

THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND THE PROTECTION OF POLITICAL DETAINEES

by Jacques Moreillon

Last November we reproduced a chapter of a book written by Jacques Moreillon, an ICRC delegate-general, and published by the Henry Dunant Institute.¹ We now quote another chapter of the same book. As usual, the views expressed are those of the author alone. (Ed.)

Interventions by the ICRC in internal disturbance and tension between 1958 and 1970

1) GENERAL

From the beginning of 1958 to the end of 1970, ICRC delegates made more than 992 visits to almost 400 prisons in 54 countries, where they saw more than 100,000 political detainees; 180 of these visits took place during periods of internal disturbance, and 812 during internal tension.

Figures such as these make plain that it would be impossible, and of no great interest, to give the history of those troubles; moreover, the majority of them are too much a part of current events and not enough part of history for them to be examined publicly without transgressing the self-imposed principle of discretion to which the ICRC has always held.

¹ *Le Comité international de la Croix-Rouge et la protection des détenus politiques*, Henry Dunant Institute, Geneva—Editions l'Age d'Homme, Lausanne, 1973, 330 pp.

We have preferred to present a global and, as far as possible, statistical view of the great mass of information underlying these figures. We have tried, in particular, to discover the arguments most often used by the ICRC to obtain from governments the authorization to visit their detainees, and the reactions of those governments to the offers of service made by the International Committee or by its delegates. We have also tried to locate the source, in general, of the requests for intervention addressed to the ICRC, their nature, and the type of reply made by the ICRC.

Like all generalizations, this approach has its limitations, and we have done our best to indicate them whenever we have noticed them. An initial precaution was to make a distinction, not only between internal tension and internal disturbances, but also, within each of these two categories, between situations of a colonial or racial nature and others, since, on analysing the matter further, it will appear that these cannot be examined together.

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Before any detailed examination of the distinctions between those four phenomena, a few very general statements derived from case studies may be called for.

In comparing the frequency of the various reasons put forward by the ICRC to induce States to accept its intervention, we see that, apart from general humanitarian considerations, by far the most frequently used arguments are those of precedent and discretion. After these comes the reminder of the traditional role of the ICRC (without mention of any precedents) and its universally recognized right to take the initiative in a humanitarian cause. Invocation of Article 3 follows very closely, a fact the more interesting since the situations envisaged within the scope of this study are never, by definition, genuine civil wars.

Two arguments, of "average frequency", are that the ICRC is a neutral and independent institution, and that any action by its delegates is impossible without the agreement and goodwill of the government concerned.

Other arguments also invoked, in descending order of frequency, are:
— the Resolutions of the International Conferences of the Red Cross;

- the hope, in the case of internal disturbances, of obtaining certain concessions from the rebels as a result of government authorization to visit the prisons;
- the Statutes of the ICRC or the International Red Cross;
- the fact that visits by the ICRC to detainees do not affect their legal status;
- the Geneva Conventions;
- the work of the three Expert Committees on political detainees;
- United Nations resolutions.

* * *

The replies from governments, when affirmative, are not as a rule accompanied by any explanation; quite often, however, they set limitations or conditions (we will see later in what sense). When they are negative, by far the most frequent reason given is that there are no political detainees in the country in question, often with the added statement that all prisoners in the hands of the authorities are penal law offenders.

Well behind these answers come two replies of average frequency: first, respect for national sovereignty does not permit of the ICRC's visiting State prisons and, second, all detainees are well treated and there is no point in visiting them. In the case of internal tension, particularly, it quite often happens that a government, when refusing intervention by the ICRC, stresses that the Geneva Conventions, including Article 3, do not apply.

Finally, the ICRC is sometimes told that other organizations are already visiting the prisoners in question or, more rarely, that it is feared the ICRC visits might confer on the detainees an "international status" or even the status of prisoners of war.

We should note, in conclusion, that in very many cases governments begin by refusing ICRC intervention, using the arguments enumerated above, but in the end allow the International Committee's delegates to visit their political detainees.

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Each file opened by the ICRC as a result of the existence of political detainees in a country obviously refers to a whole range of contacts, which we felt it worth while to classify according to the frequency of their letters to and from the International Committee in Geneva (we have not taken into account the contacts made by delegates on the spot; they are too varied, too numerous, and not systematically recorded). Of the ICRC correspondence concerning the subject of our study,

- 34% came from persons or groups living outside the countries they wrote about (two-fifths of them nationals of those countries and usually opposed to the regime) and 10% sent by the ICRC to those persons or groups;
- 10% from persons living in the country (usually in opposition, families of detainees, or even detainees themselves), and 3% addressed to those persons by the ICRC;
- 12% were exchanges with the National Red Cross Societies in the countries in question;
- 11% were exchanges with the national authorities of the countries; two-thirds from the ICRC and one-third from the governments;
- Amnesty International; the United Nations and other inter-State political bodies; organizations such as the League for the Rights of Man; the press: each of these four categories was responsible for 4% of the ICRC correspondence;
- finally, the League of Red Cross Societies and bodies like the International Commission of Jurists each accounted for 2% of these exchanges.

It may be estimated, on the basis of the first two figures given, that about 40% of the letters received by the ICRC concerning political detainees come from opponents of the regime concerned (whether they live in the country or outside it), and that the ICRC replies to roughly a quarter of these approaches. The replies themselves are generally extremely prudent in tone and the majority of them restate the limits of the ICRC's possibilities in situations not covered by the Geneva Conventions.

For the rest of the correspondence, there are, as a rule, as many letters going out as coming in, except with governments, to which the ICRC writes twice for their once.

Certainly, these figures are only a very vague indication. Too much should not be read into them, especially as certain political situations give rise to a flood of correspondence which occasionally distorts the averages for many other countries more neglected by public opinion.

2) ICRC INTERVENTION IN INTERNAL DISTURBANCES FROM 1958 TO 1970

a) Under "colonial" regimes

In six internal disturbances under a colonial or similar regime between 1958 and 1970, the ICRC asked to visit the persons imprisoned as a result of the events; each time, authorization was granted and the ICRC delegates were able to visit the detainees without the presence of witnesses.

The countries in question were Kenya, Cyprus and Aden under British rule, and Angola, Mozambique and Guinea under Portuguese authority (Portugal, incidentally, did not consider its overseas territories as colonies).

In each of these countries, the ICRC delegates made visits to places of detention, ranging from three visits in one country to a maximum of forty-four in another.

At no time did the governments contest the ICRC's ability to offer its services, but in certain cases authorization was given only after an initial refusal, based either on the argument that the detainees were "terrorists imprisoned under penal law" or that visits by the ICRC were unnecessary, since the National Red Cross Society of the country concerned was already visiting the detainees.

In fact, in all these situations, the ICRC made many approaches in close collaboration with the National Societies, which pleaded successfully in its favour, thus indicating, at least in some cases, a significant development in their attitude with regard to the problem of political detainees in their colonies or overseas territories. For example, on two occasions, it was through the good offices of the Red Cross Society in the home country that the ICRC received permission to make the visits requested.

For its part, the Committee used the whole range of arguments listed above (in one case, they were *all* cited, without exception, in a note verbale to the Minister of Foreign Affairs of the Detaining Power); it is interesting to note that on two occasions the delegate on the spot obtained from the authorities oral permission to visit the places of detention, although permission had earlier been refused, in writing, to the ICRC. These government promises were honoured.

b) Other cases of internal disturbance

During this same period, 1958 to 1970, the ICRC asked to visit prisons in eight other cases of internal disturbance in different parts of the world; in all these countries, too, the delegates were able to see the political detainees in their prisons (minimum one visit; maximum thirty-two).

These countries, all of them independent, were the following: Burundi, Congo-Kinshasa (now Zaire), Cyprus, the Dominican Republic, Indonesia, Laos, Nicaragua and South Vietnam. (For the Congo, Laos and South Vietnam, we are not referring to the period of civil or international wars which these countries have experienced, and in which the ICRC exercised its traditional activities for the benefit of prisoners of war and those of comparable status; we are speaking here solely of periods of mere internal disturbance, which, even though serious, did not involve any actual armed conflict, so that prisoners were more political than military in character.)

Those eight situations often presented points in common which it is interesting to mention here: some governments twice refused the ICRC in Geneva, whose intervention was even described as "intolerable interference", permission to make the visits, but soon afterwards granted it to the ICRC delegates on the spot; twice also, the authorities accepted the aid of the ICRC only on the condition that all the detainees benefited from it, thus avoiding the differentiation between "political" and "penal law" prisoners. Again on two occasions, the ICRC considered that the National Red Cross Society was sufficiently neutral to take over the provision of assistance to political detainees which the ICRC had begun; in two other cases, it was the government itself which requested the ICRC delegates to continue their action, the utility of which, at first violently disputed, became evident in practice.

On two occasions, the former colonial Power urgently requested the ICRC to take action in favour of its imprisoned ex-administrators, here again indicating a change of attitude, the more welcome in that one of those Powers had, in the past, shown some difficulty in understanding the aims of the ICRC in this type of situation.

Sometimes the governments concerned set conditions or limitations on the first visits by the ICRC, notably regarding the places of detention where the International Committee's representatives might go; in general, the delegates accepted these but succeeded in getting them lifted subsequently; on the other hand, in the only case in which the authorities wished to allow only visits *with* witnesses present, the ICRC refused.

It even happened that a State declared its desire to apply the Geneva Conventions "in globo" when it had not been asked to do so, since there was, in fact, not even a civil war in progress.

It should be noted, finally, that on a few occasions—without prior consultation with the International Committee—international organizations of a political or humanitarian nature made direct approaches to the countries concerned requesting them to grant the ICRC the right to visit political detainees; these spontaneous moves created certain difficulties, for on each occasion the ICRC itself was already making overtures and wished, above all else, to convince the Detaining Powers not only of its complete neutrality but also of its total independence.

3) ICRC INTERVENTION IN INTERNAL TENSION FROM 1958 to 1970

a) Under colonial or racist regimes

As we have seen, between 1958 and 1970 the ICRC was finally able to visit, more or less systematically, persons detained as a consequence of internal disturbances, whether anti-colonial or not. The situation was not quite the same in internal anti-colonial or racial tension. During those twelve years, the ICRC offered its services in seven situations of this kind where it knew arrests had been made. For five of them, its delegates were able to make between 5 and 64 visits to prisons, namely, in Rhodesia-Nyasaland, Zanzibar and Hong Kong under British author-

ity, in Rhodesia after the unilateral declaration of independence, and in the Republic of South Africa.

In the other two cases, the ICRC did not present a formal request for visits and limited itself simply to making overtures, in view of the hopes expressed by the government concerned of releasing the detainees in question before the imminent independence of its colonies. The Committee did not pursue its attempts. Therefore it would not be correct, in this case, to speak of a refusal by the detaining authority; it is none the less probable that if the situation had appeared more serious, or even if the government's reaction had been less reserved, the ICRC would have made a definite offer to visit the detainees.

For the other cases, it may be said that when a colonial government has had an opportunity to acquire a thorough knowledge of the action of the ICRC during disturbances, acceptance of the International Committee's services in a simple case of tension poses no problems. Indeed, in two cases the visits were expressly asked for, *both* by the National Red Cross Society *and* by the authorities.

b) Other cases of internal tension

As can be seen, the ICRC offered its services in the majority of internal disturbances which broke out during the last twelve years and every time that anti-colonial or racial tension led to mass arrests.

It was not the same in internal tension not attributable to colonialism or racial discrimination. Thus, from 1958 to 1970, the ICRC was informed of the existence of political detainees in 71 countries in addition to those listed above (6 in Western Europe, 8 in Eastern Europe, 20 in Black Africa, 4 in North Africa, 8 in the Middle East, 9 in Asia and 16 in South America), but it asked to visit those persons in only 46 cases. Eight of these 46 governments entered into discussion with the Committee and recognized its right to offer its services, but finally did not accept them (1 in Western Europe, 3 in Black Africa, 1 in North Africa, 1 in the Middle East, 1 in Asia and 1 in South America). Finally, four States disputed that the ICRC had any competence in the matter (1 in Eastern Europe, 2 in Black Africa and 1 in South America).

The others accepted, and in the course of these twelve years the ICRC made 638 visits (ranging from 1 in one country to 297 in another) in the following 34 countries:

Western Europe: France — Federal Republic of Germany — Greece — Northern Ireland

Eastern Europe: Bulgaria — German Democratic Republic — Hungary — Yugoslavia

Black Africa: Chad — Lesotho — Malawi — Rwanda — Tanzania

Middle East: People's Republic of South Yemen (Aden) — Bahrain — Lebanon

Asia: India — South Korea — Philippines — Singapore

Latin America: Argentina — Bolivia — Costa Rica — Colombia — Cuba — Ecuador — El Salvador — Guatemala — Haiti — Mexico — Nicaragua — Panama — Peru — Venezuela

It should be noted that half a dozen of these 34 countries accepted the visits by the ICRC at one time, then withdrew their authorization later. They are all the same included in this list, for the fact that they authorized the ICRC delegates to visit their prisons, if only once, created for them an important precedent.

To 25 countries the ICRC refrained from offering its services. We assume that it was chiefly because it was sure that its offers would be refused; perhaps now and then it thought that its intervention, far from improving the lot of those for whom it was concerned, might make it worse; in those cases, it seems to have considered that it was better not to compromise its relations with the States in question, in the hope that maintaining a favourable atmosphere would make acceptance of its offers easier if the internal tension became internal disturbance, and its intervention would prove truly indispensable. It is, however, difficult for us to be categorical on these points, for the ICRC archives contain few records of discussions relating to countries where the Committee did not intervene.

We have seen that four countries disputed the competence of the ICRC even to offer its services in the circumstances. Three of them did not reply, not even to acknowledge receipt of the ICRC's written proposals or to the ICRC delegates' requests for a meeting, and another refused to discuss the subject of its political detainees. Eight States refused only after discussion, and as we have seen, at the beginning of this chapter, the reasons most frequently adduced by governments in order to prohibit the ICRC from entering their prisons, we shall not repeat them here.

We would like, however, to note that in one of these 71 countries, whose government has always categorically rejected the ICRC's requests, an "honorary delegate" of the International Committee (a Swiss national living in the country and willing to perform voluntary services for the Red Cross from time to time) was able, in a semi-official capacity and as a result of his personal acquaintance with the General Director of the Prison Service but with no formal authorization, to make twelve visits to ten prisons. During those visits, he was able to talk, usually without witnesses, with about 5,000 detainees, an indeterminate number of whom were "political". Because of the special nature of the visits and, above all, the official position taken by the government, this case is not included in the list of 34 countries which, between 1958 and 1970, authorized ICRC visits in internal tension which was not anti-colonial or racial in nature.

4) CONCLUSIONS

The figures which we have quoted and the brief remarks which we have made in reference to them give some idea of the activities of the ICRC in favour of political detainees over the last twelve years. However, we feel that the picture would not be complete unless we added the following statements and conclusions:

Among the 54 countries which allowed their political detainees to be seen, the number of visits can be broken down as follows:

- only one visit: 10 countries
- 2 to 5 visits: 15 countries
- 5 to 10 visits: 10 countries
- 10 to 20 visits: 8 countries
- 20 to 50 visits: 9 countries
- more than 100 visits: 2 countries.

In certain countries and under certain circumstances, a small number of visits sufficed to improve the lot of the detainees, especially when they were to be released soon after the ICRC delegates had seen them. It

nevertheless remains true that the ICRC was not always able to make as many visits as it would have liked and that, in many situations, its intervention was merely an adumbration of the action which the dimensions of the problem, in fact, demanded.

Was it the governments, solely, which defined those limits? This cannot be definitely stated, for it is certain that the ICRC would on many occasions have done more if it had had the financial resources. It might be wondered whether, if it had had those resources, the International Committee, on each occasion, would have undertaken actions on a larger scale when the governments concerned were willing to permit it to do so. It is probable, but not certain. It can be affirmed that during the period under study here the International Committee always tried to do its utmost in favour of persons imprisoned when there were internal disturbances. The same was generally true—although ICRC action was initiated after some hesitation—in situations of internal tension under colonial or racist regimes. Less affirmative statements may be made for the other cases of internal tension, where the policy of the ICRC was less systematic, particularly during the first few years of the period dealt with in this chapter.

In fact, it can be seen that the hesitations of the International Committee in this sphere have gradually decreased over the years.

It is probable that in the future, if circumstances so require, the International Committee will be willing, not only to keep up but even to intensify its action in favour of political detainees, provided it is given the financial resources.

Obviously, an essential point which it is important to define is the value, not only of these 992 visits to political detainees, but also of all those made before 1958.

There again, the analysis must be carefully graded; moreover, as we said in the Introduction, our aim in this work is neither to study the technique of prison visiting nor to examine the conditions of detention of those whom the ICRC delegates saw in their prisons. However, it may be stated that more than 90% of these visits took place “according to the rules”, that is, with talks without witnesses between delegate and detainee, a vital factor which alone enables a delegate to have an accurate picture of the situation in a prison.

Evidently, a visit from the ICRC has more effect if it is followed by others, in the course of which the delegate can make sure that the

improvements asked for on previous visits have in fact been made. From 1958 to 1968 (on this point, the statistics which we established referred only to those ten years), the reports from delegates expressly noted 110 cases of radical improvements made, at their request, in hygiene, food, accommodation, clothing, medical care, leisure pursuits, work, correspondence, family visits, separation of "politicals" from penal law prisoners and in the general conditions of the places of detention which they had visited more than once.

This figure may seem small, but it is necessary to bear in mind, first, that it refers only to the major improvements and, second, that the improvements were not always recorded in the reports, either because the visiting delegates changed, or because they did not consider it necessary to report them. In fact, it is rare that a visit, even a single visit, does not improve the lot of the detainees, if only as a result of the "detailed inspection" which it usually causes *before* it takes place.

Nevertheless, there is evidence of a tendency on the part of the ICRC to avoid making single visits and to try, more and more often, to persuade the Detaining Powers to allow delegates to revisit systematically places already visited.

In fact, the time is almost past when a single visit created a precedent as necessary as it was valuable, since, as has been seen in this chapter, there is a sufficient number of precedents today. The proof of this is that, in 1971 and again in 1972, the ICRC delegates visited political detainees in 65 countries as compared with 54 in 1958, and the gates of 230 prisons opened a total of 314 times to those delegates.

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After the above chapter of the book written by J. Moreillon, we would mention that in the Third World, ICRC assistance is not confined to political detainees, who are often placed in the same prison as ordinary prisoners. Again, the conditions of detention under which the latter are kept, owing to the inadequate financial resources of the prisons services, may be such that aid from outside sources is very welcome. In the circumstances, the ICRC tends more and more frequently to visit prisons in general rather than a particular category of prisoners. If such visits are added to those made to persons detained for political offences or for reasons of a political

nature, then the list of places where ICRC delegates have rendered assistance to civilians imprisoned in their own country is considerably lengthened.

Thus, since the end of the Second World War, and not counting international conflicts and civil wars, ICRC delegates have visited civilian prisoners in the following seventy countries:¹

Africa

Angola (Port.) — Burundi — Cameroon — Chad — Congo (Brazzaville) — Congo (Kinshasa) — Cape Verde Islands (Port.) — Ethiopia — Gambia — Kenya (G.B.) — Lesotho — Liberia — Malawi — Mauritania — Mozambique (Port.) — Nyasaland (G.B.) — Guinea Bissau (Port.) — Republic of South Africa — Rhodesia — Rwanda — Togo — Zambia — Zanzibar (G.B.).

Asia

Goa (Port.) — Hongkong — Indonesia — Laos — Malaysia — Philippines — Singapore — South Korea — South Vietnam — Sri Lanka — Thailand.

Europe

Bulgaria — Cyprus — France — German Democratic Republic — Greece — Ireland (Eire) — Northern Ireland — Spain — The Federal Republic of Germany — Romania — Yugoslavia.

Middle East

Aden (G.B.) — Bahrain — The People's Democratic Republic of Yemen — The Yemen Arab Republic.

Latin America

Argentina — Bolivia — Brazil — Chile — Colombia — Costa Rica — Cuba — Dominican Republic — Ecuador — El Salvador — Guatemala — Haiti — Honduras — Jamaica — Mexico — Nicaragua — Panama — Paraguay — Peru — Uruguay — Venezuela.

¹ Where a country has changed its name during the period concerned, the name mentioned is that used by the country when the visits took place.