

THE INTERNATIONAL HUMANITARIAN FACT-FINDING COMMISSION



To secure the guarantees accorded to the victims of armed conflict, Article 90 of Protocol I of 8 June 1977 additional to the Geneva Conventions (Protocol I) provides for the establishment of an International Humanitarian Fact-Finding Commission. The International Humanitarian Fact-Finding 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 (IHL). As such, the Commission is an important means of ensuring that IHL is both applied and implemented during armed conflict.

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. They must be of high moral standing and established impartiality. Elections take place every five years, and states must ensure that all regions of the world are fairly represented.

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 Geneva Conventions and Protocol I.

The principal task of the Commission is to enquire into facts. It investigates whether 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 IHL. Consequently, it does not enquire into minor violations.

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The Commission is also authorized to facilitate, through its good offices, an attitude of respect for the Geneva Conventions and Protocol I. This means that it may, in addition to communicating its conclusions as to the facts, make observations and suggestions to encourage the warring parties to comply with the treaties.

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 IHL arising from non-international armed conflicts, with the consent of the parties involved.

COMMISSION ENQUIRIES

To begin an enquiry, the Commission must receive a request. Only states that have recognized the Commission's competence are entitled to make such a request and may do so whether or not they are involved in the conflict concerned. The Commission does not have the power to act on its own initiative.

Enquiries are generally not conducted by the Commission as a whole. Unless otherwise agreed, a seven-member Chamber consisting of five members of the Commission and two ad hoc appointees undertakes an enquiry. Each party to the conflict nominates one ad hoc member. No member of the Chamber may be a national of a party to the conflict.

During 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 concerned, all of which have the right to make observations.

REPORTING

The Commission submits a report to the parties, based on the findings of the Chamber. The report contains the Commission's findings, 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, ratifying or acceding to Protocol I but only by separately affirming that recognition. A state may make a comprehensive declaration permanently recognizing the Commission's competence or may consent to the investigation of a particular dispute.

Comprehensive declaration

A state may make a comprehensive declaration when signing, ratifying or acceding to Protocol I or at any subsequent time.

Such a declaration authorizes the Commission to enquire into any conflict that may arise between that state and another state that has made the same declaration. No additional approval is required for the Commission to act.

By accepting the Commission's competence, a state also 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.

Form of a comprehensive declaration

A state must unambiguously announce that it recognizes the competence of the Commission as set out in Article 90 of Protocol I. The declaration must be submitted to the depositary, i.e. the Swiss Confederation. A [model declaration](#) is available on the Commission's website.

Both the Swiss government and the ICRC Advisory Service on IHL have drafted a [model declaration](#) which states are free to use.

Ad hoc consent

A party to an armed conflict that has not made a comprehensive declaration may temporarily accept the Commission's competence, 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 may not proceed with the enquiry. If consent is granted, the enquiry procedure will begin.

In a conflict involving parties that have not made the comprehensive declaration, none of the parties will be bound by previous ad hoc consent; it is up to each party 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 competence.

FINANCING OF THE COMMISSION'S ACTIVITIES

The Commission's administrative expenses are covered by the states that have recognized its competence in advance and by voluntary contributions.

A Chamber's expenses (i.e. those arising from an enquiry) are borne by the parties involved: the party requesting an enquiry must advance the funds to cover the Chamber's expenses, but the party that is the object of the enquiry will have to reimburse up to half of this advance. However, the Commission has indicated that there is considerable flexibility in the financing of enquiries, with other financial arrangements possible by agreement of the parties.

ENSURING RESPECT FOR IHL

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

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By recognizing the Commission’s competence, whether permanently or temporarily, a state contributes significantly to the implementation of IHL and to compliance with this law during armed conflict. A declaration of recognition is thus an important step that states can take to protect the victims of armed conflict and to fulfil their obligations to respect and ensure respect for the rules governing methods and means of warfare.

Further information on the Commission is available on its website and from the following address:

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MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

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