Promoting Compliance with International Humanitarian Law

Summary

- It is not the absence of law that is causing casualties, destruction and unprecedented displacement in armed conflict, but flagrant breaches of the most fundamental rules of international humanitarian law. Ways must be found to strengthen compliance with the law.

- For this purpose, Switzerland and the International Committee of the Red Cross conducted consultations, between 2011 and 2015, and then proposed the establishment of a regular meeting of states parties to the Geneva Conventions.

- This proposal was not accepted. Negotiations under a new process continue. These merit support.

- Additional options must also be explored. Of these, an approach that focuses on violations of specific fundamental rules is most likely to succeed. One possible such topic is the protection of the wounded and sick, medical personnel and facilities.

- New avenues also need to be considered for strengthening compliance with international humanitarian law by non-state armed groups. Possible approaches include those linked with motivating factors: 'ownership' of the law, incentives, monitoring, and technical assistance.

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Introduction

Current armed conflicts are complex, often involving a multitude of state and non-state parties, prolonged and marked by violations of even the most fundamental rules of international humanitarian law (IHL). The widespread lack of respect for the law that should protect people caught up in conflicts provoked the president of the International Committee of the Red Cross (ICRC) to recently remark at the Istanbul World Humanitarian Summit:

> [w]hat will future historians remember from our present time? That millions of people were deliberately or carelessly targeted; that their homes, hospitals and schools were destroyed and entire cities bombed to rubble; that millions of men, women and children were forced into displacement?[1]

The need to make the legal framework more effective has long been recognized. Thus, in December 2011, the International Conference of the Red Cross and Red Crescent (International Conference)[2] invited the ICRC to put forward recommendations for enhancing and ensuring the effectiveness of IHL compliance mechanisms following consultations with states.[3] The government of Switzerland undertook to facilitate the process in cooperation with the ICRC, and together they arrived at a proposal, following wide consultations, to establish a regular meeting of states parties to the Geneva Conventions. This would serve as a dedicated venue for states to examine IHL issues of common concern; perform functions related to the implementation of IHL; and provide an institutional anchor for other elements of a future IHL compliance system.[4]

Despite apparent convergence of views during the consultations, the 2015 International Conference was unable to adopt this proposal. Instead, it recommended the continuation of an intergovernmental process to find agreement on features and functions of a forum of states and ways to enhance the implementation of IHL using the potential of the International Conference and IHL regional forums.[5]

This paper discusses why new means of promoting compliance with IHL are necessary. It outlines some key elements of the consultations facilitated by Switzerland and the ICRC, and refers to the inability to reach agreement on their proposed outcome. It then sets out alternative options for strengthening compliance with IHL, including reflections on how to promote respect by non-state armed groups.

Promoting compliance with IHL

It is not the absence of law requiring states and non-state armed groups parties to armed conflicts to respect and protect civilians that is causing protection problems, but rather a persistent failure to comply with existing obligations. By way of recent example, the reported widespread targeting of hospitals in conflict zones is not due to an absence of law but to flagrant breaches of some of the most fundamental rules of IHL.

Compliance with IHL can be promoted in various ways, ranging from dissemination and training members of armed forces and groups, to 'naming and shaming' violators, proceedings against individual perpetrators or parties to an armed conflict before domestic and international courts, targeted sanctions and engaging with the violating party to assist it to remedy its wrongdoing.

While there are many ways of promoting compliance, the framework for doing so needs strengthening. As is the case for other areas of international law, establishing accountability for violations of IHL before judicial bodies is difficult. While there are dedicated judicial or quasi-judicial bodies to consider claims of violations of international human rights law and to provide guidance on the interpretation of that law, at present none exists for IHL. Human rights bodies are considering situations of armed conflict with increasing frequency, primarily to determine whether violations of human rights law have been committed. This approach excludes review of compliance by non-state armed groups and cannot be considered a substitute for an IHL-specific mechanism.

Regional compliance mechanisms (such as the European Court of Human Rights) are an acceptable option for international human rights law, as states have assumed different obligations under regional human rights instruments. But the same approach cannot be adopted for IHL: the relevant treaties are universal and they must not be interpreted differently in different parts of the world. If an IHL compliance mechanism is established it must be universal in character.

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[1] Maurer, P. (2016), 'Uphold the norms that safeguard humanity', at the High-level Leaders' Roundtable, 24 May 2016, https://www.icrc.org/en/document/uphold-norms-safeguard-humanity-speech-icrc-president (accessed 16 Aug. 2016).

[2] The International Conference is quadrennial; it brings together representatives of the states parties to the 1949 Geneva Conventions and of the components of the International Red Cross and Red Crescent Movement – i.e. the ICRC, the International Federation of National Red Cross and Red Crescent Societies, and National Red Cross and Red Crescent Societies – to examine humanitarian matters of common interest.

[3] The International Conference asked the ICRC to conduct research and consultation, in cooperation with states, to identify and propose a range of options and its recommendations for enhancing and ensuring the effectiveness of IHL compliance mechanisms and to submit a report on this work, with a range of options, to the 2015 International Conference for its consideration and appropriate action, 31st International Conference of the Red Cross and Red Crescent, Resolution 1 – Strengthening legal protection for victims of armed conflicts, 31IC/11/R1, OPs 6–8.

[4] Strengthening compliance with international humanitarian law, Concluding Report, October 2015, 32IC/15/19.2, p. 13.

[5] 32nd International Conference of the Red Cross and Red Crescent, Resolution 2, Strengthening compliance with international humanitarian law, 32IC/15/R2.

IHL treaties establish three compliance mechanisms applicable in international armed conflicts: Protecting Powers, a formal enquiry procedure, and the International Humanitarian Fact-Finding Commission (IHFFC). There is, however, general agreement that these are not effective.[6] Protecting Powers were last used over three decades ago and, although there have been efforts to reinvigorate the IHFFC, neither that nor the enquiry procedure have ever been resorted to, principally because the requisite consent of affected states could not be obtained.

Against this background, the Swiss/ICRC initiative focused on one specific dimension: mechanisms to prevent violations and end them during hostilities. It did not consider training or dissemination, or ex post facto judicial proceedings or other accountability mechanisms.

The Swiss/ICRC Consultations

Between 2012 and 2015, Switzerland and the ICRC carried out intensive consultations. They convened four meetings of states and five preparatory discussions, in which over 140 states participated.

1. Guiding principles for the consultations and outcome

Participants developed principles to inform the consultations and underpin any compliance mechanism agreed upon. These included universality, the need to address both international and non-international armed conflicts, the avoidance of politicization, and the need to ensure the state-driven, consensus-based and voluntary nature of the consultations and of their eventual outcome.[7]

2. The proposal for a Meeting of States

Raised very early in the consultations, the establishment of a universal forum where states could regularly exchange views and experiences on the implementation of IHL received general, but not unanimous, support.[8]

Finding agreement on its functions proved difficult. Participants discussed these on a number of occasions, and over time it became apparent that agreement could be reached on the contours – but not the details – of two

tasks: voluntary periodic reporting on national compliance with IHL, and thematic discussions. Some participants had hoped that the Meeting of States would also serve as an institutional anchor for other elements of an IHL compliance system.[9] However, more ambitious functions and structures including a fact-finding role and an expert body did not muster sufficient support.

3. Three key points of divergence

Significant progress was made in finding common ground on the elements of a possible Meeting of States. At the same time, a number of points of divergence emerged, three of which appear to have contributed to failure to endorse the proposed Meeting of States at the 2015 International Conference.

a. Revitalize the old or establish the new?

A small number of states consistently asserted that ways of enhancing the effectiveness of existing mechanisms should be prioritized before considering the establishment of new ones.[10] While initially this appeared to refer to reinvigorating the IHFFC, it was later indicated that consideration should also be given to an existing arrangement within the UN, which requires the UN secretary-general to compile a biannual report on national implementation of IHL.[11] However, any development of this system would have had to be undertaken by the UN General Assembly, not the Swiss/ICRC process.

In the absence of specific proposals on how to reform existing mechanisms, the documents prepared by the facilitators approached the issue in terms of possible links between the proposed Meeting of States and IHFFC. For example, it was suggested that the Meeting of States could be authorized to 'trigger' the IHFFC, or states could be recommended to avail themselves of it.[12]

b. Foundational questions

As consultations progressed and views converged towards the establishment of a Meeting of States, questions were raised about how it should be established: whether by a consensus resolution of the International Conference, or by a diplomatic conference of states parties to the Geneva

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[6] The shortcomings of these mechanisms and the likelihood of strengthening them were discussed at the Second Meeting of States, June 2013, Background Document and Chairs' Conclusions.

[7] Concluding Report, p. 6.

[8] Informal Meeting, 13 July 2012, Guidance Document, p. 2, and Concluding Remarks, p. 2.

[9] Preparatory Discussion, December 2013, Background Document, p. 22.

[10] Preparatory Discussion, November 2012, Chairs' Conclusions, p. 1; Preparatory Discussion, April 2014, Chairs' Conclusions, p. 8; Third Meeting of States June/July 2014, Chairs' Conclusions, pp. 4–5; and Fourth Meeting of States, April 2015, Chairs' Conclusions, p. 4.

[11] This arrangement is established by the UN General Assembly resolutions on the Status of the Protocols Additional to the Geneva Conventions of 1949. See Third Meeting of States in June/July 2014, Chairs' Conclusions p. 5; and Concluding Report, pp. 15–16.

[12] Fourth Meeting of States, April 2015, Chairs' Conclusions, p. 13.

Conventions.[13] This second position appeared driven by concerns that because participation in the International Conference is not limited to states, but also includes the components of the Movement, the state-driven nature of the Meeting of States could be undermined if it were established by the International Conference.[14]

A hybrid solution was proposed to bridge the two positions: the International Conference would adopt a resolution capturing the elements of the future IHL compliance system acceptable to states, and deferring its formal establishment to an initial Meeting of States to be convened by Switzerland within a pre-determined timeframe.[15] A majority of states supported the hybrid approach, but consensus was not reached on its acceptability.[16] Nonetheless, it was the approach adopted in the draft resolution to the 2015 International Conference.[17]

c. Willingness to postpone decision on certain aspects of the Meeting of States

Another difference of approach ran throughout the consultations. Some states were willing to postpone decision on certain functions and elements of structure to the Meeting of States once it had been established. Others wanted clarity on all elements before establishing the forum.

The draft resolution submitted to the 2015 International Conference deferred decision on a number of issues, including the precise modalities of thematic discussions and periodic reporting on national compliance; the institutional structure supporting the Meeting of States; participation of the components of the Movement and other observers; and funding arrangements. Whether postponing decision on so many points, including controversial ones on which it had proved impossible to reach agreement during the consultations, was acceptable went to one of the key challenges of the consultations: how to reconcile the positions of states that wanted to move at different speeds – or, perhaps, not move at all.

In an effort to reach agreement, the draft resolution invited Switzerland and the ICRC to facilitate consultations among an open-ended working group of states to discuss the working modalities of the Meeting of States, taking into account the consultations that had already been held on these issues, before the first Meeting of States was convened within one year of the 2015 International Conference. This did not, however, prove acceptable.

4. Setting the scene for the impasse

At the final round of consultations, there were indications of trouble ahead for the 2015 International Conference. For example, Russia stated that the proposed Meeting of States did not accomplish the mandate given by the 2011 International Conference: the identification of a 'range of options' – as only one was being proposed; nor could it operate in accordance with the guiding principles agreed upon. Russia suggested the alternative option of strengthening states' confidential engagement with the ICRC on their domestic implementation of IHL by means of a system of voluntary confidential reports.[18] Additionally a small number of states made a statement reaffirming the importance of the process's guiding principles, thus pointing to the likelihood that states opposed to the proposed Meeting of States – for a variety of reasons – were developing a joint position.

The 2015 International Conference

The draft resolution submitted to the 2015 International Conference recommended the establishment of a regular Meeting of States on IHL at the first Meeting of States, which Switzerland was invited to convene within one year.[19] Despite the extensive consultations, and the apparent convergence on numerous elements, it proved impossible to reach agreement on the draft resolution.

A few days before the International Conference, and with the support of a small number of states, Russia submitted an alternative resolution. This proposed enhancing the role of the International Conference in hosting state-led thematic discussions on IHL; strengthening states' bilateral confidential dialogue with the ICRC; and regional discussions between states and the ICRC.

More unexpectedly, Pakistan, in the name of the Organisation of Islamic Cooperation (OIC) states, announced that they wanted to proceed by consensus but 'the timing was not right' so were unable to support the draft resolution. This meant that even if the resolution were put to a vote there would be a significant number of abstentions or votes against it, which would undermine its impact even if adopted.

After difficult and prolonged negotiations the International Conference adopted a resolution by

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13 Options discussed in Preparatory Discussion, April 2014, Chairs' Conclusions, p. 11; Third Meeting of States, June/July 2014, Chairs' Conclusions, p. 6; and Preparatory Discussion, December 2014, Background Document, pp. 26–28.

14 See, for example, Preparatory Discussion, December 2014, Chairs' Conclusions, pp. 11–12.

15 Preparatory Discussion, December 2014, Chairs' Conclusions, p. 12. See, also, Fourth Meeting of States, April 2015, Background Document, pp. 24–26.

16 Fourth Meeting of States, April 2015, Chairs' Conclusions, p. 13.

17 Draft resolution, 'Strengthening compliance with international humanitarian law', 32IC/15/19.2.

18 Fourth Meeting of States, 23 April 2015, Chairs' Conclusions, p. 4, and Concluding Report, p. 16.

19 32nd International Conference of the Red Cross and Red Crescent, draft resolution, 'Strengthening compliance with international humanitarian law', 32IC/15/19.2.

consensus, based on a compromise text proposed by the OIC states.[20] It recommended the continuation of a state-driven intergovernmental process in line with the existing guiding principles to agree on the features and functions of a potential forum of states and to find ways to enhance the implementation of IHL by the International Conference and IHL regional forums.[21]

Next steps

1. Should the process be pursued?

During the consultations prior to the 2015 International Conference, the functions of the Meeting of States were reduced to a minimum (voluntary reporting and thematic discussions) in an effort to bring cautious states on board. But at the conference some states were unable to agree to even this minimal framework.

Can there be any value in pursuing the process, when so little was asked of states, but agreement was still not reached? In short, yes. Abandoning the process because of the setbacks experienced at the 2015 conference would send the message that it is possible to 'sabotage and sink' initiatives to enhance the legal framework – setting a counterproductive precedent that goes well beyond this particular proposal.

It is significant that in the years since the start of the consultations, global and regional powers have become parties to various armed conflicts. Monitoring compliance with IHL is a delicate topic at the best of times. In the circumstances of multiple conflicts, it is not surprising that some states are now reluctant to agree to new mechanisms for monitoring. That does not, of course, mean that the effort should not be made to reach agreement. Considerable momentum has built around the initiative. It makes sense to take advantage of the current interest and engagement by an important number of states by continuing to pursue discussions.

2. Recommendations for the next stage of the process

Against this background, a number of considerations should guide the next steps of the process.

First, states must assume ownership of the process, not simply leave it to Switzerland and the ICRC. Despite repeated calls during the consultations for the process to be state-driven, the first stage was fundamentally a Swiss/ICRC initiative. The 2015 International Conference called for an intergovernmental process: states must play an active role in taking the process forward, not only to comply with this mandate but also to widen the circle of engaged participants and build bridges.

Second, the resolution adopted at the 2015 International Conference identifies three avenues to explore: a forum of states, and using the potential of the International Conference on the one hand and of IHL regional forums on the other. One criticism of the first stage of the process was that the Meeting of States became the sole possible outcome to the exclusion of the others referred to in the 2011 International Conference resolution, most notably the strengthening of existing mechanisms. Some states even refused to engage in discussions of the Meeting of States because of the failure, in their view, to discuss other options. To avoid repeating this, work must take place on all three elements in parallel.

Putting states that have called for particular mechanisms in charge of facilitating the discussions on the various options could galvanize action and also preclude claims that some avenues are being overlooked. It could also establish a sense of ownership in the process.

Third, for the most part until now the contours and limits of the compliance mechanism have been set by states wary of the process. Participants that have been willing to put aside more ambitious expectations must now adopt a similar stance, identifying minimum elements that must be included in a mechanism and making it clear that they will step away if they are not accepted.

Related to this point is the need for the functions of any mechanism that may be established to be periodically reviewed by participating states to enable changes to be made. This is a delicate issue both for states willing to accept a fairly limited initial role for the Meeting of States on the understanding that the possibility exists for expanding them over time and for those wary of losing control over the process and of mandate creep.

Fourth, it is essential to reach out to states that have reservations and concerns, understand them and seek mutually acceptable ways of addressing them. While the various concerns expressed at the consultations before the 2015 International Conference were raised by a small number of states, the (perceived) failure to respond to them is likely to have brought together states that felt their positions were not being taken into account. The process remains consensus-based and the only way to achieve progress is by engaging all participants.

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[20] Ally, H. (2015), 'No deal to strengthen respect for Geneva Conventions', 10 December 2015, IRIN, http://www.irinnews.org/analysis/2015/12/10/no-deal-strengthen-respect-geneva-conventions (accessed 16 Aug. 2016).
[21] 32nd International Conference of the Red Cross and Red Crescent, resolution 2, *supra*.

Looking beyond the Swiss/ICRC initiative – additional options for strengthening compliance with IHL

The challenges and intricacies of past state-to-state discussions should not obscure the very real need to improve compliance with IHL on the ground. The negotiations described above must be supported. But are there additional options that can also be considered?

1. Universal mechanisms

As discussed during the early stages of the Swiss/ICRC consultations, there are numerous possible ways of strengthening the existing compliance framework – in theory. At present, however, political realities are such that states are unlikely to commit to any new oversight mechanism. Any new arrangement would have to be established without states' direct involvement, with the evident risk that this may lead them to refuse to cooperate.

A model that may, nonetheless, warrant consideration is that established by the UN Security Council in 2005 to monitor and report on six grave violations of children's rights.[22] Parties to armed conflict determined by the secretary-general to have recruited or used children in armed conflict are listed in an annex to the secretary-general's annual report on children and armed conflict. This mechanism combines three key elements of a compliance system: monitoring, 'naming and shaming' violators, but also constructive engagement to end violations by assisting parties to develop time-bound action plans for releasing children from their ranks.[23]

An aspect of the system that contributed to its success was its limited scope: a small number of violations against children. Recent experience in treaty-making – the conventions on anti-personnel mines and on cluster-munitions – suggests that focusing on a specific issue is more likely to be successful than a broader approach.

With this in mind, one topic on which there appears to be some willingness to take action is the protection of the wounded and sick, medical personnel and facilities. While an important political statement, the recently adopted Security Council resolution 2286 (2016) does not consider the creation of new mechanisms. Instead, it simply calls upon the secretary-general to report on the issue, and to make recommendations on how to prevent attacks and ensure accountability and protection.[24]

In response to this call, and drawing inspiration from the mechanism on children in armed conflict, the secretary-general could establish arrangements within the UN for collecting information, reporting on violations, but also providing guidance on how to prevent their recurrence, including by constructively engaging with violating parties. That said, in the current political climate, any such arrangements are likely to face significant challenges in operating if there is no buy-in from states.

2. Strengthening compliance by non-state armed groups

The principles guiding the Swiss/ICRC process stipulated that any compliance mechanism should address both international and non-international armed conflicts and the parties thereto. Nevertheless, as a result of strong views expressed by some states, the consultations focused exclusively on enhancing compliance by states. If, as is to be expected, this opposition persists, many of the serious violations of IHL currently being committed by some non-state armed groups will not be considered by any new mechanism.

It is misleading to state that there are no ways of holding non-state armed groups and their members accountable for violations of IHL. At the international level, the criminal tribunals for the former Yugoslavia and for Rwanda, as well as the Special Court for Sierra Leone, had jurisdiction over situations of non-international armed conflict and tried numerous members of non-state armed groups. The same holds true for the International Criminal Court, where many of the investigations and prosecutions have been of members of such armed groups. Similarly, non-state armed groups and persons affiliated with them are listed in seven of the 13 sanctions regimes imposed by the Security Council *inter alia* because of their violation of IHL.

That said, implementation mechanisms for states are far more developed than those for non-state armed groups. There is an urgent need for greater and more systematic and sustained engagement with non-state armed groups to improve their compliance with IHL. Doing so requires overcoming numerous obstacles, including the challenge of identifying appropriate interlocutors within such groups; and the fact that some groups have limited organization and

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[22] UNSCRes 1612(2005), 26 July 2005, OP 3.

[23] This arrangement has recently been the subject of criticism, because under pressure the secretary-general removed the Saudi-led coalition fighting in Yemen from the list of parties responsible for killing and maiming children and for attacks on schools and hospitals. See *Guardian* (2016), 'Saudi Arabian allies pressured UN chief to issue blacklist reversal, sources say', 8 June 2016, https://www.theguardian.com/world/2016/jun/08/saudi-arabia-united-nations-blacklist-yemen-ban-ki-moon (accessed 16 Aug. 2016). This incident exposes some of the weaknesses in the system. When it was established it only listed parties to armed conflict that recruited or used children in armed conflict. Since then, four other violations have become 'triggers' for listing, including some related to the conduct of hostilities, whose occurrence is far more complex to establish as a matter of fact and law. It is also harder to develop action plans to put an end to them.

[24] UNSCRes 2286 (2016), 3 May 2016. On this topic see also the ICRC's Health Care in Danger project, http://healthcareindanger.org/hcid-project/.

control over their members, undermining entrenchment of the law within the group. Another significant hurdle is states' resistance to engagement with non-state armed groups out of a concern that this might affect their legal status or legitimize them. Most evident in counterterrorism measures, this is also apparent with regard to endeavours that attempt to make non-state armed groups responsible for their obligations. It is not tenable to accuse such groups of violating the law while simultaneously opposing efforts to establish dialogue with them to strengthen their respect for IHL. The active participation of non-state armed groups is necessary for compliance mechanisms to be effective.

The term 'non-state armed groups' encompasses extremely different groups. Most important for present purposes is their willingness to (attempt to) respect IHL, as this will determine the best approach for engaging with them. For those groups that show little inclination to do so, only the 'hard' end of the range of responses, such as criminal prosecution or sanctions, is likely to work. For others, approaches such as those suggested below may be effective. The challenge is determining what approach is best suited to a particular group, something that requires sophisticated analysis of individual groups' motivations.[25]

Against this background, this paper makes four proposals for enhancing compliance by non-state armed groups, each linked with a motivating factor: ownership, incentives, monitoring, and technical assistance.

Ownership
Despite being unable to accede to IHL treaties, non-state armed groups are nonetheless bound by common Article 3 of the Geneva Conventions, Additional Protocol II in conflicts where this applies, and the customary rules of IHL regulating non-international armed conflicts. Various modalities have been developed to enable such groups formally to express their intention to comply with IHL and thus establish a sense of ownership of the law. These include unilateral declarations, Deeds of Commitment signed under the auspices of the NGO Geneva Call; and, in situations where the state they are opposing agrees, the conclusion of special agreements as foreseen by common Article 3 of the Geneva Conventions.

As is the case for states' ratification of treaties, such declarations of intent do not necessarily lead to compliance with the law. They do at least address the anomaly in IHL requiring non-state armed groups to comply with rules that they had no role in developing or agreeing to.

A next step in establishing ownership could be a system of voluntary reporting by non-state armed groups on their

implementation and application of IHL. Drafting the reports and collecting the necessary information would require such groups to examine the law and how they have applied it in practice. While it is unlikely to have an immediate impact on compliance, the mere engagement in a process of discussion of the law is a positive step that can build confidence and lead to more extensive arrangements.

A framework could be established enabling non-state armed groups to submit periodic reports and, if agreement could be reached upon this, for them to be reviewed by an expert body. One obvious candidate for administering the system could be the NGO Geneva Call. It has the confidence and respect of many non-state armed groups, and is already requesting signatories to Deeds of Commitment to report on their implementation.

Incentives
Non-state armed groups have little incentive to comply with IHL because, unlike members of states' armed forces, they do not enjoy combatant status. This means that, if taken prisoner, they may be prosecuted for having taken direct part in hostilities, even if in so doing they have not violated IHL.

Additional Protocol II foresees the possibility of granting an amnesty at the end of hostilities to persons who have participated in the armed conflict. However, this is merely a recommendation and, at best, it would only come into effect at the end of hostilities.

States should be encouraged to declare at the outset of a non-international armed conflict that they will not prosecute members of non-state armed groups for detaining members of their armed forces, provided they are treated humanely. Such an arrangement would benefit both sides: captured members of the armed forces, who would receive better conditions of detention – and, possibly not be executed instead of detained – as well as members of the armed groups who would not be prosecuted for taking prisoners.

Monitoring
Non-state armed groups wishing to show their desire to improve compliance with IHL could agree to independent external monitoring. This would also give them an opportunity to respond to allegations of violations.

Various possible monitoring mechanisms exist. A framework for self-reporting could also include a monitoring function. In this regard the expertise of the IHFFC could be drawn upon in an *ad hoc* manner.

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[25] See, for example, Saul, B. (2016), *Improving Respect for International Humanitarian Law by Non-state Armed Groups*, (2016), Research Paper, London: Royal Institute of International Affairs, https://www.chathamhouse.org/publication/humanitarian-engagement-non-state-armed-groups (accessed 16 Aug. 2016), and references therein.

That said, to be effective, a monitoring arrangement must be able to consider the behaviour of both sides to a conflict, particularly when looking at the conduct of hostilities. Doing so requires both sides' consent. While there is likely to be reticence to agree to monitoring, especially by states, a fact-finding body's expertise, clarity of purpose and operating modalities may encourage parties to armed conflict to agree.

Technical assistance

The provision of technical assistance to non-state armed groups can be an effective way of enhancing their compliance with IHL. Past positive approaches have included the provision of advice on how to incorporate IHL into their policies and codes of conduct; the joint establishment of time-bound action plans to release child soldiers from their ranks; and cooperation in mine action programmes including the destruction of explosive ordnance.

Conclusions

There is no single best approach to strengthening compliance with IHL. What is best suited in a particular situation depends on a variety of factors, including the type of violation, the party whose compliance one is trying to enhance, and the party trying to promote respect for the law. Often it is a mix of methods that is most effective, together with the appreciation that achieving better compliance is a long-term process.

Efforts to establish a universal mechanism must continue despite the set-backs at the 2015 International Conference, in the realization that this is likely to be a gradual process.

In the present circumstances, and possibly counter-intuitively, progress is more likely to be achieved in establishing arrangements for enhancing respect by those non-state armed groups which, for a variety of reasons, are interested in doing so. It is essential that states not impede efforts to do so.

About the author

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