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ICRC

**Preparatory Discussion in view of the Fourth Meeting of States
on Strengthening Compliance with IHL**

1 and 2 December 2014

BACKGROUND DOCUMENT

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1. Introduction

The purpose of this document is to facilitate discussion among States in follow-up to the Third Meeting of States on Strengthening Compliance with International Humanitarian Law (IHL), held in Geneva on 30 June – 1 July 2014. The Preparatory Discussion of December 2014, for which this document has been drafted, is taking place within the joint initiative launched by the Government of Switzerland and the International Committee of the Red Cross (ICRC) based on Resolution 1 adopted at the 31st International Conference of the Red Cross and Red Crescent in December 2011.

By way of reminder, Resolution 1 entitled “Strengthening Legal Protection for Victims of Armed Conflicts” recognizes “the importance of exploring ways of enhancing and ensuring the effectiveness of mechanisms of compliance with IHL, with a view to strengthening legal protection for all victims of armed conflict”.¹ It invites 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”.² The resolution also expresses 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”.³

Since the 31st International Conference, Switzerland and the ICRC have jointly organized three Meetings of States as well as four intermediary Preparatory Discussions with a view to implementing the relevant provisions of Resolution 1.⁴

Possible elements of a future IHL compliance system were identified at the Second Meeting of States in June 2013 and examined in more detail at two Preparatory Discussions in December 2013 and April 2014. The main focus of examination of the first round of discussion was reporting on national compliance with IHL, and thematic discussions on IHL issues. The aim of the second round was to enable a discussion on the various aspects of the Meeting of States, and to enable a first, preliminary discussion on a possible fact-finding function.

An overview of the results of the two Preparatory Discussions took place at the Third Meeting of States in June 2014. The goal of that Meeting was to further clarify and refine States’ positions regarding these topics, including the possible identification of points on which views are converging, as well as those that require further discussions going forward. On the understanding that no agreement has been reached on any of the issues that were discussed within the ongoing consultation process, and acknowledging that it is not of a decision-making nature, discussions at the Third Meeting of States indicated that most States are of the view that a Meeting of States, as the central pillar of a future IHL compliance system, should be established, and serve to consider national compliance reports in a non-contextual manner and to hold thematic discussions on IHL issues. While no convergence of views emerged in relation to a possible fact-finding function, many States believe it should be part of a future IHL compliance system.

¹ Para. 5 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent.

² Para. 6 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent.

³ Para. 7 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent.

⁴ The Background Documents for and the Chairs’ Conclusions of the Meetings held thus far are available online: <https://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm> or https://www.eda.admin.ch/eda/en/home/aussenpolitik/voelkerrecht/humanitaeres_voelkerrecht/ikrc-initiative.html.

A number of issues were identified as requiring more in-depth examination, mainly relating to the establishment and institutional structure of the Meeting of States. They include: the possible denomination of the future Meeting of States; the set-up, tasks and other aspects related to the organs of the Meeting of States; the periodicity of the Meeting of States in conjunction with the periodicity of the reporting function and of thematic discussions on IHL issues; the membership of the Meeting of States; the participation of observers; resourcing of the Meeting of States, with a particular focus on ensuring that all States are able to participate therein; and the foundational issues related to the establishment of a Meeting of States, as well as its possible relationship with the International Conference of the Red Cross and Red Crescent.

The Preparatory Discussion of December 2014 aims at further clarifying States' positions regarding these issues with a view to concluding the consultation process at the Fourth Meeting of States, scheduled to take place on 23-24 April 2015.

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. It has been generally agreed that the following principles should serve as the overall framework within which the search for possible solutions to the challenge 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 and consensus-based character of the process and the need for the consultations to be based on applicable principles of international law;
- 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, as defined in the Geneva Conventions of 1949 and their Additional Protocols (for the latter as may be applicable), and the parties to them are included;
- The need for the process to ensure universality, impartiality, and non-selectivity;
- The need for the process to be based on dialogue and cooperation.

This Background Document is structured as follows: Section 2 is devoted to the various issues pertaining to the Meeting of States as such. Section 3 addresses the foundational issues related to its establishment as well as the possible relationship of that forum with the International Conference of the Red Cross and Red Crescent. Section 4 provides an overview of the next steps.

Given the great degree of inter-linkage between the subjects addressed in the Background Document, it is suggested that the text be first read in its entirety, before responses to the specific queries posed are approached.

2. Meeting of States

Since the beginning of the consultation process, there has been broad agreement among States on the need for a regular dialogue among States on IHL issues and, in particular, the necessity to improve compliance with this body of law. Previous consultations have confirmed that States generally agree that a Meeting of States (or a body with a different name) would be a useful tool in that regard and should be established.

A first discussion on the structure as well as the possible features and tasks of a Meeting of States took place at the Preparatory Discussion in December 2013. On this basis, the Preparatory Discussion of April 2014 undertook a more in-depth examination of these questions. The results of both rounds of discussion were reviewed at the Third Meeting of States in June 2014 with a view to identifying points on which States' views appear to be converging and questions that require further discussion in order for the facilitators to adequately reflect States' positions in their concluding report to the 32nd International Conference.

The present Background Document drafted for the Preparatory Discussion of December 2014 is based on a comparative analysis of existing Meetings of States established under other frameworks⁵ (regardless of their official designation), with a view to providing more clarity on possible options relating to the questions that were identified as requiring further discussions mentioned above.

2.1. General purpose and objectives of the Meeting of States

Consultation meetings held thus far within the current Swiss-ICRC facilitated process have indicated broad agreement among States on the following general purposes of the Meeting of States as the central pillar of a future IHL compliance system:

- To serve as a dedicated forum for States to discuss issues of common concern and to perform a variety of functions⁶ related to implementation of and compliance with IHL with a view to strengthening respect for this body of law.
- To serve as an institutional anchor for the other elements⁷ of the future IHL compliance system.

More specifically, the view was widely shared among States that the future Meeting of States should not serve to develop new law or to adopt amendments to existing IHL treaties. Rather, it should serve as a platform for States to exchange views, in a flexible and voluntary framework and with a focus on dialogue and cooperation, on issues related to compliance with IHL, as well as on their practical experiences in IHL implementation, the sharing of best practices, the identification of their possible capacity building needs, as well as the identification of challenges in IHL implementation.

⁵ The information provided in the present Background Document is based, as far as possible, on a comparative analysis of existing fora established under other frameworks, notably:

- The Meeting of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (APMBC)
- The Meeting of States Parties to the Convention on Cluster Munitions (CCM)
- The Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects as Amended on 21 December 2001 (CCW)
- The Conference of the States Parties of the Organisation for the Prohibition of Chemical Weapons (OPCW)
- The Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC)
- The Meeting of the States Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC)
- The International Conference of the Red Cross and Red Crescent (International Conference)

⁶ The expression "variety of functions" is to be understood as referring to those functions that States will eventually assign to the Meeting of States and that are being researched within the ongoing consultation process.

⁷ In previous consultations and discussions, in particular at the Third Meeting of States of June 2014, most States were of the view that the functions of thematic discussions on IHL issues and reporting on national compliance with IHL should be linked to the future Meeting of States. It was furthermore suggested that other functions could be linked to the Meeting of States in the future.

Given that the option of amending the Geneva Conventions of 1949 or adopting a new treaty for the purpose of establishing a Meeting of States have not generated support in the consultation process, the future IHL compliance system, including participation in the Meeting of States, will not be of a legally binding nature.

2.2. Denomination

A range of proposals for the denomination of the future Meeting of States were made in past consultation meetings such as: “Meeting of States on IHL”, “Meeting of States on Compliance with IHL”, “Meeting of States Parties to the Geneva Conventions”, or “IHL Compliance Mechanism”. A number of reasons were given for these suggestions including: the desire to reflect the purpose of this forum in a clear and concise manner, the desire to highlight the Geneva Conventions of 1949 as the denominator common to all potential members, and the desire to reflect the legally non-binding nature of the future Meeting of States.

Questions for discussion:

- a) How should the future Meeting of States be called?
- Meeting of States on IHL
 - Meeting of States on Compliance with IHL
 - Meeting of States Parties to the Geneva Conventions
 - IHL Compliance Mechanism
 - Other?

2.3. Structure and organs: set-up and tasks

There is large agreement among States that the structure of the Meeting of States should be as lean and as efficient as possible, with a view to keeping costs down and to avoiding cumbersome procedures. The structure of the Meeting of States in terms of its organs should therefore be limited to what is strictly necessary to ensure that its functions are performed in an effective manner.

In this context, it should be noted that the need to adjust the institutional structure of the future Meeting of States may arise in the future. It is thus submitted that the Meeting of States should be set up in a way that would allow for an evolution of the institutional structure should States deem this necessary going forward.

In previous consultations, a plenary session was envisaged as the principal body of the Meeting of States. It was likewise said that a Chair, a Bureau and a Secretariat would be important organs of this forum. Their respective set-up and tasks are discussed below, keeping the above mentioned considerations in mind.

2.3.1. Plenary sessions

It was generally understood that the work of the Meeting of States would mainly take place in plenary sessions, which would be the principal body of the new IHL compliance system. The tasks to be performed in plenary will be discussed separately below in order to distinguish them from related activities that may be required in terms of administrative, organizational and substantive preparation of and support to the Meeting of States, that would be performed by other organs.

i. Tasks

In previous consultations, notably at the Third Meeting of States held in June 2014, most States affirmed that plenary sessions should serve to consider State reports on national compliance with IHL in a non-contextual manner. Different views were expressed regarding the exact modalities, but there was consensus that State reports should not be reviewed on an individual basis. Hence, the prevailing view appeared to be that a dedicated session (or sessions) of the plenary would be devoted to the discussion of a single report related to national compliance with IHL. The duration of that discussion will of course depend on the final modalities that will be adopted.

Most States also agreed that plenary sessions should serve to hold thematic discussions on IHL issues. Thematic discussions would thus constitute another important item on the agenda of the plenary sessions. Most States considered that the format of such discussions, as well as the question of the selection of topics, could be decided on once the Meeting of States is established.

In addition to a reporting function and thematic discussions on IHL issues, many States considered that a fact-finding function should be part of a future IHL compliance system given that fact-finding has been part of the IHL compliance toolbox since its inception as a means for preventing further violations.⁸ Different views were expressed in this regard; while some States expressed a strong interest in continuing discussions on the establishment of a dedicated IHL fact-finding function, others expressed reservations. Still others were favorable to the idea of examining ways in which the International Humanitarian Fact-Finding Commission (IHFFC) could be utilized by the Meeting of States under a mandate distinct from that provided for in Additional Protocol I (which the current process does not and cannot aim to modify). It is submitted that a discussion of the issue of fact-finding should be maintained going forward and revisited by the Meeting of States.

As was highlighted in previous consultation meetings, most Meetings of States established under other international frameworks have, in addition to specific compliance functions, a general competence with regard to the application or implementation of the relevant body of law.⁹ An important number of States were thus of the view that the future Meeting of States

⁸ See Article 30 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field of 1929.

⁹ See, e.g.:

- Art. 11(1) of the CCM: “The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Convention” (see also similar wording in Art. 10(1) of the APMBC);
- Art. 17(4) of the Arms Trade Treaty (ATT): “The Conference of States Parties shall: (a) review the implementation of this Treaty, including developments in the field of conventional arms; (b) consider and adopt recommendations regarding the implementation and operation of this Treaty, in particular promotion of its universality”;
- Para. 4(e) of the Decision on a Compliance Mechanism Applicable to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, adopted at the Third Review Conference of the High Contracting Parties to the CCW, see Annex II of the Final Report, CCW/CONF.III/11 (Part II): “The work of the Meeting will include: Consideration and undertaking of any additional actions that may be required for the achievement of the objectives of the Convention and its annexed Protocols”;
- Art. 13(3)(a) of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the CCW): “The work of the conference shall include review of the operation and status of this Protocol”;
- Art. 8(19) of the Chemical Weapons Convention (CWC): “[The Conference] shall consider any questions, matters or issues within the scope of this Convention [...]. It may make recommendations and take decisions on any questions, matters or issues related to this Convention raised by a State Party or brought to its attention by the Executive Council”, Art. 8(20)

should have such a competence, on the understanding that any decisions/activities undertaken would be compatible with the core principles identified above, in particular non-politicization of the future IHL compliance system, its legally non-binding nature, as well as its purposes. Such decisions/activities could, as outlined in the Background Document prepared for the Preparatory Discussion of April 2014, include the establishment of an inter-sessional program of work,¹⁰ the establishment of working groups attended by State representatives at the expert level to prepare particular topics for consideration at a specific plenary session, or decisions on follow-up activities, as may be deemed necessary, related to the work of the Meeting of States.¹¹ A general competence as described above would also appear to be useful given the need to allow for an evolution of the Meeting of States should this prove necessary.

In addition to tasks of a substantive nature aimed at strengthening compliance with IHL, a number of procedural tasks are also usually performed by plenary bodies, such as:

- Adoption of the Rules of Procedure;
- Adoption of the budget of the Meeting of States, as well as of other bodies, such as the Secretariat (see below);
- Election of officers, such as the Chair, the Vice-Chairs and members of the Bureau;
- The establishment, if necessary, of subsidiary bodies and the election of members of such bodies;
- Review and oversight of the work of a subsidiary body, or another organ, such as the Secretariat.

The exact tasks of a procedural nature, and the related modalities, are usually provided for in the Rules of Procedure, which in the present context could likewise be adopted at the first Meeting of States.

Questions for discussion:

- a) Are the possible compliance tasks to be performed by the Meeting of States in plenary adequately established above? The plenary would:
- Consider, in a non-contextual manner, national compliance reports
 - Hold thematic discussions on IHL issues
 - Decide on actions, as may be necessary, with respect to general matters concerning compliance with and implementation of IHL

of the CWC: “The Conference shall oversee the implementation of this Convention, and act in order to promote its object and purpose. The Conference shall review compliance with this Convention” and Art. 8(21)(k) of the CWC: “The Conference shall take the necessary measures to ensure compliance with this Convention and to redress and remedy any situation which contravenes the provisions of this Convention”;

- Art. 10(2) of the Protocol on Explosive Remnants of War of 28 November 2003 (Protocol V to the CCW): “The work of the conferences of High Contracting Parties shall include: (a) review of the status and operation of this Protocol; (b) consideration of matters pertaining to national implementation of this Protocol, including national reporting or updating on an annual basis”.

¹⁰ See, e.g., the inter-sessional program of work of the Meeting of the States Parties to the APMB (para. 25 of the Final Report of the first Meeting of the States Parties to the APMB, 1999; general information on the inter-sessional program of work is available online: <http://www.apminebanconvention.org/intersessional-work-programme/intersessional-work-programme-background/>) and the Meeting of States Parties to the CCM (see para. 27 of the Final Report of the second Meeting of States Parties to the CCM, 2011; general information on the inter-sessional program of work is available online: <http://www.clusterconvention.org/meetings/intersessional-meetings/>).

¹¹ Such decisions could relate to any action that may be necessary or useful to further the purposes of the Meeting of States, such as measures aimed at facilitating the exchange of best practices or supporting States in their capacity-building efforts.

- b) Are the possible procedural tasks to be performed in plenary adequately established above? Such tasks include:
- Adoption of the Rules of Procedure
 - Adoption of the budget of the Meeting of States, as well as of other bodies, such as the Secretariat
 - Election of officers, such as the Chair, the Vice-Chairs and members of the Bureau
 - The establishment, if necessary, of subsidiary bodies and the election of members of such bodies
 - Review and oversight of the work of a subsidiary body, or another organ, such as the Secretariat
- c) Have any compliance functions or procedural tasks been omitted? If so, which?

ii. Periodicity

At the Meeting of States in June 2014, States expressed an interest in further discussing the periodicity of the future Meeting of States. More specifically, proposals were made for the Meeting of States to take place annually or, alternatively, biennially.

As highlighted in previous Background Documents, Meetings of States established under other international frameworks take place annually.¹² The UN Human Rights Council holds three regular sessions per year.¹³

It is submitted that a number of factors should be taken into account in determining periodicity, including the purposes of the Meeting of States outlined above, the periodicity of the reporting function and of thematic discussions on IHL issues, and the average workload of the plenary sessions.

Periodicity should be established having regard to the purposes of the Meeting of States and the overall goal of strengthening compliance with IHL. Annual meetings bear the distinct advantage of ensuring that States are able to engage in a more frequent dialogue on issues related to compliance with IHL, to discuss experiences in its practical application, to exchange best practices and identify possible capacity building needs, as well as to examine common challenges in IHL implementation. Annual meetings appear to be necessary for the creation of a positive momentum for strengthening compliance with IHL. Annual meetings would also be a way of ensuring that the agenda, as well as the substantive preparations of each plenary session, remain manageable.

As regards the reporting function, annual Meetings of States would reduce the number of national reports to be considered and amalgamated in a single non-contextual document at each Meeting. As highlighted in the Chairs' Conclusions of the Third Meeting of States of June 2014, different types of national reports on compliance with IHL are currently being considered. With regard to what have been called "basic reports", it is submitted that the submission of such reports could be staggered over a period of four years. Thus, a quarter of the total number of participating States would be expected to submit a basic report during the first four annual Meetings (with the periodicity of subsequent updates still to be determined). If the Meetings were biennial, the basic reports of half of the participating States would need

¹² Art. 112(6) of the Rome Statute; Art. 8(11) of the CWC; Art. 31(1) of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996; Art. 11(2) of the CCM. In cases where the periodicity is not determined in the document establishing the respective body, most fora have established a practice of annual meetings (see, e.g. the Meetings of the High Contracting Parties to the CCW which take place annually, see [http://www.unog.ch/80256EE600585943/\(httpPages\)/700BD7373A1FE2BCC12573CF005AFC00?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/700BD7373A1FE2BCC12573CF005AFC00?OpenDocument)).

¹³ Para. 11 of UN General Assembly resolution 60/251.

to be reviewed and amalgamated. The same consideration applies to possible subsequent reports, whether “current developments” or “thematic reports”. Annual meetings would clearly allow for more in-depth discussions, given that less information would need to be processed compared to biennial meetings.

Annual Meetings would also allow States to identify and discuss thematic issues of importance for IHL in a more meaningful manner. Given the number of thematic IHL issues currently being discussed in other international fora, it would appear necessary for the credibility a future IHL compliance system that it be able to discuss such issues in a sustained rhythm. Biennial meetings would likely not permit the creation of an awareness of the specificity of IHL and would not help raise the profile of this body of international law.

Questions for discussion:

- a) Would annual plenary sessions permit the Meeting of States to achieve its purposes?
- b) What other periodicity may be suitable? What would be the respective advantages and disadvantages?
- c) How should the periodicity of the Meeting of States relate to the periodicity of national reports on compliance with IHL and thematic discussions on IHL issues?

iii. Public and private meetings

Plenary meetings held within existing international frameworks, as well as meetings of subsidiary bodies with a general membership, usually take place in public unless the meeting decides otherwise.¹⁴ Meetings of subsidiary bodies with a limited membership, on the other hand, are often held in private unless declared public.¹⁵ Public meetings are those open to the attendance of interested persons, such as academics or journalists (in addition, of course, to members and observers), with the deliberations usually reflected in a summary report. Participation in private meetings is limited to members of the relevant forum and possibly certain observers.¹⁶ Decisions taken in private meetings, but not the deliberations themselves, may be announced at a subsequent public meeting.¹⁷

Public meetings help increase transparency. This can, in turn, be a means of ensuring the requisite visibility of the proceedings taking place at the Meeting of States; of increasing the broader public’s understanding of the activities and purposes of the Meeting of States, and

¹⁴ See, e.g., Rule 25 of the Rules of Procedure of the Meeting of States Parties to the CCM; Rule 1(5) of the Rules of Procedure of the Meetings of the States Parties to the APMBC; Rule 42 of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC; Rule 52 of the Rules of Procedure of the Conference of the States Parties to the OPCW.

¹⁵ See, e.g., Rule 42(2) and (4) of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC; Rule 45 of the Rules of Procedure of the Meeting of the High Contracting Parties to the CCW; Rule 52 of the Rules of Procedure of the Conference of the States Parties to the OPCW.

¹⁶ See, e.g., Rules 46 – 49 of the Rules of Procedure of the Meeting of the High Contracting Parties to the CCW: international organizations with observer status in the UN, organs of the UN and the ICRC may participate in the deliberations of the meeting as well as its subsidiary organs (which are, as a general rule, held in private, see Rule 45). Representatives of non-governmental organizations, on the other hand, are entitled to participate only in public meetings of that framework. See also Rule 35 of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC, according to which the UN Secretary-General or a representative may participate in private meetings of subsidiary bodies of that framework if the issues taken up by that body are of interest to the UN. Other observers may participate in the deliberations of public meetings only (see Rules 92 and 93).

¹⁷ See, e.g., Rule 42(4) of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC.

thus of increasing public awareness of IHL issues and of the challenges related to compliance with IHL.

Questions for discussion:

- a) Are there additional considerations in favor of or against public plenary sessions of the Meeting of States?
- b) Are there topics of discussion at the future Meeting of States which would require holding private meetings? What would they be?

2.3.2. Chair

As outlined in the Background Document distributed for the Preparatory Discussion of April 2014, Meetings of States are usually presided by a Chair. He/she is responsible for coordinating the substantive preparation of the meetings and for their orderly conduct.¹⁸ In the present context, the Chair could be tasked with drawing up the draft agenda of the Meeting of States in consultation with the Bureau, and of coordinating the work of the Meeting of States in general. In between meetings, the Chair could serve as the contact point on all relevant issues. At the Third Meeting of States in June 2014, most delegations considered that it would be useful to entrust a Chair with such tasks.

At the Third Meeting of States in June 2014 some delegations suggested that the Chair could also be assigned certain activities related to some of the compliance functions outlined above, such as the drafting of summaries of the Meeting of States' discussion of national compliance reporting, as well as of thematic discussions on IHL issues. In this context, other possible actors were also mentioned, namely the ICRC, the Bureau, and the Secretariat. A decision on which actor should perform which tasks may be taken at a later stage.

As regards the Chair's length of term, a few States suggested that it should correspond to the periodicity of the Meeting of States. It is submitted that this option would not be conducive to the need for continuity in the work of the Meeting of States and that it would pose certain practical challenges. For instance, procedures would need to be established to ensure that the Chair is formally involved in the preparation of the upcoming Meeting of States over which he/she will actually preside (i.e. while the outgoing Chair is still in charge).¹⁹ A number of States suggested, instead, that the Chair of the future Meeting of States should be elected for a longer period, covering two or more Meetings of States, so as to increase the continuity and efficiency of the preparations for and conduct of the sessions.

¹⁸ For an illustration of the tasks performed by the Chair during plenary sessions, see Rule 14 of the Rules of Procedure of the Seventh Review Conference of the States Parties to the BWC, applicable *mutatis mutandis* to the Meetings of States Parties to the BWC: "(1) In addition to exercising the powers conferred upon him elsewhere by these rules, the President shall preside at the plenary meetings of the Conference, he shall declare the opening and closing of each meeting, direct the discussion, ensure observance of these rules, accord the right to speak, ascertain consensus, put questions to the vote and announce decisions. He shall rule on points of order. The President, subject to these rules, shall have complete control of the proceedings and over the maintenance of order thereat. The President may propose to the Conference the closure of the list of speakers, a limitation on the time to be allowed to speakers and on the number of times the representative of each State may speak on a question, the adjournment or the closure of the debate and the suspension or the adjournment of a meeting. (2) The President, in the exercise of his functions, remains under the authority of the Conference."

¹⁹ This is for example the challenge for the Meetings of the States Parties to the APMBBC, which elect the President at the beginning of each meeting during which he/she actually holds that function (see Rule 5 of the Rules of Procedure of Meeting of the States Parties to the APMBBC).

The election of the Chair, and other modalities related to the performance of his/her functions, were identified at the Third Meeting of States as issues warranting further examination. Considering that the Chair is usually a member of the Bureau *ex officio*, his/her election and other questions are discussed below.

Questions for discussion:

- a) Should a Chair perform the following tasks?
- Coordinate the substantive preparation of the Meeting of States (including drawing up of the draft agenda in consultation with the Bureau)
 - Ensure the orderly conduct of the Meeting of States
 - Coordinate the work of the Meeting of States in general
 - Serve as the contact point on all relevant issues between two meetings
- b) Would it be beneficial for the efficiency and continuity of the Meeting of States if the Chair would act in that capacity over a period covering two or more Meetings?

2.3.3. Bureau

In previous consultations within the ongoing Swiss-ICRC facilitated process, there was broad agreement that it would be useful to have a Bureau (sometimes known under different designation), that would serve to ensure the effective preparation and conduct of the Meeting of States. At the Third Meeting of States in June, many States expressed an interest in further examining the composition of the Bureau, the election of its members, the length of their terms, and the Bureau's working modalities.

i. Tasks and working modalities of the Bureau

Most States who expressed their view on this issue at the Preparatory Discussion of April 2014 stated that the Bureau should be responsible for the substantive and operational preparation of the Meetings of States and for ensuring their orderly conduct. To that end, it could assume the following procedural tasks:

- Consider the draft agenda drawn up by the Chair;
- Assist the Chair in the discharge of his/her duties during the plenary sessions, as well as between two meetings;
- Coordinate the work of the Meeting of States, including in relation to documents that may be submitted to the Meeting of States.

In addition to these procedural tasks, the Bureau could possibly play a role in the operationalization of the compliance functions outlined above, that is, in the preparation and organization of thematic discussions on IHL issues and of the discussion on national reports on compliance with IHL. These questions were examined in some detail at the Third Meeting of States in June 2014²⁰ and may be decided on in the process of establishing the future Meeting of States.

While a few States were of the view that the future Bureau need not be constituted on a permanent basis, the performance of procedural and possibly substantive tasks may require that regular meetings of the Bureau be held both between and, in particular, ahead of plenary sessions of the Meeting of States. Most States were of the view that the Bureau should have

²⁰ See Chairs' Conclusions of the Third Meeting of States of June 2014. It was suggested that the Bureau could prepare non-analytical compilations of national reports on compliance with IHL as a basis for discussion at the Meeting of States, produce factual summaries of the debates on the national reports on compliance with IHL, as well as of thematic discussions on IHL issues, or (pre-) select topics for such thematic discussions.

the flexibility to meet as often as its members may consider necessary to ensure the effective preparation of plenary sessions.²¹

ii. Composition of the Bureau and election of its members

As outlined in the Background Document for the Preparatory Discussion of April 2014, a Bureau is usually composed of a Chair, Vice-Chairs and additional members on occasion.²²

In previous discussions, rather few indications were given regarding the size of the future Bureau. According to a proposal supported by some States, the Bureau should be comprised of six members. One seat (possibly the role of the Chair) could be attributed to Switzerland given the country's permanent neutrality and special role in the development of IHL, and the remaining five seats could be attributed to other States on the basis of equitable geographical representation. Other delegations simply expressed a preference for a relatively small Bureau.

It is submitted that the Bureau's size should be determined by the need, on the one hand, for efficiency, and, on the other, by the need to ensure that it is sufficiently representative and is able to reflect the common interests of States. Taking these considerations into account, it would appear the future Bureau could have either six members (a Chair and a representative of each of the geographic regions) or eleven members (a Chair and two representatives of each of the geographic regions).

A number of criteria related to the election of members of the Bureau were suggested by States in previous consultations:

- Equitable geographical representation (it was suggested that this criterion should also be applied to elections for the Chair and the Vice-Chairs);
- The candidate's commitment to strengthening compliance with IHL,²³ as evidenced by the State's timely submission of national compliance reports or the performance of other voluntary commitments and activities related to the IHL compliance system;
- The candidate's expertise in IHL;
- The candidate's commitment to serving the common interests of participating States.

iii. Length of terms of the members of the Bureau

In most existing international frameworks members of the Bureau are elected at the beginning of each meeting and remain in function until the following meeting.²⁴ In the present context, different options were put forward.

²¹ See, e.g., Rule 29(3) of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC: "The Bureau shall meet as often as necessary, but at least once a year".

²² The Bureau of the Assembly of the States Parties to the Rome Statute of the ICC consists of a President, two Vice-Presidents and 18 members (Art. 112(3) of the Rome Statute); the General Committee of the Meeting of the High Contracting Parties to the CCW consists of the President, ten Vice-Presidents, and the Chairpersons and Vice-Chairpersons of other committees (Rules 10-13 of the Rules of Procedures of the Meeting of the High Contracting Parties to the CCW); the Bureau of the Human Rights Council consists of a President and four Vice-Presidents (Rule 9 of the Rules of Procedure of the UN Human Rights Council, annexed to its resolution 5/1).

²³ In electing the Member States of the UN Human Rights Council, the General Assembly shall take into account the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto (para. 7 of UN General Assembly resolution 60/251).

²⁴ See Rules 5 of the Rules of Procedure of the Meeting of the States Parties to the APMBC and the CCM; Rule 35 in conjunction with Rule 1 of the Rules of Procedure of the Conference of the States Parties of the OPCW; the terms of the members of the Bureau of the UN Human Rights Council last for one year, covering thus three regular sessions and possible special sessions (see Rule 9(a) of the Rules of Procedure of the Human Rights Council, annexed to its resolution 5/1). The Bureau of the

Many States suggested that the importance of continuity should be kept in mind. This could be achieved by electing members of the Bureau for terms that would span more than one (annual) session of the Meeting of States and, possibly, by staggering elections - for example, renewing one third of the Bureau's members at each Meeting of States, or alternating the election of the Chair and that of other Bureau members.

Other States were of the view that the term of members of the Bureau should start at the beginning of each Meeting of States and end at the following Meeting. This approach would allow for a greater turn-over of members and therefore allow more States to assume responsibilities in this body over time.

With a view to increasing ownership over the Meeting of States by ensuring more frequent turn-over within the Bureau while enabling continuity at the same time, a combination of both longer and shorter terms could be envisaged. Thus, for example, the term of the Chair could include more than one Meeting of States, while the other positions within the Bureau could be renewed at more frequent intervals, or vice versa.

Questions for discussion:

- a) Are there any additional issues that need to be examined in relation to the tasks and working modalities of the Bureau by the conclusion of the consultation process,?
- b) In addition to those outlined below, are there any further procedural tasks that should be performed by the Bureau?
 - Consider the draft agenda drawn-up by the Chair
 - Assist the Chair in the discharge of his/her duties during plenary sessions, as well as between two meetings
 - Coordinate the work of the Meeting of States, including related to documents that may be submitted to the Meeting of States
- c) In addition to those outlined below, are there further criteria that should be taken into account in electing members of the Bureau?
 - Equitable geographic representation
 - The candidate's commitment to strengthening compliance with IHL (as evidenced by the State's timely submission of national compliance reports or the performance of other voluntary commitments and activities related to the IHL compliance system)
 - The candidate's expertise in IHL
 - The candidate's commitment to serving the common interests of participating States
- d) How long should the members of the Bureau remain in function?
 - Their term should extend to one Meeting of States
 - Their term should cover two or more Meetings of States (with the elections possibly being staggered)
 - The Chair should serve for longer periods while the other members of the Bureau should be renewed more frequently (or vice-versa)

2.3.4. Secretariat

As outlined in previous consultations and confirmed at the Third Meeting of States of June 2014, a range of support services will need to be provided to ensure the efficient preparation and conduct of the Meetings of States. These include typical secretariat functions of an

Assembly of States Parties to the Rome Statute of the ICC, whose members are elected for three-years terms, stands out as an exception (see Rule 29(1) of the Rules of Procedures of the Assembly of States Parties to the Rome Statute of the ICC).

administrative and organizational nature, but also certain tasks of a technical nature related to the operationalization of the national reporting and thematic discussions compliance functions. Different possible set-ups were mentioned, notably the establishment of a Secretariat.

i. Necessary tasks in support of the Meeting of States

In the Background Document prepared for the Preparatory Discussion of April 2014 and in consultations that have taken place since, the following core secretariat functions were identified:

- Conference services/conference secretariat:
 - Coordination of the preparation of and conduct of the meetings (necessary arrangements for interpretation, conference rooms, catering, supplies, equipment, security services, ensuring logistical and administrative arrangements during the meetings, etc.);
 - Preparation of meeting documentation, including editing, translation, printing and distribution;
- General secretarial tasks:
 - Necessary arrangements for meetings of the Bureau;
 - Receipt and distribution of the communications of States, including national reports on compliance with IHL;
 - Maintenance of records and archives.

A further series of tasks of an organizational nature were identified, related primarily to the work of the Chair and Bureau, and to promoting the work of the Meeting of States more broadly:

- Supporting the Chair and Bureau, including note-taking during meetings, the drafting of speaking points/statements, the facilitation of contacts with States and other relevant actors, etc;
- Liaising with intergovernmental organizations and other relevant actors, including: coordination of meeting dates, attendance of meetings relevant to the work of the future Meeting of States, providing relevant actors with information on important developments linked to the Meeting of States, etc;
- Liaising with States participating in the Meeting of States, including: facilitation of exchanges of best practices, matching offers and requests for capacity-building, receiving requests for assistance in the drafting of national compliance reports, etc;
- Drafting (possibly on behalf of and at the request of the Chair) of non-legal documents, such as financial reports of the Meeting of States, reports on the activities of the organs of the Meeting of States, or other documentation as required by the Meeting of States;
- Website management;
- Administering the funds of the Meeting of States (see also below, 2.6. Resourcing);
- Maintaining public relations.

In addition to the administrative/logistical and organizational tasks above, a number of States suggested in previous consultations that the Secretariat could also play a role in relation to the thematic discussions and reporting compliance functions. More specifically, it was suggested that the Secretariat could produce non-analytical compilations of the national reports as a basis for discussion at the Meeting of States, as well as factual outcome summaries of discussions of national reports at the Meeting of States, and of thematic discussions on IHL issues.²⁵ It is submitted that a decision on whether the Secretariat or

²⁵ In this context, it should be highlighted that most States were of the view that the ICRC, considering its expertise in the field of IHL, should play a key role in providing expert support to the Meeting of States, such as by producing generic or analytical reports as a basis for discussion, at the Meeting of States, on the national compliance reports, drafting background documents for thematic discussions, or other expert advice that the Meeting of States may seek from the ICRC. The technical tasks that

another body should perform such technical tasks may be taken in the process of establishing the Meeting of States.

ii. Structure of a Secretariat and financial implications

It was underlined throughout the consultation process that the structure of the future Meeting of States should be as lean and cost-efficient as possible, a consideration that is relevant to the structure and size of a possible Secretariat as well.

By way of comparison, bodies of a similar nature - Secretariats and Implementation Support Units (ISUs) - established within the framework of existing Meetings of States have between 2.5²⁶ and 9²⁷ full-time equivalent (FTE) positions.²⁸ The salary and social costs for one FTE position in the various secretariats/ISUs based in Geneva amount, on average, to approximately 180'000 CHF a year.²⁹ More specifically, the salaries and social costs of existing secretariats/ISUs examined for the purpose of the present discussion range from between 416'000 CHF for 2.5 FTE positions³⁰, 838'293 CHF for 4.1 FTE positions³¹ to 2'101'781 CHF for 9 FTE positions³². An estimation of other costs, such as for the rent of office space and equipment, insurance, information technology and telecommunications, website management, etc., cannot be provided at this point as they are invariably linked to the tasks of a Secretariat, and thus to its size.

It is submitted that a decision on the structure and size of the Secretariat, including what type of expertise the employees or possibly an executive officer should ideally possess, could be taken once the Meeting of States is established and the Secretariat's tasks are known. Before that, a discussion of the way in which a Secretariat might be established is warranted. A few possible options are briefly outlined below.

may be attributed to the Secretariat and that are discussed here should be complementary to a possible expert role of the ICRC.

²⁶ See Report of the CCW Implementation Support Unit, CCW/MSP/2013/5, submitted to the 2013 Meeting of the High Contracting Parties to the CCW.

²⁷ Permanent Secretariat of the Assembly of States Parties to the Rome Statute of the ICC, see para. 1 of Resolution ICC-ASP/12/Res.1, adopted at the twelfth session of the Assembly of States Parties to the Rome Statute of the ICC in 2013.

²⁸ It should be highlighted that the Implementation Support Units established under other frameworks do not usually provide secretarial services related to the preparation and organization of the relevant Meeting of States as such.

²⁹ The actual or budgeted costs, depending on the availability of the information, of the ISUs for the APMBC, the BWC, the CCM (based on the estimated costs as outlined in the document "Description of a possible Implementation Support Unit", submitted by the President of the Meeting of States Parties to the CCM to the Third Meeting of States Parties in 2012, CCM/MSP/2012/WP.3), and the CCW (including the ISUs for Amended Protocol II and Protocol V) were taken into account.

³⁰ See Report of the CCW Implementation Support Unit, submitted to the Meeting of the High Contracting Parties to the CCW in 2013, CCW/MSP/2013/5. The number reflects the final expenditures for the year 2012, converted into Swiss francs, combining the costs incurred by the ISU of the CCW, as well as of its Amended Protocol II and Protocol V. The costs for the ISU of the CCM were estimated to amount to 393'000 CHF for 2.5 FTE positions (see Description of a possible Implementation Support Unit, submitted by the President to the Meeting of the States Parties to the CCM in 2012, CCM/MSP/2012/WP.9). The establishment of the ISU of the CCM is currently underway.

³¹ See Implementation Support Unit 2014 work plan and budget, submitted by the Director of the Implementation Support Unit and endorsed by the Coordinating Committee on 1 November 2013, Meeting of the States Parties to the APMBC in 2013, APLC/MSP.13/2013/3.

³² See Proposed Programme Budget for 2015 of the International Criminal Court, considered at the Assembly of States Parties to the Rome Statute of the ICC in 2014, ICC-ASP/13/10. The number reflects the approved budget for 2014, converted into Swiss francs.

iii. Establishing a Secretariat

As mentioned above, most existing frameworks rely on the support of a secretariat. While only exceptionally secretariats are explicitly provided for in the relevant treaty,³³ most existing secretariats are established by way of a decision of the relevant Meeting of States.³⁴ In the present context, three broad models related to the institutional establishment of a Secretariat were suggested in previous consultations within the current process:

Option 1: A new stand-alone entity

The Secretariat could be established by the Meeting of States as a new stand-alone entity under the national law of the State in which it would be located (e.g. an association or foundation created under Swiss law). This option would ensure that States have exclusive responsibility and possibly a stronger sense of ownership. This solution would imply States' direct involvement in the operation of the Secretariat, including on issues such as the management of staff and financial resources. It would also probably imply the creation of a governance structure (such as a governing board with States' participation) to supervise the new stand-alone entity. This solution would require agreement among States with respect to the aspects mentioned above, and would very likely imply higher costs related to the establishment of a new infrastructure from "scratch".

Option 2: The secretarial functions are performed by a State/or by States on the Bureau on a rotating basis

In the consultations held thus far it was suggested that a State (Switzerland was specifically mentioned), could be entrusted with the Secretariat, or that States participating in the Bureau could be tasked with Secretariat functions on a rotating basis. The willingness and capacity of a State, or of States (on the future Bureau), to individually undertake a Secretariat role, as well as the logistical and financial implications of this proposal, were not elaborated and would merit discussion. It would appear that "assigning" the Secretariat to any given State could give rise to difficult logistical, administrative and financial issues. The Secretariat would not be responsible to the Meeting of States, but to the State operating the Secretariat. This would not be conducive to a sense of shared ownership of the participating States over the Meeting of States as well as its Secretariat.

Option 3: The Secretariat has a link to the ICRC

Many States that expressed their view on this issue seemed to prefer a solution according to which the Secretariat would be hosted by an already existing entity, with the ICRC being specifically mentioned in this regard. By way of illustration, the Implementation Support Units of the APMBBC³⁵ and of the CCM³⁶ are hosted (in the latter case will be hosted) by the

³³ See, e.g., Art. 18 of the ATT.

³⁴ See, e.g., para. 33 of the Final Report of the Third Meeting of the States Parties to the APMBBC 2001, APLC/MSP.3/2001/1; para. 29(a) of the Final Report of the Second Meeting of States Parties to the CCM 2011, CCM/MSP/2011/5; resolution ICC-ASP/2/Res.3 adopted at the Second Assembly of States Parties to the Rome Statute of the ICC; paras. 34-37 of the Final Report of the Meeting of the High Contracting Parties to the CCW 2009, CCW/MSP/2009/5. In the context of the CCW, it should be noted that the Meeting of the High Contracting Parties itself is not foreseen in the CCW, but established by way of a decision of the Review Conference of the High Contracting Parties to the CCW (see Decision on a Compliance Mechanism Applicable to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, annexed to the Final Report of the Third Review Conference of the High Contracting Parties to the CCW, CCW/CONF.III/11 (Part II)).

³⁵ See, e.g., the Implementation Support Unit for the APMBBC, hosted by the Geneva International Centre for Humanitarian Demining (<http://www.apminebanconvention.org/implementation-support-unit/overview/>). See also the Agreement between the States Parties to the Convention on the

Geneva International Center for Humanitarian Demining (GICHD) on the basis of an agreement between the States Parties to these treaties and the GICHD. In the present context, the ICRC could be invited by the future Meeting of States to play a broadly similar role, possibly for an initially defined period of time, provided that respect for the organization's principles, mandate and standard working modalities, as well as perceptions thereof could be maintained.

Questions for discussion:

- a) What support services should the Secretariat provide?
- Conference services/conference secretariat:
 - o Logistical and administrative coordination of the preparation and conduct of the meetings
 - o Preparation of meeting documentation
 - General secretarial tasks:
 - o Necessary arrangements for meetings of the Bureau;
 - o Receipt and distribution of State communications
 - o Maintenance of records and archives.
 - Providing support to the Bureau and the Chair
 - Liaising with intergovernmental organizations and other relevant actors
 - Liaising with States participating in the Meeting of States
 - Drafting of non-legal documents
 - Website management
 - Administrate the funds of the Meeting of States
 - Maintain public relations
 - Producing non-analytical compilations of national compliance reports
 - Producing factual summary outcomes of discussions of national reports by the Meeting of States
 - Producing factual summary outcomes of thematic discussions on IHL issues
- b) Should a decision on the size of the Secretariat, including on the expertise that may be required, be taken when its tasks are better known?
- c) Which option outlined below is preferred for establishing a Secretariat?
- Option 1: New stand-alone entity
 - Option 2: Secretarial functions are performed by a State/or by States on the Bureau on a rotating basis
 - Option 3: The Secretariat has a link to the ICRC

2.4. Membership

The membership of the future Meeting of States was examined at the Preparatory Discussion of April 2014, as well as at the Third Meeting of States in June 2014. Most States who opined on this issue were of the view that membership should be open to all States Parties to the 1949 Geneva Conventions. These treaties form the backbone of modern IHL and have been universally ratified, thus providing an objective and inclusive criterion for determining the membership of the future Meeting of States. In this context it was stressed that, while participation in the Meeting of States will not be legally binding, universal

Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction and the Geneva International Centre for Humanitarian Demining (GICHD) on Implementation Support for the Convention, signed on 6 September 2011.

³⁶ See para. 29 of the Final Report of the fourth Meeting of States Parties to the CCM in 2013, CCM/MSP/2013/6. The establishment of the ISU of the CCM is currently under way.

participation will be of great importance to the effectiveness of this forum and should be the common goal.

Questions for discussion:

- a) Should the participation in the future Meeting of States be open to all States Parties to the Geneva Conventions of 1949? Are there other criteria that may be taken into account?

2.5. Observers

2.5.1. General

Various views were expressed in previous consultations within the Swiss-ICRC facilitated process on the issue of whether and how actors other than States could take part in the future Meeting of States as observers.

There was large agreement that some form of participation of observers at the Meeting of States would be useful and that appropriate modalities should be established. Three groups of actors were mentioned as possible observers: intergovernmental organizations and entities, the components of the International Red Cross and Red Crescent Movement (other than the ICRC), and civil society actors. The possible procedures and modalities for their participation are outlined separately below, taking into account their specific nature and roles.

As outlined in the Background Document for the Preparatory Discussion of April 2014, the participation of observers is a regular feature of Meetings of States established under other international frameworks.³⁷ It allows States to interact with actors that have relevant experience, expertise and information related to the subject-matter at hand and that work in the same or similar areas, allowing for the reception of additional insights and perspectives. The participation of observers also enhances transparency and reduces the risk of duplication of efforts, in particular with regard to activities aimed at the promotion of IHL. Interaction with observer entities may also lead to the creation of synergies and mutually enhance efforts taken on the basis of different but complementary mandates. There was large agreement that such interaction should take place in accordance with the guiding principles of the current process, in particular non-politicized dialogue, and that the State-led nature of the future Meeting of States must be taken into account in developing appropriate modalities for observer participation.

2.5.2. The components of the International Red Cross and Red Crescent Movement

In the Preparatory Discussion of April 2014 and in the Third Meeting of States in June/July 2014, several delegations noted that it would be important to find ways of bringing the experience of the other components of the International Red Cross and Red Crescent Movement (in addition to the ICRC) into the discussions of the Meeting of States, depending on the topics being examined. The International Red Cross and Red Crescent Movement is composed of the National Red Cross and Red Crescent Societies (hereafter NRCS), the International Federation of Red Cross and Red Crescent Societies (hereafter the International Federation) and the ICRC.³⁸ The Movement forms the largest humanitarian

³⁷ See, e.g., Art. 11(4) of the APMBC; Art. 11(3) of the CCM. Most other frameworks lay down the modalities for the participation of observers in their Rules of Procedure, see the relevant examples below.

³⁸ All components of the Movement are guided by the same seven Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. The bodies that govern the Movement are the International Conference of the Red Cross and Red Crescent, the Council of

network in the world. The Statutes of the International Red Cross and Red Crescent Movement (hereafter Statutes)³⁹ attribute different roles to each of the components. Considering its unique status, the possible role of the ICRC is addressed separately in this document and will not be repeated here.

NRCS embody the work and principles of the International Red Cross and Red Crescent Movement in 189 countries. NRCS act as auxiliaries to the public authorities of their own countries in the humanitarian field and provide a range of services including disaster relief, health and social programmes, as well as IHL education, promotion and dissemination. During armed conflict, NRCS assist the affected civilian population and support the army medical services where appropriate. NRCS may provide valuable support to the respective public authorities of their own countries in the implementation of their obligations under IHL, and by cooperation in related tasks.⁴⁰ Many NRCS are active members of national IHL Committees, where these bodies exist. In some cases such bodies are established within the NRCS, or the NRCS either chairs it or is entrusted with its secretariat. NRCS must first be recognized by the ICRC, on the basis of a set of conditions for recognition, in order to become part of the Movement. Subsequently they may become members of the International Federation, which is the NRCS' umbrella organization.

The International Federation acts as “the official representative of its member Societies in the international field”.⁴¹ It comprises all recognized NRCS and its general object is to facilitate and promote their humanitarian activities with a view to preventing and alleviating human suffering.⁴² While the International Federation does not have a mandate directly related to strengthening compliance with IHL, it is recognized as a major humanitarian actor. The Federation directs and coordinates international assistance of the Movement to victims of natural and technological disasters, to refugees and in health emergencies.

Through the International Federation, national societies have participated as observers in various meetings of States parties to particular treaties.⁴³ In some contexts, this role is explicitly provided for in the relevant treaty, and elaborated in accompanying procedural rules. For example, the International Federation has been given permanent observer status at the Meetings of States Parties to the APMBC and the CCM. Art. 11(4) of the APMBC provides, *inter alia*, that the ICRC may be invited to attend meetings as observers in accordance with the agreed Rules of Procedure.⁴⁴ The APMBC Rules of Procedure then elaborate that both the ICRC and the International Federation may attend the Meeting of the States Parties as observers.⁴⁵ Similarly, Article 11(3) of the CCM provides that the ICRC and the International Federation may be invited to attend Meetings of the States Parties as observers, in accordance with the agreed rules of procedure.⁴⁶

Delegates and the Standing Commission. For further information, see: <https://www.icrc.org/eng/resources/documents/misc/components-movement.htm>.

³⁹ The Statutes were adopted by the 25th International Conference of the Red Cross in 1986 and amended by the 26th International Conference in 1995 and by the 29th International Conference in 2006. It is reminded that States are members of the International Conference of the Red Cross and Red Crescent, without being a component of the Movement. In other terms, the Statutes of the Movement have received the sanctioning from all States Parties to the Geneva Conventions of 1949.

⁴⁰ See Art. 4(2) of the Statutes.

⁴¹ Art. 6(4)(k) of the Statutes.

⁴² Art. 6(1) and (3) of the Statutes.

⁴³ National societies sometimes also participate in meetings of States parties as a member of their country's delegation.

⁴⁴ Art. 11(4) provides in full that: “States not parties to this Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may be invited to attend these meetings as observers in accordance with the agreed Rules of Procedure”.

⁴⁵ Rule 1(3) of the Rules of Procedure of the Meetings of the States Parties to the APMBC.

⁴⁶ See Rule 1(2) of the Rules of Procedure of the Meetings of States Parties to the CCM.

In other contexts, the participation in an observer capacity of the International Federation has occurred without explicit regulation in a treaty or procedural rules, but instead on the basis of an ad hoc decision. This has occurred for example in relation to the two Conferences that have taken place thus far on the Humanitarian Impact of Nuclear Weapons. The ICRC and the International Federation participated in the first Conference on the Humanitarian Impact of Nuclear Weapons (Oslo, 4-5 March 2013),⁴⁷ and the second Conference on the same topic in Nayarit, Mexico (13-14 February 2014).⁴⁸ A third Conference on the Humanitarian Impact of Nuclear Weapons will be taking place in Vienna on 8-9 December 2014, and the ICRC and International Federation will again participate as observers.

Other mechanisms are to confer on the ICRC and the Federation an observer status or to issue them a standing invitation. For example, the ICRC and the International Federation of Red Cross and Red Crescent Societies have obtained observer status with the UNGA, enabling them to contribute to the work of the UNGA and all UN subsidiary bodies.⁴⁹

Questions for discussion:

- a) Should the International Federation be enabled to participate in the Meeting of States? If so, what modalities and what status would be appropriate for its participation?
- b) If so, what could be the role of the International Federation in the Meeting of States?
 - Attend the plenary sessions
 - Submit written contributions
 - Make oral statements
 - Other?
- c) What should be the role of NRCS regarding the Meeting of States?

2.5.3. Intergovernmental organizations and entities

Intergovernmental organizations and entities regularly participate as observers in Meetings of States established under other international frameworks. Most States that expressed an opinion on the issue viewed the participation of relevant intergovernmental organizations and entities favorably. There was a view that such actors should be invited insofar as their activities are of relevance for the Meeting of States, namely in the domain of IHL or the protection of victims of armed conflict, and that their participation should not lead to shifting the focus of attention of the Meeting of States to other legal frameworks. In this regard, many States were of the opinion that the participation of intergovernmental organizations with a direct responsibility, role or influence in enhancing compliance with IHL would be particularly valuable.

Different modalities related to the participation of intergovernmental organizations and entities may be envisaged. The procedures of most existing international fora give permanent observer status to the UN as such;⁵⁰ some of them specify particular UN

⁴⁷ See List of Participants in the first Conference on the Humanitarian Impact of Nuclear Weapons, 4-5 March 2013, Oslo, http://www.regjeringen.no/upload/UD/Vedlegg/Hum/hum_participants.pdf.

⁴⁸ List of Participants in the Second Conference on the Humanitarian Impact of Nuclear Weapons, 13-14 February 2014, Nayarit, <http://www.sre.gob.mx/en/images/stories/cih/registracionparticipan.pdf>.

⁴⁹ UNGA Resolution 49/2 adopted 19 October 1994; see "List of entities and organizations having received a standing invitation to participate as observers in the sessions and the work of the General Assembly": UN Doc. A/INF/56/4 (15 February 2002).

⁵⁰ Rule 1(2) of the Rules of Procedure of the Meetings of States Parties to the CCM; Rules 35-36 of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC; Rule 31 of the Rules of Procedure of the Meeting of States Parties to the OPCW; Rule 47 of the Rules of Procedure of the Meeting of the High Contracting Parties to the CCW; Rule 44(3) of the Rules of

programs, funds or specialized agencies.⁵¹ Other relevant intergovernmental organizations or entities are usually required to send a request for participation or may participate upon invitation.⁵² Under some frameworks, other intergovernmental organizations with observer status in the UN may participate.⁵³

It is submitted that similar procedures could be applied in the present context. Intergovernmental organizations and entities whose activities are of relevance for the future Meeting of States could be given permanent observer status. These organizations may include specific components of the UN Secretariat,⁵⁴ and a number of UN programs, funds and specialized agencies.⁵⁵ Furthermore, as pointed out by a number of delegations in the consultations held thus far, regional and sub-regional organizations also play a role in promoting or implementing IHL and could be considered for permanent observer status.⁵⁶ Finally, a number of intergovernmental organizations and entities have specific mandates that are relevant to the subject-matter of the future Meeting of States and could likewise be invited to participate on a permanent basis.⁵⁷

The modalities of the future Meeting of States could also allow for invitations to be extended to other intergovernmental organizations and entities for particular plenary sessions, depending on the topics to be addressed, for example, in the thematic discussions on IHL issues.

By way of reminder, observer status in existing international fora generally entitles intergovernmental organizations and entities to attend and participate in the plenary sessions of the relevant Meeting of States without a vote.⁵⁸ Observer status may include the right to submit written contributions and to make oral statements in accordance with the relevant Rules of Procedure.

Procedure of the Meetings of States Parties to the BWC. Specialized UN agencies and other intergovernmental organizations have observer status with the Human Rights Council (Rule 7(a) of the Rules of Procedures of the Human Rights Council, annexed to its resolution 5/1).

⁵¹ Rule 1(3) of the Rules of Procedure of Meeting of the States Parties to the APMB: the UNHCR, UNDP, UNICEF, WHO, and WFP.

⁵² See, e.g., Rule 1(3) of the Rules of Procedure of the Meeting of States Parties to the CCM; see also Rule 32 of the Rules of Procedure of the Conference of the States Parties to the OPCW; Rule 92(2) of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC; Rule 44(4) of the Rules of Procedure of the Meetings of States Parties to the BWC.

⁵³ Rule 46 of the Rules of Procedure of the Meeting of the High Contracting Parties to the CCW; Rule 92(1) of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC.

⁵⁴ Such as the UN Office for the Coordination of Humanitarian Affairs (OCHA), the UN Department of Peacekeeping Operations (DPKO), the Office for Disarmament Affairs (ODA), the Office of the UN High Commissioner for Human Rights (OHCHR) and possibly others.

⁵⁵ Such as the Office of the High Commissioner for Refugees (UNHCR), the UN International Emergency Children's Fund (UNICEF), or the UN Educational, Scientific and Cultural Organization (UNESCO).

⁵⁶ Such as the African Union (AU), the Association of Southeast Asian Nations (ASEAN), the European Union (EU), the League of Arab States (LAS), the Organization of American States (OAS).

⁵⁷ Such as the International Criminal Court (ICC), and the International Humanitarian Fact-Finding Commission (IHFFC).

⁵⁸ See, e.g., Rules 1(3) and 1(4) in conjunction with Rule 24 of the Rules of Procedure of the Meetings of the States Parties to the APMB; Rules 1(2) and 1(3) in conjunction with Rule 24 of the Rules of Procedure of the Meeting of States Parties to the CCM; Rules 31 and 32 of the Conference of the States Parties to the CWC; Rule 92 of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC.

Questions for discussion:

- d) Should specific intergovernmental organizations and entities be given permanent observer status? Examples could include:
- The UN
 - Specific components of the UN Secretariat
 - Specific UN programs, funds and specialized agencies
 - Regional and sub-regional organizations
 - Other intergovernmental organizations and entities with a relevant mandate
- e) Should the modalities for the participation of observers allow for invitations to be extended to other intergovernmental organizations and entities with specific expertise, experience and activities in the concrete subject-matter to be addressed at a given session, upon invitation by the Chair, in consultation with the Bureau?
- f) What should be the role of intergovernmental organizations and entities that would be observers in the Meeting of States?
- Attend the plenary sessions
 - Submit written contributions
 - Make oral statements
 - Other?

2.5.4. Civil society

The participation of civil society actors as observers in the future Meeting of States was identified as an issue for further examination at the Third Meeting of States in June 2014, on the basis of a preliminary discussion held on that topic at the Preparatory Discussion of April 2014. Most States who expressed an opinion on this issue were interested in further examining civil society participation based on the view that it may serve a variety of useful purposes.⁵⁹

There was large agreement among States that modalities for possible civil society participation should ensure respect for the guiding principles of the current consultation process, including non-politicization. In this context it should be noted that the Meeting of States will be voluntary, that it will not address compliance with IHL in specific countries or conflicts, and that its deliberations will focus on general issues related to IHL compliance. With these considerations in mind, some preliminary views were shared on how civil society actors could take part:

Attendance of plenary sessions: it was suggested that civil society representatives should as a general rule be able to attend the plenary sessions. If and where necessary, relevant segments of the plenary sessions could be declared closed.

Contributions: Within existing international fora, civil society representatives are usually able to participate in the deliberations of the Meeting of States⁶⁰ (in some frameworks, the right to

⁵⁹ For example, enable States to obtain expert information and/or advice from organizations with a special competence in an IHL or IHL-related subject-matter; reinforce national and international efforts in the promotion, dissemination and implementation of IHL; increase cooperation with relevant actors in the field of IHL; increase public awareness of the need to strengthen compliance with IHL; and permit relevant representatives of public opinion to express their views (see, e.g., para. 20 of ECOSOC resolution 1996/31). A few States either expressed caution with regard to civil society participation or were not in favor of it.

⁶⁰ See, e.g., Rule 1(4) in conjunction with Rule 24 of the Rules of Procedure of the Meetings of the States Parties to the APMBC; Rule 1(3) in conjunction with Rule 24 of the Rules of Procedure of the Meeting of States Parties to the CCM; Rule 49 of the Rules of Procedure of the Meeting of the High

speak is limited to questions on which the concerned organization has a special competence.⁶¹) Civil society organizations are also usually able to provide written submissions. In previous consultations, some States suggested that the contribution of civil society representatives should be limited to written submissions, while a number of States was of the view that they should also be able to orally express their views, either in the general deliberations or in a specific slot reserved for civil society statements,⁶² and possibly subject to the approval of the Meeting of States and/or the Chair or Bureau.

Other forms of interaction: other possible forms of civil society participation were also mentioned, such as the organization of side-events.

By way of reminder, civil society actors participating as observers usually do not have the right to vote, nor to speak for or against any procedural motion, raise points of order, appeal against a ruling of the Chair,⁶³ or participate in another form in the decision-making at the Meeting of States.

As regards the issue of which civil society actors could be invited to participate as observers in the future Meeting of States, and the related procedures, two broad models were suggested in previous consultations:

Civil society organizations with ECOSOC consultative status: civil society organizations that have consultative status with the Economic and Social Council of the United Nations (ECOSOC), whose activities are relevant to the Meeting of States, could participate as observers, in accordance with the modalities discussed above.⁶⁴ It should be recalled that the attribution of ECOSOC consultative status involves a screening procedure consisting of several steps, the purpose of which is to verify whether the applying organization meets the relevant substantive and formal criteria.⁶⁵ In case a relevant civil society organization does not have ECOSOC consultative status, it could be invited to participate upon request in accordance with the procedure outlined below.

Participation upon request: It was suggested that interested civil society actors could submit a request for participation as observers to the Chair and/or the Bureau of the Meeting of States. In deciding on the request, the Chair and/or Bureau could, in particular, take into account whether the concerned organization meets a number of formal criteria, such as whether the entity is formally established as a non-profit entity in the territory of one of the participating States, whether it has an established headquarters with an executive officer, and whether it has been in existence for a sufficient period of time; alternatively or additionally, it may be considered whether the applicant organization has ECOSOC consultative status.⁶⁶ The fulfillment of certain substantive criteria could be relevant as well, such as whether the purposes and activities of the applicant are consistent with the purposes

Contracting Parties to the CCW; Rule 33 of the Rules of Procedure of the Conference of the States Parties of the OPCW; Rule 93(c) and (d) of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC; Rule 9(3) of the Rules of Procedure of the International Conference of the Red Cross and Red Crescent.

⁶¹ See, e.g., Rule 49 of the Rules of Procedure of the Meeting of the High Contracting Parties to the CCW; Rule 93(c) and (d) of the Rules of Procedure of the Assembly of States Parties to the Rome Statute of the ICC.

⁶² See, e.g., within the framework of the UNHCR, civil society observers are given the opportunity to make oral statements at the beginning of a session, in order to share their views with the participating States. Participation in further deliberations is thereafter limited to States only.

⁶³ See, e.g., Rule 24 of the Rules of Procedure of the Meeting of States Parties to the CCM.

⁶⁴ This model was adopted in the framework of the Assembly of States Parties to the Rome Statute of the ICC, see Rule 93 of the Rules of Procedure.

⁶⁵ For more details, see *Working with ECOSOC – an NGOs Guide to Consultative Status*, United Nations, New York, 2011, pp. 32-36. The criteria are determined in ECOSOC resolution 1996/31.

⁶⁶ See, e.g., paras. 10-13 of ECOSOC resolution 1996/31.

of the Meeting of States, and whether its activities are relevant to the subject-matter of the Meeting of States.⁶⁷

Questions for discussion:

- a) How could civil society representatives participate as observers at the Meeting of States?
- Civil society organizations with ECOSOC consultative status could participate as observers; other civil society organizations could participate upon invitation
 - Civil society organizations could participate upon invitation
- b) What modalities should apply to civil society participation? Civil society observers may:
- Attend the plenary sessions of the Meeting of States
 - Submit written contributions
 - Make oral statements
 - Organize side-events
 - Other?

2.6. Resourcing

In previous consultations, a number of States emphasized the issue of resourcing. It was stressed that resource constraints must be taken into account and that the general structure of the Meeting of States must be as lean and as cost-effective as possible. It was furthermore underlined that any funding model should be designed so as to enable the participation of all States, with particular attention being paid to the needs of developing countries. This subsection aims at providing a preliminary overview of the possible budgetary items that should be taken into account in estimating the costs of the Meeting of States, as well as the funding model that could be implemented. These questions were submitted for discussion at the Preparatory Discussion of April 2014, but were not examined in any detail due to time constraints.

2.6.1. General

The budget of the future Meeting of States will depend on a variety of issues, on which discussions are ongoing, due to which costs cannot be estimated in a definitive manner at this particular point in time. Pending such an estimation, this section of the Background Document aims to outline some factors that may determine the final costs of the Meeting of States. It draws on the budgets and costs of existing international frameworks of a comparable size and nature, with a view to illustrating the costs that may be expected with regard to specific budgetary items.

The budget of the Meeting of States will include costs related to the work of the plenary sessions as such, and costs associated with the broader institutional structure. With regard to the organization of the plenary sessions, the following considerations are of relevance:

- The number of languages into which simultaneous interpretation may be necessary at the plenary sessions (for example, simultaneous interpretation in the six official languages within the UN framework costs approximately 11'700 CHF for three hours of meeting,⁶⁸ or approximately 23'400 CHF per full day of meeting (6 hours); more generally, simultaneous

⁶⁷ See, e.g., paras. 9 and 14 of ECOSOC resolution 1996/31; Rule 1(4) of the Rules of Procedure of the Meeting of the States Parties to the APMBC; Rule 1(3) of the Rules of Procedure of the Meeting of States Parties to the CCM.

⁶⁸ See *Comprehensive cost review of the human rights treaty body system*, Geneva, April 2013, p. 6 (see <http://www.ohchr.org/Documents/HRBodies/TB/HRTD/ComprehensiveCostReview.pdf>).

interpretation in the context of the human rights treaty body meetings represents 96% of the total costs of these meetings⁶⁹);

- The number of languages in which official documents will need to be produced (within the UN framework, translation and editing in the six official UN languages cost approximately 1'150 CHF per one standardized page of 330 words;⁷⁰ in general terms, translation and editing represent 87% of total costs related to documentation;⁷¹ by way of illustration, the translation and editing of the present Background Document in six languages would have cost approximately 91'000 CHF);
- Rental costs for the venue of the Meeting of States and for conference equipment (costs will mainly depend on the number of participants, including the number and size of the delegations);⁷²
- Conference services not provided by the Secretariat (this may include the possible hiring of additional personnel, such as welcome or security personnel, sound technicians, etc., for the duration of the plenary sessions);⁷³
- The establishment of a Sponsorship Programme to encourage the participation of Least Developed Countries.⁷⁴

Costs associated with the broader institutional structure of the Meeting of States may relate in particular to the following budgetary items:

- The salaries and social costs of Secretariat staff;⁷⁵
- The logistical and administrative infrastructure of the Secretariat (including office rent and supplies, telecommunications and information technology, website, publications, insurance, human resources management, etc.).⁷⁶

2.6.2. Funding model

The costs of Meetings of States set up under other international frameworks are generally borne by the States parties to the relevant treaty, and by other States participating as observers, on the basis of the UN scale of assessment.⁷⁷ Considering that the establishment

⁶⁹ See *Comprehensive cost review of the human rights treaty body system*, Geneva, April 2013, p. 6.

⁷⁰ See *Comprehensive cost review of the human rights treaty body system*, Geneva, April 2013, p. 6.

⁷¹ See *Comprehensive cost review of the human rights treaty body system*, Geneva, April 2013, p. 6.

⁷² As most of the existing Meetings of States considered in this context take place at UN venues, no illustrative costs are available.

⁷³ See, e.g., estimated costs of 43'100 USD for "support services requirements" and "other requirements" for a two-day Meeting of the High Contracting Parties to the CCW in 2014 (see *Estimated Costs of the 2014 Meeting of the High Contracting Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects*, CCW/MSP/2013/6).

⁷⁴ In the framework of the Meeting of the High Contracting Parties to the CCW, a Sponsorship Programme was established in 2001. In 2013, five States contributed a total of 57'345 CHF, whereof 36'466 CHF were used, until 31 October 2013. In the previous year, total expenses amounted to 95'387 CHF (Report on the Sponsorship Programme, submitted by the Steering Committee of the sponsorship programme to the Meeting of the High Contracting Parties to the CCW in 2013, CCW/MSP/2013/3/Add.1/Rev.1). More information on the sponsorship programme is available online: [http://www.unog.ch/80256EDD006B8954/\(httpAssets\)/4E32DC09563F9447C125728E0033BB16/\\$file/Sponsorship.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/4E32DC09563F9447C125728E0033BB16/$file/Sponsorship.pdf).

⁷⁵ See above.

⁷⁶ Costs for infrastructure, logistics and administrative services in support of the ISU APMBBC provided by the GICHD (including, in this specific example, office rent and supplies, information technology and telecommunications, publications and website management, travel services, human resources management, insurance, financial management, and contract and document management) were estimated to amount approximately to 303'000 CHF in 2014 (para. 14 of the Draft Implementation Support Unit 2014 work plan and budget, APLC/MSP.13/2013/3).

⁷⁷ See, e.g., Art. 14(1) of the CCM; Art. 14(1) of the APMBBC; Para. 6 of the Decision on a Compliance Mechanism Applicable to the Convention on Prohibitions or Restrictions on the Use of Certain

of the future Meeting of States by way of an international treaty is not being contemplated, the challenge is to establish rules that, while voluntary as a matter of law, will ensure sufficient funding, predictability (i.e. that the budget can be reliably planned), and a fair distribution of costs among States.

Without prejudice to the outcome of a discussion on the funding model that will have to take place once the costs of the Meeting of States can be reliably estimated, the following measures to ensure sufficient funding, predictability and a fair distribution of costs could be contemplated:

- The Bureau, on the basis of an agreed budget of the Meeting of States, would issue recommendations on the contribution to be made by each State to the trust fund of the Meeting of States, on the basis of the adjusted UN scale of assessment;
- The voluntary contributions of each State would be disclosed in a financial report;
- In addition, States could make contributions in kind, including through staff secondments (under conditions to be determined);
- Considering the important costs related to simultaneous interpretation and translation of documents, the number of working languages of the future Meeting of States as well as the number of languages in which official conference documents will be produced should be discussed; States requesting the possibility to use additional languages may wish to cover associated costs;
- A working capital fund⁷⁸ could be established to meet short term liquidity problems (to ensure the availability of capital to cover expenses related to the regular operation of the Meeting of States pending receipt of contributions), and/or a contingency fund to meet costs associated with unforeseen developments.

The funds of the Meeting of States could be administered by the Secretariat, according to the options for its institutional set-up discussed above.⁷⁹ A financial report would be presented to the Meeting of States at the end of the financial year.

Questions for discussion:

- a) What principles should guide the funding of the Meeting of States? Should they include the need to:
 - Ensure sufficient funding
 - Ensure a fair distribution of costs among States
 - Transparency
 - Predictability
 - Others?
- b) Acknowledging that the financial rules of the Meeting of States cannot foresee obligatory contributions as a matter of law, should the contribution of each State be established pursuant to the model on which the UN scale of assessment is based?

Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, as adopted by the Third Review Conference on the CCW on 17 November 2006 and Rule 16 of the Rules of Procedures of the Meetings of the High Contracting Parties to the CCW.

⁷⁸ The Assembly of States Parties to the Rome Statute of the ICC decided at its 1st session to establish a Working Capital Fund (see resolution ICC-ASP/1/Res.13; see also Report of the Court on its Working Capital Fund, ICC-ASP/12/7, considered at the 12th session).

⁷⁹ See, e.g., para. 6 of the Agreement between the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction and the Geneva International Centre for Humanitarian Demining (GICHD) on Implementation Support for the Convention, as amended in 2011.

- c) What measures could be adopted to ensure sufficient funding and a fair distribution of costs? Should:
- The contribution of each State be disclosed in the financial report
 - States be able to contribute in kind, including through staff secondments (under conditions to be determined)
 - The number of working languages of the Meeting of States be discussed
 - A working capital fund and/or a contingency fund be envisaged
 - Others?

3. Foundational Issues and Relationship with the International Conference of the Red Cross and Red Crescent

3.1. Ways and means of establishing the Meeting of States

A future IHL compliance system will not be established by means of a legally binding instrument, as amendments to the 1949 Geneva Conventions or the adoption of a new treaty that would create such a system have not generated State support within the current process. The question of how such a system could be established and what procedural issues this would engender was therefore discussed both at the Preparatory Discussion of April 2014, and the Third Meeting of States in June 2014.

It was recalled throughout the current consultation process that the mandate on which it is based does not include the authority to decide on the establishment of a Meeting of States, which is envisaged as the central pillar of a future IHL compliance system. Instead, the options emerging from the ongoing consultations will be submitted by the ICRC, in conjunction with Switzerland, in a concluding report to the 32nd International Conference of the Red Cross and Red Crescent of late 2015, for its consideration and appropriate action.⁸⁰ Action that may be deemed appropriate by the International Conference will be adopted in a corresponding resolution.⁸¹

Different views were expressed in previous consultations on whether the International Conference has the authority to decide on the establishment of the future Meeting of States. Two broad positions emerged in that regard:

Option 1: The International Conference establishes the Meeting of States

An important number of States are of the view that an International Conference – including the one to be held in 2015 – could establish a Meeting of States, given that a resolution adopted at the International Conference would be an adequate and sufficient expression of the sovereign will of States, as well as of the desire of the other members of the International Conference, to establish such a forum. It should be recalled that the main responsibility of the International Conference is to “examine and decide upon humanitarian matters of common interest”.⁸² More specifically, one of its key functions is to “contribute to the respect for and development of IHL”.⁸³ An additional key factor informing this approach is that the

⁸⁰ Para. 8 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent of 2011.

⁸¹ See Article 10(5) of the Statutes of the International Red Cross and Red Crescent Movement.

⁸² Article 8 of the Statutes of the International Red Cross and Red Crescent Movement.

⁸³ Article 10 of the Statutes of the International Red Cross and Red Crescent Movement. In this context it should be recalled that there are precedents for resolutions adopted by an International Conference related to compliance with IHL. For instance, the 26th International Conference of the Red Cross and Red Crescent endorsed in its resolution 1 (para. 4) a recommendation (made by Meeting of the Intergovernmental Group of Experts for the Protection of War Victims, Geneva, 23-27 January 1995) according to which the Depositary may organize periodical meetings to consider general problems regarding the application of IHL. This led to the convening of the Periodical Meeting of

future IHL compliance system would not be legally binding and that the Meeting of States would be established as a regular forum on IHL issues open to all States on a voluntary basis. There is thus no legal rule or principle that would prevent States from making such a decision within a framework that already comprises all States parties to the 1949 Geneva Conventions.

It is submitted that a resolution that could be adopted by the International Conference pursuant to this option does not necessarily need to determine the working modalities of the future Meeting of States in detail.⁸⁴ In addition to establishing the Meeting of States, the resolution could lay down the key features of this forum, namely its purposes, main functions and guiding principles. It could also address participation in the Meeting of States, its institutional set-up,⁸⁵ its relationship with the International Conference of the Red Cross and Red Crescent, and possibly provide that the work of the Meeting of States would be considered at the following International Conference. In doing so, the relevant working modalities of the future Meeting of States (including those related to the reporting function and thematic discussions on IHL issues), could be further elaborated on and adopted at the first Meeting of States convened on the basis of the relevant resolution, thus ensuring that the future IHL compliance system is fully State-driven.

Option 2: The International Conference invites States to establish a Meeting of States at a diplomatic conference convened for that purpose

Conversely, some delegations are of the view that the International Conference does not have the authority to establish the Meeting of States. In their view, the International Conference could, by way of a resolution, only invite Switzerland to convene a diplomatic conference for the purpose of establishing the future Meeting of States. It was suggested that, should this approach be adopted, the relevant diplomatic conference could be held immediately after the 32nd International Conference to avoid unnecessary delay, or that a specific time-frame for it should be established. In the discussions thus far it has not been examined if, and what effect, the convening of a diplomatic conference could have on the voluntary nature of the new compliance system, which has been identified as a key guiding principle in the current process. Furthermore, the issue of the costs of convening a diplomatic conference has not been examined so far.

It is submitted that, if this option is adopted, the relevant resolution of the International Conference should confirm the principal points of convergence identified in the ongoing consultation process, and set forth the general architecture of a possible IHL compliance system. The aim would be to avoid consultations and negotiations on these issues that would start from the beginning, given the important efforts that have been invested by States thus far and the progress that has been achieved in the consultation process since 2012. Thus, similar to the approach outlined above, certain key features should be included in the relevant resolution in addition to the invitation that would be addressed to Switzerland to convene a diplomatic conference. The resolution should include the International Conference's recommendations regarding the purposes, main functions and guiding principles of the future Meeting of States. It should also comprise the International Conference's recommendations regarding participation in the Meeting of States, its institutional structure, its relationship with the International Conference, and possibly provide

States party to the Geneva Conventions on general problems relating to the application of international humanitarian law in the beginning of 1998.

⁸⁴ See, e.g., Article 13 (modalities for reporting under the ATT), Article 17 (general purposes and tasks of the Conference of States Parties to the ATT) and Article 18 (Secretariat of the Conference of the States Parties) of the ATT; Article 7 (transparency measures under the CCM) and Article 11 (general purposes and tasks of the Meetings of States Parties to the CCM) of the CCM.

⁸⁵ See, e.g., Article 18(1) of the ATT relating to the responsibilities of a provisional secretariat pending the first meeting of the Conference of States Parties to the ATT.

that the work of the Meeting of States would be considered at the following International Conference.

Questions for discussion:

- a) In addition to the options outlined below, are there any other ways and means of establishing a Meeting of States that should be further examined?
- The Meeting of States can be established by a resolution of the International Conference
 - The International Conference can recommend the convening of a diplomatic conference for the purpose of establishing a Meeting of States
- b) Please reflect and share your views on the respective advantages and disadvantages of the two options for establishing a Meeting of States.

3.2. Relationship with the International Conference of the Red Cross and Red Crescent

Several States have stressed in the consultations held so far that it would be important to establish a link between the Meeting of States and the International Conference of the Red Cross and Red Crescent. This issue was included in the Background Document for the April 2014 Preparatory Discussion, but due to lack of time it was not addressed on that occasion or at the Third Meeting of States.

As is well-known, the International Conference, which takes place every four years, is the supreme deliberative body of the Red Cross and Red Crescent Movement. At the International Conference, representatives of the components of the Movement (National Societies, International Federation, ICRC) meet with representatives of the States Parties to the Geneva Conventions, the latter in exercise of their responsibilities under the Geneva Conventions.

As set forth in the Movement Statutes, the function of the International Conference is to contribute to the unity of the Movement and to the achievement of its mission in full respect of the Fundamental Principles. A further function is to contribute to the respect for and development of IHL and other international conventions of particular interest to the Movement. In its 150 year history the International Conference has played a key role in this regard.

Thus, an International Conference discusses a wide range of issues of interest to the actors involved, including IHL, and adopts an IHL resolution and/or a four year action plan which usually serves as the basis for voluntary pledges made by States and National Red Cross and Red Crescent Societies. It should be recalled that the International Conference does not constitute an IHL compliance system of the type being examined within the current initiative, and does not carry out the functions that are being contemplated. The periodicity of its meetings, as noted by many States, also sets it apart from one of the goals of the current process, which is to establish a permanent venue for a regular dialogue among States on IHL compliance. The International Conference, however, provides impetus for the discussion of humanitarian matters in general and could, for example, initiate topics before a Meeting of States. In addition, as mentioned above, the International Conference has a recognized role with respect to the development of IHL given to it by States through the Statutes of the Red Cross and Red Crescent Movement, a task that the Meeting of States will not duplicate, as confirmed in the December 2013 Preparatory Discussion.

Several proposals have been made by States as regards possible synergies and links between a Meeting of States and the International Conference which would be mutually

reinforcing. In accordance with the functions attributed to the International Conference in the Statutes and with its Rules of Procedure, links between the International Conference and the Meeting of States could take the following form:

- The International Conference could be invited to propose topics for thematic discussions on IHL issues at a Meeting of States;
- The International Conference could be invited to consider the operation of the new IHL compliance system;
- The International Conference could make proposals for the future institutional development of the Meeting of States by means of recommendations in this regard;
- The Meeting of States could be requested to present a report on its activities to the International Conference, which could be invited to discuss it, to take stock of the activities of the Meeting of States, and to inform the Movement about its work;
- The Meeting of States could be invited to take into account action points addressed to States in any IHL Plan of Action that may be adopted by the International Conference;
- Members of the Conference could make pledges at the International Conference in relation to their activity or contribution to the Meeting of States, including regarding the submission of reports, financial contributions, or other.

Questions for discussion:

- a) What principles should underlie the overall relationship between the Meeting of States and the International Conference?
- The need for synergies
 - Care about the need for mutually reinforcing outcomes
 - In mutual relations, respect for the Fundamental Principles binding the Movement
 - Others?
- b) In addition to those mentioned below, are there other links that may be created between the International Conference and the Meeting of States?
- The International Conference could propose topics for thematic discussions
 - The International Conference could be invited to consider the operation of the new IHL compliance system
 - The International Conference could be invited to contribute to the future institutional development of the Meeting of States
 - The Meeting of States could present reports on its activities to the International Conference, which would take stock of them and inform the Movement
 - The Meeting of States could be invited to take into account action points addressed to States in any IHL Plan of Action that may be adopted by the International Conference
 - Members of the International Conference could make pledges related to the Meeting of States at the International Conference

4. Next Steps

The ongoing consultation process based on resolution 1 of the 31st International Conference of the Red Cross and Red Crescent will be concluded next year. The Fourth Meeting of States on Strengthening Compliance with IHL, scheduled to take place on 23 - 24 April 2015, will thus be the last to be held within the Swiss-ICRC facilitated initiative. Following that Meeting, and in accordance with Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, the outcome of the consultation process, including options and recommendations with regard to the establishment of an IHL compliance system, will be submitted in a concluding report to the 32nd International Conference taking place in December 2015, for its consideration and appropriate action (see below).⁸⁶

⁸⁶ Para. 8 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent.

The purpose of the Fourth Meeting of States will be to take stock of the results of the consultation process since the 31st International Conference of 2011, including on the questions that will be examined at the Preparatory Discussion of December 2014. The facilitators will submit a Background Document to the Fourth Meeting highlighting the positions taken by States on the various issues examined since the launch of the consultations, with a view to identifying, where possible, points on which views are converging, points on which views continue to differ, and questions for further examination at the Fourth Meeting of States. The Fourth Meeting will thus provide an important opportunity for States to indicate their views on the different subjects that have been examined within the consultation process, and that need to be reflected in the concluding report on the process. It is the hope of the facilitators that all questions relevant for the drafting of a concluding report on the consultation process will have been addressed in sufficient depth by the Fourth Meeting of States. The different positions that may continue to persist in relation to various issues will be faithfully reflected in the concluding report.

Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent requests the ICRC to submit a report to the 32nd International Conference on the consultation process that has been undertaken. The report, which will be prepared in conjunction with Switzerland as the co-facilitator of the process, will be the sole responsibility of the ICRC. As mentioned above, it will reflect the discussions held, options for strengthening compliance with IHL identified in consultation with States, and make recommendations. The report will not have any legal or other implications for participating States. It is, however, hoped that by indicating the relevant points of convergence of States' views, as well as points of divergence, it may provide the backdrop for a possible decision on the establishment of an IHL compliance system. The facilitators will aim to circulate the concluding report to all members of the International Conference in June 2015.

In accordance with Resolution 1 of the 31st International Conference, the 32nd International Conference in 2015 is to consider the concluding report of the consultation process and take appropriate action on that basis.⁸⁷ If there is support by States to take the outcome of the consultation process forward, the concluding report may serve to inform a possible resolution by the 32nd International Conference, whatever approach may be adopted with respect to the foundational issues related to the establishment of a Meeting of States addressed above. In this context it should be recalled that the relevant resolution will be negotiated in accordance with the usual procedures of an International Conference and not take place within the current consultation process, for lack of a mandate in that regard.

By way of reminder, in accordance with Statutory deadlines, draft resolutions need to be circulated to the members of the International Conference 45 days prior to its start. A draft resolution relating to the issue of strengthening compliance with IHL would thus likely need to be ready by mid-October 2015. It is submitted that it would be helpful if negotiations on the possible elements of such a resolution were to start sufficiently ahead of time, i.e. in the summer of 2015. The ICRC, which usually prepares resolutions on IHL for the International Conference, would aim to present the initial elements of a possible resolution by the end of June 2015 so as to enable the timely start of negotiations on the text and allow for the necessary consultations among States and other members of the International Conference.

Questions for discussion:

- a) Are there any particular issues that need to be examined and that have not yet been mentioned before the conclusion of the consultation process?

⁸⁷ As outlined above, it is recalled that the International Conference takes its decisions in the form of resolutions (Article 10(5) of the Statutes of the International Red Cross and Red Crescent Movement). "Appropriate action" of the International Conference may thus consist in adopting a resolution on the issues being outlined in the concluding report to be submitted by the ICRC.

Annex I: Chairs' Conclusions of the Third Meeting of States on Strengthening Compliance with IHL, Geneva, 30 June – 1 July 2014

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, consultation and discussion in cooperation with States to identify and propose possible means to enhance and ensure 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 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 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. The 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 (IHFFC).

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 dialogue on IHL which could also serve as an institutional 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 of 30 June and 1 July 2014, Switzerland and the ICRC scheduled two Preparatory Discussions in the meantime, the first of which took place on 16-17 December 2013. At this round of discussion, the primary focus was reporting on national compliance with IHL and thematic discussions on IHL issues. It also served to examine, in overview form, the features and tasks of a regular Meeting of States. The aim of the second Preparatory Discussion of 3-4 April 2014 was, in turn, to enable an in-depth review of various aspects of the Meeting of States and a first preliminary discussion on a possible fact-finding function. It also served to revisit select outstanding questions related to reporting on national compliance with IHL and to thematic discussions, carried over from the December 2013 meeting.

The goal of the Third Meeting of States on Strengthening Compliance with IHL was to overview the main topics examined at both rounds of Preparatory Discussions, with a view to further clarifying and refining States' positions regarding these topics, including the possible identification of points on which views are converging, as well as those that will require further discussions going forward.

The increased attendance at the Third Meeting of States of June 2014 testifies to the growing awareness and interest of States about the issue of strengthening compliance with IHL and the importance they attach thereto.⁸⁸

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 and further refined at the Preparatory Discussions of December 2013 and April 2014. 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 and consensus-based character of the process and the need for the consultations to be based on applicable principles of international law;
- 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, as defined in the Geneva Conventions of 1949 and their Additional Protocols (for the latter as may be applicable), and the parties to them are included;
- The need for the process to ensure universality, impartiality, and non-selectivity;
- The need for the process to be based on dialogue and cooperation.

It was reiterated by the facilitators at the Third Meeting of States of June 2014, as was the case in previous consultations, that the future IHL compliance system will not be established by an international treaty - and will therefore not be legally binding - and that the ongoing consultations are informal in nature. In this context, it was also recalled that the Chairs' Conclusions submitted by the Chairs in follow-up to the Preparatory Discussions and Meetings of States held within the framework of the ongoing consultations have no specific

⁸⁸ See the annexed list of participating delegations at the Third Meeting of States of 30 June and 1 July 2014.

legal or other implications for the States participating therein. It was likewise recalled that these documents are the sole responsibility of the Chairs and do not intend to reflect agreed views by States.

General Comments by States

Delegations reiterated their concern about the lack of compliance with IHL, as well as the lack of effective compliance mechanisms. The participants generally agreed on the need to urgently address this issue and expressed their support for the initiative on strengthening compliance with IHL led by Switzerland and the ICRC. In that regard, the facilitators' efforts to conduct the consultations and discussions among States in a transparent, open and inclusive manner were appreciated.

The Background Document submitted for preparation of the delegations and guidance of the debate at the Third Meeting of States was thought to be a useful and adequate basis for discussion. Many delegations stressed that, in view of the emerging contours of a future IHL compliance system, the goal of the consultation process should be to enable the facilitators to submit concrete proposals to the 32nd International Conference for its consideration and appropriate action. A few delegations indicated that the issue of creating effective compliance mechanisms for IHL deserved more time. They reiterated that it is not within the mandate provided for by Resolution 1 of the 31st International Conference to take any decision with regard to the possible establishment of such a system.

It was recalled by States that a possible new IHL compliance system will not be created by means of a treaty and that it will thus be of a voluntary nature. The approach based on voluntariness was believed instrumental to ensure universal participation by States, as well as the effectiveness and sustainability of the future system.

It was unanimously underlined that non-politicization, impartiality, non-selectivity and constructive exchange (i.e. no "naming and shaming") were essential principles of a new IHL compliance system. Several delegations also considered it important for the new IHL compliance system to be in conformity with the principles of non-intervention and sovereignty.

The question was raised by a few delegations, in this context, whether a new IHL compliance system should be able to deal with specific urgent situations in a constructive and non-politicized manner, bearing in mind the need to promote respect for IHL in response to current events. The majority of States, however, considered it important that the future system should operate on a non-contextual and non-conflict specific basis.

A number of delegations stressed that a new IHL compliance system should be aimed at improving compliance with IHL in all types of armed conflicts as defined in the Geneva Conventions of 1949 and their Additional Protocols. In that regard, it was highlighted that solutions should be found to address the issue of non-compliance with IHL by non-State parties to armed conflicts, bearing in mind that States will be the sole members of any future IHL compliance system and that States' ability to implement and comply with their IHL obligations will be the main focus of the Meeting of States.

In terms of the architecture of the future IHL compliance system, many participants were of the opinion that the Preparatory Discussions of December 2013 and April 2014, as well as the Third Meeting of States of June 2014, greatly contributed to the emergence of converging views on the possible elements of a future IHL compliance system. In that regard, a Meeting of States as a forum for dialogue and cooperation, which would in particular serve to consider the national compliance reports and to hold regular thematic discussions on IHL issues, was generally considered to be useful and essential for strengthening compliance

with IHL, and thereby improving the protection of victims of armed conflicts. A few delegations considered it premature to identify converging views on the possible elements of a future IHL compliance system before the questions identified as overarching issues (see below) have been answered.

Overarching Issues

In previous exchanges, a few issues were raised that are of importance to moving the consultations forward and to the facilitators' ability to properly gauge the preference of States regarding certain aspects of the future IHL compliance system. They were further examined at the Third Meeting of States with a view to allowing for more clarity. They were grouped under the agenda item "Overarching Issues" so as to enable exchanges and thus avoid repetition in the subsequent discussions of the possible specific elements of a future IHL compliance system.

Reforming Existing IHL Mechanisms

An examination of existing IHL compliance mechanisms, i.e. the Protecting Power system, the Enquiry Procedure and the International Humanitarian Fact-Finding Commission (IHFFC), and of their inadequacies was the main focus of the Second Meeting of States in June 2013. There was agreement that the existing stand-alone mechanisms, which are unattached to a wider institutional framework, have proven to be ineffective in strengthening compliance with IHL. It was noted that they remain valid and at the disposal of States who may wish to resort to them in situations of international armed conflicts, but underlined that one of the drawbacks is that they may be utilized only in this type of armed conflict. Most States thus recognized that, with the exception of the IHFFC, the reform of the existing mechanisms would prove difficult in light of the contemporary challenges and nature of armed conflicts.

At the Preparatory Discussion of April 2014, a small number of delegations suggested that a more in-depth examination of the existing IHL mechanisms needs to take place before they are able to take part in discussions on the possible elements of a new IHL compliance system. Accordingly, that question was again submitted for discussion at the Third Meeting of States.

At the Third Meeting of States, a small number of States reiterated their view that the potential for reinforcing existing mechanisms has not yet been fully explored. In their view, further consultations should, as a matter of priority, concentrate on ways and means of strengthening the application of compliance mechanisms provided for by the Geneva Conventions of 1949 and Additional Protocol I, as well as enable an overview of mechanisms established under other bodies of international law,⁸⁹ before they could concur with the view that there is a need for new mechanisms. As noted in the Background Document prepared for the Third Meeting of States, and reiterated at the Meeting itself, the facilitators have repeatedly encouraged States to put forward specific proposals on how existing IHL mechanisms may be reformed, but no responses have been received.

Most States reaffirmed the conclusion of the Second Meeting of States of June 2013 according to which the existing mechanisms do not work effectively, and current endeavors aimed at identifying ways and means of strengthening compliance with IHL should not focus on how they could eventually be reformed, apart from the IHFFC. There was thus a broad

⁸⁹ In this context, only the regular UN General Assembly resolution on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts was referred to.

convergence of views on the need for the current consultation process to further advance with respect to the possible development of an effective IHL compliance system. It was underlined that this approach does not exclude a discussion of specific proposals as to how existing mechanisms can be strengthened and that States can put forward such proposals at any time, including as a topic for discussion of a future Meeting of States.

A significant number of participants reiterated their interest in examining how the IHFFC could be integrated in a future IHL compliance system. It was acknowledged that the question of whether a fact-finding function should form part of a future IHL compliance system generated widely divergent views, with some States expressing caution in this regard. It was thus suggested that the topic of a fact-finding function, including whether and how the IHFFC could be reinforced, notably by establishing links with a future Meeting of States, could be addressed once the broader institutional framework is established.

Sequence of Discussions on the Elements of a Possible IHL Compliance System

The question of the sequence of the discussions on the elements of a new IHL compliance system was raised by several States in the Preparatory Discussion of April 2014 and submitted for discussion at the Third Meeting of States.

A minority of States reiterated a preference for sequencing the consultations by first discussing the possible compliance functions to be established and then the institutional framework, or vice-versa. In that regard, a few delegations suggested to clarify the foundational basis of a future IHL compliance system before a decision can be taken on the sequencing of the discussion on the possible elements of an IHL compliance system.

The Third Meeting of States, however, confirmed that most States agree with a middle course approach, consisting in discussing the institutional aspects of a future IHL compliance system and the compliance functions that will form part thereof in parallel. In the view of most States, the possible elements of an IHL compliance system are so closely intertwined that they cannot be discussed separately from each other. It was thus considered essential that States have the necessary understanding of all the relevant elements of the system and their mutual implications at every stage of the consultation.

Foundational Issues Related to the Establishment of a Meeting of States

Given that a future IHL compliance system will not be established by means of a legally binding instrument, because amendments to the 1949 Geneva Conventions or the adoption of a new treaty that would create such a system have not generated State support, the question of how to establish a Meeting of States as the central pillar of a future IHL compliance system was discussed at the Third Meeting of States. It was generally recognized that this issue is of importance for moving the process forward; a few States indicated that having more clarity on this question was necessary so as to be able to participate in consultations on the possible specific elements of a future IHL compliance system.

The two broad positions outlined in the Background Document were considered an appropriate basis for discussion and were further refined at the Third Meeting of States.

An important number of States reiterated the view that an International Conference of the Red Cross and Red Crescent - including the one to be held in 2015 - could establish a Meeting of States, given that a resolution adopted at the International Conference would be an adequate expression of the sovereign will of States to establish such a forum. It was understood that the relevant working modalities of the future Meeting of States could be

elaborated and adopted once the Meeting of States is established, thus ensuring that the future IHL compliance system is fully State-driven.

Conversely, some delegations reiterated the view that the International Conference of the Red Cross and Red Crescent does not have sufficient legal authority to establish a Meeting of States. In their view, the Conference could, by resolution, only invite Switzerland to convene a conference⁹⁰ for the purpose of establishing the future Meeting of States as the central pillar of an IHL compliance system. A number of States noted that, should this approach be adopted, the relevant conference could be held immediately after the 32nd International Conference of the Red Cross and Red Crescent to avoid unnecessarily delay.

Many States stressed that, regardless of which of the two approaches expressed above may eventually be agreed on, the outcome of the current consultation process should not fall into a "black hole". It was thus suggested that a resolution of the 32nd International Conference could endorse the principal points of convergence identified in the ongoing consultation process and set forth the general architecture of a possible future IHL compliance system.

In addition to the way in which a Meeting of States could be created, the question of how that forum should be called was addressed. Various proposals were made, such as: "Meeting of States on IHL", "Meeting of States on Compliance with IHL", "Meeting of States Parties to the Geneva Conventions", or "IHL Implementation Mechanism".

Both the foundational issues related to the establishment of a future Meeting of States, as well as the question of its denomination, were considered to necessitate further deliberations with a view to enabling more clarity on States' views.

Elements of a Possible IHL Compliance System

At the Third Meeting of States, various aspects pertaining to the possible specific elements of a future IHL compliance system were reviewed. The aim was to identify the points on which States' views are converging, as well as questions that necessitate further discussion, so as to enable the facilitators to adequately gauge States' positions in this regard. A few States did not express their views on the different questions submitted for discussion in the Background Document due, mainly, to their positions on the overarching issues (see above). The Chairs' Conclusions do not purport to reflect the positions of States who did not participate in the discussion for this reason.

Periodic Reporting

The Third Meeting of States confirmed that States generally consider a reporting function to be an important tool for strengthening compliance with IHL and an essential element of any future IHL compliance system.

There was broad agreement among delegations that a reporting function provides an opportunity for self-assessment by States in the process of the preparation of a national report, and that it enables the sharing of a baseline of information on implementation measures taken at the domestic level. It would provide a basis for exchanges among States

⁹⁰ In the view of some States, Switzerland could be invited in its capacity as the depository of the Geneva Conventions of 1949 to convene a conference of the contracting Parties to these instruments to take the decision on the establishment of a Meeting of States. In the view of other States, Switzerland could be invited in its capacity as a neutral State Party to the Geneva Conventions of 1949 to convene a conference of States to take the decision on the establishment of the future Meeting of States.

on their practical experiences with implementation of the law, the sharing of best practices, and the identification of capacity-building needs, as well as common challenges. Several States considered it essential that the reporting function is set up in a way that effectively serves the purpose of improving compliance with IHL.

There was furthermore a general agreement that reporting should not be cumbersome. It was suggested that this could be facilitated by ensuring that reports are prepared on the basis of a template or guidelines.

The Third Meeting of States confirmed the general agreement that a reporting function should encompass 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. Given the voluntary nature of a reporting function, most delegations furthermore shared the view that States should be free to report on practice which may relate to customary IHL or provisions of the Additional Protocols to which they are not a party. A few delegations reiterated their view that customary IHL should not form part of the reporting system. One delegation suggested excluding Additional Protocol II of 1977 from the scope of the reports.

A clear majority of States attached great importance to the public nature of reports, for example by making the reports available on a dedicated website. A few States were of the view that the publication of the reports should be left to the discretion of each State.

Types of Periodic Reports

There was a convergence of views on the usefulness of a baseline report in which States would outline how they implement IHL in their domestic legal system and within armed forces. Specific sections of the report would permit States to also report on challenges, good practices, lessons learned and capacity-building needs, provided they have identified such issues. This type of report, according to a proposal made by one delegation, was referred to as a "basic report".

State opinions diverged, however, on the question of whether and what type of subsequent reports should be envisaged.

Some delegations were of the view that States should only submit updates of the basic reports when necessary or after a certain interval, such as four to five years. Some of these delegations were of the opinion that such updates could also contain information on how IHL was applied in recent State practice.

Most States, on the other hand, considered that a different type of subsequent reports should be envisaged. Two broad positions emerged.

The first group of States supported a proposal which was referred to as "current developments reports". According to that model, subsequent reports, submitted for example every two years, would be focused on recent developments in a State's practice, including new case law of domestic courts or relevant government positions, as well as specific issues encountered in the implementation of IHL, including challenges that have been faced and/or resolved.

A second group of States was of the view that subsequent reports should rather have a thematic focus so as to permit in-depth discussion on crucial and contemporary problems in a focused manner. In their view, subsequent reports should focus on a set of IHL obligations that is of a particular concern with regard to the situation on the ground. This type of subsequent report was referred to as "thematic reports".

Some delegations stressed that, independently of their preference for any type of report, States should report only on their own experience with implementation of IHL. A few States did not share this view.

Follow-up to Periodic Reports

There was a converging view that reports should not fall in a “black hole” and that procedures should be adopted for the Meeting of States to consider national compliance reports in a non-contextual and non-politicized manner. Different views were expressed on the exact modalities of such procedures, but there was a consensus that they should not aim at a review of State reports on an individual basis.

Most States were of the view that a single document should be prepared as a basis for discussion in a dedicated plenary session of the Meeting of States, which could thus consider the general salient issues arising out of the reports in a focused manner. They agreed that such a document should avoid reference to a single State or conflict and focus on issues that are widespread, important and topical.

Different options as regards the format of such a document were discussed. A small number of delegations preferred a non-analytical compilation of the main issues raised in the national reports, reflecting exclusively the information and language provided therein. A second group of States was of the view that such a document should also generally identify best practices, common challenges and capacity-building needs, but not make concrete recommendations. A third group of States supported the proposal made that a single document should, in addition to the elements outlined above, also include appropriate recommendations for improving compliance with IHL. The third option was referred to as “analytical reports” or “principal issues reports” and attracted the widest interest among the participants who were in favor of a single document.

A small number of States expressed doubts that such a document would be useful. In their view, States should simply be given the opportunity to briefly present their reports in a plenary session of the Meeting of States with a view to spurring bilateral or other informal exchanges on their experience, with a particular focus on capacity building.

Regarding the outcome of a discussion of the Meeting of States on periodic reports (independently of the modalities mentioned above), most States shared the view that some form of outcome text would be appropriate. There was broad agreement that it should not be a negotiated text, but take the form of a chair’s summary or conclusions. Different views were expressed as to whether the outcome text should also highlight common challenges and best practices, or also be able to include appropriate non-contextual recommendations for strengthening compliance with IHL.

The Third Meeting of States confirmed that the preparation of a single document as the basis for a discussion of national reports and a possible outcome text may require specific expertise in IHL. The Meeting affirmed that most States do not support the establishment of an expert body, constituted either of independent experts or of government experts, for this purpose. A small number of States considered that it should be established and entrusted with such tasks. In the absence of such a body, a number of participants stated that the ICRC could possibly play an important role in this regard, provided that such a role would be compatible with the organization’s mandate, operational activity and standard working modalities, in particular confidentiality.

Some States with a preference for non-analytical compilations as a basis for a discussion of national reports and the preparation of factual summaries of discussions in the Meeting of States were of the view that the Secretariat or the Bureau of the Meeting of States, possibly

with the support of the ICRC, could be entrusted with the preparation of the relevant documents.

Effectiveness of Periodic Reporting

The Third Meeting of States reviewed possible measures designed to ensure that States will actually submit reports and effectively engage in the reporting process, given its legally non-binding nature. It was reiterated that, in order to ensure effectiveness, this function must be set up in a way that will encourage States to participate and that the publication of the national reports on a dedicated website would be an incentive for governments to engage with the reporting function. A few States reiterated their view that other measures may also be useful and compatible with the guiding principles of the ongoing consultation process, such as ensuring consultation with or technical assistance for States that may request support for the drafting of their national report. The involvement, at the domestic level, of National Committees for the Implementation of IHL, as well as of National Red Cross and Red Crescent Societies in the drafting of reports, was also seen as a possible measure to facilitate the effective participation of all States.

Thematic Discussions on IHL Issues

The Third Meeting of States largely confirmed the points outlined in the Background Document submitted to States ahead of the Meeting, in particular the general agreement among States that thematic discussions on IHL issues would be an important function of a new IHL compliance system and that specific sessions of the Meeting of States should be devoted to such discussions.

Furthermore, the Third Meeting of States confirmed that States largely agree with the purposes of this function outlined in the Background Document. In particular, the view was affirmed that thematic discussions should not aim at codification, or the creation of binding rules, but focus on IHL issues related to the application and interpretation of the law.

The view that linkages with the reporting system on national compliance with IHL should be established, including in the identification of topics of common concern, was also reaffirmed. In that regard, a proposal that States with relevant experience should be able to submit topical reports on the theme under examination, garnered significant support.

As regards the format of thematic discussions, many delegations suggested that a formula will need to be adopted so as to ensure non-politicization, non-selectivity, voluntariness and interactivity of the discussion. In order to ensure a structured dialogue, most States agreed that a background document circulated in advance and panel presentations of experts on the relevant topic would be necessary. A very small number of States were of the opinion that expert participation would not be useful.

States' views largely converged on possible criteria that could be taken into account in the selection of topics for thematic discussions. The following criteria gained the support of many States who expressed their view on the matter: a topic must not be of a merely theoretical interest, but relate to concrete problems observed in the implementation of IHL with a view to improving the situation of victims of armed conflict affected by large-scale suffering; a topic must be timely; and it must be relevant for a sufficient number of States so as to ensure the wide engagement of States in the discussion. It was pointed out that additional criteria may be considered. A small number of delegations suggested that, in addition, thematic discussions on IHL issues should also permit urgent humanitarian matters to be addressed. This view did, however, not generate significant support among the participating delegations.

Three broad positions emerged in relation to the procedure for the selection of topics for thematic discussions. One delegation was of the opinion that topics should only be adopted by the International Conference of the Red Cross and Red Crescent, which is held quadrennially. According to a second position, supported by some States, topics should be identified by the Bureau of the Meeting of States on the basis of previous consultations with all States in order to ensure that they are acceptable to a sufficient number of States. In the view of a third group of States, the plenary of a Meeting of States should be able to select topics for thematic discussion, either by a majority decision or by consensus. Most States in the latter group agreed that such a decision could be informed by a previous recommendation of the Bureau to ensure wide support by States.

The entities that could propose topics for thematic discussions mentioned in the Background Document⁹¹ submitted ahead of the Third Meeting of States were largely confirmed to adequately reflect the views of States.

The Third Meeting of States confirmed that States consider that an outcome document of a thematic discussion would be useful and that, at least, a factual report on such discussions should be produced and made public. It was understood that its precise format can be decided on when the modalities of thematic discussions have been established.

Fact-Finding

Due to time constraints, the first discussion on a fact-finding mechanism, which took place at the Preparatory Discussion of April 2014, was not followed up on at the Third Meeting of States. States' views on this topic that were expressed under other agenda items, in particular under "General Comments by States" and "Reforming Existing Mechanisms", are reflected above.

Meeting of States

The discussion on a Meeting of States as the central pillar of a future IHL compliance system confirmed that the Background Document prepared for the Third Meeting adequately reflected the state of consultations until that point. Certain precisions were made and additional issues were raised, which are outlined below for the purpose of further refining a common understanding of the possible features and structure of a Meeting of States.

The Third Meeting of States confirmed that States generally agree that a Meeting of States as the central pillar of a future IHL compliance system would be a useful tool for strengthening compliance with IHL and should be established.

There was broad agreement that the general purposes of the Meeting of States should be:

- 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 this body of law.
- To serve as an institutional anchor for the other elements of the future IHL compliance system.

With regard to the first point, it was highlighted that the term "variety of functions" is understood as relating to those functions that States will eventually assign to the Meeting of States and that are being researched within the ongoing consultation process.

⁹¹ A State, a group of States, the Bureau of the Meeting of States, the ICRC and the International Conference (the latter depending on the modalities of its relationship with the Meeting of States). One delegation suggested that National Red Cross and Red Crescent Societies may also be considered.

The Third Meeting of States confirmed that States largely agree that the future Meeting of States should not be competent to develop new law or to adopt amendments to existing IHL treaties. It should rather aim at providing a platform for States to exchange views, in a flexible and voluntary framework and with a focus on dialogue and cooperation, on issues related to compliance with IHL, as well as on their practical experiences in IHL implementation, the sharing of best practices, the identification of their possible capacity building needs, as well as the identification of challenges in IHL implementation.

Organs of the Meeting of States

It was reiterated that the structure of a Meeting of States should be as lean and as efficient as possible, with a view to keeping down the costs and to avoiding cumbersome procedures. The structure should be limited to what is necessary to perform the possible functions of the Meeting of States. The question of how and whether to ensure that States have the flexibility to readjust the structure if needs become apparent over time was identified as an issue for further discussion.

It was confirmed that plenary sessions should form the principal body of the Meeting of States. The procedural tasks that should be performed in plenary, as outlined in the Background Document for the Third Meeting of States,⁹² were generally considered adequate; a few delegations questioned the need for such tasks to be performed, in particular, the possible need for a Meeting of States to establish subsidiary bodies.

There was general acknowledgment that plenary sessions should serve to consider national reports on compliance with IHL, and to hold thematic discussions on IHL issues, in accordance with the modalities that may eventually be elaborated for both functions, as discussed above. Many delegations reiterated the view expressed in previous discussions according to which States should be able to decide in plenary sessions on actions, as may be necessary, with respect to general matters concerning compliance with and implementation of IHL, given that such a competence is provided for in many other legal frameworks. Some States expressed concern in that regard. According to their position, the Meeting of States should not have any decision-making authority, but merely serve to perform the functions that will eventually be assigned to that body by States.

The idea of entrusting a Chair with the performance of the relevant procedural and organizational tasks was confirmed to correspond to the view of most States. Certain issues, in particular relating to the election of the Chair, were identified as questions for further discussion. Equitable geographic representation was mentioned by delegations as an important criterion to be taken into account in that regard.

The discussion showed that States broadly recognize that it would be useful for a future Meeting of States to have a Bureau; a few delegations stressed that safeguards are required to ensure that the Bureau will serve the interest of all participating States. There was furthermore wide agreement on the range of issues identified for further discussion: in particular the working modalities of the Bureau, whether it should also meet in between sessions of the Meeting of States, how members should be elected and the length of their terms. As regards the composition of the Bureau, a proposal was submitted that provides for a permanent seat on the Bureau to be attributed to Switzerland, possibly the role of the

⁹² The following procedural tasks were outlined in the Background Document prepared for the Third Meeting of States of June 2014:

- Adopt the Rules of Procedure for the Meeting of States;
- Adopt the budget of the Meeting of States;
- Elect officers, such as the Chair, Vice-Chairs and the members of the Bureau;
- Establish subsidiary bodies, as may be necessary, and elect the members of such bodies;
- Oversee and consider the work done by a subsidiary body or another organ, such as the Secretariat.

Chair, with five additional seats being attributed to other States on the basis of equitable geographic representation. The positions with regard to the various aspects pertaining to the Bureau reflected in the Background Paper for the Third Meeting of States were reiterated.

Many States reiterated their support for establishing a Secretariat to provide administrative and logistical support to the Meeting of States as well as to the Bureau and Chair. With a view to keeping the size and structure of the Secretariat as small and cost-effective as possible, it was suggested that a neutral State such as Switzerland, or the ICRC, could be mandated to host the Secretariat. It was also suggested that the secretarial functions could be entrusted to States serving on the Bureau on a rotating basis. The range of issues related to the Secretariat, outlined in the Background Document for the Third Meeting as issues for further discussion, were considered adequate, with particular attention being paid to financial implications in further consultations.

Further Issues Linked to the Meeting of States

With regard to the membership of the Meeting of States, many States shared the view that it should be open to all States Parties to the Geneva Conventions of 1949. In the view of some States, that question would nonetheless require further deliberation.

As in previous consultation meetings, the issue of the participation of observers prompted different views and the Background Document was considered to adequately reflect them. Many States reiterated their support for the participation of actors other than States, including international and regional organizations (in particular those that have a direct responsibility, role or influence on enhancing compliance with IHL), the components of the International Red Cross and Red Crescent Movement (other than the ICRC), and civil society organizations, in accordance with modalities that need to be defined going forward. Different possible roles for observers were mentioned, depending on the entities involved, including participation in the public sessions of the Meeting of States, the submission of written statements in relation to thematic discussions on IHL issues, and the organization of side-events. Some delegations reiterated their concern in this regard, pointing out that the participation of observers, in particular of civil society actors, may carry the risk of politicizing the Meeting of States. Most States expressed an interest to further discuss the issue of whether and how the participation of observers should be enabled.

Facilitators' Remarks and Next Steps

Two years after the current initiative was officially launched, research and consultations with States on ways and means of strengthening compliance with IHL can be said to have made significant progress. Acknowledging that not all States have expressed their views on some of the specific topics due, mainly, to their positions on the overarching issues, converging views appear to be emerging on the contours of a possible future IHL compliance system. The Third Meeting of States enabled the identification of points on which States' views are coming together, points on which States' opinions continue to differ, and questions that require further discussions.

On the understanding that no agreement has been reached on any of the issues that were discussed within the ongoing consultation process, and acknowledging that it is not of a decision-making nature, discussions at the Third Meeting of States indicated that most States are of the view that a Meeting of States, as the central pillar of a future IHL compliance system, should be established, and serve to consider national compliance reports in a non-contextual manner and to hold thematic discussions on IHL issues. While no convergence of views emerged in relation to a possible fact-finding function, many States believe it should be part of a future IHL compliance system.

The principal questions related to the reporting function and to thematic discussions on IHL issues that needed to be presented in order to enable the facilitators to properly understand States' views have been discussed and examined to an important extent. A number of related issues continue to generate different views among States, in particular questions on the type of national compliance reports and the modalities for follow-up procedures of a reporting function, as well as the question of the procedure for the selection of topics for thematic discussions on IHL issues and guidelines relating to the format of the latter. The precise modalities relating to these issues could possibly be elaborated and decided upon once the broader institutional framework of a regular Meeting of States has been established. It is submitted that the discussions and consultations held so far may constitute the basis for future decisions, given that options generating broad support have emerged during the consultation process.

As regards a possible fact-finding function, it was recognized that the issue as such generates divergent opinions. It is submitted that the question of whether a fact-finding mechanism should form part of a future IHL compliance system and its possible modalities should be further examined once more clarity has been achieved on the broader institutional framework.

A number of issues have not yet been addressed in sufficient depth, mainly relating to the establishment and institutional structure of the Meeting of States. They include: the foundational issues related to the establishment of a Meeting of States, as well as its possible relationship with the International Conference of the Red Cross and Red Crescent; the possible denomination of the future Meeting of States; the periodicity of the Meeting of States in conjunction with the periodicity of the reporting function and of thematic discussions on IHL issues; the set-up, tasks and other aspects related to the organs of the Meeting of States; the role that the ICRC will have in a future Meeting of States; the membership of the Meeting of States; the participation of observers; and resourcing of the Meeting of States, with a particular focus on ensuring that all States are able to participate therein.

Fourth Meeting of States (2015) and Next Preparatory Discussion

The ongoing consultation process based on resolution 1 of the 31st International Conference of the Red Cross and Red Crescent will be concluded next year. The Fourth Meeting of States on Strengthening Compliance with IHL will thus be the last to be held within the Swiss-ICRC facilitated initiative. For the reasons outlined below, it is scheduled to take place in late spring 2015.

The Fourth Meeting of States will aim at taking stock of the results of the consultation process since the 31st International Conference of 2011. It will provide a further important opportunity for States to indicate their views on the different subjects that have been examined within the consultation process, and that need to be reflected in the concluding report on the process.

It is the hope of the facilitators that all questions relevant for the drafting of a concluding report on the consultation process will have been addressed in sufficient depth by the Fourth Meeting of States. The different positions that may continue to persist in relation to various issues will be faithfully reflected in the concluding report.

In order to prepare the Fourth Meeting of States on Strengthening Compliance with IHL, a Preparatory Discussion open to all States is scheduled to take place on 1-2 December 2014. It will mainly serve to discuss the questions noted above that have not yet been fully addressed, so as to enable States to further clarify their views and to allow the facilitators to properly capture them. States can, of course, suggest further topics that may, in their view, require more examination.

Report to the 32nd International Conference in 2015

Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent requests the ICRC to submit a report to the 32nd International Conference on the consultation process that has been undertaken. The report, which will be prepared in conjunction with Switzerland as the co-facilitator of the process, will be the sole responsibility of the ICRC. As mentioned above, it will reflect the discussions held, options for strengthening compliance with IHL identified in consultation with States, and make recommendations. The report will not represent agreed views among States or have any legal or other implications for participating States. It is, however, hoped that by indicating the relevant points of convergence of States' views, as well as points of divergence, it may provide the backdrop for a possible decision on the establishment of an IHL compliance system. The facilitators will aim to circulate the concluding report to all members of the International Conference in June 2015.

Resolution of the 32nd International Conference in 2015

In accordance with Resolution 1 of the 31st International Conference, the 32nd International Conference in 2015 is to consider the concluding report of the consultation process and take appropriate action on that basis.⁹³ If there is support by States to take the outcome of the consultation process forward, the concluding report may serve to inform a possible resolution by the 32nd International Conference, whatever approach may be adopted with respect to the foundational issues related to the establishment of a Meeting of States addressed above. In this context it should be recalled that the relevant resolution will be negotiated in accordance with the usual procedures of an International Conference and not take place within the current consultation process, for lack of a mandate in that regard.

By way of reminder, in accordance with Statutory deadlines, draft resolutions need to be circulated to the members of the International Conference 45 days prior to its start. A draft resolution relating to the issue of strengthening compliance with IHL would thus likely need to be ready by mid-October 2015. It is submitted that it would be helpful if negotiations on the possible elements of such a resolution were to start sufficiently ahead of time, i.e. in the summer of 2015. The ICRC, which usually prepares resolutions on IHL for the International Conference, would aim to present the initial elements of a possible resolution by the end of June 2015 so as to enable the timely start of negotiations on the text and allow for the necessary consultations among States and other members of the International Conference.

Switzerland and the ICRC reiterate their availability 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.

It is reiterated that these Chairs' Conclusions are the sole responsibility of the Chairs and do not intend to represent the agreed views of States at the Third Meeting of States held on 30 June and 1 July 2014.

⁹³ It was highlighted that the International Conference takes its decisions in the form of resolutions (Article 10(5) of the Statutes of the International Red Cross and Red Crescent Movement). "Appropriate action" of the International Conference may thus consist in adopting a resolution on the issues being outlined in the report that will be submitted.