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Refugee  
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Initiative

# The Role of the ICRC in Protecting and Assisting Refugees and Displaced Persons

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Preliminary Workshop

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## I. Introduction

This report is a summary of proceedings at the expert workshop held by the Refugee Law Initiative at the School of Advanced Study in London on 20 September 2011, on the theme of 'The Role of the International Committee of the Red Cross in Protecting and Assisting Refugees and Displaced Persons'. As such, it forms the basis for the further development of a collaborative international research project on this topic with the workshop participants at its core.

The report aims to portray the presentations and discussion undertaken during the conference, and does not necessarily reflect the views of the International Committee of the Red Cross (ICRC), Refugee Law Initiative (RLI) or any part of the University of London. The terms used in the report do not imply the expression of an opinion on the part of the RLI or the ICRC concerning the legal status of any entity, territory or borders.

### Context

The ICRC is well-established as an impartial, neutral and independent humanitarian organisation that works to ensure protection and assistance for victims of armed conflict and other situations of violence. However, its role in the protection and assistance of refugees and other displaced persons is less clearly acknowledged. Moreover, in comparison to the extensive literature concerning the office of the United Nations High Commissioner for Refugees (UNHCR), little independent research has been carried out on this topic, leaving a lacuna in our knowledge of refugee and IDP protection.

The hypothesis adopted here is that the ICRC has played a leading role in protecting and assisting refugees and displaced persons throughout much of its history. Reasons for considering that the contribution of the ICRC is indeed substantial in this regard include the following:

- The ICRC has been a prime mover in the development of *international law* for the protection of refugees and IDPs: it was the ICRC that promoted the adoption of the first multilateral refugee treaties in the 1920s; moreover, certain refugee law principles – such as family unity – appear to have a genealogical connection with similar concepts in the Geneva conventions, and the figure of the refugee also appears in Geneva law;
- The ICRC has been closely involved in developing *international policy* on refugees and IDPs: the Central Tracing Agency developed by the ICRC has served as the principal means at the international level by which members of separated families have restored contact; more recent examples include its contribution to the development of the Guiding Principles on Internal Displacement and its participation as observer in the 'clusters approach'; and
- Through direct work with victims of armed conflict and other forms of violence (as well as the potential perpetrators of forced displacement), ICRC operations have in fact provided a level of *practical protection and assistance* to refugees and displaced persons throughout the institution's history. This is apparent in operations such as those in the Balkans, Colombia, Afghanistan, Sri Lanka and the territories occupied by Israel, to take just a few contrasting examples.

Nonetheless, scholars researching the ICRC have pointed out that its engagement with refugees and displaced persons still represents an 'underdeveloped dimension' (Forsythe). Indeed, as recently as

2010, the ICRC designated the protection of internally displaced persons as one of four main areas in which a strengthening of IHL was required over the coming years.

### **Research project**

The proposed project aims to bring together key scholars and practitioners in a collaborative research network in order to explore the role played by the ICRC in the response to forced displacement and address these serious shortcomings in our knowledge.

This will encompass study not only of the formative role of the ICRC in the creation of international standards and institutions for the protection of refugees and IDPs, but also the practical ways in which the ICRC has engaged in different kinds of situations of forced displacement across the world. The premise is that whilst attention has focused on the role of UNHCR, the ICRC plays an equally important (but often different) role in protection and assistance to victims of forced displacement.

### **Expert workshop**

The expert workshop constituted the first step towards realising this objective. Its goals were to:

- Develop a research network as the collaborative basis for the project;
- Define the overall scope of the project;
- Present and discuss preliminary findings in the legal and policy fields; and
- Identify and develop a series of case studies.

These aims were to be realised through presentations by the speakers and discussion among all of the participants.

#### *Speakers and participants*

The workshop gathered fourteen participants around the table, including former and current ICRC staff, former and current staff from UNHCR and the Norwegian Refugee Council, and UK and overseas academics. For a complete list of participants, please see Annex 1. Whilst the presentations are here attributed, the ensuing discussion took place under Chatham House rules meaning that the content is reproduced here but without attribution to any individual. Moreover, the presenters all spoke in an individual rather than an institutional capacity.

#### *Agenda*

The morning session of the expert workshop was comprised of two panels dedicated to presentations and discussion of two crucial aspects of the proposed research project. The first panel considered the role of the ICRC from a legal point of view. The second panel raised questions about the policy role of the ICRC in relation to forced displacement.

The afternoon session continued the discussion of the project scope that had been generated during the course of the morning. It touched specifically on the question of the centrality to the project up on the ICRC as against other components of the Red Cross movement, as well as the definition of forced displacement. A list of thematic areas for study was debated and refined, and suggestions for relevant ICRC operations to exemplify these thematic areas were made.

## II. Law and legal history panel

The Convenor opened the morning session of the expert workshop with a warm welcome to all participants. He explained the objectives of the proposed research project and the goals of the preliminary workshop. He encouraged the participants to engage to the fullest extent. Participants then took turns to introduce themselves. The Convenor concluded by opening the first panel discussion, which concerned the legal questions raised by the proposed research project.

The purpose of this panel of eminent speakers was to explore some of the important legal questions that arose in the broad framework of the proposed project. Key questions posed to the panel included the following:

- What role has the ICRC played in the development of refugee law, as well as legal frameworks for the protection of IDPs?
- How has the ICRC sought to promote protective provisions in the law of armed conflict for refugees, displaced persons and others potentially affected by forced displacement?
- How should the ICRC position itself in relation to the continuing development of these bodies of law in the future?

The panel was chaired by David Cantor. The speakers, in order of presentations, were François Bugnion, Kate Jastram and Geoff Gilbert.

### Presentations

Speaker 1: François Bugnion

*The legal protection of civilians against forced displacement and the rules protecting refugees, internally displaced persons and returnees in case of international or non-international armed conflicts in international humanitarian law and refugee law*

François Bugnion began by describing war as the major cause of forced displacement. Indeed, one of the first uses of the term 'refugee' was in the description of Trojan war victims in Virgil's *Aeneid*. Yet displacement caused by past atrocities faded into insignificance compared with that seen during the 20<sup>th</sup> century, notably in the Second World War and the Balkan conflicts of the 1990s. In this regard, he emphasised that the ICRC has a special position in comparison to other humanitarian actors since its action is based on international humanitarian law (IHL) and contributes to the development of this body of law. Consideration of these rules, and other relevant bodies of law, was therefore essential to the study of the ICRC's response to forced displacement. Indeed, what is striking about forced displacement as a topic is the need to consider not one body of law but several.

He stated that his analytical focus would be upon civilian populations, although prisoners of war are also protected by IHL. Once uprooted, civilians may be refugees, who are protected by refugee law and certain provisions of IHL as well as human rights law (HRL) and domestic law. Alternatively, where they remained within their country of origin, the big problem of internally displaced persons (IDPs) arose. These persons were primarily protected by human rights law as expressed by the UN Guiding Principles and recent IDP treaty law from Africa.

He pointed out that consideration should not be limited to the protection of those already displaced but should include protection *from* forced displacement. He argued that the main causes of forced

displacement were (i) hostilities and the fear associated with it (exacerbated by the use of increasingly powerful weapons) and (ii) arbitrary action by one or more parties to a conflict (such as the use of scorched earth policies). In the first scenario, IHL protected the civilian population during hostilities, as did treaties to regulate weapon use. In the second scenario, the law of occupation offered protection in international armed conflicts (IACs). In non-international armed conflicts (NIACs), Common Article 3 could be relied upon as a humanitarian principle even if it did not specifically refer to forced displacement. In this respect, Article 17, Protocol II was stronger.

He highlighted the particular protection challenge posed by other situations of violence that do not cross the 'armed conflict' threshold for IHL to apply. He suggested that one could always rely on ICJ comment in the *Corfu* case that humanitarian principles applicable during war *ipso facto* must apply in time of peace, although he noted that States have been reluctant to accept this argument. As a result, he suggested that HRL offered the best protection against forced displacement in such situations. This might imply the need for greater ICRC engagement with the HRL framework. He also drew attention to the particular problems of returning displaced persons - who may find their house occupied etc. – as an area where codification of further specific protection may be required.

Bugnion concluded by making two final points about the legal framework relevant to the ICRC's response to forced displacement. Firstly, given the diversity of legal regimes touching on this issue, there was the need to look beyond IHL to refugee law, HRL and even international criminal law, when discussing whether, within its right of initiative, an adequate normative basis exists for ICRC action in this area. Secondly, there was the question of whether further codification in this area is required – his view was that this is unnecessary and could negatively impact on the existing provisions. Moreover, the political environment would have to be taken into account before embarking on such an effort.

Speaker 2: Kate Jastram

*"An empirical, but humanitarian, definition": ICRC's role in the development of refugee law*

Kate Jastram pointed to the considerable attention devoted in recent years to the relationship between IHL and HRL and the connections between refugee law and HRL. By contrast, the sound premise of the project was that the relationship between IHL and refugee law, and their respective institutional guardians (ICRC and UNHCR), really remains underexplored. The proposed project could make a significant contribution in this area, although clarity is needed over whether we are looking at the relationship between refugee law and IHL or between refugee law and the ICRC? She suggested that drawing a Venn diagram of the ways in which the different bodies of law intersected on the theme of forced displacement would show a high degree of overlap between them.

In her paper, Jastram highlighted the role played by the ICRC in the development of Inter-War legal instruments concerning refugees and other displaced persons. She also alluded to ICRC's attempts to include a refugee return provision in the Fourth Geneva Convention as well as its contribution to the 1951 Refugee Convention. A central task of the legal sphere of the project should be the collection and analysis of the ICRC's interventions in the drafting of the major refugee law instruments. She suggested as a working hypothesis that the ICRC played a limited, reactive and subsidiary role in normative development from 1951 until the 1990s when increased international attention to internal displacement motivated its active engagement to prevent the weakening of IHL principles.

She suggested that another fruitful area of analysis would be the role of the ICRC in addressing the shrinking humanitarian space available for protecting the displaced. One aspect of this would be questions about the role of 'neutrality' in this debate. Another is whether, or how, the ICRC has helped UNHCR in this regard, since the logic of affording protection to IDPs threatens UNHCR's mandate in a more intrinsic way than it does the ICRC mandate. Specifically in relation to asylum, she raised the question of the role of the ICRC in interpreting elements of the refugee definition that relate to armed conflict. This would include debates over the meaning of the phrase 'situations of international or internal armed conflict' in Art 15(c) of the EU Qualification Directive and whether IHL is controlling or merely illustrative in this legal context.

As regards the sphere of doctrine, Jastram noted that the UNHCR has already developed policy guidance on legal themes that relate closely to the ICRC mandate, such as refugees from armed conflict and conscientious objection. She suggested that an assumption that needs to be explored is that doctrine in the displacement context on family unity, gender and age considerations is more advanced in UNHCR than ICRC, thus raising questions about the process of doctrinal development in this area by the two institutions.

Speaker 3: Geoff Gilbert

*The ICRC's role in protection and its parallel obligation to uphold the laws of war*

Geoff Gilbert focused on interrogating from a legal perspective the elements of the proposed project on 'the role of the ICRC in protecting and assisting refugees and displaced persons'. He opened by pointing out that the International Red Cross and Red Crescent Movement as a whole is broader than just the ICRC, and includes the International Federation of the Red Cross and 186 National Societies. There is no hierarchy between Movement components, although all are subject to the quadrennial International Conference. Moreover, the other components will regularly be involved in humanitarian crises and work with displaced persons. He asked whether the project should not explore the relationships between these different components and how these work in practice?

He focused upon comparing the institutional mandates of the ICRC with that of UNHCR, the international organisation with an explicit mandate for refugee protection. In this regard, the ICRC's mandate is outlined in Article 4 of its statute. Its role encompasses upholding IHL (including that relating to displaced persons), ensuring protection of victims (including displaced persons), and taking any humanitarian initiative consonant with its mandate. The ICRC thus had an expansive remit to provide protection to displaced persons, primarily in time of armed conflict, although its role in disturbances not amounting to armed conflict might also encompass some similar function.

He questioned whether the term 'refugee' carried the same meaning in IHL and refugee law (including the UNHCR Statute). He then drew attention to the fact that 'protection' itself is a broad concept that is not defined in international law, but is described in various ways in different instruments. He proceeded to outline the understandings of 'protection' of refugees and IDPs in paragraph 8 of UNHCR's Statute and also its extended mandate, noting that States have regularly affirmed this understanding in the General Assembly. He queried whether this understanding of protection also governed the ICRC's work in this field. He suggested that the vagueness of the ICRC's 'protection' mandate as expressed its statute might be an advantage in practice.

He noted that, beyond the UNHCR Statute, two other instruments that were pertinent to discussion of the ICRC's protection mandate vis-à-vis the displaced. The first was the Rome Statute, particularly Article 7.1(b) on extermination as a crime against humanity, since extermination will lead to mass displacement and is a result of the denial of access to protection by entities such as the ICRC. Secondly, since much of the Guiding Principles on Internal Displacement is now customary law, the ICRC could rely upon the duties articulated there in its role with the displaced. Principle 27 arguably requires all actors to have regard to the protection needs of displaced persons, even if UNHCR implicitly has priority with respect to refugees and (in the Cluster approach) conflict-related IDPs.

Gilbert stated that a study of ICRC protection activities brings into sharp relief the law of the rights and duties of international organisations, as codified by the International Law Commission, raising questions like: Is the ICRC a private organisation or an international organisation? What is the status of its Statute in international law? What are the implications of differences in nature between the ICRC and UNHCR in work with refugees and displaced persons? Yet he also pointed to similarities in the manner in which both the ICRC and UNHCR 'do not do rights' - their role is rather to ensure that States uphold relevant obligations. Might this suggest that, where the ICRC and UNHCR are working with refugees in a particular State, the ICRC can equally rely on State duties to facilitate protection of refugees as expressed in the UNHCR Statute and Article 35 of the Refugee Convention?

### **Discussion**

Following the presentations by the panel of speakers, all of the participants joined in discussing points that had been raised as well as a wider set of legal issues and research questions.

Two of the legal themes raised by participants during the discussion were questions about the legal regime employed by the ICRC in its engagement with forcibly displaced persons. A crucial concern that was mentioned by several participants was the need to consider whether any protection and/or assistance provided by the ICRC to refugees marched together with that provided to IDPs. This reflected the concerns raised by the contributions of various speakers as regards the extent to which the international focus on IDPs undercut the refugee protection regime. Another interesting point raised by one participant concerned the important question about who gets protection. The participant pointed to the fact that the refugee regime excludes certain undesirables from protection, as seen in paragraph 7 of the UNHCR Statute and Article 1F of the Refugee Convention. The question was thus raised of whether similar distinctions were made by the ICRC in its work with displaced persons, particularly refugees. These questions partially presaged points made during the second panel about the legal categorisation of displaced persons and implicit criteria of greater 'worthiness' of some kinds of displaced persons.

The theme of ethnic cleansing that was alluded to by various speakers also generated significant debate. Participants expressed the view that this was an important case study of ICRC engagement with displaced persons since it raised fundamental legal and ethical questions which were at stake in ICRC's operations whenever such phenomenon is established. For instance, should the ICRC help to evacuate those being ethnically cleansed in order to help protect them from harm, but thereby facilitate the ethnic cleansing? Alternatively, if ethnic cleansing violated international law, should it stand back at the cost of the lives of those being ethnically cleansed? How were the different ethical and legal injunctions behind the ICRC's mandate to be squared in this paradigmatic situation? Along

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these same lines, another participant felt that it would be interesting to have an ICRC perspective on the proposal of safe areas for civilians.

Participants then turned to consider the implications of the presentations for the boundaries and scope of the proposed research project. Firstly, picking up on Gilbert's presentation and pre-empting those in the following panel, participants raised the question of whether the research should focus upon the ICRC or adopt a broader focus to include other components of the Red Cross Movement. Further discussion was held over to the following sessions.

Secondly, it was noted that the expert workshop had been given a different title in two separate documents. The earlier title - 'the role of the ICRC in the international response to forced displacement' – had been used by Bugnion to focus his presentation. It permitted consideration of the issue of preventing forced displacement. This would have fallen outside the scope of the later title - 'the role of the ICRC in protecting and assisting refugees and displaced persons' – to which Gilbert's presentation had been addressed. Participants observed that the manner in which the title was framed produced different emphases in the research itself. The question was posed whether the research ought thus to focus on forced displacement as a process or rather refugees and IDPs as categories of forcibly displaced persons.

On this question, a range of views were expressed. One participant noted that people can move several times, such that there was a need not only to incorporate the prevention of displacement, but the prevention of the recurrence of displacement. It was noted, moreover, that a focus upon categories of persons might exclude consideration of the important idea that engagement with IDPs might stand in opposition to engagement with refugees rather than marching together. Another participant argued that incorporating a focus on the prevention of displacement should not exclude recognition of the fact that displacement was not always completely negative but could rather be the best option in difficult circumstances and even lead to new opportunities. The consensus among participants was that a focus on the process of forced displacement rather than categories was appropriate, although some consideration would be required of where the dividing line between in-/voluntary displacement lies. This theme was returned to during the course of the workshop.

### III. ICRC policy and practice panel

The purpose of this panel of prominent experts was to explore policy and operational questions raised by the broad framework of the proposed project. Key questions posed to the panel included the following:

- How has the ICRC mandate evolved to incorporate refugees, IDPs and forced displacement as specific areas of concern, and where should this go in the future?
- What are the main themes running through ICRC interaction with wider international policy on refugees, IDPs and forced displacement, and how should it position itself in the future?
- Why have ICRC activities in response to forced displacement not received significant recognition outside the institution?
- What kind of protection and assistance does the ICRC offer in practice to refugees and other displaced persons?
- How does the ICRC relate to other key institutional actors for the protection of displaced persons (States, UNHCR etc.)?

The session was chaired by Anne Zeidan-Wenger, who emphasised the importance for the ICRC of maintaining coherence between legal issues on the one hand, and policy and practical issues on the other. The speakers were, in order of presentations, David Forsythe, Marion Harroff-Tavel and Katy Long.

#### Presentations

Speaker 4: David Forsythe

*The Red Cross and Refugees in the Interwar Years*

David Forsythe's paper focused upon the Red Cross Movement's engagement with Russian and Armenian refugees in the inter-war years. He raised the question of whether the challenges faced by the ICRC in the response to forced displacement were more ethical than legal in nature. He stated that his presentation would cover three main points with reference to his paper as submitted.

Firstly, he drew attention to the 'moral mission creep' that has defined the historical expansion of ICRC activities. The ICRC refers to this as its 'right of initiative'. Nonetheless, even if they gave rise to a differentiated focus upon refugees by the League of Nations, ICRC actions with displaced Russians and Armenians in the 1920s had an undifferentiated and imprecise focus. One did not need to have moved or been displaced to be subject to relief – the term 'refugee' was not in use. The ICRC was simply responding to a humanitarian need. History thus suggests that practical action by the ICRC has led development of the law rather than the other way around. He added that the legal discourse is not the only way to enhance human dignity: sometimes too much attention is given to the law and not enough to diplomatic approaches to protection and assistance.

Secondly, he emphasised that ICRC activities pertaining to forced displacement were entangled with actions by other organisations with a forced displacement mandate. This raises the crucial question of organisational dynamics within the fragmented Red Cross Movement. He asked how the ICRC could agree a division of labour with, for example, UNHCR without first reaching agreement with the other components of the Movement. He noted that National Societies are often an implementing

partner for UNHCR, but autonomous from the IFRC and ICRC. Do the local actors acknowledge headquarters? Do 'higher' decisions about division of labour feed down? The internal dynamics of the Movement thus bear heavily on the ICRC's contemporary response to forced displacement in practice. He proposed that the historical fragmentation of the Red Cross Movement evident in its treatment of Inter-War refugees had not necessarily been resolved by the Seville Agreement.

Thirdly, Forsythe argued that Red Cross engagement with refugees in the Inter-War years shows a division of labour in which the American Red Cross provided the bulk of the resources and the ICRC brought its contacts and diplomatic knowledge to bear. Given that States acted also through the League of Nations, this raises the question of State influence in the responses to refugees by inter-governmental organisations (IGOs) on the one hand (such as UNHCR) and international non-governmental organisations (INGOs) on the other (such as the ICRC). If States ultimately provide INGOs' resources through their own National Societies, what is the resulting balance between national State interests and human dignity in the Red Cross' activities? What about in the Balkans, where both the ICRC and UNHCR arguably supported ethnic cleansing by moving people out of harm's way. He finished by suggesting that this example equally demonstrated that the crucial dilemmas in this field are more ethical than legal.

Speaker 5: Marion Harroff-Tavel

*Questions to the ICRC on its activities to protect and assist IDPs*

Marion Harroff-Tavel based her presentation upon her observations during 34 years of employment with the ICRC in IDP situations including Chechnya, Georgia, Mexico (Chiapas) and Tajikistan. Her presentation and background paper developed a range of important operational and policy questions regarding the role of the ICRC in protecting and assisting displaced persons.

She began by asking whether the ICRC should continue to put so much emphasis on categorizing refugees, IDPs and migrants. From a policy perspective, wouldn't it make sense to regard the movement of persons in more holistic terms? Categories were important from a legal point of view and had to be stressed in governmental circles, since treaties protect specific categories of people, but categories were not that easy to make on the ground. Many people moved several times and their motives evolved over time. Mixed flows of people arrived at borders. Distinguishing IDPs from migrants in urban areas was a challenge. Categories also had the side effect of reflecting 'unsaid hierarchies' within the international community, in which certain uprooted people were seen as 'worthy' (refugees, IDPs), because their movements were related to conflict or persecution, and others as 'less worthy' (labour migrants or "environmental" migrants etc.). She asked whether the ICRC should not emphasize more in its communication that aid is given on the basis of needs, as does the International Federation. She also called for assessment of the operational impact of the Movement's policy on internal displacement and its IDP definition (that of the Guiding Principles). On a separate basis, she remarked that IHL had little to say about return and reintegration of displaced people and did not apply in the many situations of displacement where disturbances fall below 'armed conflict'.

She then turned to the added value of ICRC neutrality, independence and impartiality in dealing with IDPs, which would be an interesting research topic. She mentioned the ICRC's 'all victims' policy – where IDPs are helped in the context of the broader population – and asked which strategies the ICRC could further develop, within the context of its integrated approach, to deal with specific

vulnerabilities attached to the fact of displacement. Given that IDPs are not a homogenous group, she asked whether it was feasible for the ICRC to more directly address the differentiated needs of vulnerable sectors within the IDP population, such as women, the elderly, children and minorities. She further suggested that the research could highlight how the ICRC differentiated the needs arising from varying settlement patterns, e.g. in urban as opposed to rural areas, or hosted in camps as opposed to local communities. She asked whether collaboration with external agencies dealing with IDPs could be improved.

Harroff-Tavel concluded with the theme of ICRC engagement with IDP caseloads through time. Given the continuous mixed movements of persons, she asked how the ICRC determined the point at which it would cease assisting a particular caseload, and how it managed the relationship between new and old IDP caseloads. She raised the role of the ICRC in securing durable solutions, especially where these involve return to situations of violence, to areas controlled by non-State armed actors or to property disputes. In this vein, she asked how the ICRC and UNHCR could deal with situations where the UNHCR pushed for returns as a contribution to peace-building whilst the ICRC considered that the security situation was not yet suitable for return. She finished by emphasising the long-term psycho-social impact of displacement, and suggested that the ICRC should consider engaging more fully with this concern. It would be interesting to know how much the ICRC is ready to engage in the “reknitting” of communities torn by displacement and to ease tensions through its humanitarian activities.

Speaker 6: Katy Long

*A short note on “solutions”: a missing ICRC perspective?*

Katy Long focused her presentation on the ‘solutions’ framework applied to the refugee ‘problem’ in order to explore its potential implications for ICRC engagement with refugees and IDPs.

She stated that solutions (along with protection) constitute one of the twin pillars of the UNHCR Statute. She stated that all three solutions – voluntary repatriation, local integration and 3<sup>rd</sup> country resettlement – shared the key characteristic of restoring the refugee’s access to citizenship. This view of the ‘refugee problem’ in terms of access to rights was shared by refugees. However, in practice, she argued that States frame the refugee problem in terms of the demographic impact of mass influx and resulting domestic political tensions, which is to be resolved by removing refugees from their territory. Given the limited State willingness to provide 3<sup>rd</sup> country resettlement, States thus see repatriation as the ideal solution to the refugee problem.

She proceeded to argue that this current approach to ‘durable solutions’ does not provide an answer to either of the ‘refugee problems’ identified. Instead, many refugees are stuck in ‘limbo’ by protracted refugee situations, their immobility heightened by increasing use of encampment policies. ‘Voluntary’ repatriations are often involuntary and some, such as Tanzania in 1997, amounted to *refoulement*. States of origin frequently lack the capacity to re-integrate repatriated refugees. Such ‘durable solutions’ thus offer little chance for refugees to access a political solution to their situation. In consequence, secondary movement has become an important *de facto* way for individual refugees to solve their own safety problems and access rights. She therefore asked whether/how solutions should encompass this reality of continuing mobility not only by refugees but also by IDPs.

Given ICRC involvement in protecting and assisting refugees and IDPs, Long concluded by posing the question of its relationship to this predominantly United Nations discourse of solutions and State-building. She identified a need to study how the ICRC understands the objectives of its engagement with displaced persons – are they framed in terms of rebuilding State-citizen relations, physical return, cessation of conflict? She asked what role the ICRC and other Red Cross components played in reintegration activities linked to repatriation, how tendencies for pushing for return to areas in conflict impacted upon ICRC activities, and what its engagement should be with questions of *refoulement*. She asked how the ICRC – and IHL more widely – understood the concept of ‘safe area’ and whether this was applicable to the idea of ‘solving’ displacement. In view of the ICRC’s role in family reunification, she suggested that the ICRC might be better placed than UNHCR or other traditional ‘displacement’ agencies to re-imagine solutions as part of a more mobile and transnational framework.

### **Discussion**

The discussion generated by the presentations focused upon three important general topics. The first concerned the ‘added value’ of the ICRC in the international response to forced displacement, a point raised immediately by one of the participants. This participant suggested that its neutrality permitted it to gain access to communities affected by forced displacement that other humanitarian actors could not easily reach. A different take was implied by another participant, who drew a distinction between the ICRC and UNHCR as regards the nature of their independence from the political interests of States, suggesting that the ICRC had an advantage in this regard. Referring to the Balkans, this distinction was challenged by another participant, who suggested that any difference in practice between their independence from States was a matter of degree rather than kind. Participants questioned whether the policy and operations of the two organisations showed similar or different understandings of what ‘impartiality’ and ‘humanitarianism’ might mean in the response to forced displacement. One participant noted an increasing emphasis within the ICRC on protecting neutral humanitarian space in response to legal pressures such as the Bush doctrine.

The second point of discussion concerned the extent to which ICRC policy reflected implicit judgments on the ‘worthiness’ of certain kinds of migrants. One participant situated Harroff-Tavel’s analysis on this point within the current global politics referred to during the first panel. Referring to the ease of movement in the modern world as representing a threat to States, the hypothesis was advanced that the resulting protection of borders identified by Long’s presentation had helped to direct attention on the protection of persons in their own country. This raised the question of the extent to which recent ICRC interest in the category of IDPs chimed with State political interests and undermined protection for other kinds of migrants. Following this line, one participant asked whether the ICRC operated a State-based agenda or a victim-oriented agenda. There was general agreement among participants that persons displaced by war were at the top of the implicit hierarchy of migrants, less law and institutions existed to deal with other kinds of migrants, and that on the ground categories were not important to the victims of displacement.

The third point of discussion concerned the role of other components in the response by the International Red Cross and Red Crescent Movement to forced displacement. It was pointed out that the role of the IFRC would have to be taken strongly into account since under the Seville Agreement the former was designated lead agency in post-conflict reconstruction and rehabilitation efforts.

National Societies also often have a role in delivering assistance for the ICRC and also for UNHCR. There was thus general agreement that these other components of the Movement play a potentially important role, acknowledged in the Movement policy on internal displacement (2009) and the Federation policy on Migration (2009), in the response not only to wider forms of migration but also in relation to conflict-related displacement.

The remainder of the debate explored the implications of the points raised in the presentations and discussion for the proposed research project. The scope of the proposed research project in respect of the issue of displacement/migration - raised in the law panel discussion - was revisited here. One participant noted that many forms of internal displacement take place outside situations of armed conflict and are caused by circumstances that do not trigger the ICRC mandate under international humanitarian law. The question was asked whether these forms of displacement would be addressed by the project. Another participant stated that, even if a focus on conflict-related displacement were maintained, the project should look not only at displacement caused by the conflict but also at other migration within the context of armed conflict, a presently neglected area of research.

There was substantial discussion of whether to focus the research on the ICRC or rather give equal weight to other components of the International Red Cross and Red Crescent Movement. Those in favour of the broader approach pointed to the relevance of these other institutions in the response to forced displacement and other kinds of migration. Those in favour of maintaining an ICRC focus raised various points. One argued that a focus on National Societies would give the project a very disjointed nature, since they were often personality- rather than mandate-driven and each one had its own character. Another warned that giving equal weight to the other components would divert a disproportionate level of attention to the abstract legal/policy questions about mandate interaction and away from the larger issues of the response to displacement in practice. Another participant added that looking only at the law and mandates would not be interesting to academics and practitioners; the practical side was very much needed. Another participant added that, irrespective of the focus, the interesting point would be to see how the different components did *not* coordinate in practice.

The final word was had by one participant who analogised the proposed study with the study of an ecosystem. The participant pointed out that one could either study the ecosystem as a whole and give equal weight to each animal, or focus upon one animal but include its relationship with other animals in the ecosystem. The participant pointed out that adopting the latter approach would not mean ignoring the role of other components of the Movement but would give coherence to the study by maintaining a manageable and interesting analytical focus upon the institution of the ICRC. Resolution of this issue was held over to the afternoon sessions.

#### **IV. Project scope and case studies**

The two afternoon sessions continued discussion of the points raised during the morning session about the scope of the proposed research project. A title was agreed for the proposed research project that defined the scope of the research. Substantial progress was also made in identifying pertinent case studies for the case study component of the research.

##### **Defining the project scope**

The purpose of this first afternoon session was to reach definitive agreement among participants on two questions: the focus and scope of the proposed study; the selection criteria to be applied in choosing cases for the case study component of the research.

##### *General project scope*

Two related questions were discussed at length: whether to focus on the ICRC or the International Red Cross and Red Crescent Movement; whether to restrict the focus on population movement to that during armed conflict.

On the first question, the general consensus was that for reasons of coherence and analytical focus the study would concentrate upon the ICRC. This would not exclude consideration of the ICRC's relationship with other components of the Movement, particularly in the case studies where it would be an important aspect of the research. It was pointed out that in the policy study some attention might also need to be given to the policy development role of the Council of Delegates, although one participant pointed to a general unwillingness among Red Cross and Red Crescent components to dedicate time to this mechanism.

The second question was 'the role of the ICRC in respect of *what?*' It was agreed that the focus should be upon the phenomenon of 'displacement' rather than categories such as 'refugees' or 'IDPs'. The terms 'forced displacement' and 'forced migration' were suggested but rejected on the basis that they would be understood as referring only to 'worthy' categories of migrants and would exclude, for example, persons who migrated within the context of armed conflict. Participants manifested the need to emphasise displacement as a process. The following title was agreed:

Agreed title: 'The role of the ICRC with respect to the movement of persons'

This title had the benefits that it (i) was simple, (ii) was not based on narrow categories of persons, (iii) emphasised the process of movement, (iv) included wider forms of migration, including prevention of movement/displacement, (v) avoided the need to define in-/voluntary movement, (vi) did not exclude consideration of the ICRC's engagement with asylum, and (vii) implicitly focused, via the first element, upon those situations where the ICRC acted (i.e. armed conflict and similar disturbances) without excluding potential consideration of ICRC action in other scenarios.

##### *Case studies*

During the same session, discussion of the case studies element of the proposed research project was also undertaken by participants. This revolved around two related issues: the criteria for selecting case studies; and methodological questions.

An initial document was circulated in which twelve case studies were proposed. Six of these were listed as 'historical': (i) Immediate aftermath of the Second World War; (ii) 1948-1949 Arab-Israeli conflict and Palestinian refugees; (iii) October 1956 revolution and Hungarian refugees; (iv) Bangladesh conflict and IDPs in 1970s; (v) Guatemala in the 1980s; (vi) Balkans in the 1990s. The remaining six were listed as 'contemporary': (vii) Colombia; (viii) Sri Lanka; (ix) Somalia; (x) Israel and the Occupied Territories; (xi) Afghanistan; and (xii) Angola or Great Lakes region. These case studies were proposed on the basis that each involved a significant scale of displacement and encompassed relevant variables such as non-/international armed conflicts, refugee/IDP situations, as well as different regions of the world. Names of researchers for the case studies were also suggested.

The discussion made it apparent that this approach to selecting case studies was problematic. In the first place, participants justifiably critiqued the list of countries. One participant asked why Europe dominated the historical case studies whilst Africa went unrepresented, suggesting Apartheid South Africa to fill the gap. Another argued for inclusion of contemporary Northern Ireland. Widening out the Guatemala study to a regional study of Central America was also suggested. The inclusion of the Balkans was strongly questioned on the grounds that much had already been written about that context. There was also significant discussion over the double inclusion of Israel: whilst some argued it was an interesting pre-1949 Geneva Conventions example, brought in UNRWA and dealt with occupation, others felt it was too *sui generis* to merit such disproportionate attention. The lack of pre-Second World War case studies was also queried.

Several methodological concerns were also raised. It was suggested that the historical studies would be based primarily upon archival research whilst the contemporary studies on published reports and field research such as interviews. However, participants pointed out that the ICRC archives were open only up to 1965, complicating detailed historical study past that date. The suggestion that historical case studies from 1965 onwards could be written by ICRC staff was felt to be impractical and even dangerous in terms of academic rigour and independence. Nonetheless, it was proposed that access to ICRC staff for interviews for contemporary case studies should be the responsibility of each case study researcher, although the ICRC might facilitate or coordinate such contacts. Participants felt that the case studies should be limited in number and length to make the research outputs accessible to practitioners and in policy circles.

Towards the end of the discussion, one participant suggested a case study of gender looking at displaced women in the Democratic Republic of Congo. This generated the proposal that case studies should be selected by an alternative methodology: firstly, thematic issues would be identified; these themes would then be used to select ICRC operations in which particular themes played an important role. This was agreed upon by participants as a good approach, and the following session concentrated on identifying important themes for the case studies.

#### **Next steps: Project network**

Following a short break, the participants reconvened their discussion on the identification of case studies and identified the next steps required to move the proposed research project forward.

*Case studies (continued)*

A proposal was made to concentrate the case studies on contemporary situations, and have only one slightly longer chapter dealing with the ICRC's historical involvement with the movement of persons. This would address the difficulties with access to archival materials and fulfil the desire to keep the case studies section concise and focused. The chapter could be less in-depth than the contemporary case studies but still touch on the major relevant ICRC operations. Other participants agreed to this proposal, and added that the historical study should basically begin from the ICRC's engagement with Russian refugees in the 1920s with earlier engagement covered in a short space (as in Forsythe's submitted paper).

Participants decided that the case studies would comprise one historical chapter and 6-8 contemporary chapters. They then made suggestions about the particular thematic issues that would be pertinent to address in these case studies, as follows:

- Occupation – Israel? Jammu/Kashmir?
- International armed conflict – Ethiopia/Eritrea? Iraq? Afghanistan?
- Non-international armed conflict, links with criminality – Colombia? Mexico?
- Repatriation and solutions
- Children
- Gender and victims of sexual violence – DRC?
- Pastoralists/environmental conflict and displacement – Horn of Africa?
- Long term versus emergency work
- Conflict that crosses borders and how the ICRC operates across borders – Great Lakes?
- Relations with UNHCR and others – Sudan (Cluster approach)? Balkans?
- Access by ICRC – Somalia in 1992 (ICRC only humanitarian actor)?
- Impact of security issue on humanitarian action
- Local perceptions/ICRC collaboration with National Societies
- Rural versus urban displaced persons – Caucasus? Georgia?

Participants acknowledged that a particular case study might involve more than one of these different thematic issues. It was agreed that the different thematic strands here and in the legal and policy sections would be drawn together in the final chapter of the proposed research project.

*Practicalities of the network/proposed research*

The Convenor then proceeded to outline the immediate next steps to be taken by the RLI following the conclusion of the expert workshop.

**Convenor's closing words**

The Convenor closed the workshop by thanking all of the participants for their invaluable contributions. He stated that real progress had been made in defining the scope of the project and improving its focus. He was pleased to inaugurate an initial network of researchers on the topic and looked forward to jointly developing the research in the weeks and months ahead. With these words, the expert workshop was concluded.

## **Annex 1: Participants**

### **List of speakers and other participants**

- Margherita Blandini, Research Co-ordinator, Refugee Law Initiative, University of London
- François Bugnion, Former Director, International Law and Cooperation, International Committee of the Red Cross
- David Cantor, Director, Refugee Law Initiative, University of London
- David Forsythe, Emeritus University Professor and Charles J. Mach Distinguished Professor, Political Science, University of Nebraska
- Geoff Gilbert, Head of the School of Law and Human Rights Centre, University of Essex
- Marion Harroff-Tavel, Former Political Adviser and Deputy Director, International Committee of the Red Cross
- Helen Hayford, Institute of Commonwealth Studies, University of London
- Kate Jastram, Miller Institute for Global Challenges and the Law, University of California Berkeley
- Geoff Loane, Head of Mission to the United Kingdom, International Committee of the Red Cross
- Katy Long, Lecturer in Managing Humanitarianism, London School of Economics
- Alexandra McDowell, Legal Officer, United Nations High Commissioner for Refugees
- Eadaoin O'Brien, Graduate Fellow, Human Rights Consortium, School of Advanced Study
- Nuur Mohamud Sheekh, Horn of Africa Analyst, Internal Displacement Monitoring Centre, Norwegian Refugee Council
- Anne Zeidan-Wenger, Head of IDPs Project, International Committee of the Red Cross

### **Organisations represented at the workshop**

- Human Rights Consortium
- Institute of Commonwealth Studies
- Internal Displacement Monitoring Centre
- International Committee of the Red Cross
- London School of Economics
- Norwegian Refugee Council
- School of Advanced Study
- United Nations High Commissioner for Refugees
- University of California Berkeley
- University of Essex
- University of London
- University of Nebraska
- Refugee Law Initiative

## **Annex 2: Agenda**

The Agenda for the Preliminary Workshop on 'The role of the ICRC in protecting and assisting refugees and displaced persons' on Tuesday 20<sup>th</sup> September was as follows:

09.00-09.15	Welcome by Workshop Convenor
09.15-10.45	Law Panel
	Chair: David Cantor
	Speakers: François Bugnion
	Kate Jastram
	Geoff Gilbert
10.45-11.00	Coffee
11.00-12.30	Policy/Practice Panel
	Chair: Anne Zeidan-Wenger
	Speakers: David Forsythe
	Marion Harroff-Tavel
	Katy Long
12.30-13.30	Lunch
13.30-15.00	Session: Defining the Project Agenda
15.00-15.15	Coffee
15.15-16.15	Next Steps: Project Network and Funding Applications
16.15-16.30	Convenor's Summary and Thanks