



Swiss/ICRC Initiative on Strengthening Compliance with International Humanitarian Law (IHL)

Fact Sheet

International humanitarian law (IHL) is a branch of international law which seeks, for humanitarian reasons, to limit the effects of armed conflicts. Its main sources are the 1949 Geneva Conventions and their Additional Protocols as well as customary international law. Although the nature of warfare has evolved, IHL remains an appropriate and relevant framework for regulating the behaviour of parties to a conflict and ensuring protection for all those who are not or are no longer participating in the hostilities. The main problem in contemporary armed conflicts is not the lack of norms but rather the widespread flouting of those that already exist. Finding ways and means to ensure greater respect for IHL is thus one of the most pressing humanitarian challenges.

This was recognized by States and other actors in Resolution 1 adopted at the 31st International Conference of the Red Cross and Red Crescent in late 2011.¹ The Conference invited Switzerland and the International Committee of the Red Cross (ICRC) to identify ways and means to “enhance and ensure the effectiveness of mechanisms of compliance with IHL”.² In follow-up to Resolution 1, Switzerland and the ICRC launched a joint initiative to facilitate implementation of this mandate. Three major consultation Meetings and five intermediary Preparatory Discussions have taken place in Geneva since then. The consultation process has been guided by the principles of openness, transparency, and inclusivity.

In the course of the consultations, States have acknowledged that there is an institutional vacuum in the area of IHL implementation. The Geneva Conventions of 1949 are an exception among multilateral treaties in that they do not establish a Conference of States Parties or another similar type of institutional forum, in which States can discuss the application of IHL or current and emerging challenges to compliance with it. Most States have thus expressed their support for the establishment of a regular Meeting of States, as the central pillar of a future system for strengthening respect for IHL, which should be voluntary and non-politicized in nature.

The overall purpose of a future Meeting of States on IHL would be to foster dialogue and cooperation among States on ways of strengthening compliance with IHL, and to further promote awareness of this body of norms at the domestic and international levels. The Meeting of States would also enable States to discuss their possible needs in terms of capacity-building and technical assistance. More broadly, it would help deepen knowledge of IHL, and foster the creation of networks of IHL experts by bringing together representatives from the different States.

¹ http://www.rcrcconference.org/docs_upl/en/R1_Strengthening_IHL_EN.pdf.

² Resolution 1 of the 2011 International Conference invited the ICRC “to pursue further research, consultation and discussion in cooperation with States and, if appropriate, other relevant actors, including international and regional organisations, to identify and propose a range of options and its recommendations to (...) enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law” (para. 6). It also expressed its appreciation to the Government of Switzerland for its commitment “to explore and identify concrete ways and means to strengthen the application of international humanitarian law and reinforce dialogue on international humanitarian law issues among States and other interested actors, in cooperation with the ICRC” (para. 7).

As regards tasks, the Meeting of States on IHL should serve to hold regular thematic discussions on IHL issues. Such topical discussions should enable all actors involved in or responsible for the implementation of IHL at the national level to be better informed about current and emerging IHL issues, to exchange views on key legal, practical or policy questions, and to better understand how the constant evolution of warfare may affect its implementation.

Most States are also of the view that a future Meeting of States on IHL should set up a procedure of national reporting on compliance with IHL. National reports would, among other things, permit States to highlight their experiences and best practices, as well as challenges observed in the implementation of IHL obligations. These reports would serve as the basis for a non-politicized and non-contextual discussion of IHL implementation, through a procedure that would be focused on identifying general trends and ways of strengthening the application of IHL.

It is the understanding of most States that the future Meeting of States on IHL should be established in a way that is flexible, and would permit an evolution of the system going forward, should that be deemed necessary or useful. Having in mind that non-politicization is one of the key guiding principles of the consultation process, it is understood that any tasks attributed to the Meeting of States would have to be compatible with this premise.

The current Swiss-ICRC facilitated initiative will be concluded at the fourth major consultation Meeting that will be held in April 2015. This Meeting will take stock of the results of the consultation process and provide a further opportunity for States to indicate their views on the different subjects that have been examined since 2011.

In conformity with Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, a concluding report will be submitted to the 32nd International Conference, scheduled to be held in December 2015, for its consideration and appropriate action. The report will be prepared by the ICRC, together with Switzerland, and will be the sole responsibility of the co-facilitators. It will reflect the discussions held, the options for strengthening respect for IHL that have emerged, and make recommendations in this regard.

It is hoped that, by indicating the relevant points of convergence of States' views, as well as points of divergence, the concluding report will provide a backdrop for a corresponding resolution that is expected to be adopted at the 32nd International Conference. It is anticipated that the resolution will reflect the common will of States, and other International Conference members, on the next steps, in particular as regards the establishment of a Meeting of States on IHL.

Switzerland and the ICRC are fully committed to ensuring that their joint initiative is conducted in accordance with its guiding principles. The facilitators welcome any comments that States, or other interested actors, may have with respect to the ongoing consultation process.

More information on the consultation process is available online at:

<https://www.eda.admin.ch/ihl-compliance> (website of the Swiss Federal Department of Foreign Affairs)

<https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm> (website of the ICRC)

Contact

For further details on the initiative, please contact us on dv-badih@eda.admin.ch (Swiss Federal Department of Foreign Affairs) or legal-meeting@icrc.org (ICRC).

January 2015