THE SYSTEMATIC INTEGRATION AND HARMONIZATION OF COMPLEMENTARY PROTECTION IN INTERNATIONAL LAW*

Abstract
International Humanitarian Law remains the regulatory bedrock framework that governs armed conflict, even though International Human Rights Law (IRL) increasingly operates in tandem with it in contemporary hostilities. This article analyzes the interlocking protections of the dual frameworks that shield refugees and asylum seekers in theaters of war. Particular focus is on the efficacy of a mutually reinforcing, concurrent, and cumulative application of both spheres of jurisprudence during active military engagements. This article examines the confluence and bifurcation between international Human Rights law and international humanitarian law in safeguarding the rights of displaced populations, non-combatants, and asylum seekers during armed conflict. It analyzes the tripartite legal architecture, which consists of International Human Rights Law, demilitarization conventions, and the customary international humanitarian law principle of distinction in wartime. Beyond these considerations, this paper evaluates the juridical impediments to amplifying and expanding refugee status for novel actors and depicts the doctrinal architecture and design for transitioning former combatants to civilian refugee status. Additionally, this article submits that despite their definite dogmatic parameter and precise ideological demarcations, International Human Rights Law and International Humanitarian Law share a foundational, complementary objective: maximizing human protection during armed conflict.

Keywords: International law, harmonization, armed conflict, status of refugees, complementary protection, systematic integration

1.0 Introduction

Jurisdictional autonomy is a jurisprudential fallacy, as no single body of law can operate unaidedly or adequately resolve internal systemic demands. This explains the rationale for why multiple legal regimes most of the time exercise contemporaneous jurisdiction over a particular issue. For example, employment law and civil rights law frequently intersect to regulate identical and common factual scenarios. Similarly, scenarios governed by constitutional law may also be subject to the concurrent operation of Criminal Procedure. This overlap and interdependence can be explained by legal frameworks that permit interconnectivity and interchangeability across different legal fields, or by current circumstances that demand a dual approach. This situation largely parallels the link and connection between international humanitarian law and human rights law.[1] In other words, constitutional law domains frequently intersect with the concurrent application of administrative law. This doctrinal convergence is primarily driven by the inherent permeability between these legal regimes, alongside coexisting exigencies that demand a dual regulatory approach. This symbiotic relationship directly mirrors the contemporary nexus between international humanitarian law and human rights law law.[2]

This paper submits that a nexus of confluence and complementarity exists between these two distinct regimes of international law. This explains why an individual's status as a refugee does not divest their rights to the relevant protections afforded under international humanitarian law. That is why, during periods of armed conflict, various actors, including personnel and irregular combatants, international humanitarian personnel, independent contractors, and non-state dissidents, may concurrently derive protection from both human rights law and international humanitarian law.[3]

2. A Jurisprudential Analysis of the Law of War and Armed Conflict

A systemic and holistic interpretation of international law holds that exceptional exigencies, most notably armed conflict, require invoking specialized regimes whose norms supersede general legal frameworks.[4] Crucially, international humanitarian law and international human rights law are grounded in a shared commitment to human dignity, reflecting a convergent philosophical architecture and protective objective.[5] This means that a logical reading of public international law dictates that particular factual contexts, most notably armed conflict, trigger specialized prescriptive frameworks designed to either displace or modify general legal rules. Under the doctrinal concept of *lex specialis derogat legi generali*, these technical regimes override general norms within their defined scope of application. A communal teleological cornerstone and the protection of human dignity and freedom bind international Humanitarian Law and International Human Rights Law. Accordingly, the enforcement of IHRL and the execution of IHL resonate with a

***By Richard Suofade OGBE, LLM (London), PhD,** Senior Lecturer and HOD, Faculty of Law, Niger Delta University, Bayelsa State, Email: drogbe@ndu.edu.ng

[1] Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law, Volume 1: Rules* (ICRC/CUP 2005) Rule 1.

[2] Vincent Chetail, 'Are Refugee Law and International Humanitarian Law Mutual Strangers? A Critical Assessment of their Evolution and Convergence' (2014) 27 (10) *Yearbook of International Humanitarian Law*, 24

[3] Alice Edwards, 'Refugee Status Determination in Situations of Armed Conflict: The Relationship between Refugee Status, International Humanitarian Law and International Human Rights Law' (2012) 23 (4) *International Journal of Refugee Law*, 673

[4] Hugo Storey, 'Armed Conflict in Asylum Law: The "War-Flaw' *Refugee Survey Quarterly*, (2012) 31 (2) 1

[5] Richard Ogbe, 'The Jurisprudence of International Human Right and the Protection of Displaced Persons' *Kampala International University Law Journal* (KIULJ), 2024, Vol. 6, Issue I [ISSN-2519-9501] http://www.kiulj.kiu.ac.ug/

confluent jurisprudential and theoretical framework meant to mitigate sustained arbitrary human suffering during conundrum. [6]

It is well established that international human rights law has greatly advanced international humanitarian law. Furthermore, both legal frameworks protect civilians and noncombatants during armed conflicts. This does not mean they lack differing viewpoints. The core point is that tensions or cooperation between these systems do not stop them from being applied together during wartime. Such a contemporaneous interplay and application of both legal frameworks will enhance protection and preservation of at-risk and sensitive populations during hostilities and crisis. Despite this strategic alignment, its practical enforcement introduces distinct ideological and conceptual hurdles. Primarily, a significant doctrinal divergence exists regarding their temporal scope. While International humanitarian law is triggered almost exclusively by armed conflict, international human rights law applies universally at all times. Furthermore, the binding nature of their respective obligations is fundamentally distinct. Finally, while the majority of IHRL provisions admit derogation under exceptional circumstances, IHL standards remain entirely non-derogable.

3. Normative Convergence: The Interplay of Human Rights and Humanitarian Law

Scholars often argue that these two legal frameworks are closely linked. Yet, international courts acknowledge that the actual connection between international humanitarian law and international human rights law is highly complex. Determining where they overlap or split remains difficult and confusing. Legal experts note that their relationship is more than just a simple clash or alignment between general human rights and the specific rules of war.

The legal status of refugees and asylum-seekers warrants brief examination. A foundational principle is that their protected status endures even amid ongoing armed conflict.[7] The provision of Article 4 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War clearly expands human rights safeguards to this category of displaced persons and asylum seekers. The provision provides that, when implementing the convention's prescribed security, control, and safety measures, the Detaining Power must refrain from imposing arbitrary or punitive measures on enemy aliens solely based on nationality, especially when they lack the required protection of their home state. [8] Hence, this specialized sub-group of protected persons includes displaced persons or enemy aliens within a bellicose state's territory who have been forcibly displaced by systemic persecution or geopolitical conundrum. These persons acquire the legal status of enemy aliens upon the outbreak of conflicts between their host nation and their native state. This heightened standard of international protection reflects a unique vulnerability arising from the absolute rupture of their socio-political ties to their home state, leaving them fundamentally disenfranchised and without diplomatic intervention. [9]

4. The Lawful Obligation of Providing the Required Safeguard Against Compulsory Expatriation during armed conflict

The doctrine of non-refoulement or the prohibition of forced return affirms that asylum-seekers have an inalienable right against forced repatriation to jurisdictions where they risk torture or systemic maltreatment. This paper submits that banishment of forced return is a fundamental legal principle that guarantees international protection. It mandates that no individual should be returned without his voluntary submission to their native state if their life or liberty is jeopardized on account of perceived persecution based on ethnoracial taxonomy, creedal conviction, linguistic origin, immutable identity matrix, or partisan orientation.

It is therefore commendable that this principle has crystallized into a binding, justiciable right within the architecture of international refugee law. [10] In line with Article 33(1) of the 1951 Convention Relating to the Status of Refugees, the doctrine states that persons who seek to be protected on the Convention grounds must neither be refused entry nor be expelled after such a person has entered such a country. It is based on the foregoing that this paper posits that the obligation of non-refoulement, or prohibition of forced return, resonates independently of formal status determination and assurance.[11]

Article 33(2) of the 1951 Geneva Convention clearly captures and codifies the limiting exceptions to the rule of *non-refoulement*. This security measure may be legally abandoned and discarded if credible evidence affirms that the refugee constitute himself to a palpable threat to national peace and security.[12] Alternatively, the protection yields if the individual has been previously arraigned, prosecuted, and convicted of a particularly serious crime by a competent judicial authority, thereby posing a current danger to the host community. [13]

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[6] Volker Türk, 'The Interface between International Refugee Law and International Humanitarian Law' (2002) 21(4) *Refugee Survey Quarterly* 22.

[7] Cordula Droege, 'The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict' (2007) 9 (3) *Israel Law Review*, 310

[8] Ibid, 318

[9] Ibid, 320

[10] Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (4th edn, Oxford University Press 2021) 15

[11] Elihu Lauterpacht and Daniel Bethlehem, 'The Scope, Nature and Content of the Principle of Non-Refoulement: Opinions' in Erika Feller, Volker Türki and Frances Nicholsona (eds), *Refugee Protection in International Law* (Cambridge University Press 2003) 131

[12] Ibid, 137

[13] Jean-Allain Marceaue, 'The Customary International Law Character of the Principle of Non-Refoulement' (2018) 3 (20 *International Journal of Refugee Law*, 211

Certain commentators contend that conflating the principle of non-refoulement with prohibitions against torture or cruel, inhuman, or degrading treatment introduces an unsustainable degree of conceptual vagueness.[14] This view must be rejected; to hold otherwise would be to negate the doctrinal legitimacy of indeterminate legal concepts and, by extension, the inherent open-endedness of most foundational human rights and freedoms. Municipal and international tribunals consistently work to endow these broad standards with granular, case-specific content, and the concept of non-refoulement is no exception to this interpretative norm.[15] This situation remains the same even when considering the qualified nature of most human rights, which permit derogation under exceptional circumstances, including during armed conflict. This structurally embedded flexibility is explicitly codified across international instruments. Crucially, this category of refugees retains their status as non-combatants within the civilian population, which gives them adequate protections under international humanitarian law. Consequently, the legal entitlements and socio-economic benefits accorded to ordinary foreign nationals must be extended equally to refugees, so long as they are still present, in transit, or in legal relations within the host state.

The demobilization of armed actors and their subsequent separation from the civilian population is one key way of managing displaced populations, which is very likely to mitigate the risk of conduct incompatible with civilian status. Individuals fleeing armed conflict who arrive at a border secured by state forces and supported by the United Nations High Commissioner for Refugees (UNHCR) must go through immediate demilitarization as a prerequisite for receiving humanitarian assistance and protection. Consequently, their weapons must be impounded in secure repositories to prevent their reintroduction into hostilities and to ensure that such material is not repatriated to former combatants.

While operational application varies across geopolitical contexts, international legal frameworks explicitly prohibit refugees from engaging in subversive or belligerent activities. Under customary international humanitarian law governing neutrality, specifically anchored in Article 11 of the 1907 Hague Convention (V) Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land, neutral states are legally obligated to intern and isolate belligerent forces from the theater of war. Although the strict application of traditional neutrality laws is different from the matrics which governs non-international armed conflicts, the doctrine of internment remains a vital security mechanism for regulating the movement and liberty of captured combatants and prisoners of war in international armed conflicts.

It is needful to establish a concise operational definition of armed elements. In a restrictive sense, the term denotes any member of a regular or irregular military organization who meets at least one of the following criteria:[16] active participation in hostilities, involvement in the instruction or mobilization of military personnel, possession of decision-making authority within a military institution, or entry into a host state while bearing arms or wearing military uniform. [17] This functional framework largely comports with the established legal criteria governing combatant status under international humanitarian law.[18]

5. Deportation, Transfer, and the Threshold of Military Exigency

The World War II relocation and mass incarceration of citizens of Japanese ancestry, a measure justified by the state under the rubric of military necessity, is an illustration of the infringement of wartime civil rights. Despite several aggrieved plaintiffs seeking judicial recourse, the bench upheld the executive actions of United States authorities, deeming them imperative responses to pressing military exigencies. Notwithstanding the perilous historical context, the dissenting opinion suggests that command discretion must be exercised with utmost circumspection, especially in jurisdictions where martial law has not been formally declared. No matter the situation, citizens must not be divested of their fundamental constitutional protections under the pretext of unverified military necessities.[19] Consequently, pursuant to Articles 85(4), 49, and 17, the forced displacement of individuals during international or non-international armed conflicts, including the internal relocation of a state's own non-combatant population, is strictly proscribed. Provided such operational conduct strictly comports with the existing legal framework, the doctrine of military necessity may still legitimize rigorous measures designed to expedite the cessation of hostilities, under contemporary international humanitarian law and modern state practice. 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. This is why, during armed conflict, the issue of military necessity, as well as military advantage, is a fundamental consideration.

There is a strict prohibition of the extraterritorial displacement of protected persons beyond the perimeter of the occupied territory despite any prevailing legal framework which authorizes an Occupying Power to mandate the comprehensive or localized evacuation of individuals.[20] When such relocation is demonstrably unavoidable, it is seen as an exception. Irrespective of circumstances, a categorical prohibition governs any transfer into foreign states. Upon the cessation of hostilities, all uprooted individuals must be repatriated to their original places of residence.

[14] Ibid, 218

[15] Alice Farmer, 'Non-Refoulement and Jus Cogen: The Quest for an Absolute Right' (2020) 24 (3) *International Journal of Human Rights*, 430

[16] Guy S Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (4th edn, Oxford University Press (2021) 122

[17] Ibid, 137

[18] Ibid, 139

[19]Sir Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law* (4th edn, Oxford University Press (2023) 289.

[20] Rebecca M Wallacey, 'The Absolute Nature and Structure of Non-Refoulement Under the Treaty against Torture' (2021) 13(1) *Journal of International Humanitarian Legal Studies* 4, 8

The Quandary and Necessity of Human Welfare and Forced Resettlement

It is now settled that it is under exceptional circumstances of humanitarian necessity or imperative military exigency, consistent with the codification of international humanitarian law governing armed conflict, that involuntary transfer of civilian populations may be permissible.[21] As a result, the timely evacuation of non-combatants is widely recognized as a critical means of operationalizing humanitarian protection. In other words, while military necessity may dictate operational priorities, belligerents remain under an absolute legal obligation to take concrete precautionary measures, ensuring that the civilian population is neither exposed to superfluous injury nor left acutely vulnerable to the hazards of warfare.[22]

In other words, the displacement and evacuation of non-combatants from areas of active hostility constitute a core operational mechanism for implementing the principles of humanitarian protection during armed conflict.[23] While the doctrine of military necessity frequently dictates tactical priorities and operational primacy on the battlefield, it does not operate in a legal vacuum, nor does it override the civilian protection mandate. On the contrary, under established tenets of International Humanitarian Law, strategic exigencies are inherently bounded by the principle of proportionality and the absolute obligation to take feasible precautions in attack and defense. [24]

Consequently, belligerent parties bear an affirmative, non-delegable duty to implement concrete, verifiable safeguards whenever military maneuvers necessitate the evacuation or temporary displacement of a population.[25] Operational commanders must ensure that evacuated civilians are not only removed from immediate kinetic danger but also systematically insulated from subsequent systemic vulnerabilities. There is a need to ensure that the act of evacuation fulfills its protective legal purpose rather than exacerbating civilian peril, which requires the comprehensive provision of basic administrative guarantees, including adequate security, nutrition, hygiene, and shelter.[26]

One issue is how to determine the legal entitlements of Civilianized Former Combatants. Amid international or non-international armed conflicts, compounding humanitarian crises typically precipitate substantial cross-border displacement of populations seeking refuge in stable jurisdictions. Under established principles of international law, receiving states are obligated to grant entry, extend comprehensive protections, and ensure absolute compliance with fundamental human rights instruments.

Even if exclusion clauses under the 1951 Convention might otherwise apply, the asylum applications of former combatants must not be summarily excluded solely on the basis of their prior military status, provided they have undergone verifiable disarmament and demobilization. The UNHCR instruments codify a universal right to extraterritorial protection for all refugees, irrespective of their geographic location. This institutional mandate rests on the recognition that refugees' regions of origin are remote, landlocked conflict zones, far from the state's sovereign borders.[27]

This hypothesis is firmly grounded in established and settled legal precedent. Indeed, provided that such internal relocation did not compromise the host state's national security interests. The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa explicitly incentivized asylum states to resettle refugees at a secure distance from the borders of their countries of origin. These considerations underscore a multi-tiered framework of legal and moral obligations. The state of origin bears a primary, non-derogable responsibility toward its displaced population, a duty mirrored by the asylum state upon entry.[28]There are numerous justifications for these established obligations and duties anchored in the OAU Convention on Specific Aspects of Refugee Problems in Africa. Primarily, the granting of asylum to refugees must be treated as a purely humanitarian act. Furthermore, a strict demarcation exists between civilian populations and combatants, alongside a parallel distinction between civilian and military targets. Unified action is required to guarantee the protection of civilians from hostile military engagements. Implementing this involves strategically positioning refugee camps at a safe distance from military installations and combat zones.

Consequently**,** the international community's obligation to ensure that refugees are exempt from any form of persecution or hostile incursions by armed actors**,** actions which inherently imperil international peace and security as reaffirmed by the Security Council, is commendable. Member States are exhorted by the UNHCR Executive Committee to cooperate and work with the High Commissioner to perpetuate the civilian and humanitarian integrity of asylum. These mandate*s include* delineating secure camp parameters, segregating combatants from civilian populations**,** and settling refugees in secure zones. Fundamentally, host States are reminded to safeguard their primary international obligations to guarantee the safety of civilian populations and protect the humanitarian institution of asylum.

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[21] Tihomir E. Sabchev, 'The Principle of Non-Refoulement Under International Law: Its Inception and Evolution' (2016) 17(2) *Journal of International Migration and Integration* 411

[22] Ibid, 416

[23] Seline Trevisanute, 'The Principle of Non-Refoulement and the De-Territorialization of Border Control at Sea' (2013) 26(3) *Leiden Journal of International Law* 501

[24] Ibid, 512

[25] Aoife Duffyie, 'Expulsion to Face Torture? Non-Refoulement in International Law' (2008) 20(3) *International Journal of Refugee Law* 371

[26] Ibid, 376

[27] Rebecca Wallacey, 'The Absolute Nature and Texture of Non-Refoulement Under the Treaty against Torture' (2021) 13(1) *Journal of International Humanitarian Legal Studies* 41

[28] Ibid, 45

Implementing these protections requires a bifurcated legal architecture. First, high contracting parties must formalize the delineation of transparent, mutually recognized security zones, as a prerequisite for numerous justifications for these established obligations and duties. Second, one way to insulate humanitarian enclaves from destabilizing security vulnerabilities is for States to rigorously operationalize the principle of the civilian character of asylum by separating armed combatants from mass population movements.

There is a concurrent obligation to ensure public order and internal policing beyond traditional paradigms of State-centric military security. There are high rates of crime, banditry, and violence which frequently jeopardize the human security of displaced persons, host communities, and humanitarian personnel in the refugee camps and settlements created by mass population displacements. These threats are particularly acute in host states where refugee populations are susceptible to political manipulation or where geopolitical dynamics and demographic friction incite local populations to foment instability.

Robust collaboration is needed from developed States in conjunction with the territorial sovereign and the broader international community to mitigate these systemic risks. The United Nations Security Council may authorize peacekeeping operations when a sudden, large influx of asylum seekers threatens to trigger local civil unrest or severe destabilization due to destitute living conditions. Civilian police elements and multinational military contingents, in coordination with these Missions, are mandated to restore public safety and peace.

6. Conclusion

Accordingly, established norms must continue to guarantee the legal protection of these populations under international humanitarian law irrespective of the specific instruments delineating refugee status.[29] The foundational baseline remains the definition codified in the 1951 Convention and its 1967 Protocol Relating to the Status of Refugees. International Humanitarian Law and international human rights law have an all-encompassing mandate on the protection of individuals during armed conflict in spite of their doctrinal divergence. Consequently, these two legal regimes operate symbiotically and mutually reinforce one another.[30] The rule of non-refoulement is a fundamental norm of both general and customary international law, which maintains absolute legal primacy over competing state interests, even during periods of armed conflict and crises irrespective of the geopolitical context.[31] In other words, notwithstanding the exigencies of warfare, the customary international law obligation of non-refoulement operates as a superior legal norm that necessarily supersedes all countervailing state interests.[32]

The architectonics of international humanitarian law reaffirms a non-derogable normative hierarchy and structural architecture. As a result, assertions and declarations of operational military necessity or asymmetric tactical superiority cannot abrogate its overriding authority.[33] Within this legal structure, the status of refugees mandates absolute immunity from severe material deprivation or any treatment that violates the threshold of jus cogens protections against degrading and dehumanizing conduct. Because displaced populations are inherently vulnerable non-combatants, lacking domestic sovereign protection, they occupy a unique status that triggers heightened safeguards under the core principles of distinction and humanity.

Accordingly, belligerents are legally bound to give full effect to both the codified provisions and the underlying object and purpose of the Geneva Conventions. This protective mantle remains resilient even when structural upheavals temporarily affect the civilian population's baseline civil rights. As previously noted, armed conflict creates distinct legal circumstances that require robust legal safeguards. Ineligibility for Prisoner of War status does not ipso facto preclude individuals from refugee protection. This protective framework extends to displaced populations, former combatants, and individuals who remain uniformed or armed.

In other words, hostilities give rise to complex legal frameworks that demand the application of appropriate international safeguards. Being separated from the Third Geneva Convention regime should not bar refugee status, so long as the claimants meet the statutory requirements in line with the 1951 Refugee Convention. Notably, this principle encompasses displaced persons, ex-combatants, and individuals still bearing arms or wearing military service stripes. Individuals fall under the protective ambit of humane treatment prescribed by the UNHCR and the ICRC immediately upon their disarmament, disbandment, demilitarization, and decommissioning, and upon subsequent status determination.

[29] Cornelis Kees Wouters, 'International Refugee Law and International Humanitarian Law: Partners in Ensuring Protection in Situations of Armed Conflict' (2016) 19(2) *Journal of International Humanitarian Legal Studies* 115

[30] Incent Chetail, 'Are Refugee Rights Human Rights? An Unorthodox Questioning of the Relations between International Refugee Law and International Human Rights Law' (2014) 27(1) *Human Rights Law Review* 19

[31] Ibid, 23

[32] Ibid, 26

[33] Helen Duffyia, 'The War on Terror and the Framework of International Law' (2015) 30(2) *Leiden Journal of International Law* 317.