



Third Meeting of States on Strengthening Compliance with International Humanitarian Law (IHL)

World Meteorological Organization (WMO), 30 June – 1 July 2014, Geneva

Chairs' Conclusions

Context

In its Resolution 1, the 31st International Conference of the Red Cross and the Red Crescent held in 2011 stressed that greater compliance with international humanitarian law (IHL) is an indispensable prerequisite for improving the situation of victims of armed conflict.

The Conference invited the International Committee of the Red Cross (ICRC) to pursue further research, consultation and discussion in cooperation with States to identify and propose possible means to enhance and ensure the effectiveness of mechanisms of compliance with IHL and requested that a report, proposing a range of options and recommendations, be submitted to the 32nd International Conference. It also expressed its appreciation to the Government of Switzerland for its availability to facilitate a process to explore ways and means to strengthen the application of IHL and to reinforce dialogue on IHL issues among States, in cooperation with the ICRC.

Since the International Conference, 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 Meeting of States was convened in Geneva. The Meeting confirmed 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 general questions related to the application of IHL and, in particular, on improving respect for this body of law.

Following the first Meeting of States, 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. The discussions and consultations 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 discussions on the functions that such a system would need to have, regardless of what its eventual institutional structure might be. 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 frequently.

On 17 and 18 June 2013, a Second Meeting of States on Strengthening Compliance with IHL was held. The States acknowledged that IHL has only a limited number of mechanisms to ensure compliance with its norms. Furthermore, most delegations agreed that the initiative

should not focus on reforming the existing mechanisms, with the possible exception of the International Humanitarian Fact-Finding Commission (IHFFC).

An important part of the Meeting was devoted to examining whether inspiration can be found in procedures created in other compliance systems. Among the various functions discussed, the following received the broadest support:

- A periodic reporting system on national compliance with IHL;
- Regular thematic discussions on IHL issues, including on policy-related concerns common to States;
- A fact-finding mechanism.

It was furthermore felt that a regular Meeting of States should be established as a forum for dialogue on IHL which could also serve as an institutional anchor for other elements of an IHL compliance system.

With a view to devising the features of the above-mentioned possible elements of an IHL compliance system and in preparation for the Third Meeting of States of 30 June and 1 July 2014, Switzerland and the ICRC scheduled two Preparatory Discussions in the meantime, the first of which took place on 16-17 December 2013. At this round of discussion, the primary focus was reporting on national compliance with IHL and thematic discussions on IHL issues. It also served to examine, in overview form, the features and tasks of a regular Meeting of States. The aim of the second Preparatory Discussion of 3-4 April 2014 was, in turn, to enable an in-depth review of various aspects of the Meeting of States and a first preliminary discussion on a possible fact-finding function. It also served to revisit select outstanding questions related to reporting on national compliance with IHL and to thematic discussions, carried over from the December 2013 meeting.

The goal of the Third Meeting of States on Strengthening Compliance with IHL was to overview the main topics examined at both rounds of Preparatory Discussions, with a view to further clarifying and refining States' positions regarding these topics, including the possible identification of points on which views are converging, as well as those that will require further discussions going forward.

The increased attendance at the Third Meeting of States of June 2014 testifies to the growing awareness and interest of States about the issue of strengthening compliance with IHL and the importance they attach thereto.¹

Guiding Principles of the Process

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.

In addition to transparency, inclusivity and openness, the Swiss-ICRC initiative is premised on several key principles that were enunciated in the discussions and consultations held thus far and were reiterated and further refined at the Preparatory Discussions of December 2013 and April 2014. It was emphasized that the following principles should serve as the overall framework within which the search for possible solutions to the challenges of improving compliance with IHL should be pursued:

- The need for an IHL compliance system to be effective;
- The importance of avoiding politicization;

¹ See the annexed list of participating delegations at the Third Meeting of States of 30 June and 1 July 2014.

- The State-driven and consensus-based character of the process and the need for the consultations to be based on applicable principles of international law;
- 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, as defined in the Geneva Conventions of 1949 and their Additional Protocols (for the latter as may be applicable), and the parties to them are included;
- The need for the process to ensure universality, impartiality, and non-selectivity;
- The need for the process to be based on dialogue and cooperation.

It was reiterated by the facilitators at the Third Meeting of States of June 2014, as was the case in previous consultations, that the future IHL compliance system will not be established by an international treaty - and will therefore not be legally binding - and that the ongoing consultations are informal in nature. In this context, it was also recalled that the Chairs' Conclusions submitted by the Chairs in follow-up to the Preparatory Discussions and Meetings of States held within the framework of the ongoing consultations have no specific legal or other implications for the States participating therein. It was likewise recalled that these documents are the sole responsibility of the Chairs and do not intend to reflect agreed views by States.

General Comments by States

Delegations reiterated their concern about the lack of compliance with IHL, as well as the lack of effective compliance mechanisms. The participants generally agreed on the need to urgently address this issue and expressed their support for the initiative on strengthening compliance with IHL led by Switzerland and the ICRC. In that regard, the facilitators' efforts to conduct the consultations and discussions among States in a transparent, open and inclusive manner were appreciated.

The Background Document submitted for preparation of the delegations and guidance of the debate at the Third Meeting of States was thought to be a useful and adequate basis for discussion. Many delegations stressed that, in view of the emerging contours of a future IHL compliance system, the goal of the consultation process should be to enable the facilitators to submit concrete proposals to the 32nd International Conference for its consideration and appropriate action. A few delegations indicated that the issue of creating effective compliance mechanisms for IHL deserved more time. They reiterated that it is not within the mandate provided for by Resolution 1 of the 31st International Conference to take any decision with regard to the possible establishment of such a system.

It was recalled by States that a possible new IHL compliance system will not be created by means of a treaty and that it will thus be of a voluntary nature. The approach based on voluntariness was believed instrumental to ensure universal participation by States, as well as the effectiveness and sustainability of the future system.

It was unanimously underlined that non-politicization, impartiality, non-selectivity and constructive exchange (i.e. no "naming and shaming") were essential principles of a new IHL compliance system. Several delegations also considered it important for the new IHL compliance system to be in conformity with the principles of non-intervention and sovereignty.

The question was raised by a few delegations, in this context, whether a new IHL compliance system should be able to deal with specific urgent situations in a constructive and non-politicized manner, bearing in mind the need to promote respect for IHL in response

to current events. The majority of States, however, considered it important that the future system should operate on a non-contextual and non-conflict specific basis.

A number of delegations stressed that a new IHL compliance system should be aimed at improving compliance with IHL in all types of armed conflicts as defined in the Geneva Conventions of 1949 and their Additional Protocols. In that regard, it was highlighted that solutions should be found to address the issue of non-compliance with IHL by non-State parties to armed conflicts, bearing in mind that States will be the sole members of any future IHL compliance system and that States' ability to implement and comply with their IHL obligations will be the main focus of the Meeting of States.

In terms of the architecture of the future IHL compliance system, many participants were of the opinion that the Preparatory Discussions of December 2013 and April 2014, as well as the Third Meeting of States of June 2014, greatly contributed to the emergence of converging views on the possible elements of a future IHL compliance system. In that regard, a Meeting of States as a forum for dialogue and cooperation, which would in particular serve to consider the national compliance reports and to hold regular thematic discussions on IHL issues, was generally considered to be useful and essential for strengthening compliance with IHL, and thereby improving the protection of victims of armed conflicts. A few delegations considered it premature to identify converging views on the possible elements of a future IHL compliance system before the questions identified as overarching issues (see below) have been answered.

Overarching Issues

In previous exchanges, a few issues were raised that are of importance to moving the consultations forward and to the facilitators' ability to properly gauge the preference of States regarding certain aspects of the future IHL compliance system. They were further examined at the Third Meeting of States with a view to allowing for more clarity. They were grouped under the agenda item "Overarching Issues" so as to enable exchanges and thus avoid repetition in the subsequent discussions of the possible specific elements of a future IHL compliance system.

Reforming Existing IHL Mechanisms

An examination of existing IHL compliance mechanisms, i.e. the Protecting Power system, the Enquiry Procedure and the International Humanitarian Fact-Finding Commission (IHFFC), and of their inadequacies was the main focus of the Second Meeting of States in June 2013. There was agreement that the existing stand-alone mechanisms, which are unattached to a wider institutional framework, have proven to be ineffective in strengthening compliance with IHL. It was noted that they remain valid and at the disposal of States who may wish to resort to them in situations of international armed conflicts, but underlined that one of the drawbacks is that they may be utilized only in this type of armed conflict. Most States thus recognized that, with the exception of the IHFFC, the reform of the existing mechanisms would prove difficult in light of the contemporary challenges and nature of armed conflicts.

At the Preparatory Discussion of April 2014, a small number of delegations suggested that a more in-depth examination of the existing IHL mechanisms needs to take place before they are able to take part in discussions on the possible elements of a new IHL compliance system. Accordingly, that question was again submitted for discussion at the Third Meeting of States.

At the Third Meeting of States, a small number of States reiterated their view that the potential for reinforcing existing mechanisms has not yet been fully explored. In their view, further consultations should, as a matter of priority, concentrate on ways and means of strengthening the application of compliance mechanisms provided for by the Geneva Conventions of 1949 and Additional Protocol I, as well as enable an overview of mechanisms established under other bodies of international law,² before they could concur with the view that there is a need for new mechanisms. As noted in the Background Document prepared for the Third Meeting of States, and reiterated at the Meeting itself, the facilitators have repeatedly encouraged States to put forward specific proposals on how existing IHL mechanisms may be reformed, but no responses have been received.

Most States reaffirmed the conclusion of the Second Meeting of States of June 2013 according to which the existing mechanisms do not work effectively, and current endeavors aimed at identifying ways and means of strengthening compliance with IHL should not focus on how they could eventually be reformed, apart from the IHFFC. There was thus a broad convergence of views on the need for the current consultation process to further advance with respect to the possible development of an effective IHL compliance system. It was underlined that this approach does not exclude a discussion of specific proposals as to how existing mechanisms can be strengthened and that States can put forward such proposals at any time, including as a topic for discussion of a future Meeting of States.

A significant number of participants reiterated their interest in examining how the IHFFC could be integrated in a future IHL compliance system. It was acknowledged that the question of whether a fact-finding function should form part of a future IHL compliance system generated widely divergent views, with some States expressing caution in this regard. It was thus suggested that the topic of a fact-finding function, including whether and how the IHFFC could be reinforced, notably by establishing links with a future Meeting of States, could be addressed once the broader institutional framework is established.

Sequence of Discussions on the Elements of a Possible IHL Compliance System

The question of the sequence of the discussions on the elements of a new IHL compliance system was raised by several States in the Preparatory Discussion of April 2014 and submitted for discussion at the Third Meeting of States.

A minority of States reiterated a preference for sequencing the consultations by first discussing the possible compliance functions to be established and then the institutional framework, or vice-versa. In that regard, a few delegations suggested to clarify the foundational basis of a future IHL compliance system before a decision can be taken on the sequencing of the discussion on the possible elements of an IHL compliance system.

The Third Meeting of States, however, confirmed that most States agree with a middle course approach, consisting in discussing the institutional aspects of a future IHL compliance system and the compliance functions that will form part thereof in parallel. In the view of most States, the possible elements of an IHL compliance system are so closely intertwined that they cannot be discussed separately from each other. It was thus considered essential that States have the necessary understanding of all the relevant elements of the system and their mutual implications at every stage of the consultation.

² In this context, only the regular UN General Assembly resolution on the status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts was referred to.

Foundational Issues Related to the Establishment of a Meeting of States

Given that a future IHL compliance system will not be established by means of a legally binding instrument, because amendments to the 1949 Geneva Conventions or the adoption of a new treaty that would create such a system have not generated State support, the question of how to establish a Meeting of States as the central pillar of a future IHL compliance system was discussed at the Third Meeting of States. It was generally recognized that this issue is of importance for moving the process forward; a few States indicated that having more clarity on this question was necessary so as to be able to participate in consultations on the possible specific elements of a future IHL compliance system.

The two broad positions outlined in the Background Document were considered an appropriate basis for discussion and were further refined at the Third Meeting of States.

An important number of States reiterated the view that an International Conference of the Red Cross and Red Crescent - including the one to be held in 2015 - could establish a Meeting of States, given that a resolution adopted at the International Conference would be an adequate expression of the sovereign will of States to establish such a forum. It was understood that the relevant working modalities of the future Meeting of States could be elaborated and adopted once the Meeting of States is established, thus ensuring that the future IHL compliance system is fully State-driven.

Conversely, some delegations reiterated the view that the International Conference of the Red Cross and Red Crescent does not have sufficient legal authority to establish a Meeting of States. In their view, the Conference could, by resolution, only invite Switzerland to convene a conference³ for the purpose of establishing the future Meeting of States as the central pillar of an IHL compliance system. A number of States noted that, should this approach be adopted, the relevant conference could be held immediately after the 32nd International Conference of the Red Cross and Red Crescent to avoid unnecessarily delay.

Many States stressed that, regardless of which of the two approaches expressed above may eventually be agreed on, the outcome of the current consultation process should not fall into a "black hole". It was thus suggested that a resolution of the 32nd International Conference could endorse the principal points of convergence identified in the ongoing consultation process and set forth the general architecture of a possible future IHL compliance system.

In addition to the way in which a Meeting of States could be created, the question of how that forum should be called was addressed. Various proposals were made, such as: "Meeting of States on IHL", "Meeting of States on Compliance with IHL", "Meeting of States Parties to the Geneva Conventions", or "IHL Implementation Mechanism".

Both the foundational issues related to the establishment of a future Meeting of States, as well as the question of its denomination, were considered to necessitate further deliberations with a view to enabling more clarity on States' views.

³ In the view of some States, Switzerland could be invited in its capacity as the depository of the Geneva Conventions of 1949 to convene a conference of the contracting Parties to these instruments to take the decision on the establishment of a Meeting of States. In the view of other States, Switzerland could be invited in its capacity as a neutral State Party to the Geneva Conventions of 1949 to convene a conference of States to take the decision on the establishment of the future Meeting of States.

Elements of a Possible IHL Compliance System

At the Third Meeting of States, various aspects pertaining to the possible specific elements of a future IHL compliance system were reviewed. The aim was to identify the points on which States' views are converging, as well as questions that necessitate further discussion, so as to enable the facilitators to adequately gauge States' positions in this regard. A few States did not express their views on the different questions submitted for discussion in the Background Document due, mainly, to their positions on the overarching issues (see above). The Chairs' Conclusions do not purport to reflect the positions of States who did not participate in the discussion for this reason.

Periodic Reporting

The Third Meeting of States confirmed that States generally consider a reporting function to be an important tool for strengthening compliance with IHL and an essential element of any future IHL compliance system.

There was broad agreement among delegations that a reporting function provides an opportunity for self-assessment by States in the process of the preparation of a national report, and that it enables the sharing of a baseline of information on implementation measures taken at the domestic level. It would provide a basis for exchanges among States on their practical experiences with implementation of the law, the sharing of best practices, and the identification of capacity-building needs, as well as common challenges. Several States considered it essential that the reporting function is set up in a way that effectively serves the purpose of improving compliance with IHL.

There was furthermore a general agreement that reporting should not be cumbersome. It was suggested that this could be facilitated by ensuring that reports are prepared on the basis of a template or guidelines.

The Third Meeting of States confirmed the general agreement that a reporting function should encompass States' obligations under the universally ratified 1949 Geneva Conventions, and of their three Additional Protocols of 1977 and 2005, respectively, for States that are parties to the latter. Given the voluntary nature of a reporting function, most delegations furthermore shared the view that States should be free to report on practice which may relate to customary IHL or provisions of the Additional Protocols to which they are not a party. A few delegations reiterated their view that customary IHL should not form part of the reporting system. One delegation suggested excluding Additional Protocol II of 1977 from the scope of the reports.

A clear majority of States attached great importance to the public nature of reports, for example by making the reports available on a dedicated website. A few States were of the view that the publication of the reports should be left to the discretion of each State.

Types of Periodic Reports

There was a convergence of views on the usefulness of a baseline report in which States would outline how they implement IHL in their domestic legal system and within armed forces. Specific sections of the report would permit States to also report on challenges, good practices, lessons learned and capacity-building needs, provided they have identified such issues. This type of report, according to a proposal made by one delegation, was referred to as a "basic report".

State opinions diverged, however, on the question of whether and what type of subsequent reports should be envisaged.

Some delegations were of the view that States should only submit updates of the basic reports when necessary or after a certain interval, such as four to five years. Some of these delegations were of the opinion that such updates could also contain information on how IHL was applied in recent State practice.

Most States, on the other hand, considered that a different type of subsequent reports should be envisaged. Two broad positions emerged.

The first group of States supported a proposal which was referred to as “current developments reports”. According to that model, subsequent reports, submitted for example every two years, would be focused on recent developments in a State’s practice, including new case law of domestic courts or relevant government positions, as well as specific issues encountered in the implementation of IHL, including challenges that have been faced and/or resolved.

A second group of States was of the view that subsequent reports should rather have a thematic focus so as to permit in-depth discussion on crucial and contemporary problems in a focused manner. In their view, subsequent reports should focus on a set of IHL obligations that is of a particular concern with regard to the situation on the ground. This type of subsequent report was referred to as “thematic reports”.

Some delegations stressed that, independently of their preference for any type of report, States should report only on their own experience with implementation of IHL. A few States did not share this view.

Follow-up to Periodic Reports

There was a converging view that reports should not fall in a “black hole” and that procedures should be adopted for the Meeting of States to consider national compliance reports in a non-contextual and non-politicized manner. Different views were expressed on the exact modalities of such procedures, but there was a consensus that they should not aim at a review of State reports on an individual basis.

Most States were of the view that a single document should be prepared as a basis for discussion in a dedicated plenary session of the Meeting of States, which could thus consider the general salient issues arising out of the reports in a focused manner. They agreed that such a document should avoid reference to a single State or conflict and focus on issues that are widespread, important and topical.

Different options as regards the format of such a document were discussed. A small number of delegations preferred a non-analytical compilation of the main issues raised in the national reports, reflecting exclusively the information and language provided therein. A second group of States was of the view that such a document should also generally identify best practices, common challenges and capacity-building needs, but not make concrete recommendations. A third group of States supported the proposal made that a single document should, in addition to the elements outlined above, also include appropriate recommendations for improving compliance with IHL. The third option was referred to as “analytical reports” or “principal issues reports” and attracted the widest interest among the participants who were in favor of a single document.

A small number of States expressed doubts that such a document would be useful. In their view, States should simply be given the opportunity to briefly present their reports in a plenary session of the Meeting of States with a view to spurring bilateral or other informal exchanges on their experience, with a particular focus on capacity building.

Regarding the outcome of a discussion of the Meeting of States on periodic reports (independently of the modalities mentioned above), most States shared the view that some form of outcome text would be appropriate. There was broad agreement that it should not be a negotiated text, but take the form of a chair's summary or conclusions. Different views were expressed as to whether the outcome text should also highlight common challenges and best practices, or also be able to include appropriate non-contextual recommendations for strengthening compliance with IHL.

The Third Meeting of States confirmed that the preparation of a single document as the basis for a discussion of national reports and a possible outcome text may require specific expertise in IHL. The Meeting affirmed that most States do not support the establishment of an expert body, constituted either of independent experts or of government experts, for this purpose. A small number of States considered that it should be established and entrusted with such tasks. In the absence of such a body, a number of participants stated that the ICRC could possibly play an important role in this regard, provided that such a role would be compatible with the organization's mandate, operational activity and standard working modalities, in particular confidentiality.

Some States with a preference for non-analytical compilations as a basis for a discussion of national reports and the preparation of factual summaries of discussions in the Meeting of States were of the view that the Secretariat or the Bureau of the Meeting of States, possibly with the support of the ICRC, could be entrusted with the preparation of the relevant documents.

Effectiveness of Periodic Reporting

The Third Meeting of States reviewed possible measures designed to ensure that States will actually submit reports and effectively engage in the reporting process, given its legally non-binding nature. It was reiterated that, in order to ensure effectiveness, this function must be set up in a way that will encourage States to participate and that the publication of the national reports on a dedicated website would be an incentive for governments to engage with the reporting function. A few States reiterated their view that other measures may also be useful and compatible with the guiding principles of the ongoing consultation process, such as ensuring consultation with or technical assistance for States that may request support for the drafting of their national report. The involvement, at the domestic level, of National Committees for the Implementation of IHL, as well as of National Red Cross and Red Crescent Societies in the drafting of reports, was also seen as a possible measure to facilitate the effective participation of all States.

Thematic Discussions on IHL Issues

The Third Meeting of States largely confirmed the points outlined in the Background Document submitted to States ahead of the Meeting, in particular the general agreement among States that thematic discussions on IHL issues would be an important function of a new IHL compliance system and that specific sessions of the Meeting of States should be devoted to such discussions.

Furthermore, the Third Meeting of States confirmed that States largely agree with the purposes of this function outlined in the Background Document. In particular, the view was affirmed that thematic discussions should not aim at codification, or the creation of binding rules, but focus on IHL issues related to the application and interpretation of the law.

The view that linkages with the reporting system on national compliance with IHL should be established, including in the identification of topics of common concern, was also reaffirmed. In that regard, a proposal that States with relevant experience should be able to submit topical reports on the theme under examination, garnered significant support.

As regards the format of thematic discussions, many delegations suggested that a formula will need to be adopted so as to ensure non-politicization, non-selectivity, voluntariness and interactivity of the discussion. In order to ensure a structured dialogue, most States agreed that a background document circulated in advance and panel presentations of experts on the relevant topic would be necessary. A very small number of States were of the opinion that expert participation would not be useful.

States' views largely converged on possible criteria that could be taken into account in the selection of topics for thematic discussions. The following criteria gained the support of many States who expressed their view on the matter: a topic must not be of a merely theoretical interest, but relate to concrete problems observed in the implementation of IHL with a view to improving the situation of victims of armed conflict affected by large-scale suffering; a topic must be timely; and it must be relevant for a sufficient number of States so as to ensure the wide engagement of States in the discussion. It was pointed out that additional criteria may be considered. A small number of delegations suggested that, in addition, thematic discussions on IHL issues should also permit urgent humanitarian matters to be addressed. This view did, however, not generate significant support among the participating delegations.

Three broad positions emerged in relation to the procedure for the selection of topics for thematic discussions. One delegation was of the opinion that topics should only be adopted by the International Conference of the Red Cross and Red Crescent, which is held quadrennially. According to a second position, supported by some States, topics should be identified by the Bureau of the Meeting of States on the basis of previous consultations with all States in order to ensure that they are acceptable to a sufficient number of States. In the view of a third group of States, the plenary of a Meeting of States should be able to select topics for thematic discussion, either by a majority decision or by consensus. Most States in the latter group agreed that such a decision could be informed by a previous recommendation of the Bureau to ensure wide support by States.

The entities that could propose topics for thematic discussions mentioned in the Background Document⁴ submitted ahead of the Third Meeting of States were largely confirmed to adequately reflect the views of States.

The Third Meeting of States confirmed that States consider that an outcome document of a thematic discussion would be useful and that, at least, a factual report on such discussions should be produced and made public. It was understood that its precise format can be decided on when the modalities of thematic discussions have been established.

⁴ A State, a group of States, the Bureau of the Meeting of States, the ICRC and the International Conference (the latter depending on the modalities of its relationship with the Meeting of States). One delegation suggested that National Red Cross and Red Crescent Societies may also be considered.

Fact-Finding

Due to time constraints, the first discussion on a fact-finding mechanism, which took place at the Preparatory Discussion of April 2014, was not followed up on at the Third Meeting of States. States' views on this topic that were expressed under other agenda items, in particular under "General Comments by States" and "Reforming Existing Mechanisms", are reflected above.

Meeting of States

The discussion on a Meeting of States as the central pillar of a future IHL compliance system confirmed that the Background Document prepared for the Third Meeting adequately reflected the state of consultations until that point. Certain precisions were made and additional issues were raised, which are outlined below for the purpose of further refining a common understanding of the possible features and structure of a Meeting of States.

The Third Meeting of States confirmed that States generally agree that a Meeting of States as the central pillar of a future IHL compliance system would be a useful tool for strengthening compliance with IHL and should be established.

There was broad agreement that the general purposes of the Meeting of States should be:

- To serve as a dedicated forum for States to discuss issues of common concern and to perform a variety of functions related to implementation of and compliance with IHL with a view to strengthening respect for this body of law.
- To serve as an institutional anchor for the other elements of the future IHL compliance system.

With regard to the first point, it was highlighted that the term "variety of functions" is understood as relating to those functions that States will eventually assign to the Meeting of States and that are being researched within the ongoing consultation process.

The Third Meeting of States confirmed that States largely agree that the future Meeting of States should not be competent to develop new law or to adopt amendments to existing IHL treaties. It should rather aim at providing a platform for States to exchange views, in a flexible and voluntary framework and with a focus on dialogue and cooperation, on issues related to compliance with IHL, as well as on their practical experiences in IHL implementation, the sharing of best practices, the identification of their possible capacity building needs, as well as the identification of challenges in IHL implementation.

Organs of the Meeting of States

It was reiterated that the structure of a Meeting of States should be as lean and as efficient as possible, with a view to keeping down the costs and to avoiding cumbersome procedures. The structure should be limited to what is necessary to perform the possible functions of the Meeting of States. The question of how and whether to ensure that States have the flexibility to readjust the structure if needs become apparent over time was identified as an issue for further discussion.

It was confirmed that plenary sessions should form the principal body of the Meeting of States. The procedural tasks that should be performed in plenary, as outlined in the

Background Document for the Third Meeting of States,⁵ were generally considered adequate; a few delegations questioned the need for such tasks to be performed, in particular, the possible need for a Meeting of States to establish subsidiary bodies.

There was general acknowledgment that plenary sessions should serve to consider national reports on compliance with IHL, and to hold thematic discussions on IHL issues, in accordance with the modalities that may eventually be elaborated for both functions, as discussed above. Many delegations reiterated the view expressed in previous discussions according to which States should be able to decide in plenary sessions on actions, as may be necessary, with respect to general matters concerning compliance with and implementation of IHL, given that such a competence is provided for in many other legal frameworks. Some States expressed concern in that regard. According to their position, the Meeting of States should not have any decision-making authority, but merely serve to perform the functions that will eventually be assigned to that body by States.

The idea of entrusting a Chair with the performance of the relevant procedural and organizational tasks was confirmed to correspond to the view of most States. Certain issues, in particular relating to the election of the Chair, were identified as questions for further discussion. Equitable geographic representation was mentioned by delegations as an important criterion to be taken into account in that regard.

The discussion showed that States broadly recognize that it would be useful for a future Meeting of States to have a Bureau; a few delegations stressed that safeguards are required to ensure that the Bureau will serve the interest of all participating States. There was furthermore wide agreement on the range of issues identified for further discussion: in particular the working modalities of the Bureau, whether it should also meet in between sessions of the Meeting of States, how members should be elected and the length of their terms. As regards the composition of the Bureau, a proposal was submitted that provides for a permanent seat on the Bureau to be attributed to Switzerland, possibly the role of the Chair, with five additional seats being attributed to other States on the basis of equitable geographic representation. The positions with regard to the various aspects pertaining to the Bureau reflected in the Background Paper for the Third Meeting of States were reiterated.

Many States reiterated their support for establishing a Secretariat to provide administrative and logistical support to the Meeting of States as well as to the Bureau and Chair. With a view to keeping the size and structure of the Secretariat as small and cost-effective as possible, it was suggested that a neutral State such as Switzerland, or the ICRC, could be mandated to host the Secretariat. It was also suggested that the secretarial functions could be entrusted to States serving on the Bureau on a rotating basis. The range of issues related to the Secretariat, outlined in the Background Document for the Third Meeting as issues for further discussion, were considered adequate, with particular attention being paid to financial implications in further consultations.

⁵ The following procedural tasks were outlined in the Background Document prepared for the Third Meeting of States of June 2014:

- Adopt the Rules of Procedure for the Meeting of States;
- Adopt the budget of the Meeting of States;
- Elect officers, such as the Chair, Vice-Chairs and the members of the Bureau;
- Establish subsidiary bodies, as may be necessary, and elect the members of such bodies;
- Oversee and consider the work done by a subsidiary body or another organ, such as the Secretariat.

Further Issues Linked to the Meeting of States

With regard to the membership of the Meeting of States, many States shared the view that it should be open to all States Parties to the Geneva Conventions of 1949. In the view of some States, that question would nonetheless require further deliberation.

As in previous consultation meetings, the issue of the participation of observers prompted different views and the Background Document was considered to adequately reflect them. Many States reiterated their support for the participation of actors other than States, including international and regional organizations (in particular those that have a direct responsibility, role or influence on enhancing compliance with IHL), the components of the International Red Cross and Red Crescent Movement (other than the ICRC), and civil society organizations, in accordance with modalities that need to be defined going forward. Different possible roles for observers were mentioned, depending on the entities involved, including participation in the public sessions of the Meeting of States, the submission of written statements in relation to thematic discussions on IHL issues, and the organization of side-events. Some delegations reiterated their concern in this regard, pointing out that the participation of observers, in particular of civil society actors, may carry the risk of politicizing the Meeting of States. Most States expressed an interest to further discuss the issue of whether and how the participation of observers should be enabled.

Facilitators' Remarks and Next Steps

Two years after the current initiative was officially launched, research and consultations with States on ways and means of strengthening compliance with IHL can be said to have made significant progress. Acknowledging that not all States have expressed their views on some of the specific topics due, mainly, to their positions on the overarching issues, converging views appear to be emerging on the contours of a possible future IHL compliance system. The Third Meeting of States enabled the identification of points on which States' views are coming together, points on which States' opinions continue to differ, and questions that require further discussions.

On the understanding that no agreement has been reached on any of the issues that were discussed within the ongoing consultation process, and acknowledging that it is not of a decision-making nature, discussions at the Third Meeting of States indicated that most States are of the view that a Meeting of States, as the central pillar of a future IHL compliance system, should be established, and serve to consider national compliance reports in a non-contextual manner and to hold thematic discussions on IHL issues. While no convergence of views emerged in relation to a possible fact-finding function, many States believe it should be part of a future IHL compliance system.

The principal questions related to the reporting function and to thematic discussions on IHL issues that needed to be presented in order to enable the facilitators to properly understand States' views have been discussed and examined to an important extent. A number of related issues continue to generate different views among States, in particular questions on the type of national compliance reports and the modalities for follow-up procedures of a reporting function, as well as the question of the procedure for the selection of topics for thematic discussions on IHL issues and guidelines relating to the format of the latter. The precise modalities relating to these issues could possibly be elaborated and decided upon once the broader institutional framework of a regular Meeting of States has been established. It is submitted that the discussions and consultations held so far may constitute the basis for future decisions, given that options generating broad support have emerged during the consultation process.

As regards a possible fact-finding function, it was recognized that the issue as such generates divergent opinions. It is submitted that the question of whether a fact-finding mechanism should form part of a future IHL compliance system and its possible modalities should be further examined once more clarity has been achieved on the broader institutional framework.

A number of issues have not yet been addressed in sufficient depth, mainly relating to the establishment and institutional structure of the Meeting of States. They include: the foundational issues related to the establishment of a Meeting of States, as well as its possible relationship with the International Conference of the Red Cross and Red Crescent; the possible denomination of the future Meeting of States; the periodicity of the Meeting of States in conjunction with the periodicity of the reporting function and of thematic discussions on IHL issues; the set-up, tasks and other aspects related to the organs of the Meeting of States; the role that the ICRC will have in a future Meeting of States; the membership of the Meeting of States; the participation of observers; and resourcing of the Meeting of States, with a particular focus on ensuring that all States are able to participate therein.

Fourth Meeting of States (2015) and Next Preparatory Discussion

The ongoing consultation process based on resolution 1 of the 31st International Conference of the Red Cross and Red Crescent will be concluded next year. The Fourth Meeting of States on Strengthening Compliance with IHL will thus be the last to be held within the Swiss-ICRC facilitated initiative. For the reasons outlined below, it is scheduled to take place in late spring 2015.

The Fourth Meeting of States will aim at taking stock of the results of the consultation process since the 31st International Conference of 2011. It will provide a further important opportunity for States to indicate their views on the different subjects that have been examined within the consultation process, and that need to be reflected in the concluding report on the process.

It is the hope of the facilitators that all questions relevant for the drafting of a concluding report on the consultation process will have been addressed in sufficient depth by the Fourth Meeting of States. The different positions that may continue to persist in relation to various issues will be faithfully reflected in the concluding report.

In order to prepare the Fourth Meeting of States on Strengthening Compliance with IHL, a Preparatory Discussion open to all States is scheduled to take place on 1-2 December 2014. It will mainly serve to discuss the questions noted above that have not yet been fully addressed, so as to enable States to further clarify their views and to allow the facilitators to properly capture them. States can, of course, suggest further topics that may, in their view, require more examination.

Report to the 32nd International Conference in 2015

Resolution 1 of the 31st International Conference of the Red Cross and Red Crescent requests the ICRC to submit a report to the 32nd International Conference on the consultation process that has been undertaken. The report, which will be prepared in conjunction with Switzerland as the co-facilitator of the process, will be the sole responsibility of the ICRC. As mentioned above, it will reflect the discussions held, options for strengthening compliance with IHL identified in consultation with States, and make recommendations. The report will not represent agreed views among States or have any

legal or other implications for participating States. It is, however, hoped that by indicating the relevant points of convergence of States' views, as well as points of divergence, it may provide the backdrop for a possible decision on the establishment of an IHL compliance system. The facilitators will aim to circulate the concluding report to all members of the International Conference in June 2015.

Resolution of the 32nd International Conference in 2015

In accordance with Resolution 1 of the 31st International Conference, the 32nd International Conference in 2015 is to consider the concluding report of the consultation process and take appropriate action on that basis.⁶ If there is support by States to take the outcome of the consultation process forward, the concluding report may serve to inform a possible resolution by the 32nd International Conference, whatever approach may be adopted with respect to the foundational issues related to the establishment of a Meeting of States addressed above. In this context it should be recalled that the relevant resolution will be negotiated in accordance with the usual procedures of an International Conference and not take place within the current consultation process, for lack of a mandate in that regard.

By way of reminder, in accordance with Statutory deadlines, draft resolutions need to be circulated to the members of the International Conference 45 days prior to its start. A draft resolution relating to the issue of strengthening compliance with IHL would thus likely need to be ready by mid-October 2015. It is submitted that it would be helpful if negotiations on the possible elements of such a resolution were to start sufficiently ahead of time, i.e. in the summer of 2015. The ICRC, which usually prepares resolutions on IHL for the International Conference, would aim to present the initial elements of a possible resolution by the end of June 2015 so as to enable the timely start of negotiations on the text and allow for the necessary consultations among States and other members of the International Conference.

Switzerland and the ICRC reiterate their availability for bilateral talks with interested States at all times and will continue to inform the International Red Cross and Red Crescent Movement, National Committees for the Implementation of IHL, as well as international and regional organizations, and others, on the development of the initiative.

Proposals from States with regard to both the procedural and substantive aspects of the initiative being facilitated by Switzerland and the ICRC likewise remain most welcome. Please send any proposals, views or comments you may want to share to: dv-badih@eda.admin.ch.

It is reiterated that these Chairs' Conclusions are the sole responsibility of the Chairs and do not intend to represent the agreed views of States at the Third Meeting of States held on 30 June and 1 July 2014.

⁶ It was highlighted that the International Conference takes its decisions in the form of resolutions (Article 10(5) of the Statutes of the International Red Cross and Red Crescent Movement). "Appropriate action" of the International Conference may thus consist in adopting a resolution on the issues being outlined in the report that will be submitted.

Annex: Participating Delegations

1. Afghanistan
2. Albania
3. Algeria
4. Angola
5. Argentina
6. Australia
7. Austria
8. Azerbaijan
9. Bangladesh
10. Belgium
11. Botswana
12. Brazil
13. Bulgaria
14. Canada*
15. Chile
16. China
17. Colombia
18. Costa Rica
19. Côte d'Ivoire
20. Croatia
21. Cuba
22. Czech Republic
23. Democratic Republic of the Congo
24. Denmark
25. Djibouti
26. Ecuador
27. Egypt
28. Ethiopia
29. European Union
30. Finland
31. France
32. Georgia
33. Germany
34. Ghana
35. Greece
36. Guatemala
37. Guinea
38. Holy See
39. Hungary
40. India
41. Indonesia
42. Iran
43. Ireland
44. Israel*
45. Italy
46. Japan
47. Jordan
48. Kenya
49. Korea
50. Kuwait
51. Kyrgyzstan
52. Latvia
53. Lebanon
54. Liechtenstein
55. Lithuania
56. Luxembourg
57. Madagascar
58. Malaysia
59. Mexico
60. Monaco
61. Morocco
62. Myanmar
63. Netherlands
64. Nicaragua
65. Nigeria
66. Norway
67. Pakistan
68. Paraguay
69. Peru
70. Philippines
71. Poland
72. Portugal
73. Republic of Moldova
74. Romania
75. Russian Federation
76. Rwanda
77. Saudi Arabia
78. Senegal
79. Serbia
80. Sierra Leone
81. Singapore
82. Slovakia
83. Slovenia
84. South Africa
85. Spain
86. State of Palestine*
87. Suriname
88. Sweden
89. Thailand
90. Tunisia
91. Turkey
92. Ukraine
93. United Arab Emirates
94. United Kingdom
95. United States of America*
96. Uruguay
97. Venezuela
98. Vietnam
99. Yemen

* These delegations sent notes to the chairs of the Meeting recalling, in the context of this Meeting, the positions expressed in their communications addressed to the Depository of the four Geneva Conventions and circulated by the Depository by Notifications GEN 3/14 of 21 May 2014 and GEN 4/14 of 27 June 2014.