



16 June 2017

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

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### Second Formal Meeting

Geneva, 10-12 April 2017

### 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 Second Formal Meeting.
2. The Second 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. State-ownership 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 Provisional Work Plan established at the First Formal Meeting, the Second Formal Meeting was devoted to a “presentation of a detailed report on existing mechanisms dealing with IHL” and a discussion of the “features and functions of a potential forum of States”.
5. An open-ended consultation on 23 January 2017 and an informal meeting on 22 February 2017 served for delegations to discuss an outline as well as a first draft, respectively, of the documents prepared by the co-facilitators for the Second Formal Meeting and of the corresponding issues.

## **II. General Remarks**

6. 104 delegations participated in the meeting (see Annex II).
7. States had before them two documents prepared by the co-facilitators, a report by the ICRC on 'Existing Mechanisms, Initiatives and Processes Dealing with IHL', and a Background Document by both the ICRC and Switzerland on the 'Features and Functions of a Potential Forum of States', including an Annex. Both documents served as a basis for discussions. A number of States provided written contributions that were shared through the dedicated website.
8. Some delegations stressed the importance of having a French version of the working documents of the process in order to enable an active participation of all delegations in the meetings. The co-facilitators invited delegations to make proposals as to how translations into French, or other languages, could be funded.
9. In the morning of 13 April, delegations reached agreement on the main elements reflecting identified converging points and particular points for further discussions, including those on which divergent views were expressed (see Annex I).

## **III. Presentation of a Detailed Report on Existing Mechanisms dealing with IHL**

10. Pursuant to the Work Plan adopted at the First Formal Meeting, the first day of the Second Formal Meeting discussed the report prepared by the ICRC on 'Existing Mechanisms, Initiatives and Processes Dealing with IHL'.

### i. General Remarks Regarding the ICRC Report

11. In presenting the Report, the ICRC recalled that its content is factual and descriptive in nature. Accordingly, the Report does not offer judgment on the work of any international or regional mechanism, process or initiative, as this is both beyond the scope of Resolution 2 of the 32nd International Conference, and outside the scope of the ICRC's mandate and principles. The Report is meant to serve, in particular, for delegations to draw conclusions on the question of whether existing mechanisms are sufficient for the goal of strengthening respect for IHL.
12. There was general agreement that the Report provides a good factual basis for discussions in the present intergovernmental process, namely 'to find agreement on features and functions of a potential forum of State, and to find ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums.' It was noted with appreciation that the Report is comprehensive and addresses a broad range of different mechanisms, processes and initiatives both at the regional and international levels, including their objectives, mandate, composition and structure, as well as the activities of the ICRC.
13. Some delegations were satisfied that the Report contained no assessment of the gaps and weaknesses of existing mechanisms, many of which had been discussed in the previous phase of the process, and recalled that this approach adhered to the mandate assigned to the ICRC.
14. According to another view, the Report would have benefited from the inclusion of analytical remarks as to the gaps and weaknesses of existing mechanisms. It was also said that a table or catalogue of functions performed by these mechanisms would have been useful.

### ii. Observations Regarding Weaknesses and Gaps in IHL Implementation by Existing mechanisms

15. Based on the Report, some delegations observed that there are multiple existing mechanisms, initiatives and processes currently playing important roles in efforts to strengthen respect for IHL, and consequently stressed that the existing mechanisms are sufficient for the purpose of improving the application of this body of law.
16. Some delegations were of the opinion that, despite the range of existing mechanisms, initiatives and processes dealing with IHL, and the important contribution they can make, there is a gap in the existing international framework for IHL implementation. Specific reasons were provided to illustrate

the view that no existing mechanism sufficiently fulfils all the relevant guiding principles set forth in Resolution 2. States who shared this view observed the following:

- Many existing mechanisms address IHL in specific contexts.
- The purpose and /or practice of many existing mechanisms is political in nature. Examples that arose in the discussion included various bodies operating within the UN system.
- Apart from the mechanisms provided for in the 1949 Geneva Conventions and their two 1977 Additional Protocols, as well as other IHL treaties, the mandates of many existing mechanisms are either not confined to IHL, or address a limited set of IHL topics on an ad hoc basis.
- Some existing mechanisms are not exclusively State-led. For example, components of the International Red Cross and Red Crescent Movement participate in the International Conference on an equal footing with States.
- Actors involved in many existing mechanisms may lack IHL expertise. In this regard, it was observed that many of the standing bodies that occasionally address IHL specialize in human rights law.
- Certain mechanisms can only be triggered by State action, as a result of which there is insufficient regularity of meetings.
- Certain mechanisms have never been used, in particular, some of the mechanisms inherent in the 1949 Geneva Conventions and their two Additional Protocols of 1977.
- Some of the existing mechanisms are not open to universal participation. This includes, for example, treaty-based bodies and regional fora.

17. Based on the above reasons, delegations stated that a potential new forum of States could perform the specific role currently unfulfilled by existing mechanisms – that is, provide a dedicated safe space for States to meet on a regular basis to exchange views and practical experiences related to IHL implementation, in a non-politicized and non-contextual manner.

18. According to another view, there are multiple fora, and they should be better used. It was, consequently, stressed by these delegations that certain flaws and deficiencies in their functioning or lack of practical use by States should not automatically give way to creating new structures.

19. In the context of the discussion, clarification was sought regarding whether the guiding principles enunciated in Resolution 2 apply both to the intergovernmental process and to its potential outcome. It was stated that all guiding principles apply both to the current intergovernmental process and to any potential outcome and that discussions to date have proceeded on this understanding. According to another view, the guiding principles are applicable only to the intergovernmental process and should not be used in the examination of existing mechanisms.

### iii. Recurring Topics of Discussion Regarding Existing Mechanisms

20. There was general agreement that the duplication of existing mechanisms must be avoided in any new effort to improve respect for IHL. Some States felt that the need to avoid duplication precluded the establishment of a new potential forum of States, as, taken together, the existing mechanisms could fulfil the guiding principles established in Resolution 2. Other States felt that, as no single existing mechanism fulfils all of the relevant guiding principles, a new potential forum of States would not create duplication.

21. It was noted that the implementation of IHL is currently fragmented across multiple fora. Concern was voiced by some delegations that the establishment of a new mechanism could bring about further fragmentation. Other delegations felt that on the contrary, a forum of States would decrease fragmentation. These delegations expressed the view that fragmentation is currently compounded by both a general lack of IHL expertise and the concurrent discussion of IHL with human rights obligations in various fora, such that a dedicated IHL forum, created in keeping with the guiding principles of Resolution 2, would facilitate a more consistent approach across the field.

#### iv. Further Consideration of Existing Mechanisms

22. The view was expressed by some delegations that further examination of relevant existing mechanisms is necessary. These delegations were of the opinion that such consideration is needed in order to understand why existing mechanisms have not been used to their full potential. Some delegations were also of the view that a further examination of existing mechanisms is necessary to draw lessons that might also inform the discussion on a potential forum of States.

23. In this vein, a suggestion was made for the organization of a workshop dedicated to a discussion of how the IHL-related mandates of existing mechanisms could function more efficiently. It was initially proposed that such a discussion could involve experts from the relevant mechanisms (initial examples given included the President of the UN General Assembly and of ECOSOC), and that the aim of the discussion would be to identify impediments encountered by existing mechanisms at normative, institutional, and implementation levels.

24. Following consultation amongst States who expressed interest, the suggestion crystallized into a proposal that a panel session be convened as part of the next informal meeting within the intergovernmental process, to gather views and information on IHL implementation by international mechanisms and regional fora. The mechanisms referred to were the International Conference, meetings of the High Contracting Parties under Article 7 of Additional Protocol I, and periodic meetings under Resolution 1 of the 26th International Conference of 1995, as well as activities of certain regional fora (the Southern Africa region, ECOWAS and the CIS were listed). There was no agreement on the precise modalities.

25. Other delegations considered that the Report of the ICRC and discussion thereof at the Second Formal Meeting was sufficient to conclude the deliberation on relevant existing mechanisms, bearing in mind that the International Conference and regional fora will be discussed at the Third Formal Meeting in the second half of 2017. It was stressed that an in-depth analysis of existing mechanisms had already occurred and need not be repeated. It was also noted that some existing mechanisms might fall outside of the scope of the current intergovernmental process and that a Work Plan had been established at the First Formal Meeting, which should not be re-opened. It was furthermore underlined that there was sufficient expertise among delegations participating in the intergovernmental process, as well as within their respective governments, which could more proactively be sourced by States who had expressed desire for more information.

26. In relation to the International Conference, it was recalled that, pursuant to article 8 of the Statutes of the International Red Cross and Red Crescent Movement, the Conference is the supreme deliberative body for the Movement. While IHL forms part of its work, its mandate is much broader and the composition of the International Conference is not limited to States. It was also recalled that the Third Formal Meeting in the second half of 2017 will serve to discuss how the Conference could be better used to enhance the implementation of IHL. For instance, it was proposed to examine if and how the International Conference could enable more frequent dialogue on IHL among States, such as it did in Resolution 1 of 1995 or when it launched the current intergovernmental process.

27. In relation to the Meetings of the High Contracting Parties to Additional Protocol I pursuant to article 7 of this Protocol, it was recalled that the Additional Protocol is not universally ratified and that to date, no such meeting has taken place. It was noted that regularity is not built in this mechanism, and that the procedure for convening such meetings is cumbersome as it requires a triggering request from a High Contracting Party followed by consultations with all the High Contracting Parties and majority approval. Interest was expressed to increase understanding among States why this mechanism has never been used.

28. In relation to the periodic meetings pursuant to Resolution 1 of the 26th International Conference of 1995, it was recalled that only one such meeting was held in 1998. Given that it does not take place on a regular basis, and taking into account that other competing priorities intervened on the multilateral agenda subsequently, including the negotiations that led to the adoption of Additional Protocol III, no further meetings were held. Interest was expressed to further explore the potential of this mechanism.

29. In the course of the discussion, a question was also raised as to how States could provide assistance to strengthen ICRC activities in the implementation of IHL. The ICRC clarified that, in deference to its identity as an independent, neutral and impartial organization, whose work is based

on specific mandates, State recommendations as to activities under the responsibility of the ICRC should be set aside from the present intergovernmental process.

#### **IV. Features and Functions of a Potential Forum of States**

##### i. General Remarks Regarding the Features and Functions of a Potential Forum of States

30. The second day and parts of the third day of the Second Formal Meeting were devoted to a discussion on the features and functions of a potential forum of States. As suggested by the co-facilitators at the open-ended consultation in January 2017 and the informal meeting in February 2017, the focus of the meeting was on the purposes and functions of a potential forum of States, with the features addressed in overview form. The Background Document related to this topic also endeavored to provide a basis for examining concerns that were voiced in relation to the issue of the possible politicization/contextualization of the work of a potential forum in the run-up to the 32nd International Conference, and indicated ways of overcoming them.

31. The Background Document also contained draft proposals on each of these issues for delegations' consideration and possible agreement at the meeting.

32. In the Background Document it was recalled that many questions related to a potential forum of States were explored in the course of the consultation process held between 2011 and 2015.

33. The Background Document also recalled that Resolution 2 of the 32nd International Conference, which builds on the previous consultations, does not contain or pre-empt a decision on whether a potential forum of States should be established. It underlined that the discussion on the features and functions of a potential forum at the Second Formal Meeting was without prejudice to an eventual decision on its establishment.

34. Some delegations were of the view that the discussion on the features and functions of a potential forum of States was premature because it had not yet been established that there is a need to create such a forum and that its establishment would not duplicate existing mechanisms. Some delegations therefore abstained from the discussion on the features and functions of a potential forum of States or expressed opposition to the establishment of a new forum.

35. Some delegations contributed to the examination of the features and functions of a potential forum of States, while reserving explicitly their position on its establishment and/or expressing a preference for strengthening existing mechanisms instead of creating a new forum.

36. In that context, it was also suggested that the features and functions of a potential forum could be considered in conjunction with the examination of the potential of existing mechanisms, in particular the meetings of the High Contracting Parties under Article 7 of Additional Protocol I, the International Conference and regional fora, with a view to avoid duplication.

37. Some delegations were of the view that there is a need for a new forum. They were of the opinion that it would usefully complement existing mechanisms, given that it would be based on the guiding principles listed in Resolution 2 of the 32nd International Conference. They supported advancing the discussion on features and functions of a potential forum of States to enable States to take an informed decision on its establishment.

##### i. Possible Purpose of a Potential Forum of States

38. The meeting served to discuss the possible purpose of a potential forum of States. Based on a proposal prepared by the co-facilitators, some delegations were of the view that a potential forum of States would provide a venue for States to exchange views regularly on IHL issues of common interest, based on dialogue and cooperation, with a view to strengthening respect for this body of law. They also considered that it would enable States to learn from each other through an exchange of experiences in the implementation of IHL, discussion of possible challenges and ways to address them, sharing of best practices and to flag capacity-needs and foster international cooperation in addressing such needs, with the consent of the concerned States. It was underlined that such a forum would not serve to develop new law or amend IHL treaties.

39. A number of additional views and clarifications were shared. For instance, some delegations were of the view that the purpose should be defined in a more straightforward manner, i.e. clearly limited to the goal of strengthening respect for and/or compliance with IHL. It was furthermore suggested that the purpose should better reflect the desire of relevant delegations to have a “safe space” for non-politicized and non-contextualized dialogue and cooperation among States. In that context, it was suggested that the relevant formulation should contain a reference to the guiding principles and explicitly mention that a potential forum would not serve to criticize other States or to comment on an alleged lack of IHL implementation by another State. It was also proposed that the idea of expert dialogue be reflected in the purpose, as a way to underline the non-politicized and non-contextualized nature of a potential forum of States.

40. Some delegations reiterated their position according to which they were not in a position to discuss or agree on the purpose of a potential forum before it has been determined that there is a gap in IHL implementation and how duplication could be avoided. It was also suggested that the purpose should not be defined as being the establishment of a “venue”, but rather to improve compliance with IHL, as stipulated in preambular paragraph 4 of Resolution 2. In that regard, some delegations expressed doubts that a potential forum of States would effectively improve compliance with IHL and also reiterated their position according to which Resolution 2 provides different options for reaching this purpose, and not solely a potential forum of States. Finally, some delegations questioned how politicization and contextualization could be avoided, because, in their view, the exchange of experiences, the discussion of challenges and the sharing of best practices as well as addressing capacity-needs, as mentioned in the proposal submitted by the co-facilitators, may involve references to specific examples.

#### ii. Possible Functions of a Potential Forum of States

41. The meeting furthermore served to discuss two possible functions of a potential forum of States that had generated the broadest interest among States in the consultations held between 2011 and 2015: 1) thematic discussions on IHL issues and 2) national reporting on the implementation of IHL.

42. In that context, a particular emphasis was put on the question of how the guiding principles, in particular non-politicization and non-contextualization, could be realized in a potential forum of States.

##### *a) General Safeguards Against Politicization/Contextualization*

43. The discussion was based on several possible measures to avoid politicization/contextualization presented by the co-facilitators in the Background Document. The discussion was premised by the understanding that a potential forum of States would be based on consensus, in keeping with the guiding principles.

44. Delegations generally appreciated the focus on safeguards against politicization/contextualization, given that the issue of politicization and contextualization was a main concern expressed by many States with regard to a potential forum of States. Some delegations also suggested drawing on the experiences of various regional fora that have proven to be effective in preventing politicization.

45. Some delegations stressed the importance of devising such safeguards and noted that they would potentially offer more robust protection against politicization and contextualization as compared to existing mechanisms. In their view, this would be a distinctive feature of a potential forum of States.

46. Some delegations expressed an interest, in further work, to establish clear rules governing the work of a potential forum of States that would contain safeguards to ensure that its work is in line with the guiding principles. It was also suggested that a “code of ethics” could be developed. It was underlined that States should first reach agreement on a clear set of rules before a decision on the establishment of a potential forum of States could be taken.

47. Some delegations expressed a particular interest to devise rules that would ensure that in their written and oral statements, delegations participating in a potential forum of States would not

criticize, explicitly or implicitly, other States or comment on an alleged lack of implementation of IHL by another State.

48. While it was recognized that States would have the primary responsibility to observe these rules, it was also considered useful that, with regard to oral statements, a possible chair or co-chairs would have the responsibility to ensure observance of the guiding principles and rules in the debates at a potential forum of States. Some delegations were of the view that the chair or co-chairs should be given the task to accord or withdraw the right to speak to delegations participating in a potential forum of States. Some delegations felt that the responsibility to accord or withdraw the right to speak would put too much emphasis on the role of a chair or co-chairs. In that context, the question was raised of how implicit criticism would be dealt with. It was suggested that the rules of a potential forum of States could provide that delegations could request the chair or co-chairs to rule on the admissibility of oral contributions, if they perceive implicit criticism of them or their practice.

49. With regard to written statements, it was considered that a process would need to be developed to ensure that they conform to the guiding principles and other rules governing the work of a potential forum of States.

50. It was finally suggested that encouraging the participation of military and IHL experts or practitioners would provide an additional element to reduce the risk of politicization and contextualization.

51. Some delegations reiterated strong concerns about the risk of politicization and contextualization. They expressed doubts that these safeguards would avoid politicized and/or context-specific discussions in a potential forum of States. They furthermore questioned whether these safeguards could practically be implemented.

52. In particular, the view was held that it would not be possible to ensure observance of the guiding principles in case of implicit criticism of other States and that, over time, a potential forum of States would become politicized. Furthermore, concerns were expressed regarding the possibility of establishing "filter mechanisms" that are effective and at the same time respectful of States' discretion in their participation in a potential forum.

#### *b) Thematic Discussions on IHL Issues*

53. Some delegations considered that thematic discussions on IHL issues could take place in plenary at each session of a potential forum of States. In their view, they would serve to provide States a means to be better informed about current or emerging IHL issues; provide a better understanding of States' legal and policy positions on current or emerging IHL issues; provide an opportunity for exchanges of views on key legal, practical and policy questions; to develop a deeper understanding of IHL and practical measures taken by States to implement it; and, strengthen existing networks by bringing together IHL experts from different States. It was underlined that this function would not serve to address non-compliance or specific situations.

54. It was said that the function of thematic discussions on IHL issues could be examined in conjunction with the examination of the potential of existing mechanisms, with a view to determine whether it could be fulfilled by, in particular, the meetings of the High Contracting Parties under Article 7 of Additional Protocol I, the International Conference and regional fora, instead of a new forum of States.

55. The meeting also permitted to examine specific safeguards against politicization/contextualization in thematic discussions. These were considered to provide further protection, in addition to the general safeguards outlined above. In that context, the importance of defining criteria for the selection of topics was underlined. It was considered that topics should respond to the following criteria: they should be relevant in relation to current practices and challenges in the implementation of IHL and have the potential of wide engagement on the basis of the practical relevance for a sufficient number of States.

56. As regards the procedure for the selection of topics, the importance of State ownership and transparency was underlined. Some delegations considered that a possible bureau could play a role in suggesting or selecting topics for discussion. Some delegations also considered that the ICRC could play a role in this context, notably with a view to ensure non-politicization and non-

contextualization. It was also suggested that topics should be determined by consensus among States.

57. It was furthermore suggested that the participation of experts in thematic discussions would provide additional guarantees to avoid politicization. Some delegations expressed caution in that regard.

58. Some delegations considered that further safeguards could be explored, in particular in relation to the selection of topics, format and outcome. Other delegations questioned the feasibility of avoiding politicization in thematic discussions as a possible function of a potential forum of States and reiterated their concerns in that regard.

*c) National Reporting on the Implementation of IHL*

59. Some delegations considered that some form of information-sharing, on a strictly voluntary basis, would be useful in order to permit the identification of common experiences in the implementation of IHL, best practices, recurrent challenges and possible ways of addressing them; to provide an opportunity to express capacity-building needs that may be requested by a State, with a view to fostering international cooperation in addressing such needs, and to help inform thematic discussions. In addition to these external purposes, it was said that such a function could, at the domestic level, provide an opportunity for self-assessment enabling the mobilization of various relevant national stake-holders and thereby contribute to better national implementation of IHL. It was underlined that any such function would need to be set up in line with the guiding principles, in particular the principles of non-politicization and non-contextualization.

60. Given that this function was thought to be different than reporting functions in other contexts, notably because it would not involve individual or any other form of scrutiny of States' implementation of IHL, it was suggested to use alternative terms, such as "national submissions", "national/written contributions", "written exchanges of views" or "States contributions of national practice", instead of "national reporting" to describe this function.

61. It was said that this function could be examined in conjunction with the examination of the potential of existing mechanisms, with a view to determine whether it could be attached to, in particular, the meetings of the High Contracting Parties under Article 7 of Additional Protocol I, the International Conference and regional fora, instead of a new forum of States.

62. Delegations that expressed opinions on this function presented different ideas with regard to its content and form. According to one proposal, this function should allow States to share relevant material that is already available, such as military manuals, judicial opinions or national policies; States would thus not need to draft particular documents or responses to questions. According to another proposal, this function could be linked to thematic discussions, whereby States could voluntarily share in writing views or other information on the thematic topic under discussion. Another proposal was that States could submit initial contributions on measures taken at the national level to implement IHL which could thereafter be supplemented by shorter topical contributions. It was underlined that many issues regarding the form and content of this function, as well as the way in which national submissions might be considered in a potential forum of States, remained unsettled. As regards the latter aspect, it was reiterated that, in any case, national submissions would not be examined individually.

63. The meeting permitted to consider the question of specific safeguards against the politicization/contextualization of such a function, in an effort to create an additional layer of protection and to supplement the general safeguards outlined above. Some delegations underlined that such safeguards should ensure that, in their submissions, States only report on their own experience, policy and practice for the implementation of IHL, and that such submissions would not be examined individually.

64. The importance of ensuring that any such function should remain light and not burdensome was stressed.

65. Some delegations reiterated doubts as to the feasibility of such a function in a potential forum of States. It was said that this function would contravene the principles of non-contextualization and non-politicization.



66. Furthermore, some delegations expressed the view that its voluntary nature might contradict universality, given that not all States have the same capacity to participate. The idea was also expressed that only States that participate in this function would be entitled to participate in the relevant debates of a potential forum of States.

67. Some delegations thus opposed the establishment of such a function in a potential forum of States.

### iii. Possible Features of a Potential Forum of States

68. It was recalled that the possible features of a potential forum of States were not the focus of the Second Formal Meeting. The meeting served to initially address them only in overview form. Some delegations highlighted the following issues for potential further consideration: the method of establishment of a potential forum of States, participation in its work, cost-effectiveness, denomination, periodicity, structure (i.e. bureau/chair, administrative support), resourcing, and the relationship with the International Conference of the Red Cross and Red Crescent.

69. It was observed that a detailed discussion on the features of a potential forum of States is premature as long as there is no agreement on its possible functions or, more generally, the necessity of its establishment. It was also noted that the guiding principles set out in Resolution 2 should equally inform a possible discussion on the features of a potential forum, and not only its functions, and that this would distinguish such a forum from existing mechanisms.

70. Among the features outlined above, the question of the method of establishment of a potential forum generated the widest discussion. It was stressed that this question was not on the agenda of the meeting and that it would be further explored if States reached agreement on the functions and other features of a potential forum of States. It was recalled that one of the guiding principles of the intergovernmental process is its voluntary, i.e. non-legally binding, nature, as well as of its eventual outcome. Some delegations thus reiterated their preference for a voluntary forum. In that context, the question was raised how a potential forum could be established on the basis of a non-legally binding document. The position was also expressed that any new forum should be treaty-based and should therefore not be of a voluntary nature. Finally, the question was raised whether it is necessary to establish a new institutional structure and whether the International Conference, or other existing mechanisms, could fulfill the purpose and functions that could be assigned to a potential forum of States.

71. It was reiterated that a potential forum of States should be light and cost-effective and that it should not involve a large support structure. Some delegations were of the opinion that all six official languages of the UN should be used in a potential forum of States. Some delegations highlighted the additional costs that this would involve.

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

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

## Annex II: Participating Delegations

1. Afghanistan
2. Algeria
3. Angola
4. Argentina
5. Australia
6. Austria
7. Azerbaijan
8. Bahrain
9. Belarus
10. Belgium
11. Bhutan
12. Botswana
13. Brazil
14. Bulgaria
15. Burkina Faso
16. Canada\*
17. China
18. Colombia
19. Congo
20. Costa Rica
21. Côte d'Ivoire
22. Cuba
23. Cyprus
24. Czech Republic
25. Denmark
26. Djibouti
27. Dominican Republic
28. Ecuador
29. Egypt
30. El Salvador
31. Estonia
32. Ethiopia
33. Finland
34. France
35. Germany
36. Greece
37. Guatemala
38. Hungary
39. India
40. Indonesia
41. Iraq
42. Islamic Republic of Iran
43. Italy
44. Japan
45. Jordan
46. Kazakhstan
47. Kuwait
48. Latvia
49. Lebanon
50. Lesotho
51. Libya
52. Liechtenstein
53. Luxembourg
54. Madagascar
55. Malaysia
56. Mali
57. Malta
58. Mauritius
59. Mexico
60. Monaco
61. Morocco
62. Myanmar
63. Nepal
64. Netherlands
65. New Zealand
66. Nicaragua
67. Norway
68. Pakistan
69. Peru
70. Philippines
71. Poland
72. Portugal
73. Qatar
74. Romania
75. Russian Federation
76. Rwanda
77. Saudi Arabia
78. Senegal
79. Serbia
80. Singapore
81. Slovakia
82. Slovenia
83. South Africa
84. Spain
85. Sri Lanka
86. State of Palestine\*
87. Sudan
88. Sweden
89. Switzerland
90. Syrian Arab Republic
91. Tajikistan
92. Thailand
93. Togo
94. Tunisia
95. Turkey
96. Ukraine
97. United Arab Emirates
98. United Kingdom of Great Britain and Northern Ireland
99. United States of America\*
100. Uruguay
101. Venezuela
102. Viet Nam
103. Yemen
104. Zambia

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