

International Solidarity and Protection of Political Detainees¹

by Jacques Moreillon

To speak on the theme "Solidarity and Protection of Political Detainees" is unquestionably a difficult undertaking. Today, in 1980, the problem of so-called "political" detainees is one of the most controversial of issues and also one that has become heavily politicized. It is no easy matter to discern any truly universal solidarity concerning such a problem.

Difficulties arise already when a definition has to be agreed upon. In the defining of human rights, in contrast, there is unanimity at least on principles: States and experts subscribe to the same Universal Declaration of Human Rights and the same Covenants. Of course, there are divergent views on the application of these texts and on the emphasis which should be laid on the pursuit of this or that particular right rather than on others, but the basis is universal and it can be said that there is genuine solidarity concerning the objectives which should be ideally achieved in the field of human rights.

But in the case of political detainees, there is nothing of the kind. In the first place, there is no commonly accepted definition. In the climate of ideological confrontation which is characteristic of most

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situations of internal disturbances and tension, the gravity of the offences with which political detainees are charged are viewed from diametrically opposite standpoints. In the eyes of some, they are dangerous trouble-makers, for others they are heroes. The ideals which lead one man to prison may well raise another to power. Often, governments which imprison political detainees do not recognize that they belong to a special category of detainee, or else their own definition of political detainees is such that it applies only to situations which are unknown in their country.

In an international community where, at least by all appearances, order is the outcome of respect for law and the law is the creation of the State, one can conceive of the State's distrust of individuals whose common denominator is their opposition to the power of the State in their own country.

And yet, in spite of these apparently insuperable difficulties, the ICRC believes that international and universal solidarity in the matter of political detainees is possible. To achieve it there is one golden rule: a clear distinction must be made between the struggle for the release of political detainees on the one hand, and concern for their conditions of detention on the other, in order to limit the "scope of universal solidarity" to their *treatment* alone.

There will nearly always be some divergence on the reasons put forward to justify the imprisonment of certain categories of persons, but it will be less difficult to reach agreement on how they should be treated during incarceration. Everyone will agree—in theory at least—that all persons, irrespective of the charges against them and of the designation under which they may be classified, are entitled to treatment which conforms at least to a minimum standard. For this there is a theoretical basis which is universally accepted because it is consistent with unanimously recognized fundamental human rights.

It is therefore possible, quite objectively, to discern a theoretically international solidarity on the question of *treatment* of all detainees, including so-called political detainees.

Obviously, from the theoretical position to practical action for the benefit of detainees there is quite a step. For this purpose, the ICRC observes rules which it has set itself and which should permit its work to be universally understood and accepted, and hence to be the expression of international solidarity in this field.

The first rule is that *action* must be taken. It was the help given at Solferino which was the source of the universality of the Red Cross and of international humanitarian law, and this philanthropic urge can be easily understood without need of explanation.

The second rule is that such action must be *humanitarian*. Its purpose should be to prevent suffering in excess of that resulting from being put *hors de combat* or from a penalty legally inflicted on a detainee. Such humanitarian action should be quite free of any political influence or motive; it must be completely neutral and impartial.

In the third place, *definitions must be avoided*. Labels of all kinds are attached to political detainees, but their common factor everywhere is that their acts, words or writings are considered by the authorities to constitute such a menace to the existing political system that those persons' opposition must be quelled by their being deprived of their freedom. The legal or material nature of such a penalty has varied in different periods of history and from country to country. Its aim may be punitive, preventive, re-educational or reintegrational. It may be inflicted under normal law or emergency regulations. It may be the result of an administrative ruling enforced for a definite or for an indefinite period. In addition, unlike penal law criminals whose aims are limited and self-seeking, political detainees generally have a much wider objective, one which is a threat to the authorities in power or is so considered by the State.

The ICRC must therefore determine in each country, in agreement with the authorities, the name to be given to this category of persons, rather than waste time in pointless discussion on whether they are "political" detainees or not. Actually, in general, the authorities, the ICRC and the detainees themselves know who is meant; no definition is necessary. Moreover, a single general definition would lead to a purely academic and probably fruitless discussion, and one which in any case is beside the point—the humanitarian aspect which is all the ICRC is concerned with.

Fourthly, *no pronouncement shall be made about the reasons for detention*. Only at this price can the ICRC hope to gain access, and be of help to detainees. In some quarters this is held to be too high a price, but not so in the Red Cross which, if it chose to attack the causes of some evils, would sacrifice its ability to alleviate their effects. There are, incidentally, plenty of other organizations ready to protest when people are thrown into prison. Sometimes, even governments have no hesitation

in doing so. But it is essential that one organization in the international community should do what no other can, even if, to do so, it should abstain from doing what the others do. This self-imposed restriction may appear regrettable, but it is the one adopted by the entire Red Cross, not just the ICRC. Unanimity is achieved only on the lowest common denominator, which in point of fact is not so small as might appear, since it is the great principle of humanity, the principle which unites the 250 million people who make up the Red Cross throughout the world. So it is first and foremost on this principle of humanity that there is solidarity in the matter of political detainees.

These rules for action having been set, it may be asked why should the matter of so-called political detainees be examined, and why should the expression of any kind of international solidarity with them be sought. The answer, quite simply, is because the struggle does not necessarily come to an end with the arrest and incarceration of such people. Even deprived of his freedom, the political detainee often continues to be an active or potential adversary, while the State, the natural protector of the rights of individuals, or the agents of the State, often no longer feel obliged, as formerly, to respect an adversary who challenges their legality and rejects their authority. Those in power, therefore, are strongly tempted to destroy once and for all this rebellious force, if necessary by the most brutal of methods. This temptation to wield arbitrary power, particularly prevalent in countries where any political opposition, however expressed, is automatically castigated as subversion, is far stronger where political detainees are concerned than when prisoners of war fall into the hands of enemy troops. Although prisoners of war and their guards are the agents of two enemy sovereign powers, they generally feel quite naturally that their common lot as soldiers somehow brings them together.

In fact, it has been the experience of the ICRC that even when the highest authorities of a country wish so-called political detainees to be humanely treated—which is not always the case—that wish is often ignored in practice. Moreover, such detainees are not always able to convey their complaints to the appropriate authorities, who might be both able and willing to ensure that they are properly and humanely treated. In short, political detainees are very often in need of protection.

The international community has empowered the ICRC to propose such protection to the State directly involved. Under article 6, paragraph 5, of the Statutes of the International Red Cross, the ICRC is a

“neutral institution whose humanitarian activity is carried out particularly in time of war, civil war, or internal strife” and which “endeavours at all times to ensure the protection of and assistance to military and civilian victims of such conflicts and of their direct results”.

It is true that in such situations, as also in civil wars covered by article 3 of the Geneva Conventions or Protocol II, governments are not obliged to accept the ICRC's offers of service, but the intention of the community of States was to give the ICRC the unquestionable right to offer its services in the event of international strife, without being accused of interfering in the internal affairs of any State. In other words, in the event of internal strife, a government may decline the ICRC's offer but it may not tell the International Committee that it is meddling in what is not its business.

It should be remembered, in this connection, that the Statutes of the International Red Cross were adopted unanimously by the International Red Cross Conference which, as is well known, brings together not only the National Societies, the League which is the federation of those Societies, and the ICRC, but also all States parties to the Geneva Conventions; the governments, therefore, are bound by those Statutes. Those Statutes, not only in their present version—which dates back to 1952—but even in their original version of 1928, provide for ICRC activity in favour of victims of internal strife. Before 1928—since 1921, in fact—the States parties to the Geneva Conventions encouraged the ICRC to act in aid of victims of what at that time were called “social and revolutionary disturbances” in resolutions adopted by the International Red Cross Conference.

In fact, the International Conference went even further in the mandate it assigned to the ICRC, since article 6, paragraph 6, of the International Red Cross Statutes states that the Committee “takes any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary”. There is no doubt that, by the adoption of such a clause, the States sought to give an organization which enjoyed their full confidence an extensive right of humanitarian initiative, permitting it to offer its services whenever necessary, without the States' being obliged, however, to accept.

By this means it was sought to reconcile the imperatives of humanity with those of internal sovereignty and security, which is precisely what the ICRC does when it concerns itself with political detainees. Thereby, the ICRC's activities are unquestionably the main—if not the only—expression of international solidarity regarding political detainees.

To put it another way, this international solidarity, which finds expression through the Geneva Conventions, even at the height of armed conflicts, has been extended, through the medium of the ICRC, into situations of internal strife and tension.

The concept “internal strife”—to which the Statutes of the International Red Cross allude—has not been officially defined in international public law. What can be said, in any case, is that strictly speaking it is outside the framework of international humanitarian law, that is to say, not restricted to the situations of non-international armed conflicts such as those to which article 3 common to the Geneva Conventions and Protocol II, apply. The generally recognized definition of internal strife is the one drawn up by the ICRC, on the basis of discussions at various meetings of experts, for submission to the First Conference of Government Experts which met in 1971 to prepare the Diplomatic Conference on international humanitarian law: “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.”

But there may be political detainees even if there are no internal disturbances. On the strength of the humanitarian right of initiative which it has received from the international community, the ICRC has gradually extended its activities, especially during the last fifteen years, to the victims of situations involving no more than internal tension, in which—without there being internal strife—individuals have need of ICRC protection. It is true that some governments have refused the International Committee’s services or have sought to make their acceptance conditional on restrictions which the ICRC could not accept. In addition, the ICRC itself has sometimes refrained from offering its services, when preliminary enquiries or objectively observed conditions have clearly shown that its offer would be refused or would be detrimental to the detainees. Incidentally, the growing tide of internal disturbances and tensions has impelled the ICRC to prune its activities in this field and keep them to a level which its limited resources permit.

It is interesting to note that no State has complained to the ICRC that its security has been jeopardized by such visits or that the legal status of the persons visited has been affected. This is all the more remarkable in that it was as long ago as 1919 that the ICRC first helped prisoners during internal disturbances and tension and that since then it has visited more than 300,000 so-called political detainees in 75 countries.

As we are considering this theme from the angle of solidarity, it may perhaps be appropriate to underline to what extent ICRC help to political detainees is connected to a number of aspects which should by their very nature infuse us all with a feeling of solidarity: housing, food, leisure, hygiene, physical and psychological treatment are of concern to all human beings, and it should be easy to understand them, even should they be applied to one's enemies. Yet despite that, there is no doubt that a sort of ideological racism more and more closes men's minds to empathy with a fallen enemy even in matters so essentially humane. The struggle for power, especially when waged in the name of a doctrine, assumes all the aspects of total war in which even this elemental human solidarity seems to disappear. Just as attempts have been made to destroy some people simply because they were of one particular race, so today there are those who think anything is permitted against those who have the "wrong ideas". Such people are treated as if they were not entirely human, as if they were no longer fellow men to whom the principle "do unto others as you would that they do unto you" applies, for ideological blindness prevents identification with them.

This, in our opinion, is what constitutes the worst threat to that little seed of international solidarity with political detainees which the ICRC seeks to nurture. Even the lowest common denominator of the human condition is likely to disappear if people are so blinded by ideology that they cannot perceive the human being in a captive enemy. It is therefore essential that all people should wholeheartedly support the ICRC, not only that it may continue its humanitarian action in aid of political detainees but that it may develop it wherever it may be required. There does not exist any stronger expression of international solidarity where political detainees are concerned: in fact, as we have said, it is perhaps *only in the treatment* of political detainees that one can objectively detect any universal solidarity with them. Therefore, the humanitarian action of the ICRC for their benefit must be continued, strengthened and made truly widespread: whatever the designation given them, there are, in more than two-thirds of the countries in the world, men and women, to whom the ICRC alone might possibly obtain access, subject to the

agreement of the very States which detain them. The international community has decided that this possibility should belong to the ICRC, whose very nature, origin and objectives forbid it to disregard suffering which it is in its power to relieve. Whatever the status of individuals, the ICRC has always seen the man beneath the uniform. For the ICRC, treatment of a human being should in no way depend on his legal status. It is indeed in this respect that there is international solidarity with political detainees, whatever acts they may have committed or been charged with: at all times, in all places, needless suffering must be avoided and man's dignity respected.

Jacques MOREILLON

*Director of the Department of Principles
and Law in ICRC*