

**Strengthening legal protection  
for persons deprived of their liberty  
in relation to non-international armed conflict**

First Thematic Consultation on  
Conditions of Detention and Particularly Vulnerable Detainees  
29 – 31 January 2014

**Welcome and Opening of Meeting — Philip Spoerri**

[As prepared for delivery]

Welcome to the first thematic consultation of government experts on strengthening IHL protecting persons deprived of their liberty in relation to non-international armed conflict. We are pleased to see you all here and we look forward to three days of interesting discussions.

I notice that we have a mix of representatives here, with some familiar colleagues from the regional consultations that were held in 2012-2013, as well as some new participants. So let me begin by placing this meeting in a broader context.

This thematic consultation is a further step toward implementation of Resolution 1 of the 31<sup>st</sup> International Conference of the Red Cross and Red Crescent, which took place from 28 November to 1 December 2011. As you are certainly aware, Resolution 1 expresses a general agreement among the members of the International Conference that a number of humanitarian issues related to deprivation of liberty in NIAC require serious attention, and that further research, analysis and consultation is necessary. It invites the ICRC to consult with States, and other relevant actors where appropriate, and to propose to the 32<sup>nd</sup> International Conference options and recommendations for ensuring that IHL remains practical and relevant in providing legal protection to detainees.

As a first step in implementing Resolution 1, the ICRC held four regional consultations of government experts. The consultations – held in Pretoria, San Jose, Montreux and Kuala Lumpur – sought to broadly

assess whether and how IHL could be strengthened in four areas that the ICRC had identified for consideration. These included:

- (1) conditions of detention;
- (2) particularly vulnerable categories of detainees;
- (3) grounds and procedures for deprivation of liberty; and
- (4) transfers of detainees from one authority to another.

It became quickly apparent as the consultations went forward, that these four areas were the correct ones to focus on. The participating experts largely agreed with the humanitarian and legal challenges that we had identified, and they identified a broad range of more specific humanitarian and legal issues within each of the four areas discussed. They also lent their support to continued discussions on how we might strengthen IHL to address those issues.

The content of the discussions was summarized in five reports published by the ICRC, one dedicated to each regional consultation and one synthesis report providing an overview of the discussions. Many of you who participated in those consultations commented on the reports, so you are obviously closely familiar with the content. But for those who were not at the consultations, or are interested in reading the summaries from other regions, they are available here today.

One of the broad conclusions drawn from the regional consultations was that, in order to delve more deeply into the substantive issues at hand, the driving principle behind the next steps in the process should be to focus on specific areas of the law and discuss the concrete, technical aspects of strengthening it. And that is what we are setting out to do today. This is the first of two thematic consultations planned for 2014 and we will examine issues related to conditions of detention and vulnerable detainee groups. A second thematic meeting in July will cover transfers and grounds and procedures for detention.

You will have read in the invitation that, in order to ensure a thorough and productive discussion, we have found it necessary to limit participation in these thematic consultations to a geographically

representative selection of States. This has meant that each of your governments' participation has been particularly important in ensuring a balanced and fair exchange of views, so we thank you again for your attendance. In order to nonetheless ensure that all States contribute to the discussion, these two preparatory thematic meetings will be followed by a consultation with all States, providing them with the opportunity to express their views.

As with the previous regional consultations, no final decisions are to be made at the present meeting. The discussions will be held under the Chatham House Rule and the ICRC will not attribute comments to individuals or their governments in its reporting.

In a moment, the Head of our Legal Division, Knut Dörmann will go into further detail regarding the specific objectives and the methodology of the meeting, but before handing the floor to him, let me place this meeting in less of a procedural context, and focus our attention instead on the problem we face and the steps we are taking to address it.

First, and most importantly, we are here today in recognition of the fact that detainees in non-international armed conflict need protection. Deprivation of liberty triggers an inherent vulnerability, and the nature of armed conflict makes it even more likely that this vulnerability will be taken advantage of and lead to physical or psychological harm to the detainee. In the simplest terms, we are here to prevent this potential harm from manifesting itself.

We are also here with an awareness that international law has far from ignored the vulnerabilities of detainees. When it comes to international armed conflict, the Geneva Conventions are largely dedicated to deprivation of liberty, whether of members of the armed forces or civilians. When it comes to NIAC specifically, Common Article 3 and Additional Protocol II have made significant advances toward better protecting detainees. And beyond IHL, human rights law and internationally recognized standards protecting persons deprived of their liberty have developed immensely since 1949. What we have available to us, then, is a wide variety of protections -- some found in IHL and

others found in human rights law and internationally recognized detention standards -- that all aim to protect the dignity and health of persons deprived of their liberty.

As lawyers, we will be the first to point out that these rules have developed with different contexts in mind. Some, like the Geneva Conventions, Common Article 3 and Additional Protocol II, were developed to regulate armed conflict. Others – such as the Standard Minimum Rules – were developed essentially with an eye toward protecting persons detained on criminal charges, or serving sentences upon conviction. And yet others – such as the UN Principles on Medical Ethics – seek to protect all detainees in all situations.

As lawyers, we are also no strangers to the ongoing debates over how these different instruments interact with one another, especially insofar as the interplay between human rights law and IHL is concerned. And there is no need, of course, to mention the difference between binding treaties and soft law instruments. However, with all of these issues duly noted, international law presents us with a wealth of protective measures designed to address largely overlapping human needs, albeit in a variety of situations. In the context of our effort to determine how best to strengthen IHL in NIAC specifically, the *substantive content* of all of these rules and standards is an essential tool.

Our first goal for this meeting, then, is to leave aside the issue of which standards are binding in which situations in favour of carrying out a purely practical assessment of the application of these protections in NIAC. Over the next three days, we hope to learn from you how the implementation of these various safeguards would play out in light of the particular circumstances that NIACs present. We hope to better understand what it is about NIAC specifically that would have to be taken into account in the course of providing various protections to detainees. And we hope to benefit from your expertise and experience, and hear how your practices have sought to overcome these challenges. The information and insights you share will be vital in our evaluation of how IHL might be strengthened to meet the humanitarian needs of detainees in NIAC while at the same time dealing with these realities.

We also have a second goal in mind for the next three days. As the regional consultations revealed, there is broad agreement to continue work on strengthening IHL governing conditions of detention and vulnerable groups. Those discussions identified a number of areas of concern to focus on. We now hope, by the end of this meeting, to have heard your views on the more precise elements you would like to see in any protections covering detainees in NIAC.

Taken together, we are confident that the practical assessment and the exchange of views on these elements of protection will spark yet another round of rich discussions, building upon what was achieved at the regional consultations, and providing us with useful insights to present to the meeting of all States that will follow.

Finally, let me reiterate, that, as with the previous consultations, no final decisions are to be made at the present meeting. We are here to exchange views and better inform ourselves as we prepare to make recommendations to the 2015 International Conference. With that, I will hand over to Knut, who will go over the more specific objectives and methodology for the meeting.