



International Humanitarian Fact-Finding Commission (IHFFC)

Compilation of procedural rules according to article 90
of the first Protocol additional to the Geneva Conventions

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Mission Statement

The International Humanitarian Fact-Finding Commission

- is a permanent body available to the international community, based on Article 90 of Protocol I Additional to the Geneva Conventions of 1949 (Protocol I);
- has within its membership highly qualified, internationally recognised, independent experts covering various areas of expertise necessary to inquire into the conduct of hostilities;
- is competent to investigate grave breaches and serious violations of international humanitarian law;
- is committed to promoting and restoring through its good offices an attitude of respect for international humanitarian law, to the advantage of all including the parties to the conflict and especially the victims;
- has expressed its willingness to offer its services in international and non-international armed conflicts, provided the parties involved agree;
- reflects the humanitarian and non-political character of the law for the protection of the victims of armed conflict;
- offers guarantees of fair and thorough procedures for establishing the facts;
- is not a tribunal and focuses on facts and therefore returns no verdict;
- is an important means of ensuring that international humanitarian law is applied during and, where applicable, after armed conflict.

Although the 1949 Conventions provide for an enquiry into alleged violations no concrete or permanent mechanisms and procedures have been established. Everything has to be agreed, and it is not surprising that the procedure has never been invoked. The Protocol I therefore added an important new element to support the implementation of international humanitarian law. In Article 90 (set out on pp 11–14 along with the common article relating to enquiries) it provides for the establishment of a permanent International Fact-Finding Commission and for its competence and procedures.

In 1991, following acceptance of the competence of the Commission by 20 States Parties to Protocol I, those States elected the 15 original members of the Commission for a term of office of 5 years. The 4th and most recent elections took place in December 2006 in Bern and were attended by 59 out of 69 States Parties. In 1992, following initial meetings and the adoption of its Internal Rules, the Commission became operational. A few years later, the Commission added the word “humanitarian” to its original title in order to reflect on its humanitarian vocation. The seat of the Commission is in Bern and the Swiss Government assumes the function and the costs of its Secretariat.

As at April 2014, 76 States have accepted the Commission’s competence by depositing the appropriate declaration with the Swiss Government as depositary State of the 1949 Geneva Conventions and the 1977 Protocols. The number has more than tripled in the last fifteen years and exceeds one third of the States Parties to the Protocol I, among them several major military powers, including some permanent members of the UN Security Council and a number of States that have been or are currently involved in armed conflicts. All five continents are represented as can be seen from the map in the centrefold of this brochure.

Members of the Commission

The 15 members of the Commission are to be of high moral standing and acknowledged impartiality (Article 90(1)(a)). They are elected to five-year terms by those States that have accepted the competence of the Commission (Article 90(1)(b)). They serve in their personal capacity (Article 90(1)(c)), a status which is reinforced by the solemn declaration when they take up their function (first meeting after the elections). Members solemnly declare that they will exercise their functions as members impartially, conscientiously and in accordance with the provisions of the Protocol I and the Rules, including those concerning secrecy (Rule 1(2)). Among the current members are medical doctors, high-ranking military experts, diplomats and scholars of international humanitarian and human rights law (the list of the members is set out in the centrefold of the brochure). In accordance

with Article 90, States have to ensure that the geographical balance among the 15 members of the Commission is respected.

Competence of the Commission

The *raison d'être* of the Commission is to protect victims of armed conflicts by obtaining the observance by States of the principles and rules of international humanitarian law.

For this purpose, the Commission has been provided with the following competences:

- (i) to enquire into any facts alleged to be a grave breach as defined in the Geneva Conventions and Protocol I or any other serious violations of the Conventions or Protocol I (Article 90(2)(c)(i)). In addition, the Commission may institute an enquiry into other situations (Article 90(2)(d)). In that context the Commission has stated its willingness to enquire into violations of international humanitarian law, arising in non-international armed conflicts, so long as all parties to the conflict agree.
- (ii) to carry out good offices in order to facilitate the restoration of an attitude of respect for the Conventions and the Protocol I (Article 90(2)(c)(ii)). Generally, this means that it may make observations and suggestions to promote compliance with the treaties on the part of the warring parties. This may be in addition to its fact-finding role under Article 90(2)(c)(i).
- (iii) to contribute, in general, to the better implementation of international humanitarian law.

For the fulfillment of its fact-finding and good offices competences the Commission needs the consent of the States involved in alleged grave breaches and other serious violations or the State interested in seeing the Commission becoming active. States can give their consent by recognising the competence of the Commission in ad hoc form or in a declaration beforehand (Article 90(2)(a)). So far, 76 States have deposited the appropriate declarations accepting the Commission's competence beforehand. In such cases no further manifestation of consent is needed for the Commission's competence to be established.

The Commission is an investigative body and not a court or other judicial body: it does not hand down judgments. It delivers reports on the facts and makes recommendations to the parties.

The Commission has also expressed its conviction of the need to take additional initiatives – also where appropriate in co-operation with other international bodies, in particu-

lar the United Nations – for the purpose of carrying out its functions in the interest of the victims of armed conflict. That conviction is based in part on Articles 89 and 1(1) of Protocol I and Article 1 common to the Geneva Conventions.

Functioning of the Commission

a) Internal Rules

In 1992 the Commission adopted internal rules under Article 90(b) and has subsequently amended them. They contain 40 Rules regulating matters related to the membership, the Presidency, the seat, the meetings, the enquiry, the confidentiality and the methods of work. They are set out at pp 15–28.

b) Operational Guidelines

In 2003 the Commission also adopted operational guidelines which draw on its own discussions and on the experience of its members in participating in international enquiries and of that of other enquiry bodies. As their title indicates, the guidelines are designed to assist the Commission and a Chamber established for a particular case in carrying out an enquiry, and their detailed application will depend on the particular circumstances of the allegations in issue. Whilst they are in general flexible, they do however contain/include certain core principles (see pp 29–30).

c) Enquiry Procedures

When a complaint is initiated, the enquiry is undertaken, unless the parties otherwise agree, by a Chamber of seven members, including five members of the Commission not nationals of any party to the conflict appointed by the President of the Commission on the basis of equitable geographical representation after consultation with the parties to the conflict, and two ad hoc members again not nationals of any party to the conflict, one to be appointed by each side (Article 90(3)).

The Chamber invites the parties to assist it and to present evidence. The Chamber may seek such other evidence as it considers appropriate and may carry out an investigation of the situation on the ground. The parties have the right to comment on, and to challenge, all evidence disclosed to them by the Chamber (Article 90(4)).

Once the procedure of gathering evidence is complete the Chamber decides on its findings. It is then the Commission itself which submits to the parties a report on its findings, along with such recommendations as it may consider appropriate. If the Commission is unable to secure sufficient evidence for factual and impartial findings, it states the reasons for that inability (Article 90(5)(a) and (b)).

The Commission may report its findings publicly, but only if all the parties to the conflict agree (Article 90(5)(c)).

d) Administration and finance

The administrative expenses of the Commission are met by contributions from the States which have accepted the competence of the Commission and by voluntary contributions (Article 90(7)). The States Parties have adopted a set of financial regulations which in essence adopt the contribution scale established by the United Nations General Assembly for the expenses of the United Nations (pp 31–42). The Commission has at its disposal a reserve fund which would allow it to start promptly a fact-finding mission.

As a matter of principle, the cost of an enquiry is born equally by both parties to a proceeding, the requesting party or parties being obliged to advance the necessary funds for the expenses incurred by a Chamber (article 90(7)). The Swiss Government provides the Commission with the necessary administrative facilities for the performance of its functions (Art. 90 (1)(f)).

e) Flexibility and interpretation of the role of the Commission

The Commission must remain faithful to certain basic principles expressed or implied in Article 90: it must carry out its functions fairly, in an independent and impartial way, in accordance with international law, and in general on the basis of the consent of the parties given in advance through their declarations or ad hoc for the particular case. Within the framework of those basic principles there is also considerable scope for making adaptations, with the consent of the parties, in the operation of the Commission when it undertakes an enquiry, for instance in respect of :

- the means of initiating an enquiry, including allowing a State which has accepted the competence of the Commission to initiate an enquiry into an alleged grave breach or other serious violation even though it is not a party to the conflict; alternatively, the Commission process might be prompted by the United Nations or other international organisations;
- the composition of the particular Chamber;
- the procedure to be followed;
- the financing of the enquiry;
- the form of the conclusions of the Chamber or the Commission;
- the publicity to be given to the findings and recommendations of the Chamber and Commission.

The Commission also envisages the good offices function to be as flexible as possible.

One of the most important characteristics of the Commission is that it may conduct an investigation only with the consent of the parties involved. A State does not automatically recognise the Commission's competence by signing or ratifying Protocol I, but only by expressing that recognition separately. A State may make a general declaration, thereby recognising the Commission's competence for any case falling within the ambit of Art. 90 or it may consent to the investigation of a particular dispute.

a) General declaration

A general declaration can be made when signing, ratifying, or acceding to Protocol I, or at any subsequent time. By making such a declaration, a State authorises the Commission to enquire into any conflict that may arise between itself and another State that has made the same declaration. No additional approval is then required for the Commission to act.

As a matter of principle, that declaration also covers the case where a request is made by a State having made such declaration even if that State is not itself involved in the conflict.

While there is no standard form, the State must unambiguously announce that it recognises the competence of the International Humanitarian Fact-Finding Commission as set out in Article 90 of Protocol I. The declaration must be submitted to the depositary State of Protocol I, i.e. the Swiss Federal Council. Both the Swiss government and the ICRC Advisory Service on International Humanitarian Law have drafted model declarations of recognition, which States are free to make use of (http://www.ihffc.org/index.asp?page=model_declaration).

b) Ad hoc consent

A party to an armed conflict that has not made a general declaration may accept the Commission's competence on an ad hoc basis, that acceptance being limited to the specific conflict in which it is involved. This form of recognition does not constitute a general acceptance of the Commission's competence. Any party to a conflict may ask the Commission to conduct an enquiry. If a party which has not given its consent is the object of a complaint, the Commission will convey the allegation to that party and ask it to consent to an enquiry. If consent is refused, the Commission is not authorised to conduct an enquiry. If consent is granted, the enquiry procedure will begin. In a conflict involving parties that have not made the general declaration only this ad hoc consent can provide the basis for an enquiry by the Commission.

Conclusion

The States Parties to the Geneva Conventions of 1949 and to Protocol I undertake to “respect” and “ensure respect” for the provisions of those treaties. The International Humanitarian Fact-Finding Commission is a key mechanism in achieving those objectives.

By recognising the Commission’s competence, on a permanent or ad hoc basis, a State contributes significantly to the implementation of international humanitarian law and to ensuring compliance with it during armed conflict. By depositing a declaration of recognition, a State not only takes an important step in securing the fundamental guarantees laid down for the victims of armed conflict but also demonstrates its commitment to their implementation.

Article 90 of Protocol I additional to the Geneva Conventions of 1949

Article 90 – International Fact-Finding Commission

1. (a) An International Fact-Finding Commission (hereinafter referred to as “the Commission”) consisting of 15 members of high moral standing and acknowledged impartiality shall be established.
(b) When not less than 20 High Contracting Parties have agreed to accept the competence of the Commission pursuant to paragraph 2, the depositary shall then, and at intervals of five years thereafter, convene a meeting of representatives of those High Contracting Parties for the purpose of electing the members of the Commission. At the meeting, the representatives shall elect the members of the Commission by secret ballot from a list of persons to which each of those High Contracting Parties may nominate one person.
(c) The members of the Commission shall serve in their personal capacity and shall hold office until the election of new members at the ensuing meeting.
(d) At the election, the High Contracting Parties shall ensure that the persons to be elected to the Commission individually possess the qualifications required and that, in the Commission as a whole, equitable geographical representation is assured.
(e) In the case of a casual vacancy, the Commission itself shall fill the vacancy, having due regard to the provisions of the preceding subparagraphs.
(f) The depositary shall make available to the Commission the necessary administrative facilities for the performance of its functions.
2. (a) The High Contracting Parties may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to inquire into allegations by such other Party, as authorized by this Article;
(b) The declarations referred to above shall be deposited with the depositary, which shall transmit copies thereof to the High Contracting Parties;
(c) The Commission shall be competent to:
 - (i) inquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol;
 - (ii) facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.
- (d) In other situations, the Commission shall institute an inquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned.

(e) Subject to the foregoing provisions of this paragraph, the provisions of Article 52 of the First Convention, Article 53 of the Second Convention, Article 132 of the Third Convention and Article 149 of the Fourth Convention shall continue to apply to any alleged violation of the Conventions and shall extend to any alleged violation of this Protocol.

3. (a) Unless otherwise agreed by the Parties concerned, all inquiries shall be undertaken by a Chamber consisting of seven members appointed as follows:
 - (i) five members of the Commission, not nationals of any Party to the conflict, appointed by the President of the Commission on the basis of equitable representation of the geographical areas, after consultation with the Parties to the conflict;
 - (ii) two ad hoc members, not nationals of any Party to the conflict, one to be appointed by each side.(b) Upon receipt of the request for an inquiry, the President of the Commission shall specify an appropriate time-limit for setting up a Chamber. If any ad hoc member has not been appointed within the time-limit, the President shall immediately appoint such additional member or members of the Commission as may be necessary to complete the membership of the Chamber.
4. (a) The Chamber set up under paragraph 3 to undertake an inquiry shall invite the Parties to the conflict to assist it and to present evidence. The Chamber may also seek such other evidence as it deems appropriate and may carry out an investigation of the situation *in loco*;
 - (b) All evidence shall be fully disclosed to the Parties, which shall have the right to comment on it to the Commission.
 - (c) Each Party shall have the right to challenge such evidence.
5. (a) The Commission shall submit to the Parties a report on the findings of fact of the Chamber, with such recommendations as it may deem appropriate.
 - (b) If the Chamber is unable to secure sufficient evidence for factual and impartial findings, the Commission shall state the reasons for that inability.
 - (c) The Commission shall not report its findings publicly, unless all the Parties to the conflict have requested the Commission to do so.
6. The Commission shall establish its own rules, including rules for the presidency of the Commission and the presidency of the Chamber. Those rules shall ensure that the functions of the President of the Commission are exercised at all times and that, in the case of an inquiry, they are exercised by a person who is not a national of a Party to the conflict.

7. The administrative expenses of the Commission shall be met by contributions from the High Contracting Parties which made declarations under paragraph 2, and by voluntary contributions. The Party or Parties to the conflict requesting an inquiry shall advance the necessary funds for expenses incurred by a Chamber and shall be reimbursed by the Party or Parties against which the allegations are made to the extent of 50 per cent of the costs of the Chamber. Where there are counter-allegations before the Chamber each side shall advance 50 per cent of the necessary funds.

The common rule of the Geneva Conventions with regard to Enquiry Procedures

Article 52 of the first Convention/Article 53 of the second Convention/ Article 132 of the third Convention/Article 149 of the fourth Convention

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

Rules of the International Humanitarian Fact-Finding Commission

(as adopted by the Commission on July 8, 1992, in Berne and amended on 11 March 2003, 13 February 2009, 11 February 2011 and 26 March 2014 in Geneva)

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Preamble

The Commission

Having regard to Protocol I Additional to the Geneva Conventions of 1949 for the protection of the victims of armed conflicts, hereinafter referred to as "the Protocol",

Bearing in mind its competence in respect of enquiry as well as of good offices, recognised for the purpose of obtaining the observation of the principles and rules of international law applicable in armed conflict,

Convinced of the need to take all appropriate initiatives as necessary in cooperation with other international bodies, in particular the United Nations, with the purpose of carrying out its functions in the interest of the victims of armed conflict,

Acting under article 90 of the Protocol,
Adopts the present Rules:

Part I – Organisation of the Commission

Chapter I – Members of the Commission

Rule 1 – Independence and Solemn Declaration

1. In the performance of their functions, the Members of the Commission (hereinafter referred to as the “Members”) shall accept no instructions from any authority or person whatsoever and serve in their personal capacity.
2. Before taking up his duties, each Member shall make the following solemn declaration: “I will exercise my functions as a Member of this Commission impartially, conscientiously and in accordance with the provisions of the Protocol and these Rules, including those concerning secrecy”.

Rule 2 – Availability

Unless prevented by serious reasons duly justified to the President, Members shall at all times be able to respond to a call by the President or, as the case may be, by the Head of a Chamber in order to ensure the accomplishment of the Commission's functions under the Protocol.

Rule 3 – Incompatibilities

During their term of office, Members shall not engage in any occupation or make any public statement that may cast a legitimate doubt on their morality and impartiality required by the Protocol. In case of doubt, the Commission shall decide on the proper measures to take.

Rule 4 – Resignation

1. The resignation of a Member shall be addressed to the President, who shall communicate it without delay to the secretariat of the Commission (hereinafter referred to as the “Secretariat”). The Secretariat shall register the resignation under Rule 37 (1).
2. The President shall address his resignation to the first Vice-President. The resignation shall take effect on the day of its registration by the Secretariat who shall without delay inform the Members of the date.

Rule 5 – The filling of casual vacancies

1. The Commission shall ensure that each candidate possesses the qualifications required by article 90 of the Protocol and that, in the Commission as a whole, equitable geographical representation is maintained.

2. In the absence of a consensus among the Members, the following provisions shall apply:
 - a. When no candidate obtains in the first ballot the majority required, a second ballot, restricted to the two candidates who obtained the highest number of votes, shall be taken.
 - b. If the second ballot is inconclusive and a majority vote of Members present is required, a third ballot shall be taken in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the highest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating, until a Member is elected.
 - c. The elections referred to in this Rule shall be held by secret ballot. Election shall be by a majority of the Members present.
3. A Member elected under this Rule shall serve for the remainder of the term of his predecessor.

Chapter II – Presidency and Precedence

Rule 6 – Election of the President, the first Vice-President and other Vice-Presidents

1. The Commission shall elect from among its Members a President, a first Vice-President as well as three other Vice-Presidents who together shall constitute the Bureau.
2. The President, the first Vice-President and the three other Vice-Presidents shall be elected for an initial term of three years. The term starts on the first annual meeting of the Commission following the elections of the Members of the Commission by the High Contracting Parties. At the fourth annual meeting of the Commission following the elections of the Members of the Commission by the High Contracting Parties, new elections will take place for a further term of two years.
3. The President and the Vice-Presidents may be re-elected. However, the term of office of the President or of a Vice-President shall end if he ceases to be a Member.
4. If the President or a Vice-President ceases to be a Member or resigns his office of President or Vice-President before its normal expiry, the Commission may elect a successor for the remainder of the term of that office.
5. The elections referred to in this Rule shall be held by secret ballot. Election shall be by a majority of the Members.

Rule 7 – Precedence

1. The first Vice-President shall take precedence over the three other Vice-Presidents.
2. The second, third and fourth Vice-Presidents shall take precedence according to the duration of their term of office.
3. The second, third and fourth Vice-Presidents having the same length of time in office shall take precedence according to age.
4. The Members shall take precedence after the President and Vice-Presidents according to the duration of their term of office.
5. Members having the same length of time in office shall take precedence according to age.

Rule 8 – Functions of the President

1. The President shall chair the meetings of the Commission and perform all other functions conferred upon him by the Protocol, these Rules and by the Commission.
2. In exercising his functions, the President shall remain under the authority of the Commission.
3. The President may delegate some of his functions to either Vice-President.
4. In co-operation with the Vice-Presidents and the Secretariat, the President shall take the necessary measures to ensure that the functions of the Commission can be exercised at all times and expeditiously.

Rule 9 – Temporary replacement of the President

The Vice-President shall take the place of the President if the presidency is vacant or the President is prevented from carrying out his duties, especially if, in the case of an enquiry, he is a national of a party to the conflict. The second Vice-President shall replace the first Vice-President if the latter is prevented from carrying out his duties or if the office of the first Vice-President is vacant. The third Vice-President shall replace the second Vice-President if the latter is prevented from carrying out his duties or if the office of the second Vice-President is vacant.

Rule 10 – Replacement of the President and Vice-Presidents

If the President and Vice-Presidents are at the same time prevented from carrying their duties or if their offices are vacant at the same time, the duties of President shall be carried out by another Member according to the order of precedence established by Rule 7.

Part II – Working of the Commission

Chapter I – Seat of the Commission, Secretariat and languages

Rule 11 – Seat of the Commission

The seat of the Commission shall be in Berne, Switzerland.

Rule 12 – Secretariat

The functions of the Secretariat of the Commission shall be assumed by the depositary State of the Geneva Conventions and the Protocol.

Rule 13 – Languages

The official and working languages of the Commission shall be English and French.

Chapter II – Meetings of the Commission

Rule 14 – Holding of meetings

1. The Commission shall hold such meetings as it considers necessary to perform its functions. It shall meet at least once a year. The Commission shall also meet if at least one third of the Members so request or the Bureau so decides.
2. The Commission shall hold its meetings at its seat, unless the Commission or the Bureau decides otherwise.
3. Commission meetings shall be convened at dates set by the Commission or by the Bureau.
4. The Secretariat shall notify the Members of the date, time and place of each Commission meeting. Whenever possible, such notification shall be given at least six weeks in advance.

Rule 15 – Agenda

1. Following consultation with the President, the Secretariat shall transmit a draft agenda to the Members of the Commission, whenever possible at least six weeks before a meeting.
2. The agenda shall be adopted by the Commission at the beginning of the meeting.

Rule 16 – Documentation

The Secretariat shall transmit to the Members the working documents relating to the different agenda items, whenever possible at least four weeks in advance.

Rule 17 – Quorum

Eight Members shall constitute a quorum.

Rule 18 – Privacy of meetings

1. The Commission shall meet in camera. Its deliberation shall remain confidential.
2. Apart from Members, only members of the Secretariat, interpreters and persons assisting the Commission may attend its meetings, unless the Commission determines otherwise.

Rule 19 – Hearings

The Commission may hear any person whom it considers to be in a position to assist in the performance of its functions.

Part III – Enquiries

Chapter I – Enquiry request

Rule 20 – Lodging the request

1. The request for an enquiry shall be addressed to the Secretariat.
2. It shall state the facts that, in the opinion of the requesting party, constitute a grave breach or a serious violation, as well as the date and the place of their occurrence.
3. It shall list the evidence the requesting party wishes to present in support of its allegations.
4. It shall name the authority to which all communications concerning the enquiry shall be addressed, as well as the most expedient means of contacting that authority.
5. Where applicable and to the extent possible, it shall contain, in the enclosure, the original or a certified copy of any document cited in the list of evidence.
6. If the Commission receives a request for an enquiry under article 90(2)(d), and the consent of the other party or parties concerned has not yet been indicated, the Commission shall refer the request to that party or those parties with a request that it or they indicate its or their consent.

Rule 21 – Examination of the request for an enquiry

1. On receiving a request for an enquiry, the President shall without delay advise the interested party or parties of it. He shall send them, as soon as possible, a copy of the request as well as its enclosures and, subject to Rule 20(6), advise them of their right to submit, within a fixed time period, their observations concerning the admissibility of the request. The setting of that time limit does not however prevent the Commission from opening the enquiry at once.
2. The Commission may ask the requesting party to supply additional information within a fixed time limit.
3. If the competence of the Commission is contested, the latter shall decide by means of speedy consultation.
4. The Commission shall inform the requesting party if the request does not meet the conditions described in Rule 20, or if an enquiry cannot be conducted for any other reason.

5. All parties to the conflict shall be informed of the Commission's decision to open an enquiry.
6. If, in the course of an enquiry, the requesting party communicates to the Commission the withdrawal of its request, the Chamber shall cease its enquiry only with the consent of other parties to the conflict. The withdrawal does not affect the payment of the costs of enquiry in accordance with article 90 (7) of the Protocol.

Rule 22 – Expenses of the enquiry

The President, in consultation with the Secretariat, shall determine the amount to be advanced by the requesting party to cover the expenses of the enquiry.

Chapter II – The Chamber

Rule 23 – Formation of the Chamber

Unless the interested parties agree otherwise, the following provisions apply:

- a. The President shall appoint, after consultation with the Bureau and the parties to the conflict, and on the basis of equitable geographical representation, five Members of the Chamber, not nationals of any party to the conflict.
- b. The President shall invite the parties concerned to appoint, within a fixed time period, two additional persons, not nationals of any party to the conflict, as ad hoc Members of the Chamber.
- c. If one or both of the ad hoc Members have not been appointed within the time limit set under Rule 23(b), the President shall immediately make the appointments necessary to fill the seats of the Chamber.
- d. The President of the Commission shall appoint the Head of the Chamber.
- e. If a Member appointed as a member of a Chamber believes that there are reasons disqualifying him from participating in the enquiry, he shall immediately impart them to the President, who may appoint another member.

Rule 24 – Custody of documents

All documents relating to an enquiry shall, as soon as possible, be handed over to the Head of the Chamber who shall be responsible for their registration and custody until the conclusion of the enquiry. They shall then be put in the custody of the Secretariat.

Rule 25 – Assistants

1. The Chamber may decide that it shall be assisted by one or more experts or interpreters.
2. All persons assisting the Chamber shall act on the instructions and under the authority of the Head of the Chamber.

Chapter III – Enquiry Procedure**Rule 26 – Instructions**

The Commission may establish general or specific instructions or guidelines concerning the enquiry.

Rule 27 – Procedure

1. The Chamber shall invite the parties to the conflict to assist it and to present evidence within a fixed time period. It may also seek any other evidence it considers relevant and may carry out an enquiry in loco.
2. The Chamber shall determine the admissibility and the weight of the evidence presented by the parties to the conflict, and the conditions under which witnesses shall be heard.
3. The President shall remind the interested parties that, during an enquiry in loco, they must assure to the members of the Chamber and all persons accompanying them the privileges and immunities necessary for the discharge of their functions which shall not be less extensive than those accorded to the experts on mission under the 1946 Convention on Privileges and Immunities of the United Nations, as well as their adequate protection.
4. During an enquiry in loco, the members of the Chamber shall be issued a document stating their capacity, as well as a white badge displaying in clearly visible black letters the name of the Commission in the local language.
5. The members of the Chamber may separate in order to conduct simultaneous enquiries at different places. In particular, the Chamber may, at any time, detach two or more of its members for an urgent enquiry on the spot and, if necessary, to ensure the preservation of evidence.
6. The quorum of the Chamber shall be fixed by the Commission in its instructions to the Chamber.

7. The Chamber shall, as soon as possible, communicate the results of its enquiry to the Commission in accordance with the instructions given to it.
8. All the evidence shall be fully disclosed to the parties concerned who shall be informed of their right to comment on it to the Commission.
9. If necessary, the Commission may instruct the Chamber to undertake a complementary enquiry.

Chapter IV – Report and Obligation of confidentiality

Rule 28 – Preparation of the Commission’s report

1. After each enquiry the Commission shall draw up, in the light of the Chamber’s findings, a report to be transmitted to the parties concerned. In particular, the Commission shall consider, as appropriate, whether it should take steps to facilitate, through its good offices, the restoration of an attitude of respect for the Geneva Conventions and the Protocol.
2. The President shall transmit the report together with any recommendations the Commission considers appropriate to the parties concerned.
3. The President shall have the date on which the Commission’s report was sent to the interested parties duly registered. The Secretariat shall keep in its archives copies of the communications of the Chambers and the reports of the Commission in its custody. These records are accessible only to Members while in office.

Rule 29 – Confidentiality

1. No personal data shall be published without the express consent of the person concerned.
2. Members of the Commission, ad hoc members of the Chambers, experts and other persons assisting the Commission or a Chamber are under an obligation, during and after their terms of office, to keep secret the facts or information of which they have become aware during the discharge of their functions.
3. The experts and other persons hired to assist the Commission or a Chamber shall, as a condition of their engagement, be required to agree, as a rule in writing, to comply with paragraph 2.

Chapter I – Conduct of business

Rule 30 – Powers of the President

The President shall declare the opening and closing of each meeting of the Commission, direct the discussion, ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions. The President, subject to these Rules, shall have control over the proceedings of the Commission and over the maintenance of order at its meetings. The President may, in the course of the discussion of an item, propose to the Commission the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. He shall rule on points of order. He shall also have the power to propose adjournment or closure of the debate or adjournment or suspension of a meeting.

Rule 31 – Proposals

A proposal must be submitted in writing, if a Member so requests.

Rule 32 – Order of voting on proposals and amendments

1. Where a number of proposals relate to the same subject, they shall be put to the vote in the order in which they were submitted. In case of doubt about priority, the President shall decide.
2. Where a proposal is the subject of an amendment, the amendment shall be put to the vote first. Where two or more amendments to the same proposal are presented, the Commission shall vote first on whichever departs furthest in substance from the original proposal, and so on until all the amendments have been put to the vote. However, where the acceptance of one amendment necessarily entails rejection of another, the latter shall not be put to the vote. The final vote shall then be taken on the proposal as amended or not amended. In case of doubt as to the order of priority, the President shall decide.
3. A motion may be withdrawn by the Member who proposed it at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any Member.

Rule 33 – Order of procedural motions

Procedural motions shall take precedence over all other proposals.

Rule 34 – Voting

As a rule, the Commission decides by consensus. In the absence of consensus, the following provisions apply:

- a. Subject to the provisions of Rules 6 (4), 39 and 40, the decisions of the Commission shall be taken by a majority of the Members present.
- b. In matters other than elections, a proposal shall be regarded as rejected if the majority referred to under letter (a) heretofore is not obtained.
- c. Subject to Rules 5 (2)(d) and 6 (4), the Commission shall vote by show of hands, unless a Member requests a roll call vote.
- d. After a vote has commenced, there shall be no interruption of the voting except on a point of order by a Member in connection with the actual conduct of the voting.

Chapter II – Working modalities**Rule 35 – Reports of meetings**

1. The Secretariat shall prepare a draft report of the Commission's deliberations and decisions following each meeting. The draft report shall be circulated as soon as possible to the Members of the Commission, who will be given the opportunity to submit corrections within a prescribed time-limit.
2. If no corrections are submitted, the meeting report shall be deemed adopted. If corrections are submitted, they shall be consolidated in a single document and circulated to all Members. In this latter case, the adoption of the report of the meeting shall be taken up at the next meeting of the Commission.

Rule 36 – Working groups

The Commission may set up ad hoc working groups comprising a limited number of its Members. The terms of reference of such working groups shall be defined by the Commission.

Rule 37 – Communications

1. The Secretariat shall register and bring to the Commission's attention communications received containing information which may be of interest to the Members.
2. Such communications received by a Member shall be forwarded to the Secretariat.
3. The Secretariat shall acknowledge receipt of the communications to their authors.

Rule 38 – Report of activities

Subject to the obligation of confidentiality stated in Rule 29, the Commission shall issue, whenever it considers it useful, a general report on its activities to the governments of the High Contracting Parties to the Geneva Conventions. The Commission may also prepare such reports and make such public statements relating to its functions as it considers appropriate and in conformity with the provisions of the Protocol and these Rules concerning confidentiality.

Part V – Amendments and Suspension

Rule 39 – Amendments of the Rules

The present Rules may be amended by a decision taken by a majority of the Members, subject to the provisions of the Protocol.

Rule 40 – Suspension of a provision of the Rules

Upon the proposal of a Member, the application of a provision of these Rules may be suspended by a decision taken by a majority of the Members, subject to the provisions of the Protocol. The suspension of a provision shall be limited in its operation to the particular purpose for which such suspension has been sought.

Core Principles

(as adopted by the Commission on March 11, 2003, in Geneva)

At the 2003 annual meeting, the Commission adopted the internal Operational Guidelines, which are designed to assist the Commission and its chamber in carrying out an inquiry. Although their detailed application will depend on the particular circumstances of the allegations in issue, the following core principles – fundamental to a successful mission – are considered as non-negotiable:

1. The parties shall assist the International Humanitarian Fact-Finding Commission, its Chamber and Secretariat and the persons assisting the Chamber in the conduct of the enquiry. Such assistance shall include the presentation of all evidence necessary for establishing the facts.
2. Each party shall designate a point of contact responsible for facilitating the Commission's work. The point of contact shall have the authority necessary to ensure that all competent authorities fully co-operate with the enquiry.
3. The Commission shall enjoy full freedom of enquiry. In particular, it shall have access to any information and evidence from any source, as it deems appropriate, including the receipt of private testimony from any person. The Commission may conduct on-site investigations.
4. The Commission shall enjoy full freedom of movement on the territory under the control of the parties.
5. The parties shall ensure that no person who has been in contact with the Commission in relation to the enquiry, or his or her relatives and associates, will for this reason suffer any acts of violence, intimidation, harassment, threats or reprisals, or be subjected to any kind of legal action.
6. Members of the Commission, its Chamber and Secretariat and the persons assisting the Chamber shall enjoy the privileges and immunities necessary for the discharge of their functions, which shall be not less than those accorded to experts on mission under the 1946 Convention on Privileges and Immunities of the United Nations.
7. The Commission's archives, including all evidence gathered, shall be inviolable; they shall be kept confidential unless decided otherwise by the Commission.

8. The parties shall make the appropriate arrangements to ensure the security of Members of the Commission, its Chamber and Secretariat and the persons assisting the Chamber, without however restricting the freedom of movement and enquiry referred to above.

International Conference concerning the Financial Procedures for the administrative expenses of the International Humanitarian Fact-Finding Commission

Berne, September 8 and 9, 1994

Resolution 1

Resolution 2

Financial Procedures for the administrative expenses of the Commission

1. Composition of the administrative expenses
2. Contributions by Parties
3. Auditing
4. Amendment of Procedures
5. Entry in to force

Annex A: Declaration by the Parties regarding the nature and composition of the Commission's administrative expenses

Annex B: Binding statement by the Commission regarding the administration of its administrative expenses

Annex C: Declaration by the Swiss Federal Department of Foreign Affairs

Resolution 1

The Conference,

Considering that the provisional arrangement for the funding of the Commission's administrative expenses adopted at the diplomatic conference convened to elect the fifteen members of the International Humanitarian Fact-Finding Commission (the "Commission") on June 25, 1991, will expire on September 30, 1994,

Acting under article 90 of the Additional Protocol I to the 1949 Geneva Conventions, Adopts the Financial Procedures for the administrative expenses of the Commission (the "Financial Procedures") attached hereto, which shall enter into force on January 1, 1995, and which extend the provisional arrangement referred to above to December 31, 1994,

Takes note that the Financial Procedures will be implemented in keeping with legal or administrative requirements existing in each State, and invites the States to inform the depositary of the 1949 Geneva Conventions and the Additional Protocols as soon as possible of the result of the applicable implementation procedures,

Takes further note that the States having recognized the competence of the Commission remit their annual contributions for 1995 as well as those to the Working Capital Fund as

soon as possible, having due regard to the procedures of adopting the budgets applied by the competent national authorities.

Berne, September 9, 1994

Resolution 2

The Conference,

Expressing its gratitude to the members of the International Humanitarian Fact-Finding Commission (the "Commission") for their commitment to the Commission's goals,

Having adopted, by resolution of September 9, 1994, the Financial Procedures for the administrative expenses of the Commission attached hereto ("Financial Procedures"),

Having taken note of the binding statement by the Commission contained in Annex C of the Financial Procedures (the "Binding Statement"),

Having further taken note of the Commission's commitment to conduct the financial administration in accordance with the principles of economy and sound financial management,

Requests the Commission

- To limit its administrative expenses to the utmost possible, particularly in connection with meetings, having due regard to the budgetary constraints and financial restrictions of the States having recognized the competence of the Commission (the "States"),
- To submit to the States, for comments within a reasonable time-frame, in the spirit of establishing an active dialogue between the Commission and the States, the annual draft budget before its adoption by the Commission,
- To consult the States, if, in the course of a financial year, the Working Capital Fund referred to in paragraph 2 f. of the Financial Procedures amounts to less than 100 000 Swiss francs, in order to afford the States the opportunity to co-operate with its President in making the arrangements necessary to keep the Commission operational,
- To submit to the States, together with the annual financial statements, annual reports on its activities,
- To integrate the measures contained in this Resolution into its binding statement.

Berne, September 9, 1994

Financial Procedures for the administrative expenses of the Commission

(as adopted on September 9, 1994)

The High Contracting Parties to Additional Protocol I to the 1949 Geneva Conventions relating to the protection of the victims of armed conflicts ("Protocol I") having made the declaration provided for in article 90 of Protocol I ("Parties") recognizing ipso facto and without special agreement the competence of the International Humanitarian Fact-Finding Commission ("Commission"),

Expressing their sincere gratitude to the Swiss Government in its capacity as the depositary of the 1949 Geneva Conventions and the Additional Protocols for having covered one part of the Commission's administrative expenses in accordance with the arrangement agreed upon at the diplomatic conference convened to elect the members of the Commission on June 25, 1991,

Expressing equal gratitude to the States which have covered the other part of the administrative expenses under the arrangement referred to above,

Considering their Declaration contained in Annex A attached hereto to be an integral part of these Procedures,

Taking note of the Commission's Statement contained in Annex C attached hereto,

Taking further note with gratitude of the unilateral statement of the Swiss Federal Department of Foreign Affairs contained in Annex C attached hereto,

Acting under article 90 of Protocol I,

Adopt the present Financial Procedures ("Procedures") regarding the Commission's administrative expenses:

1. Composition of the administrative expenses

The administrative expenses referred to in paragraph 7 of article 90 include the following costs:

- a. costs incurred by the Commission and its members in connection with meetings of the Commission and its working groups;

- b. costs incurred by the Commission and its members in connection with a request for an enquiry, not including expenses incurred by a Chamber;
- c. costs incurred by the Commission and its members in connection with initiatives the Commission may take to promote its services and to offer its good offices in accordance with paragraph 2 c) ii) of article 90;
- d. costs incurred by the Commission's secretariat in providing the Commission with the necessary administrative facilities for the performance of its functions;
- e. costs for auditing the Commission's book keeping.

2. Contributions by Parties

- a. Each Party shall pay a proportion of the Commission's administrative expenses determined in accordance with the scale applied by the United Nations to its regular budget and as exemplified with regard to the States currently being Parties in Annex B* attached hereto. The proportions shall be adapted at the end of each year to take account of changes in the Parties which occurred in the course of that year, and any change in the scale.
- b. No later than November 1st of each year, the Commission shall request the Parties to remit their annual contributions to cover the expenses projected by the Commission for the following year.
- c. The annual contributions shall be due for payment on January 1 of each year, and shall be made in Swiss francs to an account held by the depositary of the Geneva Conventions and the Additional Protocols in the Commission's name, to be specified in the request to the Parties to remit said contributions.
- d. The first annual contribution of a Party whose declaration under article 90 has become effective after January 1, 1995, shall be due on January 1 of the year following the one during which said declaration entered into effect. Such Party shall, in addition, contribute to the Working Capital Fund according to the scale of contribution provided for in sub-paragraph a. heretofore.
- e. Any surplus income for a given financial year as well as any voluntary contributions to the coverage of the Commission's administrative expenses not specified by the donor to be intended for a certain purpose or activity shall be deducted from the Parties'

contributions for the financial year following the one in which the accounts have been approved by the Commission pursuant to paragraph 7 of Annex C; any surplus expenditure shall be added thereto.

- f. Recognizing that, as a result of a request for an enquiry, the Commission may incur costs neither to be advanced by the requesting Party under paragraph 7 of article 90, nor projected by the Commission in its annual budget for the following year (s. paragraph 1 b. heretofore), and in order to enable the Commission to do the preparatory work necessary in connection with such a request at all times without delay, the Parties herewith accord the Commission an amount of 300,000 Swiss francs as a Working Capital Fund, contribution to which shall be due and payable within the same period as the first annual contribution due on January 1, 1995, in accordance with the scale of contribution provided for in sub-paragraph a heretofore.

Subject to consultations provided for in Resolution 2 adopted in Berne on September 9, 1994, by the International Conference concerning the Financial Procedures for the administrative expenses of the International Humanitarian Fact-Finding Commission, the contributions required to replenish said Fund in the amount used in a given year shall be payable within the same period as the annual contribution for the following year. Interest gained shall accrue to the Fund and be the amount used first in accordance with this sub-paragraph; the requirement to replenish the Fund shall not apply to the interest thus used.

3. Auditing

- a. Auditing will be performed by private external auditors of good reputation appointed by the Commission for a renewable period of three years.
- b. Auditors shall annually conduct audits of the Commission. They shall, in particular, check the accuracy of the books, the statement of assets and liabilities, and the accounts. The audit shall be conducted in March of each financial year, which shall correspond to the calendar year.
- c. Auditors shall certify
 - that the annual financial statements submitted to them by the Commission are correct and in accordance with the books and records of the Commission;
 - that the financial transactions recorded in these statements have been effected in accordance with relevant rules and the statement of the projected expenses;
 - that the funds on deposit and on hand have been verified by certificates received directly from the depositories or by actual count.

- d. Auditors shall annually draw up a report certifying the accounts and setting forth the comments warranted by the audit. They may also make observations they deem necessary regarding the efficiency of the financial procedures, the accounting system and the internal financial control of the Commission.
- e. The report shall be submitted to the Commission and to the Parties not later than five months after the end of the financial year to which the accounts refer.

4. Amendment of Procedures

- a. The Commission may bring to the attention of the Parties potential problems which may necessitate the amendment of these Procedures.
- b. The depositary of the Geneva Conventions and the Additional Protocols shall convene the Parties in order to amend these Procedures,
 - (i) upon its own initiative, unless a majority of the Parties object or
 - (ii) if one third of the Parties so request.
- c. These Procedures may be amended by the majority of the Parties participating in the conference referred to in sub-paragraph b. heretofore.

5. Entry into force

- a. These Procedures shall enter into force on January 1, 1995.
- b. The period between the expiration on September 30, 1994, of the mechanism adopted on June 25, 1991, by the Parties having then made the declaration under article 90 on the one hand, and the entry into force of these Procedures on the other hand shall, for reasons of budgetary convenience, continue to be governed by said mechanism.

Annex A

Declaration by the Parties regarding the nature and composition of the administrative expenses of the Commission

1. Nature

Paragraph 7 of article 90 of Protocol I Additional to the 1949 Geneva Conventions setting forth the mechanism for the funding of the Commission's operations, distinguishes between two types of expenses:

- a) **"administrative expenses"**
which "shall be met by contributions from the High Contracting Parties which made the declaration under paragraph 2 of article 90, and by voluntary contributions" and
- b) **"expenses incurred by a Chamber"**
which shall be advanced by the Party or Parties requesting an enquiry and reimbursed to the extent of fifty percent by the Party or the Parties against which the allegations are made.

Hence, the term "administrative expenses" encompasses any and all expenses of the Commission not "incurred by a Chamber".

2. Composition

The following commentaries refer to the individual items listed in paragraph 1 of the Procedures:

ad: Costs incurred by the Commission and its members in connection with meetings of the Commission and its working groups.

These costs include meeting room rentals, translation services, equipment rentals as well as the members' transportation costs (air travel in business class, ground transportation in first class), per diem (as fixed from time to time by the International Civil Service Commission of the United Nations for experts performing tasks in Switzerland) and fees for services rendered to the Commission calculated pro rata temporis on the basis of the monthly amount granted to a professional of the level D 1 within the United Nations System.

ad: Costs incurred by the Commission and its members in connection with a request for an enquiry, not including expenses incurred by a Chamber.

As stated under paragraph 1. b) heretofore, the Party(ies) to a conflict requesting an enquiry is (are) only obliged to advance the funds estimated to be required to cover the costs of a Chamber. Yet, before a decision may be taken by the Commission whether or not to establish a Chamber, certain tasks will have to be performed urgently by the Commission and/or its President which may involve considerable expenses. E.g., the Commission will have to determine its competence to enquire, the admissibility of the request at hand, as well as the amount to be advanced.

The Working Capital Fund referred to in paragraph 2. f of the Procedures is chiefly created to cover all or part of these costs.

Furthermore, once the enquiry has been terminated and the Chamber dissolved, the Commission will have to prepare its report to the Parties under paragraph 5(a) of article 90. As these costs are not incurred by the Chamber, but by the Commission as a whole, they have to be considered "administrative expenses".

ad: Costs incurred by the Commission and its members in connection with initiatives to promote the Commission's services and to offer its good offices.

These costs include those resulting from efforts of the Commission to increase the international community's awareness of the Commission's nature and mandate and to lay the ground-work for a potential cooperation between the Commission and other international bodies.

The funds necessary to carry out these activities in any given year are difficult to anticipate; as a rule, however, they should not exceed 50,000 Swiss francs per annum.

ad: Costs incurred by the Commission's secretariat in providing the Commission with the necessary administrative facilities for the performance of its functions.

These costs include mainly the costs of the services of the Swiss Government's employees or its agents rendered in connection with the secretariat's functions as well as the costs incurred in connection with activities of the Commission as set forth in paragraph 1 b., c. and d. of the Procedures, and the costs for communication services at the Commission's seat, such as telephone and facsimile transmissions. Costs incurred by the secretariat for services rendered to a Chamber are considered to be "expenses incurred by a Chamber" to be paid by the parties to the conflict in question in accordance with paragraph 7 of article 90.

ad: Costs for auditing the Commission's book keeping.

These costs encompass the fees charged by a private auditing company in Switzerland for reviewing the book keeping by the Commission's secretariat and for preparing an annual report to the Parties.

Annex B

Binding Statement by the Commission regarding the administration of its administrative expenses

1. The financial administration of the Commission shall be conducted in accordance with the principles of economy and sound financial management.
2. The Commission's administrative expenses shall be limited to the utmost possible, particularly in connection with meetings.
3. The Budget of the Commission is the document by which the Commission forecasts and prospectively sets forth the receipts and expenditure of the Commission for one financial year. All receipts and all expenditure shall appear in the Budget.
4. The Budget shall constitute authorization to incur obligations and make payments up to the amounts and for the purposes approved.
5. The President of the Commission is authorized to make transfers between items and sub-items of up to 15 percent of items/sub-items. All such transfers must be reported by the President in connection with the financial statements mentioned in paragraph 8 hereinafter.
6. The financial year shall begin on January 1 and end on December 31.
7. The Budget shall be established and the accounts kept in Swiss francs, the currency of the host country.
8. On the basis of audit reports, the Commission shall signify its acceptance of the annual financial statements or take such other action as it may consider appropriate.
9. If, in the course of a financial year, the Working Capital Fund referred to in paragraph 2f. of the Procedures amounts to less than 100,000 Swiss francs, the President of the Commission shall consult the Parties in order to afford them the opportunity to cooperate with him/her in making the arrangements necessary to keep the Commission operational. The President shall report on his actions to the Commission.
10. Each year the Commission shall submit to the Parties, for comments within a reasonable time-frame, the draft Budget for the following year.

11. Furthermore, the Commission shall submit to the Parties annual financial statements referred to in paragraph 8 heretofore reflecting the receipts and expenditure for the year preceding the one at the end of which the contribution request is submitted, as well as annual reports on its activities.

Annex C

Declaration by the Swiss Federal Department of Foreign Affairs with regard to the administrative costs of the Secretariat

The Federal Department of Foreign Affairs presents its compliments to the Representatives of the States invited to take part in the Conference convened on September 8 and 9, 1994, to adopt the Financial Procedures for the administrative expenses of the International Humanitarian Fact-Finding Commission ("Commission") and has the honour to inform the Representatives of the following.

The Swiss Federal Council, in its capacity as the depositary of the Geneva Conventions and the Additional Protocols, is prepared to assume, the costs of the salaries of the Swiss Government's employees or its agents equalling the percentage of their working time spent fulfilling the functions of the Commission's secretariat, not including the time spent rendering services to a Chamber of enquiry, as well as any and all costs for communication services incurred at the Commission's seat.

The Department avails itself of this opportunity to present to the Representatives the assurance of its highest consideration.

Berne, September 8, 1994

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