

[Source: The International Humanitarian Fact-Finding Commission, ICRC, Advisory Service on International Humanitarian Law, Geneva, April 2001, <http://www.icrc.org/eng>, see also the Commission's website: <http://www.ihffc.org/>]

The International Humanitarian Fact-Finding Commission

In an effort to secure the guarantees accorded to the victims of armed conflict, Article 90 of the Protocol I Additional to the Geneva Conventions of 1949 (Protocol I) provides for the establishment of an International Fact-Finding Commission. The Commission was officially constituted in 1991 and is a permanent body whose primary purpose is to investigate allegations of grave breaches and other serious violations of international humanitarian law. As such, the Commission is an important means of ensuring that international humanitarian law is both applied and implemented during armed conflict.

The composition of the Commission

The Commission is composed of 15 individuals elected by those States that have recognized its competence. Commission members act in a personal capacity and do not represent the States of which they are nationals. Each member must be of high moral standing and established impartiality. Elections take place every five years and States have an obligation to ensure that all regions of the world are fairly represented.

The powers and functioning of the Commission

The Commission is competent to:

- a. enquire into any facts alleged to be a grave breach or other serious violation of the Geneva Conventions or Protocol I;
- b. facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and Protocol I.

The principal task of the Commission is to enquire into facts. It investigates only whether or not a grave breach or other serious violation of the Geneva Conventions or Protocol I has in fact occurred.

The Commission is an investigative body and not a court or other judicial body: it does not hand down judgments or address questions of law in relation to the facts it has established. Its enquiry must involve grave breaches or other serious violations of the above-mentioned treaties. Consequently, it does not enquire into minor violations.

The Commission is also authorized to facilitate, through its good offices, an attitude of respect for the Conventions and their Protocol I. Generally, this means that it may, in addition to communicating its conclusions as to the facts, make observations and suggestions to promote compliance with the treaties on the part of the warring parties.

Though the Geneva Conventions and Protocol I are applicable only to international armed conflicts, the Commission has expressed its willingness to enquire into alleged violations of humanitarian law arising from non-international armed conflicts, provided that the parties involved consent to this.

A Commission enquiry

In order for the Commission to begin an enquiry there must be a request for it to do so. Only States that have recognized the Commission's competence are entitled to make such a request, and may do so regardless of whether they are themselves involved in the conflict concerned. Private individuals, organizations, or other representative bodies do not have such authority, nor does the Commission have the power to act upon its own initiative.

Enquiries are generally not conducted by the Commission as a whole. Unless otherwise agreed, they are conducted by a seven-member Chamber consisting of five members of the Commission itself plus two ad hoc appointees. Each party to the conflict nominates one ad hoc member, but no member of the Chamber may be a national of a party to the conflict.

During the course of the investigation, the warring parties are invited to assist the Chamber and are given an opportunity to present and challenge evidence. In addition, the Chamber is authorized to conduct its own investigations. All evidence is disclosed to the parties and to any other States that may be concerned, all of whom have the right to make observations.

Report of the Commission

The Commission submits a report to the parties, based upon the findings of the Chamber. The report contains the Commission's findings regarding the facts, together with any recommendations. The Commission does not disclose its conclusions publicly unless requested to do so by all parties to the conflict.

Recognizing the Commission's competence

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 recognize the Commission's competence by signing or ratifying Protocol I, but only by separately affirming that recognition. A State may make a comprehensive declaration, thereby permanently recognizing the Commission's competence, or it may consent to the investigation of a particular dispute.

- 1) Comprehensive declaration

A comprehensive declaration can be made when signing, ratifying, or acceding to Protocol I, or at any subsequent time.

By making such a declaration, a State authorizes 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. It goes without saying that by accepting the Commission's competence, a State obtains the right to request an enquiry regarding conflicts between States that have likewise accepted that competence, regardless of whether it is itself involved in the conflict.

2) Form of a comprehensive declaration

While there is no standard form, the State must unambiguously announce that it recognizes the competence of the International Fact-Finding Commission as set out in Article 90 of Additional Protocol I to the Geneva Conventions of 1949. The declaration must be submitted to the depository, i.e. the Swiss Confederation.

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.

3) *Ad hoc* consent

A party to an armed conflict that has not made a comprehensive declaration may accept the Commission's competence on a temporary basis, that acceptance being limited to the specific conflict in which it is involved. This form of recognition does not constitute permanent 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 authorized to conduct an enquiry. If consent is granted, the enquiry procedure will begin.

In a conflict involving parties that have not made the comprehensive declaration, a warring party will not be bound by a previous consent: it is up to that State to decide whether to reaffirm the Commission's competence should it become the object of a complaint. Obviously, the request for an enquiry must come from a State that has also recognized the Commission's authority.

Financing the Commission's activities

The *administrative expenses* of the Commission are covered by the States that have recognized the Commission's competence in advance, and by voluntary contributions.

Expenses arising from a Chamber (i.e. an enquiry) are borne by the parties involved: the party requesting an

enquiry must advance the necessary funds to cover the Chamber's expenses, but up to half of this advance will be reimbursed by the party that is the object of the enquiry. However, the Commission has indicated that there is considerable scope for flexibility in financing enquiries, other financial arrangements being possible by agreement of the parties.

Ensuring respect for international humanitarian law

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

By recognizing 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 therefore takes an important step in securing the fundamental guarantees laid down for the victims of armed conflict.