

Gabor Rona, member of the WG on the use of mercenaries,

RE: the "basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court".

Of course, the Human Rights Committee has commented on the subject, as I suppose, have other HR treaty bodies.

One of the challenges is to determine what is meant by the word "court."

Another is the broader question of extraterritorial application of HR obligations when State A is conducting arrest and detention operations on the territory of State B, with or without the consent of State B.

Yet another challenge is how to deal with situations of armed conflict also addressed by IHL, specifically, how does the complementary relationship between IHL and IHRL affect the right to challenge detention? First, is the situation properly qualified as international armed conflict (IAC) or non-international armed conflict (NIAC)? If it's IAC, then the relevant grounds and procedures regarding detention are as set forth in the relevant Geneva Conventions (III or IV) and Additional Protocol I. However, in the situation of NIAC, the Geneva Conventions and Additional Protocols do not directly address grounds and procedures for detention. In such situations, complementarity between IHL and IHRL is complex, particularly in light of the assertion of some States (and the ICRC) that there is support for a notion of customary law of detention in NIAC. The existence, or nonexistence of relevant domestic law must also be considered.

Finally, the WG must consider whether it will only address procedural matters, or will also address questions concerning the permissibility of grounds for detention, in particular, in the event that arrest/detention are not pursuant to domestic criminal law. In other words, the question of administrative detention.