

## HUMANITARIAN AID TO THE VICTIMS OF INTERNAL CONFLICTS

### MEETING OF A COMMISSION OF EXPERTS IN GENEVA

*Article 3 common to the four Geneva Conventions constitutes a striking affirmation of humanitarian protection.*

*Out of respect which is due to the individual, the States parties to these Conventions have in fact accepted to limit, to a certain extent, their liberty of action as regards their own nationals in the case of internal conflicts. International law has thus managed to penetrate a field hitherto exclusively reserved to internal law and the International Committee of the Red Cross has been especially mentioned as being capable, under certain conditions, of acting as guarantor for such protection.*

*In fact, since the signing of article 3, the International Committee has had to intervene in connection with a large number of serious situations, during the course of internal conflicts of very diverse sorts, in Guatemala, Nicaragua, Kenya, Algeria, the Congo and elsewhere.*

*In order to give support to its action with Governments, the ICRC had recourse in 1953 and 1955 to two consultations with international experts who confirmed it in its determination to come to the aid of victims in the case of internal conflicts or disturbances.*

*The Conference of experts of 1953 concluded its work by declaring :  
" The Commission ventures to hope for further developments of the humanitarian work of the Red Cross in the field it has just surveyed. It hopes that the conclusion of this report will be a step towards future*

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*progress, and that the application of these principles for the alleviation of other suffering may some day be considered over a wider range”.*

*The deliberations of the 1955 Conference marked one of these stages with the question of internal disturbances in mind. Furthermore, since 1959, the ICRC considered convening a third Conference of experts to re-examine the whole of this question. This meeting<sup>1</sup> was to have taken place after the Board of Governors of the League (Athens, 1959). Now, when the Board of Governors of the League of Red Cross Societies was held in Prague in September 1961, the Yugoslav Red Cross suggested examining “the legal protection of the victims of internal armed conflicts and other similar events”. This suggestion was approved and the ICRC was requested to present a report on the subject, as well as any other useful proposals, to the next International Conference of the Red Cross.*

*In point of fact, the ICRC has never ceased studying that question : furthermore, its experiences described above have contributed to strengthening the doctrine of the Red Cross. However, in view of the report and the proposals to be submitted to the next deliberative session of the Red Cross, the International Committee decided to resort once more to a Commission of Experts. This it convened in Geneva where it sat from October 25 to 30 last.*

*Amongst the questions put to the experts was one on the respective rôle of the National Red Cross Society and the International Committee of the Red Cross as regards aid to the victims of internal conflicts, a question to which a particularly important reply was given.*

*We have pleasure in publishing below the report of this Commission of Experts which once again was composed, as called upon by the ICRC, of leading international personalities. The list of these can be found at the beginning of the report itself. The Rapporteur of the Commission was Professor Roger Pinto, of the University of Paris, a worthy successor in this capacity of the late regretted Professor Gilbert Gidel, Rapporteur of the Commission of Experts of 1953 and 1955.*

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<sup>1</sup> Adjourned by reason of events.

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The International Committee of the Red Cross (ICRC) decided to convene a Commission of Experts limited in numbers and composed of leading personalities of different nationalities, to advise it on the question of aid to the victims of internal conflicts. The Commission met in Geneva at the headquarters of the International Committee of the Red Cross from October 25 to 30, 1962.

The present report drawn up by the Commission and which it unanimously approved, sets forth the ideas upon which it was based and the conclusions which it has submitted to the ICRC.

The Commission was composed as follows :

Professor Robert Ago	Rome
Professor Frede Castberg	Oslo
Mr. Paul Cornil	Brussels
Colonel G. I. A. D. Draper <sup>1</sup>	London
Professor Jean Graven	Geneva
Professor Nihat Erim	Ankara
Professor Roger Pinto	Paris
Professor Carlo Schmid <sup>1</sup>	Bonn
Professor Georges Tenekides	Athens
Professor Erik Husfeldt	Danish Red Cross
Mr. J. J. G. de Rueda	Mexican Red Cross
Dr. Bosko Jakovljević	Yugoslav Red Cross
Mr. Paul Ruegger	Member of the ICRC
Professor Jacques Freymond	Member of the ICRC
Colonel Samuel Gonard	Member of the ICRC

It elected Professor Nihat Erim and Professor Pinto President and Rapporteur respectively.

The ICRC placed the five following questions on the Commission's provisional agenda :

- 1) In which cases is article 3 common to the four Geneva Conventions of August 12, 1949 legally applicable ?
- 2) Field of application of article 3 ?

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<sup>1</sup> Prevented from coming to Geneva, Colonel Draper and Professor Carlo Schmid duly received the report to which they gave their approval.

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- 3) Should humanitarian protection be exercised in cases in which the applicability of article 3 is in doubt ?
- 4) What are the rôles of the National Red Cross Society and of the International Committee of the Red Cross ?
- 5) Under what form could the Commission's conclusions on humanitarian action in the case of internal conflicts be put into effect ?

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**Item 1.— In which cases is article 3 legally applicable ?**

As was previously observed by the Commission of Experts, charged with examining the question of the application of humanitarian principles in the case of internal disturbances (Geneva, 1955), the existence of internal conflicts seems "in the present state of the world, to tend to become more and more frequent". The seven years which have passed since the 1955 report have singularly confirmed this statement. At the same time, the practice observed enabled the Commission to define the types of situation entering the field of application of article 3.

Article 3, common to the four Geneva Conventions of 1949, tends to guarantee respect for the essential principles of these Conventions in the case of conflicts which, by reason of their internal character, do not entail the putting into effect of all the Conventions. It must be a question of an internal "armed" conflict which gives rise to "hostilities". The Commission considers that the decision of the existence of such internal conflicts should rest on objective conditions and not be the result of a discretionary appreciation by States parties to the Geneva Conventions.

In the Commission's opinion, the existence of an armed conflict, within the meaning of article 3, cannot be denied if the hostile action, directed against a legal government, is of a collective character and consists of a minimum amount of organization. In this respect and without these circumstances being necessarily cumulative, one should take into account such factors as the length

of the conflict, the number and framework of the rebel groups, their installation or action on a part of the territory, the degree of insecurity, the existence of victims, the methods employed by the legal government to re-establish order, etc.

The Commission also examined the extent of the application of article 3 in the past. The settling of an internal conflict, dependent on article 3, does not put an end, by itself and of full right, to the application of that article, whatever the form or the conditions of this settlement may be, whether the legal government re-establishes order itself, whether it disappears in favour of a government formed by its adversaries, or whether it concludes an agreement with the other party. The Commission pointed out that the obligations described in article 3 should be respected "in all circumstances... at all times and in all places". The Commission therefore considers that the provisions of article 3 remain applicable to situations arising from the conflict and to the participants in that conflict.

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The existence of an internal conflict dependent on article 3 involves, for this reason alone, the application of the provisions of that article. Reciprocity is not a legal condition for respecting the rules of humanity described in article 3. This point has never been disputed. However, the Commission is inclined to hold the same opinion as its predecessor :

The Commission declares that it attaches the greatest importance to recalling here that the respect of humanitarian principles, not only imposes obligations on governments, but also on all those persons who are involved or engaged in "internal disturbances". This is, indeed, an essential element for the amelioration of the tragic situations examined by the Commission".<sup>1</sup>

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The first article of the four Geneva Conventions lays down that "The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances". The Government directly concerned is the first to be obliged to note the

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<sup>1</sup> Report, Commission of Experts, 1955, p. 6.

existence of an internal conflict dependent on article 3. The States parties to the Geneva Conventions have also, in this capacity, the right and the obligation to have the provisions respected—and especially article 3. Finally, the ICRC, entitled to offer its services to the parties to the conflict, is necessarily bound, in the exercising of its right of initiative, to appreciate without partiality the existence of the conditions required for the application of article 3.

**Item 2.— Field of application of article 3**

In reply to the question which had been put to it, the Commission examined some of the more important aspects concerning the range of the humanitarian principles described in article 3 and, on the other hand, the problem of applying them effectively.

It appeared to the Commission that the provisions of article 3 necessarily imply that the parties to the conflict recognize and respect the red cross sign and the conditions of its employment. In the Commission's opinion, the obligation to " treat humanely " persons taking no active part in the hostilities, to collect and care for the wounded, the prohibition of any discrimination, laid down in article 3 (1) and (2) assume that the principles of medical secrecy and the neutrality of medicine are respected. They prohibit all penal measures, administrative or others, against doctors, nurses or medical personnel, for having cared for the persons described in article 3. Restrictions imposed on the sale and the free circulation of medicaments, used exclusively for therapeutic ends, are contrary to the obligation, laid down in article 3, to dispense medical relief to the wounded and sick without discrimination. The Commission was thus led to the conclusion that Resolution XVII adopted by the International Conference of the Red Cross at New Delhi (October-November 1957) is purely and simply declaratory of the law in force between the parties to the Geneva Conventions.

The Commission pointed out that the experts' report of 1955 had accepted these principles in the case of " internal disturbances " in the absence even of armed conflict, within the meaning of article 3:

...The wounded and sick should always be able to receive the medical care they require ; and those persons who give them this

care, should be respected under all circumstances and may not be the object of sanctions for having done so.<sup>1</sup>

In the Commission's view, article 3 certainly prohibits the putting into effect of "collective responsibility". Here again the 1955 report already condemns this notion, in all cases of internal conflict.

With regard to the clause often referred to as "collective responsibility", the Commission was unanimous in disapproving the conception of the possible responsibility of an individual, due uniquely to the fact that he or she was a member of a given group, independently of criminal acts committed by him or her. The incarceration and the punishment of members of families of persons implicated in "internal disturbances", and more especially of their children, should be strictly condemned.<sup>2</sup>

Article 3 does not only demand humane treatment, "without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth or any other similar criteria". By prohibiting the taking of hostages, it thus condemns any idea of collective responsibility. Furthermore, in the case of prosecution, article 3 requires "judgment...affording all the judicial guarantees which are recognized as indispensable by civilized peoples". The fact of detaining, passing sentence or convicting a person for acts committed by others, or merely by reason of his belonging to a particular group, undeniably constitutes a violation of these provisions.

All the more, the Commission considers that the parties to the conflict described in article 3 have the obligation to permit and facilitate visits by delegates of the ICRC, the communication of the fact of their detention to the families of detained persons, correspondence between the detainees and their families or with relief bodies, and assistance under the form of relief of various kinds (legal, religious, intellectual, material).

The position of combatants taken in arms was examined by the Commission. It noted that the parties to an armed conflict of a

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<sup>1</sup> p. 7.

<sup>2</sup> p. 7.

purely internal character have often accepted to accord to these combatants a status similar to that of prisoners of war. Such practice is in keeping with the spirit of article 3 and of the Geneva Conventions. The Commission is of the opinion that this should be approved and encouraged.

Article 3 invites the parties to an internal conflict to endeavour to bring into force, by means of special agreements, all or part of the other provisions of the four Geneva Conventions. The Commission notes that such agreements have been able to be made, through the intermediary of the ICRC, which has obtained parallel agreements by the parties to the conflict.

The report of the Commission of Experts for the examination of the question of assistance to political detainees (Geneva, June 9 to 11, 1953) already remarked :

It is important to note the wish expressed by this Article to the effect that Parties to the conflict "should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention" (last sentence but one of article 3). *The signatories to the Convention thus affirm their desire to consider these provisions as a minimum only, to be exceeded whenever circumstances may allow.*<sup>1</sup>

The Commission fully subscribed to that conclusion. It consequently expressed the wish that, in accordance with such procedure, hospital and safety zones be established, protected from the effects of civil war (art. 23/I, 14/IV).

The Commission esteemed that it was not sufficient to recall the humanitarian principles and rules described in article 3. It examined the fundamental problem of their effective application. The first responsibility of their enforcement must lie with States themselves. But, article 3, for it to be put into effect, mentions the intervention of an impartial humanitarian institution such as the ICRC. Such intervention can be requested by the parties to the conflict. In so far as this concerns the ICRC, the Commission is of the opinion that it is obliged by the Statutes of the International Red Cross to offer its services (art. VI, 5) to the parties to the conflict. Should the latter refuse to accept this offer, the

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<sup>1</sup> Report, Commission of Experts, 1953, p. 5.

Commission considers that this would have the most serious consequences for the integrity of the Conventions. Governments have the duty to accept humanitarian action.

**Item 3.— Can humanitarian protection be put into effect in cases in which the applicability of article 3 is in doubt?**

The Commission's attention was drawn to situations not involving the application of article 3 but which nevertheless have resulted in the ICRC intervening. It was a question, in all three cases, of internal disturbances during the course of which the presence and action by the ICRC have been essential for ensuring respect for the humanitarian principles defined by the Geneva Conventions.

The Commission considered that the nearly one hundred year-old practice accepted by States and endorsed by numerous provisions in the Conventions—and especially by article 3 common to the four Geneva Conventions—confers the right of initiative on the ICRC in humanitarian matters. There is no ambiguity about the conclusions reached by the 1955 Commission :

... The Commission was of the opinion that the International Committee of the Red Cross has the right to found itself not only on its general mission to alleviate human suffering, but also on the texts whereby the signatory Powers of the Geneva Conventions expressly recognised its right of initiative in the humanitarian field. The Geneva Conventions of August 12th, 1949 (Articles 9/9/9/10 common to all four) in fact lay down that : The provisions of the Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.<sup>1</sup>

The Commission thinks attention should also be drawn to the provisions of the Statutes of the International Red Cross, of which article VI, paragraph 5, states :

As a neutral institution whose humanitarian work is carried out particularly in time of war, civil war or internal strife, it (the ICRC)

<sup>1</sup> Report, Commission of Experts, 1955, pp. 5-6.

endeavours at all times to ensure the protection of and assistance to military and civilian victims of such conflicts and of their direct results.

The Commission in fact esteems that this right of initiative is attributable to the ICRC, in the name and in the interest of the universal international community and should be exercised whenever a combination of circumstances require. This right is of an objective character.

The Commission does not consider that it should seek to make a strict definition of "internal disturbances". It points out, however, that the existence of acts prohibited at all times and in all places by article 3, justifies the ICRC acting in a humanitarian manner to have them cease and prevent their recurrence.

In the case of internal disturbances, the 1955 Commission was of the opinion, with which the recent Commission concurred, that "it is desirable that the minimum laid down in Article 3 should in all cases be respected by all parties concerned" <sup>1</sup>.

In the same way, humanitarian protection can and should be accorded to political detainees. In this respect the Commission reached the same conclusions as the 1953 Commission of Experts charged with examining the question of assistance to political detainees. It noted that whenever this qualification was given, by whatever authority, to persons incarcerated, this could not provide a reason for preventing the according of this humanitarian protection which was essentially based on the sort of treatment reserved for detainees.

In all such cases this protection exercised within the framework of humanitarian law is also founded on the rights of the individual recognized by the United Nations Charter and the Universal Declaration of the Rights of Man.

#### **Item 4.— Rôles of the National Red Cross Societies and of the ICRC**

Amongst the conditions for recognition of National Red Cross Societies approved by the XVIIth International Conference of the Red Cross (Stockholm, 1948), the Commission drew attention to :

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<sup>1</sup> p. 7.

*par. 4:*

Be an institution whose autonomous status allows it to operate in conformity with the fundamental principles of the Red Cross, as formulated by the International Red Cross Conference.

*par. 6:*

Be so organized as to enable it to deal effectively with the tasks incumbent upon it. Become prepared in time of peace for war-time activities.

*par. 10:*

Honour the fundamental principles of the Red Cross as defined by the International Red Cross Conferences : impartiality ; political, religious and economic independence ; the universality of the Red Cross and the equality of all National Societies ; and be guided in all its work by the spirit of the Geneva Convention and the Conventions which complete it.

The Commission recalls that, amongst the tasks incumbent on National Societies, there figures the humanitarian protection in the case of internal as well as international conflicts. The National Societies thus have the obligation to prepare themselves already in time of peace for the difficult and painful mission which they will have one day perhaps to fulfil. In order to be able to face up to this heavy responsibility, National Societies should be permeated with the doctrine and the principles of the Red Cross and assume the diffusion of this doctrine and these principles in their respective countries. They should adopt a structure capable of resisting as far as possible the upheavals caused by war or civil war. It is not for the Commission to express an opinion on purely administrative questions. It can however draw attention to the experiences of decentralization carried out by several Red Cross Societies and their efforts to ensure that national and regional committees are assured of being representative and popular in character. It was also suggested to organize, for times of crisis, the forming of ad hoc committees composed of persons who by reason of their very functions, would remain outside civil conflicts. National Societies, whatever their methods of organization may be, should remind governments that they have the obligation to

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respect and guarantee their independence and impartiality. It is in any case inadmissible that members of National Societies should be harassed and all the more be detained for their humanitarian action during a conflict.

The Commission is of the opinion that, as far as the questions which it examined are concerned, there is no division of responsibility between the International Committee of the Red Cross and the National Societies which would allot a reserved field of action for the latter. On the one hand, it would be for the ICRC to follow the development of the National Societies and to assure itself that they are organized and function in accordance with the rules of the Red Cross. In this respect, the Commission considers the moral support and technical assistance brought by the ICRC (or by the League, should the occasion arise, according to its attributions) to National Societies in countries, which have recently acceded to independence, as particularly desirable. On the other hand, the principles and the humanitarian protection can and should be called upon and put into effect by the ICRC. As the 1955 report states :

With regard to the action of the International Red Cross, the International Committee of the Red Cross must decide in each case what practical forms this action should take, taking into consideration all circumstances in order to assure maximum rapidity and efficacy.<sup>1</sup>

In the Commission's view, even if during a period of internal disturbances the National Societies assure effectively to all the protection required by international customary and conventional humanitarian law, the ICRC should no less be present. The action of the public authorities and of their services, that of the National Red Cross Societies in no way constitute a legally founded reason for refusing the ICRC's intervention. The latter cannot be considered as interfering in the internal affairs of a State.

When elements hostile to the legal government have, during the course of an internal conflict, established a Red Cross organization, the International Committee of the Red Cross cannot recognize such an organization as being a National Society within the mean-

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<sup>1</sup> Report, Commission of Experts, 1955, p. 8.

ing of the Stockholm (1948) resolution. It is, however, entitled to have all the necessary relations with it on a strictly humanitarian level. Such relations, in the opinion of the Commission, have no effect on the legal status of the organization concerned.

**Item 5.— Under what form should the conclusions of the Commission on the humanitarian action in the case of international conflicts be put into effect ?**

When drawing up this report, the Commission voluntarily restricted itself to noting the state of international customary and conventional humanitarian law, as in force.

It seemed to it that these observations and conclusions relative to the rules of customary and conventional international law applicable to internal conflicts could one day be included in documents for a Diplomatic Conference called upon to revise the Geneva Conventions.

As from now, the International Committee of the Red Cross can, if it considers it advisable, communicate the Commission's conclusions to the States parties to the Geneva Conventions and to the different organizations comprising the International Red Cross. It is also entitled, in accordance with resolution No. 2 adopted at Prague on October 7, 1961, to examine whether the conclusions of the Commission should be submitted to the International Conference of the Red Cross, for it to take action on them and to follow them up.