

## **ICRC ACTIVITIES FOR REFUGEES AND DISPLACED CIVILIANS**

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### **I. Introduction**

The Red Cross has been involved with refugees for many years, in fact ever since the International Red Cross and Red Crescent Movement began assisting the victims of wars, revolutions and other disturbances. All the Movement's institutions take part at some stage in dealing with refugees, deportees and persons displaced within their own countries, for instance by providing protection in the countries of origin at the time of exile, setting up reception facilities in transit or first asylum camps and supplying material and medical aid, or by carrying out tracing activities and organizing family reunifications, not forgetting the support lent to those engaged in the often interminable and humiliating procedure of applying for asylum.

As explained below, ICRC action is for the most part restricted to the theatre of military operations, to occupied territories or areas where political violence and strife compel people to flee their homes. It is often extended to the border areas of neighbouring countries, in camps where the ICRC assumes responsibility for some aspects of protection and in first-aid or war surgery centres, and sometimes comprises material assistance. These operations have expanded considerably in the last 15 years to keep pace with the new forms of conflict that have ravaged Asia and Africa. Massive aid operations have had to be organized to cope with the resulting flood of refugees, now numbering some 14 to 15 million in the world, plus five times as many people displaced within their own countries as a result of violence and destruction.

These events have also demonstrated the limitations of the legal texts and institutional measures initially designed to deal with the refugees produced by the Second World War and to help absorb the influx from the people's democracies of Eastern Europe. Recent developments have given rise to a need for humanitarian strategies which combine extensive material aid in a great variety of cultural and ethnic contexts far removed from the world of the donors, general protection for the population against the effects of war and of policies pursued with complete disregard for fundamental human rights, and a capacity for rapid and effective action, often very costly, carried out in remote regions and in politically sensitive and sometimes hostile or dangerous circumstances.

It is in the light of the above that we propose to review briefly the general approach and main aspects of the protection offered by international humanitarian law to refugees and displaced civilians, before looking at the various services and operational activities organized by the ICRC under its mandate to protect and assist war victims. Lastly, we shall consider some of the main issues of humanitarian policy on which the ICRC has taken a stand in recent years:

- access to victims in war areas and the often-raised question of an international convention on humanitarian assistance and intervention;
- co-operation between humanitarian agencies;
- protection for major concentrations of refugees currently being encouraged to return to their countries, particularly Afghanistan and Cambodia;
- the limitations of food aid operations, which concentrate too exclusively on material aid and lack the political and diplomatic dimensions needed to restore the victims' fundamental rights.

## **II. Protection of refugees and displaced civilians under international humanitarian law**

Unlike the 1951 United Nations Convention on Refugees or the 1969 OAU Convention, the instruments of international humanitarian law (IHL) do not make the protection of refugees conditional upon a legal definition of their status. Whether a displaced person has fled persecution or has abandoned his or her home as a result of armed conflict or unrest, that person is protected not on account of the reasons for his or her departure but as *a civilian affected by the existence of hostilities*, regardless of whether the armed conflict is interna-

tional or non-international.<sup>1</sup> Nor is the fact that the person has crossed an international border in itself decisive: the Fourth Geneva Convention of 12 August 1949 relative to the protection of civilian persons in time of war and the relevant provisions of the Additional Protocols of 8 June 1977<sup>2</sup> are designed to avoid, or at least to limit, the effects on civilians of conflict situations in which they can be caught up and which make them especially vulnerable.

The legal provisions that define, either directly or indirectly, the status and protection due to civilians in time of war amount to a sizeable set of standards, the general architecture of which has, incidentally, varied substantially with successive codifications of international humanitarian law. For the sake of simplicity and to keep the overall picture in view, we may distinguish the basic elements outlined below.

1. *The rules governing the conduct of hostilities* (Additional Protocol I) prohibit, in particular, methods and means of warfare of a nature to cause superfluous injury or unnecessary suffering and call for a distinction to be made at all times between the civilian population and combatants and between civilian objects and military objectives, so that civilians and civilian property are afforded general protection against the effects of hostilities.

There is also the rule prohibiting the use of methods and means of warfare which are intended to cause widespread and long-term damage to the natural environment.

These general rules give rise to a very comprehensive set of provisions which, if observed, should prevent not only harm and damage being caused to civilians but also the mass population movements that generally ensue.

The following rules are particularly relevant to our purpose:

- the prohibition not only of attacks against civilians as such, but also of “acts or threats of violence the primary purpose of which is to spread terror among the civilian population”,<sup>3</sup>
- the prohibition of “indiscriminate attacks”, reprisal attacks against the civilian population and objects and the use of civilians for mili-

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<sup>1</sup> See *International Review of the Red Cross*, “Refugees and conflict situations”, No. 265, July-August 1988, pages 321-378.

<sup>2</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), of 8 June 1977.

<sup>3</sup> Additional Protocol I, Article 51, paragraph 2.

tary purposes, either “in attempts to shield military objectives from attacks” or to shield military operations.<sup>4</sup>

In the same spirit, starvation as a method of warfare against civilians is strictly prohibited, as it is prohibited to destroy objects indispensable to the survival of the civilian population “whether in order to starve out civilians, to cause them to move away, or for any other motive”.<sup>5</sup>

2. In what might be termed a “second phase” of protection, the Fourth Geneva Convention and Additional Protocol I provide for a number of measures, to be instituted by agreement or by an *ad hoc* declaration, intended to protect a locality, a region, a particular establishment or a special category of civilians from military operations or from certain effects of hostilities; such measures include the setting up of *demilitarized zones*, *medical establishments* and *neutral zones*, to which may be added provisions regarding the *evacuation of areas under siege*, *dispatch of food and medicines to the population under blockade or embargo* and the *reunion of dispersed families*.<sup>6</sup>

3. Section III of the Fourth Geneva Convention deals with the *status* and *rights* of a special category of people, namely *aliens in the territory of a Party to the conflict*. The provisions in question cover the limits of administrative restrictions, methods of repatriation or transfer and, in particular, the protection of refugees who are nationals of an enemy State. Article 44 of the Fourth Convention stipulates in this respect that refugees who are nationals of an enemy State shall not be treated as enemy aliens on the basis of their nationality *de jure* of an enemy State. More generally, another provision states: “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”.<sup>7</sup> Both these rules confirm and strengthen the principle of the right of asylum in time of war.

4. The Fourth Convention also sets out, fully and in detail, the *rights* and *obligations of States towards civilians in the power of the enemy as a result of military occupation*. Two rules in particular are of special relevance here: the prohibition of individual or mass forcible transfers and of the deportation of inhabitants from occupied territory to the territory of the Occupying Power or to that of any other

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<sup>4</sup> *Ibid.*, Article 51, paragraphs 4, 5 and 7.

<sup>5</sup> *Ibid.*, Article 54, paragraph 2.

<sup>6</sup> Fourth Geneva Convention, Part II; Additional Protocol I, Articles 59 and 60.

<sup>7</sup> Fourth Convention, Article 45, paragraph 4.

country, whatever the motive.<sup>8</sup> Under a further provision, nationals of the Occupying Power who have sought refuge in the territory of the occupied State before the outbreak of hostilities may not be arrested, prosecuted, convicted or deported to their country of origin for acts committed before the outbreak of hostilities.<sup>9</sup> This provision therefore confirms the continued protection of refugees to whom asylum had been granted by a State whose territory was subsequently either partially or fully occupied.

5. A number of other rules, less detailed but based on the same principles, apply to *persons displaced within their own countries* as a result of a *non-international armed conflict*. Such persons enjoy the protection afforded by the minimum provisions regarding the treatment of persons taking no active part in the hostilities set out in Article 3 common to the four Geneva Conventions, supplemented by the provisions of Protocol II relating to the protection of victims of non-international armed conflicts.

### III. Operational activities

At present the ICRC has some 48 delegations operating in 80 countries and deploys 740 expatriates assisted by some 4,000 local staff in the field.<sup>10</sup> It works in behalf of prisoners of war, war wounded, security detainees, deportees, separated families, civilian populations affected by warfare, bombing or shelling, famine and all forms of armed repression. Needless to say, there are refugees and displaced civilians in practically all these categories, so they are never far from the institution's focus of attention.

Some ICRC operations, however, are more specifically aimed at providing protection for refugees, certain categories of displaced persons and civilians who, suffering the effects of war or famine, would have no other choice than to flee their homes if no protection or emergency material assistance were forthcoming. For the record, we can mention examples such as El Salvador and Nicaragua, Sudan, Angola, Mozambique, Uganda and Somalia, Afghanistan, Pakistan and the Thai/Cambodian border, and the territories occupied by Israel,

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<sup>8</sup> *Ibid.*, Article 49.

<sup>9</sup> *Ibid.*, Article 70, paragraph 2.

<sup>10</sup> See ICRC Annual Reports.

where a substantial proportion of the resident population is made up of refugees.

The main operational activities undertaken to assist these various groups of civilians are as follows:

- **Representations** to governments and armed movements, to promote understanding and acceptance of the law of war and certain humanitarian principles so as to ensure that they are observed by all parties. These representations, which initially consist of offers of services made through diplomatic channels, should subsequently become a permanent operational dialogue through regular contacts with the political and military leaders concerned. Access to political authorities also enables the ICRC to fulfil its role as a neutral intermediary with regard to various humanitarian issues which need to be settled between parties to the conflict, such as setting up safety zones, protecting hospitals, organizing relief convoys, exchanging prisoners or forwarding grievances.
- **Active protection** through the deployment of delegates in sensitive areas, access to refugee camps and visits to places of detention. This presence, provided for under the Fourth Geneva Convention, is intended as a means of monitoring the observance of the law, detecting violations and taking action at the appropriate level of government and the military hierarchy, and is an essential component of all ICRC operations. In the territories occupied by Israel it accounts for most of the ICRC's activity, which is almost exclusively devoted to the protection of civilians, and refugees in particular. Material assistance and basic services are provided by UNRWA, while the ICRC exercises its general mandate of protection as defined by the Fourth Convention. This mandate has been recognized by the Israeli authorities and confirmed by a series of specific agreements which give the ICRC access at all times to all places where Palestinian refugees and Arabs from neighbouring countries are to be found.
- **Medical, food and material assistance.** The ICRC has set up war surgery hospitals in several countries of Africa and Asia: in northern Kenya for the population of southern Sudan; in northern Somalia, for wounded civilians and combatants; in Pakistan and Afghanistan, where three surgical hospitals and a number of orthopaedic rehabilitation centres are treating Afghan refugees, persons displaced within Afghanistan and wounded combatants; and on the border between Cambodia and Thailand (Khao-I-Dang surgical hospital). The services of these hospitals are supplemented by first-aid and evacuation posts located in the combat zones, often deep in areas held by rebels.

Emergency food and material aid has developed considerably, especially in Africa, and more particularly since the start of relief operations in Ethiopia in 1984. In principle the ICRC, which in 1988 distributed some 45,000 tonnes of relief supplies to civilians affected by war, comes to the aid of population groups which, for political or security reasons, other organizations cannot reach. ICRC assistance is distributed directly to beneficiaries after detailed evaluation of requirements on the spot. The ICRC never delegates its work in the field, so as to ensure strict control over the use of food aid and prevent its being diverted or used for political ends by the armed forces or other armed groups. This policy of independent supervision not only guarantees the impartiality of humanitarian operations but also constitutes an important factor of protection for the assisted population.

Sanitation, cattle vaccination and seed distribution programmes have been launched to provide some degree of self-sufficiency to the resident or displaced population groups whose agricultural resources have been destroyed by war.

On the Angolan Planalto and in Mozambique, for instance, this combination of medical assistance, material aid and emergency rehabilitation has contributed to greater stability and has helped prevent or limit mass population movements and the formation of new concentrations of refugees.

● ***Tracing and family reunification:*** The work of the Tracing Agency, which is a part of all field operations, is naturally especially important for displaced families and refugees. Two examples may be cited. In the Near East, the ICRC set up a radio network in 1967 to facilitate contacts between members of dispersed Palestinian families who had taken refuge in Lebanon, the West Bank and Gaza, Jordan, Egypt and Syria. Some 1,500 messages a month were exchanged in this way, in addition to family reunifications, the tracing of missing persons and the exchange of messages between detainees and their families. In South-East Asia, a Tracing and Mailing Service was set up with the co-operation of the National Red Cross Societies of ASEAN countries in order to trace Vietnamese boat people and facilitate contacts between the latter and members of their families already settled in various countries of asylum. Thanks to this operation, contact was restored between thousands of family members and a great many families were reunited.

## IV. Questions of humanitarian policy

### 1. Legal framework for action: the question of a Convention on emergency humanitarian assistance

International public opinion has realised that, quite apart from matters concerning the status and special protection granted by international law to refugees and displaced civilians who are victims of conflict, the main operational problems are still actual access to the victims and the technical, logistic, financial and other means employed in providing them with assistance. In the 1980s several drafts<sup>11</sup> were drawn up with the aim of regulating relief operations or even proposing that States endorse a general obligation to accept any unarmed humanitarian action in aid of the population within their borders. Some of these drafts were definitely weaker than existing law and, if adopted, would have substantially lessened the obligations contracted by States under international humanitarian law. Others were too interventionist or imbued with too much humanitarian optimism, so that it would have been politically unrealistic to set them before the States.

The ICRC is of the opinion that the existing legal provisions constitute a sufficient framework for impartial and effective assistance and protection operations in aid of displaced civilians and refugees. With regard to international armed conflicts, the 1949 Geneva Conventions and Additional Protocol I of 1977 contain many specific provisions concerning relief operations and the principles of impartiality and neutrality on which such operations should be based. With regard to internal armed conflicts, on which much legislative work remains to be done, Article 3 common to the four Geneva Conventions and especially Article 18 of Additional Protocol II of 1977 enshrine the prin-

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<sup>11</sup> Examples include the draft UNDRO Convention on appropriate measures to speed up emergency relief of 18 June 1984 (UN General Assembly Reference A/39/269/Add. 2) or the "Kouchner" Resolution (named after its sponsor) of 1988. Special mention should be made, however, of the resolution on "The protection of human rights and the principle of non-intervention in the internal affairs of the State" (adopted by the Institute of International Law on 13 September 1989 and circulated by the Secretary-General under reference E/CN.41 1990/NGO/55, in a document dated 12 February 1990. This resolution strikes a satisfactory balance between the protection of human rights and the sovereignty of States; it recalls that the obligation to respect human rights is applicable *erga omnes*, confirms the conditions under which a State can intervene to restore respect for human rights in a third State and extends the right of humanitarian initiative, in the case of offers of services which concern medical and food aid, to situations not covered by international humanitarian law (internal disturbances and tension).

ciple of assistance and the right of humanitarian initiative, providing relief operations with the most binding legal basis to which the States have agreed so far:

*“If the civilian population is suffering undue hardship owing to a lack of the supplies essential for its survival, such as foodstuffs and medical supplies, relief actions for the civilian population which are of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction shall be undertaken subject to the consent of the High Contracting Party concerned”.*

It is therefore essential for States, in their bilateral relations, to reaffirm the need to respect and ensure respect for these rules and to encourage the ratification of the Protocols, which probably constitute the greatest concessions that the community of nations is willing to make at present to the humanitarian cause and offer the best prospects for relief operations in situations of armed conflict during the coming decade.

This effort expected from the States should be matched by a stricter ethical approach on the part of humanitarian agencies and a greater ability to co-ordinate and distribute tasks according to the political context and the problems involved. It is the willingness to make this effort, rather than any claim to an unconditional right to take action, that is likely to make humanitarian action an unavoidable necessity on the international scene.

What we need, therefore, is not new conventions but rather co-operation agreements and detailed consultations between agencies about their working methods and criteria, in order to clarify their respective mandates and avoid piecemeal negotiations with States and other political authorities on whose territory humanitarian assistance and protection operations are to be conducted.

## **2. Co-operation with the United Nations High Commissioner for Refugees (UNHCR) and other organizations**

Several resolutions adopted by the International Red Cross and Red Crescent Movement<sup>12</sup> and indeed practical necessity have led the ICRC and UNHCR to co-operate and to co-ordinate their operations. The division of responsibilities is, at least in theory, fairly clear-cut: the ICRC assumes primary responsibility for persons displaced within

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<sup>12</sup> Resolution XXI adopted by the 24th International Conference of the Red Cross (Manila, 1981); Resolution XVII adopted by the 25th International Conference of the Red Cross (Geneva, 1986).

a country as a result of a conflict, while in principle UNHCR has exclusive responsibility for refugees in countries of temporary or first asylum.<sup>13</sup> The two institutions have concurrent or complementary responsibilities with regard to protection and assistance activities for refugees concentrated in border areas which are subject to attacks or military operations.

The ICRC fully intends to continue its activities in the field along these lines, especially in favour of displaced civilians and refugees who do not fall within the definition set out in the 1951 Convention, and those who cannot be reached by UNHCR or other organizations because of political obstacles or hazardous security conditions. This was very recently the case in north-west Somalia, where the ICRC extended its operations in aid of Ethiopian refugees after WFP and UNHCR food programmes were suspended for security reasons.

This agreed distribution of tasks between the ICRC, UNHCR and the other organizations concerned should therefore be continued according to their respective mandates and statutory competence and in keeping with the capacity of each institution to operate in situations of political instability or armed conflict.

### **3. Settlement of conflicts and return of refugees**

Progress towards political settlement of regional conflicts has opened up the prospect of repatriation for hundreds of thousands of refugees, especially in Pakistan and on the Thai border. The ICRC feels that it should give a word of warning here against the dangers of premature repatriation of refugees to areas which are militarily unstable or where there has been widespread destruction of basic services. It is also important to ensure that they are not compelled to swell the ranks of various movements or factions and thus give fresh impetus to civil strife. Now more than ever, priority should be given to international supervision and to the refugees' safety and freedom of choice.

With the exception of a few very limited areas, all regions of Afghanistan are currently affected by civil war, partisan rivalries or interethnic strife. In several disputed provinces the fighting has actually intensified in recent years, as shown by the steady increase in the number of war wounded admitted to the hospitals in Kabul or on the

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<sup>13</sup> See *Red Cross action in aid of refugees*, document prepared by the ICRC and the League for the Council of Delegates (meeting of October 1983, Geneva, CD/8/1, pages 2 and 3).

Pakistan border; furthermore, in some regions agriculture is practically derelict and the infrastructure either destroyed or overloaded as a result of internal population movements. All this leads one to fear that, on their return, civilian refugees will face many dangers in a situation which is still highly volatile and offers little scope for reconstruction. Here, too, the ICRC would wish to have detailed consultations with the States concerned and with the donors and appropriate agencies in order to establish strategies for safeguarding the victims' interests and fundamental rights.

The ICRC is trying to put across a similar point of view with regard to the 300,000 Khmer refugees on the Thai border, who are likely to be decimated if they return to a country still ravaged by war and are resettled in areas lacking even basic services and infested with malaria and other serious diseases. Faced with this prospect, which has already begun to materialize, the ICRC has made its position known and is trying to draw the attention of the main parties involved (the major powers, the governments concerned, various movements and armed factions, the United Nations) to a few strictly humanitarian principles which, if observed, could prevent a new and particularly atrocious tragedy, ten years after the first exodus. We give below an extract of a recent official communication on the subject:

*“For humanitarian reasons, and in accordance with the comprehensive plan of action for Cambodia, the ICRC deems it essential that the following points be taken into consideration by all parties concerned:*

*1. In order to ensure maximum security for the returnees, the repatriation of the border population should take place only after a comprehensive political settlement has been reached, and after this settlement has led to an end of hostilities in Cambodia.*

*2. Under no circumstances should the border population be encouraged or compelled to move into areas where people's health and safety are clearly at risk, given the presence of mines, malaria and other diseases and, at least in some areas, a precarious food situation. Over the past few months, thousands of former residents of the satellite camps relocated inside Cambodia have returned to camps in Thailand to receive medical care. Most of them were suffering from malaria, and sometimes arrived in a very poor state of health.*

*3. Once the time for repatriation has come, the Khmer population in the border camps should be given the free choice as to how and where in Cambodia they wish to return. A free choice can be made only on the basis of full and independent information provided to the*

population of the camps. This freedom of choice will have to be monitored by an independent international organization.

4. It is the opinion of the ICRC that only a carefully planned repatriation under the auspices of the United Nations can create the necessary conditions to prevent future moves back to Thailand by people accommodated in dangerous and unhealthy areas of Cambodia, close to the Thai border.”<sup>14</sup>

#### 4. The protection factor

More attention should be given to the need to provide displaced persons and refugees with protection. The humanitarian efforts made in response to disasters which have occurred in Africa, for instance, have centred too exclusively on food aid. The ICRC draws the attention of States to indiscriminate acts of war, the bombing or shelling of civilian targets, extensive use of anti-personnel mines, the diverting of international aid and violations of fundamental rights, which have resulted in famine and mass population movements. In order to be effective, humanitarian aid must be underpinned by legal guarantees and political concessions.

In other words, humanitarian agencies cannot restrict their role to that of mere suppliers of medical and food aid. They must back up their emergency operations in the field with representations regarding the conduct and policies which lead to famine and violations of fundamental human rights, not to mention means of combat which are prohibited by the law of war.

During the Biafra war, under the pressure of world opinion and humanitarian agencies all Western countries decreed officially that while a government could legitimately combat an attempted secession it could not do so through starvation. The Nigerian Federal Government raised its food blockade soon afterwards. Since then this principle has been enshrined in positive law, which stipulates that “starvation of civilians as a method of warfare is prohibited” and that it is therefore prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population.<sup>15</sup>

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<sup>14</sup> *Memorandum on Unco-ordinated Moves of Camp Dwellers to Cambodia*, 14 November 1990. Excerpt from an official document handed over by the ICRC to the States and UN agencies involved in the Cambodian question.

<sup>15</sup> Additional Protocol I, Article 54; Additional Protocol II, Article 14.

And yet in recent years civilians have all too often suffered as much from disregard for all moral principles as from the effects of war itself: no one disputes the fact that many of the major outbreaks of famine which have had such dire effects on the people of Africa are not exclusively attributable to war or drought.

Admittedly, any action in this respect is diplomatically sensitive and politically risky or downright costly, and yet it constitutes the indispensable protective aspect of any relief operation, without which no lasting improvement in the condition of conflict victims can be assured. And after all, to paraphrase Orwell, this brings us back to our starting point, which is always the need to take a stand, spurred on by a sense of injustice.

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