

# ICRC action in aid of refugees

by **Françoise Krill**

## I. THE REFUGEE AS A PERSON PROTECTED BY INTERNATIONAL HUMANITARIAN LAW (IHL) <sup>1</sup>

### 1. General points

The refugee does not enjoy special protection in IHL except in several provisions which will be considered below, nor is there any particular definition of a refugee as a person protected by IHL. The refugee is above all a civilian person and is protected as such by the relevant provisions of IHL. The sole criterion, for the purposes of the Fourth Geneva Convention, is in fact the absence of protection by any government. The term “refugee” is thus given a broad connotation. In international public law there are two defined categories of refugee, to which a third category is usually added by analogy. They are:

#### 1.1. Refugees fleeing persecution

These are refugees as defined in the United Nations Convention relating to the Status of Refugees, of 28 July 1951, its Protocol of 31 January 1967 and the Statute of the Office of the United Nations High Commissioner for Refugees (UNHCR).

According to Article 1, A(2), of the 1951 Convention, the term “refugee” applies to any person who, *“as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the*

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<sup>1</sup> By IHL we are referring here only to international humanitarian law applicable in armed conflicts.

*protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.*

The same Article, under B(1), stipulates that “*events occurring before 1 January 1951*” shall be understood to mean either “*in Europe*” or “*in Europe or elsewhere*”, as the States prefer.

The 1967 Protocol is intended to remove the two restrictions of time and geographical location.

To sum up, refugees as defined here are persons who flee with a well-founded fear of persecution and who are outside their country.

## **1.2. Refugees owing to armed conflict and other disturbances**

The definition may be found both in the Convention of the Organization of African Unity (OAU) governing the Specific Aspects of Refugee Problems in Africa, adopted on 10 September 1969, and in certain United Nations resolutions.

The OAU Convention states that the term “*refugee*” applies, in addition to refugees fleeing persecution as defined by the 1967 Protocol, “*to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality*”.

To sum up, these are persons who seek refuge from armed conflict or other disturbances and who are outside their country.

## **1.3. Displaced persons**

This term means persons who flee armed conflict or other disturbances but who remain inside their country. Having crossed no international frontier, they are not considered refugees by international law, but in common usage are nonetheless regarded as such. Persons to whom neither refugee definition applies, or who do not come under the protection of the UNHCR, are sometimes also referred to as displaced persons, even when they are outside their country.

To come back to IHL, its protection of civilians is twofold:

- protection of civilians who are in the power of the enemy;
- protection of civilians against the effects of hostilities.

## 2. The refugee as a civilian person in the power of a Party to the conflict

### 2.1. Special protection afforded by certain provisions of the Geneva Conventions of 1949 (Fourth Convention)

The Fourth Convention provides for mainly two kinds of situation:

- aliens in the territory of a Party to the conflict;
- inhabitants of an occupied territory.

Let us now examine the different cases which may be found, depending on which of the two situations the refugee finds himself in:

#### (a) *Aliens in the territory of a Party to the conflict* (See Annex 1):

- Refugees who are nationals of an enemy State enjoy the special protection afforded by Article 44, which reads as follows:

*“In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government”.*

- In the absence of diplomatic representation, refugees who are nationals of a neutral State are protected under Article 4, para. 1; conversely, in the event of diplomatic representation they are not protected (Article 4, para. 2). Here there is a deficiency, which is fortunately remedied by Article 73 of 1977 Protocol I, as we shall see below. But first let us come back to Article 4 of the Fourth Convention:

*“1. Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.*

*“2. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are”.*

- In the absence of diplomatic representation, refugees who are nationals of a co-belligerent State are protected under Article 4, para. 1; conversely, in the event of diplomatic representation they are not protected (Article 4, para. 2). Here, too, there is a deficiency remedied by Protocol I, Article 73.

**(b) Occupation** (See Annex 2):

- Refugees who are nationals of an enemy State are afforded special protection under Article 70, para. 2:

*“Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace”.*

This provision calls for clarification on a few points. It protects nationals of the Occupying Power who sought refuge before the conflict began. Moreover, it is designed to limit the jurisdictional capacity of the Occupying Power and to safeguard the continuity of the right of asylum. The protection of the refugee does, however, have its limits, namely the security of the Occupying Power and criminal offences.

- Refugees who are nationals of a neutral State are protected under Article 4 para. 1.<sup>2</sup>
- In the absence of diplomatic representation, refugees who are nationals of a co-belligerent State are protected under Article 4, para. 1; conversely, in the event of diplomatic representation they are not protected (Article 4, para. 2). In the latter case, there is again a deficiency remedied by Protocol I, Article 73.

## **2.2. Special protection afforded by Article 73 of 1977 Additional Protocol I**

### **2.2.1. The wording of Article 73**

*“Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments*

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<sup>2</sup> *Fourth Geneva Convention of 1949 relative to the protection of civilian persons in time of war: Commentary* published under the general editorship of J. Pictet, Geneva: ICRC, 1958, pp. 48-49.

*accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.”*

### **2.2.2. Remarks**

Article 73 applies only to persons considered as stateless or refugees “before the beginning of hostilities”. These are stateless persons or refugees either under “the relevant international instruments” or “the national legislation of the State of refuge or State of residence”. “International instruments” should be understood as being all official documents adopted by an international organization, regardless of whether they are mandatory; these would be mostly treaties, conventions, agreements, protocols, resolutions, recommendations, declarations, etc., i.e., any instrument which is “accepted by the Parties concerned” and contains a definition of refugee or stateless person (for example, the OAU Convention of 1969). The temporal restriction “before the beginning of hostilities” in effect limits the scope of application *ratione personae* of this article to refugees who have fled persecution. Other refugees, persons displaced by a conflict or refugees fleeing from one, do however benefit from the protection and assistance provided for in the Fourth Convention and in Article 75 of Protocol I. Moreover, they are also covered by the relevant rules concerning refugees which remain applicable in spite of the conflict, just as they do for other refugees.

### **2.2.3. The effects of Article 73**

(a) The Fourth Convention is applicable to refugees and stateless persons inasmuch as it covers the whole of the civilian population in the territory of the Parties to a conflict, without adverse distinction, including that of nationality. Furthermore, protection is accorded “in all circumstances”, i.e., in all situations in which humanitarian law is applicable, even if only one of its provisions is applicable.

(b) Stateless persons are already protected by the Fourth Convention. They are not affected by the exceptions to the general rule which are set out in paras. 2 and 4 of Article 4. Thus, Article 73 makes only formal improvements to the law in force.

(c) As regards refugees, Article 73 improves their situation in more than one way. By virtue of Article 73, the following are now covered by the Fourth Convention:

- Refugees who are nationals of a State not bound by the Fourth Convention (previously they were not covered; see Article 4, para. 2).
- Refugees who are nationals of a neutral State which has diplomatic representation in the State in whose territory these refugees find themselves (previously they were not covered; see Article 4, para. 2).
- Refugees who are nationals of a co-belligerent State which has diplomatic representation (previously they were not covered; see Article 4, para. 2).
- Refugees in occupied territory who are nationals of the occupying State (previously they were covered only by Article 70, para. 2, and not by the other provisions of the Fourth Convention).
- These refugees, however, must meet two conditions:
  - be refugees in the terms of the relevant international instruments accepted by the Parties concerned or the national legislation of the State of refuge or the State of residence;
  - must have been deemed as such before the beginning of hostilities.

### **2.3. Provisions prohibiting forced displacement of the population**

Article 45, para. 4, of the Fourth Convention states that “*in no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs*”.

Article 49, para. 1, of the same Convention stipulates that “*Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive*”. However, total or partial evacuation is possible, but solely for the cases mentioned in this Article and according to very strict conditions.

### **2.4. Other important provisions of the Fourth Convention and Protocol I**

Other provisions, though more general, give certain powers and rights to the ICRC enabling it to take action to help refugees. These are Articles 25 (family news), 26 (dispersed families), 140 (Central Tracing Agency) and 143 (visits to all protected persons) of the Fourth Convention, as well as Articles 33 (missing persons) and 74 (reunion of dispersed families) of Protocol I.

### **3. The refugee as a civilian victim of the effects of hostilities**

The rules of international law which impose limitations on the conduct of hostilities stem from the Hague Conventions of 1899 and 1907. A large number of them have become part of customary law and are expressly reaffirmed and developed in Part IV of Protocols I and II. Part II of the Fourth Convention also protects refugees against certain effects of hostilities.

This protection is conferred by rules which include:

- the creation of protected zones (Fourth Convention, Article 15, and Protocol I, Article 60);
- relief consignments (Fourth Convention, Article 23, Protocol I, Article 70, and Protocol II, Article 18);
- special measures relating to child welfare (Fourth Convention, Article 24);
- the prohibition of attacks or threats against civilian populations (Protocol I, Articles 48 and 51, paras. 1 and 2; Protocol II, Article 13);
- the obligation to take precautions to spare the civilian population (Protocol I, Articles 57 and 58);
- prohibition of the destruction of objects indispensable to the survival of the civilian population, such as foodstuffs and agricultural areas (Protocol I, Article 54, and Protocol II, Article 14);
- respect for civil defence organizations (Protocol I, Articles 61 to 67).

It is worth pausing for a moment to consider these rules in relation to military attacks on refugee camps, which have occurred repeatedly since 1978. This relatively recent phenomenon has been on the increase in recent years and has claimed innumerable civilian victims. The attacks on the Sabra and Chatila camps in Lebanon in 1982 and again in 1985 claimed hundreds of lives. However the camps in Lebanon are far from being the only examples. Similar acts continue to be committed in Angola, Sudan, Honduras, Pakistan, Thailand, Botswana and elsewhere.

Two aspects are particularly disquieting:

- the siting of these camps in dangerous combat zones;

— the presence of combatants within strictly civilian groups.

With regard to the first problem, Article 51, para. 6, and above all Article 58 of Protocol I offer a solution.

As for the second problem, the presence of combatants within strictly civilian groups of refugees does not deprive the latter of all protection. For one thing, indiscriminate attacks which also and *a fortiori* strike civilians remain prohibited (Protocol I, Articles 51 and 57). In addition, under Article 50, para. 3, of Protocol I, the presence of individual combatants within a civilian population and, therefore, also their presence within a population consisting of refugees does not deprive that population of its civilian status.

Unfortunately, these provisions, which should serve to protect refugees and displaced persons who find themselves in areas of armed conflict, are not applied under the pretext that Protocol I does not yet have the status of universally recognized law or that there is no armed conflict in the meaning of international humanitarian law.

It is precisely in such cases that the conclusions of the UNHCR Executive Committee (38th session, October 1987) can be invoked to provide better protection for refugees.

#### **4. Non-international armed conflict**

In such a situation the refugee belongs *de facto* to the category of “*persons displaced within their own country*”. He is protected by the fundamental guarantees (Article 3 common to the four Geneva Conventions of 1949) relating to the treatment of persons not taking part in hostilities. Protocol II of 1977 supplements and extends this provision. In other words, such people are entitled to have their lives and physical and moral integrity respected. In particular, duress, cruelty, torture, collective punishments, reprisals, pillage and the taking of hostages are prohibited. For criminal offences related to the armed conflict, such persons are entitled to be tried by an impartial and regularly constituted court offering the essential legal guarantees. In addition, the wounded and sick must be collected and cared for.



## II. THE REFUGEE AS A PERSON BENEFITING FROM ICRC ACTION

### 1. General points

In order to be eligible to benefit from ICRC action, the refugee must in principle be the victim of internal or international armed conflict. Whether he belongs to the category of persons protected by IHL is not, however, crucial. The ICRC's right of initiative, which will be examined below, makes it possible to intervene in situations which are not covered by IHL or whose legal definition is in dispute. It goes without saying that if the refugee belongs to the category of protected persons, he will in any case be entitled to benefit from ICRC action.

### 2. Legal bases for ICRC action in aid of refugees

The legal bases for activities carried out by the ICRC in aid of refugees are to be found in the instruments of IHL (the 1949 Geneva Conventions and the 1977 Additional Protocols), in the Statutes of the International Red Cross and Red Crescent Movement and in the Statutes of the ICRC. In addition, various Resolutions adopted by the International Conferences of the Red Cross deal with certain specific aspects of this question.

#### 2.1. The instruments of IHL

##### (a) *Explicitly assigned competences*

On the basis of Article 143 of the Fourth Convention, the ICRC is entitled to visit protected persons. Paragraphs 1 and 5 of this provision read as follows:

*“Representatives or delegates of the Protecting Powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.”*

(...)

*“The delegates of the International Committee of the Red Cross shall also enjoy the above prerogatives.”*

## **(b) Right of initiative under the Conventions**

Provisions giving the ICRC the right to act and not merely the right to make proposals are rare; the ICRC's activities are therefore based largely on its right of initiative, whether they are to help victims of conflict in general or in aid of refugees. The bases for this right are to be found in Article 10 of the Fourth Convention and Article 81 of Protocol I, which states:

*“1. The Parties to the conflict shall grant to the International Committee of the Red Cross all facilities within their power so as to enable it to carry out the humanitarian functions assigned to it by the Conventions and this Protocol in order to ensure protection and assistance to the victims of conflicts; the International Committee of the Red Cross may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned.”*

In a non-international armed conflict this right of initiative is to be found in Article 3 common to the four Conventions (2nd paragraph):

*“An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.”*

## **2.2. The Statutes of the International Red Cross and Red Crescent Movement**

According to Article 5, paragraph 2, sub-paragraph d), of the Movement's Statutes (adopted in 1986), the role of the ICRC is:

*“d) to endeavour at all times—as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife—to ensure the protection of and assistance to military and civilian victims of such events and of their direct results”.*

It is well known that large-scale influxes of refugees are usually brought about by armed conflict. Most ICRC activities in aid of refugees are based on the statutory right of initiative as set out in Article 5, paragraph 3:

*“3. The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution.”*

In itself, the statutory right of initiative means that the ICRC may put forward proposals without them being considered interference or

an unfriendly act. Should the proposal be accepted, the resulting agreement forms the legal basis for the ICRC's action.

This right of initiative is more extensive than that provided for in the Conventions and Protocol I because it is not confined to situations covered by these instruments.

Nonetheless, three limits have been placed on this statutory or non-Convention-based right of initiative. The activities proposed must first of all be humanitarian, must clearly reflect the ICRC's neutrality and, lastly, its independence.

For the purpose of better defining their respective spheres of activities as set out in the Statutes of the Movement, the ICRC and the League signed an agreement on 25 April 1969 specifying the division of functions between the two institutions. This agreement was then the subject of an interpretation (18 December 1974) concerning relief operations.<sup>3</sup>

### **2.3. The Statutes of the ICRC**

The ICRC also takes action under its own Statutes to aid refugees. According to Article 4, the special role of the ICRC is:

*"d) to endeavour at all times—as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife—to ensure the protection of and assistance to military and civilian victims of such events and of their direct results;*

*e) to ensure the operation of the Central Tracing Agency as provided in the Geneva Conventions".*

### **2.4. Resolutions of the International Red Cross and Red Crescent Movement**

#### **(a) General points**

As a rule, the resolutions of an international organization are not binding unless the Parties feel otherwise and except for certain resolutions relating to the functioning of the organization itself. The resolutions adopted by the Movement are no exception. True, the ICRC does not need a resolution to take action vis-à-vis States because, as we have seen, it has a whole array of means. However, a resolution recommending, encouraging or supporting ICRC action is certainly an additional asset and serves as a further basis for its interventions.

<sup>3</sup> This agreement is under revision.

**(b) *The Manila Resolution***

In Manila in 1981 the Twenty-fourth International Conference of the Red Cross adopted an important resolution and an accompanying statement of policy defining the role of the International Red Cross and Red Crescent Movement in helping refugees, displaced persons and returnees. In that resolution, the Movement reminded governments that they were chiefly responsible for protecting and helping refugees. The subsidiary, back-up role of the Red Cross is also clearly stated therein. The statement of policy emphasises in paragraph 1 that “*The Red Cross should at all times be ready to assist and protect refugees, displaced persons and returnees, when such victims are considered as protected persons under the Fourth Geneva Convention of 1949, or when they are considered as refugees under Article 73 of the 1977 Protocol I additional to the Geneva Conventions of 1949, or in conformity with the Statutes of the International Red Cross, especially when they cannot, in fact, benefit from any other protection or assistance, as in some cases of internally displaced persons*”.

The statement of policy also points to the need to co-ordinate activities within the Movement, and with the UNHCR and governmental and non-governmental organizations working to help refugees.

The role of the ICRC Central Tracing Agency is also stressed.

Lastly, the Movement and the UNHCR are invited to consult each other regularly on matters of common interest and to co-ordinate their humanitarian assistance.

**(c) *The Geneva Resolution***

In Geneva in 1986 the Twenty-fifth International Conference of the Red Cross adopted a second resolution on refugees. Among other things, it invites governments and the Movement to pursue their efforts in disseminating knowledge of international humanitarian law and encourages the Movement to step up its own information and training activities. Furthermore, it repeats its appeal to governments to permit the Movement to come to the aid of displaced persons within their own country. Lastly, the resolution stresses that collaboration with the UNHCR must be strengthened and enhanced.

### III. THE SPECIFICITY OF ICRC ACTION IN AID OF REFUGEES

The role of the Movement in relation to the UNHCR was defined in the Manila resolution referred to above. It should be noted that under international law a pre-eminent function in providing international protection and material assistance to refugees is assumed by the UNHCR.

#### 1. According to the situation

As we have seen, the ICRC takes action in aid of refugees whose condition as such is due to a conflict. In other words, the ICRC (and the National Societies) have a primary competence in the case of internally displaced persons.

Whether in Africa (Angola, Ethiopia, Sudan, Uganda, Mozambique), in Latin America (El Salvador, Nicaragua), in Asia (Thailand, Pakistan, East Timor, Philippines) or in the Middle East (Israel, the occupied territories, Lebanon), the ICRC has protected and provided material and medical assistance to hundreds of thousands of displaced persons over recent years.

Protection of and assistance to refugees in countries of first asylum and host countries is primarily the task of the UNHCR.

In the absence of that organization, it sometimes happens that the ICRC goes to the aid of refugees who normally would come under the UNHCR's terms of reference. This is the case in South Africa where the ICRC, working in concerted action with other humanitarian organizations since 1985, has set up and run an emergency programme in the Gazankulu region.

In border areas where refugees are the victims of armed attack, the ICRC (and the National Societies) see to the protection of the camp population there. It can be said that in such cases the UNHCR and the ICRC have concurrent competence.

The refugees along the border between Thailand and Kampuchea can be cited as an example of this, as well as those who have crossed the border from Afghanistan to Pakistan.

## 2. Modes of intervention

The scope of the ICRC's right of initiative in aid of refugees is extensive owing to the purely humanitarian nature of its mission.

As explained above, the ICRC's statutory right of initiative enables it to intervene in situations not covered by the Conventions. Thus, the ICRC has been able to take action in countries where the governments had not requested aid from any other organization, governmental or non-governmental.

Finally, the Movement can act quickly because it is flexible. The UNHCR can act quickly too, but it must first receive a request from the government of the refugees' country of asylum.

## 3. Forms of action

If the refugee belongs to the category of persons protected by IHL, protection is provided by the ICRC in the following manner:

- The ICRC is authorized by Article 143 of the Fourth Convention *“to go to all places where protected persons are, particularly to places of internment, detention and work...”*. This function is particularly important when the refugees are in detention, whether in prisons or in camps.
- The ICRC ensures respect for the rules of IHL relating to protected persons.
- The ICRC, through its Central Tracing Agency, registers protected persons, exchanges family messages and arranges for families to be reunited.

In other cases, ICRC action tends to be directed toward the physical protection of refugees, to safeguard their life and physical integrity.

The physical protection of refugees is a new concept for the UNHCR. In performing its function of providing international protection, the UNHCR:

- ensures that refugees find asylum and acquire a legal status in accordance with the definition given by the United Nations Convention of 1951 relating to the Status of Refugees;

- encourages the conclusion, ratification and application on a national scale of instruments of international law concerning refugees;
- more generally, endeavours to provide refugees with protection analogous to that accorded by a State to its nationals.

In situations which are the primary competence of the ICRC, the victims receive the assistance which corresponds to their needs.

In situations involving the ICRC's and the UNHCR's concurrent competence, the ICRC concentrates, in co-operation with the UNHCR, on its traditional activities of providing medical aid.

**Françoise Krill**

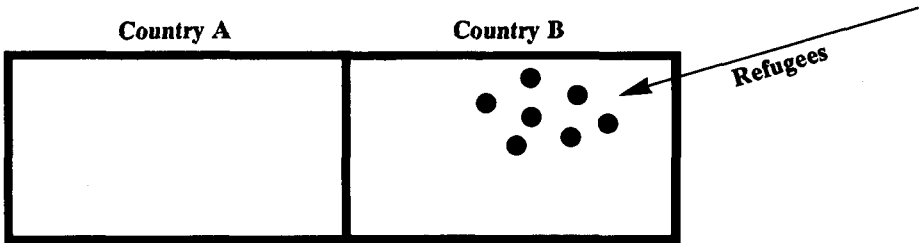
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**1.A. Aliens in the territory of a Party to a conflict — Case no. 1.**

*Facts:*

- Country A is in conflict with country B.
- Nationals of country A are refugees in the territory of country B.



*Protection:*

The refugees in country B are protected against abuses of power by country B by the Fourth Geneva Convention, Article 44, which stipulates that:

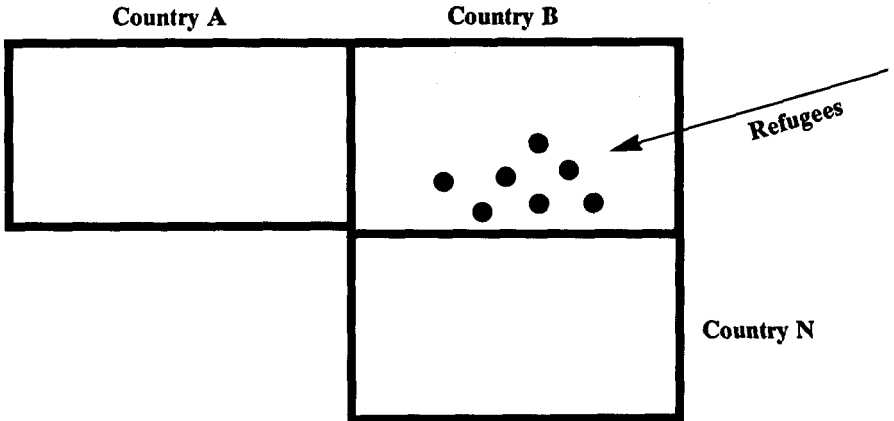
*“In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government.”*

**1.B. Aliens in the territory of a Party to a conflict — Case no. 2.**

*Facts:*

- Country A is in conflict with country B.
- Nationals of neutral country N are refugees in the territory of country B.





*Protection:*

The refugees in country B are protected against abuses of power by country B by the Fourth Geneva Convention, Article 4, para. 1, if country N does not have diplomatic relations with country B:

*“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”*

Fourth Convention, Article 4, para. 2 — The Convention affords no protection if country N does have diplomatic relations with country B. This is a deficiency because the refugee no longer benefits from the diplomatic protection of the State whose national he is.

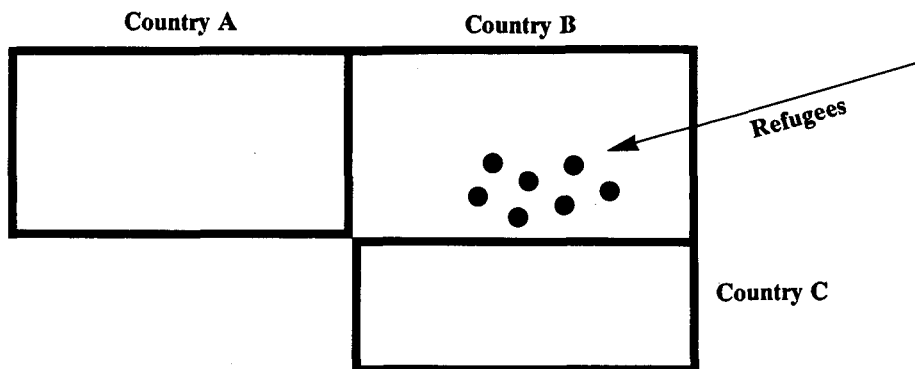
*“Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.”*

Protocol I, Article 73, corrects this deficiency.

### 1.C. Aliens in the territory of a Party to a conflict — Case no. 3.

#### *Facts:*

- Country A is in conflict with countries B and C. B and C are allies.
- Nationals of country C (co-belligerent) are refugees in the territory of country B.



#### *Protection:*

The refugees in country B are protected against abuses of power by country B by the Fourth Geneva Convention, Article 4, para. 1 — If country C has no diplomatic relations with country B (rather unlikely hypothesis as B and C are allies):

*“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.”*

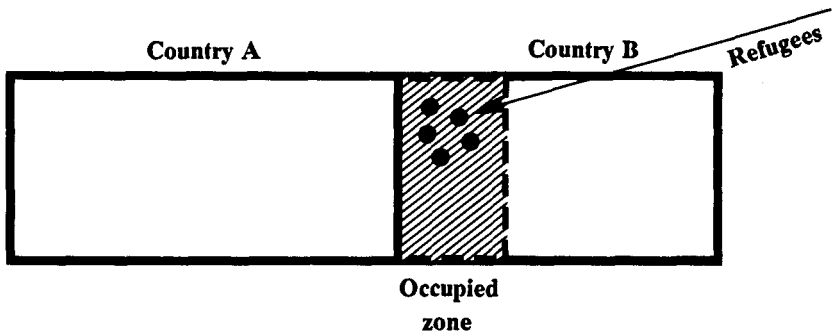
Fourth Convention, Article 4, para. 2 — The Convention affords no protection if country C has diplomatic relations with country B. This is a deficiency because the refugee no longer benefits from the diplomatic protection of the State whose national he is.

*“Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are”.*

Protocol I, Article 73, corrects this deficiency.

**2.A. Occupation — Case no. 1.***Facts:*

- Country A occupies part of country B's territory.
- Nationals of country A were already refugees in country B's territory before occupation.

*Protection:*

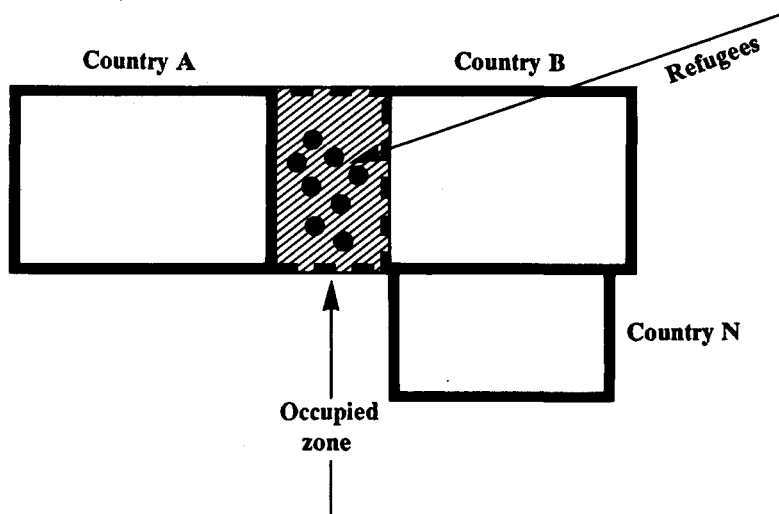
Refugees in the zone occupied by country A are protected against abuses of power by country B by the Fourth Geneva Convention, Article 70, para. 2, which stipulates that:

*“Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.”*

## 2.B. Occupation — Case no. 2.

### *Facts:*

- Country A occupies part of country B's territory.
- Nationals of neutral country N are refugees on the part of country B's territory occupied by country A.



### *Protection:*

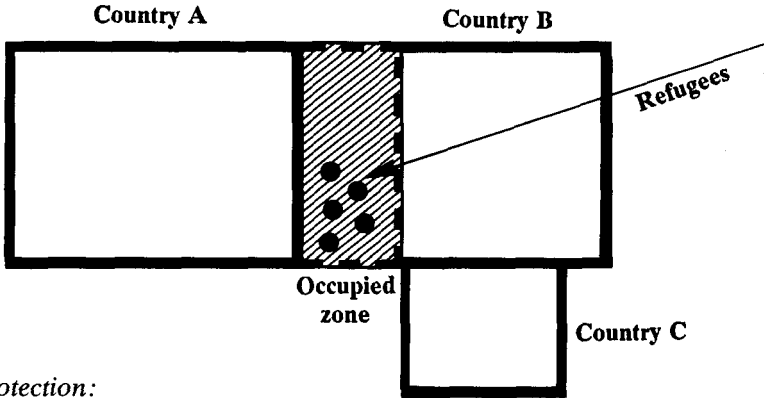
Refugees in the zone occupied by country A are protected against abuses of power by country A by the Fourth Geneva Convention, Article 4, para. 1 (See Pictet, "Commentary", bottom p. 48, explanation top p. 49.):

*"Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or Occupying Power of which they are not nationals".*

## 2.C. Occupation — Case no. 3.

### Facts:

- Country A occupies part of country B's territory. Country C is a co-belligerent State, allied to country A.
- Nationals of co-belligerent country C are refugees on the part of country B's territory occupied by country A.



### Protection:

Refugees in the zone occupied by country A are protected against abuses of power by country A by the Fourth Geneva Convention, Article 4, para. 1, if country C does not have normal diplomatic relations with country A (rather unlikely hypothesis as A and C are allies):

*“Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.*

Fourth Geneva Convention, Article 4, para.2 — The Convention affords no protection if country C has diplomatic relations with country A. This is a deficiency because the refugee no longer benefits from the diplomatic protection of the State whose national he is.

*“Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are”.*

Protocol I, Article 73, corrects this deficiency.

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