THE PROHIBITION OF TORTURE

In a world in which violence is rife and gives rise to retaliation, forming a vicious circle, torture, physical or mental, becomes extensive particularly during internal conflicts. Such practices stand condemned by Red Cross thought and action. In addition, the Fourth 1949 Geneva Convention relative to the protection of civilians in time of war, in its article 32, forbids torture by civilian or military agents.

It is now twenty years since International Review *published an article by the late Henri Coursier, a member of the ICRC Legal Service, on this interdict under the Fourth Convention. The writer showed in a broad historical background how the attitude towards torture had evolved and how its practice had declined, only to be revived and to spread again in our times. We therefore think it not inappropriate to reproduce his article, while deploring that it is still today only too tragically topical. (*Ed.*)*

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Torture is so odious a form of outrage in relation to the individual as to be inconceivable except in connection with (alleged) claims of the community, e.g. in the case of judicial torture, to which resort is had in order to prove or to prevent crime. Judicial torture is a form of penal proceedings. It is open to question both on ethical grounds and in regard to its efficacity.

There is another form of torture however, which cannot even claim to serve for the protection of the community, and is merely an abusive employment of force without public authority against individuals to compel them to commit acts against their will. Such forms of torture occur in connection with common brigandism or outrages committed during disturbances.

Torture has prevailed more or less generally in history in the different countries of the world, its extent varying according to the views held in regard to the respect of the human person.

In the civilised countries of Europe judicial torture was abolished towards the end of the 18th century. Other forms of torture seemed to have disappeared with the memories of the Thirty Years War and the exploits of Cartouche, Mandrin and their kind, only to appear once more in the present era in connection with racial and political persecutions which have shocked the conscience of the world.

It is proposed at this point to give a brief sketch of the problem of torture in its relation to the traditions and activities of the Red Cross. Ample use will be made in connection with the history of the subject of the work of M. Alec Mellor, Advocate at the Paris Court of Justice, and the author of an intrepid arraignment of torture [1]. We shall then indicate some of the ethical considerations which led the International Committee of the Red Cross to present to the XVII International Red Cross Conference in July-August 1948 the text which, a year later, was amended by the Diplomatic Conference of Geneva to become Article 32 of the Convention for the Protection of Civilian Persons in Time of War, which was signed by sixty-one States. In conclusion we shall refer to the possible influence of this Convention in the drawing up of the Universal Declaration of Human Rights, approved and proclaimed by the United Nations General Assembly on 10 December 1948, which also (Article 5) solemnly declares the abolition of torture.

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In ancient times, both in Greece and in Rome, torture was associated with the institution of slavery (and also with the status of foreigners): citizens were exempt. There could be no better gauge of the aristocratic character of ancient communities. The most famous democracies of antiquity, in whose name the liberties of the present day were proclaimed, limited complete legal capacity to a very small number of persons. The multitudes of slaves (originally prisoners of war) were treated like beasts of burden and deprived of

[1] Alec MELLOR, *La Torture*, in "Les horizons littéraires", 9 rue Clairaut, Paris, 1949.

all rights. The same applied to foreigners. The Jus Quiritium, applicable to citizens only, prohibited their being put to torture. St. Paul, on the point of being tortured, proudly protested that he was a Roman citizen, and his torturers at once stayed their hand.

With the close of the Roman Republic however, the Empire by the Lex Julia majestatis (of which it is not known whether Caesar or Augustus was the author) established the *crimen majestatis*, which suspended the citizen's immunity from torture whenever the security of the State was involved. It was a dangerous principle which, in spite of the spread of Christianity in the Roman world, was to lay the foundation for the police excesses of the Emperors of the Later Empire.

Now begins the conflict between reasons of State on the one hand, which sacrifice the individual, and religion on the other hand, which protects him on the ground of the dignity attaching to him as a being created in the image of God and redeemed by the blood of Christ. In the early 5th century St. Augustine [1] writes: " When a judge tortures an accused person for fear of sending an innocent to death by mistake, he is causing, in woeful ignorance, the death of a man both innocent and tortured whom he tortures in order to prevent his dying innocent." The principal argument of the Bishop of Hippo against torture is that it is a penalty in itself and, even if the accused person is guilty and is sentenced accordingly, he suffers both the penalty attaching to the crime and the torture, while, if he is innocent, the torture is an unwarranted punishment. Such is the attitude of the great precursor of medieval scholasticism; and we have here the origin of the theories of the canonists, which are much more reserved than those of the secular legislators, on the subject of torture, in spite of the moral value attached by the Church to the principle of confession. Such is the moderation of Canon Law. To the Gospel and also (to the honour of Israel, be it said) the Mosaic Law, torture was quite unknown. In 866 Pope Nicholas I wrote to Boris, Prince of Bulgaria, as follows: " I know that after catching a thief you put him to torture until he confesses; but no law either of God or man justifies such a practice. Confession should be spontaneous, and not extorted by force. If the torture yields no proof, are

[1] *De civitate Dei*, XIX. 6.

you not ashamed? Do you not recognise the iniquity of your action? If the sufferer, lacking the strength to resist the torture, confesses to the crime without being guilty, who then is guilty of the crime, if it be not he who forced the false avowal? [1] "

At the time of the Crusades, in spite of great bloodshed and indescribable cruelties, torture and mutilation were on principle forbidden [2].

With the formation of modern States the authority of the Roman Law, revived by the jurists in the interests of the civil power, prevailed over the precepts of the Christian hierarchy. Justinian, codifying Roman law at the close of the 6th century, reverted to the Lex Julia majestatis (*Digest*, XVIII, 4), and attached to it an inquisitorial machinery, to which the Bologna school had recourse for the technique of torture in the 13th century. The *De quaestionibus*, a doctrinal treatise on the subject and of which the civil power made use, contained a certain number of rules which became part and parcel of criminal procedure, so that we find that, always in accordance with the *Digest*, " one starts with the most timorous or the youngest of the accused, and torture will not be applied except on strong presumptions."

The development of torture was particularly marked in Italy. The dramatic sessions of the Council of Ten in Venice are notorious. Incidentally, it is interesting to note, Macchiavelli, the master-theorist of the absolute authority of Princes, had himself to submit to torture.

In England on the contrary, where the royal prerogatives were early disputed and the rights of the subject were proclaimed by Magna Charta in 1215, torture was never in use. Henry VIII, Elizabeth and Cromwell had recourse to torture on occasion, but only (the English historians are careful to point out) " as a part of the machinery of State and not as an instrument of the Law " [3]. Apart from these exceptions, British tradition remained resolutely opposed to torture. During the Felton trial (1628) the Judges resolved that it would be illegal to put the accused to the rack, since no punishment

[1] Quoted by MELLOR, *op. cit.*, page 123.

[2] See *Etudes sur la formation du Droit humanitaire* in the " Revue internationale de la Croix-Rouge ", July 1951, page 570.

[3] BLACKSTONE, *Commentaries of the Laws of England*, 23, No. 3.

of that description was known to, or authorised by, the law. In 1679 the promulgation of the Habeas Corpus Act on the liberty of the individual by Charles II definitely confirmed this doctrine, and torture was unknown in England at a time when it was rife elsewhere.

In Spain the use of torture was specially concerned with the extirpation of heresy and the proceedings of the Inquisition. The Church has often been unjustly blamed for this institution. Although its object was the repression of confessional " crimes ", and it was in consequence based on theological principles, the Inquisition was in reality a political weapon in the hands of the civil power. In 1478 the " Catholic Kings " made a radical change by giving it as its principal organ the Council of the Suprema, which was a royal council, and by leaving prosecutions to the Fiscales, who were royal officials. Torquemada had to defend himself in Rome against the extremely bitter complaints which were lodged against him; and in 1519 Pope Leo X actually excommunicated the Inquisitors of Toledo.

When the King of Spain in the person of Charles V assumed the imperial power in Germany, he regulated torture by the Constitutio criminalis Carolina (1532), which exempted sexagenarians, children under 14 years of age and pregnant women from torture, though children under 14 could be flogged " in moderation ". Luther's Reformation did nothing to change the established ideas concerning torture. On the contrary it lent them the authority of the great Reformer in connection with the repression of sorcery. The Protestants burned after torture just as many sorcerers as the Catholics, both sides being actuated by the belief that in these unfortunate people they were harrying the Devil himself and the earthly manifestations of his terrible power [1].

In France such an eminent jurist as Jean Bodin had no hesitation in conforming to the prevailing ideas. For the torture of sorcerers he recommended the " Turkish Bane " (which meant tearing their nails out) as being superior to any other form. Soon however the moralists began to lift their voices in protest. In a celebrated passage of the *Essais* (Book II, Chapter V) Montaigne wrote: " Torture is indeed a dangerous invention. It is a trial of endurance

[1] See Th. DE CANZONS, *La magie et la sorcellerie en France*, III, pages 61-66.

rather than truth: for both he who can endure it and he who cannot conceal the truth. Why should pain make me confess what is, rather than make me say what is not, true? ...It seems to me that this invention depends upon the strength of conscience, inasmuch as it seems to weaken the conscience of the guilty and on the other hand to strengthen the innocent to bear the pain. Truly it is a most uncertain and dangerous means. What would a man not say to escape such great dolour? *Etiam innocentes cogit mentiri dolor.* Thus it comes to pass that he whom the Judge hath tortured so as not to let him die innocent is made to die both innocent and tortured."

It is curious to note how Montaigne here repeats (in identical terms) the argument of St. Augustine. As to the moral argument —well placed in this chapter, which is headed " De la conscience "— that a good conscience withstands the effect of torture, while a bad conscience is a factor tending towards avowal, it is evident that Montaigne does not press this point: he puts it only as a point against the advocates of torture. His real argument against them is based on the ineffectiveness of torture. Montaigne's opinion is at the origin of the movement against torture, which developed in France in opposition to the Justice Courts (*Parlements*). The latter upheld it on the authority of the Roman Law [1].

Torture was regulated in France by the fundamental laws *(ordonnances)* of 1498 and 1549, and in particular by the Grande Ordonnance of 1670, which is really a code of criminal procedure. It stipulates that for recourse to torture the offence must be evident, and there must be " considerable proof " (Chapter XIX, Article 1). Moreover, the torture may not take place except on an initial warrant issued by the Court after careful deliberation. Torture was classified as " ordinary " or " extraordinary " according to the degree of its severity. The Judge had at all times full powers to graduate the degree of torture. There was a further distinction between "preparatory" torture, the purpose of which was to wrest from the accused an avowal of his crime, and " preliminary " torture, which was only applicable to convicted persons in order to force them to divulge the names of their accomplices.

[1] Montaigne was himself a Councillor of the Bordeaux *Parlement*; but this was not the only issue on which he showed himself to be in advance of his time.

In 1695 President de Harlay, when passing through St. Pierre-le-Moustier, had a fancy to inspect the places where these operations of justice took place. " He was much surprised to see the enormous size of the weights to be attached to the feet and hands of persons undergoing torture, who were at the same time raised to a height of 22 to 23 feet. On being questioned, the officers of the Bailliage, the Civil Lieutenant and the Criminal Assessor had to admit that two accused persons (one of them a woman) had died in the process [1]. " The Paris *Parlement* consulted the tribunals under its jurisdiction; and memoranda from Saint-Dizier, Chartres, Blois, Orleans, Montargis and Beaugé all urged the mitigation of torture. Certain changes were then made, which proved the forerunners of the great current of opinion which in the next century was to do away with torture altogether.

In Russia the movement was slower, and torture continued to be in high esteem, so much so in fact that Peter the Great had no hesitation in torturing his own son on a charge of having fomented a rising for the repeal of the reforms. Under the knout the Tsarevitch made a false confession. In the words of Voltaire [2]: " This last statement of the Prince has a very forced appearance. He seems to make efforts to prove himself guilty; and what he says is contrary to the truth on one capital point... In his last confession he seems to be afraid he did not accuse himself sufficiently in the earlier confessions, or bring out his real guilt by merely describing himself as ' bad-tempered ' and ' evil-minded ' and by imagining what he would have done, had he been the master. He laboriously sought to justify the sentence of death which was to be pronounced... In any case his sentence of death was unanimous... Of the hundred and forty-four judges, not one was prepared even to consider a lesser penalty than death. "

" An English publication", Voltaire adds, " which attracted much attention at the time, said that, if such a case had been tried by the English Parliament, there would not have been a single one of the hundred and forty-four judges who would have imposed any penalty at all, however slight ".

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[1] Alec MELLOR, *op. cit.*, page 113.

[2] VOLTAIRE, *Histoire de Russie sous Pierre le Grand*, Chapter X, pages 472 ff.

These events occurred in 1718. They were only a little anterior in date to the period when enlightened opinion made itself heard throughout Europe—in Russia, as elsewhere—against torture. The " Philosophers " of the Encyclopedia attacked the criminal procedure of their time, not only on account of its ineffectiveness, but also on ethical grounds. They evoked the great name of Nature, which for minds disabused of religious beliefs was the keystone of the social structure. Montesquieu said [1]: " So many clever people and men of great genius have declared against this practice that I hardly dare to speak after them. Otherwise I might have said that torture may be the proper thing under despotic governments which rule by fear. I might have said that the slaves of the Greeks and Romans... but I hear the voice of Nature raised against me! "

The great theoretical advocate of the abolition of torture was Beccaria. In his *Traité des délits et des peines* published in Milan in 1764 he repeated systematically in eloquent language all the classical arguments. " Torture ", he wrote, " is a penalty disguised as a form of enquiry, and no man should be penalised before being judged... Either the offence is proved, or it is not. If it is proved, he needs no other punishment than that which is inflicted by the law. If it is not proved, it is shameful to torment an innocent man. " And again he says: " To make pain a test of truth is an unfailing means of acquitting the robust rascal and condemning the innocent weakling."

But it was above all Voltaire, who in a large number of his works repeatedly attacked the institution of torture with pitiless sarcasm, and in the end definitively discredited it.

One after another the principal Sovereigns of Europe, who made it a point of honour to declare themselves " philosophers" and to correspond with the Encyclopedists and Voltaire, abolished torture.

Frederick II did so as early as 1740. In his *Dissertation sur les raisons d'établir et d'abroger les lois* he said (in French): " Nothing is so cruel as torture. The Romans inflicted it upon their slaves, whom they looked upon as a species of domestic animal: no citizen

[1] MONTESQUIEU, *Esprit des lois*, VI, 17.

was ever subjected to it. May I be pardoned if I protest against torture! I venture to side with Humanity against a practice which is the shame of Christians and of all social peoples and, I may add, a practice as useless as it is cruel." This last point reveals the macchiavellian spirit of this Prince. He had written in a very different sense to Voltaire in 1777: " In regard to torture, we have entirely done away with it, and for thirty years it has ceased to be in use. There may however be justification for exceptions in republican States in the case of crimes of high treason—for instance, if there were in Geneva citizens wicked enough to plot with the King of Sardinia against their fatherland. Supposing one such conspirator were to be discovered, and it became necessary to ascertain the names of his accomplices, in order to get at the root of the conspiracy, I believe that in such a case the public welfare would call for the torture of the culprit. "

In Sweden torture was abolished in 1734, but remained in use for certain serious cases. Gustavus III suppressed the last vestiges of the practice, when he closed the " Vault of Roses " in 1772.

The Empress Maria-Theresa, on becoming an adept of " enlightened despotism ", forbade the use of torture in her dominions, but did not abolish it in law.

Catherine II, also under the influence of the " Philosophers ", published several notes on the forms of criminal justice, in which she expressed herself emphatically in favour of the abolition of torture [1].

Meanwhile in France torture still remained in force thanks to the support of the *Parlements*. But the day arrived when Louis XVI at last put an end to it, actuated not by " philosophical " motives but by a generous impulse. On 24 August 1780, the eve of the Feast of St. Louis, he suppressed " preparatory " torture in celebration of his birthday. Finally on 8 May 1788 at a *lit de justice* he overrode the resistance of the *Parlement*, and suppressed " preliminary " torture. These two measures were confirmed by a Decree of the Constituent Assembly of 8 and 9 October 1789. It was thus thanks to the last Sovereign of the *ancien régime* that the new and more humane era opened. In spite of its excesses and its acts

[1] It was not abolished however until 1801 by a ukase of Alexander I.

of cruelty the Revolution respected these decisions, and even the Reign of Terror was without torture.

The Declaration of the Rights of Man and of the Citizen, based like all the Revolutionary legislation on the individualist ideology, inspired the successive Constitutions in France; and, when the Empire proceeded to distil the essence of the vast political and moral ferment of those troubled times, it promulgated a Criminal Code, which lays down (Article 186) that: " When an official, a public officer, an administrator, an agent or superintendent of the Government or of the Police, an executor of judicial orders or sentences, a superior or inferior public servant uses, or causes to be used, violence, without legitimate cause, against persons in the exercise of, or in connection with, his functions, he shall be punished according to the nature and gravity of his violence, the penalty being graduated in accordance with the regulation prescribed in Article 198 hereafter." The celebrated Chief of the Imperial Police, Fouché, never employed torture. From this time onwards torture may be taken to have definitely ceased in France. No subsequent regime reversed this development; and it may be said that the spirit of Article 186 of the Criminal Code is characteristic of the judicial system, which spread over all Europe during the 19th century.

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The present age has seen the revival of torture, and in a form even more horrible than in past centuries.

On the one hand scientific progress has made it possible to effect a more subtle variation of the different forms of torture up to the extreme limit of the victim's strength. Use of the electric current is especially favoured.

On the other hand it would seem that human sensitiveness, and *pro tanto* the liability to suffering, has increased in present day societies. The use of drugs like antipyrin and aspirin have for years past made the human frame independent of nervous suffering. The use of anaesthetics in surgical operations has eliminated occasional sufferings. In the past dental decay caused pain, for which there was no remedy other than the loss or extraction of the tooth: today there is hardly anyone who cannot obtain treatment

almost without pain. Mankind has become accustomed to this elimination of suffering to such an extent that we can hardly believe what seem to us the astonishing accounts of Napoleon's Grande Armée in Russia. We read, for example, that Larrey " would dislocate the shoulder of a wounded man, sitting on a drum, without even making him lie down, and the patient would say nothing... perhaps make a face for a moment ". Professor René Leriche, who reports this story, concludes that " the sensitivity to pain of present-day man is more refined and more subtle than that of his predecessors in the past " [1].

This conclusion intensifies pity, for the torture of the present day fills us with even greater horror than the torture of antiquity. " Pity ", writes Bergson [2], " consists in putting oneself in the place of others, and suffering in their sufferings. But if, as some have maintained, pity was nothing more than this, it would incline us to shun the afflicted rather than to succour them, for all suffering naturally fills us with horror. It is possible that this feeling of horror is at the origin of pity; but a new element soon mixes with it—an urge, namely, to help our fellow-men and alleviate their suffering. We may think with La Rochefoucauld that this so-called fellow-feeling is a calculated feeling, ' a shrewd forecast of evils to come '; and it is possible that fear has in fact something to do with compassion. But these aspects of pity are not its higher aspects. True pity consists less in shrinking from suffering than in desiring it. The desire may be slight: its fulfilment may hardly be welcome: but one forms the desire in spite of oneself, as if Nature had done some great wrong, and all fear of complicity with her had to be removed. The essence of pity therefore is a craving for self-humiliation, an aspiration towards belittlement. This painful aspiration has incidentally its charm, inasmuch as it raises us in our own esteem, and makes us feel superior to those material objects from which our thoughts are thus momentarily detached. "

This admirable analysis well defines the spirit of the Red Cross, and helps us to understand the devotion of pioneers of relief work like Florence Nightingale and Henry Dunant. As the same feelings

[1] René LERICHE, *La Chirurgie de la douleur*, Paris, 1937, pages 52-149.

[2] Henri BERGSON, *Essai sur les données immédiates de la conscience*, page 14.

animate those who are called to follow the example of these pioneers, the Red Cross could not possibly remain indifferent to the revival of torture.

But there is more to it than that. Torture calls in question the fundamental rights of man. If then it is true that the idea of respect for the human person is at the base of humanitarian law, how could the Red Cross do otherwise than raise the question, and show in what way torture is contrary to the very fundamental of this law?

From the moral point of view torture degrades the person who inflicts it, and even more horribly the person on whom it is inflicted. Certain scientific discoveries have made it possible to violate the very secrets of conscience, and by means of the action of barbiturate substances such as pentothal to force avowals of tendencies and conceptions which the will had always resisted. Instead of judging a man by his acts, the modern torturer probes his secret sentiments. Professor Graven of Geneva University has shown that the " right to silence " is one of the attributes of personality [1]. We may go further and say that torture deprives its victims not only of their prerogatives as human beings, but also of their powers of resistance to self-inflicted dishonour and degradation.

Prominence was given to this aspect of the problem in a Report addressed by Me Joseph de Coulhac-Mazerieux to the French Bar Council *(Conseil de l'Ordre des Avocats)* [2]. " The Bar Council ", he wrote, " has the duty of ensuring respect for this ' inviolability ' of the human person, which is one of the established principles of our liberal and individualistic juridical system. When we speak of the inviolability of the human person or of the ' right to personal inviolability ', it must be understood that for the jurist ' the human person is inseparably body and soul ', as Professor Carbonnier felicitously puts it... When guilt is in issue, doubt in the minds of those with whom it rests to investigate and to judge is so unbearable that, to overcome it, they are sorely tempted to have recourse to exceptional measures of force and coercion. It is from this temptation and from its inevitable concomitant misuse that the individual must be protected. It is for the law, and the law alone, to arbitrate

[1] J. GRAVEN, *L'obligation de parler en justice*, published by the Faculty of Law of Geneva University, 1946.

[2] Dated 13 July 1948.

when the conflicting rights of the individual and of society are in question. The law has regulated arrest, search of the arrested person, detention pending trial and imprisonment. It has laid down the limits for lawful coercion, whether physical or moral. Beyond those limits any coercion is arbitrary, and constitutes an abuse and a violation of the law... All violence has disappeared from our Code of Criminal Procedure, and the Judge cannot place beside the pen of his Registrar either the policeman's bludgeon or the psychiatrist's syringe. "

Such is the condemnation of torture from the standpoint of the law. For the Red Cross it is a confirmation of their motto " res sacra miser ". Any suffering calls for action; but, when suffering is thus glaringly inconsistent with the fundamental rights of the human person, further effort must be made to mitigate it by humanitarian law.

It was with these considerations in mind that the International Committee of the Red Cross was inspired to insert the Article on torture in the draft Convention for the Protection of Civilian Persons in Time of War. As has alrady been mentioned, the draft was submitted to the XVII International Red Cross Conference at Stockholm in July-August 1948; and the text proposed by the International Committee (" Torture and corporal punishments are prohibited ") was adopted. Some months later the United Nations General Assembly met in Paris, and on 10 December 1948 approved and proclaimed the Universal Declaration of Human Rights " as a common standard of achievement for all peoples and all nations "... This Declaration also condemned torture. Its fifth Article stated that: " No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. "

It remained to introduce these texts into positive law. This was done in the case of the humanitarian Convention by the Diplomatic Conference which met in Geneva in April 1949. It took the Stockholm text, as submitted to it by the Swiss Government, and made it in amended form into Article 32 of the Civilians Convention. It reads in its final form as follows:

" *The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.*"

At the Geneva Conference, discussion on this important Article was opened by the Soviet Delegation, which said in substance: " The crimes committed against the civilian population during the last World War will for ever be remembered by the whole world as one of the most grievous stains on the history of mankind. " The Soviet Delegation estimated the number of civilian persons exterminated in Europe alone during the Second World War at more than 12 millions, and suggested that the Article should brand as " serious crimes " all infractions of this prohibition, and establish rigorous penalties for such crimes. The United States Delegation paid tribute to the humanitarian character of the Soviet proposal, and was itself in favour of sanctions, but preferred to include the provisions for the purpose in the part of the Convention which dealt with sanctions. It was decided accordingly.

Torture is thus placed amongst those crimes which constitute an attack on the fundamental rights of the human person.

A draft preamble giving prominence to these fundamental rights had been drawn up by the French Delegation, seconded by the Finnish Delegation, with a specific reference to torture. It ran as follows:

" The High Contracting Parties, conscious of their obligation to come to an agreement in order to protect civilian populations from the horrors of war, undertake to respect the principles of human rights which constitute the safeguard of civilisation and, in particular, to apply, at any time and in all places, the rules given hereunder:

. . . . . .

" (4) Torture of any kind is strictly prohibited.

" These rules, which constitute the basis of universal human law, shall be respected without prejudice to the special stipulations provided for in the present Convention in favour of protected persons."

The text was not adopted by the Conference, the latter preferring to do without a preamble; but the substance of it was incorporated, partly in Article 3, paragraph 1, and partly in Article 147 (" Grave breaches ") which imposes penalties in accordance with the procedure above indicated. There is a specific reference to torture.

In conformity with the Fourth Convention, the three other Geneva Conventions exclude torture in the case of the persons they protect—viz. sick and wounded, shipwrecked persons, prisoners of war (Articles 12 of the First Convention, 12 of the Second Convention and 13 of the Third Convention).

It should be noted however that the Conventions relate only to times of war and to the " protected persons ", i.e. to " non-nationals ". Nationals, i.e. citizens or subjects, remain outside the Convention, which respects the autonomy of sovereign States, and does not interfere with their domestic affairs.

This limited character of the Conventions draws attention to the need for enforcing the Universal Declaration of Human Rights.

But it must be admitted that " reasons of State " still constitute the chief obstacle to the ideal proclaimed by the General Assembly of the United Nations.

In any case, the Civilians Convention does in a particular circumstance limit the consequences of the power of the State vis-à-vis its nationals. This is in Article 3, where it says that in case of civil war " the following acts are and shall remain prohibited at any time and in any place whatsoever... murder of all kinds, mutilation, cruel treatment and torture ".

Consequently, when " nationals " are in the greatest danger and within an ace of being treated as rebels, they are expressly protected against torture. That is an important step forward taken by the law of Geneva in support of human rights.
