

## **U.S. Proposal: Online Repository of Official State Documents in International Humanitarian Law**

The United States proposes the intergovernmental process mandated by Resolution 2 of the 32nd International Conference of the Red Cross and Red Crescent endorse the creation of an online repository of official State documents regarding their practice and policies related to their implementation of international humanitarian law (IHL). This outcome could be structured to be consistent with the guiding principles endorsed in Resolution 2 and other views expressed as part of this intergovernmental process. This outcome could also be complemented by, and would be without prejudice to, whatever other outcomes States may agree upon.

Description of the Proposal. We propose an online collection of materials that States would voluntarily contribute on their practice in IHL. This repository would be similar to a collection of national digests -- publications that collect and disseminate a State's official documents that reflect its practice in international law -- but with a potentially global scope.

States could provide their official documents that reflect their own practice and policies related to their implementation of IHL, such as manuals, directives, policies, regulations, diplomatic correspondence, legislation, court filings or judgments, public reports to parliament, or papers expressing legal views.

Each State could contribute the documents it deemed appropriate, and would be free to update or remove documents it previously contributed. For example, if a State updated its manual on IHL, it could post the updated manual and keep the older version available for historical purposes, or it could remove the old version when it posted the updated one, as it deemed appropriate. A State's contribution of a document regarding its practice would not be understood as necessarily indicating that the practice was undertaken out of a sense of legal obligation or otherwise required by international law. To help avoid any potential confusion, States would be free to provide contextual descriptions or caveats that could be displayed with their contributions. In addition, a State's contribution would be understood to reflect its official views or practices at the time of its contribution, but would be without prejudice to the State changing its views or practice at a later date.

*Concretely and Practically Strengthening IHL Implementation.* Such a repository would help strengthen States' implementation of IHL by allowing States to share their own practice and to learn from the practice of other States. It would provide an invaluable resource that IHL practitioners in each State could directly consult in their day-to-day work.

For example, a State that was developing a new regulation on detention operations could consult similar regulations issued by other States. Practitioners in one State might reach out to those in another State with questions, and the repository in this way could facilitate international cooperation and collaboration and the promotion of good practices.

Similarly, if a number of States were contributing practice on a similar topic, these contributions could be a basis for thematic discussions on IHL issues in regional or international IHL fora.

Documents on the implementation of IHL produced by or presented to IHL regional forums could also be shared on the online repository. Whether to do so would be a voluntary decision by the States participating in the regional forum.

*Voluntary and Cognizant of Resource Constraints.* The online repository would allow all States to share their practice readily with one another. The online repository would not require States to answer detailed questionnaires or to generate documents specifically for it. Rather, whenever they wish, States could contribute those documents reflecting their practice in IHL that they deem appropriate to share.

Access to the online repository or to certain documents on it could generally be limited (e.g., only to other States and other approved users, such as site administrators), or States could decide to allow for wider access. The site administrator would perform purely administrative functions and would not have a substantive role, such as reporting, analyzing, or commenting on States' contributions to the repository.

The online nature of this repository would also entail relatively low set-up and maintenance costs, much like with the current website established to facilitate the intergovernmental process. For example, one or several States could voluntarily offer to establish and/or maintain the online repository cooperatively. Alternatively, States could request the International Committee of the Red Cross (ICRC) to maintain the online repository, or States could voluntarily choose to contribute funds so that a private entity, a non-governmental organization, or an academic institution could be contracted to manage the online repository. We very much appreciate the suggestions we have received from participants in this intergovernmental process on identifying who would establish the repository and how it would be established and maintained, and we remain open to discussing different approaches on this issue.

States would not be required to translate their documents into different languages, although doing so would make their documents more useful to other States. Even if a State chose not to translate its documents into different languages, it would still be useful to make such documents accessible in the online repository for the other States, which could consider translating the documents for themselves as needed. In addition, making such documents available in the original language would not prejudice a possible future decision to translate the documents.

Decisions necessary to establish and maintain the online repository and about the procedures under which it would operate could be discussed during this intergovernmental process and formally taken at the next International Conference. Subsequent International Conferences could take any additional such decisions that States consider necessary on the basis of experience with the repository.

*Non-Politicized.* Each State would be offering its contributions consistent with the guiding principles endorsed in Resolution 2, such as “the importance of avoiding politicization, including by ensuring that States address the implementation of IHL only within their own sphere of competence and responsibility.” In particular, each State would be able to raise only its own practice in its contributions to the repository. The repository would not be a place for commenting on other States' practice, and thus it would not be a platform for criticizing the practices of other States, regardless of whether other States are mentioned by name in the

contributed materials. Procedures could be developed to avoid politicized postings and to ensure the application of other parameters that States may agree to by consensus.

*Avoiding unnecessary duplication.* No such global repository exists where States officially contribute their practice in IHL. Existing mechanisms could draw upon this resource in their work. To the extent the repository is publicly accessible, the ICRC or academics who are interested in IHL issues might also benefit from it.