

INTERNATIONAL COMMITTEE OF THE RED CROSS

THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND TORTURE

Introduction

In recent years, public opinion throughout the world has been increasingly disturbed by a problem which also seems to be on the increase—that of torture. The experience of the ICRC has led to the conviction that the concern is justified and that the subject is an exceedingly grave one. Repeated and even systematic resort to torture, whether on orders from or with the tacit approval of the authorities, whether by violence or by psychological or chemical means, is a cancer which seems to be spreading, threatening the body of our civilization. Of all weapons, torture is probably the most cruel and the most harmful. Its cruelty needs no proof; the injury it does results not only from what it does to the victim, who is often forced to violate his conscience and betray his loved ones, but also to the torturers themselves and to their superiors, and finally to the whole of the country in which torture is practiced.

In view of the extent and gravity of the problem, the ICRC considers it essential to describe the work it is undertaking against torture. It is a subject upon which we must act and speak with conviction, for nothing can ever justify torture. ICRC delegates are particularly conscious of this since—except for the torturers and their victims—they are among those who have the sorrowful “privilege” of knowing most about torture. Nevertheless, however good the results of its activities on behalf of the persons directly involved, the ICRC is aware of its limitations in confronting the immensity of the task and can never forget the situations in which its efforts have been in vain.

The law and the reality

Torture is forbidden by international law and by domestic legislation in most countries. It may be useful to recall and to specify that the prohi-

bition is total and unrestricted, in the Universal Declaration of Human Rights, in the Geneva Conventions and in the International Covenant on Civil and Political Rights which recently entered into force.

In concrete terms, the ICRC's experience is truly unique, since it is the only institution which, for more than a century, has made regular visits to prisoners in the hands of their enemies, foreigners or nationals of the same countries. One may readily imagine how many times, in thousands of visits to hundreds of thousands of detainees, ICRC delegates have seen the undisputable physical or mental consequences of torture.

One recurring feature has been observed: torture is mainly carried out during the period of interrogation for the purpose of obtaining information relating to the security of the State or to an armed political opposition movement. In this connection, prisoners of war have the best protection, since Article 126 of the Third Convention gives the ICRC the right to see them from the beginning of their captivity. Some governments, it is true, disregard their obligations and refuse or unduly delay the ICRC's access to their prisoners of war, who are often ill-treated by their captors. Fortunately these cases are exceptional.

The Fourth Geneva Convention gives the ICRC a right to see civilian detainees, comparable to the right it has with regard to prisoners of war, but with one important exception; Article 5 permits the Detaining Power to suspend access to detainees suspected of activities hostile to the security of the State. It is apparent that if torture takes place it will be during this period of inaccessibility; hence it is vital for the ICRC to visit immediately the detainees protected by the Fourth Convention.

This obligation by States to grant the ICRC access to prisoners of war and civilian detainees exists, however, only in international conflicts. In civil wars, internal disorders or tensions, such ICRC visits are permitted only as a concession and subject to ad hoc agreements with the detaining authority.

The result, especially in cases of internal disorders or tensions, is that some countries simply refuse to grant the ICRC any access at all to detained persons.

In addition, even in countries where the ICRC can visit such persons, often it is authorized to do so only *after* interrogation, that is, as we noted earlier, *after* the period in which torture, if torture is inflicted, usually takes place.

ICRC visits

In connection with torture, the initial problem confronting the ICRC delegate in the field is to determine whether the allegations of torture are true. An allegation does not constitute proof, and it often happens that prisoners try to lead ICRC delegates astray, seeking to utilize the institution as one element in a psychological war, in a campaign of political propaganda based upon pretended ill-treatment. Such an attitude, very rare among prisoners of war, is much more common among political detainees for whom, in a sense, the fight continues in prison.

The ICRC delegate, therefore, in interviewing a prisoner without witness, must try to make clear the purpose of his mission, so that this purpose will not be abused. He must establish an atmosphere of confidence, proving that he is neither "for" nor "against" the prisoner or the detaining authorities; that his concern is purely humanitarian and not political; that only the conditions and not the reasons for the detention are his affair, and, above all, that exact knowledge of the facts is his most effective weapon. Indeed, visits to detainees, particularly if repeated over a long period, are more effective as the detaining authorities come to accept the delegates as competent. This cannot be achieved on the basis of exaggerations, approximations or generalizations. Only an argument based on incontrovertible or at least convincing facts will lead to real improvement in the situation.

It is obvious that it is often difficult to prove that torture has been inflicted. Some tortures leave traces; others do not. Even visible traces do not always constitute proof, but at least we may say that they reverse the burden of proof. Some scars establish such a presumption that it is up to the detaining authority to prove that acts of torture did *not* take place, or to find and punish the perpetrators of the acts.

On the other hand, even in the absence of visible traces, systematic cross-checking and corroboration from different sources makes it possible to obtain a picture which is close to reality.

One may, for example, with a relative degree of confidence, determine whether torture is systematic or episodic, even accidental; whether acts of torture are concealed, recognized and tolerated, or even ordered, and at what level; whether cases of maltreatment are the fault of certain State services and not of others, or perhaps only of certain interrogators;

whether torture is inflicted mainly in certain places of detention; and so forth.

“Problem areas” are thus located and are brought to the attention of the responsible authorities, usually at the highest level. These authorities are urgently requested to make complete and impartial investigations to determine the facts and, if the accusations are true, to punish those who are guilty and to take measures to prevent any recurrence of such practices. With this in view, all alleged cases of torture with evidence of the traces are systematically brought to the attention of the highest authorities. If the efforts of delegates do not produce results, further representations are made from Geneva, and these are reiterated as long as the situation persists.

In addition to these emphatic communications, concentrating on alleged cases of torture, the ICRC draws up a detailed report on each visit to a place of detention. In international conflicts, in which the ICRC has an unquestionable right to visit prisoners, these reports are sent both to the detaining Power and to the “Power of origin” of the detainees. On the other hand, in cases of internal disorders or tensions, these reports are sent only to the detaining Power, which always considers its acceptance of ICRC activities as a concession.

If the governments receiving these reports publish them, the ICRC requests that they be published in full; otherwise, it reserves the right to publish them itself. In practice, such publication by governments is infrequent. Presumably States prefer to avoid contaminating humanitarian questions with the political considerations which are inseparable from their international relations in periods of conflict. Publication of ICRC reports by one of the belligerents might provoke similar action by the other party and result in undesirable polemics.

If the detaining government does not usually publish the reports as a matter of internal policy, one may suppose that this is mainly due to the fact that the reports generally refer to unsatisfactory conditions. Without seeking to minimize the importance of security problems, which confront all governments, security requirements must never prevail over the requirements of humanity. The security of the State can never justify torture.

In the case of armed insurgent movements, the situation is more difficult. Some such groups have allowed the ICRC to visit prisoners in their hands, usually in a neighbouring country. These movements also

engage in torture on occasion. It is rare for them to keep prisoners for a long time, and the prisoners are either released, enrolled in the group or killed. The latter practice—murder which may or may not be preceded by torture—constitutes part of the vicious circle of violence which must be broken by inducing *all* the parties involved to accept their responsibility to respect at least certain minimum humanitarian requirements and to recognize that nothing, under any conditions, justifies violence against defenceless individuals.

Limits to ICRC action

The ICRC's opportunities to reduce or even put an end to torture are real and are often the only hope for those concerned, but they have their limits. Sometimes, for example, governments simply refuse to accept the ICRC's offer of its services, either in violation of the Geneva Conventions or—in internal situations—by invoking national sovereignty. In addition, there are countries in which the conditions do not yet exist in which the ICRC can usefully offer its services with any chance that they will be accepted, or even understood.

It also happens, even in countries where the ICRC is allowed to act, that it does not have access to all those whom it seeks to protect, in particular those most endangered by torture: detainees undergoing interrogation.

These are the situations which call for the most persistent and systematic efforts, for the most dogged determination. The work of delegates, pursuant to their general instructions, in systematically and persistently revealing places of torture, is followed up at the highest level in Geneva. As a rule, this persistence eventually leads to positive results, even though we may seldom be certain that the situation is completely under control.

In these cases, the ICRC's position is especially delicate. The general public tends to assume that the very presence of the ICRC in a country is a guarantee that the situation of prisoners there is relatively satisfactory—as if the mere presence of a doctor at the bedside of a patient ensured recovery. Although the ICRC publishes the places and dates of its visits, it gives no information about the treatment of prisoners and their conditions of detention.

This is a commitment it accepts when it undertakes to visit prisoners. Experience has proved to the ICRC that persuasion, without publicity,

produces the best results. In addition, if the ICRC were to make public the observations of its delegates, there is reason to fear that the gates would be closed against it, in the countries directly concerned or in others, which could only preclude its humanitarian action and harm the detainees themselves.

It is a drawback to this approach that, despite the presence and persistence of the ICRC, inadmissible practices may continue. Such circumstances may induce the ICRC to discontinue its visits to prisons in the country in question. It obviously hesitates to make this decision, for the prisoners whom it can visit, like those whom it is not permitted to see, would then be at the mercy of their gaolers. The detainees to whom the ICRC has access generally ask not to be abandoned, believing that the ICRC's major contribution is not perhaps what it does so much as what it prevents others from doing.

Conclusions

Under such conditions, the ICRC has definite and unchanging objectives, designed to overcome the handicaps set forth above:

to seek constantly from States bound by the Geneva Conventions total respect for the obligations they have assumed;

to increase the number of countries allowing the ICRC access to their prisons in the event of internal disorders and tensions, by offering its services directly, when there is reason to hope they will be accepted, or by working systematically to create conditions that will induce governments to welcome the offer of its services on behalf of political detainees;

in every country which accepts its presence, to attempt to obtain permission to talk without witness to prisoners as soon as possible after their capture;

whenever its delegates find probable or certain evidence of torture, to do everything possible to make sure that the responsible authorities put an end to the practice.

In general, and going beyond what may be regarded as its "operational" objectives, the ICRC unequivocally and unreservedly deplors

and condemns all torture, in any form and on any pretext. It supports all efforts at international or domestic legislation intended to safeguard human beings more effectively against torture. Above all, it appeals to the conscience of every individual to put an end to this vilest and most degrading practice devised by man.
