



Second Meeting of States on Strengthening Compliance with International Humanitarian Law, Geneva, 17-18 June 2013

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 to identify possible means to enhance 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 in 2015. 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.

In 2012 the Swiss Government and the ICRC launched a series of discussions on strengthening IHL compliance. An initial Informal Meeting with all States was convened on 13 July 2012 in Geneva. The purpose of that meeting was to inform States of the initiative, to raise awareness of the challenges of IHL compliance, and to enable a first survey of States' views. The meeting showed 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 improving respect for IHL, and on compliance issues in particular. It was also noted that an examination of specific thematic issues should be the next step.

Following the July 2012 meeting, Switzerland and the ICRC continued consultations and discussions with a broad range of States, in order to identify the main substantive issues of relevance to moving the process forward. The facilitators also remained open for bilateral consultations with any interested State. Given that it is difficult to have a meaningful discussion on questions of substance in a format that would encompass all States at all times, a discussion with a number of States, representing all regions, was held in Geneva on 8/9 November 2012. This discussion was 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 also preliminary discussions on the functions that such a system would need to have, regardless of what its eventual institutional structure might be.

As more in-depth discussions were deemed necessary to prepare for the meeting of States of 17/18 June 2013, a second discussion with a number of States representing all regions took place in Geneva on 8/9 April 2013. The discussion in April 2013 was aimed at examining the possible functions of an IHL compliance system in more depth. The functions considered were periodic reporting; fact-finding; early-warnings; urgent appeals, non-binding legal opinions and others. 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 at the 31st International Conference and at the Meeting of States held in July 2012.

Purpose of the Second Meeting of States

The purpose of the June 17/18, 2013 Meeting of States was to present all States with an overview of the discussions and consultations that have taken place thus far and to seek guidance on the substantive questions that have arisen, as well as on possible next steps.

This second Meeting of States dealt with:

- an Overview and Inadequacies of Existing IHL Compliance Mechanisms;
- the Possible Functions of an IHL Compliance System; and
- the Possible Tasks and Features of a Meeting of States.

General comments by States

States reiterated their concerns about the lack of compliance with IHL and agreed that this is an important and serious issue that needed to be addressed. The participants expressed strong support for the Swiss-ICRC initiative aimed at exploring ways of strengthening IHL compliance mechanisms and expressed appreciation for their joint efforts in facilitating the process of consultation and discussion among States on how this could be done. The Background Document prepared for the Meeting was believed to be useful in outlining the questions to be addressed and in focusing deliberations on options that could be considered for moving the process forward.

There was general recognition of the need for a regular and structured dialogue among States on IHL issues, with a particular emphasis on the usefulness of establishing a Meeting of States as platform within which such a dialogue could take place. It was acknowledged that compliance systems under other bodies of international law cannot fill the IHL compliance system gap due to their focus on different sets of norms and the lack of requisite IHL expertise. In this context it was noted that a regular Meeting of States could serve as point of anchorage for specific IHL mechanisms, such as the IHFFC, which was a subject subsequently addressed in more detail.

It was recognized that a regular dialogue on IHL among states should focus on a range of other possible ways of enhancing compliance with IHL. Such a dialogue should showcase steps undertaken by States in the area of prevention of possible breaches of IHL. It should likewise enable exchanges of experiences among States in IHL implementation, allow the sharing of best practices among them, and highlight the need for capacity building where it exists. The dialogue should also include issues related to the challenges faced by States in implementing their IHL obligations, as means of seeking cooperative solutions to issues of common concern. It was understood that mechanisms of criminal justice aimed at establishing individual criminal responsibility, whether at the domestic or international level, were not within the scope of the process.

States were likewise of the view that the process of enhancing the effectiveness of IHL compliance mechanisms should be undertaken so as to ensure that the solutions arrived at were of added value. In this context it was pointed out, among other things, that current IHL compliance mechanisms do not envisage ways in which compliance with IHL by non-State armed groups could be considered. It was stated that such a need exists, given the increasing number of non-international armed conflicts and the humanitarian consequences of this type of armed conflict.

In their general comments, delegations expressed support for striving for concrete, pragmatic and meaningful outcomes of the consultation process. It was recalled that the results achieved are to be reported to the next International Conference of the Red Cross and Red Crescent scheduled for 2015.

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 reaffirmed at the

Second Meeting of States. 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 character of the process;
- The avoidance of unnecessary duplication with other compliance systems;
- The requirement to take resource considerations into account;
- The need, as already mentioned above, to find appropriate ways to ensure that all types of armed conflicts and the parties to them are included.

Existing IHL compliance mechanisms: overview and inadequacies

The need to “enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law”, which was recognized in Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, is based on the assessment that existing IHL compliance mechanisms are inadequate.

In the session of the Second Meeting of States that examined existing IHL compliance mechanisms it was acknowledged that, contrary to most other branches of international law, IHL has a limited number of mechanisms to ensure compliance with its norms. In addition, their configuration and remit are such that they do not allow for a comprehensive approach to ensuring compliance. It was noted that existing IHL compliance mechanisms also lack attachment to a broader institutional compliance structure.

The Geneva Conventions and their Additional Protocols are an exception among international treaties in that they do not provide that States will meet on a regular basis to discuss issues of common concern and perform other functions related to treaty compliance. The absence of such a structure means that specific compliance mechanisms lack the institutional support that may be necessary to ensure they are utilized, to facilitate the performance of their tasks, and to assist in any follow-up that may be appropriate.

It was stressed that the Protecting Power system and the Enquiry Procedure provided for in the 1949 Geneva Conventions remain available to States in situations of international armed conflict, although doubts were voiced whether the two mechanisms would be relied on in the future. It was pointed out, among other issues, that they could not be easily reconstituted for use in non-international armed conflicts in which humanitarian needs are currently in greatest evidence. As a result it was stated that the process of strengthening IHL compliance mechanisms should not focus on ways of “reforming” the Protecting Power system or the Enquiry Procedure.

Many States were of the view that it would be worth examining how the IHFFC could be put to better use so as to serve as part of an effective compliance system. A range of proposals for further examination were put forward based on the fact that the IHFFC is in existence, that regular elections for its members take place, and that the Commission is ready and willing to perform the functions provided to it, that is, fact-finding and good offices. It was said that ways could be found to enable the Commission to exercise its mandate, while not re-negotiating Article 90 of Additional Protocol I to the Geneva Conventions. The Commission’s remit could be expanded to include situations of non-international armed conflict. Additional tasks could be given to it by States on a voluntary basis. A Meeting of States could be authorized to trigger the Commission. A Meeting of States could also recommend to the parties to an armed conflict to avail themselves of the Commission’s services.

It was considered that, in addition to the Commission’s mandate and trigger mechanism, it would be necessary to examine further issues related to the Commission’s possible effectiveness going forward. They include its capacity to perform its tasks in terms of composition, the requisite balance of expertise, and resource considerations.

Possible functions of an IHL compliance system

The Second Meeting of States also looked at the possible functions that an IHL compliance system could be endowed with. The functions dealt with were: periodic reporting, fact-finding, early warning and urgent appeals,

country visits, non-binding legal opinions, good offices, State inquiries, dispute settlement, and examinations of complaints. There was broad agreement that reporting, thematic discussions and fact-finding (as mentioned above), should be given priority in further deliberations within the Swiss-ICRC facilitated process and that discussions should focus on examining the various aspects of these functions. Some States were of the view that a good offices function would also be useful, and others that an early warning function would be desirable. Country visits were likewise mentioned as deserving of further attention. Still other States were open to examining all the compliance functions listed above.

It was pointed out that reporting on national compliance serves as a basis for self-assessment by States, but also provides a baseline of information that allows for exchanges with other States on compliance issues. A reporting function should not entail a detailed overview of States' implementation of the applicable IHL treaties according to their provisions, but could be more focused, for example grouped according to topics or issues. It should be structured so as to also allow the sharing of relevant information on questions related to prevention such as IHL dissemination, the incorporation of IHL into domestic law, the training of armed forces and others. It should enable exchanges among States on their practical experiences and challenges in IHL implementation, as well as best practices. Another function identified for further consideration was discussions of States on thematic issues, including policy-related concerns common to States. It was also noted that further consideration could be given to whether non-governmental organisations should be involved in the preparation of reports. In addition, it was noted that the inclusion of non-State armed group actions should be the subject of further examination and that reporting should not create new legal obligations.

A range of other aspects related to the reporting and fact-finding functions deserving of attention in the process were noted. These include the body to which these functions would be attached, their periodicity, the public or confidential nature of the function, voluntariness, sources of information relevant to the function, resourcing, interface with other actors including NGOs and civil society, and others. As regards fact-finding, it was pointed out that this function may or may not be linked to conclusions about the legal consequences of the facts established. These and other topics will be the subject of deliberations within the process in the months ahead.

Meeting of States

The Second Meeting of States affirmed that there was strong general support among States for establishing a forum for a regular dialogue on IHL, that is, a regular Meeting of States. Such a Meeting would enable States to examine a range of issues related to implementation and compliance with IHL, and also be a venue for thematic discussion on IHL issues. It was also suggested that a Meeting of States could serve as an anchor for other elements of an IHL compliance system. The Meeting of States could also complement and inform the discussions at the quadrennial International Conference of the Red Cross and Red Crescent. Several States also noted the desirability of ensuring, as far as possible, coherence and complementarity between an IHL compliance system and other international and regional fora that address IHL issues.

A range of aspects related to the Meeting of States were noted as meriting further consideration. They include the periodicity of the meetings, the possible means of initiating and institutionalizing the meetings, and whether a body could be created, such as a Bureau and/or a Secretariat, that could serve to prepare the Meetings and perform possible intersessional and administrative functions. Other issues identified for further examination included the method of selecting topics for discussion, the outcomes of the Meetings, the means by which a Meeting could include engagement with international organizations, non-governmental organizations and civil society, and the question of resourcing. It was also noted that, given the prevalence of non-international armed conflict, further consideration needs to be given to appropriate means of addressing the issue of compliance with IHL by non-State armed groups, to ensure their perspectives are taken into account.

It was felt that the function of periodic reporting should be linked to the Meeting of States, regardless of its exact configuration. Another issue raised as meriting further consideration is the relationship a Meeting of States could have with fact-finding functions, including the International Humanitarian Fact-Finding Commission. It was generally emphasised that the potential role the ICRC could play as an expert body in the Meeting of States should also be considered further.

Next steps

Pursuant to the mandate given by resolution 1 of the 31st International Conference of the Red Cross and Red Crescent and based on the Second Meeting of States, Switzerland and the ICRC will devise, in continued discussions and consultations with States, concrete proposals and options notably regarding:

- the form and content of a periodic reporting system on national compliance;
- the form, content and possible outcome of thematic discussions on IHL issues;
- the modalities for fact-finding, including possible ways to make use of the IHFFC;
- the tasks and features of a Meeting of States.

Prior to the next meeting of all States to be held in the summer of 2014, there will be two preparatory meetings in Geneva in November 2013 and in the spring of 2014, open to all States, to further exchange views on concrete aspects of the topics mentioned above.

The November preparatory meeting will be held on November 25 and 26, 2013 in Geneva, and States will be advised of the dates for the spring 2014 meeting at a later stage.

Switzerland and the ICRC remain available 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