
Strengthening respect for international humanitarian law – Fourth Formal Meeting

Position of Mexico

Palais des Nations, Geneva, May 14- 16, 2018

Mexico acknowledges and appreciates the efforts by Switzerland and the ICRC, to prepare and submit for discussion during this Fourth Formal Meeting a paper on the converging elements for strengthening respect for international humanitarian law.

Resolution 2 of the 32nd International Conference of the Red Cross and the Red Crescent established a clear set of guiding principles aimed to ensure universality, impartiality and non-selectivity. We wish these principles to be read from an integrated perspective and should guide our discussion on the converging elements.

- **Thematic discussions and non-politicization**

The topics in the agenda of the new mechanism must be addressed as thematic discussions concerning emerging or current IHL challenges, without making reference to any particular context or region. The thematic discussions format offers several advantages, which include non-politicization and deeper and specialized understanding of the relevant IHL issues. As for non-politicization, thematic discussions are intended to avoid a “naming and shaming” situation, while offering an alternative for debate over specialized relevant IHL topics. Despite its non-politicization, it is possible to find a midpoint between mere theoretical discussions and the concreteness of a particular topic; hence, it is necessary to draw ideas with practical and concrete applications.

Regarding safeguards to avoid politicization, States must agree on very specific rules of procedure. For this, it is necessary to have at the core of the rules of procedure, the obligation for States to address exclusively the implementation of IHL within their own sphere of competence and to refrain from addressing any consideration or discussion of specific contexts.

Additionally, Mexico consider that thematic discussions are not aimed at the creation of rules, rather at the creation of a better understanding and application of IHL.

In this regard, the elaboration of the agenda is a paramount step that must include participation of all States and the advice from the ICRC, along with professionals and scholars specialized in the implementation of IHL.

- **Sharing of experiences and best practices**

The enhancement of IHL would benefit from the voluntary sharing of best practices and experiences concerning domestic policies of IHL dissemination during peace-time and armed conflict. Additionally, the exchange of best practices from regional IHL fora can contribute with relevant criteria. Mexico

considers that the exchange of experiences and best practices should rest at the core of the new mechanism. The ICRC could be the recipient of the said information and could be in charge of elaborating periodic reports integrating the information submitted by States and regional IHL fora.

- **State-driven and consensus-based character**

A relevant point of agreement during the consultation process is the State-driven nature of the new mechanism. Notwithstanding the importance of other actors, nowadays there is no specialized forum for dialogue and cooperation on IHL issues among States. Needless to say that a State-driven forum could benefit from the participation of the other constituent elements of the International Movement of the Red Cross and the Red Crescent, insofar as the state-driven nature of the forum is respected.

While a State-only mechanism can be established as a subsidiary body during the International Conference, this option would pose certain difficulties towards the other members of the Conference. Hence, it is necessary to explore complementary alternatives, in order to fulfil the mandate of Resolution 2 while respecting the State-driven nature of the expected new mechanism.

- **Voluntary nature**

Under International Law, States cannot be compelled to a specific mechanism. However, the non-politicization of the new mechanism offers an incentive for States to participate. Besides, the new mechanism must be based *inter alia* on the good faith of the concerned States and on their willingness to cooperate with other States within an atmosphere of mutual trust. Besides, voluntary nature ensures the non-legally binding nature of the new mechanism's outcome, and serves as an additional incentive for the participation of States.

- **Capacity-building upon request**

Another possible function of the new mechanism is to create a safe-space for States to voluntarily express their capacity-building needs. Nevertheless, Mexico considers that the means through which the potential mechanism could provide capacity-assistance should be discussed once there is a better understanding of its format, follow-up process and rules of procedure.

In any case, it will remain a prerogative of the States to acknowledge and decide on the implementation of any outcome produced by such potential mechanism. In this regard, it is important to highlight the role played so far by the National Committees on IHL and the possibility to learn from their experiences in relation to their interactions with other existing mechanisms.

- **Non-contextual nature**

In line with the format of thematic discussions, the delegations should refrain from making any reference to a specific context, understanding the notion of "context" as relating either to specific conflicts, or specific countries, regardless of the existence of an armed conflict or the general or specific positions

regarding its possible existence or recognition. Accordingly, as established before, participants must agree on a clear and categorical set of rules of procedures.

- **Regularity of the dialogue**

Regarding the periodicity of the meetings of the potential new subsidiary organ, there have been positions suggesting to hold meetings every 4 years. Mexico agrees with the position that the new mechanism should take advantage from other procedures and practices already established, insofar they are not in opposition to these guiding principles. Two examples would be the International Conference of the Red Cross and the Red Crescent or the Universal Meetings of National Committees on IHL.

In this regard, Mexico deems suitable to celebrate periodic meetings of the new mechanism every 4 years, in-between the International Conferences, in order to procure an effective follow up of the discussions and outcomes produced within this potential organ.

- **Avoidance of unnecessary duplication with other compliance systems**

In order to ensure a fruitful result, it is necessary to take advantage of the benefits of the already existing mechanisms, such as the periodic meetings of national committees on IHL, and to coordinate their agendas with the agenda of the potential forum of States. In this regard, we believe the ICRC Report on Existing Mechanisms, Processes and Initiatives dealing with IHL provides a comprehensive study of the existing mechanisms that impact on the understanding of IHL and related subjects.