

# A measure of humanity in internal disturbances and tensions: proposal for a Code of Conduct

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From time to time, States are affected by outbreaks of internal violence. Such upheavals are usually referred to as internal disturbances or tensions, disorders, states of emergency, revolutions or insurrections. These expressions all refer to situations that appear contrary to justice, order, stability and internal peace. There have been many examples of the kind in the past, and we know from the media that they continue to occur. Almost every nation in the world has a history marked by periods of insecurity and protest accompanied by outbreaks of violence.

The causes of the unrest differ from one situation to another. It would no doubt be tempting to analyse the reasons for resorting to violence, but it is not the aim of this paper. **Our purpose here is to consider the consequences of situations involving outbreaks of violence within the territory of a state.** These consequences vary widely. First and foremost, their effect is **political**, destroying minimum consensus within the state and disrupting the exchange of views among the various political forces; they also upset a country's **legal** system: resorting to exceptional measures gradually undermines the very foundation of the rule of law; there are likewise **economic** consequences, because the economy of a country in turmoil inevitably deteriorates over a long period of time, and, possibly, **social** repercussions, since prolonged emergencies change a country's social structure. These are not the only effects of unrest which may alter the very foundations of a State or

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society. The most immediate consequences, however, are always those that arouse **humanitarian** concern, in the sense that they affect human beings directly and dramatically in their dignity, their well-being, their health, their liberty and their lives.

The **purpose** of this paper is to suggest **a new approach aimed at better protection of, i.e. greater respect for, human values in situations of internal disturbances and tensions**. We propose a draft set of rules which, in our opinion, must be respected by all as a strictly necessary minimum, because they ensure a little humanity in all circumstances, **a “Code of Conduct” whose basic provisions have been drafted specifically for internal disturbances and tensions**. This Code of Conduct is also intended as an appeal to all, authorities **and** insurgents alike, to renounce the use of violence against human beings or to restrict the use of force to a minimum, within the limits of the law.

It must be made clear from the outset that the rules cited in this Code of Conduct are intended to restrict **all forms** of violence and thereby reduce the human suffering involved in internal disturbances and tensions.

To achieve this aim, it is essential to address all those who, in practice, may resort to force. This covers the established authorities, but also, at a different level, all those who commit acts of violence in opposing the authorities. In making this approach, we are not primarily concerned with the legality or legitimacy of violence used by representatives of the authorities: **the Code of Conduct recalls, first, that all excessive violence against human beings must be avoided and, second, that a person who suffers must be assisted, even if it was a lawful act that caused such suffering**. For instance, the fact that martial law has or has not been proclaimed or, if it has, that the measures taken are in conformity with obligations under international treaties or not, does not in any way alter the obligation to respect the fundamental rules described below. Likewise, the fact that the government in power was or was not the result of a democratic process is irrelevant in this particular context. **In short, if internal disturbances or tensions give rise to problems requiring humanitarian remedies, the rules stated in the proposed Code of Conduct must be respected.**

## **Internal disturbances and tensions: an attempt at defining the problem**

No instrument of international law provides a proper definition of the phenomena broadly termed “internal disturbances and tensions”.

Article 1, paragraph 2, of the Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of non-international armed conflicts (Protocol II) does mention “situations of internal disturbances and tensions”, but does not define them. The reference to “riots, isolated and sporadic acts of violence and other acts of a similar nature” in this same paragraph is merely an illustration and not a definition <sup>1</sup>.

Most international treaties for safeguarding human rights allow the states party to them to take measures derogating from certain obligations and guarantees at a time of public emergency which threatens the life of the nation <sup>2</sup>. On the other hand, states may not refuse the absolute obligation to respect a minimum number of rights explicitly indicated in the various treaties <sup>3</sup>. These provisions, however, do not make it possible to determine the field of application of the type of Code envisaged, since the right to derogate from certain obligations is not dependent upon criteria which we consider to be primordial from a humanitarian viewpoint. For instance, certain problems may require humanitarian remedies even if the authorities do not avail themselves of their right to take measures derogating from international obligations. Likewise, the field of application of rules embodied in a Code of Conduct in the event of internal disturbances and tensions must not depend on the proclamation of martial law by the national government. However, it will probably be necessary to resort to such a Code if martial law is in force, whether or not it has been officially proclaimed.

As we have said, human rights treaties do not define the situation in which we intend our Code of Conduct to apply. This has its advantages, but also definite drawbacks. The existence of a firm basis of well-known and accepted provisions would indeed have made it easier for the government representatives to begin considering a new proposal. The draft could then have been linked with a text already adopted, thus diminishing the risk of a leap in the dark. On the other hand, the

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<sup>1</sup> Sandoz, Swinarski, Zimmermann (ed.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva, 1987; commentary on Article 1, paragraph 2, of Protocol II, paragraph 4474.

<sup>2</sup> The description of a state of emergency varies from one treaty to another. See *International Covenant on Civil and Political Rights of 16 December 1966*, Article 4 — *American Convention on Human Rights of 22 November 1969*, Article 15 — *European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950*, Article 15 — *The African Charter on Human and People's Rights* does not provide for any such rule.

<sup>3</sup> See *above*, note 2.

absence of any restrictive definition permits a fresh approach leading to novel solutions.

In any case, it would be useless to attempt to define the scope of a Code of Conduct in the event of internal disturbances and tensions, for the simple reason that the actual circumstances are too different, and violence takes too many different forms, for them to be covered satisfactorily by a definition, which is necessarily rigid and restrictive. A simple description of a few characteristic aspects of the problem will more effectively serve our present purpose.

Internal disturbances and tensions are marked by a degree of violence exceeding that found in “normal” times. (By “normal” violence we mean, for instance, “ordinary” criminality or, in a different context, the “standard” measures of repression applied by the police within the limits of the law.) In general, the violence breaks out quite openly. The authorities resort to repressive action beyond the usual limits. Typical of such situations, then, are phenomena such as:

- mass arrests often followed by arbitrary detention,
- bad conditions of detention,
- disappearances, unacknowledged detention,
- ill-treatment, even torture,
- hostage-taking,
- suspension of or failure to respect the most elementary legal guarantees,

to quote but a few examples.

Open violence is not, however, the only situation in which such abuses occur. The mere existence of an oppressive regime may also give rise to problems having serious humanitarian consequences.

All the phenomena mentioned are also the expression, or the consequence, of a violation of fundamental rights of the individual, as proclaimed by the Universal Declaration of Human Rights (1948) and guaranteed by the various human rights treaties and by customary law. Serious violations of human rights will thus point to the existence of a situation covered by the Code. However, it must be remembered that the humanitarian approach is concerned less with the violation of rights—however fundamental—than with the **effects of such violation on the victims**, effects that can be summed up in the one word **suffering**. The humanitarian approach focuses on the actual situation of the victims which it strives to assist and protect, and not on redressing a legal wrong or on restoring the rule of law.

In this brief attempt to define the scope of a Code of Conduct in the event of internal disturbances and tensions, we must look again at

the sources of the violence that engenders problems of humanitarian concern. First, of course, we envisage the representatives of the authorities, who, either in the exercise of their functions or otherwise, go too far. Yet individuals and groups, large or small, also arouse humanitarian concern through the suffering they may cause to human beings. Hostage-taking, murder and unacknowledged detention are all threats to the life and human dignity of their victims, even if they are committed by individuals. The proposed Code should therefore also cover violence committed by persons unconnected with the authorities.

The International Committee of the Red Cross (ICRC) has published a descriptive definition of what it means by “internal disturbances and tensions”<sup>4</sup>. This text, which forms part of the ICRC’s internal principles, is used to determine situations in which the ICRC may offer its services to governments for protection activities beyond the field of application of the Geneva Conventions and their Additional Protocols. Such activities consist mainly in visiting places of detention with a view to improving the conditions of those held there for reasons connected with internal disturbances and tensions and, in particular, to safeguard them against ill-treatment<sup>5</sup>.

## **An overview of existing legislation**

Bad conditions of detention, hostage-taking and torture, to quote but three examples of phenomena all too frequently encountered in internal disturbances and tensions, result in great suffering that may even lead to death. The humanitarian approach must have a dual objective: (a) to take appropriate measures to forestall any problems requiring humanitarian remedies and (b) to end or at least alleviate the suffering and care for the victims, irrespective of the legal character of the violations committed.

In seeking a basis for the protection of individuals against violence and arbitrary treatment, it is natural to look first of all to the **national legal order**. Without question, national law, together with its institutions and mechanisms for the prevention and repression of abuses, must ensure that individual rights are effectively guaranteed. Nevertheless, at least since the proclamation, in 1948, of the Universal Declaration of Human Rights by the United Nations General Assembly, it is

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<sup>4</sup> See *ICRC Protection and Assistance Activities in situations not covered by International Humanitarian Law*, ICRC, Geneva, 1986, p. 4 ff, and *International Review of the Red Cross*, No. 262, January-February 1988, pp. 12, 13.

<sup>5</sup> See *above*, note 4, p. 11 ff, and p. 18 ff, respectively.

recognized that the protection of “the inherent dignity . . . of all members of the human family”<sup>6</sup> is a duty which is also incumbent upon the international community. International human rights legislation with its various treaties supplemented by rules of customary law, is the legal expression of that duty.

The written rules pertaining to **human rights** and those recognized as customary law are applicable at all times. Even in situations of internal crisis, the authorities are bound to respect them, except, however, when—“in time of public emergency which threatens the life of the nation” (Article 4, paragraph 1, of the 1966 Covenant on Civil and Political Rights)—a state of emergency may be proclaimed. States may then take measures derogating from their obligations under the human rights treaties, but they remain bound to respect at all times and in all circumstances a number of fundamental rights, the “hard core” of human rights which is the “minimum standard” required to safeguard human dignity, even in times of acute crisis<sup>7</sup>.

Thus, the International Covenant on Civil and Political Rights of 16 December 1966, the American Convention on Human Rights of 22 November 1969 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 all contain a list of inalienable rights. On the other hand, the African Charter on Human and People’s Rights of 28 June 1981 has no specific rules applicable in states of emergency.

The United Nations Covenant and the European and American Conventions forbid any derogation from the following rights and prohibitions:

- the right to life (Covenant, Article 6; European Convention, Article 2; American Convention, Article 4),
- the ban on torture (Articles 7, 3 and 5, respectively),
- the ban on slavery (Articles 8, 4 and 6, respectively),
- the ban on retroactive penal sanctions (Articles 15, 7 and 9, respectively).

The United Nations Covenant and the American Convention moreover provide full guarantees of the following rights:

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<sup>6</sup> Preambular paragraph 1 of the *Universal Declaration of Human Rights*.

<sup>7</sup> For a general overview of the problem, see in particular the following report drawn up by Nicole Questiaux: *Study on the implications for human rights of recent developments concerning situations known as states of siege or emergency*, drawn up for the Sub-Commission on Prevention of Discrimination and Protection of Minorities of 27 July 1982 (E/CN.4/Sub.2/1982/15). See also International Commission of Jurists, *States of Emergency. Their Impact on Human Rights*, 1983.

- everyone’s right to recognition as a person before the law (Articles 16 and 18, respectively),
- the right to freedom of conscience and religion (Articles 18 and 12, respectively).

The American Convention provides for additional inalienable rights, such as:

- the rights of the family (Article 17)
- the rights of the child (Article 19)
- the right to nationality (Article 20)
- the right to participate in government (Article 23).

The United Nations Covenant alone recognizes as inalienable the prohibition to imprison people on the ground of inability to fulfil a contractual obligation (Article 11).

Such is the current state of treaty law. Certain inalienable rights also form customary law or may even be peremptory norms of international law (*jus cogens*). These rights and rules are binding upon the entire community of states. In its well-known judgment in the case of the Corfu Channel, the International Court of Justice referred to “certain general and well recognized principles, namely: elementary considerations of humanity”<sup>8</sup>. However, in this context, there is no possibility of examining the question more closely and identifying such peremptory norms. We shall take it for granted that there are certain fundamental rights from which a state may never derogate.

A brief survey of **international humanitarian law** applicable in armed conflict will make it easier to determine this common core of rights applicable at all times and in all circumstances. This particular area of international law, which is highly codified for a somewhat restricted field of application, also has a “core of fundamental rights” to be observed in all forms of armed conflict. These rights are stated in Article 3 common to the Four Geneva Conventions and applicable to non-international armed conflicts. It has been generally recognized that the substance of Article 3, based on customary law, is part of *jus cogens*, and therefore binding on all states. Consequently, the obligations stated in Article 3 transcend that article’s field of application; they are valid for all forms of armed conflict. The International Court of Justice recently confirmed this in its judgment in the case of Nicaragua

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<sup>8</sup> International Court of Justice, *Corfu Channel case*, Judgment of 9 April 1949 (merits), p. 22.

versus the United States<sup>9</sup>. The Court reached the conclusion that Article 3, as part of customary law, constitutes a “minimum yardstick” applicable to all armed conflicts.

This “minimum standard” of international humanitarian law, contained in Article 3, largely corresponds to the body of guarantees from which governments cannot derogate, even in emergency situations. These rules are binding in armed conflicts, including **non-international armed conflicts**, and hence also logically in internal disturbances and tensions. The conclusion is, therefore, that in all circumstances and with no exception, international law obliges states to respect the individual by observing certain fundamental rules, even “in time of public emergency which threatens the life of the nation”<sup>10</sup>.

## A new set of rules?

Three main reasons prompted us to propose a new set of rules covering internal disturbances and tensions:

1. The inalienable rights listed in human rights treaties do not sufficiently take into account the **specific needs and problems arising in internal disturbances and tensions**. To quote the most striking example, the prohibition of imprisonment for inability to fulfil contractual obligations is maintained in times of emergency (Covenant, Article 11), yet it has absolutely nothing to do with the specific requirements of that situation. The inalienable rights included in these treaties were selected from the long list of rights guaranteed at all times. Their wording is intended for peacetime; the guarantees they embody take no account of the problems peculiar to internal disturbances or tensions. The lists of inalienable rights sometimes appear to have resulted from a process of elimination more inclined to consider what guarantees the authorities *do not wish* to provide in times of crisis rather than what guarantees are *particularly necessary*, in times of internal disturbances and tensions, to safeguard human lives and dignity.

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<sup>9</sup> International Court of Justice, *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua versus United States of America)*, Judgment of 27 June 1986 (merits), paragraph 218 (p. 104).

<sup>10</sup> As stated in the International Covenant on Civil and Political Rights, Article 4, paragraph 1.

Nevertheless, it must not be forgotten that the written law of human rights is not the only source of international law applicable in the event of internal crisis. Customary law also has rules which apply in such situations. Moreover, the general principles of international law may either replace or supplement the written guarantees of human rights. The principle of proportionality is a good example. The question of whether or not there is adequate legal protection of individuals in situations of emergency is therefore not easy to answer.

**Our purpose in drawing up a Code of Conduct is to bring together a number of existing rules that will meet the specific requirements of internal disturbances and tensions.** The Code does not propose new rules of law, but it simply **recalls rules** generally considered as being part of customary law or appearing to express general legal principles. **The fundamental nature of the rights protected by these rules should ensure their overall and undisputed acceptance. The dividing line between rules of positive law and the rules of law in the making is not always obvious, however, and opinions may differ as to the legal force of one or other of the laws proposed. Their legitimacy, by contrast, we are convinced, is beyond doubt.**

2. Situations of internal disturbances and tensions pose serious problems to the authorities responsible for maintaining or re-establishing order. In such situations there is a special danger of loss of control, through more or less grave breaches of even the most fundamental human rights. There is a very great need for protective devices that will prevent the worst excesses. The training of those responsible for maintaining order (the police, the armed forces, civil and military magistrates, etc.) is an important and delicate task. A code of conduct may act as a summary and a reminder of some of the rules of behaviour that must guide the work of the forces of law and order (in a broad sense). It must therefore be didactic in character.
3. The obligations of international law are generally binding on states and not on individuals. This is true of human rights instruments; they define the power of the state in regard to the individuals under its jurisdiction. All treaties, and hence the entire catalogue of inalienable rights, are thus binding on the authorities. The situation differs as regards international humanitarian law: its rules are binding on both parties to an armed conflict. This is also the case in non-international armed conflicts, even though at least one of the parties is

not a governmental authority. Internal disturbances and tensions are not, however, by definition, armed conflicts, since there is no clash between two official parties using established armed forces. Persons that oppose government authorities (“demonstrators”, “insurgents”, “revolutionaries”, etc.) are not directly affected by obligations under international law. But they too need to be urged to act with moderation. A code of conduct is a way of reaching everyone and of reminding those who might resort to violence against other human beings of a few basic rules.

Our opinion is, therefore, that there are good reasons for producing a compendium of rules specially adapted to requirements in internal disturbances and tensions. And yet the ICRC, which has been carrying out protection activities in this context since 1919, in particular by visiting persons detained in such circumstances, has not deemed itself competent to devise specific rules applicable in internal strife<sup>11</sup>. It has admittedly clarified its own competence to act in this context (in the form of a provision included in the Statutes of the Movement<sup>12</sup> and of resolutions adopted by the International Conference of the Red Cross and Red Crescent<sup>13</sup>). But the ICRC has not followed the course which it successfully adopted in dealing with the law of armed conflicts, namely, the codification and development of rules of international humanitarian law. It prefers, in this instance, to act without the backing of any specific legal instruments.

The ICRC's position is by no means fortuitous or due to a simple lack of imagination. It had in fact already looked into the question whether it might be useful to draw up new rules: in 1971, the ICRC submitted to the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts a draft *declaration of fundamental rights of the individual in time of internal disturbances or public emergency*<sup>14</sup>.

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<sup>11</sup> See publication mentioned in note 4, and also Jacques Moreillon, *Le Comité international de la Croix-Rouge et la Protection de Détenus Politiques*, Lausanne, 1973.

<sup>12</sup> Statutes of the International Movement of the Red Cross and Red Crescent, adopted by the Twenty-fifth International Conference of the Red Cross, October 1986, Article 5 d). See also ICRC Statutes of 21 June 1973 — presently being revised, Article 4 d).

<sup>13</sup> See references and texts in the ICRC publication mentioned in note 4.

<sup>14</sup> Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, *Protection of victims of non-international armed conflicts*, Volume V of the documentation presented by the ICRC, Geneva, 1971, pp. 85-88.

The draft consisted of a short introduction, a definition of the scope of the declaration, and eight fundamental rules to be respected “in all circumstances, without any discrimination”. The Conference of Experts, whose mandate was to prepare the reaffirmation and development of international humanitarian law which later led to the adoption, on 8 June 1977, of the two Protocols additional to the Geneva Conventions of 12 August 1949, decided not to engage in any discussion on the draft declaration<sup>15</sup>. The Report on the work of the Conference refers only briefly to this item, suggesting that the experts did not wish to make a thorough study of the ICRC’s proposal because they did not want to jeopardize the essential purpose of the Conference, which was to update humanitarian law applicable in armed conflicts. The Report also states that according to the government experts, any attempt to press ahead with the declaration might run into very great difficulties, since “that was a matter which lay clearly within the sovereignty of States”<sup>16</sup>. The obvious conclusion is that the Conference’s agenda was too heavy, and the draft was accordingly laid aside.

The years that followed the 1972 Conference were marked by the negotiation, adoption and promotion of the 1977 Additional Protocols. There was no question of simultaneously developing another project of such capital importance. It was not until early 1983 that the ICRC finally decided to resume its examination of the specific problems posed by the legal protection of victims of internal disturbances and tension. It subsequently organized several consultations with experts, without, however, arriving at any concrete proposals<sup>17, 18</sup>.

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<sup>15</sup> Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Second session), Report on the work of the Conference, Volume 1, Geneva, 1972, paragraphs 2.564-2.570, pp. 124 and 125.

<sup>16</sup> Report (see above, note 15), paragraph 2.567, page 125.

<sup>17</sup> ICRC Annual Reports 1983, p. 83, 1984, p. 85, 1985, p. 85 and 1986, p. 88.

<sup>18</sup> For a full review of the problem, see the works of Professor Th. Meron, who, in 1983 also, proposed “the drafting and adoption of such an instrument, preferably, at least as a first step in the form of a solemn declaration” with rules pertaining specifically to the problems resulting from internal disturbances and tension: Theodor Meron, “On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument”, *American Journal of International Law*, Vol. 77 (1983) 589, 605/6. By the same author, see also: “Towards a Humanitarian Declaration on Internal Strife”, 78 *AJIL* (1984) 859; and: *Human Rights in Internal Strife: Their International Protection*, Hersch Lauterpacht Memorial Lectures, Cambridge, 1987.

## Draft “Code of Conduct in the event of internal disturbances and tensions”

It now seems time to put to account the experience acquired in the consideration and discussion of a number of draft declarations. With the sole intention of contributing to the debate on providing better protection to people caught up in a sequence of violent events, we are here putting forward, in a personal capacity, a draft “Code of Conduct in the event of internal disturbances and tensions”. This text was drafted on the basis of work done within the ICRC, but it also reflects the outcome of a large number of discussions among experts outside the institution.

The draft Code <sup>19</sup> is intended to **restate** a few fundamental rules which it is particularly important to respect in internal disturbances and tensions. It is not a proposal for a new treaty. We prefer the form of a Code of Conduct, which seems more suitable for recalling rules to be observed “on the spot”. There is no reference, for instance, to specific legal provisions. The choice of a non-binding code shows that the purpose of the exercise is not to create new legal obligations but to **recall existing obligations**.

Obviously, most of the rules reiterated in the draft Code are drawn from international law relating to the protection of human rights. This must be so, because internal disturbances and tensions automatically fall within the scope of international human rights law. The primary aim of that law is to protect people against the abuse of power by those who wield it. This approach, however, does not take sufficient account of all the problems caused by the effects of violence. The rules of traditional human rights law must be supplemented by two other categories of provisions: on the one hand, by obligations to act (such as the duty to care for the wounded) and on the other, by rules of behaviour (such as the obligation to restrict the use of force to a minimum). The Geneva Conventions and their Additional Protocols, although not applicable in such situations, have served as a model for the drafting of several of these rules. Humanitarian law, too, is no more than the application of basic rules or fundamental principles of general international law to the specific problems of armed conflicts.

In situations of internal disturbances or tensions, the use of unrestrained force may be initiated either by the authorities or by those

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<sup>19</sup> See *below*, p. 51 ff.

who oppose them. Violence therefore has different origins, and the rules consequently are directed to all those who may resort to violence and thus threaten the lives or dignity of innocent people. The Code does not wish and is not able to grant any legitimacy or legality either to the authorities or to individuals at whom it is aimed. Its scope is limited to restating a few principles which everyone must respect, at all times and in all circumstances.

The draft does not attempt to define a field of application. Such an undertaking would be extremely dubious, given the great diversity of situations comprised in “internal disturbances and tensions”. The ordinary meaning of the words must be enough to indicate when there is a particular need to resort to such rules. This way of proceeding is sound, since the rules cited for use in internal disturbances and tensions are in any event part of the body of international law applicable at all times.

Although the content of the rules is of a clearly normative character, the language deliberately eschews legal terminology, for the simple reason that since the text appeals to everyone, its wording must be clear to all.

Such a Code of Conduct will not in any way affect the applicability of an instrument of international law. It could never be quoted against a rule of international or national law granting wider protection.

Needless to say, the adoption of such a Code of Conduct would never justify the recourse to violence. None of its rules may be quoted as authorizing the use of violence or as an appeal to tolerate its practice. As the introduction clearly points out, the responsibility of governments to maintain order, or if necessary to restore it, is one of the foundations of order itself, without which there can be no respect for fundamental rights. The rules recall the limits which any recourse to violence, even if legitimate, must respect in order to ensure recognition of “the inherent dignity of all members of the human family” (Universal Declaration of Human Rights).

## **CODE OF CONDUCT IN THE EVENT OF INTERNAL DISTURBANCES AND TENSIONS**

There is no justification whatsoever for acts of terrorism or torture, indiscriminate violence or enforced disappearances, the taking of hostages or any other grave outrages upon personal dignity. However serious the disturbances and tension in a country may be, certain fundamental rules of international law, whether that law be customary or codified, must be respected by all.

In order to make them as widely known as possible, this Code of Conduct sets down a number of fundamental rules which must be observed even in the event of internal disturbances and tension. It is addressed to all. Neither the government's responsibility to maintain or restore law and order, nor any other reason put forward by opponents of the established authorities, can justify the violation of these rules.

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Even in situations of internal disturbances and tensions, every person can and must respect at least the following rules, without discrimination:

1. Every person shall be treated with the respect due to the inherent dignity of the human person. His or her life, moral and physical integrity, and honour shall be respected in all circumstances and regardless of the allegations against him or her. No one shall be arbitrarily deprived of his or her life.
2. Acts which are prohibited in particular are murder, torture and all other cruel, inhuman or degrading treatment or punishment, the taking of hostages, enforced or involuntary disappearance of persons, collective penalties and all acts, methods and practices of terrorism, whether committed by public officials or by any other person.

3. Persons exercising police powers shall, out of respect for human dignity, limit their use of force to the strictly necessary minimum.
4. No one shall be arbitrarily deprived of his or her liberty. Anyone who is arrested, detained, interned or deprived in any other way of freedom of movement shall be informed without delay of the reasons for which such measures have been taken. The authorities responsible for the detention of a person have the duty to inform that person's family of his or her situation. The measures taken against any person shall be reviewed periodically.
5. Any person deprived of his or her liberty shall be treated humanely. He or she shall be afforded proper conditions with regard to hygiene, food, quarters and, where applicable, work. Wounded or sick detainees shall receive the care they require. A person deprived of his or her liberty shall have the possibility of communicating periodically with his or her family.
6. Other restrictions of individual liberty, such as forcible displacement or assigned residence, may be imposed only by decision of a competent authority. Persons affected by such measures shall be treated humanely. No one may be deprived of his or her nationality nor expelled from his or her own country.
7. No one shall be held guilty on account of acts or omissions which did not constitute a criminal offence at the time when they took place.
8. No one shall be sentenced and no penalty carried out without a judgment handed down by an impartial court respecting the fundamental judicial guarantees. In particular, any person charged with an offence:
  - a) shall be presumed innocent until proved guilty according to the law;
  - b) shall be informed of the particulars of the offence alleged against him or her;
  - c) shall be afforded the necessary rights and means of defence;
  - d) shall be tried without undue delay.

A statement extracted under torture shall not be invoked as evidence against the victim or anyone else.

A convicted person shall be advised of his or her judicial and other remedies.

9. Inasmuch as retention of the death penalty is considered necessary, it may be pronounced only for the most serious crimes. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence, nor carried out on pregnant women or mothers of young children. A condemned person has the right to ask for clemency; he or she must be advised of this right.

Any summary or arbitrary execution constitutes murder.

10. All wounded and sick persons shall receive care and attention, without discrimination. Medical assistance shall be facilitated. No one shall suffer harassment for the simple fact of having assisted wounded or sick persons.

11. The authorities concerned shall do everything possible to establish the whereabouts of persons reported missing. The authorities shall inform the next of kin on the progress of the investigation and notify them of any result.

12. Children, particularly if deprived of their liberty, shall be accorded the respect due to them on account of their age. They must never be compelled or encouraged to take part in acts of violence.

13. The authorities concerned shall take all necessary measures to ensure that these rules are known and respected by all. They shall include them in the training of those exercising police powers, such as members of the police forces, prison staff and, where applicable, members of the armed forces. The authorities shall prosecute in accordance with national law anyone who violates these rules.

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*Note.* — The sole aim of this Code of Conduct is to recall fundamental rules that must be respected even in situations of internal disturbances and tension. It must not be interpreted as limiting the protection afforded by international law, whether written or customary, or by national legislation.

## BRIEF COMMENTARY ON THE THIRTEEN RULES OF THE “CODE OF CONDUCT IN THE EVENT OF INTERNAL DISTURBANCES AND TENSIONS”

### **First rule**

This rule is drawn from the body of rights enunciated in the *Universal Declaration of Human Rights* of 10 December 1948 and, more specifically, from the guarantee of the right to life. The right to life is one of the inalienable rights included in the International Covenant on Civil and Political Rights (of 16 December 1966—Art. 6) and in regional conventions. It is part of customary law. Humanitarian law treaties (Geneva Conventions of 12 August 1949 for the Protection of the Victims of War and its two Additional Protocols of 8 June 1977) protect human life and dignity in situations of armed conflict.

Restating the obligation to respect the human person “regardless of the allegations against him or her” seems necessary, since in situations of internal disturbances and tensions, where hatred and contempt prevail, outrages by one party often convince the other that any action whatever against the suspected perpetrator is acceptable.

### **Second rule**

The various prohibitions stated in the second rule forbid all forms of violence, whatever their origin. They are based upon several instruments of international law, particularly human rights treaties, humanitarian law conventions and customary law. These prohibitions cover also acts committed by third parties on behalf of the authorities.

See, in particular, the Universal Declaration of Human Rights and:

- International Covenant on Civil and Political Rights of 16 December 1966, particularly Articles 6 and 7, from which no derogation is possible;
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;
  - International Convention against the Taking of Hostages of 19 December 1979;
- and the regional human rights conventions.

See also the following documents issued by the United Nations Commission on Human Rights:

- reports of the Special Rapporteur on questions relevant to torture (latest report: E/CN.4/1987/13, of 13 January 1987);
- reports of the Special Rapporteur on summary and arbitrary executions (latest report: E/CN.4/1987/20, of 22 January 1987);
- reports of the Working Group on enforced or involuntary disappearances (latest report: E/CN.4/1987/15, of 24 December 1986).

### **Third rule**

This rule, which deals with the use of force by government agents, is based on the *Code of conduct for law enforcement officials* (adopted by the UN General Assembly in its Resolution 34/169 of 17 December 1979). Article 3 of this Code stipulates that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”, and the commentary on Article 3 specifies that “national law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision”.

### **Fourth rule**

One of the purposes of this rule is to prevent arbitrary deprivation of liberty and to forbid unacknowledged detention, which too often leads to the disappearance and subsequent death of the victim. This rule further stipulates that the authorities must inform an arrested person’s family of his or her whereabouts and condition. Today the right of families to know the fate of their relatives is expressly recognized as applying in situations of international armed conflict (see Article 32, Protocol I of 8 June 1977). There are good reasons therefore to propose that this right be recognized also in situations not involving armed conflict. Although this provision has no direct equivalent in human rights instruments, a parallel can be made with Article 9 of the Universal Declaration of Human Rights, which forbids arbitrary arrest and detention, and with Article 16, paragraph 3, of that Declaration, which stipulates that families are entitled to protection.

### **Fifth rule**

The object of this group of provisions is to guarantee that imprisoned persons are treated humanely, whatever the reason for their detention. They are taken largely from the *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955) and approved by the Economic and Social Council (Resolution 663C (XXIV) of 31 July 1957; amendment approved in Resolution 2076 (LXII) of 13 May 1977) and from the *Principles of medical ethics* relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (Annex to Resolution 37/194 adopted on 18 December 1982 by the United Nations General Assembly).

### **Sixth rule**

While the restriction of individual liberty is subject to precise limits under the Geneva Conventions of 12 August 1949 and their Additional Protocols, international law is less specific regarding situations not covered by humanitarian instruments. Nevertheless, the obligation to treat humanely persons affected by such restrictions is founded upon fundamental principles of international law.

### **Seventh and eighth rules**

These rules ensure that any person charged with an offence is given a fair trial. Judicial guarantees admittedly do not form part of the non-derogable rights of the International Covenant on Civil and Political Rights (see Article 14). However, there is an obvious correlation between the protection of certain rights (derogable or not) and the judicial guarantees which alone can ensure that these rights are effectively protected. There must therefore be a core of judicial guarantees that are absolute. In this connection, see the *Syracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984)*, information document issued by the Commission on Human Rights on 28 September 1984 (E/CN.4/1985/4) and *Human Rights Quarterly*, Volume 7, 1985, pages 3-34).

It is interesting to note that Article 3 common to the Geneva Conventions of 12 August 1949 and, to a greater extent, Article 6 of Protocol II largely guarantee the conduct of a fair trial. If respect for minimum judicial guarantees can be required in non-international armed conflicts, it is justifiable to expect the same degree of compliance with the idea of “fair trial” to be maintained in situations of internal disturbances and tension.

Both rules are taken from the relevant provisions of the International Covenant on Civil and Political Rights of 1966, from Article 75 of Protocol I of 8 June 1977 (which codifies fundamental guarantees in the event of international armed conflict) and from Article 6 of Protocol II of 8 June 1977 relating to non-international armed conflicts.

### **Ninth rule**

General international law does not proscribe the death penalty in internal disturbances and tensions. This rule merely restates the limits that must be observed if it is applied. These limits are based upon the right to life, which is absolute. The rule itself was drafted on the basis of Article 6 of Protocol II of 8 June 1977. See also *Safeguards guaranteeing protection of the rights of those facing the death penalty* (Annex 2, Resolution 1984/50, Economic and Social Council, 25 May 1984).

### **Tenth rule**

Caring for the wounded and sick and doing everything to facilitate such assistance are fundamental principles of humanitarian law. They must be included in any set of fundamental rules whose aim is to protect and assist the victims of internal disturbances or tension. They all constitute an obligation to act: the authorities, their agents, and private individuals alike must take the measures required. And none must suffer harmful consequences for doing so.

### **Eleventh rule**

Comments on this rule concerning the obligation to trace missing persons are similar to those on the *fourth rule*. Article 32 of Protocol I of 8 June 1977 provides for the right of families to know the fate of

their relatives. Disappearances have become such a widely spread phenomenon during internal disturbances and tensions and have caused so much suffering that it was considered necessary to restate this obligation by means of a specific provision.

### **Twelfth rule**

These precise duties towards children need no justification. Human rights and humanitarian law lay down several provisions regarding children in order to grant them special protection due to their age. The statement that children must not be used to commit acts of violence is taken from the two Protocols additional to the Geneva Conventions (Protocol I, Article 77, and Protocol II, Article 4, paragraph 3). It is a practical example of the general obligation to protect children, which is part of the binding rules of customary law.

### **Thirteenth rule**

This last rule once again states the duty to take all necessary measures to ensure that the obligations laid down in the Code of Conduct are known to all who must respect them. This duty proceeds directly from the obligation incumbent on every state with regard to customary law, or on every state party to a convention, to respect both its customary and its treaty law obligations. The final reference to the fact that states must prosecute in the event of violations of international obligations is also meant only as a reminder.

**Hans-Peter Gasser**

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