THE CONVERGENCE OF REFUGEE LAW AND INTERNATIONAL HUMANITARIAN LAW

DR. RICHARD SUOFADE OGBE*
HASKAR RAO**

Abstract

One key body of international law that regulates and manages armed conflicts is the International humanitarian law (IHL). Over time and more recently, Refugee law now equally has a concomitant and contemporaneous application to armed warfare. This paper seeks to determine the protection and preservation of refugees under both refugee and international humanitarian law vis-à-vis the right of asylum seekers during armed combats. The cumulative application of IHL and refugee law is another focus of analysis. The convergence and divergence between refugee and international humanitarian law in protecting the rights of displaced persons, noncombatants and asylum seekers during armed conflicts will be considered. This paper equally deals with, inter alia, the legal position of refugee and international humanitarian law as regards the international obligations of States in the areas of non - refoulement, disarmament and separation during armed conflicts. It also deals with the issue of granting refugee status to new actors, which appears during warfare, and ways to determine the right of ex-combatants and treat them as civilian refugees. This paper submits that despite the divergence between international humanitarian law and refugee law, their main objective is the protection of persons during armed conflicts.

Keywords: International humanitarian law; refugee law; warfare, status of refugees; non - refoulement in warfare; displaced persons.

1.0 Introduction

There is generally no legal system that can claim to have an adequate self-reliant, and self-sustaining aloof unilateral operation. The application of only one body of law will not suffice even within the same legal system. That is why you find two or more bodies of law having contemporaneous application to one subject matter.[1] In other words, maritime law and environmental law may regulate the same situations.[2] Similarly, there are situations regulated and controlled by constitutional law that may be subject to the concomitant application of administrative law.[3] Many reasons may account for this kind of situation, which may include the fact that the law allows penetrability from one body of law to the other and contemporaneous situations may call for such application.[4] This is certainly the situation that exists between international humanitarian law and refugee law.

* **Dr. Richard Suofade Ogbe (LLM: London, PhD),** Lecturer at the Faculty of Law, Niger Delta University, Bayelsa State. ogberich@yahoo.com & drogbe@ndu.edu.ng

** **Haskar Rao,** 'Refugee Law Vis-à-vis Humanitarian Law', ISIL Year Book International Humanitarian and Refugee Law, (5) (3) (2008) 219

[1] *Ibid,* 220

[2] Lawrence Hill-Cawthone and Kubo Macak, 'The Relationship between International Humanitarian Law and General International Law', Journal of Conflict and Security, (23) (4) (2018) 329

[3] *Ibid*, 332

[4] Umesh Kadam, 'Implementation of International Humanitarian Law' ISIL Year book of International and Refugee Law, (2) (3) (2002) 180

This paper submits that there is convergence and reciprocation that exist between these two bodies of international law. For instance, the fact that a person is a refugee does not mean he no longer enjoys being protected under international humanitarian law. There are situations during armed conflicts where legal actors such as regular and nonregular combatants, international humanitarian workers, freelancers, and renegades may benefit from refugee law as well as international humanitarian law.

2.0 An analysis of International Law vis-a-vis Armed Conflict

The application of international law holistically also includes the fact that certain special circumstances, like situations during times of armed conflicts, warrant the implementation of special rules, and some of these rules prevail over others in those special circumstances.

It is trite that the fundamental foundation of international humanitarian law and human rights law is the most consideration and regard for human dignity. It can equally be said that the necessity for protecting human rights has a common underlining ideology with international humanitarian law.[5] It is also trite that international human rights law has contributed a great measure to the evolution and advancement of international humanitarian law. Incidentally, both bodies of law can be applied for the purposes of protecting the civilian population and noncombatants during armed conflicts. It does not mean that the law of human rights, and international humanitarian law, do not have divergent perspectives. The point is that the fact that there is dispute and anxiety or collaboration between different regimes does not mean that these laws cannot be jointly applied in times of armed conflict.[6]

There are many other treaties apart from Geneva and Hague Conventions that apply during armed conflict. For instance, in respect of refugee rights, the 1951 Convention Relating to the Status of Refugees states in Article 9 that states that the Convention does not preclude a Contracting State, during times of war or other exceptionally difficult conditions, from resorting to temporary steps which it considers vital to deal with such national emergency situations in the case of a particular person while waiting for the Contracting State confirm that that person is truly a refugee.[7] The foregoing measures as regards refugees can be applied contemporaneously with international humanitarian law during times of armed conflict.

The concurrent application of both laws will likely offer more protection to such helpless individuals during armed conflicts. Despite the foregoing beneficial interplay, it poses some challenges. The first issue is that of the divergence between international humanitarian law and human rights law. The first issue is that humanitarian law in most cases, only applies in times of armed conflict, while the application of human rights law is at all times. The second issue is that, customarily, the structural binding effect between human rights law and humanitarian law is

[5] Kumar Sinha, 'Enforcement of International Humanitarian Law', ISIL Year Book International Humanitarian and Refugee Law, (9) (3) (2019) 23
[6] Raoul Bittel, 'The Concept of Combatant in Contemporary International Humanitarian Law, (4) (6) (2002) 138
[7] Ruona Iguyovwe, 'The Inter-play between International Humanitarian Law and International Human Rights', Commonwealth Law Bulletin, (34) (4) (2004) 139

diametrically different. The third issue is that apart from a few exceptions, most international human rights are derogable, whereas humanitarian law is nonderogable.[8]

3.A The concept of interrelation and coherence between human rights law and international humanitarian law

It has been variously argued that there exists a coherent interrelation between both laws.[9] However, international courts have recognized the fact that the issue of whether or not there exists any concrete affiliation between international humanitarian law and international human rights is full of complexity.[10] In other words, the convergence or divergence of the two fields of law is not only obscure but convoluted.[11]

Spyridoula, for instance, clarifies the complementarity concept by stating that the relation between human rights law and the laws of war is not just a straightforward engagement or conflict between the general application of human rights and the unique application of the laws of war. [12]

3.B International Humanitarian Law and the sanctity and protection of refugees

This part of the paper looks at the status of refugees or asylum-seekers. The first point to note is that the status of these persons does not change even though there is an armed conflict.[13]

Article 4 of The Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (GC IV) expressly gives protection to such refugees.[14] The provision suggests that anytime measures meant to control as contained in the present Convention are applied, the Detaining Power should refrain from giving enemy aliens draconian treatment based on their nationality rightfully of an enemy State, especially when any government or its agencies do not protect such refugees. In other words, those who need special protection are the refugees or enemy aliens in the domain of a Party to a conflict who have been compelled by special events or by persecution to abandon and quit their native land and seek asylum in another country. These persons become enemy aliens when the country in which they have taken refuge is engaged in a war with their country of origin. What makes them a special group that needs special protection is that as refugees they no longer have any connection with their State of origin and accordingly do not enjoy the protection of a Protecting Power.

We will now give attention to discussing who a refugee is. There are varied and divergent interpretations of who a refugee is. There are equally many conventions and treaties that contain

[8] with the only exception of Article 5 of the Fourth Geneva Convention.
[9] Ruth Gordon, 'Critical Race Theory and International Law: Convergence and Divergence', Villanorg Law Review, (45) (5) (2000) 829
[10] Theodor Meron, 'The Humanization of Humanitarian Law', American Journal of International Law, (94) (3) (2000) 245
[11] *Ibid*, 250
[12] Spyridoula Katsoni, 'Impacts of the Interpretative Interaction between International Human Rights Law and the Refugee Convention', Cambridge International Law Journal, (10) (1) (2021) 115
[13] Thomas Norster, 'The Evolving Definition of the Refugee in Contemporary Law' Berkeley Journal of International Law, (30) (3) (2012) 134
[14] Mete Erdem, 'The Martens Clause and Humanitarian Law', Journal of the Faculty of Law of Inonu University, (6) (1) (2015) 234

the definition of the status of a refugee. Such conventions include Convention Relating to the Status of Refugees of 28 July 1951 and Protocol Relating to the Status of Refugees of 31 January 1967, Statute of the Office of the United Nations High Commissioner for Refugees (HCR) of 14 December 1950 and resolutions adopted within the framework of the United Nations, 1969 Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, 1984 Cartagena Declaration on Refugees, Principles Relating to the Treatment of Refugees adopted by the Afro-Asian Legal Consultative Committee, Council Directives *2001/55/EC* and *2004/* 83/. A blow-by-blow discussion on the definition is beyond the scope of this paper. Suffice it to say that refugees are generally persons who, before hostilities really commence, are considered stateless persons under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence and who are protected within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse dissimilarity and variation.[15] One key point to note here is that before such individuals can benefit from the foregoing conventions, they must have refugee status before the conflict to benefit from the protection afforded by this article.[16]

4.A The legality of the Non-Refoulement principle During Armed Conflict

The non-refoulement principle showcases the fact that it is an inherent right of the asylum-seeker not to be compelled to return to a place where he or she may be maltreated or tortured.[17] This paper submits that the non-refoulement principle is a legal term that assures and secures international protection on the basis of the principle that nobody should be obliged to return to his country against his will where his life or freedom may be put at risk or threatened based on any racial, religious sentiment or nationality or the fact a person is a member of a certain social group or holds contrary political views.[18] It suffices to equally state here that this principle is an enforceable right in international refugee law.

In line with Article 33(1) of The Geneva Convention of 1951 this principle suggests that an asylum-seeker or refugee who tries to cross a borderline on the above grounds should not be denied entry as well as sent back after given authorization to enter. It is on the basis of this assertion that this paper submits that the principle of non-refoulement applies not only to refugees that have been given official recognition and acceptance but also to those who have not had their status formally declared.

Article 33(2) of the Geneva Convention, 1951 gives the basis upon which the application of this principle can be denied. One such circumstance is when such benefits of the right of non-return by a refugee will be in jeopardy when there are reasonable grounds to believe that such a person is a security risk to the country in which he resides or who has been convicted and sentenced by a court of competent jurisdiction of a heinous crime and because that he is seen constituting a risk

[15] Maryellen Fullerton, 'The Law of Refugee Status', American Journal of International Law, (109) (4) (2018) 919
[16] *Ibid*, 920
[17] Innocent Okoronye and V.O.S Okeke, 'An Appraisal of Humanitarian Intervention under International Law', Nnamdi Azikiwe University Journal of Law and Jurisprudence, (2) (2) (2011) 139
[18] *Ibid*, 140

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to the community of that country.[19] Many states have hidden under this clause to modulate the fundamental rights of refugees. Despite the foregoing unfriendly measures by states, it needs to be noted that the principle of non-refoulement is taken as an essential and structural part of customary law which forbids refugees from being subjected to torture or inhuman or degrading treatment no matter the circumstances.[20]

Some authors consider that identifying non-refoulement with torture, inhuman, cruel or degrading treatment has turned it into a vague or ambiguous concept. I do not agree because otherwise, we would be denying the existence of indeterminate legal concepts and, with them, the indeterminacy of most fundamental human rights and freedoms. And States and national and international courts already take pains to ensure that each right is furnished with specific content. Non-refoulement cannot escape from this general rule. This is despite the fact that no human rights is absolute and therefore can be derogated from, especially during times of armed conflicts.[21] This is the emphasis under international treaties such as Article 15 European Convention on human rights, Article 15 of the American Convention on Human Rights, and Article 4 of the International Covenant of Civil and Peoples Rights, amongst others.

The United Nations High Commissioner for Refugees as well as many international and regional instruments, also accept this principle of non-refoulement. This principle is based on its fundamental and universally accepted character and recognition as a principle of customary international law.[22] That is why this principle is binding on all States even when they are party to the 1951 Convention or other international or regional instruments.

What remains to be said here is that refugees are still part and parcel of the civilian population as non -combatant persons and, therefore, should be given the same protective treatment which now makes them have cumulative protection.[23] In other words, the rights or benefits being enjoyed by the aliens in any given country should equally be enjoyed by refugees so long as they equally live in, visit or deal with that country.[24]

4.B Legal task to Demobilize and Set -apart Armed Elements

One task is how armed elements must be demobilized and set apart from the civilian population to preclude them from engaging in activities contradictory to the civilian status they enjoy.[25] Those who escape from the effects of armed conflict, at getting to a borderline which is surrounding and protected by security forces of the State, and where there is UNHCR humanitarian workforce to render the needed safe keeping and help, the first thing the receiving persons must do, is to

[19] Jean-Marie Henckaerts, 'Concurrent Application of International Human Rights Law and International Humanitarian Law: Victims in Search of a Form', Human Rights and International Legal discourse, (7) (1) (2016) 46

[20] *Ibid*, 49

[21] *Ibid,* 50

[22] Alex Flores, 'Reconceiving Burden-Sharing in International Refugee Law', Kings Student Law Review, (7) (1) (2016) 45

[23] Cordula Droege, 'Elective Affinities? Human Rights and Humanitarian Law International Review of the Red Cross, (90) (871) (2008) 521

[24] *Ibid*, 531

[25] Mary Crock, 'In the Wake of the Tampa: Conflicting visions of International Refugee Law in the Management of Refugee flows', Pacific Rim Law and Policy Journal, (12) (1) (2003) 74

demilitarize them, keep the weaponry in a safe and protected place to guarantee that they will not be utilized again in the conflict and certainly not returned to the people who were deploring them.[26]This situation sometimes works differently in practice because different situations call for different measures. It must be noted that refugees' rebellious activities are prohibited in line with the rules of the conventions.[27]

The customary rules regulating the law of neutrality make it mandatory that such persons must be demobilized and set apart from other persons.[28] This is in line with Article 11 of the Fifth Convention of The Hague Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land of 18 October 1907. This provision suggests that an impartial Power has a duty to confine troops owed by the belligerent armies shall intern and keep them away from the arena of war. It is only in non-international armed conflicts that these rules of neutrality apply. Applying the principle of internment is to control the movement and freedom of interned combatants and prisoners of war in international conflict as a protection measure. [29]

Detachment of UN peacekeeping forces needs to work in the domain and arrange and supply security for internment campsites so as to prevent any threat to international peace and security, which is part of their assignments.[30] The only challenges range from logistics and lack of military and specialize know how by the humanitarian workforce. Just as has been mentioned earlier, every person has a right to civilian status so long as such person has been demilitarized, and this must be done in line with the 1951 Refugee Convention, which only excludes the relevant provisions of IHL concerning prisoners of war. The implication of the foregoing is that these armed elements could be ceded and surrendered to organizations such as the UNHCR or the ICRC so long as the military workforce and other authorities are not around. These personnel have the requisite knowledge to consider wisely if they are combatants and whether or not they have the right to be regarded as prisoners of war. [31]

It is necessary to give a working definition of the 'armed elements briefly'. In a restricted sense, armed element may refer to a member of an armed or military organization, which may be regular or nonregular, who has been engaging or taking part in military activities and armed conflicts or who has been engaged in activities to employ or educates military workforce or has the power to make decisions in an armed organization or institution or has got into the receiving country bearing arms or wearing military uniform.[32] The above working definition largely encapsulates all the features of combatants as long as armed conflict is concern. [33]

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[26] *Ibid*, 82

[27] *Ibid*, 86

[28] Biljana Karouska-Andovoske, 'Human Rights Law and Humanitarian Law: Between Complementarity and contradiction' (6) (8) (2014) 156

[29] *Ibid,* 161

[30]

[31] Chris Woodruff, 'Refugee Law: Improving Oversight and accountability', Georgetown Immigration Law Journal, (29) (6) 163

[32] C. J. Harvey, 'Taking about Refugee Law', Journal of Refugee Studies, (12) (2) (1999) 121

[33] *Ibid*, 126

5.A Situations where refugees are Forcefully Transferred on the basis of Military exigencies

One ready situation was during the Second World War, where the government of the United States decided to move American citizens of Japanese descent to internment territories away from their habitual abodes on account of security exigencies.[34] Even though some aggrieved persons went to court, but the judges justified the reasons given by the US authorities as necessary for pressing military exigencies. A minority decision was given to the fact that despite the perilous times, military discretion needs to taking circumspectly, particularly where military law has not been pronounced.[35] Such persons must not be left deprived of their constitutional rights under the guise of military exigencies that may not be substantiated.

Therefore, in line with Articles 85(4), 49 and 17, it is prohibited to transfer persons in international conflicts or non -international conflicts occupying powers, including even transfer or movement of parts of its own civilian population. However, a military necessity in line with contemporary civilized nations, modern law, including modern use and deployment of war, can make it necessary for some drastic measures to be taken, which are meant to ensure the end of war so long as such measures are lawful.[36]

It must be borne in mind that the only legitimate objective of fighting wars is to weaken and incapacitate the enemy's armed forces in line with the Preamble to the St Petersburg Declaration of 1868, which is why during armed conflict, the issue of military necessity, as well as military advantage, is a fundamental consideration. [37]

While the law allows the Occupying Power to take total or partial evacuation of persons, it excludes such displacement of persons protected outside the bounds of the territory so occupied. The only proviso is when it can clearly be shown such displacement is inevitable. And in any case, there is also a general prohibition of any transfer into foreign nations. What remains here to say is that when such conflicts are over, all such displaced persons will be taken back to their original places of abode. The idea of the foregoing is to make sure that at all times and circumstances, the rights of refugees are protected and safeguarded in line with the principle of non-refoulement and all the relevant provisions of international humanitarian law and human rights law.[38]

It must be noted that no matter the peculiar conditions, the following prohibitions must be considered.[39] First, at no time should military operations and objectives encumber any form of the civilian population. Second, the civilian population should not be moved to certain areas just to

[34] Meryll Dean, 'Bridging the Cap: Humanitarian Protection and the Convergence of Laws in Europe' European Law Journal, (20) (1) (2014) 42

[35] *Ibid,* 49

[36] Antonio Cassese, 'On the Current Trends towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law', European Journal of International Law, (9) (1) (1998) 13

[37] *Ibid*, 14

[38] Stephen Meili, 'The Constitutional Rights to Asylum: The wave of the Future in International Law', Fordham International Law Journal, (41) (1) (2018) 397

[39] Conde Jimnian, 'The Principle of Distinction in virtual war: Restraints and precautionary measures under International Humanitarian Law', Tilburg Law Review, (15) (1) (2010) 72

protect military objectives and processes. Third, nothing should do to arouse civilian displacement by deliberately taking away essential elements for their continuous existence. Fourth, sometimes forced transfer can be permitted so long as human lives and security are not jeopardised.[40]

5.B The issue of humanitarian Reasons and forced transfers

As earlier mentioned, forced civilian transfer may be necessary on the basis of humanitarian reasons and exigencies in line with the application of international humanitarian law during armed conflicts.[41] That is why it is often said that evacuating civilians is an effective mechanism and measure for humanitarian protection. In other words, military exigencies take precedence over other considerations but concrete measures must be taken to ensure that the civilian population is not hurt or vulnerable to danger in all these circumstances.[42]

That is why the law mandates the designation of special localities and quarters to provide health services and security for those with special needs such as those vulnerable, wounded, paralyzed, aged, young, etc.[43] Accordingly, international humanitarian law does not preclude forced population transfer when humanitarian concerns, reasons and the security of the civilians are properly adduced and well substantiated.

What remains to be said here is that the relevant authorities can, in a bid to protect victims of armed conflict, allow some form of coerced transfers for humanitarian grounds. It means, therefore, that it is a right to embark on any forced civilian transfers for humanitarian grounds for the sole aim of protecting them. [44]

6.A Ex-Combatants Rights to Be Civilian Refugees as soon as they Have been Demilitarized and there is a decision taken on their Legal Status

During armed conflicts, there is usually a considerable migration of people to other safe countries. It is customary for such countries to receive and guarantee their protection, including making sure that their fundamental rights are kept intact.[45] In other words, such refugees are preserved and given sustenance without discrimination based on their colour, sex, religion, race and ethnicity, in line with the general principles of refugee law.

The application of such refugees should not be rejected because they are ex-combatants so long as they have been disarmed and demobilized even though there are certain grounds such applications will be rejected in line with 1951 Convention. It is immaterial that such refugees illegally entered the country and have been staying in such a country without due process or

[40] Cynthia Orcbhad, 'Almaty Process: Improving compliance with International Refugee Law in Central Africa', International Journal of Refugee Law, (28) (1) (2016) 65

[41] Charles Allen, 'Civilian Starvation and Relief during Armed Conflict: The modern humanitarian Law', Georgia Journal of International and Comparative Law, (19) (1) (1989) 45

[42] *Ibid*, 51

[43] *Ibid*, 68

[44] David Weissbrodt, 'The Role of International Organizations in the implementation of Human Rights and Human Law in situations of armed conflict', Vanderbolt Journal of International Law, (21) (12) (1988) 345

[45] Payam Akhavan and Morten Bergsmo, 'The Application of the Doctrine of State Responsibility of Refugee Creating State', Nordic Journal International Law, (58) (3) (1989) 252

meeting the requisite legal requirement, so long as their life or freedom is in danger.[46] The UHRC stipulates one right for all refugees that they should be secured where ever they are found. The idea, according to the UHRC is that the domains where the refugees come from is very far from the borderlines of the country in conflicts.

This idea already has legal precedence. That was why the OAU Convention on Specific Aspects of the Problems of Refugees in Africa supported and encouraged asylum countries to put refugees at a relatively secured distance from the borderline of their country of abode so long as such domestic displacement of refugees may not negatively affect the national security of the country.[47]

The forgoing suggests many commitments and duties at different levels. The country concern has a sacred duty toward refugees. There is a sacred duty by the country that accepts refugees. Even the rebellious parties have a sacred. duty The UNHCR has its own responsibilities as well as the refugees or those displaced.[48]

There are many reasons adduced by the OAU Convention on Specific Aspects of the Problems of Refugees in Africa for the foregoing responsibilities and duties. First,
it should be taken as a humanitarian gesture when countries admit refugees. The second reason is that there is a clear distinction between civilians and combatants, including civilian objects and military objectives. The point is that a frantic effort must be made to ensure that the civilian population must be precluded from any military attack. One way is to ensure that camp locations are far from military objectives and operations.[49]

For this reason, the Security Council reiterated the need for the international community to ensure that refugees are not in any way subjected to persecution and molestation from armed elements, which threatens international peace and security.[50] A similar move was made by the UNHCR Executive Committee, encouraging States to cooperate with UNHCR in making sure that civilian and humanitarian character is respected at all times. Ensuring that the security of camps where refugees are kept are easily identified and segregating armed elements from where refugees are kept is guaranteed and settling them in secure locations. In other words, the admonition is to remind host States that they have the fundamental commitment and obligation to make sure the civilian population and humanitarian character of asylum are guaranteed. In addition, making frantic efforts to discover camps, refugees are kept, making sure that such camps are located very far from the borderlines, preventing any form of breakdown of law and order, checking, monitoring and reducing any form of proliferation of arms and light weapons.[51]

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[46] Alice Edwards, 'Temporary Protection, Derogation and the 1951 Refugee Convention', Melbourne Journal of International Law, (13) 93) (2012) 613

[47] James Hathaway and Alexander, 'Making International Refugee Law Relevant Again: A proposal for Collectivized and Solution Oriented Protection', Harvard Human Rights Journal, (10) (3) (2016) 187

[48] Ben Saul, 'Enhancing Civilian Protection nu Engaging Non State Armed Groups under International Humanitarian Law', Journal of Conflict and Security Law, (22) (1) (2017) 49

[49] Anthony North and Joyce Chia, 'Towards Convergence in the International Protection of the Refugee Convention: A Proposal for the Establishment of an International Judicial Commission for Refugees', Australian Yearbook of International Law, (25) (4) (2013) 123

[50] Mary Holper, 'Redefining Particularly Serious Crimes in Refugee Law' Florida Law Review, (69) (1) (2017) 1117

[51] Elizabeth Holzer, 'What Happens to Law in a Refugee Camp?', Law and Society Review, (47) (1) (2013) 854

It seems evident that, when there is a mass influx of persons fleeing from generalized violence and living in conditions caused by armed conflict, the High Commissioner has to ensure the safety of such people under his charge, with the necessary cooperation of the State and even insurgent groups.[52] Secondly, the behaviour of the individuals under his charge is not incompatible with their civilian status.[53]

In effect, the party with the most significant interest in ensuring the safety of refugees and displaced persons is the UNHCR, whose strictly humanitarian and non-political character is recognized by the General Assembly. But this obligation extends in the context of IHL to all the parties in a conflict, where parties are understood to mean all the elements, organized or otherwise, operating in the theatre of operations of armed conflict, whose behaviour, even in the extreme conditions of war, must comply with the rules of IHL.[54]

For this, two frameworks must be established: first, that creating security zones, perfectly defined and known by the parties to ensure that the human rights of refugees and displaced persons are respected[55]. Second, armed elements must be separated from the mass influx of refugees and displaced persons with the aim of preventing as far as possible any activity which may endanger security in the camps, settlements and protection areas.[56]

Apart from strictly military security, there is also the obligation to guarantee police security. In refugee camps and human settlements caused by mass population displacements, the level of crime, banditry and violence may pose, as the UNHCR Executive Committee has highlighted, a threat to the security of refugees, local populations and humanitarian personnel.[57] These threats are particularly relevant in States where refugees can be manipulated or where, for geopolitical or ethnic composition reasons, local populations are incited to provoke insecurity. To palliate these circumstances as far as possible, UNHCR needs cooperation not only from the territorial State but also from the international community and the most developed States.[58] If the mass influx of refugees at a border can provoke uprisings in the local population or insecurity due to extreme living conditions, the United Nations can establish peacekeeping operations with a mandate to ensure safety in these areas in conjunction with civilian police forces or military operatives. The international society must take particular care over problems arising from sexual violence, which,

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[52] Thomas Worster, 'The Contemporary International Law Status of the Right to Receive Asylum', International Journal of Refugee Law, (26) (4) (2014) 487

[53] Marissa Jackson, 'Closing the Cap: Towards a Right Based Approach to Refugee Law', Northernwestern Interdisciplinary Law Review, (4) (1) (2011) 163

[54] Anna Lise Purkey, 'Questioning Governance in Protected Refugee Situations: The Fiduciary Nature of the State-Refugee Relationship', International Journal of Refugee Law', (25) (4) (2013) 234

[55] zones which could be the above analyzed refugee camps and settlements or others

[56] Emily Crawford, 'Unequal before the Law: The case for the Elimination of the Distinction between International and non-international Armed Conflicts', Leiden Journal of International Law, Leiden Journal of International Law, (20) (1) (2013) 345

[57] Tally Kritzman-Amir, 'Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law', Brooklyn Journal of International Law, (34) (1) (2009) 376

[58] Demeke Mekonnen 'The Role of International Human Rights Law in Improving the Law of Internal Armed Conflict', Bahir Dar University Journal of Law, (4) (2) (2014) 423

in refugee movements, causes not only *ad extra but also ad intra* problems for women and children.[59] In this regard, responses and preventive actions must be put in place, such as those already established by UNHCR. It was for this reason, UNHCR has requested States on numerous occasions to provide humanitarian security officers as part of their contingents, specialized in public security, criminal investigation and support to vulnerable populations.

6.B CONCLUSION

From the foregoing, it is crystal clear that in spite of whatever legal document which defines refugees, there are rules that guarantee the legal protection of refugees in line with international humanitarian law. The minimal definition of refugees is that contained in the 1951 Convention and its 1967 Protocol Relating to the Status of Refugees. Despite the divergence between international humanitarian law and refugee law, their main objective is the protection of persons during armed conflicts.[60] What it means is that both laws play complementary and interrelated roles.

Whatever is the case, even in a period of armed conflict, the non-refoulement principle, which is a general legal principle of international law, which includes customary law, should take precedence over any other consideration during armed conflicts.[61] The implication of this situation is that no military obligation or any other military superiority can interfere and violate its supremacy. The understanding is that refugees should not be allowed to pass through abject deprivation, agony, and dehumanizing treatment during armed conflicts. They should rather be treated with civility not only because they are civilians but as those who are defenceless, homeless and therefore deserve special protection. They should be fairly and reasonably subjected to the spirit and letter of the Geneva Conventions as dictated by the confines of international humanitarian law. This should be the case even when their initial rights are affected. Their special circumstances may sometimes warrant their being imprisoned, interned or even dragged from one place to the other on the basis of military or humanitarian exigencies.

As mentioned before, during armed conflict, different legal situations may arise which may require a requisite concomitant legal security. Even those who cannot be taken as Prisoners of War, so long as they meet all the requirements of the 1951 Refugee Convention, they should not be denied being protected as refugees. This goes for even persons that have been displaced, were once combatants, or are still wearing uniforms and carrying arms. As soon as such people have been disarmed, demobilized, demilitarized and their legal status decided, they should be treated humanely in line with UNHCR or the ICRC.

[59] Vanessa Murphy and Ahmed Al-Dawoady, 'International Humanitarian Law, Islamic Law and the Protection of Children in Armed Conflict', International Review of the Red Cross, (101) (11) (2007) 564

[60] Haskar Rao,' Refugee Law vis-à-vis Humanitarian Law' ISIL Yearbook International Humanitarian and Refugee, (5) (4) (2008) 46

[61] C. J. Harvey, 'Talking about Refugee Law' Journal of Refugee Studies, (2) (5) (1999) 127