

ACTION TAKEN BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS IN SITUATIONS OF INTERNAL VIOLENCE

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For some decades now, the International Committee of the Red Cross (ICRC) has periodically undertaken the difficult task of reassessing its policy in respect of situations of internal violence. Since 1872, when it made its first offer of services to the parties to a non-international armed conflict, and 1918, when it carried out its first visit to security detainees, the ICRC has accumulated a wealth of experience. During that time it has gradually extended its mandate to cover situations in which human suffering called for action on its part which it would not have contemplated a few years previously.

Why does the ICRC feel that the time has come once again to develop and clarify its policy? The reply to this question is to be found in the practices followed by the institution, which has had to adjust to new forms of violence and feels that its existing terms of reference are no longer adequate. It thus seemed worthwhile to conduct a comprehensive internal review, with the participation of many ICRC staff members. The result of this exercise is outlined in the article which follows.

The ICRC, which has long been identified with visits to detainees, has for example been attaching increasing importance to the plight of persons affected by violence outside prisons. It has not only carried out food and medical relief operations, sometimes on a very large scale, but also and above all it has approached the de jure or de facto authorities to draw their attention to the humanitarian problems encountered by the population and urge them to remedy the situation.

Furthermore, some guidelines adopted by the ICRC to define the framework for its action have proven too restrictive. For instance, going beyond non-international armed conflict and internal disturbances, the ICRC had defined, on the basis of relatively precise criteria, the situations of internal tension in which it considered itself

competent to intervene. In practice, however, the ICRC has sometimes felt the need to undertake or pursue humanitarian action even outside the strict framework of internal tension. Indeed, its right of initiative does not hinge on the emergence of a given situation in a country, but rather on the need for action taken by a specifically neutral and independent organization.

Lastly, the reasons underlying certain long-standing activities must be explained more clearly to the public at large. All the ICRC's activities serve the same aim, namely to help ensure that universally accepted rules protecting the fundamental rights of the individual are respected and not flouted. The emergency operations carried out by the ICRC, while they may indeed relieve terrible suffering, are not enough. What is important is not so much what the institution does itself, but rather what it encourages others to do or not to do. The main aim of the ICRC's action is thus, above all else, to influence the conduct of those who indulge in violence, conduct of which the de jure or de facto authorities may not always be aware. It endeavours to establish a constructive and sustained dialogue with those authorities, and to build up a relationship of trust, which is a prerequisite for long-term humanitarian action.

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Violence is an inherent feature of any human society. The violence resulting from the trials of strength that set individuals or groups against each other may take many different forms, ranging from criminality, which the State seeks to keep in check through policing, to full-scale conflict between organized armed groups. The persons involved in such violence are also many and varied. Thus, while one country might be the scene of conventional clashes between rioters and the police, others will fall prey to fighting between factions, militias or paramilitary groups, with the State's power a mere illusion. Finally,

the causes of the violence, which may be political, economic, religious, ethnic, etc., are often difficult to distinguish.

All such situations have one thing in common: the violence invariably leads to suffering.

Since its inception, the ICRC has always endeavoured to prevent and alleviate suffering.¹ Its mandate, initially confined to international armed conflicts, was soon extended to situations of internal violence. It is this latter aspect that is considered in this study, which focuses on ICRC action in the context of non-international armed conflicts and internal disturbances, and on the humanitarian initiatives which the institution may take in the face of pressing humanitarian needs, even when the violence has not reached such a scale.

In all cases of this type, the ICRC has to make certain choices. When should it offer its services? To do what? Where do its priorities lie? What legal bases and principles can it invoke? These are the questions which this document sets out to answer.

This study revolves around human beings affected by violence. Accordingly, the first part of the document is devoted to an analysis of their needs in humanitarian terms and the specific contribution the ICRC can make in meeting those needs. The second section focuses on the legal and statutory bases on which the ICRC's offers of services are founded. Finally, the document moves on to the institution's actual activities, seen in the light of its principles, in order to define their aim, their global nature and their ever-increasing scope.

I. THE SPECIFIC ROLE OF AN IMPARTIAL, NEUTRAL AND INDEPENDENT INSTITUTION IN SOLVING THE HUMANITARIAN PROBLEMS CAUSED BY VIOLENCE

What are the problems in question, and what are the features of the ICRC which make it such a unique institution with its own special role?

¹ The first of the seven Fundamental Principles of the International Red Cross and Red Crescent Movement is humanity. It stipulates that the Movement "*endeavours, in its international and national capacity, to prevent and alleviate human suffering wherever it may be found. Its purpose is to protect life and health and to ensure respect for the human being (...)*".

1. The effects of violence

The aim here is simply to describe the consequences of violence in humanitarian terms, from the point of view of the victim, leaving aside the question as to whether the violence is the result of lawful acts and who is responsible. In general terms, and without claiming to be exhaustive, we may identify the following:

- physical damage: injury, illness, disability or death;
- torture and ill-treatment;
- disappearances: these may be the result of a deliberate State policy, or the doing of paramilitary groups or opposition movements. Those who disappear may be held captive at secret locations; more often than not, however, they are killed, either to terrorize the population or to avoid the stigma of national or international disapproval resulting from the arrest and detention of certain opposition figures;
- deprivation of freedom: the classic form of detention is incarceration in a closed place designed for the purpose (prisons, camps, or — in some countries — psychiatric hospitals, etc.), but there are others, such as assignment to residence or confinement in another region of the country, often far away, isolated and insalubrious;
- a person's inability to satisfy his vital needs (security, material survival, psychological needs), when he has lost his means of subsistence, has been displaced within the country or has had to seek refuge abroad;
- separation of families, whose members are without news of their relatives on account of the hostilities or unrest;
- the suffering of individuals or communities indirectly affected by the strife, such as families with no means of support, communities whose precarious economic situation is threatened by the additional burden represented by refugees or displaced populations, and persons who are suspect on account of their kinship with someone involved in the violence.

Whatever the form taken by the violence, it also has adverse effects on the psychological integrity of the victims and their families.

2. The special nature of the ICRC

In the myriad of humanitarian organizations, the ICRC occupies a special place. Its specific status stems from several factors.

First of all, the ICRC has been entrusted with a mandate by the States party to the Geneva Conventions of 1949, in other words virtually every country in the world. Those States recognized the ICRC's humanitarian character and its impartiality when they signed the Conventions, which are applicable to armed conflicts whether international or otherwise.²

Secondly, the same States, in approving the adoption of the Statutes of the International Red Cross and Red Crescent Movement, pledged to respect at all times the ICRC's obligation to act in accordance with Fundamental Principles of the Movement.³ These include humanity, impartiality, neutrality and independence from any power whatsoever. They are the principles on which the ICRC's action has been founded since 1863 and which it must uphold within the Movement.⁴

² Geneva Conventions:

- for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention)
- for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention)
- relative to the Treatment of Prisoners of War (Third Convention)
- relative to the Protection of Civilian Persons in Time of War (Fourth Convention)

of 12 August 1949.

See in particular Article 3, para. 2, common to the four Geneva Conventions, which describes the ICRC as "*an impartial humanitarian body*".

³ Article 2, para. 4, of the Statutes of the International Red Cross and Red Crescent Movement, adopted by the 25th International Conference of the Red Cross in Geneva in October 1986. (The International Conference brings together representatives of the components of the Movement and representatives of the States party to the Geneva Conventions).

⁴ The seven Principles are: humanity, impartiality, neutrality, independence, voluntary service, unity and universality. The complete text of the Principles appears in the Preamble to the Statutes of the Movement, Article 5, para. 2 (a), of which stipulates that one of the ICRC's roles is "*to maintain and disseminate*" the Principles, a task which the ICRC has performed since the founding of the Movement and which was formally assigned to it in 1921.

From the outset, the ICRC adopted a structure enabling it to respect fully the principles it upholds. The ICRC is an institution formed on a private initiative. Its headquarters are in Switzerland, and its governing body, the Committee, is mononational and recruits its members by cooptation (Article 5, para. 1, of the Statutes of the Movement). Since the members of the Committee do not owe their appointment to any electoral body and are hence free of any political pressure, they enjoy total independence in their decision-making. This constitutes a guarantee of impartial conduct.

Finally, the ICRC's impartiality is the fruit of a tradition and is expressed through its policy guidelines, which ensure continuity in its action and safeguard States against unpredictable reactions on its part.

The ICRC thus enjoys a special status, which the international community recognized when, on 16 October 1990, it granted the institution a seat as observer at the United Nations.⁵ To what extent does the ICRC's specific nature dictate its choices as regards offers of services?

II. THE ICRC'S OFFERS OF SERVICES

ICRC offers of services are conditioned by several factors, namely the magnitude and urgency of the humanitarian needs observed, the legal status of the situation and the potential benefits of intervention by a specifically neutral and independent organization. The weight given to each of these different considerations varies according to the case. For instance, the incentive to take action is extremely great in a non-international armed conflict, in which the parties have a duty to apply a significant portion of international humanitarian law. Yet the ICRC also reserves the right to offer its services in contexts of lesser violence, when it is convinced that its intervention to solve the humanitarian problems stemming from such situations might help to ease tensions.

The mere fact that the ICRC offers its services in a country does not necessarily imply that serious humanitarian problems have been observed there (although obviously the ICRC will give higher priority to such situations); other parameters also have a bearing on the decision.

The assessment of a situation from the point of view of humanitarian needs and the potential benefits of the services of a neutral and independent institution cannot be governed by rigid rules. The ICRC's long experience in such matters provides a guarantee of sound judgement, which is a widely acknowledged attribute of the institution. The legal analysis, on the other hand, is based on very precise criteria, which call for a few comments. The bases for the ICRC's action and

⁵ Observer status for the International Committee of the Red Cross, in consideration of the special role and mandates conferred upon it by the Geneva Conventions of 12 August 1949, United Nations General Assembly resolution A/45/6, adopted at its forty-fifth session, at its 31st plenary meeting of 16 October 1990. General Assembly, official records: forty-fifth session, supplement No. 49 (A/45/49).

the applicable law will differ according to whether the humanitarian problems confronting the ICRC arise within a non-international armed conflict, during internal disturbances or outside the context of such situations.

1. Legal analysis

Here we must consider in turn the legal basis for the ICRC's action in a non-international armed conflict, during internal disturbances or outside the context of those two situations, when the institution identifies a humanitarian problem which it believes it can help to solve by virtue of its neutrality and independence.

● *ICRC action during a non-international armed conflict*

The Diplomatic Conference of 1949 deliberately refrained from defining the notion of non-international armed conflict. However, Article 1, para. 1, of Protocol II of 1977 sets out the material field of application of the Protocol and thereby defines the non-international armed conflicts to which the instrument is applicable. These are *“all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol”*. Furthermore, Article 1, para 2, of Protocol II specifies that this definition does not include riots, isolated and sporadic acts of violence and other acts of a similar nature.⁶

Although the law clearly defines only the non-international armed conflicts within the scope of Protocol II, it is useful for the practitioner to have an idea of what is meant by non-international armed conflict. Observation of actual cases tends to suggest that this sort of

⁶ *“This Protocol shall 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”*, Article 1, para. 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), of 8 June 1977.

conflict generally takes the form of a struggle, within a State, between two or more parties, who have recourse to armed force and where the hostile action on the part of each has a collective character and is marked by a measure of organization.

The legal basis for ICRC intervention in such conflicts is Article 3, para. 2, common to the four Geneva Conventions of 1949, which stipulates that “*an impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict*”. Article 5, para 2 (d), of the Statutes of the Movement confirms the ICRC’s mandate under international humanitarian law, stating that one of the ICRC’s duties is 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*”. Finally, several resolutions of International Conferences of the Red Cross and the Red Crescent also provide the ICRC with a basis for intervention.⁷

The aforementioned Article 3 does not oblige States to accept the ICRC’s offer of services. However, they have a duty at least to examine it in good faith and to reply. They may not consider an offer of services as interference in their internal affairs.

In a non-international armed conflict, the ICRC will take steps to ensure that the parties comply with either Article 3 common to the four Geneva Conventions of 1949 alone,⁸ or both Article 3 and

⁷ In particular, resolutions XIV of the 10th International Conference of the Red Cross (Geneva, 1921); XIV of the 16th International Conference of the Red Cross (London, 1938); XX of the 17th International Conference of the Red Cross (Stockholm, 1948); XIX of the 19th International Conference of the Red Cross (New Delhi, 1957); XXXI of the 20th International Conference of the Red Cross (Vienna, 1965) and VI of the 24th International Conference of the Red Cross (Manila, 1981).

⁸ Article 3 common to the four Geneva Conventions is the mainstay of ICRC action in non-international armed conflicts. It reads as follows:

“*In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

b) taking of hostages;

Protocol II together, if the conditions for application of the latter text, which are more restrictive than those for Article 3, are met. Protocol II can never be applied on its own, independently from Article 3. In other words, in any situation in which Protocol II is applicable, Article 3, which the Protocol supplements, is also applicable.⁹

In some cases other provisions are applicable, either by virtue of recognition of belligerence by the government side, as a result of which the major part of international humanitarian law becomes applicable, or by explicit or tacit agreement between the parties.¹⁰

● *ICRC action in connection with internal disturbances*

Internal disturbances are marked by serious disruption of domestic order resulting from acts of violence which do not, however, have the characteristics of an armed conflict. They encompass, for example, riots by which individuals or groups of individuals openly express their opposition, their discontent or their demands, or even isolated

c) outrages upon personal dignity, in particular humiliating and degrading treatment;

d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."

⁹ The objective criteria which serve to determine at what point Protocol II becomes applicable are mentioned in Article 1 of the Protocol. They include:

1. the type of forces in conflict: government armed forces in the broad sense of the term and either dissident armed forces or organized armed groups;
2. the existence of a responsible command within the armed opposition;
3. control over a part of the territory;
4. sustained and concerted military operations;
5. the ability to implement the Protocol.

Items 1 and 3 are particularly valuable indicators for determining when Protocol II is applicable.

¹⁰ The applicable law also includes the rules of customary law and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 1954), Article 19 of which refers to non-international armed conflict. Finally, human rights are also applicable, insofar as the exercise of certain rights cannot be abrogated even in an armed conflict.

and sporadic acts of violence. They may take the form of fighting between different factions or against the power in place.¹¹

For a situation to be qualified as one of internal disturbances, it is of no consequence whether State repression is involved or not, whether the disturbances are lasting, brief with durable effects, or intermittent, whether only a part or all of the national territory is affected or whether the disturbances are of religious, ethnic, political or any other origin.

The bases for the ICRC's intervention in situations of internal strife are Article 5, para. 2(d), of the Statutes of the Movement referred to above, certain resolutions of International Conferences of the Red Cross and Red Crescent¹² and traditional ICRC practice, accepted by a large number of States¹³.

¹¹ A description of internal disturbances was given at the first session of the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts, held in Geneva from 24 May to 12 June 1971 (Document submitted by the ICRC, Vol. V: *Protection of victims of non-international armed conflicts*, Geneva, January 1971, pp. 79-85).

The Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts (1974-1977) explicitly excluded from the scope of application of the Protocol situations of internal tension and disturbances, which it did not define, but of which it gave examples. These are presented as follows in the Commentary to Protocol II: "*riots, such as demonstrations without a concerted plan from the outset; isolated and sporadic acts of violence, as opposed to military operations carried out by armed forces or armed groups; other acts of a similar nature, including, in particular, large scale arrests of people for their activities or opinions*" (See the Commentary on paragraph 2 of Article I of Protocol II in the *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, International Committee of the Red Cross, Martinus Nijhoff Publishers, Geneva, 1986, paras. 4471-4479, pp. 1354-1356). The Commentary on the Protocol takes up the 1971 definitions, specifying that they form part of ICRC doctrine and that they are designed for practical use.

In this article, the presentation of internal disturbances, while based on that of 1971 and the examples of such situations given in Protocol II, takes account of observations made by the ICRC in the course of its work. First, internal disturbances, formerly qualified as "confrontation characterized by a certain seriousness or duration" may be brief or chronic and may give rise to lasting humanitarian problems. Secondly, internal disturbances may take place without any government intervention to restore order. Disturbances sometimes take the form of clashes between factions, without any direct State participation.

¹² In particular, resolution XIV of the 10th International Conference of the Red Cross (Geneva, 1921) and Resolution VI of the 24th International Conference of the Red Cross (Manila, 1981), which made 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*".

¹³ The first ICRC visits to security detainees took place in Russia (1918) and Hungary (1919), but it was mainly after the Second World War that ICRC visits to persons detained in their own countries became widespread.

In situations of internal disturbances, the rules of international humanitarian law can only be invoked by analogy. On the other hand, States must respect certain universally acknowledged humanitarian principles, and the human rights instruments to which they are party, in particular the rights for which no derogation is permitted, even when the life of the nation is threatened by an exceptional public danger.¹⁴

- ***ICRC action outside the context of non-international armed conflicts and internal disturbances***

Finally, outside the context of non-international armed conflicts and internal disturbances, the ICRC retains the option to take action, without having any obligation to do so, when it identifies a problem of humanitarian concern which it might help to solve by virtue of its special character. It may offer its services on the basis of Article 5, para. 3, of the Statutes of the Movement, which stipulates that "*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*". This right of initiative, founded on custom, does not depend on the type of situation prevailing in the country concerned, but on characteristics pertaining to the ICRC itself: independence, which guarantees that the ICRC will never see its policy dictated by pressure groups and will thus retain an objective view of the humanitarian problems to be solved, and neutrality, which signifies that the ICRC will not take part in any hostilities or controversies and will refrain from making any partisan judgements.¹⁵

These features of the ICRC are particularly valuable in situations of political or social tension which have not yet degenerated into internal disturbances, but nevertheless cause suffering of the type described in the first section. For instance, the enforcement of order by repressive measures intended to prevent opponents from taking any action (internment of individuals without any grounds for charging

¹⁴ There are inalienable rights which are considered as universal standards, having customary status: the right to life, the prohibition of torture and of cruel, inhumane or degrading punishment or treatment; the prohibition of slavery and servitude; the principle of legality and non-retroactivity of punishments. In addition, certain judicial guarantees must be respected at all times in order to prevent the violation of rights to which no derogation is permitted.

¹⁵ In this connection, see Yves Sandoz, "Le droit d'initiative du Comité international de la Croix-Rouge", *German Yearbook of International Law*, Duniker & Humblot, Berlin, 1979, Vol. 22, pp. 352-373.

them with an offence, invasive presence of police forces or the army, etc.) may prompt the ICRC to offer its services in order to ease tension.

As in the case of internal disturbances, the ICRC can refer to the universally acknowledged humanitarian principles and, where it considers it advisable, invoke the inalienable human rights, or even other human rights.

2. The effects of an offer of services

ICRC offers of services bring benefits not only for the people whom the institution is endeavouring to help, when it has access to them, but also for the State or political entity accepting the offer. All ICRC action has a calming influence; it eliminates the causes of tension and demonstrates the *de jure* or *de facto* authorities' desire to put an end to the escalation of violence. Furthermore, it provides those authorities with an opportunity to hear the views of an independent and neutral institution on humanitarian problems of which they are sometimes not even aware and to benefit from the ICRC's experience, gained during well over a century.

In order to reply to questions which the ICRC is often asked, a few details need clarifying. First of all, the ICRC is aware of and acknowledges the need to maintain order and public security, on the understanding that the steps taken to that end must respect the fundamental rights of the individual. If this condition is observed, the ICRC will not pass any judgement on the measures taken by the State against people whom it considers as opponents or even criminals. The ICRC's aim is limited: with the backing of the authorities, expressed through their decision to accept the ICRC's offer of services, the institution takes an impartial look at any problems of a humanitarian nature which might arise in a context in which passions are inflamed, and endeavours to help solve those problems.

Secondly, acceptance of an ICRC offer of services has no effect on the legal status of the parties to a conflict or, in the case of internal disturbances, on the status of persons involved in the unrest. Similarly, ICRC visits to detained persons in no way confer any legal status on them.

Finally, the ICRC observes strict confidentiality when reporting its findings to the authorities. Discretion is essential if the ICRC is to gain access to the persons whom it wishes to assist and if it is to be able to establish a constructive dialogue with the authorities in a spirit

of cooperation. It is only in exceptional circumstances, clearly determined by its policy guidelines, that the ICRC may take a stand in public. It only does so, within the framework of armed conflicts, when there have been major and repeated violations of international humanitarian law, when confidential representations to the State concerned have failed, and in so far as such publicity is in the interest of the victims of those violations.¹⁶ In doing so, it hopes to enlist the support of the States party to the Geneva Conventions of 1949, which have undertaken not only to respect but also to ensure respect for humanitarian law in all circumstances.¹⁷

III. ICRC ACTIVITIES

For many years, the ICRC gave pride of place to its activities in behalf of detainees. The institution came to be identified with the visits its delegates made to prison camps and the aid given to prisoners. In situations of internal violence, the authorities often reacted by imprisoning opponents and the ICRC endeavoured, through dialogue with the authorities, to improve the treatment given to detainees and their conditions of detention.

While this activity is still fundamental for the ICRC, which has acquired widely acknowledged experience in this area, nowadays it is only one item in a range of services provided. The ICRC has had to cope with increasingly varied humanitarian needs, in countries where authority has often been eroded, where the population itself is the object of the struggle and where all possible methods of repression are used. One need only look at the extent of the phenomenon of disappearances and the suffering inflicted in non-international armed conflicts on civilians, who are tortured, taken hostage or even summarily executed, when one of the foundations of international humanitarian law is the distinction between combatants and civilians and the duty to spare the latter.

The ICRC thus undertakes a wide range of activities: dissemination of knowledge of international humanitarian law and the Fundamental Principles of the Red Cross and Red Crescent, visits to detainees, measures in behalf of the population affected by conflict or strife,

¹⁶ "Action by the International Committee of the Red Cross in the event of breaches of international humanitarian law", *International Review of the Red Cross*, No. 221, March-April 1981, pp. 76-83.

¹⁷ Article 1 common to the four Geneva Conventions of 1949.

tracing of persons reported missing, provision of food or medical assistance — to name but a few. Yet, all these activities have in common a uniform approach stemming from the ICRC's special character.

The ICRC seeks above all to remind the people it deals with of their obligations under international humanitarian law and their duty to respect universally acknowledged humanitarian principles. Hence the need to make these rules known, first and foremost among combatants. The ICRC is also at the disposal of the parties to facilitate communication or even dialogue between them with a view to solving problems of a humanitarian nature. In such cases it acts as a catalyst, enabling the forces involved to reach a humanitarian agreement which they will have the duty to respect, but which the ICRC can help to implement. It informs the authorities of any problems observed in the course of its visits to detainees or during its food or medical assistance activities, so that these problems may be remedied. And it is because the international community recognizes the ICRC as a humanitarian, impartial, neutral and independent institution that it is able to play this role.

Let us now review the ICRC's main activities in detail.

1. ICRC activities in behalf of persons deprived of their freedom¹⁸

ICRC delegates visit thousands of detainees all over the world. What is the ICRC's objective? To what type of detainees does it wish to have access? What conditions does it attach to its visits and how does it proceed?

● Objectives

The aim of ICRC visits is not only to prevent or put a stop to disappearances, torture and ill-treatment, but also to improve detention conditions where necessary and enable family ties to be restored.

The ICRC's preventive function is worth emphasizing. The institution's presence in a place of detention in no way implies that there are problems of a humanitarian nature, but merely that the authorities are

¹⁸ In international armed conflicts, ICRC visits to protected persons are dealt with in Articles 126 of the Third and 143 of the Fourth Geneva Convention of 1949. In fact, most ICRC visits relate to situations of internal violence. It is an ICRC practice which has been accepted by a large number of States.

willing to talk to the ICRC with a view to ensuring that the persons they are detaining receive humane treatment.

- ***Type of detainees visited***

When ICRC delegates enter a prison, they are concerned primarily with persons who have been arrested on account of the situation of internal violence. In some cases, these persons are considered as “*political detainees*” or “*security detainees*”.

The ICRC, for its part, has always avoided giving too precise a definition of the persons whom it wishes to see, for a strictly humanitarian reason. This caution comes from experience. There is no single feature common to all detainees eligible for ICRC protection. It is clearly not enough to think in terms of a detainee’s political motives. Many people requiring ICRC protection have been arrested solely on account of their ethnic or other origin, without their having ever been politically committed in any way. Nor can the ICRC just consider the offence ascribed to the detainee. Political opponents are sometimes imprisoned for common-law offences, such as disruption of public order, vagrancy or illegal possession of firearms. The penal codes in many States qualify as common-law offences activities which may in fact be of a political nature. Should the criterion be the legislation under which the person has been imprisoned? Although this is often a useful point of reference, the decision to charge a detainee under a particular law may be founded on purely arbitrary considerations.

Each of the above criteria, among others, may be useful, but none is sufficient in itself. The ICRC may request access to detainees as different as a captured guerrilla, a peasant accused of collaboration with the armed opposition, a student who has demonstrated against those in power or a member of an ethnic group deemed hostile to the established regime. All these people are detained on account of events which have prompted the ICRC to offer its services and have in common the fact that, rightly or wrongly, they are considered by the detaining authority as real or potential opponents.

- ***Conditions for the visits***

So that its visits may lead to practical and well-founded proposals, the ICRC requests the authorities beforehand to:

- allow its delegates to see all detainees that come within its purview and to have access to all places where such detainees are held;

- authorize its delegates to talk to detainees of their choice without witnesses;
- give assurances that it will be authorized during the course of its visits to draw up lists of the detainees whom it considers to be within its mandate or receive such lists from the authorities and be permitted to check and add to them as necessary;
- authorize it to repeat its visits to all detainees to whom it has had access and to see any other detainees of the same type whom it may choose to see, wherever they may be detained, the frequency of such visits being determined by the ICRC according to needs.

Furthermore, the ICRC seeks to obtain the right to conduct visits without advance notice or at very short notice, and to be notified of arrests, admissions to hospital, transfers, sentences, releases and deaths. It is also extremely important that it should be able to inform the detainees' parents, children or spouses, whether or not they themselves are imprisoned or free, of its visits to their relatives of whom they have no news.

● *Visits and follow-up*

During their visits to detained persons, ICRC delegates endeavour to form an objective idea of the humanitarian problems at hand. These may be particularly severe detention conditions, ill-treatment or even executions, or simply the fact that detainees are cut off from their families. In some cases, failure to observe judicial guarantees can amount to ill-treatment, since it has a serious impact on the physical and mental state of the individual concerned.¹⁹

In the final interview held at the end of each visit with the official in charge of the place of detention, ICRC delegates point out any problems of a humanitarian nature they may have noted, and discuss with the official how these may be remedied. Only if, objectively speaking, the detaining authority is unable to meet the humanitarian needs and those needs are urgent might the ICRC temporarily provide

¹⁹ Judicial guarantees are specifically mentioned in Article 3 common to the four Geneva Conventions of 1949. The ICRC, whose role it is "*to work for the faithful application of international humanitarian law applicable in armed conflicts*" (Article 5, para. 2 (c), of the Statutes of the Movement), may intervene to ensure that fundamental judicial guarantees are respected in a non-international armed conflict.

In situations of internal disturbances, its responsibility in this connection is different, and it is mainly when the failure to observe judicial guarantees has serious implications for the physical and psychological state of the individual that the ICRC makes representations to the authorities.

assistance. Aid may also be given to common-law detainees, who are themselves often indirect victims of the violence prevailing in the country, since everyone in prison is affected by the poor functioning of the penitentiary administration and by budget shortfalls resulting from the situation. Food shortages, lack of medical care, deterioration of premises and poor conditions of hygiene are a source of suffering for everyone in the place of detention.

With the agreement of the authorities, the ICRC may arrange for the exchange of family messages where mail between the detainees and their relatives is not getting through on account of the absence of normal postal services. In some cases, the ICRC may also provide assistance to detainees' families who are suffering hardship owing to the detention of their breadwinners. In particular, the ICRC has paid travel expenses to enable the families of detainees to visit their relatives held in places of detention far away from their homes.

Finally, the ICRC's visits to prisons are followed up by verbal or written contacts, including confidential reports to the authorities.

In certain circumstances, the ICRC may keep track of a detainee after his release from prison to ensure that he has in fact reached his home and is living there in safety.

2. ICRC action to protect the population

The taking of hostages, looting, rape, displacement of populations, harassment, deliberate cutting off of access to food and drinking water, threats — these are just some of the acts which, in a situation of internal violence, may cause the population great suffering and spread terror. Civilians caught between rival factions are sometimes exposed to as great or even greater danger than combatants detained in a prison under the control of an authority.

To prevent such acts, the ICRC endeavours to ensure that international humanitarian law and the humanitarian principles are known to everyone bound to respect them. It may also, in its capacity as a neutral institution, take initiatives such as evacuating particularly vulnerable individuals from a dangerous area, inviting the warring forces to notify places where mines have been laid, reuniting separated members of families who together would be in a better position to cope with adversity, both materially and psychologically.

All too often, however, the ICRC intervenes after the event, to protest against breaches of international humanitarian law or funda-

mental human rights, which it has not been able to prevent.²⁰ Its aim is then to inform the authorities of intolerable conduct which must be condemned and brought to a halt. On the other hand, the ICRC refrains from asking who exactly was responsible and if or how the offenders have been punished. Nevertheless, it checks that orders have been issued and appropriate corrective action taken.

The ICRC's work in this field is more difficult in a situation of internal disturbances than in a non-international armed conflict. In the latter case the people it has to deal with are clearly defined, i.e. the parties to the conflict, with whom it will take up matters such as the treatment of persons in their power and the conduct of hostilities. During internal disturbances, on the other hand, demonstrators, who are by definition poorly organized, are not usually led by a formal body for the ICRC to contact. Even if such a body existed, it hardly has any authority over those it is supposed to represent (as soon as the opposition becomes organized to a certain degree, the situation is no longer qualified as one of internal disturbances but rather as a non-international armed conflict). In situations of internal disturbances, it is thus mainly the government that the ICRC approaches in connection with the treatment of demonstrators and the use of force to quell the unrest.

The ICRC's reaction may be "immediate", as soon as a reprehensible act is committed. That being said, the ICRC also finds it necessary to prepare consolidated reports over a certain period, which give examples of unacceptable practices of repression, on the basis of observed incidents. In a non-international armed conflict, such reports may be addressed to the government. If the incidents reported are attributable to opposition movements, a separate report on acts attributed to them may be sent to the latter.

These documents highlight rules of conduct which are essential for maintaining at least a measure of humanity at the heart of the violence — the right to life, safety and human dignity, the prohibition of torture and ill-treatment, judicial guarantees, the prohibition of acts of

²⁰ In deciding which acts call for a reaction from them, ICRC delegates also draw on the following texts:

"Declaration on the rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts", International Institute of Humanitarian Law (San Remo, Italy), *International Review of the Red Cross*, No. 278, September-October 1990, pp. 404-408.

"Declaration of Minimum Humanitarian Standards", adopted by a meeting of experts in Turku, Åbo, Finland (30 November-2 December 1990), *International Review of the Red Cross*, No. 282, May-June 1991, pp. 330-336.

terrorism and indiscriminate violence, respect for medical work and the wounded, the special protection to be granted to children and the limits to be imposed on means of maintaining order, and so forth.

A look at ICRC practice clearly shows that its work outside the prison context has significantly developed in recent years. Of course, the authorities are not always inclined to allow a humanitarian organization to play such a role until they have understood the potential benefits for themselves and the way in which the ICRC operates. However, when a climate of trust has been established between the ICRC and its contacts within a country or region, the latter are often willing to let it do its work on the basis of the same principles as in places of detention. The ICRC guarantees discretion, as long as the authorities for their part assume their humanitarian responsibilities and endeavour to put a stop to any abuses which are observed. Here again, the ICRC concludes a sort of “*contract of trust*” with the authorities, realizing that its discretion is often the prerequisite for effective action.

3. ICRC action in behalf of persons whose fate has not been elucidated or who have disappeared²¹

When people go missing, this may be due to a chance incident, on account of the events taking place in the country, or it may be the result of a deliberate policy on the part of the State or of opposition movements. In a non-international armed conflict, for instance, one may lose trace of a soldier during the fighting or of a civilian fleeing clashes or being displaced by force; but it also happens that those in power or their adversaries use forced disappearances as a deliberate policy. In the latter case, civilians who have been arrested or captured never turn up in prisons and are never seen in the hands of the opposition.

To avoid losing track of combatants in a non-international armed conflict, the ICRC draws the authorities' attention to the need for certain measures, namely to ensure that all combatants carry identity papers or disks, to indicate gravesites and retrieve personal belongings, and to set up a service to handle such matters. If combatants nevertheless go missing on the battlefield, the ICRC requests that appropriate information be gathered, for example that a list of victims be drawn

²¹ Resolution II of the 24th International Conference of the Red Cross (Manila, 1981) recommends, *inter alia*, that “*the ICRC take any appropriate action which might reveal the fate of missing persons or bring their families relief (...)*”.

up. It may offer its services to the parties to facilitate communication between them and to trace people whose fate has not been elucidated.

The action taken in favour of civilians in a non-international armed conflict is primarily remedial. ICRC delegates endeavour to restore contact between families when some of their members have fled, have been displaced or no longer have any means of sending news to their loved ones. They display lists in camps for displaced persons, organize exchanges of family messages, transmit lists of persons reported missing and supply the authorities with technical means to facilitate enquiries. Naturally, they also try to trace missing persons in the detention centres which they visit. In this regard, the fact that delegates register each detainee by name is a great help, in particular in preventing disappearances.

When faced with a deliberate policy of forced disappearances, however, the ICRC receives no reply or unsatisfactory replies to its approaches. If it has every reason to believe that someone is dead, it seeks confirmation so that the family can come to terms with its loss. In particular, it approaches the authorities with a view to obtaining official notification, to enable the surviving relatives to settle outstanding matters such as inheritance or receipt of a pension.

It also strives, in the longer term, to curb forced disappearances and summary executions by collecting information and submitting it to the authorities, urging them to take the measures necessary to put a stop to such practices.

4. Food, medical and other relief

The aspect of the ICRC's relief policy which is visible to the outside world is the provision of food or medicines to keep individuals or populations alive, alleviate their suffering and avoid their future being compromised by the effects of illness, injury or malnutrition. However, this is merely the most conspicuous feature of a much broader policy. First and foremost, the ICRC endeavours to ensure that the *de jure* or *de facto* authorities allow the population access to the essential resources and services needed for its survival and for the community to function properly and, where necessary, that they provide whatever assistance is required. Sharing its expertise in public health, logistics and emergency medical relief, the support it can give in training medical staff to restore basic services, the role it can play as a neutral institution in removing obstacles to community life which

are not justified by any military necessity are all equally important components of the ICRC's relief policy.²²

When emergency assistance is required and the ICRC is particularly well placed to play a useful role by virtue of its specific mandate, it sets three conditions before undertaking any relief action, namely that it be allowed access to the persons requiring assistance, to observe their situation and to evaluate their needs; that it be present when the aid is brought in; and, finally, that it be allowed to exercise administrative supervision in order to prepare reports on distributions made. It also seeks authorization to return to the scene in order to assess the impact of its work on the condition of the population (health, food, clothing, hygiene, etc.) in relation to the targets set.

Generally speaking, aid provided by the ICRC is of an urgent nature. The degree of urgency depends on the magnitude or gravity of the humanitarian needs (malnutrition, epidemics, etc.) or from the fact that the acts that have given rise to those needs are very recent. When the emergency is over, the ICRC's assistance is normally phased out. It will have helped people in distress to survive a difficult time, and will often have improved a community's standard of living by setting up an infrastructure which was not there before, such as dispensaries, wells or latrines, but it stops at the point where development commences. For in this respect the ICRC's chief aim is to strengthen the operational capacity of the National Red Cross and Red Crescent Societies whose role it is to contribute to the development of their countries.²³

Within the Movement, the ICRC has the particular responsibility of assuming the general direction of international Red Cross and Red Crescent operations in armed conflicts and situations requiring action by a specifically neutral and independent institution.²⁴ This task is important in order to avoid duplication of effort and so that a single entity within the Movement is in contact with the *de facto* or *de jure* authorities in contexts where tension is running high. The ICRC gives

²² See in particular: Jean-Luc Blondel, "Assistance to protected persons", *International Review of the Red Cross*, No. 260, September-October 1987, pp. 451-468.

²³ The ICRC's policy in respect of the development of National Red Cross and Red Crescent Societies is set within the framework of Article 7 of the Agreement between the International Committee of the Red Cross and the League of Red Cross and Red Crescent Societies of 20 October 1989. (The League has since been renamed the International Federation).

²⁴ Article 5, para. 4 (b), of the Statutes of the Movement and Articles 18 and 20 of the Agreement referred to in note 23.

priority to providing relief in areas of the country affected by conflict or disturbances. It also pays particular attention to vulnerable people or communities who are not or are no longer involved in the hostilities but find themselves in a hostile environment, while always ensuring that the aid granted to specific groups will not have any immediate or long-term adverse effects on the people concerned.

5. Dissemination of international humanitarian law and of the Red Cross and Red Crescent principles

Responsibility to make international humanitarian law better known, in particular among the armed forces and health personnel, but also among the population at large, lies first and foremost with States. This obligation on States is clearly laid down both in the 1949 Geneva Conventions and in their Additional Protocols.²⁵ Failure to discharge that duty is a breach of those instruments, often attributable to poor knowledge of the law or a shortage of resources.

The ICRC's mission is to assist actively in the promotion of international humanitarian law by States.

It produces teaching material; it runs courses which vary in content according to the target audience; it also shares its expertise with nationals of the country in which it is working so that they will be able to pass on the humanitarian message in the local language with due regard for local cultural traditions; finally, through contact with the media, it seeks to give the message as broad an impact as possible.

These activities are mainly intended to foster respect for international humanitarian law, enhance the safety of Red Cross and Red Crescent staff and medical personnel and strengthen the cohesion of the International Red Cross and Red Crescent Movement. The prime targets of ICRC dissemination work are the armed forces, the National Societies, political and academic circles and the media.

Trying to promote knowledge of fundamental humanitarian standards against a background of internal violence poses particular problems. First of all, what standards should be emphasized in a situation of internal disturbances where international humanitarian law is not

²⁵ Article 47 of the First Geneva Convention, 48 of the Second Geneva Convention, 127 of the Third Geneva Convention, 144 of the Fourth Geneva Convention of 1949, and Articles 83 of Protocol I and 19 of Protocol II.

See also Resolution X of the 24th International Conference of the Red Cross (Manila, 1981).

applicable? The "*Declaration of Minimum Humanitarian Standards*" adopted by a group of experts in Turku in 1990 and the "*Code of Conduct*" drawn up by Mr. Hans-Peter Gasser for situations which at the time were qualified as internal disturbances and tension are useful reference texts.²⁶ Nevertheless, instruction for the armed forces when they are called upon to repress disturbances or urban uprisings is more complex than that dispensed within the framework of a non-international armed conflict. In this latter case, the teaching of international humanitarian law is more or less the same as for international armed conflicts, where the distinction between civilians and combatants is clearly established.

Secondly, how far does the ICRC wish to become involved in promoting awareness of human rights, some provisions of which correspond to States' obligations under international humanitarian law? Up to now, the ICRC has confined itself to disseminating international humanitarian law which, in respect of armed conflicts, lays down much more detailed rules than human rights law. It also considers that the promotion of certain human rights, such as the right to peaceful assembly, freedom of opinion and expression and the right to vote, do not come within its field of competence. That being said, in the dissemination of international humanitarian law references to human rights are made in appropriate contexts.

Finally, how should the humanitarian message be brought home to those involved in the violence associated with internal disturbances? Emphasis must be laid on dissemination among young people, even the very young, whether or not they attend school, for these age-groups often take part in disturbances and are the first to suffer. They must be reached in schools in slum areas as well as in universities, by way of radio, television, comic strips and plays. In short, apart from the content of the message, which must be simplified, it is the means of communication which must be developed in an imaginative and understanding way.

²⁶ For the Turku Declaration, see note 20. The Code of Conduct, which is written in simple language, is intended not only for the authorities but for everyone who has recourse to violence. Rather than creating any new law it sets out the existing rules of international law, some of which are customary.

Hans-Peter Gasser, "A measure of humanity in internal disturbances and tensions: proposal for a Code of Conduct", *International Review of the Red Cross*, No. 262, January-February 1988, pp. 38-58.

6. Cooperation with the National Red Cross or Red Crescent Societies

When violence disrupts a country's political stability, the National Society, which is an auxiliary of the public authorities in the humanitarian field, faces a major challenge, namely to act impartially although feelings are running high in the country, in order to gain everyone's trust. This calls for considerable self-control and a high degree of motivation. It is also a prerequisite for effective action.

In a situation of internal violence, the ICRC wishes to cooperate with a National Society which is respected by all the adversaries and whose operational capacity is up to the task. It needs both material and cultural backing from National Society volunteers who have a knowledge of the local situation, the traditional networks of solidarity and how the community functions and can help it in its work to take account of factors which are difficult to perceive without an intimate knowledge of the country.

In return, the ICRC helps the National Society to achieve balanced development, within the framework of the statutory rules and the agreement concluded with the International Federation of Red Cross and Red Crescent Societies in 1989. It is especially responsible for preparing the National Society to carry out activities in behalf of victims of violence in the country. This requires a suitable infrastructure and the training of volunteers in jointly determined areas. Often, the ICRC informs volunteers of the rules of international humanitarian law, in particular the rights and duties of health personnel. Sometimes, the National Society wishes to give its first-aid workers further training, and the ICRC then provides them with basic equipment. There are many areas of cooperation, and it is up to the National Societies to propose specific projects in line with the distribution of tasks within the Movement.

7. Good offices

Less well known, but just as important as the activities described above, is the role that the ICRC may play in a non-international armed conflict to promote the conclusion of humanitarian agreements between the parties. Article 3 common to the four Geneva Conventions calls upon the parties to endeavour "*to bring into force, by means of special agreements, all or part of the other provisions of the*

present Convention", and authorizes the ICRC to offer them its services. Accordingly, the ICRC may propose its good offices or services as a mediator with a view to concluding agreements for evacuating the wounded or civilians (cease-fires, truces) or for the establishment of hospital zones and safe areas.

Furthermore, without any formal agreements being necessary, the ICRC may offer its services in respect of activities requiring the consent of both parties (e.g., retrieving mortal remains in a contested region, repairing a water reservoir in an area temporarily cleared of mines by those controlling it), or to transmit strictly humanitarian messages between adversaries who are not on speaking terms (for instance, in the event of hostage-taking in a situation of internal disturbances).

Finally, the ICRC is willing to examine any request from the parties involved inviting it, in its capacity as an independent and neutral institution, to perform a task which, if properly executed, will undeniably be of direct and tangible assistance in helping to settle differences.

CONCLUSION

The time has now come to draw some conclusions from our analysis of situations of internal violence, on the basis of the ICRC's experience. First of all, it emerges that in today's conflicts and disturbances, the context in which the ICRC has to operate is less and less well defined. Violence manifests itself in many different ways. Contacts have to be maintained with many different people, on account of the fragmentation of public authority, when there is any; persons not taking part in the hostilities, old people, children, are all potential targets; the limits to violence, which stem from the humanitarian values found in all great civilizations, are being constantly eroded by the choice of methods used by the parties to achieve their aims, such as summary executions, hostage-taking and torture.

The ICRC has endeavoured to respond to humanitarian problems of a new type and magnitude, by developing and diversifying its activities. Visits to detainees are now only one of the facets — albeit an extremely important one — of its mandate. Keen to avoid duplicating efforts, the ICRC has sought its own way, dictated by its specific role as a neutral, independent and impartial organization. This specific role is a great asset, but also a necessary constraint, obliging it to maintain

a certain reserve which people sometimes find hard to understand when passions are running high.

The ICRC's main task is not to take action itself, but to approach those in power to ensure that they are aware of and meet their humanitarian responsibilities both inside and outside places of detention. The institution's watchword might be "not only to act, but also to encourage others to take action". This commitment may go as far as bringing together the parties in conflict so that they can themselves work out solutions to their humanitarian problems.

May the day come when everyone who wields power will be intimately convinced that, in leading a people or a community, however small, they are leading, "*men made of flesh and blood, men who are born, suffer and die against their will, men who are ends in themselves and not only means to an end; men whose virtue is being what they are and not otherwise; last but not least, men who aspire to what we call happiness*".²⁷

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²⁷ Miguel de Unamuno (1864-1936).