

Second Meeting of States on Strengthening Compliance with International Humanitarian Law

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Geneva

Statement by Declan Smyth, Deputy Legal Adviser, Department of Foreign Affairs & Trade

Mr. Chairman

Firstly I would like to thank the International Committee of the Red Cross and the Swiss Government for facilitating this Meeting and for the Background Document prepared for it.

As we have said many times previously, in our view the greatest current obstacle to the protection of victims of armed conflict is the frequent failure by both the armed forces of States and non-state armed groups to respect the existing rules of International Humanitarian Law. This failure may occur for a number of reasons – lack of knowledge of the law, absence of political will to ensure respect for the law or, indeed, tolerance or promotion of a culture of impunity. It goes without saying that if the existing rules were followed much of the human suffering occurring in contemporary armed conflicts - particularly by civilians - would not happen.

As the Background Document notes, considerable work has been done in recent years to ensure criminal *accountability* for violations of IHL through the establishment of ad hoc criminal tribunals and the standing International Criminal Court. Similar efforts to establish structures and mechanisms to ensure *compliance* are clearly required so that violations of IHL are much less likely to occur. There are plenty of examples of such structures and mechanisms in other bodies of international law and we should not be afraid to learn from these. As the Background Document notes, it is not difficult to conclude that the absence of effective compliance mechanisms could call into question the protective function and reach of IHL.

Mr. Chairman

The Background Document raises a number of interesting questions, including about the adequacy of existing compliance mechanisms. The Protecting Powers and the Enquiry Procedure in particular are creatures of a time in which states were less accountable for their actions. Likewise the absence of any provision within the Geneva Conventions for regular meetings of the High Contracting Parties very much reflects the practices of the era in which they were negotiated, when international travel was considerably more time consuming and expensive than it is now. It seems unlikely that had the Conventions been negotiated at any time within the last 30 years they would have failed to make provision for such regular meetings.

In general, regular meetings of parties to treaties encourage compliance by promoting respect for the treaty concerned. Such meetings require states parties to give regular consideration within their domestic administrations to the treaty concerned, which automatically raises awareness. They also provide a forum in which events or issues of concern relevant to the treaty can be raised and considered, or in which states may be asked to account for their

actions. The regular nature of such meetings provides a self-reinforcing means of ensuring respect for the treaty.

Likewise, as experience elsewhere demonstrates, periodic or regular reporting by states parties to treaties serves to raise awareness - and standards of implementation - of treaties within national administrations, much as national committees on International Humanitarian Law do. For this reason alone it should commend itself to all states. In particular one can easily see how valuable regular reporting on IHL education within the armed forces of states would be in ensuring that such education took place.

Mr. Chairman

The matters to be considered over the next two days will, we hope, lead to actions by the International Conference in two years time. They will need to be well prepared in as open and transparent a manner as possible. Ireland looks forward to working with all States and the ICRC on these important issues.