

A. The Memorandum of May 7, 1983

[Source: Memorandum from the International Committee of the Red Cross to the States Parties to the Geneva Conventions of August 12, 1949 concerning the conflict between Islamic Republic of Iran and Republic of Iraq, Geneva, May 7, 1983]

APPEAL

Since the outbreak of the conflict between the Islamic Republic of Iran and the Republic of Iraq, the highest authorities of both these States parties to the Geneva Conventions have several times confirmed their intention to honour their international obligations deriving from those treaties.

Despite these assurances, the International Committee of the Red Cross, which has had a delegation in the Islamic Republic of Iran and in the Republic of Iraq from the very start of the hostilities in 1980, has encountered all kinds of obstacles in the exercise of the mandate devolving on it under the Geneva Conventions, despite its repeated representations and the considerable resources which it has deployed in the field.

Faced with grave and repeated breaches of international humanitarian law which it has itself witnessed or of which it has established the existence through reliable and verifiable sources,

and having found it impossible to induce the parties to put a stop to such violations,

the ICRC feels in duty bound to make these violations public in this present Appeal to States and its attached memorandum.

The ICRC wishes to stress that, pursuant to its invariable and published policy, it undertakes such overt steps only in very exceptional circumstances, when the breaches involved are major and repeated, when confidential representations have not succeeded in putting an end to such violations, when its delegates have witnessed the violations with their own eyes (or when the existence and the extent of those breaches have been established by reliable and verifiable sources) and, finally, when such a step is in the interest of the victims who must as a matter of urgency be protected by the Conventions.

The ICRC makes this solemn Appeal to all States parties to the Geneva Conventions to ask them – pursuant

to the commitment they have undertaken according to Article 1 of the Conventions to *ensure respect* of the Conventions – to make every effort so that:

- international humanitarian law is respected, with the cessation of these violations which affect the lives, the physical and mental well-being and the treatment of tens of thousands of prisoners of war and civilian victims of the conflict;
- the ICRC may fully discharge the humanitarian task of providing protection and assistance which has been entrusted to it by the States;
- all the means provided for in the Conventions to ensure their respect are used to effect, especially the designation of Protecting Powers to represent the belligerents' interests in their enemy's territory.

The ICRC fervently hopes that its voice will be heeded and that the vital importance of its mission and of the rule of international humanitarian law will be apparent to all and fully recognized, in the transcending interest of humanity and as a first step towards the restoration of peace.

MEMORANDUM

SITUATION OF PRISONERS OF WAR HELD IN THE ISLAMIC REPUBLIC OF IRAN

According to the Iranian authorities they today hold 45,000 to 50,000 prisoners of war. The Third Geneva Convention confers on those prisoners a legal status entitling them to specific rights and guarantees.

Registration and capture cards

One of the essential provisions of the Conventions demands that each prisoner of war be enabled, immediately upon his capture or at the latest one week after his arrival in a camp, to send his family and the Central Prisoners-of-War Agency a card informing them of his captivity and his state of health.

This operation proceeded normally at the beginning. However, the obstacle which the Iranian authorities constantly put in the way of the ICRC delegates' work led to a progressive decline in that activity from May 1982 onwards.

At present the ICRC has registered only 30,000 prisoners of war, leaving 15,000 to 20,000 families in the agony of uncertainty, which is precisely what the imperative provisions of the Conventions are designed to avoid.

Correspondence between prisoners of war and their families

The considerable delay and the holding up of mail, every aspect of which is regulated by the Convention, aggravate the families' worries and the prisoners' distress.

Although thousands of messages are sent each month by Iraqi families through the ICRC and hence to the Iranian military authorities for censorship and distribution, a great many prisoners of war complain they have

received no mail for many months. The ICRC is no longer able to exercise any supervision of the distribution and collection of family messages.

ICRC visits to prisoner-of-war camps

The Third Geneva Convention stipulates that ICRC delegates shall be allowed, with no limitation of time or frequency, to visit all places where prisoners of war are held and to interview the prisoners without witnesses. In the Islamic Republic of Iran this essential provision is being violated.

The ICRC has lost track of the interned population since May 1982: only 7,000 prisoners of war have benefited from regular visits by the ICRC.

Many places of internment have been opened since then but the ICRC has never had access to them and has not even been notified of their existence.

Consequently the ICRC can no longer monitor the material living conditions and treatment of the Iraqi prisoners of war interned in Iran.

Although there did occur at the end of 1982 one truncated visit during which the delegates were not permitted to interview prisoners without witnesses, and two spot visits in March 1983, the latest complete visit to a prisoner-of-war camp consistent with treaty rules dates back to May 1982.

The fact that it has not had access to the great majority of prisoners of war for more than a year, and the systematic concealment of some categories of prisoners of war – high ranking officers, foreigners enlisted in the Iraqi army – gives the ICRC cause to be profoundly concerned about the plight of those prisoners.

Treatment of prisoners of war

In a general way, the Iraqi prisoners of war, right from the time of their capture, are subjected to various forms of ideological and political pressure – intimidation, outrages against their honour, forced participation in mass demonstrations decrying the Iraqi Government and authorities – which constitute a serious attack on their moral integrity and dignity. Such treatment, which runs counter to the spirit and the letter of the Convention, has gone from bad to worse since September 1981.

Last but not least, concordant information from various sources and witnesses confirm the ICRC's certainty that some camps have been the scene of tragic events leading to the death or injury of prisoners of war.

Severely wounded and sick prisoners of war

The Third Geneva Convention states that “parties to the conflict are bound to send back to their own country, regardless of numbers or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel...”. Although there have been three repatriation operations – on 16 June, 25 August 1981 and 30 April 1983 – and despite the constitution of a mixed medical commission, most of the

severely wounded and sick prisoners of war have not been repatriated, as required by the Convention.

SITUATION OF IRANIAN PRISONERS OF WAR AND IRANIAN CIVILIANS IN THE POWER OF THE REPUBLIC OF IRAQ

1. Prisoners of war

So far the ICRC has registered and visited at regular intervals some 6,800 prisoners.

Registration and capture cards

In general, these prisoners of war are registered by the ICRC within the time limit specified by the Convention.

Correspondence between prisoners of war and their families

After some initial difficulties, the exchange of messages between prisoners and their families has been satisfactory for the last several months.

ICRC visits to prisoner-of-war camps

Every single month since October 1980, ICRC delegates have visited prisoners of war in a manner consistent with Article 126 of the Third Geneva Convention, which specifies inter alia that the delegates shall be enabled freely to interview prisoners of their choice without witnesses.

However, in the course of its activities in the Republic of Iraq, the ICRC realised that the Iraqi authorities have never fully respected the Third Geneva Convention.

The ICRC has established with certainty that many Iranian prisoners of war have been concealed from it since the beginning of the conflict. The ICRC has drawn up lists containing several hundred names of Iranian prisoners of war incarcerated in places of detention to which the ICRC has never had access. Although several dozen such prisoners have been returned to the camps and registered by the ICRC no acceptable answer has been found to the problem of concealed prisoners.

Treatment of prisoners of war

In the prisoner-of-war camps the ICRC has noted some appreciable improvement in material conditions. On the other hand, ill-treatment has frequently been observed and on at least three occasions disorders have been brutally quelled, causing the death of two prisoners of war and injury to many others.

Severely injured and sick prisoners of war

The Third Geneva Convention states that “parties to the conflict are bound to send back to their own country, regardless of numbers or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel...”. Although there have been four repatriation operations – on 16 June, 25 August and 15 December 1981 and on 1 May 1983 – and despite the constitution of a mixed medical commission, most of the severely wounded and sick prisoners of war have not been repatriated, as required by the Convention.

2. Iranian civilians

Tens of thousands of Iranian civilians from the Khuzistan and the Kurdistan border regions [on Iranian territory], residing in areas under Iraqi army control, have been deported to the Republic of Iraq, in grave breach of the Fourth Geneva Convention.

The ICRC delegates have had only restricted access to a few of these people.

In the prisoner-of-war camps the ICRC has registered more than a thousand civilians, including women and old men arrested in the occupied territories by the Iraqi army, deported into the Republic of Iraq and unjustifiably deprived of their freedom since the beginning of the conflict.

GRAVE BREACHES COMMITTED BY BOTH PARTIES TO THE CONFLICT

Both in Iran and Iraq captured soldiers have been summarily executed. These executions were sometimes the act of individuals involving a few soldiers fallen into enemy hands; there has sometimes been systematic action against entire enemy units, on orders to give no quarter.

Wounded enemies have been slain or simply abandoned on the field of battle. In this respect the ICRC must point out that the number of enemy wounded to which it has had access and whom it has registered in hospitals in the territory of both belligerents is disproportionate to the number of registered able-bodied prisoners in the camps or to even the most conservative estimates of the extent of the losses suffered by both parties.

The Iraqi forces have indiscriminately and systematically bombarded towns and villages, causing casualties among the civilian inhabitants and considerable destruction of civilian property. Such acts are inadmissible, the more so that some were declared to be reprisals before being perpetrated.

Iraqi towns also have been the targets of indiscriminate shelling by Iranian armed forces.

Such acts are in total disregard of the very essence of international humanitarian law applicable in armed conflicts, which is founded on the distinction between civilians and military forces.

Geneva, May 7, 1983

B. The Memorandum of February 10, 1984

[Source: Second Memorandum from the International Committee of the Red Cross to the States Parties to the Geneva Conventions of August 12, 1949 concerning the conflict between Islamic Republic of Iran and Republic of Iraq, Geneva, February 10, 1984]

On May 7, 1983, the International Committee of the Red Cross was compelled to address an appeal to all the States Parties to the Geneva Conventions. With reference to the solemn undertaking of these States to respect and ensure respect for the Conventions at all times, the ICRC asked them to make every effort to ensure the rigorous application of International Humanitarian Law by the two belligerent states i.e. the Islamic Republic of Iran on the one hand and the Republic of Iraq on the other, and to enable the ICRC to effectively perform its humanitarian task of helping the great number of civilian and military victims of this conflict.

Nine months after making its first Appeal, the ICRC notes that the results hoped for have been achieved only to a very limited degree, and it feels that the States Parties to the Conventions should be informed of the lack of respect for the principles of Humanitarian Law in the Islamic Republic of Iran and the Republic of Iraq.

The ICRC wishes to stress that its two memoranda concern serious infringements of International Humanitarian Law which are known to have occurred and which endanger the lives and liberty of the tens of thousands of people caught up in this conflict, and which flout the very spirit and principles of that law. These infringements, if unchecked, may, in time, bring into discredit those rules of law and universal principles which the States parties to the Conventions laid down to provide human beings with a better defence against the evils of war.

From its experience the ICRC is conscious that increasingly numerous violations of International Humanitarian Law have invariably placed insurmountable obstacles in the way of peace negotiations, even when all belligerents wished to end the conflict. For example, recent conflicts have been needlessly prolonged because no agreement was reached on arrangements concerning prisoners of war. The ICRC thus calls upon the States working towards the restoration of peace in the region to consider most carefully the problems which will inevitably arise because of the infringements of the Geneva Conventions by the belligerents.

In particular, the ICRC would ask States, in the course of their dealings with each of the two parties to the conflict, to broach the humanitarian questions which are hereby submitted to them. The States are also urged to lend their active support to the ICRC's efforts to help the victims of the conflict which is strictly within the terms of the humanitarian mandate assigned to the ICRC through the Geneva Conventions. Finally, the ICRC hopes that discussions will be held to designate Protecting Powers willing to undertake the tasks incumbent on such States by the Geneva Conventions. Naturally, the ICRC would wish to work closely with the Protecting Powers.

The ICRC is convinced that the States parties to the Conventions are aware of what is truly at stake in the steps proposed, and that it will be their desire and intention to translate into action the commitment which they undertook in adopting Article 1 common to the Four Geneva Conventions of 12 August 1949.

ISLAMIC REPUBLIC OF IRAN

A. Iraqi prisoners of war interned in the Islamic Republic of Iran

1. The activities of the International Committee of the Red Cross in favour of the Iraqi prisoners were again suspended on 27 July 1983. The ICRC considers that, in general terms, it has not been able to discharge its mandate as prescribed by the Third Geneva Convention relative to the treatment of prisoners of war for almost two years.

At present, some 50,000 prisoners are without the international protection to which they are entitled by virtue of their status.

In this connection, the ICRC is no longer able to perform the following tasks:

- - To ascertain the precise number of prisoners of war and to ascertain how they are distributed among various places of internment.
 - To obtain information on the identity and state of health of each prisoner of war in order to notify his family and the Iraqi Government.
 - To monitor the material, psychological and disciplinary conditions of internment by means of regular visits to the camps and interviews without witness with the prisoners.
 - To draw up lists of prisoners of war who should quickly be repatriated because of severe wounds or illness.
 - To maintain effective surveillance of the flow of Red Cross messages between the prisoners and their families.

These tasks of surveillance are all categorically stipulated in the Convention and constitute indispensable requirements for the effective protection of prisoners by ICRC delegates.

1. Numerous facts and indications, when considered together, arouse great concern on the part of the ICRC with regard to the fate of the prisoners and the authorities' real reasons for preventing the ICRC from carrying out its activities. The ICRC has noted the following specific points:
 - ■ The ICRC has constantly been denied access to certain categories of prisoners such as high-ranking officers.
 - Severe sentences have been passed on a number of prisoners. Despite repeated demands, the ICRC has received neither notifications nor explanations which should, by law, have been submitted to it.
 - Serious incidents have occurred in certain camps. Furthermore, among the death certificates issued by the Iranian authorities for members of the enemy armed forces "killed in action", the ICRC has received a number which were despatched very tardily and without any comment in relation to persons who were known to have been interned in the Islamic Republic of Iran for

many years, since they had been registered and visited on several occasions by ICRC delegates.

- Ideological and political pressure, intimidation, systematic “re-education” and attacks on the honour and dignity of the prisoners have remained a constant feature of life in the camps, and even seem to increase as a result of the activities of certain persons having no connection with the normal running of the camps. Representatives of a “department of political and ideological education”, members of Iraqi opposition groups who have fled to the Islamic Republic of Iran, and the official press all attempt to incite the prisoners against their government. On many occasions, the ICRC has submitted to the highest authorities of the Islamic Republic of Iran detailed and clearly reasoned requests that a stop should be put to these practices which States, in drawing up the Third Geneva Convention, agreed to ban. The ICRC has made the abolition of these practices a condition for the resumption of its activities, since the discharge of its mandate is incompatible and irreconcilable with attempts at political and ideological conditioning of prisoners. To date, the ICRC has received no satisfactory reply to the written and oral representations which it has made on the subject to the Government of the Islamic Republic of Iran.

B. Iraqi civilian refugees in the Islamic Republic of Iran

The ICRC has failed in its attempts to bring aid to these groups, consisting mainly of Iraqi Kurds who have fled from their home territory and are now living in camps in the Islamic Republic of Iran. The ICRC knows that these groups are in great need of food and medicine. By virtue of their status as refugees from an enemy power, these people come under the aegis of the Fourth Geneva Convention relative to the protection of civilians in time of war. They should therefore be allowed to receive the aid which an organization such as the ICRC could provide.

REPUBLIC OF IRAQ

A. Iranian prisoners of war held in the Republic of Iraq

1. Every month without fail since October 1980, ICRC delegates have visited Iranian prisoners of war, who currently number 7,300 and are held in six internment camps. The visits take place in accordance with the conditions laid down in Article 126 of the Third Geneva Convention, a main stipulation of which is that the delegates should be able to talk freely and without witnesses with prisoners of their choice.

As a rule, prisoners of war are registered by the ICRC within a reasonably short time of being captured.

On the whole, the exchange of Red Cross messages between the prisoners and their families works well, though delays which may sometimes be quite long are still caused by the Iraqi censorship procedure.

1. In the camps themselves, the ICRC has observed a number of significant improvements in the material conditions of internment. Moreover, the authorities have taken steps to put an end to the random acts of brutality to which the ICRC drew their attention on many previous occasions. Furthermore, an improvement in disciplinary measures has been apparent since autumn 1983.
2. On 29 January 1984, 190 Iranian prisoners, 87 of whom were severely wounded or sick, were handed

over by the Iraqi authorities to the ICRC in Ankara for repatriation.

3. The ICRC is concerned by the fact that a large number of members of the enemy armed forces, both officers and other ranks, some of whom were taken prisoner by the Iraqi armed forces at the beginning of the conflict, are still being held in detention centres to which the ICRC is denied access. The ICRC has regularly submitted to the government and military authorities of Iraq lists of names showing that several hundred such prisoners of war exist. The ICRC mentions with satisfaction that at the end of 1983 it was allowed to register several dozens of these prisoners, who had been captured at the start of the conflict and have now been placed in camps visited by the ICRC.

The ICRC has good grounds to be concerned about the prisoners held in places to which it does not have access. These prisoners are deprived of their most basic rights and, according to many mutually corroborating sources of information, are held in conditions which do not meet the requirements of humanitarian law.

B. Iranian civilians who have been deported to or taken refuge in the Republic of Iraq

1. During the conflict, several tens of thousands of Iranian civilians have been displaced from their homes in the frontier areas of Khuzestan and Kurdistan to Iraqi territory.

The Iraqi authorities have accepted that in principle the ICRC should be present from now on among these civilians, and considerable efforts have recently been made to improve the living conditions of these civilians when it was necessary.

1. Since the start of the conflict, the ICRC has registered more than a thousand civilians in the prisoner-of-war camps, including women and elderly men arrested in the territories occupied by the Iraqi armed forces. Although it has been possible to repatriate several hundred of these people, an overall solution to the problem still has to be found.

C. Bombing of civilian areas by the Iraqi armed forces

The Iraqi air force has continued to carry out regular indiscriminate bombing of Iranian built-up areas, sometimes more than 200 kms from the front. The result has been loss of life, sometimes on a large scale, and considerable destruction of purely civilian property. These deliberate attacks on civilians and civilian property are sometimes designated as reprisals; they contravene the laws and customs of war, in particular with regard to the basic principle that a distinction must be made between military objectives and civilian persons and property.

Discussion

1.
 - a. What must States Parties do in order to fulfil their obligation under Art. 1 common to the Conventions and Protocol I “to ensure respect” for IHL? What may they do? What may they not do?
 - b. Must States Parties act to “ensure respect” for IHL only when the ICRC appeals to them to do so? What meaning do ICRC appeals, such as the two Memoranda, have in terms of the obligation of the States Parties? Does such an appeal mean that in certain situations the normal and specific

mechanisms for the implementation of IHL do not work?

- c. What criteria would you suggest to the ICRC for deciding whether to issue an appeal to all States Parties on violations in a specific situation?
- d. Did the two Memoranda respect the Red Cross principles of neutrality and impartiality? Was it necessary for the ICRC under those principles to criticize both Iran and Iraq? Because of the denounced violations? Because under those two principles the ICRC may never criticize only one side of an armed conflict?
- e. In the Memoranda, is the revelation to all States Parties of facts the ICRC learned through its visits to prisoners of war compatible with the ICRC's working principle of confidentiality?
2. a. Did Iran and Iraq have an obligation to designate Protecting Powers? Can you imagine why no Protecting Powers were designated? (GC I-IV, Arts 8/8/8/9 respectively)
- b. If a Protecting Power is designated, can it replace the ICRC for visits to prisoners of war? What is the advantage of a Protecting Power acting parallel to the ICRC? What are the strong points of a Protecting Power? What are the strong points of the ICRC? (GC III, Arts 10 and 126)
3. a. Has the ICRC a right to visit prisoners of war? Even those who do not want to be visited by the ICRC? Why are ICRC visits important? (GC III, Arts 7 and 126; CIHL, Rule 124)
- b. Can you imagine why Iran impeded ICRC visits to Iraqi prisoners of war? Why did Iran and Iraq try to conceal certain categories of prisoners of war from the ICRC? Which categories? How may the ICRC have learned about the existence of those hidden prisoners?
- c. Why does the ICRC insist on visiting prisoners and interviewing them without witnesses? Does the ICRC have a right to insist on the latter condition? (GC III, Art. 126) Should the ICRC renounce interviewing without witnesses if it heightens tension between different groups of prisoners?
4. a. Do efforts of a Detaining Power to indoctrinate prisoners of war – to put them under ideological and political pressure with the aim of turning them against their own government – violate IHL? Even if no prohibited means (e.g., threats, intimidation, or deprivation of rights to which they are entitled under Convention III) are used? Which provisions of Convention III are violated?
- b. May prisoners of war sever their allegiance towards the Power on which they depend? What are the risks and interests involved in answering this question? Does a severing of their allegiance deprive them of their prisoner-of-war status? May they renounce their status? (GC III, Art. 7)
- c. May a Detaining Power release prisoners of war who sever their allegiance to the power on which they depend? (GC III, Arts 16 and 21; CIHL, Rule 128)
- d. May prisoners of war voluntarily join the armed forces of the Detaining Power? Do they keep their prisoner-of-war status if they do so? (GC III, Arts 7, 23, 52 and 130)
- e. Has the Detaining Power a responsibility for the killing of prisoners who keep their allegiance by prisoners who have severed their allegiance to the Power on which they depend? For killings of the latter by the former? What action must the Detaining Power take to avoid such events? May it or must it separate these two categories of prisoners? What are the risks of such a separation? (GC III, Arts 13, 16, 22, 121 and 122)
5. a. By which means does IHL ensure that a family is informed about the capture and detention of a prisoner of war? May prisoners of war renounce some or all of those means used to inform their families? What reasons could they have for doing so? (GC III, Arts 69, 70, 122 and 123; CIHL, Rules 125 and 126)
- b. Who must enable prisoners of war to fill in capture cards? Can capture cards be filled in even when

the ICRC is impeded from visiting prisoners of war? Has the ICRC a right to register prisoners of war? Even those who do not wish to be registered? Why is the registration of prisoners of war important to the ICRC? (GC III, Arts 70, 122, 123 and 126; CIHL, Rule 123)

- c. Must death certificates for prisoners of war indicate the cause of death? For enemy soldiers found dead on the battlefield? (GC I, Art. 16; GC II, Art. 19; GC III, Art. 120; CIHL, Rule 116)
6. Did Iran have an obligation to inform the ICRC about sentences passed against prisoners of war? (GC III, Art. 107)
7.
 - a. Must a detaining power repatriate seriously wounded and seriously sick prisoners during the hostilities? Why? Even if the enemy does not do so? (GC III, Arts 13(3), 109 and 110)
 - b. Who decides whether a prisoner of war is seriously wounded or seriously sick? What happens if that body is unable to agree on who is seriously wounded or seriously sick? (GC III, Arts 110-113 and Annex II)
8.
 - a. Could Iraq lawfully detain Iranian civilians it found while its offensive advanced on Iranian territory? In which cases? Could Iraq lawfully evacuate Iranian civilians living in Iranian territories it controlled once Iraq had to retreat from those territories under the pressure of an Iranian counter-offensive? At least those among them who were lawfully detained? (GC IV, Arts 49 and 76-79)
 - b. May Iraq detain civilians in prisoner-of-war camps? If it respects all the provisions of Convention IV applicable to them? (GC IV, Arts 76 and 84)
 - c. Are Iraqi civilian refugees in Iran protected persons under Convention IV? Under which circumstances has the ICRC the right to assist them? (GC IV, Arts 4, 23 and 44; P I, Arts 70 and 73)
9.
 - a. How can the ICRC know about summary executions of captured soldiers? When is a party to a conflict responsible for executions of individual enemy soldiers, immediately after their capture, by individual members of its armed forces who were not ordered to execute them? Were such individual enemy soldiers prisoners of war? (Hague Convention IV, Art. 3; GC I-IV, Arts 49/50/129/146; GC III, Arts 5 and 12; CIHL, Rule 149)
 - b. How can the ICRC know that wounded enemies were executed or abandoned on the battlefield?
10.
 - a. Does the indiscriminate bombardment of towns and villages violate IHL, although neither Iran nor Iraq were party to Protocol I? Does it make a difference for IHL that such towns were more than 200 km away from the front line? Is the concept of a “military objective” different on the front-line compared with 200 km away?
 - b. Were such bombardments even less admissible under IHL when they were announced as reprisals? (GC IV, Art. 33(3); P I, Arts 51(6) and 52; CIHL, Rules 146-147) Under which conditions do reprisals that would amount to violations of treaty-based IHL, are admissible under customary IHL?
11. Do the violations of IHL mentioned in the two Memoranda “discredit the rules of IHL”? Did those rules apparently have no influence on the Parties? Did they have a protective effect for the victims of the conflict?