

**Meeting of the Intergovernmental
Group of Experts
for the Protection of War Victims**

Geneva, 23-27 January 1995

WORKING PAPER DRAWN UP BY THE SWISS GOVERNMENT
ON THE BASIS OF THE NINE RECOMMENDATIONS
MADE BY THE PREPARATORY MEETING
HELD IN GENEVA

(26-28 September 1994)

Introductory remarks

In its final declaration, the International Conference for the Protection of War Victims (30 August to 1 September 1993) called upon the Swiss government to convene an open-ended intergovernmental group of experts to study practical means of promoting full respect for and compliance with international humanitarian law (IHL), and to prepare a report for submission to the States and to the next session of the International Conference of the Red Cross and Red Crescent.

Having accepted that mandate, the Swiss Federal Council has scheduled the meeting of experts (the "Experts") for 23 to 27 January 1995.

After requesting all States that had been invited to the War Victims Conference to provide contributions on issues which, in their opinion, should be dealt with by the Experts as a matter of priority, the Swiss government convened a preparatory meeting ("Preparatory Meeting") of 60 States in order to prepare a working document for the Experts. The meeting took place from 26 to 28 September 1994.

*The Preparatory Meeting submitted **nine recommendations** to the Experts, defining, in general terms, possible measures to promote com-*

pliance with IHL and proposing that the Experts explore ways in which those broad measures might be translated into specific and practical means (according to one recommendation the ICRC would be called upon to analyse certain additional measures which could i.a. ensure universal respect for IHL). Those recommendations were sent in November 1994 to all States and other entities invited to the meeting of Experts.

In an effort to facilitate the Experts' work, the Swiss authorities, which are organizing the meeting, have drawn up i.a., and on the basis of contributions from governments, the present working paper which contains a number of suggestions on how the measures to promote compliance with IHL set forth in the above recommendations may be translated into more concrete means. It is understood, however, that this paper does not restrict the Experts' freedom to devise practical means as they themselves see fit.

I. Ways and means to facilitate accession to IHL instruments

1. Introduction¹

Universal applicability of IHL instruments is a precondition for proper implementation of their provisions. Indeed, the fact that belligerents may not all be bound by the same IHL instruments may lead to confusion and a degradation of humanitarian standards.

2. Recommendation

The Preparatory Meeting recommends that the Experts

“Explore ways and means of facilitating States' accession to IHL instruments, notably the 1949 Geneva Conventions and their Additional Protocols, the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons and its three Protocols, and the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, taking into consideration the services

¹ See Final Declaration of the International Conference for the Protection of War Victims (hereinafter the “Final Declaration”), points II.4 and 6, *International Review of the Red Cross (IRRC)*, No. 296, September-October 1993, p. 379.

that, in particular, the ICRC, the National Red Cross and Red Crescent Societies and their Federation and the National Committees referred to below may be able to provide in that regard;

Consider, in this context, ways and means of facilitating States' recognition of the competence of the International Humanitarian Fact-Finding Commission according to Article 90 of Additional Protocol I".

3. Practical means

The Experts may consider recommending that

- the States party to IHL instruments promote accession thereto in their bilateral and multilateral contacts with non-contracting States;
- the depositaries of IHL instruments appeal to each non-contracting State to accede to the respective instruments, and publish periodically, e.g. in the *International Review of the Red Cross*, the state of accessions;
- the UN and other intergovernmental and regional organizations regularly include appeals to accede to specific IHL instruments in their agendas;
- the States that have recognized the competence of the International Humanitarian Fact-Finding Commission promote recognition thereof in their bilateral dealings, particularly with High Contracting Parties to Additional Protocol I that have not made the declaration under its Article 90, and make voluntary contributions as provided for in paragraph 7 of said provision, in order to facilitate promoting the recognition of the Commission's competence;
- national committees referred to under heading V below support their governments in the process of acceding to pertinent IHL instruments.

II. Ways and means of clarifying the role of customary rules of IHL

1. Introduction²

The vast majority of today's armed conflicts are non-international. With regard to those conflicts in particular, there is a widely-held view that the applicable rules and the state of accessions to the few existing international instruments in the relevant area of international law are

² See Final Declaration, point I.4, *IRRC, op. cit.*, p. 378.

inadequate. In addition, there appears to be a considerable measure of uncertainty as to the scope and the role of customary rules governing both non-international and international armed conflicts.

2. Recommendation

The Preparatory Meeting recommends that the Experts

“Examine ways and means of clarifying the role of customary rules of IHL in the areas of international and non-international armed conflicts”.

3. Practical means

The Experts may consider recommending that

- States contribute to the clarification of customary rules of IHL by drawing up, for their armed forces, IHL manuals governing without distinction non-international and international armed conflicts;
- international bodies having the requisite expertise in IHL, such as the ICRC and scientific and academic institutions, e.g. the “Institut für Friedenssicherungsrecht und humanitäres Völkerrecht der Ruhr-Universität Bochum” or the “International Institute of Humanitarian Law” in San Remo, prepare a study clarifying the role of customary rules of IHL in the areas of international and non-international armed conflicts and submit the study to all States, with the assistance of the depositary of the 1949 Geneva Conventions and their Additional Protocols (the “Depositary”), and to the 26th International Conference of the Red Cross and Red Crescent;
- States support efforts to obtain an internationally recognized status for the “Declaration of Minimum Humanitarian Standards” adopted by a group of experts in Turku in December 1990.

III. Ways and means of providing advisory services to States in their efforts to implement IHL and disseminate its rules and principles

1. Introduction³

To be effective, IHL must be implemented at the national level, and its rules and principles must be disseminated within the armed forces as

³ See Final Declaration, points II.1, 2 and 5, *IRRC, op. cit.*, pp. 378-379.

well as the population at large. Many States party to IHL instruments find it difficult, however, to take implementation measures and to disseminate IHL in practice, whether for lack of trained personnel or for linguistic, financial or other reasons.

2. Recommendation

The Preparatory Meeting recommends that the Experts

“Study ways and means whereby bodies dealing with IHL, such as the ICRC, the National Red Cross and Red Crescent Societies and their Federation, may, possibly with the assistance of academic institutions, provide advisory services to States in their efforts to implement IHL and disseminate its rules and principles”.

3. Practical means

The Experts may consider recommending that

- the ICRC, with the assistance of the National Red Cross and Red Crescent Societies and their Federation, and of scientific, academic and other institutions, strengthen the advisory services it provides to States in their efforts to implement and disseminate IHL, on the basis, *i.a.*, of reports by the International Conference of the Red Cross and Red Crescent, pursuant to heading VI below;
- the States indicate to the ICRC the specific needs they may have for such advisory services;
- the ICRC submit periodic reports on its advisory services to the International Conference of the Red Cross and Red Crescent.

IV. Ways and means of improving dissemination of IHL

1. Introduction⁴

Proper application of IHL presupposes that those who are expected to apply it are thoroughly familiar with its principles and rules. Yet, as with increasing frequency in today's armed conflicts people who take up arms do not belong to regular armed forces, it is of utmost importance

⁴ See Final Declaration, points II.1 and 2, *IRRC, op. cit.*, pp. 378-379.

that dissemination of IHL reach not only national armed forces, but the population as a whole. Teaching programmes for these two target groups in fact already appear to exist in a number of States. Much could be gained from international cooperation in this field.

2. Recommendation

The Preparatory Meeting recommends that the Experts

“Examine ways and means of improving dissemination of IHL, putting particular emphasis on the education of students of all ages and increasing media awareness, as well as on the training of armed forces, and the preparation of handbooks on the law of armed conflicts in an effort to harmonize, to the extent possible, the manner in which IHL is disseminated and implemented in different States”.

3. Practical means

The Experts may consider recommending that

- the ICRC and the UN, including its organs and specialized agencies, such as UNESCO, coordinate their efforts to disseminate IHL;
- the States increase their efforts to educate and train the members of their armed forces and security forces, according to their specific ranks and functions, in the law of armed conflicts;
- the States draw up IHL handbooks which must be used by their armed forces as an integral part of military training;
- the ICRC prepare, in cooperation with experts from different regions of the world, a model handbook on IHL for armed forces and submit a draft thereof to the International Conference of the Red Cross and Red Crescent;
- the States increase their efforts to educate, where appropriate with the assistance of National Red Cross and Red Crescent Societies, the civilian population in the law of armed conflicts;
- academic and other institutions involved in educating the public devise specific programmes and teaching materials designed to imbue students of all ages with the principles of IHL and make those programmes available to interested States;
- governments, international organizations and other bodies dealing with IHL organize seminars with representatives of the national and international media in order to increase their awareness of IHL.

V. Ways and means whereby the creation of national committees may foster implementation and dissemination of IHL

1. Introduction⁵

Coordination of measures to implement and disseminate IHL is crucial not only at the international level but at the national level as well. While it appears that in many countries different government authorities are dealing with different aspects of IHL and are largely unaware of each other's endeavours, some governments have created committees of varied composition in order to coordinate national measures in the area of IHL.

2. Recommendation

The Preparatory Meeting recommends that the Experts

“Explore ways and means whereby governments may benefit from the creation of national committees to advise on and assist in national implementation and dissemination measures”.

3. Practical means

The Experts may consider recommending that

- States that have created national committees to advise governments on national implementation and dissemination measures share the benefit of their experience with States interested in the establishment of such committees;
- national committees already in existence cooperate with the body providing advisory services (see point III.3 above) to governments in their efforts to implement and disseminate IHL;
- an international body, such as the ICRC or a scientific or academic institution, organize a meeting of governmental experts from States having already instituted national committees and make a report of the meeting's conclusions available to other States interested in the creation of such committees.

⁵ See Final Declaration, point II.5, *IRRC, op. cit.*, p. 379.

VI. Ways and means whereby States could report to an international body dealing with IHL on their efforts to implement and disseminate IHL

1. Introduction⁶

An exchange of information among States on national measures of implementation and dissemination is desirable, as it allows States with less experience in this area, or more modest resources, to benefit from the experience and accomplishments of other States; moreover, certain aspects of such an exchange constitute a legal obligation under the 1949 Geneva Conventions, Additional Protocol I and the 1954 Hague Convention.

Yet, for various reasons this system of reporting on national measures has never worked satisfactorily.

2. Recommendation

The Preparatory Meeting recommends that the Experts

“Examine ways and means whereby States could report to an international body dealing with IHL, such as the ICRC or the International Conference of the Red Cross and Red Crescent, on their efforts to implement IHL and to disseminate its rules and principles”.

3. Practical means

The Experts may consider recommending that a system be established whereby

- States, where appropriate with the assistance of national committees and National Red Cross and Red Crescent Societies, report every four years to a commission of governmental experts, to be established pursuant to rules to be adopted at the 26th International Conference of the Red Cross and Red Crescent, on national measures taken to implement and disseminate IHL, including
 - national measures for the repression of violations of IHL;
 - the establishment of an internal system to monitor observance of IHL by the armed forces;
 - measures to train the armed forces in the application of IHL rules;

⁶ See Final Declaration, point II.5, *ibid.*

- measures to educate the general population, particularly students of all ages, in the principles and rules of IHL;
 - legislation on the protection of the Red Cross and Red Crescent emblem;
- the ICRC provides the necessary administrative services to the commission referred to above;
- said commission prepares a summary report on the States' reports for submission to the International Conference of the Red Cross and Red Crescent or to a special conference convened by the Depositary, and makes any recommendation it may deem appropriate.

VII. Ways and means whereby the international community could react to violations of IHL and international cooperation could be improved in order to ensure respect for IHL

1. Introduction⁷

IHL reflects universally accepted human values. Violations of its principles and rules must therefore be a subject of grave concern to the international community as a whole, and they warrant joint reactions.

2. Recommendation

The Preparatory Meeting recommends that the Experts

“Examine ways and means whereby the international community could react in the face of violations of IHL, as well as the possibilities of improving cooperation between States and the United Nations or other international fora and bodies in order to ensure respect for IHL”.

3. Practical means

The Experts may consider recommending that the States

- exert, in compliance with international law, whatever influence they may have, including through diplomatic and economic means, in order to ensure respect for IHL by the parties to an armed conflict;

⁷ See Final Declaration, point II.11, *IRRC, op. cit.*, p. 380.

- cooperate within universal and regional frameworks
 - to exert, where appropriate, political, economic or any other pressure on persistent violators of IHL, and
 - to establish and enforce demilitarized zones for the protection of civilian populations;
- establish arms export and control policies that distinguish States that comply with IHL from those that do not;
- strengthen their commitment to prosecute or extradite war criminals apprehended in their jurisdictions;
- support efforts to establish, on a global and a regional level, criminal jurisdictions for the prosecution of violators of IHL and implement all national measures necessary to ensure their proper functioning;
- cooperate with universal and regional intergovernmental organizations and with the International Humanitarian Fact-Finding Commission in their efforts to enquire into violations of IHL, by providing them, whenever requested, with funds, experts and logistical support.

VIII. Ways and means of dealing with specific violations of IHL and discussing general problems regarding the application of IHL

1. Introduction⁸

While enforcement of IHL and repression of its violations are primarily the responsibility of the civilian and military authorities of the parties to an armed conflict, the conviction that particularly serious violations of IHL ought to be the concern of the international community at large, has of late gained considerable ground. This new attitude is reflected by the establishment of international tribunals for war crimes committed in the former Yugoslavia and Rwanda, the progress which the creation of an international criminal court has made in recent years, and the fact that more States have recognized the competence of the International Humanitarian Fact-Finding Commission in the last four years than in the previous thirteen.

⁸ See Final Declaration, point II.11, *ibid.*

What may still be lacking, however, is an international forum dealing with specific violations of IHL on an intergovernmental level.

In addition, there may be a need for a forum to discuss measures of improving observance of IHL in general.

2. Recommendation

The Preparatory Meeting recommends that the Experts

“Explore practical ways and means of dealing with specific violations of IHL and discussing general problems of the application of IHL, e.g., by strengthening the role of the International Conference of the Red Cross and Red Crescent and by making better use of the forum provided for in Article 7 of Protocol I additional to the 1949 Geneva Conventions”.

3. Practical means

The Experts may consider recommending that

- States assist international and national fora dealing with specific violations of IHL by providing information received, *i.a.*, from refugees who have been the victims of or have witnessed serious violations of IHL;
- the Depositary or the International Conference of the Red Cross and Red Crescent organize, in the period immediately preceding or following, or periodically between Conferences, a meeting of government representatives and interested intergovernmental and non-governmental organizations, in order to discuss specific violations of IHL on the basis of information provided by States, intergovernmental or non-governmental organizations; and that the meeting draw up a report to be submitted to the Conference and propose recommendations that the Conference may wish to communicate to the States concerned;
- the States step up their discussions of specific violations of IHL within the framework of the UN Commission on Human Rights and continue to convene, in situations where grave violations of human rights and IHL instruments have occurred, extraordinary sessions of said Commission in order to deal with those violations;
- the Depositary organize periodic meetings — of the kind provided for in Article 7 of Additional Protocol I — of the States party to the 1949 Geneva Conventions to discuss general problems regarding the application of IHL.

IX. Analysis by the ICRC of measures ensuring universal respect for IHL, the protection of women and children and the rights of refugees, and of situations where States' structures have disintegrated

1. Introduction⁹

The debate at the Preparatory Meeting showed that there are important issues, relating to armed conflicts and the protection of their victims, that are too complex to be considered by the Experts within the short time at their disposal, and that thorough discussion thereof should take place at a later date, on the basis of preparatory studies conducted by the ICRC.

2. Recommendation

The Preparatory Meeting recommends that the Experts call upon the ICRC to

- “(a) analyse measures which could ensure, i.a,*
- universal respect for IHL, particularly as it relates to civilians who are more and more often the victims of the use of means and methods of war consisting of systematic and large-scale killings by any armed groups, as well as of other violations of IHL in any armed conflict,*
 - full protection for women and for children from violations of IHL,*
 - full protection of the rights of refugees from violations of IHL, including the 1951 Convention relating to the status of refugees;*
- (b) examine situations where States' structures have disintegrated as a result of non-international armed conflicts”.*

3. Practical means

The Experts may consider calling upon the ICRC to analyse the measures and examine the situations referred to under paragraph 2 above.

⁹ See Final Declaration, points I.1 and 3, and point II.3, *IRRC, op. cit.*, pp. 377, 379.