

The protection of displaced persons in non-international armed conflicts

by Denise Plattner

I. INTRODUCTION

In recent years a number of institutions, in particular non-governmental organizations, have brought their attention to bear on the plight of people displaced within national borders.¹ Prompted by their interest in the protection of human rights, and in keeping with the charitable nature of their work, they have focused the international spotlight on the situation of those who leave their homes in a context marked by political violence. The international community has thus been made aware of two things simultaneously: first, that countries affected by internal armed conflicts have a large number of displaced persons, and second, that armed clashes often result in large-scale population movements. The displacement of minority communities can even become a deliberate policy.

This sometimes neglected aspect of the suffering engendered by war has now been put on the agenda of multilateral diplomacy.² This gives us the opportunity — which it would be remiss of us to pass by — to review the existing law and to promote its implementation.

¹ For example, the Commission of the Churches on International Affairs and the Friends World Committee for Consultation (Quakers) submitted to the Commission on Human Rights a communication on internally displaced persons (document E/CN.4/1991/N60 1 of 15 December 1990).

² Pursuant to the initiative mentioned in footnote 1 above, the 47th session of the Commission on Human Rights adopted resolution 1991/25 on internally displaced persons. At its 48th session the Commission adopted resolution 1992/73, requesting the Secretary-General to collect the views of the governments and the intergovernmental and non-governmental organizations concerned and to report to the 49th session.

II. BACKGROUND

1. The sources of the rules applicable in non-international armed conflicts

As soon as the situation in a country is characterized by continued and organized armed clashes between the legal government and a group of insurgents, or between parties none of which constitute the legal government, the authorities concerned become subject to a number of obligations which are binding under international law. The general purpose of these obligations is to limit the violence and to protect people from any abuse of power by the belligerents. The relevant rules are contained in the branch of international law commonly known as international humanitarian law,³ which is comprised of one very comprehensive series of rules governing international armed conflicts, and another more summary set of provisions which is applicable in non-international armed conflicts and therefore concerns us here.

The treaty-based rules making up humanitarian law applicable in internal armed conflicts are set forth in two places: Article 3 common to the 1949 Geneva Conventions (GC I-IV Art. 3),⁴ which applies in this kind of conflict, and Additional Protocol II (P II),⁵ which develops and supplements Article 3.⁶

³ The Commentary on the Additional Protocols of 8 June 1977 defines humanitarian law as follows: "the expression **international humanitarian law applicable in armed conflicts** means international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of Parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict. The expression 'international humanitarian law applicable in armed conflict' is often abbreviated to **international humanitarian law or humanitarian law**". (*Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, eds., ICRC/Martinus Nijhoff Publishers, Geneva, 1987, p. xxvii).

⁴ At 30 September 1992, 174 States were party to the four 1949 Geneva Conventions.

⁵ At 30 September 1992, 106 States were party to Additional Protocol II (116 were party to Additional Protocol I).

⁶ It is generally considered that the level of strife required for common Article 3 to apply is lower than that required for the application of Protocol II (see *Commentary on the Additional Protocols, op. cit.*, p. 1350, para. 4457). Moreover, the definition of armed conflict as set forth in Protocol II requires that one of the parties concerned be made up of government armed forces (Art. 1, para. 1). Thus, if several factions clash without the involvement of the government armed forces, only common Article 3 is applicable (*ibid.*, p. 1351, para. 4461).

Finally, the victims of internal armed conflicts also benefit from the protection of a series of international customary rules, in particular those relating to the methods and means of combat.

2. Differences between international human rights law and international humanitarian law

International humanitarian law is a system of legal rules specially conceived for implementation in the event of prolonged and organized armed clashes, but it in no way supersedes other systems of international rules protecting the individual. Thus, in situations of armed conflict international human rights law and international humanitarian law are applied concurrently. We can nevertheless assert, for a number of reasons, that the provisions of humanitarian law are tailored more specifically to deal with the special problems that arise during armed conflict than are those of human rights law.⁷ Indeed, the applicability of international human rights instruments is often suspended during armed confrontations.⁸ Of course, the inalienable human rights remain applicable, but the protection they offer would seem to be inferior to that afforded by international humanitarian law.⁹ International human rights law contains no rules on the methods and means of combat, meaning that most problems relating to the conduct of hostilities are outside its purview.¹⁰ Humanitarian law contains obligations which are binding on all the belligerents, whereas in principle only States can be held responsible for human rights violations.¹¹

⁷ See *inter alia* Marco Sassòli, "Mise en œuvre du droit international humanitaire et du droit international des droits de l'homme: une comparaison", in *Annuaire suisse du droit international*, Vol. XLIII, 1987, p. 51.

⁸ For an up-to-date list of the States having declared, extended or cancelled a state of emergency (about 70 since 1 January 1985), see Mr. Leandro Despouy's 5th annual report to the Commission on Human Rights, E/CN.4/Sub.2/1992/23, 6 July 1992.

⁹ See *inter alia* Mohamed El Kouhene, *Les garanties fondamentales de la personne en droit humanitaire et droits de l'homme*, Martinus Nijhoff Publishers, Dordrecht, 1986, p. 145.

¹⁰ See Absjøm Eide, "The laws of war and human rights. Differences and convergences", in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, Christophe Swinarski ed., ICRC/Martinus Nijhoff Publishers, Geneva, 1984, p. 690.

¹¹ See Theodor Meron, *Human rights and humanitarian norms as customary law*, Clarendon Press, Oxford, 1989, pp. 155-171.

Finally, the mechanisms for monitoring compliance with humanitarian rules require the appropriate organizations to have access to protected persons on a regular basis, essentially for the purpose of preventing violations.¹² The mechanisms for monitoring respect for human rights, on the other hand, are set in motion only when individuals or third States approach the UN or any other agency having jurisdiction in the matter under the human rights treaties. This point constitutes a significant difference between the two branches of law.¹³

III. CONTENT OF THE PROTECTION OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN NON-INTERNATIONAL ARMED CONFLICTS

The rules applicable in non-international armed conflicts may be divided into three categories: those that protect the victims from the effects of hostilities; those that protect them from any abuse of power by the belligerents; and those that require certain activities to be undertaken in favour of non-combatants or persons *hors de combat*.

1. Protection from the effects of hostilities

The rules affording protection from the effects of hostilities are those that govern the means and methods of combat. As concerns non-international armed conflicts, it is worth refreshing our memory on a number of points.

Article 3 common to the Geneva Conventions contains no rules specifically governing the conduct of hostilities.¹⁴ Consequently, when the State involved is not a party to Protocol II, the belligerents must rely essentially on the rules of customary law for the definition of their duties during military operations. The same holds true if the conflict has not yet reached the level of intensity required for the application of Protocol II.¹⁵

¹² See Sassòli, *op. cit.*, p. 53.

¹³ See Eide, *op. cit.*, p. 697.

¹⁴ Common Article 3 is nevertheless applicable to military operations, even though the solutions it offers are very limited. See Robert Kogod Goldmann, "International humanitarian law and the armed conflicts in El Salvador and Nicaragua", *The American University Journal of International Law and Policy*, Vol. 2, No. 2, Fall 1987, p. 547.

¹⁵ See note 6 above.

The rules in Protocol II relating to military operations (Part IV) may be few in number, but their importance should not be underestimated as Protocol II,¹⁶ for example, bans attacks on the civilian population,¹⁷ prohibits the starvation of the civilian population¹⁸ and attacks on objects indispensable to its survival,¹⁹ and Article 17 prohibits the displacement of the civilian population unless the security of the civilians involved or imperative military reasons so demand.²⁰ However, international law in no way leaves the belligerents free to launch attacks causing disproportionate losses among the civilian population,²¹ to use weapons causing superfluous injury²² or having indiscriminate effects, such as chemical or bacteriological weapons,²³ or to lay mines indiscriminately.²⁴ All these practices are prohibited by rules which have not yet been formally codified in respect of internal armed conflicts. Since such practices are at the root of most of the population displacements occurring today,²⁵ there can be no doubt that the relevant rules should be promoted as a matter of urgency.

2. Protection against abuse of power

The provisions affording protection against abuse of power cover the conditions of internment or detention of persons deprived of their freedom for reasons connected with the armed conflict,²⁶ the legal guarantees applicable to the prosecution of offenders and the repres-

¹⁶ P II, part iv.

¹⁷ P II, Art. 13, par. 2.

¹⁸ P II, Art. 14, first sentence.

¹⁹ *Ibid.*, second sentence.

²⁰ P. II, Art. 17.

²¹ See "Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts", *International Review of the Red Cross*, No. 278, September-October 1990, p. 388.

²² *Ibid.*, p. 389. See also Denise Plattner, "The 1980 Convention on Conventional Weapons and the applicability of the rules governing means of combat in a non-international armed conflict", *IRRC*, No. 279, November-December 1990, p. 554.

²³ "Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts", (Note 21), p. 395.

²⁴ *Ibid.*, p. 395 ff.

²⁵ See Alain Mourey, "Famine and war", *IRRC*, No. 284, September-October 1991, p. 552; see also the resolution adopted by the Council of Delegates of the International Red Cross and Red Crescent Movement in Budapest on the protection of the civilian population against famine in situations of armed conflict, *IRRC*, No. 286, January-February 1992, p. 57.

²⁶ P II, Art. 5.

sion of offences committed in connection with the armed conflict,²⁷ and the rules of conduct to be observed in all circumstances by civilian officials and members of the armed forces with regard to non-combatants or persons *hors de combat* under their authority.²⁸ All these rules are very similar to the norms of international human rights law in terms of both content and the problems they deal with. They cannot, however, be fully implemented as complementary branches of international law if the State concerned has invoked the derogation clause contained in human rights treaties.²⁹

The injunctions imposed by international humanitarian law on the civilian and military authorities are numerous and specific.³⁰ Common Article 3 and Additional Protocol II expressly prohibit twenty-three different acts, ranging from murder and torture to the threat of indecent assault.³¹ Types of behaviour other than those expressly prohibited can also be considered to be implicitly forbidden by the general obligation of humane treatment set forth in both instruments.³²

In respect of displaced persons, these rules are as important as those governing the means and methods of combat. Indeed, the harassment of civilians is another frequent cause of population movements.³³

²⁷ GC I-IV, Art. 3 (1.d), and P II, Art. 6.

²⁸ *Inter alia* GC I-IV, Art. 3 (1), and P II, Art. 4.

²⁹ See note 8 above.

³⁰ These are injunctions with which the civilian and military authorities must comply, no matter what the circumstances, with regard to any person under their authority (see footnote 28 above).

³¹ The following are expressly prohibited: killing (GC I-IV Art. 3.1(a), P II, Art. 4.2(a)); summary executions (GC I-IV Art. 3.1(a) and (d)), P II, Arts. 4.2(a) and 6.2); physical and mental torture, mutilation and corporal punishment (GC I-IV Art. 3.1(a), P II, Art. 4.2(a)); rape, enforced prostitution and indecent assault (GC I-IV Art. 3.1(c), P II, Art. 4.2(e)); pillage (GC I-IV Art. 3.1, P II, Art. 4.2(g)); collective punishment (GC I-IV Art. 3.1, P II, Art. 4.2(b)); the taking of hostages (GC I-IV Art. 3.1(b), P II, Art. 4.2(c)); acts of terrorism (GC I-IV Art. 3.1, P II, Art. 4.2(d)). It is also prohibited to threaten protected persons with any of the above acts (GC I-IV Art. 3.1, P II, Art. 4.2(h)).

³² The obligation to respect person, honour and convictions and religious practices (GC I-IV Art. 3.1, P II, Art. 4.1), and the prohibition on inflicting or threatening to inflict any form of humiliating or degrading treatment other than that expressly prohibited (GC I-IV Art. 3.1(c), P II, Art. 4.2(e) and (h)) constitute the principal aspects of the general obligation to treat non-combatants or persons *hors de combat* humanely (GC I-IV Art. 3.1, P II, Art. 4.1). Moreover, by virtue of the prohibition of adverse distinction set forth in P II, Art. 4.1 and defined in detail in common Article 3 ("adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria"), discriminatory treatment is also contrary to the obligation of humane treatment.

³³ See "Respect for international humanitarian law — ICRC review of five years of activity (1987-1991)", in *IRRC*, No. 286, January-February 1992, p. 83.

Moreover, such harassment does not necessarily end with displacement; only the tormentors' faces change. Here again, the existing rules must be well known and widely disseminated.

3. Norms concerning care and relief activities

The international rules applicable in internal armed conflicts provide for and govern the provision of services for those who are not or are no longer participating in the hostilities.

As concerns the sick and wounded, both civilian and military, the rules stipulate in particular that they must be collected and cared for,³⁴ that medical personnel³⁵ and facilities³⁶ are to be protected against military operations, and that medical personnel and facilities regarded as such under the law³⁷ are to be identified by means of the red cross or red crescent emblem.³⁸

As concerns the civilian population in general, a category which includes civilian sick and wounded, the rules provide that if essential supplies are lacking, the State concerned must agree to the mounting of relief operations which are humanitarian, impartial and conducted without distinction.³⁹ From the legal point of view, this means that the State would be violating international law were it to prevent people whose lives and health were seriously threatened from receiving assistance from an international organization, in so far as such assistance is provided in a manner in keeping with the aim of humanitarian law.⁴⁰

³⁴ GC I-IV Art. 3.2, P II, Arts. 7 and 8.

³⁵ P II, Art. 9; see also "Rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts", (Note 21), p. 391.

³⁶ P II, Art. 11; see also Note 21, p. 391.

³⁷ For the definition of medical personnel, see *ibid.*, p. 392. Medical facilities comprise medical units and medical means of transport; for their definition, see *Commentary on the Additional Protocols, op. cit.* p. 1433, paras. 4711 and 4712.

³⁸ P II, Art. 12.

³⁹ P II, Art. 18.2.

⁴⁰ On this subject, see the series of articles on humanitarian assistance which appeared in *IRRC*, No. 288, May-June 1992, in particular: Yves Sandoz, "'Droit' or 'devoir d'ingérence' and the right to assistance: the issues involved", p. 220; Maurice Torrelli, "From humanitarian assistance to 'intervention on humanitarian grounds'", p. 246; Denise Plattner, "Assistance to the civilian population: the development and present situation of international humanitarian law", p. 262. See also Cornelio Sommaruga, "Assistance to victims of war: international humanitarian law and humanitarian practice", p. 376, and Frédéric Maurice, "Humanitarian ambition", p. 369, in *IRRC*, No. 298, July-August 1992.

IV. IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAW APPLICABLE IN NON-INTERNATIONAL ARMED CONFLICT

1. The agents of implementation and their specific roles

(a) Humanitarian organizations

At present, international organizations are supplying vast quantities of aid to persons displaced in situations governed by international humanitarian law. These are usually specialized institutions or agencies set up by the United Nations General Assembly, such as UNICEF,⁴¹ UNHCR,⁴² UNDP⁴³ and the WFP,⁴⁴ or non-governmental organizations such as *Médecins sans frontières*, Oxfam and the Save the Children Fund.⁴⁵

The ICRC, for its part, has 52 delegations working in 80 countries. In 1991, more than 80% of its field budget (610 million Swiss francs) was allocated to protection and assistance activities for civilians, in particular displaced persons and refugees.⁴⁶

The question which springs to mind is whether or not all this aid is provided within the legal framework established by the humanitarian rules.

The answer is in the affirmative, if the assistance is supplied in response to the humanitarian problems that the rules are intended to solve.⁴⁷ In this sense, assistance furnished by the ICRC or by any other operational organization respecting the principles of humanitarian aid

⁴¹ The United Nations Children's Emergency Fund, whose mandate is to assist children, has been particularly active in Sudan.

⁴² Among the assistance activities undertaken by the office of the United Nations High Commissioner for Refugees are those carried out in Iraqi Kurdistan and in the former Yugoslav republics.

⁴³ The United Nations Development Programme's operation in Mozambique, undertaken in cooperation with the government, is an example of this agency's work in war-torn countries.

⁴⁴ In September 1992, for example, the World Food Programme and the ICRC embarked on a joint 100-day relief operation in Somalia.

⁴⁵ MSF and the Save the Children Fund are active in Somalia, for example; they are also present in Mozambique, as are Oxfam and many other non-governmental organizations.

⁴⁶ Frédéric Maurice, *The ICRC's work to assist civilian refugees and displaced persons — an operation-by-operation description 1991*, January 1992, p. 2 (paper available from the ICRC).

⁴⁷ See Jovica Patrnogic, "The evolution of the right to assistance — concluding statement", in the Institute of International Humanitarian Law's report on the XVIIth Round Table on problems of humanitarian law (San Remo, 2-4 September 1992). See *infra*, pp. 592.

distributed impartially and without discrimination must be considered as having been provided in compliance with humanitarian law.⁴⁸ The ICRC has a specific role in that it focuses on the most urgent needs, operates in conflict zones, and conducts medical activities for the victims of war.⁴⁹ Assistance intended to promote the country's development is not, of course, within the scope of humanitarian law. The same question may be asked about assistance provided by non-operational intergovernmental organizations, since the use to which it is put is monitored in a way which is incompatible with an armed conflict situation.

(b) United Nations organs

The United Nations evinces its concern regarding armed conflicts not only by providing assistance, but also in resolutions adopted by UN organs and calling for compliance with international humanitarian law.⁵⁰ These resolutions reflect the different mandates set forth in the United Nations Charter, i.e. for the Security Council, to safeguard international peace and security, and for the other bodies, their mandates with respect to human rights. While the Security Council resolutions on Iraqi civilians⁵¹ and Somalia⁵² do not mention humanitarian law, some of the resolutions adopted by the Commission on Human Rights are more explicit in that regard.⁵³

⁴⁸ See letter (a) of the General Conclusion on International Protection adopted by the 43rd session of the Executive Committee of the High Commissioner's Programme (5-9 September 1992), according to which the UNHCR assumes its responsibilities "within the framework of international refugee law and applicable regional instruments, with due regard for human rights and humanitarian law" (see the Report on the 43rd Session of the UNHCR Executive Committee, A/AC.96/8041, of 15 October 1992).

⁴⁹ Frédéric Maurice and Jean de Courten, "ICRC activities for refugees and displaced civilians", *IRRC*, No. 256, January-February 1991, pp. 14 and 18.

⁵⁰ During the Gulf war, international humanitarian law was mentioned in Security Council resolution 666 of 13 September 1990, and subsequently in resolutions 670 and 674, to mention only the first 12 resolutions. In connection with the former Yugoslavia, at 31 October 1992 humanitarian law had been referred to in resolution 764 of 13 July 1992, resolution 771 of 13 August 1992, and resolution 780 of 6 October 1992.

⁵¹ Security Council resolution 688 of 5 April 1991 condemned the repression of the Iraqi civilian population and insisted that Iraq "allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and to make available all necessary facilities for their operations".

⁵² See resolutions 733 of 23 January 1992, 746 of 17 March 1992, 751 of 24 April 1992 and 767 of 24 July 1992 (at 31 October 1992).

⁵³ See, for example, resolutions 1987/51, 1988/65, 1989/68, 1990/77 and 1991/75 adopted by the Human Rights Commission on the human rights situation in El Salvador, which referred to common Article 3 and to Protocol II.

The United Nations organs and the ICRC do not, however, work for compliance with humanitarian law in the same way. The ICRC's mandate stems from humanitarian law itself, and only humanitarian law can define the criteria that govern the ICRC's endeavours to promote compliance with its provisions.⁵⁴

(c) The States

A non-international armed conflict is an internal affair of the State concerned, so that State can invoke the principle of non-interference to oppose third-party interventions intended to promote implementation of the relevant international rules. Article 1 common to the Geneva Conventions nevertheless provides that States have the duty to ensure respect for humanitarian law, and the International Court of Justice considers that this duty obtains with respect to non-international armed conflicts as well.⁵⁵ Only an obligation to refrain from certain acts — such as those which would encourage violations of humanitarian law — has been inferred from this, but Article 1 should also be construed as imposing active obligations.⁵⁶ In any case, it entitles third-party States to take steps to promote respect for humanitarian law on the part of authorities faced with a non-international armed conflict. They must exercise this right, however, in accordance with international law, and must not do anything incompatible with the objective pursued.⁵⁷

⁵⁴ The Statutes of the International Red Cross and Red Crescent Movement, adopted by the States and the Movement's components as members of the International Conference of the Red Cross and Red Crescent, require the ICRC to work for the faithful application of international humanitarian law and to ensure the protection of and assistance to military and civilian victims of armed conflicts. In so doing, the ICRC must honour the principle of impartiality (Art. 5, paras. 2(c) and 2(d) of the Movement's Statutes; for the complete text, see *IRRC*, No. 256, January-February 1987, p. 25 ff.).

⁵⁵ Judgment of the International Court of Justice in the case of military and para-military activities in and against Nicaragua, ICJ, *Reports of Judgments, Advisory Opinions and Orders*, The Hague, 1986, p. 104, para. 220.

⁵⁶ See Luigi Condorelli and Laurence Boisson de Chazournes, "Quelques remarques à propos de l'obligation des États de 'respecter et faire respecter' le droit international humanitaire 'en toutes circonstances'", in *Studies and essays on international humanitarian law and Red Cross principles*, (Note 10), p. 26 ff.

⁵⁷ As concerns in particular the fact that Article 1 common to the Geneva Conventions cannot serve as grounds for an armed intervention, see Yves Sandoz, "L'intervention humanitaire, le droit international humanitaire et le Comité international de la Croix-Rouge", in *Annales du droit international médical*, No. 33, 1986, p. 35, and, by the same author, "'Droit' or 'devoir d'ingérence' and the right to assistance: the issues involved", (Note 40), p. 230; see also Kamen Sachariw, "States' entitlement to take action to enforce international humanitarian law", *IRRC*, No. 270, May-June 1989, p. 192, and Nicolas Levrat, "Les conséquences de l'engagement pris

In principle, humanitarian law does not discourage States from undertaking relief operations on the territory of another State.⁵⁸ The possibility is even explicitly provided for in the case of territory occupied by a foreign power.⁵⁹ In this event, however, the distribution of relief consignments must be supervised by a neutral entity.⁶⁰ This is probably the only way a government can make sure that the relief operation serves only humanitarian ends and will therefore not weaken its military and political position.

(d) The ICRC

In the light of the above, it is clear that the ICRC is both an operational organization and one which safeguards respect for the international rules applicable in non-international armed conflicts. This dual role was conferred on it many years ago by the States, and confirmed by the 1949 Geneva Conventions in the event of international armed conflicts.⁶¹

The situation as concerns non-international armed conflicts is as follows. The Statutes of the International Red Cross and Red Crescent Movement require the ICRC to assist the victims of armed conflicts, no matter who they are, and to work for the faithful application of humanitarian law.⁶² Article 3 common to the Geneva Conventions authorizes the ICRC to negotiate with the governments concerned to that end.⁶³ In fact, the ICRC is present on the scene of almost every

par les Hautes Parties contractantes de 'faire respecter' les conventions humanitaires", in *Implementation of international humanitarian law*, Frits Kalshoven and Yves Sandoz, eds., Martinus Nijhoff Publishers, 1989, pp. 263-296 and 289.

⁵⁸ In this regard, Article 5 of the resolution on the protection of human rights and the principle of non-intervention in the internal affairs of States, adopted on 13 September 1989 by the Institute of International Law, refers to "an offer by a State, a group of States, an international organization or an impartial humanitarian body such as the International Committee of the Red Cross (ICRC), of food or medical supplies..." (*Yearbook of the Institute of International Law*, 1990, Vol. 63, Part II, pp. 344-345).

⁵⁹ GC IV, Art. 59.2.

⁶⁰ GC IV, Art. 61.1.

⁶¹ The ICRC is entitled to visit prisoners of war (GC III, Art. 126) and civilian persons protected by the Fourth Geneva Convention (GC IV, Art. 143). It can act as a substitute for the Protecting Power (GC I-IV, Arts. 10, 10, 10 and 11 resp., and P II, Art. 5). As concerns its role in relief operations, see GC IV, Arts. 23, 59 and 61, and P I, Art. 70. Finally, GC I-IV, Arts. 9, 9, 9 and 10 respectively and P I, Art. 81 give the ICRC a right of humanitarian initiative in international armed conflicts.

⁶² See note 54 above.

⁶³ Paragraph 2 of common Article 3 in fact provides that the ICRC "may offer its services to the Parties to the conflict", thus expressing a right of humanitarian initiative applicable in non-international armed conflicts. See Yves Sandoz, "Le droit d'initiative

internal conflict worldwide, although the terms and conditions of its activities naturally vary with the circumstances.⁶⁴

2. The difficulties of implementing international humanitarian law

(a) Monitoring the implementation of international humanitarian law

Studies conducted on the situation of persons displaced within national borders have often revealed the absence of any mechanism to ensure compliance with existing rules of law. Indeed, in situations of non-international armed conflict what the written law confers on the ICRC is essentially the power to negotiate. Fortunately, in practice States have gone much further and allowed the ICRC to operate in conflict zones, not least because they have an interest in seeing that people not taking part in the hostilities are treated humanely.

It must be borne in mind that the mechanisms for the implementation of international humanitarian law, which for the time being are codified for international armed conflicts only, are mainly preventive in purpose.⁶⁵ This also explains the confidential nature of the ICRC's findings. While the mechanisms provided for in the Geneva Conventions cannot be applied as they stand to situations of internal armed conflict, their main features can be preserved. Indeed, the ICRC has increasingly tended to submit to the authorities concerned, with their agreement, reports on the protection of the civilian population.⁶⁶ This

du Comité international de la Croix-Rouge", *German Yearbook of International Law*, Vol. 22, 1979, pp. 364 ff.

⁶⁴ See "Respect for international humanitarian law: ICRC review of five years of activity (1987-1991)", *op. cit.* In the section on humanitarian law in internal conflicts, the ICRC refers to its activities in the following countries: Sri Lanka, Afghanistan, Mozambique, Uganda, Rwanda, El Salvador, Nicaragua, Yugoslavia, Angola, Ethiopia, Sudan, Somalia, Liberia, Lebanon, Cambodia and Myanmar. For a relatively recent and detailed description of ICRC activities for refugees and displaced persons, see Frédéric Maurice, *The ICRC's work to assist civilian refugees and displaced persons*, *op. cit.*

⁶⁵ See note 12 above.

⁶⁶ See the ICRC's 1991 *Annual Report*, the sections on El Salvador (p. 52) and the Philippines (p. 73). In the same publication, see ICRC activities for the protection of civilians in Liberia (p. 25), Uganda (p. 33), Rwanda (p. 34), Sudan (p. 38), Peru (p. 55) and Colombia (p. 57).

practice should be extended, since it has often led to tangible improvements.

(b) The difficulties involved in providing assistance

Public opinion, alerted by the media, is very much aware of the difficulties encountered in providing assistance in certain situations.⁶⁷ From the legal point of view, any refusal to allow or hamper an external aid operation must be regarded as a violation on a par with other acts which are contrary to the law and which are often committed concurrently.⁶⁸ Assistance and protection are therefore two sides of the same coin. On the other hand, no matter what the legal provisions, governments will always require serious guarantees before they agree to allow relief supplies to be distributed to the enemy side.⁶⁹ Moreover, a party which is not the internationally recognized government may well have just as much difficulty in agreeing to relief operations over which it has no control. Military protection for humanitarian aid would in itself give rise to problems of image only, if the parties concerned were truly willing to respect it. The question must be put above all in terms of effectiveness.

V. CONCLUSION

To conclude we have seen that there is a whole series of rules and mechanisms which should play a decisive role in preventing population movements in situations of non-international armed conflict. The implementation of these mechanisms depends first and foremost on the

⁶⁷ These difficulties notwithstanding, we should remember the following assistance operations for civilians conducted by the ICRC in 1991 (see *1991 Annual Report*): on both sides of the front lines in Angola (p. 17) and Mozambique (p. 20); in Liberia, including NPLF zones (p. 25); in conflict zones in Uganda (p. 33); in Rwanda, where it intervened to prevent the grouping of displaced people in overcrowded camps (p. 34); in both government and SPLA-controlled areas in southern Sudan, where it brought in and distributed thousands of tonnes of food (p. 39); in Sri Lanka, where it brought in 79,000 tonnes of food by sea and land (p. 76); and in Yugoslavia, where from November to December 1991 ICRC ships plied the coast to help civilians cut off by the fighting (p. 90).

⁶⁸ See Cornelio Sommaruga, "Assistance to victims of war", (Note 40), p. 374.

⁶⁹ See Article 70, para. 3, of Additional Protocol I, applicable to international armed conflicts. For the definition of "the parties concerned" mentioned in the first paragraph of the same article who can have recourse to the facilities provided for in paragraph 3, see *Commentary on the Additional Protocols, op. cit.*, p. 819, para. 2806. It is hardly likely that the party to benefit from an offer to provide relief would be opposed to it.

political will of the parties to the conflict. All the bodies we have mentioned can play a role in accordance with their respective mandates.

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