

Meeting of all States
on Strengthening International Humanitarian Law
Protecting Persons Deprived of their Liberty
26-29 April 2015, Geneva
Remarks of Dr Helen Durham, 26 April 2015
Director of the ICRC Law and Policy Division

Welcome, Opening of Meeting, and Introduction of the President

Your Excellencies, Ladies and gentlemen,

Welcome to this Meeting of States on Strengthening International Humanitarian Law Protecting Persons Deprived of their Liberty. We are very pleased to see you all here, and we look forward to three days of rich discussions. I particularly welcome all those governmental experts who have travelled from their capitals to join us here in Geneva.

I know that we have a mix of representatives in the room today, with some States that have already participated in previous meetings in the consultation process, as well as some new participants. So let me begin by briefly placing this meeting in a broader context.

This consultation is a further step towards implementation of Resolution 1 of the 31st International Conference of the Red Cross, which took place from 28 November to 1 December 2011. As you know, Resolution 1 expresses a consensus among the members of the International Conference that a number of humanitarian issues related to deprivation of liberty in relation to armed conflict require serious attention, and that further research,

consultation and discussion are necessary. Resolution 1 invited the ICRC to consult with States, and other relevant actors where appropriate. It also invited the ICRC to propose to the 32nd International Conference options and recommendations for ensuring that international humanitarian law remains practical and relevant in providing legal protection to all persons deprived of their liberty in relation to armed conflict.

In this opening session, the President of the ICRC, Dr. Peter Maurer, will deliver a keynote speech. I will then provide an overview of the consultation process so far. My colleague Dr. Knut Dörmann will then outline in more detail the substantive scope of the consultation process and the specific objectives of this meeting, situating it in the broader context of the next steps envisaged for this year, in the lead-up to the 32nd International Conference in December.

With that by way of preliminary remarks, let me just note one practical and administrative matter, which is that there is simultaneous translation in English, French, Arabic and Spanish. I would now like to introduce the President of the ICRC, Dr. Peter Maurer, and invite him to give his keynote speech.

-----ICRC PRESIDENT'S SPEECH-----

Helen Durham: Roadmap of the Consultation Process

Thank you very much President Maurer.

I will now provide an overview of the consultation process so far. As the President indicated, we are aware that this topic involves some complex and challenging issues, and we have therefore been proceeding in a gradual, step-by-step way in this process, to gather States views. Our objective is to get as full a picture as possible in order to identify the various options and to inform the development of the ICRC's recommendations for the way forward.

As a first step in implementing Resolution 1, the ICRC held four regional consultations of government experts. The consultations were held in South Africa, Costa Rica, Switzerland and Malaysia – and I would like to express again the ICRC's appreciation to all four countries for co-hosting these regional consultations with us. These consultations brought together 170 government experts, representing 93 States. The invited States were chosen bearing in mind a number of factors, including the need: 1) to ensure a balanced geographic representation; 2) to draw on the experience of States in dealing with detention in NIAC, and 3) to keep the consultations to a size that would help to ensure productive and frank discussions.

As indicated in the Background Document, these regional consultations broadly sought to 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 internment ; and

(4) transfers of detainees from one authority to another.

As the consultations went forward, the participants generally agreed that the focus of the discussions should be on detention in relation to NIAC, as this is the area of most pressing need for strengthening IHL. Participants also confirmed that the four areas of humanitarian concern that the ICRC had identified were the correct ones to focus on.

The regional consultations also sought preliminary views from participants on what the outcome of the consultation process as a whole might be. The goal at that stage was not to come to any final decisions but just to open a discussion on what possibilities exist. Participating States were generally supportive of an outcome that would effectively strengthen IHL protecting NIAC-related detainees. While some participants were in favour of the development of a new treaty, the general tendency was towards an outcome that was not legally binding.

As you will also have seen from the Background Document and the reports, States participating in the regional consultations generally considered that IHL applicable in international armed conflicts was the first place to turn to determine what types of protections might be appropriate for an outcome document. Participants generally considered that other sources of reference for a potential IHL outcome document might also be the substantive content of international human rights law, as well as non-binding, but internationally recognized detention standards.

The ICRC summarized the content of the discussions in five published reports. These included one report dedicated to each regional consultation and one synthesis report providing an overview of the discussions. The

reports are not intended to serve as consensus documents, and they remain solely the work of the ICRC – as our best effort to reflect the key messages that we heard from the consultations.

The ICRC is committed to ensuring that this consultation process is transparent and inclusive – and this is why we have ensured that all the reports are publicly available to all States, and are available on the ICRC website, so that everyone can see the views and ideas expressed in each meeting. This is also why these five reports were presented at a briefing session open to all Permanent Missions here in Geneva in November 2013, hosted by President Maurer. Hard copies of all these reports are available here also.

By the conclusion of the regional consultations, the government experts had identified a broad range of humanitarian and legal issues within each of the four areas discussed. They generally concurred that the driving principle behind the next steps in the process should be to focus on a concrete and technical assessment of whether and how to strengthen IHL to address those issues. And that is what led us to the second phase in our process, which was to hold two thematic consultations, where we examined the four areas in greater depth. The first thematic consultation was held in January 2014 in Geneva, and examined issues related to conditions of detention and vulnerable detainee groups. The second thematic consultation was held in October 2014 in Montreux and examined issues related to grounds and procedures for internment, as well as transfers of detainees from one authority to another.

Again, participating States were chosen on the basis of balanced geographic representation and experience with NIAC-related detention.

Forty-six States were invited. The ICRC decided to limit participation to this number of States to allow for a thorough, in-depth and productive discussion on complex substantive issues. Again, to ensure ongoing transparency in the process, the ICRC produced detailed reports on both consultations, summarizing the discussions. As with the regional consultation reports, drafts of these reports were circulated to participants for comment before finalization – but they remain solely the work of the ICRC, and our best effort to reflect faithfully the key messages and ideas raised in the meetings. You have hard copies of these reports in your document packs.

As you will be aware from the Background Document, these thematic consultations had two main objectives. The first objective was to carry out a practical assessment of the rules applicable in existing international law, to assess how their application might play out in the context of NIACs. Participants were asked to look in particular at existing IHL rules applicable in international armed conflict; at related human rights law rules; and at non-binding but internationally recognized detention standards. The goal in the discussions was to disregard the source of the protections, and instead to focus on whether their substantive content could meet the protection needs of detainees in the circumstances of NIAC. So, the focus was very practical – to ask participants to look to existing international rules and standards, as a menu for guidance and inspiration, and to discuss whether and how their content could be applicable in a NIAC situation. We were really pleased to have a very rich and productive exchange among States of their practices in addressing NIAC-specific challenges – to learn more about particular operational constraints and what they find feasible and realistic in a NIAC situation. As the President indicated, the ICRC has its own experience regarding detention in armed conflict, but these meetings helped the ICRC to develop a fuller picture of the different kinds of State experiences and

State reviews regarding diverse NIACs, dealing with diverse operational situations.

The second main objective was to conduct a survey of views on the specific 'elements of protection' that should be the focus of discussions. Here, when we refer to 'elements of protection' we mean detailed categories of protection, putting aside the question of whether and how each element would be covered in an eventual outcome document. As you will have seen, we have collected these elements of protection in an Annex to the Background Document.

These two phases of consultations have also been complemented by bilateral consultations and regional briefings, aimed at broadening our engagement with States. These consultations have focused in particular, but not exclusively, on States that had not been involved in the thematic consultations, in order to build knowledge about the initiative and what it is aiming at, and to hear their perspectives.

And now, with this meeting over the next three days, we have a critical opportunity to bring all States together to discuss the initiative together, and to express their views.

Let me reiterate that, as with the previous consultations, no final decisions are to be made at this meeting. The discussions will be held under the Chatham House Rule, meaning that the ICRC will not attribute comments to specific individuals or their governments in its reporting. We are here to exchange views and ideas, so that the ICRC can better inform itself as we prepare to make recommendations to the 2015 International Conference. I therefore encourage you all to be active participants in the discussions.

With that, I will now hand over to the ICRC's Chief Legal Officer, Dr. Knut Dörmann, who will go into further detail regarding the scope of the consultation process, the specific objectives of this meeting, and to set it in context in relation to the envisaged next steps ahead to the International Conference at the end of this year.