



INTERNATIONAL HUMANITARIAN  
FACT-FINDING COMMISSION (IHFFC)

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COMMISSION INTERNATIONALE HUMANITAIRE  
D'ÉTABLISSEMENT DES FAITS (CIHEF)

## Annual Report 2009

### 1. The situation at the end of 2008 and the way forward

During the year 2008, the IHFFC had continued its proactive approach in view of obtaining an inquiry mandate. This meant both strengthening the international presence and visibility of the Commission as well as concrete initiatives in view of particular conflict situations where, in view of the Commission, fact-finding conducted by it could have a salutary effect. This approach was systematically pursued by the Commission during the year 2009 – with considerable success. Although efforts to obtain a mandate in concrete cases have not been successful, the necessary precondition for obtaining such mandates, namely international presence and visibility of the Commission, has been greatly increased.

Efforts towards this end, and results achieved, can be grouped as follows:

- preparedness for inquiries and contingency planning;
- presence of the Commission in international fora;
- getting closer to the United Nations: observer status
- results: support for, and recognition of, the Commission;
- pursuing the proactive approach: concrete initiatives

### 2. Institutional development

On February 20, 2009, Estonia recognised the competence of the Commission, bringing the total number of recognitions to 71.

The statutory annual meeting was held in Geneva February 11-13.

As required by the Rules of the IHFFC, an election of the Bureau took place. The Commission elected its officers, for a period of two years (Rule 6 para. 2), as follows:

Prof. Michael Bothe, President  
Prof. Ghalib Djilali, 1<sup>st</sup> Vice-President  
Prof. Jeannette Irigoien Barenne, 2<sup>nd</sup> Vice-President  
Prof. Elzbieta Mikos-Skuza, 3<sup>rd</sup> Vice-President  
Prof. Akira Mayama, 4<sup>th</sup> Vice-President

The Meeting adopted the budget for 2010 which was in due course approved by the member States. A great part of the Meeting was devoted to a programme of action to implement its proactive approach.

Ambassador Christine Schraner Burgener of the Federal Department of Foreign Affairs continued to serve as the Secretary of the Commission until April. She was followed by Amb. Marion Weichelt-Krupski, the latter then by Amb. Jürg Lindenmann who continues to serve in that capacity.

### 3. Preparations for inquiries and contingency planning

In order to be personally prepared for conducting an inquiry under difficult circumstances, the members took part in a seminar, held by Commission member Dr. Gisela Perren-Klingler, on traumatisation, in particular secondary traumatisation to which the members might be exposed when dealing with victims of grave violations of international humanitarian law. Members regarded this seminar as an extremely useful experience.

Contingency planning and ensuring the availability of equipment needed in the field has been a constant concern of the Commission. In order to update its operational guidelines, consultations were held with the Office of the High Commissioner of Human Rights.

Since a number of years, there is an agreement with the Swiss Humanitarian Aid Unit on the assistance which that institution could provide to the IHFFC. A delegation of the Commission visited that institution to become acquainted with its current capabilities in terms of equipment and know-how which the Commission might need in case of an inquiry. Talks are under way to update the older agreement.

### 4. The international presence of the Commission

The Commission continued its policy of being present at relevant international events in order to enhance its international visibility and acceptance. In this framework, the following events must be mentioned, in chronological order:

- presentation of the Commission before the representatives of the Member States of the African Union, January;
- Conference on the 60<sup>th</sup> anniversary of the Geneva Conventions, London, 9 July, organised jointly by the British Red Cross and the UK Ministry of Foreign and Commonwealth Affairs;
- Conference on “The 60 years of the Geneva Conventions”, Geneva, 9 and 10 November, organised by the Swiss Federal Council and the ICRC;
- 17<sup>th</sup> session of the General Assembly of the International Federation of Red Cross and Red Crescent Societies, Nairobi, 18 to 21 November;
- 8<sup>th</sup> session of the Assembly of States Parties to the Rome Statute of the ICC, The Hague, 18 to 26 November.

Five members of the Commission participated in various functions (panelists, rapporteurs) at the Geneva conference on the 60 years of the Geneva Conventions. In addition to this participation, the Conference was of particular importance as many contributions, beginning with former UN Secretary-General Kofi Annan and Swiss Federal Councillor Calmy-Rey,

expressed a strong support for the Commission. Many Speakers held the view that the services of the IHFFC were needed for a better implementation of international humanitarian law and that they should therefore be accepted by parties to armed conflict. The Commission noted this widespread support with great satisfaction. The contributions to that Conference are posted on the website of the Swiss Department of Foreign Affairs and are published.

At the Assembly of States Parties to the ICC Statute, a statement was delivered in the general debate concerning the relationship between the ICC and the IHFFC. The President of the IHFFC also held consultations with the Prosecutor of the ICC on that possibility, which was then reflected in the resolution on coordination adopted by the Assembly (see below).

## 5. Observer status

One of the major achievements for the Commission was the resolution of the General Assembly (A/RES/64/121 of December 16, 2009) granting observer status to the Commission.

Seeking observer status had been suggested to the IHFFC by then UN Secretary-General Annan because this would enable the Commission to be present in international fora where and when the settlement of disputes involving the use of armed force and possible violations of international humanitarian law was discussed, thus enabling the Commission to remind relevant actors of its potential at the time of actual decision making. Therefore, members of the Bureau of the Commission as well as the Swiss Permanent Mission in New York have since 2007 conducted consultations for the purpose of the Commission obtaining that observer status. These consultations were intensified in 2009. Switzerland took the initiative and tabled the corresponding draft resolution before the General Assembly, together with almost 60 co-sponsors, which was then adopted without a vote. A major problem raised in these negotiations was a legal one, namely whether the Commission is an intergovernmental organisation, which is a general requirement for the observer status formulated by the General Assembly. The IHFFC, being created under an international treaty and elected and financed by States indeed fulfils this requirement.

The Commission intends to make an active use of the possibilities offered by the observer status.

## 6. Support for the Commission

In addition to the support implied in the grant of an observer status by the UN General Assembly, the cause of the Commission was also promoted by other international instruments.

In its promotional appearances before international bodies, the Commission had for a long time maintained that in addition to being seized by States, it could also accept inquiry mandates from the United Nations, in particular the Security Council. This possibility is now expressly envisaged by the Security Council itself. The relevant part of the Security Council resolution on the protection of civilians in times of armed conflict (S/RES/1894 of November 11, 2009) reads as follows:

*The Security Council,*

...

8. *Emphasizes* the importance of addressing in its country specific deliberations the compliance of parties to armed conflict with international humanitarian, human rights and refugee law; *notes* the range of existing methods used, on a case by case basis, for gathering information on alleged violations of applicable international law relating to the protection of civilians and *underlines* the importance in this regard of receiving information that is timely, objective, accurate and reliable;

9. *Considers* the possibility, to this end, of using the International Humanitarian Fact-Finding Commission established by Article 90 of the First Additional Protocol to the Geneva Conventions;

Since the creation of the International Criminal Court, there have been contacts between the Court and the IHFFC. Both the Prosecutor of the ICC and the IHFFC do fact-finding in respect of violations of international humanitarian law, albeit with somewhat different goals. The existing parallelism of tasks suggests continuing contacts and, if appropriate, cooperation or coordination. This was recognised by the Assembly of States Parties to the Rome Statute, which took place at The Hague Nov. 14 to 22, in its resolution on cooperation (ICC-ASP/8/Res.2):

*The Assembly of States Parties,*

...

11. *Notes* the potential contribution that intergovernmental cooperative initiatives can, upon request and when legally feasible, play in the effective enforcement of international criminal justice through, for example, the rapid identification, collection and preservation of the most perishable type of information relating to crimes under international law, including the International Humanitarian Fact-Finding Commission and other similar institutions; ...

## 7. Pursuing the proactive approach

In 2009, the IHFFC has continued its proactive approach towards seeking a fact-finding mandate. In the case of four conflicts, it took exploratory steps with relevant actors for that purpose. It remains the policy of the Commission to keep those contacts confidential. In some cases, express assurances were given to that effect.

Through these initiatives, the Commission has gained considerable experience related to the political context of fact-finding concerning armed conflict. The Commission will evaluate these experiences and make use of the lessons thus learned in taking similar initiatives in future conflicts where appropriate.