



## Retrospective on the activities of the commission 2008/09 Summary Report of the President

The basis of the activities was the Plan of Action adopted by the last Annual Meeting in February 2008.

### 1. International presence of the Commission

#### 1.1 The United Nations General Assembly

Based on the experience of previous years, it was considered important that the Commission was represented at the United Nations when the draft resolution on the status of the Protocols additional to the Geneva Conventions was considered in the 6<sup>th</sup> Committee. This was done by the President and Vicepresident Irigoine Barenne. The presentation took the form of a side event. In addition, a number of talks which were held at the same occasion also served the purpose of raising and maintaining the visibility of the Commission.

#### 1.2 Red Cross/NYU Seminar for UN diplomats

The ICRC Delegation in New York and NYU Law School regularly organise a joint seminar on IHL for UN diplomats. The President was invited to speak on measures to ensure compliance with IHL, which provided an excellent opportunity to put a focus on the Commission before a relevant audience. There was a lively debate. The whole seminar was very well attended.

#### 1.3 The European Union

In September, the European Parliament and the European Commission organised a conference on compliance with IHL. The Commission was represented by Vicepresident Mikos-Skuza. Unfortunately, time did not permit to give an elaborate presentation of the Commission. Our presence and informal contacts, in particular with the competent Commissioner, were important.

#### 1.4 The African Union

After some difficult negotiations about dates, the President could finally make a short presentation of the Commission before the representatives of the Member States of the African Union in Geneva. Unfortunately, Vicepresident Djilali was in the last minute prevented from joining this event. The debate was short and concise. It brought up a few relevant points. It was reassuring to note that a considerable number of the representatives were well aware of the existence and mandate of the Commission.

## 2. International Support for the Commission

### 2.1 Declarations pursuant to art. 90 and general support

In the period under review, there have been no additional declarations under Art. 90. The consultation with France which had started on a hopeful note in January had to be discontinued in the light of remaining French reservations. These difficulties should be the object of further informal consultations.

### 2.2 The United Nations General Assembly

In the light of these difficulties, it was particularly reassuring to note that the UNGA, in its customary bi-annual resolution on the status of the Additional Protocols (resolution 63/125 of 11 December 2008) repeated its earlier formula used in relation to the Commission:

#### *The General Assembly*

...

*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 and to consider making use, where appropriate, of the services of the International Humanitarian Fact-finding Commission in accordance with the provisions of article 90 of Protocol I;

A number of States, as well as the ICRC, expressly supported this formula in the debate of the 6<sup>th</sup> Committee.

### 2.3 Non-governmental organisation

The Commission continues to enjoy the active support of Amnesty International. On two occasions, AI has once more appealed to States to make use of the Commission. There are regular contacts between relevant members of the staff of AI and the Bureau of the Commission.

### 2.4 A “Group of Friends”

The idea of creating a “Group of Friends” of the Commission has been part of the “revitalisation initiative” launched by the Swiss Minister of Foreign Affairs. The Commission and in particular the Bureau has warmly welcomed this move.

## 3. Observer status

During the last two meetings of the Commission, there was general agreement that it would be very helpful for the Commission to have an observer status with the United Nations General Assembly. It would ensure the possibility to be present on the occasion of decisive political debates concerning specific conflicts, not only in the General Assembly, but also in other UN bodies, e.g. the Human Rights Council. To obtain observer status, a resolution of

the General Assembly is necessary. The Assembly has formulated conditions for granting that status: it must be an intergovernmental organisation working in a field of interest for the UNGA. While there is no doubt as to the latter condition, problems have been raised, somewhat surprisingly, as to the former, the intergovernmental character of the Commission. Therefore, it was advisable to have consultations in New York before proceeding to the final step, namely finding a group of States which would sponsor such a resolution. Two series of consultations were organised, one in March and the other in October 2008. The argumentation put forward by the Commission was as a rule well received by the interlocutors of the IHFFC delegations. These consultations will have to be continued soon if a resolution is to be tabled early enough for adoption in autumn this year. The perspectives for its adoption seem to be quite positive.

#### 4. Implementation of the new proactive approach

The new proactive approach means that the IHFFC itself, in particular the President, the Vice-Presidents and the Secretariat, observe ongoing armed conflicts and assess the possibilities and needs of fact-finding. There are few, if any, conflicts where there are no allegations of violations of international humanitarian law and a corresponding need to ascertain the facts which are the basis of such allegations. In relation to some of these conflicts, fact-finding was indeed undertaken. The record of success of this fact-finding in terms of its acceptance by the parties involved leaves to be desired. Taking this overall situation into account, the Bureau, supported by the Secretariat, took several initiatives to unofficially contact parties to armed conflicts and to draw their attention to the potential of the IHFFC.

#### 5. Contingency planning

During the talks which members of the Bureau had with representatives of States or of international organisations the question invariably came up what the Commission could achieve in practical terms. In this situation, a simple reference to the existence of our contingency planning is not enough. Therefore, the Logistics Committee of the Commission has looked into the matter. The feedback to the Commission has taken the form of a commentary to the relevant part of the Guidelines. It has made clear that a number of points, in particular agreements with institutions which should provide human and material resources to the Commission when required must be re-examined and evaluated.

#### 6. Finance

On the relatively low level of its activities, the budgetary resources of the Commission have been sufficient. As a rule, there has been no need to challenge the budget constraints. However, that situation will change with a more systematic adherence to the proactive approach. A sensible use of the observer status will also require personnel which could be present at political hotspots, in particular in New York on a permanent basis. In the case of actual inquiry mandates, payment from the parties, if at all forthcoming, will be too late or insufficient to conduct an inquiry. A staff will have to be hired in an early phase to provide the administrative infrastructure for any such mandate.

## 7. Conclusions and Perspectives

During the year under review, the Commission organs, i.e. the Bureau and the Secretariat, have consistently endeavoured to pursue the proactive approach decided by the Commission during the preceding period of office and confirmed at the beginning of the present one. The President wants to thank the members Secretariat for their unrelenting efforts in administering and promoting the affairs of the Commission. This has been a very rewarding experience of cooperation.

The first conclusion is that the proactive approach is the only realistic one to allow the Commission to finally fulfil the functions entrusted to it by AP I. The attempts to implement this approach, however, have so far not been successful. The reason for this is a kind of vicious circle which has become apparent: The Commission does not receive a mandate because it is not well known. It is not well known because it has not received a mandate. Furthermore, because of the lack of actual practice, the Commission cannot not practically show that it has the resources necessary to conduct a successful inquiry. Yet it is impossible to physically maintain such resources, human or material, as long as they are not required for a specific mission. That vicious circle must be broken. It cannot be broken by general outreach activities alone. It can only be broken, if at all, through a continued presence and insistence of the Commission wherever decisions concerning violations of IHL are taken. The practical organisational implementation of that conclusion is a major issue which has to be addressed. So far, the rule of that game has been improvisation.

In December 2008, the President, accompanied by the members of the Secretariat, had an intensive discussion with the Swiss Foreign Minister, Ms Calmy Rey. This was an opportunity for us to thank her for her personal initiatives supporting the Commission. The core subject of the conversation were the reasons why the Commission has so far not obtained a mandate. Her personal advice was to continue a lessons learned process. On the other hand, current conflict had to be closely observed. The Commission is grateful for this personal and political encouragement.