

**PROTECTION AND ASSISTANCE FOR REFUGEES
IN ARMED CONFLICTS
AND INTERNAL DISTURBANCES:**

**Reflections on the Mandates
of the International Red Cross and
Red Crescent Movement
and the Office of the United Nations
High Commissioner for Refugees**

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This article examines the mandate to protect and assist refugees in armed conflicts and internal disturbances.¹ It is a modest attempt to clarify the web of overlapping roles and mandates of humanitarian bodies, in particular the International Red Cross and Red Crescent Movement (“the Movement”) and the Office of the United Nations High Commissioner for Refugees (UNHCR). It purports to re-assess the evolution of their mandate and its extension. On the one hand, there is a need to define concrete principles, based on past and present practice, for humanitarian action. On the other, there must be sufficient leeway for flexibility and pragmatism in situations for which there is no comprehensive prognosis. The article concludes by demonstrating the interdependence and complementarity of humanitarian organizations which have to proffer protection and assistance where no other body can act.

¹ For general reading, see G. J. L. Coles, “*The Protection of Refugees in Armed Conflict and Internal Disturbance*”, paper submitted to the VIIIth Round Table on Current Problems of International Humanitarian Law and Red Cross Symposium, San Remo, September 1982; J. Pictet, *Humanitarian Law and Protection of War Victims*, Geneva: Henry Dunant Institute, 1975, especially pp. 115-38; J.-L. Blondel, “Assistance to protected persons”, *International Review of the Red Cross*, No. 260, September-October 1987, pp. 451-468.

Protection and assistance

At the international level, there has so far been no formal attempt to define the terms “protection” and “assistance” in relation to refugees in armed conflicts and internal disturbances. To a layman, the notions of protection and assistance are self-evident. A description of what lies behind the term “protection” may be found in this observation from the Movement:

“In Red Cross action, “to protect” implies preserving victims of conflicts who are in the hands of an adverse authority from the dangers, sufferings and abuses of power to which they may be exposed, defending them and giving them support.”²

At the very least, protection should comprise physical protection—protection from dangers to the person. In a wider perspective, protection may also be legal, in the sense that a person’s welfare derives from a range of legal principles which have to be safeguarded whether by judicial, administrative or other institutional means.

The term “assistance” is, arguably, even more a matter of common knowledge and needs no explanation. At the very least, it should comprise material relief in the form of food and medical aid.

One is tempted to leave the terms “protection” and “assistance” undefined because doing so gives them an inherent flexibility with a “catch-all” quality which can be adapted to new situations. As will be seen, the two notions are closely interlinked whether one talks of the Movement or the UNHCR: Indeed, in various instances where these bodies were initially requested to provide merely material assistance, they eventually became involved in the wider dimension of protection, both physical and legal.³

² “The ICRC, the League and the Report on the Re-Appraisal of the Role of the Red Cross”, *International Review of the Red Cross*, from March-April 1978 to January-February 1979, pp. 1-72; 19. Footnote 1 on the same page develops the observation as follows: “In a broader context, one might say that ‘protection’ also includes developing, publicising and ensuring application and respect for international humanitarian law.”

³ An example of how the role of the UNHCR may be extended from providing material assistance to cover legal protection can be seen in the case of Thailand. In various agreements between Thailand and the UNHCR in 1975, the term “assistance” was used in relation to the role of the UNHCR in Thailand. There was no express mention of the protection aspects in these agreements. However, from the outset, there has been a section of the UNHCR dealing with protection issues in Thailand. Protection furnished by the UNHCR has encompassed a wide range of matters, including protection against forced return, protection against physical abuses in camps, provision of legal aid where displaced persons are prosecuted for illegal entry, and arrest of those who perpetrate crimes against asylum-seekers, e.g., pirates.

The Movement and refugees: the issue of mandate

The Movement's mandate in relation to refugees can be found in various instruments ranging from the Statutes of the Movement ⁴ to the 1949 Geneva Conventions ⁵ and their 1977 Protocols ⁶. These instruments have been supplemented by various International Conferences of the Red Cross, the latest of which was convened in Geneva in 1986.⁷

The *locus classicus* is Article 5 of the Statutes of the International Red Cross and Red Crescent Movement. Article 5 (1) (d) effectively establishes the role of the International Committee of the Red Cross (ICRC) in protecting and assisting military and civilian victims of international and other armed conflicts or internal strife or of their direct results. Article 5 (3) adds to this by defining the ICRC's "right of initiative", which has so often served as a fall-back clause for its action, as follows:

"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."⁸

As a corollary, the ICRC is designated as responsible for action to provide protection and assistance in case of war, civil war or internal strife, to military and civilian victims of such conflicts,⁹ and also for the

⁴ See *Compendium of Basic Reference Texts on the International Red Cross, the International Committee of the Red Cross and the League of Red Cross Societies*, Geneva: ICRC, 1982, as amended by "Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement", *International Review of the Red Cross*, No. 256, January-February 1987, pp. 1-39.

⁵ There are four 1949 Geneva Conventions:

- the First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field.
- the Second Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea.
- the Third Geneva Convention Relative to the Treatment of Prisoners of War.
- the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War.

For text, see *The Geneva Conventions of 1949, August 12*, reprint, Geneva: ICRC, 1983.

⁶ For text, see *Protocols additional to the Geneva Conventions of 12 August 1949*, Geneva: ICRC, 1977.

⁷ See further *Twenty-fifth International Conference of the Red Cross*, Geneva, 1986: "Resolutions of the International Conference and of the Council of Delegates", *International Review of the Red Cross*, No. 255, November-December 1986, pp. 1-58.

⁸ "Statutes and Rules of Procedure of the International Red Cross and Red Crescent Movement", *op. cit.*, note 4, p. 11.

⁹ *Ibid.*

operation of Tracing Agencies as defined in the 1949 Geneva Conventions.¹⁰ As a complement to this, Article 6 (4) of the Statutes of the Movement gives the League of Red Cross and Red Crescent Societies (LRCS) the task of, *inter alia*, bringing relief to all disaster victims and helping victims of armed conflicts in cooperation with the ICRC.¹¹ It is for the latter reason that the ICRC and the LRCS came to an agreement in 1969¹² (interpreted in 1974 for the purpose of specifying certain of their respective functions in relief operations) whereby the primary responsibility for protection and assistance was conferred upon the ICRC in cases of international war, civil war, blockade or military occupation, while the LRCS would act in natural disasters, in co-ordination with the ICRC and National Societies. The role of the Movement was further reinforced by various resolutions on natural and man-made disasters adopted by the 1986 International Conference of the Red Cross.¹³

However, experience has shown that the Movement cannot operate without co-ordinating with other organizations. In particular, it has co-operated with the UNHCR. The importance of this practice was reiterated in Resolution XXI of the Twenty-fourth International Conference of the Red Cross (1981), entitled "International Red Cross Aid to Refugees",¹⁴ whereby the Movement pledged support for the UNHCR in favour of refugees and displaced persons.

The Statement of Policy attached to the resolution is of special significance and reaffirms the role of the International Red Cross (as the Movement used to be known) as the residual institution where no other organizations are available, competent or willing to provide protection and assistance. Indeed, the Movement has declared its readiness to project and assist not only "refugees" but also "displaced persons and returnees", including internally displaced persons — a

¹⁰ *Ibid.*

¹¹ *Ibid.*, p.13.

¹² *Compendium of Basic Reference Texts on the International Red Cross, the International Committee of the Red Cross and the League of Red Cross Societies, op. cit.*, note 4, pp. 29-36.

¹³ *Op. cit.*, note 8, pp. 31-3; 39-40. (Resolutions XXI and XXVI).

¹⁴ See further "Twenty-fourth International Conference of the Red Cross, Manila, 1981: Resolutions and Decisions of the International Conference and the Council of Delegates", *International Review of the Red Cross*, No. 225, November-December 1981, pp. 318-357.

domain, *stricto iure*, outside the original mandate of the UNHCR.¹⁵ Moreover, it has undertaken to take due account of the comparable needs of the local population in the areas where refugees, displaced persons and returnees are accommodated.¹⁶ This, therefore, covers an immense range of persons eligible for relief. Nevertheless, Red Cross relief programmes are of an emergency character, consonant with the need to provide rapid physical protection and material assistance.¹⁷ In consequence, in theory at least, they are of shorter duration than those of other relief organizations, such as the UNHCR.

Beyond the Statutes and the Resolution mentioned above, the role of the ICRC in relation to refugees is also set down in the Fourth 1949 Geneva Convention¹⁸ and its Additional Protocol I of 1977.¹⁹ Of interest are the provisions on refugees (Articles 44 and 70 of the Fourth Geneva Convention and Article 73 of Protocol I). Article 44 deals with the situation of refugees in the hands of a party to a conflict who are not nationals of the latter party and confers a measure of protection (such as through a Protecting Power) by stipulating 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.”

Article 70 (2) tackles the dilemma of refugees who subsequently fall into the hands of their State(s) of origin when the latter becomes the Occupying Power by stating that:

¹⁵ *Ibid.* Point 1 of the Statement of Policy provides that:

“The Red Cross should at all times be ready to assist and to 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.”

¹⁶ *Ibid.* Point 3 provides that:

“Assistance from the Red Cross should at all times take due account of the comparable needs of the local population in the areas in which refugees, displaced persons and returnees are accommodated....”

¹⁷ *Ibid.* Point 3 states further that:

“Since Red Cross relief programmes are essentially of an emergency character, they should be phased out as soon as other organizations are in a position to provide the aid required.”

¹⁸ *Op. cit.*, note 5.

¹⁹ *Op. cit.*, note 6.

“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 which, according to the law of the occupied State, would have justified extradition in time of peace.”

Article 73 of Protocol I goes even further by elevating the status of these refugees to that of “protected persons”. This implies that they enjoy the protection provided by more than 120 articles of Parts I and III of the Fourth Geneva Convention, although the article itself is limited to those considered as refugees before the outbreak of the hostilities.

It can be seen that the term “refugees” has been left undefined by the body of international humanitarian law discussed above. Hence, the Movement’s mandate is nothing akin to that of the UNHCR, which originally covered only those who had left their home country for “well-founded fear of persecution”, as will be seen later. It is evident that the term “refugees”, as concerns the Movement, should be broad and unrestricted in meaning. This is not the case for the UNHCR. For this reason J. Pictet stated in his Commentary on the Fourth Geneva Convention that the definitions of the term “refugees” inherent in the Constitution of the International Refugee Organization (now defunct), the Statute of the UNHCR and the Convention relating to the Status of Refugees of 1951 “are valid for the particular purposes of law for which they were formulated, but are too technical and too limited in scope to meet the requirements of the Geneva Conventions.”²⁰

Turning more specifically to the position of the International Red Cross within the framework of the 1949 Geneva Conventions and their Protocols, the role of the ICRC is provided for in Article 10 of the Fourth Geneva Convention and is reinforced by Article 81 of Protocol I, as follows:

“The provisions of the present Convention constitute no obstacle to the humanitarian activities which the ICRC or any other impartial humanitarian organization may, subject to the consent of the Parties to the conflict concerned, undertake for the protection of civilian persons and for their relief.” (Article 10 of the Fourth Geneva Convention),²¹ and

²⁰ J. Pictet, *Commentary on the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva: ICRC, 1958, p. 264.

²¹ The English version of the text uses the term “may”. The French version uses the term “entreprandra”. The latter seems more forceful than the former, but the difference may be unintentional.

“1. The parties to the conflict shall grant to the ICRC 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 ICRC may also carry out any other humanitarian activities in favour of these victims, subject to the consent of the Parties to the conflict concerned.” (Article 81 of Protocol I).

Article 81 of Protocol I also bolsters the actions of the LRCS and National Societies by stipulating that:

“2. The Parties to the conflict shall grant to their respective Red Cross (Red Crescent, Red Lion and Sun) organizations the facilities necessary for carrying out their humanitarian activities in favour of the victims of the conflict, in accordance with the provisions of the Conventions and this Protocol and the fundamental principles of the Red Cross as formulated by the International Conference of the Red Cross.

3. The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the assistance which Red Cross (Red Crescent, Red Lion and Sun) organizations and the League of Red Cross Societies extend to the victims of conflicts in accordance with the provisions of the Conventions and this Protocol and with the fundamental principles of the Red Cross as formulated by the International Conferences of the Red Cross.”

In relation to armed conflicts not of an international character, it is worth noting Article 3 common to the four Geneva Conventions, which enlarges the field of humanitarian services as follows:

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

As a corollary, the role of the Movement is extended to displaced persons where there is no movement across borders.²²

However, it is apparent that the Movement has preferred to base its actions on the ‘right of initiative’ under its own Statutes and subject to the consent of the parties concerned rather than having recourse to the Geneva Conventions and Protocol I as the basis for providing protection and assistance to refugees.²³ This is because the ‘right of initiative’ is of broader scope than the mandate stipulated by the Conventions. In effect, the former enables the Movement to provide protection and assistance in cases of internal tension and disturbances which are beyond the confines of traditional international humanitarian law as embodied in the Geneva Conventions and their Protocols.

²² See further V. Muntarbhorn, “Transfrontier and Internal Displacement of People”, *Amity International: Bulletin of the International Law Association of Thailand*, Vol. 2 (1) (1986), pp. 28-48.

²³ G. Abi Saab, “The Implementation of Humanitarian Law” in A. Cassese (ed.), *The New Humanitarian Law of Armed Conflict*, Napoli: Editoriale Scientifica, pp. 331-46.

On analysis, what emerges from the above discussion is the ambivalent nature of the ICRC mandate for refugees: it is comprehensive in scope, but ephemeral in principle. Its comprehensiveness lies in the fact that it can provide relief to a wider range of persons than the UNHCR can, due to the intrinsically flexible quality of the term “refugees”, left undefined, and pursuant to its “right of initiative”. On the other hand, in providing what it sees as emergency relief, it purports to give short-term protection-cum-assistance in keeping with the immediacy of the situation, unlike the UNHCR, whose goals are legally conditioned by long-term criteria.

The UNHCR and refugees: The issue of mandate

The Statute of the UNHCR (1950) ²⁴ is the basis for its mandate to provide protection and assistance to refugees. This mandate is stated categorically in relation to “refugees”, who are defined in Article 6 (B) of the Statute as:

“Any (other) person who is outside the country of his nationality, or if he has no nationality, the country of his former habitual residence, because he has or had well-founded fear of persecution by reason of his race, religion, nationality or political opinion and is unable or, because of such fear, is unwilling to avail himself of the protection of the government of the country of his nationality, or, if he has no nationality, to return to the country of his former habitual residence.”

By this very wording, the UNHCR is given the mandate to deal with those who have left their country of origin for “well-founded fear of persecution”. In essence, to fulfil the definition concerned, there must be a transfrontier movement: a person still in his home country is, *stricto jure*, not as yet a refugee. Moreover, he must have left with or without physical detriment, which has to be analysed subjectively and objectively. This definition of the term “refugee” is indeed a far cry from the opaque nature of the same term when used in the context of the Red Cross.

The definition above was, to a great extent, adopted by the Convention relating to the Status of Refugees of 1951 ²⁵ in Article 1 (A) (2), as follows: a refugee is someone who

²⁴ *Collection of International Instruments concerning Refugees*, Geneva: UNHCR, 1979, pp. 3-9.

²⁵ *Ibid.*, pp. 10-39.

“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 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 difference between the definitions under the UNHCR Statute and the 1951 Refugee Convention lies in the time limit inherent in the latter, i.e., refugees as defined by the 1951 Convention being the product of events occurring before 1 January 1951, and in the optional geographical limitation clause attached to the definition by Article 1 (B) (1), whereby a contracting State may limit its responsibility to the European context and exclude other regions. The limitations mentioned were, however, subsequently discarded in the Protocol relating to the Status of Refugees of 1967.²⁶

An important point to bear in mind is that the UNHCR has the mandate to deal with refugee situations in all countries if requested to do so, irrespective of whether they are parties to the 1951 Refugee Convention and its 1967 Protocol or not. By Articles 8 and 9 of the UNHCR Statute, guidelines are laid down for the protection and assistance of refugees, including, *inter alia*:

- promoting the conclusion and ratification of international conventions for the protection of refugees and supervising their application;
- promoting special agreements with governments conducive to measures improving the situation of refugees;
- assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
- promoting the admission of refugees to the territories of States;
- providing its resources in such additional activities, including repatriation and resettlement, as the General Assembly may determine.

In the 1951 Refugee Convention, the role of the UNHCR is expressly stipulated by Article 35, reinforced by an array of long-term considerations establishing rights for refugees. Five categories of rights are given.²⁷ The first is that the refugee has the right to be treated in

²⁶ *Ibid.*, pp. 40-4.

²⁷ See further L. W. Holborn, *Refugees: A Problem of Our Time. The Work of the UNHCR 1951-1972* (2 Vols.), Metuchen, NJ: Scarecrow, 1975, Vol. 1; G. Jaeger, *Status of International Protection of Refugees*, HCR/120/24/80 (1980), p. 18.

the same manner as other aliens generally, except where the Convention contains more favourable provisions. The second comprises a series of rights concerning which the contracting States are to accord to refugees within their territories the same treatment as that accorded to their own nationals, such as in matters of artistic rights and industrial property, access to courts, rationing, public relief, labour legislation and social security, fiscal charges, and conditional wage-earning employment. The third consists of a right to be treated at least as favourably as local nationals in relation to religion. The fourth relates to rights for which the contracting States are to accord to refugees the most favourable treatment accorded to nationals of a foreign country in the same circumstances, such as the right of association and general wage-earning employment. The fifth relates to rights for which the contracting States are to accord to refugees treatment as favourable as possible and in any event not less favourable than that accorded to aliens generally in the same circumstances, such as rights to movable and immovable property, self-employment, to have a liberal profession, to housing, and to education other than elementary education.

Complementary to the above are certain principles established by the 1951 Refugee Convention which are of primary importance. The most obvious is the principle of non-refoulement stated in Article 33 (1), whereby “no Contracting State shall expel or return (in French “refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” In addition, Article 31 stipulates that the contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened, enter or are present in their territory without authorization, while Article 32 directs the contracting States not to expel refugees save on grounds of national security.

Ostensibly, the UNHCR has two roles:

- it is the guardian of refugees who fall within the purview of the 1951 Refugee Convention and its related Protocol, and
- it is the guardian of refugees who do not fall within the purview of the instruments concerned.

Yet, the fact that its mandate is explicitly set down in terms of a definite concept with a distinct definition —“refugees” who have left their country of origin for “well-founded fear of persecution”— also, if one were to take a literal approach of definitional interpretation,

limits that mandate. That definition was espoused in the context — eurocentric by nature— of people seeking political asylum in the wake of the Cold War. Present day circumstances are different.²⁸ Currently it is more often than not the victims of armed conflicts and internal disturbances who need protection and assistance, even though they do not flee because of “well-founded fear of persecution.”

Perforce, the role and competence of the UNHCR have had to be extended beyond the scope of the original mandate embodied in the UNHCR Statute and the refugee instruments.²⁹ In 1959, the General Assembly requested the High Commissioner to use his “good offices” to aid “refugees not within the competence of the United Nations”, although no indication was given of who these people were in legal terms. The use of “good offices” for this extended category continued in the 1960s, and culminated in the importation of another term in respect of UNHCR activities —“displaced persons”— in 1975.³⁰ Although the term ‘displaced persons’ had been used by the International Refugee Organization, comprising those fleeing from forced labour and Nazi persecution, the new use of this term is wider in conception. In particular, it has been applied to the situation of Indochinese persons seeking refuge in other countries. It was with this category in mind that the General Assembly endorsed ECOSOC Resolution 2011 in 1976, in which assistance to displaced persons was explicitly approved, such persons being identified as ‘victims of man-made disasters requiring urgent humanitarian assistance.’ This extension is thus concrete recognition of the repercussions of armed conflicts and internal disturbances which have superseded the context in which the UNHCR Statute and the refugee instruments were drafted.

Certain developments at the regional level have provided additional impetus for re-assessing the definition of the term ‘refugees’ and related institutional competence. Most notable is the definition stated in the Organization of African Unity (OAU) Convention governing specific aspects of refugee problems in Africa, adopted in 1969.³¹ It incorporates the definition given in the 1951 Refugee Convention, but extends the

²⁸ See further V. Muntarbhorn, *Shadowplay: The Legal Status of Refugees in Eight Asian Countries*, Chapters 2-4, forthcoming.

²⁹ D. McNamara, “Determination of the Status of Refugees —Evolution of Definition”, *Proceedings of the Symposium on the Promotion, Dissemination and Teaching of Fundamental Human Rights of Refugees, Tokyo, December 1981*, Geneva: UNHCR, 1982, p. 76-8.

³⁰ *Ibid.*, p.77.

³¹ *Op. cit.*, note 24, pp. 193-200.

term "refugees" to cover "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the 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."³² To all intents and purposes, this definition comprises situations giving rise to man-made disasters, and is, arguably, synonymous with the term "displaced persons" used in the extended mandate mentioned above.

Support for enlarging the scope of the term "refugees" from the original definition to that of man-made disasters, as exemplified in the OAU Convention, can be gauged from reactions in other quarters. The OAU definition was approved by the Report of the Working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia of 1981³³ and by the Executive Committee of the UNHCR in its Conclusion 22 (XXXIII) of 1981 concerning the protection of asylum-seekers in situations of large-scale influx.³⁴ It was reiterated in the Conclusions of the Eighth Round Table on Current Problems of International Humanitarian Law and the Red Cross Symposium of 1982. More recently, the definition has been broadened even further to cover not only victims of man-made disasters but also victims of human rights violations. In the Cartagena Declaration of 1984,³⁵ some South American groups proposed the extension of the term "refugees" to cover "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances which have seriously disturbed public order." Arguably, the extension to encompass victims of human rights violations suggests a norm *de lege ferenda* rather than a widely accepted norm.

There is another development of the UNHCR mandate which deserves attention. In spite of the traditional view, whereby it would only act in countries receiving refugees rather than in countries of origin, the UNHCR has become increasingly involved in humanitarian activities in the countries from which the refugees originally fled.

³² *Ibid.*, Article I (2).

³³ *Report of the Working Group on Current Problems in the International Protection of Refugees and Displaced Persons in Asia*, San Remo: International Institute of Humanitarian Law, 1981.

³⁴ *Conclusions on the International Protection of Refugees*, Geneva: UNHCR, 1980.

³⁵ *Declaración de Cartagena 1984*, Geneva: UNHCR, 1985.

Numerous examples can be given of how UNHCR work has been extended to those countries. In Burma, it has been involved in the rehabilitation of returnees who had previously fled into Bangladesh.³⁶ It has provided help to Laotian returnees from Thailand and internally displaced persons in Laos.³⁷ It has also been an important catalyst in the Orderly Departure Programme in Vietnam, under which Vietnamese who wish to leave Vietnam for other countries may do so in an orderly fashion.³⁸ Whether or not one agrees with this extended competence, it is clear that pragmatism and flexibility are part and parcel of the UNHCR approach. When requested to provide relief, if no other organization is in a position to take charge, necessity *de facto* calls for action by the UNHCR even if its competence *de jure* in such situations is not clearly stipulated. In this respect, practice indicates that the UNHCR also embodies “fall-back” attributes parallel to those of the Red Cross, albeit in a more equivocal field of competence.

Reflections

In general, it may be said that the mandates of the Movement and the UNHCR differ, at least in principle. More particularly, the ICRC enjoys a flexible mechanism within the existing framework of humanitarian law treaties and the Movement’s Statutes to offer protection and assistance not only to persons who have crossed frontiers to seek refuge, but also to others where no cross-border movement is apparent. Moreover, it can provide services on its own initiative, and it works in close co-operation with the LRCS and National Societies, the latter providing a key infrastructure at the local level.

By contrast, the UNHCR’s mandate is more circumscribed. Although it has been extended beyond refugees to encompass ‘displaced persons’ in transfrontier flows, it still does not cover, *stricto jure*, internally displaced persons, the local population affected by an influx of refugees, and situations in countries of origin —instances where the ICRC is competent to furnish relief. Moreover, at least in relation to assistance aspects, the UNHCR does not claim an inherent right of

³⁶ *Report of the UNHCR, Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 12 (A/34/12)*, New York: UN, 1979, paras. 197-200.

³⁷ *UNHCR Activities financed by Voluntary Funds: Report for 1985-6 and Proposed Programmes and Budget for 1987*, UN Doc. A/AC.96/677 (1986), Part III, pp. 11-12.

³⁸ *Ibid.*, pp. 29-31.

initiative; it is in the more passive position of having to wait to be asked to act.

Nevertheless, Red Cross protection-cum-assistance is more transitory by nature, since it is conceived in terms of emergency relief, usually in the form of material assistance and immediate physical relief. On the other hand, the UNHCR not only provides material assistance but is also oriented towards a greater range of long-term protection services, as is demonstrated by the list of rights mentioned earlier in relation to the 1951 Refugee Convention.

In reality, their mandates do overlap on a number of points, especially in the case of massive transfrontier flows of persons seeking refuge as a result of armed conflicts and internal disturbances, which are very much contemporary tragedies. Both bodies are involved in furnishing material assistance, including food, welfare and medical aid. They are both involved in certain forms of legal protection, linked with or detached from physical protection. They both say that refugee camps should be in safe locations. They both visit refugees to ascertain their welfare and protest against abuses. They both trace refugee families and are concerned with family reunification as a lasting solution to the refugee problem. They both pay special attention to the plight of unaccompanied minors. They have both made provisions for issuing travel documents to refugees. Moreover, they have both been contributing to efforts to tackle the piracy problem affecting asylum-seekers.³⁹

Their complementarity is enhanced by the fact that in certain situations which concern those who have left their country of origin for well-founded fear of persecution, the UNHCR has not been called upon to furnish protection and assistance, even though, *stricto jure*, these persons fall well within its institutional competence. Such is the situation of many Kampuchean and Vietnamese who are now living on Thai soil near the Thai-Kampuchean border. Although they have sought asylum in Thailand, the UNHCR has not been requested to take charge of them for various reasons, and it was therefore at the outset left to the ICRC to provide relief.⁴⁰ *De facto*, therefore, their roles have become complementary, and are recognised as such by Point 10 of the International Red Cross Aid to Refugees: Statement of Policy, which states that:

³⁹ V. Muntarbhorn, "Asylum-seekers at Sea and Piracy in the Gulf of Thailand", *Revue Belge de Droit International*, Vol. 2 (1981-2), pp. 481-508, and Resolution V of the Twenty-fourth International Conference of the Red Cross, *op. cit.*, note 14, p. 7.

⁴⁰ *Annual Report 1986*, Geneva: ICRC, 1987, pp. 53-7.

“The international institutions of the Red Cross will have regular consultations with the office of the UNHCR on matters of common interest and whenever considered useful, will coordinate their humanitarian assistance in favour of refugees and displaced persons in order to ensure complementarity between their actions.”⁴¹

Despite this complementarity, there is still no statement on the principles to be followed as basic standards for protection and assistance. Should there be common guidelines, explicitly stated? Can these be ascertained inductively from existing sources of law and practice? In this author’s view, there is room for humanitarian organizations to agree on certain principles for the purpose of protection and assistance. This is all the more necessary because, even if there is some disagreement over the precise meaning of such terms as “refugees”, “displaced persons”, etc., these victims of circumstances beyond their control still need protection and assistance, however they are classified and whatever the terminology used for describing them.

Tentatively, a set of principles for humanitarian protection and assistance may be proposed as guidelines for the operations of humanitarian organizations. They would be derived from sources of law and practice, in particular concerning the ICRC and UNHCR, notably the four Geneva Conventions of 1949, their two Protocols of 1977, the 1951 Refugee Convention and the Conclusions of the Executive Committee of the UNHCR, such as Conclusion 22 (XXXIII).⁴² Under the heading “**Principles for Humanitarian Protection and Assistance**”, they should, at least, comprise the following:

- the principle of humane treatment, i.e., victims of armed conflicts and internal disturbances have a right to life and to be treated humanely;
- the principle of necessary assistance, i.e., these victims should receive all necessary assistance and should be able to satisfy their basic needs, such as food, shelter, medical aid and sanitary facilities;
- the principle of judicial protection, i.e., these victims should have access to courts of law or other competent bodies to protect their interests;
- the principle of family unity, i.e., these victims should be helped to re-establish family ties and rejoin their families;
- the principle of tracing, i.e., all possible aid should be given to trace relatives of these persons;

⁴¹ *Op. cit.*, note 14, p. 25.

⁴² *Op. cit.*, note 34.

- the principle of special protection, i.e., vulnerable groups, such as women, children (especially unaccompanied minors), the aged and handicapped, need special measures to protect them;
- the principle of correspondence, i.e., these victims should have the ways and means of communicating with the outside world;
- the principle of family assistance, i.e., these victims should be able to receive material assistance from friends and relatives;
- the principle of personalty, i.e., these victims should be able to own personal effects, and measures should not be taken to deprive them thereof unless there are reasons of public security;
- the principle of personal arrangements, i.e., these victims should be able to make personal arrangements in relation to their births, deaths, marriages and testaments;
- the principle of safe location, i.e., these victims should be cared for and lodged in areas where they are safe;
- the principle of non-discrimination, i.e., these victims should enjoy the rights derived from the above without any adverse distinction.

These principles are not exhaustive, but are drawn from a variety of instruments and practices where the work of the Movement and the UNHCR overlap. They are particularly important where the victims themselves are detained in camps, as is the case in many countries which have adopted a closed door policy towards asylum-seekers. Indeed, they are but a manifestation of the most basic human rights which the Movement and the UNHCR can and should espouse for the sake of humanity in the face of growing compassion fatigue.

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