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ORIGINS AND SUMMARY

Enshrined in Article 90 of the June 1977 Additional Protocol (AP) I to the Geneva Conventions of 1949, the [International Fact-Finding Commission](#) (IHFFC) was officially constituted in 1991 after the twentieth declaration of acceptance of the commission's competence had been deposited on November 20, 1990.

The IHFFC is mandated to investigate allegations of grave breaches and serious violations of international humanitarian law (IHL) and to provide its good offices in order to facilitate the restoration of an attitude of respect for the Geneva Conventions and AP I. It is a permanent body that can be immediately deployed upon activation. The commission works on a strictly confidential basis, and its findings and recommendations are shared only with the concerned parties.

Activation of the IHFFC normally requires the consent of the concerned parties to the conflict in which the incident to be investigated has arisen. While AP I, which provides for the establishment of the IHFFC, only applies in situations of international armed conflict, the commission has consistently stated its willingness to investigate incidents arising in non-international armed conflicts when all parties to the conflict agree. This has not met objections by the states parties to AP I or to the Geneva Conventions more broadly.

Until very recently, the IHFFC had not yet been formally activated (see also below). Most notably for present purposes, following the attack on its hospital in Kunduz, Afghanistan, in October 2015, Médecins Sans Frontières (MSF) [called for](#) the IHFFC to be used to investigate the incident. The IHFFC offered its services but could not act, as the concerned parties, Afghanistan and the US, did not consent. In May 2017 the secretary general of the Organization for Security and Co-operation in Europe (OSCE) asked the IHFFC to lead an independent forensic investigation into an incident that caused the death of a paramedic and the injury of two monitors of the OSCE Special Monitoring Mission to Ukraine.

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LEGAL BASIS AND FRAMEWORK, RELEVANT GUIDELINES

Legal basis and framework

- The establishment of the IHFFC is prescribed by [AP I, Art. 90](#)
- The IHFFC assesses facts and the circumstances in which they occurred against relevant rules of IHL

Relevant rules, guidelines, and methodology

- IHFFC, [Rules of the International Humanitarian Fact-Finding Commission](#), 1992
- IHFFC, [Financial Procedures for the Administrative Expenses of the International Humanitarian Fact-Finding Commission](#), 1994

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SCOPE OF MANDATE AND INVESTIGATIVE ACTIVITIES

Substantive scope: type of incidents within purview of Res 2286 the mechanism can investigate

FULL <i>The mechanism can look into all incidents that Res 2286 seeks to address</i>	✓	The IHFFC can “enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violations of the Conventions or of this Protocol” (AP I, Art. 90.2(c)(i)). Therefore, a formal inquiry can only be conducted if attacks on healthcare amount to a grave breach or a serious violation of IHL. Other incidents of violence against healthcare that may amount to violations of IHL may only be addressed through the IHFFC’s good offices.
PARTIAL <i>The mechanism can look into some but not all incidents that Res 2286 seeks to address</i>	✓	N/A
CONDITIONAL <i>The mechanism can only look into incidents where a certain condition related to the mechanism’s mandate is met</i>	✓	<p>The IHFFC can “enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violations of the Conventions or of this Protocol” (AP I, Art. 90.2(c)(i)). This means it can formally inquire into attacks on healthcare that would amount to a grave breach or serious violation of IHL. Incidents of violence against healthcare that would not qualify as a grave breach or a serious violation may only be addressed on the basis of the commission’s good offices.</p> <p>AP I, Art. 90, which prescribes the establishment of the IHFFC, only applies in situations of international armed conflict. However, the commission has consistently expressed its willingness to also investigate alleged violations of IHL occurring in non-international conflicts,</p>

		<p>provided the concerned parties to the conflict agree. Where such agreement exists, the commission is able to proceed.</p> <p>An additional degree of flexibility arises from the good offices of the IHFFC, which may go beyond what is included in a formal investigation as long as there is a linkage to the Geneva Conventions and AP I. Good offices may be defined broadly and may extend the IHFFC's role by allowing activation by non-state actors, in particular international organizations, and by enabling it to address matters below the threshold of a grave breach or a serious violation.</p>
SINGLE INCIDENTS <i>The mechanism can be activated/used to investigate single incidents within the purview of Res 2286</i>	✓	The IHFFC can be used to investigate a single incident of an attack or other violence against healthcare, subject to the above conditions.

Geographic scope

GLOBAL <i>The mechanism can be activated to look into incidents regardless of where these occurred</i>	✓	The IHFFC can investigate attacks on healthcare that allegedly amount to a violation of IHL regardless of where they occur.
REGION-SPECIFIC <i>The mechanism can only be activated to look into incidents that occurred in a specific region</i>		N/A
COUNTRY-SPECIFIC <i>The mechanism can only be activated to look into incidents that occurred in a specific country</i>		N/A

Type of investigative activities

MONITORING AND REPORTING <i>Actively monitoring conflict to identify trends/patterns of violations of IHL/IHRL</i>	(✓)	The IHFFC proactively monitors (but does not report on) incidents that could amount to violations of IHL and may, at its own initiative, offer its services to the parties to a conflict. The IHFFC only formally investigates incidents if requested by the parties to a conflict.
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FACT-FINDING & INVESTIGATING	Identifying possible violations of international law <i>Establishing facts and circumstances of specific incidents or series of incidents and assess against relevant legal framework (IHL/IHRL)</i>	✓	The IHFFC investigates facts that are alleged to be grave breaches or serious violations of IHL. Its good offices allow for fact-finding and investigation of incidents that fall below that threshold.
	Identifying those responsible <i>Identifying entities/persons responsible for or with influence over facts/circumstances</i>	✓	In its investigations, the IHFFC seeks to identify violations committed by entities or persons and may identify those responsible or in a position to restore compliance with IHL.
	Identifying perpetrators of crimes <i>Identifying entities/persons allegedly responsible for war crimes or crimes against humanity</i>	✓	The IHFFC can identify those responsible for the “grave breaches or serious violations of international humanitarian law” for the purpose of restoring respect for IHL. However, the IHFFC does not have the mandate to ensure accountability for such violations, and its findings remain confidential unless decided otherwise by the concerned parties.
COLLECTING EVIDENCE OF ALLEGED CRIMES <i>Collecting (and corroborating) evidence of alleged war crimes or crimes against humanity</i>		N/A	
ASSESSING VICTIM'S GRIEVANCES <i>Identifying direct/indirect consequences of attacks and assessing need for reparations</i>		N/A	
RECOMMENDATIONS TO	Prevent future incidents <i>Identify/propose corrective measures to prevent future incidents</i>	✓	The IHFFC conducts investigations for the purpose of restoring respect for and compliance with IHL. The IHFFC is mandated in particular to facilitate through its good offices “an attitude of respect for the Conventions and their Protocol I” (AP I, Art. 90.2(c)(ii) by offering observations and suggestions to promote compliance with these treaties.
	Ensure accountability for violations of IHL/IHRL <i>Identify appropriate avenues and concrete actions to ensure accountability</i>		The IHFFC does not have the mandate to ensure accountability for violations; it solely makes recommendations to the parties concerned. Depending on the scope of the investigation and on the good offices provided, the parties concerned may, however, use the findings of the IHFFC in any criminal investigation or prosecution they decide to carry out—but possibly only if they agree to do so between themselves.
	Ensure reparations and/or address other victims' other grievances		The IHFFC does not aim to directly address victims' grievances.

Membership	Election/appointment	Guarantee of independence and impartiality
<p>The IHFFC is composed of fifteen members who serve in their personal capacity.</p> <p>For each formal enquiry (on the basis of AP I, Art. 90.2(c)(i), not for a “sui generis” enquiry based upon good offices according to AP I, Art. 90.2(c)(ii)), a chamber of five members from the fifteen-member pool plus two ad hoc members is constituted.</p> <p>The IHFFC members elect from among their own members a president, first vice president, and three vice presidents who constitute the IHFFC Bureau. The Bureau members are elected within the period of office of IHFFC members for an initial period of three years and a subsequent period of two years.</p>	<p>IHFFC members are elected for five years by states that have recognized its competence.</p>	<p>The members of the chamber carrying out a particular enquiry may not be nationals of any party to the conflict (IHFFC Rules, Art. 23.a).</p> <p>Moreover, the members of the chamber appointed by the IHFFC president are selected after consultation with the IHFFC Bureau and the parties to the conflict on the basis of equitable geographical representation (IHFFC Rules, Art. 23.a). All IHFFC members must refrain from any occupation or make any public statement that may cast legitimate doubt on their morality and impartiality as required by the protocol (IHFFC Rules, Art. 3).</p> <p>If a member appointed to the chamber believes there are reasons disqualifying him or her from participating in the enquiry, he or she shall immediately impart them to the president, who may appoint another member (IHFFC Rules, Art. 23.a). Members of the IHFFC are granted privileges and immunities as an international institution under Swiss law (IHFFC Legal Status).</p>

Activator/Creator	Authorization/Enabler	Average duration to activate/create/function
<p>The IHFFC is a permanent investigative body that can be activated by:</p> <ol style="list-style-type: none"> 1. States parties to the armed conflict in which the incidents occurred and that have accepted the competence of the IHFFC, either <u>ipso facto</u> (declaration submitted to Switzerland in its capacity as the depositary state of AP I) or ad hoc (for a particular incident); 2. Third-party states that have accepted the competence of the IHFFC through a declaration submitted to Switzerland in its capacity as the depositary state of AP I; 3. Possibly, <u>non-state parties to the armed conflict</u> in which the incidents occurred; or 4. <u>Other non-state actors</u>, including international or regional intergovernmental organizations. <p>A state or non-state party that wants to activate the IHFFC must submit a request in conformity with the <u>IHFFC Rules</u>, Art. 20.</p>	<p>For the IHFFC to be able to proceed with a request for investigation, the consent of the parties to the conflict in which the incidents occurred is required.</p> <p>Where all concerned parties have accepted the competence of the IHFFC ipso facto (declaration submitted to the depositary of the Geneva Conventions and Additional Protocols), no further formalities to obtain their consent are required (AP I, Art. 90.2(a)). Where this is not the case, the IHFFC can only institute an investigation with the consent of the other party or parties concerned (AP I, Art. 90.2(d), <u>IHFFC Rules</u>, Art. 20).</p>	<p>As the IHFFC has its pool of experts, secretariat, and general budget in place, once a request has been submitted, and the parties to the conflict have agreed on the activation of the commission, the IHFFC can start its investigation in a fairly short period of time, depending on the circumstances of the case.</p>

	Preexisting	To be established when activated/created
Human resources	<p>Pool (IHFFC members):</p> <p>The IHFFC has a pool of fifteen members that can be deployed when the commission is activated. They are elected for five years by the states accepting the competence of the IHFFC. They are elected by secret ballot from a list of persons to which each of the high contracting parties to AP I may nominate one person (IHHFC Rules, Art. 23).</p> <p>Chamber for a specific enquiry:</p> <p>For each formal enquiry, a chamber of five members from the fifteen-member IHFFC pool, plus two ad hoc members, is constituted as follows (unless the parties concerned agree otherwise):</p> <ul style="list-style-type: none"> • Five members appointed by the IHFFC president, in consultation with the IHFFC Bureau and the parties to the conflict, on the basis of equitable geographical representation and not including any nationals of any party to the conflict. • Two ad hoc members appointed within a fixed time period by the parties to the conflict (they cannot be nationals of any party to the conflict). If not appointed within the time limit, the IHFFC president fills their seats. <p>The IHFFC president appoints the president of the chamber.</p> <p>Switzerland, in its capacity as the depositary state of AP I, provides the</p>	<p>The chamber in charge of the enquiry, based on the needs and circumstances of the case, can decide that it shall be assisted by one or more additional experts or interpreters (IHHFC Rules, Art. 25). All persons assisting the chamber act on the instructions and under the authority of the IHFFC member appointed as head of the chamber.</p>

	necessary administrative facilities for the performance of the IHFFC's functions, including the secretariat of the commission .	
Financial resources	<p>The IHFFC's regular budget is met by the states that have accepted its competence through assessed contributions on the basis of the scale applied by the United Nations to its regular budget. In addition, states can make voluntary contributions.</p> <p>The regular budget covers the general administrative and overhead expenses of the IHFFC. The budget for 2017 amounts to 211,409 Swiss francs.</p> <p>Administrative expenses are covered by the states that have recognized its competence in advance on the basis of the scale applied by the United Nations to its regular budget.</p> <p>Switzerland, in its capacity as the depository state of AP I, provides the necessary secretariat facilities for the performance of the IHFFC's functions. This also includes providing the necessary premises and locations for the performance of these functions.</p>	<p>The costs of a particular enquiry are to be met by the parties involved. These may include travel and accommodation expenses and other direct operational expenses. The party requesting an enquiry must advance the necessary funds to cover the chamber's expenses (IHFFC Rules, Art. 22).</p>

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OUTCOME AND FOLLOW-UP

Confidential reporting to and dialogue with parties to the conflict	✓	The IHFFC only communicates its findings and recommendations with the concerned parties to the conflict. The parties may decide to make the findings public themselves.
Public reporting to UN and other international organizations		The IHFFC does not report publicly or to any other entity than the parties involved in the enquiry on the enquiries it carries out or on its findings.

		The IHFFC does report to its high contracting parties and on its website when an enquiry is opened, indicating which party requested it to open the enquiry and which incident it is investigating (described in very general terms).
Transmissibility to judicial mechanisms		Unless the parties concerned by the enquiry agree, the IHFFC does not make its findings or any information or evidence it collects or obtains in the framework of an enquiry available to any criminal investigation authorities.
Possible follow-up mechanisms		Currently, there are no specific follow-up mechanisms.
Available enforcement measures		The IHFFC has no power to enforce the recommendations it makes to the parties involved.

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PRECEDENT OF USE FOR ATTACKS ON HEALTHCARE

While it has offered its services in the past, until recently the IHFFC had not yet been activated, usually failing to obtain the consent of the concerned parties. For example, the commission offered its services in relation to the attacks on MSF's Kunduz hospital on October 3, 2015. However, the concerned parties to the conflict, Afghanistan and the US, did not consent to the enquiry, and the IHFFC was therefore not activated.

The IHFFC was formally activated for the first time at the request of the secretary general of the Organization for Security and Co-operation in Europe (OSCE), who asked it to lead an independent forensic investigation into an incident in [Pryshyb](#) (Luhansk Province, Ukraine) on April 23, 2017, in which a paramedic was killed and two monitors in the OSCE Special Monitoring Mission to Ukraine were injured. The investigation [concluded](#) it unlikely the mission was intentionally targeted.