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ICRC

9 April 2019

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

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# **Factual Report on the Proceedings of the Intergovernmental Process on Strengthening Respect for IHL**

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# I. Introduction

## 1. Purpose of the factual report

- 1.1. This factual report on the proceedings of the intergovernmental process on strengthening respect for IHL has been prepared by the co-facilitators as agreed upon by States in the Main Elements of the Fifth Formal Meeting held on 3-5 December 2018 and was presented to States at the final Formal Meeting on 15 March 2019 that concluded the intergovernmental process. In accordance with Resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent, the co-facilitators will submit the factual report to the 33rd International Conference of the Red Cross and Red Crescent.
- 1.2. The documents prepared by the co-facilitators in the course of the intergovernmental process (Background Documents, Discussion Papers, Factual Summaries - covering the period 2015-2019) which are referenced in the factual report are available on the websites of the ICRC and the Swiss Federal Department of Foreign Affairs.<sup>1</sup> States were invited to have their submissions posted on the websites if they so wish.

## 2. Basis and initiation of the intergovernmental process on strengthening respect for IHL

- 2.1. The intergovernmental process on strengthening respect for IHL is the latest in a line of efforts to work towards better observance of international humanitarian law. States agree that IHL remains an appropriate international legal framework for regulating the conduct of parties to armed conflicts. While great strides have periodically been made to adapt and update the normative content of IHL, what has remained insufficient is the corresponding development of specific mechanisms to strengthen compliance with IHL.
- 2.2. A study and subsequent consultations carried out by the ICRC ahead of the 31st International Conference of the Red Cross and Red Crescent showed that a significant number of States believed that better implementation of IHL needed to be a priority. 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. Resolution 1 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”.
- 2.3. Following the 31st International Conference, Switzerland and the ICRC undertook a joint initiative to facilitate implementation of the relevant provisions of Resolution 1. Four Meetings of States along with informal consultations on all levels and accompanied by extensive research were held between 2012 and 2015. A Concluding Report on the consultation process was presented to the 32nd International Conference held in December 2015.<sup>2</sup> A corresponding draft resolution was submitted by Switzerland and the ICRC to the 32nd International Conference. An alternative draft resolution on the subject matter from nine States was equally submitted shortly before the opening of the 32nd International Conference.
- 2.4. Discussions within the Drafting Committee of the 32nd International Conference showed that consensus on either of the proposed draft resolutions could not be reached at that time. Instead, a solution providing for further space for discussions among States on the subject matter was found. As a result, the 32nd International Conference consensually adopted Resolution 2 entitled “Strengthening compliance with international humanitarian law”.<sup>3</sup> The resolution recommended the “continuation of an intergovernmental process after the 32nd International Conference to find

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<sup>1</sup> See <https://www.icrc.org/en/war-and-law/strengthening-ihl> and <https://www.eda.admin.ch/eda/en/home/foreign-policy/international-law/international-humanitarian-law.html>.

<sup>2</sup> Available at [https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/32IC-Concluding-report-on-Strengthening-Compliance-with-IHL\\_EN.pdf](https://www.eda.admin.ch/dam/eda/en/documents/aussenpolitik/voelkerrecht/32IC-Concluding-report-on-Strengthening-Compliance-with-IHL_EN.pdf)

<sup>3</sup> See Annex I.

agreement on features and functions of a potential forum of States and to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums in order to submit the outcome of this intergovernmental process to the 33rd International Conference.” The resolution further set out the following guiding principles for the intergovernmental process:

- 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 importance of avoiding politicization, including by ensuring that States address the implementation of IHL only within their own sphere of competence and responsibility
- the need for an IHL compliance system to be effective
- 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 the discussions address 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
- the need for the process to ensure universality, humanity, 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 need for the process and the mechanism to be non-contextualized.

2.5. Based on Resolution 2 of the 32nd International Conference, from 2016 to 2018 Switzerland and the ICRC organized and facilitated five Formal Meetings in the intergovernmental process on strengthening respect for IHL. Each Formal Meeting was preceded by an informal meeting and an open-ended consultation open to all States, equally facilitated by Switzerland and the ICRC. An overview of the proceedings of the intergovernmental process on strengthening respect for IHL is presented below.

## II. Overview of proceedings

### 1. First Formal Meeting

- 1.1. On 28-29 November 2016, the First Formal Meeting in the intergovernmental process on strengthening respect for international humanitarian law (IHL) was held in Geneva. The First Formal Meeting was prepared through two preliminary discussions among States held in Geneva on 3 June 2016 and 12 October 2016, respectively. These preliminary discussions served for States to share their views on implementing the mandate provided for in Resolution 2 of the 32nd International Conference and to give guidance to the co-facilitators for initiating the intergovernmental process.
- 1.2. In accordance with the views expressed by States in the preliminary discussions, the purpose of the First Formal Meeting was for States to discuss and agree on the organizational issues related to the intergovernmental process and a provisional work plan.
- 1.3. 101 delegations participated in the First Formal Meeting.<sup>4</sup>
- 1.4. Delegations had before them a background note on organizational issues of the intergovernmental process prepared by Switzerland and the ICRC in their capacity as co-facilitators, as well as comments and proposals submitted by States.<sup>5</sup> The background note outlined the views expressed by States in the preparatory process, including in the preliminary discussions and written submissions. The delegations also had before them a proposal prepared by the co-facilitators related to the issues on the agenda of the meeting, entitled “Co-facilitators’ proposal on organizational issues and work plan”.
- 1.5. In accordance with the agenda adopted at the meeting, Session 1 was devoted to a discussion on the organizational issues of the intergovernmental process, notably facilitation, working documents, the question of conclusions and summaries of each meeting, and, at the request of delegations, any other issues that States deemed necessary to be considered at this stage. Session 2 was devoted to a discussion on the work plan and timetable of the intergovernmental process as well as the format and frequency of the meetings to be held therein. Session 3 served to discuss outstanding issues from the previous sessions and Session 4 was devoted to the consideration and adoption of conclusions of the meeting.
- 1.6. Delegations reached a common understanding on the organizational issues and a provisional work plan for 2017 of the intergovernmental process and agreed to the document entitled “Organizational issues and provisional work plan”.<sup>6</sup> According to the agreement reached, Switzerland and the ICRC were to continue to serve as co-facilitators of the intergovernmental process. Two Formal Meetings open to all States were to be held in Geneva every year, each Formal Meeting prepared by an informal meeting and consultations. The guiding principles for the intergovernmental process were re-confirmed. The work plan established for the two Formal Meetings in 2017 foresaw a first meeting focused on existing IHL compliance mechanisms as well as on features and functions of a potential forum of States. The second meeting for 2017 was to focus on ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums and agree on a work plan for the intergovernmental process for 2018.
- 1.7. A factual summary of the First Formal Meeting was prepared by the co-facilitators and sent to all States on 16 December 2016.<sup>7</sup>

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<sup>4</sup> For the list of participating delegations to the First Formal Meeting see the factual summary of the First Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>5</sup> Background Note of the First Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>6</sup> See Annex II.

<sup>7</sup> Factual summary of the First Formal Meeting, available on the websites of the ICRC and Switzerland.

## 2. Second Formal Meeting

- 2.1. The Second Formal Meeting was held in Geneva on 10-12 April 2017. An open-ended consultation on 23 January 2017 and an informal meeting on 22 February 2017 served for delegations to discuss an outline as well as a first draft, respectively, of the documents prepared by the co-facilitators for the Second Formal Meeting and of the corresponding issues.
- 2.2. In accordance with the provisional work plan established at the First Formal Meeting, the Second Formal Meeting was devoted to a “presentation of a detailed report on existing mechanisms dealing with IHL” and a discussion of the “features and functions of a potential forum of States”.
- 2.3. 104 delegations participated in the meeting.<sup>8</sup>
- 2.4. States had before them two documents prepared by the co-facilitators, a detailed report on existing mechanisms dealing with IHL by the ICRC entitled “Existing Mechanisms, Initiatives and Processes Dealing with IHL”, and a Background Document by both the ICRC and Switzerland on the “Features and Functions of a Potential Forum of States”.<sup>9</sup> A number of States provided written contributions in advance of the Second Formal Meeting that were shared through the dedicated website of the intergovernmental process.
- 2.5. In accordance with the agenda adopted at the meeting, Session 1 was devoted to a presentation and discussion of the detailed report on existing mechanisms. Session 2 was devoted to features and functions of a potential forum of States. In this session, delegations discussed the possible purpose of a potential forum of States, the possible functions of a potential forum including thematic discussions on IHL issues, and general safeguards against politicization and contextualization. Session 3 served to consider and adopt Main Elements for the Formal Meeting.
- 2.6. Delegations reached agreement on conclusions of the Second Formal Meeting in the Main Elements outcome document.<sup>10</sup> Therein, all delegations reiterated their willingness to work towards improving the implementation of, and strengthening compliance with, IHL. While convergent and divergent views were expressed on the agenda items of the meeting, all delegations agreed to continue the intergovernmental process.
- 2.7. A factual summary of the Second Formal Meeting was prepared by the co-facilitators and sent to all States on 16 June 2017.<sup>11</sup>

## 3. Third Formal Meeting

- 3.1. The Third Formal Meeting was held in Geneva from 4-6 December 2017. The Third Formal Meeting was prepared through two open-ended consultations on 11 September 2017 and 30 October 2017 as well as an informal meeting on 16 October 2017. An open-ended consultation and the informal meeting served to clarify outstanding questions on existing mechanisms and foster the development of ideas on ways to enhance the implementation of IHL using the potential of the International Conference and regional IHL forums. The second open-ended consultation served to exchange views on the draft proposal of a provisional work plan for the meetings in the intergovernmental process on strengthening respect for IHL to be held following the Third Formal Meeting in 2018.

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<sup>8</sup> For the list of participating delegations to the Second Formal Meeting see the factual summary of the Second Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>9</sup> Background Document of the Second Formal Meeting and the ICRC report on ‘Existing Mechanisms, Initiatives and Processes Dealing with IHL’, available on the websites of the ICRC and Switzerland.

<sup>10</sup> See Annex III.

<sup>11</sup> Factual summary of the Second Formal Meeting, available on the websites of the ICRC and Switzerland.

- 3.2. 120 delegations participated in the meeting.<sup>12</sup> On the invitation of the co-facilitators, representatives of the International Federation of Red Cross and Red Crescent Societies attended as observers.
- 3.3. In accordance with the provisional work plan established at the First Formal Meeting, the Third Formal Meeting was devoted to discussing ways to enhance the implementation of IHL using the potential of the International Conference of the Red Cross and Red Crescent and IHL regional forums, as well as to developing a work plan for 2018.
- 3.4. States had before them a Background Document prepared by the co-facilitators giving detailed information on the functioning of the International Conference of the Red Cross and Red Crescent, meetings envisaged in Resolution 1 of the 26th International Conference of 1995, the meetings envisaged in Article 7 of Additional Protocol I, and on IHL regional forums.<sup>13</sup> A number of States provided written contributions on ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums, as well as on the conduct of business in advance of the Third Formal Meeting that were shared through the dedicated website of the intergovernmental process.
- 3.5. In accordance with the agenda adopted at the meeting, during Session 1 the co-facilitators presented the Background Document, and this provided an opportunity for delegations to ask questions regarding the functioning of the International Conference and dedicated IHL regional forums. Session 2 was in turn devoted to the presentation of proposals and discussions regarding ways to enhance the implementation of IHL using the potential of the International Conference. Session 3 then allowed for the presentation of proposals and discussion regarding ways to enhance the implementation of IHL using the potential of IHL regional forums. Session 4 concerned the discussion of a work plan for 2018 and 2019. Finally, Session 5 served to consider and adopt Main Elements for the Formal Meeting.
- 3.6. Delegations reached agreement on conclusions of the Third Formal Meeting and on the work plan for 2018 in the Main Elements outcome document.<sup>14</sup> States reiterated their willingness to work towards improving the implementation of IHL, and strengthening its compliance, in conformity with Resolution 2 of the 32nd International Conference. Note was taken of the range of proposals and options for enhancing the implementation of IHL through dialogue and cooperation by States using the potential of the International Conference that States had presented at the meeting. The sharing of experiences and the presentation of concrete achievements of IHL regional forums in strengthening respect for IHL that had taken place at the meeting was acknowledged. States furthermore agreed a work plan foreseeing two Formal Meetings in 2018.
- 3.7. A factual summary of the Third Formal Meeting was prepared by the co-facilitators and sent to all States on 22 December 2017.<sup>15</sup>

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<sup>12</sup> For the list of participating delegations to the Third Formal Meeting see the factual summary of the Third Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>13</sup> Background Document of the Third Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>14</sup> See Annex III.

<sup>15</sup> Factual summary of the Third Formal Meeting, available on the websites of the ICRC and Switzerland.

#### **4. Fourth Formal Meeting**

- 4.1. The Fourth Formal Meeting was held in Geneva from 14-16 May 2018. The Fourth Formal Meeting was prepared through an open-ended consultation on 8 February 2018 and an informal meeting on 27 March 2018 which served for delegations to exchange initial views on the draft Discussion Paper prepared by the co-facilitators, provided an opportunity for exchanges on converging elements therein, and also served as a venue to take up possible new proposals for strengthening respect for IHL.
- 4.2. 111 delegations participated in the meeting.<sup>16</sup> On the invitation of the co-facilitators, representatives of the International Federation of Red Cross and Red Crescent Societies attended as observers.
- 4.3. In accordance with the work plan agreed at the Third Formal Meeting, the Fourth Formal Meeting was devoted to the identification of converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017, and consideration of possible new proposals.
- 4.4. States had before them a Discussion Paper prepared by the co-facilitators on the identification of converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017.<sup>17</sup> The Discussion Paper presented potential converging elements taking into account States' views expressed in the intergovernmental process so far, aiming to mirror the convergence observed in ideas and contributions made by States. A number of States provided written contributions ahead of the Third Formal Meeting that were shared through the dedicated website of the intergovernmental process.
- 4.5. In accordance with the agenda adopted at the meeting, Session 1 was devoted to discussions regarding the identification of converging elements based on the Discussion Paper. Sessions 2-5 then allowed for the discussion of the individual potential converging elements as put forward in the Discussion Paper by the co-facilitators. Session 6 allowed for the consideration of new proposals. Finally, Session 7 served to consider and adopt Main Elements for the Formal Meeting.
- 4.6. Delegations reached agreement on conclusions of the Fourth Formal Meeting in the Main Elements outcome document.<sup>18</sup> It was acknowledged that the exchanges based on the Discussion Paper on the identification of converging elements had allowed for a better understanding of States' views towards the development of proposals foreseen for the Fifth Formal Meeting.
- 4.7. A factual summary of the Fourth Formal Meeting was prepared by the co-facilitators and sent to all States on 4 June 2018.<sup>19</sup>

#### **5. Fifth Formal Meeting**

- 5.1. The Fifth Formal Meeting was held in Geneva on 3-5 December 2018. It was preceded by an open-ended consultation on 18 September 2018 as well as an informal meeting on 18 October 2018, at which preparatory discussions on the issues to be addressed at the Formal Meeting took place.

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<sup>16</sup> For the list of participating delegations to the Fourth Formal Meeting see the factual summary of the Fourth Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>17</sup> Background Document of the Fourth Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>18</sup> See Annex IV.

<sup>19</sup> Factual summary of the Fourth Formal Meeting, available on the websites of the ICRC and Switzerland.



- 5.2. 116 delegations participated in the meeting.<sup>20</sup> On the invitation of the co-facilitators, representatives of the International Federation of Red Cross and Red Crescent Societies attended as observers.
- 5.3. In accordance with the work plan for 2018 adopted at the Third Formal Meeting in the intergovernmental process, the Fifth Formal Meeting was dedicated to the development of proposals for strengthening respect for IHL based on the converging elements and discussions held as well as to the identification of the main proposals to be further pursued. It equally served to hold a preliminary exchange of views on elements and form of the outcome of the intergovernmental process as well as for the consideration and adoption of a work plan for 2019.
- 5.4. States had before them a Background Document for the Fifth Formal Meeting prepared by the co-facilitators.<sup>21</sup> The Background Document presented the main ideas put forward by States on how to use the potential of the International Conference to strengthen respect for IHL and tried to illustrate commonalities among these ideas. States provided written contributions ahead of the Fifth Formal Meeting that were shared through the dedicated website of the intergovernmental process.
- 5.5. In accordance with the agenda adopted at the meeting, Session 1 was devoted to the development of proposals for strengthening respect for IHL based on the converging elements and discussions held. Sessions 2 concerned discussions regarding the identification of the main proposals to be further pursued. Session 3 allowed for a preliminary exchange of views on elements and form of the outcome of the intergovernmental process. Session 4 was dedicated to the consideration and adoption of the work plan for 2019. Finally, Session 5 served to consider and adopt Main Elements for the Formal Meeting.
- 5.6. Delegations reached agreement on conclusions of the Fifth Formal Meeting and on the work plan for 2019 in the Main Elements outcome document.<sup>22</sup> The range of proposals and ideas presented by States to enhance the implementation of IHL using the potential of the International Conference, dedicated IHL regional forums, a dialogue on IHL among States, and a digital tool, were taken note of. However, no agreement on main proposals to be further pursued could be reached. Instead, delegations agreed that the co-facilitators prepare a factual report on the proceedings of the intergovernmental process on strengthening respect for IHL in view of the last Formal Meeting. The work plan for 2019 in turn foresaw a final Formal Meeting for 2019 in which the co-facilitators were to present their factual report and which would conclude the intergovernmental process.
- 5.7. A factual summary of the Fifth Formal Meeting was prepared by the co-facilitators and sent to all States on 15 January 2019.<sup>23</sup>

## **6. Sixth Formal Meeting**

- 6.1. The Sixth Formal Meeting was held in Geneva on 15 March 2019.
- 6.2. 81 delegations participated in the meeting. On the invitation of the co-facilitators, representatives of the International Federation of Red Cross and Red Crescent Societies attended as observers.
- 6.3. In accordance with the work plan for 2019 adopted at the Fifth Formal Meeting in the intergovernmental process, the Sixth Formal Meeting was dedicated to the presentation of the

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<sup>20</sup> For the list of participating delegations to the Fifth Formal Meeting see the factual summary of the Fifth Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>21</sup> Background Document of the Fifth Formal Meeting, available on the websites of the ICRC and Switzerland.

<sup>22</sup> See Annex VI.

<sup>23</sup> Factual summary of the Fifth Formal Meeting, available on the websites of the ICRC and Switzerland.

Factual Report of the co-facilitators and the conclusion of the intergovernmental process on strengthening respect for IHL.

- 6.4. States had before them the provisional Factual Report on the Proceedings of the Intergovernmental Process on Strengthening Respect for IHL prepared by the co-facilitators as requested in the Main Elements of the Fifth Formal Meeting.
- 6.5. In accordance with the agenda adopted at the meeting, Session 1 was devoted to the presentation of the Factual Report on the Proceedings of the Intergovernmental Process on Strengthening Respect for IHL by the co-facilitators. Session 2 allowed for general comments by States. Session 3 served to adopt the Main Elements of the Sixth Formal Meeting and to conclude the Intergovernmental Process.
- 6.6. Delegations reached agreement on conclusions of the Sixth Formal Meeting in the Main Elements outcome document.<sup>24</sup> States took note of the Factual Report on the Proceedings of the Intergovernmental Process on Strengthening Respect for IHL by the co-facilitators, reaffirmed their determination to work towards improving respect for IHL and concluded the intergovernmental process on strengthening respect for IHL.

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<sup>24</sup> See Annex VII.

### **III. Final remarks**

States reaffirmed that IHL remains the appropriate international legal framework for regulating the conduct of the parties to armed conflicts and providing protection for the persons affected. Indeed, at no point during the intergovernmental process were views expressed that working towards better application of IHL is irrelevant or unimportant. Furthermore, during the intergovernmental process it was recognized that compliance with IHL is needed to protect persons in armed conflict, to reduce suffering, and to enable respect for human dignity. Exchanges within the process illustrated the strong interest and continuing commitment of States to find ways and means to strengthen respect for IHL.

It was likewise recognized that the International Conference of the Red Cross and Red Crescent remains a unique global forum for gathering States and the components of the International Red Cross and Red Crescent Movement and that the role of the Conference and of the global humanitarian network of National Societies must continue to play a key role in promoting better compliance with IHL.

Despite efforts undertaken by delegations, it became clear that, in the current international environment, the time was not ripe for reaching a consensual agreement among States on ways to strengthen respect for IHL within the intergovernmental process. Further efforts will be necessary to find solutions to bring about increased respect for IHL.

The intergovernmental process nevertheless allowed for rich discussions on how to increase compliance with IHL and provided a platform for non-politicized exchange among States that can itself provide an example for future discussions. Equally, the multitude of ideas on how to strengthen respect for IHL that were developed by States can inspire future work on strengthening compliance with IHL.

Important time and energy was invested by all in the intergovernmental process over several years. The co-facilitators wish to thank States for their participation, their active engagement and the valuable ideas they contributed to the common effort made in the process. They encourage States to seize the momentum generated by the recent exchanges and to take forward the rich spectrum of ideas on how to increase compliance with IHL.

## **Annex I: Resolution 2 of the 32<sup>nd</sup> International Conference (32IC/15/R2)**

### **Strengthening compliance with international humanitarian law**

The 32nd International Conference of the Red Cross and Red Crescent (International Conference),

*stressing* the importance and continued relevance of international humanitarian law (IHL) for regulating the conduct of parties to armed conflicts, both international and non-international, and providing protection and assistance for the victims of armed conflicts,

*recalling* the universal ratification of the 1949 Geneva Conventions, and emphasizing the primary responsibility of States in the development of IHL,

*recalling* Resolution 1 of the 31st International Conference, and taking note of the Concluding Report prepared by the ICRC and Switzerland on the consultations held in implementing the relevant provisions of this resolution,

*stressing* that the imperative need to improve compliance with IHL was recognized by all States in the consultation process facilitated by the ICRC and Switzerland as a key ongoing challenge, and that more can be done to address the current weaknesses and gaps in the implementation of IHL, including by non-State parties to armed conflict,

1. *thanks* Switzerland and the ICRC for facilitating the consultation process with States and other actors pursuant to the relevant provisions of Resolution 1 of the 31st International Conference, and recalls the guiding principles of the consultation process:

- 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 importance of avoiding politicization, including by ensuring that States address the implementation of IHL only within their own sphere of competence and responsibility
- the need for an IHL compliance system to be effective
- 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 the discussions address 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
- the need for the process to ensure universality, humanity, impartiality and nonselectivity
- 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 need for the process and the mechanism to be non-contextualized.

2. *Recommends* the continuation of an inclusive, State-driven intergovernmental process based on the principle of consensus after the 32nd International Conference and in line with the guiding principles enumerated in operative paragraph 1 to find agreement on features and functions of a potential forum of States and to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums in order to submit the outcome of this intergovernmental process to the 33rd International Conference.

## **Annex II: Organizational issues and provisional work plan agreed upon at the First Formal Meeting**

### **I. Introduction**

1. The 32nd International Conference of the Red Cross and Red Crescent of December 2015 adopted Resolution 2 entitled “Strengthening compliance with international humanitarian law”. Therein, the Conference recommended by consensus “the continuation of an inclusive, State-driven intergovernmental process based on the principle of consensus after the 32nd International Conference and in line with the guiding principles enumerated in operative paragraph 1 [of the resolution] to find agreement on features and functions of a potential forum of States and to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums in order to submit the outcome of this intergovernmental process to the 33rd International Conference.”

2. The first formal meeting in the intergovernmental process was held on 28-29 November 2016 in Geneva. The purpose of the meeting was to examine and agree on organizational matters related to the process and a provisional work plan/timetable.

### **II. General considerations**

3. The intergovernmental, State-driven process on strengthening respect for IHL is implemented in line with the guiding principles enumerated in operative paragraph 1 of Resolution 2 adopted by the 32nd International Conference of the Red Cross and Red Crescent. The guiding principles are:

- a. 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;
- b. the importance of avoiding politicization, including by ensuring that States address the implementation of IHL only within their own sphere of competence and responsibility;
- c. the need for an IHL compliance system to be effective;
- d. the avoidance of unnecessary duplication with other compliance systems;
- e. the requirement to take resource considerations into account;
- f. the need to find appropriate ways to ensure that the discussions address 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;
- g. the need for the process to ensure universality, humanity, impartiality and non-selectivity;
- h. the need for the process to be based on dialogue and cooperation;
- i. the voluntary, i.e. non-legally binding, nature of the consultation process, as well as of its eventual outcome;
- j. the need for the process and the mechanism to be non-contextualized.

4. The intergovernmental process is based on the understanding that “nothing is agreed until everything is agreed”.

### **III. Organizational issues**

5. Facilitation: Switzerland and the ICRC continue to serve as co-facilitators of the State-driven intergovernmental process on strengthening respect for IHL.

6. Documentation: Switzerland and the ICRC ensure that documentation and relevant reports are provided for the meetings held in the process, such as background documents to help inform and focus discussions. The co-facilitators endeavor to submit documentation to all States four weeks prior to the formal meetings. At all stages of the process, States are encouraged to submit in writing their own proposals or non-papers, comments and observations to the co-facilitators. State submissions

are shared with all States on the dedicated website. These documents must be in line with the guiding principles, and where a proposal is submitted in another language, unofficial translations into English by the State submitting the proposal are encouraged.

7. Outcome of the formal meetings: At the end of each formal meeting, based on the deliberations held, the co-facilitators will:

- a. propose for the consideration of States, in a succinct form, main elements reflecting identified converging points and particular points for further discussions, including those on which divergent views were expressed and,
- b. in that context, provide a factual summary of the discussions to which States may make comments or rectification, if any, within a period of two weeks.

All documents related to the formal meetings are made available on the website, including State comments and any other documents that States may wish to share.

#### IV. Format and frequency of meetings

8. Formal meetings: two formal meetings of two to three days, open to all States, are held in plenary per year in Geneva.

9. Open-ended informal meetings: one informal meeting, open to all States, will be held prior to each formal meeting to help prepare for the formal meeting, and other consultations as may be deemed necessary by the co-facilitators, keeping these to the minimum necessary. Informal meetings shall not substitute for formal meetings at which all proposals are considered and decisions are made. Sufficient advance notice shall be given by the co-facilitators of the dates of the informal meetings and consultations.

10. No meetings will be scheduled at the same time within this process.

#### V. Provisional work plan

November 2016	<p><b>First formal meeting on strengthening respect for IHL</b></p> <p><i>Modalities of the intergovernmental process</i></p> <ul style="list-style-type: none"> <li>- Organizational issues of the intergovernmental process</li> <li>- Work plan and timetable of the intergovernmental process</li> </ul>
	<p><b>Informal consultations</b></p>
First half 2017	<p><b>Second formal meeting on strengthening respect for IHL (3 days)</b></p> <ul style="list-style-type: none"> <li>- Presentation of a detailed report on existing mechanisms (1 day)</li> <li>- Features and functions of a potential forum of States (2 days)</li> </ul>
	<p><b>Informal consultations</b></p>
Second half 2017	<p><b>Third formal meeting on strengthening respect for IHL (3 days)</b></p> <ul style="list-style-type: none"> <li>- Ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums (2 days)</li> <li>- Provisional work plan for 2018, including review of outstanding issues (1 day)</li> </ul>

11. The formal meetings to be held in 2018 and 2019 will ensure further discussion on outstanding issues of the previous formal meetings, as well as the format and substance of the outcome of the intergovernmental process to be submitted to the 33rd International Conference.

12. The last formal meeting, to be held in the first half of 2019, will be dedicated to the outcome of the intergovernmental process to be submitted to the 33rd International Conference pursuant to paragraph 2 of Resolution 2 of the 32nd International Conference.

## **Annex III: Main Elements adopted by the Second Formal Meeting**

### **Main elements**

1. The second formal meeting, building on the provisional work plan, was held in the framework of the intergovernmental process in accordance with resolution 2 of the 32nd International Conference.
2. States had before them two documents prepared by the facilitators, a report by the ICRC on Existing Mechanisms, Initiatives and Processes Dealing with IHL, and a background document by both the ICRC and Switzerland on the Features and Functions of a Potential Forum of States, including an annex. Both documents served as a basis for discussions. A number of States provided written contributions that were shared through the dedicated website.
3. All States reiterated their willingness to work towards improving the implementation of, and strengthening compliance with, IHL.
4. Convergent and divergent views were expressed on the agenda items of the meeting. All delegations agreed to continue in an inclusive, State-driven intergovernmental process based on the principle of consensus after the 32nd International Conference and in line with the guiding principles enumerated in operative paragraph 1 of Resolution 2 of the 32nd International Conference to find agreement on features and functions of a potential forum of States and to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums in order to submit the outcome of this intergovernmental process to the 33rd International Conference.



## **Annex IV: Main Elements and work plan for 2018 adopted by the Third Formal Meeting**

### **Main Elements**

1. The Third Formal Meeting, building on the provisional work plan, was held in the framework of the intergovernmental process in accordance with resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent. Delegations discussed ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums.
2. Delegations had before them a Background Document prepared by the co-facilitators on the International Conference of the Red Cross and Red Crescent and meetings envisaged in Resolution 1 of the 26th International Conference of 1995; the meetings envisaged in Article 7 of Additional Protocol I; and on IHL regional forums. The Background Document had been revised in order to take into account the questions States had asked and the discussions that had been held in preparation for the Third Formal Meeting.
3. In view of the Third Formal Meeting, a number of States provided written contributions on ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums, as well as on the conduct of business. These submissions were shared through the dedicated website of the intergovernmental process.
4. All States reiterated their willingness to work towards improving the implementation of IHL, and strengthening its compliance, in conformity with resolution 2 of the 32nd International Conference.
5. Delegations provided a range of proposals and options for enhancing the implementation of IHL through dialogue and cooperation by States using the potential of the International Conference. The exchanges allowed for a better mutual understanding of States' views on ways whereby the International Conference could contribute to strengthening respect for IHL, including through providing a venue.
6. Delegations shared experiences and presented activities and concrete achievements of IHL regional forums in strengthening respect for IHL. They referred to the complementary contributions of such forums, where they exist, taking into account the diversity of each region, in enhancing the implementation of IHL.
7. States re-confirmed the agreed modalities of work and took note of the proposal presented during the meeting on the conduct of business.
8. Delegations agreed on the work plan (enclosed).

### **Work plan for 2018**

The formal meetings to be held in 2018 will ensure further discussion on possible options for strengthening respect for IHL pursuant to paragraph 2 of Resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent with a view to narrowing down the options, building convergence and defining the outcome of the intergovernmental process.

	<b>Informal consultations</b>
First half 2018	<b>Fourth formal meeting on strengthening respect for IHL (3 days)</b> - Identification of converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017, and consideration of possible new proposals
	<b>Informal consultations</b>
Second half 2018	<b>Fifth formal meeting on strengthening respect for IHL (3 days)</b>

	<ul style="list-style-type: none"><li>- Development of proposals for strengthening respect for IHL based on the converging elements and discussions held</li><li>- Identification of the main proposals to be further pursued</li><li>- Preliminary exchange of views on elements and form of the outcome of the intergovernmental process</li><li>- Consideration and adoption of work plan for 2019</li></ul>
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The formal meetings to be held in 2019 will ensure sufficient discussion on elements and form of an outcome, including the identification of consensual proposals, with a view to finalizing the outcome before mid-2019.

## **Annex V: Main Elements adopted by the Fourth Formal Meeting**

### **Main Elements**

1. The Fourth Formal Meeting, building on the Work Plan for 2018 adopted at the Third Formal Meeting held on 4-6 December 2017, was held in the framework of the intergovernmental process in accordance with resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent. Delegations discussed converging elements in the context of potential ways to enhance the implementation of IHL.
2. Delegations had before them a Discussion Paper prepared by the co-facilitators on the converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017. The Discussion Paper had been revised in order to take into account the issues raised by States in the discussions that had been held in preparation for the Fourth Formal Meeting.
3. All States reiterated their willingness to work towards improving the implementation of IHL, and strengthening its compliance, in conformity with resolution 2 of the 32nd International Conference.
4. The “Discussion paper on the identification of converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017” was discussed by delegations during the relevant sessions. The exchanges allowed for a better understanding of States’ views towards the development of proposals foreseen for the Fifth Formal Meeting to be held in December 2018.

## **Annex VI: Main Elements and work plan for 2019 adopted by the Fifth Formal Meeting**

### **Main elements**

1. The Fifth Formal Meeting, building on the Work Plan for 2018 adopted at the Third Formal Meeting held on 4-6 December 2017, was held in the framework of the intergovernmental process in accordance with resolution 2 of the 32<sup>nd</sup> International Conference of the Red Cross and Red Crescent. The Fifth Formal Meeting was dedicated to the development of proposals for strengthening respect for IHL based on the converging elements and the discussions held, the identification of the main proposals to be further pursued, a preliminary exchange of views on elements and form of the outcome of the intergovernmental process, as well as the consideration and adoption of the work plan for 2019.
2. Delegations had before them a Discussion Paper prepared by the co-facilitators. The Discussion Paper had been revised in order to take into account the issues raised by States in the discussions that had been held in preparation for the Fifth Formal Meeting.
3. In view of the Fifth Formal Meeting, a number of States provided written contributions towards the development of proposals for strengthening respect for IHL based on the converging elements and the discussions held. These submissions were shared through the dedicated website of the intergovernmental process.
4. Delegations presented a range of proposals and ideas to enhance the implementation of IHL using the potential of the International Conference, dedicated IHL regional forums, a dialogue on IHL among States, and a digital tool.
5. The main ideas put forward by States as contributions towards a potential outcome as outlined in the Discussion Paper for the Fifth Formal Meeting were discussed by delegations during the relevant sessions.
6. In view of the last formal meeting, the co-facilitators will prepare a factual report on the proceedings of the intergovernmental process on strengthening respect for IHL.
7. Delegations agreed on the work plan for 2019.

### **Work Plan for 2019**

March 2019 (short meeting)	<b>Last formal meeting on strengthening respect for IHL</b> <ul style="list-style-type: none"><li>- Presentation of the factual report of the co-facilitators</li><li>- Conclusion of the intergovernmental process on strengthening respect for IHL</li></ul>
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## **Annex VII: Main Elements adopted by the Sixth Formal Meeting**

### **Main elements**

1. The Sixth Formal Meeting, based on the Work Plan for 2019 adopted at the Fifth Formal Meeting, was held within the framework of the intergovernmental process in accordance with resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent.
2. Delegations had before them the Factual Report on the Proceedings of the Intergovernmental Process on Strengthening Respect for IHL prepared by the co-facilitators. The Factual Report will be submitted by the co-facilitators to the 33rd International Conference of the Red Cross and Red Crescent.
3. All States reaffirmed their determination to work towards improving respect for IHL.
4. The Sixth and final Formal Meeting concluded the intergovernmental process on strengthening respect for IHL.