

# STRENGTHENING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW: THE WORK OF THE ICRC AND THE SWISS GOVERNMENT<sup>1</sup>

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*The International Committee of the Red Cross and Switzerland are currently undertaking a major consultation process on how to improve compliance with IHL by developing stronger international mechanisms. This paper will provide an*

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*overview of existing compliance mechanisms in IHL and the reasons for their under-utilisation. It will then outline the background to the Swiss-ICRC consultations, as well as the elements of a future IHL compliance system currently under discussion by States.*

## I INTRODUCTION

In 1864, sixteen States gathered in Geneva, Switzerland to adopt the *Convention on the Amelioration of the Condition of the Wounded in Armies in the Field* (the 1864 Geneva Convention).<sup>5</sup> This was the first international instrument upholding minimum standards of humanity in times of war. But the principles enshrined in this treaty were not new – they were universal in origin. In every age, in every civilisation, leaders, commanders and visionaries have formulated rules to limit the brutality of war, breathing the warmth of humanity into the depths of inhuman suffering. The provisions of the 1864 Geneva Convention resonated with a belief forged over centuries and in all cultures that it is essential to lay down rules if we want to prevent wars from degenerating into barbarism.

What began as a treaty of only ten articles dealing with the protection of the wounded, sick and medical personnel, matured over time into a comprehensive body of law. Many aspects of the conduct of hostilities and the protection of persons in enemy hands have been codified and basic legal principles guiding behaviour have been formed. The four *Geneva Conventions* of 1949<sup>6</sup> and the two *Protocols Additional to the Geneva Conventions* of 1977<sup>7</sup> contain more than 600 provisions aimed at protecting victims of armed conflict. International efforts have concentrated on developing new rules to mitigate the ever-changing causes of lethal violence in armed conflict.

These developments have had a clearly positive humanitarian impact. Rules of international humanitarian law (IHL) have served to moderate the conduct of military operations with a much-needed measure of humanity. Conflict has evolved in kind, with methods used in earlier

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<sup>5</sup> Adopted 22 August 1864, entered into force 22 June 1865.

<sup>6</sup> Adopted 12 August 1949, entered into force 21 October 1950 (hereafter *Geneva Conventions*).

<sup>7</sup> Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (hereafter Additional Protocol I); and Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of Non-International Armed Conflicts, adopted 8 June 1977, entered into force 7 December 1978.

conflicts, such as carpet-bombing or the use of anti-personnel mines, now clearly regarded as unacceptable. States have adopted numerous IHL treaties, and important norms of customary IHL have likewise crystallised.

However, more than 150 years after the adoption of the 1864 Geneva Convention, armed conflicts continue to cause immeasurable suffering. This suffering is all the more intolerable because it could be avoided. If all parties to conflict showed perfect regard for IHL, most current humanitarian issues would not exist.<sup>8</sup> Insufficient respect for the rules of war – not a lack of rules – is the principle contributor to the overall human cost of war.

This sentiment is borne out by the experience of the International Committee of the Red Cross (ICRC) in its work in more than 80 countries worldwide. In Iraq and Syria, for example, health care providers are the subjects of attack. Tens of thousands of civilians live in severe conditions, and access by humanitarian organisations is limited. In the Democratic Republic of the Congo as well, civilians bear the brunt of the conflict. The impact on local inhabitants has been huge, with abductions, murders, attacks and displacement occurring frequently. An alarming level of sexual violence persists. And in Colombia – one of the world's longest running armed conflicts – every day thousands of people are killed, disappear, are forcibly displaced or become trapped in their own neighbourhoods. Many more continue to suffer from the effects of the unexploded remnants of war. These are but a few instances of where the ICRC continues to witness a lack of respect for IHL.

Addressing this problem requires a shift of focus: away from developing new rules and towards improving compliance with the existing rules. The law tries to prevent or put a stop to suffering and to deter future violations, but norms cannot, in and of themselves, eradicate abuses or be expected to do so. They need to be complied with. This shift of focus can be observed in other areas of international law, including human rights law and trade law, and is indicative of an increase in attention to matters of accountability across all fields of international law.

The ICRC and the Swiss government are currently undertaking a major consultation process on how to improve compliance with IHL by developing stronger international mechanisms.

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<sup>8</sup> ICRC 'Strengthening legal protection for victims of armed conflict' (Draft Resolution and Report, 31IC/11/5.1.1) Geneva, October 2011.

This paper will provide an overview of existing compliance mechanisms in IHL and the reasons for their under-utilisation. It will then outline the background to the Swiss-ICRC consultations, as well as the elements of a future IHL compliance system currently under discussion by States.

## II OVERVIEW OF EXISTING IHL COMPLIANCE MECHANISMS

All States have ratified the four 1949 *Geneva Conventions*. In ratifying these treaties, all States have undertaken ‘to respect and ensure respect for’ these Conventions in all circumstances.<sup>9</sup> Ensuring respect for IHL is a joint responsibility of all States. This responsibility is multi-faceted and involves the adoption of domestic legislation implementing IHL treaty obligations, the adequate training of armed forces in peacetime, the appointment of legal advisers to the armed forces, the teaching and dissemination of IHL to the population at large, and others. Important work in this area has been, and continues to be, undertaken by States, civil society and other organisations, including the ICRC.

Respect for IHL may also be improved by putting into place procedures and mechanisms necessary to enable determination of individual criminal responsibility and the application of appropriate sanctions, after suspected IHL violations have occurred. This is an area in which the most progress has been made over the past two decades, as evidenced by the creation of international courts and tribunals.

The area in which there has been inadequate progress, and which is the focus of the Swiss-ICRC initiative, is the need to enhance the effectiveness of mechanisms of compliance with IHL. This section provides an overview of the main existing mechanisms aimed at promoting greater compliance with IHL.<sup>10</sup>

### *A Protecting Powers*

The Protecting Powers mechanism<sup>11</sup> applies in international armed conflicts only. It obliges each party to the conflict to designate, with the agreement of the other side, a neutral State to

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<sup>9</sup> Common article 1, *Geneva Conventions* of 12 August 1949 (hereafter *Geneva Conventions*).

<sup>10</sup> For a full description of all IHL-related compliance mechanisms, see ICRC ‘Background Document’ Working Group Meeting on Strengthening Compliance with IHL, Geneva, October 2012.

<sup>11</sup> Common articles 8/8/8/9 of the *Geneva Conventions*, and article 5 of Additional Protocol I.

safeguard its humanitarian interests, and to therefore monitor compliance with IHL. The parties may also agree to entrust the duties of a Protecting Power to ‘an organisation which offers all guarantees of impartiality and efficacy’.<sup>12</sup>

In practice, the Protecting Powers system has been used on very few occasions since World War II, the last reported instance being the international armed conflict between the United Kingdom and Argentina over the Falklands/Malvinas Islands in 1982. As explained below, the ICRC has fulfilled this role in many modern conflicts.

### *B Enquiry procedure*

The formal enquiry procedure was first provided for in the 1929 *Convention for the Amelioration of the Condition of the Wounded and Sick in Armies in the Field* (the 1929 Convention).<sup>13</sup> It was later repeated, with additional details, in the four 1949 *Geneva Conventions*.<sup>14</sup> The procedure is applicable in international armed conflicts only. Pursuant to this mechanism, an enquiry into an alleged violation of the *Geneva Conventions* must take place at the request of a party to the conflict. The details of the procedure are to be decided by the belligerents or by an umpire whom they appoint. If the enquiry concludes that a violation of the Conventions occurred, the parties are obliged to put an end to it and to repress it with the least possible delay.

Very few attempts to use the formal enquiry mechanism have been made since the 1929 Convention was adopted,<sup>15</sup> and none have resulted in the actual launching of the procedure. Opportunities to use the enquiry procedure have diminished with the increased prevalence of non-international armed conflicts.

### *C The International Humanitarian Fact-Finding Commission*

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<sup>12</sup> Common article 10/10/10/11 and article 5 of Additional Protocol I.

<sup>13</sup> Article 30.

<sup>14</sup> Common article 52/53/132/149.

<sup>15</sup> Resort to the mechanism was proposed on four occasions: (1) during the war between Italy and Ethiopia (1935-1936); (2) following the Katyn Massacre (1943); (3) during the Korean War (1952); and (4) during the war between Israel and Arab States (1973-1974).

The International Humanitarian Fact-Finding Commission (IHFFC) was officially constituted in 1991 on the basis of article 90 of *Additional Protocol I*. The IHFFC is composed of 15 individuals acting in their personal capacity. It is competent to:

- a) enquire into any facts alleged to be a grave breach or other serious violation of the 1949 *Geneva Conventions* or *Additional Protocol I*, and
- b) facilitate, through its good offices, the restoration of an attitude of respect for these instruments.

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

While 76 States have recognised its competence to date, the IHFFC has never been triggered. However, its potential relevance as a mechanism for improving respect for IHL while armed conflict is ongoing has been emphasised on various occasions.<sup>16</sup>

#### *D The Role of the International Committee of the Red Cross*

It is mainly the ICRC that, in practice, carries out a range of functions aimed at improving compliance with IHL when an armed conflict is ongoing. The ICRC carries out some of these tasks on the basis of specific mandates provided for in the *Geneva Conventions* in situations of international armed conflict.<sup>17</sup> The ICRC is also entitled to offer its services to the parties to a non-international armed conflict pursuant to common article 3 to the *Geneva Conventions*.

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<sup>16</sup> See, for example, ICRC and International Federation of Red Cross and Red Crescent Societies 'Report of the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent' Geneva, 2011.

<sup>17</sup> See article 127(4) of the Geneva Convention Relative to the Treatment of Prisoners of War, 12 August 1949 (Geneva Convention III); see also article 143(5) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Geneva Convention IV).

The ICRC's role in monitoring compliance with IHL is characterised by certain limits that are inherent to its mission and working method. It is generally not the ICRC's practice to publicly condemn authorities responsible for violations of IHL, nor does the organisation seek to provoke international pressure to promote better respect for IHL. Except in strictly defined circumstances, the ICRC focuses on a confidential and bilateral dialogue with each party to an armed conflict with the aim of persuading those responsible for violations to change their behaviour and meet their obligations. Confidentiality has proven to be an indispensable tool for obtaining direct access to victims of armed conflicts and for being able to undertake operational work. It is also key to staff security, particularly in context where the ICRC is the only humanitarian organisation providing services on the ground.

### III PERFORMANCE OF EXISTING IHL COMPLIANCE MECHANISMS

Three broad conclusions may be drawn from an analysis of these existing IHL compliance mechanisms. First, that these existing IHL compliance mechanisms have never or rarely been used. Second, that they were crafted for international armed conflict only, whereas the majority of armed conflicts today are non-international in nature. Third, that the compliance mechanisms of other international legal frameworks are not an adequate substitute for a dedicated IHL compliance system.

#### *A Reasons for under-utilisation of existing mechanisms*

The reasons that the existing IHL compliance mechanisms have not been utilised arguably lie in the way they were configured and a lack of appropriate institutional anchoring.

The existing mechanisms are based on the premise that States involved in an international armed conflict will have the capacity to propose to the other party, or agree with it, to trigger the mechanism in question. This approach is based on an expectation that is not likely to be fulfilled in the present day.

Existing IHL compliance mechanisms also lack attachment to a broader institutional compliance structure. The four *Geneva Conventions* of 1949 and their *Additional Protocols* are an exception amongst international treaties related to the protection for persons in that they

do not provide that States will meet on a regular basis to discuss issues of common concern and perform functions related to treaty compliance.

The absence of such a structure means that specific compliance mechanisms lack the institutional support that may be necessary to ensure they are utilised, to facilitate the performance of their tasks, and to assist in any follow-up that may be appropriate.

#### *B Mechanisms of other international legal frameworks*

The performance of existing IHL compliance mechanisms must be assessed in light of related compliance mechanisms in other bodies of international law related to the protection of persons. A variety of mechanisms created within the international human rights law framework are increasingly dealing with situations of armed conflict, albeit primarily (though not exclusively) from the perspective of human rights violations that may have been committed. A growing number are including references to IHL in their activities.

Mechanisms of international criminal justice have also significantly developed over the past decades. Their aim is to establish criminal responsibility after alleged crimes under international law, including war crimes, have been committed.

The current Swiss-ICRC process offers a unique opportunity to reflect on the different concerns and objectives of these systems, their limitations and the elements that could be useful in a future IHL compliance system.

#### IV THE SWISS-ICRC CONSULTATIONS

These observations on the effectiveness of existing IHL compliance mechanisms have been the backdrop of State discussions within the Swiss-ICRC initiative, and have shaped the contours of a possible new IHL compliance system.

In its Resolution 1, the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent held in 2011<sup>18</sup> stressed that greater compliance with IHL is an indispensable prerequisite to

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<sup>18</sup> The International Conference of the Red Cross and Red Crescent is a quadrennial event that brings together the States party to the *Geneva Conventions*, the world's National Red Cross and Red Crescent Societies, the

improving the situation of victims of armed conflict.<sup>19</sup> The Conference invited the ICRC to pursue further research, consultation and discussion in cooperation with States to identify and propose possible means to enhance and ensure the effectiveness of mechanisms of compliance with IHL<sup>20</sup> and requested that a report, proposing a range of options and recommendations, be submitted to the 32<sup>nd</sup> International Conference.<sup>21</sup>

The request by the International Conference to the ICRC reflects the paramount importance the ICRC attaches to the need for compliance with IHL. It may be said to lie at the very heart of ICRC's action. ICRC's operational presence in the field – like that of many humanitarian organisations – is in large part the result of needs created by lack of compliance with IHL by the parties to armed conflicts. In addition to providing protection and assistance to persons affected by armed conflict, the ICRC aims to encourage the parties involved to better comply with this body of rules.

The 31<sup>st</sup> International Conference also expressed its appreciation to the Government of Switzerland for its availability to facilitate a process to explore ways and means to strengthen the application of IHL, and to reinforce dialogue on IHL issues among States, in cooperation with the ICRC.<sup>22</sup>

Switzerland, in its capacity as depository State of the 1949 *Geneva Conventions*, is well placed to be a vanguard of IHL. Over the past 150 years, Switzerland has been committed to strengthening IHL and its universal respect. The historical role Switzerland played in the genesis of IHL, its long humanitarian tradition, and Swiss neutrality (or the principle of universality in its international relations) accord Switzerland a particularly strong legitimacy to be an engine and promoter of IHL.

Following the International Conference, Switzerland and the ICRC began a joint initiative to facilitate implementation of the relevant provisions of Resolution 1.

#### *A Guiding Principles of the Process*

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International Federation of Red Cross and Red Crescent Societies and the ICRC. The International Conference is the supreme deliberative body of the International Red Cross and Red Crescent Movement.

<sup>19</sup> Paragraph 5.

<sup>20</sup> Paragraph 6.

<sup>21</sup> Paragraph 8.

<sup>22</sup> Paragraph 7.

Switzerland and the ICRC are committed to ensuring that their joint initiative is conducted in a transparent, inclusive and open manner. Further, the Swiss-ICRC initiative is premised on several key principles:

- a) the need for an IHL compliance system to be effective
- b) the importance of avoiding politicisation
- c) 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
- 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 all types of armed conflicts, as defined in the *Geneva Conventions* of 1949 and their Additional Protocols, and the parties to them, are included
- g) the need for the process to ensure universality, impartiality and non-selectivity, and
- h) the need for the process to be based on dialogue and cooperation.

#### *B Meetings and Consultations*

Guided by these principles, the Swiss-ICRC initiative was launched on 13 July 2012, when a first Informal Meeting of all States was convened in Geneva. The Meeting confirmed that there was general concern about lack of compliance with IHL, as well as broad agreement on the need for regular dialogue among States on IHL issues and, in particular, on improving respect for this body of law.

Following 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 discussion with a regionally balanced group of States (in November 2012 and April 2013). The purpose of these consultations was to identify the main substantive issues of relevance.

A Second Meeting of States was held in June 2013, to present States with an overview of the discussions and consultations that had taken place and to seek guidance on the substantive questions that had arisen, as well as on possible next steps. This Second Meeting was followed by two Preparatory Discussions (in December 2013 and April 2014). These Discussions were open to all States, and their objective was to devise the features of the possible elements of an IHL compliance system.

A Third Meeting of States was held at the end of June 2014, to further clarify and refine States' positions, and was followed by a further Preparatory Discussion in December 2014. With each subsequent meeting, States identified points on which views are converging, as well as those that require further discussion. The series of meetings concluded in April 2015 with a Fourth Meeting of States.

Resolution 1 of the 31<sup>st</sup> International Conference requests the ICRC to submit a report to the 32<sup>nd</sup> International Conference on the consultation process that has been undertaken. The report will be prepared in conjunction with Switzerland as the co-facilitator of the process, but will be the sole responsibility of the ICRC. It will reflect the discussions held, options for strengthening compliance with IHL identified in consultation with States, and make recommendations. While not representing an agreed view among States, it is hoped that by indicating relevant points of convergence of States' views, the report may provide a backdrop for a possible decision on the establishment of an IHL compliance system.

#### V ELEMENTS OF A FUTURE IHL COMPLIANCE SYSTEM

Noting that no agreement has been reached within the ongoing Swiss-ICRC consultation process (and acknowledging that it is not of a decision-making nature), this section provides an outline of the elements of a future IHL compliance system currently under discussion by States.<sup>23</sup>

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<sup>23</sup> For a full description of issues see discussed to date, see ICRC 'Background Document' Fourth Meeting of States on Strengthening Compliance with IHL, Geneva, April 2015.

Most States are of the view that a Meeting of States should be established as a central pillar of a future IHL compliance system. This Meeting should serve to consider national compliance reports in a non-contextual manner and to hold thematic discussions on IHL issues. A possible fact-finding function has also been discussed, though this idea has not attracted a convergence of views.

It is important to note that the new IHL compliance system being contemplated will not be legally binding. That is, any future compliance mechanism will be voluntary in nature. States have not been willing to reopen existing IHL treaties or adopt new instruments for this purpose. A key challenge in the discussions ahead, and for a new system if established, will be how to ensure its effectiveness.

There is also a general recognition that any new IHL compliance system should apply to both international and non-international armed conflicts. This raises the question of whether and how the system could improve compliance with IHL by non-State parties to non-international armed conflicts. This sensitive question will, inevitably, have to be addressed in the discussions ahead.

#### *A Meetings of States*

The central element of a new IHL compliance system is likely to be a regular Meeting of States party to the 1949 *Geneva Conventions*. During the consultation process, broad agreement has been expressed by States on the need for a regular dialogue among States on IHL issues. The general purpose of such a Meeting of States would be:

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

The view was widely shared among States that the future Meeting of States should not be competent to develop new law or to adopt amendments to existing IHL treaties. Rather, it should aim to promote knowledge of and universal respect for IHL by:

- a) providing a platform for States to exchange views (in a flexible and voluntary framework and with a focus on dialogue and cooperation) on issues related to compliance with IHL and on States' practical experiences in IHL implementation
- b) the sharing of best practices
- c) the identification of States' needs and fostering of international cooperation in addressing them, and
- d) the identification of challenges in IHL implementation.

Other aspects of a future Meeting of States are the subject of further discussions. These include: how such a Meeting of State should be created; the denomination of the Meeting; its structure and organs (including the chair, bureau and secretariat); how frequently it will be convened; whether meetings will be held in public or privately; membership and attendance; the relationship to existing bodies of the International Red Cross and Red Crescent Movement; and issues of resourcing.<sup>24</sup> In April 2015, States noted that not all of these issues would necessarily be resolved before the 32<sup>nd</sup> International Conference, and that they could be decided by States once the Meeting of States was established.

Among the various functions of a Meeting of States discussed during the consultations, the following have dominated the discussions:

- a) a periodic reporting system on national compliance with IHL
- b) regular thematic discussions on IHL issues, and
- c) a fact-finding mechanism.

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<sup>24</sup> For a summary of the discussion on these issues, see ICRC 'Background Document' Fourth Meeting of States on Strengthening Compliance with IHL, Geneva, April 2015.

## *B National Periodic Reporting on IHL Compliance*

One element of the future IHL compliance system is the periodic reporting by States on compliance with their IHL obligations. There has been broad recognition by States that a periodic reporting function is an essential tool for improving compliance with IHL at the national level and providing a baseline of information on the state of IHL implementation in various parts of the world.

Reporting provides an opportunity for self-assessment by States. It also facilitates engagement among States to achieve the common goal of enhancing IHL compliance. It was emphasised during the consultations that a reporting function must be linked to the Meeting of States, and that it could also serve to inform the choice of topics for thematic discussions on IHL issues (see below).

There is general agreement among States that such a reporting function should be limited to States' obligations under the 1949 *Geneva Conventions* and their three *Additional Protocols* (for States that are parties to the latter).<sup>25</sup> The role of customary IHL in a reporting process generated different views, but the unchallenged position is that States should feel free to refer to customary IHL in their reports if they so wish. There was likewise general agreement that the periodic reporting should not involve an 'article by article' review of the relevant IHL treaties.

While details of the form, content and frequency of periodic reports will continue to be discussed, it is clear that States do not wish the reporting system to be cumbersome. Importantly, reports should have a demonstrated utility – appropriate non-contextual follow-up procedures should be established. However, an individual review of State reports should be avoided, due to the risk of politicisation. Several options are still under examination with regards to appropriate follow-up procedures, and how best to ensure that States actually submit their periodic national reports (give the non-binding nature of the eventual reporting function).

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<sup>25</sup> Including the Protocol Additional to the Geneva Conventions and Relating to the Adoption of an Additional Distinctive Emblem, adopted 8 December 2015, entered into force 14 January 2007.

### *C Thematic Discussions*

There is general agreement among States that a thematic discussion function would be a useful and important function of a new IHL compliance system. Such a function could:

- a) serve to ensure that States are better informed about current or emerging IHL issues
- b) enable a better understanding of States' legal and policy positions on current and emerging IHL issues
- c) enable exchanges of views on key legal, practical and policy issues
- d) develop a deeper understanding of IHL and of practical measures taken by States to implement it
- e) strengthen existing networks by bringing together IHL experts from different States, and
- f) enable other potential beneficial effects.

It has been stressed in the consultations that specific sessions of the Meeting of States should be devoted to thematic discussions, and that linkages with the periodic reporting system should be considered, including in the identification of topics of common concern. In relation to scope, most States are of the view that thematic discussions should not address development of the law, but focus on IHL issues related to the application and interpretation of the law. Many participants believe that thematic discussions should also allow for an exchange of views among States on policy positions adopted with regard the interpretation and application of particular IHL obligations in practice.

### *D Fact-Finding*

Among the several possible compliance functions that have been canvassed in the consultation process, fact-finding has generated widely divergent views. Some States expressed support for the idea. In their view, establishing a fact-finding function within an IHL-specific

framework would be both useful and necessary, given that fact-finding in situations of armed conflict is already mandated by and carried out in other international fora that may not have a specific mandate and expertise in IHL. Even among this likeminded group, different views were held on whether such a function should operate on a consensual basis.

A second group of States were of the opinion that a fact-finding function should not be part of a future IHL compliance system, as it would be contrary to some of the guiding principles of the process. In particular, such a function could risk politicisation of the IHL compliance system.

A third group of States neither supported nor rejected the idea of a fact-finding function but expressed an openness to continue discussions on the topic. They also suggested that fact-finding at the domestic level and national practice in that regard could be a possible topic for a thematic discussion at the Meeting of States. At the Fourth Meeting of States it was accepted that the establishment of a fact-finding function would not be further examined at this stage. However, many States stressed that this topic should be revisited by the Meeting of States, once it is established, in keeping with the guiding principles.

An important part of discussions on this issue have been devoted to the possibility of making use of the IHFFC in the context of a future IHL compliance system, given that it is already in existence. A general question was raised about whether and how the IHFFC could be recognised to carry out its functions in situations of non-international armed conflicts, given that its current mandate is explicitly linked only to international armed conflict. While no resolution has been reached on this issue, States have confirmed the view that an amendment to article 90 of *Additional Protocol I* (on the basis of which the IHFFC was established) should not be contemplated.

## VI OUTLOOK

Discussions on clarifying and strengthening IHL to meet the challenges of modern day armed conflicts are ongoing. Among them are debates on the new types of weapons, the possible conduct of hostilities in cyberspace, and others. In addition to dealing with specific new legal challenges, IHL is also adapting to certain changes in the nature of warfare. Chief among them is the current prevalence of non-international armed conflicts, both within the territories of

single States, as well as those in which multinational forces are engaged in an armed conflict in the territory of a host State against a range of organized non-State armed groups.

The changing nature of warfare and the specific legal questions that it poses have been a constant to which IHL has had to adapt. It has generally done so well – at a normative level. States today largely agree that IHL provides a suitable framework for regulating the conduct of parties to armed conflicts.

The area in which much more work needs to be done is how to improve compliance with IHL norms in practice. Instances of brutality, abuse and atrocities serve as stark reminders of where our priority must lie: to ensure that existing rules are known and observed by all actors. Better compliance with IHL means better protection for persons who do not or no longer participate in hostilities. The law can only be effective when it is respected.

The Swiss-ICRC process provides a unique chance to improve the effectiveness of the IHL compliance system. Efforts in this direction have been made on several occasions in the past few decades, but none bore fruit. The ICRC and Swiss government are investing unprecedented time, effort and resources in facilitating the current process, and it is unlikely that a similar undertaking will be attempted in the foreseeable future. The successful conclusion of the process is therefore of great importance. It is the sincere hope of ICRC and Switzerland that through these efforts, the 21<sup>st</sup> century will be seen as a time when compliance and accountability came to the fore in IHL.