

HAMMARSKJOLD CONFERENCE

SENATE HOUSE

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A JUDICIOUS INQUIRY

At a time when statutory public inquiries are under way in the UK into the contaminated blood disaster, the Covid pandemic, the Grenfell Tower disaster and the Post Office ‘Horizon’ scandal, it’s useful to remember that there is no single model for an effective inquiry. The four I have mentioned are being chaired by retired judges of the High Court or Court of Appeal. We do not know what will happen if one of them dies before reporting. But, for as long as it takes, they are empowered to take evidence on oath, to compel the production of documents and to allocate rights of advocacy. In other words, statutory inquiries tend to mimic judicial proceedings.

The cost to the public purse of such inquiries is astronomical. More relevantly, there is little to support the belief that witnesses are more truthful when required to testify on oath, Indeed our own judicial experience suggests that the effect of the oath on habitual liars is to prompt them to lie more vigorously.

For these and other reasons I was not dismayed when, in 2012, David Lea approached me about undertaking a non-statutory, and therefore non-judicial, investigation of the 1961 Ndola disaster. I agreed on condition that I had a professional secretariat and could assemble a suitable panel to form the commission. I was able without difficulty to persuade three internationally

respected judicial colleagues, Justice Wilhelmina Thomassen, Ambassador Hans Corell and Justice Richard Goldstone, to join me. I mention this because in my view it afforded a greater range and depth of judicial experience than any single-judge-led process could have done. It was a judicious, albeit not a judicial, inquiry. At no point did we find the absence of judicial powers a problem. But without our salaried part-time secretary, Bea Randall, and the voluntary services of a specialist firm of London solicitors, Field Fisher, I don't think we could have produced a report of much value.

In the event, I was able to record interviews in London with possibly significant witnesses, including Commander Charles Southall and Sir Brian Unwin. Richard Goldstone and I travelled with our secretary to Zambia, where we interviewed local people who had seen more than one aircraft's lights on the approach path to Ndola. In the course of this we were able to resolve the mystery of what charcoal-burners were doing in the forest at midnight. The one thing that defeated Richard Goldstone and me was the huge dish of chops which Mama Kankasa put on the table when we went to interview her.

Much of the Commission's work was necessarily ground-clearing – for example, dealing with the inevitable “It was me” claims. But this left many questions open. As you know, we gave an affirmative answer to the overarching question we had undertaken to answer, namely whether the evidence which was now available would justify the UN in reopening its own inquiry. Notwithstanding our informal procedure and unofficial status, the UN accepted our reasoned advice and appointed a retired judge of international distinction, Mohamed Chande Othman, a former Chief Justice of Tanzania, to pursue the evidential issues. We hope that our work, limited as it was, has in this way contributed to an eventual answer to Susan Williams' big question: who killed Hammarskjold?

I speak for all four members of the Commission when I say that, while we were able to reach no concluded view on who was responsible for the death of Dag Hammarskjold and the other passengers and crew of the DC6, we are all now certain that it was not accidental. We share the frustration of Justice Othman, and of the considerable number of researchers here today, at the continued withholding of information and documentation by states which one might have expected to share our objectives.

In spite of the continuing voids and contradictions in what is now known, a great deal has transpired since we reported in 2013, and it is this that brings today's participants together. On behalf of the former Hammarskjöld Commission, I wish you all possible success in an endeavour which is still far from merely academic.

Stephen Sedley

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