



4 June 2018

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

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### Fourth Formal Meeting Geneva, 14-16 May 2018

#### Factual summary

##### I. Introduction

1. The present factual summary is provided by the co-facilitators in accordance with paragraph 7(b) of the document entitled “Organizational Issues and Provisional Work Plan”, as accepted by States at the First Formal Meeting on 29 November 2016. While the summary cannot and does not include the views of each delegation on every issue discussed, it aims to provide an overview of the opinions expressed at the Fourth Formal Meeting.
2. The Fourth Formal Meeting was held on the basis of Resolution 2 entitled “Strengthening compliance with international humanitarian law” that was adopted by consensus at the 32nd International Conference of the Red Cross and Red Crescent held in December 2015. Therein, the Conference recommended “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”. The intergovernmental process is based on the understanding that “nothing is agreed until everything is agreed” and is being conducted based on a general agreement about the need to ensure its non-politicization and transparency. The State-driven nature of the process was confirmed.
3. Resolution 2 builds on the consultation process on strengthening compliance with IHL that was jointly facilitated by Switzerland and the ICRC in follow-up to Resolution 1 of the 31st International Conference held in 2011. The consultations served primarily to enable States to explore jointly ways and means of enhancing the effectiveness of mechanisms of compliance with IHL and of strengthening dialogue among States on this issue.
4. In accordance with the Work Plan agreed at the Third Formal Meeting, the Fourth Formal Meeting was devoted to:
  - Identification of converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017, and consideration of possible new proposals

5. An open-ended consultation on 8 February 2018 and an informal meeting on 27 March 2018 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.

## **II. General Remarks**

6. 111 delegations participated in the meeting (see Annex II).
7. 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. The discussion paper was provided in English and in French.
8. States provided written contributions on the discussion paper on the identification of converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017. These submissions were shared through the dedicated website of the intergovernmental process.
9. Given their role as co-organisers of the International Conference, representatives of the International Federation of Red Cross and Red Crescent Societies (the IFRC) also followed the Fourth Formal Meeting.
10. On 16 May, delegations agreed on the main elements of the Fourth Formal Meeting (see Annex I).

## **III. Session 1: Identification of converging elements based on the discussion paper**

11. The first session of the Fourth Formal Meeting was dedicated to the presentation of general remarks regarding the identification of converging elements based on the discussion paper. During this session, delegations reaffirmed their commitment to the intergovernmental process and to the aim of strengthening respect for IHL, recalling the urgency of need on the ground. Delegations also expressed appreciation for the ICRC and Switzerland in their role as co-facilitators.
12. Delegations emphasised that the guiding principles established in Resolution 2 of the 32<sup>nd</sup> International Conference continue to underpin the intergovernmental process, and stressed the importance of working together towards consensus. In this spirit, it was noted that constructive, meaningful and pragmatic work will be required as discussions become more concrete in the subsequent phase of the intergovernmental process, particularly given the approach of the 33<sup>rd</sup> International Conference in 2019.
13. As general remarks, delegations noted that the discussion paper provided a useful basis for State discussions at the Fourth Formal Meeting. Some delegations expressed the view that the discussion paper appropriately reflected the converging elements of discussions held in previous meetings of the intergovernmental process. Others expressed the view that the content of the discussion paper is better understood as a compilation of ideas put forward by States, rather than as converging elements of past discussions. It was also queried whether the discussion paper adequately reflected discussions in 2017 regarding Resolution 1 of the 1995 International Conference. In discussing the nature of the content of the discussion paper, delegations generally articulated the understanding that the identification of converging elements is a stepping stone towards an outcome, intended to facilitate an

exchange of views on the framing of future proposals. On this basis no negotiation of converging elements was considered necessary.

14. In making introductory observations on the discussion paper prepared by the co-facilitators, some delegations expressed the view that the converging elements therein indicate that there is no consensus for a new mechanism to be created outside the International Conference to strengthen respect for IHL. While some delegations expressed sustained support for the establishment of a new mechanism such as a Forum of States, the same delegations nevertheless noted that consensus is required for any outcome of the intergovernmental process, and no such consensus exists with regard to a potential new mechanism.
15. In considering the 24 converging elements contained in the discussion paper, delegations identified that the ten elements constituting the guiding principles established by Resolution 2 of the 32nd International Conference are different in nature to the other elements featured in the discussion paper. In differentiating these from the other elements, delegations expressed the view that there was no need to exchange views on those ten elements, given that they have already gained consensus.
16. During this session, delegations preliminarily introduced their views regarding the other converging elements contained in the Discussion paper. These were explored in more detail during subsequent sessions, and accordingly are further discussed under these Sessions below.

#### **IV. Session 2: Discussion on converging elements 1-9**

17. Session 2 was devoted to an exchange of States' views and comments on elements 1-9 of the discussion paper. During this Session, delegations focused their comments on elements 1-4 therein; recalling that elements 5-9 represent the guiding principles established by Resolution 2.
18. Some delegations expressed support for element 1 as set out in the discussion paper, underlining that a safe space for dialogue among States is a key component of any eventual outcome of the intergovernmental process. These delegations furthermore noted that the existing formulation of element 1 is general enough to allow for continued dialogue as to how such a safe space should be created, including how to link the space to the International Conference. Other delegations emphasised that element 1 cannot be viewed as separate from element 13 regarding the link of an outcome to the International Conference. These delegations expressed discomfort with elements 1-4 without an express reference to a link to the International Conference, and correspondingly cautioned against the reintroduction of the idea of a potential forum of States. Other delegations recommended that all elements should be considered as mutually interrelated, such that each individual element is interpreted in light of the others.
19. Delegations also articulated their understanding of what would render such a space 'safe.' A range of potential safeguards and understandings were put forward in this regard, including the understanding that States could share only their own practice, that States should be able to share without fear of criticism, that the modalities of the selection of topics must avoid politicisation, selectivity, or contextualisation, and that IHL practitioners participate in the dialogue. In this vein, some delegations once again articulated their understanding that element 1 be considered as interconnected to the other converging elements, including the guiding principles, and noted that this interconnectedness provides key interpretive guidance by which to understand the safe space.

20. In considering elements 2-4 of the discussion paper, delegations remarked that these elements constitute the possible content of a focused and safe space for dialogue on IHL. Echoing the exchange regarding element 1, some delegations emphasised that elements 2, 3, and 4 should be expressly linked to using the potential of the International Conference.
21. Views expressed regarding thematic discussions included affirmations of their importance, the need to avoid cumbersome modalities when selecting a theme, and the need to address common challenges in the implementation of IHL. Views expressed regarding the sharing of experience and best practices similarly highlighted the importance of this kind of exchange. Ideas voiced in this respect included drawing on the experience of dedicated IHL regional forums where they exist, drawing on the dissemination experiences of National Societies, and exchanges on IHL issues relevant to peacetime as well as situations of armed conflict. Views expressed regarding capacity building upon request also emphasised the importance of this aspect of a dialogue on IHL, noted that capacity building would remain a prerogative of participating States, and acknowledged the merit of involving IHL National Committees as well as the ICRC.

**V. Session 3: Discussion on converging elements 10-12**

22. Session 3 was devoted to an exchange of States' views and comments on elements 10-12 of the discussion paper. Turning to element 10, the topic of the regularity of dialogue gave rise to an interactive exchange regarding State preferences in this regard. Some delegations expressed the view that a meeting every four years within the framework of the International Conference would constitute sufficient regularity of dialogue. The possibility of annual review meetings to discuss IHL at regional level, and the establishment of a web platform to facilitate a continuous dialogue on IHL, were voiced as complementary to the meeting occurring every four years. The possibility of characterising such a meeting as a 'stocktaking' exercise was put forward, wherein a review of this complementary intersessional work would be conducted. In response, some delegations suggested that such a stocktaking exercise could occur every four years to review the content of the preceding three years of annual State meetings.
23. Some delegations expressed doubt that a meeting every four years would allow for the continuity of work needed for effective and meaningful dialogue on IHL, and noted that the International Conference is not limited to an event every four years but rather encompasses significant intersessional work by and among the components of the International Red Cross and Red Crescent Movement. Some delegations furthermore reflected that a meeting every four years would not allow dialogue to reflect contemporary developments in a timely manner; that the large number of participants in such a meeting would preclude meaningful exchange if they convene only every four years; and that it is important for interlocutors to build trust and confidence through frequency of interaction. These delegations were generally of the view that annual frequency should be the preferred regularity, with some noting that modalities for such an annual meeting would need further consideration.
24. Regarding the possibility of annual frequency, some States raised the need to consider the financial implications. The need to avoid duplication with existing regional fora and the consequent overburdening of State experts was also underlined. In response, some delegations recalled that the complementary work of regional fora does not replace a universal meeting.
25. Finally, some delegations considered that a discussion on preferred regularity first requires further clarity on what kind of link to the International Conference is envisioned. These delegations indicated that though the subject of regularity is of high importance, it would be more fruitfully discussed when options are more concrete.

26. In considering element 11 regarding the involvement of personnel with relevant experience, some States indicated that the aim of strengthening the implementation of IHL would be best served if discussions on IHL issues were attended by IHL practitioners, including in particular military experts. In connection to this preference, it was noted that the involvement of such personnel could also act as a safeguard against the politicisation of discussions. Without contesting the merit of the involvement of IHL practitioners, some delegations cautioned that the composition of a State's delegation should remain the prerogative of each State. It was observed that representation by persons with relevant expertise could nevertheless be encouraged if not required. Separately, the need to link element 11 to element 13 regarding the International Conference was voiced.
27. Delegations affirmed the importance of element 12 regarding the use of new technologies, and some delegations more specifically voiced support for the possibility of using a web platform. It was considered that such a platform could serve to share best practices virtually between meetings. Reflecting on the merit of using such new technologies, some delegations cautioned that such technologies cannot substitute for physical meetings, and others recalled that new technology may also exclude those for whom access to such tools remains challenging. Questions of language and content control were flagged. In response, some delegations noted that the creation of a web platform for the purpose of facilitating State dialogue must be complementary to rather than in replacement of State meetings.

#### **VI. Session 4: Discussion of the converging elements 13-20**

28. Session 4 was devoted to a discussion of elements 13-20 of the discussion paper. During this Session, delegations focused their comments on elements 13-15, recalling that elements 16-20 are guiding principles established by Resolution 2 and as such have already been agreed. The session began with consideration of element 13, which addresses the relationship between States' efforts to strengthen respect for IHL via the current intergovernmental process and the International Conference. During this discussion, delegations engaged in an interactive exchange to facilitate a greater understanding of each other's views on how the potential of the International Conference may serve as a framework for an outcome of the intergovernmental process.
29. Some delegations emphasised that element 13 is central to their understanding of the parameters in which any future proposals within the intergovernmental process should fall. Accordingly, it was conveyed that future work should focus on finding ways to reinforce and enhance dialogue on IHL within the framework of the International Conference, such that no new mechanism to strengthen respect for IHL should be established outside of the International Conference. Some of the delegations of this view expressed concern that the description of element 13 contained in the discussion paper prepared by the co-facilitators does not adequately capture the substance of previous discussions within the intergovernmental process regarding the International Conference. Consequently, they recommended that the factual summary and main elements of the Third Formal Meeting should be better reflected in understandings of ways to strengthen respect for IHL using the potential of the International Conference. It was also suggested that elements 2, 3 and 4 of the discussion paper could be represented more expressly as subsidiary aspects of element 13, so as to make clear that the content of a safe space for dialogue on IHL among States will occur at the International Conference.
30. During the interactive exchanges, a number of views were put forward regarding how a safe space for IHL dialogue among States could be created within the framework of the International Conference. First, some States expressed the view that the creation of a safe space for dialogue on IHL among States within the framework of the International Conference will require the establishment of a State-only meeting within the International Conference, and suggested that this may be possible without changing the Statutes that govern the

International Conference if there is sufficient political will. Separately, the possibility of a State-only stocktaking meeting held immediately prior to the International Conference, supplemented by annual meetings in preparation for the stocktaking, was put forward accompanied by a query as to its technical feasibility. Finally, clarity was sought as to the possibility of adding a day for a State dialogue on IHL on the margins of the International Conference.

31. In discussion regarding the possibility of a State-only space for dialogue at the International Conference, queries were raised regarding how such a dialogue would be State-led; whether States would be able to select topics for discussion; whether such a meeting could occur before or after the International Conference; how to ensure that such a dialogue does not have an impact on the broader humanitarian purpose and work of the International Conference; and how a discussion every four years would facilitate meaningful exchange. In view of this last point, a question was raised as to what kind of substance could merit discussion more frequently than every four years. Delegations responded with examples of potential substance including the sharing of updated military manuals, IHL and counterterrorism, and the protection of medical personnel and objects. The suggestion was also put forward that States could be mandated by the International Conference to develop topics for discussion in the three years between the International Conference in such a way as to ensure that States maintained ownership over topic selection.
32. In continuation of the consideration of how best to embed a safe space for IHL dialogue within the existing framework of the International Conference, concerns were raised to the effect that the agenda of the International Conference is already extremely full, and so the addition of a dialogue arising from this process may be difficult to insert in such a way that would permit meaningful exchange. In response, some delegations suggested that the agenda of the International Conference could be changed to accommodate an outcome of this process if sufficient political will is present.
33. A number of these exchanges prompted queries as to their technical feasibility. In response to these queries, attention was drawn to Rule 16 of the Rules of Procedure of the International Conference which governs the creation of subsidiary bodies, and it was noted that the decision to create a subsidiary body composed only of States ultimately belongs to all members of the International Conference. On this subject, reference was made to the information provided in pages 13-14 of the Background Document prepared for the Third Formal Meeting. It was elaborated that though the International Conference could technically decide to establish a State-only subsidiary body for the duration of the Conference (in line with Rule of Procedure 16(3)), this would require the concurrence of all Conference members (States as well as the ICRC, the IFRC and the National Red Cross and Red Crescent Societies). It was thereby underlined that in practice, such a decision would require components of the Movement to wilfully exclude themselves from a portion of the International Conference. It was also noted that the Conference would adopt the agenda of such a subsidiary body. Separately, in response to a query regarding the technical feasibility of holding State-only meetings intersessionally between International Conferences, it was recalled that the present State-only intergovernmental process was established by a resolution of the International Conference, and that the same was the case for the periodical meetings of States that are provided for in Resolution 1 of the 26th International Conference adopted in 1995.
34. On reflection of these technical considerations, the view was put forward that if consensus on a safe space for a State dialogue on IHL at the International Conference could be reached amongst States, agreement with the Movement may be possible. In contrast, some delegations shared their conclusion that a State-only meeting during the International Conference is untenable in light of the technical requirements for the establishment of such a subsidiary body, and correspondingly observed that States will need to be creative when developing the technicalities and modalities of a State-only space for dialogue linked to the

International Conference. In exploring the nature of the potential link to the International Conference, some delegations expressed their view that a resolution of the International Conference would be required, and options including a recurring resolution, thematic resolutions, or a “one off” resolution were recalled. In addition, some delegations noted that the strengthening of IHL dialogue at the International Conference and the creation of a State-only dialogue need not be exclusive, but rather could act as a range of complementary options.

35. In considering element 14 of the discussion paper, delegations affirmed the importance of preserving the unique character of the International Conference. In this regard, delegations made reference to the significance of the composition of its membership (including the participation of components of the Movement); its focus on a broad range of humanitarian issues of common interest to its members; its foundation in the fundamental principles of the Red Cross and Red Crescent Movement; and its operation by consensus. Some delegations specifically articulated that the establishment of a State-only meeting within the International Conference would alter this unique character.
36. In considering element 15 of the discussion paper, which addresses a preference not to alter the Statutes of the Movement or the Rules of Procedure as a result of the intergovernmental process, some States reaffirmed their view that options for an outcome that would require a change to the Statutes or Rules should not be considered. Other delegations noted that while there exists a preference not to amend the Statutes or Rules, some States are not unequivocally opposed to amendments.

## **VII. Session 5: Discussion of the converging elements 21-24**

37. Session 5 was devoted to a discussion of elements 21-24 of the discussion paper. In considering the focus on dedicated IHL regional forums contained in elements 21-23, delegations shared examples of their experience of regional forums and thereby underlined the significant role such forums can play in strengthening respect for IHL. More specifically of relevance to element 21, which highlights the positive contribution of dedicated IHL regional forums where they exist, delegations commended the role, merits and distinctive functions of regional forums and their achievements in promoting IHL, taking into account regional specificities.
38. In addition, delegations affirmed element 22 regarding the complementary nature of activities of dedicated IHL regional forums where they exist. This complementarity was illustrated with the example that certain IHL regional forums support the follow up or implementation of work proceeding from the International Conference at regional or national level. Some delegations also expressed their understanding that the notion of complementarity indicates that regional forums operate in complement to but not replacement of a potential universal platform for IHL dialogue.
39. In discussing element 23 regarding the sharing of experiences by dedicated IHL regional forums where they exist, some delegations expressed caution as to the type of forum involved in such an exchange, taking into account regional specificities. With this noted, some delegations shared views on the nature of the experience regional forums could contribute to discussions at universal level, including their exposure to varied armed conflicts and perspectives on overcoming challenges. The possibility of facilitating such an exchange through the use of a dedicate web platform was also put forward.
40. Turning to element 24, delegations welcomed the prospect of the continued contribution of the ICRC, and added particular appreciation for the role that the ICRC plays in various dedicated IHL regional forums. In particular, delegations highlighted the ICRC’s role as the guardian of IHL, as well as its capacity to safeguard against the politicisation of discussions.

**VIII. Session 6: Consideration of possible new proposals**

41. Session 6 of the Fourth Formal Meeting was devoted to the consideration of possible new proposals, in line with the work plan agreed at the Third Formal Meeting in December 2017. Though no delegation presented a new proposal during this session, some States indicated that they intend in the coming months to submit more detail on ideas or proposals that have previously been put forward.

**IX. Session 7: Main elements of the Fourth Formal Meeting**

42. In Session 7, delegations agreed the main elements of the Fourth Formal Meeting (see Annex I).



## **Annex I: Main Elements as Agreed at the Fourth Formal Meeting**

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 II: Participating Delegations

1. Albania
2. Algeria
3. Angola
4. Argentina
5. Australia
6. Austria
7. Azerbaijan
8. Bahamas
9. Bahrain
10. Belarus
11. Belgium
12. Bolivia
13. Botswana
14. Brazil
15. Bulgaria
16. Burkina Faso
17. Cambodia
18. Cameroon
19. Canada\*
20. Chile
21. China
22. Colombia
23. Costa Rica
24. Côte d'Ivoire
25. Croatia
26. Cuba
27. Cyprus
28. Czech Republic
29. Democratic Republic of the Congo
30. Denmark
31. Djibouti
32. Dominican Republic
33. Ecuador
34. Egypt
35. Estonia
36. Ethiopia
37. Finland
38. France
39. Gabon
40. Germany
41. Greece
42. Guatemala
43. Holy See
44. Hungary
45. India
46. Ireland
47. Islamic Republic of Iran
48. Israel\*
49. Italy
50. Jamaica
51. Japan
52. Jordan
53. Kazakhstan
54. Kuwait
55. Lebanon
56. Lesotho
57. Liechtenstein
58. Luxembourg
59. Madagascar
60. Malaysia
61. Maldives
62. Malta
63. Mauritius
64. Mexico
65. Monaco
66. Mongolia
67. Montenegro
68. Morocco
69. Myanmar
70. Netherlands
71. New Zealand
72. Nigeria
73. Norway
74. Oman
75. Pakistan
76. Peru

77. Philippines
78. Poland
79. Portugal
80. Qatar
81. Republic of Korea
82. Romania
83. Russian Federation
84. Saudi Arabia
85. Senegal
86. Sierra Leone
87. Singapore
88. Slovakia
89. Slovenia
90. South Africa
91. Spain
92. Sri Lanka
93. State of Palestine\*
94. Sweden
95. Switzerland
96. Syrian Arab Republic
97. Tanzania
98. Thailand
99. The former Yugoslav Republic of Macedonia
100. Trinidad and Tobago
101. Tunisia
102. Turkey
103. Uganda
104. Ukraine
105. United Arab Emirates
106. United Kingdom of Great Britain and Northern Ireland
107. United States of America\*
108. Uruguay
109. Venezuela
110. Viet Nam
111. Yemen

\* Reference is made to the positions expressed by these delegations in their communications addressed to the Depositary of the four Geneva Conventions of 1949 and circulated by the Depositary by Notifications GEN 4/14 of 21 May 2014 and GEN 4/14 of 27 June 2014.