

ICRC policy on operational information

Comments by the ICRC

1. Comments in the Tansley Report regarding the ICRC's information policy

The policy of discretion (of the ICRC) has, in the past, been justified on the grounds of ensuring that the most possible is achieved for the victims. While Red Cross has achieved much on the basis of discretion in the past, the movement should recognise the danger that discretion is comfortable to both the controlling authority and the Red Cross. Thus it may be continued not because it is necessary but simply because it is comfortable.

While it is generally agreed by many that some type of discretion contributes to Red Cross success and is therefore one of the unwritten 'principles' of the movement in protection matters, it may be well to remember that the ultimate test of Red Cross acceptability is action within the bounds of expectations. If there is a general expectation that Red Cross should use some types of publicity, then such action should be acceptable even if opposed by a particular party (p. 71).

In short, while recognizing that the policy of discretion has generally served the interests of the victims, the Tansley Report suggests that in future the ICRC should make this policy more flexible by engaging in certain forms of information activity which would eventually be all the more readily accepted, as they would become an integral part of established doctrine. This development, according to the Tansley Report, could only strengthen the position of the Red Cross in the eyes of authorities which violate with impunity both humane principles and humanitarian law. This change should ultimately be in the interest of the victims.

2. The reasons for the policy of discretion

The information supplied by the ICRC on its operations is determined by the interests of the victims. This calls for discretion, not so much with regard to what the institution does, but to what it sees and hears in the course of its representatives' activities in the field. For example, the ICRC does not publish its delegates' findings in prisons and detention camps. These are contained in reports sent only to the authorities concerned.

Discretion seems even more necessary today, since the humanitarian questions dealt with by the ICRC, by their very nature, are set in a highly political context. If it is to fulfil its role as a neutral intermediary between belligerents, and especially to be recognized as such, the ICRC must take care not to allow itself to become involved in controversies of a political character, which are very often conducted publicly. In addition, the ICRC carries on extremely delicate negotiations whose only chance of success depends on their remaining confidential.

In conclusion, discretion is a working method that has long since proved its worth and does not indicate a preference for secrecy.

3. Limits to the policy of discretion

It is an exaggeration to state, as did the Tansley Report, that discretion is one of the movement's *unwritten principles* with regard to protection (p. 71). Of course, States must be able to rely on the traditional discretion of the ICRC, but not on its acquiescent silence; discretion has its limits.

The ICRC's discretion is almost exclusively concerned with activities under the heading *protection*. In the field of *assistance*, discretion is rarely helpful to victims. In fact, the reverse is normally the case: the ICRC has to alert the international community, in particular governments and National Societies, in order to obtain the necessary resources. Like other charitable organizations, therefore, the ICRC, to justify its requests for support, must supply as much information as possible on the situation of victims and their needs.

In *protection*, however, discretion is the rule and publicity the exception. As may be seen in the following section, the ICRC doctrine does nevertheless determine a number of criteria which, depending on the situation, make it possible to decide on the policy to be followed concerning information, more particularly to distinguish those cases that demand some *publicity*, to use the term of the Tansley Report, or at least a public communication.

4. Information policy in the event of violation of fundamental humanitarian principles or of the Geneva Conventions

In the event of serious violations of fundamental humanitarian principles or of the Geneva Conventions, established doctrine does not consider discretion to be an unbreakable rule. Although the ICRC normally refrains from making public statements on acts attributed to belligerents, it does from time to time drop its reserve. Two criteria must be met if it is to do so: on the one hand, such publicity must be in the interest of the persons or groups affected or threatened; on the other hand, ICRC delegates must have been eye-witnesses of the violations alleged. But it must be admitted that such cases have been extremely rare in comparison with the number of violations of humanitarian law. This accounts for apparent discrepancies of treatment of comparable situations.

While maintaining its traditional policy of discretion and its concern for the interest of the victims, the ICRC will therefore make an effort to publish more systematically in its *Annual Report* or, if circumstances require (especially in the case of urgent problems), through the press, such matters as:

- appeals of a general nature addressed to belligerents asking them to respect the Geneva Conventions and fundamental humanitarian principles;
- special approaches to belligerents in grave cases of non-observance of the Conventions witnessed by its delegates;
- requests to the parties to obtain the essential facilities which must be granted to the ICRC in conformity with the Geneva Conventions;
- offers of the ICRC's services addressed, in accordance with Article 3 common to the four Geneva Conventions, to the parties to a non-international armed conflict, and the response thereto.

The forms of publicity proposed by the Tansley Report, such as the publication of *a list of problems encountered by the ICRC over time with regard to the treatment of political prisoners or prisoners of war, without giving particular names, dates and places* (p. 71) might be adopted, but precisely because of their general and anonymous character they seem unlikely to have the desired effect on international public opinion.

Regarding a *Red Cross statement as to the extent of torture in the world* (p. 71), attention is drawn to the publication in the *International Review of the Red Cross*¹ of a document by the ICRC on this important subject.

¹ *International Review*, December 1976, pp. 610-616.

5. Information policy under the Law of The Hague

The ICRC has often been requested by governments or other political bodies to take a stand, for example, concerning the use of napalm or indiscriminate bombing.

In general, the ICRC has refrained from stating its attitude on these subjects, believing not only that the rules on the conduct of hostilities do not come directly within its competence, but that this type of intervention would inevitably involve it in political affairs.

Nevertheless, some time ago, the attitude of the ICRC on this matter underwent a change. The International Committee has in fact found it difficult, if not impossible, to advance the law of Geneva while ignoring the loopholes in the law of The Hague, the interdependence of these two laws having become more and more obvious in practice. The ICRC therefore proposed that the draft Protocols additional to the Geneva Conventions should include several provisions in the field of the law of The Hague. On the same lines, it also organized two conferences of government experts to discuss the use of certain conventional weapons.

As a result, the ICRC will in the future face problems of application of the Protocol provisions relating to the conduct of hostilities. If these provisions are violated, it may be obliged to make its voice heard. In such cases, its policy will be analogous to that laid down for violations of humanitarian law as defined above.

6. Information policy on activities outside the Conventions

In this area, the prime aim of the ICRC is to obtain access to political detainees, to bring them protection and assistance. These activities are usually possible only because they are removed from the glare of publicity, the more so since they are outside the scope of international humanitarian law. They are the result of negotiations conducted on a purely pragmatic basis, which means that the ICRC's room for manoeuvre is severely limited. Consequently, information published by the ICRC about its activities in aid of political detainees is very succinct, and generally comprises only the names of places of detention visited and the date of the visit to each, together with a reference to the conditions under which the visits were made (e.g., interviews without witnesses).

These communications contain no details of the delegates' findings, these being transmitted only to the detaining authorities. It should be pointed out, however, that the ICRC reserves the right to state publicly the limits of its action if a government does not respect the procedure agreed on or attempts to exploit abusively—for the purposes of propa-

ganda, for example—the activities of the ICRC. Moreover, if the detaining authorities publish partially or inaccurately the reports made to them by the ICRC, the Committee may react by making the reports public in their entirety.

The ICRC may, moreover, suspend or terminate its protection activities if it is convinced that the presence of its delegates serves as a cover-up for the detaining authorities and that it is not or is no longer possible for it to continue working in the interest of the victims. Such an important decision is then the subject of a detailed public statement.

Finally, the ICRC may publish a detaining authority's refusal of its services. In fact, the discretion it has shown on the subject hitherto is in some ways an encouragement to those States which systematically refuse any protection activities by the ICRC. While admitting that, from the purely legal viewpoint, its activities in aid of political detainees are outside the scope of the Geneva Conventions, the ICRC should be enabled to discharge the humanitarian duties which no other institution can accomplish. This is almost always the case with regard to political detainees. For this reason, it considers that a refusal in such a case constitutes a denial of the humanitarian mission conferred upon it by the international community, and that that community should be informed of the fact.
