

Humanitarian standards for internal strife

A brief review of new developments

by Hans-Peter Gasser

In his book “A Memory of Solferino”, Henry Dunant set out two proposals for action on the international level to alleviate the suffering of war victims: the first was to have governments adopt an international treaty to be respected in time of war, and the second was to establish an organizational framework for ensuring compliance with such international obligations. Dunant seemed to realize that only the combination of international, treaty-based obligations and an organization to implement them could induce governments to act in the way he wished. The outcome of his proposals was of course the adoption of the Geneva Convention of 1864 on the one hand, and the founding of the Red Cross Movement on the other.

There is no specific international treaty law that deals with humanitarian issues arising in situations of what is commonly known as “internal strife” (or internal disturbances and tensions,¹ internal violence, public emergency, etc.). In accordance with their field of applicability, the instruments of international humanitarian law² do not apply to such situations. International treaty law for the protection of human rights does apply, but its provisions are not worded in such a way as to respond specifically to problems arising in situations of internal strife. Application of those provisions may even be suspended in times of public emergency (or internal strife), with the exception of a core of basic rules.³

¹ The expression used in Article 1, para. 2, of Protocol II additional to the 1949 Geneva Conventions.

² In particular Article 3 common to the four Geneva Conventions of 1949, and Additional Protocol II.

³ International Covenant on Civil and Political Rights, Article 4; European Convention on Human Rights, Article 15; and American Convention on Human Rights, Article 27.

Moreover, no international institution has been set up to act specifically in situations of internal strife — as the ICRC does in times of armed conflict.

In her article entitled “Action taken by the International Committee of the Red Cross in situations of internal violence”,⁴ Marion Harroff-Tavel explains how the ICRC has come to take action in situations not covered by the Geneva Conventions. She also outlines what the ICRC actually does to protect the basic human rights of persons caught up in the turmoil of internal strife, in particular detainees.⁵

Let us now consider some developments in the codification of international standards designed to apply specifically during situations of internal strife.

1. The two 1988 draft Declarations

In its January-February 1988 edition, the *International Review of the Red Cross (IRRC)* published two texts, both of which dealt with the subject of international standards applicable in situations of internal strife. Although their authors approached the question from different angles, the two texts were the result of an intensive search for an appropriate response to the same phenomenon: violations of fundamental human rights in such exceptional situations.

The first text, by Professor Theodor Meron, is a “Draft Model Declaration on Internal Strife”, containing an “irreducible and non-derogable core of human and humanitarian norms that must be applied in situations of internal strife and violence”.⁶ The Declaration sets out standards with respect to “abuses not effectively addressed by existing norms”.⁷ Although based primarily on existing human rights and humanitarian law instruments, the Declaration also proposes rules which, according to existing positive law, may not at present be binding in situations of internal strife. Thus, Professor Meron’s Draft Declaration represents an attempt to codify the international rules protecting the individual in times of internal strife.

⁴ See this issue of the *IRRC*, pp. 195-220.

⁵ See in particular “ICRC Protection and Assistance Activities in Situations not Covered by International Humanitarian Law”, *IRRC*, No. 262, January-February 1988, pp. 9-37.

⁶ Theodor Meron, “Draft Model Declaration on Internal Strife”, *IRRC*, No. 262, January-February 1988, pp. 59-76.

⁷ *Ibid.*, p. 61.

The second article, written by the author of the present paper, deals with the same subject-matter, but does not adopt a normative approach.⁸ It contains a proposal for a Code of Conduct, which takes up the basic international standards generally applicable but formulates them in such a way as to be relevant to the special circumstances of internal strife. The author does not therefore propose the creation of new law. The Code appeals to all persons likely to commit acts of violence — persons acting on behalf of a government as well as insurgents — and is intended as an attempt to spread knowledge of some fundamental rules of behaviour, in a language everybody should be able to understand.⁹

Since then there have been a number of developments regarding the two initiatives described above. We shall first examine the proposal to establish new standards and then go on to the “code of conduct” approach.

2. The standard-setting approach: the Turku Declaration of Minimum Humanitarian Standards

In June 1987, the Norwegian Institute of Human Rights convened a meeting of experts to discuss a possible approach for drawing up a series of minimum rules to be observed in situations of internal strife. The outcome was the “Oslo Statement on Norms and Procedures in Time of Public Emergency or Internal Strife”.¹⁰

On the initiative of the Institute for Human Rights of the Abo Akademi University, Turku/Abo (Finland), a group of jurists from various universities and international organizations met in a private capacity in Turku in 1990 and drew up a “Declaration of Minimum Humanitarian Standards”.¹¹ The *Review* published this text in its May-June 1991 issue, without adopting any stand on the proposal.¹²

⁸ Hans-Peter Gasser, “A measure of humanity in internal disturbances and tensions: proposal for a Code of Conduct”, *IRRC*, No. 262, January-February 1988, pp. 38-58.

⁹ For a brief look at the ICRC’s position on the initiative, see *ibid.*, p. 47 ff.

¹⁰ Published in 5 *Mennesker og Rettigheter* (Nordic Journal on Human Rights), 1987, pp. 2-4, and in the “Declaration of Minimum Humanitarian Standards” (note 11), pp. 13-16.

¹¹ See “Declaration of Minimum Humanitarian Standards”, Institute for Human Rights, Abo Akademi University, Turku/Abo, 1991. Also published by Theodor Meron and Allan Rosas in 85 *American Journal of International Law*, 1991, pp. 375-381, with useful references to related materials and documents.

¹² Hans-Peter Gasser, “New Draft Declaration of Minimum Humanitarian Standards”, *IRRC*, No. 282, May-June 1991, pp. 328-336.

The purpose of the Turku Declaration is to codify certain basic rules which must be respected as a minimum in times of internal strife or public emergency. The text draws on many sources, primarily international human rights law and its main codifications. International humanitarian law also had an influence on the drafting of the rules, although it is not applicable *de jure* in such situations. It may, however, be of interest to recall that the International Court of Justice described the provisions of Article 3 common to the four Geneva Conventions “as a minimum yardstick ... which, in the Court’s opinion, reflect what the Court in 1949 called ‘elementary considerations of humanity’”.¹³

Such “elementary considerations of humanity” also have a bearing on situations of internal strife. Furthermore, the Turku Declaration draws on a number of documents which do not have force of law, such as Professor Meron’s Draft Declaration and the author’s proposed Code of Conduct, as well as the Siracusa Principles¹⁴ and the Paris Minimum Standards adopted by the International Law Association.¹⁵

The Turku Declaration is essentially the result of a normative approach. Although the various standards set out in the text basically reflect customary law, the authors did not hesitate to propose a progressive development of existing international rules.

After the text had appeared in scholarly reviews, the Turku Declaration was introduced into the United Nations system. At the 1991 session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, two of its members, Theo van Boven and Asbjørn Eide (both of whom, incidentally, participated in the drafting of the Declaration), submitted the Declaration to the Sub-Commission in the form of a working paper, without further comment.¹⁶ As the topic was not on the Sub-Commission’s agenda, there was no discussion on the text. The Sub-Commission nevertheless decided without a vote to give due consideration to the Declaration in its future work.¹⁷ A year later, the Sub-Commission had the Declaration of Minimum

¹³ International Court of Justice, *Reports of Judgments, Advisory Opinions and Orders*. Case concerning military and paramilitary activities in and against Nicaragua, Merits, p. 114, para. 218.

¹⁴ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984), UN doc. E/CN.4/1984/4, and 7 *Human Rights Quarterly*, 1985, pp. 3-14.

¹⁵ Paris Minimum Standards of Human Rights Norms in a State of Emergency (1984), International Law Association, *Report of the Sixty-first Conference* (1984); also published in 79 *American Journal of International Law*, 1985, pp. 1072-1081.

¹⁶ E/CN.4/Sub.2/1991/55 of 12 August 1991.

¹⁷ Decision 1991/55 of 29 August 1991.

Humanitarian Standards included in one of the Secretary-General's reports to the United Nations General Assembly on the New International Humanitarian Order.¹⁸

Thus the Turku Declaration, originally just a non-governmental initiative, has now gained international status, modest though it may be. This is an important step in the right direction. First, the Declaration may become the expression of standards to which the Sub-Commission (and possibly other international human rights bodies) will regularly refer in its monitoring activities. The Sub-Commission has already done so in its Decision 1992/106 on the humanitarian situation in Iraq, where the Declaration is mentioned alongside the Geneva Conventions and other treaties. Secondly, a reference to the Declaration by an international body may help to speed up its informal acceptance by States, reflected in their practice.

The Conference on Security and Co-operation in Europe (CSCE) underlined in its Moscow Document the determination of participating States to protect human rights and fundamental freedoms during a state of emergency.¹⁹ In a very commendable move the participating States went one step further and undertook to refrain from making derogations to human rights guarantees in such situations, even where the treaties authorize them to do so.²⁰ Throughout the Document several standards are mentioned which are of direct relevance to situations of internal strife. As Allan Rosas quite rightly says, the Moscow Document is a major step forward in the formulation of minimum humanitarian standards.²¹

3. The Code of Conduct, an instrument for dissemination

It is impossible to assess the actual impact of the Code of Conduct proposed by the author of this article. No authority was expected to take any formal step with respect to the proposal. It was hoped that the text would be used as it was or would serve as a model for drafting similar rules applicable in specific circumstances of internal

¹⁸ Doc. A/47/352 of 21 August 1992.

¹⁹ Document of the Moscow meeting of the Conference on the Human Dimension of the CSCE, of 3 October 1991, published in 30 *ILM*, 1991, p. 1670. See in particular para. (28).

²⁰ Para. (28.7).

²¹ Allan Rosas, "International controls of internal conflicts" in: *Current problems of international humanitarian law*, Finnish Red Cross and Abo Akademi Institute for Human Rights, p. 6 (1992).

strife. To give the Code a maximum amount of exposure, the text has been widely circulated.

The idea of using codes of conduct as a means of disseminating existing rules of law may become common practice, especially in situations as complex as internal strife. This is not the place, however, to analyse international practice in general; suffice it to say that the ICRC is currently working on a project to establish a code of conduct for police and military forces responsible for maintaining or restoring order and public safety in times of internal disturbances.

4. Concluding remarks

The reasons that prompted the various initiatives described above are simple: the international standards protecting the individual against abuse of power in times of internal disturbances or internal strife are not considered fully adequate to respond to the special dangers for fundamental human rights inherent in such situations. In particular, the rules of the major human rights treaties allowing for the suspension of certain rights during a state of exception may not be entirely satisfactory. However, the time is probably not ripe for a revision of those treaties. Declarations and codes of conduct whose content is adapted to the special circumstances of internal strife may play a welcome role in increasing awareness of human rights and humanitarian standards on the part of those who are called upon to observe them, and thus in keeping the rules alive. They may also prepare the ground for an eventual strengthening of the law.

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