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Strengthening compliance with international humanitarian law

Concluding report

**Document prepared by the International Committee of the Red Cross
in conjunction with
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Geneva, October 2015

Concluding report

Strengthening compliance with international humanitarian law

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EXECUTIVE SUMMARY

This Concluding Report is submitted to the 32nd International Conference of the Red Cross and Red Crescent (hereafter International Conference) in fulfillment of the mandate provided for in Resolution 1 of the 31st International Conference, which was entitled “Strengthening legal protection for victims of armed conflicts.” In Resolution 1, the 31st International Conference recognized the importance of “exploring ways of enhancing and ensuring the effectiveness of mechanisms of compliance with international humanitarian law”¹ (IHL), and invited the International Committee of the Red Cross (ICRC) to engage in consultations with States in order to identify and propose possible means of achieving that goal.² It also expressed its appreciation to the Government of Switzerland for its readiness “to explore and identify concrete ways and means to strengthen the application of with international humanitarian law and reinforce dialogue on with international humanitarian law issues among States and other interested actors, in cooperation with the ICRC.”³

Following the 31st International Conference, Switzerland and the ICRC undertook a joint initiative to facilitate implementation of the relevant provisions of Resolution 1 so as not to duplicate their respective efforts.

The initiative was effectively launched on 13 July 2012 when a first Meeting of States was convened in Geneva. A further eight meetings, which included Preparatory Discussions, were subsequently held, with a final, fourth Meeting of States within the joint initiative taking place in Geneva on 23 and 24 April 2015. In total, over 140 States participated in the consultation meetings.

The purpose of the present Report is to provide an overview of the consultation process and of the questions examined. The Report also:

- outlines the main elements of a possible new IHL compliance system that has emerged in the course of the joint Swiss-ICRC initiative, the central component of which would be a regular Meeting of States, with certain functions and tasks attached to it;
- reflects the issues on which the views of States may be said to be converging;
- reflects the topics on which States’ views remained divergent, and includes relevant options;
- presents the facilitators’ recommendations in regard to the issues discussed.

The process mandated by the 31st International Conference and facilitated by the ICRC and Switzerland was consultative in character and not a negotiation. The Concluding Report is thus the sole responsibility of the facilitators and does not purport to express the agreed views of States. As stipulated in Resolution 1, the options and recommendations set out in the Report are intended for the consideration of the 32nd International Conference, and its appropriate action,⁴ and may serve to inform a relevant resolution of the International Conference, but do not prejudice its outcome.

Each of the nine sections of the Report is dedicated to a particular subject, only some of which are highlighted below:

Section 3 outlines the principles that guided the consultation process and must, in the view of States, continue to serve as the framework for establishing a new IHL compliance system. Among them is the voluntary, i.e. non-legally binding, nature of the Meeting of States, its functions and tasks, and the need for it to be effective and operate in a non-politicized manner.

¹ Para. 5 of Res. 1 of the 31st International Conference.

² Para. 6 of Res. 1 of the 31st International Conference.

³ Para. 7 of Res. 1 of the 31st International Conference.

⁴ Para. 8 of Res. 1 of the 31st International Conference.

Section 4 overviews the consultation process itself. By briefly recalling the main points of the respective Meetings held, it aims to permit an understanding of the evolution of the discussions as a whole, and of the richness and specificity of the deliberations that took place.

Section 5 identifies the possible elements of the IHL compliance system. This, as already noted, includes a regular Meeting of States as the centrepiece, and the functions of: 1) national reporting on compliance with IHL, and 2) thematic discussions on IHL issues that would be linked to it. The section examines points of a general nature on which views may be said to have broadly converged, and certain modalities of both functions that would need to be elaborated by the Meeting of States.

Section 6 is devoted to a review of the main features of the Meeting of States. These include: its denomination, periodicity, participation, plenary sessions, institutional structure, and resourcing. Similar to the other parts of the Concluding Report, the relevant positions and broad recommendations on each of these issues are provided.

Section 7 deals with the ways in which a future Meeting of States may be created. There was clear agreement in the consultation process that the possible establishment of an IHL compliance system will not involve amendments to the 1949 Geneva Conventions or the adoption of a new treaty for this purpose. The section summarizes the specific positions that emerged with respect to the procedure by which a voluntary Meeting of States could be set up. It also examines the future relationship between the International Conference and the Meeting of States, and outlines certain principles that may underpin it.

Section 8 recalls the next steps in the lead-up to the 32nd International Conference and the adoption of a relevant resolution related to the issues outlined in this Concluding Report. It indicates that, in accordance with proposals put forward in the consultation process, an effort will be made to provide as much time as feasible for the necessary consultations on the draft resolution among the members of the International Conference.

Section 9 provides the facilitators' closing remarks. It notes that the consultation process brought into clear focus an important, existing gap, which is the absence of a dedicated platform for regular dialogue and cooperation among States on IHL issues. The facilitators submit that the International Conference should seize the historical opportunity that is being presented to establish such a forum and thereby contribute to strengthening respect for IHL, which is the common goal of all members of the International Conference.

Concluding report

Strengthening compliance with international humanitarian law

1. Introduction

International humanitarian law (IHL) is a set of rules that seeks to alleviate the effects of armed conflict. States and other relevant actors generally agree that regardless of the evolution in the nature of armed conflicts, IHL remains an appropriate international legal framework for regulating the conduct of parties to such conflicts and providing protection for the persons affected.

The need to improve compliance with IHL has nevertheless been – and remains – an abiding challenge. It seems obvious, but must be recalled, that the current state of human suffering, and of humanitarian needs caused by armed conflicts around the world, would be far lower if IHL were properly implemented before the outbreak of an armed conflict, and once it occurs. Like any other body of norms, IHL must be known, understood, and complied with if its purposes are to be fulfilled. Measures to this effect are undertaken daily by States and other actors, and yet it is widely recognized that more needs to be done.

Several attempts at raising awareness of the need for better respect for IHL have taken place over the last decade and a half.

In 2003, as part of preparations for the 28th International Conference of the Red Cross and Red Crescent, the International Committee of the Red Cross (ICRC) organized a series of regional seminars with States and other actors devoted to “Improving Compliance with IHL.”⁵ The unequivocal view of participants was that compliance with IHL was inadequate, and needed to be improved.

At a Conference organized in 2009 by the Government of Switzerland dealing with the “60 Years of the Geneva Conventions and the Decades Ahead,” States identified compliance with IHL as one of the key challenges to the continued relevance of this body of law going forward.

An ICRC Study carried out between 2008 and 2010, and subsequent consultations with States on “Strengthening Legal Protection for Victims of Armed Conflicts,” undertaken in view of the 31st International Conference in 2011, showed that a significant number of States believe that better implementation of IHL needs to be a priority, that existing IHL compliance mechanisms have proven to be inadequate, and that further reflection on how to strengthen compliance with IHL is needed. These observations formed the backdrop to Resolution 1 on “Strengthening legal protection for victims of armed conflicts” unanimously adopted by the 31st International Conference in 2011.⁶

Resolution 1, among other things, recognized “the importance of exploring ways of enhancing and ensuring the effectiveness of mechanisms of compliance with international humanitarian law, with a view to strengthening legal protection for all victims of armed conflict.”⁷ In the Resolution, the 31st International Conference invited the ICRC to pursue further research, consultation and discussion in cooperation with States to identify and propose possible means

⁵ A summary of the outcome of these consultations was annexed to the ICRC’s Report *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, presented to the 28th International Conference, available at: www.icrc.org/eng/assets/files/other/ihlcontemp_armedconflicts_final_ang.pdf.

⁶ Available at: www.icrc.org/eng/assets/files/publications/icrc-002-1130.pdf

⁷ Para. 5 of Res. 1 of the 31st International Conference.

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to enhance and ensure the effectiveness of mechanisms of compliance with IHL,⁸ and requested that a report, proposing a range of options and recommendations, be submitted to the 32nd International Conference.⁹ It also expressed its appreciation to the Government of Switzerland for its availability to facilitate a process to explore and identify concrete ways and means to strengthen the application of IHL and to reinforce dialogue on IHL issues among States, in cooperation with the ICRC,¹⁰ based on a pledge to this effect that Switzerland had submitted to the 31st International Conference.

Following the 31st International Conference, Switzerland and the ICRC undertook a joint initiative to facilitate implementation of the relevant provisions of Resolution 1 in order, *inter alia*, to avoid duplicating their respective efforts. The initiative was effectively launched on 13 July 2012 when a first Meeting of States was convened in Geneva. A further eight meetings, which included Preparatory Discussions, were held thereafter, with a final, fourth Meeting of States within the joint initiative taking place in Geneva on 23 and 24 April 2015. In total, over 140 States participated in the consultation meetings.¹¹ This Report is submitted to the 32nd International Conference, in fulfilment of the mandate provided for in Resolution 1 of the 31st International Conference.

In accordance with the stipulations of Resolution 1, the facilitators carried out extensive research prior to each of the nine meetings held with States, and presented it in Background Documents submitted ahead of each meeting. States were also invited to send the facilitators any proposals they may have had with regard to the process, whether of a substantive or procedural nature. The respective Background Documents, which are publicly available,¹² included a range of issues and ideas, as well as numerous options for State deliberation, along with guiding questions to facilitate the discussion. Each successive Background Document built on the discussions held and positions expressed by States on a particular topic in the previous meeting(s), thus narrowing down the options in accordance with the general views expressed by delegations.

The nine meetings organized since 2012 were the primary vehicle for consultations with and among States, and this Concluding Report is based on those consultations. In addition, numerous bilateral meetings on the initiative were held with States, and regional meetings were organized, or attended, to inform and consult on the process as widely as was feasible. The International Federation of Red Cross and Red Crescent Societies and National Red Cross and Red Crescent Societies were likewise periodically briefed on the progress of the initiative; the Movement's support was expressed by the Council of Delegates of the International Red Cross and Red Crescent Movement in 2013.¹³

Discussions and outreach on the initiative were undertaken in a variety of international and regional organizations, as well as in academic and civil society circles in different parts of the world.

⁸ Para. 6 of Res. 1 of the 31st International Conference.

⁹ Para. 8 of Res. 1 of the 31st International Conference.

¹⁰ Para. 7 of Res. 1 of the 31st International Conference.

¹¹ See annexed list of participating delegations.

¹² The relevant documents may be found on the ICRC's website at: www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-ihl-work-icrc-and-swiss-government, as well as on the website of the Swiss Federal Department of Foreign Affairs at: <http://www.eda.admin.ch/eda/en/home/topics/intla/humlaw/icrc.html>.

¹³ 2013 Council of Delegates, Res. 8: www.icrc.org/eng/resources/documents/publication/p1140.htm.

2. Purpose, nature and scope of the Concluding Report

The purpose of the Concluding Report is to present an overview of the process of research, consultation and discussion undertaken by the ICRC and Switzerland since the adoption of Resolution 1. The Report also:

1. outlines the main elements of a possible new IHL compliance system that has emerged in the course of the joint Swiss-ICRC initiative, the central component of which is a regular Meeting of States, with certain functions and tasks attached to it;
2. reflects the issues on which the views of States may be said to be converging;
3. reflects the topics on which States' views remained divergent, and includes relevant options;
4. presents the facilitators' recommendations in regard to the issues discussed, as requested by the 31st International Conference.

The process mandated by the International Conference and facilitated by the ICRC and Switzerland was consultative in character and not a negotiation. The Concluding Report is thus the sole responsibility of the facilitators and does not purport to express the agreed views of States. Its aim, as already noted, is to present the outcome of the research, consultations and discussions undertaken with a view to enhancing and ensuring the effectiveness of mechanisms of compliance with IHL. As stipulated in Resolution 1, the options and recommendations identified in the Report are intended for the consideration of the 32nd International Conference, and its appropriate action. According to the Statutes of the International Red Cross and Red Crescent Movement, the Conference takes action by means of a resolution.¹⁴

The current Report attempts to broadly summarize the discussions held within the Swiss-ICRC initiative since its inception. While it can be read as a stand-alone text, it has been drafted on the understanding that members of the International Conference will be able to consult the proceedings of the separate meetings – the Background Documents and the Chairs' Conclusions, also prepared under the sole responsibility of the facilitators – if they find it necessary for their preparation.

Members of the International Conference are encouraged to review the relevant documents in order to gain a better understanding of the evolution of the consultation process as a whole, and an appreciation of the richness and specificity of the discussions that took place.

3. Guiding principles of the consultation process

As facilitators, Switzerland and the ICRC were fully committed to ensuring that their joint initiative in follow-up to Resolution 1 was conducted in a transparent, inclusive, and open manner.

In addition to transparency, inclusivity and openness, the Swiss-ICRC initiative was premised on several guiding principles that were initially formulated and gradually refined by States.

It was emphasized, time and again, that these principles must serve as the overall framework within which the search for possible solutions to the challenges of improving compliance with IHL should be pursued.

¹⁴ See Art. 10(5).

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It was thus understood that the principles, listed below, should inform not only discussions within the Swiss-ICRC initiative, but also underpin any outcome of the consultation process that may be accepted by the 32nd International Conference:

- the need for an IHL compliance system to be effective;
- the importance of avoiding politicization;
- 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;
- the voluntary, i.e. non-legally binding, nature of the consultation process, as well as of its eventual outcome.

The importance of adherence to the guiding principles was repeatedly highlighted by the participants in the Fourth Meeting of States held on 23 and 24 April 2015, and, in particular, in a joint statement to this effect made by several States on that occasion.

While all the guiding principles are on an equal footing, it is necessary to reiterate that the consultation process facilitated by Switzerland and the ICRC was voluntary in nature and that State participation in a possible outcome, as further outlined in this Report, would be voluntary as well. From the very beginning of the discussions, a clear convergence of views emerged among States that any effort to enhance the effectiveness of mechanisms of compliance with IHL should not entail amendments to the 1949 Geneva Conventions, or the negotiation of a new treaty. It is therefore evident that any IHL compliance system that may eventually be agreed on will be voluntary and not treaty-based. Its operation and success will thus depend on the recognition by States that improving respect for IHL is imperative, and on their willingness to contribute to this endeavour jointly and in conformity with their common undertaking to respect and ensure respect for the relevant IHL treaties.

Recommendation:

The principles that informed the consultation process should continue to serve as the guiding framework for the possible establishment of a new IHL compliance system.

4. Overview of meetings held as part of the consultation process

4.1. First Meeting of States

The first Informal Meeting of States on Strengthening Compliance with International Humanitarian Law was convened in Geneva on 13 July 2012. It confirmed that there was general concern among States about the lack of compliance with IHL, as well as broad agreement on the need for a regular dialogue among them on IHL issues and, in particular, on improving respect for this body of law.

Subsequent to the first Informal Meeting of States, Switzerland and the ICRC continued discussions and consultations with a broad range of States, through bilateral meetings as well as in two rounds of discussions with a regionally balanced group of States, in order to identify the main substantive issues of relevance to moving the process forward.

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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 international 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.¹⁵

4.2. Second Meeting of States

On 17 and 18 June 2013, a Second Meeting of States on Strengthening Compliance with International Humanitarian Law was held in Geneva as part of the Swiss-ICRC facilitated process. The purpose of the Meeting was to present all States with an overview of the discussions and consultations that had taken place in the previous 12 months and to seek guidance on the substantive questions that had arisen, as well as on possible next steps.

The Second Meeting of States dealt with:

- an overview and the inadequacies of existing IHL compliance mechanisms;
- the possible functions of an IHL compliance system;
- the possible tasks and features of a Meeting of States.¹⁶

Existing IHL compliance mechanisms

The Second Meeting of States acknowledged that, contrary to most other branches of international law, the core IHL treaties have a limited number of mechanisms to ensure compliance with its norms.

By way of reminder, three mechanisms *stricto sensu* are provided for in the 1949 Geneva Conventions and Additional Protocol I thereto of 1977: the Protecting Powers mechanism, the Enquiry Procedure, and the International Humanitarian Fact-Finding Commission (IHFFC).¹⁷

¹⁵ See Background Documents for these two rounds of discussion, at: www.icrc.org/eng/assets/files/2013/2012-11-strenghtening-ihl-and-chairs-conclusions-meeting-states-november-2012.pdf and www.icrc.org/eng/assets/files/2013/2013-04-strenghtening-ihl-background-conclusions-meeting-states.pdf.

¹⁶ See Background Document for the Second Meeting of States on Strengthening Compliance with IHL, June 2013, at: www.icrc.org/en/document/strengthening-compliance-ihl-second-meeting-states-strengthening-compliance-ihl-june-2013.

¹⁷ The *Protecting Powers* mechanism is provided for in common Article 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 the Second World War, 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 Article 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* 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

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They are included in treaties dealing with situations of international armed conflict and designed only for such conflicts, even though the great majority of current armed conflicts are non-international in nature. The devastation and suffering caused in the latter type of conflict are in daily evidence, with civilians being the primary victims of violations of IHL committed by both State and non-State parties.

In addition to their limited scope, the existing IHL compliance mechanisms have only rarely or never, been used. The reasons for this 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 mechanisms are based on the premise that States involved in an international armed conflict will have the will and 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. 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.

The existing 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 aimed at improving respect for IHL. The absence of such a structure means that the three 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.

Most importantly, the *purpose* of these mechanisms is not to provide a regular platform for dialogue and cooperation among States on IHL issues, and they cannot be reconfigured to perform that task, which is at the heart of the new compliance system being envisaged.

For these and other reasons, the great majority of States were of the view that, while the three individual mechanisms remain available to States that may wish to trigger them under the terms of the relevant IHL treaties in situations of international armed conflict, they cannot be a substitute for a regular framework for exchanges among States on IHL. It is such a regular framework that is currently being contemplated.

The possible functions of an IHL compliance system

The Second Meeting of States also looked at the possible functions that an IHL compliance system could have. The operation of a range of such functions, drawn for illustrative purposes from other international compliance systems, was outlined in the Background Document prepared for the meeting, in order to generate reflection and States' views. The list included:

- a regular meeting of States

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 was emphasized by a number of States within the ICRC-Swiss consultation process.

In practice, it is mainly the ICRC which carries out a range of functions aimed at strengthening compliance with IHL. Its mandate to do so in international armed conflicts is provided for in the Geneva Conventions and Additional Protocol I. The organization is also entitled to offer its services to the parties to non-international armed conflicts pursuant to Article 3 common to the Geneva Conventions. The ICRC's operational work, which is providing protection and assistance to persons affected by armed conflict, is closely linked to its working method, which is essentially based on confidentiality. The Swiss-ICRC initiative did not aim to impinge on the role of the ICRC or to duplicate the activities performed by the organization. On the contrary, synergies were sought where possible in articulating the relationship between the ICRC's work, particularly in the legal domain, and an effective IHL compliance system (see below). The ICRC's existing role and mandate were thus not a focus of the joint process.

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- periodic reporting
- fact-finding
- early warning
- urgent appeals
- country visits
- non-binding legal opinions
- good offices
- State inquiries
- dispute settlement
- examinations of complaints.¹⁸

There was broad agreement that:

- periodic reporting;
 - thematic discussions on IHL issues (a function proposed by several States at the Second Meeting); and
 - fact-finding,
- should be given priority in further deliberations as part of the Swiss-ICRC facilitated process, and that discussions should focus on examining the various aspects of these functions.

The possible tasks and features of a Meeting of States

The Second Meeting of States affirmed that there was strong general support among States for establishing a forum for a regular dialogue on IHL, that is, a regular Meeting of States. Such a meeting would be a forum for discussion on issues of IHL compliance, and could also serve as an anchor for other elements of an IHL compliance system.

A range of aspects related to the Meeting of States were noted as meriting further consideration. Among the issues flagged were: the periodicity of the Meetings; the possible means of initiating and institutionalizing the Meetings; and whether a body could be set up, such as a Bureau and/or a Secretariat, to prepare the Meetings and perform potential inter-sessional and administrative functions. Other issues identified for further examination included: the method of selecting topics for discussion; the outcomes of the Meetings; the means by which a Meeting could include engagement with international organizations and civil society actors; and the question of resourcing. It was also noted that, given the prevalence of non-international armed conflict, further consideration needs to be given to appropriate means of addressing the issue of compliance with IHL by non-State parties to armed conflicts.¹⁹

Based on the discussions at the Second Meeting of States, Switzerland and the ICRC undertook to submit, in continued discussions and consultations with States, concrete proposals and options, notably regarding:

- the form and content of a periodic reporting system on national compliance with IHL;
- the form, content and possible outcome of thematic discussions on IHL issues;
- modalities for fact-finding, including possible ways to make use of the IHFFC;
- the features and tasks of a Meeting of States.²⁰

Preparatory Discussions after the Second Meeting of States

¹⁸ See Background Document for the Second Meeting of States on Strengthening Compliance with IHL, June 2013, at: www.icrc.org/en/document/strengthening-compliance-ihl-second-meeting-states-strengthening-compliance-ihl-june-2013.

¹⁹ See Chairs' Conclusions of the Second Meeting of States on Strengthening Compliance with IHL, June 2013, at: www.icrc.org/en/document/strengthening-compliance-ihl-second-meeting-states-strengthening-compliance-ihl-june-2013.

²⁰ *Ibid.*

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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, two Preparatory Discussions open to all States were facilitated by Switzerland and the ICRC following the Second Meeting of States.

The first Preparatory Discussion took place on 16 and 17 December 2013.²¹ In this round, the primary focus was reporting on national compliance with IHL and thematic discussions on IHL issues. It also addressed, in overview form, the features and tasks of a regular Meeting of States. The aim of the next Preparatory Discussion, held on 3 and 4 April 2014,²² was, in turn, to enable a more detailed review of various aspects of the Meeting of States, and to hold a first, preliminary discussion on a possible fact-finding function. It was also the opportunity to revisit certain outstanding questions related to reporting on national compliance with IHL, and to the function of thematic discussions, carried over from the December 2013 meeting.

4.3. Third Meeting of States

The Third Meeting of States on Strengthening Compliance with International Humanitarian Law as part of the Swiss-ICRC facilitated process was held on 30 June and 1 July 2014 in Geneva. Its goal was to overview the main topics examined at both rounds of Preparatory Discussions, with a view to further clarifying and refining States' positions on the outstanding issues, including the potential identification of points on which views were converging, as well as those that were deemed to require further discussion.

The Third Meeting of States dealt with several issues, the gist of which is summarized below:

Overarching issues

- *Reform of existing IHL compliance mechanisms*

The Third Meeting revisited the question of the possible reform of the existing stand-alone IHL compliance mechanisms that had already been discussed prior to and at the Second Meeting of States. With few exceptions, it was broadly reaffirmed that current endeavours aimed at identifying ways and means of strengthening compliance with IHL should not focus on how the mechanisms could be reformed, apart from the IHFFC. It was underlined that this approach did not exclude a discussion of specific proposals as to how existing mechanisms could be strengthened and that States could put forward such proposals at any time, including as a topic for a thematic discussion at a future Meeting of States.

- *Foundational issues related to the establishment of a Meeting of States*

Given that, as already explained above, a future IHL compliance system will not be established by means of a legally binding instrument, the question of how to establish a Meeting of States as the central pillar of a future IHL compliance system was raised and discussed at the Third Meeting of States. Two broad positions were enunciated, and it was considered that further deliberations would be necessary with a view to enabling more clarity on States' views. As this question is addressed further below in this Concluding Report, it will not be elaborated on here.

Possible elements of an 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, some of which are listed below. A few States

²¹ See Preparatory Discussion on Strengthening Compliance with IHL, December 2013, at: www.icrc.org/en/document/strengthening-compliance-ihl-preparatory-discussion-strengthening-compliance-ihl-december.

²² See Preparatory Discussion on Strengthening Compliance with IHL, April 2014, at: www.icrc.org/en/document/preparatory-discussion-strengthening-compliance-ihl-april-2014.

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did not express their views on the different questions that were submitted for discussion due mainly to their positions on one or the other of the two overarching issues outlined above. The summary below does not therefore purport to reflect their stance:

○ *Periodic reporting on national compliance with IHL*

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 on the purposes that a reporting function could serve; the questions discussed related primarily to the possible type of periodic reports and follow-up to them, as well as how to ensure the overall effectiveness of a voluntary reporting system.

○ *Thematic discussions on IHL issues*

The Third Meeting of States confirmed that there is a 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.

○ *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 functions related to the 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.

The discussions indicated that the future Meeting of States should aim to provide States with a forum, based on dialogue and cooperation, to examine practical experiences and challenges in IHL implementation, facilitate the flagging of possible capacity-building needs by relevant States and foster international cooperation in addressing them, and also enable the sharing of best practices.

A range of specific questions related to the structure and organs of a future Meeting of States, and others, were also discussed.

Preparatory Discussion after the Third Meeting of States

These issues were further examined at the Preparatory Discussion held on 1 and 2 December 2014. They included: the possible denomination of the future Meeting of States; the set-up, tasks and other aspects related to the organs of the Meeting of States; periodicity; membership; the participation of observers; resourcing (with a particular focus on ensuring that all States are able to participate); the foundational issues related to its establishment, as well as its relationship with the International Conference of the Red Cross and Red Crescent. The December 2014 Preparatory Discussion aimed to further clarify States' positions regarding these topics with a view to concluding the consultation process at the Fourth Meeting of States.

4.4. Fourth Meeting of States

The Fourth, and final, Meeting of States on Strengthening Compliance with International Humanitarian Law as part of the Swiss-ICRC facilitated process was held on 23 and 24 April 2015 in Geneva. As set out in the Background Document for the Meeting, discussions centred on the following points:

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- The contours of a possible IHL compliance system, including:
 - general considerations on the Meeting of States as the central pillar of the future IHL compliance system;
 - reporting on national compliance with IHL;
 - thematic discussions on IHL issues.
- The main features of the Meeting of States, including:
 - plenary sessions as the core body of the future IHL compliance system;
 - participation in the Meeting of States;
 - the Chair and Bureau of the Meeting of States;
 - the Secretariat of the Meeting of States;
 - expert support;
 - resourcing.
- Foundational issues related to the establishment of the Meeting of States, including:
 - ways and means of establishing the Meeting of States;
 - relationship with the International Conference of the Red Cross and Red Crescent.
- Next steps.²³

The overall purpose of the Meeting was to enable an overview of the main elements of a possible new IHL compliance system that had emerged in the State consultations. The additional specific goals were: to revisit the points on which a broad convergence of views may be said to have emerged; to identify questions on which opinions continued to differ; to discuss issues that merited additional examination at the Meeting (so as to allow the facilitators to better gauge States' views in the preparation of the Concluding Report); and to attempt to identify specific issues that will need to be discussed further, on the basis of the relevant resolution of the 32nd International Conference.

The following sections of this Report have been drafted to reflect the discussions at the Fourth Meeting of States along with options that were proposed at the Meeting itself.²⁴ In order to avoid duplication, therefore, a separate summary of the deliberations of the Fourth Meeting is not included here.

5. The elements of an IHL compliance system

The very first Meeting of States held as part of the Swiss-ICRC facilitated consultation process confirmed States' general concern about the lack of compliance with IHL, and indicated broad agreement on the usefulness of a regular dialogue among them on IHL issues and, in particular, on the need to improve respect for this body of law. The notion that such a regular dialogue should take place within a dedicated forum, i.e. a Meeting of States (for denomination see below), has been widely reiterated in the consultations held ever since. This section aims to outline the elements, features and modalities of a possible new IHL compliance system²⁵ that have received wide support in the discussions, and reflects other suggestions/options that were put forward.

5.1. General overview of the Meeting of States

²³ See Background Document for the Fourth Meeting of States on Strengthening Compliance with IHL, April 2015, at: www.icrc.org/en/document/fourth-meeting-all-states-geneva-23-24-april-2015.

²⁴ See Chairs' Conclusions of the Fourth Meeting of States on Strengthening Compliance with IHL, April 2015, at: www.icrc.org/en/document/fourth-meeting-all-states-geneva-23-24-april-2015.

²⁵ The goal of the IHL compliance system discussed as part of the Swiss-ICRC facilitated consultation process is to strengthen respect for IHL. The term "compliance" may be understood in the present context as respect for all relevant obligations under IHL. The term "system" was used with a view to underlining the interrelation and cohesion of the different elements that may make up the new system: the Meeting of States and the tasks it will perform, as well as specific compliance functions that may be linked to it.

Improving respect for IHL is a multifaceted process. It requires that appropriate action be taken by a range of actors at the national, regional and international levels to ensure that this body of rules is known, understood and complied with. In this context, a key observation to recall is that the Geneva Conventions of 1949 and their Additional Protocols of 1977 and 2005 are an exception among international treaties in that they do not provide States with a regular opportunity to meet in order to take stock of and exchange opinions on ways of enhancing observance with this set of norms.

While IHL is being increasingly referenced in international political fora and in specialized bodies overseeing the implementation of other branches of international law, such attention is of a sporadic and therefore insufficient nature. Focus on IHL is often the result of real or perceived emergencies, in which political considerations prevail over the need to expertly assess the specific content and implementation of this body of rules. There was thus a converging view during the Swiss-ICRC facilitated consultation process that this institutional gap should be addressed.

The discussions largely confirmed that a regular Meeting of States – as the central component of a possible new IHL compliance system – should be established. As already mentioned, the Meeting would:

- serve as a dedicated venue for States to examine IHL issues of common concern based on dialogue and cooperation;
- perform functions²⁶ related to the implementation of IHL, with a view to strengthening respect for this body of law; and
- provide an institutional anchor for the other elements of the future IHL compliance system.

The future Meeting of States would not be competent to develop new law or adopt amendments to the relevant IHL treaties, but would focus on a better understanding and implementation of IHL. It was stressed that the work of the Meeting of States should, in particular, allow States to:

- examine practical experiences in the application of IHL;
- examine challenges in IHL implementation;
- share best practices;
- flag capacity-building needs and foster international cooperation in addressing such needs with the consent of the State(s) concerned.

With regard to possible compliance functions, most States were of the view that a reporting system on national compliance with IHL (see section 5.2.1.), and the function of thematic discussions on IHL issues (see section 5.2.2.) should be attached to the Meeting of States. Other possible compliance functions may be added to the Meeting of States over time if there is agreement among the States participating therein (see section 5.2.4.).

There was a clear understanding early on in the consultation process that the scope of the Meeting of States (and therefore of its functions) should focus on the 1949 Geneva Conventions and their Additional Protocols (for States party to the latter). This means *inter alia* that the system would be limited to situations in which this body of international law applies,²⁷ excluding circumstances which do not meet the definition of armed conflicts as provided for in

²⁶ The expression “functions” is to be understood as referring to those functions that States will eventually assign to the Meeting of States.

²⁷ There are measures that States should already take in peacetime that are essentially aimed at creating an environment conducive to respect for IHL, such as IHL dissemination, the training of armed forces, and the adoption of national legislation incorporating and implementing IHL treaties where necessary. There are also IHL obligations that outlast an armed conflict and cease only once their protective function is no longer necessary, such as the application of the Third Geneva Convention until the final release of a prisoner of war.

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the 1949 Geneva Conventions and their Additional Protocols. The armed conflicts referred to are both international and non-international, as confirmed in the guiding principles of the process.²⁸

The scope of the Meeting of States as described above is the result of an understanding that the possible IHL compliance system should aim to fill the gap described above, and not duplicate the work of related compliance frameworks. In other words, it will not affect the roles and competences of meetings or conferences of States party to specific treaties of relevance for IHL.²⁹ Similarly, it should not specifically deal with treaties establishing mechanisms for determining individual criminal responsibility, such as the International Criminal Court, which additionally has its own Assembly of States Parties.

The consultations confirmed that States not party to the Additional Protocols should be able to invoke them if they so wish. The same general view was expressed with respect to other sources of IHL, including norms of a customary nature: States that want to do so should feel free to invoke them at the Meeting of States, such as in national reports on compliance with IHL or in thematic discussions on IHL issues. This is because a number of older IHL treaties, such as the 1907 Hague Conventions, are now considered to reflect customary IHL.³⁰

There was likewise agreement – and constant reiteration by delegations – that the design of the Meeting of States should be based on the guiding principles listed above, including, but not limited to, its voluntary and State-driven nature, and the need for it operate without politicization.

It was also repeatedly underlined that the institutional structure of the Meeting of States should be as “lean” and cost-effective as possible, and be limited to what is necessary – from a logistical and procedural point of view – for the effective fulfilment of its functions and tasks.

It should be noted that several States questioned the need to establish a Meeting of States. Discussions at the Fourth Meeting of States were thus an opportunity for a reiteration of previous views and the presentation of new suggestions. In this context, a specific, alternative option to the creation of a Meeting of States was proposed at the Fourth Meeting of States. It would consist of confidential reports to the ICRC (see below).

Firstly, it was said that views related to the structure of the Meeting of States, its functions and features could not be expressed before a determination was made on the *method of its establishment*. This topic is dealt with in section 7.1 below.

²⁸ One State was of the view that the new IHL compliance system should deal only with international armed conflicts.

²⁹ Such as the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction; 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; the Convention on Cluster Munitions; and the Convention for the Protection of Cultural Property in the Event of Armed Conflict.

³⁰ Customary IHL also remains important in cases where a State may not be party to a certain IHL treaty, such as Additional Protocol I. For example, Additional Protocol I outlines relevant rules on the conduct of hostilities, including the principle of distinction, i.e. the obligation of the parties to an armed conflict to distinguish between civilians and combatants and between civilian objects and military objectives. These treaty obligations are generally considered to reflect customary IHL. However, if a State is not party to the Protocol and if customary IHL is excluded from reporting, a review of the implementation of obligations under these fundamental rules could be left out of the content of reports or thematic discussions. Customary IHL is also an important source of legal obligations in non-international armed conflict, for which IHL treaty rules are far less developed. In short, the voluntary inclusion of customary IHL in the scope of the Meeting of States and its functions would allow the full spectrum of IHL obligations to be encapsulated and would presumably make for a more efficient system.

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Secondly, it was said that the avenue of reconfiguring *existing IHL mechanisms* had not been sufficiently explored. In this context it should be noted that this topic was discussed on numerous occasions in the consultation process;³¹ States were likewise invited to make concrete suggestions to this effect, but no specific proposals were received by the facilitators.³² It should be reiterated that the consultation process did not, and could not, impinge on the operation of the existing IHL mechanisms (two of which are fact-finding in nature)³³ should States wish to resort to them in the future. In addition, as previously noted, the function of the current individual mechanisms is not to serve, nor could they serve, as a *platform for a regular dialogue among States* on IHL issues, which is a principal desired goal of a possible Meeting of States.

Thirdly, it was reiterated that the opportunities provided for by the 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, as an existing mechanism, should be explored. This resolution requests the UN Secretary-General to submit biennial reports on the status of the Additional Protocols and on measures to strengthen the existing body of IHL, with respect to its dissemination and full implementation at the national level.³⁴ However, the Sixth (Legal) Committee of the UN General Assembly is not a dedicated IHL forum of the type being envisaged, given that its mandate is not specifically focused on IHL. Moreover, the resolution does not provide for a regular dialogue among States on IHL issues, but instead serves primarily as a vehicle for the provision of technical information.

Fourthly, a call was made at the final Meeting of States for the need to examine *regional approaches* to discussions on IHL issues. The ICRC's work in facilitating regional meetings on IHL implementation was mentioned as an example, and as exemplary, in that these meetings succeeded in avoiding all politicization. The ICRC confirmed that this suggestion is already being implemented and that it is committed to pursuing such activity. While this type of effort is invaluable, it should be stressed that the universal nature of IHL needs to be preserved, and it is in this context that a regular Meeting of States may be deemed to be uniquely useful.

Finally, a concern was expressed at the Fourth Meeting of States with respect to the ability of the future Meeting of States to operate in accordance with the guiding principles listed above. It was suggested that, instead of the option of creating a Meeting of States, a system of voluntary confidential reports by States to the ICRC on their respective implementation of IHL be examined as a *second option*, as noted above. Under this proposal, the ICRC would, in accordance with its method of work and mandate, review the confidential reports and make confidential recommendations to the State(s) concerned. ICRC experts could identify common challenges and best practices on the basis of the confidential reports and, if appropriate, propose a thematic discussion on a particular topic to the International Conference.

It should be recalled that a confidential, bilateral dialogue with States and non-State parties to armed conflicts, aimed at improving compliance with IHL, is already an important ongoing aspect of the ICRC's operational and legal work, which will be continued.

The consultation process demonstrated that many States see a need not for a mechanism of two-way exchanges, but rather for a venue – through the establishment of a regular Meeting –

³¹ See Background Documents and Chairs' Conclusions of the meetings held within the consultation process, at: <https://www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-ihl-work-icrc-and-swiss-government>.

³² The only proposals for reforming existing mechanisms were made in relation to the IHFFC. Suggestions included, but were not limited to, establishing a link between the IHFFC and the future Meeting of States so as to raise awareness among States of its services and to increase trust in this mechanism.

³³ The Enquiry Procedure and the IHFFC.

³⁴ The UN Secretary-General's report is based on information from UN Member States and the ICRC, see para. 14 of UN General Assembly resolution 69/120.

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for dialogue and cooperation on IHL issues *among* States. As has been noted, IHL is a rare branch of international law in that it currently does not have a forum for exchanges among States that would serve to raise awareness and understanding of its norms and allow States to discuss issues related to its implementation, thereby creating the necessary ownership and expertise. The guiding principles of the process were devised by States precisely in order to enable them to take part in the work of the new IHL compliance system in a manner conducive to the development of trust in the pursuit of the common goal of improving respect for IHL. Adherence by States to the guiding principles, which is the responsibility of States, should allow them to achieve it.

It is submitted that a regular dialogue among States on IHL issues and, in particular, a dedicated venue for examining ways of improving respect for this body of law, does not currently exist. As the result of the consultations held, in which a large majority of States recognized the need to ensure regular exchanges on IHL, a historical opportunity presents itself – and should be seized – to create such a platform.

Recommendation:

A Meeting of States that would serve as a dedicated forum for dialogue and cooperation on IHL issues should be established in conformity with the enunciated guiding principles. It should form the central component of a possible new IHL compliance system. The considerations on the general and specific purposes, functions, and scope of the Meeting of States, as outlined above, should inform its creation.

5.2. Functions of the Meeting of States**5.2.1. Reporting on national compliance with IHL**

A periodic reporting function is a regular feature of implementation frameworks set up under other bodies of international law. This would appear to be the result not of chance, or a lack of imagination, but of the fact that national reporting serves unique purposes.

A periodic reporting function was examined at almost every meeting held as part of the ICRC-Swiss facilitated consultation process. The discussions started with an overview of reporting as carried out in other international fora. They then delved, in some detail, into potential reporting modalities on IHL, with many successive options having been presented and reviewed in the course of the deliberations.

This Report cannot, and does not, replicate the specificity of those debates. Outlined below are, first, points of a general nature related to a reporting function on which the views of a large majority of States who opined on this question may be said to have converged. The second part provides an overview of the discussions, as they stood at the last Meeting of States on, *inter alia*, the types of national reports and possible follow-up. There was no discernible convergence of views on these topics and it was widely felt that discussions should be completed by the regular Meeting of States, once it is established.

In this context, it should be noted that a very small number of States were not in favour of a reporting function as such, or were of the opinion that the submission of a report should be a one-off event, and not periodic.

i. Points of a general nature

- A periodic reporting function is an important tool for strengthening respect for IHL, and is thus an essential component of any future IHL compliance system.

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- Periodic reporting enables States to systematically engage with IHL, which is conducive to the effective fulfilment of the purposes of the Meeting of States. A reporting function:
 - provides an opportunity for self-assessment by States in the process of the preparation of a national report by allowing States to gather, collate and analyze their domestic law and practice;³⁵ and
 - provides a necessary baseline of information on the state of IHL implementation in various parts of the world, which permits the identification of common experiences and challenges related to IHL observance, enables the exchange of best practices, and allows for an expression of, and responses to, capacity-building needs that may be requested by a State.
- A reporting function should be linked to the Meeting of States, and should serve to inform the choice of topics for thematic discussions on IHL issues.
- A reporting function should focus on States' obligations under the universally ratified 1949 Geneva Conventions, and their three Additional Protocols (of 1977 and 2005, respectively), for States that are parties to the latter. States not party to the Protocols could report on specific topics addressed in the Protocols if they so wish.
- States are free to refer to other sources of IHL in their reports, if they so wish.
- A reporting function should not involve an article-by-article review of the relevant IHL treaties and the reporting system will not be cumbersome.
- Subject to further debate among participants on format, reports could be prepared based on guidelines or templates that are not overly prescriptive and may be used by States voluntarily.
- A reporting function should be governed by the guiding principles enunciated above, including its voluntary nature, and should be designed so as to serve the purpose of strengthening respect for IHL.
- Appropriate follow-up procedures should be established with a view to allowing a reporting function to contribute to strengthening respect for IHL. Such procedures should be non-individualized, non-contextual and non-politicized, in keeping with the guiding principles.

³⁵ In this context it should be noted that Articles 48, 49, 128 and 145 of the four Geneva Conventions of 1949, respectively, and Article 84 of Additional Protocol I provide that the States Parties shall communicate to one another not only the official translations of these treaties, but also "the laws and regulations which they may adopt" to ensure the application thereof.

Recommendation:

A periodic reporting function is an important tool for strengthening respect for IHL and should be an essential component of a regular Meeting of States. The general points outlined above should serve to inform the specific design of the reporting function.

ii. Types of reports on national compliance with IHL

Provided below is a summary of current positions on the types of national reports on compliance with IHL that were arrived at after a review of different options over the course of the consultation process:

Basic report

Most States recognize the utility of the submission by States of what has been called a “basic report.”

In this document, States would aim to outline how they implement IHL in their domestic legal system and armed forces. It would, for example, include information on issues such as the dissemination of the applicable IHL treaties, military and civilian instruction in IHL, relevant domestic legislation to implement IHL, the appointment of legal advisers to armed forces, procedures to investigate alleged violations of IHL, etc. Basic reports would also permit States to identify challenges to IHL implementation, best practices, lessons learned, and capacity-building needs, as may be applicable.

In other words, the basic report would serve primarily as a “reference” document. The information provided would be updated at certain intervals, in order to ensure its continued relevance as a baseline of information. A four- to five-year update period has been suggested.

Subsequent reports

Based on the exchanges of views that have taken place, it likewise appears that most States recognize the utility of fairly short, non-cumbersome subsequent reports that would be submitted at shorter intervals. A two-year time frame was suggested.

Three possible types of subsequent reports, depending on their content, were discussed:

- According to the first model, subsequent reports – called “current development reports” – would be focused on recent developments in a State’s practice, and include, for example, the 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.
- According to the second model, subsequent reports – called “thematic reports” – would be topical in content, so as to permit discussions on contemporary issues of IHL implementation in a focused manner. This approach would allow for variety in the subjects addressed, and would allow the work of the Meeting of States to be relevant in terms of the need to contribute to improving respect for IHL on the ground.
- A combination of the two models outlined above, that would draw on their respective advantages, was also suggested, and attracted significant support. Under this third, “hybrid” model, subsequent reports could have a primarily thematic focus, that is, be aimed at outlining the implementation by States of a specific group of IHL obligations in a non-cumbersome format. A separate section, which would be a regular feature of subsequent reports, could allow States to report on current developments in State practice, including on challenges that have been faced and/or resolved, as indicated above. This model was called “current issues reports.”

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It is submitted that a combination of a basic report and of subsequent current issues reports, as outlined above, would be most appropriate to the purpose of strengthening compliance with IHL.³⁶

Recommendation:

The periodic reporting function should consist of basic and subsequent reports. The choice of type of reports should be finalized by the Meeting of States, once it is established.

iii. Follow-up to national reports on compliance with IHL

Provided below is a summary of positions related to the follow-up of national reports on compliance with IHL that were arrived at after a review of different options over the course of the consultation process. It is based on two points of a general nature that were repeated time and again in the consultation process. First, that national reports on IHL must not disappear into a “black hole.” Second, that any follow-up procedure must be designed to take account of the guiding principles enunciated above. Thus, as was constantly stressed, follow-up should not be based on an individual review of State reports, and must be non-contextual and non-politicized in nature (hereafter the “three criteria”).

According to the view of the majority of States who took part in the discussion on this topic, the Meeting of States should be able – in a non-individual, non-contextual and non-politicized manner – to discuss national compliance reports. Under this view, a single follow-up document should be prepared, based on national reports, and in keeping with the “three criteria,” for discussion in a specific segment of the plenary sessions of the Meeting of States. Some States were of the opinion that it was premature to discuss the specifics of follow-up before the types of national compliance reports have been agreed.

As regards the single follow-up document, 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 the single follow-up document should also generally identify best practices, common challenges and capacity-building needs, but not make any recommendations. A third group of States was of the opinion that the single follow-up document should, in addition to the elements outlined above, also include appropriate recommendations for improving compliance with IHL.

It was submitted that an attempt could be made to accommodate the various views on a single follow-up document, taking into account the two types of national IHL reports – basic and subsequent – that have been outlined above.³⁷

³⁶ Issues such as the publicity of national reports on compliance with IHL, and others, were also discussed within the consultation process and are outlined in the relevant Background Documents.

³⁷ It was suggested that:

The basic reports on IHL that would be submitted by States at longer intervals could be included in a single technical follow-up document, which could also allow for a general identification of good practices, common challenges and capacity-building needs based on the national reports, but not make any recommendations (and would, of course, be prepared in accordance with the “three criteria”). This would appear to be in keeping with the purpose and content of the basic national reports as described above (implementation of IHL in domestic law and the armed forces) and the rather long time frame for their submission by States, e.g. every five years.

The subsequent national reports that would be submitted by States at shorter intervals could also serve as the basis for the preparation of a single follow-up document (regardless of the particular model outlined above that may be agreed on). The single document could generally identify good practices, common challenges and capacity-building needs, and also include appropriate recommendations for improving compliance with IHL. The document would, of course, likewise be prepared in accordance with the “three criteria.” This would appear to be in keeping with the purpose, content and shorter length of the subsequent national reports, and the shorter time frame for their submission, e.g. every two years.

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As regards the outcome of a discussion of the Meeting of States on the single follow-up documents, the consultations confirmed that most States share the view that some form of outcome text would be appropriate. There was broad agreement that it should not be a negotiated text, but could take the form of a Chair's Summary or Conclusions. At present, there is no prevailing view as to whether the outcome text should also be able to highlight best practices, common challenges and include appropriate recommendations for strengthening compliance with IHL, in accordance with the "three criteria."

A fairly small number of States expressed doubt that any follow-up to national reports on IHL, including by means of a single document, would be useful. In their view, States should simply be given an opportunity to briefly present their national report in a specific segment of the plenary sessions of the Meeting of States, with a view to spurring only informal exchanges on mutual experiences, with a particular focus on capacity-building.

It is submitted that the preparation of single follow-up documents, based on the basic and subsequent national reports, as outlined above, would be most appropriate to the purpose of strengthening compliance with IHL. The Meeting of States should discuss the single documents, with the discussion being, at a minimum, reflected in Chair's Conclusions or a Chair's Summary.

Recommendation:

The discussion on modalities of follow-up to national reports on compliance with IHL should be finalized by the Meeting of States, once it is established. The guiding principles of the process, in particular the need for effectiveness of the IHL compliance system, and the "three criteria" (non-individual, non-contextual and non-politicized follow-up), should inform the design of the follow-up modalities.

5.2.2. Thematic discussions on IHL issues

As already mentioned, the usefulness of holding thematic discussions on IHL by the Meeting of States was proposed at the Second Meeting of States that took place on 17 and 18 June 2013. This function generated very wide support among States in the consultation process, with no reticence expressed by States who took part in the discussion with regard to its inclusion in the elements of a possible IHL compliance system.

Outlined below are points of a general nature related to a thematic discussions function on which the views of a large majority of States may be said to have converged. The following part identifies certain issues related to the modalities of thematic discussions that were also examined and on which, it was felt, discussions should be completed by the regular Meeting of States, once it has been established.

i. Points of a general nature

- A specific segment of the plenary sessions of the Meeting of States should be devoted to thematic discussions on IHL issues.
- Thematic discussions would serve to:
 - ensure that States are better informed about current or emerging IHL issues;
 - enable a better mutual understanding of States' legal and policy positions on current and emerging IHL issues;
 - provide an opportunity for exchanges of views on key legal, practical and policy questions;
 - develop a deeper understanding of IHL and of practical measures taken by States to implement it;

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- strengthen existing networks by bringing together IHL experts from the different States; and
- have other beneficial knock-on effects.
- Thematic discussions should not be aimed at legal codification, or the creation of binding rules, but focus on a better understanding and application of IHL.
- Linkages with the reporting system on national compliance with IHL should be established, including in the identification of topics of common concern.
- The format of thematic discussions should ensure the non-politicized, non-selective, voluntary and interactive nature of the discussion.
- Criteria should be established regarding the selection of topics for thematic discussions. They should include, but are not limited to, the following:
 - topics should not be of merely theoretical interest, but relate to concrete problems observed in the implementation of IHL with a view to improving the situation of persons affected by armed conflict
 - topics should be timely
 - topics should be relevant for a sufficient number of States, so as to ensure their wide engagement in the discussion.

Recommendation:

The function of thematic discussions on IHL issues is an important tool for strengthening respect for IHL and should be an essential component of a regular Meeting of States. The general points outlined above should serve to inform the specific design of the thematic discussions function going forward.

ii. Modalities of thematic discussions on IHL issues

In the view of most States, a background document circulated in advance of a thematic discussion, and panel presentations of experts on the relevant topic, would be useful. A very small number of States doubted the usefulness of expert input.

As regards the entities that could propose topics for a thematic discussion, it was largely confirmed that they should include: the States participating in the Meeting of States, its Bureau, the ICRC, and the International Conference.

Three broad positions emerged in relation to the procedure for selecting topics for thematic discussions. According to one view, topics should only be adopted by the International Conference. According to a second position, topics should be identified by the Bureau of the Meeting of States on the basis of previous consultations with all States, or regional groups, in order to ensure that they are acceptable to a sufficient number of them. Pursuant to a third opinion, the plenary of a Meeting of States should be able to select topics for a 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 the wide support of States.

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

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It is submitted that expert input, as described above, would be helpful to ensure that a range of relevant opinions on the topic of the thematic discussion are presented. The preparation of an outcome document of a thematic discussion would be most appropriate to the purpose of strengthening compliance with IHL, and, at a minimum, a factual report on such discussions should be produced and made public. As was confirmed in the consultations, the process of selecting topics for thematic discussions requires further examination.

Recommendation:

The modalities of thematic discussions on IHL should be finalized by the Meeting of States, once it is established.

5.2.3. Support for the periodic reporting and thematic discussions functions

As may be deduced from the sections above, the functions of national reporting on compliance with IHL and thematic discussions on IHL issues may require expert support. Relevant tasks may include: the drafting of the single follow-up documents to national IHL reports, the drafting of background documents for thematic discussions on IHL issues, and the drafting of outcome documents of the proceedings in plenary related to these two functions. Expert support may also be required in the preparation of a template or guidelines for national reporting on compliance with IHL if they are deemed useful.

The possibility of establishing an expert, subsidiary body of the Meeting of States for the purpose of carrying out these tasks (e.g. a committee composed of independent or government experts) was proposed as an option in the consultation process, but was rejected by a great majority of States. This begs the question of who might perform this role.

Most States who opined were in favor of inviting the ICRC to undertake these and other expert tasks, on its own or with the appropriate validation of the Bureau, provided that such a role is compatible with the organization's mandate, operational activity and standard working modalities, in particular confidentiality. Some States expressed doubts in this regard, but did not suggest an alternative approach.

The ICRC stands ready, upon invitation, to provide expert support to the functions of the Meeting of States provided that the relevant tasks are compatible with the organization's mandate, operational activity and standard working modalities, in particular confidentiality.

5.2.4. Other issues related to the functions of the Meeting of States***i. Fact-finding***

Fact-finding was discussed on several occasions in the consultation process. It was identified as a potential function of a future IHL compliance system at the Second Meeting of States held on 17 and 18 June 2013. Some States were of the opinion that it would be a useful element of a possible IHL compliance system, given that fact-finding in situations of armed conflict is already being mandated by and carried out in other international fora that may not have a specific mandate and expertise in IHL. It was indicated at this Meeting that the modalities for such a function, including possible ways to make use of the IHFFC, deserved further examination.

A discussion on a possible fact-finding function also took place at the Preparatory Discussion of 3 and 4 April 2014 and generated divergent views. The topic was likewise included in the agenda of the Third Meeting of States held on 30 June and 1 July 2014, but could not be addressed due to lack of time. The issue of a possible fact-finding function was raised by some

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States at the Preparatory Discussion of 1 and 2 December 2014, and was brought up again at the Fourth and final Meeting of States.

Given the number of States who expressed a strong opinion in favour of a fact-finding function throughout the consultation process, as well as those who equally disfavoured it in response, it is submitted that it would be necessary and useful for this subject to be revisited at a later stage, i.e. by the Meeting of States, once it is established, in keeping with the relevant modalities of work. A further discussion would allow for a more in-depth examination of this function – including its possible modalities, such as the requirement of consent by the relevant State – and could facilitate a better mutual understanding of the concerns underlying the various positions.

Recommendation:

The issue of fact-finding should be discussed at a Meeting of States once it is established, with a view to ensuring that any course of action that may be chosen is based on a comprehensive understanding of the various concerns involved.

ii. Review of the operation of the Meeting of States

It should also be recalled that the need for a future IHL compliance system to be effective – which is one of the guiding principles of the process – was noted throughout the discussions. The question of how to ensure that the work of the Meeting of States remains relevant and credible in light of the rapidly changing nature of warfare, and takes account of emerging and new challenges to IHL implementation, is thus of importance.

Participants in the Fourth Meeting of States were asked to opine on whether the general operation of the future Meeting of States should be open to review by the participating States after an initial period of time and thereafter at regular intervals, with a view also to examining whether its functions require adaptations and/or whether other functions and tasks may be added,³⁸ in keeping with the guiding principles listed above. The majority of States that expressed a view were in favour of such an approach, while a few were either not in favour or were undecided.

Recommendation:

Flexibility should be envisaged by providing that the work, functions and tasks of the Meeting of States will be periodically reviewed by the participating States with a view to enabling adaptations, as may be deemed useful and necessary.

³⁸ Existing international frameworks usually provide an opportunity for participating States to take decisions on any questions or issues related to the treaty in question. See e.g. Art. 11(1) of the Convention on Cluster Munitions; Art. 8(19) of the Chemical Weapons Convention; Art. 13(3)(a) of the 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 Chemical Weapons Convention); and Art. 10(2) of the Protocol on Explosive Remnants of War of 28 November 2003 (Protocol V to the Chemical Weapons Convention).

6. Main features of the Meeting of States

6.1. Denomination of the Meeting of States

The denomination of the Meeting of States was discussed on several occasions within the consultation process and generated various views, with a significant number of States indicating that they were flexible on the issue of how it should be called. Among those who opined, the following options were put forward:

- “Meeting of States on international humanitarian law”
- “Meeting of States on compliance with international humanitarian law” or alternatively “Meeting of States on respect for international humanitarian law”;
- “Meeting of States party to the Geneva Conventions.”

A few States were of the view that, whatever the denomination, it should also include the words “voluntary,” “non-binding” or “consultative.”

It is submitted that there would appear to be no need to expressly reference that the future Meeting of States will be devoted to improving compliance with or respect for IHL, as this will be clear from its general purposes and functions. The inclusion of this aspect in a title is not the practice, as far as is known, in other international frameworks.

For its part, linking the title to the 1949 Geneva Conventions could give the impression that the Meeting is being established by means of a binding instrument, i.e. an amendment to the Geneva Conventions or the adoption of a new Protocol to them. This will not be the case, as all States have clearly agreed, and specified in the guiding principles, that the Meeting will not be legally binding, but voluntary in nature. In addition, a perception could be created that the Meeting will be dealing only with the norms of the Geneva Conventions, and not topics addressed in the Additional Protocols (for States party to the latter), which are also referred to in the guiding principles.

It is further submitted that the denomination should not include the terms “voluntary,” “non-binding” or “consultative.” On the one hand, this feature is clear from the guiding principles, and there would thus appear to be no need to specifically reference it in the title of the Meeting. On the other hand, and perhaps more importantly, the inclusion of these terms in the denomination could be read as implying that compliance with or respect for IHL *itself* is voluntary, non-binding or consultative, which should be avoided.

Recommendation:

A future Meeting of States should be called the “Meeting of States on International Humanitarian Law.” This is the shortest and simplest title, and one which immediately indicates the particular area for which the Meeting is being established.

6.2. Periodicity of the Meeting of States

The periodicity of the Meeting of States was a further issue discussed in the consultation process. A significant majority of States was of the view that Meetings should be held annually, while some preferred biennial sessions, and a very few suggested a four-year cycle. It was also said by a few States that the Meeting of States could possibly be “skipped” in the years in which the International Conference is held.

It is submitted that holding the Meeting of States on an annual basis would be most appropriate to its overall purpose, as was underlined by a majority of States in the consultation process. The Meeting is meant to serve as a venue for regular dialogue and cooperation among States on IHL, to perform the compliance functions as outlined above, and to provide an institutional

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anchor for the other elements of the system. Annual Meetings would create a dynamic conducive to better awareness and understanding of IHL, and would signal States' commitment to work on that basis for its improved implementation in a sustained manner. Moreover, given the major challenges to IHL observance on the ground, which are being dealt with on an almost continuous basis in other international fora *not specifically dedicated to IHL*, it would appear necessary that Meetings of States take place once yearly. An annual periodicity would also allow for shorter Meetings, and for a more manageable agenda.

Recommendation:

The Meeting of States should be held on an annual basis.

6.3. Participation in the Meeting of States***i. Members***

It was clear from the beginning of the consultation process that membership in the Meeting of States should be limited to States, and be as inclusive as possible. The view was largely shared that the Meeting of States should be open, on a voluntary basis, to the participation of all States party to the Geneva Conventions of 1949 (currently 196).

Recommendation:

Membership of the Meeting of States should be open, on a voluntary basis, to all States party to the Geneva Conventions of 1949. This criterion is clear, and simple to apply, and would encourage the broadest possible participation given that the Geneva Conventions of 1949 are universally ratified.

ii. Observers

The participation of observers in the Meeting of States was discussed on several occasions during the consultation process, and there was a largely held view that entities other than States should be able to contribute to its work in an observer capacity. There was likewise a largely held view that a discussion on the specific modalities of observer participation is premature, i.e. that it should take place at the Meeting of States, once it is established. It was stressed that the subsequent examination of this issue should be guided by:

- the need to devise procedures for observer participation that would be consistent with the guiding principles of the process listed above, notably the avoidance of politicization, the need to ensure non-contextual dialogue and the State-driven character of the Meeting of States; and
- the need to take resource constraints into account.

Three categories of possible observers at the Meeting of States were discussed in the various meetings: the components of the International Red Cross and Red Crescent Movement (other than the ICRC which is likely to have a particular role in the new IHL compliance system), international and regional organizations and entities, and civil society actors. Provided below is a brief overview of the deliberations, which aims to broadly summarize the current state of the debate.

As regards the components of the *International Red Cross and Red Crescent Movement*, many States were in favour of granting the International Federation of Red Cross and Red Crescent Societies (International Federation) permanent observer status. It was mentioned by some States that the International Federation should be able to attend the public sessions, submit

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written contributions and make oral statements in accordance with rules to be determined in the future Rules of Procedure of the Meeting of States.

The participation, as observers, of National Red Cross and Red Crescent Societies (National Societies) was also considered to be important. It was widely noted that appropriate modalities for National Society representation needed to be devised, so as not to double the number of participants in the Meeting of States or duplicate the composition of the International Conference, which, as was pointed out, is a distinct body. It was likewise noted that the special Statutory role of the National Societies needs to be preserved, and that the future Meeting of States will not substitute for the International Conference. The non-exhaustive ideas put forward as regards National Society participation in observer capacity in the Meeting of States were: that it could be channeled through the International Federation, as is the case in meetings of States within certain other international frameworks; that the International Federation and National Societies could jointly propose a model for appropriate National Society representation; and that National Societies could be represented in the Meeting of States through a format of regional groupings. It was said that States should, in any case, be free to include a National Society representative in their delegation to the Meeting of States.

As already noted, the specific modalities of the participation of all observers will only be determined by the Meeting of States, once it is established.

Many States appear, likewise, to be in favour of granting permanent observer status to *international and regional organizations and entities*, whose activities are of particular relevance to the future Meeting of States.³⁹ The Meeting of States, once established, should decide on the actors who would be accorded such status. In addition, the option of inviting other international and regional organizations and entities to take part in particular sessions, depending on the subject matter at hand, was deemed useful by some. It was mentioned by some States that international organizations and entities should be entitled to attend public sessions, submit written contributions and make oral statements, in accordance with rules to be determined in the future Rules of Procedure of the Meeting of States.

Concerning *civil society actors*, one State was of the view that their contribution to the Meeting of States should take place only at the domestic level, through assistance in the drafting of the national report on IHL compliance. A few States expressed general caution vis-à-vis the participation of civil society actors. Several States took the position that it was premature to discuss the issue and that it should be taken up by the Meeting of States, once it is established. Many States were in favour of civil society participation as such, on the understanding that particular care should be taken to ensure that their participation is in conformity with the general considerations mentioned above, notably the respect for the guiding principles.

Among the States who were in favour of civil society participation, some supported ECOSOC consultative status as the criterion for granting observer capacity to relevant civil society actors, and opined that, in addition, actors without such status should be able to participate upon request. Other States were of the view that all civil society actors should be invited to submit a

³⁹ The following intergovernmental organizations were mentioned in the relevant Background Documents drafted for the consultation process: the UN Secretariat and specific components thereof (such as the UN Office for the Coordination of Humanitarian Affairs (OCHA), the UN Department of Peacekeeping Operations (DPKO), the Office for Disarmament (ODA), the Office of the UN High Commissioner for Human Rights OHCHR); a number of UN programmes, funds and specialized agencies (such as the Office of the UN High Commissioner for Refugees (UNHCR), the UN International Emergency Children's Fund (UNICEF) and the UN Educational, Scientific and Cultural Organization (UNESCO)); regional and sub-regional organizations (such as the African Union (AU), the Association of Southeast Asian Nations (ASEAN), the European Union (EU), the League of Arab States (LAS), the Organization of American States (OAS)); and other intergovernmental organizations and other entities with a specific mandate that is relevant for the Meeting of States (such as the International Criminal Court (ICC) or the IHFFC).

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request to participate as observers, and that the relevance of their work for the Meeting of States would be an important factor to take into account. Others said that a readiness to observe the enunciated principles of the consultation process could be such a factor.

Some States in favour of civil society participation also opined that civil society actors should, at least, be able to attend the public sessions, submit written contributions, and possibly organize side events. Different views were expressed on a possible speaking role: it was said that a specific slot on the agenda could be set aside for interaction with civil society organizations, or that civil society actors could be granted a speaking slot at the end of each appropriate agenda item.

It is submitted that observer participation would contribute to the work of the Meeting of States by allowing for the input of a variety of actors who have a role in IHL implementation on the ground and/or have a particular expertise in this body of law. Observer participation is also a regular feature of other international frameworks; it would be inappropriate if a regular Meeting of States on IHL were to constitute an exception.

Recommendation:

The Meeting of States should be open to the participation, as observers, of components of the International Red Cross and Red Crescent Movement in keeping with their recognized roles in the field of IHL, international and regional organizations, and civil society actors. The relevant modalities should be finalized by the Meeting of States, once it is established.

6.4. Plenary sessions of the Meeting of States

It is envisaged that the work of the Meeting of States, as previously noted, would be carried out in plenary sessions, which would be the core body of the future IHL compliance system. Specific segments of the sessions would be dedicated to the performance of the compliance functions, as outlined above, and of the necessary procedural tasks. The view was widely held that the precise modalities of the plenary sessions should be specified by the Meeting of States, once it is established.

Recalled below, for illustrative purposes, are certain procedural tasks of the plenary sessions that were included in the relevant Background Documents prepared for the consultations:

- adoption of the Rules of Procedure
- adoption of the budget of the Meeting of States
- election of officers, such as the Chair, the Vice-Chairs and members of the Bureau
- establishment and oversight of organs, such as the Secretariat
- the performance of other tasks of a procedural nature as may be necessary and agreed.

A few States expressed the view that the Meeting of States, as currently envisaged, would not require subsidiary organs.

As regards the public nature of the Meeting of States, most States who expressed an opinion said that, as a general rule, plenary sessions should take place in public to ensure the transparency and effectiveness of the work of the Meetings. Some segments could, exceptionally, be held in closed sessions if the topic of discussion warranted it or if so requested. A small number of States proposed the reverse approach: that plenary sessions should, as a general rule, be closed but could be opened, or that only some segments of the plenaries, such as the opening and closing sessions, should be public. There was broad acknowledgment that the precise formula should be agreed on once the Meeting of States is established.

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It is submitted that plenary sessions should, as a general rule, be held in public. Public meetings are necessary in order to enhance not only the transparency and effectiveness of the work of the Meeting of States, but also the visibility of IHL itself. As has been noted previously, respect for IHL presupposes that there is a broad awareness of this body of norms and that its content is understood. Public sessions could contribute to achieving that goal.

Recommendation:

Plenary sessions of the Meeting of States should be the core body of the future IHL compliance system. They should, as a general rule, be held in public. Apart from the compliance functions discussed above, certain procedural tasks will also need to be performed in plenary session. The relevant modalities should be finalized by the Meeting of States, once it is established.

6.5. Chair, Bureau and Secretariat of the Meeting of States

There was agreement in the consultation process that the structure of the Meeting of States should be as “lean” and cost-effective as possible, and that any institutional elements that may be established should be light.

The election of a *Chair* and *Bureau* of the Meeting of States – which would be entrusted with the performance of certain tasks necessary for the successful preparation and conduct of Meetings – was discussed on several occasions in the consultation process. Many States were of the view that a Chair and Bureau should be established, and selected in a plenary of the Meeting of States. It was stressed that the principle of equitable geographical representation must be observed (i.e. equitable representation of all geographic regions in the Bureau, with the role of the Chair rotating among the regions). It was generally acknowledged that the relevant modalities should be determined by the Meeting of States, once its needs in terms of governance structure are better known.

A small number of States suggested that a single Steering Committee could replace a Chair and Bureau and be responsible for the preparation and work of the Meeting of States. It was not specified how such a Committee should be selected and how this model would operate in practice, i.e. in what regard it would differ from a Bureau and Chair.

A limited number of delegations expressed their view on the tasks, size, composition and length of terms of the Chair and Bureau. It was underlined that continuity and efficiency are important, but that it should also be ensured that as many States as possible are involved in the performance of these functions.

Provided below for illustrative purposes is a list of tasks that was outlined in the relevant Background Documents prepared for the consultations, as well as observations that were made in relation to the possible size of the Bureau and the length of terms of the Chair and Bureau:

Core tasks of the Chair:

- Coordinate the substantive preparation of the Meeting of States (including drawing up the draft agenda in consultation with the Bureau)
- Coordinate the overall work of the Meeting of States
- Ensure the orderly conduct of the Meeting of States
- Serve as the contact point on all relevant issues between two Meetings of States.

Core tasks of the Bureau:

- Consider the draft agenda drawn up by the Chair
- Assist the Chair in the discharge of his/her duties during plenary sessions, as well as between two Meetings of States

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- Coordinate the work of the Meeting of States, including related to documents that may be submitted to the Meeting of States.

Size of the Bureau:

- The representation of either one or two States from each of the five geographic regions, with the Chair possibly being a member of the Bureau *ex officio*.

Length of terms of Chair and Bureau:

- Terms of office could cover at least two sessions of the Meeting of States. A combination of shorter and longer terms for the Chair and the members of the Bureau, respectively, could be envisaged. Thus, the Chair could hold office for at least two sessions of the Meeting of States, while the other members of the Bureau would be renewed at every session, or vice versa.

The establishment of a light *Secretariat* that would support the work of the Meeting of States, including the Chair and Bureau, was also discussed on several occasions. Most States who opined were of the view that a Secretariat should be envisaged, in order to perform the tasks of an administrative, organizational and logistical nature that will arise. It was generally acknowledged that the relevant modalities should be determined by the Meeting of States, once its needs in terms of support activities are better known. A few States said that a discussion of the issue was premature, while a further few believed that a permanent Secretariat was not necessary.

Provided below for illustrative purposes is a list of possible Secretariat tasks that was outlined in the relevant Background Documents prepared for the consultations:

- Coordinate the preparation of and conduct of the Meeting of States
- Prepare documentation for the Meeting of States
- Make necessary arrangements for meetings of the Bureau
- Receive and distribute the communications of States, including national reports on compliance with IHL
- Maintain records and archives
- Support the Bureau and the Chair
- Liaise with States participating in the Meeting of States
- Liaise with intergovernmental organizations and other relevant actors
- Manage the website
- Administer the funds of the Meeting of States
- Maintain public relations.

Three possible options for establishing the Secretariat were examined in the consultation process. These included: establishing a new stand-alone entity under the national law of the State in which it would be located; attributing the Secretariat functions to a particular State or to States on the Bureau on a rotating basis; or establishing links between the Secretariat and the ICRC.

A clear majority of States expressed a preference for further exploring whether and how the Secretariat could be linked to the ICRC (e.g. by establishing an entity outside of the ICRC's structure, but administered by the ICRC from a logistical and administrative point of view), on the understanding that the organization's principles, mandate and standard working modalities must not be jeopardized.

This solution was believed to be both more efficient and more cost-effective than the others presented. It was also suggested that a Secretariat link to the ICRC could be envisaged for an initially defined period of time, after which an evaluation could take place. It was stressed that any such arrangement would need to ensure that the Secretariat would report directly to the Meeting of States. A few States were of the view that a Secretariat link to the ICRC would not

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be appropriate, as it could call into question the fulfillment of the organization's operational role and principles.

While it is well understood that the institutional elements of the Meeting of States should be as non-cumbersome as possible, it is submitted that a regular gathering of States, and the functions it may perform, will require administrative, logistical and organizational support. It is not clear how, in the absence of a possible Chair, Bureau and light Secretariat, the range of activities incumbent to preparing, convening and holding a Meeting of States could be carried out or by whom, if the normal functioning of the Meetings is to be assured. It may be recalled that other international frameworks usually have the organizational elements outlined above. The work of the Chair and Bureau could also be key to ensuring non-politicization of the work of the Meeting of States.

Recommendation:

A Chair and Bureau of the Meeting of States should be provided for. The identification and distribution of the necessary tasks among them should be determined by the Meeting of States, once it is established. This also applies to modalities related to size, composition, length of terms, criteria for election and others, as may be deemed necessary. The establishment of a light Secretariat should also be provided for, the modalities of which should likewise be determined by the Meeting of States.

6.6. Resourcing

Questions related to the budgetary implications of the Meeting of States and how it will be financed were discussed in a preliminary manner at the Preparatory Discussion of 1 and 2 December 2014 and were revisited at the Fourth Meeting of States on 23 and 24 April 2015. Given that the resourcing of the future Meeting of States will depend on a variety of elements that will only be known once the process of its establishment starts nearing completion, it was generally recognized that costs cannot be estimated in a definitive manner at this point in time. The relevant Background Documents did include figures drawn from other international frameworks, in order to provide some illustration of possible cost factors.

There was agreement that the need to take resource constraints into account, which is one of the guiding principles of the process, must at all times be respected, including in the design of the funding modalities. It was likewise recalled that the difficulties that developing countries may face with regard to additional funding requirements should be accorded particular attention.

With regard to the measures that may be adopted to ensure that best use is made of available resources, it was considered that the elements outlined in the Background Document for the Fourth Meeting of States of April 2015 were a valid basis for discussion at a future stage. The measures outlined included:

- reasonable use of interpretation and translation services;
- definition of "essential" and "additional" functions of the Secretariat and prioritizing funds for the former;
- web-based or other electronic solutions for reporting and distribution of documents.

In this context it should be noted that the costs of interpretation and translation requirements have often proven to be, by far, the greatest expenditure incurred in the operation of other international frameworks. Having this in mind, some States expressed a preference for limiting the number of working languages of the future Meeting of States to two (English and French), or four (the four languages usually used at the International Conference).

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As regards possible funding models, it was unequivocally established that the financial contributions of States to the work of the future Meeting of States would be voluntary, given its non-legally binding nature. It was furthermore reaffirmed that the need to ensure sufficient funding, predictability (i.e. that the budget can be reliably planned), and a fair distribution of costs among States were important criteria to be taken into account when devising possible funding models. The establishment of a trust fund for the purpose of financing the work of the Meeting of States was particularly highlighted, as well as the creation of a periodic pledging procedure.

Provided that the voluntary nature of financial contributions was clearly recognized, some States expressed an interest in exploring how the Meeting of States could use the adjusted UN scale of assessment to give *only indicative* recommendations to States of their fair share. Some States found this proposal to be not appropriate.

Recommendation:

On the understanding that the funding of the Meeting of States will be voluntary, the particular funding model should be determined by the Meeting of States, once it is established. The need to ensure sufficient funding, predictability and fair distribution of costs should guide its design.

7. Foundational issues related to the establishment of the Meeting of States**7.1. Ways and means of establishing the Meeting of States**

The Meeting of States that has emerged in the discussions among States as the centrepiece of the ICRC-Swiss-facilitated consultation process will be voluntary, that is, not legally binding. This is because, as was stressed time and again by States, the establishment of the IHL compliance system should not involve amendments to the 1949 Geneva Conventions or the adoption of a new treaty for that purpose. Thus, the question of how such a system could be established was examined on several occasions during the consultation process, with the most comprehensive expression of views having taken place at the Fourth Meeting of States.

Three options, outlined below, have emerged:

Option 1: The International Conference establishes the Meeting of States

Some States are of the view that the 32nd International Conference could establish a Meeting of States, given that a corresponding resolution adopted at the International Conference would be an adequate and sufficient expression of the sovereign will of States, as well as of the desire of the other members of the International Conference, to establish such a forum. It should be recalled that at the International Conference, representatives of the components of the International Red Cross and Red Crescent Movement meet with representatives of the States party to the Geneva Conventions to examine and decide upon humanitarian matters of common interest.⁴⁰ One of the specific functions of the International Conference is to “contribute to the respect for and development of international humanitarian law.”⁴¹ An additional key factor informing this approach is that, as noted above, the future IHL compliance

⁴⁰ Art. 8 of the Statutes of the Movement.

⁴¹ Art. 10 of the Statutes of the Movement. In this context it should be recalled that the 26th International Conference of the Red Cross and Red Crescent in resolution 1 (para. 4) endorsed a recommendation (made by a Meeting of the Intergovernmental Group of Experts for the Protection of War Victims, Geneva, 23-27 January 1995), according to which the depositary may organize periodical meetings to consider general problems regarding the application of IHL. This led to the convening of the Periodical Meeting of States party to the Geneva Conventions on general problems relating to the application of international humanitarian law in early 1998.

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system will not be legally binding and that the Meeting of States would be established as a regular forum on IHL issues open to all States on a voluntary basis.

The Background Document for the Fourth Meeting of States indicated that, if this option were adopted, in addition to establishing the Meeting of States, the resolution should broadly establish the key features of the future Meeting of States, including its purposes, functions, and guiding principles, and possibly address further issues, such as participation, institutional set-up, and relationship with the International Conference. The resolution could also provide that the work of the Meeting of States would be considered at the following International Conference. The elaboration and adoption of the relevant working modalities would be deferred to the first Meeting of States convened on the basis of the resolution, thus ensuring the State-driven character of the future IHL compliance system.

Option 2: The Meeting of States is established by a diplomatic conference

Some States are of the view that the 32nd International Conference does not have the authority to establish the Meeting of States. Under this approach, the International Conference could, by way of a resolution, only invite Switzerland to convene a diplomatic conference for the purpose of establishing the future Meeting of States. At the Fourth Meeting of States it was specified that Switzerland should be requested by the International Conference to convene a diplomatic conference in its capacity as depositary of the Geneva Conventions. It had been previously noted that, should this approach be adopted, the relevant diplomatic conference could be held immediately after the 32nd International Conference to avoid unnecessary delay, or that a specific time frame for it should be established. It has not thus far been specified what effect the convening of a diplomatic conference by Switzerland in its capacity as depositary would have on the voluntary nature of the new compliance system, which has been recognized as a key guiding principle of the process.

The Background Document for the Fourth Meeting of States indicated that, if this option were adopted, the relevant resolution of the International Conference should include the key features of the future Meeting of States, as well as the other issues mentioned above, for consideration by, and guidance of, the diplomatic conference.

Option 3: The hybrid solution

Bearing in mind that the main divergence of views centres on whether a resolution of the International Conference can provide an adequate basis for establishing a voluntary Meeting of States, a hybrid solution, combining aspects of both options, was suggested at the Preparatory Discussion of 1 and 2 December 2014 and included in the Background Document for the Fourth Meeting of States. According to this proposal, the relevant resolution should aim to capture those elements of the future IHL compliance system that are acceptable to States, while deferring the formal establishment of the system to an initial Meeting of States to be held within a pre-determined time frame. The resolution of the 32nd International Conference would thus not formally establish the Meeting of States, but would request Switzerland, the depositary of the 1949 Geneva Conventions, to convene the first Meeting of States. The first task of that Meeting would be to constitute the new forum.

The Background Document for the Fourth Meeting of States indicated that, if this option were adopted, the resolution of the 32nd International Conference should endorse the key features of the future Meeting of States, as well as the other issues outlined above, to guide and be further elaborated by the Meeting of States.

Based on the discussions at the Fourth Meeting of States, it appears that a significant majority of States favours the hybrid option, either on its own, or because it is perceived to represent an appropriate and workable compromise between the other two options. There was broad agreement that the first Meeting of States should be convened by Switzerland. A few States

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questioned whether its convening would be part of the duties of the depositary of the 1949 Geneva Conventions, but no States objected to the convening of such a meeting by Switzerland.

It is submitted that the hybrid option would appear to be the most appropriate way of establishing the future Meeting of States, as it represents a means of usefully bridging the other proposals. The solution suggested takes into account the different positions and attempts to offer a compromise based on the key aspects of each.

Recommendation:

The resolution should endorse the establishment of the Meeting of States, as well as its key features, and defer its formal establishment to the first Meeting of States. The resolution should also call on Switzerland, the depositary of the 1949 Geneva Conventions, to convene this meeting.

7.2. Further considerations relating to the resolution and the process following the 32nd International Conference

As regards the content of a possible resolution of the 32nd International Conference, many States were of the view that it should aim to adequately reflect the points of convergence that can be identified based on the discussions held within the consultation process, regardless of which option of establishment of the Meeting of States may be adopted. It was also emphasized that the resolution should strive to preserve the results of the consultations in an appropriate manner, so that further discussions on the working modalities of the Meeting of States, its features and functions will not start *de novo*. It was suggested that the present Report may serve as a reference document in this regard, without prejudging the outcome of future deliberations.

In response to questions that were posed in the Background Document for the Fourth Meeting of States, many States likewise stressed that work on the establishment of an IHL compliance system should not lose momentum and that the first Meeting of States should take place as soon as possible, i.e. within a year of the 32nd International Conference. A small number of States opined that this time frame might not be realistic given the preparatory work that will be necessary.

A number of views were expressed on how the process following the 32nd International Conference could be conducted, regardless of the decision that the Conference may take with respect to the options outlined above. It was acknowledged that a range of questions will require further clarification before the Meeting of States can be operational. According to one proposal, a Steering Committee, composed of a group of States and chaired by Switzerland, could be tasked with facilitating the relevant discussions. Several States pointed out that it is unclear how this group would be constituted and on what basis. They expressed a preference for having Switzerland, in cooperation with the ICRC, continue the facilitation of the necessary preparatory discussions among States after the 32nd International Conference.

Switzerland and the ICRC stand ready to facilitate the necessary consultations among States in preparation of the first Meeting of States, should they be requested to do so, in accordance with a process based on the criteria of transparency, inclusivity and openness which guided the consultation process.

Recommendation:

The resolution of the 32nd International Conference should preserve the results of the consultation process in an appropriate manner. The first Meeting of States should take place

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as soon as possible in the year following the 32nd International Conference so that the existing momentum may be maintained. Switzerland and the ICRC could be invited to facilitate the necessary consultations among States in preparation of the first Meeting of States in accordance with a process based on the criteria of transparency, inclusivity and openness which guided the consultation process.

7.3. Relationship with the International Conference of the Red Cross and Red Crescent

The consultation process undertaken over the past few years with a view to exploring ways of enhancing the effectiveness of mechanisms of compliance with IHL – and this Concluding Report – were mandated by Resolution 1 of the 31st International Conference. As stipulated, the 32nd International Conference will consider the present Report and take appropriate action on that basis. The Conference will thus have a key role to play in deciding the future of the proposed Meeting of States, including the effective contribution it can make to strengthening respect for IHL.

Discussions within the consultation process examined the possible future relationship between the International Conference and a Meeting of States, and the contribution that National Societies could make to the new IHL compliance system. The deliberations did not go into very great detail, but several points were nevertheless clearly expressed by many States:

- The importance of the International Conference as a forum for meetings and exchanges among the components of the International Red Cross and Red Crescent Movement and States on IHL and other issues was recognized.⁴²
- National Societies play an essential role in the dissemination of IHL, thereby contributing to strengthening respect for this body of law. Their work at the domestic level to help governments take a meaningful part in the new IHL compliance system, as well as their possible contributions to this framework in accordance with modalities that still need to be determined, will be of fundamental significance.
- The established Statutory roles of the International Conference, and of the components of the International Red Cross and Red Movement, will not be impinged on by the possible establishment of the IHL compliance system being envisaged.
- Differences in the functions, composition, periodicity, and other features of the International Conference and the future Meeting of States were noted. It was underlined that the two bodies will be distinct and autonomous,⁴³ and that their relationship will not be of a hierarchal nature.
- Appropriate synergies between the International Conference and the future Meeting of States should be explored going forward, with a view to establishing a mutually reinforcing relationship.
- It was noted by some States that possible links between the International Conference and the Meeting of States could take the following form:
 - The International Conference could be invited to propose topics for thematic discussions on IHL issues at a Meeting of States.

⁴² Pursuant to Art. 10(2) of the Statutes of the International Movement, among other functions the International Conference: “contribute[s] to the respect for and development of international humanitarian law and other international conventions of particular interest to the Movement.”

⁴³ In this regard, it was underlined that the future Meeting of States, given its State-led character, will ultimately decide on any recommendation that the International Conference may adopt with regard to the Meeting of States.

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- The Meeting of States could be invited to present a report/a brief on its activities to the International Conference, which could discuss it in order to take stock of the activities of the Meeting of States, and inform the Movement of its work.
 - The Meeting of States could be invited to take into account action points addressed to States in any IHL Plan of Action that may be adopted by the International Conference.
 - Members of the International Conference could make pledges at the Conference in relation to their activity or contribution to the Meeting of States, including the submission of reports and financial or other contributions.
- The relationship between the International Conference and the future Meeting of States must respect the Fundamental Principles binding the International Red Cross and Red Crescent Movement.
 - The modalities of expected synergies between the International Conference and the future Meeting of States should be discussed by the Meeting of States, once it is established.

Recommendation:

The modalities of expected synergies between the International Conference and the future Meeting of States should be discussed by the Meeting of States once it is established, taking into consideration the views of the components of the International Red Cross and Red Crescent Movement. The points outlined above should guide the deliberations on the relationship between the International Conference and the future Meeting of States.

8. Next steps

The consultation process summarized in this Report was concluded at the Fourth Meeting of States on Strengthening Compliance with International Humanitarian Law that was held on 23 and 24 April 2015 in Geneva. As previously noted, the Report has been prepared in follow-up to Resolution 1 of the 31st International Conference and, as requested in the Resolution, is being submitted for consideration and appropriate action by members of the 32nd International Conference.⁴⁴

The Report is the sole responsibility of the facilitators of the consultations. The ICRC and Switzerland have made every effort to faithfully indicate – to the extent feasible in an overview text reflecting discussions held over nine meetings – the relevant points of convergence of States' views on the issues that were examined, as well as the points of divergence. It is hoped that this Report, and the facilitators' recommendations, will serve as the backdrop for a possible decision by the 32nd International Conference on the establishment of an IHL compliance system, in the form, as is habitual, of a negotiated resolution.

In accordance with the relevant Statutory deadlines, draft resolutions are to be dispatched to the members of the International Conference 45 days prior to its commencement. Based on the date of the 32nd International Conference (8 to 10 December 2015), the draft of a Resolution on Strengthening Compliance with IHL should be sent to members of the Conference in mid-October 2015.

Given the importance of the issue involved, it was suggested in the consultations that it would be helpful if discussions on the draft resolution were to begin sufficiently ahead of time, to allow for several iterations of the text. The ICRC, which usually prepares resolutions on IHL for the International Conference, will thus aim to submit the initial elements of a possible resolution to members of the International Conference in June 2015. Upon comments received, a first draft resolution would be circulated and further consulted on among the members of the

⁴⁴ Para. 8 of Res. 1 of the 31st International Conference.

International Conference. The results of this process would be reflected in the final draft that will be included in the official documents for the International Conference in mid-October 2015. Concluding negotiations, as may be necessary, would take place in the Drafting Committee of the 32nd International Conference.

9. Closing remarks

Lack of compliance is probably the greatest current challenge to IHL. This was recognized by the 31st International Conference, which unanimously concluded that better respect for this body of norms is an indispensable precondition for alleviating the suffering of people affected by armed conflict. Spurred by that realization, the Conference provided the impetus for the most focused discussion ever held among States on ways of enhancing the effectiveness of mechanisms of compliance with IHL. The consultation process was unprecedented in terms of the number of meetings convened for this specific purpose and the number of participants involved, as well as in terms of the quality and detail of the exchanges.

It has been an honour for the ICRC and Switzerland to have served as the facilitators of the consultation process. The discussions confirmed that all States, without exception, share a concern about the current state of IHL implementation and believe that more must be done to improve it. There is no doubt that a range of simultaneous efforts by many actors are required to achieve this goal. What the consultation process brought into clear focus is an important, existing gap, which is the absence of a dedicated platform for regular dialogue and cooperation among States on IHL issues. It is submitted that the creation of such a venue, with the functions and features recommended, is long overdue, and that States and the other members of the International Conference should seize the historical opportunity being presented to establish such a forum.

As has been outlined above, a future Meeting of States would be voluntary, and its work would be guided by a number of principles, features and modalities. Their observance should imbue all States with the necessary confidence to fully participate in its setting up, and future activities.

The space that was created thanks to Resolution 1 of the 31st International Conference showed that the establishment of a permanent venue for deliberations among States on compliance with IHL is both possible and necessary. The 32nd International Conference would contribute to respect for IHL by acting to enable the establishment of a Meeting of States as described in this Report.

Annex I: Delegations that took part in the consultation meetings

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|---|--------------------------------------|
| 1. Afghanistan | 47. Gambia |
| 2. Albania | 48. Georgia |
| 3. Algeria | 49. Germany |
| 4. Andorra | 50. Ghana |
| 5. Angola | 51. Greece |
| 6. Argentina | 52. Guatemala |
| 7. Australia | 53. Guinea |
| 8. Austria | 54. Haiti |
| 9. Azerbaijan | 55. Holy See |
| 10. Bahrain | 56. Honduras |
| 11. Bangladesh | 57. Hungary |
| 12. Belarus | 58. India |
| 13. Belgium | 59. Indonesia |
| 14. Bhutan | 60. Iran (Islamic Republic of) |
| 15. Bolivia | 61. Iraq |
| 16. Bosnia and Herzegovina | 62. Ireland |
| 17. Botswana | 63. Israel* |
| 18. Brazil | 64. Italy |
| 19. Bulgaria | 65. Japan |
| 20. Burundi | 66. Jordan |
| 21. Cabo Verde | 67. Kazakhstan |
| 22. Cameroon | 68. Kenya |
| 23. Canada* | 69. Kuwait |
| 24. Chile | 70. Kyrgyzstan |
| 25. China | 71. Lao People's Democratic Republic |
| 26. Colombia | 72. Latvia |
| 27. Congo | 73. Lebanon |
| 28. Costa Rica | 74. Lesotho |
| 29. Côte d'Ivoire | 75. Libya |
| 30. Croatia | 76. Liechtenstein |
| 31. Cuba | 77. Lithuania |
| 32. Cyprus | 78. Luxembourg |
| 33. Czech Republic | 79. Madagascar |
| 34. Democratic People's Republic of Korea | 80. Malaysia |
| 35. Democratic Republic of the Congo | 81. Maldives |
| 36. Denmark | 82. Mali |
| 37. Djibouti | 83. Malta |
| 38. Dominican Republic | 84. Mauritius |
| 39. Ecuador | 85. Mexico |
| 40. Egypt | 86. Monaco |
| 41. El Salvador | 87. Morocco |
| 42. Estonia | 88. Myanmar |
| 43. Ethiopia | 89. Namibia |
| 44. European Union | 90. Nepal |
| 45. Finland | 91. Netherlands |
| 46. France | 92. New Zealand |

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93. Nicaragua
94. Niger
95. Nigeria
96. Norway
97. Oman
98. Pakistan
99. Panama
100. Papua New Guinea
101. Paraguay
102. Peru
103. Philippines
104. Poland
105. Portugal
106. Qatar
107. Republic of Korea
108. Republic of Moldova
109. Romania
110. Russian Federation
111. Rwanda
112. Saudi Arabia
113. Senegal
114. Serbia
115. Sierra Leone
116. Singapore
117. Slovak Republic
118. Slovenia
119. South Africa
120. South Sudan
121. Spain
122. Sri Lanka
123. State of Palestine*
124. Sudan
125. Suriname
126. Sweden
127. Syrian Arab Republic
128. Tajikistan
129. Thailand
130. Timor-Leste
131. Togo
132. Tunisia
133. Turkey
134. Turkmenistan
135. Ukraine
136. United Arab Emirates
137. United Kingdom
138. United Republic of Tanzania
139. United States of America*
140. Uruguay
141. Uzbekistan
142. Venezuela
143. Viet Nam
144. Yemen
145. Zambia

* In the context of the consultation meetings facilitated by Switzerland and the ICRC, these delegations recalled the positions expressed in their communications addressed to the Depositary of the four Geneva Conventions of 1949 and circulated by the Depositary by Notifications GEN 3/14 of 21 May 2014 and GEN 4/14 of 27 June 2014.