



Informal Meeting on Strengthening Compliance with International Humanitarian Law, Geneva, 13 July 2012

Concluding remarks

Purpose of the meeting

Today's meeting has allowed us to appraise the dimension of the lack of compliance with international humanitarian law (IHL) and the need for concrete measures. The meeting's aspiration was to prepare the ground for a transparent and inclusive process, to which we hope all States can commit.

The three objectives of the meeting were to:

- 1) create awareness of the difficulties involved when ensuring compliance with IHL and to foster the positive dynamic and confidence that is indispensable if we are to succeed in this endeavour;
- 2) ensure that all States have the same understanding of the problem;
- 3) provide direction to Switzerland and the ICRC on how to conduct this initiative and identify the next possible steps.

Thanks to the wide participation and the high quality of our exchanges we have been able to achieve these objectives.

The States are primarily responsible for the implementation of this important body of law, and therefore it is they who must ensure that it is respected. It rests on them to reflect together on ways to strengthen compliance with IHL.

Importance of IHL

The purpose of IHL is to protect the victims of armed conflict. It is based on the conviction shared by all States that certain fundamental humanitarian precepts must be respected in all circumstances. To achieve acceptance by the parties to armed conflict, IHL attempts to strike a pragmatic balance between the principles of humanity and military necessity. This distinguishing feature is, as we have heard today, of great importance for the effective protection of the victims. There was general agreement that IHL is a pillar of the international legal order which needs to be preserved.

Today's discussions have also confirmed that despite constant changes in and the growing complexity of today's armed conflicts, IHL remains an appropriate framework for regulating the conduct of warring parties. There was general agreement that if parties to a conflict respected all IHL rules, most current humanitarian issues would not arise. A number of participants also emphasized that there is no need to develop new substantive rules and that the main goal is improving compliance with IHL.

For IHL to succeed in its mission it must be able to protect the victims while armed conflicts occur. This is obviously what the victims of war expect IHL to achieve, and this is what remains its biggest challenge. This challenge needs to be met given that any law that can be flouted without prompting an adequate response risks losing credibility.

Implementation mechanisms

IHL foresees a number of mechanisms, such as the International Humanitarian Fact-Finding Commission. As we have seen from the presentations, as well as in our discussions, they have difficulties to meet today's challenges in their current form. As a result they are not being used. Moreover, while the vast majority of current armed conflicts are non-international in nature, the existing mechanisms mainly apply to international armed conflicts.

In practice it is therefore mainly the ICRC that performs certain supervisory tasks, such as visiting detention centres, protection of the civilian population, or dealing with IHL violations in a confidential manner. There are however certain limits to the ICRC's role, inherent in its humanitarian mission and working methods.

Institutional lacuna

During preparatory contacts with States ahead of this meeting in recent months, a number of interlocutors raised the absence of a suitable forum for States to have regular deliberations on IHL in general and on compliance issues in particular. As today's exchanges have shown, more frequent and structured discussions among States on IHL issues are believed to be necessary.

Unlike other areas of international public law, IHL has few institutions at its disposal. The only universal forum in which States can gather to discuss IHL is the International Conference of the Red Cross and Red Crescent. Every four years this unique conference brings together representatives of the various components of the Movement and States for important deliberations on IHL implementation. The conference however does not deal with issues of compliance, nor does it meet with sufficient frequency, and its focus is primarily on the broad spectrum of activities that may be undertaken by States in advance, or on questions related to the general application of IHL.

As was also noted in the discussions, one of the reasons for the disuse of existing compliance mechanisms is the absence of a forum allowing States to regularly exchange views on current IHL concerns. In addition, the existing mechanisms are self-triggered and consequently there is no entity other than the parties concerned that can bring them into action.

Other fora of international public law

As a result of the absence of a regular opportunity for States to engage in dialogue on matters of IHL, human rights institutions and other international organs are increasingly focusing on this body of law. Indeed debates in the Human Rights Council, the Security Council and the General Assembly refer to IHL more and more.

As for the Security Council, it has taken a more active role of late in IHL issues, through discussions on the protection of civilians in armed conflict and through its mechanisms dealing with specific vulnerable groups.

The Human Rights Council has established thematic and other procedures that invoke IHL in certain situations and it also mandates a growing number of Commissions of Inquiry that operate in situations of armed conflict.

The attention these organs pay to IHL is positive. It shows an increasing awareness of the international community for IHL matters. However, as many delegations have noted, there are specificities of armed conflict, and consequently of IHL application, which bodies established under other branches of law are not able to fully address. Due to these inherent limitations it will be necessary to examine possible avenues for ensuring respect for IHL by means of IHL compliance mechanisms.

A cardinal achievement from the perspective of IHL is the establishment of various mechanisms of international criminal justice, most notably the International Criminal Court. It has been recalled that international criminal law, which will not be the focus of the Swiss-ICRC process, has made great

strides over the past few decades. It is now well understood that certain heinous acts constituting crimes under international law may be pursued at the international level when the requisite conditions have been met.

The positive contributions of these mechanisms and bodies of law to enhancing the protection of victims of armed conflict are beyond doubt. Yet the discussion showed that the specificities of IHL, which reflect the extraordinary situation it regulates, suggest a need for further thinking on how best to conceptualize specific IHL compliance and on how to provide States with a universal forum that would enable an ongoing dialogue on respect for IHL.

Next steps in the process

Today's discussions allow us to make a few observations:

There was broad agreement that there is a need to have a more regular dialogue among States on issues of compliance, and that it would be useful to focus future dialogue on specific thematic issues. The meeting was considered a first step on the path to strengthening the debate among States. It was clear that in the process, which will be facilitated by Switzerland and the ICRC, States will have a key role to play.

Today's exchanges have also shown that there is general and serious concern about the pervasive disregard for IHL and a common understanding that solutions need to be explored. It is a matter of preserving the credibility of this fundamental body of law.

Pursuant to Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent, Switzerland and the ICRC are committed to devising, based on further consultations with States, the format which is best suited to your expectations about how to move the initiative forward.

We are at the beginning of a complex process. In this initial stage our aim must be to ensure that positive momentum is established, and we believe that today's meeting was an important step in that direction.

It is important that all States feel themselves part of this endeavour aimed at strengthening compliance with IHL. An expedient framework will have to be defined permitting in-depth discussions on concrete ideas. The process will be inclusive, transparent and open. It is however obvious that it will not be possible to have meaningful deliberations and to devise possible avenues for solutions in a circle comprising all States at all times. There will be stages in the process where it will be inevitable to narrow down the number of parties involved. We are committed to defining a working method that will ensure the representativity of the process.

The elaboration of proposals acceptable to all is likely to take time, and as was mentioned today, further meetings with a thematic focus are envisaged as a means of focusing the debate on specific compliance related issues. Switzerland and the ICRC will take the necessary steps in this regard. We also invite you to share your views and ideas on how to improve compliance with IHL, as well as your guidance on how the process could move forward.