

# **ICRC protection and assistance activities in situations not covered by international humanitarian law**

*ICRC document of August 1986 updated in view of the new Statutes of the International Red Cross and Red Crescent Movement.*

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# ICRC protection and assistance activities in situations not covered by international humanitarian law

## Introduction

In a sporadic way since 1919, then systematically from the late 1960s, the ICRC has endeavoured to carry out its humanitarian activities in situations of internal disturbances and tensions, in particular to give protection and assistance to persons imprisoned in such circumstances and commonly referred to as "political detainees".

The ICRC's rules of conduct in such situations were presented at the Twenty-third International Conference of the Red Cross (Bucharest, 1977) as part of the document entitled "The ICRC, the League and the Report on the Re-appraisal of the Role of the Red Cross".<sup>1</sup>

The present document brings ICRC doctrine on the subject up to date. It takes into account the qualitative and quantitative development of the ICRC's humanitarian action in those situations which are not covered by the 1949 Geneva Conventions or their Additional Protocols of 1977, but in which problems of a humanitarian nature justify action by an independent body like the ICRC. Indeed, in agreement with the authorities of the country concerned, the ICRC is more and more often able to contribute in some way, especially towards better treatment of detainees and respect for certain basic rules of humane conduct, which all parties—governments and opponents alike—are bound to observe in all circumstances.

The ICRC hopes that the present document will facilitate understanding—and, where necessary, acceptance—of its humanitarian ac-

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<sup>1</sup> See *International Review of the Red Cross*, from March-April 1978 to January-February 1979, as well as off-print of those extracts, ICRC, 1979.

tion in the event of internal disturbances and tensions and thereby help to ease the plight of all victims of such situations.

## 1. Definition of internal disturbances and tensions

Originally, in 1864, international humanitarian law offered its protection only to victims of wars between States. With the adoption of the four Geneva Conventions of 1949, the situation changed: Article 3 common to the four Geneva Conventions of 1949 applies to all non-international armed conflicts. Protocol II additional to these Conventions applies to non-international armed conflicts where hostilities have a higher degree of intensity<sup>2</sup>; 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”<sup>3</sup>.

Just what are these “internal disturbances and tensions” which justify *ad hoc* protection by the ICRC outside the area to which the Geneva Conventions and the Additional Protocols apply?

The ICRC has attempted to define them. The two concepts were submitted to a group of experts in 1970. On the basis of their remarks, 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”*.<sup>4</sup>

As for *internal tensions*, the term usually refers

- a) to situations of serious tension (political, religious, racial, social, economic, etc.) or

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<sup>2</sup> Protocol II, Art. 1, par. 2.

<sup>3</sup> *Ibid.*

<sup>4</sup> Conference of Government Experts, document submitted by the ICRC, Title V, *Protection of victims of non-international armed conflicts*, 1971, p. 79.

*b)* to sequels of an armed conflict or internal disturbances.

These situations present any one, if not all, of the following characteristics:

1. mass arrests;
2. a large number of persons detained for security reasons;
3. administrative detention, especially for long periods;
4. probable ill-treatment, torture or material or psychological conditions of detention likely to be seriously prejudicial to the physical, mental or moral integrity of detainees;
5. maintaining detainees incommunicado for long periods;
6. repressive measures taken against family members of persons having a close relationship with those deprived of their liberty mentioned above;
7. the suspension of fundamental judicial guarantees, either by the proclamation of a state of emergency or by a de facto situation;
8. large-scale measures restricting personal freedom such as relegation, exile, assigned residence, displacements;
9. allegations of forced disappearances;
10. increase in the number of acts of violence (such as sequestration and hostage-taking) which endanger defenceless persons or spread terror among the civilian population.

## **2. The bases for ICRC activity**

ICRC activity in case of internal disturbances and tensions<sup>5</sup> is based, chronologically, on:

- tradition,
- the Resolutions of International Conferences of the Red Cross,
- the Statutes of the International Red Cross and Red Crescent Movement and those of the ICRC.

### **2.1. Tradition**

As is the case for the Geneva Conventions and those they protect, humanitarian action for “political detainees” has preceded legal codification.

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<sup>5</sup> Moreillon, Jacques: *Le CICR et la Protection des détenus politiques*, Lausanne, L'Age d'homme, 1973, 303 pages.

Until the First World War, the ICRC made hardly any distinction between civil war and internal disturbances.

The first time it took action to assist large numbers of civilians affected by such disturbances was when it sent relief supplies to Montenegro to aid refugees who had fled Herzegovina in 1875.

Its first **visits** to “political detainees” took place in Russia in 1918 and in Hungary in 1919.

Between the First and Second World Wars, ICRC delegates carried out visits to persons incarcerated in connection with internal disturbances or tensions in the following countries: Ireland (1923), Poland (1924), Montenegro (1924), Italy (1931), Austria (1934), Germany (1935 and 1938) and Lithuania (1937).

Those visits, however, were occasional and constituted only the beginnings of a custom. In fact, it was only after the Second World War and more particularly in connection with the process of decolonization that the ICRC increased the number and frequency of its visits to persons incarcerated in their own countries. Occasionally, such visits did not take place in the context of internal disturbances or tensions but rather in order to provide technical assistance to the prison services of developing countries.

Whether to provide technical assistance to prison services or, as has much more often been the case, to afford protection to the victims of internal disturbances and tensions, the ICRC, since the Second World War, has made visits to more than half a million “political detainees” in 95 countries, in situations not covered by the Geneva Conventions.

Between 1980 and 1985, for example, ICRC delegates carried out 12,250 visits in more than 600 different places of detention and registered or interviewed without witness 151,000 “political detainees”.

Virtually all of those visits were carried out under conditions conforming to ICRC practice, including, for example, the possibility for delegates to interview without witness the detainees of their choice and to make regular repeat visits to persons and places.

It should be noted that some governments have refused the ICRC's offers of its services or have set conditions which the ICRC deems unacceptable.

There are also situations in which the ICRC is obliged to conclude that the general attitude of a government renders productive discussion of these matters impossible.

Also, the growing number of situations involving internal disturbances and tensions has necessitated the ICRC tailoring its activities in this area to the limited means at its disposal.

## 2.2. The Resolutions of International Conferences of the Red Cross

In its Resolution No. XIV, the Tenth International Conference of the Red Cross (Geneva, 1921)<sup>6</sup> stated, among other things:

“General Principles

1. The Red Cross, which stands apart from all political and social distinctions, and from differences of creed, race, class or nation, affirms its right and duty of affording relief in case of civil war and **social and revolutionary disturbances**.

The Red Cross recognizes that all victims of civil war or of **such disturbances** are, without any exception whatsoever, entitled to relief, in conformity with the general principles of the Red Cross...” (our emphasis).

The Resolution went on to define the role of the National Society in the country concerned, the role of other National Societies and that of the ICRC, giving the Committee certain competence to intervene in such circumstances, especially to organize relief.

Various meetings of experts<sup>7</sup> have confirmed the relevance of this mandate which has been reaffirmed in many Resolutions adopted by International Conferences of the Red Cross, the most recent being Resolution No. VI of the Twenty-fourth International Conference of the Red Cross (Manila, 1981), in the text of which we indicate below in bold face the sections relating—individually or collectively—to situations of internal disturbances and tensions and to ICRC activities in connection with them.

“Respect for international humanitarian law and for **humanitarian principles and support for the activities of the International Committee of the Red Cross.**

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<sup>6</sup> See Annex I.

<sup>7</sup> See, for example:

- Commission of experts for the examination of the question of assistance to political detainees; Geneva, June 1953; published by the ICRC, 1953; 8 pages.
- Commission of experts for the study of the question of the application of humanitarian principles in the event of internal disturbances; Geneva, October 1955; published by the ICRC, 1955; 8 pages.
- Commission of experts for the study of the question of aid to the victims of internal conflicts; Geneva, October 1962; published by the ICRC; 11 pages.

The XXIVth International Conference of the Red Cross,  
***deeply concerned by the Report on the Activities of the International Committee of the Red Cross,***

*noting* that in several armed conflicts fundamental provisions of the Geneva Conventions are violated and that these grave violations have often the consequence of impeding the International Committee of the Red Cross in the discharge of its activities pursuant to international law applicable in armed conflicts—international, internal or mixed,

***observing further that the International Committee of the Red Cross is not always able to discharge its humanitarian activities in internal disturbances and tensions,***

***alarmed by such violations of the rules of the law of nations and of humanitarian principles, and likewise by the development of violence and contempt for human rights in the world,***

*recalling* that, pursuant to the Geneva Conventions, the States have the obligation not only to respect but to ensure respect for these Conventions,

***makes a solemn appeal that the rules of international humanitarian law and the universally recognized humanitarian principles be safeguarded at all times and in all circumstances and that the International Committee of the Red Cross be granted all the facilities necessary to discharge the humanitarian mandate confided to it by the international community”.***

## **2.3 The Statutes of the International Red Cross and Red Crescent Movement and those of the ICRC**

Although the Red Cross was founded in 1863 with the creation of the ICRC and the first National Societies, the Movement did not adopt Statutes until 1928, at the Thirteenth International Conference of the Red Cross in The Hague.

Article VII of those Statutes, which deals with the ICRC, affirms that the latter “**shall continue** to be a neutral intermediary whose intervention is recognized as necessary, especially in time of war, civil war **or civil strife**” (our emphasis). It adds that “all questions calling for examination by a specifically neutral body, shall remain the exclusive province of the International Committee of the Red Cross”. It should be noted that, by using the words “shall continue”, the International Conference was implying, through the Statutes, its recognition and

confirmation of the by then traditional competence of the ICRC in such matters.

The Statutes of the International Red Cross were revised by the Eighteenth International Conference of the Red Cross (Toronto, 1952). Article VI of those Statutes deals with the ICRC and states that:

- “5. 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. (...) (our emphasis)
- 6. It takes any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary and considers any question requiring examination by such an institution.”

In the new Statutes of the International Red Cross and Red Crescent Movement adopted by the Twenty-fifth International Conference of the Red Cross (Geneva, 1986)<sup>8</sup>, Article 5 on the ICRC stipulates that “The role of the International Committee... is in particular:

2.d) to endeavour at all times—as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife—to ensure the protection of and assistance to military and civilian victims of such events and of their direct results.”

Similarly:

“3. The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and may consider any question requiring examination by such an institution.”

Thus, in the 1928 version and in the revised version adopted by the Eighteenth International Conference of the Red Cross in Toronto in 1952, as well as in the 1986 version, internal strife has always been specifically mentioned in the Statutes of the Movement, whereas there has never been any reference to internal tensions. On the other hand, in these same versions, a provision (paragraph 3 in the 1986 version of the Statutes) authorizes the ICRC to offer its services both during internal disturbances and during internal tensions, among other situations.

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<sup>8</sup> See Annex II.

As for the Statutes of the ICRC itself, they preceded or followed those of the International Red Cross, employing wording which is identical or similar.

#### **2.4. Summary**

The ICRC's practice of offering its services for the protection and assistance of persons affected by internal disturbances or tensions is well rooted in its own tradition. It is confirmed in resolutions of the International Conferences of the Red Cross and the Statutes of both the International Red Cross and Red Crescent Movement and the ICRC itself.

The States have never questioned the actual principle on which this practice is based; the basis for ICRC action in the event of internal disturbances and tensions has thus acquired a customary nature and the offer of the International Committee's services in such situations does not constitute interference in the internal affairs of a State.

But there is no corresponding obligation on the part of governments to accept such offers in those situations which are, by definition, not covered by the Geneva Conventions.

### **3. ICRC activities in the event of internal disturbances and tensions**

The various violations of essential rules of humanity which take place in internal disturbances and tensions fully justify the humanitarian reasons the ICRC has for taking action in such situations: indiscriminate violence, acts of terrorism, hostage-taking, rules of law which are violated by individuals or by the State, forced disappearances, poor conditions of detention, torture etc. The classic spiral of violence and repression often leads to situations in which the individual, in fact if not in law, loses the protection of the State, either because the government is no longer capable of maintaining order or because, in maintaining that order, it also violates humanitarian norms.

In such circumstances, the ICRC's activities may take many forms:

#### **3.1. Improving the conditions of detention and treatment of incarcerated persons**

The traditional task of the ICRC in cases of internal disturbances and tensions consists in visiting places of detention in order to improve the prisoners' situation.

### **3.1.1. Examining conditions of detention**

In virtually all situations of internal disturbances and tensions certain categories of persons are imprisoned by the authorities. All these individuals have one thing in common: what they have done, said or written is considered by the authorities to constitute opposition of such magnitude to the existing political system that it must be punished by the deprivation of their freedom. The legal intent of such detentive measures may be punitive or preventive, aimed at re-education or at reintegration. The sentences may be pronounced under laws normally in force or under emergency legislation or jurisdiction; alternatively they may result from administrative measures in force for a limited or unlimited period.

Sometimes, arrest may be a general and indiscriminate measure affecting large groups of persons.

The ICRC, in its concern to preserve the confidence of all parties through its neutrality, does not get involved in the political problem at the root of the disturbances or tensions, nor does it comment on the **motives** for detention; it essentially concerns itself with the material and psychological **conditions** of detainees.

Experience has shown that, even where the government of a country wishes its prisoners to receive humane treatment, the everyday reality of prison life often could and should be improved. Prisoners tend to be viewed as “enemies” by officials in direct contact with them. There is often no practical way for them to communicate their grievances to national authorities who would be both able and willing to ensure humane and dignified treatment. Thus, both during the period of interrogation as well as afterwards—when the only security involved is that of the place of detention itself—ICRC delegates have frequently been made aware of the great need for improvement in prison conditions.

ICRC activities consist of various steps. Periodical and thorough visits to the places of detention and persons detained are carried out by appropriately trained ICRC delegates. These visits are followed by discussions at all levels with those in charge of detention. Confidential reports are then written and are sent exclusively to the detaining authority, generally at the highest level. These reports take into account the particular social, economic and cultural contexts and describe, in an objective and detailed manner, the conditions of detention and treatment of the prisoners. Specific and practical suggestions for improvement are made. The reports are not meant for publication: the

ICRC makes public only the place, date and number of persons seen and the fact that its delegates were able to interview the prisoners without witness. It never comments publicly on the material or psychological conditions observed. (However, should the detaining authority publish a part of its reports, the ICRC reserves the right to publish the reports concerned in their entirety).

If the need presents itself and the authorities agree, the ICRC often provides material assistance to the detainees.

In order to perform their task of protection effectively, ICRC delegates ask to visit all persons detained in connection with the events, to interview freely and without witness the prisoners of their choice and to return to the places of detention on a regular basis or as the needs require.

This procedure generally brings very positive results and governments which have chosen to make use of ICRC services are generally grateful. Furthermore, no State has complained to the ICRC that its security had been jeopardized by such visits or that the legal status of persons visited had been affected. This is worth mentioning when one recalls that, since 1918, the ICRC has visited more than half a million such prisoners in about a hundred countries.

(Annex III contains a description of the procedure used by the ICRC in visiting places of detention.)

### **3.1.2. The fight against torture**

As is well known, torture is prohibited in all circumstances, by both international law and national legislation. However, among the many problems relating to the treatment of "political detainees", the problem of their torture is considered by the ICRC to deserve special attention, both because of its enormity and because of the determination with which the Committee confronts it.

For the ICRC, protection means safeguarding not only an individual's physical integrity, but also his psychological integrity. During interviews without witness, ICRC delegates have noted countless forms of ill-treatment practised on detainees.

In addition to the various forms of physical torture, delegates have recorded a whole range of methods to inflict moral and mental suffering as well as psychological pressures which destroy the detainee's personal identity. Also the material conditions of detention are sometimes so poor that if they are intentional, they, too, can be considered as torture. The interrogation phase, periods of isolation and the uncertainty caused

by detention without legal basis figure prominently among the concerns of ICRC delegates.

It is equally clear that there are grave consequences for the whole of the society in which torture develops. Wherever it is practised, delegates notice that it affects not only the person tortured but also his family and social group—not to mention the torturer himself who is morally sullied and often psychologically unbalanced by his deeds.

Obviously, the primary responsibility in the fight against torture belongs to governments. It is up to them to take measures (legislative, judicial or disciplinary ones) to prevent and repress acts of torture. In this respect, the confidential reports which the delegates draw up and send to the authorities following their regular visits and interviews without witness should enable willing governments, through constant dialogue with the ICRC, to meet their responsibilities and, together, put an end to such unacceptable practices.

### **3.2. Other ICRC humanitarian activities**

Apart from the conditions of detention, there are other humanitarian issues which can justify intervention by the ICRC in situations of internal disturbances and tensions.

#### **3.2.1. Rectifying the humanitarian consequences of arbitrary practices**

Except in cases of armed conflict, the ICRC's mandate does not include ensuring that States respect the law in force in their own territory.

It can happen, however, that, while visiting prisons, delegates discover very serious humanitarian cases which result from a particularly flagrant denial of justice—incarceration prolonged beyond the term to which the detainee was sentenced; keeping the detainee in prison after the true culprit has been discovered—or even from the outright violation of fundamental judicial guarantees. ICRC delegates, aware that any intervention of a political nature on their part would be foreign to their mission, may bring the humanitarian consequences of such situations to the attention of the authorities, and ask them to remedy matters. Such intervention, however, is made only when the seriousness of the humanitarian problem demands it absolutely, and may be contemplated only if it does not jeopardize the humanitarian action of the ICRC.

### **3.2.2. Confronting acts of violence directed against defenceless persons**

Such acts of violence may be committed by individuals, armed insurgents or pro-government groups, or may even be committed by the security forces, i.e. the army or police, themselves.

These acts generally affect civilians, either individually (arbitrary detention, hostage-taking, assassination) or in groups (displacing large masses of civilians, relegation, expulsion, massacres).

Sometimes violence takes a form which is difficult to detect, such as various types of intimidation and harassment which, apart from their direct effect on the victims, perpetuate a sense of latent apprehension in the community.

The extreme form of this violence is terrorism—individual, group or State terrorism—all of which the ICRC, international humanitarian law, human rights and the principles of humanity categorically reject, prohibit and condemn.

Whatever form terrorism may take, its perpetrators use the most widely varied pretexts to justify their unjustifiable acts: military necessity, State security, the last resort of oppressed peoples, etc. But the principal factors observed by the ICRC to be common to all such acts are contempt for humanity and the violation of the fundamental rule of humanitarian law requiring that respect be shown for defenceless persons. ICRC sees the spiral of violence generating ever more hatred, more revolt, dehumanizing those who practise and tolerate it and, in the end, dehumanizing the society exposed to it. What sort of human values can survive when an ideology not only makes it impossible to see the human being in a defenceless enemy but also makes an enemy out of the innocent?

The current trend towards ever more indiscriminate violence must strengthen more than ever the Red Cross fundamental resolve to make its voice heard in order to preserve a minimum of humanity amid the violence of struggles.

The ICRC does not limit itself to stressing the evil of blind violence. It carries on an active and constant campaign to disseminate humanitarian principles to all groups most likely to have to apply them. This is done by various means adapted as well as possible to the groups it is trying to reach.

Finally, it is important to remember that a person's dignity must be respected when he is imprisoned and helpless, even if he did not respect the dignity of others when he was free. Thus, in carrying out its protection activities, the ICRC makes no distinction between those

detained in connection with internal disturbances and tensions, regardless of their actual or merely alleged crimes. It cannot, after all, act as a judge and must carry out without discrimination its humanitarian task on behalf of all those who are left defenceless, even if some among them have violated the most elementary humanitarian norms.

### **3.2.3. Exceptional intervention when hostages are taken**

Hostage-taking is a form of terrorism which deserves special mention. It is prohibited and to be condemned absolutely and in all circumstances.

The ICRC does not spontaneously offer its services in such situations. However, if all the parties involved consider that it alone can intervene, the ICRC is prepared to become involved, on certain conditions. The ICRC course of action is summarized in the following five principles<sup>9</sup>:

- I. The ICRC condemns violations of legal and humanitarian principles, especially acts which involve the deaths or threaten the lives of innocent people. In doing so, it is guided solely by concern for the victims and the will to help them.*
- II. ICRC delegates may materially assist hostages and, by their presence, provide moral comfort. As a general rule, however, participation in negotiations between authorities and the perpetrators of such violations does not come within the delegates' purview.*
- III. In the victims' interest and in so far as there is no other intermediary or direct contact, the ICRC may, as an exception, intervene at the request of one party and with the agreement of the others. The parties shall renounce the use of force, take no step detrimental to the welfare of the hostages, and shall grant the delegates freedom of action without let or hindrance so long as they maintain contact between the parties.*
- IV. The delegates will ask for all facilities to assist victims and, whenever possible, for all persons entitled to special consideration, such as the wounded, the sick, children, and so forth, to be removed to safety.*

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<sup>9</sup> Its policy in these matters was made public in the October 1972 edition of the *International Review of the Red Cross* and presented in more detail at the Twenty-fourth International Conference of the Red Cross (Manila, 1981), where it was accompanied by commentaries on the role of National Societies when hostages are taken: *Attitude of the Red Cross to the taking of hostages*; report submitted by the ICRC (CGO/3/1); Geneva; August 1981, 9 pages. See also Annex IV.

*V. Whether delegates participate in negotiations or merely act as couriers, responsibility for proposals transmitted, for decisions and action, lies solely with the parties. Delegates shall not guarantee the implementation of decisions or the observance of conditions laid down by the parties<sup>10</sup>.*

### **3.2.4. The fight against forced disappearances**

The “disappearance” phenomenon has spread significantly since the 70s.

“Disappearances” involve abduction followed by murder or clandestine detention. The uncertainty thus created about the missing person’s fate breeds anxiety and intimidation. It thus represents an attack on the whole society affected by such events and leaves longlasting scars, sometimes permanent ones, in the hearts and minds of a vast number of people.

The problem is further aggravated by constant confusion as to the causes behind disappearances since, in general, forced disappearances occur at the same time as voluntary ones, for opposite motives.

The ICRC has limited means for encompassing the problem of disappearances in general and countering forced disappearances in particular. If the ICRC achieves success in this area, it can only be through its traditional protection activities. Basically, the means at its disposal are:

- registration of requests made to it;
- approaches it can make to the authorities;
- seeking access to all places of detention;
- interviewing detainees without witness.

The ICRC’s course of action is governed by many factors. The number of reported cases and similarities between them guide the ICRC in deciding whether approaches should be made at regular intervals if initially they have not succeeded, or whether emergency action should be taken. As a rule, however, the ICRC does not carry out, by itself, detailed investigations into the circumstances in which disappearances took place and into the events following them. Indeed, in this area possibly more than in any other, it must remind the governments of their responsibilities, not substitute for the governments themselves.

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<sup>10</sup> Annex IV contains a commentary on the policy of the ICRC in this regard, as it was presented at the Manila Conference.

ICRC action may also include material assistance to the families of persons who have disappeared; it attempts to ensure, for example, that the victims' children are not adopted out of hand.

Faced with the problem of forced disappearances and their social consequences, the ICRC tries here as elsewhere to base its activities on constant dialogue with the authorities. Whatever confidence the latter place in the ICRC can only stem from a better understanding of the institution and the principles guiding it.

### **3.2.5. Material assistance**

ICRC assistance to persons affected by internal disturbances or tensions is given in accordance with the fundamental principle of impartiality:

*The Red Cross makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.*

Such relief is directed toward individuals and groups who are needy, vulnerable and not receiving sufficient aid from other sources.

Particular instances are detainees, their families, those of missing persons and large groups of displaced persons.

The assistance may be material, medical or in the form of food. In certain cases it also constitutes an indirect protection of individuals.

## **4. Summary and conclusion**

Essentially, ICRC humanitarian action in the event of internal disturbances and tensions consists of providing, with the authorities' consent, protection and assistance to persons incarcerated in connection with the situation.

These activities, despite their limitation (some self imposed), take place within more general norms of humanity which it is up to each person—whether on the side of the government or its opponents—to respect at all times. Neither the responsibility which the authorities have to maintain order nor the reasons which some may have for revolting against the government can justify terrorism and torture, violence, hostage-taking or the institutionalization of arbitrary justice.

In the ICRC's experience, it is overwhelmingly clear that the vicious circle of violence and repression is aggravated when certain fundamental rules of behaviour are violated and the first victim of the struggle is human dignity.

Whether in the exercise of government power or in the fight against that power, it is too easily forgotten that each person must be treated with humanity, that his life, his moral and physical integrity and honour must be respected in all circumstances, regardless of the acts with which he is accused.

It is too easily forgotten that nothing can justify murder, torture or any other cruel, inhuman or degrading treatment. Nothing can justify hostage-taking, forced disappearances, collective punishments or any other act, method or practice of terrorism.

Even in the legitimate exercise of power and preservation of order, the use of force must remain limited to the strict minimum necessary. The ICRC is in a particularly good position to know just how true this is in the area of detention, where the basic rule is that any person deprived of liberty **must** be treated humanely. All prisoners must be afforded proper conditions of detention, especially with regard to hygiene, food, quarters and, where applicable, work. They must have the possibility of communicating periodically with their next of kin. Wounded or sick detainees must receive the care required by their condition.

Medical assistance must be provided in all circumstances to those who need it. Speaking more generally, all sick or wounded persons must be aided and treated without discrimination. No one may be harassed simply for having assisted wounded or sick persons.

These fundamental humanitarian norms apply to all.

There are other such norms which do not directly concern ICRC activities, those, for example, deriving from judicial procedure (fundamental judicial guarantees). Once again, the ICRC's experience shows that when the authorities infringe rights which they are supposed to defend, they provide their opponents with a pretext for other acts of violence and the vicious circle of indiscriminate violence then tends to become even more inescapable.

The lesson drawn from 120 years of experience is simply that, whether on the national or international scale, it is only through respect for human dignity, including that of the fallen enemy and the defenceless person, that we can hope to find again the humanity lost to fighting.

The vicious circle of violence must be broken by spreading the antidote of humanitarism.

May governments and individuals, those who are in power and those who struggle for it, hear this essential truth and try and live up to it.

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## ANNEX I

# Xth International Conference of the Red Cross Geneva, 1921

## **Resolution XIV: Civil War**

### *General principles*

- I. The Red Cross, which stands apart from all political and social distinctions, and from differences of creed, race, class or nation, affirms its right and duty of affording relief in case of civil war and social and revolutionary disturbances.  
The Red Cross recognises that all victims of civil war or of such disturbances are, without any exception whatsoever, entitled to relief, in conformity with the general principles of the Red Cross.
- II. In every country in which civil war breaks out, it is the National Red Cross Society of the country which, in the first place, is responsible for dealing, in the most complete manner, with the relief needs of the victims; for this purpose, it is indispensable that the Society shall be left free to aid all victims with complete impartiality.
- III. If the National Red Cross cannot alone, on its own admission, deal with all the relief requirements, it shall consider appealing to the Red Cross Societies of other countries, in conformity with the following general principles,
  - a) Requests for foreign assistance cannot be accepted from one or other of the parties in conflict but only from the National Red Cross Society of the country devastated by the civil war;

such requests must be addressed by it to the International Committee of the Red Cross.

- b) The International Committee of the Red Cross, having ensured the consent of the Government of the country engaged in civil war shall organize relief, appealing to foreign relief organizations.

Should the Government in question refuse its consent, the International Committee of the Red Cross shall make a public statement of the facts, supported by the relevant documents.

### *Exceptional cases*

- I. When, following the dissolution of the National Red Cross Society, or by reason of the inability or unwillingness of such Society to request foreign aid or accept an offer of relief received through the intermediary of the International Committee of the Red Cross, the unrelieved suffering caused by civil war imperatively demands alleviation, the International Committee of the Red Cross shall have the right and the duty to insist to the authorities of the country in question, or to delegate a National Society to so insist, that the necessary relief be accepted and opportunity afforded for its unhindered distribution. Should the authorities of a country refuse to permit such relief intervention, the International Committee of the Red Cross shall make a public statement of the facts, supported by the relevant documents.
- II. Should all forms of Government and National Red Cross be dissolved in a country engaged in civil war, the International Committee of the Red Cross shall have full power to endeavour to organise relief in such country, in so far as circumstances may permit.

### *Resolutions*

1. The Xth International Red Cross Conference approves the above proposals and recommends them for study to all National Red Cross Societies.
2. The Conference recommends that, in agreement with the International Committee of the Red Cross, all Red Cross Societies should undertake intensive propaganda to create in all countries

an enlightened public opinion, aware of the complete impartiality of the Red Cross, in order that the Red Cross may enjoy throughout the world, on all occasions and without any exception, the confidence and affection of the people without distinction of party, creed, class or persons, which are indispensable conditions to enable the Red Cross to accomplish its tasks fully and to secure the most effective safeguard possible against any violation of Red Cross principles in the event of civil war.

3. The Xth International Red Cross Conference entrusts the International Committee of the Red Cross with the mandate to engage in relief in the event of civil war, in accordance with the above prescriptions.
4. The Xth International Red Cross Conference, recalling the distressing experiences of the Red Cross in countries engaged in civil war, draws the attention of all peoples and Governments, of all political parties, national or other, to the fact that the state of civil war cannot justify violation of International Law and that such law must be safeguarded at all cost.
5. The Xth International Red Cross Conference condemns the political hostage system, and emphasizes the non-responsibility of relatives (especially children) for the acts of the head or other members of the family.
6. The Xth International Red Cross Conference deplores the unlimited suffering to which prisoners and internees are sometimes subjected in countries engaged in civil war, and is of opinion that political detainees in time of civil war should be considered and treated in accordance with the principles which inspired those who drew up the 1907 Hague Convention<sup>1</sup>.

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<sup>1</sup> *Handbook of the International Red Cross*, Geneva, International Committee of the Red Cross, League of Red Cross Societies, 10th Edition, 1953, pp. 414-415.

ANNEX II

## Statutes of the International Red Cross and Red Crescent Movement

(adopted by the International Conference of the Red Cross  
at the Hague in 1928, revised at Toronto in 1952  
and at Geneva in 1986)

### **Article 5**

#### **The International Committee of the Red Cross**

1. The International Committee, founded in Geneva in 1863 and formally recognized in the Geneva Conventions and by International Conferences of the Red Cross, is an independent humanitarian organization having a status of its own. It co-opts its members from among Swiss citizens.
2. The role of the International Committee, in accordance with its Statutes, is in particular:
  - a) to maintain and disseminate the Fundamental Principles of the Movement, namely humanity, impartiality, neutrality, independence, voluntary service, unity and universality;
  - b) to recognize any newly established or reconstituted National Society, which fulfils the conditions for recognition set out in Article 4, and to notify other National Societies of such recognition;
  - c) to undertake the tasks incumbent upon it under the Geneva Conventions, to work for the faithful application of international humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law;

- d) to endeavour at all times—as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife—to ensure the protection of and assistance to military and civilian victims of such events and of their direct results;
- e) to ensure the operation of the Central Tracing Agency as provided in the Geneva Conventions;
- f) to contribute, in anticipation of armed conflicts, to the training of medical personnel and the preparation of medical equipment, in co-operation with the National Societies, the military and civilian medical services and other competent authorities;
- g) to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof;
- h) to carry out mandates entrusted to it by the International Conference.

3. The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution.

- 4. a) It shall maintain close contact with National Societies. In agreement with them, it shall co-operate in matters of common concern, such as their preparation for action in times of armed conflict, respect for and development and ratification of the Geneva Conventions, and the dissemination of the Fundamental Principles and international humanitarian law.
- b) In situations foreseen in paragraph 2 d) of this Article and requiring co-ordinated assistance from National Societies of other countries, the International Committee, in co-operation with the National Society of the country or countries concerned, shall co-ordinate such assistance in accordance with the agreements concluded with the League.

5. Within the framework of the present Statutes and subject to the provisions of Articles, 3, 6 and 7, the International Committee shall maintain close contact with the League and co-operate with it in matters of common concern.

6. It shall also maintain relations with governmental authorities and any national or international institution whose assistance it considers useful.

## ANNEX III

# Model Memorandum

### **Procedure for the conduct of visits by delegates of the International Committee of the Red Cross to places of detention**

- a) Once the ICRC delegates are authorized to visit all the “detainees”<sup>1</sup>, they will be given access to all places of detention, whether permanent or provisional, official or non-official, civil or military (prisons, barracks, transit centres, police stations, rehabilitation centres, etc.) where there are such detainees. The ICRC delegates shall visit all detainees in the entire set of buildings and any outlying constructions in the place of detention, without any restriction as to time.
- b) The purpose of the ICRC delegates’ visit is to determine and, if necessary, improve the material and psychological conditions of detention and the treatment of the detainees. They shall not examine the reasons of detention, this aspect of the matter being outside the competence of the ICRC.
- c) The ICRC delegates shall speak freely, and without witness, with the detainees of their choice on the material and psychological conditions of detention and any other humanitarian problems. Depending on circumstances, all detainees may be so interviewed. Such interviews will be held in a place chosen by the ICRC delegates.
- d) Every place of detention will ordinarily be visited by a pair of delegates, one of whom shall be a physician. The number of delegates may be increased depending on how large the place of detention is. The ICRC, with the authorities’ consent, may send several teams of delegates, each team visiting a number of places of detention. The delegates may request the services of interpreters whom they select from among the detainees.

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<sup>1</sup> The term used in the document varies according to different situations and countries.

- e) At the beginning of the visit, the ICRC delegates shall discuss with the authorities in charge of the place of detention to inform them of the purpose and method of the visit.
- f) At the end of the visit, the ICRC delegates shall communicate their findings and suggestions orally to the person or persons in charge of the place of detention. The authorities in charge of the place of detention shall, as far as possible and if need be, take immediate steps to introduce any improvements falling within their competence, even before the ICRC's official report is despatched to the authorities concerned.
- g) The confidential reports on the visits shall be drafted objectively and in a constructive spirit. When drafting them, local conditions and material difficulties, if any, which the persons in charge of the place of detention may have to face, must be taken into consideration. The confidential reports drafted after the visits shall be sent by ICRC headquarters in Geneva only to the detaining authority. These reports are meant to give confidential information to the authority to which they are remitted. The ICRC acts with the utmost discretion and does not seek any publicity.
- h) The term "assistance" is understood to mean material aid, such as: foodstuffs, medicaments, clothing, books, games, etc. The ICRC delegates are authorized to distribute such assistance immediately after their visit, or they may arrange for it to be distributed either by the National Red Cross or Red Crescent Society, or by the authorities in charge. If, in any particular place, common law detainees are together with the detainees visited by the ICRC, the material assistance may be distributed among all detainees.
- i) In any publications issued by the ICRC or the detaining authority only the names of the places of detention visited and the dates of such visits shall be mentioned. No comments relating to conditions of detention or to suggestions put forward by the ICRC shall be made. Any other information regarding the visit shall be published only after agreement is reached between the parties.

## ANNEX IV

Extract from the Report submitted by the ICRC  
to the XXIVth International  
Red Cross Conference, Manila, 1981

### Attitude of the Red Cross to the taking of hostages

#### **Comments regarding ICRC policy**

The events in which the ICRC was involved during the period after the publication of its policy have led it to make following remarks:

##### a) **Scope of application**

This policy lays down especially the ICRC's attitude where the taking of hostages is linked to situations of internal disturbances or internal tension. The taking of hostages either occurs on the territory of a State where situations of internal disturbances or tension have developed, or is related to such situations elsewhere because of, for example, demands made by the persons holding the hostages.

Where the taking of hostages falls under international humanitarian law—which, as we have seen, clearly forbids this practice in both international and non-international armed conflicts—the ICRC may be led to play a greater and more active role than the one laid down in the present policy.

In actual fact, the ICRC does not normally intervene in the event of hostage-taking during a period of internal disturbances or internal tension; but, as an exception, it may judge it necessary, for humanitarian reasons, to agree to intervene, and the five principles quoted above will help it, first, to determine if such an exception is warranted, and

secondly, to specify the conditions for ICRC intervention. It is therefore only when a certain number of objective criteria are met, and when an analysis of the situation moves it to the belief that it is its duty to act, that the ICRC will abandon the attitude of aloofness which is and must continue to be its policy in such events.

**b) Assistance action**

In principles II and IV of the policy, the possibility that the ICRC would intervene to provide moral comfort and material assistance is envisaged.

The ICRC is, of course, free to decide whether it will accept to perform such a role, which may assume various forms: material relief (foodstuffs, blankets, medicaments), medical assistance (by a doctor or a nurse), moral comfort (exchange of family messages), or evacuation of persons whose physical or psychological condition is such that their release by their captors has become particularly urgent. This latter possibility to bring assistance does not only concern the wounded, sick and children, cited as examples in point IV of the statement of policy, but all persons to whom such an ordeal causes extreme suffering. Nevertheless, the ICRC will not agree to give such assistance unless the following conditions are fulfilled:

- all of the principal parties concerned must give their assent;
- all the parties involved must give an undertaking not to seek to take advantage of the ICRC's action with the aim of deceiving the other party or parties and so deceiving the ICRC, too;
- communications at all times with ICRC headquarters and the hostages' captors must be guaranteed, whenever that is practicable;
- all parties must give an undertaking not to resort to violence, not only while the delegates are performing their assistance activity but also, at least, while the delegates are on their way to the hostages and on their way back to their base.

Should the agreement of one of the parties be withdrawn while the ICRC delegates are still performing their assistance action, the delegates would cease the work they are doing as swiftly as possible and inform the other party or parties.

**c) The ICRC's role as an intermediary**

Point III of the policy covers situations where the ICRC might be asked to play the role of intermediary, it being understood that this

role should also, as a general rule, allow material assistance and moral comfort to be brought to the hostages.

It is only in exceptional cases that the ICRC would agree to act as an intermediary. The following conditions must be satisfied, in addition to those listed above (par. b) which must be fulfilled for ICRC assistance action:

- the parties are not in direct contact with each other (either because there is no possibility at all of contact, or because one of the parties does not wish to be in contact);
- the ICRC is the body which is best placed for performing the role of intermediary;
- the parties must state that they will abstain from any acts of violence during the **whole** period when the ICRC plays this role. It is not only a matter of undertaking to abstain from violence while the ICRC delegates are on their way to the hostages, are performing their tasks and are returning to their base—as in the assistance actions. The parties must pledge to abstain from any acts of violence during the whole period when the negotiations are taking place;
- the ICRC is free to bring to an end at any moment its role of intermediary and to notify the parties of such termination.

It should be emphasized that, for the ICRC, to serve as an intermediary means essentially to transmit proposals from one party to another. The ICRC delegate in such a role will not guarantee the proposals made by one or other of the parties; nor is it his task to engage in any bargaining which might cast a doubt on the neutrality from which he must on no account swerve. At the most he could, very objectively, note that there exists a common ground for discussion should he believe he can perceive one.

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