



Presidential Report on Activities of the Commission 2021

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Preface

In order to give account and enhance the visibility of the International Humanitarian Fact-Finding Commission (in the following: IHFFC, Commission), the Commission reports regularly on its activities by way of submitting an annual Presidential Report to its Member States, and by publishing appropriate information on its website, subject to applicable rules on confidentiality.

I. Summary

2021, in light of the ongoing pandemic, has been another difficult year for the IHFFC. The Commission could, however, build on the 2020 activities, adapting them further to the circumstances of the pandemic. On 22 and 23 March 2021, the Commission held its Annual Meeting, virtually on Zoom. Most importantly, the Commission, on this occasion, encouraged and pushed forward the activities of the Working Groups established in 2019, with two of them adopting their drafts to be presented for further discussion and adoption by the newly elected members of the Commission at the beginning of the 2022-2026 term of office. The Bureau continued its newly developed format of regular (monthly) digital meetings. This facilitated the preparation of decisions to offer the Commission's good offices, and to perform some virtual outreach activities. Members of the Commission continued to lobby for support of the substantial pledge in support of the Commission, which had been launched at the 33rd International Conference of the Red Cross and the Red Crescent by a cross-regional group of States.

As the pandemic finally seems to decline, the Commission will step up its efforts again to convince States to recognize its competence and enhance its visibility in view of being mandated to conduct enquiries or perform its good offices. The Commission has continued to work towards strengthening its operational capabilities.

II. The 2017-2021 Term of Office¹

1. States having recognised the Commission's competence

As of 31 December 2021, 76 States Parties to the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts of 8 June 1977 (in the following: AP I) had recognized the competence of the IHFFC.

2. Members and officers

In 2020, the IHFFC continued to operate with the 15 members elected on 8 December 2016 for the 2017-2021 term of office. The members of the Bureau, who had all been re-elected as officers on the basis of electronic communication in June/July 2020, continued their activities.

3. Elections (19 November 2021)

On 19 November 2021, States having recognized the Commission's competence elected the fifteen members of the Commission for the 2022-2026 term of office. 58 States participated in the election presided by Ambassador Nathalie Marti, Vice-Director of the Directorate of Public International Law of the Swiss Federal Department of Foreign Affairs (FDFA). After the first ballot the following candidates were elected for a term of office of five years (in the alphabetical order of their state of origin):

Mr Rachid Belhadj (Algeria), Mr Holger Frederico Martinsen (Argentina), Mr Vaios Koutroulis (Belgium), Mr Alfredo Labbé (Chile), Ms Dyanne Marengo Gonzalez (Costa Rica), Mr Thilo Marauhn (Germany), Ms Tatiana Eddie Razafindravao (Madagascar), Mr Sukhbold Sukhee (Mongolia), Ms Elżbieta Mikos-Skuza (Poland), Mr Mateus Kowalski (Portugal), Ms Noor Ibrahim Al-Sada (Qatar), Ms Katarína Šmigová (Slovakia), Ms Åsa Molde (Sweden), Mr Mohamed Al Kamali (United Arab Emirates) and Mr Robin McNeill Love (United Kingdom).

III. Continued State Support

1. Group of Friends

Even though the Group of Friends could not meet during 2021, the Commission appreciates the ongoing support of its members. The Commission has already agreed to continue its exchanges with the Group of Friends in 2022.

2. Pledge

On the occasion of the 33rd International Conference of the Red Cross and Red Crescent, a cross-regional group of States had submitted a joint open Pledge to support the Commission (Pledge Number OP330249, available on <https://rcrcconference.org/pledge/support-for-the-international-humanitarian-fact-finding-commission-ihffc>). States could sign up to this Pledge until 31 December 2020. By the end of 2020, the pledge had 31 signatories. The Commission is grateful for the support expressed thereby.

¹ For developments in in 2017-2018 see "Presidential Report on Activities of the Commission 2017-2018"; for those in 2019 see "Presidential Report on Activities of the Commission 2019"; for those in 2020 see "Presidential Report on Activities of the Commission 2020".

IV. Activities in 2021

1. Annual Meeting 2021

On 22 and 23 March 2021, the Commission held its fifth Annual Meeting, in a virtual format.

The Commission reflected upon its own role in light of the fact that the international debate about compliance with international humanitarian law focuses on national implementation. In particular, the Commission looked into intensifying efforts to convince parties to a conflict to provide a mandate for inquiry and also focused on establishing contact with regional organizations in order to have political backing, which may support a fact-finding role. A proposal was made that the newly elected members of the Commission should decide to allocate responsibilities for certain regional organizations to certain members.

The Commission discussed the “Common understanding of the International Humanitarian Fact-Finding Commission on key legal issues relating to admissibility and competence” which had originally been adopted in 2016. In preparation for the Annual Meeting, the text that had previously been laid down in boxes was extracted and put into a sort of list of conclusions to be published and used in explaining the Commission's understanding of its mandate and promote its concrete services with a wider audience. After intensive discussions the Commission agreed that further debate was needed. Even though a Working Group was established on the Common Understanding, subsequently no progress could be achieved in 2021.

The following interim reports of Working Groups established in 2019 were presented: Working Group Africa Outreach (Rachid Belhadj), Working Group Rules of Commission (Mario J.A. Oyarzábal), Working Group Update of Operational Guidelines (Robin McNeill Love), and Working Group New Operational Guidelines for Good Offices (Shuichi Furuya). The Commission decided to continue, and if possible, to finalize the documents presented.

The Commission also adopted the Financial Report 2020 by consensus and the Draft Budget for the year 2022, for submission to Member States for comments according to the established Financial Procedures of the Commission.

2. Finalization of Working Group reports

The Working Group Rules of Commission (led by Mario J.A. Oyarzábal) and the Working Group New Operational Guidelines for Good Offices (led by Shuichi Furuya) finalized their work by adopting the draft documents. The Working Group Update of Operational Guidelines (led by Robin McNeill Love) continued its ongoing work. The documents will be presented to the new members of the Commission for consideration and adoption in 2022.

3. Bureau Meetings 2021

In light of the pandemic, the President and Bureau continued regular Bureau meetings in digital format. These meetings have become a modality that the Bureau will propose to the Commission to uphold even after the pandemic. The monthly exchange is of utmost important for the Commission to more effectively pursue its activities.

After the Annual Meeting, formal Bureau meetings in digital format were held on 1 June, 6 July, 3 August, 7 September, 5 October, 1 November and 15 December 2021. Issues discussed by the Bureau were progress related to further developing its methods of work, possible offers of good offices, outreach activities, and a review of the Commission's understanding of key legal issues related to its mandate.

4. Enquiries / Good offices

The Commission proposed its services to the government of Yemen by a letter dated 20.01.2021.

The Commission was not mandated to conduct enquiries or to perform its good offices in 2021.

5. Other activities

Robin McNeill Love, Vice President of the IHFFC, attended the Fifth Meeting of Representatives of Commonwealth National Committees on International Humanitarian Law (Online) following an invitation by the United Kingdom National Committee on International Humanitarian Law, the International Committee of the Red Cross and the British Red Cross (26-30 April 2021).

Thilo Marauhn participated in online consultations between the Slovenian, Austrian, French and German IHL national committees, Dutch IHL platform and the MFA of Portugal on IHL issues on 16 and 17 November 2021.

Elżbieta Mikos-Skuza and Thilo Marauhn attended the fifth Universal Meeting of National Committees and Similar Entities on International Humanitarian Law (IHL), hosted by the ICRC, which took place online between 29 November and 2 December 2021, focusing upon “Bringing IHL home through domestic law and policy”.

Justinas Zilinskas attended the Assembly of States Parties to the Rome Statute on behalf of the Commission. The meeting was held from 5 to 11 December 2021.

6. Budget

The 2021 budget of the IHFFC amounted to CHF 211'630.00.

7. Secretariat

According to AP I (Article 90 para. 1, lit. f) Switzerland, in its capacity as the depositary of AP I, provides the Secretariat of the IHFFC.

The Commission greatly values the support of Ambassador Nathalie Marti. Furthermore, the Commission wishes to thank Gregor Muischneek, of the Swiss FDFA, for his invaluable help, and appreciates the intense support obtained from his successor, Jonathan Cuénoud. We are grateful for the assistance provided by Sonja Möri of the Swiss FDFA.

Particular thanks go to Barry de Vries, assistant to President and to the Bureau, for his great work in all activities pursued. He has turned out to be a cornerstone in the work of the Bureau.

The Commission records its gratitude to Intern Student Erik Woodward from NYU Law School for his enthusiasm and support and in particular for his assistance to the internal Working Group on Operational Guidelines. We wish him well for the future.

10 March 2022, Bern
Thilo Marauhn
President of the International Humanitarian Fact-Finding Commission