

ICC ASSEMBLY OF STATES PARTIES – GENERAL DEBATE

PRESENTATION OF THE INTERNATIONAL HUMANITARIAN FACT-FINDING COMMISSION

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Excellencies, Ladies and Gentlemen

Let me express my gratitude to the Assembly of the States Parties to the International Criminal Court for their kind invitation to the institution I'm representing here, namely the International Humanitarian Fact-Finding Commission (in short: IHFFC), to attend the *travaux* of the Assembly as an observer and for giving me the opportunity to say a few words about the Commission.

Sixty-five ICC States parties have recognized the competence of the Commission, so I am sure that many delegations are familiar with this mechanism. However, taking into account the recent developments and challenges, particularly the war launched by the Russian Federation against Ukraine, it is worthwhile to reflect on the added value of the IHFFC.

Excellencies, Ladies and Gentlemen

There is no doubt that a law which is not respected by its own creators is worthless. Hence in any branch of law there are mechanisms aiming at the prevention of violations, and mechanisms ensuring accountability in case of breaches.

Establishing individual criminal responsibility for grave breaches and other serious violations of IHL and setting up a permanent criminal court with jurisdiction over such crimes is of course among the key methods of ensuring accountability for violations of IHL. But they are not the only ones. Indeed, among the means of ensuring compliance with IHL are also good offices and enquiries, fact-finding, carried out by the IHFFC.

In general, enquiries procedures and fact-finding are considered to be closely related to accountability - investigations, collection of evidence or other similar activities, undertaken particularly in the context of responsibility of individuals or States. There have been multiple examples of fact-finding missions, monitoring mechanisms, mapping exercises in recent years.

However, the IHFFC is based on different prerequisites - not strictly speaking as a mechanism of accountability – or *a fortiori* of individual criminal responsibility – but rather as a mechanism of dispute resolution and prevention of any further IHL violations.

The Commission is established under Article 90 of the First Protocol Additional of 1977 to the Geneva Conventions. The philosophy behind the setting up of the Commission was that the knowledge of relevant facts is the indispensable basis for a rational decision-making by parties to any armed conflict. The clarification of facts is necessary for the “restoration of an attitude of respect” for IHL, as it is stated in Article 90, for ensuring compliance with its rules; necessary in other words both for achieving the peaceful resolution of the ongoing conflict and for preventing the recurrence of breaches of IHL.

The Commission is the agent of the universal treaty system of IHL - we are neither the organ of the United Nations, nor of any other international or regional organization. We are created by States - Parties to Protocol Additional I and our competence is based on States’ consent, expressed so far by 76 States, the majority of which are States parties to the ICC Statute. As an impartial, independent, non-political body composed of 15 experts with different backgrounds, including medical doctors, military officers, diplomats and lawyers, acting in their personal capacities, we are able to undertake inquiries regarding IHL violations. It’s worth mentioning that the great majority of recent fact-finding missions established on an *ad hoc* basis dealt with human rights violations mainly or exclusively. Only a small number of missions had IHL explicitly included into their mandate.

We are a permanent organ, predictable, ready to undertake a mission at a short notice, contrary to all types of *ad hoc* bodies.

And last but not least, our confidential, flexible procedures that can be shaped depending on circumstances, provide the advantages of a low key, non-confrontational approach.

Excellencies, Ladies and Gentlemen

As Aeschylus wrote already in ancient times: “Truth is the first casualty in war”. We continue living in the times of misinformation, disinformation, fake news, when a professional, expert-based analysis of current hostilities remains a crucial confidence building measure, helping to restore a spirit of trust and reconciliation.

The Commission has proven its worth in 2017 when - at the request of the OSCE - it undertook a mission to Eastern Ukraine to conduct an independent forensic investigation on the incident in Luhansk Province where the OSCE Special Monitoring Mission Patrol was affected.

After the invasion of Ukraine by the Russian Federation, the Commission offered its good offices to the both States (unfortunately unsuccessfully, so far).

As emphasized earlier, sixty-five ICC member States have formally recognized the IHFFC competence. Fifty-five States parties to the Rome Statute are also parties to the First Additional Protocol but have not recognised the competence of the Commission. We would like to encourage them to consider such a recognition.

We would also like to remind to all States, even those that are not parties to the First Additional protocol, that they can use the IHFFC's good offices and fact-finding services on an *ad hoc* basis.

Excellencies, Ladies and Gentlemen

Implementation of IHL depends on political will. You have shown such a will by adhering to the Rome Statute and thus accepting the jurisdiction of the ICC for the most serious international crimes, among which war crimes, which "must not go unpunished" because you were – in the words of the preamble – "determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes".

The IHFFC provides States with an additional, complementary avenue towards what in essence is the same goal: "contributing to the prevention of violations IHL" which lie at the heart of the war crimes the Court deals with. It is a State-driven process enabling States to demonstrate their commitment, your commitment, to ensuring respect for IHL.

Thank you for your attention.