



Report of the International Humanitarian Fact-Finding Commission 1997-2001

1. Introduction

The first five-year report of the Commission, covering the period between 1991 and 1996, provided complete and detailed information about its establishment, composition and competence. Although the information has not been repeated here, certain basic facts may serve as an introduction to the second five-year report.

The International Humanitarian Fact-Finding Commission owes its existence to Article 90 of the First Protocol of 1977 Additional to the Geneva Conventions of 1949 for the Protection of Victims of Armed Conflicts (Appendix I). Effectively constituted in 1991, it is a permanent international body at the disposal of parties to armed conflicts. Its competence is twofold: to investigate and report allegations of serious violations of international humanitarian law as brought forth by the parties; and, through its good offices, to facilitate the restoration of the respect of the parties for international humanitarian law.

At the time of writing this report, 59 states representing all continents have become parties to the Protocol. In doing so, according to Article 90, they have agreed to accept the competence of the Commission in their relations to any other state that is a party to the Protocol (Appendix II).

The basis of the Commission, implicit in Article 90 of the First Protocol of 1977, is in its primary designation for situations of international armed conflict. The Commission, however, is also available to parties to non-international (or internal) armed conflict, provided that all of the parties involved have consented to it. In a situation of internal armed conflict within its boundaries, it is obvious that a state's acceptance of the competence of the Commission vis-à-vis other states having done likewise has no binding effect.

2. Membership

Of the 15 members of the Commission elected in 1996 (Appendix III), Dr. Carl-Ivar Skarstedt passed away in 1998 and Professor Roman Jasica, in November 1999. To fill the vacancy left by the death of Dr. Skarstedt, and in accordance with Article 90(1c), the Commission retained Mrs. Awatif Abu Haliqa, a medical doctor from the United Arab Emirates. Mrs. Haliqa effectively joined the Commission at the time of its 10th annual meeting held in Geneva in February 1999. Unfortunately, Mrs. Haliqa resigned from the Commission in March 2000 for personal reasons. Considering the short period of time remaining until the next meeting of representatives as provided in Article 90(1b), the Commission has decided not to fill the vacancies left by the death of Professor Jasica and the resignation of Mrs. Haliqa until then.

3. Activities

Under this heading, it should be said at the outset that, in spite of numerous efforts both by and on behalf of the Commission, including those in the second five-year period, it has not been approached with any concrete enquiries nor been involved in any good offices. This

applies to both the very few international armed conflicts and to the many internal armed conflicts that occurred during this time.

It should also be mentioned that the Commission was addressed on more than one occasion by one or another party to an armed conflict, whether for information or with a specific request. But it was never a situation that could be regarded as an international armed conflict, and one in which both parties had recognised the Commission's competence. Most of these tentative approaches were made by representatives of an armed opposition group involved in an internal conflict. Once they had become aware of the required procedure, including the necessary consent of both parties (and with it, the probability of a counter-request), they did not pursue the matter.

The armed conflict in Colombia represented the only situation in which the Commission almost became concretely involved. Between 1995 and 1999, repeated contacts with the government and one armed opposition group led to a stage in which the two parties were on the verge of signing an agreement to submit selected cases to the Commission. A change in the political landscape brought the process to an end.

In the period under review, the Commission has continued to prepare for future activities. In this respect, it profited greatly from a training program that was organized in September 1998 by the Swedish authorities at the initiative of Dr. Skarstedt, our Swedish member. The program involved an enquiry by a Chamber of five members of the Commission into serious violations of international humanitarian law, alleged to have been committed in a fictional armed conflict between the Swedish government and a separatist movement that exercised control over part of the territory and sought recognition as an independent state.

The experience gained from the very realistic practice provided the basis for seminars that the Commission held in February 2000 and February 2001, both times within the context of its annual meeting. The seminars focused on the methodology and techniques of enquiry, including practical matters such as the definition of the mandate of a Chamber, the logistics of a mission, relations with the parties and with the media, and, finally, the principles to be respected in interrogation and the protection of witnesses. On the basis of these activities, the Commission has prepared a draft set of operational rules.

To publicize the work of the Commission, the President and members participated in several promotional activities throughout the period covered by this report. The Commission also profited in this respect from the untiring efforts to promote its cause on the part of the International Committee of the Red Cross. In particular, promotional trips made by the President and members would not have been possible without the active support of the Committee.

The Commission was also represented at various international meetings and conferences, notably at: the First Periodical Meeting on International Humanitarian Law of States Parties to the Geneva Conventions on General Problems Relating to the Application of International Humanitarian Law (Geneva, 19 - 23 January 1998); the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, 15 June - 17 July 1998); the celebration of the 50th anniversary of the Geneva Conventions (Geneva, 12 August 1999), and the 27th International Conference of the Red Cross and Red Crescent (Geneva, 31 October - 6 November 1999).

The promotional activities led to the Commission's being mentioned in several international publications. These include:

- Report on the Conclusions of the Centennial of the First International Peace Conference, held in 1999 in The Hague and St. Petersburg; paragraph 79 (4c) of the report, published as UN Doc. A/54/381 and Corr.1, encourages all states to accept the competence of the

Commission, and parties to armed conflicts to make use of it, and suggests that its competence in relation to internal armed conflicts should formally be recognised.

- Resolution 1265 (1999), adopted by the Security Council of the United Nations on 17 September 1999 on the protection of civilians in armed conflict; operative paragraph 6 "affirms the possibility... of using the International Fact-Finding Commission established by Article 90 of the First Additional Protocol to the Geneva Conventions" (etc.).
- Resolution 55/148, adopted by the General Assembly of the United Nations on 12 December 2000 on the Status of the Protocol Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts; paragraph 3 "[calls] upon all States that are already parties to Protocol I, or those States not parties, on becoming parties to Protocol I, to make the declaration provided for under article 90 of that Protocol."
- Recommendation 1427, adopted by the Parliamentary Assembly of the Council of Europe on 23 September 1999, and suggesting that the Committee of Ministers invite the governments of the member states "to recognise the jurisdiction without prior agreement of the International Fact-Finding Commission ... and to submit enquiries to it" (para. 8, ii (e)). The Committee of Ministers, in its response to the recommendation adopted on 4 July 2001, invited the member states to act accordingly (Doc. 9174, para. 9).
- Plan of Action for the years 2000-2003, adopted by the 27th International Conference of the Red Cross and Red Crescent in November 1999; paragraph 15 urges states party to the First Additional Protocol which have not yet recognised the competence of the Commission to "consider again the possibility of doing so", and it calls upon parties to armed conflicts "to examine systematically the utility and the possibility of resorting to the Commission in order to clarify facts or facilitate respect for international humanitarian law through its good offices".

The Commission notes with gratitude that these texts not only call upon states to recognise its competence, but to actually make use of its services.

4. Administration and finance

The Swiss Federal Council continued to provide the Commission with the secretarial assistance needed for its ordinary, non-operational functions.

The annual budget of the Commission covered the remaining costs of its ordinary functions, as described in the previous part of this Report, including various promotional activities.

The President and one member of the Commission, Dr. Hernán Salinas Burgos, travelled to Colombia at the invitation of the Colombian Minister of Foreign Affairs to determine whether the parties to the armed conflict were prepared to grant the Commission a role in the endeavours to enhance respect for international humanitarian law. The mission, which lasted from 9 to 27 March 1998, did not fall under the heading of promotional activities and should have been financed, in principle, by the requesting party. Given the difficult financial situation of the Government, support had to be found elsewhere. The Commission notes with gratitude that the Government of The Netherlands provided the funds that enabled the mission to be undertaken.