

# The ICRC's policy on refugees and internally displaced civilians

by  
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Since its foundation in 1863 the International Red Cross and Red Crescent Movement, and in particular the International Committee of the Red Cross, has been concerned with the plight of refugees and internally displaced civilians.

Without listing the Movement's various operations and especially those of the ICRC to assist *refugees* in the past century until the fall of the Berlin Wall, mention should be made of several situations that are memorable in terms of the scale of the exodus and in which the ICRC was able to play a significant role.

As a result of the First World War and its aftermath, millions of people found themselves outside their own countries and in dire straits. The Movement was able to intervene and undertook major emergency relief operations. When the need for longer-term intergovernmental action on behalf of refugees became evident, the Red Cross took the initiative of alerting the newly formed intergovernmental organization, the League of Nations, to this need. Thus it was that the League of Nations established, in 1921, the office of its High Commissioner for Refugees and appointed Fridtjof Nansen of Norway to the post.

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In 1946, one year after the end of the Second World War, some 1,675,000 people in Europe, Africa and the Middle East were considered as refugees for whom new homes had to be found. Some 320,000 of them were placed under the ICRC's responsibility (refugees from Germany, Austria and the Sudetenland, and Spanish refugees). When the International Refugee Organization (IRO) was established in 1947, the activities of the ICRC and the League of Red Cross Societies<sup>1</sup> gradually tapered off.<sup>2</sup>

Of the big operations undertaken by the ICRC and the League soon after the Second World War, the one that began in 1948 on behalf of Palestinian refugees is worthy of note. In view of the deteriorating situation, the United Nations General Assembly decided on 14 May 1948 to appoint a United Nations mediator in Palestine, Count Folke Bernadotte, President of the Swedish Red Cross.

At the International Conference of the Red Cross<sup>3</sup> held in Stockholm in 1948, Count Bernadotte appealed for assistance to Palestinian refugees. This led to a resolution urging all governments and all National Societies to do their utmost, through normal governmental and Red Cross channels, to alleviate the suffering of the victims of those hostilities, irrespective of race, creed or political status.

On the basis of this resolution, the United Nations General Assembly established the United Nations Relief for Palestine Refugees (UNRPR) on 19 November 1948 to set up the requisite large-scale relief programme, in cooperation with the ICRC, the League and the American Friends Service Committee (AFSC). Agreements were concluded between the United Nations on the one hand and the ICRC and the League on the other, recognizing the latter institutions' independence from the United Nations and making funds available to them to meet the refugees' basic needs. An estimated

<sup>1</sup> Now the International Federation of Red Cross and Red Crescent Societies.

<sup>2</sup> F. Schnyder, *The Red Cross and the Refugees*, UNHCR, Geneva, 1963, pp. 5, 6 and 11.

<sup>3</sup> Under Article 8 of the Movement's Statutes, "[t]he International Conference is the supreme deliberative body for the

Movement. At the International Conference, representatives of the components of the Movement meet with representatives of the States Parties to the Geneva Conventions, the latter in exercise of their responsibilities under those Conventions and in support of the overall work of the Movement...".

395,000 refugees were assigned to the care of the ICRC, 300,000 to the League and 245,000 to AFSC.

On 8 December 1949 the United Nations General Assembly created the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) for the direct implementation of relief and works programmes there. The operation was entrusted to UNRWA on 1 May 1950, when the ICRC-League-AFSC relief programme in the Middle East ended.<sup>4</sup>

Ever since then, the relationship established between the international refugee agencies and the Movement's various components has played a significant part in all activities to assist refugees. Particularly noteworthy in this respect is the vast operation to help the hundreds of thousands of Cambodians who fled impending famine and sought asylum in Thailand and the border regions, which was carried out jointly by the ICRC and UNICEF from 1979 onwards.<sup>5</sup>

This introductory chapter would not be complete without mentioning the indispensable role that was played by the Central Prisoners of War Agency, now the Central Tracing Agency (CTA) of the ICRC. While its primary task was to restore contact between prisoners and their families, since the First World War, it has also tried to bring civilians dispersed by war together again.<sup>6</sup> During the Second World War the Central Prisoners of War Agency established a card-index of information concerning civilians dispersed as a result of hostilities, including thousands of forced labourers and deportees — the future internally displaced persons and refugees. At the request of the Allied authorities, this card-index was handed over in 1945 to the International Tracing Service (SIR) established by them at Arolsen in Germany. The ICRC has been in charge of the SIR since 1955.<sup>7</sup> To this day the Central Tracing Agency of the ICRC continues to play a vital role.<sup>8</sup>

<sup>4</sup> *Op. cit.* (note 2), pp. 16 and 17.

<sup>5</sup> François Bugnion, *Le Comité international de la Croix-Rouge et la protection des victimes de la guerre*, ICRC, Geneva, 1994, pp. 947-948. (Shortly to be published in English entitled *The International Committee of the Red Cross and the Protection of War Victims*.)

<sup>6</sup> *Ibid.*, p. 904.

<sup>7</sup> *Op. cit.* (note 2), p. 12.

<sup>8</sup> In 2000 the ICRC forwarded nearly one million family messages, traced 2,457 missing persons, received 6,092 new tracing requests and reunited 2,481 persons with their families.

It was also in 1945 that the ICRC created the travel document which is still in use today. This document is intended for internally displaced persons, stateless persons or refugees who, for lack of proper identity papers, can neither return to their country of origin or usual residence nor travel to a country of their choice willing to grant them asylum.<sup>9</sup>

The activities of the ICRC on behalf of *internally displaced civilians* are at the heart of its mandate. In other words, in all its work in connection with armed conflicts it has provided protection and assistance to the entire civilian population and has taken account of the particular needs of displaced persons — women, children and elderly people — in accordance with the responsibilities entrusted to it by the States in such situations. Besides the extensive operations deployed by the ICRC in the 1980s and 1990s in Ethiopia, Sudan, Angola and Mozambique, particular mention must be made of the one it conducted in Rwanda in aid of one million civilians displaced by hostilities in 1993<sup>10</sup> and 1.2 million in 1994.<sup>11</sup> The ICRC is currently working to help five million internally displaced persons in some fifty countries.

This brief historical review shows the extent to which the Movement's and especially the ICRC's destiny is linked with that of UNHCR. It is therefore not possible to explain the role of the ICRC without also setting forth the role of UNHCR, though concisely and far from exhaustively.

For that reason a brief account will now be given of the various legal texts governing the division of responsibilities between the Office of the United Nations High Commissioner for Refugees and the Movement, in particular the ICRC. The two organizations' responsibilities towards refugees and displaced persons who are victims of conflicts will then be examined in greater detail, to show that there are concurrent or parallel, primary and finally subsidiary responsibilities on both sides. Irrespective of whether the persons concerned are

<sup>9</sup> *Op. cit.* (note 5), p. 657.

<sup>11</sup> *ICRC Annual Report 1994*, p. 53.

<sup>10</sup> *ICRC Annual Report 1993*, p. 76.

refugees or internally displaced civilians, the role of the Central Tracing Agency of the ICRC is permanent.

## **Policy of the Movement and of the ICRC in particular**

### **A. Some key developments**

Without examining the whole framework of legal protection provided by international humanitarian law,<sup>12</sup> it is useful to recall the legal instruments — be they resolutions or agreements — which determine the Movement's policy and especially that of the ICRC on refugees and internally displaced persons.

#### **1. Resolutions of the Movement**

Since the Movement was founded, many resolutions have been adopted in that field,<sup>13</sup> but Resolution XXI on "International Red Cross aid to refugees" adopted by the 24th International Conference of the Red Cross at Manila in 1981 and, above all, the accompanying Statement of Policy unquestionably deserve particular attention. By consolidating prior practice and guiding future action, this resolution gave the Movement a genuine policy in aid of refugees, internally displaced persons and returnees. It is to the credit of the accompanying policy statement that it establishes a clear division of competencies between the Movement and UNHCR on the one hand, and between the various components of the Movement on the other.

In Resolution XXI the Movement made a point of stressing that the primary responsibility for refugee protection and assistance lies with governments. Furthermore, in legal terms UNHCR has a primary role in providing international protection and material assistance. The subsidiary and complementary role of the Red Cross is clearly shown by this resolution. Point 1 of the Statement of Policy emphasizes that:

<sup>12</sup> The legal protection afforded by international humanitarian law is the subject of other articles in this issue of the *Review*.

<sup>13</sup> Resolutions IX, IV and XXXI, adopted

respectively by the 10th, 12th and 17th International Conferences of the Red Cross in 1921 and 1925 (Geneva) and in 1948 in Stockholm.

“The Red Cross should at all times be ready to assist and to protect refugees, displaced persons and returnees, when such victims are considered as protected persons under the Fourth Geneva Convention of 1949, or when they are considered as refugees under Article 73 of the 1977 Protocol I additional to the Geneva Conventions of 1949, or in conformity with the Statutes of the International Red Cross, especially when they cannot, in fact, benefit from any other protection or assistance, as in some cases of internally displaced persons.”

The Statement of Policy also recalls the need to coordinate activities within the Movement, as well as with UNHCR and governmental and non-governmental organizations working in favour of refugees.

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

Lastly, the Movement and UNHCR are invited to hold regular consultations on matters of common interest and to coordinate their humanitarian assistance.

Other resolutions were subsequently passed but none of them called into question the policy decided on in 1981.<sup>14</sup> However, mention should also be made of Resolution 1 of the 27th International Conference, held in Geneva in 1999, which broke new ground by adopting a plan of action for the years 2000–2003.<sup>15</sup> The plan provides for measures to be taken by the National Societies, the International Federation and the ICRC, according to their respective mandates and in accordance with international humanitarian law, to aid refugees and asylum-seekers in cooperation with UNHCR, as well as internally displaced persons.

<sup>14</sup> Resolution XVII of the 25th International Conference (Geneva, 1986) and Resolution 4 of the 26th International Conference of the Red Cross and Red Crescent (Geneva, 1995). See also Resolutions 9 and 7 of the Council of

Delegates (Budapest, 1991 and Birmingham, 1993).

<sup>15</sup> Plan of Action for the years 2000–2003, *IRRC*, No. 836, December 1999, pp. 880–895, esp. p. 890.

## 2. The Seville Agreement

The Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement, which was adopted by the Council of Delegates<sup>16</sup> in Seville in 1997, aims to promote close cooperation among the components of the Movement in their international activities and to obviate differences as to the definition and the organization of their respective international activities and responsibilities.<sup>17</sup>

Generally speaking, the agreement determines the role of each component as lead agency according to the given situation. In natural or technological disasters, for instance, the lead agency role will be performed by the Federation, whereas in situations of armed conflicts, internal strife and their direct results the ICRC will act as lead agency.

The agreement furthermore specifies that “the term ‘direct results of a conflict’ shall also apply to situations in which victims of a conflict are to be found on the territory of a State which is neither party to a conflict nor affected by internal strife, especially following a large-scale movement of refugees”.<sup>18</sup> “In order to maintain among the components a coherent approach that will preserve the Movement’s unity and independence, a National Society wishing to conclude a cooperation agreement with a specialized agency of the United Nations, shall keep the Federation and/or the ICRC informed. In particular, it shall keep the Federation and/or the ICRC informed of any negotiations likely to lead to a formal agreement with the UNHCR which should be undertaken in association with the Federation and/or the ICRC”.<sup>19</sup>

The following sections of this article will focus on the division of responsibilities between UNHCR and the ICRC.

<sup>16</sup> Art. 12 of the Movement’s Statutes: “The Council of Delegates... is the body where the representatives of all the components of the Movement meet to discuss matters which concern the Movement as a whole”.

<sup>17</sup> Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement, of 26 November 1997, *IRRC*, No. 322, March 1998, pp. 159-176.

<sup>18</sup> *Ibid.*, Art. 5.1, letter A) d).

<sup>19</sup> *Ibid.*, Art. 5.8.

It is necessary to stress the important role played by the National Red Cross and Red Crescent Societies and by the Federation in operations to assist refugees.

## **B. Responsibilities of the ICRC**

According to the above-mentioned Manila resolution, several possible scenarios can arise: concurrent or parallel responsibility of UNHCR and the ICRC, which should be assumed in a spirit of complementarity; subsidiary or even complementary responsibility with regard to refugees; and primary and subsidiary responsibilities with regard to displaced civilian victims of conflicts.

### **1. Refugees**

Two categories of refugees are defined in international refugee law: first, persons who are fleeing *owing to a well-founded fear of being persecuted* and who are outside their country of origin;<sup>20</sup> and, second, persons who are fleeing *on account of an armed conflict or disturbances* and who are likewise outside their country of origin.<sup>21</sup>

Apart from a few special provisions, refugees do not receive particular protection under international humanitarian law,<sup>22</sup> nor is there any specific definition of refugees as persons protected by that law. Refugees are above all civilians who are protected as such by international humanitarian law, notably by the (Fourth) Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949. The Fourth Geneva Convention confines itself, however, to laying down the criterion of absence of protection by any government.

<sup>20</sup> Art. 1 A (2), Convention relating to the Status of Refugees, of 28 July 1951. The Protocol relating to the Status of Refugees, of 31 January 1967, abolishes the time and geographical limitations.

<sup>21</sup> Art. 1, OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, of 10 September 1969.

<sup>22</sup> Arts 44 and 70, para. 2, of the Fourth Geneva Convention of 1949 and Art. 73 of Additional Protocol I.

### 1.1. Concurrent or parallel responsibility of the ICRC

The ICRC has been mandated by the States to protect and assist the victims of international and non-international armed conflicts. People may, for instance, find refuge in a neighbouring country already racked by internal conflict or which becomes involved in an international conflict with the country of origin of refugees after their flight. In such circumstances it is normal for the ICRC to take an interest in the plight of those refugees, who are also *civilian victims of conflict*. In both the aforesaid cases they are protected both by refugee law and by international humanitarian law. The two organizations consequently each have a parallel responsibility and the tasks are allocated, in a spirit of complementarity, according to needs and to various criteria that will be discussed below.

For example, the ICRC stepped in to help 25,000 Iranians of Kurdish origin who had sought refuge in Iraq and were interned at the Al Tash camp near Ramadi. At the Iraqi authorities' request, the ICRC also endeavoured to find host countries for other Iranians who had fled to Iraq and were regularly visited by it in camps at Shomeli and Ramadi.<sup>23</sup>

These refugees were protected by the 1951 Convention and therefore came within the mandate of UNHCR. After having found refuge in Iraq, they were trapped by the conflict that broke out between Iran and Iraq and from then on were also victims of that international conflict. As such they were protected by the Fourth Geneva Convention and came within the ICRC's mandate. This gave rise to concurrent responsibilities, but the division of labour was unproblematic since the Iraqi authorities did not want the United Nations to intervene on the refugees' behalf. After consultations with UNHCR, it was thus the ICRC which looked after them. It did, however, experience some difficulty in discharging the mandate it had been given, for whereas the protection of refugees in camps comes within the scope of its traditional activity of visiting civilian prisoners,

<sup>23</sup> ICRC *Annual Reports* from 1983 to 1988, pp. 59, 62, 68, 67, 77-78 and 79, respectively.

the search for durable solutions does not. The ICRC was therefore making an exception when it embarked on the resettlement of those refugees in third countries.

The situation of people from Liberia and Sierra Leone who had found refuge in Guinea is similar: from the time that the conflict spread to their country of asylum in 2000, they have been protected both by refugee law, in particular the OAU Convention on refugees, and by international humanitarian law. Since then, UNHCR and the ICRC have had concurrent responsibilities. Insofar as UNHCR has been willing and able to discharge its mandate for refugees, the ICRC has concentrated on providing protection and assistance to displaced civilians within Guinea.

### 1.2. Subsidiary responsibility of the ICRC

For a refugee to be able to benefit from the ICRC's work, he/she must in principle be a victim of a situation of internal or international conflict. But to belong to the category of persons protected by international humanitarian law is not an absolute requirement, for the ICRC's right of initiative allows it to intervene in situations not covered by the Geneva Conventions or the nature of which is disputed. The ICRC performs this subsidiary role either because it is already on the spot, the needs are immense and it is capable of responding to them until UNHCR takes over; or because it is the only institution able to take action if UNHCR is prevented from doing so (i.e. if the host State is not party to the 1951 Convention and/or rejects United Nations' involvement; or if the UNHCR Executive Committee does not wish to act, as was the case in South Africa on account of the *apartheid* policy).

For instance the ICRC, as was mentioned in the introduction, conducted a joint operation with UNICEF on behalf of Cambodian refugees in areas bordering Thailand, which did not want UNHCR to intervene. So after consulting UNHCR and with the consent of the Thai government, the ICRC stepped in, by virtue of

the right of initiative laid down in its Statutes.<sup>24</sup> Insofar as the refugee camps were the target of armed attacks, the ICRC would also have been able to invoke humanitarian law to intervene.<sup>25</sup>

Some more recent examples can also be given:

- The ICRC temporarily acted in lieu of UNHCR for Rwandan refugees in north and south Kivu in July 1994, and for Tanzanian refugees in Kenya, near Mombasa, in 2001. Since it was already on the spot, it provided initial emergency aid until UNHCR could intervene and with the latter's agreement.
- Following the Panamanian government's refusal to allow the United Nations specialized agency to act directly, the ICRC is supporting the National Society's work in aid of Colombian refugees in the Darien region of Panama.
- Since the ICRC was already on the spot with emergency supplies, UNHCR expressly requested it to attend to the Albanian refugees who had arrived in Kosovo from Macedonia in March 2001. The ICRC provided assistance to 8,000 refugees for one month.

### 1.3. Complementary and permanent responsibility of the ICRC

In cases where UNHCR is able to discharge its mandate, the ICRC remains available for tasks in which its own specific capabilities can be turned to account. Thus in keeping with a long-established practice, it may at any time offer the services of its Central Tracing Agency, in accordance with Point 9 of the Statement of Policy accompanying the 1981 Manila resolution. Only two of the many examples will be given here.

<sup>24</sup> See Art. 5, para. 3, of the Movement's Statutes: "The International Committee may take any humanitarian initiative which comes within its role as a specifically neutral and independent institution and intermediary, and may consider any question requiring examination by such an institution."

<sup>25</sup> 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/Martinus Nijhoff Publishers, Geneva, 1984, pp. 387-393.

In the course of the operation to assist the victims of the genocide in Rwanda, the ICRC published, in collaboration with UNHCR, UNICEF and the Federation, a joint declaration on 27 June 1994 emphasizing the importance of family unity and the necessity of keeping the files of all evacuated children. About 150 other organizations took part in this large-scale programme between 1994 and 1997, which solved the problem of almost all unaccompanied children.<sup>26</sup>

In Syria, following the Arab-Israeli conflict, the ICRC continues to maintain contact between separated family members by forwarding family messages for both Syrian citizens and Palestinian refugees. In cooperation with UNHCR, it has also issued travel documents for refugees accepted by third countries but who lacked the requisite identity documents for the journey there.

It also enables refugees to receive surgical treatment, whether or not they are war casualties, by placing its knowledge and expertise at their disposal. It did so for Cambodian refugees in Thailand and Afghan refugees at Peshawar and Quetta (Pakistan), and continues to do so today at Lokichokio (Kenya) for wounded and sick persons coming from Sudan, among them refugees.

#### 1.4. Particular problem areas

Refugee *repatriation* is another of the ICRC's major concerns. Even though it is generally not involved in repatriation operations, the ICRC considers that the time of and conditions for the return of refugees must be carefully assessed by the States and organizations concerned. With its good knowledge of the refugees' countries of origin it can consider all aspects of the situation and make recommendations for refugees to return safely and in dignity. On several occasions, when refugees were being returned to Cambodia,<sup>27</sup>

<sup>26</sup> The ICRC, together with UNHCR, UNICEF and several international NGOs, is currently preparing a document summarizing common principles of action for unaccompanied children entitled "Guiding principles on unaccompanied and separated children".

<sup>27</sup> With regard to Cambodia, the ICRC's memorandum of 14 November 1990 is partially reproduced in: Frédéric Maurice/Jean de Courten, "ICRC's activities for refugees and displaced civilians", *IRRC*, No. 280, January/February 1991, pp. 9-22.

Afghanistan, Croatia, Bosnia-Herzegovina or Rwanda, the ICRC warned of the risks of premature repatriation to unstable and often mine-ridden areas or where the infrastructure had been destroyed.<sup>28</sup>

The problems of repatriation are frequently aggravated by the presence of *anti-personnel mines*, which have a devastating effect among the civilian population. Besides being a possible cause of displacement, they also seriously hinder the reconstruction of the countries affected and prevent the return of refugees and displaced persons. The adoption of the Treaty of Ottawa in 1997 and the resultant total prohibition of anti-personnel mines are a tremendous step forward. However, the impressive number of mines that have not yet been cleared and the laying of new mines, despite the total ban, show just how essential the Movement's *mine awareness* programmes still are.

Lastly, the ICRC has also been challenged with regard to *the presence of combatants within refugee camps*, in particular in Africa, be it in Zaire and later the Democratic Republic of Congo, in Tanzania, Zambia or Liberia. The ICRC has always clearly stated that, according to the Hague Convention (V) of 1907,<sup>29</sup> the authorities of neutral States which receive armed elements on their territory are themselves responsible for indentifying and disarming combatants and separating them from civilians. This is a precondition for any visits by the ICRC to ex-combatants who, according to the Third Geneva Convention of 1949, are entitled not to prisoner-of-war status but to equivalent treatment and to repatriation at the close of hostilities.<sup>30</sup>

## 2. Internally displaced civilians

The definition of *displaced persons* to which the international community usually refers is that of the Special Representative of

<sup>28</sup> Jean-Philippe Lavoyer, "Refugees and internally displaced persons: International humanitarian law and the role of the ICRC", *IRRC*, No. 305, March-April 1995, pp. 162-180.

<sup>29</sup> The Hague Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, 18 October 1907, applies formally in the context of inter-

national conflicts; it may also be applied by analogy to internal conflicts.

<sup>30</sup> *The Civilian Character of Asylum — Separating Armed Elements from Refugees*, ICRC's statement to the UNHCR Global Consultations on International Protection, first meeting, 8-9 March 2001.

the United Nations Secretary-General on internally displaced persons, Francis Deng. It is to be found in the *Guiding Principles on Internal Displacement*.<sup>31</sup>

These Guiding Principles adopted by the United Nations reflect the content of international humanitarian law and human rights law. However, the definition of displaced persons is so broad and covers a group of persons whose needs are so varied — as indeed are the motivations behind their displacement — that it goes beyond the capabilities of a single organization.

It must be borne in mind that the ICRC itself is present and active primarily in situations of conflict and internal violence, and that the States have mandated it to protect and assist the victims of those situations, thus also internally displaced civilians. In accordance with the principle of impartiality, the ICRC gives priority to those whose needs are most urgent. It consequently considers an internally displaced person primarily as a civilian, who as such is protected by international humanitarian law.

Although the ICRC contributed to the drafting of the Guiding Principles and supports their dissemination, it will use them solely when international humanitarian law is not or is only implicitly applicable, or when they afford additional protection.

The ICRC has stressed on several occasions that international humanitarian law, which is binding on both State and non-State protagonists in situations of armed conflict, is eminently suited to solving most of the problems of internal displacement on account of such situations.

<sup>31</sup> UN Doc. E/CN.4/1998/53/Add.2. — This document defines displaced persons as follows: “internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of gen-

eralized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”. See also Jean-Philippe Lavoyer, “Guiding Principles on Internal Displacement”, *IRRC*, No. 324, September 1998, pp. 467-480.

## 2.1. Primary responsibility of the ICRC

### 2.1.1. Position on principle

Whenever civilians are internally displaced or otherwise affected by conflict, the ICRC considers itself duty-bound to do its utmost on their behalf, in keeping with the mandate assigned to it by the various States and obviously insofar as the parties to the conflict, the security conditions and the resources at its disposal allow. While emphasizing once again that the primary responsibility lay with the national authorities, the members of the *Interagency Standing Committee* (IASC) recently drew renewed attention, in Rome in April 2000, to the ICRC's specific mandate for internally displaced persons who are victims of armed conflicts and internal disturbances and tensions.<sup>32</sup>

The ICRC's involvement in a given country affected by conflict extends well beyond the areas in which active hostilities are taking place; it consequently takes care of internally displaced civilians wherever they may be in that country. Moreover, in the famous appeal judgment of the International Criminal Tribunal in The Hague, in the Tadic case, the concept of armed conflict was extended to areas bordering those where armed clashes were taking place.<sup>33</sup>

### 2.1.2. Reminder of some challenges to be met

In general, the ICRC's assistance programmes seek to strike a balance between targeted operations for displaced populations and those intended for the civilian population as a whole. The ICRC wishes first and foremost to promote the affected communities' self-

<sup>32</sup> "It should be noted that the ICRC has a specific mandate to provide protection and assistance to victims, including IDPs, of armed conflicts, internal disturbances and tensions. In general, ICRC's mandate is discharged in close cooperation with National Societies of the Red Cross/Red Crescent supported by their International Federation. The National Societies are mandated to assist the most vulnerable within their own countries, including IDPs, and are often the first and only organisation

present at the inception of a disaster." Reproduced in Supplementary Guidance to Humanitarian/Resident Coordinators on their Responsibilities in relation to IDPs, 5 April 2000.

<sup>33</sup> Marco Sassoli, "La première décision de la chambre d'appel du tribunal pénal international pour l'ex-Yugoslavie: TADIC (compétence)", *Revue générale de droit international public*, Vol. 100, No. 1, 1996, pp. 101-134.

sufficiency and will therefore enhance the host population's ability to absorb the displaced persons. At the same time everything possible will be done to preserve the displaced persons' coping mechanisms and avoid exacerbating the situation by increasing the disparities between different sections of the population, or to prevent corruption and appropriation by the warring parties of the assistance provided.

Thus by advocating better application of international humanitarian law, the ICRC seeks to preserve conditions enabling the civilian population to stay in their homes, to protect people who are uprooted and to encourage their return as soon as the conditions so permit. In this regard the lack of access by humanitarian organizations to victims seriously impedes the implementation of international humanitarian law and the deployment of humanitarian activities in general. This lack of access is due to:

- deliberate obstruction by the parties to the conflict;
- inadequate security for humanitarian workers;
- forced population relocation as a military strategy.

## 2.2. Subsidiary responsibility of UNHCR

The competent organs of the United Nations (Secretary-General, General Assembly) may, in a given situation, ask UNHCR to assist displaced persons, as was the case in Bosnia in 1992.

Sometimes such requests are made by States which, to avoid a further increase in the number of asylum-seekers already on their territory, would like displaced persons to be assisted within their country of origin as a preventive measure.

UNHCR may also, if it has cause for concern, take an interest in the situation of returnees in their country of origin, which is interlinked with that of internally displaced persons there. For instance, the ICRC and UNHCR agreed in the field on a division of labour in aid of Afghan refugees repatriated from Iran to volatile areas of Afghanistan.

A recurrent scenario is when refugees and internally displaced persons coexist in the same area. In Guinea Conakry, for example, UNHCR looks after those who took refuge there before the conflict broke out, whereas the ICRC takes care of the civilian

population, and in particular those people who were internally displaced on account of the conflict.

### 2.3. Comparative advantages

It is useful to recall that in a latent or ongoing conflict, the ICRC has several comparative advantages.

First of all, the ICRC bases its work for internally displaced persons on binding treaties, unlike UNHCR, whose work for them is essentially based on the Guiding Principles on Internal Displacement. These principles are not binding and can be invoked by all United Nations institutions. So substitution by UNHCR can only remain exceptional, as is substitution of UNHCR by the ICRC in the case of refugees. Indeed, it is likewise exceptional for the ICRC to be entrusted, on the basis of a policy statement accompanying the 1981 Manila resolution, with the task of looking after refugees, whereas this role was assigned to UNHCR by governments in binding refugee law treaties.

It is essential that the ICRC be able to carry out its mandate to the greatest possible extent, as otherwise internally displaced civilian populations may well see:

- a UNHCR operation based on “soft law”, or invoking international humanitarian law without having expert knowledge of it, just as if the ICRC were to avail itself of refugee law without knowing its intricacies;
- their needs met only in government-controlled territory;
- the government concerned restricting the ICRC’s activities on the pretext that UNHCR is already taking care of displaced civilians’ needs.

Secondly, the ICRC has an operational advantage, because with its 10,000 or so staff members it provides both protection and assistance at the same time, since the latter is not sub-contracted to NGOs, as is the case for UNHCR.

Moreover, thanks to its experience, *modus operandi* and physical proximity to the victims, the ICRC is best able to meet the specific needs of civilians affected by the conflict, who include internally displaced persons.

Finally, the ICRC can act quickly because it does not require authorization from the Secretary-General or the General Assembly to do so. When the needs have been identified and assessed, it can act immediately, subject to the obvious proviso that the warring parties give their consent.

As an intergovernmental organization UNHCR, for its part, is better placed and closer to government than is possible for the ICRC, given the Committee's independence and the dialogue it maintains with all warring parties so as to play to the full its role as neutral intermediary. For example UNHCR, with its great experience in legislation for the enactment of refugee law, has been able to successfully advise the Colombian government on the country's domestic law on internal displacement.

### **C. Towards healthy complementarity**

In spite of an unequivocal legal framework, namely,

- refugee law for refugees, and a clear mandate for UNHCR; and
- international humanitarian law for civilians internally displaced by conflict, and a clear mandate for the ICRC,

some cases of duplication have occurred in the past and may well do so again in the future, in view of the ever-increasing complexity of the situations in which these two organizations are working. Such cases will have to be limited as much as possible, since they are neither in the victims' interests (risk of adverse effects to the extent of jeopardizing the very persons one wishes to protect), nor in the donors' interests in terms of operating efficiency and cost.

Moreover, we must be realistic: in huge countries where the area of hostilities and the area where peace prevails are far apart and there is no danger of the conflict spilling over, the ICRC will not always be able to act on its own throughout the territory.

As far as the Movement is concerned, its components will meet the needs of displaced persons in countries as large as Russia or Sudan by working within the framework of the Seville Agreement, abiding by their respective mandates and performing their complementary functions. Complementary action between the Movement and the United Nations' specialized agencies must definitely also be envisaged.

Whenever UNHCR is requested to intervene in a situation of armed conflict to aid internally displaced civilians and, likewise, whenever the ICRC wishes to intervene in aid of refugees, the immediate reaction of both institutions is, in principle, to start a dialogue so as to exchange information on the activities that have been, or have yet to be, organized. But this dialogue could be further reinforced.

If no agreement on a division of labour between UNHCR and the ICRC is reached in the field, discussions should continue at the headquarters of the two institutions, starting at the operational level and ending, if necessary, at the highest institutional level during the annual meeting between the High Commissioner for Refugees and the President of the ICRC.

### **Conclusion**

At a time when the 50th anniversary of the Convention on refugees' rights, adopted on 28 July 1951, is being celebrated, it was more than legitimate to speak of UNHCR in an account of the Movement's policy and especially that of the ICRC on refugees and displaced civilians in areas of armed conflict. The brief historical outline at the beginning of this article also shows how much the plight of refugees and then of internally displaced persons has been one of the core concerns of the International Red Cross and Red Crescent Movement. This review of the past has shown to what extent the ICRC, on the one hand, and the League of Nations, then the United Nations and finally UNHCR on the other, have worked with the same humanitarian desire to alleviate the suffering of millions of uprooted people.

It was also important to recall the ICRC's fervent desire for the establishment of the various intergovernmental refugee aid agencies, of which UNHCR is the most recent, a desire expressed in its appeals to States following the exodus caused first by the two world wars, then that of hundreds of thousands of Palestinians due to the situation in the Middle East. It is therefore not possible to speak of competition between UNHCR and the ICRC.

While occasional divergences between the two institutions in the field may give rise to duplication, in most situations the

responsibilities are divided out harmoniously. In closing, we shall therefore state two essential considerations:

- the interests of refugees and internally displaced persons must be safeguarded; and
- the efficiency of aid must be guaranteed.

With regard to the first consideration, it is of paramount importance to ensure that refugees and displaced persons are not left without the protection or assistance of any organization whatsoever.

With regard to the efficiency of aid, it is essential to avoid duplication and to entrust responsibility to the organization that has the most comparative advantages, taking into account the respective primary and subsidiary mandates, as well as the required experience and know-how or the operational capacity to respond to needs.



## Résumé

### **La politique du CICR à l'égard des réfugiés et des populations civiles déplacées à l'intérieur de leur propre pays**

PAR FRANÇOISE KRILL

*Depuis sa fondation en 1863, le Mouvement international de la Croix-Rouge et du Croissant-Rouge — et plus particulièrement le CICR — s'est préoccupé du sort des réfugiés et des populations civiles déplacées à l'intérieur de leur propre pays. La Croix-Rouge est ainsi à l'origine de la création d'une structure qui s'intéresse au sort des réfugiés sur le plan international et au centre de laquelle se trouve aujourd'hui le Haut Commissariat des Nations Unies pour les réfugiés. L'article porte principalement sur le défi relativement nouveau que doit relever la communauté internationale, à savoir le déplacement des personnes à l'intérieur de leur propre pays. En guise de conclusion, l'auteur en appelle à la communauté internationale et aux institutions chargées de la protection des réfugiés et des personnes déplacées pour qu'elles veillent à ce que les intérêts de ces personnes soient sauvegardés en tout temps, à l'intérieur de leur propre pays, et que l'efficacité de l'aide dont elles ont besoin soit toujours garantie.*

