

**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

Introductory Remarks and Roadmap -- Knut Dörmann

[As prepared for delivery]

Thank you Philip, and thank you again to all of you for your interest in the process. We very much look forward to the next three days.

As Philip mentioned, this meeting has two related but distinct objectives:

The first is to carry out a practical assessment of the application of certain protections related to conditions of detention and vulnerable groups in NIAC, and better understand the factors specific to such situations that need to be borne in mind as we work to strengthen IHL in this area. And the second objective is to identify the specific elements of protection that should be covered in any effort to strengthen IHL.

Before I go any further, I want to clarify that our use of the term detention during this meeting, and in the working document, refers to any deprivation of liberty, regardless of the legal framework that applies and regardless of the reasons that it is taking place. Different types of detention, such as criminal detention or internment, will be discussed throughout this meeting, but the term detention itself is used in the generic sense.

I should also clarify that the scope of these discussions is limited to detention *in connection with* a non-international armed conflict. When we talk about detention in NIAC, what we are referring to is detention measures taken by a party to the conflict for reasons related to that conflict. Detention that might occur for reasons unrelated to a NIAC in a particular State is not the subject of this meeting.

Now, regarding the practical assessment: it seemed clear from the regional consultations that – in order to strengthen IHL applicable in *non*-international armed conflict – the first place to look for inspiration was IHL applicable in *international* armed conflict. But at the same time, the regional consultations indicated that the *substantive content* of human rights law and internationally recognized detention standards was also a resource for strengthening IHL. In other words, the nature of the protections -- not the nature of document from which they were drawn -- should be considered and discussed as part of any effort to strengthen IHL in NIAC.

Taking these views on board, we have included, in the working document, a collection of protections relevant to the numerous areas of humanitarian concern identified for further discussion. Existing IHL and human rights law have served to provide an outline of the specific types of protections that exist to address the various concerns that were more broadly identified during the regional consultation.

The first guiding question in each section then presents a select list of protections and asks the group to assess the practical considerations that you would have to take into account in the course of providing those protections to detainees in NIAC.

Additionally, the protections that have been selected for discussion have been chosen on the basis of their content, not their source. They are not intended to be an exhaustive list. We have included the protections that will spark discussion by demonstrating the diversity of the humanitarian challenges that exist. They come from both IHL and human rights law, from treaties and soft law, and from best practices and expert meeting reports. We ask you, as we have done ourselves, to leave aside the question of the source of the protections selected for discussion, and focus on their protective purpose and the practical implications of providing them to detainees in NIAC. Finally, please be aware that the discussion is not limited to the protections we have selected. Feel free to draw from the other protections in the text of the working document, as well as any other sources not included in the document that you think are relevant.

The second guiding question then asks you to take into consideration a variety of circumstances that could be present in NIAC and affect your assessment. Based on your input during the regional consultations, we have developed a list of 8 scenarios that you will find both in the working document and on a separate sheet in your folders. They bring to light a

number of variables that might be relevant when assessing the details of appropriate conditions of detention. For example, the duration of detention might be relevant as needs of the detainees evolve over time. The grounds for detention might be relevant when it comes to the degree of confinement and how contact with the outside world is managed. The physical environment of the detention, whether at an operational base of a capturing force or at a more stable place of detention, will have an effect on the logistical feasibility of providing certain protections. And the type of operation in which the detention is taking place, whether domestic or extraterritorial, could give rise to both logistical and political considerations.

The next guiding question in each section will ask the group to identify the practical considerations that would have to be borne in mind if a non-State party to a NIAC were to implement similar protections. The regional consultations made clear that any additional regulation of the detention activities of non-State armed groups is a particularly sensitive issue that requires further discussion. But as with the questions focusing on States, the guiding questions concerning non-State parties to NIACs are aimed only at assessing the feasibility of armed groups providing various protections in practice. We therefore ask that for purposes of the practical assessment, you set aside, without prejudice, your views on whether or how an outcome document should deal with non-State parties to NIACs and how potential legitimization of armed groups should ultimately be dealt with. None of the views expressed in making this assessment will be understood by the ICRC as expressions in favour of, or against, further regulation of non-State parties to NIACs by IHL. We hope that this will allow you to focus on the capacity of non-State parties to NIACs to provide specific protections to detainees and therefore enable us to take these pragmatic considerations into account. That will conclude the practical assessment for each section.

Turning now to the fourth and last guiding question regarding the elements of protection: The regional consultations also indicated that the participants were in favour of some kind of outcome document, with the vast majority preferring one that was not legally binding. A variety of possibilities were raised in the discussions, including minimum standards, guiding principles, recommendations, declarations, and best practices.

The guiding question will ask for your views on the specific elements of protection you would like to be covered in any outcome document strengthening IHL in this area. When we say “elements of protection”,

we are referring to the types and categories of protections that would be covered, leaving aside the issue of how such protections would ultimately be drafted. For example, in the context of food and water, the elements of protection could include some or all of the following: (1) the quantity of food, (2) the quality of food, (3) the customary diet of the detainee, and/or (4) the timing of meals.

The specific requirements that the detaining authority would actually have to meet with respect to each element would be left to a later stage. The objective here is to help us assess in greater detail the types of issues States think it relevant to cover in a possible outcome document applicable to NIAC. Again, no decisions are final, these discussions are merely to inform the ICRC in formulating its recommendations to the International Conference.

One final note. Please keep in mind that the success of this consultation depends largely on tackling the precise questions posed in the working document and engaging with the text of the standards it highlights. So, with the guidance of our chairs and ICRC resource people, we hope that you will actively engage with the document's guiding questions and ask for your cooperation as we try our best to keep the discussions focused. The ICRC will draft a report that it will submit to the participating experts for comment and that will assist in the deliberations of the meeting of all States planned for early 2015.

Thank you again for your participation and we look forward to the discussions over the next three days.