Chapter 38
The International Humanitarian Fact-Finding Commission Established by the First Additional Protocol to the Geneva Conventions*

1 Introduction

The International Fact-Finding Commission is a creature of Article 90 of the Protocol of 8 June 1977 Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I). It was effectively established in 1991 when, as required by Article 90(1)(b), twenty States parties had recognized its competence. In order to emphasise its focus and avoid confusion with fact-finding bodies in other areas of law (such as tax law in certain countries) the Commission has added “humanitarian” to its name. In its publications and correspondence, it consistently refers to itself as the “International Humanitarian Fact-Finding Commission”, or, for short, the IHFFC.

To this day, the Commission has not had occasion to deal with any concrete case. Since the procedures set forth in Article 90 and in the Rules adopted by

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2 As provided in Art. 90(2)(c)(i), the Commission is competent to “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.” According to sub-para. (ii), the Commission is as well competent to “facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.”

3 Parties to armed conflicts more than once considered bringing a case of alleged violation before the Commission but on reflection did not pursue this idea. Some other cases clearly fell outside the competence of the Commission.

In 1998, the Commission conducted a mock enquiry in an exercise staged by the Swedish National Defence College, involving two parties to an internal conflict who
the Commission have not been tested in practice, a discussion of the specific questions raised in the organizers’ letter of 10 December 2002 therefore retains a largely theoretical character. In attempting to provide an answer to these questions nonetheless, this paper takes into account the text of Article 90 as well as subsequent developments, in particular those that arose from discussions within the Commission itself. Some of these points deserve to be mentioned at the outset.

Although established under Protocol I, the Commission at an early stage of its existence decided it was as well prepared to act in cases submitted by parties to an internal armed conflict, be it the government or an armed opposition group. The Commission is aware that as with cases arising in an international conflict, the actual exercise of its functions in an internal armed conflict remains entirely dependent on the consent of the parties concerned. The rule in Article 90(2)(a) that enables States parties to Protocol I to accept the competence of the Commission in relation to any other State party that has made the same declaration,\footnote{Art. 90(2)(b) reads: “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.”} obviously does not apply in an internal armed conflict. Therefore, consent in this case can only be *ad hoc*, like with the case of one State party to an international armed conflict not having previously accepted the competence of the Commission.

Again, rather than regarding its competence as confined to grave breaches and other serious violations of the Geneva Conventions of 1949 or Protocol I, the Commission is prepared in principle to deal with any alleged serious violation of international humanitarian law that parties to armed conflicts may submit to it.\footnote{In a paper presented on 9 Dec. 2002 to a group of governmental experts of the States parties to the Conventional Weapons Convention, the Swedish delegation mentioned that “[i]f interpreted widely, the mandate [of the Commission] could be seen to cover inquiries regarding also the CCW regime.” CCW/GGE/III/WP.7, on file with author. See also infra section VI.}