



International Institute of Humanitarian Law
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Istituto Internazionale di Diritto Umanitario

41st ROUND TABLE ON CURRENT ISSUES OF INTERNATIONAL HUMANITARIAN LAW

“Deprivation of liberty and armed conflicts: exploring realities and remedies”

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Opening remarks

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Let me join Professor Pocar in warmly welcoming you to the 41st Sanremo Round Table. It is a real pleasure for me to spend the next 3 days with you in Sanremo discussing pressing IHL issues in a way that is diverse and, looking at the audience, full of different ideas. What more could we want? We have the legal discussions with the flair of the Mediterranean and the beauty of Sanremo. We should all be happy to be here all together today. And ,of course, the ICRC is extremely pleased to collaborate with the Institute and I would like to thank your team for the organization that went on.

‘Deprivation of Liberty and Armed Conflicts: Exploring Realities and Remedies’: there are very few topics that are of similar operational and legal importance to an international organization like the ICRC. Most of you know, detainee protection is at the very heart of our humanitarian work. Every year we visit around 1400 places of detention and see many hundreds and thousands of individuals in all parts of the world working for the protection not only of persons held in relation to armed conflicts but also of detainees in other situations of violence.

Our daily detention visits provide the organization with unique insights into the often severe humanitarian consequences of detention. Regardless of the act which deprives persons of their liberty or even where they are held, all too often the ICRC finds that detainees are subject to extra-judicial killing, enforced disappearances, torture and other forms of ill-treatment.

Likewise, the ICRC frequently observes that conditions of detention are inadequate - lack of adequate food, water, clothing, bedding, accommodation, hygienic installations, or health care. Detainees are often not properly registered, or are deprived of meaningful contact with the outside world. Our delegates observe that especially in conflict situations, persons are detained arbitrarily, based on an unclear or non-existent legal framework, without effective review of their detention, and at times in secret or unofficial places of detention.

In our dialogue with the various detaining authorities, recurring legal themes include the treatment of detainees, their conditions of detention, grounds and procedures for their detention, the particular challenges of detention by multinational forces, and the question of how non-State armed groups can comply with relevant international law. The more we work to assist with the humanitarian consequences of migratory movements, the more we also engage in issues of migration-related detention. We are looking forward to hearing your views and engaging with you on all of these issues over the next 3 days.

In our interaction with the detaining authorities, international and national law provides us with a framework for advice and interventions. In our experience, on a number of key issues within the law provides detaining authorities with adequate provisions on how to protect the fundamental rights and dignity of detainees.

There is no question that torture and other forms of ill-treatment, including sexual violence, or enforced disappearances, are absolutely prohibited in all circumstances. For these basic prohibitions, it is often ignorance of the law or failure to implement existing law that leads to the inhumane treatment of detainees. In other cases, especially with regard to conditions of detention, a lack of infrastructure and resources often impede the establishment of an adequate detention regime. As Professor Pocar mentioned, political detainees are not high on the agenda. We are also conscious that implementing basic legal standards for detainees is particularly challenging during the early stages of detention, especially when detainees are captured during hostilities.

On other issues, the ICRC is of the view that the scarcity of legal norms – especially during non-international armed conflicts (NIAC) – constitutes an obstacle to safeguarding the life, health and dignity of those who have been detained. Indeed, while the Geneva Conventions contain several hundred provisions regulating deprivation of liberty in relation to international armed conflicts in virtually all its aspects with quite a lot of detail, no comparably detailed legal regime applies in non-international

armed conflicts. This gap is particularly worrying with regard to issues such as notification of capture, grounds and procedures for internment, or rules on detainee transfers.

In order to assist all parties to armed conflicts in the faithful application of IHL, the ICRC has an interest and mandate to work for fully understanding and disseminating this body of law, and to prepare for possible developments. In recent years, the ICRC has done important work on the protection of detainees, both with regard to the protection of prisoners of war, and with regard to detention in relation to NIAC.

First, many of you will be aware that the ICRC is currently updating its commentaries on the four Geneva Conventions and on their Additional Protocols.

At the moment, our team, supported by a group of external contributors and a geographically representative group of expert peer reviewers, is working on an update to our commentary on the Third Geneva Convention relative to the Treatment of Prisoners of War.

An important strength of the updating of the commentaries is that they take into account the practice and developments in international law that have taken place in the last almost 70 years since the adoption of the Conventions. The commentary on GCIII will provide up-to-date definitions of key concepts such as the treatment of detainees, humane treatment, decent conditions of detention, special protection of women, family contacts and avoiding prisoners going missing. We write these commentaries as tools for practitioners to engage with in order to enhance the protection of current and future prisoners of war. We are very happy that once published, all updated commentaries will be freely available on our website.

The third Geneva Convention of course focuses primarily and in most articles on the protection of prisoners of war in international armed conflict, and not on the protection of persons deprived of their liberty in relation to non-international armed conflicts. As NIACs are the vast majority of today's armed conflicts and pose important humanitarian challenges, since 2011 the ICRC has worked with States to strengthen IHL protecting detainees in NIAC. During the various consultations and meetings we organized, States largely confirmed the ICRC's concern that IHL protecting detainees in NIAC needs strengthening in four main areas: first, conditions of detention; second, the protection of vulnerable groups; third, grounds and procedures for internment; and fourth, detainee transfers. In light of the important need to address this situation, in late 2015 States agreed to work

collectively on concrete and implementable outcomes to strengthen IHL protections for detainees.

However, until today it has not been possible to agree on how to work collectively towards such outcomes. While the ICRC sincerely regrets this situation, we continue to reflect on what steps can be taken, from a practical point of view, to strengthen IHL protecting detainees in NIAC, and we continue to work on detainee protection within our mandate. For example, in July the ICRC convened a meeting among government experts on how States can ensure humane treatment and conditions of detention during the early stages of detention close to hostilities and during short-term detention. The meeting facilitated an exchange amongst military practitioners on which challenges arise in various detention operations and how they can be overcome.

In addition to our work to strengthen detainee protection during armed conflict, the ICRC has also taken very concrete steps to contribute to better conditions of detainees and for all persons who are held in prisons. Building on its extensive experience in visiting prisons and engaging with prison authorities, the ICRC has just released a set of guiding principles on prison planning and design. The ICRC has also cooperated with leading academics to update a Handbook for Prison Staff on a 'Human Rights Approaches to Prison Management'. These are very concrete tools that I can warmly recommend to anyone involved in prison planning and management. [A number of copies of these publications are available downstairs.]

Ladies and gentlemen, I will not take much more of your time, especially because you will hear from me again in a few minutes. As the ICRC President, Peter Maurer, is unfortunately not able to attend our roundtable he invited me to sit down and have a discussion about his recent experiences in detention work and where he sees the greatest challenges. We have recorded this conversation and will play it at the end of the session.

I will conclude my introductory remarks by taking up one point that Peter Maurer stressed in our conversation, which I fully support.

As the ICRC, we have the hope and expectation that this roundtable will also help us in taking forward our reflections about detainee protection in armed conflict and the applicable legal framework and the different ways we can precede. In this respect, we look forward to addressing and discussing not only with the panelists but also with all of you in the room on the realities of detention in contemporary armed conflicts and the remedies that the law may offer.