

Conference for the election of the international fact-finding
Commission pursuant to Article 90 of the Additional Protocol I
to the 1949 Geneva Conventions, Berne, June 25, 1991

Report of proceedings

Participating States (The "High Contracting Parties")

Algeria
Austria
Belgium
Belorussia
Canada
Denmark
Finland
Iceland
Italy
Liechtenstein
Malta
Netherlands
New Zealand
Norway
Soviet Union
Spain
Sweden
Switzerland
Uruguay

Observers

Germany
Chile

Chairman

Minister Blaise Godet, Federal Department of Foreign Affairs

1. Opening remarks by the chairman

2. Presentation of the Agenda

3. Election

The Chairman suggests the following election procedure: the 15 candidates obtaining the highest number as well as the absolute majority of the votes cast by the 19 representatives of the High Contracting Parties present and voting shall be elected. Inasmuch as the first ballot should prove inconclusive, additional ballots will be held, until all 15 seats will be filled; no absolute majority of the votes will be required after the third ballot.

The representatives entitled to participate in the election proceed to cast their votes which may not exceed 15 in number, on the ballot-papers distributed by the Chairman and containing the names of the 17 candidates and of the nominating countries.

The following 15 candidates are elected in the first ballot:

with 18 votes: Dr. André Andries, Belgium
Prof. Ghalib Djilali, Algeria
Prof. Marcel Dubouloz, Switzerland
Dr. Valeri S. Kniasev, Soviet Union
Dr. Erich Kussbach, Austria
Dr. James M. Simpson, Canada

with 17 votes: Prof. Luigi Condorelli, Italy
Prof. Daniel H. Martins, Uruguay
Dr. Santiago Torres Bernardez, Spain

with 15 votes: Prof. Frits Kalshoven, Netherlands

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with 14 votes: Prof. Kenneth J. Keith, New Zealand
Dr. Carl-Ivar Skarsted, Sweden

with 13 votes: Prof. Torkel Opsahl, Norway

with 12 votes: Prof. Allan Rosas, Finland
Prof. Francis Zachariae, Denmark

The following two candidates are not elected:

with 11 votes: Prof. Michael Bothe, Liechtenstein

with 8 votes: Dr. Giovanni Bonello, Malta

4. Questions concerning the funding of the Commission's expenses

In his introductory statement the Chairman refers to paragraph 7 of Article 90 and distinguishes two categories of expenses:

- a) the administrative expenses, which shall be met by contributions from the States having made the declaration pursuant to Article 90 and by voluntary contributions; and
- b) the expenses resulting from an inquiry, which shall be shared by the party requesting the inquiry and the party against which the allegations are made.

The Chairman submits that while the provision regulating the funding of inquiries needs no further elaboration, the apportionment of the - presumably trifling - administrative expenses among all the States having made the declaration pursuant to Article 90 would require a relatively complex budgetary mechanism reflecting, inter alia, the individual economic capacity of an ever-changing number of contributors.

Thus, in light of the anticipated modesty of the administrative

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expenses and in the interest of simplicity, the chairman presented, on behalf of the depositary State, the following proposal for discussion and, possibly, adoption by the representatives of the High Contracting Parties:

- a) Switzerland shall operate the Commission's secretariat at no cost to the Commission and meet the expenses incurred by the Commission in connection with meetings it may wish to hold in Switzerland.
- b) Each High Contracting Party whose candidate has been elected to the Commission shall be responsible for the costs of transportation, board and lodging arising from that member's participation in the meetings referred to in the previous paragraph.
- c) This funding mechanism shall be reviewed after 5 years and, if necessary, amended at the next election meeting.

In the ensuing discussion, the representatives of the High Contracting Parties describe Switzerland's proposal as useful, as it prevents budgetary issues from holding up the Commission's operations, yet suggest the following modifications:

1. Any funding arrangement agreed upon today should be submitted to the governments of the High Contracting Parties for approval.
2. The size of the Commission's administrative expenses is difficult to predict; so is the one of potential voluntary contributions, e.g., from countries that are unable, for whatever reasons, to make the declaration provided for in Article 90. Thus, a need to adapt the funding mechanism to changing financial conditions may arise before the expiration of the 5-year period suggested by Switzerland.

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3. Switzerland's proposal does not sufficiently take into account the particular situation of third world countries typically located at a greater distance from Switzerland and therefore more heavily burdened by their Commission members' travel expenses than the majority of the other High Contracting Parties.
4. All High Contracting Parties that have made the declaration according to Article 90 should be called upon to share in their statutory financial responsibilities irrespective of whether their candidates have been elected.
5. If, according to Switzerland's proposal, each High Contracting Party meets the expenses of its own Commission member, in the interest of equity per diems ought to be fixed at a uniform level.
6. Reducing the lifetime of the funding mechanism proposed by Switzerland to 2 or 3 years would enable the States concerned to consider the consequences of a new funding arrangement before they decide whether or not to nominate candidates for the next election.

As a result of the discussion summarized above, the representatives agree upon the following arrangement (the "Arrangement") scheduled to take effect on October 1, 1991, unless objected to by one or more High Contracting Parties on or before September 30, 1991:

For a period of three years,

- a) Switzerland shall operate the Commission's secretariat at no cost to the Commission and meet the expenses incurred by the Commission in connection with meetings the Commission may wish to hold in Switzerland.

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b) Each High Contracting Party whose candidate has been elected to the Commission shall be solely responsible for the costs of transportation, board and lodging arising from that member's participation in the meetings referred to in the previous paragraph. The High Contracting Parties concerned may fix the per diems in accordance with those of international experts performing comparable tasks in Switzerland.

Before the expiration of this Arrangement on September 30, 1994, a meeting of the High Contracting Parties and all other States having made the declaration pursuant to Article 90 of Protocol I shall be held at the initiative of the depositary State, or any other High Contracting Party, or any other State having made said declaration, in order to adopt a new mechanism for the funding of the Commission's administrative expenses.

If one or more High Contracting Parties timely object to this Arrangement, the depositary State will notify the other High Contracting Parties thereof and provide them with an opportunity to express their views on the objections raised, be it in writing or at a conference convened for that purpose.

p.o.411.61.(8) CAG/ROP

Le Département fédéral des affaires étrangères présente ses compliments à l'Ambassade ... et a l'honneur de lui remettre ci-joint, pour information, le rapport en langues française et anglaise de la Conférence en vue de l'élection de la Commission internationale d'établissement des faits, selon l'article 90 du Protocole Additionnel I aux Conventions de Genève de 1949, tenue à Ferne le 25 juin 1991. Une même copie est transmise à son Ministère des affaires étrangères. (sauf Liechtenstein)

Le Département saisit cette occasion pour renouveler à l'Ambassade l'assurance de sa haute considération.

Berne, le 19 juillet 1991

Annexes mentionnées

STK 22. Juli 91 12

(note envoyée aux Ambassades à Berne ou Missions à Genève, des Etats participants - voir page couverture rapport)