





combined with the expertise of the ICRC and NYU have made this annual seminar a key event for diplomats and practitioners.

We highly value this annual opportunity, as it gives us the chance to bring to your attention some of the recent developments in the United Nations in the field of international humanitarian law, and also to exchange views with Member States.

Nevertheless, before turning to international humanitarian law, I would like to say a few words about a recent success of multilateralism and diplomacy with regards to international law, namely the agreement reached on Saturday 4 March on an historic legally binding international instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction. This ambitious project, which had been under discussions for 20 years, constitutes a definite demonstration of the ability of members states, practitioners, and civil society to come together to tackle the most critical issues we all collectively face nowadays. It should also be seen as a sign of hope for the development of other branches of international law.

Turning specifically to IHL now, recent developments within the Organization do not necessarily, as you can imagine, relate to the overall topic chosen by the





I would therefore like to discuss in today's address the IHL framework governing detention and United Nations peacekeeping operations.

In doing so, I would like to focus on situations where a peacekeeping mission might capture persons in the course of an armed conflict, and discuss how IHL and human rights standards





undertakes such operations, such as the French forces in Mali that were supporting until recently the United Nations peacekeeping operation in Mali.

In these instances, Member States individually take part in those operations rather than as a single collective entity. Therefore, if and when Member States are drawn into an armed conflict in the course of such operations, Member States are bound by their respective IHL obligations, which may differ from one State to another. The extent of the obligations would differ depending on the IHL treaties which each State has ratified.

On the other hand, United Nations peacekeeping operations are different in nature.

UN peacekeeping operations are established by the Security Council as subsidiary organs of the United Nations. They are established by the Security Council as subsidiary organs of the United Nations. They are established by the Security Council as subsidiary organs of the United Nations.









deliberately made robust, such as MONUC and subsequently MONUSCO in the Democratic Republic of the Congo.

In the context of the Democratic Republic of the Congo, the Security Council, in March 2013, authorized MONUSCO to carry out “targeted offensive operations” to “prevent the expansion of all armed groups, neutralize these groups, and to





One of the immediate concerns that w







MONUSCO or to the DRC authorities would be inconsistent with the mandate to neutralize armed groups.





It is recalled that the Third Geneva Convention applies to international armed conflicts and permits the detention of members of the armed forces and other associated persons potentially until the end of active hostilities without any periodic review of whether they should be released or continue to be detained.

However, this did not appear to be a suitable legal framework in the particular case of the DRC, as MONUSCO was dealing with a situation where it might have to capture and to hold on to members of non-State armed groups, and not members of a State's armed forces.

The Fourth Geneva Convention takes a different approach in the context of





view to the favorable amendment of the initial decision [to place a person under internment], if circumstances permit.”

Similar provisions can be found in Article 78 of the Fourth Geneva Convention.

While the Fourth Geneva Convention applies to international armed conflict and so is not applicable to the present DRC context, the approach taken by this Convention seemed to be more suitable in the event that MONUSCO captures members of armed groups. This approach provides safeguards to ensure that persons are promptly released as soon as they cease to pose an imperative threat to the security of United Nations personnel, civilians or the DRC national authorities.

Compared to international armed conflicts, there are only a few IHL rules concerning captured persons that apply in non-international armed conflicts. For this reason, we understand that there were extensive discussions on how to strengthen IHL rules concerning captured persons in non-international armed conflicts during past ICRC’s consultations with States on that matter. We are aware that, during these consultations, a number of States considered that the approach taken in the Fourth Geneva Convention was generally relevant in non-international armed conflict too.

These were some of the considerations that we took into account when preparing the standing operating procedures for MONUSCO and the new SOP on the





handling of detention. As a result, the procedures currently in force contain detailed safeguards to ensure that, if and when members of armed groups are captured, they would not be held arbitrarily and for an extended period of time.

The procedures, therefore, require that captured persons be informed of the basis upon which they were held.

The procedures also require prompt and regular reviews of the decisions to hold members of armed groups. The initial review is required within three days from the time of arrival at the initial holding facility.

If they are transferred to another facility to hold them for a longer term, another review must be conducted within seven days from the time of arrival at that

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- in the case of persons that are not DRC nationals, enrolment in a disarmament, demobilization, repatriation, reintegration, and resettlement programme, or DDRRR [di-di-triple-ar] programme, which is managed by MONUSCO.

As far as MONUSCO is concerned, the preferred approach is to, as far as possible, make use of one of these options to remove captured persons from MONUSCO custody.

A captured person is also entitled to initiate the review process with a view to having the decision to hold on to him or her reconsidered and being released.

The standing operating procedures entrust an independent and impartial body within MONUSCO to carry out the reviews. The body is to be composed of three members who are not within the chain of command of the For ope dto 9nr88idemai





This is particularly important in the MONUSCO context, since, if and when members of armed groups are captured, the preferred approach would be to handover them to the DRC authorities.





In order to prevent such delays, the procedures include rules that require the mission to identify in advance DRC facilities that meet the requirements of international law, and to obtain information concerning national laws that provide a legal basis for depriving a person of their liberty and the procedural safeguards that apply during detention.

The procedures also contain detailed rules to ensure the rigorous monitoring of the treatment of captured persons after they have been handed over, including visits and follow-up measures in instances where a person who has been handed over is not treated in accordance with the applicable international obligations of the DRC.

The standing operating procedures also require the mission to obtain a written statement from the national authorities that specifies their obligations after the captured persons are handed over to them. This includes a detailed procedure in case the national authorities intend to transfer captured persons to another country.

These safeguards have also been applied by missions other than MONUSCO. In 2013, the Organization concluded with the Government of Mali a supplemental arrangement to the status-of-forces agreement for MINUSMA concerning the treatment of persons that MINUSMA might hand over to the Government of Mali. In 2014, a similar supplemental arrangement was concluded with the Central African Republic in respect of persons handed over by MINUSCA.



