



**Swiss/ICRC Initiative on Strengthening Compliance with IHL
Preparatory Discussion in view of the third Meeting of States (2014)
Geneva, 16-17 December 2013**

Chairs' Conclusions

Context

In its Resolution 1, the 31st International Conference of the Red Cross and the Red Crescent of 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. 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. 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.

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 regular dialogue on IHL which could serve as an 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 scheduled for late June 2014, Switzerland and the ICRC convened a Preparatory Discussion on 16–17 December 2013. The focus of this round of discussion was on periodic reporting on national compliance with IHL and on thematic discussions on IHL issues. The exchanges allowed for a determination of the broad parameters of these two functions and for an identification of the issues that will need to be examined in more detail going forward. A preliminary review of certain features of a Meeting of States was also undertaken.

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 at the December 16-17 Preparatory Discussion. 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 to find appropriate ways to ensure that all types of armed conflicts and the parties to them are included.

Two additional principles were mentioned at the December 2013 Preparatory Discussion: the need for the process to ensure universality and impartiality.

Periodic Reporting on National Compliance with IHL

There was recognition that a periodic reporting function is 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 which could allow States to engage with each other in order to achieve the common goal of enhancing IHL compliance. There was a convergence of views about 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.

There was general agreement that a reporting function should be limited to States' obligations under the universally ratified 1949 Geneva Conventions, and of their three Additional Protocols (of 1977 and 2005, respectively), for States that are parties to the latter. It was mentioned that States not party to the Protocols could also report on specific provisions of the Protocols which they apply in practice. The role of customary IHL in a reporting process garnered different views and will be revisited in the time ahead.

There was similarly general agreement that a periodic reporting function would need to be voluntary in nature, given that legally binding changes to the treaties of IHL - as delineated above - are not currently contemplated. In this context, it was emphasized that ways should be found to encourage States to commit to a non-treaty reporting system, and that a balance will need to be devised between the voluntary nature of a reporting system with an acknowledged need for it to also be effective.

As regards the features of a periodic reporting function, there was general agreement that it should not involve an article-by-article review of the relevant IHL treaties, but a grouping of IHL provisions. Some States were of the view that a fairly comprehensive initial report, followed by subsequent updates - as described in the Background Document for the Preparatory Discussion - should be given preference, while others favoured the option of focused thematic reports being presented from the start. A proposal to combine these two models made at the meeting garnered significant interest. Some States were also of the view that the option of ad hoc reports and of an overview report on the state of IHL compliance should be retained. The possible type of national compliance report will be the subject of further discussions within the process.

Participants were of the view that regardless of the reporting system established, it should not be cumbersome. This could, among other things, be facilitated by ensuring that reports are prepared based on guidelines that should not be overly prescriptive, whether a template or questionnaire format is adopted, for which preferences were expressed. The format should, however, also be sufficiently flexible, leaving room for States to report on the specificity of their experiences as may be necessary. It was also felt by some States that a page limit would be helpful.

As regards possible reporting periodicity, it was said by some States that this will depend on a previous determination of other modalities, such as the type of report which is eventually agreed on. Some States were of the view that the submission of a first report within a one to two year time-frame, and the submission of periodic reports every four years thereafter would be feasible.

The discussion on the review of reports raised the question of whether, and what type of review of national IHL compliance reports should take place. Some States were of the view that this task should be entrusted to a committee of independent experts that would be a subsidiary body of the Meeting of States and report to it. It was felt that this model would help avoid politicization and would ensure the necessary professionalism. Other States were of the opinion that scrutiny of individual State reports should be avoided, also in order to avoid politicization, and that reports should be presented to a Meeting of States, i.e. circulated to all participants, as well as more broadly, as a means of allowing bilateral and multilateral engagement by States on IHL compliance. Still other States did not yet have an established view on possible review models. There was general agreement that, whatever model may eventually be agreed on, it should not lead to reports "falling into a black hole" and that appropriate follow-up to reports will need to be carefully considered going forward for the system to be effective.

As regards the involvement of other actors in the preparation of national IHL compliance reports, most participants were of the view that the procedures should allow for flexibility so that States could determine this question at the domestic level. Many mentioned the positive role that national IHL Committees could play in that regard. Many expressed their intention to involve National Red Cross and Red Crescent Societies, as well as civil society representatives, and considered that this practice should be encouraged. With regard to the involvement of other actors in the examination of reports, different views were expressed, but several States highlighted that a decision on this issue will depend on the options chosen.

There was broad agreement that any IHL compliance system would need to address non-international armed conflicts, but that more reflection on how to strengthen compliance with IHL by non-State actors is necessary going forward.

The ICRC provided examples of its possible role and involvement in a reporting system on national IHL compliance. States agreed that the ICRC would have an important role to play in accordance with its mandate; it was underlined however that such a role shall not jeopardize its operational activities or standard working procedures.

Finally, it was mentioned that resource considerations should be taken into account in further discussions on a reporting system.

Thematic Discussions on IHL Issues

There was broad agreement that thematic discussions on IHL are an important function of an IHL compliance system and could serve the purposes outlined in the Background Paper, namely 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 and emerging IHL issues, to enable exchanges of views on key legal, practical and 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.

Many participants mentioned 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.

In relation to the scope, most States were of the view that thematic discussions should not aim at legal development, but should focus on IHL issues related to the application and necessary interpretation of the law. Different views were expressed on policy-related issues, but many held that the thematic discussions should also allow for an exchange on policy positions adopted by States on how to interpret and apply particular IHL obligations in practice.

Many States mentioned that flexibility was needed with regard to the format and outcome of thematic discussions, as much will depend on the theme that is specifically addressed. However, the view was widely shared that an outcome document would be useful and that, at the least, a factual report on the discussions should be produced and made public.

The selection of topics was mentioned as one of the key issues. There was agreement that such a decision should be taken by States, with the possible involvement of other actors, such as the ICRC, in an advisory capacity, and that further discussions on an adequate procedure are needed.

Overview of a Meeting of States

The discussions confirmed that a Meeting of States would be useful and should be established. The following purposes outlined in the Background Document were furthermore deemed relevant:

- 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.

With regard to the structure of the Meeting of States, most States held that it should not be overly burdensome in terms of financial and human resources. Many mentioned the usefulness of a Bureau and/or a Secretariat in order to prepare the Meeting of States, but noted that more in-depth discussions on their set-up were needed. Different views were voiced on subsidiary bodies and it was generally agreed that they must be restricted to what is necessary.

On the tasks and functions of the Meeting of States, participants were of the view that further consultations should focus on the three functions identified at the Second Meeting of States in June 2013, i.e. a reporting function, thematic discussions and fact-finding. It was mentioned that other possible functions could be considered in the future.

Several States considered that the Meeting of States should be held at annual intervals in order to ensure the effectiveness of an IHL compliance system, while others mentioned that biennial meetings should be considered for reasons of resource constraints. Links with the International Conferences of the Red Cross and Red Crescent were seen by many participants as an important feature.

The participants agreed that the further consultations on the tasks and features of the Meeting of States should focus on those issues outlined in the Background Document, namely:

- Ways and means to institutionalize the Meeting of States;

- Relationship with the International Conference of the Red Cross and Red Crescent;
- Participation of observers; and
- Resourcing.

Next Steps

Prior to the Third Meeting of States scheduled for 30 June and 1 July 2014, a second Preparatory Discussion will be held on 3-4 April 2014 in Geneva. This second round of discussion will mainly focus on the tasks and features of a Meeting of States and touch upon the topic of fact-finding. There will also be an opportunity to further discuss issues raised at the Preparatory Discussion on 16-17 December 2013, such as the possible review of national compliance reports and follow-up to such reports.

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.

These Chairs' Conclusions serve to outline a respective meeting and to allow for the preparation of subsequent meetings by summarizing the views of, and concrete proposals made by States, that will be relied on by the facilitators as guidance for further discussions in the process. They are the sole responsibility of the Chairs and do not intend to represent the agreed views of States at the Preparatory Discussion held on 16-17 December 2013.