

## The Fate of Political Detainees

*The third issue of Aspects, which has just come out, contains an article by Mrs. Danièle Bujard, legal expert at the ICRC, on the subject of political detainees. Readers of International Review, we believe, will most probably find it of considerable interest, in view of its topical content, at a time when internal tension appears to be on the increase in various parts of the world while the legal basis for ICRC intervention is contained within very narrow limits.*

Throughout the world hundreds of thousands of men are deprived of freedom for having professed political or religious opinions opposing those of their country's leaders, or for having manifested their discontent with social conditions.

The overthrow of a legal government by the army may not always be accompanied by bloodshed; however, large-scale arrests of the former government's supporters will inevitably occur, with a concomitant situation of internal tension.

Should part of the population rise up spontaneously against living conditions to which it is subjected, the legal government will unleash special anti-riot police, and sometimes even the army, against any such groups which may be organized or totally unorganized and weakly armed. There will be casualties and many persons arrested: the situation is one of internal disorder.

It may occur also that minority groups endeavour to seize power by creating disorder, resorting to terrorism and destruction.

"Political prisoners" is a term which most frequently connotes persons arrested under the conditions just described. It is true that governments are able to deploy forces of repression of such strength that any rebellion has become almost hopeless unless part of the police or armed forces defects to the insurgents.

And yet, over the last twenty years, many local non-international conflicts have been waged in all quarters of the globe. International conflicts, although less numerous, have not been wanting from the scene of violence, and it must not be forgotten that in conflicts of all types, from international war to internal disturbances, the political detainee has become a regular feature.

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Legal protection for political prisoners, whatever the reasons for their arrest, is practically non-existent. The 1949 Geneva Conventions for the protection of war victims do not apply to the nationals of a State in the event of international armed conflict. Article 3, common to those Conventions and applicable to non-international armed conflict, gives some basic protection to the victims of such conflicts, forbidding, *inter alia*, torture and ill-treatment and rough justice; it does not, however, prescribe any particular treatment of persons deprived of their freedom or any supervision of such treatment.

No doubt some hope may be pinned to the international treaties on Human Rights, some provisions of which must be applied in all circumstances, even in the event of exceptional public emergency. However, although some regional conventions on Human Rights have entered into force, the international treaties have not yet been ratified by a sufficient number of States. One way of alleviating the plight of political detainees would be to improve conditions for all detainees throughout the world, perhaps by application of the "Minimum Rules for the Treatment of Detainees" drawn up by the United Nations and which, it is held in some quarters, should be applied to all persons deprived of freedom, whether for criminal offences or for their opinions. For the time being, however, the nearest approach to the international recognition of these Minimum Rules is a 1957 recommendation by the U.N. Economic and Social Council. They therefore do not have the force of law.

How, then, can the plight of these innumerable persons be alleviated, of these persons of whom so many are arrested secretly and detained without proper trial, subjected to physical and mental

ill-treatment and, worst of all, forgotten for years even when the government against which they revolted has been replaced or when ideology has changed?

Many international organizations are trying to have their conditions improved. The Red Cross, in particular, has long been concerned for the problem and has endeavoured to provide relief and improve detention conditions for political prisoners. Since the beginning of the century, in the context of non-international armed conflict and of internal disturbances, the International Committee of the Red Cross has been active in this field. It has been encouraged so to do by International Conferences of the Red Cross which have adopted many resolutions recognizing that all victims of civil war or internal disturbances should be helped in accordance with Red Cross principles. Moreover, the ICRC has been able to act on the basis of its Statutes which stipulate that its role is, *inter alia*, "to take action in its capacity as a neutral institution, especially in case of civil war or internal strife".

Over the last two decades, it has endeavoured to extend its scope to certain situations of internal tension. Without any legal basis, the ICRC's action is dependent on its power of persuasion; it relies entirely on the good will of governments which authorize it to visit detention centres. From 1958 to 1969, in the course of its work during internal disturbances and tension, the ICRC visited over 100,000 persons detained as a result of situations not really covered by the 1949 Geneva Conventions. Consequently, in practice, and invoking its generally recognized right to take humanitarian action on its own initiative, it has achieved very encouraging results. It is first and foremost the treatment of detainees for which the ICRC is concerned. The purpose of its visits is to ensure that detention conditions are humane, and to arrange, in case of need, for improvements. In addition, the ICRC provides material comforts and, as far as it can, assists the families in distress as a result of the arrest of one of their members. Traditionally discreet, the International Committee does not publicize its work, and reports on detention centres solely to the government of the detaining Power, whose confidence it must retain, for the benefit of the detainees.

But the ICRC does not overlook the fact that political detainees have no legal protection to ensure that they receive humane treatment at all times and in all circumstances. In addition to its practical work, it examines ways and means of improving relevant international law. However, let us foster no illusions; progress will be slow, for the political detainee question impinges upon the sovereignty of States which jealously guard their prerogatives and watch over their security.

The ICRC must therefore unremittingly continue its work in the field and, from case to case, offer its services on the basis of its impartiality and neutrality, appealing to the political and moral responsibility of governments. It must continue, without respite and without being discouraged, its work in the field in order to broaden its sphere of action and to establish a practice which we hope it will be easier to sanction in an international legal instrument.

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