

Rules of the International Humanitarian Fact-Finding Commission*

(adopted on 8 July 1992)

The Commission,

Having regard to Protocol I additional to the Geneva Conventions of 1949 for the protection of the victims of armed conflicts, hereinafter referred to as "the Protocol",

Bearing in mind its competence in respect of enquiry as well as of good offices, recognized for the purpose of obtaining the observation of the principles and rules of international law applicable in armed conflict,

Convinced of the need to take all appropriate initiatives as necessary in cooperation with other international bodies, in particular the United Nations, with the purpose of carrying out its functions in the interest of the victims of armed conflict,

Acting under Article 90 of the Protocol,

Adopts the present Rules:

PART I ORGANIZATION OF THE COMMISSION

Chapter I — Members of the Commission

Rule 1 — Independence and Solemn Declaration

1. In the performance of their functions, the Members of the Commission (hereinafter referred to as the "Members") shall accept no instructions from any authority or person whatsoever and serve in their personal capacity.

2. Before taking up his duties, each Member shall make the following solemn declaration:

"I will exercise my functions as a Member of this Commission impartially, conscientiously and in accordance with the provisions of the Protocol and these Rules, including those concerning secrecy".

* Title adopted by the Commission.

Rule 2 — Availability

Unless prevented by serious reasons duly justified to the President, Members shall at all times be able to respond to a call by the President or, as the case may be, by the Head of a Chamber in order to ensure the accomplishment of the Commission's functions under the Protocol.

Rule 3 — Incompatibilities

During their term of office, Members shall not engage in any occupation or make any public statement that may cast a legitimate doubt on their morality and impartiality required by the Protocol. In case of doubt, the Commission shall decide on the proper measures to take.

Rule 4 — Resignation

1. The resignation of a Member shall be addressed to the President, who shall communicate it without delay to the secretariat of the Commission (hereinafter referred to as the "Secretariat"). The Secretariat shall register the resignation under Rule 37(1).

2. The President shall address his resignation to the first Vice-President.

3. The resignation shall take effect on the day of its registration by the Secretariat who shall without delay inform the Member of the date.

Rule 5 — The filling of casual vacancies

1. The Commission shall ensure that each candidate possesses the qualifications required by Article 90 of the Protocol and that, in the Commission as a whole, equitable geographical representation is maintained.

2. In the absence of a consensus among the Members, the following provisions shall apply:

a. When no candidate obtains in the first ballot the majority required, a second ballot, restricted to the two candidates who obtained the highest number of votes, shall be taken.

b. If the second ballot is inconclusive and a majority vote of Members present is required, a third ballot shall be taken in which votes may be cast for any eligible candidate. If the third ballot is inconclusive, the next ballot shall be restricted to the two candidates who obtained the highest number of votes in the third ballot and so on, with unrestricted and restricted ballots alternating, until a Member is elected.

c. The elections referred to in this Rule shall be held by secret ballot. Election shall be by a majority of the Members present.

3. A Member elected under this Rule shall serve for the remainder of the term of his predecessor.

Chapter II — Presidency and precedence

Rule 6 — Election of the President and Vice-Presidents

1. The Commission shall elect from among its Members a President as well as a first and second Vice-President who together shall constitute the Bureau.

2. The President and the Vice-Presidents shall be elected for a term of two years. They may be re-elected. However, the term of office of the President or of a Vice-President shall end if he ceases to be a Member.

3. If the President or a Vice-President ceases to be a Member or resigns his office of President or Vice-President before its normal expiry, the Commission may elect a successor for the remainder of the term of that office.

4. The elections referred to in this Rule shall be held by secret ballot. Election shall be by a majority of the Members.

Rule 7 — Precedence

1. The Members shall take precedence after the President and Vice-Presidents according to the duration of their term of office.

2. Members having the same length of time in office shall take precedence according to age.

Rule 8 — Functions of the President

1. The President shall chair the meetings of the Commission and perform all other functions conferred upon him by the Protocol, these Rules and by the Commission.

2. In exercising his functions, the President shall remain under the authority of the Commission.

3. The President may delegate some of his functions to either Vice-President.

4. In co-operation with the Vice-Presidents and the Secretariat, the President shall take the necessary measures to ensure that the functions of the Commission can be exercised at all times and expeditiously.

Rule 9 — Temporary replacement of the President

The first Vice-President shall take the place of the President if the presidency is vacant or the President is prevented from carrying out his duties, especially if, in the case of an enquiry, he is a national of a party to the conflict. The second Vice-President shall replace the first Vice-President if the latter is prevented from carrying out his duties or if the office of first Vice-President is vacant.

Rule 10 — Replacement of the President and Vice-Presidents

If the President and Vice-Presidents are at the same time prevented from carrying out their duties or if their offices are vacant at the same time, the duties of President shall be carried out by another Member according to the order of precedence established by Rule 7.

PART II WORKING OF THE COMMISSION

Chapter I — Seat of the Commission, Secretariat and languages

Rule 11 — Seat of the Commission

The seat of the Commission shall be in Bern, Switzerland.

Rule 12 — Secretariat

The functions of the Secretariat of the Commission shall be assumed by the depositary State of the Geneva Conventions and the Protocol.

Rule 13 — Languages

The official and working languages of the Commission shall be English and French.

Chapter II — Meetings of the Commission

Rule 14 — Holding of meetings

1. The Commission shall hold such meetings as it considers necessary to perform its functions. It shall meet at least once a year. The Commission shall

also meet if at least one third of the Members so request or the Bureau so decides.

2. The Commission shall hold its meetings at its seat, unless the Commission or the Bureau decides otherwise.

3. Commission meetings shall be convened at dates set by the Commission or by the Bureau.

4. The Secretariat shall notify the Members of the date, time and place of each Commission meeting. Whenever possible, such notification shall be given at least six weeks in advance.

Rule 15 — Agenda

1. Following consultation with the President, the Secretariat shall transmit a draft agenda to the Members of the Commission, whenever possible at least six weeks before a meeting.

2. The agenda shall be adopted by the Commission at the beginning of the meeting.

Rule 16 — Documentation

The Secretariat shall transmit to the Members the working documents relating to the different agenda items, whenever possible at least four weeks in advance.

Rule 17 — Quorum

Eight Members shall constitute a quorum.

Rule 18 — Privacy of meetings

1. The Commission shall meet *in camera*. Its deliberations shall remain confidential.

2. Apart from the Members of the Commission, only members of the Secretariat, interpreters and persons assisting the Commission may attend its meetings, unless the Commission determines otherwise.

Rule 19 — Hearings

The Commission may hear any person whom it considers to be in a position to assist it in the performance of its functions.

PART III ENQUIRIES

Chapter I — Enquiry request

Rule 20 — Lodging the request

1. The request for an enquiry shall be addressed to the Secretariat.
2. It shall state the facts that, in the opinion of the requesting party, constitute a grave breach or a serious violation, as well as the date and the place of their occurrence.
3. It shall list the evidence the requesting party wishes to present in support of its allegations.
4. It shall name the authority to which all communications concerning the enquiry shall be addressed, as well as the most expedient means of contacting that authority.
5. Where applicable and to the extent possible, it shall contain, in the enclosure, the original or a certified copy of any document cited in the list of evidence.
6. If the Commission receives a request for an enquiry under Article 90(2)(d), and the consent of the other party or parties concerned has not yet been indicated, the Commission shall refer the request to that party or those parties with a request that it or they indicate its or their consent.

Rule 21 — Examination of the request for an enquiry

1. On receiving a request for an enquiry, the President shall without delay advise the interested party or parties of it. He shall send them, as soon as possible, a copy of the request as well as its enclosures and, subject to Rule 20(6), advise them of their right to submit, within a fixed time period, their observations concerning the admissibility of the request. The setting of that time does not however prevent the Commission from opening the enquiry at once.
2. The Commission may ask the requesting party to supply additional information within a fixed time limit.
3. If the competence of the Commission is contested, the latter shall decide by means of speedy consultation.
4. The Commission shall inform the requesting party if the request does not meet the conditions described in Rule 20, or if an enquiry cannot be conducted for any other reason.
5. All parties to the conflict shall be informed of the Commission's decision to open an enquiry.

6. If, in the course of an enquiry, the requesting party communicates to the Commission the withdrawal of its request, the Chamber shall cease its enquiry only with the consent of the other parties to the conflict. The withdrawal does not affect the payment of the costs of the enquiry in accordance with Article 90(7) of the Protocol.

Rule 22 — Expenses of the enquiry

The President, in consultation with the Secretariat, shall determine the amount to be advanced by the requesting party to cover the expenses of the enquiry.

Chapter II — The Chamber

Rule 23 — Formation of the Chamber

Unless the interested parties agree otherwise, the following provisions apply:

a. The President shall appoint, after consultation with the Bureau and the parties to the conflict, and on the basis of equitable geographical representation, five members of the Chamber, not nationals of any party to the conflict.

b. The President shall invite the parties concerned to appoint, within a fixed time period, two additional persons, not nationals of any party to the conflict, as *ad hoc* members of the Chamber.

c. If one or both of the *ad hoc* members have not been appointed within the time limit set under Rule 23(b), the President shall immediately make the appointments necessary to fill the seats of the Chamber.

d. The President of the Commission shall appoint the Head of the Chamber.

e. If a member appointed as a member of a Chamber believes that there are reasons disqualifying him from participating in the enquiry, he shall immediately impart them to the President, who may appoint another member.

Rule 24 — Custody of documents

All documents relating to an enquiry shall, as soon as possible, be handed over to the Head of the Chamber who shall be responsible for their registration and custody until the conclusion of the enquiry. They shall then be put in the custody of the Secretariat where they may be viewed by authorized representatives of the interested parties.

Rule 25 — Assistants

1. The Chamber may decide that it shall be assisted by one or more experts or interpreters.
2. All persons assisting the Chamber shall act on the instructions and under the authority of the Head of the Chamber.

Chapter III — Enquiry procedure

Rule 26 — Instructions

The Commission may establish general or specific instructions or guidelines concerning the enquiry.

Rule 27 — Procedure

1. The Chamber shall invite the parties to the conflict to assist it and to present evidence within a fixed time period. It may also seek any other evidence it considers relevant and may carry out an enquiry *in loco*.
2. The Chamber shall determine the admissibility and the weight of the evidence presented by the parties to the conflict, and the conditions under which witnesses shall be heard.
3. The President shall remind the interested parties that, during an enquiry *in loco*, they must assure to the members of the Chamber and all persons accompanying them the privileges and immunities necessary for the discharge of their functions which shall not be less extensive than those accorded to the experts on mission under the 1946 Convention on Privileges and Immunities of the United Nations, as well as their adequate protection.
4. During an enquiry *in loco*, the members of the Chamber shall be issued a document stating their capacity, as well as a white badge displaying in clearly visible black letters the name of the Commission in the local language.
5. The members of the Chamber may separate in order to conduct simultaneous enquiries at different places. In particular, the Chamber may, at any time, detach two or more of its members for an urgent enquiry on the spot and, if necessary, to ensure the preservation of evidence.
6. Five members of the Chamber shall constitute a quorum.
7. The Chamber shall, as soon as possible, communicate the results of its enquiry to the Commission in accordance with the instructions given to it.
8. All the evidence shall be fully disclosed to the parties concerned who shall be informed of their right to comment on it to the Commission.
9. If necessary, the Commission may instruct the Chamber to undertake a complementary enquiry.

Chapter IV — Report and Obligation of Confidentiality

Rule 28 — Preparation of the Commission's report

1. After each enquiry the Commission shall draw up, in the light of the Chamber's findings, a report to be transmitted to the parties concerned. In particular, the Commission shall consider, as appropriate, whether it should take steps to facilitate, through its good offices, the restoration of an attitude of respect for the Geneva Conventions and the Protocol.

2. The President shall transmit the report together with any recommendations the Commission considers appropriate to the parties concerned.

3. The President shall have the date on which the Commission's report was sent to the interested parties duly registered. The Secretariat shall keep in its archives copies of the communications of the Chambers and the reports of the Commission in its custody. These records are accessible only to Members of the Commission while in office.

Rule 29 — Confidentiality

1. No personal data shall be published without the express consent of the person concerned.

2. Members of the Commission, *ad hoc* members of the Chambers, experts and other persons assisting the Commission or a Chamber are under an obligation, during and after their terms of office, to keep secret the facts or information of which they have become aware during the discharge of their functions.

3. The experts and other persons hired to assist the Commission or a Chamber shall, as a condition of their engagement, be required to agree, as a rule in writing, to comply with paragraph 2.

PART IV METHODS OF WORK

Chapter I — Conduct of business

Rule 30 — Powers of the President

The President shall declare the opening and closing of each meeting of the Commission, direct the discussion, ensure observance of these Rules, accord the right to speak, put questions to the vote and announce decisions. The President, subject to these Rules, shall have control over the proceedings of the Commission and over the maintenance of order at its meetings. The Presi-

dent may, in the course of the discussion of an item, propose to the Commission the limitation of the time to be allowed to speakers, the limitation of the number of times each speaker may speak on any question and the closure of the list of speakers. He shall rule on points of order. He shall also have the power to propose adjournment or closure of the debate or adjournment or suspension of a meeting.

Rule 31 — Proposals

A proposal must be submitted in writing, if a Member so requests.

Rule 32 — Order of voting on proposals and amendments

1. Where a number of proposals relate to the same subject, they shall be put to the vote in the order in which they were submitted. In case of doubt about priority, the President shall decide.

2. Where a proposal is the subject of an amendment, the amendment shall be put to the vote first. Where two or more amendments to the same proposal are presented, the Commission shall vote first on whichever departs furthest in substance from the original proposal, and so on until all the amendments have been put to the vote. However, where the acceptance of one amendment necessarily entails rejection of another, the latter shall not be put to the vote. The final vote shall then be taken on the proposal as amended or not amended. In case of doubt as to the order of priority, the President shall decide.

3. A motion may be withdrawn by the Member who proposed it at any time before voting on it has commenced, provided that the motion has not been amended. A motion which has thus been withdrawn may be reintroduced by any Member.

Rule 33 — Order of procedural motions

Procedural motions shall take precedence over all proposals.

Rule 34 — Voting

As a rule, the Commission decides by consensus. In the absence of consensus, the following provisions apply:

a. Subject to the provisions of Rule 6(4), 39 and 40, the decisions of the Commission shall be taken by a majority of the Members present.

b. In matters other than elections, a proposal shall be regarded as rejected if the majority referred to under letter (a) heretofore is not obtained.

c. Subject to Rules 5(2)(c) and 6(4), the Commission shall vote by show of hands, unless a Member requests a roll call vote.

d. After a vote has commenced, there shall be no interruption of the voting except on a point of order by a Member in connection with the actual conduct of the voting.

Chapter II — Working modalities

Rule 35 — Reports of Meetings

1. The Secretariat shall prepare a draft report of the Commission's deliberations and decisions following each meeting. The draft report shall be circulated as soon as possible to the Members of the Commission, who will be given the opportunity to submit corrections within a prescribed time-limit.

2. If no corrections are submitted, the meeting report shall be deemed adopted. If corrections are submitted, they shall be consolidated in a single document and circulated to all Members. In this latter case, the adoption of a report of the meeting shall be taken up at the next meeting of the Commission.

Rule 36 — Working groups

The Commission may set up *ad hoc* working groups comprising a limited number of its Members. The terms of reference of such working groups shall be defined by the Commission.

Rule 37 — Communications

1. The Secretariat shall register and bring to the Commission's attention communications received containing information which may be of interest to the Members.

2. Such communications received by a Member shall be forwarded to the Secretariat.

3. The Secretariat shall acknowledge receipt of the communications to their authors.

Rule 38 — Report of activities

Subject to the obligation of confidentiality stated in Rule 29, the Commission shall issue, whenever it considers it useful, a general report on its activities to the governments of the High Contracting Parties to the Geneva Conventions. The Commission may also prepare such reports and make such public statements relating to its functions as it considers appropriate and in

conformity with the provisions of the Protocol and these Rules concerning confidentiality.

PART V AMENDMENTS AND SUSPENSION

Rule 39 — Amendments of the Rules

The present Rules may be amended by a decision taken by a majority of the Members, subject to the provisions of the Protocol.

Rule 40 — Suspension of a provision of the Rules

Upon the proposal of a Member, the application of a provision of these Rules may be suspended by a decision taken by a majority of the Members, subject to the provisions of the Protocol. The suspension of a provision shall be limited in its operation to the particular purpose for which such suspension has been sought.