



**INTERNATIONAL HUMANITARIAN
FACT-FINDING COMMISSION (IHFFC)**

**COMMISSION INTERNATIONALE HUMANITAIRE
D'ÉTABLISSEMENT DES FAITS (CIHEF)**

Statement before the 8th Assembly of States Parties to the Rome Statute
by Michael Bothe, President of the IHFFC

Thank you, Mr. President.

Mr. President, Excellencies, Ladies and Gentlemen!

It is a great privilege for me to address this Assembly as an observer in the name of the International Humanitarian Fact-finding Commission. As you know, the IHFFC has been established pursuant to Art. 90 of the Protocol I additional to the Geneva Conventions. It is composed of 15 experts elected by the States (now 71) which have recognised its competence. Its task is fact-finding where there are allegations of violation of international humanitarian law. The VIth Committee of the General Assembly has just decided to grant observer status to the IHFFC.

Last week in Geneva, the Swiss Federal Council organised, together with the ICRC, a conference on "60 Years of the Geneva Conventions and the Decades Ahead". A core issue was how to ensure a better implementation of international humanitarian law, the different roles of different institutions were debated. There was of course a strong emphasis on the ICC. But the possible function of the IHFFC was also highlighted.

The ICC and the IHFFC have indeed different, but complementary roles in ensuring compliance with IHL. That being so, they should recognise each other and cooperate wherever this can lead to synergetic effects and is of mutual benefit. Both the ICC, in the first approach its Prosecutor, and the IHFFC do fact-finding. This obvious fact has led to first contacts in the form of an exchange of information. Last year, a member of the staff of the Prosecutor briefed the IHFFC on problems of investigation of crimes in Africa, an extremely interesting and useful presentation which was greatly appreciated by our Commission.

In contradistinction to the ICC, the mission of the IHFFC ends once the facts are clarified and reported to the parties. If the IHFFC receives an early mandate this would be an opportunity to channel proofs of violations, or a statement of the absence of such proofs, into the relevant directions. This may enable the States to conduct prosecutions themselves – which, under the principle of complementarity, renders action by the ICC unnecessary. It may on the other hand prompt a State concerned to bring a case before the ICC, or the Security Council to refer the situation to the Court. The example of this possibility is the Darfur case.

This perspective of a relationship based on a fruitful division of tasks between the ICC and the IHFFC can be mutually beneficial. The IHFFC would, for instance, be in a position to fulfil the expectations expressed in last years Resolution ICC-ASP/7/Res. 3 adopted by this Assembly. I quote paragraph 39 of the said resolution:

The Assembly ...

Notes the potential contribution that intergovernmental co-operative initiatives can, upon request and where legally feasible, play in the effective enforcement of international criminal justice through, for example, the rapid identification, collection and preservation of the most perishable type of information relating to crimes under international law.

Mr. President,

Along the lines of this resolution, the ICC and in particular its Prosecutor could enter into contacts with the IHFFC and explore ways of cooperation for mutual benefit. The Assembly might even want to include this perspective in this year's omnibus resolution.

I thank you for this opportunity to submit to your consideration a few thoughts on synergies between institutions which have a common vocation: to ensure the respect of international humanitarian law in the interest of the victims of violations. This would promote the cause of international criminal justice and of the values which it defends.