

Zeitschrift: Annual report / International Committee of the Red Cross
Herausgeber: International Committee of the Red Cross
Band: - (1955)

Anhang: Report of the Commission of experts for the study of the question of humanitarian principles in the event of internal disturbances
Autor: [s.n.]

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ANNEXES

1. REPORT OF THE COMMISSION OF EXPERTS

FOR THE STUDY OF THE QUESTION OF THE APPLICATION
OF HUMANITARIAN PRINCIPLES IN THE EVENT OF
INTERNAL DISTURBANCES.

The International Committee of the Red Cross decided to convene a Commission of Experts composed of a small number of persons of various nationalities, in order to obtain their opinion on the question of the application of humanitarian principles in the event of internal disturbances.

The Commission met at the headquarters of the International Committee of the Red Cross from October 3 to 8, 1955.

The present report, drawn up and unanimously approved by the Commission, sets forth the ideas whereby it was inspired and the conclusions which it felt it could reasonably submit to the International Committee of the Red Cross.

The Commission was made up as follows :

Mr. Paul Cornil, President of the International Association of Penal Law,¹

Professor Gilbert Gidel,

Professor Dr. Max Huber, Honorary President of the International Committee of the Red Cross,

H. E. M. Julio Lopez-Oliván, Spanish Ambassador,

M. E. M. Mohan Sinha Mehta, Ambassador of India to Switzerland,

H. E. Dr. Abbas Naficy, former Vice-Chairman of the Council of Iran, Vice-Chairman of the Red Lion and Sun Society of Iran,

¹ Mr. Cornil, unable to attend the meetings in Geneva, submitted his opinions in writing to his colleagues. The report having in its turn been submitted to him, he declared that he agreed with it.

H. E. Professor Nihat Erim, former Vice-Chairman of the Council of Turkey,
H. E. Caracciolo Parra Perez, Ambassador of Venezuela,
H. E. M. Massimo Pilotti, President of the High Court of the European Coal and Steel Community,
Mr. Alejandro Quijano, Chairman of the Mexican Red Cross Society, represented by Mr. J. J. Gomez de Rueda,
Professor William E. Rappard, Geneva University,
Justice Emil Sandstroem, President of the Board of Governors of the League of Red Cross Societies,
H. E. Professor Dr. Carlo Schmid, Vice-Chairman of the "Bundestag" of the Federal Republic of Germany.

The Commission elected Professor Rappard to the Chair and Professor Gidel as Rapporteur.

The following four questions were submitted to the Commission by the International Committee in lieu of a provisional agenda :

- (1) Is it possible to define the idea of an "armed conflict", so as to determine the moment when Article 3 of the Fourth Geneva Convention of August 12th, 1949, becomes applicable in law, in the event of internal disturbances ?
- (2) So long as the said article is not applicable in law, is it consistent with the interests of humanity and the standards of civilisation for the humanitarian safeguards defined by the Fourth Convention to be applied, in particular in the case of persons (citizens or subjects) detained by their own Government for political reasons ?
- (3) Would not the International Committee be justified, by virtue of its traditions, the Statutes of the International Red Cross and its own Statutes, in offering its services to the Governments responsible for law and order ?
- (4) What should the conditions be for its action to be exercised, and what should be the limits of such action ?

* * *

With regard to question 1, the Commission first had to examine whether the problems raised by "internal disturbances" were already covered by the Geneva Convention and, in the affirmative, to what extent. Could "internal disturbances" be considered as coming under the heading of "armed conflicts" as foreseen in Article 3 common to all four Geneva Conventions of August, 12th, 1949 ?

The Commission was of the opinion that this Article, though it does indeed cover situations which are different from those foreseen in the other dispositions of the Convention, does tend towards the application of the principles contained in the Convention, to situations which, though presenting certain characteristics of a war, are distinct from that of an international conflict. It is, however, often difficult to include under the heading of these different situations, the event of "internal disturbances" since such troubles oppose the State to persons who are in fact its own nationals, subjects or citizens and who do not generally in themselves constitute a "Party to the conflict". It should be noted that such situations would seem, in the present state of the world, to tend to become more and more frequent and it is necessary to meet them, in so far as possible, by applying the humanitarian principles upon which the Geneva Conventions are based. At the same time, it should never be forgotten that the State which finds itself faced with such disturbances has full liberty to judge which measures it shall take in order to "repress, according to the law, a riot or an insurrection" (Article 2 of the European Convention for the Safeguard of the Rights of Man).

The difficult and delicate nature of the problems to be examined by the Commission are thus abundantly clear. On the one hand, as Señor de Alba, Mexican Ambassador, representing his country at the Geneva Diplomatic Conference of 1949, so concisely stated "the rights of the State should not be placed above all humanitarian considerations (*Actes de la Conférence* - II, B, p. 11). But, on the other hand, humanitarian action should never include any intrusion on the legal plane, nor any expression of opinion with regard to the merits or otherwise of the steps taken by the authorities in order to assure the maintenance or the reestablishment of public order. It was between these two poles that the Commission had to deliberate.

The Commission did not hesitate as to its reply to question 2. It does, indeed, appear consistent with the interests of humanity as well as with the standards of civilization that the humanitarian safeguards, as defined more particularly by the Fourth Convention, should be applied to persons at strife with their own government on political or social grounds. When pursuing this humanitarian aim the Red Cross is well within its sphere. The International Red Cross Conference has, moreover, already expressed itself on various occasions in this sense. Resolution XIV adopted at Geneva (Xth International Red Cross Conference), formulated, in 1921 already, the following general principles :

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...

The Red Cross is acting within the bounds of its mission when placing the principles which inspire the Conventions before the positive rules which they lay down. These principles are absolutely essential. They are the source from which the Conventions, which formulate them, sprang and allow for their adaptation in view of the changes which the continuous evolution in the life of humanity impose.

Indeed, the Hague Conference followed a similar concept when drafting the preamble to the Hague Conventions of 1899 and 1907 concerning the Laws and Customs of War on Land which runs as follows :

Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience.

The evolution which has taken place with regard to the respect due to the individual also contributes towards orienting the action of the Red Cross towards the maintenance of permanent humanitarian principles even in cases where the application of normal legislation is compromised by a state of emergency or exception. We merely need to recall, in this connection, the Universal Declaration of the Rights of Man proclaimed by the General Assembly of the United Nations on December 10th, 1948, whose principles inspired the Convention for the Safeguard of the Rights of Man and Fundamental Liberties, signed in Rome, on November 4th, 1950.

The Commission's attention was also drawn to the work of the first international congress of the United Nations for the prevention of crime and the treatment of delinquents, which met in Geneva from August 27th to September 3rd, 1955. This congress formulated rules applicable to all categories of prisoners. This document should therefore be considered as a code of the minimum basic rules governing detention.

* * *

With regard to questions 3 and 4 on the practical methods of action in virtue of humanitarian principles in the event of " internal disturbances ", the Commission was of the opinion that the International Committee of the Red Cross has the right to found itself not only on its general mission to alleviate human suffering, but also on the texts

whereby the 61 signatory Powers of the Geneva Conventions expressly recognised its right of initiative in the humanitarian field. The Geneva Conventions of August 12th, 1949 (Articles 9/9/9/10 common to all four) in fact lay down that :

The provisions of the present Convention constitute no obstacle to the humanitarian activities which the International Committee of the Red Cross or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.

Article 3, common to all four Conventions, which proclaims the International Committee's quality as "an impartial humanitarian body" and recognise its right to "offer its services to the Parties to the conflict" should also be recalled here.

Given these circumstances, it is difficult to see what objections could possibly be raised against action by the International Committee of the Red Cross in the event of "internal disturbances" if it remains strictly on the humanitarian plane which is its own.

The Commission was unanimously of the opinion that the International Committee of the Red Cross should abstain, in conformity with its invariable tradition of neutrality, from any measures which might seem to constitute an encroachment on the political or legal sphere. The Commission stressed the idea that humanitarian action is absolutely distinct from political considerations of any kind and that, moreover, the carrying out of a humanitarian action cannot, under any circumstances, have as a result any change whatsoever in the legal status of the persons benefiting by this action. Such humanitarian action in no wise constitutes a "de facto" or legal recognition and cannot entail any change of status.

The Commission declares that it attaches the greatest importance to recalling here that the respect of humanitarian principles not only imposes obligations on governments but also on all those persons who are involved or engaged in "internal disturbances". This is, indeed, an essential element for the amelioration of the tragic situations examined by the Commission.

The rule of the presence of the Red Cross in the event of disturbances is imperative, not only in order to effectively attenuate human suffering, but also in order to contribute towards progressively establishing a mode of behaviour which will lead to extending to persons not specifically protected by the Geneva Conventions and to the victims of "internal disturbances", similar guarantees to those contained in these Conventions on behalf of protected persons and in time of war.

Thus, more especially, it is desirable that the minimum laid down in Article 3 should in all cases be respected by all parties concerned and that the dispositions of Article 33 and 34 of the IVth Geneva Convention of August 12th, 1949 relative to the Protection of Civilian Persons in time of War should also be applied. These Articles lay down :

Article 33: *No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.*

Pillage is prohibited.

Reprisals against protected persons and their property are prohibited.

Article 34: *The taking of hostages is prohibited.*

With regard to the clause often referred to as " collective responsibility ", the Commission was unanimous in disapproving the conception of the possible responsibility of an individual, due uniquely to the fact that he or she was a member of a given group, independently of criminal acts committed by him or her. The incarceration and the punishment of members of the families of persons implicated in " internal disturbances ", and more especially of their children, should be strictly condemned.

Finally the sick and wounded should always be able to receive the medical care they require ; and those persons who give them this care, should be respected under all circumstances and may not be the object of sanctions for having done so.

With regard to the practical methods of intervention by the Red Cross, the Commission was of the opinion that there were no grounds for examining the question of the delimitation of responsibilities and competences between National Societies and the International Committee of the Red Cross.

Very different situations can, in fact, arise in the relationships between the national societies and the government with whom they may be called upon to intervene. With regard to the action of the International Red Cross, the International Committee of the Red Cross must decide in each case what practical forms this action should take, taking into consideration all circumstances in order to assure maximum rapidity and efficacy. Each separate case may call for a different solution. There are no hard and fast rules of procedure. The essential fact is to make known to the national society, to the authorities, and to the victims of events that the International Red Cross is prepared to come to their assistance.