

UN, Request for an Investigation on War Crimes

[Source: Brunnstrom, David, UN, Request for an Investigation on War Crimes; original in French, unofficial translation.]

N.B. As per the disclaimer ^[1], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Afghanistan/UN, Request for an Investigation on War Crimes by David Brunnstrom

Reuters, 23 October 2002

Kabul (Reuters) – A United Nations expert called Wednesday for the establishment of an

independent, international commission to investigate crimes against humanity and other human rights violations committed during Afghanistan's 23 years of armed conflict.

Asma Jahangir, a lawyer from Pakistan who is currently serving as UN Special Rapporteur on extrajudicial, summary or arbitrary executions, said that the findings of such a commission would constitute the first step towards setting up a mechanism capable of bringing the perpetrators to trial.

Jahangir told a press conference at the end of her 10-day trip to Afghanistan that the number of people executed in 23 years of war was "staggering" and recommended that the death penalty be suspended until international standards for imposing capital punishment could be met.

At the same time, she said that the cycle of violence could not be halted until an end was put to impunity and that the perpetrators of crimes against humanity must be brought to trial. [...]

When asked whether she was referring to a tribunal inside or outside Afghanistan, Jahangir replied that it was too early to say which type of mechanism would be most appropriate. [...]

Justice must be done

While in Afghanistan, Jahangir visited the towns of Herat, Kandahar, Mazar-i-Sharif and Paghman, where the number of extrajudicial and summary killings seemed to have decreased.

However, she said that a climate of fear prevailed, especially outside of Kabul, and that various recent reports of extrajudicial killings were probably only the "tip of the iceberg."

These included the case of a man who had been killed after firing on a US marine in Kandahar and whose body had been strung up with a note of warning, and those of several women who had been killed by their families in the name of morality.

The UN expert said that she was “disturbed” by the alleged execution of prisoners after the fall of the Taliban and “deeply concerned” about reports of excessive use of force by the US-led coalition in Uruzgan province in July.

She also mentioned the discovery in northern Afghanistan of mass graves containing the remains of about 1,000 Taliban prisoners who had been handed over to coalition-backed warlords and the deaths of some 40 Afghans in Uruzgan villages after a mistaken attack by U.S. aircraft.

According to information gathered by Jahangir, perpetrators of war crimes still hold key positions in Kabul and elsewhere in the country.

“Our job is to ensure that justice is done. No one, whatever their rank or position, should be considered above the law.”

Discussion

1. How would you qualify the conflict between the Northern Alliance and the Taliban armed forces? Between the latter and the United States?
2. If it is confirmed that there have been extrajudicial and summary executions of Taliban prisoners in the context of this armed conflict, do these constitute war crimes? Crimes against humanity? (GC I-IV, Art. 3 ^[2]; GC III, Arts 13 ^[3], 14 ^[4] and 130 ^[5]; GC IV, Arts 27 ^[6], 32 ^[7] and 147 ^[8]; P I, Arts 75(2) ^[9] and 85(2) ^[10]; P II, Art. 4 ^[11])
3. Was the bombing of villages in Uruzgan, which killed 40 Afghans, a war crime? Even if it was a mistake? (P I, Arts 48 ^[12], 51 ^[13], 52 ^[14], 57 ^[15] and 85(3) ^[10])
4. What kind of commission could be considered in order to implement Ms Jahangir’s idea to create an international commission? (GC I-IV, Arts 52 ^[16]/53 ^[17]/132 ^[18]/149 ^[19])

- respectively; *PI*, Art. 90 [20])
5. What would be the role of an international fact-finding commission in Afghanistan? Under what conditions would it be able to act?
 6. Could the work of investigation be entrusted to a non-governmental organization such as Human Rights Watch or Amnesty International? Could it be given to the ICRC or would this compromise the ICRC's activities, which are based on neutrality and impartiality, and its work methods, which are based on dialogue and therefore on the confidentiality of any information it obtains? [See *ICTY/ICC, Confidentiality and Testimony of ICRC Personnel* [21], and *Afghanistan, ICRC Position on Alleged Ill-Treatment of Prisoners* [22]]
 7. Is Afghanistan obliged to prosecute perpetrators of war crimes? Would Afghanistan's establishment of a commission allow it to fulfill this obligation? Of a "truth and reconciliation"-type commission? (*GC I-IV, Arts 49* [23]/*50* [24]/*129* [25]/*146* [26] respectively; *P I, Art. 85* [10])

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[21] <https://casebook.icrc.org/case-study/ictyicc-confidentiality-and-testimony-icrc-personnel>

[22] <https://casebook.icrc.org/case-study/afghanistan-icrc-position-alleged-ill-treatment-prisoners>

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