

23 INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT AND HUMANITARIAN ACTIVITIES FOR MIGRANTS

*Réka Varga**

23.1 THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT

The International Red Cross and Red Crescent Movement (hereinafter: Movement) is a universally recognised international humanitarian network with a 150 years' tradition, consisting of three components: the International Committee of the Red Cross (hereinafter: ICRC), the International Federation of Red Cross and Red Crescent Societies (hereinafter: Federation), and national red cross and red crescent societies. The founding body of the Movement is the ICRC, which in the legal sense is an association registered in Switzerland, but has a *sui generis* status since, in a way unique among humanitarian organisations, it has an international legal mandate with respect to some of its activities, thus, it resembles and is in practice regarded as an international organisation.

The legal basis of the Movement is the Statutes of the Movement, which is formally a resolution adopted at the 25th International Conference of the Red Cross and Red Crescent¹ (hereinafter: International Conference) in 1986 and which was amended several times.² The resolution does not qualify as an international treaty, it is rather of a *soft law* nature, but since it was adopted by all the states present by consensus, it has very high significance and also has a kind of binding effect for the states.

The division of responsibilities within the Movement is laid down in the Seville Agreement adopted in 1997.³ The agreement stipulates that the members of the Movement perform their activities in cooperation with each other and lays down which component ('lead agency') has the leading role in certain cases. This does not mean that the other

* Associate professor, Pázmány Péter Catholic University, Budapest, varga.reka@jak.ppke.hu.

1 The participants of the International Conference were the participants of the Movement and the states parties to the 1949 Geneva Conventions.

2 *Statutes of the International Red Cross and Red Crescent Movement* adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995 and 2006.

3 Agreement on the organization of the international activities of the components of the International Red Cross and Red Crescent Movement (The Seville Agreement), adopted at the Council of Delegates, Seville, 25-27 November 1997.

components must not be active in the situations concerned, but it is always one component that is responsible for the coordination, the policy and the leading role in general.

Accordingly, in the case of armed conflicts and internal strife the lead organisation is ICRC,⁴ in the case of technological or natural disasters the Federation acts as the lead agency,⁵ while a national society may coordinate international efforts within its own territory as a lead agency in any situation where the two other components do not take the role of the lead organisation.⁶ The ICRC and the Federation help national societies in every case and cooperation between the components is always active.

The international legal background is comprised of the Geneva Conventions of 1949 and the Additional Protocols of 1977. The Geneva Conventions of 1949 authorise ICRC to the following in the case of international armed conflicts: visiting prisoners of war,⁷ visiting civilian detainees⁸ and providing humanitarian aid in general.⁹ In other cases, i.e. in non-international armed conflicts and at times of peace (also including internal strife below the level of armed conflicts) the states recognise what is referred to as the “right of initiative”,¹⁰ which means that the ICRC may offer its assistance and services but the states are not legally obliged to accept it.

In the case of national societies, the states must accept humanitarian assistance in the case of international armed conflicts.¹¹

Two considerations are worth mentioning in this regard. On the one hand, although in the case of international armed conflicts there are international agreements obliging states to provide access for ICRC to e.g. prisoners of war camps, this is clearly only implemented if the state in fact cooperates, in other cases the ICRC is unable to impose access. The same holds for access to territories controlled by parties to conflicts: if the parties deny access to the ICRC, the organisation is not only unable to enter the territory but entry would even be dangerous to its delegates.

On the other hand, it can be stated in general that considering the almost 150 years’ past of the organisation, its neutrality and efficiency repeatedly proven and acknowledged in the course of its history and its *modus vivendi* based on the confidential dialogue to be outlined in what follows, states usually have a positive approach to ICRC’s requests and

4 Cf. Art. 5.3.1 of the Seville Agreement.

5 Cf. Art. 5.3.2 of the Seville Agreement.

6 Cf. Art. 5.3.3 of the Seville Agreement and Art. 3.3 of the Statutes of the Movement.

7 Art. 126 of the Geneva Convention relative to the Treatment of Prisoners of War, 12 August 1949 (Geneva Convention III); Jean-Marie Henckaerts, Louise Doswald-Beck: Rule 124, *Customary International Humanitarian Law*, Cambridge, ICRC–Cambridge University Press, 2005.

8 Art. 76 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August, 1949 (Geneva Convention IV); Henckaerts-Doswald-Beck Id., Rule 124.

9 Arts. 5 and 81 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I).

10 Common Art. 3(2) of the Geneva Conventions of 1949; Art. 5.3 of the Statutes of the Movement.

11 Arts. 17 and 81 (1-2) of the Additional Protocol I.

are cooperative. This has several reasons: on the one hand ICRC represents humanitarian considerations and values that the states, too, can identify with and, on the other hand, cooperation with ICRC is often in the states' own interests as well. Not insignificantly, a state that considers itself civilized and humane in the international community must show willingness to cooperate with an organisation of such high prestige.

23.2 HUMANITARIAN ORGANISATIONS IN GENERAL

Humanitarian organisations can be grouped in several ways.¹² According to the nature of their activities, one grouping could be into the following two categories: advocacy organisations and assistance organisations. Advocacy organisations speak up, examine situations or state practices or analyse procedures for the sake of protection of some basic human rights, compliance with humanitarian law, refugee law or other rights. Often they use the publicity to be able to exercise influence on the state or the organisation concerned, in the course of which they reveal unlawful practices, call upon the state concerned to comply with the law and formulate recommendations.¹³ Thus, sharing the facts they have revealed with the media and making them public are key elements in their operation and success.

“Classic” humanitarian aid organisations assist persons or groups of people who are in need or in sensitive or vulnerable situations. Probably much rather than in the case of the previous group of advocacy organisations, their success depends on certain kind of cooperation of the state or group concerned in that if they are denied access to those in need (be it about aid in an armed conflict where the area concerned may only be entered with the permission of the state or non-governmental organisation concerned so as to access the people in need), they are unable to efficiently perform their activity or, if they are denied permit to carry out a specific activity (e.g. setting up soup kitchens) or authorities are not cooperative, they are hindered or prevented from performing their tasks.

It is often the case that both advocacy and humanitarian assistance organisations actually perform state responsibilities basically, since the protection of human rights or the provision of rights stipulated in international humanitarian law and providing help to those in need are both state responsibilities. In many cases, however, the state is unable to (e.g. the state does not operate efficiently enough or lacks the means at the time of war or, at times of peace it lacks of money/capacity/expertise, etc) or unwilling to (in an ethnic, religious, etc. conflict it expressly does not want to provide for the opposing group; its conduct is intentionally unlawful and abusive) perform these tasks. It is exactly these

12 Cf. e.g. P.J. Simmons, 'Learning to live with NGOs', in: *Foreign Policy*, No. 112 (Autumn 1998), pp. 82-96, 85.

13 Human Rights and Advocacy NGOs, United States Institute of Peace

shortcomings that humanitarian organisations point out to and attempt to remedy, or at least help in remedying.

It is often not viable that the two kinds of humanitarian activity can be performed simultaneously.¹⁴ The fundamental and very pragmatic reason for this is that if an organisation is an advocacy organisation, and is using the publicity and the media, and often very harshly criticises a state or a group, it is often very difficult for the organisation to get support, access or cooperation from this very same criticised state.

Essentially, the Red Cross Movement is a community of assistance organisations but their activities also include some kind of advocacy elements. Both the ICRC and national societies are active in the dissemination of international humanitarian law. ICRC has numerous prevention programmes aiming at increasing the sensitivity of various target groups, e.g. soldiers, policemen, university circles or the general public for international humanitarian law. ICRC regularly consults states about the interpretation of certain issues of international humanitarian law and often calls attention to the importance of compliance with international humanitarian law; the latter are advocacy types of activities, even if carried out substantively differently from other advocacy organisations.

Unlike in the case of the other organisations, however, all the above activities, i.e. the dialogue with states, are performed in the form of a strictly confidential dialogue.¹⁵ Accordingly, ICRC does not disclose the contents of the discussions with authorities to the public and the states concerned must not do so either. Confidential dialogue, which is one of the fundamental pillars of ICRC's activities, is the guarantee in the case of ICRC that the dialogue is honest and does not jeopardise access to victims. In this way, even though ICRC lacks the means of exercising pressure through publicity, it does have the means of access to victims, which is a core element of its activities.¹⁶

The aim of confidential dialogue is to enable the ICRC to communicate its concerns to the state concerned about compliance with international humanitarian law and call upon the state to put an end to unlawful conduct, as well as to support the state in a constructive way in establishing lawful conduct. In practice, this dialogue may mean various different things: often a fruitful dialogue concerning the interpretation of law, the legal analysis of situations or assistance or practical advice in adopting national legal provisions.

14 There are certainly exceptions where one and the same organisation performs both kinds of activity, e.g. Hart combining aid and advocacy, cf. www.hart-uk.org/about-us/aid-and-advocacy/, or e.g. ICRC itself both providing aid and performing activities advocating for better protection of war victims, although doing the latter without using the publicity.

15 Cf. e.g. 'Confidentiality: key to the ICRC's work but not unconditional', an interview with Dominik Stillhart, 20.09.2010, <https://www.icrc.org/eng/resources/documents/interview/confidentiality-interview-010608.htm>

16 For more details on confidential dialogue, see: The International Committee of the Red Cross's (ICRC's) confidential approach – Specific means employed by the ICRC to ensure respect for the law by State and non-State authorities – Policy document (ICRC's confidential approach). December 2012. In: *International Review of the Red Cross*, Reports and Documents, Vol. 94 No. 887 (Autumn 2012) – Cf. e.g. p. 1137 for the precise meaning of confidential dialogue.

Exceptions to the rule of confidentiality have been very rare. If the detaining authority makes part of an ICRC report public, for example, ICRC reserves the right, after due consideration, to publish the complete report.¹⁷ Exceptions to confidentiality may only be made if the violations committed are extremely severe, the confidential dialogue conducted with the state concerned and other methods have failed despite repeated attempts and no further success is expected either of this or other methods, or if the advantages to be gained by publicity by far outdo the disadvantages the victims suffer if ICRC is forced out of the area or denied access to the them.¹⁸ If ICRC decides to break with the principle of confidentiality in a case, it either involves a third party in the dialogue or makes the case public, in the course of which it either reports about the legal violations revealed or gives an account of the quality of the dialogue conducted with the authority concerned.¹⁹ Only very few such cases have been documented.

As an illustrative example of the controversy of public protests, it has very much been disputed until today if it was the right decision by the ICRC during World War II not to make public²⁰ what it experienced in relation to deportations and exterminations.²¹ According to the ICRC's arguments it was not worth using publicity or make public protest in that case, because (i) public protest needs to be taken on the basis of impartial enquiry which was not possible at the time, (ii) it would have had a grave effect on the ICRC's relations with governments in that such public protest would have politicized the ICRC, (iii) it was seen as not effective and (iv) it would have jeopardised concrete relief work the ICRC was able to do.²² In addition, by the time ICRC had reliable information on the extermination plan, it was more or less public what had been going on. Thus, using publicity would not have brought great advantage, ICRC argues, but would have meant losing the limited access they had.

17 Interview with D. Stillhart, cf. footnote 15.

18 Interview with D. Stillhart, cf. footnote 15.

19 ICRC's confidential approach, p. 1140.

20 Yves Beigbeder, *The role and status of international humanitarian volunteers and organizations*, Martinus Nijhoff Publishers, Dordrecht/Boston/London, 1991, pp. 151-152.

21 ICRC did not only not make its experience public, but it practically refused to give a testimony before the Nuremberg Military Court, based on its rule of confidentiality. During the whole proceedings, ICRC permitted evidence from three delegates only, and even so the delegates did not appear in person but provided written testimonies which did not contain any specific information about the alleged violations committed by the accused. Cf. Stéphane Jeannot, 'Recognition of the ICRC's long-standing rule of confidentiality – An important decision by the International Criminal Tribunal for the former Yugoslavia', in: *International Review of the Red Cross*, No. 838, pp. 403-425.

22 Beigbeder, p. 156.

23.3 FUNDAMENTAL PRINCIPLES

There are seven fundamental principles guiding the Movement's activities. The fundamental principles were adopted at the 20th International Conference in 1965;²³ they have been guiding the Movement's activities to this day and many of them are benchmarks accepted by many other humanitarian organisations as well. In practice, the fundamental principles are not merely empty slogans or catchwords but are the benchmarks and constraints for every single activity. From all fundamental principles, humanity is the most essential one.

In brief, the fundamental principles are as follows:

1. Independence: the Movement is independent; national societies must maintain their autonomy;
2. Neutrality: the Movement may not take sides in hostilities or politically and may not engage in disputes of a political, racial, religious or ideological nature;
3. Impartiality: the Movement is only guided by the needs of those in distress, giving priority to the most urgent cases, it makes no discrimination to nationality, race, religious beliefs, class or political opinion;
4. Humanity: the Movement endeavours to alleviate human suffering;
5. Voluntary service: financial gain may not be an objective; the movement operates on a voluntary basis;
6. Universality: the Movement is present and active worldwide;
7. Unity: there can be only one national society in a country, active throughout its territory.

From the above basic principles, most humanitarian organisations identify with the principles of independence, neutrality, impartiality and humanity. Given the nature of the other fundamental principles, these largely make sense in the context of the Movement only.

The above fundamental principles have specific meanings in the operations of humanitarian organisations. The fundamental principles show guidance in issues such as whether it is acceptable that, for the sake of the safety of the organisation's staff they could accept armed escort or protection by soldiers; whether they should accept armed escort for the protection of humanitarian consignments; to what extent a donor (whether or not it is a government) should be allowed to influence what the money donated should be spent on.

Similarly, it is exactly considering the principle of impartiality that the components of the Movement do not take stance regarding the method of handling the migration crisis,

23 The fundamental principles of the Red Cross and Red Crescent Movement, adopted at the 20th International Red Cross Conference in Vienna, 1965.

including issues such as whether or not to close up borders or how to treat the migration issue. The only exception to this is if a certain policy has human suffering as a consequence: in that case authorities' attention is drawn to a specific problem within the framework of confidential dialogue, whereby solutions are suggested or assistance is provided.

Thus, throughout their activities, the international and national components of the Movement strive for compliance with the fundamental principles. Considering their legal character, the fundamental principles are not binding international legal norms but because they were adopted by consensus at the International Conference with the states participating, they nevertheless have a mandatory feature for the states. Accordingly, in the cooperation of a national society with authorities, the constraints of the cooperation, too, are determined by these fundamental principles. This may often be a sensitive issue since, on the one hand, national societies operate fully according to the legislation of their own state (international components often enjoy special treatment, privileges and immunities), and on the other hand authorities may not do anything endangering the independence of national societies, e.g. they must not interfere with their specific activities.

In practice, for example, access by authorities to documents of national societies or to personal information managed by them may be a sensitive issue, especially if these are related to persons who went missing during the war and the search for whom was initiated with the national societies, because in view of their independence and the sensitivity of the activity they are carrying out, tracing service documents are confidential, but at the same time national societies have to cooperate with their own authorities. In such cases states often accept the fact that the humanitarian mission served by the tracing service is more important than the state's right of access, with the exception of certain priority cases like e.g. criminal procedures.

The fundamental principles thus serve the victim-centred, efficient operation of humanitarian organisations. As mentioned above, the majority of humanitarian organisations identify with the same fundamental principles, while there are differences in their practical implementation. We can say that the Movement and especially ICRC's practice serve as guidance for many humanitarian organisations, even though they often divert from that practice.

23.4 PRINCIPLES OF COOPERATION WITHIN THE MOVEMENT AND WITH OTHER HUMANITARIAN ORGANISATIONS

The performance of tasks within the Movement's components is regulated by the Seville Agreement adopted in 1997, as outlined above.

The relations of the Movement's members with other organisations are most varied, depending on the situation. The most delicate situation is always an armed conflict, where

cooperation is often limited to *cooperation per se* (i.e. being aware of what the other organisation is doing), and not necessarily including *working together*; the best way to understand this is through ICRC's activity in an armed conflict. The reason for keeping a certain distance is among others the fact that it is important for ICRC that the local population should see the division of tasks and organisations' identities clearly. It has been often observed that the local population mixes UN aid organisations (i.e. those who help) with UN peacekeeping or peace enforcement missions (i.e. those who shoot) and consequently lose trust in UN aid organisations or any aid organisations as well. In such cases it is especially important for ICRC not to be identified with the UN but make it clear that it is about two totally independent organisations.

So, depending on the situation it can happen that there is no cooperation whatsoever with other aid organisations, specifically so as to keep identity. In less sensitive situations, if the situation so requires, closer and more open cooperation can be implemented, certainly by keeping the integrity of every organisation.

The cooperation related to the migrant crisis is somewhat 'more open' than that at the times of armed conflicts. In general, migration is not in the range of the Movement's activities (with the exception of what is described below), but if they see that there are fields where other humanitarian organisations do not help or are unable to help efficiently enough, the Movement's components activate themselves where possible.

23.5 THE MIGRATION SITUATION FROM A HUMANITARIAN POINT OF VIEW

Thus the sole objective of the activities is helping those in need; no other considerations may come into question with reference to the Movement's humanitarian activities. According to the above, this can be interpreted to mean in relation to the migration crisis that the Movement does not encourage or discourage migration;²⁴ it does not comment on how respective states handle the migration crisis, whether they welcome migrants or whether or not they close up their borders, but instead it focuses on the necessity that people in need should receive appropriate care and assistance.

As has been experienced lately, not even specifying the problem in this issue could be done without giving it a political hue. In the terminology of ICRC and the whole Movement, every person who was forced to leave their homes for any reason is referred to as 'migrant': the term covers refugees, asylum seekers, migrants and economic immigrants irrespective of why and for what reason they left their homes and where they are heading and irrespective of the fact that certain categories enjoy international protection.²⁵ From ICRC's point of view, from the humanitarian aspect all the people on the move face the same problems:

24 ICRC – Activities for Migrants (ICRC Activities for Migrants), ICRC-Geneva, September 2015, p. 2.

25 International Federation of Red Cross and Red Crescent Societies, Policy on Migration, 2009.

they are far away from their homes, they may require medical help, family members get lost from each other, they do not understand the language of the foreign country and especially those in a sensitive position – children, women, expectant women, old age persons, etc. – are even more prone to abuse and need even more attention and help.²⁶

The Movement's activities related to migrants strive to respond to these demands and provide help, and their dialogue with authorities is shaped accordingly. Cooperation with authorities is similarly based on the confidentiality principle: it thus comprises one-to-one discussions whose contents are not made public. If ICRC formulates criticism, it shares it only with the state concerned and the point is to improve the assistance and care for and the circumstances of migrants. In order to achieve this, ICRC supports authorities' work by constructive recommendations beyond its own activities.

In relation to the migration crisis we have evidenced in many cases how the adherence of the Movement's members to the fundamental principles has borne fruit and what benefits the general trust in the Movement has. The Red Cross emblem is one of the best known symbols in the world. It was interesting to see that, wherever migrants had come from, they turned to Red Cross organisations with confidence right away because they were familiar with the organisation. In Hungary, this was evident in relation to the migration crisis several times: it happened numerous times that migrants trusted only the staff of the Red Cross, which often helped the conflict-free solution of very sensitive situations.

The weight of the migration crisis is also indicated by the fact that in October the ICRC President and the UN Secretary General issued a joint statement²⁷ in which they drew the attention of the states to the serious human impact of today's conflicts, including the fact that this year the highest number of persons have been displaced since the Second World War. Such a joint statement has been unprecedented, knowing ICRC's legendary attitude of keeping distance from other organisations so as to protect its independence. In this situation it became clear, however, that a political solution was required to the conflicts, the joint statement being a means of awareness-raising in order to facilitate the former.

It can be stated in general that, for several years, ICRC has considered the Syrian crisis the most severe humanitarian problem and has once again raised the awareness of the states to this situation.²⁸ The serious consequences of the Syrian crisis²⁹ and the close to

26 ICRC Activities for Migrants.

27 Cf. <https://www.icrc.org/en/document/conflict-disaster-crisis-UN-red-cross-issue-warning>.

28 In Syria, the Movement is by far the most significant humanitarian organisation, which suffered serious losses in the crisis: in five years 58 of their staff lost their lives in the conflict while trying to save human lives. Cf. Address of ICRC President Peter Maurer at the Syrian Donor Conference in London, 4 February 2016 <https://www.icrc.org/en/where-we-work/middle-east/syria>.

29 Some figures indicating the severity of the conflict: 8 million people have been displaced, 12 million require urgent help, four out of five Syrians live in poverty and the primary care system is on the verge of collapse. Cf. Syria crisis, ICRC <https://www.icrc.org/en/where-we-work/middle-east/syria>.

unbearable extent of human suffering caused by the conflicts in the world in general, as well as the insufficient response to these were among the main issues discussed at the preparatory works leading up to and at the World Humanitarian Summit itself as well.³⁰ Here, too, political decision makers' awareness was raised to the fact that humanitarian organisations had reached the limits of their capacity, they were unable to keep pace with the humanitarian needs caused by the conflicts, and it was emphasised that it was up to states to eliminate the crisis centres by political solutions, which nobody else could do for them.³¹ This kind of awareness raising, the fact that all humanitarian organisations without an exception agreed on the question of severity and the factor that it was humanitarian organisations pointing out to the inevitability of a political-military solution to the humanitarian problems all highlighted the uniqueness and severity of the situation.

It is a major advantage of the Movement in responding to the humanitarian problems caused by the migration that the Movement, especially ICRC and national societies, has been present in Afghanistan, Iraq and Syria, i.e. in the areas where migrants leave from, for decades. This means that the Movement has a major overview of the conflicts there, as well as of the problems, cultural aspects and tendencies. The Movement is similarly present, mostly through the national societies, in the transit and target countries and, covering the whole migration route they are able to respond to the specific demands. It can thus be stated that the major instrument the Movement has in the migration case is its presence along the whole migration route,³² whereby it is able to bridge the gap between the respective stations, especially by assistance and protection activities, as outlined below.

23.6 CONCRETE ACTIVITIES IN RELATION TO MIGRANTS

As regards concrete activities in relation to migrants, members of the Movement, depending on their nature and the division of tasks, perform various types of activities.

In the situation that developed in Hungary in October 2015, the *Hungarian Red Cross* mainly provided psychological support, hygienic articles and first aid at the refugee reception centres and transit zones, while they distributed water, food packages, sanitary and child care articles, baby food, warm clothes and blankets at the entry and exit points of the southern and western borders. Beyond these, for years they have regularly sent aid

30 The reports of preparatory meetings and the outcome of the Summit can be found at: <https://www.world-humanitariansummit.org>.

31 Cf. e.g. World Humanitarian Summit, Regional Consultation for Europe and others (Budapest, 3-4 February 2015), Final Report: "Participants underscored the duty of governments to protect vulnerable groups and of all parties to a conflict to respect international humanitarian law (IHL)" (p. 13), "Use the Summit as a 'cry for humanity' to protect and preserve the dignity of people affected by conflict and disaster" (p. 13). Outcome of the World Humanitarian Summit, Report of the Secretary-General, 23 August 2016, UN General Assembly, A/71/353.

32 ICRC Activities for Migrants, p. 3.

donations to guarded camps, refugee reception centres, communal accommodations, homes for unaccompanied minors and other places and provided health assistance where necessary; they have furthermore helped tracing family members who had lost contact and assisted in restoring family links.³³

The good relations with partner national societies were a great advantage and could be used for coordinating assistance activities in areas near the fence and/or border as well as for exchanging experience.

The main task of the *Federation* is coordinating national societies' activities.³⁴ In addition, the Federation similarly provides support to the 28 countries along the migration route engaged in the care for refugees and migrants. Five appeals have been issued lately aimed to raise support for, among others, Slovenia, Croatia, Serbia, Macedonia and Greece. A migration conference had been convened in London where 38 European countries were represented by almost a hundred delegates. The conference aimed to organise standard and coordinated Red Cross-Red Crescent aid operations for people arriving in transit and target countries, in the areas of social support, health care and the restoration of family links.³⁵

ICRC's specific, migration-related activities can be grouped into three major categories: (i) restoring family links, (ii) activities for detained migrants protecting and ensuring their circumstances, (iii) assisting in the identification of and decent funeral for the deceased. In the migration issue in general ICRC does not have a leading role within the Movement, but it does have a leading role in the three fields mentioned. ICRC and national societies have ample experience and relations in all the three fields, which can be well exploited in the migration situation.

(i) Restoring family links: In the migration situation it often happens that family members staying at home have no information of those who left home or family members lose one another on the way. In such cases, especially considering that the Movement has much

33 Source: www.voroskereszt.hu, as well as written communication by the Hungarian Red Cross. I hereby wish to thank Alice Szél of the Hungarian Red Cross for the information.

34 In Hungary, the Federation donated tents financed from the Disaster Response Emergency Fund, and it donated immediate support of CHF 322,365 to the Hungarian Red Cross, from which the organisation made preparations to care for some 72,000 people. The funds furthermore financed the procurement of tents suitable for accommodation equipped with bedding supplies, sanitary and baby care supplies, durable food products, water supplies, clothing, first aid equipment and other aid articles and helped fill up stocks to be able to flexibly respond to fast changing circumstances. Further help for these activities came through an appeal issued by the Federation, which targeted collecting some CHF 3.5 million in order to finance the care for some 120,000 people for several months. Due to the changes in the situation the action was stopped with some 29% coverage only, including significant donations from the Swedish, British and Dutch Red Cross organisations. Information actual as of June 2016.

35 Source: www.ifrc.org, as well as written communication by the Hungarian Red Cross. I hereby wish to thank Alice Szél of the Hungarian Red Cross for the information.

experience in the restoration of family links during armed conflicts and in view of its worldwide network, ICRC and national societies actively cooperate in helping family members find one another.³⁶

It does not only have psychological impacts if one lacks information about family members; the economic and legal consequences are also important. If a family member has deceased, it is very important to establish the fact of death, especially so as to enable relatives to have certainty and bury their beloved one. From the administrative and legal aspects, declaration as deceased is important considering widow's allowances and inheritance. The Movement has set up a Family Links Network, in the operation of which both ICRC and national societies have a role. The Network is unique in the world because it is global and because both national societies and ICRC have gained vast experience in tracing; national societies are in cooperating with one another and, migrants have confidence in the Network. This know-how was originally worked out for the times of armed conflicts but has been adapted to the special needs of migrants, too.

Restoring family links comprises many things including making phone calls possible, writing messages which are sent to the addressees by the Red Cross network, making tracing requests on the basis of which a national society or the ICRC starts tracing the missing family member, registering certain persons so as to prevent their getting lost, providing help in family reunification as well as providing assistance to authorities in finding missing migrants.

In addition, ICRC set up a website under the name Trace the Face³⁷ especially for the situation caused by migration, with the help of which migrants can upload photos and on the basis of these identify their families and make contact with them.

There is great emphasis in the case of the Tracing Service in general on confidential data management; data are revealed to authorities and sometimes even to those who have been successfully traced only with the Service's consent. For this reason, in view of the nature of the organisation's activities, often not even national authorities (with the exception of court requests) may have access to the documents of the national society Tracing Service. In the migration situation, however, national societies often perform tracing in cooperation with authorities. It should be noted that authorities do not have any access to ICRC documents (not even in the case of court requests).³⁸

36 ICRC Activities for Migrants, pp. 6-7.

37 <http://familylinks.icrc.org/europe/en/Pages/Home.aspx>.

38 In the case of ICRC it has more serious legal grounds why authorities may have no access to the documents. In many cases, the ICRC delegation signs a Headquarters Agreement with the host country, which grants diplomatic privileges and immunities to the delegation, including the inviolability of documents. ICRC has similar agreements with international courts and tribunals; what is more, ICRC's immunity towards international courts and tribunals is recognised as a customary norm. Cf. e.g. Stéphane Jeannot, 'Recognition of the ICRC's long-standing rule of confidentiality – An important decision by the International Criminal Tribunal for the former Yugoslavia', in: *International Review of the Red Cross*, No. 838 (2000), pp. 403-425;

At the other end of the process, family members staying at home and other family members, too, are helped in coping with the situation caused by losing their beloved ones. In the case of death they wish to make sure that the deceased persons are identified, an appropriate funeral is ensured or the body is returned, the death certificate is issued or the national authorities or family members are informed (these are often performed via the Movement).

(ii) Visiting detainees: ICRC traditionally plays a serious role in this field. Foreigners are a separate category in need of protection in the case of an armed conflict, and ICRC has been visiting this category of persons for a long time. In many cases there are other detainees, too, at these places of detention and ICRC delegates often visit them as well for humanitarian and practical reasons (i.e. there would be outrage if cell mates were not visited). If national societies visit persons detained in relation to migration, ICRC provides support to the national societies by sharing good practice, exchanging experience and providing training.

The main purpose of visiting detainees is checking the conditions of detention, monitoring compliance with the principle of fair procedure and other international legal provisions with special regard to non-refoulement, ensuring contact with the external world and forwarding messages to family members.³⁹ Confidential and constructive dialogue with detaining authorities is a main principle here, too: confidential, so the outcome of the visits may not be disclosed by either the ICRC or the state; only the fact that ICRC visits the detainees may be made public. And constructive, i.e. the aim is to improve the detainees' conditions of detention by constructive recommendations and offering help. ICRC is of the view that detaining migrants should be only the last solution because administrative detention may have very serious effects on detainees' psychological condition since the procedure is uncertain, they are worried about their future and could have lost their family members.⁴⁰ Detention must be necessary, reasonable and proportionate. Since administrative detention does not have criminal punishment as a purpose, in ICRC's opinion it should be as free as possible, e.g. even if leaving the premises is not permitted, free movement within the institution should be allowed where possible.

ICTY, *The Prosecutor v. Blagoje Simic, Milan Simic, Miroslav Tadic, Stevan Todorovic, Simo Zaric*, IT 95-9. PT, in the Trial Chamber, Decision of 27 July 1999; it is laid down in the Rules of Procedure and Evidence of the International Criminal Court that: "The Court shall regard as privileged, and consequently not subject to disclosure, including by way of testimony of any present or past official or employee of the International Committee of the Red Cross (ICRC), any information, documents or other evidence which it came into the possession of in the course, or as a consequence, of the performance by ICRC of its functions under the Statutes of the International Red Cross and Red Crescent Movement" (Rule 73(4), in: Rules of Procedure and Evidence).

39 ICRC Activities for Migrants, p. 5.

40 ICRC Activities for Migrants, p. 5.

(iii) Identification of the deceased and ensuring a decent funeral: Unfortunately death cases take place in very high numbers along the migration routes. The authorities concerned are not always able to keep pace with the tasks, and the duties related to the identification of the deceased, the transportation/return of the bodies or to providing a decent funeral are immense burden on them. ICRC seeks to help authorities' work among others by putting its international network at disposal and providing expertise.⁴¹

Identifying bodies is a most time consuming and meticulous work, and is made more difficult by circumstances like establishing contact with the authorities of the country of origin, having to take DNS samples from family members staying at home for the identification, and setting up and operating a database which makes it possible to share information necessary for the identification, etc.⁴²

Beyond the above activities, the components of the Movement certainly perform classic aid work as well, mainly through the national societies along the migration route, e.g. by providing water, food and blankets. National societies seek to maintain close relations with migrants or their representatives in order to know what they are in need of.

In addition to the above, the Movement's components strive for dialogue with authorities certainly also in relation to migration issues. In a close cooperation with states it is an important factor that it is the states that are primarily responsible for the security of persons in their territory and jurisdiction. Thus, ICRC only raises their awareness of their obligations within the framework of a confidential dialogue or offers support. The aim of the dialogue is to make sure that the states guarantee migrants' security and the preservation of their human dignity, and alleviate their suffering.

41 ICRC Activities for Migrants, p. 7.

42 Cf. e.g. <https://www.icrc.org/en/document/resources-commitment-needed-care-for-migrants>.