

TWENTY-FOURTH INTERNATIONAL RED CROSS CONFERENCE

Manila, November 1981

9  
6

# **ACTION OF THE RED CROSS AGAINST TORTURE**

(Item 6 of the provisional agenda of the Council of Delegates)

Report submitted

by

the International Committee of the Red Cross

Geneva, July 1981

## 1. INTRODUCTION

Resolution XIV, adopted at the Twenty-third International Red Cross Conference, condemned the resurgence of torture in the world and reaffirmed that it ran counter to the fundamental principles of the Red Cross and that its elimination was essential for the observance of these principles. The Conference urged not only governments and international organizations but also the Red Cross organizations to do their utmost to eliminate the practice of torture.

The International Committee of the Red Cross wishes to review the problem. It is not a new one for the ICRC or its delegates<sup>1)</sup> but because this scourge has become so widespread in recent years the ICRC has decided to accord it more sustained attention, especially since the Bucharest Resolution of 1977.

## 2. LAW AGAINST TORTURE

Torture is forbidden by public international law.

Most national legislation also forbids torture. States that do not proscribe torture explicitly do so implicitly. Today, no human community "legalizes" torture.

### 2.1. The prohibition of torture in international law

- (a) The *Charter of the United Nations* does not mention torture but, in stating that the achievement of "respect for human rights and for fundamental freedoms for all" is one of the purposes of the United Nations, it provides a basis for United Nations activity in the fight against torture. The Universal Declaration of Human Rights of

---

1) See, in particular, "The International Committee of the Red Cross and torture" in *International Review of the Red Cross*, 1976, pp. 610 - 616.

10 December 1948 states, in article 5 :

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Even if the legally obligatory nature of the Declaration is debatable, it can hardly be contested that this prohibition of torture is the expression of a universally accepted rule setting a standard for all.

(b) All the various *conventions dealing with human rights* forbid torture, e.g :

- The International Covenant on Civil and Political Rights, of 16 December 1966 - article 7;
- The American Convention on Human Rights, of 22 November 1969 - article 5;
- The European Convention on Human Rights and Fundamental Freedoms, of 4 November 1950 - article 3.

Article 5 of a draft African Charter on Human Rights and the Rights of Peoples will prohibit torture : it rightly places torture and cruel, inhuman or degrading treatment on the same footing as slavery and the slave trade.

International humanitarian law applicable in armed conflicts forbids the use of torture in both international and non-international armed conflicts. The four *Geneva Conventions of 12 August 1949* outlaw all forms of torture upon the persons they protect (I/12, II/12, III/17, IV/32). The two 1977 *Protocols additional* to the Geneva Conventions reaffirm and expand the prohibition. Article 75 of Protocol I extends this protection to all categories of victims of international armed conflicts and article 4 of Protocol II forbids torture in internal conflict situations.

- (c) The prohibition of torture is the subject of *various declarations* which are not instruments of positive law. Having been adopted by the General Assembly of the United Nations, they do, however, have considerable moral weight.

First, mention should be made of the *Declaration on the protection of all persons from being subjected to torture and other cruel inhuman or degrading treatment or punishment* adopted on 9 December 1975. This Declaration contains a definition of torture and states that torture cannot be justified under any circumstances. The Declaration urges States to take effective measures to prevent all torture.

The *Standard Minimum Rules for the Treatment of Prisoners and the Recommendations relating to them*, elaborated by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in 1957 and 1977, proscribe all treatment not compatible with human dignity and thus any act of torture.

The importance of the prohibition of torture by the *Code of Conduct for Law Enforcement Officials* cannot be overestimated. This text, which was adopted by the General Assembly of the United Nations on 17 December 1979, is addressed to all those exercising police powers and, in particular, the powers of arrest and detention.

- (d) In conclusion, torture is prohibited internationally under all circumstances.

Nevertheless, the Human Rights Commission of the United Nations is drafting a convention against torture.

## 2.2. Draft convention against torture

On the initiative of Sweden, the General Assembly of the United Nations adopted by consensus at its thirty-second session in December 1977 a resolution directing the Human Rights Commission to draft a convention against torture

and other cruel, inhuman or degrading punishment or treatment. Since 1978, a working group of that Commission has devoted itself to the elaboration of a convention. It took as a working basis the draft introduced by the Swedish delegation. It also has at its disposition a second draft submitted by the International Association of Penal Law (IAPL). The two texts propose rules for the prohibition of torture and, in particular, for enforcement and penal prosecution of presumed torturers.

The IAPL draft specifically declares torture a crime under international law, e.g., like genocide.

The working group has adopted a number of articles. Negotiation and drafting are, however, not yet complete and some important and difficult aspects still await a solution.

The Commission also has before it a proposal for a draft optional protocol to the future convention, prepared by the International Commission of Jurists and submitted to the Commission by the delegation of Costa Rica. This text proposes the creation of a Committee which would be charged with visiting places of detention in States parties to the convention and to the optional protocol to inspect detention conditions and the treatment of detainees.

The proposal seeks to reinforce the implementation and control system envisaged by the draft convention by adding regular visits to all places where persons deprived of their liberty are to be found.

It is evident that this draft is inspired by the practice of the ICRC which has been visiting places of detention for a century, either under the Geneva Conventions or on the basis of its right of initiative conferred by the Statutes of the International Red Cross.

The working group has not yet had an opportunity to study the draft optional protocol.

### 2.3. ICRC attitude to the proposals

The ICRC condemns torture in all its forms and under all circumstances. It thus cannot but welcome all draft international conventions seeking to increase protection for potential victims of torture. However, faithful to its tradition of not taking a position on texts that are not its own and which are submitted to bodies other than a Diplomatic Conference on international humanitarian law, the ICRC will not express an opinion on either of the drafts under discussion.

## 3. ICRC ACTION AGAINST TORTURE

### 3.1. ICRC experience

The experience of the ICRC in this field is unique because it is the only institution which, for more than a hundred years, has regularly been visiting prisoners in the hands of their enemies, whether their captors be foreigners or of their own nationality. From this experience, it emerges that torture may be systematically practised or tolerated by the authorities or it may occur occasionally, even accidentally. It may be inflicted by specific groups or individuals. In the State hierarchy, it may be approved of at one level and disapproved of at another. It may also be that detainees falsely claim, for political ends, to have been tortured.

The repeated, even systematic use of torture - individual or collective, physical, psychological or scientific, on the instructions of or with the complicity of superiors, in violent forms or by psychological and chemical means - has been observed by delegates in recent years, most particularly during the interrogation of detainees.

Thus, tragically, ICRC delegates have been able to establish undeniably all forms of physical torture or of physical suffering that people inflict on others : all types of brutality, mutilation, burns, suffocation, rape, etc., the whole range of mental torture ranging from psychological pressure to harassment of the detainee with a view to destroying his personality, and including threats to him or to members of his family, sham executions, prolonged solitary confinement, brain-washing, humiliation and vexation of all kinds, not to mention the use of chemical agents and internment in psychiatric asylums, etc.

In addition, very bad conditions of detention (absence of hygiene, mediocre or no medical care, nonexistent ventilation and lighting, isolation, overcrowding, etc.) may be considered as bad treatment, even torture, when they are intentional.

Other situations, such as particularly severe conditions of detention may come to the attention of delegates. Depending on gravity and intent, the denial of legal safeguards may be included under ill-treatment : extreme slowness of investigations, preventive or administrative detention lasting months or years, and forbidding the detainee to communicate with the exterior, leading to anxiety about what is going to happen to him, sometimes accentuated by the fear of disappearing.

### 3.2. Steps taken by the ICRC

One of the most delicate problems facing the ICRC delegate is to ascertain or establish the truth of torture allegations. During successive visits and at the interviews without witnesses which he always has with the prisoner, the delegate endeavours to make the object of his mission well understood, so that it will not be misused. He must create a climate of confidence, showing that he is neither "for" nor "against" the prisoner or the detaining authority, that his concern is purely humanitarian and not political, that only the conditions of and not the reasons for detention concern him and, above all, that only with exact knowledge of the facts is he able to intervene effectively. Only reasoning based on incontrovertible facts or at least on convincing evidence can lead to a real amelioration of the situation.

Delegates have often been confronted with allegations of physical or mental cruelty and in a certain number of cases they have been able to establish that there was bad treatment or torture.

Torture is often difficult to prove. Ill-treatment may or may not leave marks. Even visible traces do not always constitute proof. However, even without visible after-effects, systematic work allows a picture quite close to reality to emerge. One can determine, with a certain degree of confidence, whether cruelty is systematic, occasional or even accidental; if torture is hidden, known and tolerated, even ordered, and by what authority; if maltreatment is inflicted by some State services and not by others, or only by some interrogators.

Each time that delegates feel that they have collected sufficient information, sometimes by the accumulation of corroborative data, they intervene to stop the malpractice reported to them or of which they have seen the effects. The ICRC may react in different ways, ranging according to the gravity of the case from a mention in the report of the visit, to an oral or written intervention at ministerial level, even to a detailed report to the head of State. If steps taken by delegates on the spot do not appear to have any effect, intervention may be made from Geneva.

"Problem zones" are thus identified, and are drawn to the attention of the competent authorities, in general at the highest level. These authorities are invited to carry out in-depth and impartial enquiries in order to establish the facts and, if the allegations are shown to be true, to punish the guilty and be on the watch to see that such practices do not reccur.

### 3.3. Results and limits of ICRC action

The ICRC can act to diminish and even end torture, and it is vital that it do so. However, there are limits to what it can do. In armed conflict, troubles, or tension there is a danger that torturers will take advantage of the unstable conditions to act with total impunity. Even in countries where the ICRC is allowed to act, it happens that the ICRC does not have access to all those it seeks to

protect, notably those most likely to be tortured : detainees under interrogation. These are the situations which call for the most persistent and systematic efforts on the part of the ICRC.

According to ICRC experience, the best results are obtained by persuasion, without publicity. Moreover, if the ICRC made its delegates' findings public, it would risk being shut out of the countries concerned or of others, which would only be harmful to its humanitarian action and ultimately to the detainees.

It is evident that the responsibility to eliminate torture rests with governments. It is the duty of governments to take the legislative, legal and enforcement measures to prevent and repress torture. In this respect, the confidential reports prepared by ICRC delegates following repeated visits to places of detention and private interviews with detainees should, by providing them with impartial information, allow governments which wish to put an end to torture to discharge their responsibilities.

Experience has shown the ICRC that governments, military forces, the police or security forces do not have a monopoly of torture because torture is often countenanced, and even prolonged, by collaborators recruited from various alternative police or paramilitary groups.

In its fight against torture the ICRC has set itself permanent objectives, namely :

- to endeavour at all times to see to it that States bound by the Geneva Conventions discharge the obligations that they have undertaken, in particular the respect of the dignity of persons deprived of their liberty;
- to increase the number of countries which accept its presence in their prisons in time of internal trouble and tension resulting in numerous arrests;
- in all countries accepting its presence, to endeavour to have access to detainees from the time of their arrest;

- each time the delegates establish the existence or probability of maltreatment, to do all within its power to get the responsible authorities to put a stop to it.

It may be affirmed that each time the ICRC has been authorized to act systematically in a country, its action has resulted in a substantially improved treatment of detainees, even though it cannot be claimed that its presence guarantees the cessation of torture.

#### 4. THE ROLE OF NATIONAL SOCIETIES

It is not for the ICRC to dictate to National Societies what type of steps they should take to fight against torture.

However, because it considers that these Societies are not powerless in the fight against torture, especially when their own country is involved, the ICRC should remind them of the amount of suffering endured by persons who are tortured.

In the opinion of the ICRC, National Societies have an imperative moral duty to fight for the elimination of torture by the methods that they feel best adapted to their national conditions, whether by encouraging their governments to ratify international treaties, by working for the respect of national legislation forbidding torture or by any other effective, discreet or public, direct or indirect means.

It is by uniting all the forces fighting against a phenomenon that may develop by ever more insidious means that results may be hoped for.