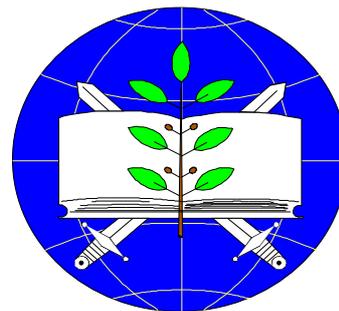

**Commission Internationale Humanitaire
D'Etablissement des Faits**



**International Humanitarian
Fact-Finding Commission**

**REPORT OF THE
INTERNATIONAL HUMANITARIAN FACT-FINDING COMMISSION
2002-2004**

APPEAL TO STATES PARTIES

The International Humanitarian Fact-Finding Commission calls its vital role to the attention of the States Parties to the 1949 Geneva Conventions for the protection of the victims of war. It makes that appeal particularly to the States which have accepted its competence under article 90 of the First Additional Protocol to the Conventions.

The Commission appeals to States to accept its competence (if they have not already done so) and to give consideration to invoking its services where there are disputes about compliance with international humanitarian law. In the past two years both the 28th International Conference of the Red Cross and the Red Crescent and the United Nations General Assembly have made essentially that appeal.

The Commission is a permanent body of 15 independent experts elected by the States (now 68) accepting its competence. The essential purpose of the Commission is to help ensure that international humanitarian law is applied during armed conflict. The States Parties to the Geneva Conventions and their Protocols themselves have a fundamental obligation to respect and ensure respect for those treaties in all circumstances.

The Commission was established by article 90 of Protocol 1 Additional to the Geneva Conventions. It came into existence in 1991, when 20 States had accepted its competence. Today, more than one third of the States which have accepted Protocol 1 have recognised the competence of the Commission, among them several major military powers and a number of States which have been involved in armed conflicts.

The Commission is to meet its purpose

- by inquiring into allegations of grave breaches or serious violations of the Conventions and Protocol
- by facilitating through its good offices the restoring of respect for the Conventions and Protocol
- when reporting its findings, by making such recommendations as it deems appropriate.

The Commission may undertake those functions at the request of one of the States which has accepted its competence and which makes such allegations against another State which has also accepted its competence.

In other situations the Commission may act if the parties to the particular conflict consent to its acting. In that respect it has made it clear that it is willing to act in relation to non international armed conflicts as well as international ones.

In carrying out its responsibilities, the Commission, through article 90, its rules and its operational guidelines, guarantees fair and thorough procedures for establishing the facts.

Like a court, it establishes the facts, but, unlike a court, it does not make judgements against individuals or the parties to the conflict ; and, also unlike a court, through its good offices and recommendations, it may make proposals for restoring respect for international humanitarian law and its findings remain confidential to the parties unless they agree otherwise. Because of those differences and those characteristics the parties to a conflict may see value in using the Commission's procedure, as well as, or instead of, a court procedure or other methods of resolving disputes about compliance with that body of law.

A particular inquiry is undertaken by a chamber of five members plus two others nominated by each party to the conflict, unless the parties agree otherwise. The parties are to assist the Commission in the conduct of its inquiry. The assistance is to include the presentation of all evidence necessary for establishing the facts.

The Commission's regular budget is met by the States accepting its competence on a proportional basis using the United Nations formula for the general budget. The costs of a particular inquiry are to be met by the parties to the conflict unless another arrangement is made.

The Swiss Government provides the Commission with the necessary administrative facilities for the performance of its functions.

Further information is available from the Secretariat of the Commission, ihffc@eda.admin.ch, in a brochure published by the Commission and on its website: www.ihffc.org.

1. States accepting the Commission's competence

The first two reports of the Commission, covering the period between 1991 and 2001, provide detailed information about its establishment, composition and competence.¹ This report covers the following three years.

By the end of December 2004, 68 States representing all continents had recognised by declaration the competence of the Commission under article 90 of the First Additional Protocol to the 1949 Conventions (Appendix I). The states which have recognised the competence of the Commission in the period under review are: Cyprus, the Cook Islands, Democratic Republic of the Congo, Tonga, Mali, Republic of Korea, Burkina Faso and Japan. The 68 States are listed in Appendix II.

2. Membership

The 15 members of the Commission (Appendix III) elected at the Annual Meeting 2004 the following members for a term of two years:

- President : Sir Kenneth Keith
- First Vice-President : Dr Ghalib Djilali
- Second Vice-President : Dr Elzbieta Mikos-Skuza
- Third Vice-President : Major-General Anthony Rogers

Ambassador Juan Antonio Yañez-Barnuevo, the former second Vice-President, did not stand for re-election for professional reasons. The Commission thanks him for his services as a Vice-President of the Commission.

3. Promotional Activities

3.1 Participation in Conferences and Seminars

The most important conference during the time period of this report was the 28th International Conference of the Red Cross and Red Crescent. The Commission participated in this Conference as an observer.

3.1.1 *28th International Conference of the Red Cross and Red Crescent in Geneva, 1-6 December 2003*

The Commission delegation, including Sir Kenneth Keith, President, Dr Djilali, First Vice-President and Major-General Rogers, Member, together with other members attending the Conference as members of their National Society or Government delegations, took this opportunity to inform the International Conference about its role and current activities at a plenary session and in the first workshop, "International Humanitarian Law and the Challenges Posed by Contemporary Conflicts". It also organised a well attended seminar during which the President spoke on "The function and current activities of the IHFFC", and Professor Michael Bothe, Member, discussed "The role of the IHFFC in the context of contemporary challenges".

The Commission delegation distributed its new brochure to all delegations, and invited several States which have not yet accepted the competence of the IHFFC to participate in bilateral discussions on the Commission's recent activities and developments. The Commission had valuable discussions with a number of African states to assess their interest in IHL, the prospect of their accepting the competence of the Commission and the value of the Commission making a visit to their capitals to discuss the matter further. The talks it held with Latin American countries served as followups to the promotional missions it had made to Guatemala, El Salvador and

¹ The reports of the Commission are available online at: www.ihffc.org/en/publicreports.html.

Honduras in 2000 and to Venezuela and Ecuador in 2001. The Commission also had talks with members of the French delegation and a number of Asian delegations.

The Commission was pleased about the positive response to its active participation in the conference and to its role appearing in the texts adopted by the International Conference, mentioned under 4 below.

3.1.2 *Other international conferences and meetings*

The Commission was also represented at various other international meetings and conferences, including

- International Conference of Governmental and Non-Governmental Experts on the Missing, 19-21 February 2003 in Geneva, by Dr Marcel Dubouloz;
- ICRC regional seminars on improving compliance with IHL, which were held in Cairo, Pretoria, Kuala Lumpur, Mexico City and Bruges between April and September 2003. The Commission was represented in Cairo by Professor Bothe, in Kuala Lumpur by Sir Kenneth Keith, in Mexico City by Dr Jeannette Irigoien Barrenne, and in Bruges by Professor Elzbieta Mikos-Skuza, Major-General Rogers and Professor Stelios Perrakis;
- the second session of the Assembly of States Parties to the Rome Statute of the International Criminal Court held at the United Nations Headquarters in New York on 8-12 September 2003, by Ambassador Yañez-Barnuevo;
- the 8th session of the Group of Governmental Experts of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons of 1980, on 5-16 July 2004 Geneva, with a presentation by Professor Bothe on the Commission;
- 71st Conference of the International Law Association on 16-21 August 2004, Berlin, by Professor Bothe, Professor Ove Bring, Dr Irigoien Barrenne and Ambassador Arpad Prandler;
- XXVIIIth Round Table on current problems of International Humanitarian Law held in San Remo on 2-4 September 2004 by Professor Mikos-Skuza;
- Conference on 2-4 September 2004, by Raoul Wallenberg Institute in Lund on November 2004, by Professor Bothe.

3.2 Promotional Missions to Africa

The Commission was encouraged by the discussions at the International Conference at the end of 2003 to undertake two promotional missions to Africa.

Dr Djilali, first Vice-President, and Ambassador Yañez-Barnuevo, second Vice-President, accompanied by a member of the Secretariat, Mr Daniel Derzic, undertook a promotional mission to Western and Central Africa between 7-19 February 2005: Cameroon (7-11 February), Ivory Coast (11-13 February), Niger (13-16 February) and Senegal (16-18 February). Another delegation of the Commission visited the following Southern and East African countries between 2-12 May 2004: South Africa (2-5 May), Botswana (5-6 May), Mozambique (6-8 May) and Kenya (9-12 May). The Delegation was made up of Sir Kenneth Keith, President of the Commission, Major-General Rogers, Third Vice-President, and Mr Daniel Derzic of the Secretariat.

The purpose of these visits was to explain the activities of the Commission to the relevant government services, to members of the National Red Cross and Red Crescent Societies, to academic circles and to non-governmental organisations. In all eight countries, the delegations held very constructive meetings with high-ranking government officials as well as with Presidents or Vice-Presidents of the National Societies and members of civil society active in this area. The delegations took pains to point out among other issues that of the 68 countries worldwide to have recognised the competence of the Commission only ten are African, and that Africa is represented in the Commission by only one member. They accordingly invited these States to recognise the competence of the Commission as soon as possible, and certainly before the next election of members of the Commission.

The Commission was satisfied with the talks and the interest shown by the governmental representatives of these states. It intends to stay in contact with these states to facilitate possible recognition of the Commission's competence.

The Commission thanks the Swiss Federal Department of Foreign Affairs for its valuable support on both missions. The Commission also profited during these missions from the untiring efforts of the International Committee of the Red Cross to promote its cause. In particular, the promotional missions would not have been as effective without that support.

4. International Support

The role of the Commission continues to be emphasised by important international instruments. The Declaration, adopted by the 28th International Conference of the Red Cross and Red Crescent in December 2003,² called upon States "to make use of existing implementation mechanisms, such as Protecting Powers and the International Fact-Finding Commission".

Resolution 1, adopted by the same Conference, "calls upon States to use and to ensure the effective functioning of existing implementation mechanisms of international humanitarian law, pursuant to international obligations undertaken by them, and calls upon States party to the 1977 Additional Protocol 1 to the 1949 Geneva Conventions, which have not yet recognized the competence of the International Fact-Finding Commission pursuant to Article 90 thereof, to consider again the possibility of doing so."

The General Assembly of the United Nations on 16 December 2004 in resolution 59/36 on the Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts emphasised: "the possibility of making use of the International Fact-Finding Commission in relation to an armed conflict, pursuant to article 90 of protocol I to the Geneva Conventions of 1949" as well as "the possibility for the International Fact-Finding Commission to facilitate, through its good offices, the restoration of an attitude of respect for the Geneva Conventions and Protocol 1."

5. Mandate

From the outset, the Commission has proposed that it be given a mandate in respect of particular disputes. Others have also made such proposals. Notwithstanding those efforts the Commission has not been approached with any concrete requests nor been asked to provide its good offices on any occasion.

From the period under review the Commission mentions three instances. In the course of its visit to the Ivory Coast, the Commission delegation met the Minister of Foreign Affairs and the Head of the Cabinet of the Prime Minister to raise the question whether the Commission might take up a role proposed in Linas-Marcoussis Accords: the government of national reconciliation was to ask for the creation of an international commission to undertake inquiries and establish facts with a view to registering cases of serious violations of human rights and international humanitarian law since 19 September 2002. The Ivory Coast has not however had recourse to the services of the Commission.

The Commission, by letter dated 7 May 2004, offered its good offices to X State, suggesting that it could undertake a monitoring role in respect of the internal inquiries into the allegations appearing in the media of serious human rights violations by members of the X State armed forces of persons detained by X in Iraq. After further contacts, the X Ministry of Foreign Affairs finally declined, by letter dated 13 October 2004, the offer of the Commission saying that none of the 146 service police investigations have revealed evidence of systematic abuse by the X State Armed Forces in Iraq and saying that "we take all allegations of abuse very seriously, and our investigation is fully competent, impartial and independent".

² The official documents of the Conference are available online at www.icrc.org/eng/conf28 (English) and www.icrc.org/fre/conf28 (French).

Finally, when the Secretary-General of the United Nations was assembling the membership of the Commission to inquire into allegations of human rights abuses in Darfur the Commission, in consultation with the Office of Legal Affairs in the Secretariat, suggested the names of a number of Commission members. Unfortunately the suggestion was not taken up.

6. Internal Work of the Commission

In the period under review, the Commission has continued to prepare for future activities. At the 2003 annual meeting, the Commission approved its redesigned website (www.ihffc.org) and adopted internal operational guidelines, which relate to four areas:

- The first part lays down detailed rules on internal procedures in the event of a request to the Commission to make its services available.
- The second part deals with the relationship between the Commission and the parties to the conflict in the event of the commission receiving a mandate to undertake an on-site investigation (Terms of Reference).
- The third part consists of procedural guidelines for the Commission team tasked with an on-site mission.
- The fourth part deals with technical and operational aspects of such a mission.

The Commission decided to go further into the fourth topic and charged an internal working group with the task of investigating the logistical infrastructure for a mission in a crisis area.

At its 2004 annual meeting the Commission adopted a statement about the type of good offices it could make available to restore and uphold international humanitarian law. That is now on its website.

7. 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, including various promotional activities, as described in this Report.

October 2005.