



30 January 2017 (revised)

Intergovernmental Process on Strengthening Respect for International Humanitarian Law (IHL)

First Formal Meeting

Geneva, 28-29 November 2016

Factual summary

I. Introduction

1. On 28-29 November 2016, the First Formal Meeting in the intergovernmental process on strengthening respect for international humanitarian law (IHL) was held in Geneva. The present factual summary is provided by the co-facilitators in accordance with paragraph 7(b) of the document entitled “Organizational issues and provisional work plan” (see Annex I), as accepted by States at the First Formal Meeting on 29 November 2016.

2. The First Formal Meeting was held on the basis of Resolution 2 entitled “Strengthening compliance with international humanitarian law” that was adopted by consensus at the 32nd International Conference of the Red Cross and Red Crescent held in December 2015. Therein, the Conference recommended “the continuation of an inclusive, State-driven intergovernmental process based on the principle of consensus after the 32nd International Conference and in line with the guiding principles enumerated in operative paragraph 1 [of the resolution] to find agreement on features and functions of a potential forum of States and to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums in order to submit the outcome of this intergovernmental process to the 33rd International Conference.” The intergovernmental process is based on the understanding that “nothing is agreed until everything is agreed” and is being conducted based on a general agreement about the need to ensure its non-politicization and transparency. State-ownership of the process was confirmed.

3. Resolution 2 builds on the consultation process on strengthening compliance with IHL that was jointly facilitated by Switzerland and the ICRC in follow-up to Resolution 1 of the 31st International Conference held in 2011. The consultations served primarily to enable States to jointly explore ways and means of enhancing the effectiveness of mechanisms of compliance with IHL and of strengthening dialogue among States on this issue.

4. On 3 June 2016, a first preliminary discussion among States was held in Geneva to share views on implementing the mandate provided for in resolution 2. The aim of the discussion was to allow an initial exchange of views among States on how the intergovernmental process should be taken forward and to give participants an opportunity to provide guidance to the co-facilitators in this regard.

5. In follow-up to the preliminary discussion of June 2016, a letter was sent to all Permanent Missions in Geneva on 6 July which informed States about the next steps, as were announced by the co-facilitators at the close of the discussion, and supported by the participants. In this letter, States were furthermore invited to share with the co-facilitators, including by way of written contributions, further views on: the procedural questions/modalities that will be relevant to moving the intergovernmental process forward, with proposals for how they could be addressed, and, the way in which the November meeting should address the substantive elements of resolution 2. The

written contributions received were made available on the website established for the intergovernmental process, with the consent of the relevant States.

6. On 12 October 2016, a second preliminary discussion among States was held in Geneva. This discussion mainly served to further refine the ideas and proposals that were raised at the preliminary discussion of 3 June, as well as in subsequent written submissions by States, with a view to giving maximum guidance to the co-facilitators for the preparation of the First Formal Meeting, which took place on 28-29 November.

II. Consideration of organizational issues and provisional work plan

7. In accordance with the views expressed by States in the preparatory process, the purpose of the First Formal Meeting was for States to discuss and agree on the organizational issues related to the intergovernmental process and a provisional work plan.

8. 101 delegations participated in the First Formal Meeting (see Annex II).

9. In accordance with the agenda adopted at the meeting, Session 1 was devoted to a discussion on the organizational issues of the intergovernmental process, notably facilitation, working documents, the question of conclusions and summaries of each meeting, and, at the request of delegations, any other issues that States deemed necessary to be considered at this stage. Session 2 was devoted to a discussion on the work plan and timetable of the intergovernmental process as well as the format and frequency of the meetings to be held therein. Session 3 served to discuss outstanding issues from the previous sessions and session 4 was devoted to a consideration and agreement on conclusions of the meeting.

10. Delegations had before them a Background note prepared by Switzerland and the ICRC in their capacity as co-facilitators, as well as comments and proposals submitted by States. The Background note outlined the views expressed by States in the preparatory process, including in the preliminary discussions and written submissions. The delegations also had before them a proposal prepared by the co-facilitators related to the issues on the agenda of the meeting, entitled "Co-facilitators' proposal on organizational issues and work plan". The proposal served to streamline discussion and facilitate agreement among States. Both documents were distributed on 31 October 2016 and are available on the website of the intergovernmental process.

11. In the evening of 29 November 2016, delegations reached a common understanding on the organizational issues and a provisional work plan for 2017 of the intergovernmental process. The agreement reached at the First Formal Meeting is reflected in the document entitled "Organizational issues and provisional work plan" (see Annex I), available on the website of the intergovernmental process.

Annex I: Organizational issues and provisional work plan

I. Introduction

1. The 32nd International Conference of the Red Cross and Red Crescent of December 2015 adopted Resolution 2 entitled “Strengthening compliance with international humanitarian law”. Therein, the Conference recommended by consensus “the continuation of an inclusive, State-driven intergovernmental process based on the principle of consensus after the 32nd International Conference and in line with the guiding principles enumerated in operative paragraph 1 [of the resolution] to find agreement on features and functions of a potential forum of States and to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums in order to submit the outcome of this intergovernmental process to the 33rd International Conference.”
2. The first formal meeting in the intergovernmental process was held on 28-29 November 2016 in Geneva. The purpose of the meeting was to examine and agree on organizational matters related to the process and a provisional work plan/timetable.

II. General considerations

3. The intergovernmental, State-driven process on strengthening respect for IHL is implemented in line with the guiding principles enumerated in operative paragraph 1 of Resolution 2 adopted by the 32nd International Conference of the Red Cross and Red Crescent. The guiding principles are:
 - a. 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;
 - b. the importance of avoiding politicization, including by ensuring that States address the implementation of IHL only within their own sphere of competence and responsibility;
 - c. the need for an IHL compliance system to be effective;
 - d. the avoidance of unnecessary duplication with other compliance systems;
 - e. the requirement to take resource considerations into account;
 - f. the need to find appropriate ways to ensure that the discussions address 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;
 - g. the need for the process to ensure universality, humanity, impartiality and non-selectivity;
 - h. the need for the process to be based on dialogue and cooperation;
 - i. the voluntary, i.e. non-legally binding, nature of the consultation process, as well as of its eventual outcome;
 - j. the need for the process and the mechanism to be non-contextualized.
4. The intergovernmental process is based on the understanding that “nothing is agreed until everything is agreed”.

III. Organizational issues

5. Facilitation: Switzerland and the ICRC continue to serve as co-facilitators of the State-driven intergovernmental process on strengthening respect for IHL.
6. Documentation: Switzerland and the ICRC ensure that documentation and relevant reports are provided for the meetings held in the process, such as background documents to help inform and focus discussions. The co-facilitators endeavor to submit documentation to all States four weeks prior to the formal meetings. At all stages of the process, States are encouraged to submit in writing their own proposals or non-papers, comments and observations to the co-facilitators. State submissions are shared with all States on the dedicated website. These documents must be in line

with the guiding principles, and where a proposal is submitted in another language, unofficial translations into English by the State submitting the proposal are encouraged.

7. Outcome of the formal meetings: At the end of each formal meeting, based on the deliberations held, the co-facilitators will:

- a. propose for the consideration of States, in a succinct form, main elements reflecting identified converging points and particular points for further discussions, including those on which divergent views were expressed and,
- b. in that context, provide a factual summary of the discussions to which States may make comments or rectification, if any, within a period of two weeks.

All documents related to the formal meetings are made available on the website, including State comments and any other documents that States may wish to share.

IV. Format and frequency of meetings

8. Formal meetings: two formal meetings of two to three days, open to all States, are held in plenary per year in Geneva.

9. Open-ended informal meetings: one informal meeting, open to all States, will be held prior to each formal meeting to help prepare for the formal meeting, and other consultations as may be deemed necessary by the co-facilitators, keeping these to the minimum necessary. Informal meetings shall not substitute for formal meetings at which all proposals are considered and decisions are made. Sufficient advance notice shall be given by the co-facilitators of the dates of the informal meetings and consultations.

10. No meetings will be scheduled at the same time within this process.

V. Provisional work plan

November 2016	<p>First formal meeting on strengthening respect for IHL</p> <p><i>Modalities of the intergovernmental process</i></p> <ul style="list-style-type: none"> - Organizational issues of the intergovernmental process - Work plan and timetable of the intergovernmental process
	<p>Informal consultations</p>
First half 2017	<p>Second formal meeting on strengthening respect for IHL (3 days)</p> <ul style="list-style-type: none"> - Presentation of a detailed report on existing mechanisms (1 day) - Features and functions of a potential forum of States (2 days)
	<p>Informal consultations</p>
Second half 2017	<p>Third formal meeting on strengthening respect for IHL (3 days)</p> <ul style="list-style-type: none"> - Ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums (2 days) - Provisional work plan for 2018, including review of outstanding issues (1 day)

11. The formal meetings to be held in 2018 and 2019 will ensure further discussion on outstanding issues of the previous formal meetings, as well as the format and substance of the outcome of the intergovernmental process to be submitted to the 33rd International Conference.

12. The last formal meeting, to be held in the first half of 2019, will be dedicated to the outcome of the intergovernmental process to be submitted to the 33rd International Conference pursuant to paragraph 2 of Resolution 2 of the 32nd International Conference.

Annex II: Participating delegations

1. Algeria
2. Angola
3. Argentina
4. Armenia
5. Australia
6. Austria
7. Azerbaijan
8. Belarus
9. Belgium
10. Bhutan
11. Bosnia and Herzegovina
12. Botswana
13. Brazil
14. Bulgaria
15. Canada*
16. China
17. Colombia
18. Croatia
19. Cuba
20. Cyprus
21. Czech Republic
22. Democratic People's Republic of Korea
23. Denmark
24. Dominican Republic
25. Ecuador
26. Egypt
27. El Salvador
28. Estonia
29. Finland
30. France
31. Georgia
32. Germany
33. Greece
34. Guatemala
35. Hungary
36. India
37. Indonesia
38. Iran (Islamic Republic of)
39. Iraq
40. Ireland
41. Israel*
42. Italy
43. Japan
44. Jordan
45. Kazakhstan
46. Kenya
47. Kuwait
48. Latvia
49. Lebanon
50. Liechtenstein
51. Luxembourg
52. Madagascar
53. Malaysia
54. Maldives
55. Mali
56. Malta
57. Mexico
58. Monaco
59. Morocco
60. Mozambique
61. Myanmar
62. Namibia
63. Netherlands
64. New Zealand
65. Nicaragua
66. Norway
67. Pakistan
68. Paraguay
69. Peru
70. Philippines
71. Poland
72. Qatar
73. Republic of Korea
74. Russian Federation
75. Rwanda
76. Saudi Arabia
77. Senegal
78. Serbia
79. Singapore
80. Slovakia
81. Slovenia
82. South Africa
83. Spain
84. State of Palestine*
85. Sudan
86. Sweden
87. Switzerland
88. Syrian Arab Republic
89. Tajikistan
90. Thailand
91. The former Yugoslav Republic of Macedonia
92. Tunisia
93. Turkey
94. Ukraine
95. United Arab Emirates
96. United Kingdom of Great Britain and Northern Ireland
97. United States of America*
98. Uruguay
99. Venezuela (Bolivian Republic of)
100. Viet Nam
101. Zambia

* Reference is made to the positions expressed by these delegations in their communications addressed to the Depositary of the four Geneva Conventions of 1949 and circulated by the Depositary by Notifications GEN 4/14 of 21 May 2014 and GEN 4/14 of 27 June 2014.