

Protection and assistance in situations not covered by international humanitarian law

Comments by the ICRC

1. Protection in extra-Conventional situations

Originally, and up to 1949, the law of Geneva protected only victims of wars between States. Article 3, common to the four Conventions of 1949, is applicable to all non-international armed conflicts; the Protocol additional II to these Conventions covers non-international armed conflicts in which hostilities reach a certain degree of intensity; it does not apply to *situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts (Protocol II, art. 1, par. 2)*.

These internal disturbances and tensions are precisely the situations in which, according to the Tansley Report, the ICRC should provide a protection he describes as “*ad hoc* protection”, to distinguish it from protection “under law” (pp. 72-74).

In this respect, the Report uses a new and interesting terminology for the distinction between situations commonly characterized as “Conventional” and those described as “extra-Conventional”. Whatever the terminology, it means *protection attempts which lack specific authorisation in international law (p. 72)* or, more specifically, in the law of armed conflicts.

What are these “internal disturbances and tensions” which justify the ICRC’s *ad hoc* protection outside the field covered by the Geneva Conventions and the Protocols?

The ICRC has tried to define them. The two concepts were presented to a group of experts in 1970. On the basis of their comments, the ICRC gave the first Conference of Government Experts (1971) the following description of **internal disturbances** :

This involves situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves

acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules (Conference of Government Experts, Document V submitted by the ICRC: Protection of victims of non-international armed conflicts, p. 79).

One may say that **internal tensions**¹ are, in particular:

- (a) situations of serious tenseness, of a political, religious, racial, social, economic, etc, nature;
- (b) a sequel to an armed conflict or to internal disturbances.

In such situations are found one or several of the following characteristics, or even all of them:

1. large-scale arrests;
2. a large number of political detainees;
3. probable ill-treatment or inhuman conditions of detention;
4. suspension of fundamental legal guarantees as a result of the promulgation of emergency law, or of the circumstances;
5. alleged disappearances of people.

In short, as some experts have stated, *internal disturbances* exist when, in the absence of an armed conflict, the State uses armed force to maintain order; *internal tensions* exist when, in the absence of internal disturbances, force is employed as a preventive measure to maintain respect for law and order.

It is in such situations that the ICRC seeks to provide “*ad hoc* protection”. It carries out this activity by virtue of its universally recognized right of humanitarian initiative, of several resolutions by International Conferences of the Red Cross and on the basis of Article 6, paragraph 5 of the Statutes of the International Red Cross which states that the ICRC: *As a neutral institution whose humanitarian work is carried out particularly in time of war, civil war, or internal strife, it endeavours at all times to ensure the protection of and assistance to military and civilian victims of such conflicts and of their direct results.*

¹ The following definition differs somewhat from the text submitted at the International Conference at Bucharest.

Unlike the “Conventional” situation of international conflict, a State to which the ICRC offers its services under such circumstances has no formal obligation to accept them. It is therefore at the discretion of the State and on terms of confidence that the ICRC is permitted to act. Sometimes, it is on the invitation of the government concerned that the ICRC undertakes an action in a country.

2. Persons incarcerated in situations of internal disturbances or tensions

Internal disturbances and tensions have a general characteristic: the incarceration of certain categories of persons by the authorities. These persons have in common the fact that their actions, statements or writings are regarded by the authorities as constituting such opposition to the existing political system that they must be dealt with by depriving them of their freedom. The legal or material nature of the sanctions imposed may vary. It may be aimed at punishment, prevention, re-education or reintegration; it may be the result of a sentence imposed under the regular laws in force or by virtue of emergency laws and regulations; it may be the result of an administrative measure of limited or unlimited duration.

While it does not express itself on the reasons for the detention of these persons, the ICRC is nevertheless concerned with the *conditions* of their incarceration. Experience has proved that even when the government of a country wishes to have its prisoners humanely treated the everyday reality of their life in detention often could and should be improved. In many cases they are treated as “enemies” by officials in direct contact with them and do not always have the practical possibility of making their grievances known to the national authorities who might be both able and willing to guarantee them decent and humane treatment. Under these circumstances, not only during the period of interrogation but afterwards as well—when the only security involved is that of the place of detention itself—ICRC delegates have had many occasions to observe how far the situation of these persons falls short of what it should be.

The ICRC has had long and abundant experience in this field, since its first visit to such detainees was on 28 April 1919 in the Hungarian Soviet Republic. Between the two World Wars, similar visits were made in Ireland (1923), Poland (1924), Montenegro (1924), Italy (1931), Austria (1934), Germany (1935 and 1938) and Lithuania (1937).

Such visits were however occasional and constituted only the beginnings of a custom that began to be established when, after the Second World War, and particularly in relation to the process of decolonization, the ICRC increased the number and frequency of its visits to persons

incarcerated in their own countries. In exceptional cases, such visits took place without any relation to internal disturbances or tensions and as a form of technical assistance to the prison authorities in developing countries.

Whether the visits had the character of technical assistance, or, much more frequently, that of protection for victims of internal disturbances or tensions, the ICRC, since the Second World War, has visited some 300,000 detainees in 72 countries on four continents, in situations not covered by the Geneva Conventions.

In about twenty of these countries, it made no more than five visits, either because it was not permitted to make more or because it did not seem necessary. In most countries, it made from five to fifty visits and in some countries more than a hundred.

In all, more than 2,000 visits were carried out, most of them under conditions conforming to ICRC practice, particularly with regard to the possibility for delegates to meet detainees of their choice without witnesses.

Some governments have refused the ICRC's offers of its services, or have considered permitting visits only under conditions which the ICRC regarded as unacceptable. In some instances, the ICRC itself has chosen not to offer its services, when preliminary inquiries or objective circumstances made it clear that such offers would either be refused or would be prejudicial to the detainees themselves. Finally, the increased number of situations of internal disturbances or tensions has compelled the ICRC to keep its activities within the bounds of its limited means.

Despite uneven results, the ICRC, since the Twenty-second International Conference of the Red Cross (Teheran 1973), has visited persons detained on the occasion of internal disturbances or tensions or—exceptionally—as a measure of technical assistance, in the following countries and territories:

AFRICA:	Angola (Portuguese), Burundi, Cameroon, Congo (Brazzaville), Ethiopia, French Territories of the Afars and Issas, Gambia, Liberia, Mauritania, Mozambique (Portuguese), Rhodesia/Zimbabwe, Rwanda, South Africa, Togo, Uganda, Zambia.
ASIA:	Indonesia, Malaysia, Philippines, Singapore, Sri Lanka, Thailand.
EUROPE:	Northern Ireland, Portugal, Spain.
MIDDLE EAST:	Arab Republic of Yemen.

LATIN AMERICA: Argentina, Bolivia, Brazil, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

3. ICRC procedure for visits

Periodic and detailed visits are carried out by professional ICRC delegates, all of them Swiss, to the places of detention and persons concerned, followed by discussions at all levels with the detention authorities and ending with the sending of confidential reports addressed only to the detaining Government. These reports, describing objectively and in detail the conditions of detention and containing specific suggestions for improvement, where appropriate, are not intended to be published. The ICRC confines itself to publishing the places and dates of the visits, the number of persons seen and the fact that the delegates have been able to talk to the prisoners without witnesses. It never comments publicly on the material or psychological conditions observed. It never gives its views—publicly or otherwise—on the reasons for detention. As occasion arises, the ICRC supplies material assistance to detainees, if there is need and if the authorities are willing.

In order to provide effective protection, the ICRC delegates ask to see all persons detained as a result of the events, to meet freely and without witnesses with prisoners of their choice and to return to the places of detention as the needs require.

In their criteria for evaluation in these visits, the delegates take local conditions and customs into consideration. This procedure, as a rule, leads to positive results and the governments which have decided to use the services of the ICRC are generally satisfied.

Furthermore, no State has complained to the ICRC that its security has been compromised by such visits or that the legal status of the persons visited has been affected by them. This is well worth pointing out since, as noted above, it was in 1919 that the ICRC first visited prisoners under circumstances other than those of international conflict or civil war.

It is a field in which, the Tansley Report concludes: *The ICRC should seek to enlist the support of the rest of the movement in terms of understanding, in terms of co-ordinated initiatives of public authorities, and co-operation in providing protection through assistance where required. The action of a few National Societies in this work can be used by the movement as a model of what can be done (p. 73).*

The ICRC will always be willing to accept such assistance.