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Overview of Mission in Croatia

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MEMORANDUM**TO: M.C. BASSIOUNI****FROM: NANCY PATERSON****RE: AN OVERVIEW OF THE COMMISSION OF EXPERTS
MISSION IN CROATIA - MARCH, 1994****DATE: APRIL 6, 1994**

INTRODUCTION -

This report is intended to serve simply as an overview, from the lawyers' perspective, of the recent Commission of Experts mission to Croatia during which an international team of eleven lawyers conducted a month long investigation of allegations of war crimes committed in the territory of the former Yugoslavia since 1991. As the spokesperson for the legal team, my goal is to assess the success of the mission from several different perspectives. At the same time, however, I will also address some of the negative aspects of the mission and offer some constructive criticism. It is my hope that any criticism presented will be accepted in the spirit in which it is made - that of simple constructive criticism offered so that future missions of a similar nature can learn from our experiences. This report is being written without the benefit of contemporary input or editorial comment from any other members of the legal team. However, before leaving Croatia I gathered input and solicited the opinions of the other lawyers and, therefore, will attempt to convey what I determined to be the consensus of opinion on most of the subjects discussed.

OVERALL ASSESSMENT -

Without a doubt, the mission can be declared a success and everyone associated with it should take great pride in a job well done. In the space of approximately three weeks, eleven teams of lawyers and interpreters conducted over 200 interviews and compiled an equal number of reports which recounted an incredible variety of disturbing and compelling stories. While there was some disappointment that we were not able to interview more women rape victims, there can be no disputing the fact that the team was able to document a large number of very serious violations of humanitarian law inflicted primarily upon Muslim and Croat victims by both Serbian and Croatian perpetrators. The incidents documented occurred in diverse and wide ranging areas of Croatia and Bosnia and included both seemingly unconnected incidents of individual victimization and clearly organized, officially sanctioned incidents of mass victimization.

While not all of the interviews yielded viable witnesses or incidents that either warrant or could sustain legal prosecution, a significant number of the witnesses were able to identify their perpetrators and provide sufficient eye witness testimony and documentation to provide the basis for a number of possible prosecutions. Although a number of witnesses did request anonymity, the majority of witnesses interviewed were willing to be identified and to testify at trial should it be necessary.

Another important accomplishment, of no small significance, was the fact that by successfully completing so many interviews in such a professional manner, the team proved to the witnesses as well as the governmental agencies and NGO's who had been extremely skeptical of the mission, that the investigation conducted by the Commission of Experts was, in fact, a very real, serious attempt to investigate and document violations of humanitarian law. The potential for failing to prove that important point was all too real, and everyone associated with the mission should be commended for succeeding so well in this vital aspect of the mission. While it remains unclear at this time whether there will be any follow-up to this recent work of the Commission, it appears that future missions should benefit greatly from the team's positive public relations accomplishments.

Therefore, within the limitations of time and logistics, the mission was well worthwhile and should be viewed as an important component in the overall investigation of war crimes committed within the territory of the former Yugoslavia.

SOME PROBLEM AREAS AND SUGGESTIONS FOR FUTURE MISSIONS -

1) Legal Team -

In light of budgetary and time constraints, the legal team was not selected until a few weeks before the mission was to begin. This caused problems not only for the lawyers themselves, specifically in terms of scheduling, but also limited the opportunity to include the legal team members in the planning and organization of the overall mission. Since a coordinator of the mental health team was appointed early on and was included in some of the early decision making, the legal team coordinator should also have been appointed and included in the project planning as early as possible.

If the legal team coordinator had been sent over ahead of the rest of the team for the same two week period as the mental health team coordinator, many problems that arose early in the mission could have been anticipated or even resolved before the mission started. Since this wasn't done, many legal issues and decisions that could and should have been resolved much earlier were left until the last minute. As a result some important aspects of the mission -- such as whether or not to videotape the interviews and how to utilize the mental health team -- were altered in such a way that the focus of the project changed significantly for some team members after they arrived which caused unnecessary confusion and bad feelings.

In addition, the issue of whether or not the lawyers had sufficient typing and computer skills to complete the written reports in a timely and efficient matter should have been assessed as soon as the lawyers were appointed. If that had been done, serious

problems related to completion of the reports which developed later in the mission could have been avoided. All of the lawyers felt that an incredible amount of their valuable time was wasted by having them, many of whom lacked the necessary typing and computer skills, type the reports themselves. Furthermore, there were continual problems with securing enough computers and printers to meet everyone's needs which further added to the frustration. This situation left every member of the legal team frustrated and unhappy with the entire report writing aspect of the mission.

While the members of the legal team were all highly competent and capable attorneys, there are obvious, inherent problems with selecting members of a team without the benefit of personal interviews. In the future, to be sure that every member of the team possesses the necessary practical experience, language skills, and appropriate personality for such a project, I would discourage selecting team members based solely on a review of their vitae. If in-person interviews cannot be arranged, phone interviews would certainly be better than nothing.

2) Mental Health Team -

Although my opinion may not be shared by all the lawyers, I feel it was unfortunate that the vast majority of the mental health team all came from the same hospital and, for the most part, were all personal friends. I feel it would have been more appropriate to have had a more balanced international team, similar to the legal team, including some local mental health professionals from Croatia. In addition, greater emphasis should have been placed on selecting team members with proven, hands-on experience dealing with post-traumatic stress disorders and similar psychological issues likely to come up in the wartime situation we were confronting. Had we had more time, it is entirely possible that many of the problems related to utilizing the mental health team appropriately could have been worked out. Without the benefit of that additional time, however, it was somewhat unrealistic to think that some of the serious problems that arose would just naturally work themselves out.

Knowing that there has already been considerable discussion concerning some of the problems with the mental health component of the mission, I will not address the issue further except to note that due to the lack of early planning and coordination between the legal and mental health teams, some difficult and unfortunate conflicts could have been avoided and, had that been done, a good deal of the energy and emotion wasted on resolving the problems could have been directed toward much more important concerns. That said, however, it should also be noted that the members of the legal team have the highest regard for all the members of the mental health team and commend them for their sincere efforts to contribute to the overall success of the mission.

3) Scheduling and Politics; The Role of Catharine MacKinnon -

While some felt more strongly about this issue than others, there was a consensus among the legal team that it was unfortunate to have been so dependent on governmental organizations and NGO's to funnel us so many of the witnesses we ultimately interviewed. Although the reality and sensitive political issues of the situation were appreciated by all concerned, the fact remains that this arrangement did allow the organizations entirely too much control over a mission that had such a limited time frame within which to complete its work. As was becoming evident by the time we were ready to leave, had the legal teams had more time to work at cultivating witnesses on our own and through our own contacts, we probably could have interviewed a larger number of "independent" and more valuable witnesses. Certainly there was great frustration on the part of all the lawyers that, just as it was time to leave, we had witnesses coming forward from many different sources who undoubtedly had important stories to tell.

In this regard, the role played by Catharine MacKinnon was also an unfortunate one. In retrospect, most of the lawyers were of the opinion that it was probably inappropriate for Ms. MacKinnon to have addressed the group prior to participating so actively in the interviews themselves. This left the mission open to some legitimate criticism concerning its objectivity and independence. Although I'm not sure that it could have been avoided given Ms. MacKinnon's influence and media exposure, it was unfortunate that we had to set precedents and deal with her in a totally different manner than we did all of the other contact persons we worked with. In addition, I found it personally difficult to be thrown into the situation of having to "negotiate" with Ms. MacKinnon without the benefit of having been informed before hand that she was going to be working with the Commission. This left me in the very difficult situation of not knowing my role nor the extent of my discretion in making some very sensitive decisions. While, quite frankly, I am extremely proud of the way the situation was ultimately resolved, it was a very difficult situation to be thrust into without some advance warning. Finally, I would like to commend in the highest way the work of Karen Kenny and the interpreters in regard to their involvement with Ms. MacKinnon. Karen and the interpreters were put in extremely difficult situations by Ms. MacKinnon and her advisers and they all dealt with the situation with great professionalism and good humor that went well above and beyond the call of duty.

4) Limitation on the Legal Investigation -

Without a doubt, every member of the legal team was frustrated that there was not enough time to complete the work of the Commission. Frankly, had the resources and funding been available, the mission probably should have been scheduled for two to three months instead of four weeks. In addition to the problems already mentioned, there was also no opportunity to conduct a thorough criminal investigation of individual cases. Ideally, in some of the more important cases, there should have been some means to follow-up on interviews by collecting physical evidence, documents, photographs, and other corroborating material many witnesses said they possessed and were willing to make

available. Had it been thought of before hand, it also might have been possible to have a collection of photographs and videotapes of some of the perpetrators and some of the camps on hand in Zagreb, not only to educate the lawyers about some of the incidents, but also to provide a means for the witnesses to identify perpetrators and locations of incidents.

In addition, in some cases it would have been helpful to have multiple interviews, or at least multiple contacts, with some witnesses to produce more thorough and worthwhile interviews. It can be extremely difficult for some people to meet a total stranger, let alone someone who doesn't speak your language, for five minutes and then be expected to sit down and discuss in great detail the most traumatic events of their life. While undoubtedly in those interviews with female rape victims it was helpful to have female lawyers and interpreters, once the mission was expanded beyond the narrow focus of rape cases there was no particular reason to keep it an entirely female team of lawyers. That is not to say that the women lawyers did not handle all of the interviews in a more than capable fashion, rather, it is simply a fact that as the female victims were more comfortable with female interviewers, in some cases the male victims might have been more comfortable with male interviewers.

5) Miscellaneous -

Although it might have been unavoidable, the fact of the matter was all the lawyers and interpreters put in very long hours every day, often skipping meals in the process, and this simply brought everyone to a point of exhaustion relatively quickly; a situation that may have impacted on the ability of some people to work as effectively as they would have liked. On another note, I personally would have found it helpful to have some simple maps and diagrams, particularly of some of the camps, early on in the mission to educate myself and to show to witnesses. While Thomas Osorio did a great job of making maps available, they were probably a little more detailed than necessary and some simple maps and diagrams that were easily photocopied would have been helpful. In addition, it might have been helpful in some situations for the lawyers to have a better understanding of the different types of support services available that they then could have shared with some of the victims. For instance, it might have been helpful to have a list prepared of names and phone numbers (in Croatian) of different organizations available in Zagreb (for psychological assistance, as well as legal and other types of assistance) which then could have been given to the witnesses.

POSITIVE ASPECTS OF THE MISSION -

a) Interpreters -

There are simply not enough positive things to be said about the work of all of the interpreters and Maja Drazenovic, the coordinator of the interpreters. All of the interpreters proved to be highly qualified for the mission and all seemed to be very conscious of the need for discretion and confidentiality. It would not be an overstatement

e) Positive Contributions of the Mental Health Team -

Despite some of the problems discussed above, the mental health professionals did make important and significant contributions to the efforts of the mission. The lawyers have reported several incidents where the mental health professionals were able to provide important, caring assistance for some of the witnesses. In addition, particularly in Split, the team of mental health professionals was invaluable in making contacts with several organizations which produced witnesses to be interviewed as well as important local support networks for the victims. Furthermore, in a few cases the mental health professionals were also able to facilitate getting important medical attention for witnesses.

f) Working Under Difficult Conditions -

Every member of the team deserves considerable credit for their willingness to do just about anything asked of them and to go wherever they were asked to go without complaint. In some instances, the lawyers and interpreters were thrown into difficult and potentially troublesome situations with nothing but their own wisdom and ingenuity to rely on. Despite these challenges, the teams did what was necessary under sometimes difficult circumstances and, in almost every instance, handled the matter in a professional and appropriate manner. Furthermore, despite the long hours and sometimes difficult working conditions, everyone bent over backwards to get along with each other and to maintain a positive working environment for everyone. Without this willingness to do whatever was necessary to make the team and the mission successful, there could have been any number of conflicts and problems. Those problems that did arise were, for the most part, quickly diffused and those that were not resolved could be attributed to faulty communication or simple misunderstandings.

g) Work of Karen Kenny, Maja Drazenovic, Thomas Osorio, and Masa Mlakar -

I cannot say enough positive things about the hard work and dedication of Karen Kenny, Maja Drazenovic, Thomas Osorio, and Masa Mlakar. Maja did an outstanding job of selecting and overseeing the interpreters which contributed immensely to the overall success of the mission. By her manner, she also set a very professional model for all of the interpreters to emulate. Thomas went out of his way to meet the transportation and technical needs of the team and provided important intangible assistance through his sincerity, caring, and good natured approach to everyone. Masa was invaluable in her role as secretary and administrative assistant and could always be depended on to know the answer, or how to find it, to just about any problem. Her friendly nature and extremely competent manner helped diffuse many potential problems and won her the undying admiration of all the lawyers for putting up with more than her share of headaches and aggravation.

to say that a good deal of the success of the mission was due to the ability and willingness of the interpreters to talk appropriately, and with political sensitivity, to the witnesses as well as contact persons, military personnel, and other important persons. They were amazingly adept at quickly picking up the dynamics of how the interviews should be conducted and they were incredibly willing to go just about anywhere and do almost anything required to get an interview. Furthermore, and not insignificantly, the interpreters suffered all the quirks and foibles of the lawyers with great patience and good humor.

b) Number and Quality of Interviews -

The entire team of lawyers, interpreters, coordinators, and mental health professionals should be proud of the high number and good quality of interviews completed. I think the number of interviews completed, in what was basically a three week period, was well above everyone's expectation. Furthermore, the fact that most interviews lasted a minimum of two to three hours, with some lasting nine and ten hours, was a testament to the willingness of everyone to take the time to do the interviews properly by striving for quality over quantity. While not every witness had a legally significant story to tell, there can be no doubt that the team was willing to listen to everyone and to give them a forum to tell their story; something of no small import to many of the victims.

c) Additional Insight into Legal Issues for The Tribunal -

Regardless of how many, if any, of the interviews conducted by the Commission lead to actual prosecutions, by simply undertaking the investigation and uncovering many significant legal issues that need to be considered, the Commission has undoubtedly helped to refine and direct the work of the prosecutors for the Tribunal. For instance, by focusing on the many problems with proof and identification that were highlighted by some of the interviews, the Tribunal can better direct its future investigations without having to "reinvent the wheel." In addition, if there are more investigations in the future, hopefully some of the problems the Commission encountered in its interactions with the governmental agencies and NGO's can be avoided or dealt with differently.

d) Positive Representatives of the UN -

As mentioned above, the fact that the teams managed to win over so many witnesses and contact persons helped to improve the reputation of the United Nations and the Commission of Experts. Despite a couple of minor missteps, each team proved by their hard work and willingness to accommodate the needs of the witnesses that this was not going to be just another bureaucratic exercise in futility. In addition, as a result of the hard work and sincere effort put into the mission, each of the lawyers undoubtedly will go back to their home countries and do what they can to see to it that something comes of the project by spreading the word that this was an important and significant mission whose work should not be overlooked or forgotten.

Finally, I hope that Karen Kenny receives the praise and accolades that she deserves for the incredible job she performed. I had the opportunity to work closely with Karen and I probably know better than most just how difficult her job was. I never ceased to be amazed at how well she kept her composure in some very difficult situations and how she confronted every problem head on. She treated everyone with proper respect and was more than willing to listen to different ideas and to solicit different opinions on how to deal with problem situations. I don't honestly know how she coped as well as she did with the constant myriad of scheduling problems, all the while remaining sensitive to the political implications of some of her decision making as well as the needs and desires of the lawyers and mental health professionals. Simply because she was the point person, Karen was subjected many times to considerable unfair and unwarranted criticism which she always tried to deflect with considerably more composure than I could have mustered under the circumstances. Karen, as well as Maja, Thomas, and Masa, deserve considerable praise for an outstanding job; praise that I hope is forthcoming from everyone involved in this mission.

CONCLUSIONS THAT CAN BE DRAWN FROM THE INVESTIGATION -

Unfortunately, although the Commission conducted almost 200 interviews during the month spent in Croatia, that number is but a very small percentage of the total number of violations of humanitarian law committed in the course of this war. Since the sampling is so small, it would be inappropriate to make any broad conclusions based on this one investigation. What is clear, however, is that whether by commission or by omission, the volume and nature of the rape incidents, including their geographical distribution, strongly points to an officially condoned, if not officially sanctioned, policy of inflicting the terror of rape upon the Muslim and Croatian women of the occupied territories. In addition, there does seem to be strong evidence that some divisions of the Croatian military are also guilty of violations of humanitarian law for capturing and forcing thousands of Muslims, including women and children in the Mostar area, to work at the front lines. Furthermore, the investigation revealed that there are a number of very strong witnesses who have first hand knowledge of many horrific incidents and the perpetrators of those incidents which can provide a firm foundation for a number of potentially successful prosecutions.

SUGGESTIONS FOR FUTURE INVESTIGATIONS -

Ironically, it is probably the short comings of the mission which can provide the most benefit for future investigations. As mentioned, it is vitally important to provide sufficient time and manpower to conduct any future investigations; a thorough investigation requires a considerable amount of time and resources. Interviews with victims take time and may require multiple interviews over an extended period of time; relationships must be developed and witnesses have to be cultivated over time, especially in rape and sexual assault cases. Information cannot be gathered in a vacuum, so there must be provisions for taking the investigation beyond the limits of single interviews to include evidence

collection and other means of securing corroboration. It is critical to have the right mix of experienced personnel with the proper personalities to conduct this unique type of investigation.

The sheer volume of cases makes contemplating actual prosecutions a daunting prospect at best, but based on our limited experience it appears that the cases focusing on the detention camps, prisons, and other sites of group victimization will provide the most realistic starting points for successful prosecutions. By focusing on the camps (Omarska, Keraterm, etc.) and sites of group victimization (saw mill in Kotor Varos), it should be easier to pinpoint those people who either authorized and/or ordered the abuses or, at the very least, who knew of the abuses and did nothing to stop them. By focusing on the sites of group victimization, there will be multiple witnesses available who can identify perpetrators and provide impeccable corroboration for each other. In addition, since many of the camps were organized and operated in the same regions where the victims came from, many of the witnesses knew the perpetrators and can not only identify them, but in some instances can provide information concerning their present whereabouts. Because many of the victims were themselves involved in local governments and politics, they have first hand knowledge about the specific responsibility of particular perpetrators as well as detailed knowledge about the chain of command from top to bottom.

Before any on-site investigations begin, it will be necessary to conduct some fairly detailed analysis of the findings of the Commission as well as all the other information currently available to the Tribunal. It will be important to analyze the data by looking for significant dates and significant surrounding events as well as things such as troop movements, significant local political events, when camps and situations became known to the outside world, and where and how detainees were released. It may be possible, for instance, to develop some simple computer programs to analyze some of the data or to keep track of witnesses who have overlapping information. Without having an extensive knowledge of the data already acquired, any future investigators will be wasting valuable time going over much of the same territory.

In addition, I cannot emphasize enough the need to have coordinated legal-investigative teams conducting any future investigations. Ideally, each team should consist of a lawyer, an investigator, and an experienced interpreter. The team could then focus on particular geographical regions or on a small group of camps or detention centers. By taking a geographical approach, the teams could become "specialists" about the events that occurred in those areas. Frankly, that may be the only way to get a handle on the hundreds, if not thousands of cases, and could be the best way to truly understand and prove that the abuses were not individual, random events, but were part of an officially ordered and/or condoned policy. Furthermore, although most prosecutors are used to having the police or legal authorities conduct the investigation and then turn over their findings to the prosecutors, that may not be the appropriate approach in this case. Due to the complex legal nature of these prosecutions, it is important that the prosecutors supervise the investigations. If the lawyers cannot themselves take part in the investigations, at the very least the lawyers should have regular contact with the investigators to be sure they are conducting sufficiently thorough interviews to meet the evidentiary and legal needs of the Tribunal. If nothing else can be arranged, I would

recommend having at least one lawyer located on-site somewhere in Croatia or Bosnia-Herzegovina to serve as the legal consultant to all the investigatory teams.

In addition, at least one of the team members should have some practical experience in the field and/or a high degree of knowledge about the dynamics and history of the conflict in the former Yugoslavia. As we learned during the course of our investigation, without a thorough understanding of the conflict, it is easy to overlook important evidence or to fail to follow important leads. It can also be easy to alienate witnesses and contact people by not having adequate knowledge about particular incidents. Sensitivity to the political and cultural issues that may seem insignificant to outsiders can be of great importance to victims and witnesses and a simple misstatement or misstep can have wide ranging negative implications.

While it is difficult to anticipate at this time how and when the fighting in Croatia and Bosnia-Herzegovina will cease, it is very important that investigators be sent into many of the areas that have been inaccessible to outsiders for most of the past two years. The entire north-central region of Bosnia including the Banja Luka-Prijedor area needs to be thoroughly investigated, as does the entire southeast region around Sarajevo, Foca, and Gorazde. In addition, members of the Commission have been informed that there are large numbers of rape victims in the Brcko region who have never been interviewed by anyone about those crimes. Furthermore, it will only be by conducting a thorough investigation of all the geographical regions that patterns and evidence of systematic victimization will become evident. Limitations of time and money should not be an excuse for doing anything less than a thoroughly complete and comprehensive investigation which looks at victims and perpetrators from all sides of the conflict.

It would be unthinkable of going ahead with the prosecutions without having thoroughly investigated these regions just because they have been inaccessible or because of the limitations of time and resources. Unfortunately, it is highly likely that an enormous number of violations of humanitarian law will be uncovered in those regions, involving not only rape and sexual abuse, but all nature of physical torture, mass killings, and other types of war crimes. It should also go without saying that equally detailed investigations should be conducted within the territory of Serbia and Montenegro since all sides in this conflict suffered and inflicted atrocities. Hopefully, the Serbian authorities will see the importance of being an equal participant in the investigation and will allow future investigators full, unfettered access to Serbian victims.

Regardless of what approach to the prosecutions is ultimately decided upon, it is hoped that the work of the Commission of Experts, in securing and analyzing the 223 cases investigated by the legal team, will provide a strong foundation and an important starting point for this extremely important endeavor.