



Bern / Geneva, 19 April 2013

Discussion on Strengthening Compliance with International Humanitarian Law (IHL), Geneva, 8/9 April 2013

Chairs' Conclusions

Context

In its Resolution 1, the 31st International Conference of the Red Cross and the Red Crescent of late 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 to identify possible means to enhance the effectiveness of mechanisms of compliance with IHL and requested that a report, proposing a range of options and recommendations, be submitted to the 32nd International Conference. It also expressed its appreciation to the Government of Switzerland for its availability to facilitate a process to explore ways and means to strengthen the application of IHL and to reinforce dialogue on IHL issues among States, in cooperation with the ICRC.

Besides numerous bilateral consultations, a round of discussions with a number of States, representing all regions, was held in Geneva on 8/9 November 2012. Pursuant to the recommendations by the meeting States of 13 July 2012, the question of the format of a more regular dialogue among States and the possible functions of an IHL compliance system were at the centre of those exchanges. As more in-depth discussions were deemed necessary in view of the meeting of States of 17/18 June 2013, a second discussion took place in Geneva on 8/9 April 2013.

Agenda of the second discussion

The second discussion dealt with:

- the specific functions that an effective IHL compliance system would need to perform and their features;
- the possible format of an institutional framework providing States with a regular opportunity to engage in a dialogue on IHL matters with a view to strengthening compliance with IHL.

Priorities and guiding principles of the process

As the various consultations and the discussions held thus far have shown, the following priorities and principles will need to guide the thinking in the further process:

- the need for any mechanisms to be effective;
- the importance of minimizing the risk of politicisation;
- avoiding unnecessary duplication;
- taking into account resourcing considerations, and
- the need to find appropriate ways of engaging with non-state actors, given the prevalence of non-international armed conflicts.

Possible functions of an IHL compliance system

The second discussion looked at the possible functions that an IHL compliance system could be endowed with. The functions dealt with were: periodic reporting, fact finding, early warning and urgent appeals, country visits, non-binding legal opinions, good offices, State inquiries, dispute settlement, examinations of complaints. Some of these functions attracted more attention than others, notably the functions of periodic reporting and of fact-finding. All these functions will be part of the outline to be presented to all States at the upcoming meeting of 17/18 June.

The deliberations showed, however, that periodic reporting and fact-finding would constitute important elements of a meaningful IHL compliance system. The discussion about the reporting function also broached the question of whether it should focus on national compliance or rather on thematic issues, or if a combination should be envisaged. The discussion, moreover, briefly revisited the question of the potential for reform of the three existing compliance monitoring mechanisms, i.e. the Enquiry Procedure, the Protecting Power system and the International Humanitarian Fact-Finding Commission (IHFFC). While there was broad agreement that it would be difficult to enhance the effectiveness of the first two, inter alia on account of their limitation to international armed conflict, it was felt that it will be worth examining how the IHFFC can be revitalised so as to serve as part of an effective compliance system.

Forum of States for regular dialogue on IHL

As concerns a possible forum that would enable States to engage in a regular dialogue on IHL issues, there was a tendency in favour of establishing a Meeting of States as provided for in all other treaties that deal with the protection of persons. With regard to the frequency of such meetings a preference emerged for annual or at least biennial meetings. It was also felt that the function of periodic reporting would have to be linked in some way to the Meeting of States, regardless of its exact configuration. Furthermore, the exchanges considered how and to what degree such a forum of States would need to be formalised.

The way forward

The question of how to strengthen compliance is central to the credibility of IHL and hence concerns all States. It is therefore imperative that all States are part of the consultations on the options and recommendations to be submitted to the 32nd International Conference of the Red Cross and the Crescent. Switzerland and the ICRC thus intend to continue to hold consultations on a bilateral basis and also within groups, and to convene meetings of all States until the 32nd International Conference. All these exchanges will allow for an open, transparent and inclusive debate on the structure that a regular dialogue among States could have and on the role that a coherent compliance system could play in furtherance of respect for IHL.

As concerns the meeting of States of 17/18 June 2013, all the possible functions of an effective IHL compliance system and the different considerations regarding the possible establishment of a universal forum of States will be deliberated in detail.

In mid-May the agenda of the June meeting and a background document will be sent to all States. In view of the significance of the question of how best to strengthen compliance, the Swiss Minister for Foreign Affairs, Mr. Didier Burkhalter, and the President of the ICRC, Dr Peter Maurer, will open the meeting.

It can be assumed that in order to take the process forward following the June meeting, it will be useful to be able to base future exchanges on more concrete proposals regarding the possible features and tasks to be performed by a Meeting of States. Pursuant to resolution 1 of the 31st International Conference, the June meeting could therefore entrust Switzerland and the ICRC with a mandate to devise such concrete proposals in preparation for the meeting of States in early summer 2014.

Switzerland and the ICRC remain available for bilateral talks with interested States at all times and will continue to inform the International Red Cross and the Red Crescent Movement, National Committees for the Implementation of IHL, as well as international and regional organisations, and others, on the development of the initiative. As for the next round of discussions, it is tentatively scheduled for November 2013.

Proposals from all States with regard to process and to substance would be greatly appreciated. Views and ideas on how to further develop this initiative can be sent to: dv-badih@eda.admin.ch