



Swiss/ICRC Initiative on Strengthening Compliance with IHL Preparatory Discussion in view of the third Meeting of States (2014)

Geneva, 3-4 April 2014

Chairs' Conclusions

Context

In its Resolution 1, the 31st International Conference of the Red Cross and the Red Crescent held in 2011 stressed that greater compliance with international humanitarian law (IHL) is an indispensable prerequisite for improving the situation of victims of armed conflict.

The Conference invited the International Committee of the Red Cross (ICRC) to pursue further research, consultation and discussion in cooperation with States to identify and propose possible means to enhance and ensure the effectiveness of mechanisms of compliance with IHL and requested that a report, proposing a range of options and recommendations, be submitted to the 32nd International Conference. It also expressed its appreciation to the Government of Switzerland for its availability to facilitate a process to explore ways and means to strengthen the application of IHL and to reinforce dialogue on IHL issues among States, in cooperation with the ICRC.

Since the International Conference, Switzerland and the ICRC have undertaken a joint initiative to facilitate implementation of the relevant provisions of Resolution 1. The initiative was effectively launched on 13 July 2012 when a first Informal Meeting of States was convened in Geneva. The meeting confirmed that there was general concern about lack of compliance with IHL, as well as broad agreement on the need for a regular dialogue among States on general questions related to the application of IHL and, in particular, on improving respect for this body of law.

Following the first Informal Meeting of States, Switzerland and the ICRC continued discussions and consultations with a broad range of States in order to identify the main substantive issues of relevance to moving the process forward. The discussions and consultations were focused on a review of existing IHL compliance mechanisms, the reasons why they did not work, and whether some could be resuscitated. Lessons that could be learned from other bodies of law for the purpose of envisaging an effective IHL compliance system were also examined. There were likewise discussions on the functions that such a system would need to have, regardless of what its eventual institutional structure might be. An important topic of discussion was the format that a regular dialogue on IHL compliance among States should have, given that the lack of an appropriate forum was underlined frequently.

On 17 and 18 June 2013, a second Meeting of States on Strengthening Compliance with IHL was held. The States acknowledged that IHL has only a limited number of mechanisms to ensure compliance with its norms. Furthermore, most delegations agreed that the initiative should not focus on reforming the existing mechanisms, with the possible exception of the International Humanitarian Fact-Finding Commission (IHFFC).

An important part of the meeting was devoted to examining whether inspiration can be found in procedures created in other compliance systems. Among the various functions discussed, the following received the broadest support:

- A periodic reporting system on national compliance with IHL;
- Regular thematic discussions on IHL issues, including on policy-related concerns common to States;
- A fact-finding mechanism.

It was furthermore felt that a regular Meeting of States should be established as a forum for dialogue on IHL which could also serve as an institutional anchor for other elements of an IHL compliance system.

With a view to devising the features of the above-mentioned possible elements of an IHL compliance system and in preparation for the third Meeting of States to be held on 30 June and 1 July 2014, Switzerland and the ICRC scheduled two Preparatory Discussions in the meantime, the first of which took place on 16-17 December 2013. At this round of discussion, the primary focus was reporting on national compliance with IHL and thematic discussions on IHL issues. It also served to examine, in overview form, the features and tasks of a regular Meeting of States. The aim of the Preparatory Discussion of 3-4 April 2014 was, in turn, to enable an in-depth review of various aspects of the Meeting of States and a first preliminary discussion on a possible fact-finding function. It also served to revisit select outstanding questions related to reporting on national compliance with IHL and to thematic discussions, carried over from the December 2013 meeting.

The large attendance to the Preparatory Discussion of April 2014 testifies to the growing awareness of States about the issue of strengthening compliance with IHL and the importance they attach thereto.¹

Guiding Principles of the Process

As facilitators, Switzerland and the ICRC are fully committed to ensuring that their joint initiative in follow-up of Resolution 1 is conducted in a transparent, inclusive and open manner.

In addition to transparency, inclusivity and openness, the Swiss-ICRC initiative is premised on several key principles that were enunciated in the discussions and consultations held thus far and were reiterated and further refined at the Preparatory Discussion of 3-4 April 2014. It was emphasized that the following principles should serve as the overall framework within which the search for possible solutions to the challenges of improving compliance with IHL should be pursued:

- The need for an IHL compliance system to be effective;
- The importance of avoiding politicization;
- The State-driven and consensus-based character of the process and the need for the consultations to be based on applicable principles of international law;
- The avoidance of unnecessary duplication with other compliance systems;
- The requirement to take resource considerations into account;
- The need to find appropriate ways to ensure that all types of armed conflicts, as defined in the Geneva Conventions of 1949 and their Additional Protocols (for the latter as may be applicable), and the parties to them are included;
- The need for the process to ensure universality, impartiality, and non-selectivity;
- The need for the process to be based on dialogue and cooperation.

¹ See the annexed list of participating delegations at the Preparatory Discussion of 3-4 April 2014.

It was reiterated by the facilitators at the Preparatory Discussion of April 2014 that the future IHL compliance system will be of a voluntary character, and that the ongoing consultations are informal in nature. In this context, it was also recalled that the Chairs' Conclusions submitted by the Chairs in follow-up to the Preparatory Discussions and Meetings of States held within the framework of the ongoing consultations have no specific legal or other implications for the States participating therein. It was also recalled that these documents are the sole responsibility of the Chairs and do not intend to reflect agreed views by States.

Issues Carried over from the December 2013 Preparatory Discussion: National Reporting on Compliance with IHL

The Preparatory Discussion of 16-17 December 2013 enabled the States to examine different aspects of a system of national reporting on compliance with IHL in a fairly detailed manner. Among those delegations who expressed their view on this function, the opinion was broadly shared that it would be an essential tool for improving compliance with IHL at the national level. Reporting provides an opportunity for self-assessment by States in the process of the preparation of reports and also allows for the provision of a baseline of information on measures taken at the national level. On this basis, States could more easily engage with each other in order to achieve the common goal of enhancing IHL compliance. There was likewise a convergence of views about the need for a reporting system to enable exchanges among States on their practical experiences in IHL implementation, the sharing of best practices, the identification of possible capacity building needs, as well as the identification of challenges in IHL implementation. It was likewise emphasized that a reporting function must be linked to the Meeting of States and that it could serve to also inform the choice of topics for thematic discussions on IHL issues.

A number of issues were identified at the Preparatory Discussion of December 2013 that required further examination. These included, mainly, the types of reports, measures to ensure the effectiveness of a voluntary reporting system, follow-up to the submission of national reports, the role of customary IHL and the possibility for ad hoc reports to be presented outside of regular timeframes.

The Preparatory Discussion of 3-4 April 2014 provided an opportunity for States to express general views on a reporting function as its possible features have reached a certain degree of tangibility. Underlining that no consensus has yet been reached on the establishment of such a function, a small number of delegations were of the view that further examination is necessary to assess whether national reports on compliance with IHL are a useful means to strengthen compliance with IHL. Some delegations were also of the view that more clarity was desirable on legal and procedural questions related to the establishment of the Meeting of States (see below) providing the institutional framework for a reporting function before the possible configuration of that function could be discussed. As a result, these delegations were not in a position to fully engage in a discussion on the questions raised in the Background Document submitted prior to the Preparatory Discussion of April 2014. Accordingly, the conclusions below are made on the understanding that some States were not in a position to actively participate in the exchange of views on the specific aspects of a reporting function that were discussed on 3-4 April 2014.

As regards the types of reports, most delegations expressed a preference for a combination of two kinds of reports. According to that option, an initial report would focus on the variety of measures that States take to implement IHL in their domestic legal system and armed forces. It would provide fairly detailed information on the legal framework a State has put in place in order to carry out its treaty obligations. At certain intervals, the information provided in initial reports would need to be updated so as to ensure its relevance. Subsequent reports would focus on thematic issues and also address recent State practice in these areas. With

a view to reducing the reporting burden on States, some States were in favor of submitting focused thematic reports from the start. Such reports would outline the implementation of a specific group of IHL obligations in every reporting cycle. A further suggestion, introduced at the Preparatory Discussion of April 2014, also garnered considerable interest. According to this suggestion, a “basic report” would outline a State’s relevant obligations under IHL and how these obligations are implemented in its domestic legal framework; the basic report would be presented initially and updated every five years, or after a comparable interval. Recent developments, such as judicial decisions of domestic courts and other relevant State practice, or specific issues encountered and resolved (or not yet resolved) during implementation of IHL could be presented on a more regular basis, e.g. every two years, in “current developments reports”. The “basic reports” would serve as a “reference library” and could be made available, for example, on a publicly accessible website. They could be used by each reader as background information in reading a State’s “current developments report”.

The question of the scope of national reports was furthermore revisited. At the Preparatory Discussion of December 2013, it was generally recognized that a reporting function should encompass States’ obligations under the universally ratified Geneva Conventions of 1949 and of their Additional Protocols (of 1977 and 2005, respectively), for States that are parties to the latter. The role of customary IHL in the reporting process garnered different views and was therefore submitted for further exploration at the Preparatory Discussion of April 2014. Among delegations who took the floor, opinions were largely evenly divided between those that supported and those that took a cautious or negative approach on this question. Many also pointed out that, given the voluntary nature of the reporting system, States should simply feel free to include obligations under customary IHL in their national compliance reports if they so choose. It was also said by a few States that the reports should primarily focus on the practical measures a State is taking at the national level to implement IHL. If the goal is to enable an exchange among States on their practical experiences in implementing IHL, as well as on challenges, best practices and technical/capacity building assistance, it would be less critical to define the legal scope of reports.

Considering that under the envisaged system of national reporting on compliance with IHL States would not be under a legal obligation to submit reports, but would do so on a voluntary basis, measures were examined to ensure the effective commitment of States to that function. In this regard, most delegations were of the view that the function should be set-up in a way that is non-threatening and encourages States to participate: if engagement in the process of reporting provides an added-value for States, they will voluntarily participate. It was also mentioned that maintaining a list of States that have submitted their reports within agreed time limits, or otherwise making the reports publicly available, such as on a dedicated website, could be an incentive for governments to engage with that function. A considerable number of delegations were of the view that no other measures are required as such procedures could run counter to the voluntariness, legally speaking, of the system. Others found merit in other options, such as the establishment of a dedicated committee of the Meeting of States or the appointment of a Reporting Coordinator whose task it would be to enter into a dialogue with States that might have difficulties in drafting the reports and to recommend action to overcome them.

An important part of the discussion was dedicated to the follow-up that may be given to national reports on IHL compliance. Delegations reiterated that the reports should not fall in a “black hole” and that appropriate follow-up procedures should be established. Many delegations considered it important that the reports are made publicly available, for example on a dedicated website, in order to enable States to engage with each other on matters arising from the reports and to allow for engagement with other relevant actors, such as civil society. Most delegations were of the view that individual scrutiny of the reports on a State-by-State basis should not be contemplated at this stage of the discussions, because such

procedures carry the risk of politicization. On the other hand, while not explicitly supported by every single delegation, there appeared to be a convergence of views that the Meeting of States should be able, in a non-contextual manner and according to procedures that require further examination, to discuss national compliance reports. Thus, many delegations supported the idea that, based on such reports, a single document should be prepared as a basis for discussion in a plenary session of the Meeting of States.

Both options for follow-up outlined in the Background Document, that is, a generic report and an analytical report, were referred to in this context. The generic report would synthesize, in a non-context specific way, measures taken by States in order to ensure compliance with IHL and generically identify practical experiences and challenges in IHL implementation, best practices and capacity building needs. Analytical reports, which were given moderate preference over generic reports, would assess in a non-context specific manner how IHL is implemented in law and practice, where there is room for improvement and how compliance could be strengthened. They would enable an overview of the state of IHL compliance globally and contain an analysis of the issues and trends observed as well as recommendations for improvement. In addition or alternatively, it was suggested that States could, on a voluntary basis, make brief presentations of their reports at the Meeting of States. A number of delegations suggested that the discussions on the national reports could be summarized in an outcome document.

It was observed that the preparation of generic or analytical reports, as well as of an outcome document, requires specific expertise in IHL. A relatively small number of delegations were thus of the view that an expert body, constituted either of individual experts or governmental experts, should be established and entrusted with these tasks. Most of the delegations, however, did not support the establishment of such a body noting that it could unnecessarily increase the costs of the system as a whole and that other sources of IHL expertise should be examined first. They considered that the ICRC could possibly play an important role in this regard (see below).

Some compliance systems under other bodies of international law provide for the possibility that ad hoc reports related to compliance are prepared outside of the regular timeframes. Some delegations indicated therefore at the Preparatory Discussion of December 2013 an interest to examine such an option in the context of the IHL compliance system. The explicit inclusion of such an option was, however, not supported by most delegations at the Preparatory Discussion of April 2014, as it was deemed possibly conducive to politicizing the compliance system. A small number of delegations did nevertheless express their support for establishing procedures related to the submission of ad hoc reports. In their view, the Meeting of States should not be prevented from requesting the submission of ad hoc reports as an exceptional measure.

Issues Carried over from the December 2013 Preparatory Discussion: Thematic Discussions on IHL Issues

Among the delegations who expressed their views on Thematic Discussions on IHL issues at the Preparatory Discussion of December 2013 there was broad agreement that this would be an important function of an IHL compliance system and could serve a variety of purposes. These include: to ensure that States are better informed about current or emerging IHL issues, to enable a better mutual understanding of States' legal and policy positions on current or emerging IHL issues, to enable exchanges of views on key legal, practical or policy issues, to develop a deeper understanding of IHL and of practical measures taken by States to implement it, to strengthen existing networks by bringing together IHL experts from the different States, and to enable for other potential beneficial flow-on effects.

At the Preparatory Discussion of April 2014, many participants reiterated the view that specific sessions of the Meeting of States should be devoted to Thematic Discussions and that linkages with a national IHL compliance reporting system should be considered, including in the identification of topics of common concern.

The selection of topics was mentioned as one of the key issues in December 2013. There was agreement that such a decision should be taken by States, but it was suggested that more attention to the selection process should be devoted. That question was therefore revisited at the Preparatory Discussion of April 2014.

The delegations that expressed their opinion on the topic held different views regarding the actors that should be authorized to suggest topics and the procedures that could apply to their selection.

On the understanding that States would select the topic for thematic discussions, many delegations supported the list of actors provided for in the Background Document that could propose such topics, namely: States or a group of States, the Bureau, the ICRC and the International Conference of the Red Cross and Red Crescent. As only a limited number of States were in favor of establishing an expert body, it was suggested that such a body should not be considered in this context.

As regards the selection of topics, most delegations were of the view that the plenary Meeting of States would play a central role. Most delegations also agreed that the Bureau could act as a “filter” and recommend a select topic for approval to the Meeting of States. The Bureau could thus consult on the topic and ensure that it is of interest to a sufficient number of States. Views were divided on whether the Meeting of States should formally decide on the selection of a topic. While most delegations expressed a preference for the Meeting of States to be able to take decisions, including on the topics to be addressed in Thematic Discussions, a few delegations were of the view that this forum should not have any decision-making power and that the Bureau should ensure that a proposed topic (or topics) is acceptable to all States. In the view of the former group, topics could be selected either by a majority-decision taken by the Meeting of States or by consensus.

Fact-Finding Function

At the second Meeting of States in June 2013, an interest was expressed to examine in further consultations how a fact-finding function could form part of an IHL compliance system. The Preparatory Discussion of April 2014 was the first opportunity for States to discuss such a function in a preliminary manner.

At the outset, some delegations considered it premature to discuss a possible fact-finding function before some degree of common understanding has been achieved on the other functions that could constitute an IHL compliance system. In their view, the discussion should move forward in a step-by-step approach and conclude on one topic before new topics are considered.

While no convergent view on the establishment of a fact-finding function as a component of a future IHL compliance system emerged in April 2014, a number of delegations expressed support for such a function. In their view, considering that fact-finding in situations of armed conflict is being carried out in various other fora that may not have a specific mandate and expertise in IHL, establishing a fact-finding function within an IHL-specific framework would be useful and necessary. Other delegations suggested that fact-finding should not be part of a future compliance system, as it would, *inter alia*, risk politicization. As a consequence, these participants did not engage in a discussion of the possible features of a fact-finding

function. A third group of delegations, while skeptical about the usefulness of such a function - in particular about any non-consensual fact-finding mechanism and its compatibility with the guiding principles of the process - expressed openness to continue discussions on that topic. It was also suggested that fact-finding at the domestic level and national practice in that regard could be a possible topic for Thematic Discussions on IHL issues.

Among those delegations who shared their views on the possible purposes of a fact-finding function, most supported the idea that an enquiry should serve to establish the circumstances, causes and consequences of alleged violations of IHL and to make recommendations to the parties involved in the armed conflict at hand with a view to facilitating their return to respect for IHL. Some participants were of the opinion that the relevant body should, in addition, be competent to make legal appreciations of the facts.

As regards the scope of a possible fact-finding function, a relatively small number of delegations expressed their view. Some were of the opinion that the scope of a fact-finding function should relate to facts that are alleged to constitute serious violations or grave breaches of the Geneva Conventions of 1949 and their Additional Protocols, in situations where the latter are applicable. Some other delegations considered that there would, to some degree and under some conditions, also be room for enquiring into facts that are alleged to constitute violations of customary IHL.

With regard to the procedures related to the institution of an enquiry, a few delegations supported the possibility for the Meeting of States to be able to dispatch an enquiry by way of a majority decision. Many others considered that such procedures would potentially politicize the Meeting of States and expressed their opposition to a mechanism that is non-consensual, i.e. one that would permit an enquiry to be instituted without the consent of the parties concerned. The view was widely shared that the question of consent is, in addition, of crucial practical importance, as cooperation by the parties to a conflict with an enquiry is key to its success.

An important part of the discussions was also devoted to the possibility of making use of the IHFFC in the context of a future IHL compliance system. Some delegations that were in favor of establishing a fact-finding function considered that the IHFFC could be entrusted with this role, given that it is already in existence and offers guarantees of impartiality and neutrality. Others simply expressed an interest in the possibility for the IHFFC to participate in the Meeting of States in order to raise awareness of its services on the basis of its existing mandate and said it would be useful to find other creative ways of engaging with the IHFFC.

A general question was raised about whether and how the IHFFC could be recognized to carry out its functions also in situations of non-international armed conflicts, given that this mechanism is provided for in a treaty - Additional Protocol I - that applies in international armed conflicts only. While some delegations expressed caution in this context, other participants indicated that further discussion on this issue could be beneficial for the purpose of strengthening compliance with IHL. In this regard, all delegations who took the floor confirmed the view, already expressed in previous meetings, that an amendment of Article 90 of Additional Protocol I, on the basis of which the IHFFC was established, should not be contemplated.

Meeting of States

The Preparatory Discussion of 16-17 December 2013 permitted a preliminary overview of a Meeting of States. The great majority of States affirmed on that occasion that they considered such a meeting to be a useful tool for strengthening compliance with IHL, and that it should be established. A number of aspects requiring further clarification were

identified. These included: the institutional structure of the Meeting of States and the tasks of the possible components, the participation of observers, the relationship between the Meeting of States and the International Conference of the Red Cross and Red Crescent, questions related to resourcing, and ways and means to establish the Meeting of States.

In addition to a fairly detailed discussion on most of these aspects, the Preparatory Discussion of April 2014 also allowed States to express general views on the establishment of a Meeting of States. Some delegations said that further discussions should be devoted to examining the potential for the improvement of existing mechanisms of IHL before they could subscribe to the general view that a Meeting of States is necessary for the purpose of strengthening compliance with IHL. However, most delegations reiterated their support for the establishment of a Meeting of States. In this context, the purposes of the Meeting of States outlined in the Background Document were also deemed appropriate:

- To serve as a dedicated forum for States to discuss issues of common concern and to perform a variety of functions related to implementation of and compliance with IHL with a view to strengthening respect for that body of law;
- To serve as an institutional anchor for the other elements of the future IHL compliance system.

There was also broad agreement that the Meeting of States should not be competent to develop new law or to adopt amendments of existing IHL treaties. It should rather aim at providing a platform for States to exchange, in a flexible and voluntary framework with a focus on dialogue and cooperation, on issues related to compliance with IHL, their practical experiences with implementation of IHL, best practices and technical/capacity building assistance.

A number of delegations were of the opinion that a common understanding on the legal foundation of the Meeting of States should be reached before its structure and other features can be discussed (see also below). These delegations recalled, as was the case in previous consultations, that the Geneva Conventions and their Additional Protocols do not provide for the establishment of a regular Meeting of States. For this reason, they considered that a discussion is necessary among States on the legal requirements for the establishment of a forum in its currently contemplated form, as well as on the procedures by which this could be achieved. These delegations were not ready to engage in a discussion, at this stage, on the specificities of a Meeting of States. Accordingly, the conclusions below are made on the understanding that not all States actively participated in the exchange of views on a number of aspects of a Meeting of States that were discussed on 3-4 April 2014.

A “chicken or egg”-style dilemma was reflected at this juncture of the discussion. Some delegations noted that a detailed discussion on structure and features of a Meeting of States may be premature as there should first be more clarity on its functions. For this reason, they were not ready to provide a considered position on the set-up of the Meeting of States. In their view, this will depend to a large extent on the functions that may be linked to the Meeting of States. Other delegations indicated, on the contrary, that priority should be given to the discussion of the institutional framework of a Meeting of States within which the various functions could be performed. Still others underlined that all these questions are to a large degree interdependent and that the discussion needs to move forward in parallel in order to ensure that the possible functions are not discussed without taking their institutional consequences into account and vice-versa.

The question was also raised in the discussion as to what the future forum should be called. Some delegations preferred “Meeting of States”, while others were of the view that it should be “Meeting of States Parties to the Geneva Conventions of 1949”. This issue will be need to be revisited going forward.

As regards the structure of the Meeting of States, the opinion was widely shared that it should be as lean and as efficient as possible with a view to keeping costs low and to avoiding burdensome procedures. Furthermore, it was said that the structure should be strictly limited to what is necessary to perform the functions that will be linked to the Meeting of States and that readjustments should be examined if a need becomes apparent over time. In this regard, it was also indicated that there should be flexibility for States to reconsider the structure of the Meeting of States if they wish to do so in the future.

In the view of most delegations, plenary sessions would form the principal body of the Meeting of States. There was also broad agreement with the list of procedural tasks outlined in the Background Document² to be performed in plenary. As regards the establishment of subsidiary bodies, some delegations were of the view that the functions being contemplated would not make it necessary to create further bodies at this stage. Concerning the tasks related to the compliance functions, most delegations were of the view that the plenary sessions would serve to consider national reports on compliance with IHL, and to hold Thematic Discussions on IHL issues, as discussed above. In addition, many delegations were favorable to States being able to decide in plenary sessions on actions, as may be necessary, with respect to general matters concerning compliance with and implementation of IHL, a competence that is provided for in many other legal frameworks. In their view, States need to retain the flexibility to adapt to new developments. A few delegations expressed caution, stressing that the mandate of the Meeting of States should be formulated in clear terms.

Most delegations supported the idea of entrusting a Chair with the performance of the relevant procedural and organizational tasks. In particular, the Chair would preside over the plenary sessions and head the meetings of the Bureau. Different views were expressed on the election of the Chair. Some delegations expressed a preference for attributing the Chair to a State which would then designate a representative to perform that function; others were in favor of electing an individual from among the representatives of States ad personam. It was pointed out by delegations that equitable geographic representation should be taken into account in the election/rotation of the Chair.

There was broad agreement that a Bureau would be a useful organ to ensure the effective conduct of the Meeting of States. It would be responsible for the substantive and organizational preparation of the plenary sessions. It would be consulted on the draft agenda and other documents to be submitted to the Meeting of States, assist the Chair in the discharge of his or her duties and generally coordinate the work of the Meeting of States. A small number of delegations were of the view that the Bureau should not have a permanent role in between two Meetings of States, but that it should be constituted only at the occasion of a possible preparatory meeting and remain in function until the end of the corresponding Meeting of States. Most delegations reiterated the working modalities outlined in the Background Document and stressed that the Bureau would require more regular meetings in order to ensure the preparation of effective plenary sessions, such as with regard to the discussion of national reports on compliance with IHL and Thematic Discussions. It should therefore have the flexibility to meet as often as may be necessary to perform its function successfully, also in between two Meetings of States.

² The following procedural tasks were outlined in the Background Document:

- Adopt the Rules of Procedure for the Meeting of States
- Adopt the budget of the Meeting of States
- Elect officers, such as the Chair, Vice-Chairs and the members of the Bureau
- Establish subsidiary bodies and elect the members of such bodies
- Oversee and consider the work done by a subsidiary body or another organ, such as the Secretariat

Different views were expressed related to the election of the members of the Bureau. Some delegations were of the opinion that the members should be elected *ad personam*, while others preferred that seats on the Bureau be attributed to States who would in turn designate a representative to participate in the work of the Bureau. As regards the composition of the Bureau, a proposal was submitted that provides for a permanent seat on the Bureau to be attributed to Switzerland, including possibly the role of the Chair, with five additional seats being attributed to other States on the basis of equitable geographic representation. Regardless of this proposal, most delegations agreed that equitable geographic distribution should be taken into account when electing the members of the Bureau. Concerning the length of their terms, various opinions were expressed. Some delegations were of the view that the length of the terms should coincide with the periodicity of the Meetings of States, such as one or two years. Other delegations expressed a preference for members of the Bureau to hold their functions for longer terms, in order to ensure continuity.

The establishment of a Secretariat to provide administrative and logistical support to the Meeting of States as well as the Bureau and the Chair was supported by most delegations; an important number of delegations stressed however that a detailed discussion on its set-up may take place when its possible tasks are better known. In general terms, there was large agreement that the size and structure of the Secretariat should be as small and cost-effective as possible and that its set-up should reflect the tasks it may be required to perform. In this regard, most delegations were of the view that the Secretariat should perform primarily logistical and administrative functions; a few delegations also considered that the Secretariat could perform a limited role in the preparation of documents, such as financial reports, summaries of the proceedings during the plenary sessions or non-analytical compilations of national reports on compliance with IHL. It was also stressed that attention should be paid to ensuring that the Secretariat is staffed with personnel that have the requisite expertise.

In order to reduce costs, some delegations were of the view that possibilities should be explored for the Secretariat to be hosted by an existing institution. Further discussions will be necessary on this issue.

The preparation and work of the Meeting of States, in particular in relation to discussions of national reports on compliance with IHL and to Thematic Discussions on IHL issues, will likely require substantive expert input. As mentioned above, the possibility of establishing an expert body did not garner majority support. A few delegations suggested that drawing on the expert support of the IHFFC could be considered. Many delegations saw, in this context, an important role to be played by the ICRC, if it is willing and able to do so. It was also underlined that it must be ensured that this role does not impinge on the organization's operational activities, mandate, and working methods, and that its humanitarian activities are not jeopardized. The proposals made in that regard in the Background Document were generally considered relevant. In particular, the ICRC could be invited to regularly submit its views, in a non-context specific manner, on the state of IHL compliance globally, it could be called upon to draft the generic or analytical report, on the basis of the national reports, to be discussed in plenary at the Meeting of States, it could support the relevant body in the identification of current or emerging issues that would merit discussion and prepare a Background Document providing guidance for the thematic discussions on IHL issues, or, in a more general sense, it could be called upon to act in a consultative capacity to the Meeting of States and the Bureau.

The Preparatory Discussion of April 2014 also allowed for a preliminary exchange of views on the possible membership of the Meeting of States. The delegations that expressed their views on the issue agreed that the members of the Meeting of States should be the States Parties to the Geneva Conventions of 1949.

As regards the participation of observers, many delegations said that modalities should be established to allow actors other than States to participate, in accordance with modalities that still need to be defined by the Meeting of States. A small number of delegations expressed concerns in this regard and indicated that the question should be examined after the tasks and structure of the Meeting of States have become clearer.

A few delegations noted that it would be important to find ways of bringing the experience of the other components of the International Red Cross and Red Crescent Movement (in addition to the ICRC) into the discussions of the Meeting of States, depending on the topics being examined. It was generally acknowledged that intergovernmental organizations and entities could be able to significantly contribute to the work of the Meeting of States, in particular those that have a direct responsibility, role or influence to enhance compliance with IHL, and that modalities should be found for their participation as observers. It was suggested that intergovernmental organizations could be systematically invited, as it is the practice in a number of Meetings of States established under other legal frameworks.

The question of participation of civil society actors garnered different views. A small number of delegations expressed reservations to their involvement as observers at the Meeting of States, stating that this forum should primarily serve as a platform for non-politicized dialogue and cooperation among States. Some other delegations were generally open to their participation as observers, but cautious to ensure that their participation would not contribute to a politicization of the Meeting of States. It was thus suggested that their participation could be limited to public sessions of the Meeting of States, that observer status might be granted on an ad hoc basis and not be conferred automatically, or that their observer status might not include the right to make oral interventions during the Meeting of States. Most delegations that expressed their views on the topic were, however, open to giving civil society actors a broad possibility to participate as observers, including the option of making oral statements and other forms of contributions, such as organizing side-events or distributing written statements. It was mentioned by these delegations that organizations with ECOSOC consultative status should as a general rule be eligible as observers. It was also suggested that the participation of other organizations could be approved by the Meeting of States.

An important part of the discussion was devoted to ways and means of establishing the Meeting of States. Considering that the Meeting of States will be voluntary in nature, some delegations were of the view that consensus among States would constitute a sufficient basis to create this intergovernmental body; other delegations were of the opinion that more clarity on foundational legal issues was necessary. In general terms, two procedures were suggested as possible ways to establish the Meeting of States. According to a first opinion, as sovereign entities, States are entirely free to reach a common understanding on the question of the establishment of a Meeting of States at an International Conference of the Red Cross and Red Crescent, including the one that will take place in 2015. The Meeting of States could thus be established by way of a resolution adopted consensually within this framework. According to the second point of view, the International Conference of the Red Cross and Red Crescent lacks the competence to take such a decision. Rather, it may adopt a resolution inviting States to convene a diplomatic conference, attended by the States Parties to the Geneva Conventions of 1949, at which the establishment of the Meeting of States and the other functions of a new IHL compliance system would be considered. Several delegations expressed a strong interest in further exploring these questions, as mentioned above, with a view to avoid that legal and procedural ambiguities impede advancement in these important endeavors aimed at strengthening respect for IHL.

A number of other topics, including the relationship between the Meeting of States and the International Conference of the Red Cross and Red Crescent, as well as questions related to

the resourcing of the Meeting of States were not addressed at the Preparatory Discussion of April 2014 due to time constraints.

Next Steps

The Preparatory Discussion of April 2014 concluded a cycle of informal consultations, open to all States, on the elements that could constitute a future IHL compliance system, as identified at the second Meeting of States in June 2013. The two rounds of discussions organized on 16-17 December 2013 and 3-4 April 2014 aimed at devising the possible features of these elements and receiving States' views on these matters. They permitted a fairly comprehensive overview of a series of questions that needed clarification and that are relevant for moving the process forward.

The results of the two Preparatory Discussions will be considered at the third Meeting of States within the Swiss/ICRC facilitated Initiative on Strengthening Compliance with IHL. This meeting will take place on 30 June and 1 July 2014 and its participation is likewise open to all States. As a basis for discussion, Switzerland and the ICRC will prepare a background document that takes stock of the views expressed by States at the two rounds of consultation held since the second Meeting of States in June 2013. This document will aim to ascertain areas on which convergent views appear to be emerging, as well as divergent views, and identify issues that require further discussions. It will thus serve to outline a foundation on the basis of which further consultations can take place.

At the Preparatory Discussion of April 2014, the view was generally shared that the 32nd International Conference of the Red Cross and Red Crescent in late 2015 constitutes a milestone for the current consultations - whatever way forward may be chosen by this body. Pursuant to Resolution 1 of the 31st International Conference, the ICRC, in consultation with Switzerland as the co-facilitator of the ongoing consultations, will submit to the International Conference a report on the research, consultations and discussions they have facilitated since 2012. The 32nd International Conference will also enable participants to take any action deemed appropriate pursuant to the consultations that have been held since the 31st International Conference in late 2011.

Until the 32nd International Conference, Switzerland and the ICRC will continue to consult States on options to enhance and ensure the effectiveness of mechanisms of compliance with IHL. Switzerland and the ICRC reiterate their availability for bilateral talks with interested States at all times and will continue to inform the International Red Cross and Red Crescent Movement, National Committees for the Implementation of IHL, as well as international and regional organizations, and others, on the development of the initiative.

Proposals from States with regard to both the procedural and substantive aspects of the initiative being facilitated by Switzerland and the ICRC likewise remain most welcome. Please send any proposals, views or comments you may want to share to: dv-badih@eda.admin.ch.

It is reiterated that these Chairs' Conclusions are the sole responsibility of the Chairs and do not intend to represent the agreed views of States at the Preparatory Discussion held on 3-4 April 2014.

Annex: Participating Delegations

1. Albania
2. Algeria
3. Andorra
4. Angola
5. Argentina
6. Australia
7. Austria
8. Azerbaijan
9. Belgium
10. Brazil
11. Bulgaria
12. Burundi
13. Canada
14. Chile
15. China
16. Colombia
17. Congo
18. Costa Rica
19. Côte d'Ivoire
20. Croatia
21. Cyprus
22. Czech Republic
23. Denmark
24. Ecuador
25. Egypt
26. Estonia
27. Ethiopia
28. European Union
29. Finland
30. France
31. Germany
32. Greece
33. Holy See
34. Honduras
35. Hungary
36. India
37. Indonesia
38. Iran
39. Ireland
40. Israel
41. Italy
42. Japan
43. Jordan
44. Kenya
45. Kuwait
46. Kyrgyzstan
47. Latvia
48. Lebanon
49. Liechtenstein
50. Lithuania
51. Luxembourg
52. Madagascar
53. Malta
54. Mexico
55. Monaco
56. Myanmar
57. Netherlands
58. New Zealand
59. Norway
60. Pakistan
61. Palestine
62. Paraguay
63. Poland
64. Portugal
65. Republic of Moldova
66. Romania
67. Russian Federation
68. Rwanda
69. Singapore
70. Slovakia
71. Slovenia
72. South Africa
73. Spain
74. Sri Lanka
75. Sweden
76. Tajikistan
77. Thailand
78. Tunisia
79. Turkey
80. UK
81. Ukraine
82. United Arab Emirates
83. United States of America
84. Uruguay
85. Venezuela