

## Refugees and internally displaced persons

### International humanitarian law and the role of the ICRC

by **Jean-Philippe Lavoyer**

#### **1. Introduction**

The main purpose of this brief study is to show the importance of international humanitarian law, in particular the Geneva Conventions of 1949 and their Additional Protocols of 1977, for internally displaced persons, i.e. persons displaced within their own country, and to refugees, i.e. persons who have fled their country. Not only does this body of international law protect them when they are victims of armed conflict, but its rules — if scrupulously applied — would make it possible to avoid the majority of displacements.

In addition, attention will be drawn to the particular role played by the International Committee of the Red Cross (ICRC) on behalf of refugees and displaced persons, a role which combines legal intervention with operational action. The mandate of the other components of the International Red Cross and Red Crescent Movement (in short, the Movement) will also be discussed.<sup>1</sup>

After a brief review of international humanitarian law, the ICRC's mandate will be outlined and the problems faced by refugees and displaced persons will be examined from a legal and institutional standpoint.

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<sup>1</sup> In addition to the ICRC, the Movement consists of 163 National Red Cross or Red Crescent Societies and the International Federation of Red Cross and Red Crescent Societies (in short, the Federation).

Finally, a few comments will be made on current deliberations with regard to displaced persons.

## 2. International humanitarian law

International humanitarian law — also known as the law of armed conflict or law of war — consists of rules to protect people in time of war who are not, or are no longer, participating in the hostilities, as well as to limit the methods and means of warfare. It is a ‘realistic’ law, which takes into account not only requirements stemming from the principle of *humanity*, upon which humanitarian law is based, but also considerations of *military necessity*.<sup>2</sup>

The main instruments of humanitarian law are the four Geneva Conventions of 12 August 1949 and their two Additional Protocols of 8 June 1977. The *Geneva Conventions* protect the following people: wounded, sick and shipwrecked members of the armed forces (First and Second Conventions), prisoners of war (Third Convention), and civilians, particularly when they are in enemy territory and in occupied territories (Fourth Convention). The *Additional Protocols* have above all increased the protection of the civilian population from hostilities, while also limiting the methods and means of warfare.

Virtually every State is party to the Geneva Conventions of 1949,<sup>3</sup> and the tendency towards universal acceptance of the Additional Protocols has been confirmed.<sup>4</sup> Protection under international humanitarian law covers two areas:

- international armed conflicts: the Geneva Conventions and 1977 Protocol I are applicable;
- non-international armed conflicts: in situations of internal strife, Article 3 common to the four Geneva Conventions and 1977 Additional Protocol II are applicable.<sup>5</sup>

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<sup>2</sup> We suggest the following works for readers wishing to delve more deeply into this subject: Hans-Peter Gasser, *International Humanitarian Law: An Introduction*, in Hans Haug, *Humanity for All*, Henry Dunant Institute/Haupt, Geneva, 1993, and Frits Kalshoven, *Constraints on the Waging of War*, ICRC, 1991.

<sup>3</sup> As of 31 March 1995: 185.

<sup>4</sup> As of 31 March 1995: 137 States (Protocol I); 127 States (Protocol II).

<sup>5</sup> Common Article 3 contains several fundamental principles applicable in every situation of armed conflict, and is itself a “mini-convention”. Protocol II has a higher threshold of application than that of Article 3 inasmuch as the armed opposition must exercise “such control over a part of the territory whereby it can carry out sustained and concerted military operations.”

Particularly noteworthy among the humanitarian law treaties covering the use of certain weapons is the 1980 United Nations Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons, one of whose three Protocols restricts the use of mines.

States have a collective responsibility for compliance by other States and armed opposition movements with the Geneva Conventions and Protocols.<sup>6</sup> They also have the obligation to bring persons accused of having committed grave breaches thereof before their own courts, and they may also hand such persons over to another State for trial.<sup>7</sup>

Although humanitarian law and international human rights law are two separate branches of public international law, they have a common goal, namely to protect human beings. Humanitarian law safeguards the most basic human rights in the extreme situations that take the form of armed conflict. Thus these two bodies of law, plus refugee law, should be considered as complementary.

In disturbances and other violent situations not covered by humanitarian law, recourse may be had to international human rights law and to fundamental humanitarian principles, set forth in particular in the Declaration of Minimum Humanitarian Standards adopted at Turku (Finland) in 1990.<sup>8</sup>

The provisions of the Geneva Conventions and Additional Protocols are very specific. The following is a summary of certain especially important rules of conduct which apply to all armed conflicts:

- people who are not, or are no longer, taking an active part in hostilities, such as the wounded and sick, prisoners and civilians, must be respected and protected in all circumstances;
- civilians must be treated humanely; in particular, violence to their life and person is prohibited, as are all kinds of torture and cruel treatment, the taking of hostages, and the passing of sentences without a fair trial;

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<sup>6</sup> Article 1 common to the Geneva Conventions: "The High Contracting Parties undertake to respect and *to ensure respect* for the present Convention in all circumstances" (emphasis added). See also Article 89 of Protocol I, whereby States undertake to act in cooperation with the United Nations in situations of serious violations.

<sup>7</sup> This involves the principle of universal jurisdiction. Grave breaches (war crimes) are defined in each of the four Geneva Conventions (Article 50 of the First Convention; Article 51 of the Second; Article 130 of the Third; and Article 147 of the Fourth), and in Protocol I (Articles 85 and 11).

<sup>8</sup> Also known as the "Turku Declaration". See *International Review of the Red Cross (IRRC)*, No. 282, May-June 1991, pp. 328-336.

- the armed forces must always distinguish between civilians and combatants, and between civilian objects and military objectives. It is prohibited to attack civilians and civilian objects, and all precautions must be taken to spare the civilian population;
- it is prohibited to attack or destroy objects indispensable to the survival of the civilian population (e.g. foodstuffs, crops, livestock, drinking water installations and irrigation works); it is prohibited to use starvation as a method of warfare;
- the wounded and sick must be collected and cared for; hospitals, ambulances, and medical and religious personnel must be respected and protected; the emblem of the red cross or red crescent, which symbolizes this protection, must be respected in all circumstances; any abuse or misuse thereof must be punished;
- parties to a conflict must agree to relief operations of a humanitarian, impartial and non-discriminatory nature on behalf of the civilian population; aid agency personnel must be respected and protected.

### 3. The ICRC's mandate

Founded in 1863, the ICRC has been mandated by the community of States, under the Geneva Conventions and in recognition of its long-standing practical experience, “to work for the faithful application of international humanitarian law”.<sup>9</sup> To this end, it makes appropriate representations to all parties to conflict (i.e. government authorities and armed opposition groups) in order to encourage full respect for this law. It informs them of its observations, offers suggestions and reminds them whenever necessary of their obligations. The ICRC exercises this supervisory mandate by seeking to establish a relationship of trust with belligerents. Although its observations are kept confidential out of a desire to cooperate and to obtain access to the people it endeavours to protect and assist, this principle of confidentiality is not absolute, as evidenced by numerous public denouncements concerning in particular the conflicts in the former Yugoslavia and Rwanda.<sup>10</sup>

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<sup>9</sup> Article 5, para. 2 (c) of the Statutes of the Movement, revised in 1986 by the 25th International Conference of the Red Cross. It should be noted that the States party to the Geneva Conventions attend these international conferences as full members of them and that by participating in the adoption of the Statutes they expressed their desire to allocate specific tasks to the respective components of the Movement.

<sup>10</sup> The ICRC denounces grave violations of humanitarian law when all its representations fail and it is in the interest of the victims to make such a denouncement. See “Action by the ICRC in the event of breaches of international humanitarian law”, *IRRC*, No. 221, March-April 1981, pp. 76-83.

So that the ICRC can effectively carry out its duties as the *guardian of international humanitarian law*, the Geneva Conventions grant it right of access to prisoners of war (Third Convention) and to civilians protected by the Fourth Convention.<sup>11</sup> They also grant it a very broad right of initiative.<sup>12</sup> If there is no Protecting Power, the ICRC can moreover act as a substitute for it.<sup>13</sup> The ICRC also has the legal responsibility “to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof” (Article 5(g) of the Statutes of the Movement).

The States have also assigned the ICRC the task of providing *protection and assistance* to victims of armed conflicts and internal strife, and of their direct results.<sup>14</sup> Numerous operational activities have been carried out in this regard, particularly in situations of internal violence (armed conflict and unrest).<sup>15</sup>

The Statutes of the Movement specify the other tasks within the ICRC’s mandate, particularly that of upholding and disseminating the Fundamental Principles of the Movement<sup>16</sup> and of ensuring the operation of the Central Tracing Agency.<sup>17</sup>

Finally, the ICRC has the statutory *right to take any humanitarian initiative*, i.e. to offer its services whenever it considers that its specific status as a *neutral and independent intermediary* can help solve problems of humanitarian concern.<sup>18</sup> This right has the character of customary law.

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<sup>11</sup> Article 126 of the Third Convention and Article 143 of the Fourth Convention, which stipulate the following conditions for visits: access to all protected people, right to interview such people without witnesses, no restrictions on the frequency of visits.

<sup>12</sup> Article 9 of the First, Second and Third Conventions; Article 10 of the Fourth Convention; and Article 81 of Protocol I. Regarding non-international armed conflicts, see Article 3 common to the four Conventions.

<sup>13</sup> Article 10 of the First, Second and Third Conventions; Article 11 of the Fourth Convention; Article 5 of Protocol I. In practice, the ICRC most often acts on the basis of its right of initiative.

<sup>14</sup> Article 5, para. 2(d) of the Statutes of the Movement.

<sup>15</sup> For detailed information, see Marion Harroff-Tavel, “Action taken by the International Committee of the Red Cross in situations of internal violence”, *IRRC*, No. 294, May-June 1993, pp. 195-220.

<sup>16</sup> The work of the Movement is governed by the following Fundamental Principles: humanity, impartiality, neutrality, independence, voluntary service, unity and universality.

<sup>17</sup> Article 5, para. 2(e) of the Statutes of the Movement. In particular, the Central Tracing Agency seeks to restore and maintain ties among members of families split up by conflicts or disturbances, as well as reuniting members of such families.

<sup>18</sup> Article 5, para. 3 of the Statutes of the Movement.

In situations not covered by humanitarian law, for instance disturbances, the ICRC bases its activities on the universally recognized humanitarian principles, on the “hard-core” human rights which cannot be waived in any circumstances, or on other human rights.

The ultimate embodiment of the ICRC’s work is to be found in its role as a *neutral and independent intermediary*. It serves not only as an intermediary between States, but also between victims of armed conflict or internal disturbances and the State or armed opposition movements.

These numerous responsibilities have made the ICRC an organization with a *unique status*. Even though it is itself a private non-governmental organization, the duties and responsibilities assigned to it by international law give it an extremely international scope of activity; it is therefore widely recognized as having an international juridical personality. In 1990, the ICRC was moreover granted observer status in the United Nations General Assembly.<sup>19</sup> The ICRC has also concluded headquarters agreements with many countries in which it operates. These agreements confer immunities and privileges upon it, thus placing it on the same footing as an inter-governmental organization.<sup>20</sup>

## 4. Refugees

### 4.1 Protection under international humanitarian law

Whereas refugee law contains a specific definition of refugee,<sup>21</sup> humanitarian law is very vague and only rarely employs the term. All the same, this does not mean that refugees are neglected by humanitarian law, since they are protected by it when they are in the power of a party to a conflict.

During international armed conflicts, nationals of a State who flee hostilities and enter the territory of an enemy State are protected by the

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<sup>19</sup> Resolution 45/6 of 16 October 1990. See *IRRC*, No. 279, November-December 1990, pp. 581-586.

<sup>20</sup> In particular, headquarters agreements confer legal immunity and the inviolability of premises and archives. ICRC delegates generally enjoy diplomatic immunity.

<sup>21</sup> Article 1 of the Convention relating to the Status of Refugees (28 July 1951); Article 1 of the Protocol relating to the Status of Refugees (31 January 1967). This definition was expanded by the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (10 September 1969), mainly to include persons having fled from armed conflict or disturbances.

Fourth Geneva Convention as aliens in the territory of a party to the conflict (Articles 35 to 46 of the Fourth Convention). This Convention requests *favourable treatment for refugees* on the part of the host country; since, as refugees, they do not enjoy the protection of any government, they must not be treated as enemy aliens solely on the basis of their nationality (Article 44 of the Fourth Convention). Protocol I reinforces this rule while also referring to the protection of stateless persons (Article 73 of Protocol I). Refugee nationals of a neutral State who find themselves in the territory of a belligerent State are protected by the Fourth Convention when there are no diplomatic relations between their State and the belligerent State. Article 73 of Protocol I maintains this protection even when diplomatic relations exist.

The Fourth Convention further stipulates 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” (principle of *non-refoulement*, Article 45, para. 4 of the Fourth Convention).

If, during the occupation of a territory, refugees again fall into the power of a State of which they are nationals, they also enjoy special protection: the Fourth Convention prohibits the Occupying Power from arresting, prosecuting or convicting them, or from deporting them from the occupied territory (Article 70, para. 2 of the Fourth Convention).

However, nationals of a State who flee from armed conflict to the territory of a State that is not taking part in an international conflict are not protected by international humanitarian law,<sup>22</sup> unless this State is beset by internal armed conflict, in which case they are protected by Article 3 common to the Geneva Conventions and by Protocol II. The refugees in question are then the victims of two situations of conflict, one in their own country, and the other in the country receiving them.

## 4.2 The ICRC's role

The Office of the United Nations High Commissioner for Refugees (UNHCR) plays a role of paramount importance in work on behalf of refugees.

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<sup>22</sup> Such situations are frequent, e.g. Afghan refugees in Pakistan and Iran; Iraqi refugees in Iran during the Gulf war; and Rwandan refugees in Zaire, Burundi and Tanzania.

The ICRC considers itself to be directly concerned by the fate of refugees who are *civilian victims of armed conflicts or disturbances*, or of their direct results, i.e. situations covered by its mandate.<sup>23</sup> ICRC action for these refugees depends *inter alia* on their protection under international humanitarian law.

In the case of *refugees covered by humanitarian law*, the ICRC steps in to encourage belligerents to apply the relevant provisions of the Fourth Geneva Convention. At the operational level, the ICRC seeks to obtain access to the said refugees on the basis of this same Convention, and to provide them with any protection and assistance they may need.<sup>24</sup>

As mentioned above, refugees are often *not protected by humanitarian law*, i.e. when the host country is not party to an international armed conflict or is itself not engaged in conflict. In such cases they are protected only by refugee law and benefit from the activities of UNHCR. As a rule, the ICRC then acts only in a *subsidiary* capacity and if it is the sole organization in the area concerned.<sup>25</sup> It withdraws once UNHCR and other organizations take over so that it can carry out tasks more in keeping with its specific role. The ICRC may, however, offer refugees the services of its Central Tracing Agency at any time. It has also developed war surgery programmes for wounded refugees.<sup>26</sup>

The ICRC does, however, feel concerned when refugees encounter major security problems in host countries, particularly when violence or even military operations are directed toward refugee camps near the border.<sup>27</sup> In this case, the ICRC is well placed to perform its role as a

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<sup>23</sup> See Françoise Krill, "ICRC action in aid of refugees", *IRRC*, No. 265, July-August 1988, pp. 328-350.

<sup>24</sup> During the Iran/Iraq conflict, the ICRC thus took care of Iranian refugees in Iraq and even helped with their resettlement in other countries. Following the Gulf war, the ICRC also visited more than 20,000 Iraqis held in the Rafha camp in Saudi Arabia; activities by the ICRC and UNHCR were mutually complementary.

<sup>25</sup> The ICRC intervened on several occasions during the initial phase of an influx of refugees, e.g. in the following cases: Iraqi Kurd refugees in Iran at the end of the Gulf war (1991); Rwandan refugees in Goma (Zaire) and Ngara (Tanzania) in 1994. When UNHCR was not present, the ICRC looked after Mozambican refugees in South Africa and Iranian refugees in Iraq during the Iran/Iraq war.

<sup>26</sup> For example, hospitals for Afghan refugees in Peshawar and Quetta (Pakistan), and for Cambodian refugees in Thailand.

<sup>27</sup> For example, the ICRC launched an extensive operation in aid of Cambodian refugees on the Thai-Cambodian border. See René Kosirnik, "Droit international humanitaire et protection des camps de réfugiés", in *Studies and essays on international humanitarian law and Red Cross principles, in honour of Jean Pictet*, ICRC/Geneva; Martinus Nijhoff Publishers, The Hague 1984, p. 387 ff.

neutral and independent intermediary, and has *concurrent competence* alongside that of UNHCR. With regard to security problems arising in refugee camps particular note should be taken of two factors: the location of such camps in dangerous areas close to the border where they are exposed to hostilities, and the presence of combatants in the camps. International humanitarian law provides some solutions to these problems, though it must first be respected.

When both the ICRC and UNHCR are competent to take action, work by the two organizations is carried out in a spirit of complementarity. Concerted efforts and close coordination result in optimum assistance for victims.

Attention is drawn here to the important role played by the National Red Cross and Red Crescent Societies and their Federation in assistance operations for refugees.

The *repatriation of refugees* is another area of considerable concern to the ICRC. Although it generally does not engage in such operations,<sup>28</sup> the ICRC considers that the States and organizations involved must carefully check that the time and conditions for the refugees' return are right. Owing to its good knowledge of the refugees' country of origin, it can analyse the situation and make recommendations to ensure that refugees return home safely and in dignity. On several occasions the ICRC has warned against the risk of over-hasty repatriations in unstable areas or places where the infrastructure has been destroyed.<sup>29</sup>

The problem of landmines must be borne in mind here, with their devastating injuries that most of all affect the civilian population. These mines not only constitute a reason for displacement, they also seriously impede the reconstruction of war-stricken countries and represent a major obstacle to the return of refugees and displaced persons. The ICRC is of the opinion that only a total prohibition of anti-personnel mines can put an end to this scourge.

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<sup>28</sup> The ICRC does, however, supervise large-scale repatriations, of prisoners of war in particular, such as those that took place between Iraq and Iran in 1990 (approximately 79,000 prisoners), and between Saudi Arabia and Iraq in 1991 (approximately 80,000 prisoners). The ICRC always ensured that each prisoner of war was willing to be repatriated.

<sup>29</sup> The ICRC has spoken out in particular against the repatriation of refugees to Afghanistan, Cambodia, Croatia, Bosnia-Herzegovina and Rwanda. As regards Cambodia, see ICRC Memorandum of 14 November 1990, partially reprinted in Frédéric Maurice and Jean de Courten, "ICRC activities for refugees and displaced civilians", *IRRC*, No. 280, January-February 1991, pp. 9-21.

## 5. Persons displaced within their own country

### 5.1 Protection under international humanitarian law

As previously seen, during armed conflict the civilian population is entitled to an immunity intended to shield it as much as possible from the effects of war. Even in time of war, civilians should be able to lead as normal a life as possible. In particular, they should be able to remain in their homes; this is a basic objective of international humanitarian law.

However, when civilians are forced to leave their homes owing to serious violations of international humanitarian law, they are still *a fortiori* protected by this law. This protection may come from the law applicable either to international or to internal armed conflicts, as both types of conflict may result in displacements of people within their own country.

The protection to which displaced persons, as civilians, are entitled in the event of *displacements due to international armed conflict* is set forth in considerable detail (Protocol I, for example, dedicates a major section to it — Articles 48 ff.). The civilian population is also entitled to receive items essential to its survival (Article 23 of the Fourth Convention; Article 70 of Protocol I). The same holds true for the population of occupied territories (Articles 55 and 59 ff. of the Fourth Convention; Article 69 of Protocol I). In addition, the civilian population cannot be deported from occupied territory.<sup>30</sup> Generally speaking, the civilian population enjoys the fundamental guarantees stipulated in Article 75 of Protocol I.

Civilians *fleeing from an internal armed conflict* enjoy protection very similar to that during international armed conflicts. Although the fundamental principles of this protection have been clearly spelt out, it must be admitted that the rules are less specific. Owing to the predominance nowadays of internal armed conflicts, a fairly detailed description will be given here of the relevant rules.<sup>31</sup>

*Article 3* common to the four Geneva Conventions is the cornerstone of this protection. Although very short, it contains essential principles.

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<sup>30</sup> Article 49 of the Fourth Convention: the Occupying Power may, as an exception, undertake evacuations “if the security of the population or imperative military reasons so demand. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased”.

<sup>31</sup> See Denise Plattner, “The protection of displaced persons in non-international armed conflicts”, *IRRC*, No. 291, November-December 1992, pp. 567-580.

After pointing out that persons taking no active part in the hostilities must be treated humanely in all circumstances, it prohibits the following acts: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; the taking of hostages; outrages upon personal dignity, in particular humiliating and degrading treatment; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the [fundamental] judicial guarantees. The Article also states that the wounded and sick are to be collected and cared for.

These fundamental guarantees are repeated in *Protocol II* which, in addition to the guarantees given in common Article 3, prohibits collective punishments, acts of terrorism, and pillage (Article 4, paras 1 and 2). In addition, the prohibition of outrages upon personal dignity explicitly includes rape, enforced prostitution and any form of indecent assault. Persons deprived of liberty also enjoy additional guarantees (Article 5). Article 6 specifies judicial guarantees, while Articles 7 to 12 stipulate that the wounded and sick, as well as those caring for them, must be respected and protected. Finally, special protection is laid down for women and children (particularly in Article 4, para. 3).

Afterwards, Protocol II stipulates that the civilian population is to be protected from the effects of hostilities (Part IV): “The civilian population...shall enjoy general protection against the dangers arising from military operations” (Article 13). In particular, it must not be the object of attack. Also prohibited are acts or threats of violence intended to spread terror among the civilian population.

In addition, the use of starvation of civilians as a method of combat is prohibited (Article 14). It is also prohibited to attack, destroy or remove objects indispensable to the survival of the civilian population or render them unusable (such as foodstuffs, agricultural areas, crops, livestock, drinking water installations and supplies and irrigation works). Works and installations containing dangerous forces — dams, dykes and nuclear power stations — must not be attacked if such attacks may cause severe losses among the civilian population (Article 15). Cultural objects and places of worship are likewise protected (Article 16).

Protocol II also prohibits *forced movement of civilians*. Such displacements may be carried out only if required for the security of the civilians involved or for imperative military reasons. When such is the case, all possible measures must be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition (Article 17). Although not expressly stipulated, it is understood that such movements may be only temporary.

Finally, whenever the civilian population is deprived of supplies essential for its survival (such as foodstuffs and medical supplies), relief actions “of an exclusively humanitarian and impartial nature and which are conducted without any adverse distinction” are to be undertaken with the consent of the State concerned.<sup>32</sup>

As regards the conduct of hostilities, in 1990 the International Institute of Humanitarian Law at San Remo adopted a “Declaration on the rules of international humanitarian law governing the conduct of hostilities in non-international armed conflicts”. It contains general principles on the conduct of hostilities as well as rules on the use of certain weapons.

*Thus international humanitarian law adopts a global approach aimed at safeguarding the civilian population as a whole. The fact that population displacements are only rarely mentioned does not mean that legal protection is lacking. On the contrary, compliance with the law should help to prevent such displacements.*

Evidently there will never be such a thing as ‘total’ legal protection; even if every rule of international humanitarian law were respected, population displacements would still take place.<sup>33</sup> However, respect for the rules would make it possible to avoid most displacements resulting from war, which is at present the main cause thereof.

*It is consequently essential that States not yet party to the Geneva Conventions and their Additional Protocols should accede to these instruments, and that belligerents should fulfil their obligations and scrupulously apply the rules they have solemnly undertaken to respect.*

The obligation to spread knowledge of humanitarian law, in particular among the armed forces but also among the population at large, can never be overstressed. *Instruction in the rules of international humanitarian law is a major preventive measure.*

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<sup>32</sup> Article 18, para. 2 of Protocol II. When these conditions exist, the State must in principle give its consent. As regards relief actions under humanitarian law, see Denise Plattner, “Assistance to the civilian population: the development and present state of international humanitarian law”, *IRRC*, No. 288, May-June 1992, pp. 249-263.

<sup>33</sup> The civilian population can suffer collateral or incidental damage loss (see Article 51, para. 5 and Article 57, para. 2 of Protocol I). Attacks are prohibited, or must be stopped, if the loss of human life among the civilian population would be excessive in relation to the concrete and direct military advantage anticipated (principle of proportionality).

## 5.2 The ICRC's role

The whole problem of internally displaced persons calls for a dual response from the ICRC: first, as promoter and guardian of international humanitarian law and, second, as an operational agency providing protection and assistance to victims of armed conflicts and internal disturbances.<sup>34</sup>

By combining approaches to belligerents to promote respect for the law with its operational activities in the field, the ICRC above all seeks to create conditions whereby the civilian population can remain in their homes whenever possible, in safety and dignity. *Prevention* is thus a major aspect of its work. The magnitude of population displacements is evidence of how arduous such a task is, and how difficult it is to diminish the arbitrary treatment of civilians and the excesses committed against them. Humanitarian action nonetheless plays a significant role, helping to curb wanton violence and prevent the situation from deteriorating further.

As victims of armed conflicts or disturbances, internally displaced persons unquestionably come under the mandate of the ICRC. They consequently enjoy the general protection and assistance it affords to the civilian population, which can be briefly summed up as follows:<sup>35</sup>

- protection of the civilian population; respect for international humanitarian law and humanitarian principles;
- visits to persons deprived of their freedom;<sup>36</sup>
- emergency medical assistance and rehabilitation (war surgery, orthopaedics, support for medical facilities, etc.);
- assistance in public health programmes, particularly as regards the supply of drinking water;
- emergency food aid and other assistance to cover basic needs (e.g. material to make shelters, hygiene products, the distribution of seed, and agricultural tools and fishing tackle, livestock vaccination);<sup>37</sup>

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<sup>34</sup> See Maurice and de Courten, *op. cit.*

<sup>35</sup> See Harroff-Tavel, *op. cit.*

<sup>36</sup> The purpose of these visits is to verify the detention conditions and the treatment of detainees. In 1994, the ICRC visited more than 99,000 persons held in 2,470 places of detention in 58 countries.

<sup>37</sup> In 1994, the ICRC distributed 167,000 tonnes of supplies of all kinds in 45 countries.

— activities to restore contact among family members separated by war or disturbances, or to facilitate their reunification.<sup>38</sup>

The ICRC also offers its services to facilitate communication between parties to conflict (e.g. by passing on messages of a humanitarian nature) or the conclusion of humanitarian agreements (e.g. special agreements to extend the applicability of international humanitarian law to an internal armed conflict, or to make it possible to evacuate the wounded).

For the ICRC the concepts of protection and assistance are closely linked and even inseparable.<sup>39</sup>

Most of the ICRC's work for displaced persons is carried out during armed conflicts. Thanks to its recognized right of initiative and its neutral and independent status, the ICRC is often best placed to take action during hostilities, i.e., in situations where the dangers and consequently the humanitarian needs are the greatest. Its specific nature and virtually permanent contacts with all parties to conflict generally enable it to obtain access — whether in government territory or in areas held by armed opposition groups — to the victims it is mandated to protect and assist. It cooperates as much as possible with National Red Cross and Red Crescent Societies.

Recent ICRC activities in aid of displaced persons, particularly in Rwanda and Chechnya, have been considerable. In *Rwanda*, the ICRC has cared for more than one million civilians, most of them displaced persons.<sup>40</sup> In *Chechnya*, the ICRC has assisted hundreds of thousands of people, many of them displaced. In both cases, as in general, its activities were not confined to these groups of people but formed part of a whole range of efforts on behalf of the civilian population.

Questions may arise as to the advisability of recourse to measures intended to improve protection of the civilian population, in particular displaced persons, against hostilities. The creation of *special protected*

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<sup>38</sup> In 1994, the Central Tracing Agency delivered 7,721,650 Red Cross messages to and from separated family members.

<sup>39</sup> See Jean-Luc Blondel, "Assistance to protected persons", *IRRC*, No. 260, September-October 1987, pp. 451-468.

<sup>40</sup> The ICRC's material aid, essentially in food and agricultural rehabilitation, is also directed toward the particularly vulnerable members of the local population and, as the need arises, toward returnees. The ICRC also carries out the following work in Rwanda: visits to persons deprived of liberty; restoring family ties, particularly by registering unaccompanied children; rehabilitation of the drinking water supply system; and basic medical programmes.

*zones* has thus been proposed, such as those provided for in international humanitarian law<sup>41</sup> or inspired by it. Practical experience has shown, however, how difficult it is to set up such areas, and especially to ensure their safety, which requires strict control over the area and therefore a considerable deployment of personnel. It has also shown that a safety zone will be all the more effective when it has been accepted by all parties concerned. Moreover, a protected zone that has been imposed on the parties fails to meet the requirements of international humanitarian law. The *ICRC* has managed — in cases of extreme urgency and with the consent of all parties — to render limited areas neutral by placing them under its own control.

Great caution must be taken when creating safety zones, for they tend to create a false sense of security among those they are meant to protect. In certain cases, they may also have the undesired effect of placing those outside the zone in even greater danger, detracting from the effectiveness of the international humanitarian law which is destined to protect the civilian population as a whole, without discrimination.

Care should also be taken to ensure that such measures do not limit the right of displaced persons to leave their country and request asylum abroad.

## **6. The International Red Cross and Red Crescent Movement**

Any description of activities to assist refugees and displaced persons must also take into consideration the work of the Movement's other components, namely the National Red Cross and Red Crescent Societies and the Federation. The Movement has in fact adopted a specific policy for these two categories of people.

The Movement's concern for them dates back a long time. However, it was not until 1981, at the 24th International Conference of the Red Cross

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<sup>41</sup> As regards protection of civilians, see Article 14 of the Fourth Convention ("Hospital and safety zones and localities"), Article 15 of the Fourth Convention ("Neutralized zones"), Article 59 of Protocol I ("Non-defended localities"), and Article 60 of Protocol I ("Demilitarized zones"). For a more detailed study of the matter, see Yves Sandoz, "The Establishment of Safety Zones for Persons Displaced within their Country of Origin," presented at the Multi-choice Conference on International Legal Issues arising under the United Nations Decade of International Law, Doha, Qatar, 22-25 March 1994.

held in Manila, that the role of the Movement was clearly defined for the first time, with the adoption of a resolution and a 10-point "Statement of Policy" (Resolution XXI and Annex). Of particular note therein is a general appeal to the Movement to help refugees, displaced persons and returnees. It is also specified that all action undertaken must be in strict accordance with the Fundamental Principles of the Movement.

In addition, the components of the Movement are invited to cooperate with UNHCR and other institutions and organizations working on behalf of refugees. Provision is made for consultations with UNHCR and for the coordination of activities to ensure that efforts will be complementary. In order to ensure consistency in the Movement's work, National Societies are expected to inform the ICRC and/or Federation of any negotiations likely to lead to an agreement with UNHCR. The ICRC and/or Federation should be associated with the Society in the negotiations and concur with the terms of agreement.

This Statement of Policy also demonstrates the specific protection the ICRC offers as a neutral and independent institution. Furthermore, the role of its Central Tracing Agency is stressed; in cooperation with National Societies, the agency seeks to facilitate the reunification of dispersed families, the exchange of family news and the tracing of missing persons.

The 25th International Conference, held in Geneva in 1986, reaffirmed the role of the Movement in aid of refugees, displaced persons and returnees (Resolution XVII), as did the Council of Delegates<sup>42</sup> at its 1991 meeting in Budapest (Resolution 9), and in 1993 in Birmingham (Resolution 7). The Resolution adopted in Birmingham "invites the components of the Movement, in accordance with their respective mandates...to continue to act vigorously in favour of refugees, asylum-seekers, displaced persons and returnees".

The Movement's efforts in favour of displaced persons are centred around the specific roles of each of its components. Respect for these roles, in a spirit of complementarity, is indeed the best guarantee for effective action. The Statutes of the Movement and the Agreement concluded in 1989 between the ICRC and the League (now known as the Federation) provide the general framework for the various activities. Broadly speaking, the assignment of tasks is as follows:

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<sup>42</sup> The Council of Delegates is the statutory body where the components of the Movement meet to discuss matters which concern the Movement as a whole.

- In situations of armed conflict, and whenever the presence of a specifically neutral and independent institution is necessary, the ICRC assumes the general direction of the operation;<sup>43</sup>
- In situations of peace, the Federation coordinates the relief work of the National Societies following any major disaster.<sup>44</sup>

A large number of National Societies have now set up major programmes for refugees, displaced persons and returnees, often with the support of the Federation. Many of these Societies act as implementing agencies for UNHCR or other United Nations organizations. Such cooperation must be guided by the Movement's Fundamental Principles, a requirement which is all the more important in a world where neutral and impartial action is in constant danger of politicization.

## 7. Current challenges

The problem of population displacements, whether the people concerned are refugees or persons displaced within their own country, presents a big challenge for the international community. Aspects concerning displaced persons will be considered here.<sup>45</sup>

First of all there is the important work being carried out by Mr Francis Deng, Representative of the UN Secretary-General on Internally Displaced Persons.<sup>46</sup> Input on this subject has been provided by the Human Rights Commission, the UN Department of Humanitarian Affairs,<sup>47</sup> UNHCR, the Centre for Human Rights and many non-governmental organizations, some of which have been assigned the task by Mr Deng of investigating certain legal<sup>48</sup> and institutional<sup>49</sup> aspects of the phenom-

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<sup>43</sup> Article 5, para. 4 of the Statutes of the Movement; Articles 18 and 20 of the 1989 Agreement.

<sup>44</sup> Article 19 of the 1989 Agreement.

<sup>45</sup> The current number of displaced persons is estimated to be around 25 million, or even more, although the concept of 'displaced person' is not clearly defined. The causes of displacement vary widely: armed conflict, disturbances, repression, natural disasters, socio-economic conditions, and infrastructural projects (e.g. dams).

<sup>46</sup> See in particular his latest report to the Commission on Human Rights, dated 2 February 1995 (ref. E/CN.4/1995/50).

<sup>47</sup> The Department of Humanitarian Affairs has created an inter-agency work group on displaced persons.

<sup>48</sup> The *Ludwig Boltzmann Institute* for Human Rights (Austria), the *American Society of International Law* and the *International Human Rights Law Group* (United States).

<sup>49</sup> The *Refugee Policy Group* (United States) and the *Norwegian Refugee Council* (Norway).

enon of displaced persons. Many States are also joining in. As the subject is of great importance to the ICRC, it is taking an active part in the debate as well, in particular through dialogue with the Representative of the Secretary-General.<sup>50</sup>

Careful consideration by the international community of how to address the growing problem of displaced persons is essential. Present efforts to increase awareness are commendable, valuable as they are in drawing attention to a matter of serious humanitarian concern. Current ideas on the subject are reviewed below.

To begin with, what should be done to improve *humanitarian action* on behalf of displaced persons? In view of the large numbers and vast needs of these people, greater cooperation between the humanitarian agencies, particularly UN bodies and non-governmental organizations, is of paramount importance. This cooperation must be increased in a spirit of complementarity and must take their respective mandates into account. To be truly neutral and impartial, humanitarian action must moreover be independent of all political and military considerations, for only then is it possible to reach all victims.<sup>51</sup> States must also recognize that humanitarian action has its limits; although indispensable, it is but a temporary remedy for problems that can be solved only by political means, with assistance from the international community when required.

The question then arises as to a possible *development of the law*. This is a delicate matter, for there are already many legal regulations, and, when new rules are created (e.g. a convention on displaced persons), care must be taken not to undermine the existing law. Another moot point is the advisability of creating rules aimed solely at protecting displaced persons, which could result in discrimination against other victims who also deserve to be protected. The traditional humanitarian law approach, based on needs arising from a given situation (armed conflict), therefore appears preferable to an approach centred on specific categories of people in every situation.

Proposals intended to reaffirm certain essential principles and rules of humanitarian law and human rights law in order to improve protection of displaced persons must on the other hand be encouraged, provided that

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<sup>50</sup> See the ICRC's reply November 1992 to Mr Deng which is reproduced in this issue of the *IRRC*, pp. 181-191.

<sup>51</sup> See *Code of conduct for the International Red Cross and Red Crescent Movement and non-governmental organizations (NGOs) in disaster relief*.

the existing law is upheld and not weakened (there has been talk of a set of principles, a code of conduct or a declaration). It is true that in situations not covered by international humanitarian law, existing law perhaps does not yet provide optimum protection for the civilian population, and consequently for displaced persons, although the power to waive certain human rights at times of exceptional public danger is limited. It should be noted that population displacements are mentioned in Article 7 of the Turku Declaration.

In general, however, efforts by the international community should be concentrated first and foremost on *improved implementation of international humanitarian law* by all belligerents. This should help to bring about a considerable reduction in the number of displaced persons and refugees.<sup>52</sup>

**Jean-Philippe Lavoyer** was born in 1950 in Berne (Switzerland), where he obtained his degree as a barrister in 1976. From 1984 to 1988, he was an ICRC delegate in South Africa, Somalia and Afghanistan. After three years with the ICRC's Legal Division in Geneva, he was assigned to Kuwait (1991-1994). He has now rejoined the Legal Division, and continues to carry out regular missions, particularly for the purpose of disseminating international humanitarian law.

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<sup>52</sup> In an effort to increase respect for humanitarian law, in 1993 the Swiss Government, at the ICRC's suggestion, organized the International Conference for the Protection of War Victims. The next International Conference of the Red Cross and Red Crescent, to be held in Geneva in December 1995, will also discuss measures to be taken to increase this respect.