



Seventeenth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 5-12 December 2018

Statement on behalf of International Humanitarian Fact-Finding Commission  
By Justinas Žilinskas, 6 December 2018

Mr. President,  
Distinguished Delegates,  
Ladies and Gentleman,

On behalf of the International Humanitarian Fact-Finding Commission (IHFFC), I would like to express my sincere gratitude to all the Member States and the ICC ASP secretariat for inviting IHFFC as an observer to this Assembly.

The IHFFC considers the meeting of the Assembly of State Parties of the International Criminal Court an important occasion to raise awareness of the IHFFC and its activities towards ensuring respect for international humanitarian law. The International Humanitarian Fact-Finding Commission was established by Article 90 of the First Additional Protocol to the Geneva Conventions of 1949. It is the only permanent international body for fact-finding in matters of international humanitarian law. The Commission is composed of fifteen Members of high moral standing, elected by states that have recognized its competence. The members of the Commission, however, do not represent their States but they serve in their personal capacity, as a result of which the Commission is truly neutral and impartial. The members reflect geographical and professional diversity, including military officers, lawyers, medical doctors, and diplomats. The Commission provides its services to states that have recognized its competence. This includes the possibility to "enquire into any facts alleged to be a grave breach as defined in the Geneva Conventions and its First Protocol or other serious violation of the Conventions or of this Protocol" or to "facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol" (Article 90 Protocol I).

The Commission is an instrument of confidence-building and prevention. By establishing the facts of alleged violations it assists States (and other parties to armed conflicts) to manage the dispute between them, and to restore an attitude of respect for international humanitarian law. The Commission does not establish responsibility nor accountability, neither state responsibility, nor individual criminal responsibility.

The Commission has automatic competence in relation to allegations made by and against the State Parties, which have accepted its competence by submitting a declaration under Article 90, paragraph 2 (a). However, in all other cases where either of the parties concerned or all of them have not accepted its competence, it can act only with the consent of all those parties. In other words, any mandate of the Commission is consensual. The Commission cannot start its mission only at its own discretion.

Fact-finding is conducted in a neutral and impartial way. The Commission's report is confidential unless all Parties to the conflict request otherwise.

The Commission is also competent to provide good offices in order to facilitate the restoration of an attitude of respect for international humanitarian law.

Mr. President,

Please allow me to draw your attention to the Commission's latest mission carried out at the request of the Organization for Security and Cooperation in Europe (OSCE) in Ukraine last year.

Upon request by the Organization for Security and Co-operation in Europe (OSCE), the IHFFC assembled and deployed an Independent Forensic Investigation Team (IFI Team) in relation to the incident of 23 April 2017 that had occurred in Eastern Ukraine and had caused the death of a paramedic and the injury of two monitors of the OSCE Special Monitoring Mission (SMM).

The IFI Team was led by the Vice-President of the IHFFC, Ambassador Alfredo Labbé. It consisted of two additional Members of the Commission as well as five experts, who were selected in consultation with OSCE.

The mandate of the IFI Team, as agreed with OSCE on 18 May 2017, was to establish the facts of the incident by conducting a post-blast scene forensic investigation and technical assessment against the background of IHL. It did not include the establishment of criminal responsibility or accountability.

The investigation was conducted confidentially. The IFI Team undertook several steps, which included the review of documents, interviews of witnesses, the inspection of the site where the incident occurred, the damaged vehicle and material collected at the site, and the conduct of a forensic medical analysis.

The report was presented by the President of the IHFFC and the Leader of the IFI Team to the Permanent Council of the OSCE on 7 September 2017. Among other things, it concluded that it was unlikely that the SMM had been the intended target of an attack, that the explosion had most likely been caused by a very recently laid anti-tank mine with a pressure fuse, and that any such recent laying of anti-vehicle mines on a road frequently used by civilian traffic constituted a violation of IHL because of its predictable indiscriminate effect. The Secretary General of the OSCE welcomed the report and said its results would be taken into account.

Mr. President,

In today's times it is very important to use every potential offered by international law and its institutions to deal with disrespect for international humanitarian law. The Commission stands ready to provide its services at any time. The IHFFC is fully supportive of the ICC and is happy to work together with States and international organizations, such as the ICC for the benefit of international humanitarian law and the victims of its breaches.

Thank you for your attention.