



Intergovernmental Process on Strengthening Respect for International Humanitarian Law (IHL)

Third Formal Meeting

Geneva, 4-6 December 2017

Background Document on the International Conference of the Red Cross and Red Crescent and meetings envisaged in Resolution 1 of the 26th International Conference of 1995; the meetings envisaged in Article 7 of Additional Protocol I; and on IHL regional forums

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General Remarks

In accordance with the provisional work plan for 2017 adopted at the First Formal Meeting in the intergovernmental process on strengthening respect for IHL (held on 28-29 November 2016), the Third Formal Meeting (4-6 December 2017) is dedicated to the following issues:

- Ways to enhance the implementation of IHL using the potential of the International Conference of the Red Cross and Red Crescent and IHL regional forums (2 days)
- The provisional work plan for 2018, including review of outstanding issues (1 day)

The present Background Document provides information to States on the International Conference of the Red Cross and Red Crescent, the meetings envisaged under Resolution 1 of the 26th International Conference of 1995; the meetings envisaged under article 7 of Additional Protocol I; as well as on IHL regional forums. It should serve to help States develop ideas and proposals on ways to enhance the implementation of IHL using the potential of the International Conference and regional IHL forums.

The Background Document was revised to reflect the discussions held at the informal meeting on 16 October 2017. In particular, it tracks the questions asked on that occasion and includes responses, based, among other things, on answers given at the informal meeting.

The questions and answers are highlighted under the corresponding sections in text boxes.

By way of reminder, States are invited to share their views and proposals ahead of the Third Formal Meeting in December, as well as at the meeting itself. The submissions should address the following questions:

- 1. What are your general views and specific proposals on possible ways to enhance IHL implementation using the potential of the International Conference?**
- 2. What are your general views and specific proposals on possible ways to enhance IHL implementation using the potential of IHL regional forums?**
- 3. Would your delegation like to share experiences regarding its participation in or contribution to the IHL-related activities of the International Conference or IHL regional forums?**

We kindly ask you to send us your proposals by e-mail (respectIHL@eda.admin.ch and respectIHL@icrc.org). The proposals and comments will continuously be made available on the website of the intergovernmental process (www.respect-ihl.ch; password: Geneva2019).

Overview of the Background Document

Part I of the background document provides a factual overview of the International Conference, including information regarding its purpose, mandate, composition, and activities, with a particular focus on its functions and activities relating to IHL. It also contains more detailed information on the periodical meetings envisaged in Resolution 1 of the 26th International Conference of 1995. The overview is an elaboration of the information provided in the 'Report on Existing Mechanisms, Processes and Initiatives Dealing with IHL', prepared by the ICRC and circulated to States for discussion at the Second Formal Meeting.¹

Part II of the background document provides factual information on the meetings envisaged in article 7 of Additional Protocol I, as requested by States at the Second Formal Meeting in April 2017, as well as on other occasions.

Part III of the background document provides a factual overview of existing regional forums relevant to IHL. As indicated at the open-ended consultation in September 2017, the background document repeats the information contained in the ICRC's 'Report on Existing Mechanisms, Processes and Initiatives Dealing with IHL', prepared for the Second Formal Meeting.

This background document does not offer judgement or evaluation of the issues addressed therein, but is intended to provide a useful basis to help inform State discussions 'to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums', as stipulated in Resolution 2 of the 32nd International Conference and taken up in the work plan for 2017 adopted at the First Formal Meeting in November 2016.

¹ Available on the website of the intergovernmental process at <https://www.respect-ihl.ch/>

PART I: The International Conference of the Red Cross and Red Crescent and periodical meetings envisaged in Resolution 1 of the 26th International Conference of 1995

1. Purpose, basis, composition, and main organizational aspects of the International Conference

a) Purpose

The International Conference is a unique global forum that occurs generally every four years, bringing together the world's largest humanitarian network with the States parties to the 1949 Geneva Conventions to discuss the most pressing humanitarian issues and establish common positions. It is widely recognized as the premier venue to enhance and inspire humanitarian debates among governments and the components of the International Red Cross and Red Crescent Movement (the Movement).²

As defined in the Statutes of the International Red Cross and Red Crescent Movement (Statutes of the Movement),³ the International Conference is 'the supreme deliberative body for the Movement. At the International Conference, representatives of the components of the Movement meet with representatives of the States Parties to the Geneva Conventions, the latter in exercise of their responsibilities under those Conventions and in support of the overall work of the Movement in terms of Article 2 [of the Statutes of the Movement]. Together they examine and decide upon humanitarian matters of common interest and any other related matter'.⁴

With regard to the topics addressed at the International Conference, the Statutes emphasize that they need to be humanitarian matters 'of common interest', meaning of interest to States and to the components of the Movement. Humanitarian matters for consideration at the International Conference usually relate to improving the situation of victims in three broad areas: armed conflict, disaster and disease. However, humanitarian issues outside these three areas may also be examined.⁵ Concretely, at the 32nd International Conference in 2015 a wide range of topics were discussed, including: health care in danger; strengthening disaster laws; strengthening compliance with IHL; strengthening IHL protecting persons deprived of their liberty; sexual and gender-based violence; the safety and security of humanitarian volunteers. Resolutions of the International Conference influence debates on humanitarian issues of universal concern and may contribute to the development of new policies and international law in various areas (armed conflict, international disaster response, etc.).

The hybrid composition of the International Conference and the requirement to focus on humanitarian matters of common concern are intended to foster a cooperative approach.⁶ A collaborative and consensus-oriented approach is also warranted in light of the humanitarian

² The International Red Cross and Red Crescent Movement consists of the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and the 190 National Red Cross and Red Crescent Societies. 'The Movement' is a term used to refer to all Red Cross and Red Crescent actors together. For further details on the three components of the Movement, see pages 6-7 below.

³ The Statutes of the Movement and the Rules of Procedures are available online at: <https://www.icrc.org/eng/assets/files/other/statutes-en-a5.pdf>. The Statutes of the Movement and the Rules of Procedures were adopted by all members of the Conference, namely the ICRC, the International Federation, National Societies, and States.

⁴ Article 8 of the Statutes of the Movement.

⁵ For example, at the 30th International Conference (2007), humanitarian issues related to migration were discussed.

⁶ As has been noted: 'The character of the International Conference affects—and is affected by—the character of the Movement: it is based on co-operation and partnership'. Michael Meyer, 'The importance of the International Conference of the Red Cross and Red Crescent to National Societies: fundamental in theory and in practice', (2009) 91(876) *International Review of the Red Cross*, 713-32, at 731 (hereafter 'Meyer').

objectives of the Conference and its function as the 'supreme deliberative body for the Movement'. This idea of collaboration between government and non-governmental entities in the humanitarian field goes back to the origins of the International Red Cross and Red Crescent Movement, when following the ideas of Henry Dunant – the founder of the ICRC – a first conference was organized convening 16 governments, representatives of four private philanthropic organizations, and a number of individuals attending in a private capacity.⁷

b) Fundamental Principles

The work of the Movement, and the proceedings at the International Conference, are guided by seven Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.⁸ These seven principles were unanimously adopted by all components of the Movement and States at the 20th International Conference in 1965. In 1986, they were included in the Statutes of the Movement. With regard to the International Conference, the Statutes stipulate that '[a]ll participants in the International Conference shall respect the Fundamental Principles and all documents presented shall conform with these Principles'.⁹ Thus, all debates must be free from political, racial, religious or ideological controversies.¹⁰ While the Fundamental Principles are not of themselves binding on States, States must respect the Fundamental Principles while taking part in the International Conference.

c) Legal basis / mandate

The International Conference takes place in accordance with the Statutes of the Movement and the Rules of Procedure of the International Red Cross and Red Crescent Movement (Rules of Procedure).¹¹ The primary aim of the Statutes is to regulate relations between the Movement components. However, they also constitute the legal basis for all deliberations of the International Conference. In this way, the Statutes assume a constitutional character and set the framework that guides components of the Movement and States during the International Conference. They contain important provisions setting out the definition, composition, functions and procedure of the International Conference (some key aspects of these are elaborated further below).

The current Statutes of the Movement were adopted by the 25th International Conference in 1986. Since then, only two non-substantive amendments have been adopted, one in 1995 (change of 'League of Red Cross and Red Crescent Societies' into 'International Federation of Red Cross and Red Crescent Societies') and one in 2006 (amendment of the Statutes so as to include the Red Crystal emblem in line with the *Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)*).

In accordance with article 20 of the Statutes: 'Any proposal to amend the present Statutes and the Rules of Procedure must be placed on the agenda of the International Conference and its text sent to all members of the Conference at least six months in advance. To be adopted, any amendment shall require a two-thirds majority of those members of the International Conference present and

⁷ See Meyer, at 715. For further information about the history of the foundation of the Red Cross, see Francois Bugnion, 'The International Conference of the Red Cross and Red Crescent: challenges, key issues and achievements' (2009) 91(876) *International Review of the Red Cross*, 675-712. At 676, fn 3 (hereafter 'Bugnion').

⁸ A detailed discussion of each principle is available online: https://www.icrc.org/eng/assets/files/other/icrc_002_0513.pdf

⁹ Article 11(4) of the Statutes of the Movement.

¹⁰ Article 11(4) of the Statutes of the Movement.

¹¹ See article 11(8) of the Statutes of the Movement.

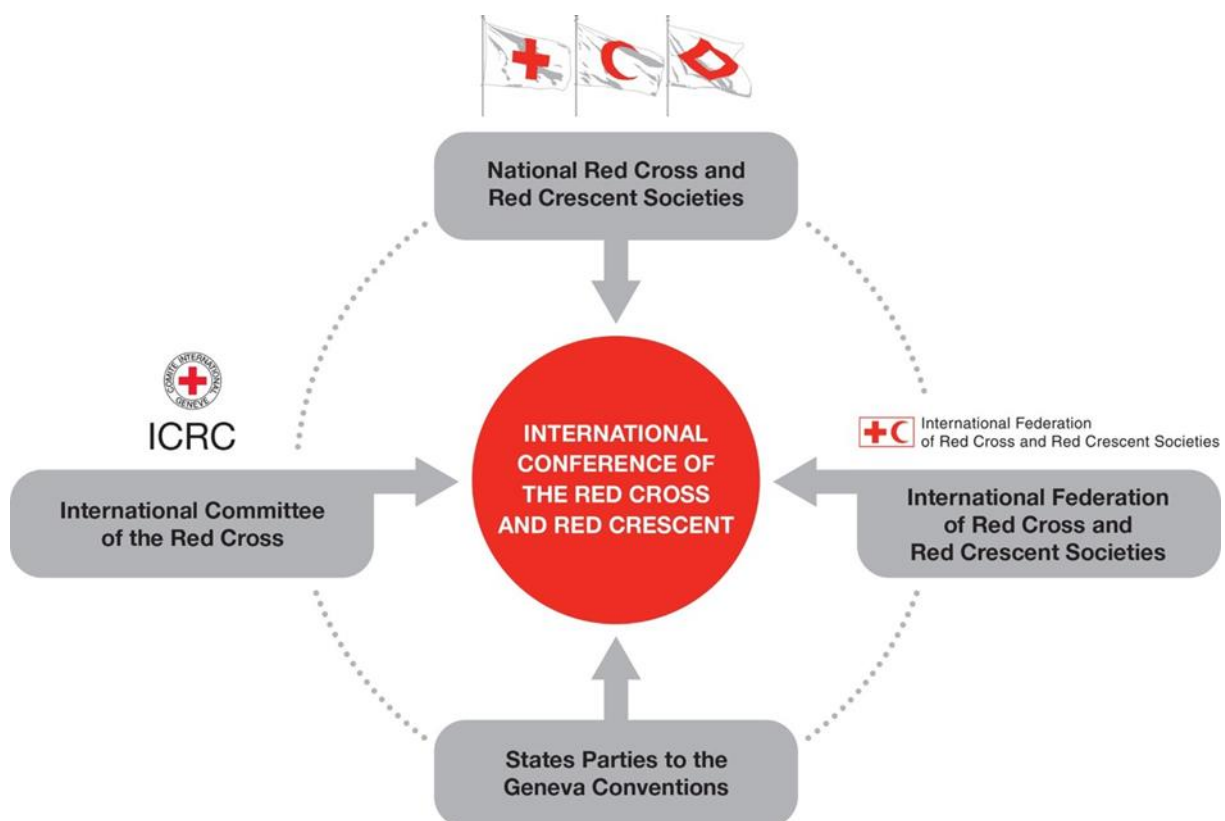
voting, after the views of the International Committee and the Federation have been presented to the Conference.’

This means that the Statutes of the Movement, including the section on the International Conference, can be changed only with the support of a substantial number of members, including States and the components of the Movement.

d) Composition

Members of the International Conference

The composition of the International Conference is enshrined in article 9 of the Statutes of the Movement: ‘The members of the International Conference shall be the delegations from the National Societies, from the International Committee, from the Federation and from the States Parties to the Geneva Conventions.’ Thus, the Conference has a unique hybrid composition comprising delegations from all 196 States parties to the 1949 Geneva Conventions and delegations from all components of the Movement. By way of example, the 32nd International Conference brought together more than 2,300 participants, comprising 169 States, 183 National Societies, the ICRC, the International Federation, and observers.



Above: Diagram showing the composition of the International Conference.

All members of the International Conference have equal rights expressed by a single vote;¹² that is, States, each National Society, the ICRC and the Federation meet on an equal basis, with each

¹² Article 9(2) of the Statutes of the Movement.

State and each component of the Movement having one independent vote in taking decisions at the International Conference (in the form of resolutions, discussed in section 2(c) below).¹³

The composition of the International Conference gives the Conference its unique character. In the over 150 year-history of the International Conference, the Conference has never debated a proposal to change its composition.¹⁴

By way of reminder, the Movement comprises three components: the ICRC, the recognized National Red Cross and Red Crescent Societies, and the International Federation of Red Cross and Red Crescent Societies.

The ICRC is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC was central to the establishment of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

National Red Cross and Red Crescent Societies are autonomous organizations established within a State party to the four Geneva Conventions. They carry out their humanitarian activities in conformity with their own statutes and national legislation, in pursuance of the mission of the Movement, and in accordance with the Fundamental Principles. National Societies shall be recognized by the government of the State in which they are constituted. They are voluntary aid societies, auxiliary to the public authorities in the humanitarian field.¹⁵ As autonomous organizations with certain recognized functions, National Societies are neither part of government nor are they non-governmental organizations. It can be said that their legal status is genuinely *sui generis*.¹⁶ There are currently 190 recognized National Red Cross and Red Crescent Societies around the world.

The International Federation of Red Cross and Red Crescent Societies (International Federation), was founded in 1919. It is a membership organisation established by and composed of National Societies. The general objective of the International Federation is to inspire, encourage, facilitate and promote at all times all forms of humanitarian activities carried out by National Societies with a view to preventing and alleviating human suffering and thereby contributing to the maintenance and promotion of human dignity and peace in the world.

Other participants: observers

The Statutes of the Movement provide that observers may attend meetings of the International Conference, unless the International Conference decides otherwise.¹⁷ Observers do not have any voting rights. In recent years a range of humanitarian and development actors have participated in the International Conference as observers. This has included regional and international organizations, for instance the United Nations and several of its specialized agencies, non-governmental organizations, academic institutions, and others. By way of example, apart from

¹³ At the International Conference, a delegate shall belong to only one delegation. See article 9(3) and (4) of the Statutes of the Movement.

¹⁴ See Bugnion, at 707.

¹⁵ See articles 3(2), 4(1), and 4(3) of the Statutes of the Movement.

¹⁶ See Meyer, at 725, citing, for example, Jean Pictet, *Fundamental Principles of the Red Cross: Commentary*, Henry Dunant Institute, Geneva 1979, at 63.

¹⁷ Article 11(5) of the Statutes of the Movement.

States and the components of the Movement, the 32nd International Conference was attended by 102 other humanitarian actors and corporate partners in an observer capacity.¹⁸

e) Periodicity, venue and costs

Periodicity

Under the Statutes of the Movement, the International Conference is mandated to meet every four years, unless it decides otherwise.¹⁹ The quadrennial periodicity of regular Conferences has generally been observed:²⁰ the 31st International Conference was held in November/December 2011, the 32nd International Conference in December 2015, and the 33rd International Conference is expected to take place in late 2019.

However, sometimes the periods between two International Conferences have been longer than four years, for example when the International Conference was prevented from meeting due to widespread conflict (for example, 1912-1921, 1938-1948), or by political impediments connected with the representation of certain States or political entities. Overall, since the constituent Conference in October 1863, the International Conference has met on 32 occasions.

Venue

Since 1986, for practical reasons (including costs), the International Conference has been held in Geneva, with the ICRC and the International Federation as co-hosts. However, the International Conference has been held in different venues in the past. The first International Conference in October 1867 was held in Paris, France, and it has been held in other countries also. The International Conference may mandate a National Society to host the next International Conference, which is done normally on the basis of offers made during the previous session.²¹ The Statutes of the Movement provide in article 11(2): 'Should exceptional circumstances so require, the place and date of the International Conference may be changed by the Standing Commission. The Standing Commission may act on its own initiative or on a proposal by the International Committee, the Federation or at least one third of the National Societies.'

Costs

The costs of the 32nd International Conference held in 2015 amounted to approximately 2.8 million Swiss Francs. One half of the costs was borne in equal parts by the ICRC and the IFRC, the other half – as well as costs for the venue and costs going beyond the original budget – was borne by Switzerland.²²

¹⁸ 'The 32nd International Conference of the Red Cross and Red Crescent: Taking Stock': http://rcrcconference.org/wp-content/uploads/2016/05/What-is-the-International-Conference_Summary-EN.pdf. The 32nd International Conference was the first time that the participation was opened to corporate partners, as observers.

¹⁹ Article 11(1) of the Statutes of the Movement.

²⁰ On one occasion, the International Conference met more frequently than every four years. The 29th International Conference (2006) was convened as an exceptional Conference to amend the Statutes of the Movement in order to reflect the 'Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)'. This Conference was convened under article 11(2) of the Statutes of the Movement.

²¹ Article 11(1) of the Statutes of the Movement.

²² A couple of other actors had pledged to or funded certain specific costs.

f) Format and length

The length and format of each International Conference are determined by the ICRC and the International Federation, as the organizers of the Conference, and are open to variation.²³ Prior to each Conference, however, the ICRC and the International Federation consult other members of the Conference about these subjects.

In past years there have been different approaches to the length and format of the International Conference. For example, while the 31st International Conference of 2011 was held over four days, it was decided that the 32nd International Conference of 2015 shall only last three days and include certain innovations. Accordingly, it was shorter, less formal and more interactive, with numerous activities taking place in parallel. The Conference included: an opening session; a panel debate; the drafting committee; eight commissions (two of which were repeated);²⁴ the general debate; a humanitarian dialogue in the form of a 'Vision Lab'; 35 side events on diverse issues; the Standing Commission election; reporting on the work of the Conference; the adoption of resolutions; and a closing panel debate on the outcomes of the Conference.

In an effort to ensure a more open and inclusive Conference, with more opportunities to engage and help shape it, some innovative engagement and communication ideas were adopted. These included, for example, the 'Voices to Action' initiative, which was launched in August 2015, in the lead-up to the International Conference.²⁵ This novel format was designed to emphasize the strong local dimension and proximity of Movement action and to ensure that field realities are kept 'front of mind' throughout the International Conference debates.

In the past, a broad theme has been selected for each International Conference. For example, the themes of the last three International Conferences were 'Together for Humanity' (2007), 'Our World. Your Move – For Humanity' (2011), and 'Power of Humanity – Fundamental Principles in Action' (2015). The agenda, length and format of the next, 33rd International Conference, are currently being developed by the ICRC and the International Federation. States and National Societies will be consulted in due course.

g) Organization of the International Conference

The International Conference is co-organised by the ICRC and the International Federation. The main procedural steps in organizing the Conference are defined in the Rules of Procedure.²⁶ During the preparation of the Conference, in addition to the organizers, two bodies perform particular functions: the Standing Commission and the Council of Delegates.

The Standing Commission

The Standing Commission is a body in which the components of the Movement are represented on a permanent basis and which meets regularly, normally several times per year. The Standing Commission comprises five National Society Members who are elected during the International

²³ As seen below, the Standing Commission plays a central role in the organization of the Conference, alongside the organizers.

²⁴ The topics of these Commissions were: Contemporary Challenges in IHL; Sexual and Gender-Based Violence; Health Care in Danger; Building Resilience: Launch of the One Billion Coalition for Resilience; Building Resilience: Strengthening Legal Frameworks for Disasters and Emergencies; Fundamental Principles in Action.

²⁵ The initiative comprised an online platform focusing on real life scenarios; five hub events prior to the International Conference (held between October and November in Liberia, Honduras, Austria, Bangladesh and Lebanon) and a parallel track for dialogue during the Conference, called the 'Humanitarian Dialogue: a Vision Lab'.

²⁶ See primarily rules 4-8 of the Rules of Procedure.

Conference for four years, until the close of the next International Conference. In addition to the elected members, there are four ex officio members (the Presidents of the ICRC and of the International Federation, and one other representative of both institutions, presently the Deputy Director General of the ICRC and the Secretary General of the International Federation).²⁷

The Standing Commission acts as the trustee of the International Conference between Conferences and performs key functions in its organization.²⁸ These functions are defined in article 18 of the Statutes of the Movement and include the selection of place and date of the Conference; establishing the Conference programme and a provisional agenda, establishing the list of observers, and promoting the Conference.²⁹ In addition to its tasks relating to the organization of the Conference, the Standing Commission has a range of additional functions,³⁰ one of which is to encourage the implementation of the resolutions of the International Conference.³¹

How does the Standing Commission draw up the provisional agenda?

The Standing Commission draws up the provisional agenda based on initial consultations and on its own deliberations. The provisional agenda is then sent to all members of the International Conference, together with the notice of convocation. All members of the International Conference then have the opportunity to submit observations, amendments or additions to the provisional agenda to the Standing Commission at least 60 days before the Conference opens, unless the Standing Commission agrees to a later date (Rules of Procedure, Rule 6). The Standing Commission considers any such proposals received within the deadline and may revise the provisional agenda before submitting a final version to the Council of Delegates for approval.

The Council of Delegates

The Council of Delegates is a body in which the representatives of all the components of the Movement meet to discuss matters which concern the Movement as a whole.³² It is thus not a body of the International Conference. It meets biennially: once just prior to the International Conference, and once at the end of the second year following the International Conference. The 2017 Council of Delegates will take place from 10-11 November in Antalya, Turkey. Through discussion, debate and adoption of resolutions, the Council develops Movement policy and strategy for humanitarian issues of global concern. Important decisions of past sessions of the Council have included, for example, the adoption of a 'Movement Strategy on Landmines, Cluster Munitions and other Explosive Remnants of War: Reducing the Effects of Weapons on Civilians', or a Movement strategy and implementation plan on 'Restoring Family Links'.

The Council of Delegates also adopts the provisional agenda of the International Conference and proposes for election by the International Conference the Chairperson, Vice-Chairpersons,

²⁷ See rule 17 of the Rules of Procedure.

²⁸ See article 16 of the Statutes of the Movement.

²⁹ The Commission's functions with regard to the International Conference are defined in particular in article 18 (1) of the Statutes of the Movement: 'The Standing Commission shall make arrangements for the next International Conference by: a) selecting the place and fixing the date thereof, should this not have been decided by the previous Conference, or should exceptional circumstances so require in terms of article 11, paragraph 2; b) establishing the programme for the Conference; c) preparing the provisional agenda of the Conference for submission to the Council; d) establishing by consensus the list of the observers referred to in article 11, paragraph 5; e) promoting the Conference and securing optimum attendance.'

³⁰ For further detail see: 'About the Commission': <http://standcom.ch/about-the-commission/>

³¹ Article 18(3)(b) of the Statutes of the Movement.

³² Article 12 of the Statutes of the Movement.

Secretary General, Assistant Secretaries General and other officers of the Conference. It thus plays an important procedural role in setting the Conference agenda.³³

How was the Council of Delegates created?

The Council of Delegates, although by a different name, was created during the 3rd International Conference in Geneva in 1884, on the proposal of the ICRC. Its purpose was to serve as a forum for the ICRC and the then National Societies for the consideration of purely Red Cross matters. In practice, the Council met prior to the official opening of the International Conference in order to nominate individuals to be presented to the Conference for election as officers and to determine the Conference agenda. This role was later formalized in the first Statutes of the Movement in 1928 and the periodicity of sessions of the Council and its functions have grown over time.

How are resolutions adopted by the Council of Delegates?

Resolutions are adopted by the Council of Delegates in the same way as at the International Conference. That is, the texts must conform to the Fundamental Principles and the Council shall endeavor to adopt resolutions by consensus (Statutes of the Movement, Articles 15(3) and 15(5)). The Council of Delegates normally follows the Rules of Procedure of the Movement (Article 15(6)).

What is the interaction between resolutions adopted by the International Conference and resolutions adopted by the Council of Delegates?

The resolutions adopted by the International Conference and the resolutions adopted by the Council of Delegates reflect the different purposes and membership of each body (both of them being statutory bodies of the Movement). Resolutions of the International Conference, which include participation by States as well as the components of the Movement, address humanitarian matters of common interest and support the overall work of the Movement. International Conference resolutions also set the Movement's agenda for the next four years. Resolutions of the Council of Delegates, composed of delegations from National Societies, the ICRC and the Federation, deal with matters which are of interest to the Movement or to the Movement's engagement with issues of broader interest. On occasion, a resolution may first be adopted by the Council and then, often with some elaboration, with States at the International Conference.

2. Overview of the functions of the International Conference

The functions of the International Conference are set out in article 10 of the Statutes of the Movement. These are as follows:

- The International Conference contributes to the unity of the Movement and to the achievement of its mission in full respect of the Fundamental Principles.³⁴
- The International Conference contributes to the respect for and development of international humanitarian law and other international conventions of particular interest to the Movement.³⁵

³³ See article 14(2) of the Statutes of the Movement. Rule 17(1) of the Rules of Procedure provide further: 'The Bureau shall determine the agenda for each meeting, following as far as possible the order of the subjects proposed by the Standing Commission and approved by the Council.'

³⁴ Article 10(1) of the Statutes of the Movement.

³⁵ Article 10(2) of the Statutes of the Movement.

- The International Conference has the sole competence to amend the Statutes of the Movement and Rules of Procedure.³⁶ At the request of any member of the International Conference, the International Conference will take the final decision on any difference of opinion as to the interpretation and application of the Statutes and Rules of Procedure. It also will decide on any question which may be submitted to it by the Standing Commission, the ICRC and the International Federation.³⁷
- The International Conference also elects in a personal capacity the five National Society members of the Standing Commission. In doing so it must take into account the personal qualities of the candidates and the principle of fair geographical distribution.³⁸
- Within the limits of the present Statutes and of the Rules of Procedure, the International Conference adopts its decisions, recommendations or declarations in the form of resolutions.³⁹
- The International Conference may assign mandates to the ICRC and the Federation, within the limits of their statutes and the Statutes of the Movement.⁴⁰
- The International Conference may enact, when necessary and by a two-thirds majority of its members present and voting, regulations relating to matters such as procedure and the award of medals.⁴¹
- The International Conference may establish for the duration of the Conference subsidiary bodies in accordance with the Rules of Procedure of the International Red Cross and Red Crescent Movement.⁴²

For the purpose of this document, four activities/functions of the International Conference are elaborated on in the following sections: debates in the plenary; discussions in subsidiary bodies (commissions); the adoption of resolutions; and the submission of pledges.

a) Debates in the plenary

At the International Conference, members hold main debates and take decisions in the plenary. The Conference programme and a provisional agenda are proposed by the Standing Commission.⁴³ Once the provisional agenda is published six months prior to the opening of the Conference, all members of the Conference may submit observations, amendments or additions to the provisional agenda to the Standing Commission at least 60 days prior to the opening of the Conference.⁴⁴ Subsequently, the provisional agenda is subject to approval by the Council of Delegates.⁴⁵ The plenary adopts the agendas for the commissions and subsequently adopts any resolutions.

³⁶ The amendment procedure is specified in article 20 of the Statutes of the Movement and rule 32 of the Rules of Procedure.

³⁷ See article 10(3)(c) of the Statutes of the Movement.

³⁸ Article 10(4) of the Statutes of the Movement.

³⁹ Article 10(5) of the Statutes of the Movement.

⁴⁰ Article 10(6) of the Statutes of the Movement.

⁴¹ Article 10(7) of the Statutes of the Movement.

⁴² Article 10(8) of the Statutes of the Movement.

⁴³ The provisional agenda normally lays out the various agenda items in the sequence that they will be dealt with. The program provides the actual schedule/ timing, and might not contain as much detail on each agenda item as the provisional agenda.

⁴⁴ See rule 6 of the Rules of Procedure.

⁴⁵ Rules 6 and 17 of the Rules of Procedure. As rule 17.1 states: 'The Bureau may propose to the Conference that new items be added to the agenda, provided that the proposals are submitted to the Chairman the day before and signed by at least five delegations to the Conference each belonging to a different country.'

The primary place for substantive discussions at the International Conference, however, has been the commissions.

b) Discussions in commissions (subsidiary bodies)

Article 10(8) of the Movement Statutes foresees the establishment of subsidiary bodies by the International Conference in accordance with the Rules of Procedure.⁴⁶ Subsidiary bodies can be established 'for the duration of the Conference'.⁴⁷ They normally take the form of 'plenary commissions' and are open to all Conference participants. Each commission elects its Chairperson, Vice-Chairpersons and Rapporteurs on the proposal of the Council of Delegates.⁴⁸

Commissions provide a space for discussions on matters of substance, including in relation to IHL. Over the past 150 years, a number of Conferences established commissions dedicated to IHL issues. In earlier conferences, these commissions had rather general denominations, for instance 'Legal Commission'⁴⁹ or 'International Humanitarian Law Commission'.⁵⁰ However, commissions have also been more specifically focused on certain aspects of IHL, for example on 'International Humanitarian Law and Relief to the Civilian Populations in Armed Conflicts', 'War victims and Respect for IHL', or 'Reaffirmation and Implementation of International Humanitarian Law: Preserving Human Life and Dignity in Armed Conflict'.⁵¹

At the 32nd International Conference in 2015, five commissions were established as subsidiary bodies, one of which was focused on 'Contemporary Challenges in IHL'.⁵² Discussions in this commission were scheduled for two hours during the three-day Conference and took place in parallel to several other activities.

Is it possible to establish a Commission for the duration of the International Conference that is open to States only?

Yes, the International Conference could decide by resolution to establish such a commission for the duration of the Conference (Rules of Procedure, Rule 16(3)). However, a state-only subsidiary body of the International Conference (i.e. a state-only commission) would not reflect the prescribed composition of the International Conference (Statutes of the Movement, Article 9(1)), which is a unique venue for exchanges between the components of the Movement and States. The International Conference normally establishes plenary commissions that are open to all members of the Conference, that is, to States and to the components of the Movement (the ICRC, the International Federation and the presently 190 National Red Cross and Red Crescent Societies in total) (Rule 16(2)). The creation of a state-only commission for the duration of the Conference would thus have to garner the approval of all Conference members. The International Conference,

⁴⁶ Article 10(8) of the Statutes of the Movement. According to rule 2.2 of the Rules of Procedure, 'any subsidiary body established by the statutory bodies, other than the plenary commissions of the International Conference, may draw up by consensus its own rules of procedure. In the absence of any such rules and to the plenary commissions of the International Conference, these Rules shall be applied *mutatis mutandis*.'

⁴⁷ Article 10(8) of the Statutes of the Movement. See also rule 16 of the Rules of Procedure.

⁴⁸ Rule 16(2) of the Rules of Procedure.

⁴⁹ See, for instance, 16th International Conference (1938) and 17th International Conference in 1948.

⁵⁰ See, for instance, 19th International Conference (1957) and 20th International Conference in 1965.

⁵¹ See, respectively, 21st International Conference (1969), 26th International Conference (1995), 30th International Conference (2007).

⁵² The other four commissions were: 'Commission A: Fundamental Principles in action'; 'Commission C: Joint action on the prevention of and response to sexual and gender-based violence'; 'Commission D: Health Care in Danger: Continuing to protect the delivery of health care together'; and 'Commission E: Building resilience by scaling up local action and strengthening legal frameworks'.

whether it establishes a plenary commission or a state-only subsidiary body, would adopt the agenda for both.

Is it possible to create a standing subsidiary body of the International Conference?

No, the Statutes of the Movement do not foresee that possibility. According to the Statutes, the International Conference may establish a subsidiary body only for the duration of each International Conference (Article 10(8); also Rules of Procedure, Rules 16(2) and 16(3)).

c) The adoption of resolutions

In accordance with article 10(5) of the Statutes of the Movement, 'the International Conference shall adopt its decisions, recommendations or declarations in the form of resolutions'. In practice, and as encouraged by the Statutes, resolutions are generally adopted by consensus.⁵³ Each member of the International Conference has one independent vote (i.e. each State and each component of the Movement). Ongoing dialogue and consultations among Conference members help secure consensus outcomes to advance specific humanitarian objectives and may facilitate their implementation. Consensus reflects the nature of the existing collaboration between States and National Societies and it also contributes to the unity of the Movement, which is one of the Conference's main objectives.

In the context of the International Conference, 'consensus shall be understood to mean the absence of any objection expressed by a delegation and submitted by it as constituting an obstacle to the adoption of the resolution in question'.⁵⁴ If no consensus can be reached, the Rules of Procedure foresee that 'resolutions shall be taken by a majority of those members present and voting'.⁵⁵ This means that a simple majority would suffice to adopt a resolution.

Generally, Conference resolutions are not legally binding on the entirety of Conference members. However, they can have binding effect for components of the Movement. As one commentator emphasized: 'Although most of the resolutions of the International Conference are exhortational in nature and are thus similar to resolutions of international organizations, some resolutions are meant to lay down rules that are binding upon the members of the Movement. That is, in particular, the case regarding the Regulations on the Use of the Emblem of the Red Cross or the Red Crescent by the National Societies, the Principles and Rules for Red Cross and Red Crescent Disaster Relief, the Principles and Rules for Red Cross and Red Crescent Development Cooperation, the regulations concerning funds and medals, and, of course, the Statutes and the Fundamental Principles.'⁵⁶

Moreover, if the International Conference adopts resolutions concerning its functioning and the interaction of the Conference members, such resolutions bind all members for these purposes.⁵⁷

In addition, resolutions can reflect agreement among States and the Movement on pressing humanitarian questions and have contributed to the development and reaffirmation of IHL. As representatives from all Conference members participate in the Conference in their official capacity, voting on a resolution may be said to reflect a member's position on and commitment to engage for a specific purpose.

⁵³ See article 11(7) of the Statutes of the Movement.

⁵⁴ Rule 19(1) of the Rules of Procedure.

⁵⁵ Rule 19(2) of the Rules of Procedure.

⁵⁶ Bugnion, at 680.

⁵⁷ For example, according to article 11(4) of the Statutes of the Movement: 'All participants in the International Conference shall respect the Fundamental Principles and all documents presented shall conform with these Principles.'

The drafting and negotiation of resolutions normally takes place in the 'drafting committee', which is an ordinary subsidiary body of the conference. All members may participate in the drafting of resolutions; in contrast, observers cannot.

Can the International Conference adopt a resolution that allows States to meet on a regular basis? Do the Statutes preclude the convening of regular meetings among States?

Yes, the International Conference can adopt and has adopted such resolutions and the Statutes do not preclude this. For example, the current "State-driven, intergovernmental process" on strengthening respect for IHL is based on Resolution 2 adopted at the 32nd International Conference in 2015. Resolution 1 of the 26th International Conference held in 1995 provided that Switzerland may organize periodical meetings of States to consider general problems regarding the application of IHL (operative paragraph 4 and annexed Recommendations thereto, number VII, see Part I, Section 4 of the Background Document). Thus, regular meetings of States may be held on the basis of a resolution adopted by the International Conference. They are linked to the International Conference but do not constitute subsidiary bodies thereof.

How does the follow-up to resolutions adopted at the International Conference work?

There is normally a general resolution adopted at each International Conference that invites all Conference members to report on their progress in implementing resolutions, and requests the ICRC and the International Federation to report on such follow-up to the next International Conference (e.g., 32nd International Conference, Resolution 10, "Power of Humanity," operative paragraphs 2 and 3). Individual resolutions may also invite all members, or the ICRC and/or the Federation, to report on progress on their topic (e.g., 32nd International Conference, Resolution 3, "Sexual and gender-based violence: Joint action on prevention and response," paragraph 35). In practice, the ICRC and the Federation invite members to report on implementation measures two years after the International Conference and then in the year before the next International Conference. Recently the Conference database has been used for such reports, which are the basis for overview reports prepared by the ICRC and the International Federation.

Can States propose resolutions to the International Conference?

Like any other member of the International Conference, States can propose resolutions to the International Conference. A document submitted by a member of the Conference for inclusion as an official working document must be received by the Standing Commission at the latest ninety days before the opening of the Conference. The documents are despatched, with the approval of the Standing Commission, by the International Committee and the International Federation to the members and observers of the Conference at least forty-five days before its opening (Rules of Procedure of the Movement, Rule 7). In practice, it is the ICRC and the International Federation that prepare and submit Resolutions as official documents. This is preceded by written consultations on the proposed draft texts open to all members of the International Conference, including, of course, States.

Any proposal submitted at the International Conference itself must be in conformity with the Statutes of the Movement. No International Conference document should engage in controversies of a political, racial, religious or ideological nature (Statutes of the Movement, Article 11(4); Rules of Procedure of the Movement, Rule 16(1)). Proposals should be submitted in writing in advance to the Chairperson of the Conference, and be circulated by him/her to the delegates before being discussed, unless he/she decides otherwise (Rules of Procedure of the Movement, Rule 17 (2)). The Chair would in practice involve the Bureau.

d) Submission of pledges

In the *practice* of the International Conference, ‘pledges’ have developed as a tool that the members of the Conference may use to submit, either individually or jointly with other members, voluntary humanitarian commitments for the four-year period until the next International Conference.⁵⁸ Pledges are an important tool for translating International Conference outcomes into action at the country level. A pledge may relate to the objectives of, and issues addressed by, the Conference. It may also be tailored to matters of IHL relevant to the country or National Society submitting the pledge. All pledges should be action-oriented, specific and indicate in measurable terms the objectives to be reached.

Two main types of pledges have evolved:

- First, specific pledges can be initiated by Conference members or observers. As each participant decides whether or not to submit a pledge, pledges are normally tailored to the particular national context of the sponsor. This type of pledge offers members the possibility to advance on humanitarian questions beyond the consensus resolutions. Specific pledges also provide the possibility for a government and the associated National Society to commit jointly to concrete action on a subject of mutual concern, even if not addressed specifically at the International Conference. For example, there may be a joint State and National Society pledge to co-operate on a new or up-dated emblem law or to work together towards ratification of or accession to an IHL treaty.
- Second, open pledges – which normally take the form of a petition – can be initiated. In these cases, the sponsor of the pledge opens the pledge up to support by other members and rallies support for a cause. It is also possible for an open pledge to be restricted to a specific group of States and National Societies, e.g. within a region.

Members of the Conference also report on follow-up to pledges, using the same reporting mechanism established for resolutions.

3. Activities undertaken by previous International Conferences relating to IHL

The International Conference has undertaken various activities relating to IHL, humanitarian action and humanitarian diplomacy. The focus of this part of the background document is specifically on the International Conference activities of relevance to IHL. The wider range of International Conference activities relating to the organization and principles of humanitarian action; humanitarian diplomacy; the mandate of the Movement, and relations between the components of the Movement and States are not discussed below.⁵⁹

Since the first International Conference in 1867, the Conference has played a pivotal role in the development of IHL – in particular with regard to the four Geneva Conventions of 1949, their two Additional Protocols of 1977, and the third Protocol of 2005. In addition, the International Conference has been a venue for discussion about challenges in IHL and has reaffirmed its rules on several occasions, which has contributed to its implementation. The International Conference has also assigned specific IHL mandates to the ICRC. The following sections describe these three aspects in more detail.

⁵⁸ For instance, at the 32nd International Conference, 215 pledges were made. http://rcrcconference.org/wp-content/uploads/2016/05/What-is-the-International-Conference_Summary-EN.pdf

⁵⁹ For further details on these tasks, see, for instance, Bugnion, at 690-703.

e) Providing the impetus for the development of IHL

In the lead-up to the development and adoption of the four Geneva Conventions of 1949 and of the two Additional Protocols of 1977, discussions at International Conferences provided substantive guidance to diplomatic conferences and adopted resolutions setting out the main procedural steps prior to the respective diplomatic conference.

In 1948, substantive debates on the draft international conventions prepared by the ICRC and government experts took place in the 'Legal Commission' established at the 20th International Conference. This commission discussed and amended drafts of the Geneva Conventions, which were subsequently approved by the International Conference in a resolution on 'Draft International Conventions'. That resolution also 'Request[ed] the International Committee of the Red Cross to take all necessary steps to ensure that the said draft, with the amendments which the Conference has made therein, be transmitted to the Governments, with a view to its adoption by a Diplomatic Conference'.⁶⁰ As a result, it provided an important building block for the adoption by States of the four Geneva Conventions of 1949.

Likewise, in preparing for the development of the 1977 Additional Protocols, at the 21st International Conference of 1969 the commission on 'International Humanitarian Law and Relief to the Civilian Populations in Armed Conflicts' discussed the reaffirmation and development of IHL in international and non-international armed conflicts over three days. Based on these discussions, the International Conference adopted a resolution on 'Reaffirmation and Development of the Laws and Customs Applicable in Armed Conflicts', which mandated the ICRC to propose new IHL rules, to discuss them with government experts, to submit them for comments by States, and to recommend, if desirable, to States to convene a diplomatic conference to develop international legal instruments incorporating those proposals.⁶¹

f) Reaffirmation of the law and requesting its implementation

The International Conference has held debates and subsequently adopted resolutions aimed at reaffirming IHL and at strengthening its application.

For instance, resolutions adopted at the International Conference in 1965 addressed, among other issues, the 'Implementation and Dissemination of the Geneva Conventions', the 'Application of the Geneva Conventions by the United Nations Emergency Forces', and 'Protection of Civilian Populations against the Dangers of Indiscriminate Warfare'. Respectively, the resolutions included recommendations for States on how to implement and ensure respect for IHL; what steps troop contributing countries should take to ensure respect of IHL by their contingents taking part in emergency forces; and reaffirmed basic IHL principles that all parties to armed conflicts should respect. Later on, at the 25th International Conference in 1986, the 'Commission on International Humanitarian Law' proposed 12 draft resolutions relating to IHL and other legal questions of concern to the Conference.⁶² More recently, the 2007 resolution on 'Reaffirmation and Implementation of International Humanitarian Law: Preserving Human Life and Dignity in Armed Conflict' reaffirmed fundamental IHL principles regarding the obligation to respect and to ensure

⁶⁰ Resolution XIX on 'Draft International Conventions' adopted at the 17th International Conference (1948).

⁶¹ See 21st International Conference, 1969, Resolution XIII on 'Reaffirmation and Development of the Laws and Customs applicable in Armed Conflicts'.

⁶² See Report of the 25th International Conference (1986).

respect for IHL; fundamental guarantees; humanitarian and medical assistance; the conduct of hostilities; and achieving effective implementation.⁶³

In addition to reaffirming IHL, resolutions have also made concrete proposals to strengthen the institutional framework for the implementation of and respect for IHL. For example, Resolution 1 of the 26th International Conference in 1995 endorsed seven recommendations of the Intergovernmental Group of Experts for the Protection of War Victims. One of them recommended 'the depositary to organize periodical meetings of the States parties to the 1949 Geneva Conventions to consider general problems regarding the application of IHL'. Acting on Resolution 1 of the 26th International Conference and the recommendation of the Intergovernmental Group of Experts, the Swiss Government convened the First Periodical Meeting of States party to the Geneva Conventions on general problems relating to the application of IHL in 1998. For more details on this issue, see the next section.

Acting in response to Recommendation III of the Intergovernmental Group of Experts,⁶⁴ which was also endorsed by Resolution 1 the 26th International Conference in 1995, the ICRC formally established its Advisory Service on IHL. Consisting of a global network of legal advisers, the Advisory Service provides guidance to national authorities on specific domestic implementation measures needed to meet their IHL obligations. It also supports the work of national IHL bodies established to facilitate IHL implementation domestically. Moreover, the Service supports the exchange of information on national measures of implementation, and helps in capacity-building upon the specific request of national authorities and other concerned actors.⁶⁵

A final example of the conference's activities on the reaffirmation and implementation of IHL are declarations or action plans developed and agreed upon by members of the International Conference. As an illustration, after previous conferences had adopted broader declarations or action plans for humanitarian action that included certain IHL issues,⁶⁶ the 31st International Conference in 2011 adopted a '4-year action plan for the implementation of international humanitarian law'. The 2011 action plan included five main objectives, with numerous action points indicating specific actions that States and the components of the Movement were urged to take 'in accordance with their respective powers, mandates, capacities and applicable obligations under international humanitarian law'.⁶⁷ The resolution endorsing the action plan 'urges all members of the International Conference to implement the actions set out in the Action Plan' and 'invites all members of the International Conference to inform the International Committee of the Red Cross on progress made on implementation of the Action Plan, with a view to the presentation of a report on implementation to the 32nd International Conference in 2015'.⁶⁸ Reporting on members' efforts to implement the action plan, in 2015 the ICRC pointed out that efforts and measures taken by

⁶³ See Resolution 3 adopted at the 30th International Conference (2007).

⁶⁴ Recommendation III recommended that: 'the ICRC, with the assistance of National Societies, the International Federation of Red Cross and Red Crescent Societies ("the International Federation") and academic institutions, strengthen its capacity to provide advisory services to States, with their consent, in their efforts to implement and disseminate IHL'.

⁶⁵ For more detail, see 'The ICRC Advisory services on international humanitarian law', online at <https://www.icrc.org/en/document/icrc-advisory-services-international-humanitarian-law>.

⁶⁶ See the Declaration and Agenda for Humanitarian Action on 'Protecting Human Dignity' (Resolution 1 adopted at the 28th International Conference (2003)), or the Declaration and Plan of Action on 'the power of humanity' (Resolution 1 adopted at the 27th International Conference (1999)).

⁶⁷ The main objectives were: (1) Enhanced access by civilian populations to humanitarian assistance in armed conflicts; (2) To enhance the specific protection afforded to certain categories of persons, in particular children, women and persons with disabilities; (3) Enhanced protection of journalists and the role of the media with regard to international humanitarian law; (4) To improve the incorporation and repression of serious violations of international humanitarian law; (5) Arms transfers.

⁶⁸ See Resolution 2 adopted at the 31st International Conference (2011).

States and the members of the Movement to implement the Action Plan objectives contributed to 121 States becoming party to 26 IHL treaties and other relevant instruments; 57 States enacting 123 domestic laws or regulations, and the preparation of numerous draft laws; the establishment of special thematic taskforces and inter-ministerial working groups to assess the alignment of domestic law with the respective IHL requirements; the coordination of more IHL training and education initiatives; and regional IHL meetings.⁶⁹

g) Assignment of mandates to the ICRC

According to article 10(6) of the Movement Statutes, the International Conference may assign mandates to the ICRC, within the limits of the ICRC Statutes and the Movement Statutes. Such a mandate may concern issues of IHL and its implementation. A recent example of such a mandate was included in Resolution 1 adopted by the 31st International Conference in 2011, which *'invites* the ICRC to pursue further research, consultation and discussion in cooperation with States and, if appropriate, other relevant actors, including international and regional organizations, to identify and propose a range of options and its recommendations to: i) ensure that international humanitarian law remains practical and relevant in providing legal protection to all persons deprived of their liberty in relation to armed conflict; and ii) enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law' and also *'invites* the ICRC to provide information on the progress of its work at regular intervals to all members of the International Conference and to submit a report on this work, with a range of options, to the 32nd International Conference, for its consideration and appropriate action'. By way of reminder, this resolution provided the basis for the consultations undertaken jointly by the ICRC and Switzerland that led to the adoption of Resolution 2 at the 32nd International Conference in 2015.

Another example of a mandate assigned to the ICRC was the decision of the 26th International Conference of 1995 to endorse the recommendations drawn up by the Intergovernmental Group of Experts for the Protection of War Victims, which recommended that 'the ICRC be invited to prepare, with the assistance of experts in IHL representing various geographical regions and different legal systems, and in consultation with experts from governments and international organizations, a report on customary rules of IHL applicable in international and non-international armed conflicts, and circulate the report to States and competent international bodies'. This resolution laid the cornerstone for the ICRC Customary IHL Study.

h) IHL questions at the 32nd International Conference in 2015: an example

The last International Conference took place in December 2015. As stated in section 1(a) above, the 32nd International Conference addressed a broad spectrum of humanitarian concerns. With regard to IHL, the following main features of the 32nd International Conference may be recalled.

- First, the Conference adopted important resolutions relating to IHL questions, in particular Resolution 1 on 'Strengthening international humanitarian law protecting persons deprived of their liberty' and Resolution 2 on 'Strengthening compliance with international humanitarian law'. Resolution 2 provides the basis for the current intergovernmental process on strengthening respect for IHL. In addition, Resolution 3 on 'Sexual and gender-based violence: Joint action on prevention and response' and Resolution 4 on 'Health Care

⁶⁹ See 32nd International Conference, 4-year action plan for the implementation of international humanitarian law, 32IC/15/17.1, available at http://rcrcconference.org/wp-content/uploads/2015/10/32IC-Progress-report-4-year-action-plan-on-IHL_EN.pdf

in Danger: Continuing to protect the delivery of health care together' addressed IHL questions to some extent. These resolutions were negotiated in the drafting committee.

- Second, one Commission was dedicated to 'Contemporary challenges in international humanitarian law'. Discussions in that commission were based on a report on 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts', which was prepared by the ICRC. Discussions were animated by expert panels and served as an opportunity for participants at the International Conference to discuss the contemporary challenges in IHL and to exchange views on this subject. The Commission did not aim to develop any outcome. The central theme of discussions was the lack of compliance with IHL, including, notably, by non-State armed groups.⁷⁰ In the Conference agenda, two hours were dedicated to discussions in the IHL commission.⁷¹
- Third, 35 side-events were organized by different actors. Side events addressed a variety of subjects related to IHL, ranging from 'Children and detention in situations of armed conflict', to 'The use of explosive weapons in populated areas and the need to better protect civilians, and 'International humanitarian law and Islam'.⁷²
- In total, members of the Conference made 79 pledges relating to IHL dissemination, the ratification of IHL treaties, or the repression of IHL violations.

The drafting committee, the commissions, and the plenary debates took place in parallel. Side events were organized on the margins of the Conference.

4. Periodical meetings envisaged in Resolution 1 of the 26th International Conference of 1995

By endorsing the recommendations made by the Intergovernmental Group of Experts for the Protection of War Victims (see below), the 26th International Conference of the Red Cross and Red Crescent in 1995 in its Resolution 1, provided for a general mandate for Switzerland, in its capacity as depositary, to "organize periodical meetings of the States parties to the 1949 Geneva Conventions to consider general problems regarding the application of IHL".⁷³ Acting on this recommendation and Resolution 1, Switzerland organized the "First Periodical Meeting of States party to the Geneva Conventions on general problems relating to the application of international humanitarian law" from 19 to 23 January 1998 in Geneva. No further meetings of this kind were held thereafter.

i) Background

At the initiative of the ICRC, Switzerland convened the International Conference for the Protection of War Victims in Geneva from 30 August to 1 September 1993. In the final declaration that was adopted at the Conference, States reaffirmed the necessity to make the implementation of IHL

⁷⁰ See 'Report on the work of Commission B: Contemporary challenges in international humanitarian law', available at http://rcrcconference.org/wp-content/uploads/2015/04/32IC-IHL-Commission-B-report_EN.pdf

⁷¹ Discussions in the Commission took place twice on similar subjects in order to enable discussions in smaller groups and in different languages.

⁷² For a full list of side events, see: http://rcrcconference.org/calendar/list/?action=tribe_list&tribe_paged=1&tribe_event_display=list&tribe-bar-date=2015-12-08

⁷³ See para. 4 of Resolution 1 of the 26th International Conference of 1995 and Recommendation VII in Annex II, available online: <https://www.icrc.org/eng/resources/documents/resolution/26-international-conference-resolution-1-1995.htm> as well as on the dedicated website of the intergovernmental process.

more effective and requested the Swiss government to convene an Intergovernmental Group of Experts in Geneva to study practical means of promoting full respect for and compliance with this body of law, and to prepare a report for submission to the States and to the next International Conference of the Red Cross and Red Crescent.⁷⁴ The meeting of the Intergovernmental Group of Experts was held from 23 to 27 January 1995 in Geneva and was open to all States. The group adopted by consensus a series of practical recommendations aimed at promoting full respect for IHL.⁷⁵

Drawing on article 7 of Additional Protocol I, one of the recommendations of the Intergovernmental Group of Experts was that ‘the Depositary organize periodical meetings of the States parties to the 1949 Geneva Conventions to consider general problems regarding the application of international humanitarian law’.⁷⁶ By endorsing all the recommendations drawn up by the Group of Experts, the 26th International Conference of 1995 thus provided for a general mandate for Switzerland to convene such periodical meetings. It left article 7 of Additional Protocol I intact,⁷⁷ but provided an additional basis for meetings among States that is also larger in scope: the periodical meetings envisaged in Resolution 1 of the 26th International Conference are open to the participation of all States parties to the Geneva Conventions of 1949; they do not require a triggering request by one or more States; and they are not limited to general problems concerning the application of the Geneva Conventions and Additional Protocol I, but general problems regarding the application of IHL in general.

j) Overview of the periodical meeting held in 1998

In accordance with the recommendation of the Intergovernmental Group of Experts and Resolution 1 of the 26th International Conference of 1995, Switzerland organized the “First Periodical Meeting of States party to the Geneva Conventions on general problems relating to the application of international humanitarian law” from 19 to 23 January 1998 in Geneva. The meeting of 1998 was attended by 129 States Parties to the Geneva Conventions and 36 observer delegations (see below). The discussions centred on two general topics relating to the implementation of IHL, namely:

- Respect for and security of the personnel of humanitarian organizations;
- Armed conflicts linked to the disintegration of State structures.

The purpose of the meeting was to enable an informal exchange of views among States.

Prior to the convening of the meeting, Switzerland held consultations with States which lasted for over one year. In line with the understanding reached at the 26th International Conference, States were consulted on both the principle of organizing a meeting, as well as on possible topics of discussion.

In accordance with the views expressed in the consultations, the meeting was of an informal nature; it did not adopt rules of procedure or elect officers. The meeting was convened by Switzerland and chaired by a representative of the Swiss Government.

The ICRC, in cooperation with the International Federation of Red Cross and Red Crescent Societies, was closely involved both in the preparation of the meeting, as well as during the

⁷⁴ See final declaration: <https://www.icrc.org/eng/resources/documents/misc/57jms8.htm>.

⁷⁵ See Annex II to Resolution 1 of the 26th International Conference of 1995.

⁷⁶ See Recommendation VII, annexed to Resolution 1 of the 26th International Conference of 1995.

⁷⁷ For meetings under article 7 of Additional Protocol I, see Part II of the background document.

meeting itself. In particular, the ICRC prepared two background documents, one on each topic, which provided the basis for discussion at the meeting.

At the close of the meeting, the Chairman presented conclusions, reflecting his own views. The conclusions formed part of a report and were not binding on the participants. The conclusions identified the problems encountered in implementing IHL in respect of the topics of discussion, as well as possible remedies. The report was communicated to all States Parties to the Geneva Conventions, the 27th International Conference of the Red Cross and Red Crescent, the Standing Commission of the Red Cross and Red Crescent, and the UN Secretary-General.⁷⁸

k) Features of the periodical meetings

Resolution 1 of the 26th International Conference of 1995 did not specify the modalities or other features of periodical meetings. The modalities of the first periodical meeting held in 1998 were largely based on a proposal by Switzerland, submitted to the International Conference of 1995 and taken note of in its Resolution 1.⁷⁹ The proposal gave expression to Switzerland's understanding of how it would implement the mandate entrusted to it by Resolution 1.

In general terms, it was the understanding that periodical meetings would serve to maintain and enhance dialogue among States on general problems relating to the application of IHL, in the spirit of complementing the discussions taking place at the International Conference.

Conditions for convening the meeting and preparation procedure

Contrary to article 7 of Additional Protocol I, Resolution 1 of the 26th International Conference of 1995 does not require a request to be addressed to Switzerland for initiating the organisation of a meeting. However, the other conditions of article 7 of Additional Protocol I were considered to apply also in this framework by analogy, as underlined by Switzerland in a statement made when resolution 1 was adopted.⁸⁰ In particular, it was the understanding that such meetings would be convened on the basis of consultations and a "broad consensus" regarding both the desirability of convening them and the topics to be discussed.⁸¹

Accordingly, the meeting of 1998 was preceded by important consultations, including bilateral meetings, written consultations, consultations with the Group of Ambassadors (GAMBAS) which was involved in preparations for the 26th International Conference and other groups, as well as consultation meetings that were open to the participation of all States. A final preparatory meeting was held on 13 January 1998, i.e. shortly before the actual periodical meeting took place.

The ICRC was closely involved in the consultations, in particular with a view to identifying suitable topics for discussion.

⁷⁸ See „First Periodical Meeting on International Humanitarian Law“, *International Review of the Red Cross*, No. 323, June 1998, pp. 368-373. The Report is available online: <https://casebook.icrc.org/case-study/first-periodical-meeting-chairmans-report>.

⁷⁹ See PP10 of Resolution 1 of the 26th International Conference of 1995.

⁸⁰ It should be noted that, in the Drafting Committee, it was agreed that the adoption of Resolution 1 of the 26th International Conference would be supplemented by a statement by the Swiss delegation. The statement thus forms an integral part of the agreement reached at the 26th International Conference. See Report of the 26th International Conference of the Red Cross and Red Crescent of 1995, p. 115.

⁸¹ See Report of the 26th International Conference of the Red Cross and Red Crescent of 1995, p. 117.

Periodicity

Resolution 1 of the 26th International Conference did not specify the periodicity of periodical meetings.

Topics of discussion

Resolution 1 of the 26th International Conference of 1995 provided that periodical meetings would serve to address “general problems regarding the application of IHL”. By definition, such meetings would not address specific situations, but only generic issues. More specifically, it was Switzerland’s understanding that the topics should be of a general nature and current interest, not give rise to purely academic debates and be sufficiently circumscribed so as to be able to be successfully addressed in a meeting, and, possibly, at the following International Conference of the Red Cross and Red Crescent. In the consultations held prior to the meeting of 1998, Switzerland, following consultations with the ICRC, suggested the following topics for States’ consideration: Armed conflicts linked to the disintegration of the structures of a state (so-called destructured conflicts); the repression of breaches of international humanitarian law at the national level; protecting the staff of humanitarian organisations; the end of the applicability of international humanitarian law.

Following consultations with States, respect for and the security of the personnel of humanitarian organisations was chosen as the primary topic; armed conflicts linked to the disintegration of State structures was the secondary topic.

According to the report of the periodical meeting of 1998, there was a brief exchange of views at the meeting on the topics which could be discussed at subsequent periodical meetings. A number of proposals were made, but it was considered premature to specify which theme(s) would be examined at the next periodical meeting.

Participation

As indicated in Resolution 1 of the 26th International Conference of 1996, participation was open to all States parties to the Geneva Conventions of 1949. The question of observer participation was not specified, and was taken up in the preparatory consultations carried out by Switzerland.

On the basis of the views expressed by States in the consultations, Switzerland invited a broad range of possible observers. These included the following clusters: the International Red Cross and Red Crescent Movement, the International Humanitarian Fact-Finding Commission, the UN system, International Organisations and observers to the UN General-Assembly, and civil society. At the meeting of 1998, 36 observer delegations participated. Given the informal nature of the meeting, the form of their participation was not specifically regulated; observers were entitled to make statements at the meeting.

Outcome

Based on States’ preference, the meeting was informal in nature. It was conceived primarily to allow States to informally exchange views, rather than as an event serving to adopt a formal declaration. Given its informal nature, the 1998 meeting did not produce a binding outcome, but a Chairman’s report in summary form, outlining his own conclusions, which were presented at the close of the meeting.

The Chairman’s report was communicated to all States, to the following International Conference, the Standing Commission of the Red Cross and Red Crescent, and to the UN Secretary-General.

The report contained the following elements:⁸²

- Factual elements of the meeting, including the background of the meeting and of the consultations held prior to the meeting.
- The Chairman's conclusions of the discussions on both topics, including problems highlighted by participants, as well as possible remedies to these problems.
- Follow-up: under this section, the Chairman presented his views on possible follow-up to the meeting, including the circulation of his report.

Other aspects

Given that the mandate provided for in Resolution 1 of 1995 was addressed only to Switzerland, the financial and other resources necessary for the preparatory consultations, as well as for the organisation of the meeting itself, were provided by Switzerland.

During the meeting, simultaneous interpretation was available in English, French and Spanish, drawing on the Rules of Procedure of the International Red Cross and Red Crescent Movement. Conference documents were also translated into these three languages. The Chairman's report became available in all six languages of the UN.

It was the understanding that such meetings would last a few days, but not longer than a week.

I) Organization of further periodical meetings

While the meetings were understood to be part of a continuing process and to be of a periodic nature, after the first meeting in 1998 no other meetings of this kind were held. Several factors or a combination thereof may have led to this situation, including possibly the following elements:

- Resolution 1 of the 26th International Conference of 1995 provided for a general mandate, but did not specify the periodicity of such meetings. It was the understanding that States would need to be consulted at each occasion on the principle of organizing a further periodical meeting.
- In addition, consultations would have to be undertaken in order to identify the topics for discussion. At the first periodical meeting in 1998, States considered it premature to specify which theme(s) would be examined at the next periodical meeting.
- The uncertainties inherent in these extensive consultations made the planning of further meetings difficult. The long period of time needed for the preparation of the meeting in 1998 diminished the prospect for convening a subsequent meeting. Moreover, due to other diplomatic activities in the field of IHL or related matters, the possibility of conducting extensive consultations was reduced.

Do we need a new resolution to convene a periodical meeting of the States parties to the 1949 Geneva Conventions on IHL? Are the modalities of the periodical meeting in 1998 still valid?

Resolution 1 of the 26th International Conference of 1995 has not been repealed. As such it continues to stand on its own merits, reflecting the agreement reached in light of the prevailing circumstances at that time.

⁸² The report is available online: <https://casebook.icrc.org/case-study/first-periodical-meeting-chairmans-report>.

The modalities of the periodical meeting of 1998 were largely inspired by a proposal submitted by Switzerland and taken note of in Resolution 1 of the 26th International Conference,⁸³ and supplemented by a statement of the Swiss delegation made during the adoption of this resolution. The final modalities were discussed and refined in the preparatory consultations held prior to the periodical meeting of 1998. States can, if they wish so, revise these modalities, including with regard to the question of the frequency of periodical meetings, or envisage a new resolution, which could build upon the 1995 text and benefit from the experience of the periodical meeting of 1998.

Based on the experience of the periodical meeting in 1998, what reasons led to the delay in the organization of the meeting and what could be improved to simplify preparations?

Resolution 1 of the 26th International Conference of 1995 provided for a general mandate. It did not set a date for a first meeting, and was based on the understanding that consultations would be undertaken to secure “broad consensus” among States on both the principle of convening a meeting and its topic.

In the absence of efficient procedures for such consultations, important efforts were necessary to build broad consensus. A prior agreement on the frequency of meetings as well as on simplified procedures for selecting topics could have shortened the preparations.

Is it possible for a State other than Switzerland to convene a meeting under this resolution?

The mandate provided for by Resolution 1 of the 26th International Conference of 1995 was addressed exclusively to the Depositary of the 1949 Geneva Conventions, i.e. the Federal Council of Switzerland.

Are there preconditions for Switzerland to convene a periodical meeting on the basis of Resolution 1 of the 26th International Conference of 1995?

The mandate provided for in Resolution 1 of the 26th International Conference of 1995 did not require a trigger request, as is the case for article 7 of Additional Protocol I, or set other pre-conditions. The general conditions for convening a meeting are outlined above.

How was the outcome of the periodical meeting of 1998 considered at the following International Conference?

The Chairman’s report of the periodical meeting in 1998 was submitted to the 27th International Conference of 1999 as an official conference document. The Chairman presented his report at the “First Plenary Meeting of the Plenary Commission”, one of the subsidiary bodies of the 27th International Conference, as a separate agenda item and in connection with the theme “the protection of victims of armed conflict through respect for international humanitarian law”. The 27th International Conference did not take action in relation to the report of the Chairman nor hold substantive discussions on the report.⁸⁴

⁸³ The proposed modalities, submitted by Switzerland, are available on the dedicated website of the intergovernmental process.

⁸⁴ For more information, see the report of the 27th International Conference of the Red Cross and Red Crescent, available online: https://library.icrc.org/library/docs/DIGITAL/CI_1999_RAPPORT_ENG.pdf.

PART II: Meetings Envisaged in Article 7 of Additional Protocol I

1. Introduction

Article 7 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) reads as follows: “The depositary of this Protocol shall convene a meeting of the High Contracting Parties, at the request of one or more of the said Parties and upon the approval of the majority of the said Parties, to consider general problems concerning the application of the Conventions and of the Protocol.”

Since the entry into force of Additional Protocol I, no such meeting of the High Contracting Parties was convened because the depositary has never received a request in accordance with this provision.

Today, 174 States are parties to Additional Protocol I.

2. Background

Article 7 of Additional Protocol I is inspired by a comparable provision in the Hague Conventions of 14 May 1954 for the Protection of Cultural Property in the Event of Armed Conflict. It was adopted by consensus at the diplomatic conference of 1977, which adopted Additional Protocol I.

3. Features of the meetings envisaged in Article 7 of Additional Protocol I

a) Conditions for convening the meeting and preparation procedure

According to the wording of article 7, a request to the depositary by one or more of the High Contracting Parties to Additional Protocol I, combined with the subsequent approval of a majority of the said parties, is required to convene a meeting. In accordance with this provision, States not party to Additional Protocol I cannot request a meeting, nor is their approval necessary in response to a request.

b) Periodicity

Meetings of the High Contracting Parties do not take place at a given periodicity, but only at the request of one or more High Contracting Parties to Additional Protocol I and the subsequent approval by the said parties.

c) Topics of discussion

Meetings of High Contracting Parties would serve to hold discussions on one or more general problems relating to the application the Geneva Conventions of 1949 and of Additional Protocol I. The plain text of article 7 suggests that the emphasis is on a discussion of treaty obligations and – with the exception of common article 3 to the Geneva Conventions – relating to situations of international armed conflicts. Given the use of the term “general problems”, discussions of specific situations are excluded from the scope of meetings under article 7.⁸⁵

⁸⁵ See ICRC Commentary on article 7 of Additional Protocol I, para. 274.

d) Participation

In accordance with article 7, all High Contracting Parties to Additional Protocol I would be invited and entitled to participate. The question of whether States parties to the Geneva Conventions of 1949 that are not parties to Additional Protocol I could also participate is not addressed in article 7.

e) Other aspects

Article 7 is silent on other aspects, such as the precise procedure to be pursued for consulting States parties on a request or the nature of the outcome of such meetings.

What is the drafting history of article 7 and what was the intention of the drafters?

The initial draft of article 7, prepared by the ICRC, read as follows: “The depositary of the Conventions shall convene a meeting of the High Contracting Parties, at the request of two-thirds of them, to study general problems concerning the application of the present Protocol; it may convene such a meeting at the request, also, of the International Committee of the Red Cross.” This proposal was the fruit of a study carried out by the ICRC to identify ways for the High Contracting Parties to ensure respect for the Geneva Conventions of 1949 in accordance with Common Article 1.

In the course of the negotiations, it was, in effect, confirmed that such meetings would only relate to “general” problems as opposed to concrete cases, relating both to the application of the 1949 Geneva Conventions and Additional Protocol I, and decided that the approval of a simple majority, instead of two-thirds, of the High Contracting Parties to the Protocol would suffice for convening a meeting.

On the basis of available information, the general intention of the drafters was to address the fact that the 1949 Geneva Conventions did not provide for the possibility of convening a meeting for States parties to study general problems concerning their application. It was felt that “the absence of such a forum had been a serious impediment to the smooth working of the Conventions”, as one delegate observed.⁸⁶

Can the International Conference of the Red Cross and Red Crescent initiate a meeting under article 7?

Article 7 does not provide for actors other than High Contracting Parties to Additional Protocol I to address a request to the depositary. Based on the explicit wording of article 7, a resolution of the International Conference would thus not qualify as a request under article 7.

Can Switzerland request a meeting under article 7 in its capacity as State Party to Additional Protocol I?

This scenario was not considered at the Diplomatic Conference of 1974-1977, where the general understanding was that the request would be submitted by State(s) other than Switzerland. However, like any other High Contracting Party to Additional Protocol I, Switzerland is not precluded from requesting a meeting in its capacity as a High Contracting Party. The other condition, namely the approval of the majority of the High Contracting Parties, would still apply.

⁸⁶ Official records of the diplomatic conference on the reaffirmation and development of international humanitarian law applicable in armed conflicts, Geneva, 1974 – 1977, Vol. 8, p. 185.

PART III: IHL Regional Forums

1. Introduction

This section of the background document provides a factual overview of existing regional forums relevant to IHL and is intended to facilitate States' discussion on ways of enhancing the implementation of IHL using the potential of IHL regional forums.

The phrase 'IHL regional forums' has no set definition. For the purposes of this background document, the term 'forums' refers to existing regional mechanisms, processes and initiatives that deal with IHL in some way. They take a variety of forms, some of which have less structure, permanence and regularity than others. The term 'regional' is interpreted to refer to forums which may encompass two or more States, and which are not of global composition; it also includes sub-regional forums.

The background document does not cover mechanisms, processes and initiatives that may have included a reference to IHL on a one-off basis only. It presents those whose general mandate, while in the vast majority of cases not specifically referencing IHL, allows them to examine situations of armed conflict, due to which they have occasionally made reference to IHL. The text adopts a methodology whereby basic information is provided with respect to each mechanism, process and initiative, including, whenever possible, information regarding its composition and/or participants; mandate; periodicity and activities.

The text relies on publicly available information, including data available from online sources, in English and French.

Information on IHL regional forums submitted by States ahead of the Third Formal Meeting is available on the dedicated website of the intergovernmental process (www.respect-ihl.ch, password: Geneva2010).

2. Regional and sub-regional mechanisms that deal with IHL

The section below discusses mechanisms that exist within intergovernmental organizations that may deal with IHL in their activities. The second section relates to relevant activities undertaken by treaty-based expert bodies, while the third section covers relevant activities undertaken by courts.

f) Intergovernmental Organizations

At the regional level, some intergovernmental organizations have included IHL in their activities, with varying levels of regularity. The following organizations are included in this report: the African Union, the Asian-African Legal Consultative Organization, the Commonwealth of Independent States, the Council of Europe, the Economic Community of West African States, the European Union, the League of Arab States, and the Organization of American States.

The overarching mandate of all of these organizations does not explicitly refer to IHL. Where an activity of these mechanisms is carried out pursuant to a more specific mandate that mentions IHL, this is reflected in the text below.

African Union (AU)

- Composition: 55 African States.⁸⁷
- Mandate: The AU's objectives are, inter alia, to promote peace, security and stability on the continent, and promote protection of human and peoples' rights.⁸⁸
- Periodicity: Varies from one activity to another.
- Activities: The Assembly of the AU adopts a number of decisions, declarations and resolutions which on occasion have referred to IHL. Resolutions, statements and communiqués of the Peace and Security Council have also referred to IHL, for example, in documents relating to the protection of civilians, or terrorism. The African Commission on Human and Peoples' Rights promotes and protects human rights in the Member States of the AU which have ratified the African Charter on Human and Peoples' Rights (the Banjul Charter).⁸⁹ The Commission accepts complaints from individuals, groups of individuals, non-governmental organizations and States concerning alleged violations of the Banjul Charter. While the focus of the Commission is on human rights, on occasion in the course of its work the Commission has referred to IHL.⁹⁰ The African Commission on Human and Peoples' Rights has also undertaken a number of activities that have occasionally referred to IHL, such as resolutions, fact-finding missions, general comments and reports of special mechanisms. In 2009 the AU Heads of State adopted the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),⁹¹ which recognizes the rights of internally displaced persons that are recognized in human rights law and IHL.

Asian-African Legal Consultative Organization (AALCO)

- Composition: 47 States from Asia and Africa.⁹²
- Mandate: Amongst other activities, AALCO serves as an advisory body to its Member States in the field of international law.⁹³
- Periodicity: Varies from one activity to another.
- Activities: The ICRC and AALCO have jointly convened various workshops on IHL.⁹⁴

⁸⁷ AU, 'Press Release: 28th African Union Summit' (2 February 2017): <https://www.au.int/web/en/pressreleases/20170202/28th-african-union-summit-concludes-swearing-new-commission-and-readmission>.

⁸⁸ See Art. 3 of the Constitutive Act of the AU.

⁸⁹ 1520 UNTS. 217 (27 June 1981).

⁹⁰ E.g. IHL is referred to in General Comment No.3 on The Right to Life (Article 4) (adopted during 57th Ordinary Session, 4-18 November 2015): <http://www.achpr.org/instruments/general-comments-right-to-life/>, paras 13, 32, 33; IHL is also referred to briefly in a Resolution of Human Rights in Conflict Situations, ACHPR/Res.332 (EXT.OS/XIX) 2016 (25 February 2016): <http://www.achpr.org/sessions/19th-ao/resolutions/332/>.

⁹¹ See: AU, 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)': <https://www.au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>.

⁹² AALCO, 'About AALCO': <http://www.aalco.int/scripts/view-posting.asp?recordid=1>.

⁹³ See Art. 2 of the Statutes of the Organization.

⁹⁴ E.g. ICRC and AALCO Workshop on IHL, New Delhi (May 2014). See: <http://blogs.icrc.org/new-delhi/2014/05/06/icrc-aalco-workshop-to-confer-on-challenges-facing-ihl/>.

The Caribbean Community (CARICOM)

- Composition: 15 full members, 5 associate members and 8 observers.⁹⁵
- Mandate: To work to deepen integration of the CARICOM community and contribute to the improvement of the quality of life.⁹⁶
- Periodicity: Varies from one activity to another.
- Activities: The ICRC and CARICOM Secretariat signed a Cooperation Arrangement on 1 March 2007, which amongst other issues, facilitates the promotion, ratification and implementation by CARICOM member states of the major IHL instruments. The CARICOM Council on Foreign and Community Relations (COFCOR) is a secondary body of the CARICOM Secretariat and consists of Ministers of Foreign Affairs of all Member States. The COFCOR occasionally considers IHL issues. The CARICOM Legal Affairs Committee (LAC) is a recognised body of the CARICOM Secretariat which consists of Ministers of Legal Affairs or Attorneys General of all Member States. The LAC considers IHL topics on occasion, and has a specific Agenda on IHL. The CARICOM Implementation Agency for Crime and Security (CARICOM IMPACS) is designed to administer a collective response to the crime and security priorities of Member States under the directives of the Council of Ministers of National Security and Law Enforcement. It has for instance actively promoted the ratification and implementation of the Arms Trade Treaty in CARICOM member States as well as the drafting of a CARICOM Model Legislation to Facilitate the Implementation of the ATT.

Commonwealth of Independent States (CIS)

- Composition: The CIS is a regional organization comprising 12 States.⁹⁷
- Mandate: 'The [CIS] serves the further development and strengthening of relations of friendship, good neighborhood, international harmony, trust, mutual understanding and mutually beneficial cooperation between member states.'⁹⁸
- Periodicity: Varies from one activity to another.
- Activities: The Inter-Parliamentary Assembly of the CIS (IPA CIS) has adopted model legislation or practical advice on topics of relevance to IHL, such as national implementation of the Biological Weapons Convention; protection of cultural property in the event of armed conflict; missing persons; and use and protection of the Red Cross, Red Crescent and Red Crystal emblems. Model provisions compatible with IHL requirements and to be adopted in the penal code were also adopted. In 2004, the ICRC and the IPA CIS signed a cooperation agreement.

Council of Europe (CoE)

- Composition: 47 European States.
- Mandate: The aim of the CoE is to achieve greater unity between its members. It is tasked, amongst other things, with discussing questions of common concern and engaging in common action in legal matters and working towards the maintenance and further realization of human rights and fundamental freedoms.⁹⁹
- Periodicity: Varies from one activity to another.

⁹⁵ CARICOM : <http://caricom.org/membership>.

⁹⁶ For the full Mission statement see: CARICOM, <http://caricom.org/about-caricom/who-we-are/vision-mission-and-core-values>.

⁹⁷ See CIS, 'About Commonwealth of Independent States': <http://www.cisstat.com/eng/cis.htm>.

⁹⁸ Art. 1 of the Charter of the CIS, unofficial English translation.

⁹⁹ Art. 1 of the Statute of the Council of Europe.

- Activities: Some guidelines adopted by the Committee of Ministers as well as resolutions of the Parliamentary Assembly of the CoE have referred to IHL. IHL matters are also occasionally one of many topics considered by the Council of Europe's Committee of Legal Advisers on Public International Law (CAHDI), an intergovernmental committee bringing together legal advisers of ministries of foreign affairs of member States of the Council of Europe, and some observer States and organizations.¹⁰⁰

Economic Community of West African States (ECOWAS)

- Composition: 15 West African States.
- Mandate: Its aims are 'to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African Continent.'¹⁰¹
- Periodicity: Varies from one activity to another.
- Activities: Activities relevant to IHL include an annual Review Meeting on the Promotion of IHL Implementation, held jointly by ECOWAS and the ICRC,¹⁰² and workshops on IHL organized jointly by the ECOWAS Standby Force and the ICRC. ECOWAS has also adopted a convention on Small Arms and Light Weapons which addresses small arms and light weapons transfers in West Africa and denies transfer of said weapons if they were to be used to violate IHL.

European Union (EU)

- Composition: 28 European States.
- Mandate: The EU is an economic and political union whose work spans diverse policy areas, from external relations and security, justice, human rights and migration, to climate, environment and health.¹⁰³
- Periodicity: Varies from one activity to another.
- Activities: The Council of the EU adopted the 'EU guidelines on promoting compliance with international humanitarian law',¹⁰⁴ as well as the 'EU guidelines on children and armed conflict'.¹⁰⁵ A few resolutions of the European Parliament and conclusions of the European Council have referred to IHL. IHL issues are also sometimes considered by the EU Council Working Party on Public International Law (*Comité Juridique*) (COJUR).¹⁰⁶

¹⁰⁰ Council of Europe, 'Committee of Legal Advisers on Public International Law': <http://www.coe.int/en/web/cahdi>. See also CAHDI: 'Opinions on International Humanitarian Law': <http://www.coe.int/en/web/cahdi/humanitarian-international-law-theme>.

¹⁰¹ Art. 3(1) of the Revised ECOWAS Treaty of 1993.

¹⁰² During one of these meetings the ECOWAS Plan of Action on Implementation of IHL in West Africa (2009–2014) was adopted. The Plan of Action was then endorsed in the ECOWAS Humanitarian Policy and its corresponding Plan of Action (2012–2017). These documents were adopted by Ministers in charge of humanitarian affairs during the ECOWAS member States meetings of March 2012.

¹⁰³ See: Art. 2 of the Lisbon Treaty, and EU, 'The EU in Brief': https://europa.eu/european-union/about-eu/eu-in-brief_en.

¹⁰⁴ Adopted in 2005 and updated in 2009: <http://www.consilium.europa.eu/uedocs/cmsUpload/st16841en09.pdf>.

¹⁰⁵ Adopted in 2003 and updated in 2008: <http://www.consilium.europa.eu/uedocs/cmsUpload/GuidelinesChildren.pdf>.

¹⁰⁶ See: European Council, 'Working Party on Public International Law': <http://www.consilium.europa.eu/en/council-eu/preparatory-bodies/working-party-public-international-law/>. See also: F Hoffmeister, 'Comité Juridique' (COJUR), in Oxford Public International Law: <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2049>, paras 16-19.

League of Arab States (LAS)

- Composition: 22 independent Arab States on the territory of northern and north-eastern part of Africa and southwest Asia.¹⁰⁷
- Mandate: The LAS 'has as its purpose the strengthening of the relations between the member-states, the coordination of their policies in order to achieve co-operation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries.'¹⁰⁸
- Periodicity: Varies from one activity to another.
- Activities: The LAS, in cooperation with the relevant national IHL committee and the government of a member State, organizes a biennial Meeting of Arab Government Experts on IHL. The ICRC contributes to the organization of the event.¹⁰⁹

Organization of American States (OAS)

- Composition: 35 States of the Americas.¹¹⁰
- Mandate: The OAS, amongst other things, is tasked with strengthening the peace and security of the continent.¹¹¹
- Periodicity: Varies from one activity to another.
- Activities: The OAS General Assembly first adopted an IHL-specific resolution in 1994. The resolution, named 'Promotion of and respect for international humanitarian law' was adopted on an annual basis between 1994 and 2011, and the last IHL-specific resolution was adopted in 2013.¹¹² In 2014, the General Assembly started adopting a biennial resolution on 'Promotion of international law',¹¹³ which reaffirms the mandates included in the previous relevant resolutions, including the IHL-specific resolutions. The OAS Committee on Judicial and Political Affairs (CAJP) of the Permanent Council holds special sessions on IHL and organizes a course on IHL, with the support of the Department of International Law of the OAS Secretariat for Legal Affairs and the ICRC. The Inter-American Juridical Committee (IAJC) proposes model legislation to the Permanent Council for its consideration, which sometimes relates to IHL.¹¹⁴ The Inter-American Commission on Human Rights (IACHR) has a mandate to promote the observance and protection of human rights.¹¹⁵ While its mandate does not refer to IHL, the IACHR has on occasions referred to IHL in carrying out the activities that fall under its mandate, such as issuing decisions on individual communications, preparing thematic reports or country reports on the human rights situation in a State.

¹⁰⁷ 'Arab League Online: Presentation of the Arab League': <http://www.arableagueonline.org/>. One World Nations Online, 'League of Arab States': http://www.nationsonline.org/oneworld/arab_league.htm.

¹⁰⁸ Art. 2 of the Charter of the League of Arab States.

¹⁰⁹ At the end of the meeting, participants adopt a 'Regional Plan of Action for the Implementation of IHL in Arab States' which is meant to be a roadmap for IHL implementation until the next meeting.

¹¹⁰ OAS, 'Who We Are': http://www.oas.org/en/about/who_we_are.asp.

¹¹¹ See: Art. 2 of the Charter of the Organization of American States.

¹¹² See: AG/RES 2795 (XLIII-O/13) (5 June 2013): www.oas.org/en/sla/dil/docs/AG-RES_2795_XLIII-O-13_eng.pdf.

¹¹³ See: AG/RES. 2852 (XLIV-O/14) (4 June 2014): www.oas.org/en/sla/dil/docs/ag-res_2852_xliv-o-14.pdf.

¹¹⁴ E.g. in March 2013 the IAJC presented to the Permanent Council a report on 'Model Legislation on protection of cultural property in the event of armed conflict': see: http://www.oas.org/en/sla/iajc/docs/ijc_current_agenda_Model_legislation_protection_cultural_property.pdf and OAS General Assembly Resolution AG/RES. 2650 (XLI-O/11), 'Promotion of and respect for international humanitarian law' of 7 June 2011, para. 12.

¹¹⁵ See: Art. 46 of the Charter of the OAS.

Organization for Security and Co-operation in Europe (OSCE)

- **Composition:** 57 States from Europe, Central Asia and North America.¹¹⁶
- **Mandate:** to address a wide range of security-related concerns, including arms control, confidence-building measures, security-building measures, human rights, national minorities, democratization, policing strategies, counter-terrorism and economic and environmental activities.¹¹⁷
- **Periodicity:** Varies from one activity to another.
- **Activities:** The OSCE's work sometimes includes consideration of IHL issues, e.g. in 2014 it held a regional conference on the Role of Domestic Jurisdictions in the Implementation of IHL—Law and Practice.¹¹⁸

g) Expert Bodies (treaty-based)

Some regional human rights treaties mandate the constitution of a monitoring body that has the task of overseeing the implementation of its constitutive treaties.¹¹⁹ None of the regional treaty-based bodies have a mandate that refers to IHL. However, the African Committee of Experts on the Rights and Welfare of the Child has referred to IHL on some occasions.

African Committee of Experts on the Rights and Welfare of the Child (ACERWC)

- **Composition:** 11 experts, supported by a secretariat.¹²⁰
- **Mandate:** The Committee's functions include monitoring implementation of the African Charter on the Rights and Welfare of the Child.¹²¹ The African Charter on the Rights and Welfare of the Child, from which the Committee sources its mandate,¹²² does not refer to IHL.
- **Periodicity:** The Committee holds ordinary sessions twice a year.
- **Activities:** In addition to its regular activities (including considering State Party reports on compliance with the African Charter on the Rights and Welfare of the Child and issuing general recommendations; providing views on individual complaints of violations, and interpreting the provisions of the African Charter, for example through general comments), the Committee engages in other ad hoc activities, some of which may include references to IHL. In 2016, the Committee released its first 'Continental Study on the impact of conflicts and crisis on children in Africa.'¹²³

¹¹⁶ OSCE, 'Who We Are: Participating States': <http://www.osce.org/participating-states>.

¹¹⁷ OSCE, 'Who We Are': <http://www.osce.org/whatistheosce>.

¹¹⁸ See the Conference report, at OSCE: <http://www.osce.org/odihr/142256>.

¹¹⁹ These monitoring bodies include the courts that oversee the implementation of regional human rights treaties. These mechanisms are discussed in section C of this chapter.

¹²⁰ See: AU, 'Judicial and Human Rights Institutions': <https://www.au.int/en/organs/cj>; ACERWC, 'The Experts': <http://www.acerwc.org/the-experts/>.

¹²¹ See: art. 32 – 46 of the African Charter on the Rights and Welfare of the Child.

¹²² Adopted by OAU Heads of States and Government on 11 July 1990, entered into force 29 November 1999, arts 32 - 41.

¹²³ See: ACERWC: <http://www.acerwc.org/the-committee-releases-its-study-on-children-and-armed-conflicts/>.

h) Courts

While there is no regional or sub-regional court mandated to adjudicate on IHL questions, mention can be made of regional courts that are mandated with the protection of human rights.

European Court of Human Rights (ECtHR)

The ECtHR rules on individual or State applications alleging violations of human rights set out in the European Convention on Human Rights. On some occasions, the court has been requested to adjudicate on allegations of human rights violations in a situation of armed conflict. Accordingly, although the court's mandate does not include IHL, the court has referred to this body of law in its case law.¹²⁴

Inter-American Court of Human Rights (IACtHR)

The IACtHR has the competence to determine whether the conduct or laws of a State are compatible with the American Convention on Human Rights,¹²⁵ and its mandate does not include adjudicating on IHL. However, the IACtHR has also referred to IHL in its case law, as it has been seized of cases where the allegations of human rights violations occurred within the context of an armed conflict.¹²⁶

Courts within the African system

The African Court on Human and Peoples' Rights has advisory and contentious jurisdiction concerning the interpretation and application of the Banjul Charter, as well as of the Protocol that established the Court, and of any other relevant human rights instrument ratified by the State Party concerned, including the Protocol to the Banjul Charter on the rights of women in Africa, known as the Maputo Protocol, which calls on State Parties to respect and ensure respect for IHL (article 11). The Court was established in 1998 to complement and reinforce the functions of the African Commission on Human and Peoples' Rights.¹²⁷ In 2003, a Protocol to establish the African Court of Justice and Human Rights was adopted. This Court is to be the main judicial organ of the AU, and will be a merger of the African Court on Human and Peoples' Rights and the Court of Justice of the AU.¹²⁸ Once it is operational, it will have jurisdiction over all cases and disputes submitted to it which relate to international law broadly, which includes IHL.¹²⁹

¹²⁴ Examples of recent decisions that refer to IHL include: ECtHR, *Hassan v. the United Kingdom* (Grand Chamber), Application no. 29750/09, 16 September 2014, and ECtHR, *Jaloud v. the Netherlands* (Grand Chamber), Application no. 47708/08, 20 November 2014.

¹²⁵ Art. 63(2) of the American Convention on Human Rights.

¹²⁶ See, e.g., IACtHR, *Las Palmeras v. Colombia*, Judgment (Preliminary Objections) of 4 February 2000, Ser. C, No. 67; IACtHR, *Bámaca Velásquez v. Guatemala*, Judgment (Merits) of 25 November 2000, Ser. C, No. 70; IACtHR, *Serrano-Cruz Sisters v. El Salvador*, Judgment (Merits, Reparations and Costs) of 1 March 2005, Ser. C, No. 118; IACtHR, *Santo Domingo Massacre v. Colombia*, Judgment (Preliminary Objections, Merits, Reparations and Costs) of 30 November 2012, Ser. C, No. 259.

¹²⁷ See: African Court on Human and Peoples' Rights: <http://en.african-court.org/>. See also: International Justice Resource Center, 'African Human Rights System': http://www.ijrcenter.org/regional/african/#African_Court_on_Human_and_Peoples8217_Rights.

¹²⁸ The AU Constitutive Act provided for an African Court of Justice to be established as one of the AU's principal organs. The Protocol of the Court was adopted in July 2003. In June 2014, the Assembly adopted a further Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Assembly/AU/Dec.529(XXIII)). The African Court of Justice and Human Rights has not yet become operational. See: AU, 'Judicial and Human Rights Institutions': <https://www.au.int/en/organs/cj>.

¹²⁹ See art.28, Statute of the African Court of Justice and Human Rights', Annex to the 2008 Protocol on the Statute of the African Court of Justice and Human Rights: <http://www.africancourtcoalition.org/images/docs/legal->

3. Regional or sub-regional meetings of State representatives or national IHL committees in cooperation with and/or facilitated by the ICRC

Through its staff based both in the field and at headquarters, the ICRC facilitates a variety of activities at the regional level. For the purpose of this section, these activities are divided as follows: a) periodic regional or sub-regional meetings of State representatives, b) sub-regional peer-to-peer meetings of national IHL committees.

a) Regional or sub-regional meetings of State representatives

The ICRC started regularly co-organizing periodic meetings dedicated to IHL in some regions or sub-regions in 2001. These meetings, which—at a minimum—gather State representatives from within a region or sub-region, vary in their functions and features, but they all offer a platform for participants to discuss contemporary IHL issues and share information about IHL implementation in their respective countries.

In some cases, other relevant stakeholders, such as representatives of international organizations, representatives of National Red Cross and Red Crescent Societies, members of civil society and academics, participate in some of the sessions of the meetings. It should also be noted that in some cases, sub-regional or regional meetings may be attended by a limited number of States from outside the region or sub-region, in order to foster, to some extent, cooperation between regions and sub-regions. However, the meetings primarily seek to convene States of a given region or sub-region, because experience has shown that this format allows States to discuss issues that are common to their region or sub-region.

In terms of activities, regional or sub-regional meetings of State representatives may involve thematic sessions on IHL-related topics, sessions in which participants make oral presentations, sometimes supplemented by written reports, on the state of play of IHL implementation in their respective States, peer-to-peer exchanges, exchanges of best practices, experiences and challenges in strengthening implementation of IHL.

As regards outcomes, they are diverse as well, depending on the specific meeting. On occasion, an outcome document may be adopted, or regional pledges formulated, in particular in advance of an International Conference of the Red Cross and Red Crescent. Conference reports may also be prepared and made public and/or distributed to the participants. Conclusions may also be adopted by way of the outcome of a specific meeting.

In Africa there is an Annual Regional Seminar on IHL, organized by the ICRC and the Department of International Relations and Cooperation, Government of South Africa. The 17th edition of the Annual Seminar was held in 2017.

There is likewise a Regional Seminar on IHL National Implementation, organized by the ICRC, the Government of Kenya and the national IHL committee of Kenya. The 5th edition of the Regional Seminar was held in 2017.

In the Americas, there is a Continental Conference of National Committees for the Implementation of IHL of the Americas, organized by the ICRC, the government and the national IHL committee of the host State, which changes from one meeting to another. The 4th edition of the Conference was held in Costa Rica in 2017.

[texts/acjhr_protocol.pdf](#). Transition to the Court will begin after 15 Member States have ratified the 2008 Protocol. See: AU, 'Judicial and Human Rights Institutions': <https://www.au.int/en/organs/cj>.

In Asia, there is a Conference on IHL in East and Southeast Asia, which is organized by the ICRC, the government and the national IHL committee of a host State, which changes from one meeting to another. The 6th edition of the Conference was held in Singapore in 2017. There is also a South Asian Conference on IHL, organized by the ICRC and the government of a host State, which changes from one meeting to another. The 7th edition of the Conference was held in Nepal in 2017.

In Eastern Europe and Central Asia, there is a Regional Seminar on Implementation of IHL, organized by the ICRC and the authorities of a host State, which changes from one meeting to another. The 6th edition of the Regional Seminar was held in Belarus in 2017.

b) Sub-regional peer-to-peer meetings of national IHL committees

In addition to the periodic regional or sub-regional meetings of State representatives, the ICRC facilitates or has facilitated peer-to-peer meetings of national IHL committees.¹³⁰ The sub-regional peer-to-peer meetings of national IHL committees gather a smaller subset of States that also attend the larger periodic regional or sub-regional meeting of State representatives. The sub-regional peer-to-peer meetings provide a platform for State representatives who are members of national IHL committees to share challenges these committees face and best practices in promoting IHL at the national level, and to identify avenues for cooperation. The participating States may vary from one year to another.¹³¹

¹³⁰ Close to 110 States have created either national inter-ministerial working groups, often called committees for the implementation of IHL, or national IHL committees. For more information, see: ICRC, 'National Committees', at <https://www.icrc.org/en/war-and-law/ihl-domestic-law/national-committees>.

¹³¹ E.g. a Peer to Peer Meeting of Indian Ocean Islands' National IHL Committees on the Implementation of IHL; Sub-regional Peer to Peer Meeting of National IHL Committees in Southern Africa; and Regional Meeting of National Committees on IHL in Central and South Eastern Europe.