



ICRC

CHECK AGAINST DELIVERY

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Strengthening Legal Protection for Victims of Armed Conflicts

States' consultations and way forward

Address by

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President of the International Committee of the Red Cross

Excellencies,

Ladies and gentlemen,

On 21 September last year, I shared with you the conclusions of the ICRC study on strengthening legal protection for victims of armed conflicts. In a nutshell, the study concluded that international humanitarian law remains, on the whole, an appropriate framework for regulating the conduct of parties to armed conflicts – whether international or non international. Therefore, what is required in most cases in order to improve the situation of persons affected by armed conflict is a greater compliance with the existing legal framework. However, the ICRC study also showed that ensuring better protection for these persons involves addressing normative weaknesses through a reinforcement of the law in four specific areas, namely: (a) the protection for persons deprived of liberty; (b) implementation of international humanitarian law and reparations for victims of violations; (c) the protection of the natural environment; (d) the protection of internally displaced persons.

Excellencies,

Ladies and gentlemen,

In my September statement, I also announced that in the following months the ICRC would engage in a dialogue with States to discuss the conclusions contained in the study and possible follow-up to it. The purpose of our meeting today is to present the results of this consultation and to provide information on the next steps that the ICRC intends to take.

The consultation was an enriching experience. States from all the world regions participated and shared their views with the ICRC on fundamental humanitarian problems arising from armed conflicts and possible legal solutions. Most of the States that engaged in the consultation gave us detailed comments both in terms of substance and process; no doubt an encouraging sign of genuine interest in the issues for consultation. This was not an easy task as the timeline for the consultation was relatively short and the scope of the subject matter submitted for comments was quite extensive. I thank all those who participated in this exercise.

This consultation phase was a first step in our dialogue with States on the need to strengthen international humanitarian law. All States - including those which have not yet been able to express their views - will have other opportunities to contribute to this dialogue.

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Let me now come to the main results of the consultation process. States engaged in the consultation confirmed the ICRC's overall conclusion that international humanitarian law remains as relevant today as ever before to ensure protection to all victims of armed conflict. They agreed that in most cases greater compliance with the existing legal framework is the best way to address the needs of these victims. This reaffirmation of the adequacy of existing rules of international humanitarian law is an appeal to States and parties to armed conflicts to renew efforts to respect and ensure respect for humanitarian law. It is also a source of great encouragement for the ICRC to uphold its activities for the promotion of this legal framework. I am grateful for this.

States also shared our assessment of the humanitarian problems in contemporary armed conflicts as described in the study. There was a broad recognition that serious concerns arise in practice in the four areas selected and highlighted in the study and that action must be taken. Views regarding how to address these concerns in legal terms varied however and therefore remain open for discussion. In particular, some States expressed reservations to the idea that new treaty rules should be developed in each of these areas. Consequently, the ICRC considers that all options must be carefully studied, including the elaboration of soft law instruments, the identification of best practices and the facilitation of expert processes aimed at clarifying existing rules. These are indeed different ways of strengthening international law.

In addition, States participating in the consultation made clear that it would not be realistic to work on these four areas simultaneously. They indicated that priorities must be established based on the level of interest States have expressed in each one of them.

The protection of persons deprived of liberty was clearly identified by most States as an area where further work is urgently needed. In particular, they recognized the necessity to ensure better legal protection for persons detained for security reasons during non-international armed conflicts. Clear legal guidance is needed to prevent arbitrary detention. Some States also insisted that the risks to which detainees are exposed when they are transferred from one authority to another should be addressed. Others also expressed an interest in the specific protection needs of certain categories of persons in detention, such as women, children, the elderly and disabled. We were therefore encouraged to engage in further work on the protection of persons deprived of liberty.

Obviously, such an endeavour would have to take into consideration other on-going processes on the protection of persons deprived of liberty in order to ensure complementarities between them. Some States mentioned the Copenhagen Process on detention in multinational military operations. The scope of an ICRC initiative would be broader, however, covering all forms of non-international armed conflicts. The ICRC believes moreover that certain humanitarian problems cannot be properly addressed in practice through the mere restatement of common legal and operational standards. Consequently, it is its conviction that - regardless of the results of other on-going processes - further work remains necessary on the protection of persons deprived of liberty.

A significant number of States also indicated that they consider better implementation of international humanitarian law a priority. States recognized that most of the mechanisms provided under this legal framework have proved to be insufficient so far. They acknowledged in particular that existing procedures for the supervision of parties to armed conflicts have rarely been used in practice. Moreover, many States admitted that mechanisms developed outside the ambit of international humanitarian law also have limitations and were not developed for implementing this body of law. Some States insisted on the need to amend existing implementation tools, such as the International Humanitarian Fact-Finding Commission, in order to ensure their proper functioning. Other States considered that different alternative solutions should be explored including the possibility of creating a new mechanism. Whatever solution is finally pursued, they concurred that discussions on improving compliance with international humanitarian law is a priority in order to give further credibility to this legal framework.

Such interest for the implementation of international humanitarian law, however, does not seem to include the question of reparations for the victims of armed conflicts. Whereas some States agreed that clarifying existing rules on reparation would be helpful, and the ICRC still believes that this question raises humanitarian challenges in practice to be addressed, others clearly expressed their reservations and do not seem to consider that this is a priority for the time being in terms of legal development.

With regard to the two other areas highlighted in the study - namely the protection of the natural environment and the protection of internally displaced persons - we came to the conclusion that further consultation and research with a view to strengthening the law is not considered a priority by a number of States at this stage. In relation to the protection of the natural environment, several States expressed an interest in the clarification of existing rules of international humanitarian law. Some also expressed interest for discussion and

identification of best practices to prevent damage to the environment in the course of military operations and the clearance of contaminated areas once operations have ended. Concerning the protection of internally displaced persons, the result of the consultation suggests that efforts should focus mainly on the promotion of the existing legal framework, including relevant rules of international humanitarian law and human rights law, as well as the promotion of the *Guiding Principles on Internal Displacement* adopted in 1998. In other words, the consultations tended to indicate that time was not ripe for a discussion with States on strengthening international humanitarian law in these two domains. The ICRC will however keep working to ensure improved knowledge and better understanding of these issues, if appropriate through the organization of expert meetings.

Excellencies,
Ladies and gentlemen,

The ICRC, based on its daily experience of armed conflicts in different parts of the world, continues to believe that these four areas involve serious humanitarian problems requiring the development of international humanitarian law. However, the purpose of the consultation process was to listen to States, to understand their opinions on substance, procedures and priorities. The ICRC's conclusion, at this stage, is that further dialogue on strengthening international humanitarian law should focus on the protection for persons deprived of liberty and on the implementation of international humanitarian law. These two topics are the ones that have attracted the most interest from States. This conclusion will form the basis for the ICRC's future action.

The 31st International Conference of the Red Cross and Red Crescent will be an important opportunity. On this occasion, the ICRC will submit a report presenting the main conclusions of its study. This report will reiterate the ICRC's position that international humanitarian law should be strengthened in the four areas selected from the study. It will explain that this position does not commit other participants in the Conference. The report will also present the result of the consultation. It will serve as a basis for debate among the participants. This debate will be an occasion for all those interested - including those who did not participate in the initial consultation - to express their views. It will provide them with an opportunity to indicate whether and to what extent they share the ICRC's analysis presented in its report. We would also welcome any proposals regarding which aspects future substantive discussions should focus and on ways to pursue this dialogue in the future.

The ICRC will also submit a draft resolution to be adopted by the International Conference. This draft resolution will refer to the study and the consultations. It will stress that the consultation confirmed the relevance of international humanitarian law in contemporary armed conflict and insist on the need to work for better implementation of and compliance with this legal framework. It will also propose that further work be undertaken on the protection for persons deprived of liberty and the implementation of international humanitarian law.

The draft resolution will not identify a particular outcome of the work to be undertaken in order to strengthen the law. This question will have to be discussed at a later stage, considering the merits of the various options. Rather, the resolution will encourage the ICRC to pursue substantive discussions as well as further research and consultation in close cooperation with States in order to identify the most appropriate form in which humanitarian problems in the two proposed areas should be addressed.

In the coming weeks, the ICRC will circulate the draft resolution and begin discussions to determine the extent to which consensus on this document may be reached. I consider it essential to continue the constructive and transparent dialogue with States on the issues identified in the ICRC study in preparation of the debate at the International Conference. It is important that work to further strengthening international humanitarian law is undertaken with broad agreement and support.

Excellencies,

Ladies and gentlemen,

This first round of consultations clearly showed that States are willing to participate in any future dialogue on new avenues to strengthen international humanitarian law. This is very important to me. Real and long term changes in international law can ultimately be achieved only if States are committed to it. The ICRC is ready to contribute to this endeavour, in accordance with its mandate as received from the international community. I trust that we can combine our efforts to find efficient ways to meet the needs of the victims of armed conflicts.