

## **THE GENEVA CONVENTIONS AND THE TRIAL OF CUBAN PRISONERS**

The Geneva Conventions having been invoked in numerous requests for intervention received by the International Committee of the Red Cross concerning the recent trial of Cuban prisoners captured during the invasion attempt in April 1961, it is appropriate to make the following statement :

In an international war, that is to say, in a war between States, a soldier cannot be punished for acts of legitimate warfare which he has committed against the enemy armed forces. If he is captured, he cannot be arraigned for such acts nor be prosecuted by a court. He has the right of the full application of the Third Convention of 1949, relative to the treatment of prisoners of war.

On the other hand, in internal armed conflicts, namely those in which nationals of the same State oppose each other, only article 3 of the Geneva Convention of 1949 is applicable. This is its text :

“ In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions :

- (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed “ hors de combat ” by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons :

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture ;
- (b) taking of hostages ;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment ;

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(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The 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.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict ”.

The Diplomatic Conference of 1949, which drew up the text of this article, did not accept the addition of a provision granting impunity to insurgents taken with arms in their hands and who have committed no other crime than that of fighting openly against the armed forces of the Government. It cannot therefore be excluded that, in international law, captured members of armed insurgent forces be brought before the courts and tried, subject to the conditions laid down at *d*) of that article.

On the other hand, it will be seen that, in the case of a conflict not of an international character, this article does not give the ICRC any possibility of intervention other than that of offering its services. This, it has not failed to do in every case of a similar nature which has been submitted to it since the signing of the new Conventions of 1949, as it has also not failed to recall their provisions on each of these occasions. It intervened in this sense with the Cuban Government at the time of the trial of the Cuban prisoners mentioned above.