

Power of humanity

33rd International Conference
of the Red Cross and Red Crescent

9-12 December 2019, Geneva



**33rd INTERNATIONAL CONFERENCE
OF THE RED CROSS AND RED CRESCENT**

Geneva, Switzerland
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**Bringing IHL home: A road map for better national implementation
of international humanitarian law**

Draft elements of resolution

March 2019

Bringing IHL home: A road map for better national implementation of international humanitarian law

Background

The draft elements of the proposed resolution on the adoption of a road map for better national implementation of international humanitarian law seek to provide an outline of the possible substance of individual paragraphs, without providing a definitive text for the proposed resolution.

Each paragraph is followed by a rationale explaining why it would be useful to include such a paragraph in the resolution.

This document is being shared for consultation with the members of the International Conference of the Red Cross and Red Crescent (International Conference) in order to gather a first round of comments and feedback, and to gain an initial understanding of whether the proposed approach on the substance would be acceptable and garner consensus.

When providing comments and feedback on this document, please consider the following questions:

- Do you agree with the proposed elements for the preambular and operative paragraphs of the proposed resolution?
- Are there any elements that are missing or should be included in the resolution?

Detailed comments on the wording of the draft elements of this resolution are not expected at this stage. There will be an opportunity to comment on specific wording once the draft zero of the resolution is available at a later stage.

Introduction

Recent years have seen many shocking and egregious violations of international humanitarian law (IHL). The capacity of IHL to protect the victims of today's complex armed conflicts has even been questioned by some, and significant challenges lie ahead. Yet, every day, in armed conflicts across the world, many belligerents are actually fighting by the rules. IHL continues to govern their behaviour, successfully protecting victims and restricting the way hostilities are conducted.

Every day, the achievements of IHL – a wounded person allowed through a checkpoint, a child who receives the food they need, detainees able to send a message to their families, and many other examples – may not always be visible to the public. However, in every instance, they prove that IHL is respected. Created for the worst of times, IHL preserves the core of our common humanity. And respecting IHL prevents human suffering that would otherwise be felt not only years but even decades after conflicts have ended.

Members of the International Conference are heartened by the many examples of respect for the law that we witness, but are equally dismayed by frequent instances of non-respect, especially as their consequences are so dire. All the States party to the Geneva Conventions and the components of the International Red Cross and Red Crescent Movement can and must do more to ensure that IHL is respected.

This year marks the 70th anniversary of the adoption of the 1949 Geneva Conventions. The Conventions are universally ratified. The 33rd International Conference therefore presents an opportune moment for the members of the Conference to reaffirm their commitment to IHL and to work towards its full application and implementation, especially at the national level.

The proposed resolution therefore focuses on practical measures for national implementation. In parallel, members of the Conference are urged to submit specific thematic pledges, if possible with demonstrable outcomes, linked to the measures proposed in this resolution.

Preambular paragraphs (PP)

PP1 The introductory preambular paragraph could express deep concern about continuing violations of international humanitarian law (IHL), which cause great human suffering and affect large parts of populations.

Rationale: This paragraph is intended to express concern on the part of the 33rd International Conference about violations of IHL and to make a link between those violations and their humanitarian consequences.

PP2 *A preambular paragraph could stress that, despite frequent violations of IHL, there are also many instances in which this body of law is respected, inter alia when attacks on military objectives are suspended or cancelled because the incidental civilian harm is deemed to be excessive; when information is provided on the whereabouts of missing persons and families can be reunited; or when parties to an armed conflict permit impartial humanitarian organizations to deliver relief to people in need.*

Rationale: This paragraph is intended to contribute to a more positive discourse on IHL, which has not been done formally in any previous International Conference resolutions. It could include a non-exhaustive list of instances when IHL was respected in order to provide tangible confirmation of the relevance and importance of IHL. The positive wording of this paragraph should, however, be read together with the previous one: while the tone is hopeful, the unacceptable existence of violations remains a major concern and should not be underestimated.

PP3 *A preambular paragraph could reaffirm the obligation of all States and parties to armed conflict to respect and ensure respect for IHL in all circumstances.*

Rationale: This paragraph recalls the obligation enshrined in Article 1 common to the Geneva Conventions, which underlies all other IHL rules and principles.

PP4 *A preambular paragraph could acknowledge that, while contemporary warfare poses new challenges, IHL remains as relevant today as ever before in international and non-international armed conflicts, and must be fully applied in all circumstances to all persons who are protected by those rules, without any adverse distinction based on the nature or origin of the armed conflict or on the causes espoused by or attributed to the parties to the conflict.*

Rationale: This paragraph reaffirms the relevance of IHL and reiterates some of its fundamental features, such as the prohibition of denying anyone the protection to which they are entitled under IHL.

PP5 *A preambular paragraph could welcome the universal ratification of the 1949 Geneva Conventions, highlight that 2019 marks the 70th anniversary of their adoption, and express the hope that other treaties related to IHL will also achieve universal acceptance.*

Rationale: This paragraph is intended to recognize the 70th anniversary of the 1949 Geneva Conventions and to link this symbolic occasion with a call for States to ratify/accede to other IHL-related treaties to which they are not yet party.

PP6 *A preambular paragraph could recall the respective mandates of the components of the International Red Cross and Red Crescent Movement in relation to IHL as enshrined in IHL treaties and the Statutes of the Movement.*

Rationale: This paragraph recalls the mandates of the ICRC and of National Societies, as per IHL and the Statutes of the Movement.

Operational paragraphs (OP)

OP1 *An operational paragraph could urge all parties to armed conflicts to fully comply with their obligations under IHL.*

Rationale: This paragraph echoes the first preambular paragraph. Violations of IHL can and must be avoided. The obligation for all parties to armed conflict to respect IHL is at the core of this road map.

OP2 *An operational paragraph could recall that domestic implementation of international obligations plays a central role in fulfilling the obligation to respect IHL, and therefore reiterate the need for States to adopt all necessary legislative, regulatory and practical measures to incorporate IHL into domestic law, including for the repression of serious violations of IHL.*

Rationale: This paragraph is intended to recall that the establishment and constant maintenance of a domestic legal framework in accordance with the rules of IHL is a fundamental step towards respect for IHL. An analysis of the areas requiring further domestic implementation is encouraged at the national and regional levels. Members of the International Conference are strongly encouraged to make pledges to tailor the road map to their national

contexts or on specific themes. The following paragraphs then provide additional recommendations on the concrete actions that States and other actors can take to fulfil this obligation.

OP3 *An operational paragraph could encourage all States to consider ratifying or acceding to IHL treaties to which they are not yet party, and to recognize the competence of the International Fact-Finding Commission established under Article 90 of Protocol I additional to the Geneva Conventions.*

Rationale: This paragraph is intended to further promote universal adherence to IHL treaties and insist on the fact that such adherence is of the utmost importance to strengthen respect for IHL.

OP4 *An operational paragraph could acknowledge with appreciation the effective role and increasing number of national committees and similar entities on IHL involved in advising and assisting national authorities in implementing, developing and spreading knowledge of IHL. It could further urge States which have not yet established such an entity to consider doing so.*

Rationale: National committees and similar entities on IHL (NCIHL) play a key role in the national implementation of IHL in the countries where they exist. As of February 2019, 112 NCIHL existed. The establishment of such entities has been encouraged by previous International Conferences as well as by the participants of previous universal meetings of national committees and similar entities on IHL. The recent ICRC publication [*National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success – Towards Respecting and Implementing International Humanitarian Law*](#) aims to provide existing NCIHL with guidance to ensure that their efforts are impactful both in their respective countries and beyond their borders. The publication also encourages the establishment, as appropriate, of additional similar entities, and provides assistance to national authorities doing so.

OP5 *An operational paragraph could welcome the outcomes of the fourth universal meeting of national committees and similar entities on IHL held in 2016, and call for the strengthening of cooperation between such entities on the international, regional and cross-regional levels, in particular by attending and actively participating in the universal meetings and other regular meetings of such entities, as well as through the new digital community for national committees and similar entities on IHL, created on the basis of the recommendations made by the participants of the 2016 universal meeting.*

Rationale: The participants of the 2016 universal meeting of NCIHL reiterated the importance of cooperation among such entities, which had already been encouraged in previous meetings. They specifically asked the ICRC to reactivate a digital community. The ICRC's Advisory Service has since worked on developing such a community, drawing on lessons learnt from the previous online page that existed between 2003 and 2009. The new community will be launched by the ICRC at the 33rd International Conference.

OP6 *An operational paragraph could encourage States to make every effort to further integrate IHL into military training and all levels of military operational planning and decision-making, thereby ensuring that IHL norms are fully integrated into the military ethos. The paragraph could recall the importance of the availability within States' armed forces of legal advisers to advise commanders, at the appropriate level, on the application of IHL, including to non-international armed conflicts.*

Rationale: This paragraph further builds on the evidence of the ICRC *Roots of Restraint in War* study, which showed that IHL training has an impact on battlefield behaviour, especially when tailored to the profile of the audience. The second part of the paragraph insists on the usefulness of legal advisers within armed forces in both international and non-international armed conflicts.

OP7 *In one operational paragraph, States could agree to take concrete action to disseminate IHL among all layers of society, in particular among those called upon to implement or apply IHL at the national level, such as parliamentarians,*

prosecutors and judges, including by forging partnerships with National Societies, academics and practitioners.

Rationale: This paragraph recalls States' obligation to disseminate IHL as widely as possible at the national level. Among the different potential audiences, particular attention should be paid to parliaments and the judiciary. Members of parliament are instrumental in ensuring that IHL is properly implemented under their domestic legal system and in adapting national legislation to give effect to a State's international obligations. The national judicial sector plays a fundamental role in ensuring that IHL is effectively implemented in judicial decision-making where appropriate, hence contributing to the State's fulfilment of its obligation to respect and ensure respect for IHL. Conference members are encouraged to seek relevant partnerships to amplify the impact of their efforts and boost knowledge of and adherence to the protection afforded by the rules and principles of IHL.

OP8 An operational paragraph could encourage States and the components of the Movement to explore new forms of dissemination, including using digital and other means, such as video games promoting respect for IHL, and to incorporate therein the voices of people affected by armed conflict and their perception of IHL.

Rationale: This paragraph also follows on from the previous ones, and touches upon the means and channels for disseminating IHL. In implementing the previous operational paragraphs, Conference members are encouraged to explore the use of new educational tools, in particular those that will reach audiences whom we target less often, particularly young people.

OP9 An operational paragraph could invite States to seize all relevant opportunities to share examples of and exchange on good practices of national implementation measures taken in accordance with treaty obligations and this road map, including by making use of existing tools and of the national committees and similar entities on IHL, where applicable, in order to facilitate such exchanges.

Rationale: This paragraph recalls the obligation contained in the four Geneva Conventions (Articles 48, 49, 128 and 145, respectively): "The High Contracting Parties shall communicate to one another through the Swiss Federal Council and, during hostilities, through the Protecting Powers, the official translations of the present Convention, as well as the laws and regulations which they may adopt to ensure the application thereof." In this regard, use could be made of existing tools, for instance by contributing to the ICRC's [IHL in Action](#) website, and by using national committees and similar entities on IHL to share progress on implementing this road map.