



## Swiss/ICRC Initiative on Strengthening Compliance with IHL Preparatory Discussion in view of the Fourth Meeting of States (2015)

Geneva, 1-2 December 2014

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### Chairs' Conclusions

#### Background

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 and other relevant actors, to identify and propose possible means to enhance and ensure the effectiveness of mechanisms of compliance with IHL. The Conference 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 31st<sup>1</sup> 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 participants acknowledged that IHL has only a limited number of mechanisms to ensure compliance with its norms. Most delegations also 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 Second Meeting of States was devoted to examining whether inspiration could be drawn from procedures created within other compliance frameworks. 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 widely recognized that a regular Meeting of States should be established as a forum for regular dialogue on IHL, one which could also serve as an institutional anchor for other elements of a possible 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, the first of which took place on 16-17 December 2013. At this round of discussion, the primary focus was on reporting on national compliance with IHL and on 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 a future Meeting of States, and allow 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 of 30 June and 1 July 2014 was to provide an overview of 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.

On the understanding that the current consultation process has no decision-making capacity, discussions at the Third Meeting of States indicated that most States are of the view that a regular Meeting of States should be established. It should be the central pillar of a future IHL compliance system and should serve to, inter alia, consider national IHL compliance reports in a non-contextual manner and be the venue of thematic discussions on IHL issues. While no convergence of views emerged in relation to a possible fact-finding function, many States believed it should be part of a future IHL compliance system.

The goal of the Preparatory Discussion of 1-2 December 2014, held in view of the Fourth Meeting of States on Strengthening Compliance with IHL (scheduled to take place on 23-24 April 2015), was to further clarify States' views on a number of issues warranting more detailed discussion, mainly related to the establishment and institutional structure of a future Meeting of States. An important number of delegations participated in the Preparatory Discussion of December 2014, testifying to the growing awareness and interest of States in the issue of strengthening compliance with IHL and the importance they attach thereto.<sup>1</sup>

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<sup>1</sup> See the annexed list of delegations that participated in the Preparatory Discussion of 1-2 December 2014.

## **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 Discussion of December 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;
- The voluntary, i.e. non-legally binding nature of the consultation process, as well as of its eventual outcome.

At the Preparatory Discussion of December 2014 the facilitators recalled that the Chairs' Conclusions submitted in follow-up to the Preparatory Discussions and Meetings of States held within the framework of the ongoing consultations are the sole responsibility of the Chairs, and do not intend to reflect agreed views by States. In this context, the facilitators likewise emphasized that, while the Chairs' Conclusions cannot include the individual views of the participants on every issue discussed, their summaries aim to provide a faithful overview and balance of the opinions expressed at each meeting.

## **Meeting of States**

The following issues pertaining to the institutional structure and establishment of the future Meeting of States were examined at the Preparatory Discussion of December 2014: the possible denomination of the future Meeting of States; the set-up, task and other modalities relating to its possible organs; its membership; the modalities of participation by observers, and resourcing.

The broad support expressed throughout the consultation process for the establishment of a Meeting of States was reiterated at the Preparatory Discussion of December 2014. It was strongly felt that the creation of a Meeting of States (or a forum with a different name), would be useful to the goal of strengthening respect for IHL.

### **General purpose and denomination of the Meeting of States**

The December 2014 Preparatory Discussion largely confirmed that a future Meeting of States should serve the following purposes:

- Provide a dedicated venue for States to discuss issues of common concern and to perform a variety of functions<sup>2</sup> related to implementation of and compliance with IHL with a view to strengthening respect for this body of law.
- Provide an institutional anchor for the other elements<sup>3</sup> of the future IHL compliance system.

Participants also emphasized that the Meeting of States should serve as a platform for an exchange of views among States - based on dialogue and cooperation - on issues related to strengthening respect for IHL, as well as on their practical experiences in its implementation. The future Meeting of States should also promote knowledge of and universal respect for IHL, enable the sharing of best practices among States, facilitate the identification of their possible capacity-building needs, and help identify challenges in IHL implementation.

It was underlined that the material scope of the future Meeting of States should be limited to IHL and to situations in which this body of international law applies, thus clearly excluding situations which do not meet the definition of armed conflicts as provided for in the 1949 Geneva Conventions and their Additional Protocols (for the latter, as may be applicable). The prevailing view of delegations was that the future Meeting of States should not serve to develop new law or adopt amendments to the relevant IHL treaties.

No consensus emerged on the question of what the future Meeting of States<sup>4</sup> should be called, but most delegations stated that they had an “open mind” on this issue. Many were of the view that the denomination of the future Meeting of States should provide an indication of its substantive focus and also reflect the fact that it will not be convened or operate pursuant to binding treaty obligations, i.e. that participation will be voluntary. Based on such considerations, these States favored the denomination “Meeting of States on IHL”. A number of other States were of the view that the central element of a future compliance system should be called “Meeting of States on Compliance with IHL”, or alternatively, “Meeting of States on Respect for IHL”, with a view to better reflecting its specific purpose. A small number of States were of the opinion that the denomination “Meeting of States Parties to the Geneva Conventions”, or a variation thereof such as “Consultative Meeting of States Parties to the Geneva Conventions”, would be appropriate. This view is based on a desire to reflect the fact that the Geneva Conventions have been universally ratified and to provide a clear reference to the composition of the future body. Finally, individual proposals were made to include the terms “forum”, “global”, “voluntary”, “dialogue and cooperation” in the name of the future Meeting of States.

### Structure and organs

There was a broad convergence of views on the functions that should be performed in the plenary sessions of the Meeting of States, which would be the core body of the new IHL compliance system. States reiterated their interest in establishing a reporting function on national compliance with IHL, as well as a function related to thematic discussions on IHL issues. It was underlined in this context that the principle of non-politicization must be

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<sup>2</sup> 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 discussed within the ongoing consultation process.

<sup>3</sup> 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.

<sup>4</sup> The term “Meeting of States” has been used throughout the consultation process. Its utilization in this document is without prejudice to the designation that may eventually be agreed by States.

preserved and that both functions must be implemented in a non-contextual manner. A number of States expressed an interest in further exploring the procedural, structural or other safeguards that would be conducive to ensuring the non-politicization of debates within the future Meeting of States. The guiding principle of effectiveness was also said to be important for future discussions on the exact modalities of these functions.

In addition to the two above-mentioned functions, many States reiterated their interest in examining how a fact-finding function could be integrated into the IHL compliance system once a Meeting of States has been established. The ways in which the International Humanitarian Fact-Finding Commission (IHFFC) could be utilized was particularly signaled by some participants. The facilitators took note of the divergence of opinions expressed in this regard.

Apart from specific compliance functions, most Meetings of States established under other international legal frameworks<sup>5</sup> have a general competence to decide on other actions or measures that may over time be deemed useful or necessary by States with regard to the implementation of the relevant body of law. At the December 2014 Preparatory Discussion, some States were of the view that the future Meeting of States should have such a competence, on the understanding that any action or measure would be agreed on in accordance with the already mentioned guiding principles, including non-politicization, the State-driven character of the new system, and its voluntary nature. Certain other States were of the view that more clarity on the nature of this general competence is required before they are able to express an opinion. A small number of participants were not favorable to such a general competence, mainly because they believe that the future Meeting of States should not have any decision-making capacity.

The possible procedural tasks to be performed in plenary sessions of the Meeting of States - outlined in the Background Document prepared for the December 2014 Preparatory Discussion<sup>6</sup> - were largely considered appropriate by the participants. A few delegations expressed the view that the Meeting of States, as currently contemplated, will not require subsidiary bodies and stated that plenary sessions should not have the competence to establish such bodies.

A clear majority of States who expressed a view on the issue was of the opinion that plenary sessions should take place on an annual basis. According to them, such periodicity is necessary if the work of the Meeting of States is to be effective and relevant, if its discussions are to be timely, and if sufficient and sustained attention is to be focused on IHL as a means of raising the profile of this body of norms and facilitating its better implementation both nationally and internationally. Yearly intervals would also ensure that the agenda of the Meetings remains manageable (given that annual plenary sessions would likely be shorter than plenary sessions held at longer intervals), and would enable the required "routine" to be quickly established, and with it, a culture of constructive and non-politicized dialogue. The suggestion was also made that consideration could be given to the issue of whether it would be necessary to hold a Meeting of States in the year in which the International Conference of the Red Cross and Red Crescent also takes place. It was also underlined that the periodicity of the Meeting of States does not need to be congruent with the periodicity of reporting. There was furthermore a clear understanding that resource

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<sup>5</sup> See Background Document for the Preparatory Discussion of December 2014, p. 5-6.

<sup>6</sup> The following procedural tasks were listed in the Background Document for the Preparatory Discussion of December 2014:

- 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

considerations should be taken into account when deciding on the periodicity of the future Meeting of States, although it was stressed that this factor should not necessarily outweigh the main advantage of annual sessions, i.e. that they enable a consistent focus on the need to strengthen compliance with IHL. Mindful of the costs of annual Meetings, a few delegations nonetheless expressed a preference for biennial Meetings.

A majority of States were of the opinion that plenary sessions should in general take place in public. In their view, there are no particular reasons for deliberations to be held in private given the need for transparency of work as a means of enhancing awareness of the need for improved IHL implementation, and given that the work of the Meeting of States is intended to be of a non-contextual nature. These States did not, however, rule out the possibility of holding closed sessions on an exceptional basis, in particular if specific topics, such as institutional arrangements, were to warrant it. A small number of States expressed a preference for closed meetings as a matter of general principle because such meetings would, in their view, be more conducive to fostering confidence among States. It was also suggested by a couple of participants that the opening and closing sessions of the Meeting of States could be held in public, while the remaining sessions would be closed.

There was unequivocal support for the view that the overall architecture of the new IHL compliance system - including the other possible organs of the future Meeting of States, notably the Chair, the Bureau, and the Secretariat - must be lean and effective, and ensure good use of existing resources. A few States considered it premature to express specific views on the tasks and set up of these organs, in particular as regards the Secretariat, before the functions and other modalities of the Meeting of States are established. A small number of States also queried whether the purposes and functions of the future Meeting of States require an institutional structure with a permanent Secretariat. It was said that the goal is not to establish a comprehensive institutional forum, but a legally non-binding and flexible framework that would allow States to perform the compliance functions considered useful for improving respect for IHL.

The tasks of the Chair<sup>7</sup> and of the Bureau<sup>8</sup> outlined in the Background Document drafted for the December 2014 Preparatory Discussion were largely confirmed by the delegations who expressed a view on the specific questions posed in the document. Certain criteria for election<sup>9</sup> of the Chair and of the members of the Bureau outlined in the Background Document, and the criterion of equitable geographical representation in particular, garnered wide support. In the view of many delegations, the role of the Chair should rotate among the

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<sup>7</sup> The following tasks of the Chair were listed in the Background Document for the Preparatory Discussion of December 2014:

- 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

<sup>8</sup> The following tasks of the Bureau were listed in the Background Document for the Preparatory Discussion of December 2014:

- 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

<sup>9</sup> The following criteria were listed in the Background Document for the Preparatory Discussion of December 2014:

- Equitable geographic representation
- The candidate's commitment to strengthening compliance with IHL
- The candidate's expertise in IHL
- The candidate's commitment to serving the common interests of participating States

geographic regions. Some of the other possible criteria did not meet with similar approval, including a candidate's commitment to strengthening compliance with IHL, and his or her commitment to serving the common interests of the participating States: in both cases it was, inter alia, questioned how and by whom the fulfillment of these requirements could be evaluated. It was, conversely, suggested by some delegations that a State's military experience could be taken into account as an additional criterion for election to the Bureau, given that States with relevant practice would likely have an important contribution to make.

Various views were expressed on the composition of the Bureau. In the most probable scenario, the Chair of the Meeting of States would be a member of the Bureau ex officio. Some States said that the principle of equitable geographical representation should be strictly applied, meaning that the Bureau should be composed of either five or ten members, with the Chair holding one (or one of the two seats) belonging to his or her region. Other States were of the view that the Bureau should be composed of a Chair plus one (or two) representatives of the geographic regions, that is, of six or eleven members. In the discussion, a small number of States additionally said that each regional group should independently determine how their representative(s) is chosen, and that members of the Bureau, including possibly the Chair, should not be formally elected at the Meeting of States.

It was stressed that a balance should be found between the need for continuity and the need for universality in determining the length of terms of the Chair and of members of the Bureau. Most States considered it appropriate that the Chair, as well as members of the Bureau, should serve for a period covering two or more plenary sessions. Staggered elections were deemed an interesting option for the purpose of ensuring continuity of the Bureau, as not all members would be renewed at the same time. A combination of shorter and longer terms for the Chair and the members of the Bureau was also deemed possible. Thus, the Chair could be elected to serve a longer term, while Bureau members could be elected to shorter terms, or vice versa.

As mentioned above, not all States expressed an opinion on the questions posed in the Background Document with regard to the tasks and set up of a possible Secretariat of the Meeting of States. It was noted by some that a decision on its size and other modalities could be taken once the framework of the Meeting of States is better known. There was nevertheless a general sense that the Secretariat should start as small as possible, with a view to adapting its size and working modalities, as may be necessary, after an initial pilot phase. At the same time, it was suggested that the need for the effective functioning of the compliance framework should also guide any future decisions.

The tasks of the Secretariat outlined in the Background Document, in particular those of a logistical/administrative<sup>10</sup> and organizational<sup>11</sup> nature, were largely considered appropriate. It

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<sup>10</sup> The logistical/administrative tasks listed in the Background Document for the Preparatory Discussion of December 2014 were:

- Conference services/conference secretariat
  - o Coordination of the preparation of 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 the communications of States, including national reports on compliance with IHL
  - o Maintenance of records and archives

<sup>11</sup> The organizational tasks listed in the Background Document for the Preparatory Discussion of December 2014 were:

- 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

was also said that the eventual attribution to the Secretariat of certain tasks, such those related to the preparation of a consolidated non-contextual report on national compliance with IHL, or related to thematic discussions on IHL issues, will depend on the role to be played by the ICRC.

Three possible options on establishing the Secretariat were provided for in the Background Paper. A clear majority of delegations expressed a preference for further exploring whether and how the Secretariat could be linked to the ICRC, on the understanding that the organization's principles, mandate and standard working modalities must not be jeopardized. This option was believed to be both more efficient - given the ICRC's professionalism and extensive expertise in the field of IHL - and more cost-effective than the others presented. It was also suggested that a Secretariat link to the ICRC could be envisaged for an initially defined period of time, after which an evaluation could take place. The creation of a new stand-alone Secretariat, was nevertheless considered interesting by a few States. The option of a Secretariat that would rotate among States, or be permanently performed by a single State, was not deemed to be appropriate by most States, due not only to the financial and logistical challenges involved, but also because it would not be conducive to creating a sense of ownership by the other participants.

### Participation in the Meeting of States

The December 2014 Preparatory Discussion confirmed that membership in the future Meeting of States would be limited to States.

There was a broad convergence of views on the fact that membership should be open to all States Parties to the four Geneva Conventions of 1949.<sup>12</sup> In this context, the hope was expressed that the universal ratification of these treaties would lead to equally universal participation in the new compliance system. A small number of States were of the opinion that membership should be open to States, regardless of their ratification of the 1949 Geneva Conventions.

A large majority of States who took the floor were also of the view that the participation of observers in the work of the Meeting of States would be important. Some States, however, either considered it premature to discuss modalities for observer participation, or expressed doubt that their participation as such could be consistent with the guiding principles of the process.

There was unequivocal acknowledgment that the modalities for observer participation should be compatible with the guiding principles of the consultation process, in particular the need to avoid politicization, to ensure a non-contextual dialogue on strengthening compliance with IHL, and the State-driven character of the future Meeting of States. It was furthermore recalled that the question of observer participation is closely linked to the question of whether the plenary sessions of the Meeting of States should be public or closed. In this

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- 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

<sup>12</sup> This criterion is without prejudice to the material scope of work of the future Meeting of States. As widely agreed in previous consultation meetings, the future compliance system would encompass obligations under the four Geneva Conventions of 1949 and their Additional Protocols (for States that are a party to the latter).

context, a few States expressed an interest in further exploring a combination of public and closed meetings as a means of both enabling observers to express their views, but also allowing deliberations only among States if warranted. It was likewise suggested that resource considerations should be kept in mind, i.e. that attention should be paid to not disproportionately increasing the number of participants of the future Meeting of States.

Three categories of possible observers at the Meeting of States were outlined in the Background Document: the components of the International Red Cross and Red Crescent Movement (other than the ICRC),<sup>13</sup> intergovernmental organizations and entities, and civil society actors.

As regards the components of the International Red Cross and Red Crescent Movement, the participation of the International Federation of Red Cross and Red Crescent Societies was said to be important, given its role as a humanitarian actor. Many States were favorable to the idea of granting the International Federation permanent observer status and channeling the participation of National Red Cross and Red Crescent Societies through the Federation, in order not to, among other things, double the number of participants in the future Meeting of States. A few States considered it nevertheless appropriate to open the Meeting of States to all the individual National Societies. A few other States underlined the importance of involving National Societies in preparations for the Meeting of States at the domestic level, but did not deem their additional participation in the Meeting of States necessary.

Most States were of the opinion that intergovernmental organizations and entities whose activities are of particular relevance to the future Meeting of States<sup>14</sup> should be granted permanent observer status and that the Meeting itself, once established, should decide who those actors will be. It was also said that the option of inviting other such organizations and entities to take part in particular sessions, depending on the subject matter, should be provided for. As regards modalities for the participation of this group of observers, most delegations were of the view that they should be able to attend the public sessions, submit written contributions and make oral statements in accordance with the future Rules of Procedure of the Meeting of States. The few delegations who were not favorable to the participation of intergovernmental organizations and entities, were of the opinion that their involvement with the Meeting of States should be limited to supporting individual States in IHL implementation at the national or regional level.

There was agreement that the participation of civil society actors as observers in the future Meeting of States, and the relevant modalities, should be compatible with the guiding principles of the process, in particular non-politicization (i.e., that their participation does not lead to “naming and shaming”), and the State-driven character of the Meeting of States.

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<sup>13</sup> By way of reminder, the ICRC's possible role and tasks in relation to the new IHL compliance system are being separately discussed.

<sup>14</sup> The following intergovernmental organizations were mentioned in the Background Document drafted for the Preparatory Discussion of December 2014: the UN Secretariat and specific components thereof (such as the UN Office for the Coordination of Humanitarian Affairs (OCHA), the UN Department of Peacekeeping Operations (DPKO), the Office for Disarmament (ODA), the Office of the UN High Commissioner for Human Rights (OHCHR)), a number of UN programs, funds and specialized agencies (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)), regional and sub-regional organizations (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)) and other intergovernmental organizations and other entities with a specific mandate that is relevant for the Meeting of States (such as the International Criminal Court (ICC) or the International Humanitarian Fact-Finding Commission (IHFFC)).

Most delegations opined that observer status should be granted to civil society actors with ECOSOC consultative status, whose activities are relevant to the work of the Meeting of States. It was said that this approach would greatly simplify the invitation procedure and render it more objective. Pursuant to this view, civil society actors without ECOSOC consultative status could be invited to participate upon request. Different views were expressed as to how and by whom such requests should be examined; some delegations considered that the Meeting of States should decide based on formal criteria, while others suggested conferring the decision on the Chair and the Bureau for reasons of efficiency. Still other delegations were of the view that ECOSOC consultative status may be too broad a criterion for determining the eligibility of civil society actors for observer status. They expressed caution vis à vis automatic invitations and suggested that objective criteria should be developed to guide the Chair, Bureau or the Meeting of States in the examination of requests for civil society participation. It was simultaneously stressed that the Meeting of States should not spend too much time on this issue; in order to enable an efficient use of resources, it was suggested that decisions on participation should be taken by the Chair, in consultation with the Bureau. There was also a small number of delegations who were not favorable to civil society participation in an observer capacity in the future Meeting of States.

Different positions were expressed as regards the modalities for the participation of civil society observers. Most delegations favored civil society actors being able to attend the public sessions of the Meeting of States, to make oral statements and submit written contributions. It was suggested by some that, at least initially, civil society participation could be limited to the attendance of public sessions and the submission of written contributions as a means of ensuring compliance with the principles of non-politicization and non-contextualized dialogue, with the option of further arrangements being made at a later stage. As already mentioned above, some States underlined that it would be necessary to develop rules on the public or other nature of the plenary sessions and to have more clarity on the working procedures of the future Meeting of States, before they are able to opine on the modalities of civil society participation. It was also stressed that safeguards should be established to ensure that side-events organized by civil society actors do not politicize the future Meeting of States.

### Resourcing

The question of how the future Meeting of States will be financed, and its budgetary implications, were identified as an issue for further discussion at the Third Meeting of States held in June 2014. The December 2014 Preparatory Discussion thus provided an opportunity for a preliminary examination of this subject.

Given that a limited number of delegations expressed an opinion, the observations made below do not purport to reflect any views of a general nature. Many delegations stated that financing should be considered at a later stage, once the structure and functioning of the Meeting of States have been more precisely defined. It was also recalled that the requirement of taking resource constraints into account relates to all aspects of the future IHL compliance framework, including the question of how the funding of the Meeting of States should be ensured.

The principles<sup>15</sup> that should guide the funding of the Meeting of States outlined in the Background Document were largely considered adequate. It was also recognized that the

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<sup>15</sup> The following principles were listed in the Background Document for the Preparatory Discussion of December 2014:

- Ensure sufficient funding
- Ensure a fair distribution of costs among States

costs of the Meeting of States should be borne by the participating States, taking into account the difficulties of developing countries in this regard. Some delegations were of the view that it would be not be appropriate to draw on the UN scale of assessment as a model for issuing recommendations on the voluntary contributions to be made by States. Other delegations were open to relying on this model, as they believed it could provide an already existing objective criterion for achieving a fair distribution of costs.

It was acknowledged that the legally non-binding nature of the future Meeting of States poses particular legal and practical challenges. Some delegations anticipated, for example, that voluntary contributions could pose particular challenges as compared to contributions based on the legally-binding provisions of an international treaty, due to requirements posed by domestic law and regulations.

Certain measures outlined in the Background Document, notably the possibility of establishing a contingency fund, the creation of a sponsorship program to enable the participation of Least Developed Countries, the option of States seconding staff and others, as well as the number of working languages of the future Meeting of States (which would have budgetary implications), were not examined in sufficient depth. These issues were highlighted as needing further discussion once the structure and functions of the future Meeting of States have been determined.

## **Foundational Issues and Relationship with the International Conference of the Red Cross and Red Crescent**

### **Ways and means of establishing the Meeting of States**

It was recalled by the facilitators that, pursuant to the approach reiterated by the participants in the consultation process, the future Meeting of States will be voluntary, i.e. not be established by means of a legally binding instrument. It was also underlined that the mandate on which the ongoing initiative is based does not include the authority to decide on the establishment of such a forum. Instead, options that emerge from the consultations will be presented in a concluding report that will be submitted by the ICRC, in conjunction with Switzerland, to the 32nd International Conference of the Red Cross and Red Crescent. Action that may be deemed appropriate by the 32nd Conference<sup>16</sup> will be adopted in a corresponding resolution. Its content remains to be determined in the usual process of negotiations of resolutions of the International Conference (see below, Next Steps).

Two broad positions on whether a resolution of the International Conference may establish a Meeting of States - which would serve as the central pillar of the future IHL compliance system - were once again expressed in the discussion. Some States are of the opinion that a Meeting of States can be created by the International Conference. In their view, this approach would be compatible with the legally non-binding nature of the future IHL compliance framework, and be more efficient, given the risk of losing momentum and the *acquis* of the consultations. It would also avoid the financial implications of deferring the decision on establishment to a diplomatic conference. Other States are of the view that the International Conference can only invite Switzerland to convene a diplomatic conference for the purpose of establishing a Meeting of States. In their view, given that actors other than States participate in decision-making at the International Conference (i.e., the components of the International Red Cross and Red Crescent Movement), the International Conference

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- Transparency
  - Predictability

<sup>16</sup> See Para. 8 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent of 2011.

lacks the requisite legal authority. It was said that this approach would better reflect the State-driven character of the future Meeting of States and would not necessarily affect its legally non-binding nature.

Having in mind that the main divergence of views centers on whether a resolution of the International Conference can provide an adequate basis for establishing the Meeting of States, it was also suggested that a hybrid solution, combining the advantages of both options, should be envisaged. According to this proposal, the relevant resolution could aim to capture those elements of the future IHL compliance system that are acceptable to States, while deferring the formal establishment of the system to an initial Meeting of States to be held within a pre-determined timeframe. It was specified that such an approach would preserve the results of the ongoing consultation process (including, for example, the principles that should guide the work of the future Meeting of States, its purposes and functions, questions related to participation, its relationship with the International Conference and the contours of its institutional structure). This solution, it was said, would allow the initial Meeting of States to decide on specific institutional issues that may require further elaboration, including through the future Meeting's Rules of Procedure.

The question of how the future Meeting of States should be established was said to merit further consideration at the Fourth Meeting of States in April 2015.

#### Relationship with the International Conference of the Red Cross and Red Crescent

Several States had stressed in previous consultation meetings that it would be important to establish a link between the Meeting of States and the International Conference. The December 2014 Preparatory Discussion enabled a preliminary examination of this issue, as well as of the principles that should guide the relationship.

Most States said that the principles outlined in the Background Document<sup>17</sup> provided a useful basis for discussion, in particular the need to find synergies between the two bodies, in order to also avoid duplication. It was likewise stressed by some that the distinct and autonomous character of the Meeting of States and the International Conference should be preserved and that there should be no hierarchical relationship between them (the future Meeting of States will not be a subsidiary body of the International Conference). Several delegations underlined that it will be for the Meeting of States to eventually decide on whether recommendations or other similar outcomes of the International Conference should be taken into account by the Meeting of States, including with respect to the institutional development of this latter forum.

Other possible links between the future Meeting of States and the International Conference outlined in the Background Document<sup>18</sup> were deemed relevant. A number of States said that

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<sup>17</sup> The following principles were listed in the Background Document for the Preparatory Discussion of December 2014:

- The need for synergies
- Care about the need for mutually reinforcing outcomes
- In mutual relations, respect for the Fundamental Principles binding the Movement

<sup>18</sup> The following links were listed in the Background Document for the Preparatory Discussion of December 2014:

- 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

their relationship is an issue that merits further discussion and can be conclusively elaborated on once the Meeting of States is established.

## **Next Steps**

The next steps within the current consultation process, including the phase leading up to the 32nd International Conference of the Red Cross and Red Crescent, were outlined in the Background Document prepared for the December 2014 meeting. The overview presented by the facilitators was deemed appropriate by the participants and is therefore recalled below.

The ongoing consultation process based on Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent will be concluded in 2015. 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 consultation process. Following this Meeting, and in accordance with Resolution 1, 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).<sup>19</sup>

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. 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 requests the ICRC to submit a report to the 32nd International Conference on the consultation process that has been undertaken. This 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 consultations with States, and make recommendations. The report will not have any binding 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.

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- 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

<sup>19</sup> Para. 8 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent.

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.<sup>20</sup> The concluding report will thus serve to inform a possible resolution by the 32nd International Conference. In this context, it should be recalled that the relevant resolution will be negotiated in accordance with the usual procedures of the International Conference of the Red Cross and Red Crescent, and not within the current consultation process.

By way of reminder, in accordance with relevant Statutory provisions, the final deadline for the despatch of documents to members and observers of the International Conference is 45 days prior to its start. This means that 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 discussions on the possible elements of such a resolution were to start sufficiently ahead of time. The ICRC, which usually prepares resolutions on IHL for the International Conference, would aim to present the initial elements of a possible resolution in June 2015 so as to enable the timely start of discussion on the text and allow for the necessary consultations among States and other members of the International Conference.

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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, of the development of their joint 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](mailto: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 Preparatory Discussion of December 2014.

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<sup>20</sup> The International Conference takes 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 be the adoption of a resolution on the issues that will be dealt with in the concluding report to be submitted by the ICRC, in conjunction with Switzerland.

## Annex: Participating Delegations

1. Afghanistan
2. Algeria
3. Argentina
4. Australia
5. Austria
6. Azerbaijan
7. Belarus
8. Belgium
9. Brazil
10. Canada\*
11. China
12. Colombia
13. Costa Rica
14. Côte d'Ivoire
15. Croatia
16. Cuba
17. Cyprus
18. Czech Republic
19. Democratic Republic of Congo
20. Denmark
21. Ecuador
22. Egypt
23. Estonia
24. Ethiopia
25. European Union
26. Finland
27. France
28. Georgia
29. Germany
30. Greece
31. Guatemala
32. Holy See
33. Hungary
34. India
35. Indonesia
36. Iran
37. Iraq
38. Ireland
39. Italy
40. Japan
41. Jordan
42. Korea
43. Kuwait
44. Kyrgyzstan
45. Latvia
46. Lebanon
47. Liechtenstein
48. Lithuania
49. Luxembourg
50. Madagascar
51. Mauritius
52. Mexico
53. Moldova
54. Monaco
55. Morocco
56. Myanmar
57. Namibia
58. Netherlands
59. New Zealand
60. Nicaragua
61. Nigeria
62. Norway
63. Oman
64. Pakistan
65. Panama
66. Paraguay
67. Philippines
68. Poland
69. Portugal
70. Qatar
71. Romania
72. Russia
73. Rwanda
74. Serbia
75. Singapore
76. Slovakia
77. Slovenia
78. South Africa
79. South Sudan
80. Spain
81. Sri Lanka
82. State of Palestine\*
83. Sweden
84. Thailand
85. Tunisia
86. Turkey
87. United Arab Emirates
88. United Kingdom
89. Uruguay
90. USA\*
91. Venezuela

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\* These delegations reiterated to the Chairs of the Preparatory Discussion, in the context of this meeting, the positions expressed in their communications addressed to the Depositary of the four Geneva Conventions and circulated by the Depositary by Notifications GEN 3/14 of 21 May 2014 and GEN 4/14 of 27 June 2014.