

**Informal Meeting
on strengthening compliance with International Humanitarian Law**

Friday, 13 July 2012, Geneva, Switzerland

Guidance Document

International Humanitarian Law (IHL) is a set of rules which seeks to alleviate the effects of armed conflict. Although the nature of armed conflicts has evolved over time, States generally agree that IHL remains an appropriate legal framework for regulating the conduct of parties to armed conflicts and in providing protection for all victims. States once again confirmed this view at the 31st International Conference of the Red Cross and Red Crescent held in late 2011.

Compliance has always been the challenge of IHL. States recognize, however, that the main problem is the lack of respect for the existing law rather than the lack of rules. If IHL were perfectly respected by the parties concerned, the occurrence of a great number of contemporary humanitarian concerns could be avoided. In this sense, it is alarming to see that in the majority of armed conflicts around the world, IHL is being violated daily, both by the armed forces of governments and by non-State armed groups, causing enormous suffering to the civilian population.

At the Conference on the “60 Years of the Geneva Conventions and the Decades Ahead”, States identified the question of compliance with IHL as one of the challenges facing IHL. More recently, the ICRC’s study and subsequent consultations of States on “Strengthening Legal Protection for Victims of Armed Conflicts”, undertaken in view of the 31st International Conference, showed that a significant number of States believe that, first, better implementation of IHL needs to be a priority, second, that IHL compliance mechanisms have proven to be inadequate and, third, that further reflection on how to strengthen them is needed. These observations are part of the conclusions of Resolution 1 of the 31st International Conference on “Strengthening Legal Protection for Victims of Armed Conflicts”¹.

Based on these findings and in line with its humanitarian tradition and its commitment to IHL, Switzerland, together with the ICRC, has decided to launch an initiative aimed at reinforcing dialogue among States, and other actors as may be appropriate, with a view to identifying concrete ways and means of improving respect for IHL, with a particular focus on the question of compliance mechanisms.

In Resolution 1 the International Conference expressed its appreciation to the Government of Switzerland for its initiative, and invited the ICRC to engage with States and other actors in order to identify and propose to the 32nd International Conference a range of options and its recommendations on how the effectiveness of IHL compliance mechanisms may be enhanced.

¹ 31st International Conference of the Red Cross and Red Crescent, Resolution 1, OP 5, available at : <http://www.icrc.org/eng/resources/documents/resolution/31-international-conference-resolution-1-2011.htm>

Moreover, the Swiss Government's pledge at the International Conference to facilitate a process with the above goals in mind has since been supported by over 50 States² from every region.

In light of this support, Switzerland and the ICRC decided to convene a first informal meeting of States on 13 July 2012 in order to enable a discussion on enhancing the effectiveness of IHL compliance mechanisms. For the purposes of the meeting, compliance does not refer to measures and mechanisms by means of which States aim to prevent IHL violations, or to after-the-fact criminal proceedings against individuals for serious violations of IHL.

The Swiss-ICRC initiative is not the first attempt to address the question of how to strengthen compliance with IHL. In 2003, the ICRC organized, as part of the preparation for the 28th International Conference, a series of regional seminars on "Improving Compliance with IHL". A summary of the outcome of these consultations was annexed to the ICRC's Report on "IHL and the Challenges of Contemporary Armed Conflicts", which was among the official documents of the 28th International Conference of the Red Cross and Red Crescent in 2003³.

However, not much progress has been made since then. Based on Resolution 1, the meeting of 13 July will provide an opportunity to enter a new phase in reflection and exchanges of views on how to enhance and ensure the effectiveness of IHL compliance mechanisms. It is meant to inform States of the initiative, to raise awareness about the challenges of IHL compliance, and to contribute to building the indispensable confidence so that further work may be undertaken. It is envisaged as the first step in a transparent process that should permit a comprehensive examination by States, and other actors as may be appropriate, of the need to strengthen IHL compliance and enable proposals by States on how that goal may be achieved. Based on the reaction of States Switzerland and the ICRC will evaluate possible next steps.

Despite an evident need, IHL compliance mechanisms⁴ have essentially not served the purpose for which they were envisaged. It may be noted that their functions are in practice being increasingly performed by institutions and mechanisms established under other bodies of international law, in particular, human rights law and international criminal law which has obvious advantages but also certain limitations.

Furthermore there is, except for the International Conference of the Red Cross and Red Crescent, which is a specific international gathering and meets every four years, no universal forum where States can regularly exchange on IHL implementation.

With a view to facilitating reflection, discussion and possible proposals, participants of the informal meeting of 13 July are invited to focus their attention on the following issues:

- Current features and adequacy of IHL compliance mechanisms;
- Legal, institutional or other gaps affecting IHL compliance and possible ways and means to address them;
- How to ensure a more regular and systematic dialogue among States;
- Proposals for improved compliance mechanisms.

² <http://www.icrc.org/appweb/p31e.nsf/pledge.xsp?action=openDocument&documentId=0BECC18A0C475295C1257951005103FC>

³ http://www.icrc.org/eng/assets/files/other/ihlcontemp_armedconflicts_final_ang.pdf

⁴ For a summary presentation of the main mechanisms of compliance see the Annex below.

Outlined below are the main compliance mechanisms provided for in the Geneva Conventions and Additional Protocol I:

- The Protecting Powers mechanism is provided for in common Articles 8/8/8/9 of the 1949 Geneva Conventions and Article 5 of Additional Protocol I, and applies in international armed conflicts only. It obliges each Party to the conflict to designate a neutral State, with the agreement of the other side, to safeguard its humanitarian interests, and to thus monitor compliance with IHL. In practice, the Protecting Powers system has been used on very few occasions since World War II, the last reported instance having occurred three decades ago.
- The formal Enquiry Procedure was first provided for in the 1929 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (Article 30). Also applicable only in international armed conflict, it was later repeated, with additional details, in the 1949 Geneva Conventions (common Articles 52/53/132/149). Pursuant to this mechanism, an enquiry into an alleged violation of the Geneva Conventions must take place at the request of a party to the conflict. Very few attempts to use the Enquiry Procedure have been made since the 1929 Convention was adopted, and none resulted in its actual launching.
- The International Humanitarian Fact-Finding Commission (IHFFC) was created in 1991 pursuant to Article 90 of Additional Protocol I. It is competent to enquire into any facts alleged to be a grave breach or other serious violation of the 1949 Geneva Conventions or Additional Protocol I, or to facilitate, through its good offices, the restoration of an attitude of respect for these instruments. The competence of the IHFFC is mandatory if the relevant States involved in an international armed conflict are Parties to the Protocol and have made a formal declaration accepting such competence, and one of them requests its services. The parties to an international armed conflict may also use the services of the Commission on an *ad hoc* basis. The IHFFC has not been triggered to date.

In practice, it is mainly the ICRC which carries out a range of functions aimed at strengthening compliance with IHL when an armed conflict is ongoing. Its general and specific mandates are provided for in the Geneva Conventions and Additional Protocol I in international armed conflicts. The organization is also entitled to offer its services to the parties to non-international armed conflicts pursuant to common Article 3 to the Geneva Conventions. The ICRC is a *sui generis* international organization with field operations in some 80 contexts in all regions of the world whose role in monitoring compliance with IHL is well-known. Its performance is, however, characterized by certain limits that are inherent to the organization's primary mission – providing protection and assistance to persons affected by armed conflict – and its working method, which is essentially based on confidentiality.