



International Humanitarian Fact-finding Commission (art. 90 Protocol I)
Commission Internationale Humanitaire d'Établissement des Faits (art. 90 Protocole I)

International Humanitarian Fact-Finding Commission

Statement
by
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Commission**

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Mr. President, Excellencies, Distinguished Delegates, Ladies and Gentlemen,

In the name of the International Humanitarian Fact-Finding Commission, I would like to express our sincere gratitude for this opportunity to present the cause of the Commission during the Fifth Assembly of States Parties to the Rome Statute of the International Criminal Court.

The Commission attended the Diplomatic Conference in Rome in 1998 as well as two first Assemblies in 2002 and 2003. It was and is always a great honour and privilege for the Commission to be able to address a distinguished audience like yours.

Mr. President,

The International Humanitarian Fact-Finding Commission is established under Article 90 of the First Protocol Additional of 1977 to the Geneva Conventions of 1949 and is frequently referred to as Article 90 Commission. It is one of the methods and mechanisms that are designed under international law to ensure compliance with international humanitarian law of armed conflicts. Its main purpose is to ensure compliance during armed conflicts through the clarification of facts alleged to be war crimes – both in international and internal armed conflicts. The idea behind is that uncertainty about facts gives often rise to accusations and makes the return to the attitude of respect for rules of law, and further of the return to peace, much more difficult. Clarity about relevant facts might serve as a basis of mutual confidence and therefore better respect for international humanitarian law. Another function of the Commission are the good offices exercised on behalf of parties to a given conflict – again, with the aim of contributing to returning to peace through increased respect for international humanitarian law.

Ever since, the primary task of the Commission is not to ascertain facts for the purpose of establishing individual criminal responsibility, but with the aim of ensuring better compliance with international humanitarian law of armed conflicts. However, the findings of the Commission might be useful in criminal prosecutions, national or international, including the International Criminal Court.

The International Criminal Court is an institution tasked to ensure the application of international humanitarian law of armed conflicts, including rules contained in the Geneva Conventions and its Protocols Additional that – as has just been mentioned – form the legal basis for the International Humanitarian Fact-Finding Commission. Of course, the International Criminal Court has its own procedure of investigation which is in the hands of the Office of the Prosecutor and aims at collecting reliable evidence in order to ascertain individual responsibility. However, in cases of enquiries conducted particularly during an armed conflict, it might be more appropriate and prompter to facilitate the return of a situation of respect of international humanitarian law, to call upon the International Humanitarian Fact-Finding Commission. Our mandate would allow for such a complementary role to investigations conducted by the Office of the Prosecutor.

The advantages of using the services of the Commission are numerous. The Commission is a permanent body not being linked to the United Nations, the International Red Cross and Red Crescent Movement, or to any other international or national organization. It is based on firm and widely recognised treaty-law and is composed of 15 highly qualified members from

different regions of the world, with different professional background: there are medical doctors, high-ranking military officers, experts on IHL and diplomats.

The Commission has developed operational guidelines that enable it to be flexible and pragmatic, to start its work at a short notice and to be efficient.

The potential of the Commission is recognized by the international community, for example in a number of resolutions adopted by the UN Security Council and General Assembly, International Conferences of the Red Cross and Red Crescent Movement, within the Council of Europe and the European Union. Most of these documents do not only call upon states to recognize the Commission's competence, but also to make use of its services.

This call is particularly relevant if one takes into account that the Commission can be activated only with the consent of the parties to a given armed conflict. According to Article 90, states have to accept, as a prior condition, the Commission's competence before being able to trigger this mechanism for the purpose of investigations of alleged violations of international law of armed conflicts. So far 69 states have recognized the Commission's competence on a permanent basis, but nevertheless we regret that they have not been willing to call upon its services.

Mr. President,

The main ambition of the Commission here, during the Assembly of States Parties to the Rome Statute, is to remind, to make aware the delegations participating into this Assembly of the existence of the Commission, to promote its role. We are sure that the two institutions – the International Criminal Court and the International Humanitarian Fact-Finding Commission – could cooperate in order to ensure the greatest possible respect for human dignity and protect the lives of the civilian population during armed conflicts.

I am at your disposal to answer any questions and discuss issues relating to the Commission.

Mr. President, I thank you for your attention.