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Refugees and the Red Cross: an underdeveloped dimension of protection

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Introduction

It is widely assumed that the international protection of refugees and displaced persons can be best understood by focusing on the Office of the United Nations High Commissioner for Refugees (UNHCR), along with the hard and soft law or international regime associated with that office. It is not widely appreciated how much refugee law in its broad formulation cross cuts international humanitarian law and the humanitarian diplomacy of the International Red Cross and Red Crescent Movement (also called the Movement). It is the purpose of this essay to highlight this duality and to discuss the contributions of the Red Cross network to refugee protection.

The International Red Cross is not a tightly integrated network, and parts of that loose system of actors have long competed *inter se* concerning refugees and other matters. The lead Red Cross actor in conflict situations, the International Committee of the Red Cross (ICRC), has often had better relations with UNHCR than with various members of the Red Cross family. But some developments suggest a clarification of divisions of labour within the Movement that hold out the promise of improved coordination and effectiveness. This in turn suggests that UNHCR may find it has better organized partners in trying to protect refugees and displaced persons, although some problems may remain on the Red Cross side.

UNHCR as starting point

Since its creation in 1950, it has been clear that UNHCR has a special role to play in trying to protect those defined as refugees in the 1951 Convention on Refugees (along with its 1967 Protocol that extended the treaty's terms of reference across time).¹ Subsequent resolutions by UNHCR's Executive Committee and UN General Assembly authorized the agency to deal not only with conventional refugees (those crossing an international boundary because of a well founded fear of persecution), but also with those fleeing political unrest or certain of those who find themselves displaced for political reasons within their state of residence.

Despite traditional rhetoric to the contrary from all quarters, UNHCR's primary protective action entails two dimensions.² First there is traditional protection, in which the agency undertakes diplomatic or legal steps to try to ensure that states implement the internationally recognized civil rights intended to benefit those "persons of concern" uprooted from their normal residence because of political events - viz., persecution, war, instability. For example, those seeking to prove refugee status are entitled to a fair hearing from public authorities; those granted refugee status are entitled not be returned to a situation of persecution but rather to be granted at least temporary asylum.

Second there is relief protection, in which the agency seeks to protect those persons of concern who are threatened by hunger, exposure to the elements, sickness and disease,

¹ See especially Gil Loescher, The UNHCR and World Politics: A Perilous Path, (Oxford: Oxford University Press, 2001).

² David P. Forsythe, UNHCR's mandate: the politics of being non-political, Geneva, UNHCR, Working Paper No. 33, New Issues in Refugee Research, March, 2001.

inadequate education, and various threats to sound mental health. In short, persons of concern to the agency have recognized socio-economic rights. Whereas the origins of UNHCR lay in traditional protection, increasingly the agency has had to recognize that protecting a person from starvation is as important as protecting one from summary execution, that protecting a person from hypothermia is as important as protecting one from torture. Absent attention to the socio-economic rights inherent in relief protection, often there may be no need for attention to the civil rights of traditional protection - such are the harsh material conditions in which many refugees and displaced persons find themselves. What good are the civil rights at issue in traditional protection when the refugee has died from exposure to the elements?

Especially because of the demands of relief protection after the end of the Cold War, UNHCR has greatly expanded in terms of budget and staff. UNHCR remains the clear lead agency of the international community in traditional protection efforts focused on individual conventional refugees - particular individuals claiming a well founded fear of persecution and seeking asylum in another state. Yet the agency has no monopoly in dealing especially with those uprooted by war and other political instability.

UNHCR shares relief protection when dealing with war refugees and displaced persons from political events. This shared responsibility stems not only from interaction with non-governmental organizations (NGOs) with whom UNHCR contracts for provision of relief goods and services, and not only from the fact that other UN agencies like UNICEF or the World Food Programme may be involved in a particular situation. UNHCR's shared responsibility also stems from the long involvement of the Red Cross and Red Crescent Movement in dealing with civilians adversely affected by war and other conflict situations.

ICRC and civilians in conflicts

ICRC, the founding Red Cross actor (1863), took as its first *raison d'être* the provision of medical aid to the war wounded (in an era in which states provided more veterinarians to care for horses than doctors to care for wounded soldiers).³ In 1864 it helped in the negotiation and adoption of the first Geneva Convention for victims of war, which legally shielded from attack both medical assistance in international armed conflict and the wounded combatants who were *hors de combat* and who required that medical assistance. This treaty comprised the start of what is called today international humanitarian law (IHL), which is that part of the laws of war devoted to creating a place for humanitarian values and activities in the midst of war.

To adapt a long and interesting story to present purposes, over time ICRC extended its concern for the individual in both international and internal (or civil) war to include civilians rather than just the wounded or captured combatant. Reflecting the growing concerns of ICRC during the 1930s as it operated in places like Ethiopia and Spain, not to mention the terrible destruction from the Second World War, the Fourth Geneva Convention of 1949 pertains to civilians in armed conflict, as do parts of Protocols I and II added in 1977. Under these instruments of modern IHL, ICRC has

³ Francois Bugnion, Le Comité Internationale de la Croix-Rouge et la Protection des Victimes de la Guerre, (Geneve: CICR, 1994).

special rights and duties regarding civilians affected by war.⁴ Of course there are other legal provisions that pertain to other subjects like combatants and means and methods of combat.

Apart from IHL, which legally regulates situations of armed conflict, ICRC's pragmatic humanitarian diplomacy allows ICRC to address humanitarian issues arising in other conflict situations aside from war such as domestic troubles or tensions. Thus ICRC exercises a broad and open-ended "right of initiative," now approved by both the Movement and more general state practice, which allows it to try to protect persons in "domestic troubles" or "domestic troubles and tensions" characterized by a variety of exceptional conditions including: declarations of states of siege or martial law, prolonged and special arrest and detention for reasons of state security, widespread fear and tension due to political events, forced displacement and "ethnic cleansing," etc.

In these situations of political conflict not characterized by key public authorities as internal or international war, the modern ICRC finds that it is often able to play the role of neutral intermediary who tries to protect persons viewed as "the enemy" by public authorities. Just as in war, ICRC's basic concern is to try to protect persons held or adversely affected by an "enemy" party. Sometimes a government will regard some of its own citizens as "enemy," and sometimes citizens will regard their own government in the same light.

Given the modern mandate of ICRC, self-devised but endorsed by the rest of the Movement and by public international law,⁵ one can see that ICRC is often interested in the same persons who comprise "persons of concern" to UNHCR. Both agencies focus on persons uprooted by mass persecution, war, and political instability. While IHL explicitly mentions refugees in passing (as a group of especially vulnerable civilians meriting special humanitarian attention in war),⁶ that law is broadly concerned with all civilians adversely affected by international or internal war.

Civilians legally covered by IHL sometimes overlap with refugees now normatively protected by international refugee law and related international instruments (e.g., UN resolutions of various types). In other words, some "war refugees" and internally displaced persons from political events, who are of concern to UNHCR, also fall within the traditional mandate of ICRC if they are in a country affected by armed conflict. According to ICRC, for example, "of the close to five million persons assisted by it in the course of 1999, the great majority were internally displaced."⁷

⁴ See further David P. Forsythe, Humanitarian Politics: The International Committee of the Red Cross, (Baltimore: Johns Hopkins University Press, 1977).

⁵ Some ICRC personnel like to stress that states have given or entrusted certain mandates to ICRC. I believe it is more accurate to say, on the basis of history, that ICRC took certain initiatives on its own that were then later endorsed by states via international law. I believe that absent IHL, ICRC would continue to do most of what it does, because the Agency is most fundamentally a moral and pragmatic actor. ICRC action has led international law, not the other way around.

⁶ See especially Jean-Philippe Lavoyer, "Refugees and internally displaced persons: International humanitarian law and the role of ICRC," *International Review of the Red Cross*, No. 304 (March-April, 1995), 162-191. See especially Fourth Geneva Convention, Articles 4, 35-36, 44, and 70. Also Protocol I (1977), additional to the 4 Geneva Conventions of 12 August 1949, Article 73.

⁷ ICRC, "Internally displaced persons: the mandate and role of the International Committee of the Red Cross," *International Review of the Red Cross*, no. 838 (June 2000), p. 493.

ICRC, when it does become involved in conflict situations, carries out the same two types of applied protection mentioned above: traditional protection involving diplomatic and legal representation in behalf of civil rights, and relief protection involving an element of traditional protection plus provision of socio-economic goods and services.⁸ ICRC and UNHCR parallel each other not only in their list of persons of concern, but also in the protective efforts they seek to bring to such persons. They also parallel each other in seeking to construct a normative framework to guide practical or field protection. Moreover, the two agencies are funded by essentially the same voluntary donors - the wealthy liberal democracies, either acting separately or through such mechanisms as the European Union.⁹

Some differences exist between the two agencies. For example, ICRC is greatly interested in the combatant who is *hors de combat* whether taking the form of a sick or wounded fighter, prisoner of war, irregular fighter, or security detainee, etc. Normally UNHCR does not seek to protect fighters of various sorts. UNHCR, on the other hand, is greatly interested in permanent solutions to the plight of persecuted individuals who have been granted temporary asylum in a haven state. Normally ICRC does not deal with the repatriation or resettlement of conventional refugees. ICRC is a private Swiss agency (now with a multinational staff, but retaining an all-Swiss policy-making Assembly), which is highly independent (even from other Red Cross bodies). UNHCR is a United Nations agency which is accountable to states through the General Assembly.

ICRC, refugees, and displaced persons in history

Long before UNHCR was created, ICRC dealt with those fleeing widespread persecution and/or war and political instability.¹⁰ Thus ICRC tried to respond, in its small and inadequate way, to the involuntary transnational movement of persons after the First World War and especially to those dislocated by events in the Soviet Union after the 1917 November revolution. Given its own experience in these events, ICRC was among those pushing for the creation of a refugee office in the structure of the League of Nations. ICRC President, Max Huber, drew up the statutes for what came to be called the Nansen Office of the League of Nations.¹¹

ICRC had long seen itself as an emergency and supplemental actor who was prepared, at least in theory, to step aside when - and if - public authorities or the international community took the steps necessary to properly care for persons in dire straits because of conflict. States have the primary responsibility under international law for humanitarian protection, and of course UNHCR exists to work with states to implement the refugee regime. Today ICRC does not much concern itself with medical relief to soldiers of industrialized and high-technology military forces, since almost all such forces have their own medical services. Things have changed since

⁸ David P. Forsythe, "Humanitarian protection: the International Committee of the Red Cross and the United Nations High Commissioner for Refugees," International Review of the Red Cross, No. 843 (September 2001), pp. 675-697.

⁹ At the time of writing UNHCR annual budget was about \$850 million, while ICRC budget was about \$550 million.

¹⁰ Françoise Krill, "ICRC's policy on refugees and internally displaced," International Review of the Red Cross, No. 843 (September 2001), 607-628.

¹¹ Henri Coursier, La Croix-Rouge Internationale, (Paris: Presses Universitaires de France, 1962), p96.

1859 and the Battle of Solferino, which caused Henry Dunant to set in motion both ICRC and the Red Cross and Red Crescent Movement in reaction to the absence of adequate military medical services by France and Austria-Hungary.

It remains true, however, that ICRC has a high opinion of its abilities and is not always persuaded that others can do as good a job as it has done in protecting persons in conflict situations.¹² Thus the agency was not enthralled about discussion in the 1930s about an International Relief Union that might be linked with the new Red Cross Federation (analyzed below), which would have reduced or eliminated much ICRC relief protection altogether.¹³ So the question of ICRC's deferring to other actors in the humanitarian and refugee fields is a complicated matter requiring careful analysis.

After the Second World War, ICRC was deeply involved in responding to various civilian populations that were dislocated by that war and its immediate aftermath. ICRC was again one of those supportive of first the International Refugee Office and then UNHCR as it became clear that refugees after 1945 would be a continuing rather than temporary problem. Once again ICRC saw itself primarily as an emergency supplement to public authorities. The Agency remained deeply concerned about victims of war, but it certainly had never seen itself as concerned primarily with refugees fleeing persecution *per se*, compared to flight or displacement due to war or other large-scale political conflict. In general ICRC and UNHCR have had good relations over the years. Where both have been involved in the same state or situation, in general they have reached amicable agreement on a division of labour.

ICRC played a major role in responding to the plight of Palestinian refugees dislocated in the 1947-1949 fighting for control of western Palestine. In addition to playing its usual intermediary role throughout the war between the Israeli forces and various Arab armies, ICRC created a special unit to deal with Palestinian refugees. Whereas the "regular" ICRC field mission in the struggle for Palestine comprised 18 persons, ICRC special unit for refugees consisted of some 100 employees. ICRC proved essential for the care of some 480,000 Palestinian refugees in the immediate area of conflict (not counting another 330,000 who resettled in neighboring states) until UNRWA was created to take over those duties in 1950.¹⁴

ICRC, struggling to maintain its traditional composition and mandate in the face of various critiques, had its own reasons for making such a relatively large, if exceptional, effort for Palestinian refugees. The agency was under attack in the late 1940s by both communist parties and some in the western world who objected to various aspects of its record in the Second World War. The communists saw ICRC as a western bourgeois organization that had failed to protect Soviet prisoners of war from Nazi brutality (although the USSR had never ratified the 1929 Geneva Convention on Prisoners of War and had treated German prisoners of war equally badly). The leadership of the Swedish Red Cross, initially before rethinking its

¹² Former ICRC President Cornelio Sommaruga remarked with concern that some ICRC officials saw themselves as the high priests of humanitarianism. Massimo Lorenzi, *Le CICR, le coeur et la raison: entretiens avec Cornelio Sommaruga*, (Lausanne, Favre, 1998).

¹³ John F. Hutchinson, "Disasters and the International Order," *International History Review*, xxii, 1, (January, 2000), 1-36; and Hutchinson, "Disasters and the International Order—II," *International History Review*, xxiii, 2 (June 2001), pp. 253-504.

¹⁴ Dominique-D. Junod, *The Imperiled Red Cross*, (London: Kegan Paul International, 1996).

position, saw ICRC as too legalistic and conservative to exercise effective leadership, witness ICRC's refusal to speak out about, or do much else to counteract, the German Holocaust. So these and certain other parties wanted either to internationalize the all-Swiss ICRC or to eliminate it altogether.

Thus the agency took the conscious decision in Geneva to use the Palestine conflict to prove to the world that it was still a viable organization. Be all that as it may, its role was crucial for the existence and socio-economic welfare of these persons dislocated by war and ethnic cleansing in the first Arab-Israeli war. This record, and the onset of the cold war, did much to undermine those demanding fundamental change at ICRC. The Swedish Red Cross in particular saw that internationalizing ICRC's Assembly during the cold war would have led to debilitating difficulties.

From 1950, given the existence of both UNRWA and UNHCR, ICRC left both the Palestinian refugees and the matter of traditional protection of particular conventional refugees to these other agencies. But given its continuing interest in civilians affected by war and political unrest, ICRC could hardly avoid dealing with what others might call war refugees and those internally displaced by political events. To recite some of its larger operations of this nature up until 1980, ICRC found itself dealing with: 2 million persons moving between India and Pakistan in 1950; over 1 million persons displaced in Algeria 1954-62; 600,000 persons displaced in Indonesia during 1957-59; 3.25 million persons displaced during the Nigerian civil war of 1967-70.¹⁵ Of course ICRC was not the only actor involved in trying to protect civilians in these situations.

The larger Red Cross movement and refugees

Note should also be taken of the role of what is now the Federation of Red Cross and Red Crescent Societies (hereafter the Federation). Created in 1920, the Federation was the brainchild of the American Red Cross and its leader, Henry P. Davison, and was intended to replace ICRC as the head of the Red Cross and Red Crescent Movement.¹⁶ Since the Great War was supposedly the war to end all wars, ushering in an era of democracy and peace, there was to be no further need for ICRC in conflict situations and its presumably aging and cautious leaders. History and ICRC, however, were not to cooperate with this vision.

There resulted a spirited and determined competition between ICRC and the Federation for leadership of the Movement for perhaps eight decades. Already mentioned was ICRC effort in the inter-war years to undercut the International Relief Union, since it was linked to the Federation. In the long term, to oversimplify, the mono-national leadership of ICRC more than held its own in this competition due to several factors: the continuing need in international relations for a neutral humanitarian intermediary that was trusted by "enemy" parties; the quality of ICRC personnel compared to the Federation both in Geneva and in the field; the fact that ICRC was a free standing and independent agency capable of taking decisions on short notice, whereas the Federation was just that - a composite of the quasi-governmental National Red Cross and Red Crescent Societies around the world.

¹⁵ Francois Moreillon, "L'action de Comité international de la Croix-Rouge en faveur des refugies et des personnes deplacées," unpublished paper read by permission.

¹⁶ The most penetrating history of the Red Cross Movement through about 1930 is by John F. Hutchinson, Champions of Charity: War and the Rise of the Red Cross, (Boulder: Westview, 1996).

Not to put too fine a point on a complicated relationship, much of the time the Federation's leadership, staff, and component members were no match for ICRC. For all this time ICRC had more prestige and support in most governmental circles - communist parties aside - than the Federation. ICRC was able to maintain its position as the lead agency for the International Red Cross in conflict situations, and the Federation had to content itself with being – primarily - the lead agency of the International Red Cross in responding to natural (and now technological) disasters.

Still, the Federation, with at least periodic support from important western National Red Cross Societies, had its own programme of refugee assistance in many parts of the world. If we again look at the larger operations up until 1980, we find the Federation dealing with: more than a million persons returning to Portugal from African colonies during 1975-79; and more than 1 million persons fleeing from Ethiopia into Somalia during 1979-80.¹⁷

In some cases there was a rather clear and harmonious division of labour between ICRC and the Federation in certain conflict situations. For example, in 1956 in regard to events in Hungary, ICRC concentrated on trying to provide humanitarian protection to persons in Hungary, whereas the Federation dealt with refugees in neighboring Austria.

In some cases there was a coordinated Red Cross plan for dealing with a country or area - at least on paper. During World War Two there had been a joint ICRC and Federation commission for relief protection. In the Republic of South Vietnam during much of 1954-1975, there was supposed to be one coordinated Red Cross presence in that beleaguered country. That plan pertained, inter alia, to relief protection to displaced persons. But in reality, the Federation teamed with the South Vietnamese Red Cross to exclude ICRC from some relief operations - ICRC being too independently assertive and no doubt too neutral for its quasi-governmental "partners" in the Red Cross family.¹⁸

As in the Nigerian civil war, when the Federation and the French Red Cross had their own separate agendas, cooperation with ICRC was minimal to non-existent. A coordinated Red Cross plan was devised for Bosnia during 1992-1995, and this plan fared better than the previous one in South Vietnam. Again, displaced persons and war refugees were covered. But neither the Federation nor ICRC were anxious to renew this coordination, given the different planning, operations, and accounting that existed in the two agencies.

Red Cross operations: the Seville Agreement

It is ICRC and Federation, relying to varying degrees on National Red Cross or Red Crescent Societies, which organize the activities of Red Cross network for international action. Other Red Cross organs come into play for international deliberations, such as the International Conference held in principle every four years. The Conference, which brings together representatives of state parties to the Geneva Conventions, of National Societies, and of ICRC and Federation, retains some

¹⁷ Moreillon, op.cit.

¹⁸ Jacques Freymond, Guerres, Révolutions, Croix-Rouge: Reflexions sur le rôle du Comité international de la Croix-Rouge, (Geneve: HEI, 1976), pp. 151-2.

importance in the role of approving Movement policies. ICRC, for example, will often seek and obtain Conference endorsement of certain ideas or initiatives that strengthens its hand in dealing with governments or other authorities. In so far as there is private Red Cross law, the Conference establishes this.

Although a number of members of the Movement refuse to acknowledge it as such, the presence of states in what is supposed to be a private humanitarian Movement is an anomaly. In the International Conference, states play a large role. A legalist might point out that states have pledged themselves to apply humanitarian law and have been among those voting for Red Cross principles and standards.

Still, among the seven official principles of the Movement one finds independence from politics plus neutrality and impartiality in the service of universal humanity. Especially since Red Cross actors are supposed to be strictly “non-political,” how states and their governments can participate in a “non-political” Movement is certainly not clear. In fact, the Conference has often been disrupted by the strategic or ideological competition among states whether one speaks of communist and anti-communist states during the Cold war, Islamic states and Israel since 1948-1949, etc. With typical ICRC reserve, a former official wrote that the presence of states in the International Conference could lead to “inconvenient” things.¹⁹

The Standing Commission attends to Conference business in the years between meetings. The Council of Delegates is another Movement-wide body that also helps organize the Conferences and otherwise deliberates issues of interest to the Movement. These latter two bodies are usually ignored in analyses of Red Cross action. They lack the authority to command either ICRC or the Federation or the National Societies to move in any particular direction. Each component of the Movement - ICRC, Federation, and National Society - has its own statutes. At the 1997 meeting of the Council of Delegates in Seville, Spain, a new document was adopted that has implications not only for the Red Cross and victims of various conflicts and disasters, but also for persons of concern to UNHCR.

In the history of the Red Cross one can find various “peace treaties” between ICRC and the Federation, as well as pious admonitions for the two international actors to be nice to each other and get along! But bilateral agreements in 1969, 1974, and 1989 failed to resolve the recurring conflict between the two. The 1997 Seville agreement seems to have ushered in a new stage of cooperation and integration within the Red Cross Movement.

At Seville, ICRC and Federation, along with the representatives of National Societies, agreed on the concepts of lead agency in international relief and lead role in various situations.²⁰ Without describing the entire document, one can note the following. In conflict situations such as armed conflict and internal strife, ICRC will be the lead Red Cross actor covering the entire territory of the state in question. ICRC’s traditional and relief protection will extend to the “direct results” of the conflict, including the situation where active hostilities may have ceased but peace has not yet been fully restored. Should a natural disaster arise in a country torn by conflict, or

¹⁹ “presenter des inconvenients,” Coursier, op.cite, p. 76.

²⁰ Seville Agreement, reprinted in International Review of the Red Cross, No. 322 (March, 1998), 159-176.

vice versa, ICRC retains the lead role. In these situations covering displaced persons from conflict, and refugees moving into a state involved in the conflict or having its separate conflict, ICRC is the lead Red Cross partner for UNHCR.

On the other hand, the Federation assumes the lead Red Cross role in relief action for post-conflict situations where relief may be needed in conjunction with “reconstruction and rehabilitation programmes.” This situation would cover internally displaced persons post-conflict. The Federation also is the lead Red Cross agency to care for the “large scale movement of refugees” into states not characterized by armed conflict or domestic troubles. Thus the Federation becomes the logical Red Cross partner for UNHCR in these situations. The Federation of course retains the lead role in natural and technological disasters unrelated to “man-made” conflict, ICRC having no operational interest in such situations.

National Societies may become lead Red Cross agencies for international relief efforts if ICRC or Federation agrees on the basis of roles defined above, but such National Societies may not enter into agreements with UNHCR unless ICRC or Federation gives their “concurrence.” Thus there is an attempt to allow for the strong and effective National Society to play a lead role in Red Cross relief, but in an integrated and coordinated fashion.

Most of the Seville agreement pertains to relief protection, the Federation and National Societies having no history of, or experience in, or capability for, traditional protection - especially when consisting of detention visits. ICRC continues to be the Red Cross actor engaging in traditional protection in conflict situations.

Regarding relief protection, in the future one may find some misunderstanding and conflict under the Seville Agreement especially in these early years of implementation. When exactly have the “direct effects” of a conflict ended and a phase of “reconstruction and rehabilitation begun?” Will ICRC and Federation agree on the timing of the hand over of Red Cross programmes and funds? Suppose a “large scale movement of refugees” occurs into a country with some political tension and low level strife? If ICRC is making some small-scale detention visits, will it agree that the Federation should provide relief to refugees? Suppose a National Society asserts itself as the lead Red Cross actor for a relief effort, but one of the Geneva-based Red Cross agencies does not believe that the National Society is as effective as the latter thinks? And what is UNHCR to do while the Red Cross family sorts out its relationships?

After 1997, however, in both Kosovo and in the North Caucus region, for example, ICRC and Federation have reached amicable agreement on divisions of labour. In the latter example, the Russian Red Cross has also been an important and cooperative part of a coordinated Red Cross response to refugee flows.

More generally, there remains the question of whether the Federation and National Societies can always be counted on to provide effective relief according to the principles of independence, impartiality, and neutrality. ICRC has mostly acted according to these principles since 1863. There is the major exception of the Second World War when it allowed itself to be heavily influenced by the Swiss government

in some matters pertaining to Nazi Germany.²¹ Swiss public officials in Bern feared a possible German invasion if Swiss elements, including ICRC, proved too irritating to Berlin. So Bern closely tracked and sometimes “leaned on” ICRC. But this is the exception that proves the rule. Some in ICRC do not like the Seville Agreement, believing that ICRC gave away too much to other Red Cross actors. These dissenters fear that the Federation and many National Societies are not as independent and neutral and impartial as ICRC and that victims of conflict will pay the price.

In fact, it is not always clear that National Societies can operate independently of their governments in order to provide impartial relief only on the basis of need. In the event of refugee flows from Iraq into Iran, for example, could one count on the Iranian Red Crescent to provide neutral and impartial relief independently of the desires and manipulations of the Iranian government? Nor has it always been clear that the Federation can stay apart from the ideological and strategic calculations of its component National Societies, at least sometimes because of the heavy hand of governmental influence.

The Seville Agreement stresses the importance of expert preparation for relief on the basis of IHL and Red Cross principles.²² The Movement endorses a Red Cross code of behavior for all actors responding to disaster or emergency situations broadly defined.²³ The Federation staff understands the issue well. UNHCR, of course, should be interested also in whether the Federation and its members have the requisite abilities to be reliable partners in refugee relief.

In the final analysis, the Seville Agreement indicates a considerable desire by the Red Cross Movement to get its house in order for effective international action. Much of this action pertains to persons of concern to UNHCR such as certain internally displaced persons and both conventional and war refugees.²⁴ If the Federation continues to improve the quality of its headquarters and operations staff, and if National Societies continue to improve their relief personnel either for themselves or for loan to ICRC and Federation, UNHCR could find itself with more reliable partners beyond the already reliable but already heavily engaged ICRC.

It is likely that ICRC accepted the Seville Agreement precisely in order to concentrate on detention visits and relief in the midst of conflict.²⁵ This focus leaves to the Federation and its component members the main responsibility for providing relief to

²¹ Jean-Claude Favez, The Red Cross and the Holocaust, (Cambridge: Cambridge University Press, 1999), French edition from 1988.

²² Federation, Working with refugees and asylum seekers: a handbook for Red Cross and Red Crescent staff and volunteers, (Geneva: Federation, no date given.)

²³ ICRC, Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations (NGOs) in Disaster Relief, (Geneva: ICRC, no date given.)

²⁴ UNHCR appears to have an unclear “doctrine” regarding which IDPs fall within its mandate and which do not. It may be the case that despite some general wording seeking to establish broad policy on this matter, political pressures plus available resources account for the fact that UNHCR had concerned itself with IDPs in places like Afghanistan and Colombia but not the Sudan and Indonesia.

²⁵ Legally speaking, those who flee one country seeking safe haven in a second are not covered by IHL in that second country unless the latter is characterized by armed conflict. See Lavoyer, *op. cit.*

displaced persons and refugees on the periphery of active conflicts - viz., in post-conflict situations and in neighboring areas.²⁶

Given the large number of conflicts after the cold war, ICRC is using more and more persons in its protection efforts who are seconded from National Societies.²⁷ This pattern could lead to experienced Red Cross personnel who at one time wear ICRC hat, at another time the Federation hat, and at still another time the hat of their National Society. The result could be better relief and less Red Cross internal rivalry. The beneficiaries would be victims of conflict and persons of concern to UNHCR - which as we have already noted are not mutually exclusive categories.

Conclusion

We should keep the Seville Agreement in perspective. One cannot reasonably expect the Agreement to do anything about the human rights violations around the world that lead to some 15-20 million refugees and displaced persons annually due to persecution as well as political events. The Agreement of course does not address the causes of the numerous armed conflicts since the end of the cold war that produce so many victims of wars - approximately 80-85% of which are civilians. Nor does the Agreement address the prevalence of internal strife and domestic troubles that can lead not only to security prisoners but also forced migration.

Still, it is important that the Agreement lays down some relatively clear markers for how the disjointed Red Cross Movement can better prepare itself to deal with victims of conflicts, some of whom are also persons of concern to UNHCR.

What is needed now is some close tracking of how the Agreement works in the real world of victimization and forced dislocation. We know that in general in Geneva, the leaders of both ICRC and the Federation are pragmatists interested in less competition *inter se* and more effective programming. We know that the Secretary-General of the Federation was invited to address the Assembly of ICRC (the top policy making body for general policy) and that he was given a warm welcome. We know that the Director-General and the Directorate of ICRC, comprised of professionals responsible for quotidian policy, meet on a regular basis with their counterparts at the Federation. We know that important National Societies support the Seville Agreement in principle.

In the past, sometimes the official leadership of the Federation, not always the Secretary-General and his immediate staff, but the elected leadership, arriving in Geneva without much experience in sensitive matters of international diplomacy, have tried to assert themselves at the expense of ICRC. On the other hand, before the presidency of Cornelius Sommaruga (1987-1999), sometimes ICRC leadership could be very defensive of traditional turf and hyper-sensitive about any apparent encroachment by the Federation. One can hope that the Seville Agreement will be an effective brake on any tendency to return to this pattern that was detrimental both for the Red Cross family and for victims of conflict and persecution.

²⁶ The Federation and the local National Society play myriad roles beyond relief to refugees and IDPs in nations not affected by war.

²⁷ See further David P. Forsythe, The Humanitarians: The International Committee of the Red Cross, forthcoming.

The Red Cross Movement provides an extensive Red Cross presence in various situations around the world. ICRC manages the largest private relief operation in the world for conflict situations, with such expenditures running annually at about \$350 million.²⁸ There are 178 National Red Cross or Red Crescent Societies in the world, at least some of which have effective relief programmes, capable personnel with international experience, and good contacts with governments. (There is no denying, however, that historically the Movement has tolerated a sizable number of very weak National Societies.) UNHCR would do well to track developments closely in regard to the evolution of this Red Cross network. At long last the Red Cross Movement may be overcoming at least some of its more dysfunctional aspects and thus becoming a stronger partner for UNHCR as it copes with refugees and displaced

²⁸ It is difficult if not impossible to calculate exactly how much ICRC spends on relief protection. Not only does its Annual Report present medical expenses as separate from relief. Also, that Report estimates headquarters expenses in support of non-defined field operations. Moreover, some relief protection is combined in the field with traditional protection.