



Discussions on Strengthening Compliance with International Humanitarian Law (IHL), Geneva, 8/9 November 2012

Chairs' conclusions

Context

The joint initiative by Switzerland and the ICRC, launched in early 2012 pursuant to Resolution 1 adopted by the 31st International Conference of the Red Cross and Red Crescent in December 2011, aims to explore ways of strengthening compliance with international humanitarian law (IHL).

The meeting of States held on 13 July 2012 in Geneva showed broad agreement on the need to have a more regular dialogue among States on issues of IHL compliance, and indicated that it would also be useful to focus further reflection within the Swiss-ICRC initiative on specific thematic issues.

As follow-up to the 13 July meeting of States, Switzerland and the ICRC continued consultations with States with a view to identifying the main substantive issues of relevance to moving the process forward. In this context, discussions with a regionally balanced group of States were held in Geneva on 8/9 November 2012 to explore possible avenues for new proposals to be submitted for discussion at the next meeting of States in June 2013.

Purpose of the discussions

The discussions on 8/9 November built on the meeting of States held on 13 July. Their focus was, first, to assess the current system of IHL compliance with a view to drawing lessons and best practices and, second, to discuss and identify possible functions that an IHL compliance system would need to fulfil in order to be effective.

General observations and comments by participants

Participants in the discussions of 8/9 November underscored the importance of IHL as a universal body of rules regulating the conduct of the parties to armed conflicts. There was general agreement that it needs to be preserved and strengthened. It was noted that a regular dialogue between governments would facilitate a greater sense of ownership of IHL among States. In this regard, the mere fact of holding meetings and of exchanging views among States about IHL issues was seen as a very positive step. The importance of an inclusive process based on a step-by-step approach was highlighted and the continuation of the consultations held by Switzerland and the ICRC was encouraged.

Finding concrete ways and means to fill the gap

It was acknowledged that, contrary to most other branches of international law, IHL has only a limited number of mechanisms to ensure compliance. It also lacks a specific forum in which States could discuss IHL issues. Moreover, except for the ICRC, the existing compliance mechanisms provided for under the 1949 Geneva Conventions and the First Additional Protocol are not being used. In addition, while the vast majority of current armed conflicts are non-international in nature, the existing mechanisms mainly apply to international armed conflicts. Most participants held that it is important to identify concrete ways and means to strengthen the compliance system with a view to filling this gap.

In that regard, some participants were of the view that the possibility of strengthening existing compliance mechanisms should be examined before developing new ones. It was stated that in case new mechanisms are developed it will be important to avoid duplication with the existing ones and to make sure that they

have a clear added value. States were encouraged to propose possible measures to operationalize existing IHL compliance mechanisms such as the International Humanitarian Fact-Finding Commission, taking into account the current types and reality of armed conflicts.

Before devising possible means of strengthening the IHL compliance system, it was deemed necessary to examine the functions that a compliance system could have. The following functions, drawn from existing IHL compliance mechanisms, as well as from mechanisms established under other bodies of law, were discussed and considered possibly relevant:

- Periodic reporting: This function was mentioned as potentially valuable for the purpose of more systematic engagement by States with IHL, and for facilitating a greater sense of ownership.
- Fact-finding: Given that compliance with IHL may require an investigation of facts before an application of the law can be attempted, and an opinion on the rules that were possibly breached fact-finding was recognized as a possibly useful function.
- Early warning function: A tool that rapidly informs parties of situations that could result in breaches of IHL and proposes measures to prevent or respond to the behaviour in question was also considered worthy of further discussion.
- Urgent appeals: A tool that allows for immediate action in response to allegations of violations, and allows rapid dialogue with the authorities concerned aimed at clarifying the situation and contributing to a change in behaviour.

It was also mentioned that the different functions of possible IHL compliance mechanisms can be conceptually distinguished by whether they are to be performed before, during or after armed conflict (the "three box" time frame). Due attention should be given to functions that are performed before an armed conflict breaks out as they can have a preventive effect. It was underlined that, for example, all States are under an obligation to train and teach their armed forces to respect IHL and to disseminate the Geneva Conventions as widely as possible in order for the law to be respected in situations of armed conflict. It was recognized, however, that respect for IHL includes other parts of the "three-box" time frame noted above, and that challenges in implementation of the law in those parts remain significant.

More in-depth discussions on the possible functions of IHL compliance mechanisms and, in particular, on their features, were deemed necessary in order to prepare for further discussions at the next meeting of States.

Framework for more regular meetings

One of the conclusions of the 13 July 2012 meeting of States was that States currently lack an opportunity for a regular and structured dialogue on issues of IHL compliance – and that establishing an institutional framework for such a dialogue would be useful. In their exchanges on the possible features of such an institutional framework, participants in the November 8/9 discussions mentioned that such meetings should focus on issues that would allow the establishment of trust and avoid politicization, including exchanges on good practices. In the same context, most participants were of the view that regular meetings would be more appropriate, even though some participants mentioned that *ad hoc* meetings could be useful as well.

While recognizing the important contribution that regional compliance systems can play, a clear majority of participants recognized that a forum for States would have to be of a universal nature.

Next steps

In view of the next meeting of States on Strengthening Compliance with IHL to be held on 17/18 June 2013, Switzerland and the ICRC will continue their consultations, and further discussion with a regionally balanced group of States is planned for spring 2013. This discussion will mainly focus on the following issues:

- The specific functions that effective IHL compliance mechanisms would need to perform and the features of such mechanisms.
- 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.

Such consultations represent an opportunity for Switzerland and the ICRC to obtain guidance on how best to advance the process and on possible solutions that deserve further exploration. Switzerland and the ICRC remain at the disposal of all States. Proposals from all States with regard to process and to substance are greatly appreciated. Views and ideas on how to develop this initiative can be sent to: dv-badih@eda.admin.ch