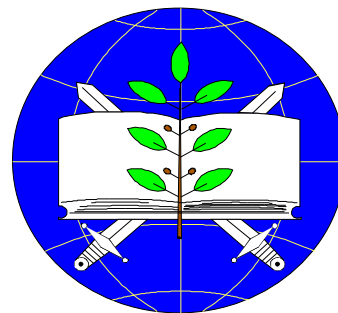

**COMMISSION INTERNATIONALE HUMANITAIRE
D'ETABLISSEMENT DES FAITS**



**INTERNATIONAL HUMANITARIAN
FACT-FINDING COMMISSION**

GOOD OFFICES

Article 90(2)(c) of the Protocol 1 additional to the Geneva Conventions of 1949 authorises the Commission to

- (i) Enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol;
- (ii) Facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.

That power is exercisable in the circumstances contemplated by article 90(2)(a), that is where a High Contracting Party which has accepted the Commission's competence makes allegations against another such Party in terms of article 90(2)(c)(i).

In addition, in terms of article 90(2)(d), in other situations the Commission shall institute an inquiry at a request of a Party to the conflict only with the consent of the other Party or Parties concerned. In that context the Commission has, from early in its existence, stated its willingness to inquire into alleged violations arising in non-international armed conflicts, as well as international ones, so long as all parties to the conflict agree.

The Rules adopted by the Commission at the outset in 1992 and amended in 2003 do not directly address good offices except in the preamble and Rule 28(1). The preamble contains this explicit provision:

Bearing in mind its competence in respect of enquiry as well as of good offices, recognised for the purpose of obtaining the observation of the principles and rules of international law applicable in armed conflict.

The next paragraph of the preamble is also broadly significant:

Convinced of the need to take all appropriate initiatives as necessary in cooperation with other international bodies, in particular the United Nations, with the purpose of carrying out its functions in the interest of the victims of armed conflict.

That paragraph may be seen as reflecting article 89 and 1(1) of the Protocol and article 1 common to the 1949 Conventions. The first reads as follows:

In situations of serious violations of the Conventions or of this Protocol, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the United Nations and in conformity with the United Nations Charter.

Also relevant is a provision of the Financial Procedures for the Administrative Expenses of the Commission adopted in 1994 by the International Conference of the (now 68) States which have

accepted the Commission's competence. Under the Procedures the "administrative expenses" referred to in paragraph 7 of article 90 include "costs incurred by the Commission and its members in connection with initiatives the Commission may take to promote its services and to offer its good offices in accordance with paragraph 2(c)(ii) of article 90". That item is elaborated as follows:

ad: Costs incurred by the Commission and its members in connection with initiatives to promote the Commission's services and to offer its good offices.

These costs include those resulting from efforts of the Commission to increase the international community's awareness of the Commission's nature and mandate and to lay the ground-work for a potential cooperation between the Commission and other international bodies.

The funds necessary to carry out these activities in any given year are difficult to anticipate; as a rule, however, they should not exceed 50,000 Swiss francs per annum.

The budget regularly includes an amount under that heading.

The essential purpose of the Commission is to facilitate compliance with international humanitarian law during armed conflict, within the provisions under which it is established and operates. The Commission's function is to be seen in the broader context of the obligations of States to settle their disputes by peaceful means which include a wide array (see articles 2(3) and 33 of the Charter of the United Nations). It has also been long recognised that third parties may take initiatives to help others to resolve disputes; that is not to be seen as an unfriendly act (see eg the 1899 Hague Convention for the pacific settlement of international disputes, articles 2-8). Ninety years on, the first meeting of the Security Council, at the level of heads of State and heads of Government held in 1992, formally invited the Secretary-General to make greater use of his good offices.

"Good offices" are seen as involving a flexible range of elements, depending on the nature of the controversy, the attitudes of the Parties and the possible roles of the third party. The process can facilitate communication between parties where direct communication has broken down. The third party can communicate procedural suggestions of its own or of one party or the other, claims of fact and its own view of the facts, suggested ways forward and means of resolving the dispute and suggested findings and recommendations. It is left to the parties to accept or not the proposals.

While it is important to emphasise that flexibility, some matters of principle must be respected : the integrity, independence and even-handed character of the process; the need for parties' consent and cooperation; the appropriateness of the means chosen to the issues in dispute; and in the particular context of the Commission the commitment by all involved to the restoration of respect for the Conventions and Protocol.

The issues relating to the Commission's good offices role broadly divide into two:

- When can the Commission exercise its good offices?
- How must the Commission exercise its good offices?

A. When can the Commission exercise its good offices

1. On the initiative of High Contracting Parties

If an allegation is made under article 90(2)(a) and (c) and falls within the Commission's competence then it has a good offices role. It might be expected that that role would ordinarily be associated with the fact finding role, particularly given the reference to "restoration of an attitude of respect". That is not however expressly required by the drafting of paragraph (2)(c) and it is

possible to envisage a situation in which High Contracting Parties might recognise in confidential processes that both are in breach and what is required is a means of returning to compliance. Those means could be promoted through a process of good offices.

2. *On the initiative of Parties to the conflict*

While paragraph (2)(d) appears to be limited to an inquiry established by the consent of the Parties to the conflict, the Parties, in the spirit of the overall purpose of the Commission to restore the Parties to compliance and on the basis of their consent, could consent to a good offices process.

3. *On the initiative of the Commission*

The purpose of the Parties to the Protocol as manifested in article 90 and particularly of those who have accepted the Commission's competence, the position taken by those Parties in the financial rules and in annual budgets and the position taken by the Commission in the preamble to its rules and in its practice all support the power of the Commission to offer its good offices to Parties to a conflict. In no case has a Party in an internal or international conflict suggested that the Commission may not make such an offer. The broader context of the law for the settlement of international disputes supports that reading.

B. How must the Commission exercise its good offices?

1. *Must the Commission make factual findings before considering proposals under its good offices?*

Logic, along with the structure of article 90(2)(c), suggests that before making proposals or recommendations for the *restoration* of respect factual findings have to be made. But, as already suggested, the parties may agree to a different course.

2. *May the Commission make proposals to the Parties about respect for the Conventions and the Protocol?*

If the Commission is competent under paragraphs (2)(a) and (c) it has power to make recommendations to that end. Article 90(5)(a) does not require it to make a recommendation. In other cases the matter will turn on the terms of the consent the parties have given and the Commission's judgment on how far it may properly go.

3. *What continuing role might the Commission have once it has brought its good offices to a conclusion?*

If the Parties consented to a continuing role, that could be contemplated, but it may not be practicable for the Commission, given its resources.

4. *How is the Commission to be composed to carry out its good offices?*

If the matter is being handled under article 90(2)(a) and (c), the Chamber would include five members of the Commission and two ad hoc members. The Parties to the conflict can however agree to a different composition, as would also be the case with good offices being undertaken by consent "in other situations".