STRENGTHENING COMPLIANCE WITH INTERNATIONAL HUMANITARIAN LAW: THE FAILED PROPOSAL FOR A “MEETING OF STATES ON INTERNATIONAL HUMANITARIAN LAW”

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Abstract

Within current debates on international humanitarian law (IHL) attempts to strengthen compliance are a key issue. Several existing mechanisms provided by IHL treaties have proved to be unsuccessful, mainly due to States’ unwillingness to activate them and to their limited field of application, that is, such mechanisms are principally restricted to international armed conflicts. Conversely, instruments pertaining to other branches of international law have progressively come to play a significant role in this area, emphasizing a series of challenges and opportunities. Against this background this contribution explores attempts to identify further options, such as the proposal submitted to the 32nd International Conference of the Red Cross and Red Crescent held in December 2015. Its aim was to facilitate the creation of a new compliance mechanism for IHL, the so-called “Meeting of States on International Humanitarian Law”: a regular, voluntary, yet institutionalized forum for dialogue on IHL among States Parties to the Geneva Conventions, to be provided with a series of functions intended to improve the implementation of IHL. However, due to disagreements among States during the Conference, delegations were ultimately unable to reach a consensus on this new mechanism, thus emphasizing serious difficulties in bringing about effective improvements with regard to IHL compliance mechanisms.

Keywords: compliance with international humanitarian law; International Committee of the Red Cross; armed conflicts; human rights law.

1. INTRODUCTION

One of the major current challenges for international humanitarian law (IHL) concerns compliance. Considering that this term is currently understood “as respect for all relevant obligations under IHL”1 or as “ensuring that belligerents act in con-

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1 ICRC/Swiss Federal Department of Foreign Affairs, Strengthening Compliance with International Humanitarian Law, Concluding Report, June 2015, p. 12, footnote 25: “The goal of the IHL compliance system discussed within the Swiss-ICRC facilitated consultation process is to strengthen respect for IHL. The term ‘compliance’ may be understood in the present context as respect for all relevant obligations under IHL”. The Concluding Report, as well as documents
formity with IHL”,² it is clear that compliance represents one of the hardest tests for IHL. Better compliance with IHL rules is however of paramount importance, as it would not only permit the proper application of international obligations, but would also provide enhanced protection for victims of armed conflicts.

It is therefore no surprise that growing attention has been paid to the assessment of existing mechanisms related to the application of this branch of law, also in the light of internal and external challenges to the IHL compliance system, as explored in section 2. Shared scepticism about the current framework has fostered discussions regarding both potential reforms to the existing system and possible new mechanisms to favour the implementation of IHL.³

In this regard activities carried out under the aegis of the International Conference of the Red Cross and Red Crescent (IC) – a unique institutional forum, gathering delegations from States Parties to the Geneva Conventions (GCs), National Red Cross and Red Crescent Societies, the International Committee of Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies⁴ – have assumed a pivotal role. The ICs have represented periodic opportunities for debate on the possibility of strengthening IHL compliance mechanisms, as testified by Resolution 1 adopted at the 31st IC in 2011.⁵ This Resolution led to the development of the so-called “compliance track”, requiring the ICRC and Switzerland to pursue consultations with the aim of identifying solutions to enhance the effectiveness of IHL compliance mechanisms and submit potential proposals in this regard to the 32nd IC, held in Geneva on 8-10th December 2015 (see section 4).

related to this initiative managed by the ICRC and Switzerland, such as Chairs’ conclusions and background reports, are available at: <https://www.icrc.org/en/document/strengthening-compliance-international-humanitarian-law-ihl-work-icrc-and-swiss-government>.

² BOITRUCHE, “Good Offices, Conciliation and Enquiry”, in CLAPHAM, GAETA and SASSOLI (eds.), The 1949 Geneva Conventions. A Commentary, Oxford, 2015, p. 661 ff., p. 661: “Unlike the complementary notion of enforcement of IHL that focuses on the ways to restore observance with IHL when it has been violated, compliance pertains to ensuring that belligerents act in conformity with IHL”.


⁴ On the institutional features of the IC see BUGNION, “The International Conference of the Red Cross and Red Crescent: Challenges, Key Issues and Achievements”, IRRC, 2009, p. 675 ff.

On this basis, in October 2015 the facilitators submitted a draft resolution on “Strengthening Compliance with International Humanitarian Law” in view of the 32nd IC. The significant novelty of this draft resolution was self-evident: the document contained a comprehensive proposal recommending that States create a new compliance mechanism for IHL, the so-called “Meeting of States on International Humanitarian Law” (hereinafter “Meeting of States”). This would mainly be a regular, voluntary, but institutionalized forum to favour dialogue on IHL among States party to the GCs; the operative paragraphs of the draft resolution identified the Meeting’s key features, on the basis of the main elements apparently agreed upon by participants during the consultation process. This new mechanism was to be vested with a series of functions intended to be beneficial in improving the implementation of IHL, even if a series of potential shortcomings risked significantly limiting its efficacy (see section 4).

However, due to the fierce debate that took place during the 32nd IC, when clear divisions among States became apparent, the delegations were unable to reach a consensus on this new mechanism and the final Resolution merely recommends the continuation of consultations in this area, to be informed by a series of guiding principles. As a result the 32nd IC, rather than being the expected turning point in the longstanding debate on potential reforms to the IHL compliance system, represented a fiasco among the law/policy-making activities related to this body of law and raised doubts about the real willingness of stakeholders (mainly States) to introduce significant improvements. This article will explore the debate surrounding potential reforms to the IHL compliance mechanisms, focusing in particular on the failed proposal to create the Meeting of States, the latter being the touchstone for any future discussions in this area.

2. A REVIEW OF EXISTING MECHANISMS FOR THE IMPLEMENTATION OF IHL: INTERNAL AND EXTERNAL CHALLENGES FOR THE IHL COMPLIANCE SYSTEM

An analysis of the abovementioned proposal to establish a Meeting of States must necessarily be based on a review of the current compliance mechanisms provided by IHL, as well as instruments pertaining to other branches of international law that have progressively assumed a role in this area. In both cases a series of challenges and opportunities can be highlighted in order to facilitate understanding of the legal framework behind current proposals.

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6 For the Draft Resolution 2 circulated among delegations see at: <https://perma.cc/X3K2-G3AD>.
2.1. The “Internal” Mechanisms for Compliance with IHL

Taking into account the internal dimension of the IHL compliance system, i.e. the mechanisms in force and factors that might prompt the development of additional instruments within the realm of this body of law, various elements highlight the shortcomings of the current system. In particular, attention should be paid to: (a) the unsuccessful nature of several IHL mechanisms, also due to States’ unwillingness to activate them; (b) the absence of an institutional forum devoted to supervising compliance with IHL obligations; and (c) the limited field of application of several treaty-based mechanisms, which are mainly restricted to international armed conflicts (IACs).

(a) First, several compliance mechanisms provided by IHL rules have proven to be largely ineffective, mainly due to States lacking the political/legal will to trigger their application. As many mechanisms rely on the consent of States involved in armed conflicts in order to be operative, this reluctance has implied their progressive irrelevance.

The role of Protecting Powers, i.e. neutral States called upon to ensure the implementation of IHL (following the consent of the States involved), has been progressively neglected. Indeed, Protecting Powers have been appointed in only five IACs since the adoption of the 1949 GCs. This decline can be attributed to several concurrent causes. In particular, very few States are perceived as properly neutral and either able or willing to carry such a burden, which might expose them to foreign policy difficulties. Furthermore the ICRC’s *de facto* substitution of Protecting Powers when the latter mechanism does not function has made it possible to partly overcome the difficulties related to the non-application of this mechanism. However, as recently recognised in the 2016 ICRC’s Commentary, “[t]he obstacles do not appear to result from the inadequacy of the procedures nor from the financial burden, but are more likely to be related to political considerations”. Also in this regard the lack of will by the States concerned is the driving factor for the inactivity of these mechanisms.

Similarly, the enquiry procedures provided for by the 1949 Conventions have not worked at all. As they are intended to resolve disputes between States Parties to

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an IAC regarding alleged violations of the GCs, and request the wrongful State to repress such violations, it is not surprising that these procedures have not engaged the interest of States. Attempts to establish enquiry procedures have failed in the past due to a lack of consent on the part of the States involved in conflicts, this being a fundamental prerequisite for their activation.\(^\text{13}\) Also in this case, the new Commentary to the GCs recognises that “the ineffectiveness of the enquiry mechanism established under the 1949 GCs is due mainly to lack of political will” and its absence of institutionalization.\(^\text{14}\)

A similar unhappy fate has been met by the complex machinery of the International Humanitarian Fact-Finding Commission (IHFFC), provided for by Article 90 of the 1977 Additional Protocol I (AP I)\(^\text{15}\) and primarily intended to enquire into any facts alleged to constitute a grave breach or other serious violation of the GCs and AP I, through a confidential procedure. Notwithstanding the potential of such a mechanism, to date the Commission has not been used, despite more than 70 States having made a general declaration accepting the competence of the IHFFC. Likewise, the longstanding willingness expressed by the IHFFC to extend its activities to non-international armed conflicts, as long as all parties to the conflict agree, has come to nothing.\(^\text{16}\) Even recent events, such as the 2015 attack on a Médecins sans frontières hospital in Afghanistan,\(^\text{17}\) have demonstrated how appeals by humanitarian actors to permit the Commission to operate cannot have any effect when the States involved do not request its services.

Another additional mechanism that has not yet been tested is the meeting of the High Contracting Parties, as provided for by Article 7 AP I.\(^\text{18}\) This mechanism, as well as similar meetings of States Parties mentioned below, is of particular interest taking into account the 2015 proposal to create a Meeting of States. Under Article 7 AP I, at the request of one or more of the States Parties and upon the approval of the majority of the parties to AP I, Switzerland shall convene a meeting to con-

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\(^\text{13}\) Regarding the failed attempts by the ICRC to facilitate the creation of an enquiry procedure related to the 1973 Israeli-Arab countries’ conflict see BUGNION, *Le Comité International de la Croix-Rouge et la protection des victimes de la guerre*, Geneva, 1994, p. 1099.

\(^\text{14}\) VITÉ, *cit. supra* note 12, para. 34.


sider “general problems concerning the application of the Conventions and of the Protocol”. This kind of mechanism could therefore provide a sort of institutional framework for debates concerning IHL, but no meeting has ever been convened, partly due to certain inherent limitations. First, taking into account the ratification of AP I by 174 States, this mechanism can only operate on the basis of a common request by a significant number of parties. Second, it is not envisaged as a regular conference of States Parties, also because it lacks any of the proper institutional and bureaucratic machinery required to manage such meetings in a fruitful manner. Third, the broad reference to the possibility of debating “general problems” regarding the application of the Geneva Conventions limits its functions. This expression has mainly been interpreted as having a negative character, aiming “to exclude the discussion of specific situations”\textsuperscript{19} from its area of operation. On this basis, for instance, preliminary requests to convene urgent meetings in relation to ongoing armed conflicts involving alleged violations of IHL, such as the 2006 Lebanon conflict, have been refused by Switzerland as being outside the scope of application of Article 7 AP I.\textsuperscript{20}

Until now, only a sort of substitute meeting of States Parties has been realised in exceptional circumstances. Its basis can be found in Resolution 1\textsuperscript{21} adopted by the 26th IC held in 1995, which endorsed the recommendation of a group of intergovernmental experts\textsuperscript{22} to request “the Depositary to organize periodical meetings of the States Parties to the 1949 Geneva Conventions to consider general problems regarding the application of IHL”. So far, Switzerland has only managed to organize one meeting in 1998, following consultations with States, which aimed to discuss both armed conflicts in relation to the disintegration of State structures, and respect for and the security of the personnel of humanitarian organizations.\textsuperscript{23} This initiative, had it been replicated in a periodic manner as originally suggested by the 26th International Conference, could have helped create a forum for discussion on the current challenges for IHL, even if its non-institutionalized nature as well as uncertainties concerning the management of key issues (e.g. the selection of topics,

\textsuperscript{19} \textit{Ibid}, p. 104.

\textsuperscript{20} The request had been made by twenty States parties. See “Federal Department of Foreign Affairs, Notification to the Governments of the State Parties to the Geneva Conventions of 12 August 1949 for the Protection of War Victims”, 12 September 2006, available at: <https://www.eda.admin.ch/content/dam/eda/fr/documents/aussenpolitik/voelkerrecht/geneve/060912-GENEVE_e.pdf>. See also \textsc{DISTEFANO} and \textsc{HENRY}, “Final Provisions, Including the Martens Clause”, in \textsc{CLAPHAM}, \textsc{GAETA} and \textsc{SASSÔLI} (eds.), \textit{cit. supra} note 2, p. 155 ff., p. 172.

\textsuperscript{21} “Resolution 1 of the 26th International Conference of the International Red Cross and Red Crescent (Geneva, Switzerland, 3-7 December 1995)”, \textsc{IRR}, 1996, p. 58 ff.

\textsuperscript{22} “Meeting of the Intergovernmental Group of Experts for the Protection of War Victims: Recommendations”, \textsc{IRR}, 1995, p. 37 ff.

outcomes of the meetings, etc.) would have represented major challenges. Hence evaluations similar to those above in relation to Article 7 AP I can be reiterated in this regard.

Nonetheless, conferences involving States Parties to the GCs have occasionally been organized on a different basis. In particular, through certain resolutions the UN General Assembly has recommended that the High Contracting Parties to the Fourth GC, or specifically the government of Switzerland as depositary of this Treaty, organize conferences related to the application of this Convention in the occupied Palestinian Territories. The departure from the model envisaged above is clear. In this case the focus is on the arrangement of conflict-specific meetings of High Contracting Parties to the Fourth GC, the occurrence of which Switzerland has subordinated to a sufficient consensus being achieved by States Parties. The main legal basis for these meetings has been their qualification as a concrete expression of the measures that States can adopt on the basis of Common Article 1.

So far, Switzerland has convened three conferences dealing with this conflict, in 1999, 2001, and 2014.

The main aim of the above meetings has therefore been to reaffirm the relevance of basic IHL rules and the need for their full respect in such a scenario, as expressed in brief statements or more detailed documents adopted at the end of such conferences. However, being closely connected to a clearly-defined conflict scenario, these experiences have emphasized a series of difficulties. First, the highly sensitive nature of the situation addressed has made it necessary to develop a delicate balance between different exigencies and legal perceptions, as carefully enshrined in the final documents. Second, the need to identify a minimum level of consent among States to set up such meetings has implied lengthy negotiations, which have not favoured the timely examination of the situations in hand. For instance, the multilateral process initiated in 2009 on the basis of Resolution 64/10 of the UN General Assembly only ended in 2014, when it was partly favoured by an additional military escalation affecting the area. Similarly, relevant States, including those directly involved in the situations under examination, have opposed

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to such conferences, thus raising doubts about their efficacy. The difficulties of replicating this kind of conflict-specific conference in other contexts are easy to perceive. At the same time, they could have some merits, especially if repeated in other situations to avoid the perception of selectivity, as they may help to raise awareness about the humanitarian consequences of certain situations, and to exercise diplomatic pressure on parties.

The above survey of the compliance mechanisms provided by IHL treaty provisions emphasizes their limited role, even if other more effective tools also exist. Reference could be made to the multifaceted activities of the ICRC, which are of paramount importance in this area. Similarly, even if mainly related to the enforcement phase, individual criminal responsibility for war crimes could also be mentioned, especially in light of its deterrent effect, aimed at favouring compliance with IHL. However, criminal responsibility for war crimes can only be a part of the overall mechanisms for strengthening compliance with IHL.

(b) A second shortcoming of the current IHL compliance mechanisms is the lack of a proper institutional framework aimed at favouring the application of this body of law and verifying its fulfilment. This could be provided by monitoring bodies or, to a lesser extent, by periodic meetings of States Parties, intended to facilitate general dialogue on the application of relevant provisions. As it is known, conferences of States Parties have also been experienced in areas closely related to IHL, such as in international criminal law, or weapons treaties, where States are required (for instance) to report to Meetings of States Parties, and on occasion to the UN Secretary-General, on measures adopted at the national level to implement treaty obligations, even if such mechanisms have largely acted on a bureaucratic manner.

An institutional framework could have some positive effects in this area, also taking into account that IHL pays significant attention to obligations to be fulfilled by States in view of potential armed conflicts, as maintained in Common Article

26 HAPPOLD, cit. supra note 24, pp. 391-393; LANZ, MAX and HOEHNE, cit. supra note 24, p. 1125.
28 For different views compare JENKS and ACQUAVIVA, “Debate: The Role of International Criminal Justice in Fostering Compliance with International Humanitarian Law”, IRRC, 2015, p. 775 ff.
2 to the 1949 GCs and detailed elsewhere in the Conventions and APs.\textsuperscript{31} For instance, a series of provisions require States to enact legislation and provide effective criminal sanctions for persons responsible for acts contrary to treaty obligations. Similarly, obligations to preventively disseminate IHL among the civilian population and the armed forces are also imposed upon States. Failing the acceptance of the ICRC proposals to oblige States to periodically report to the Depositary and to the ICRC on measures taken with regard to dissemination,\textsuperscript{32} the implementation of IHL is basically delegated to State discretion.\textsuperscript{33} Such preventive measures should allow States to create a sound legal framework and help relevant actors to apply IHL rules, through appropriate legislative and practical measures for that purpose. Especially in this regard, the possibility for States to benefit from an institutional framework supporting the fulfilment of such activities, for instance through the sharing of best practices and the development of fruitful discussion, would represent an added value regarding proper compliance with IHL.

Currently the only regular momentum in institutional dialogue among relevant stakeholders is represented by the ICs, held every four years. However, the ICs have a more diplomatic and policy-making nature than a monitoring approach, as delegations avoid turning this meeting into a possible site of scrutiny.\textsuperscript{34} Furthermore, its busy agenda and long periods of inactivity impede any regular dialogue.

Similarly, at the national level the existence of an institutional framework capable of fostering a legal and policy environment that favours the implementation of IHL cannot be taken for granted. In several areas of international law the positive feature of such bodies can be seen in the development of national platforms and focal points aimed at permitting the better application of treaties\textsuperscript{35} as well as non-binding international standards.\textsuperscript{36} Notwithstanding recommendations in this regard by ICs,\textsuperscript{37} in the IHL system the creation of similar institutions depends on the willingness of States, which may create national committees on IHL, usually made up of representatives of government departments, academics, and the National Red

\textsuperscript{31} For required activities see ZIEGLER and WEHRENBerg, “Domestic Implementation”, in CLAPHAM, GAETA and SASSOLI (eds.), cit. supra note 2, p. 647 ff.


\textsuperscript{33} GC I, Art. 47; GC II, Art. 48; GC III, Art. 127(1); GC IV, Art. 144(1); AP I, Art. 83(1); AP II, Art.19. See MÜLLER, “Article 47. Dissemination”, in ICRC, cit. supra note 9, para. 1 ff.; and MIKOS-SKUZA, “Dissemination of the Conventions, Including in Times of Armed Conflicts”, in CLAPHAM, GAETA and SASSOLI (eds.), cit. supra note 2, p. 597 ff.

\textsuperscript{34} PFANNERS, cit. supra note 3, p. 307.

\textsuperscript{35} See for instance the activities of focal points in relation to several multilateral environmental agreements or as provided by the WHO International Health Regulations.


\textsuperscript{37} See in particular para. 4 of the Resolution 1 of the 26th IC, cit. supra note 21.
Cross / Red Crescent Societies. However, these bodies are present in only about half of the States Parties to the GCs and the significant differences in their effectiveness are notorious, in many cases due to sporadic action and lack of capacity to significantly address challenges.

The detrimental effects of the absence of IHL institutional frameworks at the international and national level can be exemplified with regard to Italy. For instance, Italy has yet to translate into appropriate criminal provisions some of the offences that the GCs and AP I required be introduced into domestic legal orders. Equally, the inter-ministerial Committee on IHL, originally established in 1998 and formally still in force, is not operative. Hence it is clear that other legislative priorities, budget concerns, and the allocation of insufficient human resources devoted to addressing IHL issues can render the proper fulfilment of IHL provisions even more complex. Conversely, the availability of appropriate institutional fora in which to debate and support activities in this area would be beneficial.

(c) Finally, a major shortcoming of several IHL compliance mechanisms lies in their field of application, which is essentially circumscribed to IACs. They are thus inapplicable in relation to the most common scenario for the application of IHL, namely non-international armed conflicts (NIACs). Furthermore, challenges posed by organized armed groups are almost entirely neglected in IHL provisions dealing with compliance, thus enhancing a perception of legal asymmetry which hardly favours their observance of IHL rules.

2.2. Mechanisms “External” to the IHL System

Awareness of the limits faced by the IHL compliance mechanisms has progressively favoured the resort to a multifaceted series of instruments outside this body of law, borrowing mechanisms external to it when potentially advantageous to IHL: the measures provided by human rights law (HRL) and the law of international organisations are of particular relevance here. The increasing use of such mechanisms has implied both positive aspects – as they enrich the catalogue of tools available


to favour the implementation of IHL – and challenges: they are perceived as being driven by politics and selective in their agenda, as lacking specific expertise in relation to the inherent dynamics of IHL, or, equally, as being ineffective.

In particular, a series of mechanisms provided by HRL at the universal and regional levels are increasingly used to deal with armed conflicts – primarily, but not exclusively, from the perspective of human rights violations that may have occurred in such scenarios. Various instruments can be cited in this regard.

First, the increased involvement of judicial or quasi-judicial HRL bodies in IHL matters has primarily occurred in the case of individual claims, and has partly compensated for the lack of similar mechanisms in the IHL system. However, such a trend is far from being unproblematic, due to the legal tensions between HRL and IHL and the different approaches adopted by monitoring bodies. The examination of periodic reports has similarly permitted monitoring bodies to make general references to States regarding respect for IHL or certain specific provisions of the specific HR treaty under exam. However, such references do not follow a uniform approach, since only a small number of States involved in armed conflicts have been affected by these requests and not all human rights bodies have followed such a pattern.

At the universal level an added contribution could be provided via the universal periodic review (UPR) activities of the Human Rights Council (HRC). Specifically, the UPR system expressly mandates the HRC to examine States regarding their IHL-related obligations. This has led to increasing practice in this regard, although it remains cursory, also on account of some States’ express criticism of such a possibility. Furthermore, the system’s diplomatic-political nature could affect the possibility of such issues being examined substantively. This element is reflected in the rather general character of observations proposed by other States during the examination process when dealing with IHL. Concerns for compli-

ance with IHL have also prompted a significant increase in special sessions of the HRC devoted to situations involving armed conflicts: during these meetings IHL issues have been addressed,\footnote{Out of the 23 special sessions of the HRC, eighteen have been devoted to situations involving an armed conflict, where IHL issues were consequently discussed (Iraq, Central African Republic, Sri Lanka, Democratic Republic of Congo, Sudan, Israel, Syria, and Libya). See recently Twenty-third special session on activities carried out by the terrorist group Boko Haram (2015).} with focuses on activities carried out by organized armed groups in NIACs. Resolutions condemning violations of IHL could also be mentioned,\footnote{See for instance UN Doc. A/HRC/RES/S-23/1(2015) in relation to Boko Haram; UN Doc. A/HRC/RES/S-8/1 (2008), Democratic Republic of Congo.} which might help increase the diplomatic pressure on parties to the conflict to comply with IHL.

A very significant novelty has been the establishment of independent commissions of inquiry and fact-finding missions related to armed conflicts, managed by the HRC,\footnote{See commissions of inquiry of fact-finding missions related to: Lebanon, 2006 (UN Doc. A/HRC/S-2/1); Gaza Conflict, 2009 (UN Doc. A/HRC/RES/S-9/1); Freedom Flotilla, 2010 (UN Doc. A/HRC/RES/14/1); Libya, 2011 (UN Doc. A/HRC/RES/S-15/1); Ivory Coast, 2011 (UN Doc. A/HRC/RES/16/25); and Syria, 2011 (UN Doc. A/HRC/RES/S-17/1).} other UN bodies,\footnote{For commissions, fact-finding missions or panel of experts established by the UN Secretary-General or by the Security Council see: Darfur, 2004 (UN Doc. S/RES/1564); Guinea, 2009 (UN Doc. S/2009/556); Sri Lanka, 2010 (UN Doc. SG/SM/12967); Central African Republic, 2013 (UN Doc. S/RES/2127).} and regional international organizations.\footnote{52 See EU Council Decision 2008/901/CFSP creating an independent fact-finding mission on the conflict in Georgia; Report of the African Commission on Human and Peoples’ Rights’ Fact-Finding Mission to the Republic of Sudan in the Darfur Region, EX.CL/364 (XI), Annex III, 2004; Inter-American Commission on Human Rights, Third report on the human rights situation in Colombia, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 1999.} These activities are particularly relevant as they have progressively shifted the focus of fact-finding activities – originally envisaged as part of the IHL compliance system – toward external mechanisms. In fact, apart from providing analysis under HRL, such commissions usually possess the faculty to review events from an IHL perspective. They also share the advantage of considering conduct carried out by organized armed groups involved in NIACs. Significantly, acting on a mandate provided by an international organisation means that such commissions need not rely on the consent of parties to the conflict to perform their activities, i.e. an element that has prevented similar IHL compliance mechanisms from acting.

Such bodies have nonetheless been characterized by approaches that broadly differ from the IHL mechanisms. For instance, one of the aims of the abovementioned bodies is to provide public scrutiny of the events, whereas the IHFFC would be required to conduct its activities according to the principle of confidentiality, unless otherwise determined by the parties. Similarly, such commissions have hardly limited themselves to mere fact-finding activities. They have also displayed ele-
ments of an adjudicative nature, making broad use of legal assessments to evaluate alleged violations of IHL and provide legal opinions regarding events at issue. Furthermore some of such bodies have also been requested to identify individual responsible for violations of HRL and IHL in view of subsequent prosecutions, prompting a debate on legal standards related to such evaluations.\(^{53}\)

Attention has also been paid to IHL by some Special Procedures managed by the HRC, such as thematic\(^{54}\) or country\(^{55}\) mandates, also regarding activities carried out by non-State actors. Similar functions are identifiable in the activities of the Special Representative of the Secretary-General for Children and Armed Conflict,\(^{56}\) or the periodic reports of the Secretary-General on the Protection of Civilians in Armed Conflicts.\(^{57}\) The UN Security Council has also recurrently made use of its broad powers to adopt a complex set of measures regarding the enforcement of IHL.\(^{58}\) Finally, other institutions have gradually focused on activities aimed at favouring the application of IHL or monitoring its application, such as the UN General Assembly,\(^{59}\) the Office of the High Commissioner for Human Rights,\(^{60}\) and other international organisations.\(^{61}\)

The abovementioned measures developed outside the realm of the IHL system reveal quite a fragmented scenario. Though hardly conclusive when considered individually, these mechanisms can nonetheless contribute to improving compliance

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\(^{54}\) See special procedures dealing with: extrajudicial, summary or arbitrary executions; torture; arbitrary detentions, etc.


\(^{57}\) For the latest report see UN Doc. S/2015/453 (2015).


\(^{59}\) See resolutions devoted to general IHL topics (for an early example see UN General Assembly Resolution 2444 (XXIII) on respect for human rights in armed conflict of 1968) or condemning IHL violations (e.g., UN Doc. A/RES/64/10 (2009), and UN Doc. A/RES/64/254 (2010), on Israel).


with and the enforcement of IHL, thus complementing measures provided by the IHL system itself. In some cases, external measures have de facto substituted ineffective mechanisms originally envisaged by IHL treaty-provisions, as in the case of fact-finding activities, even if such external mechanisms have ultimately been developed according to their own distinctive features. Likewise, several external mechanisms share the advantage of avoiding the need to obtain the consent of parties to the conflict to be operative, a limit which has contributed to determining the ineffectiveness of some IHL mechanisms. Furthermore, external mechanisms have also made it possible to focus in particular on NIACs: an area in which the IHL compliance mechanisms are much less developed. At the same time some tensions related to the development of such external mechanisms can be identified. For instance, the attention to IHL issues has been cursory or focused on specific topics, and controversial legal evaluations provided by such bodies have sometimes fuelled diplomatic debates. Furthermore, political limits may be in place, implying selectiveness in the decision of which conflicts or issues are addressed.

The development of such external mechanisms is consequently far from being unproblematic for States. Indeed, States’ discomfort in relation to the increasing proliferation of such mechanisms expressly emerged during the consultation process for the “compliance track”. The politicized agenda and inappropriate expertise on IHL issues of external fora were specifically underlined in the Concluding Report to the 32nd IC, which maintained:

“While IHL is being increasingly referenced in international political fora and in specialized bodies overseeing the implementation of other branches of international law, such attention is of a sporadic and therefore insufficient nature. Focus on IHL is often the result of real or perceived emergencies, in which political considerations prevail over the need to expertly assess the specific content and implementation of this body of rules”.

Hence, alongside the inherent shortcomings of IHL treaty provisions devoted to such issues, the current trend of referring to mechanisms external to the IHL system has represented a significant prompt for the exploration of potential solutions, within this body of law, to strengthen compliance with IHL.

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62 Concluding Report, *cit. supra* note 1, p. 19. See, furthermore, the Chairs’ conclusions to the Informal Meeting held on 13 July 2012, p. 3 (*cit. supra* note 1): “The positive contributions of these mechanisms and bodies of law to enhancing the protection of victims of armed conflict are beyond doubt. Yet the discussion showed that the specificities of IHL, which reflect the extraordinary situation it regulates, suggest a need for further thinking on how best to conceptualize specific IHL compliance”.
3. **The Path Toward the Proposal for the Meeting of States**

Against this background we can turn our focus to the longstanding debate on improvements to the IHL compliance system. A comprehensive analysis of the possibility of establishing a permanent body charged with the implementation of IHL – either within the UN framework or by States Parties to the GCs – was already included in the seminal 1970 UN Secretary-General’s Report on Respect for Human Rights in Armed Conflicts.\(^6^3\) Similarly, in the mid-1990s the ICRC made a proposal to develop, through a committee of experts, a mechanism “to examine reports and advise States on any matters regarding the implementation of IHL”.\(^6^4\) This mechanism would have reflected the monitoring bodies’ characteristic of HRL, but it was not supported by States, as they were clearly concerned about the scrutiny to be carried out by autonomous IHL experts. Equally, in relation to the UN Millennium Summit, the proposal by Kofi Annan to establish “a mechanism to monitor compliance by all parties with existing provisions of international humanitarian law”\(^6^5\) was not endorsed and subsequent reforms linked to the HRC have only addressed IHL issues to a limited extent.

The ICs have consequently represented periodic opportunities for debate on the possibility of strengthening IHL compliance mechanisms. For instance, in view of the 28th IC held in 2003 the ICRC organized a consultation process, the results of which were submitted to the IC for consideration.\(^6^6\) However, the ensuing debate was not reflected in Resolution 1 adopted at the 28th IC, which merely called upon States to use and to ensure the effective functioning of existing IHL mechanisms.\(^6^7\)

Nonetheless, following additional consultations on the occasion of the 60th anniversary of the GCs,\(^6^8\) a consensus regarding the development of concrete activities in this area was finally reached at the 31st IC held in 2011. In particular, Resolution 1 adopted by the IC entrusted the ICRC (later joined by Switzerland) with the pursuit of “further research, consultation and discussion in cooperation

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\(^6^3\) Report of the UN Secretary-General, Respect for Human Rights in Armed Conflicts, UN Doc. A/8052 (1970), paras. 75-79.


The 2011 Resolution was therefore the starting point for the current proposals. It triggered the development of a consultation process among the facilitators, mainly through nine meetings held between 2012 and 2015 and involving around 140 States. Consultations with National Red Cross and Red Crescent Societies were also arranged, although their role was overshadowed by the debates among States, which brought to light elements expressed in draft Resolution 2.

According to the reports prepared by the facilitators, States emphasized their limited interest in further enhancing the existing IHL compliance mechanisms. The inherent limits characterizing such mechanisms were reiterated, and a shared scepticism was expressed about the possibility of introducing modifications. An interest in revitalizing the IHFFC was expressed, but the facilitators did not suggest any further action due to a lack of specific proposals by States. Hence the latter consultation process also failed to help this mechanism change its image as a “sleeping beauty”.

Conversely, a shared interest among States did seem to emerge concerning the creation of an institutional structure devoted to GC and AP-related compliance activities in order to deal with a detrimental characteristic of the IHL system: the absence of regular meetings of States Parties to enhance compliance with this body of law. Consultations therefore aimed to clarify the content of such a proposal and identify the key institutional elements and functions of the suggested Meeting of States. Discussions were particularly intense from mid-2015, when draft elements for Resolution 2 were circulated, providing delegations with the opportunity to engage with the process of refining its content. On this basis the final text of draft Resolution 2 was openly circulated in October 2015 in view of its potential adoption by the 32nd IC.

4. THE PROPOSAL SUBMITTED TO THE 32ND INTERNATIONAL CONFERENCE OF THE RED CROSS AND RED CRESCENT: A CRITICAL ANALYSIS

Draft Resolution 2 provided a comprehensive proposal for the creation of an innovative Meeting of States on IHL, although the settlement of several issues was
deferred to future decisions by the States involved, to be adopted within the framework of the planned body.

The first relevant point to be addressed is the way in which the Meeting of States was intended to be created. According to draft Resolution 2 the IC was only to be entrusted with recommending “the establishment, by States, of a regular Meeting of States on International Humanitarian Law, with the functions and features described above, at the first Meeting of States, which the government of Switzerland is invited to convene within one year”. 74 During the consultation process alternative proposals were rejected. The idea of amending the GCs or adopting a new AP was not endorsed, due to the States’ wish to preserve the non-binding nature of the Meeting. Similarly, the possibility of the 32nd IC directly setting up the Meeting was ruled out, partly due to the difficulty of reconciling the multipolar nature of the IC’s components with the strictly inter-State character of the planned mechanism. As a result, draft Resolution 2 merely aimed to facilitate the subsequent step to be taken by States, deferring the formal establishment of this body to its initial sessions.

Furthermore, through a series of operative paragraphs, draft Resolution 2 was also intended to act as a blueprint for the identification of the Meeting of States’ core elements; it encapsulated the elements considered as acceptable for States and to be endorsed by other participants in the IC.

Firstly, draft Resolution 2 recommended that the forum should convene annually, 75 which would have finally guaranteed a set venue for regular dialogue among States on IHL issues. The difficult relationship with mechanisms external to the IHL system also influenced this solution: this was emphasized in the Concluding Report, where a yearly timeframe was qualified as necessary “given the important challenges to IHL observance on the ground, which are being dealt with on an almost continuous basis in other international fora not specifically dedicated to IHL”. 76

Another significant characteristic of the Meeting of States was to be its voluntary nature, being potentially open to participation by all the 196 States Parties to the 1949 GCs. 77 This would have represented a challenge for the effectiveness of the mechanism, as the concrete involvement of key political and military States would have been entirely uncertain. Only confidence in the mechanism and States’ willingness to engage in fruitful cooperation would have permitted it to gain importance. Furthermore, taking into account its voluntary nature, the proposed Meeting of States would not have represented a proper conference of States Parties, with the need to tailor its activities to this specific feature in order to avoid tensions among States not taking part in the mechanism.

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74 Draft Resolution 2, cit. supra note 6, operative para. 17. See, furthermore, the Concluding Report, cit. supra note 1, pp. 31-33.
75 Draft Resolution 2, cit. supra note 6, operative para. 9.
76 Concluding Report, cit. supra note 1, p. 25 (italics in the original).
77 Draft Resolution 2, cit. supra note 6, operative paras. 4-5.
Resolution 2 also provided for the participation of other stakeholders as observers, due to their role in strengthening compliance with IHL. In this regard mention was made of international organizations, civil society actors, and components of the Red Cross Movement.\(^ {78} \) Hence, the Meeting of States would have largely differed from the IC in order to emphasize its State-driven character. In this latter forum membership is granted to States Parties, the ICRC, IFRC, and National Red Cross and Red Crescent Societies, with each of these delegations having equal rights, including voting rights.\(^ {79} \) Resolution 2 failed to detail the modalities of attendance as observers for National Societies. Various options were discussed, ranging from their representation under the umbrella of the IFRC, regional groups or as members of the Governmental delegations,\(^ {80} \) hence not providing them with an autonomous standing. On the contrary a specific role was expected for the ICRC, able to contribute to the Meeting “in an expert or other capacity”,\(^ {81} \) for instance supporting its management.

However, the modalities of observers’ participation were deferred to further deliberations as this sensitive issue deserved additional attention, also taking into account different models concerning the participation of observers in similar forums. Their involvement could take various forms along a spectrum of options, including the possibility to: circulate documents, directly or via the support of States; attend public sessions; take the floor during debates; and organize side events.\(^ {82} \) Different solutions could have had a significant impact on the characteristics of the Meeting of States.

The possibility for representatives of civil society to attend the planned Meeting was in line with current trend of aiming to emphasize the positive role that such non-State actors can play regarding compliance with international provisions, also in the area of IHL where “implementation is seen less and less as the sole prerogative of state or of state-driven actors”.\(^ {83} \) Mention could be made, for instance, of activities performed by NGOs such as Geneva Call,\(^ {84} \) or to institutions devoted to IHL training, such as the Sanremo International Institute of Humanitarian Law.

\(^ {78} \) Draft Resolution 2, cit. supra note 6, operative paras. 11-12.


\(^ {81} \) Draft Resolution 2, cit. supra note 6, operative para. 13.


Likewise, in areas close to IHL, such as weapons conventions, the participation of “relevant non-governmental organisations” in review conferences or regular meetings of States Parties is expressly provided for in treaty provisions, thus recognizing their supportive role and expertise in dealing with challenges arising from the implementation of such conventions.\(^\text{85}\)

Similarly, the draft resolution deferred to further negotiations among States the settlement of issues related to the creation of an institutional structure to support the Meeting of States. Taking into account its permanent character, draft Resolution 2 made a broad reference to the need to establish a chair, bureau, and secretariat\(^\text{86}\) for the management of Meetings. Budget issues were also not settled in the draft document, although the Concluding Report explored several alternatives to guarantee the predictability of funds, an essential element for the efficacy of the planned mechanism.\(^\text{87}\)

Concerning its key substantive elements, draft Resolution 2 defined the Meeting’s areas of activity, maintaining the need “to find appropriate ways to ensure that all types of armed conflicts, as defined in the Geneva Conventions of 1949 and their Additional Protocols (for the latter as may be applicable), and the parties to them are included”.\(^\text{88}\) This reference rightly required that the Meeting of States’ activities encompass both IACs and NIACs, even if, as emphasized below, its concrete relevance to NIACs may be questioned.

With regard to the relevant legal framework, not a single line of draft Resolution 2 was devoted to this fundamental element. Such a shortcoming is difficult to justify, except by States’ uncertainty regarding the proper legal boundaries for this new compliance mechanism due to the difficulties of balancing the need to guarantee its efficacy against the desire to preserve State sovereignty and the voluntary character of this body. In this regard only the Concluding Report provided some insights on the potential alternatives evaluated by States.

In particular, as a starting point the report maintained that “the Meeting of States […] should focus on the 1949 Geneva Conventions and their Additional Protocols”.\(^\text{89}\) This approach was clearly understandable, also to avoid overlapping

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\(^{86}\) Draft Resolution 2, *cit. supra* note 6, operative para. 10. For further references see Concluding Report, *cit. supra* note 1, pp. 28-30.


\(^{89}\) Concluding Report, *cit. supra* note 1, p. 19.
with other treaties of relevance for IHL which have already established conferences of States Parties.\textsuperscript{90}

At the same time, to expand the efficacy of the Meeting of States, the Concluding Report emphasized that “States not party to the Additional Protocols should be able to invoke them if they so wish”. The same general view was expressed with respect to IHL customary rules.\textsuperscript{91} This stance aimed to avoid an approach strictly limited to the 1949 GCs’ for States not party to the APs, also by making reference to the substantive role of customary provisions in the IHL system. This potential expansion of the relevant legal framework should have been welcomed. The 1949 GCs mainly focus on the protection of persons not taking or no longer taking part in armed conflicts, while rules pertaining to the conduct of hostilities have largely been codified in the 1977 APs. Similarly, the Concluding Report was correct in reaffirming the potential complementary role of customary IHL, especially in NIACs. It goes without saying that in NIACs reference needs to be made to general rules to achieve a comprehensive analysis of pertinent legal obligations. Furthermore, references made by States to customary rules during the Meeting’s activities would have implied an additional effect, making it possible to gather evidence of States’ \textit{opinio juris} related to customary provisions of IHL.

However, the abovementioned additional possibilities were inherently limited by their reliance on a proactive attitude on the part of the States involved. If a State participating in the Meeting wished to maintain an approach strictly limited to the 1949 GCs it would be free to do so: this implies an ability to avoid sensitive topics, for instance those related to the conduct of hostilities or NIACs, as common Article 3 can hardly provide a comprehensive picture of current challenges in such scenarios. Furthermore the solution envisaged, primarily focusing on the 1949 GCs and APs, appears to be a departure from past attempts by the 26th IC to establish regular meetings of States competent to discuss “general problems regarding the application of IHL”: such wording expressly aimed at enlarging their sphere of competence in comparison to the reference made by Article 7 AP I to meetings of the High Contracting Parties focusing on “the application of the Conventions and of the Protocol”.\textsuperscript{92}

One key element addressed by draft Resolution 2 was which potential functions should be attributed to the proposed Meeting of States. The consultation process was of crucial relevance as States were able to evaluate different options. In particular, the second consultative meeting of States held in Geneva on June 2013 could be identified as a turning point. On that occasion States dealt with a series

\textsuperscript{90} Apart from examples related to weapons treaties, as provided \textit{supra} note 30, see Art. 27 of the Convention for the Protection of Cultural Property in the Event of Armed Conflict (14 May 1954, entered into force 7 August 1956).

\textsuperscript{91} Concluding Report, \textit{cit. supra} note 1, p. 14.

\textsuperscript{92} L\textsc{anz}, M\textsc{ax} and H\textsc{oehne}, \textit{cit. supra} note 24, pp. 1117-1118.
of proposals submitted by the ICRC and Switzerland in a background document. These proposals were based on existing compliance functions operating in other areas of international law, such as: examinations of individual and inter-State complaints; dispute settlement functions; country visits; early warnings; urgent appeals; good offices; fact-finding activities; periodic reports; and thematic discussions. The set of proposal therefore permitted States to evaluate several options, which could have attributed particularly far-reaching powers to the Meeting of States if accepted. However, it almost goes without saying that States favoured only the minimal options, i.e. periodic reports and thematic discussions, while the possibility of attributing to the Meeting of States a role in fact-finding activities was deferred to further discussions during future sessions of the proposed body.

The attribution of extensive functions to the Meeting of States was therefore excluded from the very outset, and this minimal approach fitted with the overall non-legally binding character of the mechanism. As for the Meeting of States’ tasks, the draft resolution emphasized that “among the possible functions […] two were deemed by the consultation process to be particularly relevant […] thematic discussions on issues of IHL and periodic reporting on national compliance with IHL […]. [T]hese voluntary functions should be organized so as to be non-contextual and non-politicized”. As further indications were lacking from the draft resolution, additional references were provided in the Concluding Report.

Concerning State reports, the proposal was to develop an initial “basic report” aimed at highlighting how States generally implement IHL in their domestic legal systems. This report was to focus mainly on an overall assessment of the implementation measures related to IHL obligations to be fulfilled preventively in relation to an armed conflict. These would include, for instance, dissemination activities, the appointment of legal advisers, and procedures for investigating violations of IHL, also in order to identify best practices and lessons learned to be shared. Furthermore, the possibility of preparing “subsequent reports”, intended both to update the “basic report” and focus on issues linked to the thematic discussions, was also mentioned. In such a case the mixed nature of the “subsequent reports” would have also made it possible to establish a fruitful link with the additional function of the Meeting, i.e. thematic discussions. In particular through these documents States would have been able to analyse issues related to thematic discussions in depth and highlight relevant practice in these areas, thus compensating for the limited time expected to be devoted to such discussions during plenary sessions.

In any case the review of reports would not have represented a significant form of legal scrutiny for States. Being informed by a non-contextual and non-politicized evaluation, thus implying a “no naming, no shaming” approach, an individ-

93 Second Meeting of States on Strengthening Compliance with International Humanitarian Law. Background Document, May 2013 (cit. supra note 1).
94 Draft Resolution 2, cit. supra note 6, operative para. 8. See also the Concluding Report, cit. supra note 1, pp. 12-24.
ual review of reports was excluded, while a preference was expressed for a single follow-up document intended to include best practices, common challenges, and/or general recommendations, while not directly pinpointing single States. Therefore not even the mild control represented by specific concluding observations relevant to the States under exam, as experienced in HRL, could have been expected from the proposed mechanism. The effectiveness of such a review function would also have been unlikely due to States’ notorious “reporting fatigue”, implying delays and shortcomings in periodic reports. Furthermore, taking into account the non-contentious nature of this function, neither the Concluding Report nor the previous Chairs’ conclusions addressed techniques to avoid obstacles due non-collaborative States, as the preparation of “shadow reports”, or how to deal with situations involving non-reporting States. It was quite clear, therefore, that this function was entirely dependent on a positive attitude on the part of the States involved.

The additional function attributed to the Meeting of States was the possibility to devote sections of the plenary sessions to thematic discussions among States on IHL issues. Such sections were intended to facilitate exchanges of views on States’ legal and policy positions regarding existing challenges, also in order to share best practices and technical expertise. In this latter regard the possibility of benefitting from external input, as expert presentations or background documents, was mentioned. However, the establishment of subsidiary bodies, such as a committee of independent experts, was rejected, thus further confirming the State-driven nature of the Meeting. The latter function would have permitted States to discuss IHL topics on a peer-to-peer basis at regular intervals, thus facilitating frank debates on sensitive issues. Nonetheless, to appease States’ concerns, thematic discussions were to be non-politicized, non-selective and voluntary, and the same characteristics were to influence the possible follow-up of debates: the proposal made was for an outcome document to summarize discussions. Also in this regard the diplomatic and non-adversative nature of the Meeting was confirmed, being aimed at fostering dialogue among States, rather than highlighting misapplications of IHL.

5. The Outcome of the 32nd International Conference: Resolution 2 and the Way Forward

Draft Resolution 2 was therefore an attempt to synthesize States’ positions as expressed during consultations. The proposal had several merits, favouring the creation of a regular forum for the discussion of IHL issues, with the inherent hope

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that this mechanism could gradually help increase mutual confidence among States in this area.

At the same time, it had potential shortcomings, which were mainly attributable to States’ self-restricting approach and resulted in minimal options being supported during the consultation phase, as subsequently translated into draft Resolution 2. Being of a voluntary nature, the proposed Meeting of States would have been unlikely to attract key military-political States, especially in the event that this body’s practice ever departed from its original features in order to assume a more incisive character. Similarly, it would have been hard to maintain its non-contextual and non-politicized nature when faced with the recurring political-diplomatic crises related to armed conflicts. The poor record of the IC’s past efforts to create partially similar meetings of States Parties, as required in particular by Resolution 1 adopted in 1995, represents a warning in this regard. Similarly, the likelihood of the (quite limited) functions to be attributed to the Meeting of States actually enhancing compliance with IHL could be queried, also because their effectiveness would have been highly dependent upon a proactive attitude by participating States.

The development of a State-driven process in order to create “a venue […] for dialogue and cooperation on IHL issues among States” also implied the total irrelevance of organized armed groups in the planned new compliance mechanism. Such a solution was obvious due to political concerns, but represented a missed opportunity as limiting discussions on NIACs to States’ views alone can hardly provide a comprehensive perspective on the legal and practical challenges related to compliance in such contexts. In particular, as NIACs represent the most complex scenario for the application of IHL, the abovementioned process dedicated to strengthening compliance with IHL could have been expected to identify this as a priority area and recognize the need to accommodate non-State actors’ perspectives, as already emphasized in the past.

Past experiences at the 1974-1977 Diplomatic Conference, where national liberation movements acted as observers, emphasized the potentialities of their involvement in activities aimed at strengthening IHL. Similarly, recent practice has emphasised how such armed groups, or at least some of them, could be involved in initiatives aiming to generate respect for IHL. Perhaps certain compromises could have been adopted in the Meeting of States’ future activities, as extending participation in thematic discussions among panels of experts to include, with the

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98 Concluding Report, cit. supra note 1, p. 16 (italics in the original).
99 ICRC’s Report, cit. supra note 66, pp. 24-25 and 64-68.
101 Reference could be made to activities managed by the Geneva Call, see supra note 84, as well as the ICRC with regard to non-State actors.
consent of concerned States, former members of organized armed groups involved in peace processes, thus permitting them to share their experiences and perspectives. Likewise, from an abstract viewpoint, other possibilities for the involvement of non-State actors could have been explored, in order to make it effective in favouring compliance with IHL in NIACs.\textsuperscript{102} It was, however, clear from debates during the consultation process that States were not interested in such additional possibilities.

Draft Resolution 2 submitted to delegations at the 32nd IC therefore reflected the current minimal law-making agenda of many States regarding IHL issues. This attitude was also apparent during negotiations at the Conference where, as disappointingly stressed by ICRC President Maurer,\textsuperscript{103} States were unable to reach a consensus on the proposed mechanism, despite it being crafted according to the main elements that emerged during the consultation process. It is clear that the current political tensions characterizing international relations, as well as potential concerns about a new compliance mechanism, which might be perceived as implying additional possibilities of scrutiny over armed conflicts and the parties involved in them, did not favour a positive outcome of the negotiation process. As a result it was not entirely surprising that delegations were unable to reach an agreement on the recommendation to create the Meeting of States as proposed in draft Resolution 2.

Conversely, as finally adopted, Resolution 2 merely recommends the continuation of State consultations “to find agreement on features and functions of a potential forum of States and to find ways to enhance the implementation of IHL”\textsuperscript{104} in view of the 33rd IC. Furthermore, its operative paragraph 1 underlines a series of principles required to inform future consultations, as:

\begin{quote}
the State-driven and consensus-based character of the process; [...] the importance to avoid politicization [...] the need to [...] address all types or armed conflicts [...] the voluntary, i.e. non-legally binding, nature of the consultation process, as well as its eventual outcome; the need for the process and the mechanism to be non-contextualized\end{quote}

The divergence of the final text of Resolution 2 from the original draft version is clear, as it mainly provides for an additional round of consultations among States with the hope of reaching an agreement on the features and functions of a potential forum devoted to IHL issues. It is hard to grasp what any potential future compromise may look like, as the current proposal was already a minimal option

\textsuperscript{102} BENVENUTI and BARTOLINI, \textit{cit. supra} note 3, pp. 617-620.
\textsuperscript{104} 32nd IC, Resolution 2, \textit{cit. supra} note 7, operative para. 2.
for strengthening compliance with IHL. Nonetheless it would have had the merit of planting a tiny seed in the IHL system, with a view to one day reaping its ripening fruits, as experienced by IHL in other contexts.\textsuperscript{105}

\textsuperscript{105} Kalshoven, “The Undertaking to Respect and Ensure Respect in All Circumstances: From Tiny Seed to Ripening Fruit”, YIHL, 1999, p. 3 ff.