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ANNEX

REPORT OF THE COMMISSION OF EXPERTS FOR THE EXAMINATION OF THE QUESTION OF ASSISTANCE TO POLITICAL DETAINEES ¹

The International Committee of the Red Cross decided to form a small Commission of Experts, composed of jurists and other persons of various nationalities, to give its opinion on the extension, as far as possible, of the application of the humanitarian principles common to civilised nations for political detainees who are not explicitly covered by the Conventions in force.

The Commission met at the headquarters of the International Committee of the Red Cross in Geneva from June 9 to 11, 1953.

The present Report, drafted by the Commission and unanimously approved by the Members who took part in its work ² set forth the ideas which inspired it and the conclusions which it thinks fit to submit to the International Committee of the Red Cross.

* * *

The Commission was constantly guided by the essential idea that the vocation of the Red Cross is to alleviate human suffering. This rôle falls to it, not only in the case of international warfare, but also in that of civil war or disturbances, and in

¹ For the composition of the Commission see above page 67. —
² Judge Sandström, who was present in Geneva but unable to share in the discussion on account of his health, has read the report and entirely agrees with the contents.

all instances where men must suffer through international or national political causes. It esteemed that it should not take into account the origin of the sufferings endured but merely record them and seek the means for their alleviation, in accordance with the hypotheses which have already been set forth for some long time by several International Red Cross Conferences.

In 1921 the Xth International Red Cross Conference held in Geneva stated—

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 offering 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.

2. 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.

Under Paragraph 1 of the XIVth Resolution

The Xth International Red Cross Conference approves the above proposals and recommends them for study to all National Red Cross Societies.

Under Paragraph 3 of the same Resolution

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.

Under Paragraph 6 of the same Resolution

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 Convention.

In 1938 the XVIth International Red Cross Conference which met in London "recalling the resolution relating to civil war adopted by the Xth Conference in 1921,

pays tribute to the work spontaneously undertaken by the International Committee of the Red Cross in hostilities of the nature of civil war and relies upon the Committee to continue its activity in this connection with the cooperation of National Societies, with a view to ensuring on such occasions respect for the high principles which are at the basis of the Red Cross movement,

requests the International Committee and the National Red Cross Societies to endeavour to obtain,

- (a) the application of the humanitarian principles which were formulated in the Geneva Convention of 1929 and the Xth Hague Convention of 1907, especially as regards the treatment of the wounded, the sick and prisoners of war, and the safety of medical personnel and medical stores,
- (b) human treatment for all political prisoners, their exchange and as far as possible, their release,
- (c) respect of life and liberty of non-combatants,
- (d) facilities for the transmission of news of a personal nature and for the re-union of families,
- (e) effective measures for the protection of children, requests the International Committee, making use of its practical experience, to continue the general study of the problems raised by civil war as regards the Red Cross, and to submit the results of its study to the next International Red Cross Conference."

The XVIIth International Red Cross Conference, the first to be held after the War (Stockholm, 1948), followed the same lines and made a step forward by adopting Resolution No. XX, reading thus—

The XVIIth International Red Cross Conference, wishes to draw the attention of the Diplomatic Conference, which will be called upon to study the revised or new Conventions for the protection of war victims, to the importance of applying humanitarian principles to persons prosecuted or detained for political reasons,

expresses the hope that the Governments of the High Contracting Parties ensure to such persons the protection afforded by the said principles.

Lastly, Article 3 common to the four Geneva Conventions of August 12, 1949, includes the prohibition of various acts apt to be prejudicial to personal dignity. Its provisions refer to :

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture,
- (b) taking of hostages,
- (c) outrages upon personal dignity, in particular, humiliating and degrading treatment,
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

This same Article provides for the possible intervention of the International Committee of the Red Cross in support of the provisions above-mentioned by stating :

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

It is important to note the wish expressed by this Article to the effect that Parties to the conflict “ should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention ” (last sentence but one of Article 3). The signatories to the Convention thus affirm their desire to consider these provisions as a minimum only, to be exceeded whenever circumstances may allow.

The Commission considered the possibility of these ideas being developed and put into practice in circumstances which have not been provided for by the stipulations in force.

* * *

The Commission first placed in evidence the general principles which would be likely to give support to possible intervention by the International Committee of the Red Cross.

It noted the fundamental developments which have taken place in connection with respect for the human being thanks to the Universal Declaration for Human Rights proclaimed by the United Nations on December 10, 1948.

The Commission was also of the opinion that the successful protection of these rights in the particular field open to its survey depended upon the action of relief organisations taking place on strictly humanitarian lines. While it appeared to be lawful, and also necessary, for an impartial agency such as the International Committee to give its charitable services in circumstances where the respect of the human being was likely to be prejudiced, the Commission esteemed that it was not the role of such an agency to appreciate whether the measures taken were well-founded, but merely to see that these measures, however strict, were nevertheless accompanied by a minimum of material and moral guarantees in conformity with the principles of the Universal Declaration for Human Rights. For the Commission it appeared essential to ensure, in all circumstances, humane treatment of persons against whom Governments have thought fit to take severe measures of some description for political reasons.

What should be understood by humane treatment ?

The Commission had no difficulty in finding the answer to this question in the texts already existing. In this connection reference has already been made above to the provisions of Article 3 common to the four Geneva Conventions of August 12, 1949 (No. 1, Items (a), (b), (c), (d)). The Universal Declaration for Human Rights prohibits, in Article 5, "cruel, inhuman or degrading treatment or punishment". The text adopted by the Human Rights Commission in May 1953, referring to this idea of humanity as being without doubt, merely stated in consequence that any person deprived of his liberty is to be treated with humanity. This development is comparable to that which in the case of the laws of war, finally resulted in placing beyond belligerents' power "the laws of humanity and the dictates of the public conscience", and prohibiting in principle all discriminatory treatment. The Commission considers that similar

extension can and should, be recognised in circumstances which do not concern the conflict between States.

The Commission esteems that the consequence of humanitarian action is not in any case to transform the legal relations existing between the individual or individuals, considered to be disturbers of the peace, and the Detaining Power. These legal relations remain exactly the same and are unchanged, whatever the relief given to those who suffer and the assistance in order to ensure their humane treatment may be.

The Commission is of the opinion that no valid objection could be raised by the Detaining Power to efforts which tend to reserve humane treatment for the persons to whom it has applied severe measures, if the essential distinction is made between humanitarian and legal aspects of the case. In this connection the Commission affirms the extreme importance of the principle set forth in the following terms in the last paragraph of Article 3 above-mentioned of the Geneva Conventions of August 12, 1949 :

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

* * *

When dealing with the question of the practical realisation of the humanitarian improvement of conditions for persons detained for political reasons, the Commission had the benefit of most interesting information contained in existing and draft texts—first, certain regulations of the Geneva Conventions of August 12, 1949, secondly the “Standard Minimum Rules for the Treatment of Prisoners”, approved on December 1, 1950, by the European Regional Consultative Group on the Prevention of Crime and the Treatment of Offenders, created in accordance with Resolution 415 (V) of the United Nations General Assembly of December 1, 1950. These two series of provisions provide most valuable chapter headings on the subject.

The Commission was guided by these documents when examining in succession the questions of detainees' identification, the commencement of the detention period, possible

contacts with the outside world and the physical, intellectual and moral condition of detainees.

The Commission thought it desirable, in particular, for the fact of the person's detention to be communicated to his family at an early date, either directly or through a relief organisation. There could be no question of objecting to solitary confinement of the detainee by the Detaining Power. But solitary confinement is not incompatible with visits from duly authorised delegates of relief organisations, if necessary in the presence of an official of the Detaining Power, provided such visits are strictly confined to the conditions of detention and do not concern the motives for confinement.

The detainee's correspondence with his family or relief organisations could be arranged in conditions similar to those which prevailed during the Second World War, to which the Detaining Powers raised no objection.

The question of assistance by the provision of relief in various forms (spiritual, intellectual or material) might usefully be considered, on the basis of regulations (with the necessary adaptations) inspired by the provisions of the Geneva Conventions.

The Commission does not think fit to make a more detailed study in this report of these points which, even if essential, could no doubt find a satisfactory solution in the light of the provisions for a similar purpose which are to be found in the texts above-mentioned.

Such is the general outline of the Commission's discussions in connection with the substance of the questions submitted for its examination.

* * *

The Commission studied the question of giving practical effect to the suggestions it thought fit to recommend.

The Commission had no hesitation in view of the present state of affairs, in rejecting the idea of an international Convention; it was also not in favour of a "Declaration" by Governments.

The Commission considered in consequence that the conclusions of the results of its work should be submitted to the International Committee of the Red Cross, who had honoured it by seeking its views on the subject.

It remains for the International Committee to judge how far these conclusions can be taken into account and made effective in conformity with its statutes and its traditional activity.

The Commission ventures to hope for further developments of the humanitarian work of the Red Cross in the field it has just surveyed. It hopes that the conclusion of this report will be a step towards future progress, and that the application of these principles for the alleviation of other suffering may some day be considered over a wider range.
