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wishes its readers
all the best for 1988

INTERNATIONAL REVIEW OF THE RED CROSS

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JANUARY-FEBRUARY 1988
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- specializing in international humanitarian law and ICRC doctrine,
- recording the international activities of the Red Cross, mainly for reference purpose, as a chronicle of events,

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INTERNAL DISTURBANCES AND TENSIONS: A NEW HUMANITARIAN APPROACH?

*Violence generally
begets violence
Aeschylus*

The common terms “internal disturbances” and “internal tensions” cover a whole range of situations all characterized by acts of violence related to human rights violations and resulting in human suffering. These situations, now so common and widespread throughout the world, are typified by direct confrontations between police and opponents of a regime or by any of a variety of ethnic, racial, religious, ideological, economic or social tensions, which may likewise give rise to police action as a preventive measure.

Above and beyond this simplified summary, there is another kind of violence, overt or covert, with its train of abuses and infractions of fundamental human rights—mass arrests, ill-treatment of detainees, excessive measures of repression, the disappearance of persons, acts of terrorism, summary executions, etc.

The effects of these situations of violence within States may, from one case to another, be of a political, legal, economic or social nature, but they always have humanitarian implications since they affect the life, integrity and dignity of every individual concerned.

Violations of human rights are of course a constant concern of the United Nations, and of course the ICRC and other organizations have done all they could to relieve the suffering of the victims. The results, however, have not fulfilled our aspirations. We do not speak of a “legal void” with regard to the rights and responsibilities applicable in these situations, as some experts do, but we are compelled to recognize that the international protection of victims of internal disturbances and tensions remains inadequate.

The fundamental question, then, is how can individuals be better protected against all forms of violence? Recognizing that the international community has already accumulated a substantial legal capital in the domain of human rights and humanitarian law, has the time now come to recall and reaffirm some fundamental rules which must be observed even in situations of internal disturbances and tensions? Or should we maintain a pragmatic and non-legislative attitude vis-à-vis the governments and situations in question?

*
* *

The international community does possess international legal instruments which could be applied to such situations. To begin with, universal and regional legislation on human rights defines the rights of the individual which the States have formally undertaken to implement and uphold. Admittedly, in the event of disturbances the States can suspend some of these rights, but even if they have decreed a state of emergency, they are nevertheless bound at all times and in all circumstances to preserve the minimum fundamental rights necessary to safeguard the physical and moral integrity of the individual.

The fact is that human rights law, even though formally applicable in wartime, is essentially designed for times of peace. In practice, the exercise of these rights is very often reduced in the event of conflict—quite apart from the fact that the state of ratification of international and regional human rights instruments is still very unsatisfactory.

International humanitarian law protects the individual not only against foreign enemies but also in certain circumstances, against his own government. This progress is most clearly expressed in Article 3 common to the four Geneva Conventions, which contains a “hard core of fundamental rights” widely considered as minimum standards to be applied as an absolute must in any armed conflict. Furthermore, these provisions largely correspond in content with those non-derogable human rights norms which must be respected in all circumstances, even in situations of internal disturbances and tension.

In all these situations the International Committee of the Red Cross may offer its services both to the parties to a non-international conflict, by virtue of Article 3, and to governments confronted by internal disturbances and tensions, in this case, on the basis of the Statutes of the International Red Cross and Red Crescent Movement, its own statutes

and also resolutions adopted by the International Conference of the Red Cross and Red Crescent.

Furthermore, the ICRC's right to take any humanitarian initiative entitles it to intervene in situations of internal tensions and even in cases which have not been defined as such, but which would require the humanitarian action of a specifically neutral and impartial institution.

The ICRC practice of offering its services is rooted in its own tradition. Guided by its extensive experience, the ICRC has considered such situations in humanitarian terms and has sought to define them. These definitions are only for the ICRC itself, but they help to determine the bases for its activity. It has also outlined the action it will take, which does not cover all aspects of internal disturbances and tensions, notably during actual clashes, but is concentrated on the humanitarian consequences of the situation, especially with regard to detainees and their families.

It will seek to improve conditions of detention and treatment of detainees, make special interventions in the event of especially flagrant denials of justice, indiscriminate violence against defenceless persons or the taking of hostages, and combat the phenomenon of forced disappearances, etc. All these ICRC protection and assistance activities in situations not covered by international humanitarian law are described and commented upon in the ICRC policy document presented below, which was first published in 1986 on the occasion of the Twenty-fifth International Conference of the Red Cross and updated in view of the new Statutes of the Movement.

We do not in this article intend to evaluate ICRC action in these situations, but should simply like to point out that the ICRC's right to take any humanitarian initiative in such cases has become a matter of customary law and that its offers of services cannot be regarded as interference in the internal affairs of a State. At the same time, the fact remains that the States are under no corresponding obligation to accept those offers.

*
* *

Alarmed by the proliferation of internal disturbances and tensions and the myriad forms of violence which characterize them, many people deplore the lack of legal means to protect the victims. Some of them regret that the Protocols additional to the Geneva Conventions excluded

these situations from their field of application; others feel that since there is no obligation for the States to accept the ICRC's offers of services, even in non-international armed conflicts, such an exclusion does no harm to the ICRC's humanitarian work and may even be conducive to it. It is indeed true that the ICRC has been able to visit places of detention in some 90 countries without the States being under any legal obligation to accept its interventions.

In order to deal with these major concerns, a new approach has emerged. Its intention is not to create a new body of law specific to these situations, but rather to recall a number of existing fundamental rules drawn from written law, customary law and general legal principles, rules which will thereby be better applied in situations of internal disturbances and tensions and which cannot be violated without offending the universal conscience of mankind.

The Review is pleased to present two texts which reflect this approach. One is a "Code of Conduct" put forward by an ICRC expert, expressing his personal opinions; the other is a "Model Declaration" drafted by a well-known internationalist.

Their basic approaches are identical insofar as both of them draw on the "common ground" of law, human rights and humanitarian law and propose fundamental rules which must be respected in all circumstances and without discrimination.

We do not intend, in this editorial, to make a comparative legal analysis of these two texts. The reader will be the judge. We shall limit ourselves to commenting on their substance and value. In both of them, in the introduction to the Code of Conduct and in Article 2 of the Declaration, the authors express their desire to recall the essential rules of international law, both written and customary, to all concerned, to the governments responsible for maintaining or restoring order and those who are opposed to the authorities.

*These rules, which must absolutely be respected, relate to **the right to life, the inherent dignity of the human being, the forbidding of murder, torture and other degrading forms of treatment, the taking of hostages, disappearances of persons, acts of terrorism and collective punishment, recourse to force out of proportion with the objectives sought, humane treatment of persons deprived of their freedom, the granting of fundamental legal guarantees, the rights of the child, protection of the wounded and sick and the search for missing persons.***

As we see, these imperative rules are inspired essentially by the hard core of non-derogable rights and prohibitions contained, inter alia, in the International Covenant on Civil and Political Rights, the American

Convention on Human Rights and the European Convention for the Protection of Human Rights, as well as Article 3 common to the four Geneva Conventions and Articles 4-6 of Protocol II.

Both authors emphasize that the rules they present must in no way be interpreted as limiting the protection provided by humanitarian law and the human rights instruments already in force.

What distinguishes the two texts is above all their formulation and presentation, reflecting each author's desire to find the best means to convince the readers and the approach best adapted to the present political context.

The Code of Conduct is intended primarily as an instrument for dissemination, designed to arouse the conscience of all its readers. Its simple language and conciseness are reminiscent of the manual entitled The fundamental rules of international humanitarian law applicable in armed conflicts, compiled by ICRC experts in 1979 to facilitate the dissemination of humanitarian law. This same paramount desire to make the law known is expressed in Rule 13 of the Code of Conduct.

The Model Declaration has a more accentuated legal approach in its presentation and formulation. It is conceived as a collection of imperative principles and rules, accompanied by procedures to clarify them and facilitate their application. In this respect, the Model Declaration assumes the appearance of a protocol to the human rights and humanitarian law conventions to which it mainly refers. Although the author does not dwell on the need to disseminate the rules in the Declaration, he does make a point of specifying that the authorities of the State "should grant to humanitarian organizations all facilities within their power so as to enable them to carry out their humanitarian activities for the protection and assistance to the victims of the internal strife".

*The Code of Conduct avoids legal terminology so as to make it as accessible as possible to everyone. It is designed to encourage individuals to observe a certain humanitarian conduct, and is thus mainly directed toward the **victims**.*

*The Model Declaration, with its legal approach, is addressed more to **States and citizens**, but is sufficiently flexible to serve both as a reference document that anyone can use and as a draft which could be presented to an international, universal or regional institution.*

As they are, these texts are "trial balloons" which already have the merit of existing. They are thus promising elements in this new humanitarian approach so widely demanded, in a domain so poorly documented.

In publishing these two texts the Review wishes to initiate thorough consideration of the phenomenon of internal disturbances and tensions

and the means of dealing with its effects in humanitarian terms. It invites its readers to form their own opinion and in particular to judge whether, at this stage, it would already be advisable to try and determine the form of an instrument on internal disturbances and tensions, or whether it is preferable to make the spirit of it emerge clearly by first appealing to the conscience of all, or even to renounce all thought of codification and concentrate solely on the pragmatic approach of humanitarian action.

In any case the Review, by opening its columns to its readers, hopes to encourage dialogue among all those who would like to offer their comments and suggestions on a subject of whose importance we are all aware.

The Review

ICRC protection and assistance activities
in situations not covered by
international humanitarian law

ICRC document of August 1986 updated in view of the new Statutes of the International Red Cross and Red Crescent Movement.

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ICRC protection and assistance activities in situations not covered by international humanitarian law

Introduction

In a sporadic way since 1919, then systematically from the late 1960s, the ICRC has endeavoured to carry out its humanitarian activities in situations of internal disturbances and tensions, in particular to give protection and assistance to persons imprisoned in such circumstances and commonly referred to as “political detainees”.

The ICRC’s rules of conduct in such situations were presented at the Twenty-third International Conference of the Red Cross (Bucharest, 1977) as part of the document entitled “The ICRC, the League and the Report on the Re-appraisal of the Role of the Red Cross”.¹

The present document brings ICRC doctrine on the subject up to date. It takes into account the qualitative and quantitative development of the ICRC’s humanitarian action in those situations which are not covered by the 1949 Geneva Conventions or their Additional Protocols of 1977, but in which problems of a humanitarian nature justify action by an independent body like the ICRC. Indeed, in agreement with the authorities of the country concerned, the ICRC is more and more often able to contribute in some way, especially towards better treatment of detainees and respect for certain basic rules of humane conduct, which all parties—governments and opponents alike—are bound to observe in all circumstances.

The ICRC hopes that the present document will facilitate understanding—and, where necessary, acceptance—of its humanitarian ac-

¹ See *International Review of the Red Cross*, from March-April 1978 to January-February 1979, as well as off-print of those extracts, ICRC, 1979.

tion in the event of internal disturbances and tensions and thereby help to ease the plight of all victims of such situations.

1. Definition of internal disturbances and tensions

Originally, in 1864, international humanitarian law offered its protection only to victims of wars between States. With the adoption of the four Geneva Conventions of 1949, the situation changed: Article 3 common to the four Geneva Conventions of 1949 applies to all non-international armed conflicts. Protocol II additional to these Conventions applies to non-international armed conflicts where hostilities have a higher degree of intensity²; it does 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”³.

Just what are these “internal disturbances and tensions” which justify *ad hoc* protection by the ICRC outside the area to which the Geneva Conventions and the Additional Protocols apply?

The ICRC has attempted to define them. The two concepts were submitted to a group of experts in 1970. On the basis of their remarks, the ICRC gave the first Conference of Government experts (1971) the following description of *internal disturbances*:

“This involves situations in which there is no non-international armed conflict as such, but there exists a confrontation within the country, which is characterized by a certain seriousness or duration and which involves acts of violence. These latter can assume various forms, all the way from the spontaneous generation of acts of revolt to the struggle between more or less-organized groups and the authorities in power. In these situations, which do not necessarily degenerate into open struggle, the authorities in power call upon extensive police forces, or even armed forces, to restore internal order. The high number of victims has made necessary the application of a minimum of humanitarian rules”.⁴

As for *internal tensions*, the term usually refers

- a) to situations of serious tension (political, religious, racial, social, economic, etc.) or

² Protocol II, Art. 1, par. 2.

³ *Ibid.*

⁴ Conference of Government Experts, document submitted by the ICRC, Title V, *Protection of victims of non-international armed conflicts*, 1971, p. 79.

b) to sequels of an armed conflict or internal disturbances.

These situations present any one, if not all, of the following characteristics:

1. mass arrests;
2. a large number of persons detained for security reasons;
3. administrative detention, especially for long periods;
4. probable ill-treatment, torture or material or psychological conditions of detention likely to be seriously prejudicial to the physical, mental or moral integrity of detainees;
5. maintaining detainees incommunicado for long periods;
6. repressive measures taken against family members of persons having a close relationship with those deprived of their liberty mentioned above;
7. the suspension of fundamental judicial guarantees, either by the proclamation of a state of emergency or by a *de facto* situation;
8. large-scale measures restricting personal freedom such as relegation, exile, assigned residence, displacements;
9. allegations of forced disappearances;
10. increase in the number of acts of violence (such as sequestration and hostage-taking) which endanger defenceless persons or spread terror among the civilian population.

2. The bases for ICRC activity

ICRC activity in case of internal disturbances and tensions⁵ is based, chronologically, on:

- tradition,
- the Resolutions of International Conferences of the Red Cross,
- the Statutes of the International Red Cross and Red Crescent Movement and those of the ICRC.

2.1. Tradition

As is the case for the Geneva Conventions and those they protect, humanitarian action for “political detainees” has preceded legal codification.

⁵ Moreillon, Jacques: *Le CICR et la Protection des détenus politiques*, Lausanne, L'Age d'homme, 1973, 303 pages.

Until the First World War, the ICRC made hardly any distinction between civil war and internal disturbances.

The first time it took action to assist large numbers of civilians affected by such disturbances was when it sent relief supplies to Montenegro to aid refugees who had fled Herzegovina in 1875.

Its first **visits** to “political detainees” took place in Russia in 1918 and in Hungary in 1919.

Between the First and Second World Wars, ICRC delegates carried out visits to persons incarcerated in connection with internal disturbances or tensions in the following countries: Ireland (1923), Poland (1924), Montenegro (1924), Italy (1931), Austria (1934), Germany (1935 and 1938) and Lithuania (1937).

Those visits, however, were occasional and constituted only the beginnings of a custom. In fact, it was only after the Second World War and more particularly in connection with the process of decolonization that the ICRC increased the number and frequency of its visits to persons incarcerated in their own countries. Occasionally, such visits did not take place in the context of internal disturbances or tensions but rather in order to provide technical assistance to the prison services of developing countries.

Whether to provide technical assistance to prison services or, as has much more often been the case, to afford protection to the victims of internal disturbances and tensions, the ICRC, since the Second World War, has made visits to more than half a million “political detainees” in 95 countries, in situations not covered by the Geneva Conventions.

Between 1980 and 1985, for example, ICRC delegates carried out 12,250 visits in more than 600 different places of detention and registered or interviewed without witness 151,000 “political detainees”.

Virtually all of those visits were carried out under conditions conforming to ICRC practice, including, for example, the possibility for delegates to interview without witness the detainees of their choice and to make regular repeat visits to persons and places.

It should be noted that some governments have refused the ICRC’s offers of its services or have set conditions which the ICRC deems unacceptable.

There are also situations in which the ICRC is obliged to conclude that the general attitude of a government renders productive discussion of these matters impossible.

Also, the growing number of situations involving internal disturbances and tensions has necessitated the ICRC tailoring its activities in this area to the limited means at its disposal.

2.2. The Resolutions of International Conferences of the Red Cross

In its Resolution No. XIV, the Tenth International Conference of the Red Cross (Geneva, 1921)⁶ stated, among other things:

“General Principles

1. The Red Cross, which stands apart from all political and social distinctions, and from differences of creed, race, class or nation, affirms its right and duty of affording relief in case of civil war and **social and revolutionary disturbances.**

The Red Cross recognizes that all victims of civil war or of **such disturbances** are, without any exception whatsoever, entitled to relief, in conformity with the general principles of the Red Cross...” (our emphasis).

The Resolution went on to define the role of the National Society in the country concerned, the role of other National Societies and that of the ICRC, giving the Committee certain competence to intervene in such circumstances, especially to organize relief.

Various meetings of experts⁷ have confirmed the relevance of this mandate which has been reaffirmed in many Resolutions adopted by International Conferences of the Red Cross, the most recent being Resolution No. VI of the Twenty-fourth International Conference of the Red Cross (Manila, 1981), in the text of which we indicate below in bold face the sections relating—individually or collectively—to situations of internal disturbances and tensions and to ICRC activities in connection with them.

“Respect for international humanitarian law and for **humanitarian principles and support for the activities of the International Committee of the Red Cross.**

⁶ See Annex I.

⁷ See, for example:

- Commission of experts for the examination of the question of assistance to political detainees; Geneva, June 1953; published by the ICRC, 1953; 8 pages.
- Commission of experts for the study of the question of the application of humanitarian principles in the event of internal disturbances; Geneva, October 1955; published by the ICRC, 1955; 8 pages.
- Commission of experts for the study of the question of aid to the victims of internal conflicts; Geneva, October 1962; published by the ICRC; 11 pages.

The XXIVth International Conference of the Red Cross,
deeply concerned by the Report on the Activities of the International Committee of the Red Cross,

noting that in several armed conflicts fundamental provisions of the Geneva Conventions are violated and that these grave violations have often the consequence of impeding the International Committee of the Red Cross in the discharge of its activities pursuant to international law applicable in armed conflicts—international, internal or mixed,

observing further that the International Committee of the Red Cross is not always able to discharge its humanitarian activities in internal disturbances and tensions,

alarmed by such violations of the rules of the law of nations and of humanitarian principles, and likewise by the development of violence and contempt for human rights in the world,

recalling that, pursuant to the Geneva Conventions, the States have the obligation not only to respect but to ensure respect for these Conventions,

makes 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”.

2.3 The Statutes of the International Red Cross and Red Crescent Movement and those of the ICRC

Although the Red Cross was founded in 1863 with the creation of the ICRC and the first National Societies, the Movement did not adopt Statutes until 1928, at the Thirteenth International Conference of the Red Cross in The Hague.

Article VII of those Statutes, which deals with the ICRC, affirms that the latter “**shall continue** to be a neutral intermediary whose intervention is recognized as necessary, especially in time of war, civil war **or civil strife**” (our emphasis). It adds that “all questions calling for examination by a specifically neutral body, shall remain the exclusive province of the International Committee of the Red Cross”. It should be noted that, by using the words “shall continue”, the International Conference was implying, through the Statutes, its recognition and

confirmation of the by then traditional competence of the ICRC in such matters.

The Statutes of the International Red Cross were revised by the Eighteenth International Conference of the Red Cross (Toronto, 1952). Article VI of those Statutes deals with the ICRC and states that:

- “5. As a neutral institution whose humanitarian work is carried out particularly in time of war, civil war, **or internal strife**, it endeavours at all times to ensure the protection of and assistance to military and civilian victims of such conflicts and of their direct results. (...) (our emphasis)
6. It takes any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary and considers any question requiring examination by such an institution.”

In the new Statutes of the International Red Cross and Red Crescent Movement adopted by the Twenty-fifth International Conference of the Red Cross (Geneva, 1986)⁸, Article 5 on the ICRC stipulates that “The role of the International Committee... is in particular:

2.d) 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.”

Similarly:

“3. The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and may consider any question requiring examination by such an institution.”

Thus, in the 1928 version and in the revised version adopted by the Eighteenth International Conference of the Red Cross in Toronto in 1952, as well as in the 1986 version, internal strife has always been specifically mentioned in the Statutes of the Movement, whereas there has never been any reference to internal tensions. On the other hand, in these same versions, a provision (paragraph 3 in the 1986 version of the Statutes) authorizes the ICRC to offer its services both during internal disturbances and during internal tensions, among other situations.

⁸ See Annex II.

As for the Statutes of the ICRC itself, they preceded or followed those of the International Red Cross, employing wording which is identical or similar.

2.4. Summary

The ICRC's practice of offering its services for the protection and assistance of persons affected by internal disturbances or tensions is well rooted in its own tradition. It is confirmed in resolutions of the International Conferences of the Red Cross and the Statutes of both the International Red Cross and Red Crescent Movement and the ICRC itself.

The States have never questioned the actual principle on which this practice is based; the basis for ICRC action in the event of internal disturbances and tensions has thus acquired a customary nature and the offer of the International Committee's services in such situations does not constitute interference in the internal affairs of a State.

But there is no corresponding obligation on the part of governments to accept such offers in those situations which are, by definition, not covered by the Geneva Conventions.

3. ICRC activities in the event of internal disturbances and tensions

The various violations of essential rules of humanity which take place in internal disturbances and tensions fully justify the humanitarian reasons the ICRC has for taking action in such situations: indiscriminate violence, acts of terrorism, hostage-taking, rules of law which are violated by individuals or by the State, forced disappearances, poor conditions of detention, torture etc. The classic spiral of violence and repression often leads to situations in which the individual, in fact if not in law, loses the protection of the State, either because the government is no longer capable of maintaining order or because, in maintaining that order, it also violates humanitarian norms.

In such circumstances, the ICRC's activities may take many forms:

3.1. Improving the conditions of detention and treatment of incarcerated persons

The traditional task of the ICRC in cases of internal disturbances and tensions consists in visiting places of detention in order to improve the prisoners' situation.

3.1.1. Examining conditions of detention

In virtually all situations of internal disturbances and tensions certain categories of persons are imprisoned by the authorities. All these individuals have one thing in common: what they have done, said or written is considered by the authorities to constitute opposition of such magnitude to the existing political system that it must be punished by the deprivation of their freedom. The legal intent of such detentive measures may be punitive or preventive, aimed at re-education or at reintegration. The sentences may be pronounced under laws normally in force or under emergency legislation or jurisdiction; alternatively they may result from administrative measures in force for a limited or unlimited period.

Sometimes, arrest may be a general and indiscriminate measure affecting large groups of persons.

The ICRC, in its concern to preserve the confidence of all parties through its neutrality, does not get involved in the political problem at the root of the disturbances or tensions, nor does it comment on the **motives** for detention; it essentially concerns itself with the material and psychological **conditions** of detainees.

Experience has shown that, even where the government of a country wishes its prisoners to receive humane treatment, the everyday reality of prison life often could and should be improved. Prisoners tend to be viewed as “enemies” by officials in direct contact with them. There is often no practical way for them to communicate their grievances to national authorities who would be both able and willing to ensure humane and dignified treatment. Thus, both during the period of interrogation as well as afterwards—when the only security involved is that of the place of detention itself—ICRC delegates have frequently been made aware of the great need for improvement in prison conditions.

ICRC activities consist of various steps. Periodical and thorough visits to the places of detention and persons detained are carried out by appropriately trained ICRC delegates. These visits are followed by discussions at all levels with those in charge of detention. Confidential reports are then written and are sent exclusively to the detaining authority, generally at the highest level. These reports take into account the particular social, economic and cultural contexts and describe, in an objective and detailed manner, the conditions of detention and treatment of the prisoners. Specific and practical suggestions for improvement are made. The reports are not meant for publication: the

ICRC makes public only the place, date and number of persons seen and the fact that its delegates were able to interview the prisoners without witness. It never comments publicly on the material or psychological conditions observed. (However, should the detaining authority publish a part of its reports, the ICRC reserves the right to publish the reports concerned in their entirety).

If the need presents itself and the authorities agree, the ICRC often provides material assistance to the detainees.

In order to perform their task of protection effectively, ICRC delegates ask to visit all persons detained in connection with the events, to interview freely and without witness the prisoners of their choice and to return to the places of detention on a regular basis or as the needs require.

This procedure generally brings very positive results and governments which have chosen to make use of ICRC services are generally grateful. Furthermore, no State has complained to the ICRC that its security had been jeopardized by such visits or that the legal status of persons visited had been affected. This is worth mentioning when one recalls that, since 1918, the ICRC has visited more than half a million such prisoners in about a hundred countries.

(Annex III contains a description of the procedure used by the ICRC in visiting places of detention.)

3.1.2. The fight against torture

As is well known, torture is prohibited in all circumstances, by both international law and national legislation. However, among the many problems relating to the treatment of “political detainees”, the problem of their torture is considered by the ICRC to deserve special attention, both because of its enormity and because of the determination with which the Committee confronts it.

For the ICRC, protection means safeguarding not only an individual’s physical integrity, but also his psychological integrity. During interviews without witness, ICRC delegates have noted countless forms of ill-treatment practised on detainees.

In addition to the various forms of physical torture, delegates have recorded a whole range of methods to inflict moral and mental suffering as well as psychological pressures which destroy the detainee’s personal identity. Also the material conditions of detention are sometimes so poor that if they are intentional, they, too, can be considered as torture. The interrogation phase, periods of isolation and the uncertainty caused

by detention without legal basis figure prominently among the concerns of ICRC delegates.

It is equally clear that there are grave consequences for the whole of the society in which torture develops. Wherever it is practised, delegates notice that it affects not only the person tortured but also his family and social group—not to mention the torturer himself who is morally sullied and often psychologically unbalanced by his deeds.

Obviously, the primary responsibility in the fight against torture belongs to governments. It is up to them to take measures (legislative, judicial or disciplinary ones) to prevent and repress acts of torture. In this respect, the confidential reports which the delegates draw up and send to the authorities following their regular visits and interviews without witness should enable willing governments, through constant dialogue with the ICRC, to meet their responsibilities and, together, put an end to such unacceptable practices.

3.2. Other ICRC humanitarian activities

Apart from the conditions of detention, there are other humanitarian issues which can justify intervention by the ICRC in situations of internal disturbances and tensions.

3.2.1. Rectifying the humanitarian consequences of arbitrary practices

Except in cases of armed conflict, the ICRC's mandate does not include ensuring that States respect the law in force in their own territory.

It can happen, however, that, while visiting prisons, delegates discover very serious humanitarian cases which result from a particularly flagrant denial of justice—incarceration prolonged beyond the term to which the detainee was sentenced; keeping the detainee in prison after the true culprit has been discovered—or even from the outright violation of fundamental judicial guarantees. ICRC delegates, aware that any intervention of a political nature on their part would be foreign to their mission, may bring the humanitarian consequences of such situations to the attention of the authorities, and ask them to remedy matters. Such intervention, however, is made only when the seriousness of the humanitarian problem demands it absolutely, and may be contemplated only if it does not jeopardize the humanitarian action of the ICRC.

3.2.2. Confronting acts of violence directed against defenceless persons

Such acts of violence may be committed by individuals, armed insurgents or pro-government groups, or may even be committed by the security forces, i.e. the army or police, themselves.

These acts generally affect civilians, either individually (arbitrary detention, hostage-taking, assassination) or in groups (displacing large masses of civilians, relegation, expulsion, massacres).

Sometimes violence takes a form which is difficult to detect, such as various types of intimidation and harassment which, apart from their direct effect on the victims, perpetuate a sense of latent apprehension in the community.

The extreme form of this violence is terrorism—individual, group or State terrorism—all of which the ICRC, international humanitarian law, human rights and the principles of humanity categorically reject, prohibit and condemn.

Whatever form terrorism may take, its perpetrators use the most widely varied pretexts to justify their unjustifiable acts: military necessity, State security, the last resort of oppressed peoples, etc. But the principal factors observed by the ICRC to be common to all such acts are contempt for humanity and the violation of the fundamental rule of humanitarian law requiring that respect be shown for defenceless persons. ICRC sees the spiral of violence generating ever more hatred, more revolt, dehumanizing those who practise and tolerate it and, in the end, dehumanizing the society exposed to it. What sort of human values can survive when an ideology not only makes it impossible to see the human being in a defenceless enemy but also makes an enemy out of the innocent?

The current trend towards ever more indiscriminate violence must strengthen more than ever the Red Cross fundamental resolve to make its voice heard in order to preserve a minimum of humanity amid the violence of struggles.

The ICRC does not limit itself to stressing the evil of blind violence. It carries on an active and constant campaign to disseminate humanitarian principles to all groups most likely to have to apply them. This is done by various means adapted as well as possible to the groups it is trying to reach.

Finally, it is important to remember that a person's dignity must be respected when he is imprisoned and helpless, even if he did not respect the dignity of others when he was free. Thus, in carrying out its protection activities, the ICRC makes no distinction between those

detained in connection with internal disturbances and tensions, regardless of their actual or merely alleged crimes. It cannot, after all, act as a judge and must carry out without discrimination its humanitarian task on behalf of all those who are left defenceless, even if some among them have violated the most elementary humanitarian norms.

3.2.3. Exceptional intervention when hostages are taken

Hostage-taking is a form of terrorism which deserves special mention. It is prohibited and to be condemned absolutely and in all circumstances.

The ICRC does not spontaneously offer its services in such situations. However, if all the parties involved consider that it alone can intervene, the ICRC is prepared to become involved, on certain conditions. The ICRC course of action is summarized in the following five principles⁹:

- I. The ICRC condemns violations of legal and humanitarian principles, especially acts which involve the deaths or threaten the lives of innocent people. In doing so, it is guided solely by concern for the victims and the will to help them.*
- II. ICRC delegates may materially assist hostages and, by their presence, provide moral comfort. As a general rule, however, participation in negotiations between authorities and the perpetrators of such violations does not come within the delegates' purview.*
- III. In the victims' interest and in so far as there is no other intermediary or direct contact, the ICRC may, as an exception, intervene at the request of one party and with the agreement of the others. The parties shall renounce the use of force, take no step detrimental to the welfare of the hostages, and shall grant the delegates freedom of action without let or hindrance so long as they maintain contact between the parties.*
- IV. The delegates will ask for all facilities to assist victims and, whenever possible, for all persons entitled to special consideration, such as the wounded, the sick, children, and so forth, to be removed to safety.*

⁹ Its policy in these matters was made public in the October 1972 edition of the *International Review of the Red Cross* and presented in more detail at the Twenty-fourth International Conference of the Red Cross (Manila, 1981), where it was accompanied by commentaries on the role of National Societies when hostages are taken: *Attitude of the Red Cross to the taking of hostages*; report submitted by the ICRC (CGO/3/1); Geneva; August 1981, 9 pages. See also Annex IV.

V. *Whether delegates participate in negotiations or merely act as couriers, responsibility for proposals transmitted, for decisions and action, lies solely with the parties. Delegates shall not guarantee the implementation of decisions or the observance of conditions laid down by the parties*¹⁰.

3.2.4. The fight against forced disappearances

The “disappearance” phenomenon has spread significantly since the 70s.

“Disappearances” involve abduction followed by murder or clandestine detention. The uncertainty thus created about the missing person’s fate breeds anxiety and intimidation. It thus represents an attack on the whole society affected by such events and leaves longlasting scars, sometimes permanent ones, in the hearts and minds of a vast number of people.

The problem is further aggravated by constant confusion as to the causes behind disappearances since, in general, forced disappearances occur at the same time as voluntary ones, for opposite motives.

The ICRC has limited means for encompassing the problem of disappearances in general and countering forced disappearances in particular. If the ICRC achieves success in this area, it can only be through its traditional protection activities. Basically, the means at its disposal are:

- registration of requests made to it;
- approaches it can make to the authorities;
- seeking access to all places of detention;
- interviewing detainees without witness.

The ICRC’s course of action is governed by many factors. The number of reported cases and similarities between them guide the ICRC in deciding whether approaches should be made at regular intervals if initially they have not succeeded, or whether emergency action should be taken. As a rule, however, the ICRC does not carry out, by itself, detailed investigations into the circumstances in which disappearances took place and into the events following them. Indeed, in this area possibly more than in any other, it must remind the governments of their responsibilities, not substitute for the governments themselves.

¹⁰ Annex IV contains a commentary on the policy of the ICRC in this regard, as it was presented at the Manila Conference.

ICRC action may also include material assistance to the families of persons who have disappeared; it attempts to ensure, for example, that the victims' children are not adopted out of hand.

Faced with the problem of forced disappearances and their social consequences, the ICRC tries here as elsewhere to base its activities on constant dialogue with the authorities. Whatever confidence the latter place in the ICRC can only stem from a better understanding of the institution and the principles guiding it.

3.2.5. Material assistance

ICRC assistance to persons affected by internal disturbances or tensions is given in accordance with the fundamental principle of impartiality:

The Red Cross makes no discrimination as to nationality, race, religious beliefs, class or political opinions. It endeavours to relieve the suffering of individuals, being guided solely by their needs, and to give priority to the most urgent cases of distress.

Such relief is directed toward individuals and groups who are needy, vulnerable and not receiving sufficient aid from other sources.

Particular instances are detainees, their families, those of missing persons and large groups of displaced persons.

The assistance may be material, medical or in the form of food. In certain cases it also constitutes an indirect protection of individuals.

4. Summary and conclusion

Essentially, ICRC humanitarian action in the event of internal disturbances and tensions consists of providing, with the authorities' consent, protection and assistance to persons incarcerated in connection with the situation.

These activities, despite their limitation (some self imposed), take place within more general norms of humanity which it is up to each person—whether on the side of the government or its opponents—to respect at all times. Neither the responsibility which the authorities have to maintain order nor the reasons which some may have for revolting against the government can justify terrorism and torture, violence, hostage-taking or the institutionalization of arbitrary justice.

In the ICRC's experience, it is overwhelmingly clear that the vicious circle of violence and repression is aggravated when certain fundamental rules of behaviour are violated and the first victim of the struggle is human dignity.

Whether in the exercise of government power or in the fight against that power, it is too easily forgotten that each person must be treated with humanity, that his life, his moral and physical integrity and honour must be respected in all circumstances, regardless of the acts with which he is accused.

It is too easily forgotten that nothing can justify murder, torture or any other cruel, inhuman or degrading treatment. Nothing can justify hostage-taking, forced disappearances, collective punishments or any other act, method or practice of terrorism.

Even in the legitimate exercise of power and preservation of order, the use of force must remain limited to the strict minimum necessary. The ICRC is in a particularly good position to know just how true this is in the area of detention, where the basic rule is that any person deprived of liberty **must** be treated humanely. All prisoners must be afforded proper conditions of detention, especially with regard to hygiene, food, quarters and, where applicable, work. They must have the possibility of communicating periodically with their next of kin. Wounded or sick detainees must receive the care required by their condition.

Medical assistance must be provided in all circumstances to those who need it. Speaking more generally, all sick or wounded persons must be aided and treated without discrimination. No one may be harassed simply for having assisted wounded or sick persons.

These fundamental humanitarian norms apply to all.

There are other such norms which do not directly concern ICRC activities, those, for example, deriving from judicial procedure (fundamental judicial guarantees). Once again, the ICRC's experience shows that when the authorities infringe rights which they are supposed to defend, they provide their opponents with a pretext for other acts of violence and the vicious circle of indiscriminate violence then tends to become even more inescapable.

The lesson drawn from 120 years of experience is simply that, whether on the national or international scale, it is only through respect for human dignity, including that of the fallen enemy and the defenceless person, that we can hope to find again the humanity lost to fighting.

The vicious circle of violence must be broken by spreading the antidote of humanitarianism.

May governments and individuals, those who are in power and those who struggle for it, hear this essential truth and try and live up to it.

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ANNEX I

Xth International Conference
of the Red Cross
Geneva, 1921

Resolution XIV: Civil War

General principles

- I. The Red Cross, which stands apart from all political and social distinctions, and from differences of creed, race, class or nation, affirms its right and duty of affording relief in case of civil war and social and revolutionary disturbances.
The Red Cross recognises that all victims of civil war or of such disturbances are, without any exception whatsoever, entitled to relief, in conformity with the general principles of the Red Cross.
- II. In every country in which civil war breaks out, it is the National Red Cross Society of the country which, in the first place, is responsible for dealing, in the most complete manner, with the relief needs of the victims; for this purpose, it is indispensable that the Society shall be left free to aid all victims with complete impartiality.
- III. If the National Red Cross cannot alone, on its own admission, deal with all the relief requirements, it shall consider appealing to the Red Cross Societies of other countries, in conformity with the following general principles,
 - a) Requests for foreign assistance cannot be accepted from one or other of the parties in conflict but only from the National Red Cross Society of the country devastated by the civil war;

such requests must be addressed by it to the International Committee of the Red Cross.

- b) The International Committee of the Red Cross, having ensured the consent of the Government of the country engaged in civil war shall organize relief, appealing to foreign relief organizations.
Should the Government in question refuse its consent, the International Committee of the Red Cross shall make a public statement of the facts, supported by the relevant documents.

Exceptional cases

- I. When, following the dissolution of the National Red Cross Society, or by reason of the inability or unwillingness of such Society to request foreign aid or accept an offer of relief received through the intermediary of the International Committee of the Red Cross, the unrelieved suffering caused by civil war imperatively demands alleviation, the International Committee of the Red Cross shall have the right and the duty to insist to the authorities of the country in question, or to delegate a National Society to so insist, that the necessary relief be accepted and opportunity afforded for its unhindered distribution. Should the authorities of a country refuse to permit such relief intervention, the International Committee of the Red Cross shall make a public statement of the facts, supported by the relevant documents.
- II. Should all forms of Government and National Red Cross be dissolved in a country engaged in civil war, the International Committee of the Red Cross shall have full power to endeavour to organise relief in such country, in so far as circumstances may permit.

Resolutions

- 1. The Xth International Red Cross Conference approves the above proposals and recommends them for study to all National Red Cross Societies.
- 2. The Conference recommends that, in agreement with the International Committee of the Red Cross, all Red Cross Societies should undertake intensive propaganda to create in all countries

an enlightened public opinion, aware of the complete impartiality of the Red Cross, in order that the Red Cross may enjoy throughout the world, on all occasions and without any exception, the confidence and affection of the people without distinction of party, creed, class or persons, which are indispensable conditions to enable the Red Cross to accomplish its tasks fully and to secure the most effective safeguard possible against any violation of Red Cross principles in the event of civil war.

3. The Xth International Red Cross Conference entrusts the International Committee of the Red Cross with the mandate to engage in relief in the event of civil war, in accordance with the above prescriptions.
4. The Xth International Red Cross Conference, recalling the distressing experiences of the Red Cross in countries engaged in civil war, draws the attention of all peoples and Governments, of all political parties, national or other, to the fact that the state of civil war cannot justify violation of International Law and that such law must be safeguarded at all cost.
5. The Xth International Red Cross Conference condemns the political hostage system, and emphasizes the non-responsibility of relatives (especially children) for the acts of the head or other members of the family.
6. The Xth International Red Cross Conference deplores the unlimited suffering to which prisoners and internees are sometimes subjected in countries engaged in civil war, and is of opinion that political detainees in time of civil war should be considered and treated in accordance with the principles which inspired those who drew up the 1907 Hague Convention¹.

¹ *Handbook of the International Red Cross*, Geneva, International Committee of the Red Cross, League of Red Cross Societies, 10th Edition, 1953, pp. 414-415.

ANNEX II

Statutes of the International Red Cross and Red Crescent Movement

(adopted by the International Conference of the Red Cross
at the Hague in 1928, revised at Toronto in 1952
and at Geneva in 1986)

Article 5

The International Committee of the Red Cross

1. The International Committee, founded in Geneva in 1863 and formally recognized in the Geneva Conventions and by International Conferences of the Red Cross, is an independent humanitarian organization having a status of its own. It co-opts its members from among Swiss citizens.
2. The role of the International Committee, in accordance with its Statutes, is in particular:
 - a) to maintain and disseminate the Fundamental Principles of the Movement, namely humanity, impartiality, neutrality, independence, voluntary service, unity and universality;
 - b) to recognize any newly established or reconstituted National Society, which fulfils the conditions for recognition set out in Article 4, and to notify other National Societies of such recognition;
 - c) to undertake the tasks incumbent upon it under the Geneva Conventions, to work for the faithful application of international humanitarian law applicable in armed conflicts and to take cognizance of any complaints based on alleged breaches of that law;

- d) 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;
- e) to ensure the operation of the Central Tracing Agency as provided in the Geneva Conventions;
- f) to contribute, in anticipation of armed conflicts, to the training of medical personnel and the preparation of medical equipment, in co-operation with the National Societies, the military and civilian medical services and other competent authorities;
- g) to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof;
- h) to carry out mandates entrusted to it by the International Conference.

3. 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.

- a) It shall maintain close contact with National Societies. In agreement with them, it shall co-operate in matters of common concern, such as their preparation for action in times of armed conflict, respect for and development and ratification of the Geneva Conventions, and the dissemination of the Fundamental Principles and international humanitarian law.
- b) In situations foreseen in paragraph 2 d) of this Article and requiring co-ordinated assistance from National Societies of other countries, the International Committee, in co-operation with the National Society of the country or countries concerned, shall co-ordinate such assistance in accordance with the agreements concluded with the League.

5. Within the framework of the present Statutes and subject to the provisions of Articles, 3, 6 and 7, the International Committee shall maintain close contact with the League and co-operate with it in matters of common concern.

6. It shall also maintain relations with governmental authorities and any national or international institution whose assistance it considers useful.

ANNEX III

Model Memorandum

Procedure for the conduct of visits by delegates of the International Committee of the Red Cross to places of detention

- a)* Once the ICRC delegates are authorized to visit all the “detainees”¹, they will be given access to all places of detention, whether permanent or provisional, official or non-official, civil or military (prisons, barracks, transit centres, police stations, rehabilitation centres, etc.) where there are such detainees. The ICRC delegates shall visit all detainees in the entire set of buildings and any outlying constructions in the place of detention, without any restriction as to time.
- b)* The purpose of the ICRC delegates’ visit is to determine and, if necessary, improve the material and psychological conditions of detention and the treatment of the detainees. They shall not examine the reasons of detention, this aspect of the matter being outside the competence of the ICRC.
- c)* The ICRC delegates shall speak freely, and without witness, with the detainees of their choice on the material and psychological conditions of detention and any other humanitarian problems. Depending on circumstances, all detainees may be so interviewed. Such interviews will be held in a place chosen by the ICRC delegates.
- d)* Every place of detention will ordinarily be visited by a pair of delegates, one of whom shall be a physician. The number of delegates may be increased depending on how large the place of detention is. The ICRC, with the authorities’ consent, may send several teams of delegates, each team visiting a number of places of detention. The delegates may request the services of interpreters whom they select from among the detainees.

¹ The term used in the document varies according to different situations and countries.

- e) At the beginning of the visit, the ICRC delegates shall discuss with the authorities in charge of the place of detention to inform them of the purpose and method of the visit.
- f) At the end of the visit, the ICRC delegates shall communicate their findings and suggestions orally to the person or persons in charge of the place of detention. The authorities in charge of the place of detention shall, as far as possible and if need be, take immediate steps to introduce any improvements falling within their competence, even before the ICRC's official report is despatched to the authorities concerned.
- g) The confidential reports on the visits shall be drafted objectively and in a constructive spirit. When drafting them, local conditions and material difficulties, if any, which the persons in charge of the place of detention may have to face, must be taken into consideration. The confidential reports drafted after the visits shall be sent by ICRC headquarters in Geneva only to the detaining authority. These reports are meant to give confidential information to the authority to which they are remitted. The ICRC acts with the utmost discretion and does not seek any publicity.
- h) The term "assistance" is understood to mean material aid, such as: foodstuffs, medicaments, clothing, books, games, etc. The ICRC delegates are authorized to distribute such assistance immediately after their visit, or they may arrange for it to be distributed either by the National Red Cross or Red Crescent Society, or by the authorities in charge. If, in any particular place, common law detainees are together with the detainees visited by the ICRC, the material assistance may be distributed among all detainees.
- i) In any publications issued by the ICRC or the detaining authority only the names of the places of detention visited and the dates of such visits shall be mentioned. No comments relating to conditions of detention or to suggestions put forward by the ICRC shall be made. Any other information regarding the visit shall be published only after agreement is reached between the parties.

ANNEX IV

Extract from the Report submitted by the ICRC
to the XXIVth International
Red Cross Conference, Manila, 1981

Attitude of the Red Cross to the taking of hostages

Comments regarding ICRC policy

The events in which the ICRC was involved during the period after the publication of its policy have led it to make following remarks:

a) **Scope of application**

This policy lays down especially the ICRC's attitude where the taking of hostages is linked to situations of internal disturbances or internal tension. The taking of hostages either occurs on the territory of a State where situations of internal disturbances or tension have developed, or is related to such situations elsewhere because of, for example, demands made by the persons holding the hostages.

Where the taking of hostages falls under international humanitarian law—which, as we have seen, clearly forbids this practice in both international and non-international armed conflicts—the ICRC may be led to play a greater and more active role than the one laid down in the present policy.

In actual fact, the ICRC does not normally intervene in the event of hostage-taking during a period of internal disturbances or internal tension; but, as an exception, it may judge it necessary, for humanitarian reasons, to agree to intervene, and the five principles quoted above will help it, first, to determine if such an exception is warranted, and

secondly, to specify the conditions for ICRC intervention. It is therefore only when a certain number of objective criteria are met, and when an analysis of the situation moves it to the belief that it is its duty to act, that the ICRC will abandon the attitude of aloofness which is and must continue to be its policy in such events.

b) Assistance action

In principles II and IV of the policy, the possibility that the ICRC would intervene to provide moral comfort and material assistance is envisaged.

The ICRC is, of course, free to decide whether it will accept to perform such a role, which may assume various forms: material relief (foodstuffs, blankets, medicaments), medical assistance (by a doctor or a nurse), moral comfort (exchange of family messages), or evacuation of persons whose physical or psychological condition is such that their release by their captors has become particularly urgent. This latter possibility to bring assistance does not only concern the wounded, sick and children, cited as examples in point IV of the statement of policy, but all persons to whom such an ordeal causes extreme suffering. Nevertheless, the ICRC will not agree to give such assistance unless the following conditions are fulfilled:

- all of the principal parties concerned must give their assent;
- all the parties involved must give an undertaking not to seek to take advantage of the ICRC's action with the aim of deceiving the other party or parties and so deceiving the ICRC, too;
- communications at all times with ICRC headquarters and the hostages' captors must be guaranteed, whenever that is practicable;
- all parties must give an undertaking not to resort to violence, not only while the delegates are performing their assistance activity but also, at least, while the delegates are on their way to the hostages and on their way back to their base.

Should the agreement of one of the parties be withdrawn while the ICRC delegates are still performing their assistance action, the delegates would cease the work they are doing as swiftly as possible and inform the other party or parties.

c) The ICRC's role as an intermediary

Point III of the policy covers situations where the ICRC might be asked to play the role of intermediary, it being understood that this

role should also, as a general rule, allow material assistance and moral comfort to be brought to the hostages.

It is only in exceptional cases that the ICRC would agree to act as an intermediary. The following conditions must be satisfied, in addition to those listed above (par. b) which must be fulfilled for ICRC assistance action:

- the parties are not in direct contact with each other (either because there is no possibility at all of contact, or because one of the parties does not wish to be in contact);
- the ICRC is the body which is best placed for performing the role of intermediary;
- the parties must state that they will abstain from any acts of violence during the **whole** period when the ICRC plays this role. It is not only a matter of undertaking to abstain from violence while the ICRC delegates are on their way to the hostages, are performing their tasks and are returning to their base—as in the assistance actions. The parties must pledge to abstain from any acts of violence during the whole period when the negotiations are taking place;
- the ICRC is free to bring to an end at any moment its role of intermediary and to notify the parties of such termination.

It should be emphasized that, for the ICRC, to serve as an intermediary means essentially to transmit proposals from one party to another. The ICRC delegate in such a role will not guarantee the proposals made by one or other of the parties; nor is it his task to engage in any bargaining which might cast a doubt on the neutrality from which he must on no account swerve. At the most he could, very objectively, note that there exists a common ground for discussion should he believe he can perceive one.

A measure of humanity in internal disturbances and tensions: proposal for a Code of Conduct

by Hans-Peter Gasser *

From time to time, States are affected by outbreaks of internal violence. Such upheavals are usually referred to as internal disturbances or tensions, disorders, states of emergency, revolutions or insurrections. These expressions all refer to situations that appear contrary to justice, order, stability and internal peace. There have been many examples of the kind in the past, and we know from the media that they continue to occur. Almost every nation in the world has a history marked by periods of insecurity and protest accompanied by outbreaks of violence.

The causes of the unrest differ from one situation to another. It would no doubt be tempting to analyse the reasons for resorting to violence, but it is not the aim of this paper. **Our purpose here is to consider the consequences of situations involving outbreaks of violence within the territory of a state.** These consequences vary widely. First and foremost, their effect is **political**, destroying minimum consensus within the state and disrupting the exchange of views among the various political forces; they also upset a country's **legal** system: resorting to exceptional measures gradually undermines the very foundation of the rule of law; there are likewise **economic** consequences, because the economy of a country in turmoil inevitably deteriorates over a long period of time, and, possibly, **social** repercussions, since prolonged emergencies change a country's social structure. These are not the only effects of unrest which may alter the very foundations of a State or

* The author is Legal Adviser to the Directorate of the International Committee of the Red Cross. This article reflects his personal views and does not engage the responsibility of the ICRC.

society. The most immediate consequences, however, are always those that arouse **humanitarian** concern, in the sense that they affect human beings directly and dramatically in their dignity, their well-being, their health, their liberty and their lives.

The **purpose** of this paper is to suggest **a new approach aimed at better protection of, i.e. greater respect for, human values in situations of internal disturbances and tensions**. We propose a draft set of rules which, in our opinion, must be respected by all as a strictly necessary minimum, because they ensure a little humanity in all circumstances, **a “Code of Conduct” whose basic provisions have been drafted specifically for internal disturbances and tensions**. This Code of Conduct is also intended as an appeal to all, authorities **and** insurgents alike, to renounce the use of violence against human beings or to restrict the use of force to a minimum, within the limits of the law.

It must be made clear from the outset that the rules cited in this Code of Conduct are intended to restrict **all forms** of violence and thereby reduce the human suffering involved in internal disturbances and tensions.

To achieve this aim, it is essential to address all those who, in practice, may resort to force. This covers the established authorities, but also, at a different level, all those who commit acts of violence in opposing the authorities. In making this approach, we are not primarily concerned with the legality or legitimacy of violence used by representatives of the authorities: **the Code of Conduct recalls, first, that all excessive violence against human beings must be avoided and, second, that a person who suffers must be assisted, even if it was a lawful act that caused such suffering**. For instance, the fact that martial law has or has not been proclaimed or, if it has, that the measures taken are in conformity with obligations under international treaties or not, does not in any way alter the obligation to respect the fundamental rules described below. Likewise, the fact that the government in power was or was not the result of a democratic process is irrelevant in this particular context. **In short, if internal disturbances or tensions give rise to problems requiring humanitarian remedies, the rules stated in the proposed Code of Conduct must be respected.**

Internal disturbances and tensions: an attempt at defining the problem

No instrument of international law provides a proper definition of the phenomena broadly termed “internal disturbances and tensions”.

Article 1, paragraph 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) does mention “situations of internal disturbances and tensions”, but does not define them. The reference to “riots, isolated and sporadic acts of violence and other acts of a similar nature” in this same paragraph is merely an illustration and not a definition ¹.

Most international treaties for safeguarding human rights allow the states party to them to take measures derogating from certain obligations and guarantees at a time of public emergency which threatens the life of the nation ². On the other hand, states may not refuse the absolute obligation to respect a minimum number of rights explicitly indicated in the various treaties ³. These provisions, however, do not make it possible to determine the field of application of the type of Code envisaged, since the right to derogate from certain obligations is not dependent upon criteria which we consider to be primordial from a humanitarian viewpoint. For instance, certain problems may require humanitarian remedies even if the authorities do not avail themselves of their right to take measures derogating from international obligations. Likewise, the field of application of rules embodied in a Code of Conduct in the event of internal disturbances and tensions must not depend on the proclamation of martial law by the national government. However, it will probably be necessary to resort to such a Code if martial law is in force, whether or not it has been officially proclaimed.

As we have said, human rights treaties do not define the situation in which we intend our Code of Conduct to apply. This has its advantages, but also definite drawbacks. The existence of a firm basis of well-known and accepted provisions would indeed have made it easier for the government representatives to begin considering a new proposal. The draft could then have been linked with a text already adopted, thus diminishing the risk of a leap in the dark. On the other hand, the

¹ Sandoz, Swinarski, Zimmermann (ed.), *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva, 1987; commentary on Article 1, paragraph 2, of Protocol II, paragraph 4474.

² The description of a state of emergency varies from one treaty to another. See *International Covenant on Civil and Political Rights of 16 December 1966*, Article 4 — *American Convention on Human Rights of 22 November 1969*, Article 15 — *European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950*, Article 15 — *The African Charter on Human and People's Rights* does not provide for any such rule.

³ See *above*, note 2.

absence of any restrictive definition permits a fresh approach leading to novel solutions.

In any case, it would be useless to attempt to define the scope of a Code of Conduct in the event of internal disturbances and tensions, for the simple reason that the actual circumstances are too different, and violence takes too many different forms, for them to be covered satisfactorily by a definition, which is necessarily rigid and restrictive. A simple description of a few characteristic aspects of the problem will more effectively serve our present purpose.

Internal disturbances and tensions are marked by a degree of violence exceeding that found in “normal” times. (By “normal” violence we mean, for instance, “ordinary” criminality or, in a different context, the “standard” measures of repression applied by the police within the limits of the law.) In general, the violence breaks out quite openly. The authorities resort to repressive action beyond the usual limits. Typical of such situations, then, are phenomena such as:

- mass arrests often followed by arbitrary detention,
- bad conditions of detention,
- disappearances, unacknowledged detention,
- ill-treatment, even torture,
- hostage-taking,
- suspension of or failure to respect the most elementary legal guarantees,

to quote but a few examples.

Open violence is not, however, the only situation in which such abuses occur. The mere existence of an oppressive regime may also give rise to problems having serious humanitarian consequences.

All the phenomena mentioned are also the expression, or the consequence, of a violation of fundamental rights of the individual, as proclaimed by the Universal Declaration of Human Rights (1948) and guaranteed by the various human rights treaties and by customary law. Serious violations of human rights will thus point to the existence of a situation covered by the Code. However, it must be remembered that the humanitarian approach is concerned less with the violation of rights—however fundamental—than with the **effects of such violation on the victims**, effects that can be summed up in the one word **suffering**. The humanitarian approach focuses on the actual situation of the victims which it strives to assist and protect, and not on redressing a legal wrong or on restoring the rule of law.

In this brief attempt to define the scope of a Code of Conduct in the event of internal disturbances and tensions, we must look again at

the sources of the violence that engenders problems of humanitarian concern. First, of course, we envisage the representatives of the authorities, who, either in the exercise of their functions or otherwise, go too far. Yet individuals and groups, large or small, also arouse humanitarian concern through the suffering they may cause to human beings. Hostage-taking, murder and unacknowledged detention are all threats to the life and human dignity of their victims, even if they are committed by individuals. The proposed Code should therefore also cover violence committed by persons unconnected with the authorities.

The International Committee of the Red Cross (ICRC) has published a descriptive definition of what it means by “internal disturbances and tensions”⁴. This text, which forms part of the ICRC’s internal principles, is used to determine situations in which the ICRC may offer its services to governments for protection activities beyond the field of application of the Geneva Conventions and their Additional Protocols. Such activities consist mainly in visiting places of detention with a view to improving the conditions of those held there for reasons connected with internal disturbances and tensions and, in particular, to safeguard them against ill-treatment⁵.

An overview of existing legislation

Bad conditions of detention, hostage-taking and torture, to quote but three examples of phenomena all too frequently encountered in internal disturbances and tensions, result in great suffering that may even lead to death. The humanitarian approach must have a dual objective: (a) to take appropriate measures to forestall any problems requiring humanitarian remedies and (b) to end or at least alleviate the suffering and care for the victims, irrespective of the legal character of the violations committed.

In seeking a basis for the protection of individuals against violence and arbitrary treatment, it is natural to look first of all to the **national legal order**. Without question, national law, together with its institutions and mechanisms for the prevention and repression of abuses, must ensure that individual rights are effectively guaranteed. Nevertheless, at least since the proclamation, in 1948, of the Universal Declaration of Human Rights by the United Nations General Assembly, it is

⁴ See *ICRC Protection and Assistance Activities in situations not covered by International Humanitarian Law*, ICRC, Geneva, 1986, p. 4 ff, and *International Review of the Red Cross*, No. 262, January-February 1988, pp. 12, 13.

⁵ See *above*, note 4, p. 11 ff, and p. 18 ff, respectively.

recognized that the protection of “the inherent dignity . . . of all members of the human family”⁶ is a duty which is also incumbent upon the international community. International human rights legislation with its various treaties supplemented by rules of customary law, is the legal expression of that duty.

The written rules pertaining to **human rights** and those recognized as customary law are applicable at all times. Even in situations of internal crisis, the authorities are bound to respect them, except, however, when—“in time of public emergency which threatens the life of the nation” (Article 4, paragraph 1, of the 1966 Covenant on Civil and Political Rights)—a state of emergency may be proclaimed. States may then take measures derogating from their obligations under the human rights treaties, but they remain bound to respect at all times and in all circumstances a number of fundamental rights, the “hard core” of human rights which is the “minimum standard” required to safeguard human dignity, even in times of acute crisis⁷.

Thus, the International Covenant on Civil and Political Rights of 16 December 1966, the American Convention on Human Rights of 22 November 1969 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 all contain a list of inalienable rights. On the other hand, the African Charter on Human and People’s Rights of 28 June 1981 has no specific rules applicable in states of emergency.

The United Nations Covenant and the European and American Conventions forbid any derogation from the following rights and prohibitions:

- the right to life (Covenant, Article 6; European Convention, Article 2; American Convention, Article 4),
- the ban on torture (Articles 7, 3 and 5, respectively),
- the ban on slavery (Articles 8, 4 and 6, respectively),
- the ban on retroactive penal sanctions (Articles 15, 7 and 9, respectively).

The United Nations Covenant and the American Convention moreover provide full guarantees of the following rights:

⁶ Preambular paragraph 1 of the *Universal Declaration of Human Rights*.

⁷ For a general overview of the problem, see in particular the following report drawn up by Nicole Questiaux: *Study on the implications for human rights of recent developments concerning situations known as states of siege or emergency*, drawn up for the Sub-Commission on Prevention of Discrimination and Protection of Minorities of 27 July 1982 (E/CN.4/Sub.2/1982/15). See also International Commission of Jurists, *States of Emergency. Their Impact on Human Rights*. 1983.

- everyone’s right to recognition as a person before the law (Articles 16 and 18, respectively),
- the right to freedom of conscience and religion (Articles 18 and 12, respectively).

The American Convention provides for additional inalienable rights, such as:

- the rights of the family (Article 17)
- the rights of the child (Article 19)
- the right to nationality (Article 20)
- the right to participate in government (Article 23).

The United Nations Covenant alone recognizes as inalienable the prohibition to imprison people on the ground of inability to fulfil a contractual obligation (Article 11).

Such is the current state of treaty law. Certain inalienable rights also form customary law or may even be peremptory norms of international law (*jus cogens*). These rights and rules are binding upon the entire community of states. In its well-known judgment in the case of the Corfu Channel, the International Court of Justice referred to “certain general and well recognized principles, namely: elementary considerations of humanity”⁸. However, in this context, there is no possibility of examining the question more closely and identifying such peremptory norms. We shall take it for granted that there are certain fundamental rights from which a state may never derogate.

A brief survey of **international humanitarian law** applicable in armed conflict will make it easier to determine this common core of rights applicable at all times and in all circumstances. This particular area of international law, which is highly codified for a somewhat restricted field of application, also has a “core of fundamental rights” to be observed in all forms of armed conflict. These rights are stated in Article 3 common to the Four Geneva Conventions and applicable to non-international armed conflicts. It has been generally recognized that the substance of Article 3, based on customary law, is part of *jus cogens*, and therefore binding on all states. Consequently, the obligations stated in Article 3 transcend that article’s field of application; they are valid for all forms of armed conflict. The International Court of Justice recently confirmed this in its judgment in the case of Nicaragua

⁸ International Court of Justice, *Corfu Channel case*, Judgment of 9 April 1949 (merits), p. 22.

versus the United States⁹. The Court reached the conclusion that Article 3, as part of customary law, constitutes a “minimum yardstick” applicable to all armed conflicts.

This “minimum standard” of international humanitarian law, contained in Article 3, largely corresponds to the body of guarantees from which governments cannot derogate, even in emergency situations. These rules are binding in armed conflicts, including **non-international armed conflicts**, and hence also logically in internal disturbances and tensions. The conclusion is, therefore, that in all circumstances and with no exception, international law obliges states to respect the individual by observing certain fundamental rules, even “in time of public emergency which threatens the life of the nation”¹⁰.

A new set of rules?

Three main reasons prompted us to propose a new set of rules covering internal disturbances and tensions:

1. The inalienable rights listed in human rights treaties do not sufficiently take into account the **specific needs and problems arising in internal disturbances and tensions**. To quote the most striking example, the prohibition of imprisonment for inability to fulfil contractual obligations is maintained in times of emergency (Covenant, Article 11), yet it has absolutely nothing to do with the specific requirements of that situation. The inalienable rights included in these treaties were selected from the long list of rights guaranteed at all times. Their wording is intended for peacetime; the guarantees they embody take no account of the problems peculiar to internal disturbances or tensions. The lists of inalienable rights sometimes appear to have resulted from a process of elimination more inclined to consider what guarantees the authorities *do not wish* to provide in times of crisis rather than what guarantees are *particularly necessary*, in times of internal disturbances and tensions, to safeguard human lives and dignity.

⁹ International Court of Justice, *Case concerning military and paramilitary activities in and against Nicaragua (Nicaragua versus United States of America)*, Judgment of 27 June 1986 (merits), paragraph 218 (p. 104).

¹⁰ As stated in the International Covenant on Civil and Political Rights, Article 4, paragraph 1.

Nevertheless, it must not be forgotten that the written law of human rights is not the only source of international law applicable in the event of internal crisis. Customary law also has rules which apply in such situations. Moreover, the general principles of international law may either replace or supplement the written guarantees of human rights. The principle of proportionality is a good example. The question of whether or not there is adequate legal protection of individuals in situations of emergency is therefore not easy to answer.

Our purpose in drawing up a Code of Conduct is to bring together a number of existing rules that will meet the specific requirements of internal disturbances and tensions. The Code does not propose new rules of law, but it simply **recalls rules** generally considered as being part of customary law or appearing to express general legal principles. **The fundamental nature of the rights protected by these rules should ensure their overall and undisputed acceptance. The dividing line between rules of positive law and the rules of law in the making is not always obvious, however, and opinions may differ as to the legal force of one or other of the laws proposed. Their legitimacy, by contrast, we are convinced, is beyond doubt.**

2. Situations of internal disturbances and tensions pose serious problems to the authorities responsible for maintaining or re-establishing order. In such situations there is a special danger of loss of control, through more or less grave breaches of even the most fundamental human rights. There is a very great need for protective devices that will prevent the worst excesses. The training of those responsible for maintaining order (the police, the armed forces, civil and military magistrates, etc.) is an important and delicate task. A code of conduct may act as a summary and a reminder of some of the rules of behaviour that must guide the work of the forces of law and order (in a broad sense). It must therefore be didactic in character.
3. The obligations of international law are generally binding on states and not on individuals. This is true of human rights instruments; they define the power of the state in regard to the individuals under its jurisdiction. All treaties, and hence the entire catalogue of inalienable rights, are thus binding on the authorities. The situation differs as regards international humanitarian law: its rules are binding on both parties to an armed conflict. This is also the case in non-international armed conflicts, even though at least one of the parties is

not a governmental authority. Internal disturbances and tensions are not, however, by definition, armed conflicts, since there is no clash between two official parties using established armed forces. Persons that oppose government authorities (“demonstrators”, “insurgents”, “revolutionaries”, etc.) are not directly affected by obligations under international law. But they too need to be urged to act with moderation. A code of conduct is a way of reaching everyone and of reminding those who might resort to violence against other human beings of a few basic rules.

Our opinion is, therefore, that there are good reasons for producing a compendium of rules specially adapted to requirements in internal disturbances and tensions. And yet the ICRC, which has been carrying out protection activities in this context since 1919, in particular by visiting persons detained in such circumstances, has not deemed itself competent to devise specific rules applicable in internal strife¹¹. It has admittedly clarified its own competence to act in this context (in the form of a provision included in the Statutes of the Movement¹² and of resolutions adopted by the International Conference of the Red Cross and Red Crescent¹³. But the ICRC has not followed the course which it successfully adopted in dealing with the law of armed conflicts, namely, the codification and development of rules of international humanitarian law. It prefers, in this instance, to act without the backing of any specific legal instruments.

The ICRC’s position is by no means fortuitous or due to a simple lack of imagination. It had in fact already looked into the question whether it might be useful to draw up new rules: in 1971, the ICRC submitted to the Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts a draft *declaration of fundamental rights of the individual in time of internal disturbances or public emergency*¹⁴.

¹¹ See publication mentioned in note 4, and also Jacques Moreillon, *Le Comité international de la Croix-Rouge et la Protection de Détenus Politiques*, Lausanne, 1973.

¹² Statutes of the International Movement of the Red Cross and Red Crescent, adopted by the Twenty-fifth International Conference of the Red Cross, October 1986, Article 5 d). See also ICRC Statutes of 21 June 1973 — presently being revised, Article 4 d).

¹³ See references and texts in the ICRC publication mentioned in note 4.

¹⁴ Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, *Protection of victims of non-international armed conflicts*, Volume V of the documentation presented by the ICRC, Geneva, 1971, pp. 85-88.

The draft consisted of a short introduction, a definition of the scope of the declaration, and eight fundamental rules to be respected “in all circumstances, without any discrimination”. The Conference of Experts, whose mandate was to prepare the reaffirmation and development of international humanitarian law which later led to the adoption, on 8 June 1977, of the two Protocols additional to the Geneva Conventions of 12 August 1949, decided not to engage in any discussion on the draft declaration¹⁵. The Report on the work of the Conference refers only briefly to this item, suggesting that the experts did not wish to make a thorough study of the ICRC’s proposal because they did not want to jeopardize the essential purpose of the Conference, which was to update humanitarian law applicable in armed conflicts. The Report also states that according to the government experts, any attempt to press ahead with the declaration might run into very great difficulties, since “that was a matter which lay clearly within the sovereignty of States”¹⁶. The obvious conclusion is that the Conference’s agenda was too heavy, and the draft was accordingly laid aside.

The years that followed the 1972 Conference were marked by the negotiation, adoption and promotion of the 1977 Additional Protocols. There was no question of simultaneously developing another project of such capital importance. It was not until early 1983 that the ICRC finally decided to resume its examination of the specific problems posed by the legal protection of victims of internal disturbances and tension. It subsequently organized several consultations with experts, without, however, arriving at any concrete proposals^{17, 18}.

¹⁵ Conference of Government Experts on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts (Second session), Report on the work of the Conference, Volume 1, Geneva, 1972, paragraphs 2.564-2.570, pp. 124 and 125.

¹⁶ Report (see *above*, note 15), paragraph 2.567, page 125.

¹⁷ ICRC Annual Reports 1983, p. 83, 1984, p. 85, 1985, p. 85 and 1986, p. 88.

¹⁸ For a full review of the problem, see the works of Professor Th. Meron, who, in 1983 also, proposed “the drafting and adoption of such an instrument, preferably, at least as a first step in the form of a solemn declaration” with rules pertaining specifically to the problems resulting from internal disturbances and tension: Theodor Meron, “On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument”, *American Journal of International Law*, Vol. 77 (1983) 589, 605/6. By the same author, see also: “Towards a Humanitarian Declaration on Internal Strife”, 78 *AJIL* (1984) 859; and: *Human Rights in Internal Strife: Their International Protection*, Hersch Lauterpacht Memorial Lectures, Cambridge, 1987.

Draft “Code of Conduct in the event of internal disturbances and tensions”

It now seems time to put to account the experience acquired in the consideration and discussion of a number of draft declarations. With the sole intention of contributing to the debate on providing better protection to people caught up in a sequence of violent events, we are here putting forward, in a personal capacity, a draft “Code of Conduct in the event of internal disturbances and tensions”. This text was drafted on the basis of work done within the ICRC, but it also reflects the outcome of a large number of discussions among experts outside the institution.

The draft Code ¹⁹ is intended to **restate** a few fundamental rules which it is particularly important to respect in internal disturbances and tensions. It is not a proposal for a new treaty. We prefer the form of a Code of Conduct, which seems more suitable for recalling rules to be observed “on the spot”. There is no reference, for instance, to specific legal provisions. The choice of a non-binding code shows that the purpose of the exercise is not to create new legal obligations but to **recall existing obligations**.

Obviously, most of the rules reiterated in the draft Code are drawn from international law relating to the protection of human rights. This must be so, because internal disturbances and tensions automatically fall within the scope of international human rights law. The primary aim of that law is to protect people against the abuse of power by those who wield it. This approach, however, does not take sufficient account of all the problems caused by the effects of violence. The rules of traditional human rights law must be supplemented by two other categories of provisions: on the one hand, by obligations to act (such as the duty to care for the wounded) and on the other, by rules of behaviour (such as the obligation to restrict the use of force to a minimum). The Geneva Conventions and their Additional Protocols, although not applicable in such situations, have served as a model for the drafting of several of these rules. Humanitarian law, too, is no more than the application of basic rules or fundamental principles of general international law to the specific problems of armed conflicts.

In situations of internal disturbances or tensions, the use of unrestrained force may be initiated either by the authorities or by those

¹⁹ See *below*, p. 51 ff.

who oppose them. Violence therefore has different origins, and the rules consequently are directed to all those who may resort to violence and thus threaten the lives or dignity of innocent people. The Code does not wish and is not able to grant any legitimacy or legality either to the authorities or to individuals at whom it is aimed. Its scope is limited to restating a few principles which everyone must respect, at all times and in all circumstances.

The draft does not attempt to define a field of application. Such an undertaking would be extremely dubious, given the great diversity of situations comprised in “internal disturbances and tensions”. The ordinary meaning of the words must be enough to indicate when there is a particular need to resort to such rules. This way of proceeding is sound, since the rules cited for use in internal disturbances and tensions are in any event part of the body of international law applicable at all times.

Although the content of the rules is of a clearly normative character, the language deliberately eschews legal terminology, for the simple reason that since the text appeals to everyone, its wording must be clear to all.

Such a Code of Conduct will not in any way affect the applicability of an instrument of international law. It could never be quoted against a rule of international or national law granting wider protection.

Needless to say, the adoption of such a Code of Conduct would never justify the recourse to violence. None of its rules may be quoted as authorizing the use of violence or as an appeal to tolerate its practice. As the introduction clearly points out, the responsibility of governments to maintain order, or if necessary to restore it, is one of the foundations of order itself, without which there can be no respect for fundamental rights. The rules recall the limits which any recourse to violence, even if legitimate, must respect in order to ensure recognition of “the inherent dignity of all members of the human family” (Universal Declaration of Human Rights).

CODE OF CONDUCT IN THE EVENT OF INTERNAL DISTURBANCES AND TENSIONS

There is no justification whatsoever for acts of terrorism or torture, indiscriminate violence or enforced disappearances, the taking of hostages or any other grave outrages upon personal dignity. However serious the disturbances and tension in a country may be, certain fundamental rules of international law, whether that law be customary or codified, must be respected by all.

In order to make them as widely known as possible, this Code of Conduct sets down a number of fundamental rules which must be observed even in the event of internal disturbances and tension. It is addressed to all. Neither the government's responsibility to maintain or restore law and order, nor any other reason put forward by opponents of the established authorities, can justify the violation of these rules.

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* *

Even in situations of internal disturbances and tensions, every person can and must respect at least the following rules, without discrimination:

1. Every person shall be treated with the respect due to the inherent dignity of the human person. His or her life, moral and physical integrity, and honour shall be respected in all circumstances and regardless of the allegations against him or her. No one shall be arbitrarily deprived of his or her life.

2. Acts which are prohibited in particular are murder, torture and all other cruel, inhuman or degrading treatment or punishment, the taking of hostages, enforced or involuntary disappearance of persons, collective penalties and all acts, methods and practices of terrorism, whether committed by public officials or by any other person.

3. Persons exercising police powers shall, out of respect for human dignity, limit their use of force to the strictly necessary minimum.
4. No one shall be arbitrarily deprived of his or her liberty. Anyone who is arrested, detained, interned or deprived in any other way of freedom of movement shall be informed without delay of the reasons for which such measures have been taken. The authorities responsible for the detention of a person have the duty to inform that person's family of his or her situation. The measures taken against any person shall be reviewed periodically.
5. Any person deprived of his or her liberty shall be treated humanely. He or she shall be afforded proper conditions with regard to hygiene, food, quarters and, where applicable, work. Wounded or sick detainees shall receive the care they require. A person deprived of his or her liberty shall have the possibility of communicating periodically with his or her family.
6. Other restrictions of individual liberty, such as forcible displacement or assigned residence, may be imposed only by decision of a competent authority. Persons affected by such measures shall be treated humanely. No one may be deprived of his or her nationality nor expelled from his or her own country.
7. No one shall be held guilty on account of acts or omissions which did not constitute a criminal offence at the time when they took place.
8. No one shall be sentenced and no penalty carried out without a judgment handed down by an impartial court respecting the fundamental judicial guarantees. In particular, any person charged with an offence:
 - a) shall be presumed innocent until proved guilty according to the law;
 - b) shall be informed of the particulars of the offence alleged against him or her;
 - c) shall be afforded the necessary rights and means of defence;
 - d) shall be tried without undue delay.

A statement extracted under torture shall not be invoked as evidence against the victim or anyone else.

A convicted person shall be advised of his or her judicial and other remedies.

9. Inasmuch as retention of the death penalty is considered necessary, it may be pronounced only for the most serious crimes. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence, nor carried out on pregnant women or mothers of young children. A condemned person has the right to ask for clemency; he or she must be advised of this right.

Any summary or arbitrary execution constitutes murder.

10. All wounded and sick persons shall receive care and attention, without discrimination. Medical assistance shall be facilitated. No one shall suffer harassment for the simple fact of having assisted wounded or sick persons.
11. The authorities concerned shall do everything possible to establish the whereabouts of persons reported missing. The authorities shall inform the next of kin on the progress of the investigation and notify them of any result.
12. Children, particularly if deprived of their liberty, shall be accorded the respect due to them on account of their age. They must never be compelled or encouraged to take part in acts of violence.
13. The authorities concerned shall take all necessary measures to ensure that these rules are known and respected by all. They shall include them in the training of those exercising police powers, such as members of the police forces, prison staff and, where applicable, members of the armed forces. The authorities shall prosecute in accordance with national law anyone who violates these rules.

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Note. — The sole aim of this Code of Conduct is to recall fundamental rules that must be respected even in situations of internal disturbances and tension. It must not be interpreted as limiting the protection afforded by international law, whether written or customary, or by national legislation.

BRIEF COMMENTARY ON THE THIRTEEN RULES OF THE “CODE OF CONDUCT IN THE EVENT OF INTERNAL DISTURBANCES AND TENSIONS”

First rule

This rule is drawn from the body of rights enunciated in the *Universal Declaration of Human Rights* of 10 December 1948 and, more specifically, from the guarantee of the right to life. The right to life is one of the inalienable rights included in the International Covenant on Civil and Political Rights (of 16 December 1966—Art. 6) and in regional conventions. It is part of customary law. Humanitarian law treaties (Geneva Conventions of 12 August 1949 for the Protection of the Victims of War and its two Additional Protocols of 8 June 1977) protect human life and dignity in situations of armed conflict.

Restating the obligation to respect the human person “regardless of the allegations against him or her” seems necessary, since in situations of internal disturbances and tensions, where hatred and contempt prevail, outrages by one party often convince the other that any action whatever against the suspected perpetrator is acceptable.

Second rule

The various prohibitions stated in the second rule forbid all forms of violence, whatever their origin. They are based upon several instruments of international law, particularly human rights treaties, humanitarian law conventions and customary law. These prohibitions cover also acts committed by third parties on behalf of the authorities.

See, in particular, the Universal Declaration of Human Rights and:

- International Covenant on Civil and Political Rights of 16 December 1966, particularly Articles 6 and 7, from which no derogation is possible;
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984;
- International Convention against the Taking of Hostages of 19 December 1979;

and the regional human rights conventions.

See also the following documents issued by the United Nations Commission on Human Rights:

- reports of the Special Rapporteur on questions relevant to torture (latest report: E/CN.4/1987/13, of 13 January 1987);
- reports of the Special Rapporteur on summary and arbitrary executions (latest report: E/CN.4/1987/20, of 22 January 1987);
- reports of the Working Group on enforced or involuntary disappearances (latest report: E/CN.4/1987/15, of 24 December 1986).

Third rule

This rule, which deals with the use of force by government agents, is based on the *Code of conduct for law enforcement officials* (adopted by the UN General Assembly in its Resolution 34/169 of 17 December 1979). Article 3 of this Code stipulates that “law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”, and the commentary on Article 3 specifies that “national law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision”.

Fourth rule

One of the purposes of this rule is to prevent arbitrary deprivation of liberty and to forbid unacknowledged detention, which too often leads to the disappearance and subsequent death of the victim. This rule further stipulates that the authorities must inform an arrested person’s family of his or her whereabouts and condition. Today the right of families to know the fate of their relatives is expressly recognized as applying in situations of international armed conflict (see Article 32, Protocol I of 8 June 1977). There are good reasons therefore to propose that this right be recognized also in situations not involving armed conflict. Although this provision has no direct equivalent in human rights instruments, a parallel can be made with Article 9 of the Universal Declaration of Human Rights, which forbids arbitrary arrest and detention, and with Article 16, paragraph 3, of that Declaration, which stipulates that families are entitled to protection.

Fifth rule

The object of this group of provisions is to guarantee that imprisoned persons are treated humanely, whatever the reason for their detention. They are taken largely from the *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955) and approved by the Economic and Social Council (Resolution 663C (XXIV) of 31 July 1957; amendment approved in Resolution 2076 (LXII) of 13 May 1977) and from the *Principles of medical ethics* relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (Annex to Resolution 37/194 adopted on 18 December 1982 by the United Nations General Assembly).

Sixth rule

While the restriction of individual liberty is subject to precise limits under the Geneva Conventions of 12 August 1949 and their Additional Protocols, international law is less specific regarding situations not covered by humanitarian instruments. Nevertheless, the obligation to treat humanely persons affected by such restrictions is founded upon fundamental principles of international law.

Seventh and eighth rules

These rules ensure that any person charged with an offence is given a fair trial. Judicial guarantees admittedly do not form part of the non-derogable rights of the International Covenant on Civil and Political Rights (see Article 14). However, there is an obvious correlation between the protection of certain rights (derogable or not) and the judicial guarantees which alone can ensure that these rights are effectively protected. There must therefore be a core of judicial guarantees that are absolute. In this connection, see the *Syracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984)*, information document issued by the Commission on Human Rights on 28 September 1984 (E/CN.4/1985/4) and *Human Rights Quarterly*, Volume 7, 1985, pages 3-34).

It is interesting to note that Article 3 common to the Geneva Conventions of 12 August 1949 and, to a greater extent, Article 6 of Protocol II largely guarantee the conduct of a fair trial. If respect for minimum judicial guarantees can be required in non-international armed conflicts, it is justifiable to expect the same degree of compliance with the idea of “fair trial” to be maintained in situations of internal disturbances and tension.

Both rules are taken from the relevant provisions of the International Covenant on Civil and Political Rights of 1966, from Article 75 of Protocol I of 8 June 1977 (which codifies fundamental guarantees in the event of international armed conflict) and from Article 6 of Protocol II of 8 June 1977 relating to non-international armed conflicts.

Ninth rule

General international law does not proscribe the death penalty in internal disturbances and tensions. This rule merely restates the limits that must be observed if it is applied. These limits are based upon the right to life, which is absolute. The rule itself was drafted on the basis of Article 6 of Protocol II of 8 June 1977. See also *Safeguards guaranteeing protection of the rights of those facing the death penalty* (Annex 2; Resolution 1984/50, Economic and Social Council, 25 May 1984).

Tenth rule

Caring for the wounded and sick and doing everything to facilitate such assistance are fundamental principles of humanitarian law. They must be included in any set of fundamental rules whose aim is to protect and assist the victims of internal disturbances or tension. They all constitute an obligation to act: the authorities, their agents, and private individuals alike must take the measures required. And none must suffer harmful consequences for doing so.

Eleventh rule

Comments on this rule concerning the obligation to trace missing persons are similar to those on the *fourth rule*. Article 32 of Protocol I of 8 June 1977 provides for the right of families to know the fate of

their relatives. Disappearances have become such a widely spread phenomenon during internal disturbances and tensions and have caused so much suffering that it was considered necessary to restate this obligation by means of a specific provision.

Twelfth rule

These precise duties towards children need no justification. Human rights and humanitarian law lay down several provisions regarding children in order to grant them special protection due to their age. The statement that children must not be used to commit acts of violence is taken from the two Protocols additional to the Geneva Conventions (Protocol I, Article 77, and Protocol II, Article 4, paragraph 3). It is a practical example of the general obligation to protect children, which is part of the binding rules of customary law.

Thirteenth rule

This last rule once again states the duty to take all necessary measures to ensure that the obligations laid down in the Code of Conduct are known to all who must respect them. This duty proceeds directly from the obligation incumbent on every state with regard to customary law, or on every state party to a convention, to respect both its customary and its treaty law obligations. The final reference to the fact that states must prosecute in the event of violations of international obligations is also meant only as a reminder.

Hans-Peter Gasser

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Draft Model Declaration on Internal Strife

by Theodor Meron*

Introduction

The tragedy of internal strife affects a large and growing number of countries throughout the world. The situations in many of these countries have been studied by UN bodies, governmental agencies and non-governmental organizations and, of course, by the International Committee of the Red Cross. On the basis of their reports, it would be possible to describe the symptoms of internal strife specific to these particular countries. However, this paper focuses on the general features characteristic of internal strife, without reference to particular countries, since accounts of the situation in any specific country inevitably prompt debate over conflicting factual allegations. Such debate would deflect us from our tasks of developing and understanding of the nature of internal strife and suggesting the necessary remedies.

Internal strife frequently presents an aggregate of violent acts and human rights abuses which are interrelated rather than isolated phenomena. Despite the salutary efforts of the International Committee of the Red Cross, the United Nations, and such non-governmental organizations as Americas Watch and Amnesty International to humanize the behaviour of the principal actors in situations of internal

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strife, gross abuses of human dignity continue unabated. A systemic relationship often exists between various types of abuses, so that a given practice will create an environment in which other abuses are almost certain to occur. This paper focuses on the most serious and the most frequent of these abuses.

In preparing this paper, I have drawn heavily on my published writings¹ on the tragic and increasingly frequent situations of internal strife and on the working paper presented, on my own responsibility, to the International Committee of the Red Cross (ICRC) in April 1984. In these writings I attempted to demonstrate the need to draft a declaration containing an irreducible and non-derogable core of human and humanitarian norms that must be applied in situations of internal strife and violence. Such normative progress in establishing such norms should be accompanied by efforts to strengthen the implementation of existing provisions guaranteeing human and humanitarian rights. I explained both the conceptual context and the practical urgency of such an initiative. Focusing on the problems of applicability and the effective reach of the relevant humanitarian and human rights instruments, I tried to explain that humanitarian law instruments are not applicable in cases of internal strife which fall below the thresholds of applicability of Article 3 common to the four Geneva Conventions of 12 August 1949 for the Protection of Victims of War and of Article 1 of the Protocol II Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts. I found that human rights instruments are either inapplicable, because the States concerned have chosen not to become parties to them, or ineffective because of the frequency of the *de facto* and *de jure* derogations from the normally applicable rights. This ineffectiveness is heightened by the grave inadequacy of non-derogable rights relevant to situations of violent internal strife. The combined effect of derogations from human rights instruments, the inadequacy of the non-derogable human rights provisions, and of the inapplicability of humanitarian law result in a denial of elementary protections to persons caught up in internal strife.

The present paper comprises two sections. The first enumerates the abuses not effectively dealt with in existing norms and comments on

¹ Theodor Meron, "On the Inadequate Reach of Humanitarian and Human Rights Law and the Need for a New Instrument", 77 *American Journal of International Law (AJIL)* 589 (1983); Meron, "Towards a Humanitarian Declaration on Internal Strife", 78 *AJIL* 859 (1984); T. Meron, *Human Rights in Internal Strife: Their International Protection* (Hersch Lauterpacht Memorial Lectures, Cambridge, Grotius Publications 1987).

the deficiency of existing protections. The second consists of the annotated text of a draft Model Declaration on Internal Strife, showing the antecedents and sources from which the provisions of the Declaration were drawn. The provisions of the draft Declaration are primarily based on existing human rights and humanitarian instruments.

I. Abuses not effectively addressed by existing norms

SUMMARY AND ARBITRARY EXECUTIONS, CAPITAL PUNISHMENT, AND MURDER

Protecting the right to life from arbitrary deprivation is the first and most important of the non-derogable rights enumerated in Article 4(2) of the International Covenant on Civil and Political Rights (Political Covenant). However, because it is possible to derogate from the critically important due process provisions in Article 14 of the Political Covenant and because the protection of the right to life under Article 6 is not absolute, there is considerable danger that some States will argue that in times of emergency, death sentences may be imposed following summary procedures, provided that the more limited guarantees stated in Article 6 itself are observed. Despite the salutary efforts made by Wako² in his reports to the UN Commission on Human Rights and by the Human Rights Committee created under Article 28 of the Political Covenant (through its General Comments) to establish that the procedural safeguards of Article 14 are non-derogable for cases where the death penalty may be imposed, even during a public emergency, Wako's reports and other reliable information document frequent arbitrary and summary executions in situations of internal strife.

Provisions strengthening the protection of the right to life are urgently needed. A major goal should be the "freezing" or suspension of executions. It should be provided that the death penalty should not be carried out during internal strife, or at least (as provided in Article 75 of the Fourth Geneva Convention), until a stated period of time has elapsed following the entering of the final judgment.

² Discussed in T. Meron, *Human Rights in Internal Strife*, *supra* note 1, pp. 61 (note 88), 64-67.

TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Although the non-derogable norm prohibiting torture or cruel, inhuman or degrading treatment or punishment is stated in all the principal human rights and humanitarian instruments, this prohibition is frequently violated in situations of internal strife. In such situations, committing torture is made much easier by the suspension, *de jure* or *de facto*, of judicial guarantees, by large-scale detention of persons, particularly detention incommunicado, and by preventing access to counsel and to families, *etc.* Prolonged detention and detention incommunicado maximize the risk of ill-treatment and torture, as basic procedural rights and avenues of redress are denied the detainees. Due to this situation, it is therefore necessary to emphasize that the imperative prohibition of torture or cruel, inhuman or degrading treatment or punishment continues to be applicable in conditions of internal strife.

TAKING OF HOSTAGES

Hostage-taking is a frequent occurrence in situations of internal strife. This abuse, which often leads to the deprivation of the right to life, constitutes cruel, inhuman or degrading treatment, and comprises wrongful deprivation of the liberty of the person. Hostage-taking is prohibited by humanitarian law instruments and by customary law, but is not explicitly addressed in human rights instruments. The Declaration should, therefore, include the prohibition of hostage-taking.

CAUSING THE DISAPPEARANCE OF INDIVIDUALS

Often a euphemism for murder, causing the disappearance of individuals is particularly common in situations of internal strife. Although various rights enshrined in international human rights treaties, including some which are non-derogable, are violated through “disappearances,”³ an explicit prohibition of “disappearances” has not yet appeared in any human rights treaty.

³ Among the rights implicated are the right to life; the prohibition of torture or other cruel, inhuman or degrading treatment or punishment; the right to liberty and security of the person; the right not to be subjected to arbitrary arrest and detention; the right to due process of law; the right of persons deprived of their liberty to be treated with humanity; the right to recognition everywhere as a person before the law and the rights of the family, motherhood and childhood.

The draft of the new *Restatement of the Foreign Relations Law of the United States*⁴ correctly lists causing the “disappearance” of individuals as a violation of customary international law. Considering that the prohibition of disappearances has been accepted into the corpus of customary international law and that disappearances occur with great frequency in many countries, especially in situations of internal strife, the Declaration should incorporate this concept and include the prohibition of disappearances or at least state that the authorities have a duty to acknowledge all detentions and to notify the families of the detainees without delay.

TERRORIZING THE CIVILIAN POPULATION

In internal strife situations, acts or threats of violence whose purpose or effect is to spread terror among the population are very common. This abusive practice must be addressed in the Declaration.

EXCESSIVE USE OF FORCE

Abusive and excessive force is frequently used against civilians and innocent bystanders in situations of internal strife, for example, to suppress demonstrations, enforce curfews or to intimidate the population.

The problem is exacerbated by the absence in human rights instruments of provisions to humanize violent conflict situations, such as requiring “proportionality” between a legitimate objective and the amount of force used to achieve the objective. Such provisions are contained in international humanitarian law instruments governing international armed conflicts. But only few provisions concerning permissible use of force can be found in international humanitarian instruments governing internal armed conflicts. While it is possible to maintain that certain general principles of customary law should govern the use of force even in internal conflicts and internal strife, efforts to humanize the authorities’ behaviour by invoking general principles of customary law have not proven to be effective in the past.

⁴ Restatement of the Foreign Relations Law of the United States (Revised) §702 (Tent. Draft No. 6, Vol. I, 1985).

Of course, regulation of the use of force in internal strife is different from that in war. While in war killing is allowed in principle, in internal strife, use of force is permissible only in connection with law-enforcement and weapons may be used only as an extreme police measure. The Declaration should therefore attempt to curtail the use of force, incorporating the principle of proportionality between the objective to be attained and the amount of force used. The use of materials calculated to cause unnecessary or indiscriminate suffering should not be allowed. The Declaration should at least reflect the concept that the use of firearms constitutes an extreme measure which is simply not permitted in certain egregious cases, for example against peaceful demonstrators or children.

DEPORTATIONS, FORCED MOVEMENT OF POPULATION

Deportations and forced movements of the population which cause great suffering and often lead to the loss of life are common in situations of internal strife. Articles 12-13 of the Political Covenant concerning the liberty of movement and the expulsion of aliens are derogable and subject to limitation clauses. These articles do not explicitly deal with the phenomenon of mass expulsions, but the major regional human rights instruments do expressly prohibit mass expulsions of aliens. Although the General Comments of the Human Rights Committee on Article 13 are beneficial in fighting deportation abuses, it is important that the Declaration should deal with such acts specifically for situations of internal strife and base its provisions on the model of the provisions contained in humanitarian law instruments.

ABSENCE OR ABUSE OF JUDICIAL SAFEGUARDS; GUARANTEES OF DUE PROCESS AND HUMANE TREATMENT FOR PERSONS DETAINED OR PROSECUTED FOR REASONS RELATING TO THE INTERNAL STRIFE

Experience indicates that widespread abuse of judicial and humane treatment guarantees is common in situations of internal strife. The important guarantees of due process and of the humane treatment for detainees and internees are mostly derogable in human rights instruments, e.g., Articles 9, 10 and 14 of the Political Covenant. The

substance of these guarantees is also to be found in humanitarian instruments which are non-derogable. It is from these instruments that judicial and humane treatment guarantees should be “borrowed”.

Providing due process guarantees presents a strategic question. The Geneva Conventions and the Protocols contain detailed and explicit provisions on due process, while a different approach is followed in common Article 3. This provision contains only the requirement that regularly constituted courts afford “all the judicial guarantees which are recognized as indispensable by civilized peoples.” Which approach is better for a declaration on internal strife? Since States are sensitive to due process issues, a modest approach may be preferable. A modest treatment might be based on enumerating certain essential elements of due process, such as the right to counsel (as provided by Article 72 of the Fourth Geneva Convention, Article 105 of the Third Geneva Convention, and in provisions concerning prosecutions for grave breaches, for example Article 129 of the Third Geneva Convention) or at least requiring the extension of “all necessary rights and means of defence” (Article 75(4)(a) of Protocol I, Article 6(2)(a) of Protocol II) and such elementary safeguards as the right to appeal, the prohibition of retroactive penal measures, the presumption of innocence, and the right to be judged by an independent tribunal.

MASSIVE AND PROLONGED ADMINISTRATIVE DETENTIONS WITHOUT JUDICIAL REVIEW

Among the phenomena endemic to internal strife, massive and prolonged administrative detention merits special consideration because of its frequency and the scarcity of non-derogable provisions guaranteeing judicial review in the Political Covenant.

A provision dealing with massive and prolonged detentions (often ostensibly for preventive purposes) would, therefore, be of great importance. Such a provision should contain minimum standards of treatment, the right to correspond with families and the right to family visits. A particularly difficult question concerns the extent to which the Declaration should address the reasons for preventive detention. Minimally, ordering the preventive detention of an individual should be subject to at least some due process guarantees such as the right to appeal.⁵

⁵ See Art. 78 of the Fourth Geneva Convention.

COLLECTIVE PUNISHMENTS

The prohibition of collective punishments is stated explicitly in humanitarian law instruments, but only implicitly in human rights conventions, such as the Political Covenant. Because of the relevance of this prohibition to situations of internal strife, it merits inclusion in the Declaration.

PROTECTION OF CHILDREN

In situations of internal strife, children are often mobilized and forced to participate in acts of violence. A prohibition against mobilizing children or otherwise forcing them to participate in violent activities should be included in the Declaration.⁶

PROTECTION OF MEDICAL PERSONNEL; PROTECTION AND CARE OF THE SICK AND WOUNDED; ACTIVITIES OF HUMANITARIAN BODIES AND RELIEF

In internal strife situations, medical personnel acting in accordance with the principles of medical ethics are often punished for treating guerillas and dissidents. The Political Covenant does not provide these individuals with explicit protection, nor does the Covenant cover the protection and care of the sick and wounded or the activities of humanitarian bodies and humanitarian relief. The Declaration should contain provisions dealing with these matters.

II. Draft model Declaration on internal strife

The General Assembly,

Recalling the reaffirmation by the Charter of the United Nations of faith in the dignity and worth of the human person,

Considering that situations of internal strife have been on the increase and have caused great suffering to millions of victims,

⁶ See Art. 77(2)-(3) of Protocol I; Art. 4(3) of Protocol II.

Noting that experience has demonstrated a need for further specificity and a more effective implementation of human rights and humanitarian principles in order to provide a more adequate protection to victims of internal strife,

Declaring that in cases not covered by the law in force, the human person remains under the protection and authority of the principles of humanity and the dictates of public conscience,⁷

Now, therefore,

Proclaims this Declaration on Internal Strife.⁸

Article 1

Material scope of application

1. This Declaration shall apply in all cases of internal strife, as defined in paragraph 2 of this Article.
2. Internal strife shall comprise all situations involving substantial and protracted acts of violence.⁹

Article 2

Personal scope of application

This Declaration shall be respected by, and applied to, all persons present in the State in which internal strife is taking place without any adverse discrimination.¹⁰

⁷ This is a short statement of the Martens clause, adapted from the last preambular paragraph of Protocol II.

⁸ This language is inspired by the language of parallel provisions of the Universal Declaration of Human Rights.

⁹ This language is based on the Draft Declaration of the Fundamental Rights of the Individual in Time of Internal Disturbances or Public Emergency, which was presented in 1971 by the ICRC to the Conference of Government Experts on Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.

¹⁰ This provision reflects the prohibition of discrimination, which is central to the UN Charter, humanitarian instruments and human rights instruments. The language borrows, *mutatis mutandis*, from Article 75(1) of Protocol I and Article 2(1) of Protocol II. It aims at the observance of the rights and duties stated in the Declaration by all persons in the State where the internal strife is taking place, irrespective of the side to which they may belong.

Article 3

Humane treatment¹¹

1. All persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.

2. Without prejudice to the generality of the foregoing and of the fundamental guarantees stated in Articles 7-10, the following acts against persons referred to in paragraph 1 are and shall remain prohibited:

- (a) violence to the life, health and physical or mental well-being of persons, in particular murder, as well as cruel, inhuman or degrading treatment or punishment such as torture or mutilation and other outrages upon personal dignity;¹²
- (b) collective punishments against persons and their property;¹³
- (c) taking of hostages;¹⁴
- (d) acts of terrorism;
- (e) causing or acquiescing in the disappearance of individuals, including their abduction or unacknowledged detention;¹⁵
- (f) pillage;
- (g) threats to commit any of the foregoing acts.

In a low-intensity conflict, the traditional distinctions between combatants and civilians, participants and innocent bystanders, persons affected or not affected by the situation of internal strife, *etc.*, may not always be meaningful. Moreover, such distinctions may be abused so as to circumvent the objectives of the Declaration. As a matter of general policy, the Declaration should therefore be made applicable to the entire population. However, certain protections (*e.g.*, derogable due process guarantees) may have to be limited to particular categories of beneficiaries such as persons prosecuted for offences related to the internal strife, because States may be reluctant to go further. *See infra* Articles. 9-10.

¹¹ This Article reflects essential protections of humane treatment stated in Article 4 of Protocol II. These protections also echo certain provisions of common Article 3 and of the Fourth Geneva Convention.

¹² This provision draws on Article 4(2)(a) and (e) of Protocol II.

¹³ This provision follows paragraph 6 of the 1971 ICRC Draft Declaration, *supra* note 9.

¹⁴ This provision follows paragraph 6 of the 1971 ICRC Draft Declaration, *supra* note 9.

¹⁵ The reference to the prohibition of causing disappearances combines the language of the Draft Restatement of the Foreign Relations Law of the United States (*supra* note 4) with that of Resolution 1984/13 adopted by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

Article 4

Use of force by law enforcement officials ¹⁶

Law enforcement officials, such as military and paramilitary personnel, including persons or groups who are in fact acting on behalf of a State or are in fact exercising elements of governmental authority, may use force only when strictly required for the performance of their duty and then only in the minimum degree.¹⁷ The use of force which is disproportionate to the legitimate objective to be achieved is prohibited.¹⁸ Weapons or other material calculated to cause unnecessary or indiscriminate suffering shall not be employed.¹⁹ Their use against children, peaceful demonstrators and other defenseless persons shall be prohibited.²⁰

Article 5

Acts or threats of violence

Acts or threats of violence the primary purpose or effect of which is to spread terror among the population are prohibited.²¹

¹⁶ This provision reflects several important principles: prohibition of the use of force unless such use is strictly required; proportionality between the objective to be attained and the degree of force used; the concept that use of firearms constitutes an extreme measure and that their use is not to be allowed in certain egregious circumstances.

This Article does not address the use of force by elements of the opposition (situations of internal strife are governed by national law, subject to any international obligations of the State concerned. National laws do not authorize use of force by elements of the opposition), a subject which is covered by other Articles of the Declaration, such as Articles 3 and 5.

¹⁷ The first sentence of this draft Article originates in Article 3 of the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979 in Resolution 34/169, combined with the language of Article 8 of the International Law Commission's Draft Articles on State Responsibility (part one). 2 Y. B. Int'l L. Comm'n 73 (Pt. 2, 1976).

¹⁸ The second sentence is borrowed, with modifications, from the Commentary on Article 3 of the Code of Conduct for Law Enforcement Officials, *supra* note 17.

¹⁹ This sentence builds on the language of Article 23(e) of The Hague Regulations Annexed to Hague Convention No. IV Concerning Laws and Customs of War on Land, which reflects a principle of customary law.

²⁰ This sentence is inspired, in its reference to children, by paragraph (c) of the Commentary to Article 3 of the Code of Conduct for Law Enforcement Officials, *supra* note 17.

²¹ Although the prohibitions stated in this draft Article overlap, to a certain extent, other provisions of the draft Declaration, events in various parts of the world, such as

Article 6

Prohibition of forced movement of the population ²²

1. The displacement of the population shall not be ordered for reasons related to the internal strife unless the safety of the population involved or imperative security reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons thus displaced shall be transferred back to their homes as soon as the conditions which made their displacement imperative have ceased.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the internal strife.

Article 7

Right to life

1. In addition to the guarantees of the inherent right to life, stated in Article 6 of the International Covenant on Civil and Political Rights, the following provisions shall be respected as a minimum.²³

the activity of so-called “death squads”, acts and threats of violence against indigenous or political groups, make this draft Article necessary. The draft borrows from Article 13(2) of Protocol II and employs the “purpose or effect” language of Article 1(1) of the International Convention on the Elimination of All Forms of Racial Discrimination.

²² Recent experience shows the necessity of including in the Declaration the prohibition of deportations and massive displacement of the population. This vital principle is well-established in humanitarian law, but rather less in the human rights instruments. The formulation of the above provision is therefore based on language to be found in humanitarian instruments. The provision employs the language of Article 17 of Protocol II, with certain changes, and adapts it to the circumstances of internal strife. It is thus provided that not only the conditions under which the civilians are received must correspond to certain standards, but that such standards should apply also to the conditions prevailing during the transfer of the civilians. The last sentence of paragraph 1 is based, with some changes, on the last sentence of the second paragraph of Article 49 of the Fourth Geneva Convention.

²³ This paragraph emphasizes that the protections stated in paragraphs 2-3 are additional to those stated in Article 6 of the Political Covenant, which are declaratory of *jus cogens* norms and must, of course, always be observed.

2. Sentence of death shall not be carried out on mothers of young children.²⁴

3. No death sentence shall be carried out before the expiration of at least six months from the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve.²⁵

Article 8

Rights of the child

Every child has the right to the measures of protection required by his condition as a minor and shall be provided with the care and aid he requires.²⁶ Persons who have not yet attained the age of fifteen years shall not be recruited in armed forces or groups or allowed to take part in acts of violence.²⁷

Article 9

Persons deprived of their liberty²⁸

1. In addition to the provisions of Article 3, persons deprived of their liberty for reasons related to the internal strife:

- (a) shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health and hygiene and protection against the rigours of climate and the dangers of the internal strife;
- (b) shall be allowed to practice their religion and, if requested, to receive spiritual assistance from persons, such as chaplains, performing religious functions;

²⁴ This paragraph is based on Article 6(4) of Protocol II (*see also* Art. 76(3) of Protocol I). This is a vital addition to the protections stated in Article 6 of the Political Covenant given the fact that the execution of a mother shortly after she gives birth endangers the life of the infant and its mental and physical well-being.

²⁵ This provision is based on Article 75 of the Fourth Geneva Convention and Article 101 of the Third Geneva Convention.

²⁶ The first part of the first sentence is based on the non-derogable Article 19 of the American Convention on Human Rights, with the deletion of the last words of that Article. The second part is based on the first part of Article 4(3) of Protocol II.

²⁷ This sentence is based on Article 4(3)(c) of Protocol II, *mutatis mutandis*.

²⁸ This draft Article is based on Article 5 of Protocol II, with a number of changes.

- (c) shall be allowed to send and receive letters and cards, the number of which may be reasonably ²⁹ limited by the competent authority if it deems necessary;
 - (d) shall not have their physical or mental health and integrity endangered by any unjustified act or omission.
2. If it is decided to release persons deprived of their liberty, necessary measures to ensure their safety shall be taken by the releasing authority.

Article 10

Penal prosecutions ³⁰

1. The rights stated in paragraphs 2-3 shall be respected as a minimum in the prosecution and punishment of criminal offenses related to the internal strife.

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offense without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular:

- (a) the procedure shall provide for an accused to be informed without delay of the particulars of the offense alleged against him, shall provide for a trial without undue delay, and shall afford the accused before and during his trial all necessary rights and means of defense;
- (b) no one shall be convicted of an offense except on the basis of individual penal responsibility;
- (c) anyone charged with an offense is presumed innocent until proved guilty according to law;
- (d) anyone charged with an offense shall have the right to be tried in his presence;
- (e) no one shall be compelled to testify against himself or to confess guilt;

²⁹ The word “reasonably” has been added to the language of Article 5(2)(c) of Protocol II to limit the discretion of the detaining authorities.

³⁰ This draft Article is based on Article 6 of Protocol II, with changes. It applies only to persons prosecuted and punished for offences related to internal strife.

- (f) no one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of the State in which an internal strife is taking place;³¹
- (g) no one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby. Nothing in this paragraph shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.³²

3. The competent authority shall endeavour to grant the broadest possible amnesty to persons who have participated in the internal strife, or those deprived of their liberty for reasons related to the internal strife.

Article 11

Administrative detentions ³³

If the authorities consider it necessary for imperative reasons of security to subject any person to assigned residence or to internment, such decisions shall be subject to a regular procedure, which shall include the right of appeal and to a periodical review.

³¹ This paragraph is based on Article 14(7) of the Political Covenant, which is derogable. *See also* Article 75(4)(h) of Protocol I.

³² Paragraph 2(g) repeats the language of the non-derogable Article 15 of the Political Covenant, while consolidating its two paragraphs into one and introducing the resultant modifications.

³³ This provision is inspired by Articles 42-43 of the Fourth Geneva Convention, to which the right of appeal has been added.

Article 12

Protection and care ³⁴

In every circumstance, the wounded and sick, whether or not they have taken part in internal strife, shall be protected and treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them on any grounds other than their medical condition.

Article 13

Search ³⁵

Every possible measure shall be taken, without delay, to search for and collect wounded, sick and missing persons and to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead; prevent their being despoiled, and to decently dispose of them.

Article 14

Protection of medical and religious personnel ³⁶

1. Medical and religious personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian mission. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefitting therefrom.³⁷

³⁴ Although the Declaration assumes a conflict of low-intensity violence, provisions on the care of wounded and sick may nevertheless be needed and have, therefore, been incorporated in the draft Declaration. The above provision adapts to the situation of internal strife Article 7 of Protocol II or the similar Article 10 of Protocol I with a number of modifications.

³⁵ This provision reflects Article 8 of Protocol II, with a number of changes.

³⁶ This provision tracks Article 9 of Protocol II.

³⁷ This sentence is based on Article 16(1) of Protocol I.

2. In the performance of their duties, medical personnel may not be required to give priority to any person except on medical grounds.

Article 15

Activities of humanitarian bodies ³⁸

The authorities of the State in which internal strife is taking place (hereinafter referred to as the “authorities”) should grant to humanitarian organizations all facilities within their power so as to enable them to carry out their humanitarian activities for the protection of and assistance to the victims of the internal strife.

Article 16

Legal status of authorities and persons ³⁹

The application of this Declaration shall not affect the legal status of any authorities, groups, or persons involved in the situation of internal strife.

Article 17

Prohibition of derogations ⁴⁰

No derogation from the provisions of this Declaration may be made on any ground whatsoever, including public emergency, which threatens the life of the nation, nor may there be any suspension from the judicial guarantees essential for the protection of the rights stated in this Declaration.

³⁸ This provision is based on Article 81(1) of Protocol I, with a number of changes designed to adapt them to a situation of internal strife.

³⁹ Such a provision is necessary to encourage governments to respect the Declaration without fear that its application might amount to recognition of, or grant of political status to, dissidents, or opposition groups. The provision is based on the final paragraph of Article 3 common to the four Geneva Conventions and on Article 4 of Protocol I. The reference to “authorities and persons” is substituted for the “parties to the conflict” to reflect the different scope of applicability of the present Declaration, namely a situation of internal strife, rather than armed conflict between contesting parties. Unlike Article 4 of Protocol I, the draft Article mentions only the Declaration, rather than other humanitarian instruments or any special agreements.

⁴⁰ The first part of the draft provision on derogations is based on Article 4(2) of the Political Covenant, to which the words “on any ground whatsoever...” have been added.

Article 18

Saving provisions

1. Nothing in the present Declaration shall be interpreted as impairing the provisions of the Geneva Conventions of 12 August 1949 for the protection of war victims and the Additional Protocols of 8 June 1977 and of any international human rights instrument.⁴¹

2. No restriction upon or derogation from any of the fundamental rights of human beings recognized or existing in any country by virtue of law, treaties, regulations, custom, or principles of humanity shall be admitted on the pretext that the present Declaration does not recognize such rights or that it recognizes them to a lesser extent.⁴²

Theodor Meron

Dr. Theodor Meron is Professor of International Law at the University of New York Law School. He is a member of the Board of Editors of the American Journal of International Law. He was Carnegie Lecturer at the Hague Academy of International Law, Rockefeller Foundation Fellow, Max Planck Institute (Heidelberg) Fellow, and Hersch Lauterpacht Memorial Lecturer at the University of Cambridge. He serves on the boards of several human rights organizations. He published numerous articles on international, humanitarian and human rights law in various legal periodicals. His books are: *Investment Insurance in International Law* (1976), *The United Nations Secretariat* (1977), *Human Rights in International Law* (editor, 1984), *Human Rights Law-Making in the United Nations* (1986) (awarded the Certificate of Merit of the American Society of International Law), and *Human Rights in Internal Strife* (1987).

The addition is based, with modifications, on the language of Principle 6 of Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the UN General Assembly on December 18, 1982 by Resolution 37/194, and on Article 4(1) of the Political Covenant. The second sentence is based on the final words of Article 27(2) of the American Convention on Human Rights. The addition of the second sentence is intended to eliminate the weakness in the Political Covenant which allows derogation from some due process rights essential for the safeguarding of non-derogable rights.

⁴¹ Paragraph 1 is based, *mutatis mutandis*, on the language of Article 46 of the Political Covenant (Art. 24 of the Economic Covenant).

⁴² This paragraph is based, with modification, on Article 5(2) of the Political Covenant and the Covenant on Economic, Social and Cultural Rights, to which the reference to the principles of humanity has been added because of its special relevance. The word "treaties" replaces the word "conventions", to avoid ambiguity and clearly cover both the Geneva Conventions and the 1977 Protocols.

INTERNATIONAL COMMITTEE OF THE RED CROSS

APPOINTMENT OF A NEW MEMBER TO THE ICRC

At its last meeting in 1987, the Assembly of the International Committee of the Red Cross welcomed **Mrs. Liselotte Kraus-Gurny** as a new member of the Committee.

Mrs. Kraus-Gurny is from Zurich. She is a Doctor of Laws and worked in the legal division of the Office of the United Nations High Commissioner for Refugees in Geneva from 1961 to 1972. She devoted the following years to her family, and to political activities at the municipal and cantonal levels in Geneva, where she was particularly active in the field of education and training.

With the appointment of Mrs. Kraus-Gurny, the Committee, which is composed exclusively of Swiss citizens, now has 21 members.

OFFICIAL VISIT TO JAPAN BY THE ICRC PRESIDENT

ICRC President Cornelio Sommaruga paid an official visit to Japan from 6 to 14 December 1987.

The President, accompanied by Mr. Hans Spiess, ICRC honorary delegate for Japan, Mr. Peter Küng, head of the regional delegation (Far East) and Mr. Cédric Neukomm, delegate responsible for dissemination and co-operation in Asia, first participated in a symposium on the theme "From small peace to large peace", which was organized by the Japanese Red Cross Society in collaboration with the NHK television station and the newspaper *Asahi Shimbun* and sponsored by the Union Bank of Switzerland.

In his address, the ICRC President began by paying tribute to the Japanese Red Cross and its continuous support for the ICRC during the Society's 100 years of existence. He then gave an outline of the ICRC's current operations.

The symposium's discussions, which were led by eminent university professors, highlighted the Movement's positive role and its contribution to peace. The participants recommended, in particular, that Japan increase its support for the ICRC's activities, and launched an appeal in favour of ratification by Japan of the Protocols of 8 June 1977.

During his visit Mr. Sommaruga was received by the Minister for Foreign Affairs, Mr. Sosuke Uno. The ICRC President drew the Minister's attention, in particular, to the importance of greater support by the Japanese Government for the ICRC, and expressed the wish that Japan would soon ratify the Protocols additional to the Geneva Conventions.

The Minister declared his great respect for the work accomplished by the Red Cross and thanked the ICRC for its efforts with regard to certain issues of concern to Japan. He furthermore announced the donation of 30 million yen (about 300,000 Swiss francs) as an extraordinary contribution to the ICRC's activities in the Philippines.

Mr. Sommaruga also met the outgoing Prime Minister, Mr. Yasuhiro Nakasone, and various other leaders of Japanese political and economic life in Tokyo and Osaka.

Finally, the ICRC President was received by the President of the Japanese Red Cross Society, Mr. Yamamoto, and his closest colleagues. On this occasion, H.I.H. Crown Prince Akihito presented the ICRC President with the "Golden Order of Merit", the highest distinction awarded by the Japanese Red Cross Society.

THE CHANCELLOR OF AUSTRIA VISITS THE ICRC

The Federal Chancellor of the Republic of Austria, **Mr. Franz Vranitzky**, visited on 2 February 1988 the International Committee of the Red Cross, where he was received by Mr. Cornelio Sommaruga,

President of the institution, and several members of the Committee.

In his speech of welcome, the President of the ICRC thanked the Federal Chancellor for the support that the Republic of Austria gives to the ICRC. He also recalled the fact that the large number of conflict situations in the world demands constant diplomatic support, in the interest of the victims, especially from neutral countries.

The signing of the ICRC's visitors' book was followed by a meeting between Mr. Franz Vranitzky and the ICRC President, which focused on the application and dissemination of international humanitarian law, the financing of the institution and the operational involvement of the ICRC's 41 delegations worldwide.

*EXTERNAL ACTIVITIES**(November-December 1987)***Africa****Mozambique**

During the final months of 1987 the ICRC gradually managed to overcome the numerous logistic difficulties it had encountered; its aid programme, conducted together with the National Society, went as planned. Thus, by the end of 1987, ICRC delegates were working as normal in 51 areas throughout 41 districts in seven of the country's ten provinces. From the beginning of 1988 onwards their activities should increase in the province of Manica and in the Inhambane region.

Nevertheless, at the end of December the ICRC temporarily had to limit its activities for security reasons, particularly in areas where the fighting was heaviest. Negotiations were under way with the forces there to obtain the necessary safeguards for its work to continue and to allow the ICRC to extend its activities to areas where it had not yet reached.

Ethiopia

Following an appeal by the ICRC President on 9 November for "open roads for survival", food distributions began on a large scale in northern Ethiopia. By the end of December, the ICRC had supplied food rations to some 300,000 civilians threatened by famine, mainly in Tigre.

Burundi

Shortly after the *coup d'état* of 3 September 1987 the ICRC delegate to Kinshasa visited Burundi. Even though security detainees in the country were speedily released, an agreement was reached with the Burundi authorities for another visit to the places of detention before the end of 1987. Consequently, between 12 and 24 November three delegates and an ICRC physician visited seven prisons (where there were no longer any security detainees) as part of their ongoing activities.

In collaboration with the authorities, an ICRC sanitary engineer set up a water-purification project at Bujumbura prison at the end of 1987.

Uganda

On 29 December an agreement was signed between the ICRC and the Uganda Government, giving an official basis to the ICRC's presence in that country.

Latin America

Brazil

President Sommaruga, who headed the ICRC delegation that attended the meetings of the International Red Cross and Red Crescent Movement held in Rio de Janeiro in November, had several discussions with the Brazilian authorities in the presence of leaders of the National Society. On 16 November he was officially received by Dr. José Sarney, President of the Federative Republic of Brazil, in Brasilia. On 24 November President Sommaruga had discussions with the Minister of Foreign Affairs, the Minister of the Armed Forces, the President of the Senate and the President of the Chamber of Deputies. These talks were concerned mainly with the question of the Additional Protocols, to which Brazil is not yet a party, the funding of the ICRC and the dissemination of international humanitarian law.

Cuba/Haiti

On 12 December, 153 Haitians wishing to return home were repatriated from Cuba under ICRC auspices, with the co-operation of the Cuban and Haitian Red Cross Societies.

Visits to places of detention

Security detainees were visited in the following countries: Chile, Colombia, Nicaragua and Peru (within the limits imposed on the ICRC since the beginning of 1987). In El Salvador, following the government's decision to release certain detainees under the Esquipulas II peace plan, the ICRC was visiting only 33 detainees in Ministry of Justice penitentiaries at the end of December, in addition to those visited regularly in detention centres run by the armed forces and the security corps. Visits were also carried out in Suriname, where detainees held at Fort Zelandia prison in Paramaribo were released by the authorities at the beginning of December.

Assistance programme for the civilian population

The various assistance programmes for the civilian population in Nicaragua and El Salvador continued (food and medical assistance, sanitation, etc.). In El Salvador regular food distribution ended in November; henceforth the ICRC will undertake limited distributions only as the need arises. The ICRC also concerned itself with the situation of Salvadorian nationals who had returned from Honduras; after a visit to the camps it was decided to organize a number of sanitation projects.

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Various missions were carried out by the Buenos Aires, Bogotá and San José (Costa Rica) regional delegations in order to maintain relations with the authorities and the National Societies of the following coun-

tries: *Bahamas* (an introductory seminar on international humanitarian law and on the Red Cross), *Brazil*, *Guatemala* and *Paraguay* (training seminar for leaders of the National Society on the dissemination of international humanitarian law).

Since November, one ICRC delegate has been based permanently in *Suriname* (for the purposes explained in the issue for July-August 1987), and another in *Haiti*. In Haiti the objectives were to strengthen the operational capacity of the National Society and launch a programme for the dissemination of international humanitarian law. In the first stage, the ICRC delegate worked with the Haitian Red Cross to prepare the Port-au-Prince ambulance service to cope with the election weekend at the end of November.

Asia

Afghan conflict

Afghanistan — The ICRC delegate general for Asia and the Pacific visited Kabul between 8 and 12 December 1987 to discuss with the Afghan authorities the continuation of ICRC activities in that country.

The main result of the mission was an agreement in principle for the ICRC to resume visits, carried out in accordance with its customary procedure, to persons detained in Afghanistan. Starting with Pul-I-Charki Prison in Kabul, these visits were expected to begin in early February 1988.

Discussions also concerned medical programmes run or proposed by the ICRC (orthopaedic programme, medical assistance for Afghan Red Crescent dispensaries in the provinces and a planned orthopaedic hospital).

Pakistan — During the period under consideration, both ICRC orthopaedic hospitals in Peshawar and Quetta were kept very busy because of the fighting which took place in the border provinces: a total of 412 patients were admitted to the hospital in Peshawar and 949 operations were carried out; the hospital in Quetta received 373 patients and performed 718 operations.

At the beginning of December, ICRC delegates had access to about 100 prisoners in the hands of the Afghan opposition.

Sri Lanka

Following an offer of services to set up a joint League/ICRC programme, Mr. A. Pasquier, ICRC Director of Operations, and Mr. H. Bucher, Deputy Secretary General of the League, went on mission to Sri Lanka in October 1987.

During discussions in Colombo concrete proposals were made to the authorities as regards medical aid, equipment and orthopaedics. The ICRC is continuing negotiations to this effect with the Sri Lanka Government and the Indian authorities so as to set up a programme to help all the victims of the situation in Sri Lanka, particularly in the northern and eastern parts of the country.

Philippines

In November and December 1987 the ICRC continued its programmes in the Philippines and visits to prisoners arrested in connection with insurgency-related incidents (169 detainees visited); it also provided relief supplies and medical aid to people displaced or cut off by the events (7,625 people assisted) and continued to disseminate international humanitarian law and the Fundamental Principles of the Movement.

Conflict in Kampuchea

The ICRC pursued its negotiations to provide better protection for some 250,000 civilians displaced along the Khmer-Thai border and to visit all persons detained because of the conflict. The three teams working in the ICRC orthopaedic hospital in Khao-I-Dang operated on 2,384 Khmer and Vietnamese patients. At the request of the families, the ICRC Central Tracing Agency tried to trace more than 2,000 Khmer and Vietnamese by making enquiries both along the border and abroad. The ICRC also forwarded mail between the camps (more than 4,200 letters).

Middle East

Iran/Iraq Conflict

During the last two months of the year, ICRC delegates continued their visits to prisoner-of-war camps in both Iran and Iraq. In November two teams of delegates completed the sixth series of visits to Iranian prisoners of war held in ten camps in Iraq and, in December, began the seventh series which should end in January 1988. In Iran, the team of delegates continued and completed the round of visits begun in December 1986, by visiting the fourteenth and fifteenth camps for Iraqi prisoners of war covered by the series.

Israel and the Occupied Territories

In November ICRC delegates, including a physician, continued and completed the annual round of prison visits begun at the beginning of August.

The delegates followed with close attention the situation resulting from the events which broke out on 9 December in the Occupied Territories (West Bank, Gaza Strip and East Jerusalem). They frequently went to the scenes of clashes, especially in the refugee camps, and made many visits to hospitals receiving the wounded, both in the Occupied Territories and in Israel. In particular they made sure that the evacuation of the wounded went forward unhindered. They also visited persons arrested in connection with the incidents, who numbered several hundred at the end of December.

IN THE RED CROSS AND RED CRESCENT WORLD

THE 125th ANNIVERSARY OF THE FOUNDATION OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

On 9 February 1863, at a meeting of the Geneva Public Welfare Society (Société genevoise d'Utilité publique), a benevolent society chaired by Gustave Moynier, a committee composed of Henry Dunant, Louis Appia, General Guillaume-Henri Dufour, Théodore Maunoir and Gustave Moynier was appointed to give effect to the conclusions of Henry Dunant's book A Memory of Solferino, and particularly his call for "the creation of a body of voluntary nurses attached to armies in the field".

This date has gone down to history, as the committee laid the foundations of what was to become on 17 February 1863 the International Committee for Relief to the Wounded (Comité international de secours aux blessés) and later the International Committee of the Red Cross. As Gustave Moynier wrote: "The date of 9 February 1863... marks the true starting point of the Red Cross".

To celebrate the 125th anniversary of this event, on 9 February 1988 a commemorative plaque was placed on the former "Casino de Genève", where the Committee of Five came into being on 9 February 1863. Several notables spoke at the unveiling ceremony; they were Mr. Pierre Wellhauser, President of the Council of State of the Republic and Canton of Geneva, Mr. Claude Haegi, Mayor of the City of Geneva, Mr. Cornelio Sommaruga, President of the International Committee of the Red Cross, Mrs. Catherine Santschi, President of the Geneva Public Welfare Society, and Mr. Roger Durand, President of the Henry Dunant Society.

The Review is happy to publish below the address by the President of the ICRC, entitled, "A tribute to the pioneers of the International Committee of the Red Cross".

The Henry Dunant Society, the ICRC and the Geneva Public Welfare Society have jointly published a souvenir brochure containing all the speeches and articles related to this event.

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Tribute to the Pioneers of the International Committee of the Red Cross

by **Cornelio Sommaruga**
President of the International Committee of the Red Cross

At 6 o'clock in the evening of 9 February 1863, in a place then called the "Casino", the members of the Geneva Public Welfare Society were assembled under the chairmanship of Gustave Moynier to discuss the publication of a popular edition of the French classics, the creation of a body of volunteer nurses attached to armies in the field (conclusion of Henry Dunant's book entitled "A Memory of Solferino") and the foundation of an agricultural camp for problem children!

At the time who would have imagined that such a day would become a historical landmark and the "true starting point of the Red Cross"—to quote Gustave Moynier himself? Who but a few well informed people would recall nowadays that this very ordinary meeting acquired such exceptional importance, because that was where five citizens of Geneva laid the foundations of the International Committee of the Red Cross and hence of the International Red Cross and Red Crescent Movement as a whole?

This is why the ICRC is particularly gratified to share in the commemoration of this major event, an initiative that we owe to the very active Henry Dunant Society together with the authorities of the Republic and Canton of Geneva and of the City of Geneva. To this tribute to the pioneers of the most universal humanitarian movement that exists, we shall now add a more lasting token in the form of a plaque which will bear witness to the history of humanitarian thinking, a modest and yet significant symbol of that altruistic and international spirit which has been and will continue to be the pride of our City of Geneva.

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The fact that the event we are celebrating took place in Geneva and that this city became the cradle of the Red Cross is hardly fortuitous. In the second half of the nineteenth century, Geneva was a prosperous city, open to the rest of Europe and above all the centre of international charity: numerous philanthropic societies there were engaged in a thousand and one forms of charitable activity. Among these societies, the Geneva Public Welfare Society played a particularly active part in helping abandoned children, detainees and the destitute. Geneva was the place where Jean-Henri Merle d'Aubigné preached the duty to assist the underprivileged; his appeal to the various communities to alleviate the suffering of victims of the conflicts that were ravaging the Europe of that time, particularly in Italy, found a wide audience and was largely followed. It was from Geneva also that Samaritans of all kinds went out to bring material and moral support to those in need, whatever their nationality or religion.

Even before Solferino, such was the “spirit of Geneva”—if you will pardon the expression—a spirit of generosity and altruism, already imbued with the principles of humanity, impartiality and neutrality; a spirit that gave their incentive to those whose memory we are commemorating here today.

Albeit such a spirit and the seed of the humanitarian message it contained had to be revealed to the world in order to achieve universal and lasting recognition. And so the humanitarian gesture accomplished by Henry Dunant at Solferino on 25 June 1859 was made known to the public of his time in “A Memory of Solferino”. Inspired by a shattering experience, it was a work which shaped Henry Dunant’s life and that of generations of Red Cross workers after him.

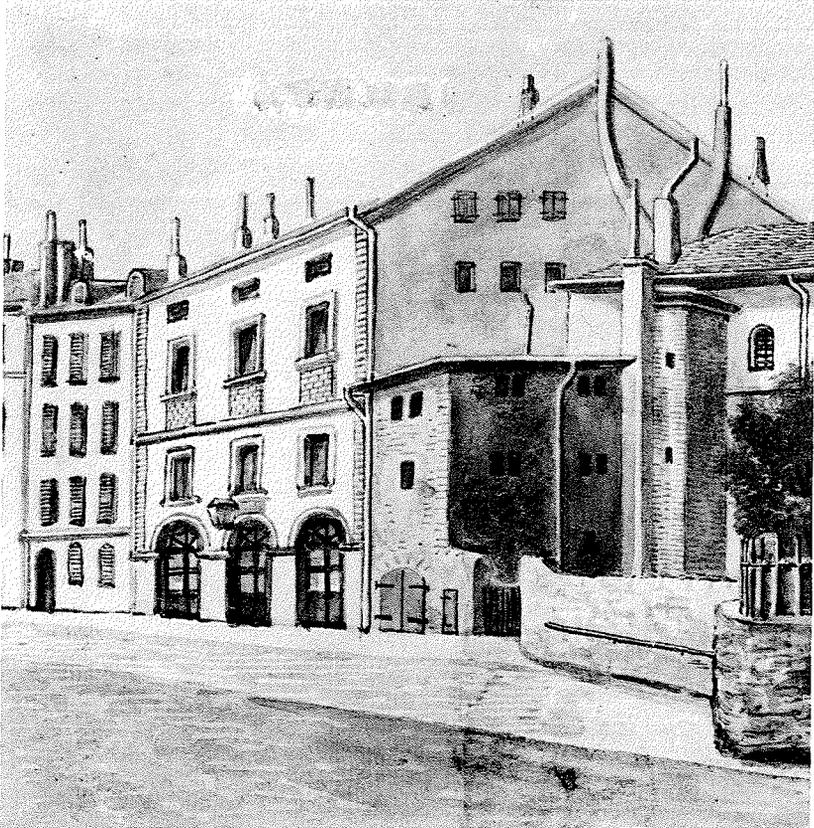
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All of us are familiar with Henry Dunant the man, whose sensitive nature, foresight and force of persuasion pervade the book that so deeply impressed the European audience of his time. Dunant’s ideas, however, still lacked precision and clarity. It took a man like Gustave Moynier, the chairman of the Geneva Public Welfare Society, to explain and translate Dunant’s brilliant concept into clear and consistent terms. Such was the miracle that drew these two men together despite their considerable differences: Henry Dunant, the man who “imagined” the Red Cross, as Moynier himself acknowledged, the creative visionary with his unique gift of compassion for those who suffered, and his



Unveiling of a commemorative plaque, on 9 February 1988,
at the former *Casino de Saint-Pierre*, 3 rue de l'Evêché, Geneva.

(Photo: City of Geneva Monuments and Fountains Service)



The former Casino (with its three arcades) at 3 rue de l'Evêché. On the ground floor were held the meetings of the Geneva Public Welfare Society which, on 9 February 1863, created the "Committee of Five".

(Philip Jamin (1848-1918) — drawing with watercolour (detail)
Museum of Art and History, Old Geneva).

capacity to comfort and give both material and moral support to those in need; and Gustave Moynier, the dialectician, the organizer and theorist of social phenomena. In other words, their meeting was a conjunction of opposites—of the visionary and the rational, of the ardent enthusiast and the sober-minded sceptic. Far from negating each other, Dunant and Moynier joined efforts and gave substance and strength to the ideal they shared above all: to alleviate human suffering, to let their hearts be their guide and common sense prevail in the midst of violence and misery. To achieve this, Dunant and Moynier's answer was: try, try and try again.

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Time has shown that the association of these five men was perhaps not fortuitous either. They had so many things in common; not only the place where they met, but above all their faith.

More than a duty, charity was second nature to them. They all belonged to the same philanthropic and social circles. Dunant and Appia were both members of the Evangelical Society; Dunant, Dufour and Appia had met at the Geographical Society; Moynier, Dufour, Appia and Maunoir all four belonged to the Geneva Public Welfare Society. The five men had experience in common too: Dunant and Moynier, first of all, as we have already seen. Louis Appia, who showed a rapidly growing interest in war surgery, was to become the ambassador of Genevese charity in the hospitals of Piedmont and Lombardy; Dr. Maunoir, a man of considerable intelligence, was devoted to both his family and his patients, who all appreciated his patience, solicitude and kindness. General Dufour's renown as a peace-maker grew as a result of the restraint and wisdom he showed in conducting the Sonderbund war.

This was indeed an extraordinary meeting of men who were all singularly ahead of their time: Henry Dunant, whose spontaneous act at Solferino foreshadowed the future work of the Red Cross and its guiding principles; Appia, who, at the time the battle of Solferino took place, was giving indiscriminate attention to the patients of Italian hospitals, and Dufour, whose orders to his officers in 1847 prefigured certain fundamental provisions of the Geneva Conventions.

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In fact, it was not merely a matter of creating a body of volunteer nurses. Dunant's thinking went much, much further: he urged States to adopt "some international principle, sanctioned by a Convention inviolate in character, which, once agreed upon and ratified, might constitute the basis for societies for the relief of the wounded in the different European countries."

Starting on 17 February 1863, this tremendous task was accomplished by the Committee of Five on 22 August 1864, when the first Geneva Convention was signed. It required considerable determination, tenacity, imagination, audacity and intense activity, according to Dunant's account.

Maybe it also needed that slight touch of madness that one finds in all true idealists, whose fantasy inspires them to achieve great things.

What the five men needed above all was to overcome their feelings of uncertainty. That same evening of 9 February, General Dufour, being the realistic soldier he was, was not sure whether this great venture would succeed, and Gustave Moynier was not by any means convinced that the Berlin Conference was the best place to start spreading Dunant's ideas. Moynier again—on the eve of the Conference in October 1863—admitted in confidence that the members of the Committee felt "so small and so weak in the face of the monumental task that lay before them"; Moynier also doubted whether the government delegations would agree to the neutrality of medical personnel; this was an idea put forward by Dunant in Berlin, without consulting his colleagues.

This other inspired idea of Dunant's that all medical staff should be recognized and treated as neutral—an idea which was shared by Dr. J. Basting, a Dutch army medical officer—was later adopted by the other members of the Committee.

We must not forget that at the time the concept of neutrality was still unheard of; it was customary to consider doctors and nurses as ordinary combatants, and it was by no means easy for Dunant to win his friends over to this fundamental concept. But ironically enough for history in the making, the 1863 Conference more readily accepted neutrality than the creation of a body of volunteer nurses!

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In putting up this plaque, we wished to pay tribute to these five men, who had no other means available to them than their profound motivation, imagination and audacity and who deliberately induced a change in the course of history by laying down the foundations of a universal movement, which today is more alive and indispensable than ever.

In remembering that this small Committee of Five, which in its original form was destined to be but temporary, the ICRC which I represent can be proud of the task it has been accomplishing for the past 125 years on behalf of all who suffer. The ICRC is better able to appreciate the responsibilities entrusted to it and which require it—nowadays more than ever—to remain unconditionally faithful to those simple precepts laid down by Dunant, Appia, Dufour, Maunoir and Moynier: to alleviate, and insofar as possible, to eliminate human suffering; to ensure that all individual human beings are respected, not because they are citizens of a given State, but simply because they are human beings; to identify completely with those who suffer; and to know the limits of humanitarian action, which is the fundamental guarantee of the unity and universality of the Red Cross.

MISCELLANEOUS

States party to the Protocols of 8 June 1977

as at 31 December 1987

Below we give the lists, drawn up in chronological order as at 31 December 1987, of all the States party to Protocols I and II additional to the Geneva Conventions of 12 August 1949, adopted on 8 June 1977.

The names of the States are shown in abbreviated form; the numbering of States party to the Protocols has been divided into two columns, the first for States party to Protocol I, the second for those party to Protocol II.

The third column indicates the form of official act received by the depositary, the Swiss Federal Council: R = ratification; A = accession.

The fourth column indicates whether the ratification or accession was accompanied by any reservations or declarations (using the State's own designation thereof). It also indicates by the abbreviation "Int. Commission" whether the State concerned has accepted the competence of the International Fact-Finding Commission by making the declaration provided for in Art. 90, para. 2 of Protocol I.

| PROTOCOL | | | OFFICIAL DATE | TYPE OF ACT | | |
|---|----|-------------|-----------------|-------------|--|-----------------|
| I | II | | OF REGISTRATION | RECEIVED | | REMARKS |
| 1978 | | | | | | |
| 1 | 1 | Ghana | 28 February | R | | |
| 2 | 2 | Libya | 7 June | A | | |
| <i>Date of entry into force of the Protocols: 7 December 1978</i> | | | | | | |
| 3 | 3 | El Salvador | 23 November | R | | |
| 1979 | | | | | | |
| 4 | 4 | Ecuador | 10 April | R | | |
| 5 | 5 | Jordan | 1 May | R | | |
| 6 | 6 | Botswana | 23 May | A | | |
| 7 | | Cyprus | 1 June | R | | Protocol I only |
| 8 | 7 | Niger | 8 June | R | | |

| | | | | | |
|-------------|----|--|--------------|---|----------------------------------|
| 9 | 8 | Yugoslavia | 11 June | R | Declaration |
| 10 | 9 | Tunisia | 9 August | R | |
| 11 | 10 | Sweden | 31 August | R | Reservation; Int. Commission |
| 1980 | | | | | |
| 12 | 11 | Mauritania | 14 March | A | |
| 13 | 12 | Gabon | 8 April | A | |
| 14 | 13 | Bahamas | 10 April | A | |
| 15 | 14 | Finland | 7 August | R | Declarations; Int. Commission |
| 16 | 15 | Bangladesh | 8 September | A | |
| 17 | 16 | Laos | 18 November | R | |
| 1981 | | | | | |
| 18 | | Viet Nam | 19 October | R | Protocol I only |
| 19 | 17 | Norway | 14 December | R | Int. Commission |
| 1982 | | | | | |
| 20 | 18 | Rep. of Korea | 15 January | R | Declaration |
| 21 | 19 | Switzerland | 17 February | R | Reservations; Int. Commission |
| 22 | 20 | Mauritius | 22 March | A | |
| 23 | | Zaire | 3 June | A | Protocol I only |
| 24 | 21 | Denmark | 17 June | R | Reservation; Int. Commission |
| 25 | 22 | Austria | 13 August | R | Reservations; Int. Commission |
| 26 | 23 | Saint Lucia | 7 October | A | |
| 27 | | Cuba | 25 November | A | Protocol I only |
| 1983 | | | | | |
| 28 | 24 | Tanzania | 15 February | A | |
| 29 | 25 | United Arab Emirates | 9 March | A | Declaration |
| 30 | | Mexico | 10 March | A | Protocol I only |
| 31 | | Mozambique | 14 March | A | Protocol I only |
| 32 | 26 | Saint Vincent and the Grenadines | 8 April | A | |
| 33 | 27 | China | 14 September | A | Reservation |
| 34 | 28 | Namibia* | 18 October | A | |
| 35 | 29 | Congo | 10 November | A | |
| 36 | | Syria | 14 November | A | Protocol I only; Declaration |
| 37 | 30 | Bolivia | 8 December | A | |
| 38 | 31 | Costa Rica | 15 December | A | |

* Instruments of accession deposited by the United Nations Council for Namibia.

1984

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|-------|-------------------------|--------------|---|---------------------------------|
| 32 | France** | 24 February | A | Protocol II only |
| 39 33 | Cameroon | 16 March | A | |
| 40 34 | Oman | 29 March | A | Declaration |
| 41 35 | Togo | 21 June | R | |
| 42 36 | Belize | 29 June | A | |
| 43 37 | Guinea | 11 July | A | |
| 44 38 | Central African Rep. | 17 July | A | |
| 45 39 | Western Samoa | 23 August | A | |
| 46 | Angola | 20 September | A | Protocol I only; Declaration |
| 47 40 | Seychelles | 8 November | A | |
| 48 41 | Rwanda | 19 November | A | |

1985

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| 49 42 | Kuwait | 17 January | A | |
| 50 43 | Vanuatu | 28 February | A | |
| 51 44 | Senegal | 7 May | R | |
| 52 45 | Comoros | 21 November | A | |
| 53 46 | Holy See | 21 November | R | Declaration |
| 54 47 | Uruguay | 13 December | A | |
| 55 48 | Suriname | 16 December | A | |

1986

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| 56 49 | Saint Christo- pher and Nevis | 14 February | A | |
| 57 50 | Italy | 27 February | R | Declarations; Int. Commission |
| 58 51 | Belgium | 20 May | R | Declarations; Int. Commission*** |
| 59 52 | Benin | 28 May | A | |
| 60 53 | Equatorial Guinea | 24 July | A | |
| 61 54 | Jamaica | 29 July | A | |
| 62 55 | Antigua and Barbuda | 6 October | A | |
| 63 56 | Sierra Leone | 21 October | A | |
| 64 57 | Guinea-Bissau | 21 October | A | |
| 65 58 | Bahrain | 30 October | A | |
| 66 59 | Argentina | 26 November | A | Declarations |
| 60 | Philippines | 11 December | A | Protocol II only |

** When acceding to Protocol II, France sent a communication concerning Protocol I.

*** On 27 March 1987.

1987

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| 67 | 61 | Iceland | 10 April | R | Reservation; Int. Commission |
| 68 | 62 | The Netherlands | 26 June | R | Declarations; Int. Commission |
| 69 | | Saudi Arabia | 21 August | A | Reservation |
| 70 | 63 | Guatemala | 19 October | R | |
| 71 | 64 | Burkina Faso | 20 October | R | |

On 31 December 1987, 71 States were parties to Protocol I and 64 to Protocol II.

Accession of Guyana to the Protocols

The Co-operative Republic of Guyana deposited with the Swiss Government, on 18 January 1988, an instrument of accession to the Protocols Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and Non-International Armed Conflicts (Protocol II), adopted in Geneva on 8 June 1977.

Pursuant to their provisions, the Protocols will come into force for the Co-operative Republic of Guyana on 18 July 1988.

This accession brings to 72 the number of States party to Protocol I and to 65 those party to Protocol II.

BOOKS AND REVIEWS

HUMAN RIGHTS IN INTERNAL STRIFE: THEIR INTERNATIONAL PROTECTION

This study on the international protection of human rights in internal strife* begins with the following proposition: "Ideally, there should be a continuum of norms protecting human rights in all situations, from international armed conflicts at one end of the spectrum to situations of non-armed internal conflicts at the other". The author raises the question whether the system of legal protection of the individual person is really as comprehensive as this assertion claims, especially in situations which can be classified neither as peace nor as armed conflict: internal strife. A very thoughtful analysis of the law of human rights and of international humanitarian law leads him to the conclusion that there is no such continuum, that indeed there is a lacuna in the international protection of human beings. That lacuna appears "in the area where humanitarian law meshes with human rights law, i.e. in internal strife". The gap needs to be filled, says the author, and he proposes the drawing up of a Declaration on Internal Strife which would safeguard fundamental human rights in such particularly difficult situations.

Internal strife is a problematical concept. Although ubiquitous, the phenomenon is not defined by any international instrument. All that the international lawyer knows for sure is that humanitarian law is not applicable to internal strife, humanitarian law being that part of public international law which deals specifically with problems arising in armed conflicts, which are situations characterized by the confrontation of armed forces. The suffering wrought upon the population of a country torn by internal strife is, however, such that the normal "peacetime" approach does not correspond to the needs of the situation, as the author quite clearly demonstrates. His presentation and discussion of various attempts to define the concept of internal strife and to introduce adequate rules into international law cover the activities of institutions as far apart as the *International Committee of the Red Cross* and the *Overseas Private Investment Corporation*. A common phenomenon emerges, however, from the author's various descriptions: **violence**, all of which leads to **human rights abuses** (incommunicado detention, torture, physical disappearance, extrajudicial killing, etc.), which cause **human suffering**. It is important to note that these abuses may be committed either by governments or by private groups.

* Theodor Meron, *Human Rights in Internal Strife: Their International Protection*, Hersch Lauterpacht Memorial Lectures, Cambridge, Grotius Publications United, 1987 (172 pp.).

An entire chapter is devoted to examining the ICRC's response to internal strife, which is to visit detention places in order to protect the specially vulnerable group of political detainees from abuses of power. The author's analysis shows his thorough knowledge of the ICRC's work in situations where the institution has no explicit legal basis on which to act. The absence of a legal framework is, in the author's eyes, an obstacle to a more comprehensive activity which would cover all the victims' needs. One could also say that, on the contrary, it is the absence of legal rules that permits that extraordinary flexibility and adaptability which is a condition for effective work in situations where governments do not want to accept binding international rules.

Having shown the inadequate response of human rights law to the humanitarian issues raised by internal strife, and the silence of humanitarian law on the subject, the author pleads for the drafting of a new text. As the negotiation of a formal treaty on the subject seems quite impossible today, a non-binding declaration could be a more promising way to success. A whole chapter is devoted to the normative content of such a text.

Whether one agrees or not with the author's thesis that there is a lacuna in the law protecting human beings in situations of internal strife, Meron's book certainly fills a lacuna in legal literature. His thorough analysis of the connections between the human rights and the humanitarian law systems is an excellent starting point for any discussion on how to improve the protection of human rights in internal strife.

The author's proposal to draft a declaration on internal strife is timely; it is also a useful contribution to the ongoing debate on the answers that the law can provide to the specific humanitarian problems raised by internal strife. This is a plea for action in a field which has long been neglected by the international legal community. It deserves to be heard.¹

Hans-Peter Gasser

¹ This book is an expanded version of the Hersch Lauterpacht Memorial Lectures which the author was invited to deliver in 1986 at the University of Cambridge Research Centre for International Law (United Kingdom).

NEWS AND REVIEWS

● American Journal of International Law

(Published by the *American Society of International Law*) presented in its January 1987 issue (*Vol. 81, No. 1*), a series of articles on the judgment handed down by the International Court of Justice (ICJ) on “the military and paramilitary activities in and against Nicaragua” case (*Nicaragua v. US*). Some twenty authors analyse various aspects of the judgment. The articles are of great interest, particularly on account of the light they shed on the relationship between customary law and the general principles of international humanitarian law.

Along similar lines, the same journal published in its April 1987 issue (*Vol. 81, No. 2*) an article by Professor Theodor Meron entitled “The Geneva Conventions as customary law”. After outlining the usefulness of establishing the customary law content of a treaty, even one which is widely ratified, the author points out the difficulty of making such an assessment for the Geneva Conventions because of the dearth of State practice outside the treaty. Looking at the experience of the Nuremberg Tribunal, however, he states that international judicial tribunals tend to find a customary law content in humanitarian treaty provisions more easily than in other provisions. This was also the case, he says, in the recent ICJ judgment in the case of *Nicaragua v. US*, which declared Article 3 common to the four Geneva Conventions to be a minimum customary law standard for internal (as well as international) conflicts, although there has been little State practice, either during the Diplomatic Conference of 1949 or since, to support such a finding. The author nevertheless feels that minimum human rights standards accepted as customary law could enhance the status of parallel norms applicable in armed conflicts; and he concludes that what is most important, in reality, is the recognition by States of the binding nature of the Geneva Conventions accompanied by compliance with their provisions.

● The Cahiers du droit public

(Annals of public law, published by the *Centre for Research and Study on Humanitarian Law and Human Rights of the University of Clermont-Ferrand, France*) devoted a special issue (1987) to the subject of “Le droit international humanitaire — Problèmes actuels et perspectives d’avenir” (International humanitarian law—Current problems and prospects for the future). It contains the proceedings of the symposium on this subject held on 13 and 14 December 1985 by the Institut français de droit humanitaire et des droits de l’homme (French Institute of Humanitarian Law and Human Rights). The opening paper delivered by Dominique Turpin, professor of law at the University of Clermont-Ferrand and President of the Institute, highlights the relationship between human rights and humanitarian law. The legal aspects of humanitarian law and

its dissemination are then taken up by professors from several European countries and by representatives of the ICRC. The discussions are summed up by Roger Pinto, Professor Emeritus at the University of Paris I. This publication, which contains the unabridged versions (in French) of the various papers presented, should prove very useful for researchers, teachers and people engaged in the dissemination of humanitarian law.

● **The Military Law and Law of War Review**

(Published under the auspices of the *International Society of Military Law and Law of War*), devoted its latest issue (Vol. XXVI, Nos. 1, 2, 3, 1987) to the Tenth International Congress of that Society, held in Garmisch-Partenkirchen on 2-7 October 1985 on the subject of "The armed forces in a changing society—Some legal problems". It includes, among others, a paper on the law of naval warfare delivered by Dr. Elmar Rauch, Assistant Secretary General of the Society. The author analyses the impact on the law of naval warfare of, on the one hand, the Protocols additional to the Geneva Conventions and, on the other hand, the 1982 Convention on the Law of the Sea.

Official Medal commemorating the 125th Anniversary of the International Red Cross and Red Crescent Movement

To mark the Movement's 125th anniversary, the Henry Dunant Society, together with the Red Cross institutions in Geneva, is issuing a commemorative medal in three versions:

| | | |
|---------------------------|---|-----------------|
| Gold | one ounce of pure gold (24 carat) | Sw. fr. 1,500.- |
| Silver | two ounces of pure silver (999.9) | Sw. fr. 150.- |
| Bronze | three ounces | Sw. fr. 50.- |
| Special collection | all three medals with a certificate signed by the artist | Sw. fr. 1,900.- |

The medal was designed by Bernard Bavaud of Vevey, Switzerland, and was selected in an international competition. The medal is struck by Huguenin Médailleurs of Le Locle, Switzerland.

Orders to be sent to HENRY DUNANT SOCIETY
Chemin Haccius 10
CH-1212 Grand-Lancy
Geneva, Switzerland

The Henry Dunant Society will allocate all proceeds from sales of the medal to the Symposium on the Precursors of the Red Cross and to publications relating to the 125th anniversary of the Red Cross (see also *IRRC*, No. 261, November-December 1987, p. 654).

ADDRESSES OF NATIONAL SOCIETIES

- AFGHANISTAN (Democratic Republic of) — Afghan Red Crescent Society, Puli Hartal, *Kabul*.
- ALBANIA (Socialist People's Republic of) — Albanian Red Cross, 35, Rruga e Barrikadavet, *Tirana*.
- ALGERIA (People's Democratic Republic of) — Algerian Red Crescent, 15 bis, Boulevard Mohamed V, *Algiers*.
- ANGOLA — Cruz Vermelha de Angola, Av. Hoji ya Henda 107, *Luanda*.
- ARGENTINA — The Argentine Red Cross, H. Yrigoyen 2068, 1089 *Buenos Aires*.
- AUSTRALIA — Australian Red Cross Society, 206 Clarendon Street, *East Melbourne 3002*.
- AUSTRIA — Austrian Red Cross, 3 Gusshausstrasse, Postfach 39, A-1041, *Vienna 4*.
- BAHAMAS — The Bahamas Red Cross Society, P.O. Box N-8331, *Nassau*.
- BAHRAIN — Bahrain Red Crescent Society, P.O. Box 882, *Manama*.
- BANGLADESH — Bangladesh Red Cross Society, 684-686, Bara Magh Bazar, Dhaka-17, G.P.O. Box No. 579, *Dhaka*.
- BARBADOS — The Barbados Red Cross Society, Red Cross House, Jemmotts Lane, *Bridgetown*.
- BELGIUM — Belgian Red Cross, Chaussée de Vleurgat 98, 1050 *Brussels*.
- BELIZE — Belize Red Cross Society, P.O. Box 413, *Belize City*.
- BENIN (People's Republic of) — Red Cross of Benin, B.P. No. 1, *Porto Novo*.
- BOLIVIA — Bolivian Red Cross, Avenida Simón Bolívar No. 1515, *La Paz*.
- BOTSWANA — Botswana Red Cross Society, 135 Independence Avenue, P.O. Box 485, *Gaborone*.
- BRAZIL — Brazilian Red Cross, Praça Cruz Vermelha No. 10/12, *Rio de Janeiro*.
- BULGARIA — Bulgarian Red Cross, 1, Boul. Biruzov, 1527 *Sofia*.
- BURKINA FASO — Burkina Be Red Cross Society, B.P. 340, *Ouagadougou*.
- BURMA (Socialist Republic of the Union of) — Burma Red Cross Society, Red Cross Building, 42, Strand Road, *Rangoon*.
- BURUNDI — Burundi Red Cross, rue du Marché 3, P.O. Box 324, *Bujumbura*.
- CAMEROON — Cameroon Red Cross Society, rue Henry-Dunant, P.O.B. 631, *Yaoundé*.
- CANADA — The Canadian Red Cross Society, 1800 Alta Vista Drive, *Ottawa, Ontario K1G 4J5*.
- CAPE VERDE (Republic of) — Cruz Vermelha de Cabo Verde, Rua Unidate-Guiné-Cabo Verde, P.O. Box 119, *Praia*.
- CENTRAL AFRICAN REPUBLIC — Central African Red Cross Society, B.P. 1428, *Bangui*.
- CHILE — Chilean Red Cross, Avenida Santa Maria No. 0150, Correo 21, Casilla 246-V., *Santiago de Chile*.
- CHINA (People's Republic of) — Red Cross Society of China, 53, Ganmien Hutong, *Beijing*.
- COLOMBIA — Colombian Red Cross Society, Avenida 68, No. 66-31, Apartado Aéreo 11-10, *Bogotá D.E.*
- CONGO (People's Republic of the) — Croix-Rouge congolaise, place de la Paix, B.P. 4145, *Brazzaville*.
- COSTA RICA — Costa Rica Red Cross, Calle 14, Avenida 8, Apartado 1025, *San José*.
- CÔTE D'IVOIRE — Croix-Rouge de Côte d'Ivoire, B.P. 1244, *Abidjan*.
- CUBA — Cuban Red Cross, Calle Calzada 51, Ciudad Habana, *Habana 4*.
- CZECHOSLOVAKIA — Czechoslovak Red Cross, Thunovska 18, 118 04 *Prague 1*.
- DENMARK — Danish Red Cross, Dag Hammarskjölds Allé 28, Postboks 2600, 2100 *København Ø*.
- DJIBOUTI — Société du Croissant-Rouge de Djibouti, B.P. 8, *Djibouti*.
- DOMINICAN REPUBLIC — Dominican Red Cross, Apartado postal 1293, *Santo Domingo*.
- ECUADOR — Ecuadorean Red Cross, Calle de la Cruz Roja y Avenida Colombia, *Quito*.
- EGYPT (Arab Republic of) — Egyptian Red Crescent Society, 29, El Galaa Street, *Cairo*.
- EL SALVADOR — Salvadorean Red Cross Society, 17C. Pte y Av. Henri Dunant, *San Salvador*, Apartado Postal 2672.
- ETHIOPIA — Ethiopian Red Cross Society, Ras Desta Damtew Avenue, *Addis Ababa*.
- FIJI — Fiji Red Cross Society, 22 Gorrie Street, P.O. Box 569, *Suva*.
- FINLAND — Finnish Red Cross, Tehtaankatu, 1 A, Box 168, 00141 *Helsinki 14/15*.
- FRANCE — French Red Cross, 1, place Henry-Dunant, F-75384 *Paris*, CEDEX 08.
- GAMBIA — The Gambia Red Cross Society, P.O. Box 472, *Banjul*.
- GERMAN DEMOCRATIC REPUBLIC — German Red Cross of the German Democratic Republic, Kaitzerstrasse 2, DDR 8010 *Dresden*.
- GERMANY, FEDERAL REPUBLIC OF — German Red Cross in the Federal Republic of Germany, Friedrich-Ebert-Allee 71, 5300, *Bonn 1*, Postfach 1460 (D.B.R.).
- GHANA — Ghana Red Cross Society, National Headquarters, Ministries Annex A3, P.O. Box 835, *Accra*.
- GREECE — Hellenic Red Cross, rue Lycavittou, 1, *Athens 10672*.
- GRENADA — Grenada Red Cross Society, P.O. Box 221, *St. George's*.
- GUATEMALA — Guatemalan Red Cross, 3.^a Calle 8-40, Zona 1, *Ciudad de Guatemala*.
- GUINEA — The Guinean Red Cross Society, P.O. Box 376, *Conakry*.
- GUINEA-BISSAU — Sociedad Nacional da Cruz Vermelha de Guiné-Bissau, rua Justino Lopes No. 22-B *Bissau*.
- GUYANA — The Guyana Red Cross Society, P.O. Box 10524, Eve Leary, *Georgetown*.
- HAITI — Haitian National Red Cross Society, Place des Nations Unies, B.P. 1337, *Port-au-Prince*.
- HONDURAS — Honduran Red Cross, 7.^a Calle, 1.^a y 2.^a Avenidas, *Comayagüela D.M.*
- HUNGARY — Hungarian Red Cross, V. Arany János utca, 31, *Budapest 1367*, Mail Add.: 1367 *Budapest 5*, Pf 121.
- ICELAND — Icelandic Red Cross, Raudararstigur 18, 105 *Reykjavik*.
- INDIA — Indian Red Cross Society, 1, Red Cross Road, *New Delhi 110001*.
- INDONESIA — Indonesian Red Cross Society, II Jend Gatot subroto Kar. 96 Jakarta Selatan 12790, P.O. Box 2009, *Jakarta*.
- IRAN — The Red Crescent Society of the Islamic Republic of Iran, Avenue Ostad Nejatollahi, *Tehran*.
- IRAQ — Iraqi Red Crescent Society, Mu'ari Street, Mansour, *Baghdad*.
- IRELAND — Irish Red Cross Society, 16, Merrion Square, *Dublin 2*.
- ITALY — Italian Red Cross, 12, via Toscana, 00187 *Rome*.
- JAMAICA — The Jamaica Red Cross Society, 76, Arnold Road, *Kingston 5*.
- JAPAN — The Japanese Red Cross Society, 1-3, Shiba-Daimon 1-chome, Minato-Ku, *Tokyo 105*.
- JORDAN — Jordan National Red Crescent Society, P.O. Box 10001, *Amman*.
- KENYA — Kenya Red Cross Society, St. John's Gate, P.O. Box 40712, *Nairobi*.
- KOREA (Democratic People's Republic of) — Red Cross Society of the Democratic People's Republic of Korea, Ryonhwa 1, Central District, *Pyongyang*.
- KOREA (Republic of) — The Republic of Korea National Red Cross, 32-3Ka, Nam San-Dong, Choong-Ku, *Seoul 100*.
- KUWAIT — Kuwait Red Crescent Society, P.O. Box 1359 Safat, *Kuwait*.
- LAO PEOPLE'S DEMOCRATIC REPUBLIC — Lao Red Cross, P.B. 650, *Vientiane*.
- LEBANON — Lebanese Red Cross, rue Spears, *Beirut*.
- LESOTHO — Lesotho Red Cross Society, P.O. Box 366, *Maseru 100*.
- LIBERIA — Liberian Red Cross Society, National Headquarters, 107 Lynch Street, P.O. Box 5081, *Monrovia*.
- LIBYAN ARAB JAMAHIRIYA — Libyan Red Crescent, P.O. Box 541, *Benghazi*.

- LIECHTENSTEIN — Liechtenstein Red Cross, Heiligkreuz, 9490 Vaduz.
- LUXEMBOURG — Luxembourg Red Cross, Parc de la Ville, C.P. 404, Luxembourg 2.
- MADAGASCAR — Malagasy Red Cross Society, 1 rue Patrice-Lumumba, Antananarivo.
- MALAWI — Malawi Red Cross Society, Mahati Magandhi Road, Blantyre (P.O. Box 30080, Chichiri, Blantyre 3).
- MALAYSIA — Malaysian Red Crescent Society, National HQ, No. 32 Jalan Nipah, off Jalan Ampang, Kuala Lumpur 55000.
- MALI — Mali Red Cross, B.P. 280, Bamako.
- MAURITANIA — Mauritanian Red Crescent, B.P. 344, Avenue Gamal Abdel Nasser, Nouakchott.
- MAURITIUS — Mauritius Red Cross Society, Ste Thérèse Street, Curepipe.
- MEXICO — Mexican Red Cross, Luis Vives 200, Col. Polanco, C.P. 11510, México, D.F.
- MONACO — Red Cross of Monaco, 27 boul. de Suisse, Monte Carlo.
- MONGOLIA — Red Cross Society of Mongolia, Central Post Office, Post Box 537, Ulan Bator.
- MOROCCO — Moroccan Red Crescent, B.P. 189, Rabat.
- NEPAL — Nepal Red Cross Society, Tahachal Kalimati, P.B. 217, Kathmandu.
- NETHERLANDS — The Netherlands Red Cross, P.O.B. 28120, 2502 KC The Hague.
- NEW ZEALAND — The New Zealand Red Cross Society, Red Cross House, 14 Hill Street, Wellington 1. (P.O. Box 12-140, Wellington Thorndon).
- NICARAGUA — Nicaraguan Red Cross, Apartado 3279, Managua D.N.
- NIGER — Red Cross Society of Niger, B.P. 11386, Niamey.
- NIGERIA — Nigerian Red Cross Society, 11 Eko Akete Close, off St. Gregory's Rd., P.O. Box. 764, Lagos.
- NORWAY — Norwegian Red Cross, Drammensveien 20 A, Oslo 2, Mail add.: Postboks 2338, Solli, Oslo 2.
- PAKISTAN — Pakistan Red Crescent Society, National Headquarters, Sector H-8, Islamabad.
- PANAMA — Red Cross Society of Panama, Apartado Postal 668, Zona 1, Panamá.
- PAPUA NEW GUINEA — Papua New Guinea Red Cross Society, P.O. Box 6545, Boroko.
- PARAGUAY — Paraguayan Red Cross, Brasil 216 esq. José Berges, Asunción.
- PERU — Peruvian Red Cross, Av. Camino del Inca y Nazarenas, Urb. Las Gardenias — Surco — Apartado 1534, Lima.
- PHILIPPINES — The Philippine National Red Cross, Bonifacio Drive, Port Area, P.O. Box 280, Manila 2803.
- POLAND — Polish Red Cross, Mokotowska 14, 00-950 Warsaw.
- PORTUGAL — Portuguese Red Cross, Jardim 9 Abril, 1 a 5, 1293 Lisbon.
- QATAR — Qatar Red Crescent Society, P.O. Box 5449, Doha.
- ROMANIA — Red Cross of the Socialist Republic of Romania, Strada Biserica Amzei, 29, Bucarest.
- RWANDA — Rwandese Red Cross, B.P. 425, Kigali.
- SAINT LUCIA — Saint Lucia Red Cross, P.O. Box 271, Castries St. Lucia W. I.
- SAN MARINO — Red Cross of San Marino, Comité central, San Marino.
- SÃO TOMÉ AND PRÍNCIPE — Sociedade Nacional da Cruz Vermelha de São Tomé e Príncipe, C.P. 96, São Tomé.
- SAUDI ARABIA — Saudi Arabian Red Crescent Society, Riyadh 11129.
- SENEGAL — Senegalese Red Cross Society, Bd Franklin-Roosevelt, P.O.B. 299, Dakar.
- SIERRA LEONE — Sierra Leone Red Cross Society, 6 Liverpool Street, P.O.B. 427, Freetown.
- SINGAPORE — Singapore Red Cross Society, 15, Penang Lane, Singapore 0923.
- SOMALIA (Democratic Republic) — Somali Red Crescent Society, P.O. Box 937, Mogadishu.
- SOUTH AFRICA — The South African Red Cross Society, Essany House 6th Floor, 175 Jeppe Street, P.O.B. 8726, Johannesburg 2000.
- SPAIN — Spanish Red Cross, Eduardo Dato, 16, Madrid 28010.
- SRI LANKA (Dem. Soc. Rep. of) — The Sri Lanka Red Cross Society, 106, Dharmapala Mawatha, Colombo 7.
- SUDAN (The Republic of the) — The Sudanese Red Crescent, P.O. Box 235, Khartoum.
- SURINAME — Surinam Red Cross, Gravenberchstraat 2, Paramaribo.
- SWAZILAND — Baphalali Swaziland Red Cross Society, P.O. Box 377, Mbabane.
- SWEDEN — Swedish Red Cross, Box 27316, 102-54 Stockholm.
- SWITZERLAND — Swiss Red Cross, Rainmattstrasse 10, B.P. 2699, 3001 Berne.
- SYRIAN ARAB REPUBLIC — Syrian Arab Red Crescent, Bd Mahdi Ben Barake, Damascus.
- TANZANIA — Tanzania Red Cross National Society, Upanga Road., P.O.B. 1133, Dar es Salaam.
- THAILAND — The Thai Red Cross Society, Paribatra Building, Chulalongkorn Hospital, Bangkok 10500.
- TOGO — Togolese Red Cross, 51, rue Boko Soga, P.O. Box 655, Lomé.
- TONGA — Tonga Red Cross Society, P.O. Box 456, Nuku'Alofa, South West Pacific.
- TRINIDAD AND TOBAGO — The Trinidad and Tobago Red Cross Society, P.O. Box 357, Port of Spain, Trinidad, West Indies.
- TUNISIA — Tunisian Red Crescent, 19, rue d'Angleterre, Tunis 1000.
- TURKEY — The Turkish Red Crescent Society, Genel Baskanligi, Karanfil Sokak No. 7, 06650 Kizilay-Ankara.
- UGANDA — The Uganda Red Cross Society, Plot 97, Buganda Road, P.O. Box 494, Kampala.
- UNITED ARAB EMIRATES — The Red Crescent Society of the United Arab Emirates, Abu Dhabi.
- UNITED KINGDOM — The British Red Cross Society, 9, Grosvenor Crescent, London, S.W.1X 7EJ.
- U.S.A. — American Red Cross, 17th and D. Streets, N.W., Washington, D.C. 20006.
- URUGUAY — Uruguayan Red Cross, Avenida 8 de Octubre 2990, Montevideo.
- U.S.S.R. — The Alliance of Red Cross and Red Crescent Societies of the U.S.S.R., I. Tcheremushkinskii proezd 5, Moscow, 117036.
- VENEZUELA — Venezuelan Red Cross, Avenida Andrés Bello, N.º 4, Apartado 3185, Caracas.
- VIET NAM (Socialist Republic of) — Red Cross of Viet Nam, 68, rue Bà-Triệu, Hanoi.
- WESTERN SAMOA — Western Samoa Red Cross Society, P.O. Box 1616, Apia.
- YEMEN ARAB REPUBLIC — Red Crescent Society of the Yemen Arab Republic P.O. Box 1257, Sana'a.
- YEMEN (People's Democratic Republic of) — Red Crescent Society of the People's Democratic Republic of Yemen, P.O. Box 455, Crater, Aden.
- YUGOSLAVIA — Red Cross of Yugoslavia, Simina ulica broj 19, 11000 Belgrade.
- ZAIRE — Red Cross Society of the Republic of Zaire, 41, av. de la Justice, B.P. 1712, Kinshasa.
- ZAMBIA — Zambia Red Cross Society, P.O. Box 50 001, 2837 Brentwood Drive, Longacres, Lusaka.
- ZIMBABWE — The Zimbabwe Red Cross Society, P.O. Box 1406, Harare.