

## REFUGEES AND CONFLICT SITUATIONS

*The protection of refugees and displaced persons is guaranteed by many universal and regional instruments of international law. The rules are there, but for several years the humanitarian organizations charged with implementing them have constantly had to face new situations brought about by the scale and frequency of mass population movements, especially in the Third World, and new types of violence which affect both the status and the possibilities for protection of the people concerned. Very often, the solutions arrived at by these bodies have taken the form of assistance rather than protection, the one not always easily distinguishable from the other.*

*To what extent, therefore, do legal rules provide protection for “traditional” refugees and for people who, although not refugees, are forced to leave their country because of armed conflict or serious internal disturbances? How have humanitarian protection and assistance organizations adapted to reality in this regard?*

*The growing complexity of the problems facing refugees and displaced persons, especially in situations of conflict, calls for increasingly close co-operation between the humanitarian bodies responsible for protecting and assisting them. What can we say in 1988 about the respective mandates of these organizations, the complementarity of their activities and the degree to which they co-operate?*

*The International Review of the Red Cross, devoting this issue to the theme “Refugees and conflict situations”, asked the United Nations High Commissioner for Refugees, the President of the International Institute of Humanitarian Law, the ICRC Legal Division and a professor of law at Chulalongkorn University in Bangkok to share with its readers their thoughts about these matters, which are constant concern to the international community.*

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Jean-Pierre Hocké, United Nations High Commissioner for Refugees, focuses in his article "Protection by action" on the changing nature of UNHCR operations since the institution was created in 1951. He observes that the refugee problem is such that refugees can no longer be protected unless that protection goes hand in hand with some form of assistance. In fact, combining protection and assistance has gradually become a necessary condition for implementation of the UNHCR mandate.

This combining of protection and assistance is already the hallmark of Red Cross action in armed conflicts. The two concepts are and must remain inextricably linked if victims of armed conflicts are to be defended and human life and dignity respected.<sup>1</sup>

The similarity between UNHCR and ICRC protection and assistance activities has a legal basis that it might be useful to recall and above all to examine in the light of the social and political changes of recent years.

ICRC activities for refugees are reviewed from the legal standpoint by Françoise Krill, of the ICRC Legal Division. Her detailed study covers all the situations that could be encountered by refugees, who are regarded as civilians and protected as such by international humanitarian law, and analyses the legal mechanism, providing such protection in time of armed conflict. She gives special attention to the progress made in Protocol I of 1977 towards the protection of refugees, whether civilians in the power of a party to the conflict or civilians suffering the effects of the hostilities (for example, in the context of military attacks on refugee camps).

Mrs. Krill also explains the legal basis for ICRC action for refugees, the better to define the ICRC's specific role in this regard: the ICRC intervenes on behalf of refugees when their situation is related to a conflict; hence the ICRC's recognized mandate to protect people displaced within a country affected by a conflict.

Her article is an apt introduction to that written by Professor Vít Muntarhorn, from Chulalongkorn University in Bangkok. This author examines the mandates of the International Red Cross and Red Crescent Movement, the ICRC in particular, and of the UNHCR in the field of protection and assistance for refugees in time of armed conflict or internal disturbances: he considers the similarities in the ICRC and UNHCR mandates, on which points they converge and on which they differ. He also reflects on the changes that have come about in those mandates to keep pace with new forms of conflict and disturbances. The author

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<sup>1</sup> See Jean-Luc Blondel, "Assistance to protected persons", *International Review of the Red Cross*, No. 260, September-October 1987, pp. 451-468.

repeats that the tasks of the two institutions are complementary: while the UNHCR has seen its mandate extended to displaced persons outside their country of origin, it does not yet cover, within the strict meaning of the law, persons displaced within their own country of origin, this situation falling within the ICRC's mandate in time of armed conflict or internal disturbances.

There remain ill-defined situations, such as that of refugees in border areas who are exposed to armed attacks. Here, the law is unclear as to the respective mandates of the UNHCR and the ICRC. But marked progress was made during the Twenty-fourth International Conference of the Red Cross in 1981: a resolution was adopted which clarified the situation by emphasizing the complementary nature of the two institutions' activities and urging them to consult each other and to co-ordinate their assistance operations.<sup>2</sup>

In spite of these real achievements, and in order to limit possible disagreement on the meaning of the terms "refugees" and "displaced persons" and to deal with any new situation the victims of which do not come within a well-defined category but nonetheless need protection and assistance, the author feels it would be wise to draw up a set of basic principles on humanitarian protection and assistance, based on current legislation and on practical experience. These principles would serve as guidelines for humanitarian operations.

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The complementarity of humanitarian law and refugee law has also been studied at the International Institute of Humanitarian Law. Its President, Professor Jovića Patrnoć, explains the workings of humanitarian law—a well-established branch of law—and of refugee law, which is still rather rudimentary and which he would like to see more strictly codified to encompass modern problems.

While Professor Patrnoć readily accepts that developments in what he calls fundamental human laws (human rights law, international humanitarian law, international refugee law) are encouraging, he observes that respect for them has run into several major obstacles. The most serious of these are an exaggerated interpretation of the notion of

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<sup>2</sup> Twenty-fourth International Conference of the Red Cross, Manila, 1981, Resolution XXI: "International Red Cross aid to refugees".

*State sovereignty, the erosion of the principle of non-refoulement and grave breaches of the law relating to refugees and displaced persons.*

*This highlights the delicate relationship between politics and humanitarian issues. As J.-P. Hocké puts it, "Although there can be no humanitarian solution without a political one, humanitarian action can and must be taken pending a political solution. In this respect, humanitarian action, precisely because it is apolitical, can help to shape and foster a political solution". Humanitarian action, whether taken by the ICRC or the UNHCR, to name but those two, becomes a constant struggle to influence politics and create the conditions for a political solution. Here we can quite aptly cite the President of the ICRC at the opening of the Second World Red Cross and Red Crescent Conference on Peace (Aaland/Stockholm, 1984): "Humanitarian action alone cannot solve anything and cannot even claim to provide definitive solutions to the fundamental problems which are at the source of conflicts, since the problems are political and thus outside the humanitarian terms of reference. Nevertheless, this humanitarian action, if properly understood and 'intelligently used' by governments, may allow them a breathing space in which to seek—in a spirit of peace and conciliation—political solutions which will themselves eradicate the humanitarian problems".<sup>3</sup>*

*As Professor Patrignic stresses, a humanitarian strategy is absolutely necessary, now more than ever. A framework for it has already been sketched by the complementary nature of the mandates and activities of the ICRC and the UNHCR; it must proceed via the promotion of international humanitarian instruments, the methodical dissemination of knowledge of the basic principles of humanitarian law and refugee law, and the continued adaptation of rules of law to new needs. This is the price of guaranteed protection for refugees and the victims of armed conflicts and other conflict situations.*

*The Review*

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<sup>3</sup> "Opening message to the Second World Red Cross and Red Crescent Conference on Peace", by Alexandre Hay, President of the ICRC, *IRRC*, No. 243, November-December 1984, p. 325.