

**INTERNATIONAL HUMANITARIAN FACT-FINDING COMMISSION (IHFFC)
COMMISSION INTERNATIONALE HUMANITAIRE D'ÉTABLISSEMENT DES FAITS (CIHEF)**

(Article 90 of Protocol additional I to the Geneva Conventions)



Report for the period 2002 - 2006

I. Introduction

The first five-yearly report of the International Humanitarian Fact-Finding Commission (hereinafter “the Commission”), covering the period between 1992 and 1996, provided complete and detailed information about its establishment, competence, procedure and basic principles. Like the second five-yearly report, covering the period from 1997 to 2001, this third report will review the States accepting the competence of the Commission, the membership, activities, mandate, international support and internal work of the Commission as well as administrative and financial issues.

Art. 90 of additional Protocol I of 1977 to the Geneva Conventions of 1949 provides for the establishment of a permanent International Fact-Finding Commission and describes its competence and procedure. In 1991, following acceptance of its competence by twenty States parties to Protocol I, these States elected the fifteen first members of the Commission. In 1992, the Commission became operational, having adopted its internal Rules.

The Commission is a permanent international body at the disposal of parties to an international or internal armed conflict. Its competence is twofold: (i) backward-looking, being competent to investigate and report on allegations of serious violations of international humanitarian law and (ii) forward-looking, by having the capacity to offer its good offices with a view to facilitating the return to a situation of respect for international humanitarian law, which is often indispensable for reconciliation.

After fifteen years of existence, the Commission has largely fulfilled its initial objectives related to its capacity to be operational: it has adopted Internal and Financial Rules, Operational Guidelines, ensured the stock of material to enable a prompt start of a mission and established relations with important international organisations (e.g. the UN) as well as by contributing generally and regularly to the promotion of international humanitarian law.

II. States accepting the competence of the Commission

By December 2006, 69 States representing all continents and of which two are permanent members of the Security Council of the United Nations, have deposited their declaration with the Swiss Federal Council and thus recognised the competence of the Commission under article 90 of Protocol I. The States which recognised the competence of the Commission in the period under review are: Cyprus, Cook Islands, Democratic Republic of the Congo, Tonga, Mali, Republic of Korea, Burkina Faso, Japan and Republic of Montenegro. The 69 States are listed in the Appendix. At the time of the last elections of the members of the Commission in 2001, 59 States had recognised the competence of the Commission.

III. Membership

The last election of the members of the Commission took place on 9 November 2001. At their first annual meeting in February 2002, the fifteen members elected, for a term of office of two years, Sir Kenneth Keith as President, Prof. Ghalib Djiali, Ambassador Juan-Antonio Yañez-Barnuevo and Prof. Elzbieta Mikos-Skuza as 1st, respectively 2nd and 3rd Vice-President. Except for Ambassador Juan-Antonio Yañez-Barnuevo, who did not stand for re-election for professional reasons, and was replaced by Major-General Anthony Rogers, the Bureau was confirmed in its position at the 2004 annual meeting.

In November 2005, Sir Kenneth Keith was elected as a member of the International Court of Justice in Den Haag. Following this election, he had to resign from his offices as member and President of the Commission by the beginning of February 2006. At the annual meeting in 2006, the members elected Prof Ghalib Djilali as his successor for the remainder of the term of office, and Prof. Michael Bothe to fill the vacancy left in the Bureau of the Commission. In view of the short period of time remaining until the next elections, the fourteen members decided not to fill the vacancy left by the resignation of Sir Kenneth Keith.

The Commission thanks Sir Kenneth Keith and Ambassador Juan-Antonio Yañez-Barnuevo for their services as President and respectively Vice-President of the Commission.

IV. Activities

The activities undertaken by the Commission had various objectives: participation in the worldwide dissemination and implementation of international humanitarian law, enhancement of knowledge about the Commission and the potential role it could play, awareness of the current need of States and international organisations regarding fact-finding and good offices, in particular in light of new legal and political developments, the promotion of the recognition of its competence and the gathering of international support with a view to, ultimately, obtaining a mandate to allow the Commission to fulfil the important role it has been given by the international community.

It should be said that, in spite of the numerous efforts made by individual members of the Commission and the Commission as a whole, it has not been approached by a State with a concrete demand for an enquiry nor has it been involved in any good offices function. However, the Commission is pleased to notice that the knowledge on the part of States, important international organisations as well as the civil society about its existence and the role it has been provided with, has constantly increased in the period since 2002, which is highly encouraging for the pursuance of the work of the next Commission to be elected on 7 December 2006.

1. Report on the work of the IHFFC

At its annual meeting 2005, the Commission decided to take a deeper look into what it had done since 1991 to obtain a mandate, analyse these findings and suggest a plan of action containing measures touching upon various fields of action. Based on this decision, the Commission charged its President, with the support of members, to produce a report on the work of the IHFFC by the end of 2005. Owing to Sir Kenneth Keith's resignation, the production of the Report was delayed and the responsibility carried forward by Prof. Michael Bothe. The final report was adopted by the Commission at the annual meeting in 2006, officially presented on 22 June 2006 and handed over to member States in August 2006.

2. Participation into international conferences and meetings

2.1 *28th International Conference of the Red Cross and Red Crescent, 1-6 December 2003*

The Commission's delegation, (Sir Kenneth Keith, Prof. Ghalib Djilali and Maj-Gen. Anthony Rogers), participated in this Conference as observers, together with other members attending the Conference as members of their National Society or Government delegations. The Commission was granted an opportunity to inform the Conference about its role and current activities at a plenary session and in the first workshop about "International Humanitarian Law and the Challenges Posed by Contemporary Conflicts". The Commission also organised a well-attended seminar during which the President spoke about "the function and current activities of the IHFFC", and Prof. Michael Bothe discussed "the role of the IHFFC in the context of contemporary challenges".

The new brochure of the Commission was distributed to all delegations. The Commission invited several States which had not yet accepted the competence of the Commission to participate in bilateral discussions (especially from Africa, Asia and South America).

The Commission was pleased about the positive response to its active participation in the Conference, which was rewarded with a mention of its role and a general appeal to make use of its services in the final Declaration as well as Resolution 1 adopted by the Conference.

2.2 *Side-event to the 1st session of the Human Rights Council, 22 June 2006*

The Commission took the opportunity of the 1st session of the newly established Human Rights Council to launch and present the "Report on the work of the IHFFC". A side-event was organised on 22 June 2006 in Geneva to which all members of the Human Rights Council and Permanent Missions present in Geneva were invited. The Commission invited Prof. Dr. John Dugard, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied since 1967, as Guest Speaker to comment on the conclusions and recommendations in the Report. The Report was presented by Prof. Michael Bothe. Prof. Ghalib Djilali and Maj-Gen. Anthony Rogers also participated to the discussion with Prof. John Dugard and the participants, which followed the presentations.

Beside the side-event, a number of bilateral meetings between the Commission and States which have yet to recognise the competence of the Commission were organised on 22-23 June 2006 in Geneva.

2.3 *6th Committee of the United Nations General Assembly, 18 October 2006*

The Chairman of the 6th Committee, H.E. Juan Manuel Gómez Robledo of Mexico, granted the Commission the unique opportunity, during an informal meeting organised following the cluster on the "Status of implementation of the additional Protocols to the Geneva Conventions", to present itself before the delegations to the 6th Committee. Prof. Michael Bothe, accompanied by Ambassador Juan-Antonio Yañez-Barnuevo and Col. Hugo Corujo Sanseviero, read the statement of the Commission, following which an interesting exchange of views took place between the delegations and the Commission's members present.

2.4 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 Prof. Michael Bothe, in Kuala Lumpur by Sir Kenneth Keith, in Mexico City by Dr. Jeannette Irigoien Barrenne, and in Bruges by Prof. Elzbieta Mikos-Skuza, Maj-Gen. Anthony Rogers and Prof. Stelios Perrakis;
- 2nd and the 5th sessions of the Assembly of States Parties to the Rome Statute of the International Criminal Court held respectively at the United Nations Headquarters in New York on 8-12 September 2003, by Ambassador Yañez-Barnuevo and, in Den Haag on 23 November to 1 December 2006, by Prof. Ghalib Djilali and Prof. Elzbieta Mikos-Skuza;
- 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 in Geneva, with a special presentation by Prof. Michael Bothe on the Commission;
- 71st Conference of the International Law Association on 16-21 August 2004 in Berlin, by Prof. Michael Bothe, Prof. Ove Bring, Dr. Jeanette 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 Prof. Elzbieta Mikos-Skuza;
- Conference on 2-4 September 2004 organised by the Raoul Wallenberg Institute in Lund on 12 November 2004, by Prof. Michael Bothe;
- Meeting of representatives of National Committees on International Humanitarian Law of Commonwealth States in Nairobi on 19-21 July 2005, by Ambassador Arpad Prandler;
- Information meeting on the elections 2006 organised by the Permanent Mission of Switzerland to the United Nations and other International Organisations for all States having recognised the competence of the Commission held in Geneva on 12 September 2006, by Prof. Ghalib Djilali.

3. Promotional missions

The purpose of the following promotional missions was to expose or recall the existence of the Commission, to explain the potential role it is willing and ready to undertake and to enhance its contacts and network, with the final aims of universalising the recognition of the competence of the Commission and obtaining a mandate in the scope of the competence it has been provided with in article 90 of Protocol I.

The Commission thanks the Swiss Federal Department of Foreign Affairs for its valuable support on all promotional missions as well as the International Committee of the Red Cross, which is of a great support for the Commission's efforts to promote its cause.

3.1 *Africa*

The Commission was encouraged by the discussions at the 28th International Conference of the Red Cross and Red Crescent in 2003 to undertake two promotional missions to Africa.

Prof. Ghalib Djilali and Ambassador Juan-Antonio Yañez-Barnuevo, 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 made up of Sir Kenneth Keith, Maj-Gen. Anthony Rogers and Mr. Daniel Derzic from the Secretariat, 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 Commission's delegation visited relevant government services, members of the National Red Cross and Red Crescent Societies, academic circles and non-governmental organisations. In all eight countries, very constructive meetings were held with high-ranking government officials as well as with Presidents or Vice-Presidents of the National Red Cross and Red Crescent Societies and the civil society active in this area. The visited States were especially invited to recognise the competence of the Commission as soon as possible. For this purpose, the Commission stays in regular contact with these States.

3.2 *New York*

Conscious of the importance of having the support of the United Nations in its endeavour to obtain a mandate, the Commission decided to intensify the number of its visits to the UN headquarters in New York as well as other relevant institutions in New York. Thus, a delegation composed of Prof. Ghalib Djilali, Prof. Elzbieta Mikos-Skuza and Mrs Véronique Haller representing the Secretariat, partly accompanied by Ambassador Juan-Antonio Yañez-Barnuevo, undertook a visit to New York from 5 to 9 December 2005.

The highlight of the visit was the meeting with the Secretary-General Kofi Annan on 6 December. He showed knowledge and interest in the Commission and encouraged the delegation to keep promoting its services among international organisations and concerned States, including those who are currently involved in an armed conflict and could potentially call upon the Commission. Among others, the delegation also had talks with the Under Secretary-General for Legal Affairs, Mr. Nicolas Michel, the Secretary General of DPKO, Mr. Hedi Annabi, the acting President of the Security Council, Sir Emyr Jones Parry, as well a number of representatives of States. The Commission also had meetings with representatives of the ICRC, civil society and academic circles.

3.3 *South-East Asia*

Prof. Elzbieta Mikos-Skuza and Dr. Marcel Dubouloz, accompanied by Mrs Véronique Haller, member of the Secretariat, undertook a promotional mission to South-East Asia between 7-16 May 2006 where the following countries were visited: Thailand (6 May), Vietnam (7-9 May), Cambodia (9-12 May) and Brunei Darussalam (14-16 May).

The Commission's delegation visited all relevant government services, representatives of the National Red Cross and Red Crescent Societies, academic circles and non-governmental organisations. The opportunity was also taken by the delegation to

deepen the relationship with the ICRC in the region. In all countries, but especially in Vietnam, Cambodia and Brunei Darussalam, very constructive meetings were held with high-ranking government officials. They showed interest in reaffirming their commitment towards implementation of international humanitarian law by recognising the competence of the Commission. Through its Secretariat the Commission intends systematically to follow-up the interest of those States in the Commission.

V. International support

The role of the Commission continues to be regularly emphasised by important international organisations and institutions.

Since 2002, the most important were e.g. the Resolutions from the United Nations General Assembly, 57/14 (2002), 59/36 (2004) and the draft Resolution on the Status of the Protocols Additional to the Geneva Conventions to be adopted shortly, the Declaration as well as the Resolution 1 adopted by the 28th International Conference of the Red Cross and Red Crescent (2003), the Guidelines on promoting compliance with international humanitarian law from the European Union (2005) as well as the appeal to make use of the Commission's services during the 2005 debate on the protection of civilians in times of an armed conflict of the United Nations Security Council.

VI. Mandate

As already mentioned, the period under review has not resulted in any approach to the Commission from States or other international governmental organisations with concrete enquiry or good offices requests. Based on this report, the Commission will continue to work more pro-actively and increasingly offer its services where it appears to be appropriate to do so.

Since 2002, the Commission has offered its services in four concrete cases:

- In the course of its promotional visit to the Ivory Coast in February 2004, to the Minister of Foreign Affairs and the Head of the Cabinet of the Prime Minister to take up a role proposed in the Linas-Marcoussis Accords. The Ivory Coast has not however had recourse to the services of the Commission.
- With regard to allegations appearing in the media of serious human rights violations by members of the "X" State armed forces of persons detained by such State in Iraq. In May 2004, the Commission offered its good offices to the "X" State, suggesting that it could undertake a monitoring role in respect of the internal inquiries into these allegations. After further contacts, the Ministry of Foreign Affairs of "X" finally declined the Commission's offer.
- 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 suggested the names of a number of Commission members. The suggestion was not taken up.
- In the context of the hostilities which took place in summer 2006 in the Middle East and the alleged violations of international humanitarian law by parties to the conflict, the Commission offered its services to these parties in August 2006. Until now, it has not received a response to its letters. That enterprise received encouragement from the United Nations High Commissioner for Human Rights, Louise Arbour.

VII. Internal work of the Commission

In the period under review, the Commission has continued to prepare for future activities and missions. In 2003, the redesigned website of the Commission (www.ihffc.org) was adopted. In 2004, an essential step forward was taken with the adoption of the internal operational guidelines of the Commission. In 2006, the logistics working group of the Commission presented additional suggestions regarding technical and logistical infrastructure needed, in particular in a crisis area.

In 2004, the Commission reflected on the type of good offices it could make available to restore and uphold international humanitarian law and adopted a statement of its interpretation of that role.

VIII. Administration and finance

The Swiss Federal Council continued to assume the costs of the Secretariat of the Commission. The annual budget of the Commission covered the remaining costs of its ordinary functions, including various promotional activities, as described in this report.

Bern, December 2006

