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ICRC

**Fourth Meeting of States on Strengthening Compliance
with International Humanitarian Law (IHL)**

23 and 24 April 2015

BACKGROUND DOCUMENT

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1. Introduction

1.1. Origins of the consultation process

In its Resolution 1, the 31st International Conference of the Red Cross and 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.¹

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 IHL² and requested that a report, proposing a range of options and recommendations, be submitted to the 32nd International Conference.³ 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,⁴ based on a pledge to this effect that Switzerland had submitted to the 31st International Conference.

Following the 31st International Conference, Switzerland and the ICRC undertook a joint initiative to facilitate implementation of the relevant provisions of Resolution 1 in order, inter alia, to avoid duplicating their respective efforts. The Fourth Meeting of States, which will take place on 23-24 April 2015, and for which this Background Document has been prepared, is the last meeting that will be held within the consultation process.

A brief overview of State consultations that have been facilitated by Switzerland and the ICRC since the beginning of the current process is provided further below. Next steps in the lead-up to the 32nd International Conference of the Red Cross and Red Crescent, which will be held on 8-10 December 2015, are outlined in the last section of this Document.

1.2. Guiding principles of the consultation process

As facilitators, Switzerland and the ICRC have been 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 has been 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 1-2 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;

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

⁴ Para. 7 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent.

- 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.

The Geneva Conventions of 1949 do not foresee the establishment of a forum for regular meetings of States on IHL issues, to which certain compliance functions may be attached, such as exist under other branches of international law (usually called Conferences or Meetings of States Parties). In the consultations held within the Swiss-ICRC process to date, a clear convergence of views has emerged among States that the possible establishment of an IHL compliance system should not entail amendments to the 1949 Geneva Conventions, or the negotiation of a new treaty. It should therefore be clear that any IHL compliance system that may eventually be established will not be treaty-based, and thus not legally binding.

1.3. Purpose of the Fourth Meeting of States on Strengthening Compliance with IHL

The purpose of the Fourth Meeting of States on Strengthening Compliance with IHL is to enable an overview of the main elements of a possible new IHL compliance system that have emerged in the State consultations held thus far. The aim of this Background Document is to provide a basis for the discussion.

Given that this will be the last Meeting of States held within the current consultation process, the Document does not introduce new subjects. Instead, it:

- Revisits the main issues that have been examined, with a view to recalling the points on which a broad convergence of views may be said to exist, and to indicating those on which opinions continue to differ;
- Makes suggestions and poses questions with respect to certain specific issues that merit additional examination at the Fourth Meeting, so as to allow the facilitators to better gauge States' views for the purpose of the preparation of their concluding report on the process; and,
- Attempts to identify those specific issues that may need to be further elaborated on the basis of the relevant resolution to be adopted at the 32nd International Conference.

This Background Document is the sole responsibility of the facilitators of the process and does not purport to express the agreed views of States.

While the Document can be read as a stand-alone text, it has been drafted on the understanding that participants will be able to consult the proceedings of the previous meetings – the Background Documents and the Chairs' Conclusions – if they find it necessary for their preparation. The relevant documents have been posted on the ICRC's website at: <http://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm>, and on the website of the Swiss Federal Department of Foreign Affairs at: <http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/icrc.html>.

As on previous occasions, it is suggested that the Background Document first be read in its entirety given that the issues, and thus various sections of the text, are interlinked.

1.4. Overview of previous meetings held within the consultation process

1.4.1. First Meeting of States

The initiative was effectively launched on 13 July 2012 when a first Informal Meeting of all 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 IHL issues and, in particular, on improving respect for this body of law.

Subsequent to the first Informal Meeting of States, Switzerland and the ICRC continued discussions and consultations with a broad range of States, through bilateral meetings as well as in two rounds of discussions with a regionally balanced group 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.

1.4.2. Second Meeting of States

On 17 and 18 June 2013, a Second Meeting of States on Strengthening Compliance with IHL was held. The purpose of the Meeting was to present all States with an overview of the discussions and consultations that had taken place and to seek guidance on the substantive questions that had arisen, as well as on possible next steps.

The Second Meeting of States dealt with:

- An overview and inadequacies of existing IHL compliance mechanisms;
- The possible functions of an IHL compliance system;
- The possible tasks and features of a Meeting of States.⁵

As regards the first issue, the Second Meeting of States acknowledged that, contrary to most other branches of international law, IHL has a limited number of mechanisms to ensure compliance with its norms. In addition, their configuration and remit are such that they do not allow for a comprehensive approach to ensuring compliance. It was noted that existing IHL compliance mechanisms also lack attachment to a broader institutional compliance structure. It was likewise underlined that the Geneva Conventions and their Additional Protocols are an exception among international treaties in that they do not provide that States will meet on a regular basis to discuss issues of common concern and perform other functions related to treaty compliance.

As regards the second issue, the Second Meeting of States also looked at the possible functions that an IHL compliance system could be endowed with. A range of possible functions outlined in the Background Document were discussed (periodic reporting, fact-finding, early warning and urgent appeals, country visits, non-binding legal opinions, good offices, State inquiries, dispute settlement, and examinations of complaints).⁶ At the end of

⁵ See Background Document for the Second Meeting of States on Strengthening Compliance with IHL, June 2013, at: <http://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm>.

⁶ Idem, pp. 9-11 and Annex 4, pp. 22-45.

the Meeting, it was identified that: national reporting on compliance with IHL, thematic discussions on IHL issues, and fact-finding, should be given priority in further deliberations within the Swiss-ICRC facilitated process and that discussions should focus on examining the various aspects of these functions.

The Second Meeting of States affirmed that there was strong general support among States for establishing a forum for a regular dialogue on IHL, that is a regular Meeting of States. Such a meeting would be a forum for discussion on issues of IHL implementation and compliance, and could also serve as an anchor for other elements of an IHL compliance system.

Based on the discussions at the Second Meeting of States, Switzerland and the ICRC undertook to submit, in continued discussions and consultations with States, concrete proposals and options notably regarding the:

- Form and content of a periodic reporting system on national compliance with IHL;
- The form, content and possible outcome of thematic discussions on IHL issues;
- Modalities for fact-finding, including possible ways to make use of the International Humanitarian Fact-Finding Commission (IHFFC);
- The features and tasks of a Meeting of States.⁷

1.4.3. Third Meeting of States

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, two Preparatory Discussions open to all States were facilitated by Switzerland and the ICRC. The first meeting took place on 16 and 17 December 2013.⁸ Its primary focus of examination was reporting on national compliance with IHL and thematic discussions on IHL issues. The aim of the next Preparatory Discussion, held on 3 and 4 April 2014,⁹ was to enable a more detailed review of various aspects of the Meeting of States. 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, and provided an opportunity for a first, preliminary discussion on a possible fact-finding function.

The Third Meeting of States on Strengthening Compliance with IHL was held on 30 June and 1 July 2014. Its goal was to overview the main topics examined at both rounds of Preparatory Discussions, with a view to further clarifying and refining States' positions on the outstanding issues, including the possible identification of points on which views are converging, as well as those that were deemed to require further discussions going forward.

The Third Meeting of States dealt with several questions, only the gist of which can be briefly recalled below, including a number of aspects that were labelled "overarching issues", and that required further discussion in order to move the consultations on the possible elements of an IHL compliance system forward:

- *Reform of existing IHL compliance mechanisms*
The Third Meeting revisited the question of the possible reform of the existing stand-alone IHL compliance mechanisms that had already been discussed prior to, and at the Second Meeting of States. With few exceptions, it was broadly reaffirmed that current endeavors

⁷ Idem.

⁸ See Preparatory Discussion on Strengthening Compliance with IHL, December 2013, at: <http://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm>.

⁹ See Preparatory Discussion on Strengthening Compliance with IHL, April 2014, at: <http://www.icrc.org/eng/what-we-do/other-activities/development-ihl/strengthening-legal-protection-compliance.htm>.

aimed at identifying ways and means of strengthening compliance with IHL should not focus on how the existing mechanisms could eventually be reformed, apart from the IHFFC. It was underlined that this approach does not exclude a discussion, at a later stage, of specific proposals on how they can be strengthened, and that States could put such proposals forward at any time, including as a topic for a thematic discussion of a future Meeting of States.

- *Foundational issues related to the establishment of a Meeting of States*

Given that, as already explained above, a future IHL compliance system will not be established by means of a legally binding instrument, the question of how to establish a Meeting of States as the central pillar of a future IHL compliance system was raised and discussed at the Third Meeting of States. Two broad positions were enunciated, and it was considered that further deliberations would be necessary with a view to possibly reconciling them. As this question is again addressed in the present Background Document, it will not be further elaborated on here.

In addition to the “overarching issues”, various questions related to the functioning of a future IHL compliance system were reviewed at the Third Meeting of States. The Meeting enabled the identification of points on which States’ views were coming together, as well as points on which opinions continued to differ. Discussions at the Meeting indicated that most States were of the view that a Meeting of States as the central pillar of a future IHL compliance system should be established. A reporting function on national compliance with IHL, as well as thematic discussions on IHL issues, were generally considered important functions of the future Meeting of States, and were said to be essential elements of any future IHL compliance system.

The Third Meeting of States also permitted the identification of a number of questions that required further discussions. They pertained notably to the modalities of a future Meeting of States.

1.4.4. Preparatory Discussion since the Third Meeting of States

Questions linked to the establishment and institutional structure of the future Meeting of States were further examined at the Preparatory Discussion held on 1 and 2 December 2014. The discussions focused on 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; its periodicity; the membership of the Meeting of States; the participation of observers; the resourcing of the Meeting of States (with a particular focus on ensuring that all States are able to participate therein); 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 December 2014 Preparatory Discussion served to further clarify States’ positions regarding these topics with a view to concluding the consultation process at the Fourth Meeting of States.

2. Contours of a possible IHL compliance system

This section aims to outline the elements, features and modalities of a possible new IHL compliance system¹⁰ that have received broad support in the discussions so far, with a view to also providing further indication as to how they may be implemented.

States are, in particular, invited to opine on the points on which views are converging and should be highlighted in the concluding report of the facilitators, and may be reflected in a resolution of the 32nd International Conference of the Red Cross and Red Crescent (see below for more details on Next Steps). Participants are also invited to opine on the points on which views have not yet converged.

2.1. General considerations on the Meeting of States as the central pillar of the future IHL compliance system

In previous consultations, it was acknowledged that the Geneva Conventions of 1949 are an exception among international treaties in that they do not provide States with a regular opportunity to meet in order to take stock of and exchange opinions on ways of enhancing observance of this body of norms. There was a converging view that this institutional gap should be redressed.

During the consultation process, including at the Preparatory Discussion of December 2014, it was thus largely confirmed that the Meeting of States should:

- Serve as a dedicated venue for States to discuss issues of common concern and to perform functions¹¹ related to implementation of and compliance with IHL, with a view to strengthening respect for this body of law; and
- Provide an institutional anchor for the other elements of the future IHL compliance system.

There is also a converging view that the overall purpose of the future IHL compliance system, and of the Meeting of States as its central pillar, should be to promote knowledge of and universal respect for IHL. To this end, the performance of the compliance functions attached to it should, on the basis of dialogue and cooperation, enable States to examine practical experiences and challenges in IHL implementation, facilitate the flagging of possible capacity-building needs and foster international cooperation in addressing them, and enable the sharing of best practices. The future Meeting of States should not be competent to develop new law or to adopt amendments to the relevant IHL treaties, but rather focus on interpretation and implementation of IHL.

With regard to possible compliance functions, most States are of the view that a reporting system on national compliance with IHL (see Section 2.2.1.), and the function of thematic discussions on IHL issues (see Section 2.2.2.), should be established. Other possible compliance functions may be added over time if there is State agreement, including possibly a fact-finding function (see Section 2.2.3.).

In this context it should be recalled that the scope of the future IHL compliance system will be limited to IHL and to situations in which this body of international law applies,¹² excluding

¹⁰ The goal of the IHL compliance system discussed within the Swiss/ICRC facilitated consultation process is to strengthen respect for IHL. The term “compliance” may thus be understood in the present context as respect for all relevant obligations under IHL. The term “system” was used with a view to underlining the interrelation and cohesion of the different elements that may make up the new system: the Meeting of States and the tasks it will perform, as well as specific compliance functions that may be linked to it.

¹¹ The expression “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.

circumstances 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).

There is likewise distinct agreement that the work of the Meeting of States should be based on the guiding principles previously listed above, including the need for it to be effective and to promote dialogue and cooperation as a means of strengthening respect for IHL without politicization. The institutional structure of the Meeting of States should be as cost-effective as possible and be limited to what is necessary (from a logistical and procedural point of view), for the effective fulfillment of its functions.

Questions for discussion:

- a) Do the points above adequately reflect the current state of consultations on general aspects of the Meeting of States as the central pillar of the future IHL compliance system? Should any other points be added? If so, which?
- b) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.2. Functions of the Meeting of States

2.2.1. Reporting on national compliance with IHL

A large majority of States consider a reporting function to be an important tool for strengthening compliance with IHL. It would provide the necessary baseline of information on the state of IHL implementation in various parts of the world, permit the identification of common experiences and challenges related to IHL observance, enable the exchange of best practices, and allow for an expression of and responses to capacity-building needs that may exist. This function was said to be an essential element of any future IHL compliance system, i.e. necessary for the effective fulfillment of the purposes of the Meeting of States outlined above.

This section does not aim to and cannot revisit the whole spectrum of issues that have been examined in relation to a reporting function at various meetings held within the current consultation process. Provided below are areas on which the views of States - which took part in the discussions on reporting - may be said to have reached a significant level of convergence.

Certain issues that require further examination at the Fourth Meeting of States are also outlined below. They include the types of national reports on IHL, as well as possible follow-up procedures.

These two topics have been examined on several occasions within the ongoing consultations. It is submitted that it would be useful and necessary to reach as much clarity on them as possible at the Fourth Meeting of States, in order to provide sufficient indication to the facilitators in the preparation of their concluding report. The guidance sought is not on related questions of a detailed or primarily procedural nature, which would be subject to further discussions and be elaborated in the Rules of Procedure of a future Meeting of

¹² It is recalled that there are measures that States are to take already in peacetime and are essentially aimed at the creation of an environment conducive to respect for IHL - such as IHL dissemination, the training of armed forces, the adoption of national legislation incorporating and implementing IHL treaties where necessary, and others. Also, there are IHL obligations that survive an armed conflict and cease only once their protective function is no longer necessary – for example, the application of the Third Geneva Convention of 1949 until the final release of a prisoner of war.

States. At issue is, rather, the need to identify, in broad outline, the type of reports and the main thrust of their content, as well as the elements of follow-up, which could possibly generate a necessary convergence of views.

i. Points of a general nature

A reporting function provides an opportunity for self-assessment by States in the process of the preparation of a national report, and enables the establishment and subsequent sharing of a baseline of information on implementation measures taken at the domestic level.

A reporting function provides a basis for exchanges and dialogue among States on their practical experiences in the implementation of IHL, on the identification of common challenges faced, the sharing of best practices, and the identification of capacity-building needs.

A reporting function will be linked to the Meeting of States, and could serve to inform the choice of topics for thematic discussions on IHL issues.

A reporting function will be limited to 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. States not party to the Protocols could report on specific provisions of the Protocols which they apply in practice if they so wish. States are free to refer to other sources of IHL in their reports, if they so wish.

A reporting function will not involve an article-by-article review of the relevant IHL treaties and the reporting system will not be cumbersome. Subject to further debate among participants on format, reports should be prepared based on guidelines or templates that are not overly prescriptive.

A reporting function will be voluntary, but should be designed so as to serve the purpose of strengthening respect for and implementation of IHL.

Appropriate follow-up procedures will be established with a view to allowing a reporting function to contribute to strengthening respect for IHL (see below). Such procedures should be non-individualized, non-contextual, and non-politicized.

Questions for discussion:

- a) Do the points indicated above adequately reflect the current state of the consultations on the periodic reporting function? Should any points be added? If so, which?
- b) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

ii. Types of national reports on IHL

Provided below is a summary of current positions on the types of national reports on IHL, with suggestions that aim to move the process forward:

Basic report

Based on exchanges of views that have taken place so far, and in particular at the Third Meeting of States in 2014, it appears that most States recognize the utility of the submission by States of what has been called a "basic report".

In this document, States would aim to outline how they implement IHL in their domestic legal system and armed forces: it would, for example, include information on issues such as the

dissemination of the applicable IHL treaties, military and civilian instruction in IHL, relevant domestic legislation to implement IHL, the appointment of legal advisers to armed forces, procedures to investigate alleged violations of IHL, etc. Specific sections of the report would permit States to also report on challenges to IHL implementation, best practices, lessons learned and capacity-building needs, as may be applicable.

In other words, the basic report would serve primarily as a “reference” document. The information provided would be updated at certain intervals, in order to ensure its continued relevance as a baseline of information. A four to five-year update period has been suggested.

Subsequent reports

Based on exchanges of views that have taken place so far, and in particular at the Third Meeting of States in 2014, it likewise appears that most States recognize the utility of the submission of fairly short subsequent reports, at shorter intervals. A two-year time frame has been suggested.

Two possible types of subsequent reports, depending on their content, have been suggested. As a way forward, a combination of both may also be envisaged:

- According to the first model, subsequent reports - called “current development reports” - would be focused on recent developments in a State’s practice, and include, for example, the 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.
- According to the second model, subsequent reports - called “thematic reports” - would be topical in content, so as to permit discussions on contemporary issues of IHL implementation in a focused manner. This approach would allow for variety in the subjects addressed, and would allow the work of the Meeting of States to be relevant in terms of the need to contribute to improving respect for IHL on the ground.
- It is submitted that a combination of the two models outlined above could also be envisaged, one that would draw on their respective advantages. Under a third, hybrid model, subsequent reports could have a primarily thematic focus, that is, be aimed at outlining the implementation by States of a specific group of IHL obligations in a non-cumbersome format. A separate section, that would be a regular feature of subsequent reports, could allow States to report on current developments in State practice, including on challenges that have been faced and/or resolved, as indicated above. This model could be called a “current issues report”. This title would appear to encapsulate both the thematic and the update part of a subsequent report.

Questions for discussion:

- a) Do the points indicated above adequately reflect the current state of the consultations on the types of reports? Should any points be added? If so, which?
- b) Based on previous exchanges during the consultation process, the combination of a basic report, as outlined above, and of a short subsequent report would appear to be regarded as a useful way of structuring the reporting function. Do you agree? If not, why?
- c) Which of the models of subsequent reports outlined above do you prefer? Why?
 - Current development reports
 - Thematic reports
 - Current issues reports (hybrid model)
- d) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

iii. Follow-up to national reports on IHL

Provided below is a summary of positions related to the follow-up of national reports that have been expressed thus far, and in particular at the Third Meeting of States in 2014, with suggestions that aim to move the process forward. It is based on two points of a general nature that have been repeated time and again in the consultation process. First, national reports on IHL must not fall into a “black hole”, and, second, any follow-up procedure must not include individual review of State reports, and it must be non-contextual and non-politicized in nature (the “three criteria”).

According to the view of the great majority of States who took part in the discussion on this topic, the Meeting of States should be able - in a non-individual, non-contextual and non-politicized manner - to discuss national compliance reports. Under this view, a single follow-up document should be prepared, based on national reports, and in keeping with the “three criteria”, for discussion in a specific segment of the plenary sessions of the Meeting of States.

As regards the single follow-up document, 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 the single follow-up document should also generally identify best practices, common challenges and capacity-building needs, but not make any recommendations. A third group of States was of the opinion that the single follow-up document should, in addition to the elements outlined above, also include appropriate recommendations for improving compliance with IHL. The third option¹³ attracted the widest interest among the participants who were in favor of a single document.

It is submitted that an attempt could be made to accommodate the various views on a single follow-up document, taking into account the two types of national IHL reports - basic and subsequent - that have been outlined above:

- The basic reports on IHL that would be submitted by States at longer intervals could be included in a single technical follow-up document, that could also allow for a general identification of good practices, common challenges and capacity-building needs based on the national reports, but not make any recommendations (and would, of course, be prepared in accordance with the “three criteria”). This would appear to be in keeping with the purpose and content of the basic national reports as described above - implementation of IHL in domestic law and the armed forces - and the rather long time frame for their submission by States, e.g. every five years.
- The subsequent national reports that would be submitted by States at shorter intervals could also serve as the basis for the preparation of a single follow-up document (regardless of the particular model outlined above that may be agreed on). The single document could generally identify good practices, common challenges and capacity-building needs, and also include appropriate recommendations for improving compliance with IHL. The document would, of course, likewise be prepared in accordance with the “three criteria”. This would appear to be in keeping with the purpose, content and shorter length of the subsequent national reports, and the shorter time frame for their submission, e.g. every two years.

The preparation of single follow-up documents as described above begs the question of who should be tasked with doing so. As will be recalled, the idea that an expert body could be established for this purpose has been widely rejected by States in the consultation process. Many have expressed the view that the ICRC should be invited to perform this role, provided that it is compatible with the organization’s mandate, operational activity and standard working modalities, in particular confidentiality.

¹³ This type of single report was referred to as an “analytical” or “principal issues report”.

As regards the outcome of a discussion of the Meeting of States on the single follow-up documents, the consultations so far confirm that most States share 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. At present, there is no prevailing view as to whether the outcome text should also be able to highlight best practices, common challenges and include appropriate recommendations for strengthening compliance with IHL, in accordance with the "three criteria".

A small number of States have expressed doubt that such follow-up documents would be useful. In their view, States should simply be given an opportunity to briefly present their national report in a specific segment of the plenary sessions of the Meeting of States, with a view to spurring bilateral or other informal exchanges on mutual experiences, with a particular focus on capacity building.

Questions for discussion:

- a) Do the points indicated above adequately reflect the current state of the consultations on the follow-up to national reports on IHL? Should any points be added? If so, which?
- b) Should the Meeting of States be able to discuss national compliance reports on the basis of a single follow-up document, or only provide for the possibility of short presentations?
- c) If the Meeting of States were to discuss basic and subsequent national reports on IHL on the basis of single follow-up documents drafted in accordance with the "three criteria", does the suggestion made above with regard to their respective content provide a workable way forward? If not, why not? What other proposal(s) would you have?
- d) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.2.2. Thematic discussions on IHL issues

The function of thematic discussions on IHL issues has generated a wide convergence of views among the participants, with no reticence expressed with regard to the usefulness of its inclusion in the elements of a possible IHL compliance system by States who took part in the discussion.

There is thus general agreement that a specific segment of the plenary sessions of the Meeting of States should be devoted to thematic discussions. Such discussions could serve to: ensure that States are better informed about current or emerging IHL issues, enable a better mutual understanding of States' legal and policy positions on current and emerging IHL issues, provide an opportunity for exchanges of views on key legal, practical and policy questions, develop a deeper understanding of IHL and of practical measures taken by States to implement it, strengthen existing networks by bringing together IHL experts from the different States, and have other potential beneficial effects.

It has also been affirmed that thematic discussions should not aim at legal codification, or the creation of binding rules, but focus on the application and interpretation of IHL. 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, has likewise generated wide support.

While the specific format of thematic discussions will need to be revisited and agreed on at a later stage, there is general agreement that it should ensure the non-politicization, non-

selectivity, voluntariness and interactivity of the discussion. In the view of most States, a background document circulated in advance of a thematic session and panel presentations of experts on the relevant topic would be useful. A very small number of States doubted the usefulness of expert inputs.

States' views largely converged on the possible criteria that could be taken into account in the selection of topics for thematic discussions. The following were noted among them: 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, a topic must be timely, and it must be relevant for a sufficient number of States, so as to ensure their wide engagement in the discussion. It has been pointed out that additional criteria could also be considered.

As regards the entities that could propose topics for a thematic discussion, it was largely confirmed that they should include: the States participating in the Meeting of States, its Bureau, the ICRC and the International Conference (the latter depending on the modalities of its relationship with the Meeting of States).

Three broad positions have 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 them. In the view of a third group of States, the plenary of a Meeting of States should be able to select topics for a 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 consultations held so far have 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 could be decided on when the modalities of thematic discussions have been established.

Questions for discussion:

- a) Do the points above adequately reflect the current state of the consultations on the function of thematic discussions on IHL issues? Should any points be added? If so, which?
- b) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.2.3. Other functions

Fact-finding was a further function discussed in the consultation process. It was initially reviewed at the Second Meeting of States held in June 2013. Some States were of the opinion that it would be a useful element of a possible IHL compliance system, given that fact-finding in situations of armed conflict is already being mandated by and carried out in other international fora that may not have a specific mandate and expertise in IHL. It was indicated at this Meeting that the modalities for such a function, including possible ways to make use of the IHFFC, deserved further examination.

A discussion on a fact-finding function took place at the Preparatory Discussion of April 2014 and generated divergent views. The topic was also included in the agenda of the Third Meeting of States held in June-July 2014, but could not be addressed due to lack of time. It should be noted that the issue of a possible fact-finding was most recently raised by some States at the Preparatory Discussion of December 2014, even though it was not explicitly on the agenda.

Given the number of States who have expressed a strong opinion in favor of a fact-finding function throughout the consultation process, and as well as those who disfavor it in response, it is submitted that it would be necessary and useful to revisit this subject at a later stage, i.e. by the Meeting of States once it is established. A further discussion would allow for a more in-depth examination of this function - including its possible modalities - and could facilitate a better mutual understanding of the concerns underlying the various positions.

In the context of this section, it should also be recalled that the need for a future IHL compliance system to be effective - which is one of the guiding principles of the current process - was noted throughout the discussions. The question of how to ensure that the work of the Meeting of States remains relevant and credible in light of the rapidly changing nature of warfare, and can take account of possibly new challenges to IHL implementation, is thus of importance. It is submitted that the general operation of the Meeting of States should be open to review by the participating States after an initial period of time and thereafter at regular intervals, with a view to also examining whether its functions require adaptations and/or whether other tasks and functions may be added,¹⁴ in keeping with all the guiding principles previously listed above.

Questions for discussion:

- a) Does the brief description above adequately reflect the present state of the consultations on a possible fact-finding function? Should any points be added? If so, which?
- b) How could it be ensured that the Meeting of States remains effective, taking into account evolving challenges to IHL implementation?
- c) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.3. Main features of the Meeting of States

2.3.1. Plenary sessions as the core body of the future IHL compliance system

Plenary sessions of the Meeting of States, as previously noted, will form the core body of the future IHL compliance system, with specific segments of the sessions being dedicated to the performance of the compliance functions discussed above.

Apart from compliance functions, the performance in plenary of the following procedural tasks was also largely considered appropriate:

- Adoption of the Rules of Procedure;

¹⁴ In this context, and as outlined in previous consultation meetings, it should be recalled that existing frameworks usually provide for the opportunity of participating States to take decisions on any questions or issues related to the relevant treaty. See e.g., Art. 11(1) of the Convention on Cluster Munitions (CCM); Art. 8(19) of the Chemical Weapons Convention (CWC); 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 Convention on Certain Conventional Weapons (CCW)); Art. 10(2) of the Protocol on Explosive Remnants of War of 28 November 2003 (Protocol V to the CCW).

- Adoption of the budget of the Meeting of States, as well as of other organs, such as the Secretariat (see below);
- Election of officers, such as the Chair, the Vice-Chairs and members of the Bureau;
- Establishment of organs, such as the Secretariat;
- Review and oversight of the work of organs, such as the Secretariat;
- The performance of other tasks of a procedural nature as may be necessary and agreed.

A few States have expressed the view that the Meeting of States, as currently contemplated, will not require subsidiary organs.

There is agreement that clear rules need to be established regarding the publicity of plenary sessions. There seems to be a converging view that plenary sessions should generally be held in public¹⁵ for purposes of transparency and effectiveness but that, exceptionally, some segments may be declared closed¹⁶ if the topic of discussion warrants it. It is submitted that the precise “formula”, taking into account the possible modalities for observer participation, could be laid out in the Rules of Procedure of the future Meeting of States.

Questions for discussion:

- a) Do the points above adequately reflect the current state of consultations on the plenary sessions as the core body of the future IHL compliance system? Should any points be added? If so, which?
- b) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.3.2. Participation

There was a fairly broad convergence of views in the consultations held thus far that membership of the future Meeting of States should be open to all States Parties to the four Geneva Conventions of 1949.

The participation of observers in the Meeting of States was generally considered important. There was agreement on the need to devise procedures for participation that would be consistent with the guiding principles of the process listed above, notably the avoidance of politicization, the need to ensure non-contextual dialogue and the State-driven character of the Meeting of States. It was, furthermore, emphasized that resource constraints should be taken into account. Note was taken of the fact that some States that took part in the December 2014 Preparatory Discussion and in previous consultations consider a discussion on observer participation to be premature, and therefore did not express their views on the specific questions raised in the Background Documents for the corresponding meetings.

Three categories of observers and the modalities related to their participation have been discussed: the components of the International Red Cross and Red Crescent Movement (other than the ICRC, which is likely, based on current proposals by States, to have a

¹⁵ Public sessions may be understood as those sessions that are generally open to the attendance of all participants, including observers. Furthermore, the proceedings of public sessions may be published, for example in the form of summaries. However, specific rules may be devised on the question of whether all observers also have the right to speak in all public sessions or whether specific speaking slots may be foreseen.

¹⁶ Closed sessions may be understood as those in which participation is limited to States and possibly some specifically designated observers. Decisions taken in such sessions, but not the proceedings, may be rendered public.

specific role in the new IHL compliance system), international organizations and entities, and civil society representatives.

The participation of the *components of the International Red Cross and Red Crescent Movement*, namely the International Federation of Red Cross and Red Crescent Societies (hereafter International Federation) and National Red Cross and Red Crescent Societies (hereafter NRCS), was said to be important. Views appear to be converging that the International Federation should be granted permanent observer status and that the participation of NRCS could possibly be channeled through the International Federation, or that States may consider including a NRCS representative in their delegations.¹⁷ Most States agreed that the International Federation should be able to attend the public sessions, submit written contributions and make oral statements in accordance with rules to be determined in the future Rules of Procedure of the Meeting of States.

Most States appear, likewise, to be in favor of granting permanent observer status to *international organizations and entities* whose activities are of particular relevance to the future Meeting of States.¹⁸ The Meeting of States, once established, would decide on the actors who would be accorded such status. In addition, the option of inviting other international organizations and entities to take part in particular sessions, depending on the subject matter at hand, was deemed useful. It was said that international organizations and entities should be entitled to attend public sessions, submit written contributions and make oral statements in accordance with rules to be determined in the future Rules of Procedure of the Meeting of States.

Concerning *civil society* actors, most States that have expressed a view on the question were in favor of enabling their participation. However, some States expressed doubts as to the opportunity of permitting civil society participation.

Two different positions regarding the procedure for invitation emerged among States who were favorable to civil society participation: the predominant view was that relevant civil society actors with ECOSOC consultative status should be admitted as observers, given that this would greatly simplify the invitation procedure and make it more objective. As regards civil society actors without ECOSOC consultative status, it was said that they should be able to participate upon request. Among the States in this group, no convergence could be discerned on the issue of whether the Chair, the Bureau or the Meeting of States should make the relevant decisions. There was, however, agreement that the time available for substantive discussions at the Meeting of States should not unnecessarily be spent on dealing with these matters. According to the second position, all civil society actors should be required to submit a request for participation. Under this view, the criterion of ECOSOC consultative status would be too broad for determining eligibility for observer status. The

¹⁷ There are currently 189 National Societies. It has been pointed out that their inclusion as observers would double the number of participants in the Meeting of States. The ICRC is engaged in a discussion with National Societies and the International Federation in order to gather their views on this issue.

¹⁸ 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 IHFFC).

question was equally raised here as to who should examine requests for participation. Most States were favorable to the Chair playing an important role, in consultation with the Bureau.

As regards the modalities for the participation of civil society observers, there was agreement that particular care must be taken to draft rules that avoid politicization, ensure non-contextual dialogue and preserve the State-driven character of the Meeting of States. There was a broad convergence on the fact that civil society actors should, at least, be able to attend the public sessions, submit written contributions, and eventually organize side-events. Different views were expressed on a possible speaking role. According to one option that was discussed at the Preparatory Discussion of December 2014, a specific slot, i.e. a single agenda item, could be set aside for interaction with civil society organizations. According to a second option, civil society actors could be granted a speaking slot at the end of each relevant agenda item (provided it is public).

Questions for discussion:

- a) Do the points above adequately reflect the current state of consultations related to participation? Should any points be added? If so, which?
- b) How should civil society representatives be admitted as observers?
 - All relevant civil society actors with ECOSOC observer status; others upon request
 - All relevant civil society actors may submit a request
- c) In addition to attending the public sessions, submitting written contributions and possibly organizing side-events, should civil society observers have the right to speak? If so, according to what formula?
 - Option 1: Only during a specific slot i.e. under a single agenda item dedicated to interaction with civil society
 - Option 2: At the end of relevant agenda items that are discussed in public session
- d) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.3.3. Chair and Bureau

There appears to be large agreement on the necessity of electing a Chair and a Bureau of the Meeting of States, and entrusting them with certain tasks, in order for the Meeting to be successfully prepared and conducted.

It was said that the following core tasks should be performed by the Chair:

- Coordinate the substantive preparation of the Meeting of States (including drawing up of the draft agenda in consultation with the Bureau);
- Coordinate the overall work of the Meeting of States;
- Ensure the orderly conduct of the Meeting of States;
- Serve as the contact point on all relevant issues between two Meetings of States.

It was said that the following core tasks 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 of States;
- Coordinate the work of the Meeting of States, including related to documents that may be submitted to the Meeting of States.

Different positions have been expressed regarding the size of the Bureau, having in mind that the Chair would be a member *ex officio*, but views converged on the necessity to ensure equitable geographical representation. With regard to the Bureau, most States favored a representation of one or two States from each of the five geographic regions. With regard to the Chair, most States considered it appropriate for this office to rotate among the regions. The proposal of attributing a permanent seat on the Bureau to a neutral country such as Switzerland, possibly the role of the Chair, with five (or ten) additional seats being attributed to other States on the basis of equitable geographical representation, was also made.

In addition to equitable geographical representation, other criteria for election were discussed in past consultation meetings, notably the candidate's commitment to strengthening compliance with IHL, the candidate's commitment to serving the common interest of participating States, and the candidate's expertise in IHL. In addition, it was suggested that a State's practical experience in IHL implementation may be taken into account. With regard to such criteria, which did not meet with similar approval as the criterion of equitable geographical representation, the question was raised as to how their fulfilment may be evaluated. It is submitted that these criteria may primarily be useful as a way of encouraging a State presenting a candidacy to demonstrate its commitment to advancing the goals of the Meeting of States, as well as to making voluntary pledges or taking other steps to that end.

The Chair, possible Vice-Chairs, and other members of the Bureau would be elected in a plenary session of the Meeting of States, as is usually the case in other similar fora. It is submitted that the precise modalities could be laid out in the Rules of Procedure of the future Meeting of States.

Regarding the length of terms of the Chair and of the other members of the Bureau, it was generally believed that relevant modalities should ensure both continuity and universality in the work of the Meeting of States. Most States emphasized the need for efficiency, and, in view of the imperative of keeping costs down, expressed a preference for terms of office that would cover at least two sessions of the Meeting of States. In an attempt to simultaneously increase States' ownership of the system, a proposal made to combine shorter and longer terms for the Chair and members of the Bureau, respectively, garnered significant support. It was thus suggested that the Chair could hold office for at least two sessions of the Meeting of States, while the other members of the Bureau would be renewed at every session, or *vice versa*.

Questions of discussion:

- a) Do the points above adequately reflect the current state of consultations on the Chair and the Bureau? Should any points be added? If so, which?
- b) Do you agree that continuity and universality are relevant criteria in determining the length of terms of the Chair and of the other members of the Bureau, taking into account the importance of efficient preparation of the sessions? Are there other relevant criteria for determining the length of terms?
- c) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.3.4. Secretariat

Discussions held within the consultation process so far confirm that, with a few exceptions, the majority of States support the view that the establishment of a Secretariat of the Meeting of States would be necessary. The Secretariat would be responsible for the performance of

administrative, logistical, and organizational tasks essential for the proper functioning of the sessions of the Meeting of States, and facilitate the work of the Chair and Bureau.

The following secretarial tasks were identified:

- Conference services/conference secretariat:
 - Coordination of the preparation of and conduct of the Meeting of States;
 - Preparation of documentation for the Meeting of States ;
- 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;
- 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;
- Administering the funds of the Meeting of States;
- Maintaining public relations.

It was noted that a decision on the size of the Secretariat, and on other relevant modalities, could be taken once the framework of the Meeting of States is better known. There was, nonetheless, a convergent view that the Secretariat should start out as small as possible, with a view to adapting its size and working modalities after an initial pilot phase if necessary. It was also said that the need for the effective functioning of the future IHL compliance system should guide any future decisions.

Different options for establishing a Secretariat were examined at the Preparatory Discussion in December 2014. A clear majority of delegations expressed a preference for further exploring how the Secretariat could be linked to the ICRC. This option was said to be more efficient - given the ICRC's professionalism and extensive expertise in the field of IHL - and more cost-effective than the other options that had been presented.¹⁹ Arrangements would need to be made in order not to jeopardize the organization's principles, mandate and standard working modalities, or create a perception thereof. This could be achieved by establishing an entity outside of the ICRC's structure, but administered by the ICRC from a logistical and administrative point of view. A Secretariat thus linked to the ICRC would report directly to the Meeting of States and operate pursuant to its instructions.

Questions for discussion:

- a) Do the points above adequately reflect the current state of consultations on the Secretariat? Should any points be added? If so, which?
- b) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

¹⁹ The following other options were discussed and disfavoured at the Preparatory Discussion of December 2014:

- Stand-alone entity: establishment of the Secretariat as a 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) that would be directly accountable to the Meeting of States.
- Secretariat functions are performed by a State on a rotating basis: a State or States participating in the Bureau would perform the Secretariat functions on a rotating basis.

2.3.5. Expert support

As indicated above, the functions of national reporting on compliance with IHL and thematic discussions on IHL issues may require expert support. Relevant tasks possibly include: the drafting of the single follow-up documents to national IHL reports, the drafting of background documents for thematic discussions on IHL issues, and the drafting of outcome documents of the proceedings in plenary related to these two functions. Expert support may also be required in the preparation of a template or guidelines for national reporting on compliance with IHL.

Given that, as already mentioned, the possibility of establishing an expert, subsidiary body of the Meeting of States for this purpose was rejected by an important number of States, the question arises as to who should be entrusted with these tasks.

In previous consultations, most States were in favor of inviting the ICRC to perform these and other expert tasks, provided that such a role is compatible with the organization's mandate, operational activity and standard working modalities, in particular confidentiality. The possibility of entrusting some of these tasks to the Secretariat was also mentioned. It is submitted that the question of which actor would be appropriate for which task will depend on the nature and level of expertise required, and may therefore be decided on only when more clarity on the modalities of the relevant compliance functions has been achieved.

Questions for discussion:

- a) Do the points above adequately reflect the current state of consultations on the possible need for expert support? Should any points be added? If so, which?
- b) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.3.6. Resourcing

Questions related to the budgetary implications of the future Meeting of States and how it will be financed were discussed in a preliminary manner at the Preparatory Discussion of December 2014. A limited number of States took the opportunity to enunciate their views.

Note has been taken of the position, expressed by some States, according to which resourcing questions should be further discussed once the structure and functions of the future Meeting of States have been determined. In light of the importance that many delegations attach to the financial implications of the Meeting of States, a number of considerations appear nonetheless relevant, and are presented here in order to ensure that States have a better understanding of the relevant issues already at this stage of the consultations.

i. Cost factors and possible measures to minimize costs

As stated in the Background Document prepared for the Preparatory Discussion of December 2014, the budget of the future Meeting of States will depend on a variety of elements that will only be known once the process of establishing the Meeting of States starts nearing completion. Hence, costs cannot be estimated in a definitive manner at this particular point in time.

Nevertheless, some factors that may have financial implications, and the average costs of existing Meetings of States in other frameworks, were outlined for illustrative purposes in the

Background Document for the December 2014 Preparatory Discussion and are reproduced below.

In annex to this Document is, additionally, an estimation of costs of the Meeting of States Parties to the Convention on Biological Weapons (BWC), as well as of its Implementation Support Unit (ISU) for the 2012-2015 period. It does not purport to suggest any conclusion on the size of the Secretariat, the duration of the Meeting of States, or on any other issue that may have financial implications for the Meeting of States that is currently under discussion.

Based on research and practice, it should be observed that simultaneous interpretation at the plenary sessions and the translation of documents may be said to be the two main cost factors of most compliance frameworks.

- The following costs may be expected for simultaneous interpretation in the plenary sessions of the Meeting of States:²⁰
 - If two working languages (English and French) are relied on in the plenary sessions, costs would amount to approximately 3'900 CHF for three hours of meeting, or to 9'100 CHF per full day of meeting (7 hours).
 - If simultaneous interpretation is provided for in the four languages generally used at the International Conference of the Red Cross and Red Crescent (English, French, Spanish and Arabic), costs would amount to approximately 7'800 CHF for three hours of meeting, or to 18'200 CHF per full day of meeting (7 hours).
 - If simultaneous interpretation were provided for in the six official UN languages, costs would amount to approximately 11'700 CHF for three hours of meeting, or to approximately 27'300 CHF per full day of meeting (7 hours).
 - It should be noted that simultaneous interpretation in the context of the human rights treaty-bodies represents 96% of the total costs of such meetings.²¹
- The following costs may be expected for the translation of documents:²²
 - If the official documents are available in two languages, the translation costs would amount to approximately 230 CHF per one standardized page of 330 words, or to around 13'800 CHF for a 60-page report or background document.
 - If the official documents are available in the four languages generally used at the International Conference of the Red Cross and Red Crescent (English, French, Spanish and Arabic), the translation costs into the three other languages would amount to approximately to 690 CHF per one standardized page of 330 words, or to around 41'400 CHF for a 60-page report or background document.
 - If the official documents were translated into the six UN official languages, the translation costs would increase to 1'150 CHF per one standardized page of 330 words, or to around 69'000 CHF for a 60-page report or background document.
 - It should be noted that the translation and editing of documents in the context of the human right treaty-bodies represents 87% of the total costs related to documentation.²³

Other cost factors that may be flagged include:

- Rental costs for the venue of the Meeting of States and for conference equipment: these will mainly depend on the number of participants, including the number and size of delegations;²⁴

²⁰ The numbers provided are based on the indications of costs of simultaneous interpretation provided in *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>).

²¹ See *Comprehensive cost review of the human rights treaty body system*, Geneva, April 2013, p. 6.

²² The numbers provided are based on the indications of costs of translation and editing provided in *Comprehensive cost review of the human rights treaty body system*, Geneva, April 2013, p. 6.

²³ See *Comprehensive cost review of the human rights treaty body system*, Geneva, April 2013, p. 6.

²⁴ As most of the existing Meetings of States considered in this context take place at UN venues, no illustrative costs are available.

- 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;²⁵
- The establishment of a Sponsorship Program to encourage the participation of Least Developed Countries;²⁶
- The salaries and social costs of Secretariat staff;²⁷
- The logistical and administrative infrastructure of the Secretariat (including office rent and supplies, telecommunications and information technology, website, publications, insurance, human resources management, etc.).²⁸

In order to ensure that best use is made of available resources, and with a view to keeping costs down, the following measures may be considered:

- *Reasonable use of interpretation and translation services.* Given that, as indicated above, costs for simultaneous interpretation and translation are usually significant, different formulas may be adopted to reduce related expenditures. Costs could be kept down if simultaneous interpretation and translation of documents were to be provided in two working languages only (for example English and French), or in four working languages (for example Arabic, English, French and Spanish which are generally used at the International Conference of the Red Cross and Red Crescent). This would not preclude participating States from submitting documents, such as national reports on IHL, in any of the six official UN languages. Any State wishing to use a language other than the two or four working languages in the debates at the Meeting of States could do so if it provides for its own interpretation. Furthermore, documents that are not official conference documents, such as national compliance reports, could be translated into one or two additional languages only, such as English and/or French, for the purpose of wider accessibility.
- *Definition of “essential” and “additional” functions of the Secretariat and prioritizing funds for the former.*²⁹ Ahead of a budget cycle, the Secretariat could present a work plan to the

²⁵ 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).

²⁶ 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, as of 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).

²⁷ The salaries and social costs of existing secretariats/ISUs examined in the Background Document of the Preparatory Discussion of December 2014 range from between 416'000 CHF for 2.5 FTE positions (CCW Implementation Support Unit), 838'293 CHF for 4.1 FTE positions (APMBC Implementation Support Unit) to 2'101'781 CHF for 9 FTE positions (Secretariat of the Assembly of States Parties to the Rome Statute of the ICC), see Background Document of the Preparatory Discussion of December 2014, p. 14.

²⁸ Costs for infrastructure, logistics and administrative services in support of the ISU APMBC provided by the Geneva International Centre for Humanitarian Demining (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).

²⁹ Such modalities are currently discussed in the context of establishing the Secretariat of the ATT, see Working document on the functions, structure, size and staff issues of the Permanent Secretariat, Prepared by Norway for the 2nd Round of Informal Consultations, Berlin 27-28 November 2014.

Meeting of States (see also below), outlining functions that are “essential” for the preparation, organization and functioning of the Meeting of States, and those that may be deemed “additional”. The latter would be performed only if States pledged sufficient funding and/or if a request to that effect was made by an individual State or a group of States willing to fund the specific activity or activities at issue. This would help avoid the generation of costs that are not strictly necessary for the operation of the Meeting of States as such, unless there is support by States for attributing additional functions to the Secretariat. It should, however, be underlined that all functions of the Secretariat currently under discussion appear to be essential, given that there is agreement on the need to keep the size of the Secretariat as small as possible. This measure may thus become relevant only over time.

- *Web-based or other electronic solutions for reporting and distribution of documents.* The number of documents that are circulated in paper form and/or printed for the Meeting of States could be limited to what is strictly necessary. Other documents could be submitted, made available and circulated solely in electronic form or through web-based tools (with or without restricted access to a dedicated website). This would help reduce costs related to printing, as well as mailing expenses.
- *Using available resources and other arrangements to limit costs.* Further measures may be envisaged, such as inviting an existing institution to host the Secretariat, in order to avoid creating the necessary infrastructure from scratch (see above); in-kind contributions for the holding of the Meeting of States, such as making available adequate facilities; in-kind support to the Secretariat, etc.

ii. Funding models

It was confirmed in previous consultation meetings, including at the December 2014 Preparatory Discussion, that the financial contributions of participating States will be voluntary, based on the fact that the new IHL compliance system as a whole will be voluntary. The main challenge is thus to devise modalities that will ensure sufficient funding, predictability (i.e. that the budget can be reliably planned), and a fair distribution of costs among States. It was furthermore recalled that resource constraints must be taken into account in devising the funding model.

A number of proposals related to these modalities were submitted for examination and discussion at the Preparatory Discussion of December 2014. The following considerations may be flagged:

- *General considerations.* Expenses related to the Meeting of States and the Secretariat could be covered through a single trust fund. As mentioned above, this fund would be financed exclusively through voluntary contributions. If deemed relevant and/or necessary, additional multi-year budget headings could be established within the trust fund. Such headings could relate to certain expenses not covered by the regular budget. This could, for example, be the case for technical assistance that may be requested by States that have identified capacity-building needs. Another multi-year budget heading may be established to ensure the availability of sufficient funds in case of short-term liquidity problems. Voluntary contributions to additional budget headings could be clearly identified by means of ear-marking.
- *Work plan and budget of the Secretariat.*³⁰ The Secretariat could be requested to submit for approval to the Meeting of States a work plan and budget for each upcoming budget cycle. This would ensure that States will not ask for services from the Secretariat without taking the responsibility for providing the necessary, and sufficient, funds. This measure could greatly increase the predictability of the budget and improve security in terms of the

³⁰ Existing ISUs regularly prepare “work plans” for approval by the Meeting of States, see, e.g. Draft Implementation Support Unit 2014 work plan and budget, submitted to the Meeting of States Parties to the APMBC 2013, APLC/MSP.13/2013/3.

Secretariat's financial planning. As outlined above, it would also help keep expenses under control.

- *Indicative recommendations based on the UN scale of assessment.*³¹ A fair distribution of costs is important to ensure ownership of the new forum by participating States and the predictability of its financing. At the Preparatory Discussion of December 2014, different views were expressed on the relevance of the UN scale of assessment for formulating recommendations related to the distribution of costs. It is, nonetheless, submitted that the adjusted UN scale of assessment provides an already existing, i.e. established and objective criterion for indicating what a fair distribution of costs would be. It is recalled that issuing *indicative recommendations* on the basis of the UN scale of assessment does not affect the non-legally binding nature of participation in the Meeting of States. Such recommendations would only aim at providing reliable guidance as to what would constitute a fair distribution of costs, and could encourage States to take ownership of the new forum by ensuring that costs are borne in an equitable manner.
- *Pledging procedure.* Appeals for voluntary contributions could be issued well ahead of a budget cycle, on the basis of a provisional budget, with an invitation to pledge funding. This measure would be particularly useful as a means of ensuring reliable financial planning. Depending on the pledges made, the work plan and budget of the Secretariat, as well as the budget of the next Meeting of States (to be submitted to States for approval), could be prepared on the basis of realistic estimations and, if necessary, adapted accordingly.
- *Disclosure of voluntary contributions.* The disclosure of voluntary contributions made by each State in the financial report of the Meeting of States could serve to strengthen States' sense of ownership of the new forum.

Questions for discussion:

- a) Do the points indicated above adequately reflect the current state of the consultations on the resourcing of the Meeting of States? Should any point be added? If so, which?
- b) Are the measures discussed above relevant to the goal of ensuring the best use of existing resources and to keeping down the costs of the Meeting of States? Are there additional measures that may be envisaged?
- c) Among the measures envisaged for ensuring sufficient funding, predictability and a fair distribution of costs, which are the most useful? Are there other measures that could be considered?
- d) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

2.3.7. Further issues

In addition to the features discussed above, the periodicity of the Meeting of States, as well as its denomination, were also examined in previous discussions within the current consultation process.

While no convergence of views on the periodicity of the Meeting of States has yet been reached, most States seem to agree that annual sessions would best serve the need for efficiency and effectiveness. An annual dialogue among States in a dedicated forum would permit sustained attention to IHL and would appear to be more appropriate given the

³¹ For an example of distribution of costs, see the annexed estimation of costs of the Meeting of States Parties to the BWC.

important challenges to IHL implementation on the ground. Yearly intervals could furthermore help ensure that the agenda of the Meeting of States remains manageable, having in mind that annual sessions would likely be shorter than plenary sessions held at longer intervals. Some States have nonetheless expressed a preference for biennial sessions.

The question of what the future Meeting of States should be called has generated different proposals. While no consensus has yet emerged, it would appear that a majority of States has a preference for a broad designation, such as “Meeting of States on IHL” or “Meeting of States on Compliance with IHL” (alternatively “Meeting of States on Respect for IHL”). Some States favor a designation that would reflect the special relevance of the Geneva Conventions and the fact that they are universally ratified. The proposals made in this regard included: “Meeting of States Parties to the Geneva Conventions” or “Consultative Meeting of States Parties to the Geneva Conventions”.

Questions for discussion:

- a) Do the points above adequately reflect the current state of consultations related to periodicity and the denomination of the Meeting of States? Should any other issues be added? If so, which?
- b) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

3. Foundational issues related to the establishment of the Meeting of States

3.1. Ways and means of establishing the Meeting of States

As stated and confirmed throughout the current consultation process, 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 to that end have not generated State support in the discussions. The question of how such a system could be established was therefore examined to an important extent in previous consultation meetings.

It should be recalled that the mandate on which the consultation process is based does not include the authority to decide on the establishment of a Meeting of States, which is envisaged to be the central pillar of a future IHL compliance system. Instead, the options that will have emerged 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 (scheduled for December 2015), for its consideration and appropriate action.³² Action that may be deemed appropriate by the International Conference will, as is habitual, be expressed in a corresponding resolution.³³ Thus, the central question is what will be the effect of this resolution with regard to the establishment of the Meeting of States.

³² Para. 8 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent of 2011.

³³ 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.

Two broad positions have emerged on this issue. Recognizing that both have certain advantages, a “hybrid solution” was suggested as a third option at the Preparatory Discussion of December 2014.

Option 1: The International Conference establishes the Meeting of States

According to the first option, the Meeting of States could be established through a resolution of the 32nd International Conference, given that it 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. In addition to establishing the Meeting of States, the resolution could lay down the key features of this forum, namely its purposes, functions and guiding principles. It could also address participation, the institutional set-up, the relationship with the International Conference, 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

According to the second option, the International Conference does not have the authority to establish the Meeting of States. As a result, it could, by way of a resolution, only invite Switzerland to convene a diplomatic conference for the purpose of establishing the future Meeting of States. The relevant resolution of the International Conference would confirm the principal points of convergence identified in the ongoing consultation process and set forth the general architecture of a possible IHL compliance system. Thus, similar to the approach outlined above, certain key features would be included in the resolution in addition to the invitation addressed to Switzerland to convene a diplomatic conference. The relevant text would include the International Conference’s recommendations regarding the purposes, functions and guiding principles of the future Meeting of States. It would also comprise the International Conference’s recommendations regarding participation, the institutional structure, the relationship with the International Conference, and possibly provide that the work of the Meeting of States would be considered at the following International Conference.

Option 3: Hybrid Solution

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, a hybrid solution, combining the advantages of both options, has been suggested. 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 the relevant resolution should preserve the results of the ongoing consultation process: by, for example, endorsing the guiding principles of the future Meeting of States, its purposes and functions, questions related to participation, the contours of its institutional structure, its relationship with the International Conference, and possibly provide that the work of the Meeting of States would be considered at the following International Conference. The resolution would thus not formally establish the Meeting of States, but would underline the need for States to regularly meet and perform the functions that have been deemed necessary and useful for strengthening respect for IHL. On this basis, Switzerland in its capacity as the depository of the 1949 Geneva Conventions, could convene the first Meeting of States. The first task of the Meeting would be to constitute the new forum, as well as its institutional structure, and decide on the modalities of the functions

that it will have, taking into account the recommendations of the 32nd International Conference.

Apart from the appropriate way of establishing the Meeting of States and regardless of what option above will be adopted, it remains to be discussed whether an interim Secretariat will be required and how the preparation process in view of the first Meeting of States will be conducted.

Questions for discussion:

- a) Leaving aside whether the relevant resolution of the 32nd International Conference will establish the Meeting of States, do you agree that it should aim to preserve the points of convergence and outcomes of the current consultation process?
- b) Leaving aside the option that may be adopted, within what timeframe should the first Meeting of States be convened?
- c) Which of the options outlined above appears to be the most constructive and appropriate as regards the establishment of the Meeting of States?

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

It was stressed throughout the consultation process 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.³⁴ This issue, as well as the principles that would guide the relationship, was discussed in a preliminary manner at the Preparatory Discussion of December 2014. Related questions were identified as meriting further discussions.

The following considerations appear to be relevant for defining the relationship between the Meeting of States and the International Conference:

- The importance of finding synergies between the Meeting of States and the International Conference;
- The importance of establishing a mutually reinforcing relationship;
- The need to respect the Fundamental Principles binding the Movement;
- The distinct³⁵ and autonomous³⁶ character of the Meeting of States and the International Conference.

At the Preparatory Discussion of December 2014, several proposals regarding the possible links between the Meeting of States and the International Conference were examined. In accordance with the functions attributed to the International Conference in the Statutes and

³⁴ 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.

³⁵ In this regard, it was recalled that the functions of the International Conference, notably to contribute to the development of IHL, as well as other features, such as its quadrennial periodicity and its membership, distinguish this body clearly from the Meeting of States that is being examined within the joint initiative. The purposes and functions of the future Meeting of States, as currently contemplated, would therefore not duplicate the work of the International Conference.

³⁶ In this regard, it was underlined that the future Meeting of States, given its State-led character, will ultimately decide on any recommendation that the International Conference may adopt with regard to the Meeting of States.

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 work of the new IHL compliance system;
- The International Conference could make proposals for a possible 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
 - The distinct and autonomous character of the two bodies
- 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 work of the new IHL compliance system
 - The International Conference could be invited to contribute to a possible 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
- c) What are your initial thoughts on the aspects above that could be reflected in the resolution to be adopted by the 32nd International Conference of the Red Cross and Red Crescent?

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 at the Fourth Meeting of States on Strengthening Compliance with IHL on 23 and 24 April 2015. 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, scheduled for December 2015, for its consideration and appropriate action (see below).³⁷

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. 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 faithfully 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. As there seems to be broad enough support by States to take the outcome of the consultation process forward, the concluding report may serve to inform a resolution by the 32nd International Conference. In this context, it should be recalled that the relevant resolution will not be negotiated within the current consultation process, for lack of a mandate in that regard, but within the framework of the International Conference.

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 discussions 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 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.

³⁷ Para. 8 of Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent.

Annex I: Chairs' Conclusions of the Preparatory Discussion of 1-2 December 2014

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^t 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.¹

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;

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

- 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 functions² 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 elements³ 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.

² 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.

³ 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.

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 States⁴ 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 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 frameworks⁵ 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

⁴ 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.

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

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 Discussion⁶ - 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 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

⁶ 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

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 Chair⁷ and of the Bureau⁸ 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 election⁹ 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 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

⁷ 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

⁸ 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

⁹ 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

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/administrative¹⁰ and organizational¹¹ nature, were largely considered appropriate. It 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.

¹⁰ 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

¹¹ 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
- 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

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 1949.¹² 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 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),¹³ 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 States¹⁴ should be granted

¹² 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).

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

¹⁴ The following intergovernmental organizations were mentioned in the Background Document drafted for the Preparatory Discussion of December 2014: the UN Secretariat and specific components

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.

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

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)).

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 principles¹⁵ 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 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

¹⁵ 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
- Transparency
- Predictability

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 Conference¹⁶ 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 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 Document¹⁷ provided a useful basis for discussion, in particular the need to find synergies between the two bodies, in order

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

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

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 Document¹⁸ were deemed relevant. A number of States said that 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).¹⁹

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

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

¹⁸ 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
- 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

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

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.

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.²⁰ 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.

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.

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.

²⁰ 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 to the Chairs' Conclusions: 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

* 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 Depository of the four Geneva Conventions and circulated by the Depository by Notifications GEN 3/14 of 21 May 2014 and GEN 4/14 of 27 June 2014.

Annex II: Illustrative example of the overall costs of a Meeting of States Parties and its Implementation Support Unit

The figures listed below give further indications on overall costs of an existing Meeting of States and its Implementation Support Unit (ISU), as well as the distribution of costs among States Parties. The example chosen to illustrate these costs is that of the Meeting of States Parties to the Convention on Biological Weapons (BWC) and its ISU for the period of 2012-2015. The BWC has 172 States Parties. This example is given without purporting to draw any conclusion on the duration of the Meeting of States on IHL which is currently under discussion, the size of its Secretariat, or any other relevant aspect that may have financial implications.

1. Estimation of costs of the Meeting of States Parties to the BWC and the ISU for the period of 2012-2015

The following figures are based on a document entitled “Estimated costs of the intersessional programme of the Convention to be held from 2012-2015” (revised) as adopted at the Seventh Review Conference of the States Parties to the BWC in 2011 (BWC/CONF.VII/4/Rev.1). It gives an estimation of the costs per year of the Meeting of States Parties, as well as of the yearly costs of the ISU.

Meeting of States Parties (5-days meeting in Geneva)	Costs per year (USD)
Interpretation and meeting servicing	119'600
Translation of documentation	94'700
Support servicing requirements	6'500
Other requirements	47'100
Total	267'900
Implementation Support Unit	Costs per year (USD)
Fixed-term staff (three posts : one P 5, one P 3 and one P 2)	662'800
Travel	20'000
Equipment and supplies	5'000
Total	687'800
Total Costs (Meeting of States Parties + ISU)	955'700

It should be noted that the costs related to the Meeting of Experts which take place within the framework of the BWC compliance system are not included above, because such a meeting is not foreseen in the IHL compliance system currently under discussion.

2. Distribution of costs among States Parties to the BWC

The costs of the Meeting of States Parties to the BWC, as well as of the ISU are shared among States Parties on the basis of the adjusted UN scale of assessment. Calculated on the basis of total costs of 1'387'200 USD, the lowest contributions are 14 USD and the highest contribution is 307'181 USD. The average contribution is 8160 USD.

The table below is from the Invoice sent by the Financial Resources Management Services of the UN Office at Geneva (UNOG) to the States Parties on 10 June 2014 and relates to the Meeting of States Parties to the BWC of December 2014. It should be noted that the invoice includes the costs of the Expert Meeting (estimated to be 342'100 USD per year), which is not taken into account above.

2014 Meetings of the Biological Weapons Convention

Estimated cost :
IMIS Project No:

\$1,387,200
BW15/BW16

		Percentage of UN 2014 assessment (1)	Prorated % of contributions (2)	Assessed contributions US\$ (3)
	A. States Parties			
1	Afghanistan	0.005	0.005	69
2	Albania	0.010	0.010	139
3	Algeria	0.137	0.138	1,915
4	Antigua and Barbuda	0.002	0.002	27
5	Argentina	0.432	0.435	6,034
6	Armenia	0.007	0.007	97
7	Australia	2.074	2.088	28,964
8	Austria	0.798	0.803	11,139
9	Azerbaijan	0.040	0.040	555
10	Bahamas	0.017	0.017	236
11	Bahrain	0.039	0.039	541
12	Bangladesh	0.010	0.010	139
13	Barbados	0.008	0.008	111
14	Belarus	0.056	0.056	777
15	Belgium	0.998	1.006	13,954
16	Belize	0.001	0.001	14
17	Benin	0.003	0.003	42
18	Bhutan	0.001	0.001	14
19	Bolivia (Plurinational State of)	0.009	0.009	125
20	Bosnia and Herzegovina	0.017	0.017	236
21	Botswana	0.017	0.017	236
22	Brazil	2.934	2.954	40,977
23	Brunei Darussalam	0.026	0.026	361
24	Bulgaria	0.047	0.047	652
25	Burkina Faso	0.003	0.003	42
26	Burundi	0.001	0.001	14
27	Cambodia	0.004	0.004	56
28	Cameroon	0.012	0.012	166
29	Canada	2.984	3.005	41,684
30	Cape Verde	0.001	0.001	14
31	Chile	0.334	0.336	4,661
32	China	5.148	5.183	71,897
33	Colombia	0.259	0.261	3,620
34	Congo	0.005	0.005	69
35	Cook Islands	0.001	0.001	14
36	Costa Rica	0.038	0.038	527
37	Croatia	0.126	0.127	1,762
38	Cuba	0.069	0.069	957
39	Cyprus	0.047	0.047	652
40	Czech Republic	0.386	0.389	5,396
41	Democratic People's Republic of Korea	0.006	0.006	83
42	Democratic Republic of the Congo	0.003	0.003	42
43	Denmark	0.675	0.679	9,419
44	Dominica	0.001	0.001	14
45	Dominican Republic	0.045	0.045	625
46	Ecuador	0.044	0.044	610
47	El Salvador	0.016	0.016	222
48	Equatorial Guinea	0.010	0.010	139
49	Estonia	0.040	0.040	555
50	Ethiopia	0.010	0.010	139
51	Fiji	0.003	0.003	42
52	Finland	0.519	0.522	7,241
53	France	5.593	5.630	78,100
54	Gabon	0.020	0.020	278

		Percentage of UN 2014 assessment (1)	Prorated % of contributions (2)	Assessed contributions US\$ (3)
55	Gambia	0.001	0.001	14
56	Georgia	0.007	0.007	97
57	Germany	7.141	7.189	99,724
58	Ghana	0.014	0.014	195
59	Greece	0.638	0.642	8,906
60	Grenada	0.001	0.001	14
61	Guatemala	0.027	0.027	374
62	Guinea-Bissau	0.001	0.001	14
63	Guyana	0.001	0.001	14
64	Holy See	0.001	0.001	14
65	Honduras	0.008	0.008	111
66	Hungary	0.266	0.268	3,718
67	Iceland	0.027	0.027	374
68	India	0.666	0.670	9,294
69	Indonesia	0.346	0.348	4,827
70	Iran (Islamic Republic of)	0.356	0.358	4,966
71	Iraq	0.068	0.068	943
72	Ireland	0.418	0.421	5,840
73	Italy	4.448	4.477	62,104
74	Jamaica	0.011	0.011	152
75	Japan	10.833	10.904	151,259
76	Jordan	0.022	0.022	305
77	Kazakhstan	0.121	0.122	1,693
78	Kenya	0.013	0.013	181
79	Kuwait	0.273	0.275	3,815
80	Kyrgyzstan	0.002	0.002	27
81	Lao People's Democratic Republic	0.002	0.002	27
82	Latvia	0.047	0.047	652
83	Lebanon	0.042	0.042	583
84	Lesotho	0.001	0.001	14
85	Libya	0.142	0.143	1,984
86	Liechtenstein	0.009	0.009	125
87	Lithuania	0.073	0.073	1,013
88	Luxembourg	0.081	0.082	1,138
89	Madagascar	0.003	0.003	42
90	Malawi	0.002	0.002	27
91	Malaysia	0.281	0.283	3,926
92	Maldives	0.001	0.001	14
93	Mali	0.004	0.004	56
94	Malta	0.016	0.016	222
95	Marshall Islands	0.001	0.001	14
96	Mauritius	0.013	0.013	181
97	Mexico	1.842	1.854	25,719
98	Monaco	0.012	0.012	166
99	Mongolia	0.003	0.003	42
100	Montenegro	0.005	0.005	69
101	Morocco	0.062	0.062	860
102	Mozambique	0.003	0.003	42
103	Nauru	0.001	0.001	14
104	Netherlands	1.654	1.665	23,097
105	New Zealand	0.253	0.255	3,537
106	Nicaragua	0.003	0.003	42
107	Niger	0.002	0.002	27
108	Nigeria	0.090	0.091	1,263
109	Norway	0.851	0.857	11,888
110	Oman	0.102	0.103	1,429
111	Pakistan	0.085	0.086	1,193
112	Palau	0.001	0.001	14
113	Panama	0.026	0.026	361
114	Papua New Guinea	0.004	0.004	56

		Percentage of UN 2014 assessment (1)	Prorated % of contributions (2)	Assessed contributions US\$ (3)
115	Paraguay	0.010	0.010	139
116	Peru	0.117	0.118	1,637
117	Philippines	0.154	0.155	2,150
118	Poland	0.921	0.927	12,859
119	Portugal	0.474	0.477	6,617
120	Qatar	0.209	0.210	2,914
121	Republic of Korea	1.994	2.007	27,841
122	Republic of Moldova	0.003	0.003	42
123	Romania	0.226	0.227	3,149
124	Russian Federation	2.438	2.454	34,042
125	Rwanda	0.002	0.002	27
126	Saint Kitts and Nevis	0.001	0.001	14
127	Saint Lucia	0.001	0.001	14
128	Saint Vincent and the Grenadines	0.001	0.001	14
129	San Marino	0.003	0.003	42
130	Sao Tome and Principe	0.001	0.001	14
131	Saudi Arabia	0.864	0.870	12,069
132	Senegal	0.006	0.006	83
133	Serbia	0.040	0.040	555
134	Seychelles	0.001	0.001	14
135	Sierra Leone	0.001	0.001	14
136	Singapore	0.384	0.387	5,369
137	Slovakia	0.171	0.172	2,386
138	Slovenia	0.100	0.101	1,401
139	Solomon Islands	0.001	0.001	14
140	South Africa	0.372	0.374	5,188
141	Spain	2.973	2.992	41,505
142	Sri Lanka	0.025	0.025	347
143	Sudan	0.010	0.010	139
144	Suriname	0.004	0.004	56
145	Swaziland	0.003	0.003	42
146	Sweden	0.960	0.966	13,400
147	Switzerland	1.047	1.054	14,621
148	Tajikistan	0.003	0.003	42
149	Thailand	0.239	0.241	3,344
150	The former Yugoslav Republic of Macedonia	0.008	0.008	111
151	Timor-Leste	0.002	0.002	27
152	Togo	0.001	0.001	14
153	Tonga	0.001	0.001	14
154	Trinidad and Tobago	0.044	0.044	610
155	Tunisia	0.036	0.036	499
156	Turkey	1.328	1.337	18,547
157	Turkmenistan	0.019	0.019	264
158	Uganda	0.006	0.006	83
159	Ukraine	0.099	0.100	1,387
160	United Arab Emirates	0.595	0.599	8,310
161	United Kingdom of Great Britain and Northern Ireland	5.179	5.213	72,315
162	United States of America	22.000	22.144	307,181
163	Uruguay	0.052	0.052	721
164	Uzbekistan	0.015	0.015	208
165	Vanuatu	0.001	0.001	14
166	Venezuela (Bolivarian Republic of)	0.627	0.631	8,753
167	Viet Nam	0.042	0.042	583
168	Yemen	0.010	0.010	139
169	Zambia	0.006	0.006	83
170	Zimbabwe	0.002	0.002	27
GRAND TOTAL		99.350	100.000	1,387,200