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ICRC

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

10 April 2018

Fourth Formal Meeting

Geneva, 14-16 May 2018

Discussion paper on the identification of converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017

Towards identifying converging elements

General Remarks

In accordance with the Work Plan for 2018 adopted at the Third Formal Meeting in the Intergovernmental Process on Strengthening Respect for IHL (held on 4-6 December 2017), the Fourth Formal Meeting (14-16 May 2018) is dedicated to the following issues:

- *Identification of converging elements for strengthening respect for IHL based on proposals from and discussions held in 2017, and consideration of possible new proposals.*

The converging elements to be identified at the Fourth Formal Meeting should be seen as guidelines for further discussions within the intergovernmental process aimed at fulfilling the mandate of resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent. The converging elements are meant to help establish a *common understanding of the parameters* within which any future specific and detailed proposals - to be discussed at the Fifth Formal Meeting in December 2018 - should fall.

In this respect the converging elements are not an end in themselves, but rather a stepping stone towards the preparation of an outcome for the International Conference going forward: their aim is to answer the question of what basic characteristics such an outcome should have. The converging elements are thus not meant to be negotiated, but should serve instead as a general framework for the examination by States of specific proposals that will be taken up in the second half of this year and in the first half of 2019.

In keeping with the Work Plan, the potential converging elements presented below draw on proposals from and discussions held among States in 2017, and also take into account States' views expressed in the preparatory exchanges held prior to the Fourth Formal Meeting of States. They aim to mirror the convergence observed in ideas and contributions made by States.

An initial exchange of views on a draft discussion paper on potential converging elements took place at an open-ended consultation of States held on 8 February 2018. A subsequent Informal Meeting on March 27 provided an opportunity for exchanges on an updated version of the draft discussion paper. The current discussion paper is the result of further revisions included to reflect the observations and proposals made at the March 27 Informal Meeting, so as to better outline the potential convergence.

States have expressed the opinion that the guiding principles in resolution 2 of the 32nd International Conference should be recognized as converging elements. These principles have therefore been included in this document without alteration. Their origin, as part of resolution 2 of the 32nd International Conference, is indicated in each instance,

Purpose of the discussion paper

This discussion paper aims to facilitate exchanges among States at the Fourth Formal Meeting of 14-16 May 2018.

It highlights potential converging elements that should, as mentioned above, be seen as the overall framework for future specific proposals for an outcome to the intergovernmental process. The preparatory discussions have shown that further exchanges on how certain converging elements are to be understood in more detail would be useful. The discussion paper offers a basis for such exchanges on any element or aspect that may be deemed

relevant by States. It is hoped that this sharing of views will help advance a common understanding of how future specific proposals should be framed in order that they may come within the range of a potential consensus.

Converging elements

The Intergovernmental Process on Strengthening Respect for IHL has demonstrated the willingness of States to work towards developing space for dialogue on IHL among States. States have expressed their wish to use the potential of the International Conference as a framework for the range of complementary efforts that could together constitute the outcome of the Intergovernmental Process, as foreseen in resolution 2. In this context, the unique character of the International Conference, and the need to preserve it, was recognized in the discussions. The importance of the contribution of dedicated IHL regional forums, where they exist and according to their specificity, was showcased. Discussions among States in the Intergovernmental Process on Strengthening Respect for IHL suggest the following converging elements:

1. Provide focused and safe space for dialogue on IHL among States

The Intergovernmental Process on Strengthening Respect for IHL has demonstrated the willingness of States to work towards developing a focused and safe space for dialogue on strengthening respect for IHL among States. A focused and safe space means one in which States can engage in a dialogue specifically on IHL issues without risk or fear of mutual finger-pointing.

2. Thematic discussions

Discussions have shown that the space for dialogue should include opportunities for thematic discussions as a means of enabling States to work towards strengthening respect for IHL. It has been mentioned that the selection of topics for discussions on IHL should be organized in an efficient manner, avoiding lengthy and cumbersome procedures.

3. Sharing of experiences and best practices

Discussions have shown that the space for dialogue should include opportunities for the sharing of experiences and best practices on IHL in order to enable States to work towards strengthening respect for IHL.

4. Capacity-building upon request

Discussions have indicated that the space for dialogue should allow for support and cooperation in capacity-building among States where this is requested.

5. Voluntary nature

The voluntary, i.e. non-legally binding, nature of the intergovernmental process, as well as of its eventual outcome, has been recognized as *a guiding principle in resolution 2 of the 32nd International Conference.*

6. Non-politicization

The importance of avoiding politicization in the intergovernmental process, as well as in its eventual outcome, including by ensuring that States address the implementation of IHL only within their own sphere of competence and responsibility has been confirmed in the intergovernmental process. It has also been recognized as *a guiding principle in resolution 2 of the 32nd International Conference.*

7. Non-contextual nature

The need for the intergovernmental process, as well as any eventual outcome to be non-contextualized has been recognized as a guiding principle in resolution 2 of the 32nd International Conference.

8. State-driven and consensus-based character

The State-driven and consensus-based character of the intergovernmental process and the need for the consultations to be based on applicable principles of international law have been recognized as a guiding principle in resolution 2 of the 32nd International Conference. Discussions in the intergovernmental process have confirmed these principles as applicable to any outcome as well.

9. Ensure universality, humanity, impartiality and non-selectivity

The need for the intergovernmental process to ensure universality, humanity, impartiality and non-selectivity has been recognized as a guiding principle in resolution 2 of the 32nd International Conference. Discussions in the intergovernmental process have confirmed these principles as applicable to any outcome as well.

10. Regularity of the dialogue

Discussions have pointed to the need to establish a regular dialogue on IHL among States that allows for continuity of work towards strengthening respect for IHL. States have expressed the desire to meet at an interval which would enable efficient discussions, providing time for substantive exchanges.

11. Involvement of personnel with relevant expertise

It has been indicated in the discussions that a focused dialogue on strengthening respect for IHL would benefit from States including IHL practitioners and other persons with the relevant expertise in their delegations, by ensuring participation of personnel from the different government ministries/departments involved in the application of IHL.

12. Use of new technologies

It has been indicated in the discussions that new technologies should be used to facilitate dialogue among States on strengthening respect for IHL. The possibility of developing a web platform to enable enhanced State dialogue and continuity of exchanges on IHL in relation to the outcome and thereafter was highlighted.

13. The relationship between States' efforts to strengthen respect for IHL via the current intergovernmental process and the International Conference

Discussions have highlighted the willingness of States to use the potential of the International Conference to strengthen respect for IHL. The International Conference can serve as an anchor/umbrella/framework for a range of complementary efforts that could together form the outcome of the intergovernmental process. It is to be noted that appropriate and acceptable ways in which the International Conference could serve as an anchor/umbrella/framework of States' efforts resulting from the intergovernmental process will be discussed when specific options for an outcome to the process are considered in the second half of 2018. Discussions have shown that States look to strengthen the work on IHL at the International Conference among all members of the International Conference. The International Conference can also offer an adequate framework to devise a safe space for State dialogue. Equally, States have indicated that how the work of dedicated IHL regional forums where they exist could interact with the International Conference should be further explored.

14. Preserve the unique character of the International Conference

Discussions have highlighted the unique mandate and features of the International Conference, which brings together the components of the Red Cross and Red Crescent

Movement and the States Parties to the Geneva Conventions. It was noted that the International Conference is the supreme deliberative body for the Movement and that it functions as a singular venue for enabling dialogue among its members on a broad range of humanitarian issues. States underlined the need to preserve the uniqueness of the International Conference.

15. Preference not to alter the Statutes of the Movement or the Rules of Procedure as a result of the intergovernmental process

Discussions have shown that States have a strong preference to not alter the Statutes of the Movement or the Rules of Procedure in finding ways to enhance the implementation of IHL using the potential of the International Conference.

16. Dialogue on IHL addressing all types of armed conflict

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, has been recognized as a guiding principle in resolution 2 of the 32nd International Conference.

17. Ensure dialogue and cooperation

The need for the process to be based on dialogue and cooperation was recognized as a guiding principle in resolution 2 of the 32nd International Conference. Discussions have shown that these features should also underlie any outcome of the intergovernmental process.

18. Effectiveness of the outcome with regard to strengthening respect for IHL

The need for an IHL compliance system to be effective has been recognized as a guiding principle in resolution 2 of the 32nd International Conference. Effectiveness has been recognized in the discussions as a principle that should guide any outcome of the intergovernmental process.

19. Avoiding duplication and complementarity with existing mechanisms

The avoidance of unnecessary duplication with other compliance systems has been recognized as a guiding principle in resolution 2 of the 32nd International Conference. Discussions have shown that any outcome of the intergovernmental process should likewise be guided by this principle.

20. Resource considerations to be taken into account

The requirement to take resource considerations into account has been recognized as a guiding principle in resolution 2 of the 32nd International Conference. Discussions have shown that any outcome of the intergovernmental process should likewise be guided by this principle.

21. Highlight the positive contribution of dedicated IHL regional forums where they exist

Discussions highlighted the positive contribution of dedicated IHL regional forums, where they exist, to strengthening respect for IHL. The variety and richness of dialogue and cooperation among States at the regional level was acknowledged. It was indicated that it is important to ensure the inclusive character of forums on IHL held at the regional level and that their distinct functions and merits should be respected and maintained, taking into account the diversity of each region.

22. Complementary nature of activities of dedicated IHL regional forums where they exist

It was emphasized in the discussions that the role and work of dedicated IHL regional forums, where they exist, should be seen as complementary to efforts at the global level to increase respect for IHL. In this context it was stressed that the

intergovernmental process and any outcome should safeguard and not negatively impact the continued activities of IHL regional forums.

23. Sharing of experiences by dedicated IHL regional forums where they exist

Discussions indicated that depending on the type of forum involved, ways should be explored for enabling dedicated IHL regional forums to share their experiences in strengthening respect for IHL at the global level including through the International Conference.

24. Continued contribution of the ICRC

Discussions in the intergovernmental process confirmed delegations' desire for the ICRC to continue to be involved in States' exchanges on IHL that are to result from the current process. Equally, discussions highlighted the need for continued and sustained involvement of the ICRC at the level of IHL regional forums.

Questions for discussion:

1. Does the discussion paper adequately reflect possible converging elements arising from discussions in the intergovernmental process?
2. What are your views on the specific elements included?
3. Are any elements missing from the discussion paper? If so, which?