

The ICRC and internally displaced persons

In 1992, the United Nations Commission on Human Rights adopted a resolution on persons displaced within their own countries, pursuant to resolution 1991/25 on the same subject, whereby the United Nations Secretary-General was requested to gather the views of governments and of the intergovernmental and non-governmental organizations concerned and to report to the next session.

Mr Francis Deng, subsequently appointed Special Representative of the Secretary-General on internally displaced persons, asked the ICRC for its opinion on the matter. The ICRC's reply, given in November 1992, remains valid today and is reproduced below in a slightly modified form.

1. Introduction

According to the four Geneva Conventions of 1949 and the 1977 Protocols additional thereto, the mandate of the International Committee of the Red Cross (ICRC) applies in both international and non-international armed conflict situations. The States party to the Geneva Conventions have also recognized the ICRC's right to propose activities in behalf of victims of internal strife, by adopting the Statutes of the International Red Cross and Red Crescent Movement (Article 5, para. 2d, of the Statutes).

For the purposes of this article, therefore, the ICRC will confine its considerations to situations of armed conflict and internal strife, it being understood that international humanitarian law applies only to armed conflict situations.

2. Causes of displacement of persons

Whenever military operations are not confined to the front line, they are liable to cause population movements. However, the ICRC has observed that violations of international humanitarian law very frequently lead to population displacements, or exacerbate the phenomenon.

For instance, civilians flee combat zones on account of indiscriminate attacks by belligerents. Or, subjected to harassment and caught in the firing line between the belligerents, they attempt to escape the abuses of power of which they are the victims. When they move, they lose access to their normal sources of supply. This may in itself be a primary cause of famine; or famine may develop because the belligerents do not take the necessary steps to allow the delivery of relief to these persons. When belligerents deliberately impede the delivery of relief supplies essential to the survival of the civilian population, their conduct runs counter to international humanitarian law, in particular the provisions prohibiting the use of starvation of civilians as a method of warfare (Articles 54 of Protocol I and 14 of Protocol II). Such impediments to the delivery of relief may in turn cause further population displacements.

The indiscriminate use of landmines must also be taken into consideration when analysing the causes of the displacement of civilians during armed conflict. Indeed, mines kill 800 people each month, most of them women, children and farmers. According to conservative estimates, there are still 85 to 100 million mines lying in wait in 62 countries. Even under ideal conditions, when the layout of minefields is known and is even mapped, it takes a hundred times as long to remove mines as to lay them. By cutting farmers off from their fields, landmines force them to leave their villages and thus they swell the ranks of persons displaced by war.

Authorities faced with a non-international armed conflict may decide to transfer a civilian or group of civilians from one place to another within the national territory. In this case, the authorities' decision complies with international humanitarian law only if the security of the civilians involved or imperative military reasons (our underlining) so demand. Even then, the decision is in line with humanitarian standards only if all possible measures are taken "*in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition*" (Article 17(1) of Protocol II).

Violations of international law may be the cause of large-scale population movements and at the same time betray a deliberate policy on the part of the authorities to provoke such movements. In any event, a policy

involving mass displacement of groups of population, like the policy of “ethnic cleansing”, is not consistent with respect for humanitarian law. It should be noted in this connection that Article 3 common to the four Geneva Conventions forbids parties to a conflict to have recourse to discriminatory treatment founded on “*race, colour, religion or faith, sex, birth or wealth, or any other similar criteria*”.

Although organization and discipline among combatants are liable to enhance respect for humanitarian law, it must be stressed that the provisions of common Article 3, which are applicable to all types of armed conflict,¹ and particularly non-international armed conflict, lay down rules of conduct which stem from the duty to act humanely and which do not require any particular legal or political mechanism for compliance. To avoid any further regression of the minimum standards of civilization, such compliance must continue to be demanded at all times.

3. Needs of displaced persons

Human dignity is generally very severely affected by the fact of having to leave one’s home on account of events associated with armed hostilities or other forms of violence, because of the utter dependence in which the displaced persons then find themselves. States should therefore adhere to a policy designed to *prevent displacements*. For this, much greater importance will have to be attached to respect for humanitarian law.

States at peace should — as indeed they are required to do by the Geneva Conventions — spread knowledge of the humanitarian rules, notably on account of their educational value, which is at least on a par with that of the rules of human rights. For countries affected by an armed conflict, efforts should focus on restoring the resolve of political and military leaders to respect the minimum standards of humanity which the Geneva Conventions endeavour to preserve. Securing respect for humanitarian law should be seen as a necessary step towards the restoration of a peace which will not be undermined by the memory of disproportionate suffering. Attention should also be given to situations which are not governed by a protective regime such as that provided by humanitarian

¹ See Judgment by the International Court of Justice in the case concerning military and paramilitary activities in and against Nicaragua, Reports of Judgments, Advisory Opinions and Orders, p.104, para. 218.

law, firstly because humanitarian law does not apply in such cases and furthermore because the international law of human rights is often suspended, at least partially, by the use of derogation clauses.²

In summary, the prevention of displacements calls for rules which would avert, or at least limit, population movements, an implementation system geared to the problems which those rules are intended to solve (see section 5 below), and a policy on the part of States allowing the rules to produce the desired effects.

The ICRC has in any event observed that the needs of displaced persons go much further than mere material relief. Action must be taken ahead of displacements. Its purpose must be to shelter people from the hostilities, not by displacing them but by making sure that military operations comply with the restrictions laid down by law. It must combat all conduct which violates the identity of a population group by abuses of power contrary to the rules of international law. In non-international armed conflict, special agreements between the parties may raise standards of behaviour and offer solutions derived from the law applicable to international armed conflicts.

Humanitarian law applicable to non-international armed conflicts does not make any provision for protected areas such as the hospital and safety zones mentioned in Article 14 of the Fourth Geneva Convention and the neutralized zones mentioned in Article 15 of the same text. The question arises whether the establishment of similar zones should not be encouraged in situations of internal armed conflict. The main problem is obtaining the cooperation of the authorities concerned; otherwise such zones are frequently subject to attacks, with often tragic results for the persons whom they are supposed to protect. It is therefore difficult to advocate general solutions; their relevance must be examined on a case-by-case basis, taking the specific circumstances into account. Similar difficulties arise when attempts are made to reserve for exclusively humanitarian purposes communication channels used for the transport of relief supplies (humanitarian corridors). In practice this is almost impossible. The establishment of such corridors can furthermore have negative effects on areas other than those they serve. Any proposed solution must therefore be carefully examined in terms of its advantages and disadvantages in the given context.

² See the "Declaration of Minimum Humanitarian Standards" published in the *International Review of the Red Cross*, No. 282, May-June 1991, p. 330 ff. This Declaration was circulated within the Sub-Commission on Prevention of Discrimination and Protection of Minorities on 12 August 1991 as Document No. E/CN.4/Sub.2/1991/55, and in 1994 was submitted by resolution to the Commission with a view to its finalization and possible adoption.

In regard to the phenomenon of displaced persons, therefore, the ICRC believes that a combined protection and assistance strategy is required. The provision of relief, intended to help people survive by meeting their most urgent needs, should never be regarded as a substitute for efforts to eradicate the causes of displacement, through representations to the civilian and military authorities and practical activities in the field. In addition, all possible steps must be taken, when launching a relief operation, to avoid creating a state of dependence and to help the people receiving assistance to regain their self-sufficiency.

4. Law applicable to displacement of persons within the national territory

International humanitarian law protects the victims of international and non-international armed conflicts. The four Geneva Conventions of 1949 and Additional Protocol I, in addition to customary law, apply to international armed conflicts. Article 3 common to the four Geneva Conventions of 1949, and Additional Protocol II, as well as the relevant customary rules, apply to non-international armed conflicts. At 31 December 1994, 185 States were parties to the Geneva Conventions of 1949, 135 to Protocol I and 125 to Protocol II.

As internally displaced persons are in principle civilians, they are protected before, during and after their displacement by all the rules that protect civilians in an armed conflict situation.

Nowadays, most such situations are non-international in nature. On account of their characteristics — no front line, combatants mingling with the population, breakdown of political, economic and social structures, etc. — these situations are more likely to cause population movements than are international armed conflicts. In addition, in international armed conflict situations, it often happens that the States at war impose restrictions on the movements of people residing on their territory.

Nevertheless, displacements can occur within the national territory of a State which is party to an international armed conflict.

A State may have to face, within its borders, clashes which reach the intensity of an internal armed conflict; this conflict will then be superimposed upon the international armed conflict. In such circumstances, the humanitarian problems causing or resulting from population movements will have to be dealt with in part by application of the rules relating to non-international armed conflicts. Article 75 of Additional Protocol I,

which, within the framework of an international armed conflict, applies to anyone affected by such a situation, may also cover some of the problems that can arise in the context described above.

If the international armed conflict is not accompanied by a non-international armed conflict, then only the rules applicable to international armed conflict will come into play.

For the sake of clarity, a distinction has to be drawn between the rules applicable to international armed conflicts (A) and those applicable to non-international armed conflicts (B).

A. Rules applicable to international armed conflicts

It should be pointed out first of all that humanitarian law governing international armed conflicts contains a large body of *rules applicable to the conduct of hostilities* (see Part II of the Fourth Geneva Convention and Parts III and IV of Protocol I).

One of these provisions, Article 54 of Protocol I, prohibits starvation of civilians as a method of warfare. Paragraph 2 of the provision states that it is prohibited “*to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive*” (our underlining).

In its relations with the inhabitants of an occupied territory, the Occupying Power must respect *the prohibition of forcible transfers* laid down in Article 49 of the Fourth Geneva Convention.

In its relations with persons protected under the Fourth Geneva Convention (see Article 4 of that Convention and Article 73 of Protocol I), a State party to an international armed conflict must respect all *the rights of those persons, whether political or social, and whether relating to judicial guarantees, to the manner in which they are to be treated, to their physical integrity or to their safety*, laid down in Part II and Sections I and II of Part III of the Fourth Geneva Convention.

In its relations with the inhabitants of an occupied territory, the Occupying Power must respect all *the rights of those persons, whether political or social, and whether relating to judicial guarantees, to the manner in which they are to be treated, to their physical integrity or to*

their safety, laid down in Part II and Sections I and III of Part III of the Fourth Geneva Convention.

In its relations with persons who are not protected persons under the Fourth Geneva Convention but are affected by the situation, a State party to an international armed conflict must respect *all the rights specified in Article 75 of Protocol I*.

Pursuant to Articles 23, 55 and 59 ff. of the Fourth Geneva Convention and Articles 68 ff. of Protocol I, *the civilian population*, whether in an occupied territory or on the national territory of a belligerent State, and even when the latter is subjected to a blockade, *must be provided with supplies essential to its survival*. These supplies must, if necessary, be delivered to them by international relief operations. Neither the States implementing the blockade, nor the enemy State, nor the Occupying Power may oppose relief actions intended to provide the civilian population with supplies essential to its survival and which comply with the requirements laid down under humanitarian law, and in particular the stipulation that relief actions must be humanitarian, impartial and non-discriminatory. The Fourth Convention also provides, in Articles 108 ff., for relief shipments to civilian internees.

Women, children, the elderly and the disabled make up most of the civilian population and as such already enjoy the protection of humanitarian law. Moreover, such persons may also fall into the category of the wounded and sick within the meaning of Article 8(a) of Protocol I, and as such benefit from all the provisions of humanitarian law which organize protection of the wounded and sick in time of war.

Finally, Articles 76 and 77 set out some of the many specific measures which States must take to ensure special protection for women and children.

B. Rules applicable to non-international armed conflicts

A closer look should be taken at the various points mentioned under A above.

Like the law relating to international armed conflicts, that relating to non- international armed conflicts contains *rules applicable to the conduct of hostilities*.³

³ See, on this point, Denise Plattner, "The protection of displaced persons in non-international armed conflicts", *International Review of the Red Cross*, No. 291, Nov.-Dec.1992, pp. 567-580, pp. 570-571.

As in the rules applicable to international armed conflict, starvation of civilians as a method of combat is also prohibited in non-international armed conflict, in the following terms:

"Starvation of civilians as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works" (Article 14 of Protocol II).

Forced displacements are covered by Article 17(1) of Protocol II.

Political and social rights, whether relating to judicial guarantees or to the manner in which non-combatants or persons hors de combat are to be treated, to their physical integrity and to their safety, stem from Article 3(1) common to the four Geneva Conventions and Articles 4, 5, 6, 14 and 18 of Protocol II.⁴ Thus, as regards inhumane treatment alone, 23 types of conduct are specifically prohibited, as, for example, murder, torture, collective punishments, taking of hostages, acts of terrorism and threats to commit such acts.

Article 18(2) requires the government in power to accept *international relief operations*, even for the population under opposition control, if that population lacks the supplies essential for its survival and the relief operations are of an exclusively humanitarian and impartial nature and are conducted without any adverse distinction.⁵ Article 18(2) of Protocol II is the equivalent of Article 70 of Protocol I, which is applicable to international armed conflicts. In both provisions it will be seen that the State concerned does not have discretionary power to accept or refuse relief operations in favour of a population other than the one it controls, but is under an obligation to accept them when the operations are indispensable and are conducted in such a way as to ensure that they serve exclusively humanitarian purposes.

As in international armed conflicts, *women, children, the elderly and the disabled* are protected by the rules in favour of persons not participating directly in the hostilities. In addition, they may benefit from the provisions relating to the protection of the wounded and sick contained in Article 3(2) common to the Geneva Conventions and Articles 7 to 12

⁴ *Ibid.*, p. 571.

⁵ *Ibid.*, p. 573.

of Protocol II. Articles 4(3), 5(2)(a) and 6(4) of Protocol II also reflect the principle of the special protection due to women and children.

5. Implementation of international humanitarian law

The suffering experienced by displaced persons must not undermine faith in the rules whose violation has prompted the displacements. Humanitarian law has the strengths and weaknesses of international law, of which it is an integral part. The difficulties that are encountered in implementing it justify an examination of the reasons for which humanitarian law is still inadequately respected and of ways and means of securing more effective application of its rules. *The ICRC therefore believes that efforts should focus on improving respect for international humanitarian law rather than on the establishment of new rules for the specific category — moreover very difficult to define — of displaced persons.* As stated in section 3 above, the needs of displaced persons have to be addressed before, rather than after, their displacement occurs. Such needs have to be tackled as a whole, and not solely in relation to the phenomenon of displaced persons.

States have entrusted the ICRC with the task of ensuring faithful application of international humanitarian law and providing the victims of armed conflicts with protection and assistance (see Article 5(c) and (d) of the Statutes of the International Red Cross and Red Crescent Movement, adopted by International Conferences of the Red Cross and Red Crescent at which the States party to the Geneva Conventions are represented). The terms and conditions under which the ICRC is able to fulfil its various duties differ, however, according to whether the situation is one of international or non-international armed conflict.

In an *international armed conflict*, the ICRC may be appointed as a substitute for the Protecting Power (see Articles 10/10/10/11 of the four Geneva Conventions, respectively, and Article 5 of Additional Protocol I). Whether or not it is appointed as such, the ICRC is entitled in any event to have access to persons protected by the Fourth Geneva Convention, wherever they may be, and to talk to them without witnesses (Article 143 of the Fourth Geneva Convention, which is the equivalent of Article 126 of the Third Geneva Convention, relating to prisoners of war). Finally, the ICRC enjoys a right of initiative which permits it to undertake, with the consent of the authorities concerned, any other activity to protect or assist civilians (Article 10 of the Fourth Geneva Convention).

In *non-international armed conflicts*, the activities undertaken by the ICRC are founded on the right of initiative which it enjoys under Article 3(2) common to the Geneva Conventions. That article allows it to offer its services to the parties to a non-international armed conflict. In practice, it is fortunately very rare for States to reject the ICRC's proposals, with the result that the institution is now active on the scene of virtually all internal hostilities, carrying out the activities entrusted to it by virtue of the Statutes of the International Red Cross and Red Crescent Movement.⁶

The United Nations bodies competent in the human rights area may be led to contribute, in certain contexts, to the implementation of international humanitarian law. It should however be borne in mind that, in armed conflict situations, respect for the rules protecting civilians against the causes or effects of their displacement can ultimately be secured only by permanent close relations with the government in place, regular contacts with all the factions concerned - contacts that in no way entail international recognition of those factions - and practical activities on behalf of the victims of the armed conflict.

The status of neutral intermediary thus appears indispensable for implementation of the rules protecting civilians against the causes or effects of their displacement in an armed conflict situation.

In the field, cooperation with the organizations on the spot is very often necessary in order to avoid duplication in relief work. For the same purpose, the ICRC follows with great interest the efforts undertaken under United Nations auspices to improve coordination of the activities of agencies within the United Nations system and of certain non-governmental organizations and, while considering it essential to retain its independence, consults those responsible for such coordination with a view to establishing a concerted approach. *Cooperation and concerted approaches do not, however, imply an overlapping of mandates, and any fragmentation of the legal mechanisms set up to secure respect for international humanitarian law should be avoided, just as much as any fragmentation of the basic rules. It is essential that the ICRC be able to fulfil fully and effectively its role as custodian of the rules designed to limit human suffering in times of armed conflict.*

That being said, the humanitarian agencies can play a part in the implementation of international humanitarian law whenever they bring

⁶ *Ibid.*, p. 574.

assistance to victims of armed conflict in accordance with the principles of humanity, impartiality and non-discrimination which, by virtue of the Statutes of the International Red Cross and Red Crescent Movement, the ICRC is duty bound to respect in all circumstances.
