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Fax from Hans Corell to M. Cherif Bassiouni

M. Cherif Bassiouni 1937-2017

Hans Corell

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POSTAL ADDRESS—ADRESSE POSTALE UNITED NATIONS, N.Y. 10017
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REFERENCE:

23 March 1994

Dear Cherif,

This is in reply to your letter to me of 18 March 1994 concerning, inter alia, co-operation for mass grave and rape investigations. I appreciate very much your having brought to my attention two recent developments on that issue. My views thereon are set out below.

The Security Council, by its resolution 780 (1992), requested the Secretary-General to establish "an impartial Commission of Experts to examine and analyze the information submitted pursuant to resolution 771 (1992) and the present resolution, together with such further information as the Commission of Experts may obtain through its own investigations or efforts, of other persons or bodies pursuant to resolution 771 (1992), with a view to providing the Secretary-General with its conclusions on the evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the territory of the former Yugoslavia". According to this resolution, the mandate conferred on the Commission of Experts was to report its conclusions to the Secretary-General.

The Security Council, by its resolution 827 (1993), decided to establish the International Criminal Tribunal for the former Yugoslavia and to this end adopted the Statute prepared by the Secretary-General. The Statute does not envision a role for the Commission of Experts in the investigation of the crimes covered by the Statute for purposes of prosecution by the International Tribunal. Furthermore, the resolution clearly anticipates the completion of the work of the Commission of Experts in stating as follows: "The Security Council ... Considering that, pending the appointment of the Prosecutor of the International Tribunal, the Commission of Experts established pursuant to resolution 780 (1992) should continue on an urgent basis the collection of information relating to evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law as proposed in its interim report".

Mr. Cherif Bassiouni
Chairman of the Commission of Experts
established pursuant to Security Council
Resolution 780(1992)
United Nations Office at Geneva

The Prosecutor initially appointed by the Security Council on the nomination of the Secretary-General subsequently decided not to assume his responsibilities. The Security Council has yet to appoint his successor. However, in the meantime the Acting Deputy-Prosecutor, Mr. Blewitt, has been appointed and is in the process of setting up the Office of the Prosecutor which should be ready to commence its functions in the near future and can do so under existing budget arrangements. The necessary budget arrangements for the longer term are expected to be approved by the General Assembly shortly. Therefore, there is no apparent reason why the information concerning the recent developments you brought to my attention should not be sent to Mr. Blewitt with a possible view to the investigations being undertaken by the Office of the Prosecutor in the near future.

There were also some specific concerns raised with respect to the International Tribunal, including the necessity of confidence-building with the competent national authorities and the issue of the refusal of the Federal Republic of Yugoslavia to accept its competence. These difficulties, which the International Tribunal will have to address as it assumes its responsibilities, are not necessarily reasons for delaying its assumption of the tasks entrusted to it.

There is a further concern with respect to the "negative consequences" of the Commission "backing out" of the investigation concerning the refugees in Turkey. As indicated in your letter, the delay in conducting the investigation is to some extent due to the fact that "Turkey... has taken some time in trying to respond to our logistical needs." There is no indication in the letter from Turkey that it would not be equally willing to cooperate with investigators sent by the International Tribunal.

Thus, as indicated previously, the Commission of Experts should terminate its work by 30 April 1994. We are at present examining the possibilities of retaining Mr. Kotliar and one assistant for the month of May in order to wind up the Commission and hand over its materials to the Tribunal. We will be in contact on that issue, but you should be aware that under our financial rules and regulations it is not self-evident that funds remaining in the Voluntary Trust Fund can be used for that purpose.

As you suggested, we will send to Mr. Blewitt a copy of your letter and attachments, together with this reply.

Best regards,


Hans Corell

Under-Secretary-General for Legal Affairs
The Legal Counsel