

INTERNAL DISTURBANCES AND TENSIONS: A NEW HUMANITARIAN APPROACH?

*Violence generally
begets violence
Aeschylus*

The common terms “internal disturbances” and “internal tensions” cover a whole range of situations all characterized by acts of violence related to human rights violations and resulting in human suffering. These situations, now so common and widespread throughout the world, are typified by direct confrontations between police and opponents of a regime or by any of a variety of ethnic, racial, religious, ideological, economic or social tensions, which may likewise give rise to police action as a preventive measure.

Above and beyond this simplified summary, there is another kind of violence, overt or covert, with its train of abuses and infractions of fundamental human rights—mass arrests, ill-treatment of detainees, excessive measures of repression, the disappearance of persons, acts of terrorism, summary executions, etc.

The effects of these situations of violence within States may, from one case to another, be of a political, legal, economic or social nature, but they always have humanitarian implications since they affect the life, integrity and dignity of every individual concerned.

Violations of human rights are of course a constant concern of the United Nations, and of course the ICRC and other organizations have done all they could to relieve the suffering of the victims. The results, however, have not fulfilled our aspirations. We do not speak of a “legal void” with regard to the rights and responsibilities applicable in these situations, as some experts do, but we are compelled to recognize that the international protection of victims of internal disturbances and tensions remains inadequate.

The fundamental question, then, is how can individuals be better protected against all forms of violence? Recognizing that the international community has already accumulated a substantial legal capital in the domain of human rights and humanitarian law, has the time now come to recall and reaffirm some fundamental rules which must be observed even in situations of internal disturbances and tensions? Or should we maintain a pragmatic and non-legislative attitude vis-à-vis the governments and situations in question?

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The international community does possess international legal instruments which could be applied to such situations. To begin with, universal and regional legislation on human rights defines the rights of the individual which the States have formally undertaken to implement and uphold. Admittedly, in the event of disturbances the States can suspend some of these rights, but even if they have decreed a state of emergency, they are nevertheless bound at all times and in all circumstances to preserve the minimum fundamental rights necessary to safeguard the physical and moral integrity of the individual.

The fact is that human rights law, even though formally applicable in wartime, is essentially designed for times of peace. In practice, the exercise of these rights is very often reduced in the event of conflict—quite apart from the fact that the state of ratification of international and regional human rights instruments is still very unsatisfactory.

International humanitarian law protects the individual not only against foreign enemies but also in certain circumstances, against his own government. This progress is most clearly expressed in Article 3 common to the four Geneva Conventions, which contains a “hard core of fundamental rights” widely considered as minimum standards to be applied as an absolute must in any armed conflict. Furthermore, these provisions largely correspond in content with those non-derogable human rights norms which must be respected in all circumstances, even in situations of internal disturbances and tension.

In all these situations the International Committee of the Red Cross may offer its services both to the parties to a non-international conflict, by virtue of Article 3, and to governments confronted by internal disturbances and tensions, in this case, on the basis of the Statutes of the International Red Cross and Red Crescent Movement, its own statutes

and also resolutions adopted by the International Conference of the Red Cross and Red Crescent.

Furthermore, the ICRC's right to take any humanitarian initiative entitles it to intervene in situations of internal tensions and even in cases which have not been defined as such, but which would require the humanitarian action of a specifically neutral and impartial institution.

The ICRC practice of offering its services is rooted in its own tradition. Guided by its extensive experience, the ICRC has considered such situations in humanitarian terms and has sought to define them. These definitions are only for the ICRC itself, but they help to determine the bases for its activity. It has also outlined the action it will take, which does not cover all aspects of internal disturbances and tensions, notably during actual clashes, but is concentrated on the humanitarian consequences of the situation, especially with regard to detainees and their families.

It will seek to improve conditions of detention and treatment of detainees, make special interventions in the event of especially flagrant denials of justice, indiscriminate violence against defenceless persons or the taking of hostages, and combat the phenomenon of forced disappearances, etc. All these ICRC protection and assistance activities in situations not covered by international humanitarian law are described and commented upon in the ICRC policy document presented below, which was first published in 1986 on the occasion of the Twenty-fifth International Conference of the Red Cross and updated in view of the new Statutes of the Movement.

We do not in this article intend to evaluate ICRC action in these situations, but should simply like to point out that the ICRC's right to take any humanitarian initiative in such cases has become a matter of customary law and that its offers of services cannot be regarded as interference in the internal affairs of a State. At the same time, the fact remains that the States are under no corresponding obligation to accept those offers.

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Alarmed by the proliferation of internal disturbances and tensions and the myriad forms of violence which characterize them, many people deplore the lack of legal means to protect the victims. Some of them regret that the Protocols additional to the Geneva Conventions excluded

these situations from their field of application; others feel that since there is no obligation for the States to accept the ICRC's offers of services, even in non-international armed conflicts, such an exclusion does no harm to the ICRC's humanitarian work and may even be conducive to it. It is indeed true that the ICRC has been able to visit places of detention in some 90 countries without the States being under any legal obligation to accept its interventions.

In order to deal with these major concerns, a new approach has emerged. Its intention is not to create a new body of law specific to these situations, but rather to recall a number of existing fundamental rules drawn from written law, customary law and general legal principles, rules which will thereby be better applied in situations of internal disturbances and tensions and which cannot be violated without offending the universal conscience of mankind.

The Review is pleased to present two texts which reflect this approach. One is a "Code of Conduct" put forward by an ICRC expert, expressing his personal opinions; the other is a "Model Declaration" drafted by a well-known internationalist.

Their basic approaches are identical insofar as both of them draw on the "common ground" of law, human rights and humanitarian law and propose fundamental rules which must be respected in all circumstances and without discrimination.

We do not intend, in this editorial, to make a comparative legal analysis of these two texts. The reader will be the judge. We shall limit ourselves to commenting on their substance and value. In both of them, in the introduction to the Code of Conduct and in Article 2 of the Declaration, the authors express their desire to recall the essential rules of international law, both written and customary, to all concerned, to the governments responsible for maintaining or restoring order and those who are opposed to the authorities.

*These rules, which must absolutely be respected, relate to **the right to life, the inherent dignity of the human being, the forbidding of murder, torture and other degrading forms of treatment, the taking of hostages, disappearances of persons, acts of terrorism and collective punishment, recourse to force out of proportion with the objectives sought, humane treatment of persons deprived of their freedom, the granting of fundamental legal guarantees, the rights of the child, protection of the wounded and sick and the search for missing persons.***

As we see, these imperative rules are inspired essentially by the hard core of non-derogable rights and prohibitions contained, inter alia, in the International Covenant on Civil and Political Rights, the American

Convention on Human Rights and the European Convention for the Protection of Human Rights, as well as Article 3 common to the four Geneva Conventions and Articles 4-6 of Protocol II.

Both authors emphasize that the rules they present must in no way be interpreted as limiting the protection provided by humanitarian law and the human rights instruments already in force.

What distinguishes the two texts is above all their formulation and presentation, reflecting each author's desire to find the best means to convince the readers and the approach best adapted to the present political context.

The Code of Conduct is intended primarily as an instrument for dissemination, designed to arouse the conscience of all its readers. Its simple language and conciseness are reminiscent of the manual entitled The fundamental rules of international humanitarian law applicable in armed conflicts, compiled by ICRC experts in 1979 to facilitate the dissemination of humanitarian law. This same paramount desire to make the law known is expressed in Rule 13 of the Code of Conduct.

The Model Declaration has a more accentuated legal approach in its presentation and formulation. It is conceived as a collection of imperative principles and rules, accompanied by procedures to clarify them and facilitate their application. In this respect, the Model Declaration assumes the appearance of a protocol to the human rights and humanitarian law conventions to which it mainly refers. Although the author does not dwell on the need to disseminate the rules in the Declaration, he does make a point of specifying that the authorities of the State "should grant to humanitarian organizations all facilities within their power so as to enable them to carry out their humanitarian activities for the protection and assistance to the victims of the internal strife".

*The Code of Conduct avoids legal terminology so as to make it as accessible as possible to everyone. It is designed to encourage individuals to observe a certain humanitarian conduct, and is thus mainly directed toward the **victims**.*

*The Model Declaration, with its legal approach, is addressed more to **States** and **citizens**, but is sufficiently flexible to serve both as a reference document that anyone can use and as a draft which could be presented to an international, universal or regional institution.*

As they are, these texts are "trial balloons" which already have the merit of existing. They are thus promising elements in this new humanitarian approach so widely demanded, in a domain so poorly documented.

In publishing these two texts the Review wishes to initiate thorough consideration of the phenomenon of internal disturbances and tensions

and the means of dealing with its effects in humanitarian terms. It invites its readers to form their own opinion and in particular to judge whether, at this stage, it would already be advisable to try and determine the form of an instrument on internal disturbances and tensions, or whether it is preferable to make the spirit of it emerge clearly by first appealing to the conscience of all, or even to renounce all thought of codification and concentrate solely on the pragmatic approach of humanitarian action.

In any case the Review, by opening its columns to its readers, hopes to encourage dialogue among all those who would like to offer their comments and suggestions on a subject of whose importance we are all aware.

The Review
