

Power of humanity

33rd International Conference
of the Red Cross and Red Crescent

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

Geneva, Switzerland
9–12 December 2019

**Strengthening International Humanitarian Law
Protecting Persons Deprived of their Liberty**
(Resolution 1 of the 32nd International Conference of the Red Cross and Red
Crescent)

Progress report

Document prepared by the International Committee of the Red Cross

Geneva, October 2019

EXECUTIVE SUMMARY

The International Committee of the Red Cross (ICRC) is submitting this report to the 33rd International Conference of the Red Cross and Red Crescent (International Conference) to present its work pursuant to Resolution 1 adopted at the 32nd International Conference, “Strengthening international humanitarian law protecting persons deprived of their liberty”. With the submission of this report, the ICRC completes its mandate under Resolution 1.

Resolution 1 set out a framework for States and the ICRC to follow in their work from 2016 to 2019 to strengthen international humanitarian law (IHL) protecting detainees held in relation to armed conflict. The resolution welcomed the readiness of States and the ICRC to collaborate, before engaging in substantive work, in determining “the modalities of further work in order to ensure its State-led, collaborative and non-politicized nature in accordance with this Resolution”.

Accordingly, the ICRC made efforts in 2016 and 2017 to facilitate agreement on the working modalities and a work plan for the implementation of Resolution 1. The ICRC convened regional group meetings, exchanged views in writing, and held an open-ended consultation, informal meetings and a formal meeting of States. However, it was not possible to find agreement on these issues during the formal meeting of States in April 2017.

Following further consultation, and in light of the widely diverging views among States, the ICRC concluded that it would not convene another formal meeting aimed at reaching consensus on working modalities under Resolution 1. The ICRC remained open to further work under Resolution 1, if States had so desired.

1) INTRODUCTION AND BACKGROUND

The ICRC is submitting this report to the 33rd International Conference to present the ICRC’s work pursuant to Resolution 1 adopted at the 32nd International Conference, “Strengthening international humanitarian law protecting persons deprived of their liberty”.

Resolution 1 set out a framework for States and the ICRC to follow in their work from 2016 to 2019 to strengthen IHL protecting detainees held in relation to armed conflict. In operative paragraph 8, the International Conference recommended “the pursuit of further in-depth work, in accordance with this Resolution, with the goal of producing one or more concrete and implementable outcomes in any relevant or appropriate form of a non-legally binding nature with the aim of strengthening IHL protections and ensuring that IHL remains practical and relevant to protecting persons deprived of their liberty in relation to armed conflict, in particular in relation to NIAC [non-international armed conflict]”. The resolution invited the ICRC “to facilitate the work of States and to contribute its humanitarian and legal expertise” (operative paragraph 10) and welcomed the readiness of States and the ICRC to collaborate, before engaging in substantive work, in determining “the modalities of further work in order to ensure its State-led, collaborative and non-politicized nature in accordance with this Resolution” (operative paragraph 9). Accordingly, in 2016 and 2017, the ICRC worked with States to find agreement on the modalities of further work and to develop a preliminary work plan.

The work that has been carried out since the 32nd International Conference builds on the consultations conducted between 2011 and 2015. In 2011, the 31st International Conference invited the ICRC, in cooperation with States and other actors if relevant, to pursue research, consultation and discussion to ensure that IHL remains practical and relevant in providing legal protection to all persons deprived of their liberty in relation to armed conflict, and to submit reports to the 32nd International Conference, with options and recommendations. Thus, this report adds to, and should be read together with, the concluding report submitted by the ICRC

to the 32nd International Conference in 2015 (*Strengthening International Humanitarian Law Protecting Persons Deprived of their Liberty*, 32IC/15/19.1).

Resolution 1 invited the ICRC to “present a report on the work done pursuant to this Resolution to the 33rd International Conference” (operative paragraph 13). With the submission of this report, the ICRC completes its mandate under Resolution 1 of the 32nd International Conference.

2) PROGRESS

Consultations on modalities of work and preparation of ICRC draft modalities

In order to find agreement on the modalities of work, as required in Resolution 1, the ICRC engaged with States in 2016 in various ways, including at regional group meetings, in written exchanges of views, and in open-ended consultation. At the invitation of States and taking into account their views, the ICRC prepared a proposal of draft modalities of further work and draft elements of a work plan, which States discussed during an informal open-ended discussion on 20 January 2017. The proposal suggested, *inter alia*, that the ICRC and two States from different geographical regions co-facilitate further work. While there was some agreement on a number of aspects of the proposal, the main point of debate was the question of who would facilitate further work. A number of States supported the ICRC’s proposal that it, along with two States, should co-facilitate. Other States raised doubts about the proposal.

All permanent missions were therefore invited to another informal consultation in Geneva on 24 February 2017 to discuss a revised proposal of modalities and a draft work plan. Prior to the 24 February discussion, Australia and Colombia expressed interest in co-facilitating further work jointly with the ICRC. In the 24 February consultation, some States once again supported the proposal of having the ICRC, Australia and Colombia co-facilitate further work, while other States preferred the ICRC alone to facilitate further work and did not wish to have States involved in the facilitation.

Formal meeting of States, 6–7 April 2017

Taking into account the views of States expressed during the January and February informal discussions, the ICRC prepared, and submitted to all States in March 2017, draft modalities of further work and a draft preliminary work plan. On 6 and 7 April 2017, the ICRC organized the first formal meeting of States on this track of work. The first formal meeting was attended by 91 States.

Regrettably, it was not possible during the two-day meeting to find agreement on the modalities of work and a provisional work plan. Despite extensive outreach work by the ICRC, significant diplomatic efforts by States to find agreement, a compromise proposal for modalities that the ICRC produced during the April meeting, and discussions until late in the evening, the positions of States did not converge sufficiently for an agreement to be reached.

States’ views diverged particularly on the following questions: whether all decisions in the process – including procedural questions and decisions on possible outcomes – should be taken by consensus; whether the entire process, including all possible outcomes, should be based on the principle of “nothing is agreed until everything is agreed”; and who should facilitate further work and how. While there was general agreement that the ICRC should facilitate further work, States had different views on whether States should co-facilitate, whether the ICRC could ask States for support in the facilitation on a case-by-case basis, or whether the ICRC alone should facilitate further work. The ICRC would have appreciated being able to share with States the heavy burden of facilitating further work.

Steps taken following the lack of agreement during the formal meeting

In light of the lack of agreement among States during the meeting of 6 and 7 April 2017, the ICRC sent a letter to all States in May 2017. In that letter, the ICRC enquired whether States believed that the impasse reached in April 2017 could be overcome, and invited States to submit concrete suggestions to the ICRC on how to overcome the disagreement on modalities. A number of States responded to the invitation and the ICRC received a wide range of diverse suggestions and views on how to proceed. While all stressed the importance of strengthening IHL protecting detainees in armed conflicts, in particular in non-international armed conflicts, there were widely diverging views among respondents on whether and how to continue work on the implementation of Resolution 1.

Considering this continuing lack of agreement, the ICRC's president sent a letter to all States in late 2017, informing them that the ICRC would not convene another formal meeting aimed at reaching consensus on working modalities under Resolution 1. The ICRC remained open to further work under Resolution 1, if States had so desired.

The ICRC strongly believes that strengthening the protection of detainees in armed conflict is a humanitarian imperative. It remains convinced that more needs to be done to find ways to enable all parties to armed conflicts to better protect persons deprived of their liberty. In this spirit – and independent from the process under Resolution 1 – the ICRC invited all States to an expert meeting on challenges and practices for ensuring humane treatment and conditions of detention during armed conflict, which took place in 2018.

Consultations with other components of the Movement

The ICRC regularly informed other members of the International Red Cross and Red Crescent Movement on the progress of work under Resolution 1. In 2016 and 2017, the ICRC's Legal Division gave presentations on this work to legal advisers from National Red Cross and Red Crescent Societies, as part of the Annual Meeting of National Society Legal Advisers. In 2017, the ICRC also sent all National Societies three briefing notes informing them about the consultation process described above. Moreover, the ICRC also submitted a background report to the 2017 Council of Delegates to update the Council on its work: [International Humanitarian Law, CD/17/12.1](#).