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ICRC

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

**June 17/18, 2013  
Geneva**

**Background Document**

**May 2013**

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## **Second Meeting of States on Strengthening Compliance with International Humanitarian Law**

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### **Background Document**

#### **1. Introduction**

Resolution 1 adopted at the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent<sup>1</sup> held in November-December 2011 recognized “the importance of exploring ways of enhancing and ensuring the effectiveness of mechanisms of compliance with international humanitarian law (IHL), with a view to strengthening legal protection for all victims of armed conflict”.

The text of the resolution, entitled “Strengthening Legal Protection for Victims of Armed Conflicts”, was the result of consultations that had taken place prior to the International Conference and discussions at the Conference. These exchanges evidenced general recognition that IHL implementation needed to be improved, that existing IHL compliance mechanisms have proven to be inadequate, and that further reflection on how to strengthen them was necessary.

Resolution 1 invited the International Committee of the Red Cross (ICRC) “to pursue further research, consultation and discussion in cooperation with States and, if appropriate, other relevant actors, including international and regional organisations, to identify and propose a range of options and its recommendations to (...) enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law”. It also expressed its appreciation to the Government of Switzerland for its commitment “to explore and identify concrete ways and means to strengthen the application of international humanitarian law and reinforce dialogue on international humanitarian law issues among States and other interested actors, in cooperation with the ICRC”.

Since the International Conference, the Government of Switzerland and the ICRC have undertaken a joint initiative to facilitate implementation of the relevant provisions of Resolution 1. The initiative was effectively launched on 13 July, 2012 when a first Informal Meeting of States was convened in Geneva. The purpose of that meeting was to inform States of the initiative, to raise awareness of the challenges of IHL compliance, and to provide Switzerland and the ICRC with indications on how to move forward.

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<sup>1</sup> [http://www.rcrcconference.org/docs\\_upl/en/R1\\_Strengthening\\_IHL\\_EN.pdf](http://www.rcrcconference.org/docs_upl/en/R1_Strengthening_IHL_EN.pdf).

The July meeting showed that there was general concern about lack of compliance with IHL, as well as broad agreement on the need for a regular dialogue among States on improving respect for IHL, and on compliance issues in particular. It was also noted that an examination of specific thematic issues should be the next step.

Following the July meeting, Switzerland and the ICRC continued discussions and consultations with a broad range of States in order to identify the main substantive issues of relevance to moving the process forward. Given that it is difficult to have a meaningful discussion on questions of substance in a format that would encompass all States at all times, part of the consultations also took place among a geographically balanced number of States. In the fall of last year, discussions and consultations within the process were focused on a review of existing IHL compliance mechanisms, the reasons why they did not work, and whether some could be resuscitated. Lessons that could be learned from other bodies of law for the purpose of envisaging an effective IHL compliance system were also examined. There were likewise preliminary discussions on the functions that such a system would need to have, regardless of what its eventual institutional structure might be.

The consultations and discussions that ensued in the spring of 2013 were aimed at examining the possible functions of an IHL compliance system in more depth. An important topic of discussion was the format that a regular dialogue on IHL compliance among States should have, given that the lack of an appropriate forum was underlined at the 31<sup>st</sup> International Conference and at the Meeting of States held in July last year.

As facilitators, Switzerland and the ICRC are fully committed to ensuring that their joint initiative in follow-up of Resolution 1 is conducted in a transparent, inclusive and open manner. The purpose of the June 17/18, 2013 Meeting of States is thus to present all States with an overview of the discussions and consultations that have taken place thus far and to seek guidance on the substantive questions that have arisen, as well as on possible next steps. This Background Document is structured accordingly. Each section briefly presents the issue, outlines the gist of the exchanges held, and poses specific questions in order to focus the discussion. More detail on the topics addressed in each section is included in the corresponding Annexes.

In addition to transparency, inclusivity and openness, the Swiss-ICRC initiative is premised on several key principles that have been enunciated in the discussions and consultations held thus far. It was stated that these principles should serve as the overall framework within which the search for possible solutions to the challenges of improving compliance with IHL will be pursued:

- The need for an IHL compliance system to be effective;
- The importance of avoiding politicization;
- The State-driven character of the process;
- The avoidance of unnecessary duplication with other compliance systems;
- The requirement to take resource considerations into account;

- The need to find appropriate ways to ensure that all types of armed conflicts and the parties to them are included.

It should, finally, be emphasized that the joint Swiss-ICRC initiative - and thus this Background Document - does not deal with issues related to the operation of international criminal justice or the corresponding international mechanisms that have been established (such as the *ad hoc* or special tribunals, “mixed” tribunals, or the International Criminal Court). This area of compliance, which is focused on establishing individual criminal responsibility for a range of violations of international law, including IHL, has been significantly developed over the past couple of decades.

## 2. Existing IHL Compliance Mechanisms: Overview and Inadequacies

The need to “enhance and ensure the effectiveness of mechanisms of compliance with international humanitarian law”, as stated in Resolution 1 of the 31<sup>st</sup> International Conference, is based on the assessment that existing IHL compliance mechanisms (Annex 1) are inadequate. This view was broadly confirmed in the discussions and consultations held within the Swiss-ICRC process thus far. Several reasons may be advanced:

- i) the existing mechanisms are of limited scope,
- ii) they were crafted for international armed conflict only, and
- iii) they have rarely, if ever, been used.

i) Three mechanisms *stricto sensu* are provided for in the 1949 Geneva Conventions and Additional Protocol I thereto of 1977:

- The Protecting Powers mechanism is provided for in common Articles 8/8/8/9 of the 1949 Geneva Conventions and Article 5 of Additional Protocol I. It obliges each Party to the conflict to designate a neutral State, with the agreement of the other side, to safeguard its humanitarian interests, and to thus monitor compliance with IHL. In practice, the Protecting Powers system has been used on very few occasions since World War II, the last reported instance having occurred three decades ago.
- The formal Enquiry Procedure was first provided for in the 1929 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (Article 30). It was later repeated, with additional details, in the 1949 Geneva Conventions (common Articles 52/53/132/149). Pursuant to this mechanism, an enquiry into an alleged violation of the Geneva Conventions must take place at the request of a party to the conflict. Very few attempts to use the Enquiry Procedure have been made since the 1929 Convention was adopted, and none resulted in its actual launching.
- The International Humanitarian Fact-Finding Commission (IHFFC) was created in 1991 pursuant to Article 90 of Additional Protocol I. It is competent

to enquire into any facts alleged to be a grave breach or other serious violation of the 1949 Geneva Conventions or Additional Protocol I, or to facilitate, through its good offices, the restoration of an attitude of respect for these instruments. The competence of the IHFFC is mandatory if the relevant States are Parties to the Protocol and have made a formal declaration accepting such competence, and one of them requests its services. The parties to an international armed conflict may also use the services of the Commission on an *ad hoc* basis.

The IHFFC has not been triggered to date. Regardless of this, and in contrast to the Protecting Powers and Enquiry Procedure mechanisms, the IHFFC's potential as a tool for improving compliance with IHL has been emphasized on various occasions. In 2009, many participants of the 60th anniversary Geneva Conventions' Conference were of the view that the IHFFC "was a useful institution, the potential of which has to be used in order to promote compliance with IHL".<sup>2</sup> Participants of the 2011 International Conference of the Red Cross and Red Crescent, while recognizing that all options should be studied with a view to strengthening the international system for monitoring respect for IHL, expressed a desire to find ways of making the IHFFC efficient.<sup>3</sup>

Similar views were expressed during the discussions and consultations held since the Swiss-ICRC initiative was launched. It was noted that the Commission is already in existence as a fact-finding mechanism, with members elected and available to carry out its mandate. It was recalled that the Commission has expressed its readiness to be engaged in fact-finding in situations of non-international armed conflicts, in addition to international armed conflicts. Many States were of the view that ways should be examined to revitalize the IHFFC, having in mind the usefulness of a fact-finding function within an IHL compliance system. It was likewise observed that additional efforts should be made to promote awareness of the Commission, both domestically and internationally.<sup>4</sup>

In practice, it is mainly the ICRC which carries out a range of functions aimed at strengthening compliance with IHL. The ICRC is a *sui generis* international organization whose mandate is provided for in the Geneva Conventions and Additional Protocol I in international armed conflicts. The organization is also entitled to offer its services to the parties to non-international armed conflicts pursuant to

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<sup>2</sup> 60 Years of the Geneva Conventions and the Decades Ahead, Geneva, November 9-10 2009, Report of Workshop D, p. 92.

<sup>3</sup> 31st International Conference, Report of the plenary session on strengthening legal protection for victims of armed conflict.

<sup>4</sup> In addition to the three mechanisms outlined above, *Additional Protocol I (Article 7)* provides that the Depositary shall convene a *meeting of the High Contracting Parties thereto* "to consider general problems concerning the application of the Conventions and of the Protocol" if requested to do so by one or more Parties to the Protocol and agreed to by the majority of States Parties to that treaty. It must be noted that an Article 7 meeting is limited to an examination of "general problems" only and not of compliance more broadly. Moreover, not all States are party to the Protocol. Such a meeting has never been convened.

common Article 3 to the Geneva Conventions. The ICRC's operational work in situations of armed conflict - which is to provide protection and assistance to persons affected by them - is closely linked to its working method which is essentially based on confidentiality.

The Swiss-ICRC initiative does not aim to impinge on the role and mandate of the ICRC or to duplicate the activities performed by the organization. To the contrary, synergies - if possible - should be sought in articulating the relationship between the ICRC's work, particularly in the legal domain, and an effective IHL compliance system. This view was expressed by States in the discussions and consultations that have taken place. The ICRC's role and mandate are thus not a focus of the joint process.

**ii)** All the IHL compliance mechanisms outlined above (with the exception of the ICRC), are provided for in treaties that were crafted to regulate international armed conflicts. However, international armed conflicts today constitute a fraction of the armed conflicts taking place, the great majority of which are non-international in nature. The devastation and suffering caused in this type of armed conflict are in daily evidence, with civilians being the primary victims of violations of IHL committed by both State and non-State parties.

Given the humanitarian consequences of non-international armed conflicts, it is not difficult to conclude that the absence of IHL compliance mechanisms calls into question the protective function and reach of this body of international law. This despite the fact that IHL is the *only* branch of international law that was specifically crafted for armed conflict (international, as well as non-international), and provides rules binding both States and non-State armed groups thereto. The need to examine the current situation and to provide appropriate ways to enhance compliance with IHL in non-international armed conflicts by all parties was recognized by many States in the discussions and consultations leading up to the June 17/18 meeting as an issue that should be addressed in the initiative.

**iii)** A marked feature of the three existing IHL compliance mechanisms, as described above, is that they have never or rarely been used. This is in contrast to other branches of international law dealing with the protection of persons, which have rather developed and multifaceted compliance systems composed, in some cases, of a variety of compliance bodies.

The human rights system, both international and regional, is a salient example (see Annex 2). The discussions held confirmed the view that while human rights law and IHL are complementary, there are also important differences. It was acknowledged that the human rights compliance system is not able to adequately take into account the specificities of armed conflict or of the body of international law, IHL, that was specifically devised for it. Issues of lack of a specific IHL mandate and of the non-binding nature of human rights law with regard to the conduct of non-State armed groups were among those recalled. Furthermore, it was mentioned that sustainable strengthening of IHL cannot be achieved through case-by-case measures taken by international institutions that are not tasked with IHL, i.e. that such efforts should

rather be promoted from within the IHL system.

IHL treaties other than the Geneva Conventions and their two Additional Protocols also have fleshed out compliance systems. Examples are treaties on weapons (such as the Anti-Personnel Mine Ban Convention or the Convention on Cluster Munitions), as well as in the Convention for the Protection of Cultural Property in the Event of Armed Conflict (see Annex 3).

The reasons for which the existing IHL compliance mechanisms provided for in the Geneva Conventions and Additional Protocol I have not been utilized arguably lie - among other things - in the way in which they were configured, as well as in the lack of an appropriate institutional anchorage. The three compliance mechanisms are based on the premise that States involved in an international armed conflict will have the capacity to propose to the other party, or agree with it, as the case may be, to institute the mechanism in question. This approach is based on an expectation that is not likely to be fulfilled in the present day, and is perhaps due to the times in which the respective mechanisms were designed.

In addition, no branch of international law dealing with the protection of persons that was developed subsequent to the Geneva Conventions relies exclusively on mechanisms that are thus configured.

Existing IHL compliance mechanisms also lack attachment to a broader institutional compliance structure. The Geneva Conventions and their Additional Protocols are an exception among international treaties related to the protection of persons in that they do not provide that States will meet on a regular basis to discuss issues of common concern and perform other functions related to treaty compliance. The absence of such a structure means that specific compliance mechanisms lack the institutional support that may be necessary to ensure they are utilized, to facilitate the performance of their tasks, and to assist in any follow-up that may be appropriate.

As a result of these, and other reasons, in the consultations held within the Swiss-ICRC initiative some States suggested, as mentioned above, that the IHFFC could possibly be reconfigured. Similar opinions were not expressed regarding the other mechanisms outlined.

### **Questions:**

- ❖ **Do you share the view that, except for the IHFFC, the other existing IHL compliance mechanisms cannot be reformed?**
- ❖ **Why have the compliance mechanisms outlined above been rarely, or never used?**



### 3. Possible Functions of an IHL Compliance System

The inadequacy of existing IHL compliance mechanisms poses the question of what an effective IHL compliance system would be. While several possible aspects would need to be considered, one issue that necessitates examination are the functions that an effective IHL compliance system should have. Provided below is list of the functions that may be relevant (see also Annex 4, in which this topic is outlined in some detail, based on a review of the functions and features of a range of international compliance systems). Also summarized below is an overview of preliminary opinions expressed in the discussions thus far.

- **Regular meetings of States** (addressed in the next section of this Document).
- **Periodic reporting.** The submission of periodic reports on compliance with the relevant body of law is a regular feature of many international compliance systems. Under those systems, States regularly submit reports on measures they are taking to ensure the implementation of and respect for their obligations with regard to specific treaties or bodies of law. The purpose of periodic reports is to, among other things, identify challenges and to provide participants in the compliance system with a base-line of information on the basis of which compliance may be evaluated.
- **Fact-finding.** Fact-finding is a method of ascertaining facts on the basis of information gathered, compiled and analyzed from a range of sources, which serves to shed light on the circumstances, causes and consequences of an event (or events). The purpose of fact-finding is to ascertain controversial facts. Fact-finding generally does not necessarily include pronouncements of an authoritative or binding nature on the legal consequences of the facts established.
- **Early warning.** An early warning functions aims to bring to the attention of relevant actors situations that could potentially result in breaches of the law and proposes measures to prevent or halt the behaviour in question.
- **Urgent appeals.** Some compliance systems allow for an urgent appeal function the goal of which is to enable immediate action in response to allegations of violations of the relevant law and allow a rapid dialogue with the authorities concerned aimed at clarifying the situation and contributing to a change in behaviour.
- **Country visits.** There are compliance systems which provide for country visits by a body or individual for the purpose of observation of the implementation of the relevant body of law. This serves as a basis for dialogue with the relevant interlocutors on ways of improving its implementation.
- **Non-binding legal opinions.** Some compliance systems provide for the issuance of non-binding or quasi-judicial opinions on matters of interpretation

or application of the relevant treaty or body of law. These opinions aim to assist States to promote the further implementation of the relevant treaty or body of law.

- **Good offices.** Good offices are particular steps usually undertaken within procedures established for the purpose of the settlement of disputes that can in practice take many forms and be performed by a variety of bodies.
- **State inquiries.** Some compliance systems provide that a State or States may submit an inquiry to another State where the former wishes to clarify and seek to resolve questions relating to a matter of compliance with the relevant instrument by the requested State. An inquiry is first dealt with through a bilateral exchange of views; if this does not produce a satisfactory result, the issue is submitted to a specific body.
- **Dispute settlement.** In case of a dispute between States over the interpretation or application of the relevant treaty provisions, some compliance systems provide for a specific dispute settlement process.
- **Examination of complaints.** A function that some compliance systems provide for is the examination of complaints. This function exists in a number of legal frameworks, and can be mandatory or depend on *ad hoc* consent. It includes both inter-State and individual complaints.

Some of the functions listed above attracted more attention than others, chief among them the reporting and fact-finding functions.

While it was recognized that care must be taken in view of States' "reporting fatigue", it was nevertheless generally acknowledged that reporting is an essential function. It provides each State a basis for self-assessment, and allows for an informed dialogue among them on issues of compliance, including the challenges faced. This, in turn, contributes to building trust, which is key to the ensuring the operation of a credible compliance system. Specific issues that should be examined going forward were likewise identified: the content of State reports (on measures related to compliance at the national level, thematic issues, or both), the nature of reporting (voluntary or mandatory), reporting periodicity, the need for an interactive process, follow-up, resource constraints, and others.

Fact-finding is another function that garnered support among States. It was recognized that fact-finding may be a necessary precursor to informed discussion in some circumstances, and that relevant expertise and a clear mandate are important ingredients for ensuring acceptance of the results obtained. Specific issues that would merit further examination were also raised: the trigger mechanism, the public or confidential nature of a fact-finding report, whether fact-finding should include an assessment of the legal consequences of the facts established, and others. It was reiterated that consideration should be given to adapting the IHFFC so that it could perform its fact-finding mandate.

It should be noted that the list of functions provided above is illustrative. Its aim is to stimulate reflection and provide guidance for discussion at the June 17/18 meeting, as well as in further discussions and consultations. While preferences of a preliminary nature have been expressed, the facilitators of the process believe that there are certain merits to all the functions enumerated, which should also be given careful consideration going forward.

### **Questions:**

- ❖ **Which of the functions listed above should be the focus of further attention in the process?**
- ❖ **Are there functions that have been overlooked and should be included?**

## **4. Meeting of States**

As already mentioned, the Geneva Conventions and their Additional Protocols are an exception among international treaties in that they do not provide an opportunity for States to meet on a *regular* basis to discuss issues of common concern and perform tasks related to treaty implementation. By way of reminder, most international treaties establish such an intergovernmental "platform". This takes the form of a Conference of States Parties, a Meeting of States Parties, a Meeting or a Conference of High Contracting Parties, an Assembly of States Parties. There are also meetings of States outside of treaty regimes that have been established pursuant to a resolution adopted by the relevant body, such as the Human Rights Council. (Hereafter, collectively, "Meeting of States", see Annex 5 for more detail.)

There is no "model" list of tasks that Meetings of States perform; rather, they are specifically laid out in the relevant instrument/text and depend on the subject-matter at hand. As a general rule Meetings of States are usually mandated to consider any questions, matters or issues within the scope of the relevant instrument/text and to make recommendations or take decisions on any questions, matters or issues related to it. They do this either on their own motion or when brought to their attention by authorized bodies.

Discussions and consultations within the Swiss-ICRC initiative confirmed what was preliminarily expressed at the July 13 meeting in 2012 - that there is general support for the creation of a platform for regular exchanges among States related to IHL compliance. It was felt that a Meeting of States would be of benefit in that it would enable a permanent dialogue on IHL, enhance cooperation and help promote respect for this body of law.

As regards possible tasks, it was non-exhaustively noted that a reporting function - interactively designed - could be linked to a Meeting of States. Reports could be submitted by States, as described above, and would allow for thematic and other types of discussions. A Meeting would allow States to discuss national

implementation and gaps, best practices and capacity building. It would likewise permit an exchange of views and be an opportunity for overview of, and reporting by, any subsidiary bodies (e.g. expert bodies) or organs that may be established. Meetings could also allow for policy-oriented discussions, as may be necessary. These and other possible tasks to be performed by a Meeting of States were deemed deserving of further discussion.

An issue that was preliminarily examined is the possible periodicity of a Meeting of States. It was mentioned that annual or biennial meetings would be appropriate. In this context, the importance of the continued engagement of the International Conference of the Red Cross and Red Crescent on IHL issues was noted; it was, however, pointed out that the composition of an International Conference is broader, that it meets every 4 years and that IHL issues are not the only focus of such gatherings. It was also said that, given some complementarity, an appropriate link between a possible IHL compliance system and the International Conference should be found, for example, by means of the submission of activity reports by the former to the latter.

Other issues preliminarily discussed included whether there should be an opportunity for the convening of *ad hoc* Meetings of States, and whether and how participants other than States (i.e. non-governmental organizations), could be associated with the work of such an intergovernmental platform.

### **Questions:**

- ❖ **As the Meeting of States of July 13, 2012 showed, there is a need for a regular dialogue among States on IHL issues; do you share the view that this forum could be an annual Meeting of States?**
- ❖ **What are the possible tasks a Meeting of States could perform?**

## **5. Next Steps**

Resolution 1 of the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent is the basis for the Swiss-ICRC initiative aimed at exploring ways of - and providing responses to - the challenges of strengthening compliance with IHL. The focus of the mandate set out in the Resolution is enhancing and ensuring the effectiveness of IHL compliance mechanisms in order to strengthen legal protection for all victims of armed conflict. As stipulated in the text, a range of options, as well as recommendations, on how this may be done is expected to be presented to the next International Conference, scheduled to take place in 2015.

In light of Resolution 1 and given the outcome of the first meeting of States held on July 13, 2012, Switzerland and the ICRC have pursued consultations with States on how to move the process forward. Particular attention was paid to the

recommendation that the next phase should involve discussions of specific thematic issues. The thematic issues addressed and the opinions expressed in the consultations thus far have been outlined in this Background Document.

As already mentioned, Switzerland and the ICRC are fully committed to ensuring that their joint initiative in follow-up of Resolution 1 is conducted in a transparent, inclusive and open manner. The purpose of the June 17/18, 2013 Meeting of States is thus to present States with an opportunity to express their views on the substantive questions that have been identified and formulated in order to facilitate the debate.

In view of the broad support for the initiative and of the recognition that a universal platform for a regular dialogue among States on IHL compliance is necessary, the June 17/18 meeting should also to trace the way forward. The facilitators believe that it would be useful to base further exchanges on more concrete proposals regarding the possible structure, tasks and features of a regular Meeting of States.

In furtherance of Resolution 1 of the 31<sup>st</sup> International Conference, Switzerland and the ICRC submit that the Second Meeting could entrust them with a mandate to devise the necessary proposals, in continued discussions and consultations with States, for examination at the next Meeting of States to be held in early summer 2014.

**Question:**

- ❖ **Do you think it would be useful to base further exchanges on more concrete proposals regarding the possible characteristics of a Meeting of States?**

## **ANNEX 1: Existing IHL Compliance Mechanisms**

- **Protecting Powers and their substitutes**

The Protecting Powers mechanism is based on common Article 8/8/8/9 of the 1949 Geneva Conventions and Article 5 of Additional Protocol I and applies in international armed conflicts (IAC) only. It obliges each Party to the conflict to designate a neutral State, with the agreement of the other side, to safeguard its humanitarian interests, and to therefore monitor compliance with IHL. The Parties may also agree to entrust the duties of a Protecting Power to “an organization which offers all guarantees of impartiality and efficacy” (common Art. 10/10/10/11 and Art. 5 of AP I).

In practice, the Protecting Powers system has been used on very few occasions since World War II, the last reported instance being the international armed conflict between the United Kingdom and Argentina over the Falklands/Malvinas Islands in 1982.

- **Enquiry procedure**

The formal enquiry procedure was first provided for in the 1929 Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field (Art. 30). It was later repeated, with additional details, in the four 1949 Geneva Conventions (common Art. 52/53/132/149) and is applicable in international armed conflicts only. Pursuant to this mechanism, an enquiry into an alleged violation of the Geneva Conventions must take place at the request of a party to the conflict. The details of the procedure are to be decided by the belligerents or by an umpire whom they appoint. If the enquiry concludes that a violation of the Conventions occurred, the parties are obliged to put an end to it and to repress it with the least possible delay.

Very few attempts to use the formal enquiry mechanism have been made since the 1929 Convention was adopted,<sup>5</sup> and none have resulted in the actual launching of the procedure.

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<sup>5</sup> Resort to this mechanism was proposed on four occasions only: a) during the war between Italy and Ethiopia (1935-36), both sides addressed complaints of IHL violations to the ICRC, and the organization offered its services to help them set up an international commission of enquiry. The parties never reached an agreement on the formation of such a commission; b) following the Katyn Massacre (1943), the German Red Cross asked the ICRC to participate in the exhumation of the victims and the Polish government in exile asked the ICRC to conduct an independent investigation. The ICRC answered that it would be ready to lend its assistance to establish an enquiry commission with the consent of all the parties. The Soviet government never answered and the Polish government withdrew its request; c) during the Korean War (1952), the Democratic People’s Republic of Korea accused the United States of America of using bacteriological weapons. The USA asked the ICRC to conduct an independent enquiry. The organisation answered that it would set up an enquiry commission if all parties would agree. The DPRK never reacted to this proposal; d) during the war between Israel and Arab States (1973-1974), the parties to the conflict alleged serious violations of IHL against each other and asked the ICRC to investigate. The ICRC proposed the constitution of two bipartite enquiry commissions, but no agreement between the parties was reached on this procedure.

- **International Humanitarian Fact-Finding Commission**

The International Humanitarian Fact-Finding Commission (IHFFC) was created in 1991 on the basis of Article 90 of Additional Protocol I. The IHFFC is composed of 15 individuals acting in their personal capacity. It is competent to: a) enquire into any facts alleged to be a grave breach or other serious violation of the 1949 Geneva Conventions or Additional Protocol I, and b) facilitate, through its good offices, the restoration of an attitude of respect for these instruments. In 2009, the UN General Assembly granted the Commission observer status.<sup>6</sup>

The competence of the IHFFC is mandatory if the relevant States involved in an international armed conflict are Parties to the Protocol and have made a formal declaration accepting its competence for allegations of grave breaches or of other serious violations of IHL, and one of them requests its services. The parties to an armed conflict may also use the services of the Commission on an *ad hoc* basis, in which case all involved must give their consent. Following an investigation, the IHFFC is meant to present its conclusions to the parties, together with any recommendation it might deem appropriate. The report is not disclosed publicly, unless all parties to the conflict agree to do so. The IHFFC has not been triggered to date.

- **Meetings of the High Contracting Parties to Additional Protocol I, and Resolution I of the International Conference of the Red Cross and Red Crescent (1995)**

Pursuant to Article 7 of Additional Protocol I, the Depositary of the Protocol, i.e. the Swiss Federal Council, shall convene a meeting of the States parties thereto “to consider general problems concerning the application of the Conventions and of the Protocol” if requested to do so by one or more parties to the Protocol and agreed to by the majority of States parties to that treaty. Such a meeting has never been convened.

Article 7 of Additional Protocol I should be distinguished from the mandate given to the Depositary in 1995, by means of Resolution I of the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent,<sup>7</sup> which endorsed Recommendation VII of the Intergovernmental Group of Experts for the Protection of War Victims.<sup>8</sup>

Recommendation VII requests “the Depositary to organize periodical meetings of the States party to the 1949 Geneva Conventions to consider general problems regarding the application of IHL”.<sup>9</sup> Acting on Recommendation VII and on Resolution

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<sup>6</sup> A/RES/64/121, December 2009.

<sup>7</sup> Resolution I of the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent of 1995.

<sup>8</sup> Meeting of the Intergovernmental Group of Experts for the Protection of War Victims, Geneva, 23-27 January 1995, Recommendations (<http://www.icrc.org/eng/resources/documents/misc/57jmbm.htm>).

<sup>9</sup> Paragraphs 4 and 7 of Resolution I of the 26<sup>th</sup> International Conference of the Red Cross and Red Crescent of 1995:

I of the 26th International Conference, the Swiss Government convened the First Periodical Meeting of States Parties to the Geneva Conventions on general problems relating to the application of IHL. The meeting took place in Geneva, from January 19-23 1998, and was the only meeting of its kind to date.

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“4. also endorses the Recommendations drawn up by the Intergovernmental Group of Experts (Recommendations), which aim at translating the Final Declaration of the Conference into concrete and effective measures and which are attached to the present Resolution”.

“7. *recommends that the outcome of meetings convened by the Depositary of the 1949 Geneva Conventions, including those mentioned in Recommendation VII of the Intergovernmental Group of Experts, be transmitted to the next International Conference of the Red Cross and Red Crescent as well as to States party to those Conventions*”.



## ANNEX 2: The Human Rights Compliance System

A variety of mechanisms created within the human rights (HR) law framework are increasingly dealing with situations of armed conflict, albeit primarily, but not exclusively, from the perspective of HR violations that may have been committed. A growing number are including references to IHL in their activities.

This Annex does not aim to provide a detailed or comprehensive review of existing international HR mechanisms, based on the understanding that participants of the June 17/18, 2013 meeting are familiar with them. Only a brief reminder is provided below.

International HR monitoring mechanisms may be broadly divided into essentially political, UN Charter-based mechanisms, or into the treaty-based ones, depending on the source of their mandate.

The main Charter-based mechanism is the Human Rights Council (HRC), a subsidiary body of the UN General Assembly, which replaced the HR Commission in 2006. The HRC reviews States' HR compliance by means of:

- The Universal Periodic Review Mechanism, which allows for periodic examinations of every State's HR record based on three reports (one submitted by the State, one by the Office of the High Commissioner for Human Rights and one by NGOs), and comments/recommendations made by other States (peer review) and NGOs.
- The HRC also has Special Procedures - Special Rapporteurs or Working Groups - both thematic and country specific, which report on activities within their mandates to the Council.
- The HRC inherited a confidential complaints procedure from the HR Commission, based on individual or group allegations of HR violations, the main purpose of which is to enable the Council "to address consistent patterns of gross and reliably attested violations of human rights" anywhere in the world.<sup>10</sup>

The HRC meets in regular sessions three times a year and has also held numerous special sessions, called at fairly short notice, mainly on country specific issues. A number of resolutions have established HRC-mandated Commissions of Inquiry (COI), composed of independent experts, to undertake and present fact-finding or other reports to the Council (some of which engage/interact with non-State armed groups).

The HR treaty body system is made up of committees of independent experts, chosen in their personal capacity, charged with monitoring the implementation of the core international HR treaties (currently nine). Depending on their mandate the Committees:

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<sup>10</sup> OHCHR factsheet: <http://www.ohchr.org/EN/HRBodies/HRC/Pages/Complaint.aspx>. The HRC also has an Advisory Committee whose mandate is primarily research and is usually referred to as a think-tank.

- Receive periodic reports from States parties, engage in a dialogue with and issue findings on a State's compliance with its obligations under the relevant treaty (all);
- Deal with inter-State complaints;
- Receive and issue findings with respect to individual complaints;
- May, on their own initiative, initiate inquiries if they receive reliable information containing well-founded indications of systematic violations of the relevant convention by a State party.<sup>11</sup>
- They have also developed a practice of issuing comments or observations of a general nature on how the relevant treaty provisions should be interpreted.

In addition to treaty bodies at the international level, there are also regional mechanisms of HR protection which are mentioned here for the sake of completeness. The most important are regional HR courts, mandated to issue binding decisions on inter-State or individual complaints (e.g. the European or Inter-American HR courts), and HR commissions. The European Court of HR has dealt with the largest number of cases arising from situations of armed conflict, but has for the most part avoided explicit reliance on IHL. In this context, it must be noted that the jurisdiction of regional mechanisms is limited to certain geographical areas.<sup>12</sup> It is not clear how the universality of IHL could be maintained if regional bodies were to take up IHL implementation as a matter of course.

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<sup>11</sup> For example, the Committee against Torture, pursuant to Art. 20 of the Convention against Torture.

<sup>12</sup> It is submitted that there are currently other limitations to the ability of regional courts to deal with IHL: they do not have a specific mandate over IHL; they cannot engage with non-State actors (who are not bound by the relevant HR treaties); they lack the relevant IHL expertise.

## **ANNEX 3: Compliance Systems of Other IHL Treaties**

- **Convention on Anti-Personnel Mines**

Most weapons conventions provide for a monitoring system that is aimed at ensuring their implementation. This often includes a reporting obligation to Meetings of States Parties to the Convention and on occasion to the UN Secretary-General. A large number of weapons conventions also provide for an annual Meeting/Conference of States Parties to consider the application of the relevant Convention.

The Convention on Anti-Personnel Mines<sup>13</sup> - which was adopted in 1997 and entered into force in 1999 - is relied on below to illustrate the system of compliance established under some of the weapons conventions. The relevant provisions of the Convention on Cluster Munitions are largely similar (see Articles 8, 10 and 11).

The Convention provides that Meetings of States Parties are to be held regularly to consider and, where necessary, take decisions on any matter related to the application or implementation of the Convention (Art. 11). It foresees a variety of mechanisms for promoting its implementation and ensuring that its provisions are respected. These involve the participation of the UN Secretary-General and Meetings of States Parties.

States Parties are required to report annually to the UN Secretary-General on a range of matters, including the types and numbers of anti-personnel mines destroyed, the extent and the location of areas contaminated by anti-personnel mines, the status of clearance programmes, measures taken to provide warnings to the population and measures taken domestically to prevent and suppress violations of the Convention (Art. 7). The UN Secretary-General transmits the reports received to the States Parties.

When a dispute between States Parties occurs with regard to the application or the interpretation of the Convention, they may bring any such a dispute before a Meeting of the States Parties (Art. 10).<sup>14</sup>

Article 8 provides an elaborate process related to the “facilitation and clarification of compliance”. States Parties may submit, through the UN Secretary-General, a “request for clarification”, together with all appropriate information, on any question relating to compliance with the provisions of the Convention by another Party (Art. 8 (2)). The State whose behaviour is at issue must provide relevant information. If there

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<sup>13</sup> The full title of the Convention is: “Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction”.

<sup>14</sup> The Convention on Cluster Munitions also foresees a procedure for settling disputes arising between two or more States Parties on the interpretation or application of its provisions (Art. 10). In such situations, the States Parties concerned must consult together with a view to settle the dispute by negotiation or other peaceful means of their choice. The Parties may decide to solicit the support of a Meeting of States Parties, which can adopt procedures or specific mechanisms to clarify the situation and adopt a resolution. They may also refer the case to the International Court of Justice.

is no reply or the reply is not satisfactory, the State Party that raised the question may submit the matter to the Meeting of the States Parties through the UN Secretary-General for further consideration (Art. 8 (3)). Pending the convening of a Meeting of States Parties, any State Party concerned may request the UN Secretary-General to exercise his good offices to facilitate the clarification requested (Art. 8 (4)).

The requesting Party may propose, through the UN Secretary-General, the convening of a Special Meeting of the States Parties to consider the matter (Art. 8 (5)). The Meeting of the States Parties or the Special Meeting of the States Parties, as the case may be, shall first determine whether to consider the matter further, taking into account all the information submitted by the States Parties concerned (Art. 8 (6)). All States Parties are to cooperate fully with the Meeting of the States Parties or the Special Meeting of the States Parties in their review of the matter, including any fact-finding missions that are authorized in accordance with Article 8 (8) (Art. 8 (7)).

If further clarification is required, a Meeting of the States Parties or a Special Meeting of the States Parties may authorize a fact-finding mission and decide on its mandate by a majority of the States Parties present and voting (Art. 8 (8)).

Upon receiving a request from a Meeting of the States Parties or a Special Meeting of the States Parties, the UN Secretary-General may, after consultations with the requested State Party, appoint members of the mission, including its leader (Art. 8 (10)). The fact-finding mission then reports the results of its findings, through the UN Secretary-General, to a Meeting of the States Parties or a Special Meeting of the States Parties (Art. 8 (17)).

Finally, a Meeting of the States Parties or a Special Meeting of the States Parties may suggest to the States Parties concerned ways and means of further clarifying or resolving the matter under consideration, including the initiation of appropriate procedures in conformity with international law (Art. 8 (19)).

- **Convention for the Protection of Cultural Property in the Event of Armed Conflict**

The Convention for the Protection of Cultural Property in the Event of Armed Conflict was adopted on 14 May 1954. Article 10 of the Convention lays the groundwork for ensuring “international control” over cultural property under special protection, while the procedure is elaborated in the Regulations for the execution of the Convention.

The international control procedure requires the involvement and cooperation of three partners:

- First, Parties to the Convention must appoint a “representative for cultural property” as soon as they are engaged in an international armed conflict (Regulations, Art. 2(a) and 18).
- Second, delegates of Protecting Powers (or of substitutes to the Protecting Powers) must also be appointed and accredited (Regulations, Art. 2(b), 3 and 9).

- Lastly, a Commissioner-General for Cultural Property must be chosen among a list of international experts to be prepared by the Director-General of UNESCO (Regulations, Art. 1 and 2(c), and 4) and is accredited to the State involved in an international armed conflict.

The Commissioner-General is allowed to “deal with all matters referred to him in connexion with the application of the Convention, in conjunction with the representative of the Party to which he is accredited and with the delegates concerned” (Regulations, Art. 6(1)). In particular, he may undertake investigations, make representations to the Parties to the conflict or their Protecting Powers, and may exercise the functions of the Protecting Power, in the absence of such a Power (Regulations, Art. 6). The Commissioner-General may also have recourse to the support of an “an inspector of cultural property”, to be charged with a specific mission, or may also request the services of experts (Regulations, Art. 7).

## **ANNEX 4: Possible Functions of an IHL Compliance System and Their Features**

### **I. PERIODIC REPORTING**

The submission of periodic reports on compliance with the relevant treaty or body of law is a regular function of many international compliance systems. Under those systems, States regularly submit reports on measures they take to ensure the proper implementation of and respect for their obligations with regard to specific treaties or bodies of law. The reporting exercise serves a self-monitoring function as it allows a State to gather, collate and analyze domestic law and practice. It also provides an opportunity for external actors - other States or expert bodies - to engage in a dialogue with the reporting State in order to identify ways of improving its level of implementation with the relevant law. The general aims of a reporting system are thus the identification of challenges and the evaluation of developments in the implementation of a State's obligations. An important characteristic of a reporting system is that it establishes a continuous process and allows the input of a variety of actors in the different phases: the collection of data, its analysis at the national level, the compilation of the report, and, finally, the formulation of recommendations by the relevant review body.

The following reporting systems have been relied on to extrapolate the main features detailed further below:

- Anti-Personnel Mine Ban Convention (APMBC)/ or Convention on Anti-Personnel Mines;
- Convention on Cluster Munitions (CCM);
- Convention for the Protection of Cultural Property in the Event of Armed Conflict;
- Universal Periodic Review (UPR);
- UN Human Rights Conventions<sup>15</sup>;
- Monitoring and Reporting Mechanism on Children Affected by Armed Conflict (MRM);
- Convention on Action against Trafficking in Human Beings (adopted by the Council of Europe);
- Reporting Mechanism of the Financial Action Task Force (FATF);
- Inter-American Commission on Human Rights;
- Reporting at the International Conferences of the Red Cross and Red Crescent;
- Resolution adopted by the General Assembly relating to the Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Armed Conflicts<sup>16</sup>;

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<sup>15</sup> All UN human rights conventions provide for a reporting procedure: International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW); Convention on the Rights of Persons with Disabilities (CRPD); International Convention for the Protection of All Persons from Enforced Disappearance (CED).

<sup>16</sup> In this resolution - adopted biennially by the UN General Assembly since 1982 - the UN Secretary General is requested to submit a report to the General Assembly on the status of the Additional

- Conventions of the International Labour Organization (ILO).

### **Main features:**

#### **1. Scope**

Reporting systems usually deal with general or thematic issues and not with specific cases or situations.

The majority of reporting systems deal with a single treaty<sup>17</sup> and require States Parties to report on measures they have adopted to ensure the full implementation of that treaty. However, certain reporting systems deal with a range of treaties, such as the Committee of Experts on the Application of the Conventions and Recommendations of the ILO, which deals with all ILO Conventions<sup>18</sup>. Others deal with a whole branch of law<sup>19</sup>, such as the UPR, or with specific provisions of a treaty<sup>20</sup>, such as the Group of Experts established under the European Convention on Action against Trafficking in Human Beings.

Other systems - such as the Monitoring and Reporting Mechanism on Children Affected by Armed Conflict<sup>21</sup> - monitor specific violations<sup>22</sup>.

#### **2. Voluntary or mandatory basis**

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Protocols relating to the Protection of Victims of Armed Conflicts. Since 1998 the UN Secretary General has also been requested to include in this report information on measures taken to strengthen the existing body of international humanitarian law with, inter alia, respect to its dissemination and full implementation at the national level, based on information received from Member States and the International Committee of the Red Cross.

<sup>17</sup> APMBC (Article 7); Convention for the Protection of Cultural Property in the Event of Armed Conflict (Article 26(2)); all UN human rights conventions.

<sup>18</sup> [http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm](http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang-en/index.htm).

<sup>19</sup> Annex of Resolution 5/1, "Institution-Building" adopted by the United Nations Human Rights Council on 18 June 2007: "1. The basis of the review is: (a) The Charter of the United Nations; (b) The Universal Declaration of Human Rights; (c) Human rights instruments to which a State is party; (d) Voluntary pledges and commitments made by States, including those undertaken when presenting their candidatures for election to the Human Rights Council (hereinafter "the Council"). 2. In addition to the above and given the complementary and mutually interrelated nature of international human rights law and international humanitarian law, the review shall take into account applicable international humanitarian law".

<sup>20</sup> Under this Council of Europe Convention, a Group of Experts on Action against Trafficking in Human Beings (hereinafter referred to as "GRETA") evaluates the implementation of the treaty following a procedure divided in rounds. At the beginning of each round GRETA selects the specific provisions on which the evaluation will be based.

<sup>21</sup> Based on Resolution 1612 (2005) of the UN Security Council, supplemented by Resolution 1882 of 2009 and Resolution 1998 of 2011.

<sup>22</sup> The Monitoring and Reporting Mechanism on Children Affected by Armed Conflict (MRM) focuses on six "grave violations" against children in situations of armed conflict and/or in "other situations of concern", namely: a) the killing or maiming of children; b) the recruitment or use of children as soldiers; c) rape and other grave sexual violence against children; d) the abduction of children; e) attacks against schools or hospitals; f) denial of humanitarian access for children.

The majority of reporting systems are mandatory<sup>23</sup>.

When a reporting system is established by means of a resolution States are not legally required to report; however, in the case of a resolution of the UN General Assembly or of the International Conference of the Red Cross and Red Crescent, States undertake a political commitment to submit the requested reports.

### 3. Periodicity

Several reporting systems - such as those established by the UN human rights treaties - require a State to submit an initial report to the relevant treaty body one or two years after the treaty's entry into force for it and then periodically thereafter (usually every four or five years)<sup>24</sup>. The relevant committee may formulate a list of issues and questions for the State Party, which is invited to send a delegation to attend the committee session and interact with its members. The relevant committee may proceed to examine a State's compliance record even though no report has been received.

Under the UPR, the human rights situation in all UN member States is reviewed every 4 1/2 years. States are required to implement the recommendations identified during the previous reporting cycle and to provide information at the next review on what has been achieved. States are also encouraged to provide an intermediary report to the Human Rights Council.

Under certain weapons treaties the reporting periodicity is more regular, given the more precise and technical subject-matter involved (confidence-building or transparency reports required by Articles 7 of both the APMBC and the CCM). It should, moreover, be noted that the UN General Assembly resolution relating to Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Armed Conflicts requests States to provide the necessary information to the UN Secretary General every two years.

The reporting system under the Convention for the Protection of Cultural Property in the Event of Armed Conflict is distinct from those mentioned above in that it leaves States a certain liberty to decide when they will report ("at least" once every four years)<sup>25</sup>.

### 4. Structure

#### a) Body in charge of examining the report

In most reporting systems, States report to a committee composed of independent experts serving in their personal capacity, as is the case with the committees of

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<sup>23</sup> UN human rights conventions; APMBC; Convention on Action against Trafficking in Human Beings; Convention for the Protection of Cultural Property in the Event of Armed Conflict.

<sup>24</sup> States are also invited to report every four years to the International Conference of the Red Cross and Red Crescent.

<sup>25</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict, Article 26 § 2.



experts established by the UN human rights treaties. The committees are tasked to collect information and data, receive State reports, act as a forum for reviewing the performance of States, and to take other measures as may be necessary to accomplish their task.

Another procedure is the peer-review. Within the UN Human Rights Council it is known as the Universal Periodic Review and is carried out by a UPR Working Group which consists of the 47 members of the Council (however, any UN Member State can take part in the discussion/dialogue with the reviewed State). Every review is managed by groups of three States, known as “troikas”, chosen by lot, who serve as rapporteurs. The UPR system receives secretariat support from the Human Rights Council and the Treaties Division of the UN Office of the High Commissioner for Human Rights (OHCHR), to which States are required to submit their reports.

Some treaties ask States to report to the UN Secretary General who then circulates the reports the States Parties in advance of a Conference of High Contracting Parties which is entitled to consider the reports<sup>26</sup>.

Under the MRM procedure, the drafting of the reports is coordinated by the Special Representative of the UN Secretary General for Children and Armed Conflicts and UNICEF. Once the report has been submitted to the UN Secretary General for approval, it is shared with the concerned government. It is then submitted to and reviewed by the UN Security Council Working Group on Children and Armed Conflict. The Working Group is also tasked to review action plans that parties to armed conflicts must adopt to halt the recruitment and use of children in violation of their international obligations, as well as other violations of children’s rights (Resolution 1612, para. 8)<sup>27</sup>. The Working Group may address recommendations to the UN Security Council on possible measures to promote the protection of children affected by armed conflict. Available measures include targeted sanctions, as well as recommendations on appropriate mandates for peacekeeping missions. The Working Group may also address recommendations to other bodies within the UN system.

## **b) Sources of information**

The vast majority of reporting systems require only States to provide a report. However, some systems are open to input from other actors as well. Thus, in the UN human rights treaty body system information may be received from UN partners and NGOs and may be taken into account in the issuance of concluding observations/recommendations to a State. For example, the Committee of the Rights of the Child and the Committee on Economic, Social and Cultural Rights invite written information from NGOs and provide them with an opportunity to present oral information before the respective Committee and its pre-sessional working group.

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<sup>26</sup> APMBC, Article 7 and CCM, Article 7.

<sup>27</sup> For an overview of existing action plans, see: Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Action Plans with Armed Forces and Armed Groups"; <<http://childrenandarmedconflict.un.org/our-work/action-plans/>>, and "Annual Report of the Secretary-General", A/66/782-S/2012/261 (26 April 2012), available at; <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/320/83/PDF/N1232083.pdf?OpenElement>>.

The Human Rights Committee has encouraged States to consult with national entities, including NGOs, in the preparation of their reports.

The UPR process directly involves civil society. The review is based on a national report established by the State, on information contained in the reports of UN entities (independent human rights experts and working groups - known as the Special Procedures - human rights treaty bodies and others), and on information from other stakeholders, including national human rights institutions and NGOs.

Under the reporting system of the International Conference of the Red Cross and Red Crescent, States, the ICRC, National Red Cross and Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies submit their own reports.

Pursuant to the UN General Assembly resolution relating to the Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the Protection of Victims of Armed Conflicts the ICRC is, in addition to States, requested to provide a biannual report.

The MRM is a bottom-up procedure in which UN agencies, NGOs and other partners collect information in the field and channel it up to the UN Secretariat. In the field, the MRM is implemented through UN-led Task Forces<sup>28</sup>, co-chaired by the highest UN authority in the country and by UNICEF. The Task Forces oversee the implementation of action plans signed with parties to the conflict in the relevant country and coordinate the work of child protection advisors who collect and verify information. The collection of such information is made in close collaboration with NGOs, whether or not they are formal members of a Task Force. Resolution 1612 emphasizes the need for the MRM to operate in cooperation with national Governments. This means that national Governments should assist the MRM teams by facilitating contacts and access to conflict affected areas. However, Governments are not required nor expected to take part in the monitoring process themselves, nor to give their consent to the country report.

### **c) Follow-up of reports**

Within the human rights system, treaty bodies have the most elaborate procedure in terms of follow-up of State reports. Under some human rights conventions, after the adoption of recommendations/concluding observations, the relevant committee appoints a special rapporteur to establish, maintain or restore a dialogue with a State Party. In order to enable the committee to take further action, the special rapporteur also reports back to the committee.

Under the MRM procedure, the commission of violations by a party to an armed conflict triggers the inclusion of its name in a “list of shame” published in the UN Secretary General’s Report on Children and Armed Conflict in accordance with UN

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<sup>28</sup> The Task Forces are composed of representatives from all relevant UN agencies and UN mission components and, in some cases, NGOs.

Security Council resolutions 1539 (2004), 1612 (2005) and 1882 (2009)<sup>29</sup>. A party to a conflict is listed if it violates international child use and recruitment obligations applicable to it<sup>30</sup> and/or engages in contravention of applicable international law, in patterns of killing and maiming of children and/or rape and other sexual violence against children<sup>31</sup>. As part of the de-listing process, a party to the conflict, whether State or non-State, is required to enter into a dialogue with the United Nations in order to prepare and implement a concrete, time-bound action plan to cease and prevent the grave violations against children for which it was listed.

Between two UPR rounds, States are due to implement the recommendations contained in what is known as the final outcome. During each subsequent review States are expected to provide information on what they have done to implement the recommendations made during the previous review, as well as on any relevant developments in the field of human rights.

As regards the Anti-Personnel Mine Ban Convention, an Implementation Support Unit (ISU) has been established to support States, including by providing advice and technical support on treaty implementation and universalization<sup>32</sup>. The ISU also assists individual States Parties in preparing transparency reports, particularly by advising States Parties which are in the process of clearing mined areas on how to provide the clarity required by Convention obligations<sup>33</sup>.

## 5. Public or confidential nature

In most reporting systems, State reports and discussions of reports are public. The UN treaty bodies and the UPR system provide for public procedures.

As part of the UN treaty body review, States send a delegation to the relevant committee session to answer questions posed by committee members and to listen to their comments, over the course of one or more public meetings. The recommendations/concluding observations issued by the committee are likewise public. NGO representatives may be present during the review meetings but cannot take the floor. In general, UN treaty bodies require States to reply to a prior list of issues and questions in writing. Written replies are usually published on the web pages of the relevant committee<sup>34</sup>.

The UPR system also allows for a public review, which is conducted by the UPR Working Group (comprising the 47 members of the Human Rights Council) and, as

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<sup>29</sup> See: Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "Naming and Shaming", <<http://childrenandarmedconflict.un.org/our-work/naming-and-shaming/>>. See also: Report of the UN Secretary General to the Security Council, Children and Armed Conflict, UN Doc. A/64/742-S/2010/181, 13 April 2010, para 179.

<sup>30</sup> UN Security Council Resolution 1379, UN Doc S/RES/1379 (20 November 2001), para. 16.

<sup>31</sup> UN Security Council Resolution 1882, UN Doc.S/RES/1882 (4 August 2009), para. 3.

<sup>32</sup> <http://www.apminebanconvention.org/implementation-support-unit/activities/support-to-individual-states-parties/>.

<sup>33</sup> Idem.

<sup>34</sup> With the exception of the Committee on the Elimination of Racial Discrimination. Note: this Committee does not ask specific questions in the list of issues but instead has a "list of themes".

already mentioned, is based on: the national report, a compilation of UN information, and a summary of stakeholders' information, all of which are public. Any UN member State can take part in the discussion with a State under review. The review begins with the presentation of the national report and is followed by an interactive dialogue, at the end of which the State under review presents its final observations. Then, an “outcome report” consisting of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State, is prepared by the “troika” with the involvement of the State. During the Working Group session which does not take place until 48 hours after the country review, the reviewed State has the opportunity to make preliminary comments on the recommendations, choosing to either accept or reject them. The report then has to be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under review can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allotted to member and observer States who may wish to express their opinion on the outcome of the review, and for NGOs to make general comments.

Under the APMBC and the CCM, reports are also public and are considered by Meetings of the States Parties.

The MRM procedure is public given that the Secretary General issues an annual Report on Children and Armed Conflict which includes two annexes naming (and shaming) parties who have committed “grave violations” against children. Annex I lists parties who are on the Security Council’s agenda, while Annex II lists parties who are not, but also raise concerns in relation to the protection of children in armed conflict. The lists include both States and non-State armed groups.

Some reporting systems<sup>35</sup> - such as the reporting mechanism of the Financial Action Task Force - are confidential in the sense that the report itself and all the information obtained or used during the review remain confidential. An executive summary is, however, included in a public annual report. In the same sense, GRETA addresses a questionnaire to States Parties, the responses to which it treats as confidential unless the Party involved requests publication.

## **6. Issues related to non-State armed groups**

An important feature of the MRM is that it allows for the monitoring of both States and non-State armed groups. Resolution 1612 recognizes that contacts with such groups may, within certain limits, be required for the implementation of the procedure. Paragraph 2(d) “stresses that any dialogue established under the framework of the monitoring and reporting mechanism by United Nations entities with non-State armed groups in order to ensure protection for and access to children must be conducted in the context of peace processes where they exist and the cooperation framework

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<sup>35</sup> The FATF is an intergovernmental body established in 1989. It consists of representatives of 34 States and 2 regional organizations. Its aim is to promote the implementation of a variety of measures for combating money laundering, terrorist financing and other related threats to the international financial system.

between the United Nations and the concerned Government". As already mentioned, once a party - whether a State or non-State actor - is included in the "list of shame", it must enter into dialogue with the United Nations in order to be de-listed. In the case of non-State actors, the consent of the relevant State for such a dialogue is required. Without it, non-State actors may remain listed indefinitely, regardless of whether or not they cease committing violations<sup>36</sup>. A number of non-State actors have also adopted action plans, whose implementation may be reviewed by the UN Security Council Working Group.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict addresses the conduct of non-State actors. However, only States may submit reports. They are, notably, requested to report, when applicable, on the number of children recruited and used in hostilities by armed groups in the State Party<sup>37</sup>.

The Inter-American Commission on Human Rights, which considers itself competent to apply IHL, has decided that when receiving and reviewing reports by States, it may monitor the conduct of armed groups, including their compliance with IHL<sup>38</sup>. This procedure, however, does not permit a dialogue with armed groups and does not provide for the enforcement of its findings with respect to non-State armed groups.

## II. FACT-FINDING

Fact-finding is a method of ascertaining facts on the basis of information gathered, compiled and analyzed from a range of sources, which serves to shed light on the circumstances, causes and consequences of an event (or events). The purpose of fact-finding is to ascertain controversial facts when there are mutual allegations and denials of violations. Fact-finding generally does not include pronouncements of an authoritative or binding nature on the legal consequences of the facts established.

Without purporting to be exhaustive, the following fact-finding mechanisms have been relied on to extrapolate the main features detailed further below:

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<sup>36</sup> Resolution 1612, UN Doc. S/RES/1612 (25 July 2005), para. 2 (d). Para 2(d) does not explicitly require consent, but a requirement for consent could be regarded as implied from the requirement that dialogue "be conducted in the context of peace processes where they exist and the cooperation framework between the UN and the concerned Government". See also Pascal Bongard and Jonathan Somer, on "Monitoring Armed Non-State Actor Compliance with Humanitarian Norms: A Look at International Mechanisms and the Geneva Call" (2011) Vol.93, No.883 International Review of the Red Cross, pp.673-706, at p.683.

<sup>37</sup> Revised Guidelines regarding initial reports to be submitted by States Parties under Article 8 § 1 of the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict, September 2007, para. 8(b).

<sup>38</sup> General Assembly of the Organization of American States, AG/RES.1043 (XX-0/90), 8 June 1990, ("Consequences of Acts of Violence Perpetrated by Irregular Armed Groups on the Enjoyment of Human Rights"), operative para 3. See eg Inter-American Commission on Human Rights, Third Report on the Situation of Human Rights in Colombia, OEA/Ser/L/V/II.102, Doc. 9 rev.1, at 72, section 6, paras 109-119.

- Enquiry Procedure of the Geneva Conventions<sup>39</sup>;
- International Humanitarian Fact-Finding Commission<sup>40</sup>;
- Fact-finding system under the Anti-Personnel Mine Ban Convention;
- Commissions of Inquiry established by the Human Rights Council or the Security Council.

### **Main features:**

#### **1. Scope**

Most fact-finding mechanisms deal with all allegations of violations of the relevant law by States or other parties to an armed conflict. Thus, Commissions of Inquiry established by the Human Rights Council deal with human rights violations and, in situations of armed conflict, with IHL as well<sup>41</sup>.

The International Humanitarian Fact-Finding Commission (IHFFC)<sup>42</sup> is competent to inquire into any facts alleged to be a grave breach as defined in the Geneva Conventions and Additional Protocol I, or other serious violations of the Geneva Conventions or Additional Protocol I. Other mechanisms, i.e. the enquiry procedure established under the 1949 Geneva Conventions provide for a fact-finding function to deal with any alleged violations of the Geneva Conventions<sup>43</sup>.

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<sup>39</sup> Very few attempts to use the formal enquiry mechanism have been made since the 1929 Convention was adopted, and none have resulted in the actual launching of the procedure. Resort to this mechanism was proposed on four occasions only: a) during the war between Italy and Ethiopia (1935-36), both sides addressed complaints of IHL violations to the ICRC, and the organization offered its services to help them set up an international commission of enquiry. The Parties never reached an agreement on the formation of such a commission; b) following the Katyn Massacre (1943), the German Red Cross asked the ICRC to participate in the exhumation of the victims and the Polish government in exile asked the ICRC to conduct an independent investigation. The ICRC answered that it would be ready to lend its assistance to establish an enquiry commission with the consent of all the Parties. The Soviet government never answered and the Polish government withdrew its request; c) during the Korean War (1952), the Democratic People's Republic of Korea accused the United States of America of using bacteriological weapons. The USA asked the ICRC to conduct an independent enquiry. The organization answered that it would set up an enquiry commission if all Parties would agree. The DPRK never reacted to this proposal; d) during the war between Israel and Arab States (1973-1974), the parties to the conflict alleged serious violations of IHL against each other and asked the ICRC to investigate. The ICRC proposed the constitution of two bipartite enquiry commissions, but no agreement between the Parties was reached on this procedure.

<sup>40</sup> The IHFFC has never been triggered.

<sup>41</sup> Several commissions of inquiry are explicitly mandated to investigate violations of international humanitarian law. This was the case with the "International Fact-Finding Mission to Investigate Violations of International Law, Including International Humanitarian and Human Rights Law, Resulting From the Israeli Attacks on the Flotilla of Ships Carrying Humanitarian Assistance", as constituted under HRC Res14/1 (2 June 2010). However, other commissions of inquiry are not mandated to investigate violations of international humanitarian law; rather, the Commission "declares" this competence by investigating both violations of human rights and international humanitarian law.

<sup>42</sup> The IHFFC was created in 1991 on the basis of Article 90 of Additional Protocol I. The IHFFC is composed of 15 individuals acting in their personal capacity.

<sup>43</sup> Enquiry procedure established by Common Article 52/53/132/149 Geneva Conventions I-IV.

Still others, such as the as the Anti-Personnel Mine Ban Convention, aim to facilitate and clarify compliance with the provisions of that Convention, including by means of fact-finding missions whose mandate is established in each case by an authorized body<sup>44</sup>.

## 2. Triggering

Some fact-finding systems require the prior consent of the State(s) concerned. Thus, the IHFFC requires the consent of the involved Parties, whether given in advance by means of formal declarations or granted for a specific situation on an *ad hoc* basis. The competence of the IHFFC is mandatory if the relevant States involved in an international armed conflict are Parties to the Protocol and have made a formal declaration accepting its competence for allegations of grave breaches or of other serious violations of IHL, and one of them requests its services<sup>45</sup>.

Under the enquiry procedure established by the four 1949 Geneva Conventions<sup>46</sup>, which is applicable in international armed conflicts only, an enquiry into an alleged violation of the Geneva Conventions may take place at the request of a party to the conflict. The wording used in the relevant articles makes it clear that the holding of the enquiry is compulsory once one of the belligerents has asked for it<sup>47</sup>.

Contrary to enquiries that may be requested by the parties to an international armed conflict, Commissions of Inquiry established within the UN system are put in place by resolutions adopted by the Human Rights Council or the UN Security Council. They do not depend on the specific or general consent of the State involved. It should, however, be noted that Commissions of Inquiry do not enter the territory of the State(s) concerned without their prior consent.

Article 8 of the Anti-Personnel Mine Ban Convention provides an elaborate process related to the “facilitation and clarification of compliance”. When a State Party submits a “request for clarification” of a question relating to compliance with the provisions of the Convention by another Party, through the UN Secretary General, and the requested State fails to provide the necessary information, a Meeting of the States Parties or a Special Meeting of the States Parties, as the case may be, may authorize a fact-finding mission and decide on its mandate by a majority of the States Parties present and voting.

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<sup>44</sup> A Meeting of States Parties or a Special Meeting of States Parties, APMBC, Article 8 § 7 and 8.

<sup>45</sup> Apart from consent, or a willingness of those who have made a formal declaration to activate it, there is no other formalized way of ensuring the actual functioning of the IHFFC. The IHFFC has never been triggered in practice, as it has never obtained the agreement of the Parties concerned in a specific situation. The IHFFC has stated its willingness to enquire into alleged violations of humanitarian law, including those arising in non-international armed conflicts, so long as all parties to the conflict agree.

<sup>46</sup> Common Article 52/53/132/149 Geneva Conventions I-IV.

<sup>47</sup> However, the details of the procedure are to be decided by the belligerents or, when the Parties do not reach agreement on the institution of the enquiry, by an umpire whom they should appoint. It is therefore the responsibility of the Parties to agree on the concrete realization of the procedure. As already mentioned, very few attempts to resort to the enquiry mechanism of the Geneva Conventions have been made, and none have resulted in the actual launching of the procedure.

### 3. Public or confidential nature

The IHFFC for example provides for a confidential procedure. Following an investigation, the IHFFC is meant to present its conclusions to the parties, together with any recommendation it might deem appropriate. The report is not disclosed publicly, unless all Parties to the conflict agree to do so<sup>48</sup>.

However, other fact-finding mechanisms, such as Commissions of Inquiry established by the Human Rights Council, or established under the “facilitation and clarification of compliance” procedure of the APMBC, provide for public procedures. A fact-finding mission established under Article 8 of the APMBC reports the results of its findings, through the UN Secretary General, to a Meeting of the States Parties or a Special Meeting of the States Parties. A Meeting of States Parties or a Special Meeting of States Parties may suggest to the States Parties concerned ways and means of further clarifying or resolving the matter under consideration, including the initiation of appropriate procedures in conformity with international law.<sup>49</sup>

### 4. Issues related to non-State armed groups

The IHFFC has stated its willingness to enquire into alleged violations of IHL, including those arising in non-international armed conflicts, so long as all parties to the conflict agree. Thus, if it were given a mandate in a non-international armed conflict it would deal with alleged violations of IHL committed by all parties to the conflict.

Commissions of Inquiry established by the Human Rights Council have been established in relation to situations of non-international armed conflict. In such cases they deal with alleged violations of IHL committed by all parties to the conflict.

## III. EARLY WARNING AND URGENT APPEAL

Early warning and urgent appeal functions are treated simultaneously given that they both essentially aim at preventing and responding to alleged violations of the law. These functions are in practice usually carried out by individual experts, committees of experts, or political bodies.

**Early warning** may be understood as the process of collecting and analyzing information in relation to situations or areas of crisis for the purpose of identifying and recommending strategic options for preventive measures that could help avert a possible (further) deterioration.

The goal of the **urgent appeal** function is to enable immediate action in response to allegations of violations of the law and to allow a rapid dialogue with the authorities concerned aimed at clarifying the situation and contributing to a change in behaviour.

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<sup>48</sup> Article 90 § 5 let. c Additional Protocol I.

<sup>49</sup> APMBC, Articles 8 § 17 and 8 § 19.



Mechanisms entrusted with an early warning function transmit urgent appeals/communications to the States concerned and submit reports to the body which established them. Thus, Special Procedures regularly submit reports to the Human Rights Council containing summaries of the concerns raised with States since the last reporting period, and the majority also submit annual reports to the UN General Assembly on their activities.

Without purporting to be exhaustive, the following early warning and urgent appeal mechanisms have been relied on to extrapolate the main features detailed further below:

- Special Procedures of the Human Rights Council (urgent appeal);
- Committee on the Elimination of Racial Discrimination (that monitors implementation of the Convention on the Elimination of All Forms of Racial Discrimination) (early warning and urgent appeal);
- Special Adviser of the UN Secretary General on the Prevention of Genocide and Mass Atrocities (early warning).

### **Main features:**

#### **1. Scope and timing**

Most early warning and urgent appeals mechanisms are mandated to act either with respect to human rights situations in specific countries or with respect to major rights-related themes. They may take action as and when a situation meriting action arises.

Special Procedures are usually mandated by the Human Rights Council and typically react by means of urgent appeals when a situation in need of rapid reaction comes, or is drawn, to their attention.

The Special Adviser of the UN Secretary General on the Prevention of Genocide and Mass Atrocities acts as a mechanism of early warning by bringing to the attention of the UN Secretary General, and through him to the UN Security Council, situations that could potentially result in genocide or other mass atrocities. He or she is appointed by the Secretary General and bases his or her work on a broad body of norms including: the Convention on the Prevention and Punishment of the Crime of Genocide; international human rights law; international humanitarian law; international criminal law, and relevant resolutions of the UN General Assembly, the UN Security Council, and the Human Rights Council, including the 2005 World Summit Outcome Document. The Committee on the Elimination of Racial Discrimination's early warning measures aim to prevent existing structural problems from escalating into violent conflicts. Its urgent procedures aim to respond to problems requiring immediate attention in order to avert or limit the scale or number of serious violations of the Convention on the Elimination of All Forms of Racial Discrimination<sup>50</sup>.

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<sup>50</sup> UN Doc/A/48/18, Annex III, § 8, let. a and b.

## 2. Triggering

The urgent appeal and early warning mechanisms are self-triggered.

In the case of the early warning procedure, information is needed to identify situations/areas at risk<sup>51</sup>. Thus, the Committee on the Elimination of Racial Discrimination may decide to consider a specific situation under its early warning mandate on the basis of information made available to it by, among others, UN agencies, human rights bodies, Special Procedures, regional human rights mechanisms, national human rights institutions, and NGOs. Once it decides on the measures to be taken<sup>52</sup>, these can be transmitted to a variety of actors, including, notably, the State concerned<sup>53</sup>.

With regard to urgent appeals, the Special Procedures of the Human Rights Council are in general entrusted by their mandate to receive information from various sources: Governments, intergovernmental organizations, NGOs, alleged victims of human rights abuses, and others. When they receive credible information that human rights violations that come within the scope of their mandate have occurred, some Special Rapporteurs intervene directly with Governments. An intervention can likewise relate to human rights violations that are ongoing, or that will very likely take

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<sup>51</sup> Under the early warning procedure of the Committee on the Elimination of Racial Discrimination, criteria for early warning measures could, for example, include the lack of an adequate legislative framework defining and criminalizing all forms of racial discrimination or lack of effective mechanisms, including lack of recourse procedures; the presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations; a significant and persistent pattern of racial discrimination evidenced in social and economic indicators, and significant flows of refugees or displaced persons, or encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources. (Guidelines for the Early Warning and Urgent Action Procedures, Annual Report A/62/18, Annexes, Chapter III, § 12 adopted at the 71st session of the Committee on the Elimination of Racial Discrimination in August 2007.)

<sup>52</sup> The measures may include: a request to the State Party concerned to urgently submit information on the situation considered under the early warning and urgent action procedure; to request the Secretariat to collect information from field presences of the UN Office of the High Commissioner of Human Rights and specialized agencies of the United Nations, national human rights institutions, and NGOs on the situation under consideration; to adopt a decision including the expression of specific concerns, along with recommendations for action; to offer to send to the State Party concerned one or more members of the Committee in order to facilitate the implementation of international standards, etc. (Guidelines for the Early Warning and Urgent Action Procedures, Annual Report A/62/18, Annexes, Chapter III, § 14, adopted at the 71st session of the Committee on the Elimination of Racial Discrimination in August 2007.)

<sup>53</sup> Recommendations can be addressed to the State Party concerned; the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination and Xenophobia and Related Intolerance; the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People; the Independent Expert on Minority Issues; other relevant human rights bodies or Special Procedures of the Human Rights Council; regional intergovernmental organizations and human rights mechanisms; the Human Rights Council; the Special Adviser of the Secretary General on the Prevention of Genocide and Mass Atrocities; and the UN Secretary General through the UN High Commissioner for Human Rights, together with a recommendation that the matter be brought to the attention of the UN Security Council. (Guidelines for the Early Warning and Urgent Action Procedures, Annual Report A/62/18, Annexes, Chapter III, § 14(c), adopted at the 71st session of the Committee on the Elimination of Racial Discrimination in August 2007.)

place if no action is taken. The decision to intervene is at the discretion of the Special Procedure mandate-holder<sup>54</sup>.

### 3. Public or confidential nature

The work of mechanisms entrusted with an early warning/urgent appeal function, the essential focus of which is awareness raising, implies public communication as a method of work. Thus, these mechanisms also regularly issue press releases on specific matters of grave concern.

## IV. COUNTRY VISITS

Some compliance systems provide for country visits by a body or an individual for the purpose of observing the implementation of the relevant treaty or body of law. This serves as a basis for dialogue with the relevant State interlocutors - and sometimes with non-State armed groups - on ways of improving their implementation. Country visits provide an opportunity to raise awareness at the national, regional and international levels of the specific problems under consideration and allow the formulation of recommendations where appropriate.

Without purporting to be exhaustive, the following mechanisms have been relied on to extrapolate the main features detailed further below:

- UN human rights treaty bodies<sup>55</sup>;
- Convention for the Protection of Cultural Property in the Event of Armed Conflict;
- Special Procedures of the Human Rights Council.

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<sup>54</sup> The intervention usually takes the form of a letter, transmitted through the UN Office of the High Commissioner for Human Rights to the Government concerned requesting information and comments on the allegations and that preventive or investigatory action be taken. Depending on the response received, the Special Procedure mandate-holder may decide to inquire further or make recommendations.

<sup>55</sup> Article 11(3) Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (when it enters into force on 5 May 2013); Article 33 International Convention for the Protection of All Persons from Enforced Disappearance; Article 6(2) Optional Protocol to the International Convention on the Rights of Persons with Disabilities; Article 20(3) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 11-16 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 8(2) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; Article 13(2) Optional Protocol on a Communication Procedure to the Convention on the Rights of the Child (not yet in force). In all these treaties, a country visit may only be undertaken where the Committee has decided to make an inquiry, and has invited the State Party to cooperate in the examination of information and to submit observations.

## **Main features:**

### **1. Scope**

Some UN human rights treaties authorize the relevant UN treaty body to identify situations in which an inquiry procedure related to treaty compliance - that could include a country visit - may be launched. This decision can be taken by the UN treaty body on the basis of reliable information indicating grave or systematic violations by a State Party of obligations set forth in the relevant treaty.

Special Procedures, whether individuals or working groups, may also carry out country visits. Country specific mandate holders aim to assess the situation of human rights as a whole at the national level. Thematic mandate holders generally aim to evaluate the specific institutional, legal, judicial or other structures in place set up to guarantee the right at issue, based on an evaluation of the situation on the ground. Special procedures do not usually engage in specific fact-finding during country visits, but strive to provide recommendations for improvement or reform of a more general, systemic, nature.

Pursuant to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, a Commissioner-General<sup>56</sup> is allowed to "deal with all matters referred to him in connexion with the application of the Convention in conjunction with the representative of the Party to which he is accredited and with the delegates concerned"<sup>57</sup>. In particular, he may undertake assessments and may also have recourse to the support of "an inspector of cultural property", who may be charged with a specific mission<sup>58</sup>.

### **2. Triggering**

Mechanisms entitled to undertake country visits need the consent of the State concerned.

As already mentioned, UN treaty bodies can initiate an inquiry on their own motion upon receipt of reliable information indicating grave or systematic violations by a State Party of any rights set forth in the relevant treaty. The treaties describe the relevant procedure, including the exchanges that are to take place between a committee and the State Party concerned. In agreement with the State Party, the inquiry may include a visit to its territory, but may only be undertaken with respect to States Parties who have recognized the competence of the relevant committee<sup>59</sup>.

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<sup>56</sup> He must be chosen among a list of international experts to be prepared by the Director-General of UNESCO and is accredited to States involved in an international armed conflict (Regulations, Article 1, 2(c), and 4 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict. (Hereafter "Regulations").

<sup>57</sup> Regulations, Article 6 § 1.

<sup>58</sup> Regulations, Article 7(1).

<sup>59</sup> States Parties may opt out of the competence of a committee at the time of ratification or accession, by means of a declaration. Moreover, any State Party having made a declaration accepting the competence of a UN treaty body to lead inquiries may, at any time, withdraw it by notification to the UN Secretary General.

Under the Special Procedures system, mandate holders send a letter to the relevant Government requesting to visit the country, and, if the Government agrees, an invitation to visit is extended. Some countries have issued standing invitations, which means that they are prepared to receive a visit from any Special Procedure mandate holder. Visits of mandate-holders may thus be accepted on a permanent or *ad hoc* basis.

Under the Convention for the Protection of Cultural Property in the Event of Armed Conflict, the Commissioner-General for Cultural Property accredited to a State involved in an international armed conflict shall, with the agreement of the Party to which he is accredited, have the right to order an investigation or to conduct it himself<sup>60</sup>.

### 3. Public or confidential nature

UN treaty body inquiries are to be conducted confidentially and the cooperation of the State Party is to be sought at all stages of the proceedings. After examining the findings, the relevant treaty body is to transmit them to the State Party concerned together with any comments and recommendations it may have. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the committee, submit its observations to the committee. After completion of the proceedings, the UN treaty body may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report<sup>61</sup>.

Country visits undertaken by Special Procedure mandate holders are public. A mission report, which includes findings and recommendations, is submitted to the Human Rights Council.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict provides for a confidential procedure. The Commissioner-General for Cultural Property is to draw up such reports as may be necessary on the application of the Convention and communicate them to the Parties concerned, as well as to their Protecting Powers. He or she is to also send copies to the Director-General of the United Nations Educational, Scientific and Cultural Organization, who may only make use of their technical contents<sup>62</sup>.

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<sup>60</sup> Regulations, Article 6 § 3.

<sup>61</sup> See, for example, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Article 11(7).

<sup>62</sup> Regulations, Article 6 § 5.

#### 4. Issues related to non-state armed groups

Some human rights mechanisms - such as the Special Procedures - issue recommendations directly or indirectly to non-State armed groups and ask all parties to an armed conflict to comply with their obligations or to cease violations<sup>63</sup>.

### V. NON-BINDING LEGAL OPINIONS

Some compliance systems provide for the issuance of non-binding or quasi-judicial opinions on matters of interpretation or application of the relevant treaty or body of law. Legal opinions of this type aim to assist States Parties to promote the further implementation of the relevant treaty or body of law<sup>64</sup>. For example, most of the human rights treaty bodies have adopted the practice of elaborating their views on the content of obligations assumed by States Parties in the form of “general comments”(or “general recommendations”)<sup>65</sup>.

Without purporting to be exhaustive, the mechanisms of the UN human rights treaty bodies have been relied on to extrapolate the main features detailed further below.

#### Main features:

##### 1. Scope

General comments (or recommendations) issued by UN human rights treaty bodies cover a wide range of subjects. They aim, first and foremost, to provide authoritative non-binding guidance on how specific treaty provisions should be interpreted. General comments thus aim to contribute to the better implementation of the relevant treaty by allowing a better understanding of its norms, also possibly enabling a more uniform application of the treaty’s provisions across different States. General comments can also address the scope of a State Party's obligations<sup>66</sup>, issues such as the effect of derogations<sup>67</sup>, and may examine specific measures that may be undertaken to enhance implementation of a convention. They also often provide guidance to States on how to better comply with their reporting obligations.

##### 2. Public or confidential nature

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<sup>63</sup> E.g., see: Report on the Democratic Republic of the Congo (UN Doc.A/HRC/10/18), para. 99, in Compilation of Special Procedures’ Recommendations by Country, 2009, p. 46 , at <http://www.ohchr.org/Documents/HRBodies/SP/compilation2009.pdf>.

<sup>64</sup> Through their general comments, human rights treaty bodies endeavor to distill the experience they have gained in the examination of States’ reports with respect to the legal and practical challenges faced in treaty implementation. General comments are intended to benefit all States Parties in order to assist and promote their better implementation of the relevant treaty.

<sup>65</sup> Two committees refer to these as “General Recommendations” (Committee on the Elimination of Discrimination against Women; Committee on the Elimination of Racial Discrimination).

<sup>66</sup> E.g., Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on States Parties.

<sup>67</sup> E.g., Human Rights Committee, General Comment 5 on Derogation of Rights (article 4) (31 July 1981) and General Comment 29 on States of Emergency (article 4) (31 August 2001).

The general comments of UN treaty bodies, which are public<sup>68</sup>, are directed at States Parties. During the process of formulation of general comments, consultations may take place with States Parties, UN specialized agencies, non-governmental organizations, academics, human rights treaty bodies and other relevant actors, allowing for broader input into the process of elaboration of a general comment.

## VI. GOOD OFFICES

Good offices are particular steps usually undertaken within procedures established for the purpose of the settlement of disputes. "Good offices" can take many forms, and may include facilitating contacts between the parties, the communication of conclusions to them on the points of fact, comments on the possibilities of a friendly settlement, the receipt of written and oral observations by the States concerned, etc.

Without purporting to be exhaustive, the following existing mechanisms have been relied on to extrapolate the main features detailed further below:

- International Humanitarian Fact-Finding Commission;
- Anti-Personnel Mine Ban Convention;
- Convention on Cluster Munitions.

### **Main features:**

#### **1. Scope**

Some mechanisms entrusted with a good offices function are mandated to also perform other, broader supervision and implementation functions within a specific treaty or body of law. For example, the IHFFC's primary role is fact-finding, but it is also competent to facilitate, through its good offices, the restoration of an attitude of respect for the Geneva Conventions and Additional Protocol I.

Other mechanisms are tasked with a more specific mandate. Within the elaborate process related to the "facilitation and clarification of compliance" established by article 8 of the Anti-Personnel Mine Ban Convention referred to above (as well as under the CCM), pending the convening of a Meeting of States Parties, any State Party concerned may request the UN Secretary General to exercise his good offices to facilitate the clarification requested<sup>69</sup>. Moreover, the Meeting of States Parties may also contribute to the settlement of the dispute by whatever means it deems appropriate, including offering its good offices (as well as calling upon the States Parties concerned to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure)<sup>70</sup>.

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<sup>68</sup> They are listed on their respective web pages. Moreover, the general comments of all human rights treaty bodies are compiled in documents available on the Internet (although these compilations are not always up to date): E.g., see: OHCHR, "Table of General Comments of all Treaty Bodies", at <http://www2.ohchr.org/english/bodies/treaty/comments.htm>.

<sup>69</sup> Article 8 § 4 APMBC and of the CCM.

<sup>70</sup> Article 10 § 2 APMBC and of the CCM.

## 2. Triggering

The IHFFC requires the consent of the parties concerned, whether given in advance by means of formal declarations or granted for a specific situation on an *ad hoc* basis. The competence of the IHFFC is therefore mandatory if the relevant States involved in an international armed conflict are Parties to the Protocol and have made a formal declaration accepting its competence, and one of them requests its services. When it has taken note of facts which seem to it to constitute grave breaches or serious violations, the Commission is invited to facilitate, through its good offices, the restoration of an attitude of respect for the provisions concerned. In providing such good offices, the Commission is to submit to the Parties concerned such recommendations as it deems appropriate.

Under the Anti-Personnel Mine Ban Convention, the procedure is triggered once any State Party concerned has requested the UN Secretary General to exercise his or her good offices to facilitate the clarification requested. Moreover, a Meeting of the States Parties may also contribute to the settlement of a dispute by offering its good offices.

## VII. STATE INQUIRIES

Some compliance systems in the weapons' realm provide that if one or more States Parties wish to clarify and seek to resolve questions relating to a matter of compliance with the provisions of a convention by another State Party, they may submit, through the UN Secretary General, a request for clarification of that matter to such State Party<sup>71</sup>. A State Party that receives a request for clarification is to provide, through the Secretary General, all information that would assist in clarifying the matter within 28 days to the requesting State Party<sup>72</sup>.

Without purporting to be exhaustive, the following mechanisms have been relied on to extrapolate the main features detailed further below:

- Anti-Personnel Mine Ban Convention;
- Convention on Cluster Munitions<sup>73</sup>.

### Main features:

#### 1. Scope

Both Conventions provide for a procedure aimed at clarifying and seeking to resolve (any) questions relating to a matter of compliance with the provisions of the respective Convention.

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<sup>71</sup> Such a request is to be accompanied by all appropriate information. Each State Party is to refrain from unfounded Requests for Clarification, care being taken to avoid abuse (Article 8 § 2 of the APMBC and of the CCM).

<sup>72</sup> *Idem*.

<sup>73</sup> The procedures under these Conventions have never been used.



## 2. Triggering

The procedures are mandatory once a State Party has submitted a request through the UN Secretary General to another State Party.

## 3. Public or confidential nature

In a first phase, the inquiry is dealt with through a bilateral exchange of views between the States involved and stays confidential<sup>74</sup>. However, if this does not produce a satisfactory result, the procedure could become public because the requesting State (or States) may submit the matter, through the UN Secretary General, to the next Meeting of States Parties. The Secretary General is to transmit the submission, accompanied by all appropriate information pertaining to the request for clarification, to all States Parties. All such information is to be presented to the requested State Party, which has the right to respond<sup>75</sup>.

## VIII. DISPUTE SETTLEMENT

In case of a dispute between States Parties over the interpretation or application of treaty provisions, some compliance systems provide for a specific dispute settlement process<sup>76</sup>.

Without purporting to be exhaustive, the following mechanisms have been relied on to extrapolate the main features detailed further below:

- Human rights treaty bodies;
- Anti-Personnel Mine Ban Convention;
- Convention on Cluster Munitions.

### Main features:

#### 1. Scope

Under the Anti-Personnel Mine Ban Convention and the Convention on Cluster Munitions, the States Parties concerned must consult and cooperate with each other to settle any dispute that may arise with regard to the application or interpretation of the respective Convention<sup>77</sup>. The Parties may decide to solicit the support of a Meeting of States Parties, which may contribute to the settlement of the dispute by whatever means it deems appropriate<sup>78</sup>. The procedure provided for in the

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<sup>74</sup> If the State requested to clarify a question gives a response through the UN Secretary General within 28 days which is considered satisfactory the procedure stops.

<sup>75</sup> Article 8 § 3 of the APMBC and of the CCM.

<sup>76</sup> These procedures have never been used.

<sup>77</sup> Article 10 § 1 of both Conventions, respectively.

<sup>78</sup> These means include: offering its good offices, calling upon the States Parties to a dispute to start the settlement procedure of their choice and recommending a time-limit for any agreed procedure

Convention on Cluster Munitions additionally includes possible referral to the International Court of Justice<sup>79</sup>.

Several UN human rights conventions<sup>80</sup> provide that any dispute between two or more States concerning the interpretation or application of the respective Convention, which cannot be settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within 6 months from such a request the Parties are unable to agree on the organization of arbitration, any one of them may refer the dispute to the International Court of Justice in conformity with its Statute.

## 2. Triggering

Under the UN human rights conventions providing for a dispute settlement procedure the procedure is mandatory unless a State Party has opted out of it by means of a declaration deposited at the time of signature or ratification. In this case, the relevant State is barred from triggering the procedure with respect to other States Parties as well. Under the Anti-Personnel Mine Ban Convention and the Convention on Cluster Munitions, the dispute settlement procedure is mandatory.

## 3. Public or confidential nature

The dispute settlement procedure under the relevant human rights treaties is public. The same is the case with the relevant procedure under the two weapons' conventions once the issue is brought to a Meeting of States Parties or is referred to the International Court of Justice.

## IX. EXAMINATION OF COMPLAINTS

International complaints procedures usually comprise both inter-State and individual complaints. This function exists in a number of legal frameworks, at both the universal and regional levels.

Certain UN human rights treaties include provisions allowing the relevant treaty body to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under the treaty (inter-State complaints)<sup>81</sup>. The detailed procedure starts with a three-month period during which the States

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(Articles 10 § 2 of both Conventions, respectively).

<sup>79</sup> Article 10 § 1.

<sup>80</sup> Convention on the Elimination of All Forms of Discrimination against Women (Article 29); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 30); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Article 92); International Convention for the Protection of All Persons from Enforced Disappearance (Article 42).

<sup>81</sup> International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention for the Protection of All Persons from Enforced Disappearance; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The inter-State complaints procedure has never been used.

involved communicate with each other, failing which the relevant treaty body may be involved, including through a good offices role. If the matter is not resolved to the satisfaction of the Parties concerned, a treaty body may also establish an *ad hoc* Conciliation Commission, whose procedure and work are likewise outlined in the relevant treaty<sup>82</sup>.

A number of treaty bodies are also competent to receive and consider communications from individuals claiming to be victims<sup>83</sup> of violations by a State Party of any of the rights set forth in the relevant treaty (individual complaints)<sup>84</sup>. Certain treaty bodies have established working groups to study individual complaints and make recommendations in this respect to the relevant committee. Most treaty bodies have also established follow-up procedures for individual complaints by designating special rapporteurs entitled to ascertain that States Parties are taking measures to give effect to the committee's views<sup>85</sup>. The relevant treaty body includes a summary of activities undertaken in relation to the examination of individual complaints in its annual reports to the UN.

The complaint mechanisms of the Special Procedures and of the Human Rights Council<sup>86</sup> also deal with individual complaints.

As already described, Special Procedures mechanisms usually intervene directly with governments on specific allegations of violations of human rights that come within their mandates. The process generally involves sending a letter to the State concerned requesting information and comments on allegation(s) of violations and, where necessary, asking that preventive or investigatory action be taken<sup>87</sup>. Occasionally, communications are also sent to intergovernmental organizations or non-State armed groups to ensure that there are no protection gaps. Special procedures also submit regular summary reports on their activity related to communications to the Human Rights Council.

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<sup>82</sup> Human Rights Committee; Committee on the Elimination of Racial Discrimination.

<sup>83</sup> Or by third parties on behalf of individuals, provided the latter have given their written consent, as well as in cases where a victim is incapable of giving consent.

<sup>84</sup> Human Rights Committee; Committee on the Elimination of Discrimination against Women; Committee against Torture; Committee on the Elimination of Racial Discrimination; Committee on the Rights of Persons with Disabilities; Committee on Enforced Disappearances. The Optional Protocol to the Convention on Economic, Social and Cultural Rights (enabling communications to be considered by the Committee on Economic, Social and Cultural Rights) has entered into force on 5 May 2013. The Convention on Migrant Workers also contains provision for allowing individual communications to be considered by the Committee on Migrant Workers; these provisions will become operative when 10 States Parties have made the necessary declaration.

<sup>85</sup> Special rapporteurs make recommendations for further action by the relevant committee as may be necessary, and regularly report to the committee on follow-up activities.

<sup>86</sup> Formerly known as the "1503 Procedure".

<sup>87</sup> Mandate-holders address their communications to concerned Governments through diplomatic channels, unless otherwise agreed between individual Governments and the UN Office of the High Commissioner for Human Rights.

Under the complaints procedure of the Human Rights Council<sup>88</sup>, individual complaints can be submitted by a person or a group of persons<sup>89</sup> claiming to be the victims of violations of human rights and fundamental freedoms.

### **Main features:**

#### **1. Scope**

There is no restriction on the subject-matter of an inter-State complaint under the UN human rights treaties. The relevant UN human rights treaty bodies are, likewise, competent to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the relevant treaty.

The focus of other mechanisms is broader. The complaint mechanism of the Special Procedures deals with specific allegations of human rights violations that come within their mandates, which is either thematic or country-specific. For its part, the complaints procedure of the Human Rights Council is established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances<sup>90</sup>.

#### **2. Triggering**

The relevant UN human rights treaties provide that a State Party must have made the necessary declaration that it recognizes the competence of a treaty body to receive and consider communications from individuals or group of individuals<sup>91</sup> (opt-in).

This is also the case with most of the UN treaty bodies entitled to deal with inter-State complaints<sup>92</sup>: the procedure applies only to States Parties who have made a declaration accepting the competence of the committee in this regard. However, the exception is the Convention on the Elimination of All Forms of Racial Discrimination,

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<sup>88</sup> Two distinct Working Groups have been established to consider individual complaints: the Working Group on Communications and the Working Group on Situations. An initial screening of individual complaints is undertaken by the Chairperson of the Working Group on Communications, together with the Secretariat, in order to weed out manifestly ill-founded and other inadmissible communications.

<sup>89</sup> In addition to a person or group of persons claiming to be the victims of violations of human rights and fundamental freedoms, a complaint may be submitted by any person or group of persons (including non-governmental organizations), acting in good faith in accordance with the principles of human rights, not resorting to political motivations and claiming to have direct and reliable knowledge of the violations concerned; (HRC Resolution 5/1, 18 June 2007), para 87(d).

<sup>90</sup> Pursuant to resolution 5/1 adopted by the Human Rights Council on 18 June 2007.

<sup>91</sup> Committee against Torture; Committee on the Elimination of Racial Discrimination; Committee on Enforced Disappearances; Committee on Migrant Workers; Committee on Enforced Disappearances; Committee on the Rights of Persons with Disabilities; Human Rights Committee; Committee on the Elimination of Discrimination against Women and Committee on Economic, Social and Cultural Rights (after 5 May 2013).

<sup>92</sup> Human Rights Committee; Committee against Torture; Committee on Migrant Workers; Committee on Enforced Disappearances.

pursuant to which no declarations are necessary to trigger the inter-State complaint procedure<sup>93</sup>.

Given that the complaints procedures of the Special Procedures and of the Human Rights Council were established by resolutions, States are not legally bound by their requests, but have undertaken a political commitment to deal with the communications.

### **3. Public or confidential**

The complaints procedures outlined above are public, with the exception of the complaints procedure of the Human Rights Council. However, even that procedure could ultimately result in a public finding, after other necessary steps have been undertaken and failed<sup>94</sup>.

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<sup>93</sup> Article 11.

<sup>94</sup> For an outline of the Human Rights Council's complaint procedure see: OHCHR, "Human Rights Council Complaint Procedure", at <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCCComplaintProcedureIndex.aspx>, and International Service for Human Rights: <http://www.ishr.ch/complaint-procedure>.

## ANNEX 5: Meeting of States

Most international treaties establish an intergovernmental "forum" - i.e. a Conference of States Parties, a Meeting of States Parties, a Meeting or a Conference of the High Contracting Parties, an Assembly of States Parties (hereafter, collectively, "Meeting of States"). Other inter-governmental bodies such as the Human Rights Council have been established by a UN General Assembly resolution<sup>95</sup>.

Without purporting to be exhaustive, the following instruments have been relied on to extrapolate the main features detailed further below:

- Rome Statute of the International Criminal Court (Assembly of States Parties);
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Conference of States Parties);
- Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects as amended on 21 December 2001 (Conference of High Contracting Parties);
- Anti-Personnel Mine Ban Convention (Meeting of States Parties);
- Convention on Cluster Munitions (Meeting of States Parties);
- Convention for the Protection of Cultural Property in the Event of Armed Conflict (Meeting of the High Contracting Parties);
- Human Rights Council;
- International Conference of the Red Cross and Red Crescent.

### Main features:

#### 1. Participants

The treaties listed above provide that each State Party shall have one representative in a Meeting of States (who may usually be accompanied by alternates and advisers). Moreover, certain conventions, such as the Anti-Personnel Mine Ban Convention and the Convention on Cluster Munitions provide that States not Parties to the Convention, as well as the United Nations, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross and relevant non-governmental organizations may also be invited to attend the Meetings as observers<sup>96</sup>.

#### 2. Possible structure and organs

The **Assembly of States Parties to the ICC** has a Bureau<sup>97</sup> that has two working groups<sup>98</sup>, and a Secretariat<sup>99</sup>. The Bureau assists the Assembly in the discharge of

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<sup>95</sup> UN GA Resolution 60/251, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/a.res.60.251_en.pdf).

<sup>96</sup> APMBC, Article 11 § 4; CCM, Article 11 § 3.

<sup>97</sup> Rome Statute of the International Criminal Court, Article 112 § 3 (a)-(c).

<sup>98</sup> [http://www.icc-cpi.int/en\\_menus/asp/assembly/asp\\_organigramme/Pages/asp\\_organigramme.aspx](http://www.icc-cpi.int/en_menus/asp/assembly/asp_organigramme/Pages/asp_organigramme.aspx).

its responsibilities and is composed of a President, two Vice-Presidents, and 18 members elected by the Assembly for three-year terms. It must have a representative character, taking into account, in particular, equitable geographical distribution and the adequate representation of the principal legal systems of the world.

Between two Meetings of States, certain systems provide for inter-sessional technical discussions. The **Anti-Personnel Mine Ban Convention**<sup>100</sup> and the **Convention on Cluster Munitions**<sup>101</sup> provide for annual meetings of informal inter-sessional Standing Committees to assist with treaty implementation. The inter-sessional program was established to ensure the systematic and effective implementation of the respective Conventions through a more regularized program of work<sup>102</sup>. The **Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects** provides for an annual Meeting of the States Parties to review the status and operation of the Convention and its Protocols, and to consider the work done by the Group of Governmental Experts (GGE) which was established in 2001<sup>103</sup>. In parallel, Amended Protocols II<sup>104</sup> and V<sup>105</sup> have their own implementation structure consisting of annual Conferences and meetings of experts to discuss specific problems of implementation.

The **Human Rights Council**, which has been described above, is made up of 47 States. It has established the UPR mechanism and also has an Advisory Committee, composed of 18 experts. The Committee serves as the Council's "think tank", providing it with expertise and advice on thematic human rights issues and also has a role to play in the Council's complaints procedure<sup>106</sup>.

The **International Conference of the Red Cross and Red Crescent** comprises a Chairman, Vice-Chairmen, Secretary General and other officers, a Bureau<sup>107</sup>, as well

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<sup>99</sup> The Secretariat operates under the full authority of the Assembly of States Parties and reports directly to the Assembly on matters concerning its activities. (Rule 37 of the Rules of Procedures of the Assembly of the States Parties of the ICC, ICC-ASP/1/3.)

<sup>100</sup> The Inter-sessional Work Program of the Anti-Personnel Mine Ban Convention was created by the States Parties at the First Meeting of the States Parties in May 1999. See Final Report of the First Meeting of the States Parties to the Anti-Personnel Mine Ban Convention (May 1999), (Final Report of the First Meeting of States Parties (APLC/MSP.1/1999/1); Annex IV, p. 26).

<sup>101</sup> At the Second Meeting of States Parties in Beirut, Lebanon, States Parties decided to convene annual informal inter-sessional meetings in Geneva.

<sup>102</sup> <http://www.apminebanconvention.org/intersessional-work-programme/intersessional-work-programme-background/>.

<sup>103</sup> The Meeting of States Parties also decides on the mandate of the GGE and its Meetings of military and technical experts (which may be to negotiate a new Protocol or study a specific problem or weapon), as well as on the number of sessions per year the GGE may need to fulfill its mandate.

<sup>104</sup> Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the CCW as amended on 3 May 1996).

<sup>105</sup> Protocol on Explosive Remnants of War (Protocol V to the CCW), 28 November 2003.

<sup>106</sup> Human Rights Council resolution 5/1 of 18 June 2007.

<sup>107</sup> The Bureau organizes the work of the International Conference. The Bureau is chaired by the Chairman of the Conference and its membership includes the Chairman of the Standing Commission, the heads of the delegations of the International Committee of the Red Cross and of the International Federation of Red Cross and Red Crescent Societies, the Chairmen of the plenary commissions and

as plenary commissions, which are subsidiary bodies of the Conference. Between two International Conferences, the Standing Commission is their trustee and carries out functions related to the organization of the next Conference. It is composed of nine members: five of whom are members of different National Societies, two of whom are representatives of the ICRC, and two of whom are representatives of the International Federation of Red Cross and Red Crescent Societies<sup>108</sup>.

### 3. Regular meetings

The Meetings of States under most of the treaties listed above take place annually<sup>109</sup>.

The Human Rights Council holds three regular sessions a year, for a total of at least ten weeks. They take place in March (four weeks), June (three weeks) and September (three weeks). The UPR takes place twice a year (a week in February immediately before the March session of the Council and a week in August).

At the International Conference of the Red Cross and Red Crescent, representatives of the components of the Movement meet representatives of the States Parties to the Geneva Conventions every four years<sup>110</sup>.

### 4. Special and *ad hoc* meetings

Some treaties provide for the option of special sessions (in addition to regular Meetings) on an "as need" basis.

Thus, the ICC Assembly of States Parties may, when circumstances require, hold special sessions. Except as otherwise specified by the ICC Statute, special sessions are to be convened by the Bureau on its own initiative or at the request of one third of the States Parties<sup>111</sup>. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction provides that a special session shall be convened when decided by the Conference the States Parties; when requested by the Executive Council; when requested by any Party and supported by one third of the Parties; or in order to undertake reviews of

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the Secretary General of the Conference. (Rules of Procedure of the International Red Cross and Red Crescent Movement, Rule 16, <http://www.icrc.org/eng/assets/files/other/rules-of-procedure-int-mvt-rcrc.pdf>.)

<sup>108</sup> Statutes of the International Red Cross and Red Crescent Movement, Articles 16 and 17.

<sup>109</sup> Rome Statute of the International Criminal Court, Article 112 § 6; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Article 8 § 11; Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996, Article 13 § 1; Anti-Personnel Mine Ban Convention, Article 11 § 2; Convention on Cluster Munitions, Article 11 § 2.

<sup>110</sup> Statutes of the International Red Cross and Red Crescent Movement, Articles 8 and 11. However, it should be borne in mind that Additional Protocol III to the Geneva Conventions was adopted at an International Conference that took place between two regular sessions.

<sup>111</sup> Rome Statute of the International Criminal Court, Article 112 § 6.



the operation of the Convention<sup>112</sup>. A special session shall be convened no later than 30 days after receipt of the request (by the Director-General of the Technical Secretariat). Under the Anti-Personnel Mine Ban Convention, the UN Secretary General shall convene a Special Meeting of the States Parties if one State requests the UN Secretary General to do so and at least a third of States Parties favour such a meeting<sup>113</sup>.

If a Member State requests it and obtains the support of a third of the membership, the Human Rights Council can decide at any time to hold a special session to address human rights violations and emergencies.

Other treaties provide only for ad hoc Meetings of States. Thus, the Convention for the Protection of Cultural Property in the Event of Armed Conflict stipulates that the Director of UNESCO may, with the approval of its Executive Board convene meetings of representatives of the HCP. He must convene such a meeting if at least one-fifth of the High Contracting Parties so request<sup>114</sup>.

## 5. Scope

There is no prescribed scope for Meetings of States. The majority of Meetings of States deal with a single treaty<sup>115</sup>. For its part, the Human Rights Council is responsible for the promotion and protection of all human rights around the world. The mandate of the International Conference of the Red Cross and Red Crescent is to examine and decide on humanitarian matters of common interest and any other related matter.

## 6. Tasks

There is likewise no "model" list of tasks that Meetings of States are meant to perform; rather, they are specifically laid out in the relevant instrument and depend on the subject-matter at hand. As a general rule Meetings of States are usually mandated to consider any questions, matters or issues within the scope of the relevant instrument and to make recommendations or take decisions on any questions, matters or issues related to the instrument, either on their own motion or when brought to their attention by authorized bodies. Below is a non-exhaustive list of tasks compiled from a range of instruments for illustrative purposes:

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<sup>112</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Article 8 § 12.

<sup>113</sup> Anti-Personnel Mine Ban Convention, Articles 11 § 3 and 8 § 5.

<sup>114</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict, Article 27 § 1.

<sup>115</sup> Rome Statute of the International Criminal Court; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction; Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects as amended on 21 December 2001; Anti-Personnel Mine Ban Convention; Convention on Cluster Munitions; Convention for the Protection of Cultural Property in the Event of Armed Conflict.

- Oversee the implementation of the treaty and review compliance with it<sup>116</sup>;
- Take the necessary measures to ensure compliance with the treaty and to redress and remedy any situations which contravene its provisions, including restriction or suspensions of State's Party' rights under the treaty<sup>117</sup>
- Promote universal respect for a body of law (all human rights and fundamental freedoms for all)<sup>118</sup>;
- Address situations of violations of a body of law and make recommendations thereon (human rights, including gross and systematic violations)<sup>119</sup>;
- Review the status and operation of the treaty and its protocols, and consider the work done by an expert body<sup>120</sup>;
- Consider matters pertaining to national implementation of the treaty, including matters arising from annual reports submitted by States<sup>121</sup>;
- Facilitate exchange of information among States<sup>122</sup>;
- Establish subsidiary organs as it finds necessary for the exercise of its functions in accordance with the treaty<sup>123</sup>;
- Prepare review conferences when the treaty provides for such conferences or undertake a revision of the relevant treaty<sup>124</sup>;
- Elect members of Executive and other bodies<sup>125</sup>;
- Approve the Rules of Procedure<sup>126</sup>;
- Adopt the budget<sup>127</sup>.

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<sup>116</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Article 8 § 20.

<sup>117</sup> Idem, Article 8 § 21 (k) and Article 12.

<sup>118</sup> Human Rights Council, Resolution 60/251 adopted by the UN General Assembly on 3 April 2006, operative para 2.

<sup>119</sup> Human Rights Council, Resolution 60/251, operative para 3.

<sup>120</sup> Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects as amended on 21 December 2001.

<sup>121</sup> Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the CCW), Article 13; Anti-Personnel Mine Ban Convention, Article 11; Protocol on Explosive Remnants of War (Protocol V to the CCW), Article 10; Convention on Cluster Munitions, Article 11.

<sup>122</sup> UN Convention against Corruption, Article 63.

<sup>123</sup> The Arms Trade Treaty, adopted 2 April 2013, by UNGA Resolution A/RES/67/234 B, Article 17(4)(f) (treaty not yet in force – to be opened for signature on 3 June 2013); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Article 8 § 21 (f).

<sup>124</sup> Convention for the Protection of Cultural Property in the Event of Armed Conflict, Article 27.

<sup>125</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Article 8 § 21 (c) and (d).

<sup>126</sup> Idem, Article 8 § 21 (e).

<sup>127</sup> Under the APMBC and the CCM the costs of the Meetings of States are borne by the States Parties and States not party to these Conventions participating therein, in accordance with the United Nations scale of assessment adjusted appropriately. Under the ICC Statute, the expenses of the Court and the Assembly of States Parties, including its Bureau and subsidiary bodies, is provided by: the assessed contributions made by States Parties and funds provided by the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the UN Security Council. Moreover, the Court may receive voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Assembly of States Parties.

