



REVUE
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SUPPLEMENT

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RED CROSS PRINCIPLES

V

4. Impartiality

The Red Cross will act without favour or prejudice towards or against anyone.

Impartiality is the first of a series of three principles whose object is to ensure that everyone has confidence in the Red Cross, such confidence being indispensable. These principles guarantee the strict observance of the essential rules which we have just been considering.

The best of dictionaries are sometimes too summary to bring out the whole meaning of an abstract notion. One need not be afraid, therefore, to give one's own definition of the words one uses. In order to define "impartiality" we shall start from the term "partial" from which it is derived. "Partial" describes someone who makes up his mind, or takes sides, as a result of prejudice or personal preference. Two ideas may be distinguished: the action itself, and its motive, the latter being founded on a subjective appreciation of the problem. These two distinct elements are also to be found in the counter-term, but we must carefully note here that the negation only applies to the motive and not to the action. A man who does not make up his mind should not therefore, be described as "impartial", as he sometimes has been, by people who confuse the notions of impartiality and neutrality; a man is only impartial if, when he comes to a decision, he does so without prepossession or bias of any kind.

We shall now analyse the five fundamental features which, in our opinion, characterize this concept. In the first place, impartiality is an attitude of mind. It can therefore only be attributed to man, or to an organization considered as a person. In a wider sense, one sometimes speaks of an impartial act or an impartial opinion ; but in this case the idea of impartiality still remains inseparably linked with the author of the act, whose state of mind has merely been translated into action. The attitude of the agent is then transferred to the act and its result.

In the second place, impartiality implies a choice, or at least a comparison, between two or more people, or between two or more actions or theses. It is called into play, for example, when a judge has to decide a law-suit, or when the Red Cross has relief supplies to distribute. In exercising this choice any tendency to favour or be prejudiced against any party must be avoided. On the other hand, one cannot speak of impartiality in cases where there is no need to show discernment, where the distribution takes place automatically in mathematically equal parts. It is, in fact, as we shall see later, this positive quality, implying a decision, that distinguishes impartiality from neutrality. An impartial man chooses, without any bias for or against any of the parties concerned. A man who is neutral does not choose : he refrains from taking action, or, if need be, gives equally to everyone.

Then again, impartiality, like its counterpart partiality, implies that the agent enjoys a sufficient degree of freedom. This freedom must be of two kinds : vis-a-vis oneself and vis-a-vis the world. The latter quality is known as independence, and as it constitutes, in itself, one of the fundamental principles of the Red Cross, we shall devote a special chapter to it at a later stage.

Inward freedom may be even harder to attain. Subjective constraint is impartiality's most formidable enemy ; it is all the more dangerous, as the person concerned is often unaware of its existence. This is already true in the case of passion, which makes one see human beings and things in an unreal light. It is even more striking, however, in the case of mental complexes, which are essentially unconscious, as one is cured of them when

one realizes that they exist. These complexes warp an individual's mind and affect his behaviour, sometimes seriously. It is therefore above all necessary to burst such bonds.

Fourthly, impartiality depends upon a precise and comprehensive examination of the factors involved and an exact appreciation of what is at stake. Impartiality is founded on objectivity, which means basing one's opinion and decision on the facts alone without allowing oneself to be influenced, consciously or unconsciously, by the personal factor, which is the disturbing element in any subjective appreciation. Thus a scholar or scientist is objective when he seeks the truth, basing himself solely on phenomena about which he is certain. The notion of objectivity is a wider one than impartiality, since it is not necessarily limited to a choice to be made between two parties. Nevertheless, one of the criteria of impartiality is to be able, without detriment, to replace that notion by that of objectivity. For impartiality may be defined, when all is said and done, as objectivity in one's decisions or judgments.

It must, lastly, be emphasized most strongly, that impartiality is shown in the application of rules laid down beforehand—of general principles which are recognized as valid and held to be just in the given set of circumstances. We have described a partial man as one who makes up his mind as a result of prejudice or personal preference. Such a man makes up his mind improperly, that is to say, in a manner contrary to recognized standards of conduct. On the other hand, an impartial man's decision to act is based solely on just motives. His line of conduct follows a rule defined in advance as being the most equitable, and in order to adhere strictly to it, he must be free from all emotional constraint. Impartiality thus consists, as we see, in living up to an ideal ; it is this, incidentally, that gives it its value and distinctive character.

An honest judge will show his impartiality by an objective examination and appraisal of the facts and arguments put forward and by then applying the permanent rules laid down by law. Justice, whether we speak of equity or of the justice instituted by society, presupposes the existence of laws or higher precepts which it maintains. The impartiality of the

Red Cross consists in applying certain rules without favouring or handicapping any person or groups of persons, through self-interest or passion. The rules in question are the three principles of humanity, equality and due proportion which we have already discussed—the principle, that is, that men who suffer must be helped; that an equal degree of distress calls for equal aid; and that the assistance given, in cases where the distress is not equal, must depend on the greatness of the respective needs and on their urgency. We should, however, stress the fact that impartiality is independent of the rules applied: it only refers to the manner in which they must be applied.

It may be said, in conclusion, that impartiality has two aspects—one moral and the other intellectual. The first represents an effort by the individual to free himself from his prejudices and sympathies, so as to become objective, not forgetting that this objectivity is liable to be affected at any moment, consciously or unconsciously, by factors which the best will in the world is often powerless to resist. The second aspect consists in the absolute submission of one's faculty of judgment to standards which are recognized to be right. Impartiality thus lies in the application, without personal preference intervening, of rules accepted by the civilization to which the parties belong. If asked for a precise definition, we would say that impartiality is the quality shown by a person or an institution which, when called upon to judge, choose, apportion or act, does so quite freely, in the light of objective considerations and in accordance with the prescribed standards, without yielding through personal interest, sympathy or antipathy, to the influence of the persons or ideas involved.

Until now, the doctrine of the Red Cross has, as we said, confused the notion of impartiality with that of equality as between men, both conceptions being referred to as impartiality; it has, in fact, confused the principle itself with the manner in which it is applied. The two notions are essentially different. Impartiality is an inward quality, an intrinsic virtue of the agent; it implies a constant effort on his part to free

himself from prejudices, it is a means to an end. The principle of equality, on the other hand, is not concerned with the agent ; it relates to the actual object of the operation, suffering man, and the help to be given to him ; this principle, which results from the common nature of men and from their desire for equality—the expression of the highest form of justice—has won acceptance once and for all ; its place is among the ends to be attained, and it, together with certain other basic principles, determines the action itself and the methods to be used. To be convinced of this we need only reverse our line of reasoning. Starting from the general idea of impartiality, we note that it is apparent in various acts, but does not, on its own account, give rise to any. Impartiality would not, for example, allow a judge to dispense justice, if he did not already know the standards of equity and the provisions of the law, and if he were not called upon to render judgment. It is the principles laid down earlier which give impartiality the substance, without which it would merely be an empty form. In other words, impartiality is a condition for the proper application of those principles to the concrete cases which occur in real life.

An example will confirm this. Let us suppose that the principle of impartiality is not observed in a Red Cross action. The institution's abstract and intangible principles will remain unshaken, and the blame will be laid on the agent who has been guilty of partiality. Everyone will agree that the lapse was an individual one and that there is no question of abandoning the institution's principles. A deliberate, systematic violation of the fundamental rules of the Red Cross would constitute a repudiation of the ideals of humanity. But to be partial is to apply those rules falsely, for subjective and personal reasons.

We have robbed the old principle of impartiality of part of its substance—of everything, in fact, that is covered by the notion of equality. It may even seem surprising that we still need to refer to impartiality after noting that in the eyes of the Red Cross all individuals are equal. It is quite obvious, people will say, that the institution must observe its own principles and apply them conscientiously. But man is not a logical and purely reasonable being ; let us make no mistake about that ;

he is, on the contrary, an emotional being, a victim of mental complexes and preconceived ideas, and swayed by his passions. His vision is often distorted by the impact of his own personality. Impartiality therefore demands that a prolonged and intense effort be made to free charitable action from the influence of the personal factor¹. It will sometimes be the fruit of a hard-won and dearly gained victory over oneself; it is always balanced, as it were, on a narrow dividing-line, finer than a razor's edge. Just think, for example, of the position of a man who must avoid favouring his own son.

Whereas, the principle of equality forbids all objective distinction between individuals, it is the principle of impartiality that prohibits the subjective distinctions which spring from factors peculiar to the relationship existing between the agent and the person concerned—those based on social considerations or political opinion, for example, or on a spontaneous feeling of sympathy.

Impartiality has exactly the same importance for the Red Cross as it has in legal proceedings; this should indicate its value.

The Red Cross—and the International Committee in particular—has sometimes been asked to express its opinion on certain facts, affecting the human person, about which public opinion is stirred, as though the Red Cross were a judge. If the Red Cross is thus expected to go outside its traditional role as a charitable institution, it is because there is a feeling of confidence in its impartiality, and a desire for it to settle the problem, not according to the justice of man, but according to its own justice as the moral conscience or court of honour of humanity. It is therefore desirable to enumerate here the cases in which Red Cross action is comparable in certain respects to the discharge of a judicial function.

Apart from these specific tasks, the Red Cross, has, in the name of its widest ideal, brought about the conclusion of the

¹ Goethe, emphasising the great difficulty of acquiring the quality of impartiality, said in his *Aphorisms*: "I can promise to be sincere, but not to be impartial."

Geneva Convention, thus helping to make duties of a humanitarian nature exigible under international law. One of the most important features of this codification of the law lies in the observance of rules of procedure enacted by civilized nations with a view to surrounding the administration of justice with all the desirable guarantees of equity and humanity, within a limited and well-defined field—that of the protection of prisoners of war and civilians of enemy nationality against whom legal proceedings are taken. But, as we have said, the Red Cross does not in any way oppose the actual dispensation of justice or question the right of the State to punish the guilty according to its laws.

Furthermore, the duties of the Red Cross under the Geneva Conventions are entrusted to it as an agent, and not as a judge. The International Committee of the Red Cross is, however, responsible for seeing that the Conventions are properly applied, in particular by arranging for the visiting of prisoner-of-war and civilian internment camps by its delegates, and by sending the reports drawn up after such inspections to the Power of Origin of those detained, and also to the Detaining Power. This task is of fundamental importance, but of a very special nature, and perhaps more strictly the concern of the International Committee as a neutral organization than of the Red Cross as an institution, since the Protecting Powers exercise a similar function. Although the sole object of the Committee's delegates, when carrying it out, will be to further the interests of the war victims, they may be regarded to some extent as impartial witnesses seeking the truth, and giving an account of what they see. The International Committee assists in this way in the application of the law, endeavouring to ensure respect for those standards of human justice, which it has itself inspired.

The International Committee is, lastly, sometimes asked to take part in an impartial inquiry into some alleged violation of a provision of the Geneva Conventions, or of humanitarian principles. In actual fact, however, it has never yet filled such a role, as it could only agree to do so with the consent of both parties concerned—not being at liberty to sacrifice the sustained relations it must entertain with the belligerents, to any parti-

cular interest—and only if there were no danger of its charitable work in the practical field suffering as a result. Nations are no more inclined than men to recognize when they are at fault, or to submit, of their own free will, to sentence being passed on them ; consequently one or other of the parties has always so far refused its consent. But if, for a wonder, the various conditions stated above were one day fulfilled, the Committee would then serve in a capacity which would be approximate to that of an arbitrator or judge.

In all other respects the Red Cross is only the guardian of moral rights, over which the judicial organs, for their part, have no power. As can be seen, the two spheres remain, in substance, quite distinct.

(To be continued)

Jean S. PICTET.

INTERNATIONAL COMMITTEE OF THE RED CROSS

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 restricted Commission of Experts composed of personalities 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 in Geneva from 3rd to 8th, October, 1955.

The present report, drawn up and unanimously approved by the Commission, sets down 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 Inter-
national of the Red Cross,

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.

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- H. E. M. Julio Lopez-Olivan, Spanish Ambassador,
H. 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.
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 an 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 Conference - 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 as 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.

INTERNATIONAL COMMITTEE

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.

NEW YEAR MESSAGE
FROM THE PRESIDENT OF THE ICRC

During the coming year, the International Conference of the Red Cross will be held in New Delhi, the capital of India. Men of different races and religions, with different political and social conceptions, will meet there and will try to show that Henry Dunant's message applies to everyone : that the principle of mutual aid in the face of suffering means bringing relief to the victims of all conflicts, whatever form they take, whether wars, revolutions or armed risings.

In a divided world, where peace depends on a precarious balance of power, the Red Cross can bring the hope, I may even say the certainty, that, however, dark the future appears to be, the untiring work of those who wish to make human charity the supreme object of international collaboration, will one day result in the nations of the world understanding that they must at last unite in a spirit of fellowship.

The further development of humanitarian law, the return, to their own countries and families, of those who have been separated from them by war, and the sending of delegates to regions which are still the scene of bitter struggles and bloodshed —those are the immediate tasks now facing the International Committee of the Red Cross in whose name I wish you a happy New Year.

Léopold BOISSIER
President