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Conflict in Afghanistan

The first three Soviet soldiers, who had been captured in Afghanistan by opposition movements and transferred to Switzerland by the ICRC on May 28, 1982, have reached the end of their two-year period of internment agreed upon with the parties concerned. One of them, who confirmed his desire to be transferred to his country of origin, has returned to the USSR. The other two soldiers informed the Swiss authorities that they did not wish to return to their country. Their status will be determined by the Swiss authorities in accordance with the legislation in force.

The ICRC took this opportunity to make public its position regarding all the victims of the Afghan conflict in the following press release, published on May 20, in Geneva:

“Since 1979, the ICRC has made every effort to provide protection and assistance to the civilian and military victims of the armed conflict in Afghanistan, in accordance with the mandate conferred upon it in the Geneva Conventions and the statutes of the International Red Cross. On several occasions, it has reminded the parties whose armed forces are engaged in the conflict of their obligations under international humanitarian law. However, in spite of repeated offers of services to the Afghan government and representations to the government of the USSR, the ICRC has only on two occasions – during brief missions in 1980 and 1982 – been authorized to act inside Afghanistan. Consequently, the ICRC has to date been able to carry out very few of the assistance and protection activities urgently needed by the numerous victims of the conflict on Afghan territory.

Due to the serious consequences of the situation in Afghanistan, the ICRC decided in 1980 to undertake protection and assistance activities in Pakistan. It opened two surgical hospitals for Afghan war wounded, the first in Peshawar, the second, in July 1983, in Quetta. In addition, being deeply concerned by the plight of persons captured by the Afghan opposition movements and by information to the effect that several such persons had been executed, the ICRC tried to find a way of protecting the lives of both Afghan and Soviet captured persons.

Negotiations carried out by the ICRC, with successively, the USSR, the Afghan opposition movement,

Pakistan and Switzerland led to partial success. The parties agreed to the transfer and internment in a neutral country of Soviet soldiers detained by the Afghan opposition movements, in application, by analogy, of the Third Geneva Convention, relative to the treatment of prisoners of war.

On the basis of this agreement, the ICRC has had access to some of the Soviet prisoners in the hands of the Afghan movements and has informed them, in the course of interviews without witness, of the possibility for transfer by the ICRC to Switzerland, where they would spend two years under the responsibility and watch of the Swiss government before returning to their country of origin.

The ICRC made this proposal to the Soviet prisoners on the basis of the principle worked out at the 1949 Diplomatic Conference and stipulated in the Geneva Conventions, i.e. that repatriation of a prisoner of war signifies the return to a normal situation and is in the best interests of the prisoner. The above-mentioned procedure therefore applies only to Soviet soldiers who consider themselves to be in a situation comparable to that of a prisoner of war in enemy hands. Consequently, the entire operation is based on respect for the principle according to which the ICRC never acts against the wishes of the person it is assisting.

To date, eleven Soviet soldiers have accepted the proposal. The first three were transferred to Switzerland on May 28, 1982. Eight others arrived in August and October 1982, January and October 1983, and February and April 1984. One of them escaped to the Federal Republic of Germany in July 1983.

The first three Soviet soldiers reach the end of their period of internment on May 27, 1984. In conformity with the spirit of the provisions of international humanitarian law in this respect, the Swiss authorities, under whose responsibility the soldiers are, have taken the measures necessary to repatriate those internees still wishing to return to their country of origin.

The ICRC's main concern since the beginning of the conflict has been the unacceptable restriction of its humanitarian activities. In view of the situation, which has inflicted so much suffering on the Afghan population for over four years, the ICRC expects all the parties to the conflict to enable it by all means possible to protect and assist in all places all of the victims of that conflict, and thereby fully respect International Humanitarian Law and its principles."

Discussion

1. How would you qualify the conflict in Afghanistan? What consequences would the qualification of the conflict have upon the parties involved in Afghanistan?
2. When soldiers are captured by the adverse party, are they automatically considered POWs? Is the qualification of the conflict crucial in that regard? Why did the Soviet and Afghan authorities sign an agreement stating that after a period of two years the captured soldiers should be released? Theoretically, in an international armed conflict, would the parties need to have signed an agreement on the release of POWs during the conflict? Is there a provision in IHL which states that POWs have to be released at the end of hostilities? During the hostilities? (GC III, Arts 109 and 118)

3. Which Soviet soldiers consider themselves to be “in a situation comparable to that of prisoners of war”? Would they not automatically be considered POWs simply by virtue of the fact that one may assert that the situation is an international armed conflict? (GC III, Arts 2 and 4) Which Soviet soldiers do not “consider themselves to be in a situation comparable to that of prisoners of war”? What is their legal status? Which provisions of IHL would apply to those in the hands of the Afghan rebels? (GC III and IV, Art. 4)
4. When can a POW be interned in a third country? (GC III, Arts 110(2) and 111)
5. Under which provisions can the ICRC take the initiative as an intermediary between the parties in the Afghan armed conflict? (GC I-IV, Art. 3 and Arts 9/9/9/10 respectively; PI, Art. 81(1))
6. What is the status of the Soviet soldiers in Switzerland? Do they have to be treated as POWs? Does the ICRC have the right to visit them? What is the justification for detaining captured combatants under IHL? Under international human rights law? How would you, as a Swiss judge, rule on their request for release? (GC III, Art. 4(B)(2))
7. Under IHL, does Switzerland have the right or perhaps even the obligation not to repatriate POWs who do not wish to be repatriated?
8.
 - a. At the end of the two-year period, the ICRC, in accordance with its standard practice, asked the captured soldiers whether or not they wanted to go back to their country of origin. Is this practice foreseen in IHL? On what premises can it be justified? (GC III, Art. 118)
 - b. In this case, could the two captured soldiers who refused to go back to the Soviet Union be considered at that point as refugees seeking asylum?
9. Why do you think that the ICRC did not have access to victims in Afghanistan? Was the refusal to give the ICRC access to Afghanistan a violation of IHL? What can the ICRC do to make the authorities grant its request to act inside the country? To make the parties to the conflict comply with Convention III? (GC III, Arts 3 and 126; GC IV, Arts 3 and 143)