HUMANE TREATMENT FOR NON-DELINQUENT DETAINEES

Some time ago, the International Committee of the Red Cross suggested to the Medico-Legal Commission of Monaco to study the important question of humane treatment due to persons deprived of their freedom for reasons unconnected with common penal law. It was a question of filling a gap in the form of a guide determining the principles aimed at regulating conditions of detention in a humane manner.

Professor J. Graven has published in the Annales de droit international médical [1] *a preliminary report on the work of the Medico-Legal Commission, which has led to the latter's adoption of "Minimum rules for non-delinquent detainees" of which he drew up the draft. We will shortly be producing the text of these "Rules", but it has seemed to us to be of interest to give beforehand some extracts of the report in which Professor Graven brings out the spirit and the significance of the valuable work achieved by the Commission of which he was a member* (Ed).

It can only be advantageous to elaborate a simple, logical plan which at the same time runs parallel with the already existing "general minimum rules" for delinquent detainees, in so far as alterations are not made to their structure and foundations. Authorities having to deal with the position of non-delinquent detainees will thus find it easier to make an impact on men's minds and customs. Both regulations will give greater weight and completion to each other. They will benefit mutually from the knowledge gained

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therefrom by governments and public opinion, from the respect shown to them and from the favourable results ensuing.

1. **Rules for detainees and for administrations.** — The two *subdivisions* proposed in the preliminary report to the Medico-Legal Commission are clear and reasonable. They can moreover be found in the recommendations and resolutions of the first Congress of the United Nations in Geneva in 1955, and it would in fact be " an error not to profit as widely as possible " from the experience and work of specialists who have " dealt with a similar problem " and studied most of the situations and solutions which would also have to be resolved here.

The *first part* must ostensibly set forth the minimum rules for the treatment of all non-delinquent detainees.

The *second* should be devoted to questions of personnel and administration, indispensable for the normal running of detention centres, whatever they may be. It cannot be denied that rules are justified also in the present context " owing to the fact that conditions of detention are largely dependent on the comprehension which the personnel of detention centres have of their duties, obligations and responsibilities ". " Recent notorious cases which have emphasized this aspect of the question " have unfortunately confirmed only too much the immense risks of abuse connected with official and individual shortcomings in this sphere. Without going as far as the " atrocities " of the " executioners " of concentration, forced labour or even " death " camps, which will remain a blot on our " advanced civilization ", iniquities, injustice and treatment setting at nought the " essential rights of the individual " are only too frequent, widespread and sufficiently known to need further emphasis.

2. **Consideration of the detention in itself and not its causes.** — It is also expedient to " consider persons deprived of their liberty *in their state of detention*, that is to say, in the objective conditions in which they find themselves, without having to consider " how the deprivation of their freedom has occurred ", which is quite another

question and would raise immeasurable and insoluble problems of a political nature, going far beyond the subject whose research and clarification would serve no purpose, even doing damage by provoking withdrawal and obstruction, a " disclaim " which would impede any chances of application by the protecting authority. In fact, as one can see from the preliminary report " a large number of internments extraneous to common law are arbitrary and enforced without sufficient knowledge of human rights ". What is essentially important in the minimum rules as a whole is not to discover the *reasons for the detention* of " non-delinquents " deprived of their liberty and exactly how this occurred, or whether they have been arbitrarily detained or on account of legal enactments. The essential point, on the contrary, is to know *how they are being treated* in order to reassure them in the situation in which they find themselves that they enjoy the *protection* and the maximum possible rights connected with humane treatment and the dignity of the individual, also compatible with the state of subjection in which they are held.

This has, moreover, always been the wise position of the International Committee of the Red Cross and that is one of the main reasons for the respect it is given and the success of the missions it has been able to accomplish, restricting itself solely to its rôle as a humanitarian institution without attempting to act as a censor or an international inquirer. Even when it has studied ways of ensuring the *repression* of grave breaches committed against the protective Geneva Conventions, this has only ever been but to enable these to " accomplish their full duty of protection and safeguard " and solely to ensure, on behalf of condemned persons no less than of prisoners of war or political detainees, respect for " guarantees to which every human being has a right ". This is to some extent tantamount to " saving people from arbitrary acts of the enemy ".[1]

[1] Cf. GRAVEN, " La répression pénale des infractions aux Conventions de Genève ", *Revue internationale de criminologie et de police technique* 1956, p. 262. This very clear statement of principle enabled the ICRC to carry out a large number of effective actions, such as in Guatemala, Kenya, Algeria, Cyprus, Congo, etc., without naturally preventing certain setbacks of an essentially political character. It has always been understood that the work of the " relief body " in carrying out " humanitarian duties would be strictly limited to the visiting of places of detention to the study and routing of eventual relief and to the possibility of aiding families deprived of their normal support as a result of imprisonment or internment and that " it would never be concerned in the reasons for detention".

Here is one example, borne out by its effectiveness and the satisfactory achievement of humanitarian missions carried out in often extremely difficult conditions which should always be kept in mind.

3. **Selection of general rules.** — As regards the *substance* of the general rules to be drawn up for the protection now under discussion, we do not believe that the first consideration should be, as mentioned in the Preliminary Report for the Commission, that the proposed work " cannot be as assiduously elaborated as that of the 1955 Geneva Conference ". This would in fact result in " the omission of many items taken up in the resolutions of that Conference ". In fact the *length of the elaboration* is not an absolute condition in the thoroughness and value of the work itself and moreover for a series of provisions, the preparatory work previously carried out can and should be sufficient, since a fair number of stipulations ensuring " humane treatment " are intrinsically linked with any detention and should be applied to all categories of detainees, whether they are held on account of a penal sentence or for any other cause, once they are all in the common condition of being deprived of their freedom.

Useful headings, even necessary ones, should not be omitted for lack of time in drawing them up and all those which are necessary and which exist in the " general rules for delinquent detainees " should therefore in principle not be discarded, even though these may be set forth more briefly and in summarized form, or by referring to the corresponding provision in the 1955 resolutions and recommendations, if necessary.

One will naturally *discard*, on the other hand, all those which are of no direct interest for the situation of non-delinquent detainees, such as the " question of imprisonment which holds such an important place in connection with prisoners held under common law ", or, for example, the rules concerning the presentation of a warrant and the reasons for arrest, or the contacts and necessary interviews of a person undergoing sentence with his lawyer for the preparation of his defence in court. A very considered selection must

be made as regards requirements and practical use, working from the *concrete realities* of the detention.

It is on the other hand a fact, another reason that the project aimed at protecting non-delinquent detainees " should be able to be applied to persons detained for extremely different reasons and belonging to the most diverse categories " which requires rules sufficiently fundamental to be of general application to these different categories and to ensure for them a basic statute in all circumstances fulfilling the minimum requirements of humanity and equity, or it could almost be said by quoting the article common to the four Geneva Conventions of 1949 " affording all the judicial guarantees which are recognized as indispensable by civilized peoples ". These are the *minimum guarantees* which should be determined as soon as possible, " special statutes " which can take into account, as has already been said, diverse situations or categories, such as persons detained for administrative reasons, interned civilians, political internees, aliens or suspect nationals of an enemy country, in cases of internal disturbances, risks of war, prisoners of war or other internees. " Alterations or additions " of such a nature will naturally conform with the " minimum general rules " which constitute their foundation.

4. **Special aspects of political detention.** — It is right and necessary to consider these, when seeking for a sort of agreement and adaptation to the " minimum rules " already in existence, not to lose sight of the *special differences and considerations* which may have their " repercussions on the organizing of the captivity " of non-delinquents. Now, this is the first essential difference, that delinquents undergoing deprivation of their liberty on account of sentence or for reasons of security, by appearing before a court " have had the opportunity of giving an explanation of their acts and of discovering whether they were placed in a state of rebellion against the established order ", which in fact " gave them the realization of their guilt or, at least, the evidence they were recognized as being guilty ". Nothing similar, on the other hand, applies to persons detained without having committed an offence and who are not undergoing a fixed sentence after legal proceedings. They have the conviction,

on the contrary, which may often be justified, that " their detention is due to the accomplishment of their duty and that they deserve respect, if not admiration."

This is certainly often the case. It should however be asked to what extent this attitude can and should *really* weigh in the conditions of their detention and in the demands which, *from the point of view of the authorities detaining them*, those deprived of their liberty for various reasons are entitled to express on that account. It should not be lost from view in particular that persons detained for acts of a political character, which constituted " privileged offences " in the liberal legal system of the past century, are now in an increasing number of States, even those which are highly civilized, not considered as deserving of the former favoured treatment, but rather that of rigour. It is in fact no longer their views, their disinterestedness or the sincerity of their convictions, but the danger they might represent for the interests and security of the Power in whose hands they find themselves, which are regarded as being preponderant and decisive . . .

. . . Minimum rules capable of general application and respect or general effect should rather take into account *the fact itself* that one is dealing with non-delinquent detainees who have not been convicted, for whom more consideration should be given than those who have been convicted of an offence, and *at least* with as much consideration and as many guarantees as persons merely under preventive detention, benefitting from presumptive innocence, as enshrined in the Universal Declaration of Human Rights, article 11, paragraph 1 and the European Convention on Human Rights in its article 6, heading 2.

If the status of persons in " preventive detention " and presumed to be innocent can therefore provide useful indications [1] and that of detainees in the " political section " of detention centres can offer

[1] When the United Nations also made a study of the *preventive detention of adults* (agreement in a section of the general minimum rules, the Swiss group of the International Association of Penal Law submitted a report which we made which was published in the *Revue internationale de Droit pénal*, Paris 1950, p. 189 ff. We were also charged by UNO to undertake a preliminary study on " The detention of adults before sentence " (conditions of arrest and preventive detention; general report, plan and proposals regarding applicable rules and guarantees), United Nations, Final Record of General Secretariat, 1955, Doc. SOA/183/40: We base ourselves also on these considerations.

certain examples which could be included in the minimum rules to be drawn up, one should not lose sight of one difference, hence a difficulty of considerable importance. This is namely that during internal disturbances, for example, or cases of prisoners, suspects or internees, special problems arise from detention which is not individual but *collective*, not of a permanent and normally organized nature, rather than it is *occasional* and often improvised, with the disadvantages, various inconveniences, increased disciplinary rigour and even security measures which are resultant from such situations. Inadequate accommodation with bad arrangements, hutments and " camps " have almost everywhere shown up these serious shortcomings which, even should the detaining authorities wish it, often prevent humane, let alone proper and satisfactory, treatment in practice to be assured, which would justify itself in principle . . .

. . . We have to place ourselves in a realistic and humane perspective. This counsels us to codify *certain very definite principles*, without amassing a set of rules or complicated methods of execution which would more often than not, especially in some countries lacking modern techniques and material resources, risk *not being able to be applied.*

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The Preliminary Report of the International Law Study Centre proposes, as is customary, that a brief *preamble* acts as an introduction to this sort of " Declaration of Rights ", which could develop the two following considerations. Firstly, " the notion of safeguarding human rights and the protection of these rights on the international level has made considerable progress since the end of the Second World War and the corollary to such a movement of ideas is the protection of detainees now under consideration ". In the second place, that " the penal code evolving in the direction of giving ever move humane treatment to those deprived of their freedom, affecting criminals and delinquents, it would be a paradox to become desinterested in detainees deprived of their liberty without their having committed any offence. For these minimum guarantees should therefore be assured ".

It is in fact perfectly reasonable and in accordance with usage to introduce the subject with a sort of brief " description of reasons " of such a nature by pointing out the completion necessarily required by the " minimum general rules " in the treatment of detainees prosecuted or sentenced and deprived of their liberty by the decision of a court, which was achieved in Geneva in 1955. There would also be advantage in at once stating as a " fundamental principle ", as in the general rules for detainees (art. 6), the principle of *non-discrimination* as regards race, colour, religion, sex, birth or wealth, or any other similar criteria, in conformity with article 2 of the Universal Declaration of Human Rights, since it is precisely the " ideal " which one should attempt to achieve in all legislation and regulations and in all situations in which one really intends to make it prevail.

1. **Registration and possibility of identification of detainees.** — An accurate and complete *list* of non-delinquent persons deprived of their freedom should naturally be drawn up and kept up-to-date and an entry made in the prison calendar, if one wishes at all times to be able to ascertain the name, identity and the number of detainees, to be able to find them again, to prevent them from being completely cut off from their families and the outside world, enable them to be visited and given relief within the permitted limits and also obviate the risk, in extreme cases, of seeing them disappear, " of being lost like a stone in the sea ".

Such a list is all the more necessary, as is pointed out in the Preliminary Report, because " high-handedness is often employed in arrests where administrative or police methods are concerned ", that " the hazards of fighting determine military capture ". It also happens that detention does not result in " either discussion or a verdict in court " and that " their duration is not decided upon in advance ". Most frequently such detention " occurs on a wide scale, massively operated " when it is a question of prisoners, suspects or political agitators. These persons detained collectively should not become a " horde " or be dumped like an anonymous and indeterminate pack. They should certainly not be considered as being mere " serial numbers ", or " heads " to be counted, but rather as

" men " to be treated humanely, even when one wants to " neutralize " them.

Exact " Records of arrival, transfer and departure " must therefore be kept, without it being however essential for these to be codified in universal form. This procedure could not always be realizable practically in the form of a " bound and classified register ", well paginated and containing more or less detailed headings. The essential points to assure are exactitude, order, veracity and the exhaustive and lasting character of the document. It is not necessary either to insist, as in the minimum General Rules for detainees, on including the times of arrival and departure with the date. This is justified for sentenced detainees, as has rightly been observed during the discussion, as such exact mention is necessary when the law fixes a *definite respite* during which a prisoner under sentence or an accused person may be detained without certain acts or formalities being legally required, such as, for example, in cases of provisional arrest or detention under charge.

2. **Separation of detainees.** — It is obvious first of all that detainees should be kept apart according to their *sex*, a requirement necessitated for disciplinary and moral reasons. Men and women should everywhere be detained, if not in separate establishments, at least in different sections or quarters.

Other problems of separation raised for delinquent detainees present themselves differently for non-delinquents. Such is the case as regards the separation of *adolescents* and *children*, and adults. Methods of penal treatment and the special objects in the rehabilitation of young delinquents, the ignominous stain which their term in prison can mark them permanently and the risks of corruption or depravity to which they are exposed from other dangerous and pervert delinquents are motives which are nearly everywhere decisive in their separation. These motives, however, are not to be encountered where relations with non-delinquents are concerned. In conditions of internment, a certain communal life reflecting the world outside can be of benefit for all, including young as well as old, provided they do not demand special treatment in view of their age, such, for example, as a scholastic or professional back-

ground for the former and a less rigorous imprisonment or comforts and ease on account of infirmity for the latter. Family life itself should often be safeguarded. This should be a question of practical internal organization rather than one of principle.

On the other hand, separation of non-delinquent internees from persons *sentenced under common law* must be made. They should not be assimilated nor be intermingled, nor must the former be exposed to corruption, persecution, threats of violence, aggressiveness or blackmail by the latter. This is an elementary rule in all cases of detention. Most regulations insist upon this during preventive detention of persons under sentence and who should be " presumed innocent " until their guilt has been proved in law by the normal course of justice after trial. This is laid down in article 11 of the Universal Declaration of Human Rights and art. 6 (2) of the European Convention. There is all the more reason therefore to conform to this principle of equity and reasonableness as regards persons against whom no charge or penal accusation can be laid.[1]

As regards internees or military detainees (also aliens in the case of the danger of war or serious troubles), separation according to *nationality*, which is natural and necessary when adversaries in a conflict are involved, is justified for obvious reasons to avoid the risk of disturbance, defiance, disputes or brawls often of a serious and dangerous character. Such necessity does not on the contrary exist at first sight, as rightly pointed out in the Preliminary Report,

[1] Cf. GRAVEN, " Mémoire suisse pour l'Association internationale de droit pénal ", *Revue internationale de droit pénal*, 1950, heading II and in the same sense, note by Mr. J. A. Roux, Secretary-General of the Association and the Belgian memorandum of the lawyer Sasserath for the United Nations, 1950, No. 8. In practice, the lack of a sufficient number of distinct establishments often made the separation between those charged with an offence and persons under sentence. The prudent reservation " as far as possible " is added to the rule. This is, however, one of the undisputed requirements and one of the first reforms to be realized, for the same reprobation and in the same penal establishments should not be mixed for provisional detention for security reasons and the putting into effect of the punishment of depriving condemned delinquents of their freedom. This principle has always been rightly set forth without ambiguity in successive drafts of the C.I.P.P.s minimum rules. (1939, art. 12; 1950, art. 11, para. 1.) The project submitted by the United Nations to governments demanded this and the principle was formally accepted, in spite of known difficulties of execution, by the European Advisory Group in 1952, p. 30 and decision, 9 December 1952, p. 6. We have insisted especially on this point in our synthesis and detailed study plan on " the detention of adults before sentence " for the Economic and Social Council of the United Nations, heading II, para. 1.

when it is a question of grouping military prisoners of allied armies. In such cases it is not in fact more in evidence than for civilian detainees of different nationalities. Questions of organization and internal convenience, taking language or particular customs into account, could arise, but that is an administrative problem which has nothing to do with the condition of " humane treatment ", neither cruel nor degrading, of the detainees.

The provisions for insertion under this heading should restrict themselves to the strict requirements of humanity and the corresponding minimum rules should then be drawn up with prudence and flexibility so that they do not unnecessarily produce an obstacle to their application.

3. **Quarters, installations, accommodation.** — The problem of the material conditions of accommodation and of the cleanliness of sanitary arrangements and of detention, is naturally difficult to resolve because installations are more often than not inadequate or in a state of disrepair, if they even exist, and nearly always leave much to be desired in cases of personal detention and even more of collective detention.

The " Minimum Rules " for delinquent prisoners still represent in many countries a mere theoretical " ideal ", one which is *burdensome*. Financial and local resources are often lacking, quarters often being devoid of adequate installations and it is moreover considered that existing resources should be devoted to more urgent and more productive tasks, in the general interest than to the comfort of prisoners or detainees, regarded as being the least interesting element in the population, since they have to be segregated from society and are surrounded by distrust and general reprobation. There is a tendency to look upon places of detention less as a social institution, which they in fact are, or as a decent place of " committal ", than a sort of " dump " where collection can be made of all those of whom one wishes to be disencumbered. Difficulties increase when it is a question of installations for large numbers, as for prisoners of war or internees, the " parking " of suspects or enemies in camps or improvised hutments. The irrefutable image of certain " human cages " of these unhealthy and grim habitations, unworthy of man's

dignity, still lingers in the memory and should serve as a warning.

Such a reprehensible situation is condemned and attempts are being made to alter it even when criminals are concerned, formerly treated as " social wild beasts " whom it was considered, according to ancient beliefs, a duty " to make suffer ", to " punish " and undergo " expiation " in a sort of infernal " purgatory ". This treatment was also intended to serve as an example and intimidate all those who might be tempted to imitate them. This is all the more intolerable when it is applied to non-delinquents, interned civilians and military personnel who lead decent lives and are often most honourable, or to innocent people, even women and children, against whom no reproaches can be made. It is not a question here of evil-doers of whom the superficial popular saying was that " those who dislike prison have only to see to it that they do not go there ", but a matter of individuals deprived of their liberty without their having deserved any punishment whatsoever.

For a far juster reason than the " penitentiary population ", these detainees have the essential *right*, intrinsic to the human being, to be lodged and maintained in installations and quarters which are neither unhealthy nor properly speaking uninhabitable, but which conform to minimum requirements as regards available space, indispensable conditions of hygiene (air, light, water, protection against cold, possibility of keeping clean and satisfy natural intimate needs etc . . .).

By neglecting and suppressing these possibilities of preserving human dignity and self-respect, one risks degrading men materially " to the level of animals " (those who have not on the contrary raised themselves to a higher level by a sort of holiness or spiritual nobility by purging through suffering and will-power or by faith, which is not the common lot). It has rightly been said that certain concentration and forced labour " camps " have constituted the most loathsome attempt to degrade and demoralize men.

These considerations and this reminder certainly serve some useful purpose, since the " Minimum Rules " for humane treatment, that is to say, which is correct, decent and just, even when conditions of accommodation and installation are difficult, are not simple to fix, between material exigencies, nearly if not entirely impossible to satisfy and those of human dignity, which are legitimate and often

run counter to the possibilities, means and, it should be said, sometimes the will also of the authorities taking measures to deprive of their liberty, those whom it considers it should guard against or from whom they ought to defend themselves. One should therefore not be shocked " to see the status of persons deprived of their liberty without their being delinquents based on principles accepted for persons undergoing sentence under common law ", according to the terms of the Preliminary Report, when these principles are tolerant, humane and perfectly correct, as articles 9 to 14 of the 1955 " Minimum Rules " attempt precisely to obtain. This is also, on the other hand, the reason for not wanting to go too far in this sphere by " asking the impossible ", what in fact is *practically unrealizable* in conditions of a given country or situation and which would not correspond to " minimum requirements ", but to " optimum realizations ".

Experience has shown that one should be *realist* and empirical in this connection, if it is desired to extricate oneself from mere theoretical declarations and verbal affirmations and not risk obstructing the obtaining of *acceptable solutions* which will be satisfactory in the end, by wishing to impose utopian solutions which cannot even be realized for all honest people not deprived of their liberty in whatever capacity who are massed, huddled together and perish in " hovels " or " shanty towns ", often built on refuse heaps which are a disgrace to organized society.

It is, therefore, indispensable, by way of conclusion to *simplify* the " minimum rules " for all detained persons, without taking offence at theoretical comparisons between " delinquents " and " non-delinquents ", but to want to respect human dignity in both cases, by basing oneself here again on the *real situation and possibilities* of installations fulfilling " minimum " requirements of humanity and decency, which does not mean minimum and virtually non-existent exigencies. One should also take into account the immense *variety* of customs, countries, climate, technical methods and types of installations or accommodation to be considered and the conditions which can widely differ, both in theory and in practice, in installations in permanent penal establishments fulfilling all requirements, right and desirable in themselves, in the modern penal system and its educational and moral objectives for

the " rehabilitation " of delinquents. The draft " Minimum Rules for non-delinquent detainees " should be drawn up on the basis of these essential facts and by avoiding too meticulous regulations as to the size of windows, individual cubic air space, ideal lighting, or the number and functioning of baths and showers.[1] Authorities and experts of whom such demands are made will naturally object that, even with the best will in the world to conform to the rules, they can only satisfy those which are in fact realizable.

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[1] This is an experience we ourselves have had on visits to existing establishments with a view to modernizing the penitentiary system in the Ethiopian Penal Code of 1957 (art. 105 ff.), made specially in Ogaden on the edges of the desert at Dire-Dawa where there was a director in charge who was intelligent, humane, full of goodwill and also with common sense and a realist. We discussed the adequacy of essential water and sanitary installations in accordance with the " Minimum Rules ". He showed us showers and basins in the yard, which could not, however, be used during the long dry season when all water is polluted, the light and requisite amount of cubic air space was also mentioned and he observed, in the blinding and stifling atmosphere, that such " ideal " installations would mean torture, madness and even death for the detainees who would " benefit " therefrom. He also showed us appropriate and healthy work in the open air, and we could see that the arid and baking earth only afforded scant vegetation, difficult to maintain, scrub and some thorn bushes barely sufficient to give nourishment to goats. These are " object-lessons " which experts tend too often to forget.