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## Refugees, Internally Displaced Persons, And International Humanitarian Law

Francois Bugnion\*

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# Refugees, Internally Displaced Persons, And International Humanitarian Law

Francois Bugnion

## **Abstract**

The fact that war is the primary cause of people being uprooted prompts us to ask what protection the law of armed conflict affords refugees and displaced persons. How does humanitarian law protect groups of civilians from being forced to flee? What protection does it offer those who have nevertheless been uprooted, and how does that protection interrelate with refugee law? How can the Red Cross and Red Crescent organizations, in particular the International Committee of the Red Cross (“ICRC”), come to the aid of refugees and displaced persons? These are the questions this Article aims to answer. First, however, let us recall what international humanitarian law is.

# REFUGEES, INTERNALLY DISPLACED PERSONS, AND INTERNATIONAL HUMANITARIAN LAW

*François Bugnion\**

They bore within their breasts the grief  
That fame can never heal . . .  
The deep unutterable woe  
Which none save exiles feel.

—W. E. Aytoun, *The Island of the Scots*<sup>1</sup>

## INTRODUCTION

War has always been one of the main reasons people pull up and leave, the cause of the most massive displacements of population, of those that take place in the most tragic circumstances. As Ruud Lubbers, United Nations High Commissioner for Refugees, wrote in 2001, “Refugees continue to flee persecution in countries at peace, but armed conflict is undeniably the greatest cause of refugee flows today. The nature of conflict has also changed, with the proliferation of internal ethnically or religiously based struggles in which displacement has become an objective, rather than merely a consequence of war.”<sup>2</sup>

Driven out by the approach of the enemy, the violence of the fighting or fear of persecution, people are forced to abandon, from one day to the next, their homes, their possessions and their loved ones. Countless families are dispersed during the exodus. As one attentive observer wrote in 1944: “like autumn leaves before the wind, parents and children, husbands and wives, brothers and sisters are swept away from each other by a jostling crowd and scattered to the four corners of the earth

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\* Bachelor of Arts and Doctor of Political Sciences, joined the International Committee of the Red Cross (“ICRC”) in 1970. He has served the institution in Israel and the occupied territories, Bangladesh, Turkey and Cyprus, Chad, Vietnam, and Cambodia. In January 2000 he was appointed Director for International Law and Cooperation. This Article is a personal contribution and does not necessarily reflect the views of the ICRC.

1. W. E. AYTOUN, *The Island of the Scots*, st. 11, in LAYS OF THE SCOTTISH CAVALIERS AND OTHER POEMS 123 (1849).

2. Ruud Lubbers, *Foreword by the High Commissioner for Refugees*, 843 INT’L REV. OF THE RED CROSS 578 (2001).

without hope of ever finding each other again in this immense chaos.”<sup>3</sup>

By the end of the Second World War, the number of people who had fled their homes, discreetly labeled “displaced persons,” was estimated to be thirty million. If we add to that figure the prisoners of war who could not return home for political reasons, the civilian internees, the deportees, the forced laborers and those who had survived the horror of the concentration camps, over fifty million people had been driven from their homes by the fierceness of the fighting, by coercion, terror or captivity. About half of them would never see their country of birth again.

Unfortunately, tragic events like this are not a thing of the past. We have all seen the heart-wrenching images of utterly destitute refugees from Darfur (Sudan) parked in the middle of nowhere under the scorching sun of the Sahara, suffering from thirst, hunger and violence by armed militias. We all remember the frantic flight of Kosovo’s Albanians in March 1999, followed, a few weeks later, by the Serb inhabitants of the province, and the desperate departure of Rwandan refugees to the then Zaire in April 1994.

We cannot harden our hearts to their distress, any more than we can ignore the scale of the phenomenon: According to reliable sources, there are at present about 11.9 million refugees and 23.6 million internally displaced persons throughout the world,<sup>4</sup> altogether, more than 35 million persons forcibly uprooted — the equivalent of the entire population of countries such as Argentina and Canada, or the State of California. Some of them will be able to return home after a temporary exile, but for many, there is no going back. Years or in some cases decades later, they still have no prospect of return, yet most refugees and displaced persons think of nothing else. I have met people who,

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3. Renée-Marguerite Frick-Cramer, *Au Service des Familles Dispersées*, 304 *REVUE INTERNATIONALE DE LA CROIX-ROUGE* 308-09 (1944).

4. See U.S. Comm. for Refugees, *World Refugee Survey* (2004), at 1. A distinction is usually made between “refugees”, i.e., those who seek refuge in a country other than that of which they are nationals, and “displaced persons” or “internally displaced persons”, who have left their homes but remain within the borders of the country of which they are nationals. This Article does not deal with the situation of soldiers who have sought refuge in a neutral country, or of people who have been uprooted for reasons other than war (political persecution unrelated to an armed conflict, natural disaster, famine, unemployment, etc.).

after years of exile, still carry the key to their old house, a lucky charm they cling to like a promise of return.

Nor can we turn our backs on the economic, social, and political consequences of these population flows, the risk of destabilization they pose in host countries that suddenly have to cope with waves of needy people.

In the wake of the Second World War, the international community adopted a variety of instruments in order to ensure refugee protection, the cornerstone being the Convention relating to the Status of Refugees of 28 July 1951.<sup>5</sup>

However, the fact that war is the primary cause of people being uprooted prompts us to ask what protection the law of armed conflict affords refugees and displaced persons. How does humanitarian law protect groups of civilians from being forced to flee? What protection does it offer those who have nevertheless been uprooted, and how does that protection interrelate with refugee law? How can the Red Cross and Red Crescent organizations, in particular the International Committee of the Red Cross ("ICRC"), come to the aid of refugees and displaced persons? These are the questions this Article aims to answer. First, however, let us recall what international humanitarian law is.

## I. INTERNATIONAL HUMANITARIAN LAW

International humanitarian law comprises all the treaty-

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5. U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137 [hereinafter Refugee Convention]; *see also* BASIC DOCUMENTS ON HUMAN RIGHTS 64-81 (Ian Brownlie ed. 1992). The Refugee Convention was supplemented by the Protocol relating to the Status of Refugees. *See* Protocol relating to the Status of Refugees, Jan.31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 [hereinafter 1967 Protocol]. Regional instruments include the various inter-American conventions on asylum, and the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa. *See* II COLLECTION OF INTERNATIONAL INSTRUMENTS AND OTHER LEGAL TEXTS CONCERNING REFUGEES AND DISPLACED PERSONS 3-9, 169-72, 185-93, 201-05 (1995). The definition of refugees set out in the Refugee Convention, however, covers essentially people who have been forced to leave their country for fear of persecution; it does not cover those who have been uprooted by war. The Convention Governing the Specific Aspects of Refugee Problems in Africa extends the definition of refugees in the Refugee Convention to include "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality." *See* Organization for African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45.

based and customary rules of international law whose aim is to limit the horrors of war by regulating the means and methods of combat and by protecting war victims.<sup>6</sup> For a long time it was a corpus of customary rules that sovereigns respected among themselves. It was the ICRC, following up on Henry Dunant's proposals, which suggested that the States adopt a convention protecting wounded soldiers and those endeavoring to come to their aid. That initiative led to the adoption of the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field. Signed in Geneva on August 22, 1864, the Convention marked the inception of modern international humanitarian law.<sup>7</sup> It was revised in 1906, 1929, and 1949, and supplemented with new conventions protecting the shipwrecked, prisoners of war and civilians.

Today we have the four Geneva Conventions of August 12, 1949: the Geneva Convention for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field; the

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6. According to the Commentary on the Additional Protocols to the Geneva Conventions, "the expression 'international humanitarian law applicable in armed conflict' means international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of Parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict. The expression 'international humanitarian law applicable in armed conflict' is often abbreviated to 'international humanitarian law' or 'humanitarian law.'" INT'L COMM. OF THE RED CROSS, COMMENTARY ON THE ADDITIONAL PROTOCOLS OF JUNE 8, 1977 TO THE GENEVA CONVENTIONS OF AUG. 12, 1949 XXVII (Yves Sandoz et al. eds., 1987). The word "humanitarian" is defined in the Commentary on the Fourth Geneva Convention as "concerned with the condition of man, considered solely as a human being, regardless of his value as a military, political, professional or other unit." THE GENEVA CONVENTIONS OF 12 AUGUST 1949, COMMENTARY, IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 97 (J. Pictet ed., 1958) [hereinafter GENEVA CONVENTION COMMENTARY].

7. The history of the founding of the Red Cross and of the adoption of the first Geneva Convention is well known, and there is extensive literature on the subject. The following personal accounts and other works are of particular interest: J. HENRY DUNANT, A MEMORY OF SOLFERINO (Int'l Comm. of the Red Cross ("ICRC") ed., 1986) (1862); J. HENRY DUNANT, MÉMOIRES 32-121 (B. Gagnebin ed., 1971); ALEXIS FRANÇOIS, LE BERCEAU DE LA CROIX-ROUGE (1918); PIERRE BOISSIER, HISTORY OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS: FROM SOLFERINO TO TSUSHIMA 7-121 (1985); François Bugnion, *La Fondation de la Croix-Rouge et la Première Convention de Genève*, in DE L'UTOPIE À LA RÉALITÉ: ACTES DU COLLOQUE HENRY DUNANT TENU À GENÈVE AU PALAIS DE L'ATHÉNÉE ET À LA CHAPELLE DE L'ORATOIRE LES 3, 4 ET 5 MAI 1985 191-223 (Roger Durand ed., 1988); FRANÇOIS BUGNION, THE INTERNATIONAL COMMITTEE OF THE RED CROSS AND THE PROTECTION OF WAR VICTIMS 1-28 (2003) [hereinafter BUGNION, ICRC].

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; the Geneva Convention Relative to the Treatment of Prisoners of War; and the Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("Fourth Geneva Convention").<sup>8</sup> On June 8, 1977, the Conventions were supplemented with two Additional Protocols: Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts ("Additional Protocol I") and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts ("Additional Protocol II").<sup>9</sup> The four Geneva Conventions and their Additional Protocols form the bedrock of international humanitarian law in force at present.

A series of conventions have been adopted to regulate the conduct of hostilities, the most important being the Convention (IV) Respecting the Laws and Customs of War on Land, adopted in The Hague on October 18, 1907.<sup>10</sup> Chemical and biological weapons were prohibited by the Geneva Protocol of June 17, 1925.<sup>11</sup> The use of indiscriminate weapons is covered by the

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8. See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention]; see also INT'L COMM. OF THE RED CROSS & INT'L FED'N OF RED CROSS AND RED CRESCENT SOCIETIES, HANDBOOK OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT (1994), at 23-194 [hereinafter HANDBOOK]; DOCUMENTS ON THE LAWS OF WAR 195-369 (Adam Roberts & Richard Guelff eds., 2000); THE LAWS OF ARMED CONFLICTS: A COLLECTION OF CONVENTIONS, RESOLUTIONS AND OTHER DOCUMENTS 459-688 (Dietrich Schindler & Jiri Toman eds., 2004).

9. Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 16 I.L.M. 1391 [hereinafter Additional Protocol I]; Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, 16 I.L.M. 1442 [hereinafter Additional Protocol II]; see also HANDBOOK, *supra* note 8, at 198-280.

10. See Hague Convention (IV) Respecting the Laws and Customs of War on Land, Oct. 18, 1907, 36 Stat. 2227; see also HANDBOOK, *supra* note 8, at 299-309.

11. Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, June 17, 1925, 26 U.S.T. 571; HANDBOOK, *supra* note 8, at 315.

United Nations Convention on Conventional Weapons of October 10, 1980,<sup>12</sup> and anti-personnel landmines are prohibited by the Ottawa Convention of September 18, 1997.<sup>13</sup>

Confronted with the war crimes committed during the conflicts that ravaged the successor States of the former Yugoslavia and the genocide in Rwanda, and the impunity from which the perpetrators of those crimes benefited, the Security Council established two *ad hoc* international tribunals to punish the crimes committed in those countries.<sup>14</sup> This led to the decision to set up a permanent international court whose task would be to try war crimes committed in any conflict and not prosecuted by the competent national courts. The Statute of the International Criminal Court ("ICC")<sup>15</sup> was adopted in Rome on July 17, 1998 and has been ratified by ninety-nine States to date.<sup>16</sup> There is no doubt that when the Court becomes operational, as it will shortly, it will have a dissuasive effect that will enhance respect for international humanitarian law.

The law of war emerged from the confrontation on the battlefield of sovereigns who are equal before the law, and it remains marked by that fact.<sup>17</sup> Traditionally, the customary rules

12. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, U.N. GAOR, 35th Sess., U.N. Doc. A/CONF 95/15 (1980), 1342 U.N.T.S. 168 [hereinafter Conventional Weapons Convention]; *see also* ICRC, Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (2004) [hereinafter ICRC, Restrictions on the Use of Certain Conventional Weapons].

13. U.N. Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and On Their Destruction, Sept. 18, 1997, 1342 U.N.T.S. 137, 36 I.L.M. 1507.

14. *See* Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, S.C. Res. 827, U.N. SCOR, 3217th mtg. U.N. Doc. S/RES/827 (1993), *amended by* S.C. Res. 1166, U.N. SCOR, Annex, U.N. Doc. S/RES/1166 (1998); *see also* Statute of the International Tribunal for Rwanda, S.C. Res. 955, U.N. SCOR, 49th Sess., art. 2(2), U.N. Doc. S/RES/955 (1994).

15. *See* Rome Statute of the International Criminal Court, July 17, 1998, U.N. Doc. A/CONF. 183/9 (1998), 37 I.L.M. 999 [hereinafter Rome Statute] *available at* <http://www.un.org/law/icc/statute/rome fra.htm>.

16. *See* Ratification Status of the Rome Statute, *at* <http://www.un.org/law/icc/> (listing ninety-nine States that have ratified the Rome Statute as of August 22, 2005).

17. *See* JEAN SIOTIS, *LE DROIT DE LA GUERRE ET LES CONFLITS ARMÉS D'UN CARACTÈRE NON-INTERNATIONAL* 53 (1958) (stating that "[t]he laws of war, as a system of legal rules, originate in the customs established to regulate the relations, on the battlefield, between two bodies equal before the law").



of the law of armed conflict and the humanitarian conventions only applied *ipso jure* to conflicts between States.<sup>18</sup> However, one of the crucial provisions of the 1949 Geneva Conventions is common Article 3,<sup>19</sup> a genuine “convention in miniature”<sup>20</sup> protecting the victims of non-international armed conflicts. Article 3 was supplemented by Protocol II additional to the Geneva Conventions.<sup>21</sup> Recently, the States also agreed to extend the scope of the 1980 Convention on Conventional Weapons and its Protocols to non-international armed conflicts.<sup>22</sup> Likewise, the Rome Statute allows the ICC to sanction war crimes committed in both international and non-international armed conflicts.<sup>23</sup> Lastly, it is widely accepted that most customary rules on the conduct of hostilities apply to all armed conflicts, be they international or non-international.<sup>24</sup>

Unlike human rights and refugee law instruments, which in principle are binding only on States, the provisions of interna-

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18. See, e.g., William A. Schabas, *Punishment of Non-State Actors in Non-International Armed Conflict*, 26 *FORDHAM INT'L L.J.* 907, 914 (noting that “[i]nternational humanitarian law was originally concerned with reciprocal commitments between sovereign States”).

19. See Fourth Geneva Convention, *supra* note 8, art. 3; see also Schabas, *supra* note 18, at 914 (“[t]he law has developed considerably . . . with respect to whether or not acts committed during non-international armed conflict are punishable as ‘international crimes’”).

20. This is a term apparently coined by the Soviet Delegation to the 1949 Diplomatic Conference. See Final Record of the Diplomatic Conference of Geneva of 1949, Vol. II-B, at 35, 326, available at <http://www.icrc.org> (last visited Apr. 21, 2005).

21. See Additional Protocol II, *supra* note 9.

22. See Second Review Conference of the States Parties to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, Geneva, Switz., Dec. 21, 2001, *Final Declaration*, at 10, U.N. Doc CCW/CONF.II/2; see also ICRC, *Restrictions on the Use of Certain Conventional Weapons*, *supra* note 12, at 12 (including the text of the Convention with amendments and protocols adopted through November 28, 2003).

23. See Rome Statute, *supra* note 15, art. 8(2)(c)-(f).

24. The Intergovernmental Group of Experts for the Protection of War Victims, which met in Geneva on January 23-27, 1995, recommended that the ICRC be invited to prepare, with the assistance of specialists in international humanitarian law representing different geographical regions and legal systems, a report on the customary rules of humanitarian law applicable in international and non-international armed conflicts. The 26th International Conference of the Red Cross and Red Crescent, held later that year in Geneva, endorsed this recommendation. More than 100 specialists contributed to the study, conducting intensive research with a view to identifying the practice of States and of belligerents during international and non-international armed conflicts. See generally JEAN-MARIE HENCKAERTS & LOUISE DOSWALD-BECK, *CUSTOMARY INTERNATIONAL HUMANITARIAN LAW* (2005).

tional humanitarian law that apply to non-international armed conflicts are equally binding on the insurgent party and on the party that claims governmental legitimacy. Thus, the Rome Statute enables the ICC to prosecute crimes committed by insurgents as well as those committed by the members of governmental forces.<sup>25</sup>

A close scrutiny of the Geneva Conventions and their Additional Protocols reveals few references to refugees and stateless persons, and no specific reference to internally displaced persons. Should this lead us to conclude that humanitarian law does not protect refugees and displaced persons who make up the great mass of war victims and whose plight is often the most painful?

Not at all.

Refugees and displaced persons are civilians, and as such, are protected by all the provisions of humanitarian law protecting civilian persons in time of war. In truth, international humanitarian law aims, first and foremost, to protect civilians from the risk of being uprooted. It also contains important provisions aimed in particular at the protection of refugees and stateless persons.

## II. *INTERNATIONAL HUMANITARIAN LAW AND THE PROTECTION OF CIVILIANS AGAINST THE RISK OF DISPLACEMENT*

Many provisions of humanitarian law aim to protect civilians from the effects of hostilities, especially against the risk of being uprooted. Thus, indiscriminate attacks and attacks directed against civilians are prohibited. So are reprisals against the civilian population, and acts or threats of violence the primary purpose of which is to spread terror among the civilian population.<sup>26</sup>

Attacks may only be directed against combatants or military objectives, i.e., objects "which by their nature, location, purpose

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25. It must be remembered that the jurisdiction of the International Criminal Court ("ICC") is subsidiary to that of national tribunals. In principle, it will therefore not be called on to rule on the cases of individuals tried by a national court. *See* Rome Statute, *supra* note 15, preamble (emphasizing that the International Criminal Court ("ICC") is complementary to national criminal jurisdictions).

26. *See* Additional Protocol I, *supra* note 9, art. 51(2), 51(4)-(6); Additional Protocol II, *supra* note 9, art. 13(2)-(3).

or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."<sup>27</sup> Civilian objects may never be the target of attacks or reprisals.<sup>28</sup> It is also prohibited to use starvation of civilians as a method of warfare, and to destroy crops and objects which are indispensable to the survival of the civilian population.<sup>29</sup>

The Fourth Geneva Convention also protects civilians who have fallen into the hands of the adversary, either because they happened to be on enemy territory when the hostilities began or because they reside in occupied territory. Any protected person wishing to leave the enemy's territory at the outset of or during the hostilities is entitled to do so, unless his or her departure is contrary to the national interests of the State concerned.<sup>30</sup> Those authorized to return home must be repatriated in satisfactory conditions of safety, hygiene, sanitation, and food.<sup>31</sup>

In case of occupation, the Fourth Geneva Convention expressly prohibits the forcible transfer of civilians from their own territory, regardless of the motive. Article 49(1) expressly prohibits "[i]ndividual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not."<sup>32</sup> Should an evacuation be required for the security of the population or for imperative military reasons, it may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated must be transferred back to their homes as soon as hostilities in the area have ceased.<sup>33</sup>

In addition: "[i]n no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs."<sup>34</sup> The principle of *non-refoulement* was thus recognized

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27. Additional Protocol I, *supra* note 9, art. 52(2).

28. *See id.* art. 52(1).

29. *See id.* art. 54; *see also* Additional Protocol II, *supra* note 9, art. 14.

30. *See* Fourth Geneva Convention, *supra* note 8, art. 35.

31. *See id.* art. 36.

32. *See id.* art. 49(1).

33. *See id.* art. 49(2).

34. *Id.* art. 45(4).

in the 1949 Geneva Conventions even before it was set down in the 1951 Refugee Convention.

It is well-known that the treaty provisions applicable in non-international armed conflicts are far less developed than those that apply in international conflicts, as the States are not willing to undertake the same commitments in the case of internal strife as in international conflicts. Article 3 common to the four Geneva Conventions nevertheless provides that: “[p]ersons taking no active part in the hostilities . . . shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.”

Article 3 further prohibits:

violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; 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 judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

Article 17 of Additional Protocol II provides:

The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.<sup>35</sup>

In the event of an international armed conflict, the following actions are considered “war crimes” for the purposes of the Rome Statute: “[i]ntentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” and the “[u]nlawful deportation or transfer” of civilians in occupied territories. In a non-international armed conflict, the Statute similarly proscribes “[i]ntentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities” and “[o]rdering the displacement of the civilian pop-

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35. See Additional Protocol II, *supra* note 9, art. 17.

ulation for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.”<sup>36</sup>

If they are upheld, these provisions — which protect all civilian persons — eliminate the main reasons people are uprooted in times of war. They kick in before refugee law does, protecting civilians against forcible transfers and the threat of uprooting, whose devastating effects are all too familiar, and hence from the risk of becoming refugees or displaced persons. We shall now turn to the situation of the latter.

### III. *INTERNATIONAL HUMANITARIAN LAW AND THE PROTECTION OF REFUGEES AND INTERNALLY DISPLACED PERSONS*

As civilians, refugees and displaced persons are protected by all the provisions of humanitarian law protecting civilian persons in time of war. What is more, a number of provisions apply specifically to refugees and stateless persons. Thus, though the Fourth Geneva Convention is mainly concerned with protecting the interests and citizens of the States parties thereto, stateless persons are also entitled to benefit from its provisions.<sup>37</sup>

In applying the measures of control it is authorized to take to guarantee its security, the Detaining Power shall not treat refugees who have fled the enemy country as enemy aliens exclusively on the basis of their nationality.<sup>38</sup> This provision is intended to protect refugees from the measures of constraint they may be subjected to on the grounds of their nationality, even though they have fled the country of which they are citizens and broken all ties of allegiance to the authorities that govern it.

As stated, protected persons may not be transferred to a country in which they have reason to fear persecution for their political opinions or religious beliefs.<sup>39</sup> This provision protects refugees from the risk of forcible repatriation to the country from which they have fled, even if it is their country of origin.

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36. See Rome Statute, *supra* note 15, arts. 8(2)(a)(vii), 8(2)(b)(i), 8(2)(e)(i), 8(2)(e)(viii).

37. See Fourth Geneva Convention, *supra* note 8, art. 4; see also Additional Protocol I, *supra* note 9, art. 73; GENEVA CONVENTION COMMENTARY, *supra* note 6, at 45-49.

38. See Fourth Geneva Convention, *supra* note 8, art. 44.

39. See *id.* art. 45(4).

In cases of occupation,

[n]ationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace.<sup>40</sup>

We all remember the horrendous fate of the German and Austrian exiles who had sought refuge in countries Nazi Germany subsequently occupied. Almost all of them were deported to concentration camps, where they perished in appalling conditions. This provision is intended to prevent such atrocities from happening again.

These provisions were confirmed and developed in Article 73 of Additional Protocol I to the Geneva Conventions:

Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction.<sup>41</sup>

Clearly, therefore, international humanitarian law has many provisions protecting refugees, stateless persons and internally displaced persons, all of whom are also covered by the general rules protecting the civilian population from the effects of the hostilities and from forcible transfers and deportation; refugees and stateless persons are further protected by rules that relate specifically to them.

These provisions are in no way exclusive of the 1951 Refu-

40. *Id.* art. 70(2).

41. Additional Protocol I, *supra* note 9, art. 73. Neither the Geneva Conventions nor their Additional Protocols define refugees or stateless persons; rather, they refer to the definitions set forth in the international instruments protecting refugees and stateless persons. *See* Refugee Convention, *supra* note 5, art. 1(A)(1) ("refugee" shall apply to any person who . . . [h]as been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization").

gee Convention, and the same person may well, depending on the circumstances, be protected by international humanitarian law and by refugee law. Far from excluding each other, the two bodies of law supplement and support each other.

However, whether in an international or internal conflict, the provisions of international humanitarian law apply essentially on the territory of the parties in conflict. As a rule, they do not apply to refugees who have sought refuge on the territory of a State that is not involved in the conflict. Insofar as they have reached the territory of a neutral or non-belligerent State, refugees are protected by the national law of the host country, by human rights law and by the 1951 Refugee Convention, if they are refugees as defined in the latter.<sup>42</sup>

Refugees who flee to neutral States may nonetheless enjoy the benefit of certain provisions of international humanitarian law. Because they are basically civilian, refugee camps may not be the object of attack, unless they are used as bases for military operations directed against the State from which the refugees fled.<sup>43</sup> If the camps are nevertheless attacked, as occurred in 1994 in certain camps for Rwandan refugees in the former Zaire, the rules relating to the conduct of hostilities should obviously be applied.

Furthermore, refugees in neutral countries can benefit from the provisions relating to the tracing of missing persons,<sup>44</sup> family news,<sup>45</sup> and the reunification of families separated by the war.<sup>46</sup>

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42. See Refugee Convention, *supra* note 5, art. 1A.

43. 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* 387-93 (Christophe Swinarski ed., 1984).

44. See Fourth Geneva Convention, *supra* note 8, art. 26 (“[e]ach Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible”; Additional Protocol I, *supra* note 9, arts. 32-34 (requiring parties to the conflict to inform families of the fate of the missing or location of dead relatives)).

45. See Fourth Geneva Convention, *supra* note 8, art. 25 (requiring parties to the conflict to enable protected persons to “give news of a strictly personal nature to members of their families, wherever they may be, and to receive news from them . . . speedily and without undue delay”).

46. See *id.* art. 26; Additional Protocol I, *supra* note 9, art. 74 (“the High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts”); Additional Protocol II, *supra* note 9, art. 4(3)(b) (“all appropriate steps shall be taken to facilitate the reunion of families temporarily separated”).

#### IV. TOWARDS A CONVENTION PROTECTING INTERNALLY DISPLACED PERSONS?

People who have been displaced because of an armed conflict and who remain on the territory of a party to the conflict are, obviously, protected by international humanitarian law. In international armed conflicts, these people are protected by the provisions of the Fourth Geneva Convention and of Additional Protocol I. In the case of non-international armed conflicts, they are protected by Article 3 common to the four Geneva Conventions, Additional Protocol II, and the customary international law applicable in such conflicts.

Should these provisions be supplemented by a new convention specially adopted to protect internally displaced persons?

On numerous occasions in the past few years the possibility, and in some cases the necessity, of adopting a new convention protecting people displaced within the borders of their country — a kind of sister treaty to the 1951 Refugee Convention — has been invoked. In fact, the parallels between the two are misleading. By definition, refugees have fled their country of origin or residence to seek refuge abroad; they need to be granted asylum in a host country and fear above all else *refoulement* to the country from which they have fled. Displaced persons, on the other hand, have remained in their country of residence; what they need first and foremost is protection from the effects of the hostilities and from arbitrary acts on the part of the adverse party. Their material circumstances and need for protection are therefore different from those of refugees.

Moreover, the 1951 Refugee Convention was adopted specifically because most of the provisions of humanitarian law do not apply to the territory of neutral or non-belligerent States. People who have been displaced because of a conflict — be it international or non-international — and who remain on the territory of a belligerent State are, however, protected by humanitarian law. Any new convention covering such people specifically could give rise to confusion and might water down existing standards. This was clearly understood by the United Nations Secretary-General's former Special Representative on Internally Displaced Persons, Mr. Francis Deng, who recommended the adop-



tion of *Guiding Principles on Internal Displacement*<sup>47</sup> rather than a new convention on displaced persons, who are already protected by international humanitarian law, given that there was no guarantee that a new convention would afford the same level of protection or would be universally adopted.

Because international humanitarian law continues to provide the best means of preventing people from being uprooted, the efforts of the international community should be directed towards ensuring respect for existing law rather than at preparing new legal texts.

#### V. THE INTERNATIONAL COMMITTEE OF THE RED CROSS ("ICRC") AND THE PROTECTION OF REFUGEES AND DISPLACED PERSONS

The ICRC was created to come to the aid of wounded soldiers, but it was soon brought face-to-face with the tragic plight of refugees.<sup>48</sup> The ICRC's first operation for these war victims apparently dates back to the insurrection in Bosnia-Herzegovina, in the spring of 1876. The insurrection, and above all the repression that followed, forced hundreds of thousands of refugees to take to the roads; tens of thousands reached neighbouring Montenegro, which had no means of meeting the needs of this mass of totally destitute people. In response to the

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47. See *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4/1998/53/Add.2 (Feb. 11, 1998) and E/CNA/1998/53/Add.2\* (Oct. 16, 1998) (reprint for technical reasons) [hereinafter *Guiding Principles*]; see also Jean-Philippe Lavoyer, *Guiding Principles on Internal Displacement: A Few Comments on the Contribution of International Humanitarian Law*, 324 INT'L REV. OF THE RED CROSS 467-80 (1998). The United Nations Commission on Human Rights ("UNCHR") took note of the *Guiding Principles* on April 17, 1998. See Commission on Human Rights Resolution 1998/50, U.N., Economic and Social Council, Commission on Human Rights, U.N. Doc. E/CN.4/1998/50 (1998). The *Guiding Principles* have also influenced domestic legislation in several countries, including: Angola, Burundi, Colombia, Georgia, Liberia, Peru, Sri Lanka, and Uganda. See Roberta Cohen, *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*, GLOBAL GOVERNANCE 10, 459-80 (2004).

48. For a discussion of the origin, history and role of the ICRC, see generally BOISSIER, *supra* note 7; BUGNION, ICRC, *supra* note 7; ANDRÉ DURAND, HISTORY OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS: FROM SARAJEVO TO HIROSHIMA (1984); DAVID P. FORSYTHE, THE HUMANITARIANS: THE INTERNATIONAL COMMITTEE OF THE RED CROSS (2005); DAVID P. FORSYTHE, HUMANITARIAN POLITICS: THE INTERNATIONAL COMMITTEE OF THE RED CROSS (1977); YVES SANDOZ, THE INTERNATIONAL COMMITTEE OF THE RED CROSS AS GUARDIAN OF INTERNATIONAL HUMANITARIAN LAW (1998); Marion Hartoff Tavel, *Action Taken by the International Committee of the Red Cross in Situations of Internal Violence*, 294 INT'L REV. OF THE RED CROSS 195-220 (1993).

Montenegrin government's call for international aid, the ICRC dispatched three delegates to facilitate the establishment of a National Red Cross Society and organize the reception and distribution of relief supplies.<sup>49</sup> Since then, the International Red Cross and Red Crescent Movement has been involved in practically all aspects of aid for refugees and displaced persons, placing special emphasis on emergency assistance, medical care, the transmission of family news, and the reunification of separated families.

As a wave of more than 800,000 Russian refugees, most of them totally destitute, poured into Europe and China in the wake of the October Revolution and the defeat of the White armies, the ICRC realized that it could not meet the needs of so many refugees with the resources of private charity, and that only concerted action on the part of governments, in the framework of the new League of Nations, would allow those needs to be met. The persistent representations of the ICRC, in particular of its President, Gustave Ador, prompted the League of Nations to create the Office of the High Commissioner for Refugees and to appoint as its head the celebrated Norwegian explorer Fridtjof Nansen, who was already well-known for his activities to repatriate prisoners of war captured during the First World War.<sup>50</sup>

The ICRC would renew its appeal in the aftermath of the Second World War, in view of the planned dissolution of the International Refugee Organization. In its May 1, 1950 appeal, the ICRC emphasized "how important it is that there should be a permanent international organization, impartial and indepen-

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49. See *L'Insurrection dans l'Herzégovine*, 25 BULLETIN INTERNATIONAL DES SOCIÉTÉS DE LA CROIX-ROUGE, Jan. 1876, at 1-4; see also *Une Mission au Monténégro: Rapport Présenté au Comité International de la Croix-Rouge par ses Délégués*, 26 BULLETIN INTERNATIONAL DES SOCIÉTÉS DE LA CROIX-ROUGE, Apr. 1876, at 55-70.

50. See Telegram and Letter from ICRC President Gustave Ador to the President of the Council of the League of Nations and ICRC Memorandum to the Council of the League of Nations, Feb. 20, 1921, ICRC Archives, File B Mis CR 87-2/39 and 39 bis; Note by Sir Eric Drummond, Secretary-General of the League of Nations, to Gustave Ador, Mar. 1, 1921, ICRC Archives, File B Mis CR 87-5/59; Telegram from Sir Eric Drummond to Fridtjof Nansen, Aug. 24, 1921, and Letter by Fridtjof Nansen to Sir Eric Drummond, Sept. 1, 1921, ICRC Archives, File B Mis CR 87/SDN; see also 27 REVUE INTERNATIONALE DE LA CROIX-ROUGE 266-71 (1921); 30 REVUE INTERNATIONALE DE LA CROIX-ROUGE 621-24, 628-29 (1921); 32 REVUE INTERNATIONALE DE LA CROIX-ROUGE 815-16 (1921); 33 REVUE INTERNATIONALE DE LA CROIX-ROUGE 928-38 (1921); 34 REVUE INTERNATIONALE DE LA CROIX-ROUGE 1016-20 (1921).

dent, to ensure the protection of refugees — but on the condition that it will, without discrimination, embrace all refugees and stateless persons.”<sup>51</sup>

The Nansen Office for Refugees and the Office of the United Nations High Commissioner for Refugees (“UNHCR”), which took over in 1951, have been at the forefront of refugee protection. Under the leadership of highly respected dignitaries such as Prince Sadruddin Aga Khan and Mrs Sadako Ogata, the Office’s work has expanded considerably.<sup>52</sup>

The ICRC has nevertheless continued to concern itself with refugee protection, particularly in terms of registering people, tracing the missing, and restoring family ties. Thanks to its experience of more than 100 years, and to the network of National Red Cross and Red Crescent Societies, it is able to render invaluable services in this field. Its specialists have drawn up particularly effective methods, combining strict professionalism with the flair of Sherlock Holmes.

In many cases, refugees are unable either to return home or to settle definitively in the country of first asylum. They have to find a host country ready to grant them long-term asylum. Often, the same refugees have no identity papers, either because the papers were destroyed in the shelling or because the refugees lost them while fleeing or — as is all too often the case — because they were seized and destroyed during a check. The refugees are therefore prevented from seeking asylum in a host country and from crossing the borders separating them from that country.

It was after the First World War that the ICRC first took steps to help people with no identity papers. The governments of Vienna and Budapest, which had no representation in Vladivostok, asked the ICRC delegation in the Far East to draw up the identity papers the former Austro-Hungarian prisoners of war who had been deported to eastern Siberia needed to board the ships that would bring them back to Europe.<sup>53</sup>

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51. *Refugees and Stateless Persons, Appeal of May 1, 1950*, 3(5) REVUE INTERNATIONALE DE LA CROIX-ROUGE 82-85 (English Supp. 1950); ICRC, Report on General Activities 1950, at 38-41.

52. See generally THE STATE OF THE WORLD’S REFUGEES 2000: FIFTY YEARS OF HUMANITARIAN ACTION (Mark Cutts ed., 2000).

53. See 17 REVUE INTERNATIONALE DE LA CROIX-ROUGE 610-11 (1920); 36 REVUE INTERNATIONALE DE LA CROIX-ROUGE 1210-11 (1921); see also Renée-Marguerite Cramer,

What might still have been considered an exceptional situation after the First World War ceased to be so in the wake of the Second. There were millions of displaced persons — prisoners of war, internees, deportees, and refugees — and tens of thousands of uprooted people who could not go home because they lacked the required identity papers. It was in those circumstances that the ICRC established, in February 1945, the travel document that it still uses today.

Travel documents are intended for displaced persons, stateless persons, and refugees who, because they have no other adequate means of identifying themselves, are unable to return to their countries of origin or usual residence, or to travel to a country that is willing to grant them asylum. The documents are drawn up on the basis of the bearer's statements and in the light of any papers the bearer is able to produce. They therefore do not have the stamp of authenticity of a passport or other official document issued by the public authorities and attesting to the bearer's identity. As a result, they do not constitute genuine proof of identity and the ICRC cannot be held accountable for the accuracy of the information they contain.<sup>54</sup>

Travel documents are nevertheless extremely useful because they enable the bearers to show a paper on which the authorities of the receiving country and, as required, the countries of departure and transit, can stamp the entry and exit visas without which the bearers could not travel to the country of their choice.

ICRC travel documents are not governed by any treaty provisions. They were created under the right of humanitarian initiative, which the ICRC is universally recognized to have, and are grounded in what has become a widely accepted practice, given that the authorities of 133 States or territories have affixed visas on them.<sup>55</sup> Since 1945, more than 550,000 displaced persons, stateless persons, and refugees have travelled to the country of

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*Rapatriement des Prisonniers de Guerre Centraux en Russie et en Sibérie et des Prisonniers de Guerre Russes en Allemagne*, 17 *REVUE INTERNATIONALE DE LA CROIX-ROUGE* 526-56 (1920); Renée-Marguerite Frick-Cramer, *Le Rapatriement des Prisonniers du Front Oriental Après la Guerre de 1914-1918*, 309 *REVUE INTERNATIONALE DE LA CROIX-ROUGE* 700-27 (1944).

54. Although the ICRC endeavours to ascertain the veracity of the information entered on travel documents, the sheer number of documents — which often have to be issued quickly and under emergency conditions — precludes any form of verification and renders effective control impossible. The ICRC cannot therefore guarantee the accuracy of the information contained therein.

55. For a discussion of the ICRC's recognized right of humanitarian initiative, see

their choice or to another country willing to take them in on an ICRC travel document.<sup>56</sup>

For the past quarter century, UNHCR has been running increasingly large-scale programs to assist refugees in the first country they reach. The ICRC has therefore reduced its activities in that field accordingly, in order to not overlap with UNHCR. It has, however, organized major relief operations for refugees in situations in which UNHCR either could not or was not willing to come to their aid. For example, the ICRC and UNICEF ran sizable relief operations for Cambodian refugees who had fled to Thailand in the fall of 1979. In a matter of days, the two organizations set up reception camps, opened field hospitals to admit the wounded and sick,<sup>57</sup> and distributed large amounts of food, clothing, cooking utensils, and other relief materials.<sup>58</sup>

No intergovernmental body has a mandate specifically to assist people displaced by war within their own country.<sup>59</sup> The

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Yves Sandoz, *Le Droit d'Initiative du Comité International de la Croix-Rouge*, 22 GERMAN YEARBOOK OF INT'L L. 352-73 (1979).

56. See ICRC, 1 Report of the International Committee of the Red Cross on its Activities During the Second World War 669-71 (1948); see also *A Humanitarian Certificate: The ICRC Travel Document*, 180 INT'L REV. OF THE RED CROSS 136-37 (1976); *New Printing of ICRC Travel Document*, 199 INT'L REV. OF THE RED CROSS 417-21 (1977); *Le Titre de Voyage du Comité International de la Croix-Rouge*, Apr. 30, 1986, Document A 493 bis.

57. Of particular note is the creation of the Khao-I-Dang refugee camp and hospital. On November 17, 1979, the Thai authorities made available to the ICRC a field overgrown with shrubs and bushes for the construction of a refugee camp. The next day, about 350 workers hired by the ICRC arrived, unloaded the trucks packed with bamboo sticks and other construction material, and started to clear the land. On November 19, the first buildings hinted at the camp's basic structure, and on November 21, the first refugees arrived at the camp hospital, the construction of which had not yet been finished but which was already offering all essential services. See *Thai/Cambodia Refugee Camps 1975-1999 Information and Documentation Website*, available at <http://www.websitesrcg.com/border/index.html> (last visited Apr. 18, 05).

58. See ICRC, Annual Report 40-43 (1979); ICRC, Annual Report 38-40 (1980); ICRC, *Kampuchea, Back from the Brink: The International Committee of the Red Cross Reports on its 15-month Joint Action with UNICEF in Kampuchea and Thailand* (1981); see also WILLIAM SHAWCROSS, *THE QUALITY OF MERCY: CAMBODIA, HOLOCAUST AND MODERN CONSCIENCE* (1984); MAGGIE BLACK, *THE CHILDREN AND THE NATIONS: THE STORY OF UNICEF* 378-407 (1986).

59. In some situations, notably the conflicts in the former Yugoslavia, UNHCR has established major relief operations for internally displaced persons, but only on a selective basis and without a general mandate to assist such victims. Some refugee aid organizations view such operations with distrust, fearing that if UNHCR becomes too involved in relief operations for internally displaced people, it may jeopardize its primary

ICRC, whose mission is to protect and assist the victims of war, considers that these people fall within its purview and endeavours to come to their aid. Through its representations to the parties to the conflict and, as necessary, to neutral States that may be able to exert pressure on them, the ICRC has tried to ensure that belligerents comply with international humanitarian law and meet their obligations towards the civilian victims of war, in particular displaced persons.<sup>60</sup>

Whether the people concerned are refugees or internally displaced persons, one of the ICRC's priorities is to restore their ties to their families. Its activities to that end include registering the displaced, tracing missing persons, setting up a family message system and reuniting families dispersed by war.<sup>61</sup> In more recent conflicts, the family message system has often been replaced by the systematic use of cell phones and the publication of tracing requests on websites created by the ICRC.

People who are forced to flee their homes try to take along their most precious belongings, which they often have to abandon en route, because they cannot carry them or because they have been pillaged on the way or looted at checkpoints. As a

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mission to ensure respect for the right to asylum. See generally Michael Jandl, UNHCR's Involvement with Internally Displaced Persons: The Emergence of the "Situational Approach", at <http://www.net4you.com/jandl/idps1.htm> (last visited Apr. 18, 2005).

60. For a discussion of ICRC activities to ensure respect for international humanitarian law, see BUGNION, ICRC, *supra* note 7; Harroff-Tavel, *supra* note 48; Sandoz, *supra* note 48.

61. Even in situations where UNHCR took charge of the refugees and provided for their needs, the ICRC was still responsible for registering them, helping them renew contact with their families, and tracing the missing. One example is the case of the Vietnamese boat people during the late 1970s and early 1980s. After the communist forces triumphed in Vietnam on April 29, 1975, hundreds of thousands of Vietnamese fled their country on any boat they could find, making landfall in Hong Kong, Indonesia, Macao, Malaysia, the Philippines, Singapore, and Thailand, depending on the direction of the winds and currents. UNHCR provided them with assistance and set up refugee camps in the countries of first asylum, in several countries working in cooperation with National Red Cross and Red Crescent Societies. Given that countless refugees were known to have died at sea, relatives back in Vietnam and abroad were understandably anxious. Boat people were often impatient to renew contact with relatives who had settled in other countries and who might be able to help them find a country of final asylum. The ICRC helped establish tracing offices and a postal service that came to be known as the Tracing and Mailing Services, among the National Red Cross and Red Crescent Societies of Hong Kong, Indonesia, Macao, Malaysia, the Philippines, Singapore and Thailand. The information collected on over 650,000 names by the offices was stored in Geneva. In total, 1.2 million letters were exchanged and 70,000 tracing cases opened, 28% of which were resolved positively. See *The 'Tracing and Mailing Services' in Aid of the 'Boat People'*, 257 INT'L REV. OF THE RED CROSS 203-07 (1987).

result, when these people reach their place of first asylum, they are often completely destitute. They left with everything they could carry, only to arrive with empty hands and a child on each shoulder. What is more, nothing has been done to receive them. In such cases, the ICRC works to make the parties to the conflict meet their responsibilities, but often has to set up large-scale emergency assistance programs to distribute food and cooking utensils, clothes, tents, blankets and toiletries, to erect shelters, to sink wells and protect sources of water, to construct or renovate water distribution systems, to build latrines and drains for waste water, and so on.

In late 2003 and early 2004, for example, fighting in Darfur forced over one million of the province's six million inhabitants to move. The ICRC was able to launch a major relief operation, thanks to an agreement reached during its President's mission to Sudan in March 2004. The operation provided basic household items to 380,000 displaced persons, and tents and emergency shelters to 80,000 people in the camps. The ICRC also distributed food on a regular basis to about 110,000 people and drinking water to over 200,000 people. Conducted in partnership with the Sudanese Red Crescent, the operation continues to this day. In addition, the National Societies of thirteen countries (Australia, Canada, Denmark, Egypt, Germany, Iran, Kuwait, the Netherlands, Norway, Saudi Arabia, Spain, the United Arab Emirates, and the United Kingdom) are also providing assistance to the displaced in Darfur, while the International Federation of Red Cross and Red Crescent Societies is assisting those who have sought refuge across the border in Chad. At the same time, the ICRC continues to make representations with a view to obtaining respect for international humanitarian law in Darfur.<sup>62</sup>

When they reach a place of first asylum, refugees and displaced persons are often in a perilous state of health. They have been traumatized by their departure and are exhausted after a difficult journey; they have suffered cold or heat, and slept rough or in makeshift shelters. Many of them have been wounded by mines, bombs or cross-fire. The health services of the host countries are generally ill-prepared to cope with a sud-

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62. See Roland Huguenin-Benjamin, *Darfur's Turbulent Times*, 3 RED CROSS-RED CRESCENT 5-8 (2004).

den influx of sick and wounded. Here, too, the ICRC endeavours to have the parties to the conflict meet their responsibilities, but often ends up having to set up major medical relief programs in support of dispensaries and hospitals in the region, to provide emergency care, and to prevent epidemics. It sometimes has to open its own dispensaries or field hospitals, with the help of National Red Cross and Red Crescent Societies.

If the displaced cannot go home, they will need help to rebuild their lives and find the means of providing for themselves and their families. By distributing tools, seed and fertilizer, making available micro credits, supporting training programs and solidarity networks, the ICRC helps refugees and displaced persons find the means of winning back their economic independence, which is vital to maintaining their dignity.

In Chiapas (Mexico), for example, the ICRC provided those displaced by the conflict of the spring of 1994 with technical aid to build greenhouses, and with vegetable seeds and fruit tree seedlings, in order to enable them to recover their economic independence.<sup>63</sup> In Serbia, it backed occupational training and micro credit programs aimed at helping displaced Serbs from Kosovo find employment or initiate activities enabling them to meet their needs and those of their families.<sup>64</sup>

In many cases, aid programs for refugees and displaced persons have to be accompanied by activities for the local residents, who may be left in need after having shared their meagre resources with the refugees and displaced persons and who may resent the newcomers, as is all too often the case when the latter are the sole beneficiaries of international assistance.

Once the emergency phase is over, it is usually by providing support for local facilities or institutions — hospitals, dispensaries, health and social services, the National Red Cross or Red Crescent Society, women's or mothers' associations, other aid societies and local NGO's — that refugees and displaced persons are most effectively helped.<sup>65</sup>

Lastly, the ICRC is often requested to cooperate in pro-

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63. See ICRC, Annual Report 198 (2003).

64. See *id.* at 213-14.

65. See Marion Harroff-Tavel, *Do Wars Ever End? The Work of the International Committee of the Red Cross When the Guns Fall Silent*, 851 INT'L REV. OF THE RED CROSS 465-96 (2003).



grams to repatriate refugees and displaced persons, in particular to register the candidates for repatriation, to help them prepare their application files, to provide travel documents or to make available the requisite logistical means: transportation and transit camps.<sup>66</sup> Irrespective of whether it is involved in repatriation operations, the ICRC has always advocated respect for the principle of *non-refoulement*. Its delegates interview candidates for repatriation in private, so as to obtain assurance that they are willing to return to their country of origin. The ICRC has never been involved in forced repatriations.

As the systems of protection afforded by refugee law and international humanitarian law are not mutually exclusive but rather complement and supplement each other, so do the mandates of UNHCR and the ICRC. According to ICRC President, Jakob Kellenberger, “[t]he Office of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross have long shared a close relationship based on a determination to uphold standards of protection and operational principles. The connection between the two institutions is firmly anchored in historical, legal and operational aspirations.”<sup>67</sup> The two institutions are in constant contact in order to coordinate their programs and initiatives.<sup>68</sup>

At its meeting in Seville in November 1997, the Council of Delegates of the International Red Cross and Red Crescent Movement adopted an important agreement on cooperation between the Movement’s components (the National Red Cross and Red Crescent Societies, the ICRC and the International Federation). Under the terms of the agreement, the ICRC is responsi-

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66. In 1973, for instance, the governments of Bangladesh and Pakistan asked the ICRC to register all civilians eligible for repatriation under the New Delhi agreement of August 28, 1973. In Pakistan, the ICRC registered 74,000 Bengali civilians, and collated the lists of 52,000 soldiers and their families who had already been registered by the Pakistani authorities; it then forwarded their files to the authorities in Dhaka. In Bangladesh, the ICRC registered requests concerning 535,000 people and forwarded their files to the authorities in Islamabad, which had to issue the authorizations to enter Pakistan. In Bangladesh, the ICRC also drew up travel documents for authorized persons, which served as exit visas from Bangladesh and entry visas for Pakistan, and enabled them to board UNHCR-chartered aircrafts. In total, 236,000 people were thus repatriated to the country of their choice.

67. Jakob Kellenberger, *Foreword by the President of the International Committee of the Red Cross*, 843 INT’L REV. OF THE RED CROSS 573 (2001).

68. See, e.g., ICRC, *Joint Note on the Interaction between the ICRC and UNHCR in the Context of the Iraq Crisis* (2003).

ble for coordinating the Movement's relief operations in countries affected by international and non-international armed conflicts or by internal unrest, and by the direct consequences of such situations, until such time as peace is restored. The International Federation coordinates the Movement's relief operations for refugees who have found asylum in countries unaffected by armed conflict.<sup>69</sup>

Providing protection and assistance to people uprooted by war is a constant challenge for the Movement, and the plight of refugees and above all internally displaced persons lies at the heart of the ICRC's mandate. Admittedly, no organization can say in good faith that it alone meets all the needs of people uprooted by war, but the ICRC and the Movement have nevertheless played a paramount role in helping such people for over a century. In 2004, the ICRC alone provided protection, medical care, food and drinking water to more than three million displaced persons, almost the equivalent of the entire population of Connecticut, Oklahoma, or Oregon.

### CONCLUSION

In conclusion, we must never forget that refugees and people displaced by war are first and foremost civilian victims of war. As such, they are protected by the relevant provisions of international humanitarian law before, during, and after their exodus, until they are repatriated or have settled somewhere

We must also remember that international humanitarian law, if it is respected, is the strongest bulwark against people being uprooted. In fact, the main reasons people pack up and leave in time of war are always violations of humanitarian law, whether indiscriminate attacks or attacks deliberately targeting civilians, terrorist attacks, abuse of power, threats of violence, reprisals or deportation.

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69. See *Agreement on the Organization of the International Activities of the Components of the International Red Cross and Red Crescent Movement*, 322 INT'L REV. OF THE RED CROSS 159-77 (1998).