



INTERNATIONAL HUMANITARIAN
FACT-FINDING COMMISSION (IHFFC)

COMMISSION INTERNATIONALE HUMANITAIRE
D'ÉTABLISSEMENT DES FAITS (CIHEF)

International Criminal Court (ICC) Review Conference
Kampala, Uganda - 31 May to 11 June 2010

Statement by Michael Bothe, President of the IHFFC

Thank you, Mr. President.

Mr. President, Excellencies, Ladies and Gentlemen,

It is a great privilege and honour for me to address this Conference as an observer in the name of the International Humanitarian Fact-finding Commission.

The International Criminal Court and the IHFFC share a common goal: they are both means to achieve respect and better implementation of fundamental values of the international community, namely the rules of international law restraining violence. This common goal explains our presence as observers at the conferences which once established and now govern the functioning of the ICC. Since the Rome Conference of 1998, we have participated in the Assemblies of States Parties. This year, it is time for stock-taking. We witness with great satisfaction the progress achieved by the Court.

As you know, the IHFFC has been established pursuant to Art. 90 of the Protocol I Additional to the Geneva Conventions to ascertain facts in cases where violations of international humanitarian are alleged to have happened. It is composed of 15 experts elected by the States (currently 71) which have recognised its obligatory competence.

These functions assigned to the IHFFC mean that the ICC and the IHFFC have different, but complementary roles in ensuring compliance with international humanitarian law. Common purpose, but different functions – this is a situation which invites cooperation. We are pleased to note that this was recognised by the ASP of the ICC Statute in the Resolution on cooperation adopted last November at The Hague. The IHFFC would like to reiterate its willingness and determination to live-up to the expectations thus expressed. Practical steps for that purpose are being taken or prepared.

Mr. President!

The relationship between fact-finding and criminal investigations has played an important role in the practice of the Security Council during the last two decades. Just a reminder: in 1992, the SC sent a fact-finding mission to the former Yugoslavia to enquire about alleged violations of international humanitarian law. Its report prompted the decision to establish the ICTY. A fact-finding report was the basis for the SC's referral of the Darfur situation to the ICC. In its resolution 1894 adopted 11 November 2009, the SC envisages making use of the services of the IHFFC in cases of alleged violations of international humanitarian law. Thus, fact-finding mandated by the SC may also become an item on the IHFFC agenda.

The case of Darfur shows, however, that the relationship between independent fact-finding and the collection of evidence by the Prosecutor of the ICC implies some difficult procedural questions. Independent fact-finding must not necessarily lead to a case being submitted to the ICC. Inquiry reports of the IHFFC may, for instance, enable States to make a meaningful use of the complementarity option offered by the ICC Statute. This is a perspective which has been discussed between the IHFFC and States. By ascertaining facts concerning alleged violations, the IHFFC can enable States to return to a situation of respect for the law, to re-establish confidence between parties to a conflict, and thus to overcome conflict situations. At this occasion, we would like to publicly repeat our offer to discuss such perspectives with States affected by conflict.

Thank you for your attention!

Thank you, Mr. President!