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REFUGEE PROTECTION DURING ARMED CONFLICTS: BRIDGING THE GAP BETWEEN INTERNATIONAL HUMANITARIAN LAW AND REFUGEE LAW

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ABSTRACT

Armed conflicts are among the major causes of forced displacement, compelling millions of people to flee their homes in search of safety and protection. Refugees affected by armed conflicts face multiple risks, including violence, persecution, forced displacement, family separation, trafficking, sexual violence, lack of humanitarian assistance, and the denial of access to asylum. International Humanitarian Law (IHL) and International Refugee Law provide important legal protections to address these challenges. However, the interaction between these two legal regimes remains complex and gaps in implementation continue to affect the effective protection of refugees.

International Humanitarian Law, particularly the Geneva Conventions of 1949 and their Additional Protocols, primarily seeks to protect civilians and persons who are no longer participating in hostilities during armed conflicts. International Refugee Law, particularly the 1951 Convention relating to the Status of Refugees and the 1967 Protocol, establishes specific rights and safeguards for refugees, including the fundamental principle of non-refoulement, which prohibits returning a refugee to a territory where their life or freedom would be threatened. Despite their complementary objectives, differences in scope, implementation, and enforcement may leave refugees vulnerable during different stages of displacement.

This paper critically examines the relationship between IHL and International Refugee Law in protecting refugees during armed conflicts. It identifies major legal and practical gaps relating to forced displacement, access to asylum, humanitarian assistance, border

protection, and non-refoulement. The paper also examines the challenges faced by vulnerable groups, particularly women and children, and considers India's approach to refugee protection. Finally, it proposes measures to strengthen coordination between the two legal regimes and ensure effective, rights-based protection for refugees affected by armed conflicts.

Keywords: Refugees, Armed Conflict, International Humanitarian Law, International Refugee Law, Geneva Conventions.

CHAPTER I

INTRODUCTION AND CONCEPTUAL FRAMEWORK

1.1 Background and Concept of Refugee Protection

Refugee protection has become an important concern of international law because armed conflicts, persecution, violence, and serious human rights violations force people to leave their homes. A refugee is generally understood as a person who is outside their country of nationality and is unable or unwilling to return because of a well-founded fear of persecution. The **1951 Refugee Convention** and its **1967 Protocol** constitute the principal international legal instruments governing refugee protection. One of the most important principles is **non-refoulement**, which prohibits returning a refugee to a place where their life or freedom would be threatened. Refugee protection therefore involves ensuring safety, dignity, access to asylum, basic rights, and protection from forced return.

1.2 Armed Conflict and Forced Displacement

Armed conflict is one of the major causes of forced displacement. During international and non-international armed conflicts, civilians may be compelled to leave their homes because of attacks, persecution, destruction of property, food insecurity, or fear of violence. Such displacement may create refugees who cross international borders or internally displaced persons who remain within their own country. International Humanitarian Law (IHL), particularly the **Geneva Conventions of 1949** and their Additional Protocols, seeks to protect civilians during armed conflicts. IHL prohibits certain forms of forced displacement and requires parties to conflicts to respect humanitarian principles. Refugees may therefore require protection both as displaced persons and as civilians affected by armed conflict.

1.3 Relationship between International Humanitarian Law and Refugee Law

IHL and International Refugee Law are separate but complementary legal regimes. IHL primarily regulates conduct during armed conflict and protects civilians and other persons affected by hostilities, while Refugee Law focuses specifically on the status, rights, and protection of refugees. Their common objective is the protection of human dignity. During armed conflicts, refugees may benefit from protections under both regimes. However, differences in legal scope, implementation, and enforcement can create protection gaps. Strengthening coordination between IHL and Refugee Law is therefore essential to ensure effective protection against forced displacement, refoulement, violence, and other violations.

CHAPTER II

INTERNATIONAL LEGAL FRAMEWORK FOR REFUGEE PROTECTION

2.1 1951 Refugee Convention and 1967 Protocol

The principal international legal framework for refugee protection is the **Convention Relating to the Status of Refugees, 1951**. It defines a refugee as a person who, owing to a well-founded fear of persecution based on race, religion, nationality, membership of a particular social group, or political opinion, is outside their country and unable or unwilling to seek its protection.¹ The Convention establishes important rights relating to legal status, employment, education, public assistance, and freedom of movement. The **1967 Protocol Relating to the Status of Refugees** removed the original temporal and geographical limitations of the 1951 Convention and thereby extended its application to refugees worldwide.²

2.2 Principle of Non-Refoulement and Rights of Refugees

The principle of **non-refoulement** is the foundation of international refugee protection. Article 33 of the 1951 Convention prohibits states from returning a refugee to a territory where their life or freedom would be threatened.³ Refugees are also entitled to fundamental rights and humane treatment, including access to courts, education, employment, and identity

¹ Convention Relating to the Status of Refugees art. 1(A)(2), July 28, 1951, 189 U.N.T.S. 137.

² Protocol Relating to the Status of Refugees art. I, Jan. 31, 1967, 606 U.N.T.S. 267.

³ Convention Relating to the Status of Refugees, *supra* note 1, art. 33.

documentation. The principle becomes particularly significant during armed conflicts, when refugees may face persecution, violence, and forced return. Although exceptions exist under Article 33(2), the principle remains a central safeguard against arbitrary removal.

2.3 Role of UNHCR in Refugee Protection

The **United Nations High Commissioner for Refugees (UNHCR)** was established in 1950 to provide international protection and humanitarian assistance to refugees.⁴ Its functions include promoting durable solutions such as voluntary repatriation, local integration, and resettlement. UNHCR also assists states in developing refugee legislation, determining refugee status, providing emergency assistance, and monitoring compliance with international protection standards.⁵

2.4 International and Regional Refugee Protection Mechanisms

Refugee protection is supported by international and regional mechanisms. The **African Union Convention Governing the Specific Aspects of Refugee Problems in Africa** and the **Cartagena Declaration on Refugees** provide broader approaches to refugee protection in their respective regions.⁶ These mechanisms complement the 1951 Convention by addressing mass displacement, generalized violence, and other circumstances that may produce refugees. Together, international and regional frameworks strengthen legal protection and promote cooperation among states.

CHAPTER III

PROTECTION OF REFUGEES UNDER INTERNATIONAL HUMANITARIAN LAW

3.1 Geneva Conventions and Protection of Civilians

International Humanitarian Law (IHL) provides protection to civilians affected by armed conflict, including refugees who are present in a state involved in hostilities. The **Fourth**

⁴ Statute of the Office of the United Nations High Commissioner for Refugees, G.A. Res. 428(V), annex, U.N. Doc. A/RES/428(V) (Dec. 14, 1950).

⁵ See generally U.N. High Comm'r for Refugees, The 1951 Refugee Convention and 1967 Protocol Relating to the Status of Refugees (2011).

⁶ Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45; Cartagena Declaration on Refugees, Nov. 22, 1984, Annual Report of the Inter-American Commission on Human Rights 1984–85, OEA/Ser.L/V/II.66, doc. 10, rev. 1.

Geneva Convention of 1949 is particularly important because it protects civilians who find themselves in the hands of a party to the conflict of which they are not nationals.⁷ Refugees may therefore receive protection as civilians, in addition to the protection available under international refugee law. Article 44 of the Fourth Geneva Convention provides special consideration for refugees who may not enjoy the protection of any government.⁸

3.2 Forced Displacement and Prohibition of Deportation

Forced displacement is a serious humanitarian consequence of armed conflict. IHL generally prohibits compelling civilians to leave their places of residence unless their security or imperative military reasons require evacuation.⁹ In occupied territories, Article 49 of the Fourth Geneva Convention prohibits individual or mass forcible transfers and deportations from occupied territory, subject to narrowly defined exceptions.¹⁰ Additional Protocol II also prohibits ordering the displacement of the civilian population for reasons related to the conflict, subject to limited exceptions.¹¹ These rules seek to prevent displacement from being deliberately used as a method of warfare or persecution.

3.3 Humanitarian Assistance and Protection of Vulnerable Groups

Refugees and displaced civilians are entitled to humane treatment and protection from violence, torture, collective punishment, and other forms of degrading treatment.¹² IHL also requires parties to armed conflicts to facilitate humanitarian relief for civilian populations in need.¹³ Particular attention must be given to vulnerable persons, including women, children, elderly persons, and persons with disabilities. Additional Protocol I specifically recognizes refugees and stateless persons as protected persons in certain circumstances.¹⁴

3.4 Protection During Occupation and Armed Conflict

Additional Protocol I, Article 73, provides that persons who were refugees or stateless

⁷ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 4, Aug. 12, 1949, 75 U.N.T.S. 287.

⁸ Id. art. 44.

⁹ Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts art. 17, June 8, 1977, 1125 U.N.T.S. 609.

¹⁰ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 1, art. 49.

¹¹ Protocol Additional to the Geneva Conventions of Aug. 12, 1949, *supra* note 3, art. 17.

¹² Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 1, arts. 27, 32.

¹³ Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 70, June 8, 1977, 1125 U.N.T.S. 3.

¹⁴ Id. art. 73

persons before the beginning of hostilities shall be treated as protected persons under the Fourth Geneva Convention without adverse distinction.¹⁵ Thus, IHL complements refugee law by protecting refugees against the dangers arising from armed conflict. Effective implementation of these rules is essential to prevent displacement, protect human dignity, and ensure humanitarian assistance during armed conflicts. (ICRC).

CHAPTER IV

CHALLENGES AND LEGAL GAPS IN REFUGEE PROTECTION

4.1 Gaps between International Humanitarian Law and Refugee Law

Although International Humanitarian Law (IHL) and International Refugee Law are complementary, differences in their scope and application can create protection gaps. IHL primarily operates during armed conflicts and protects civilians and other persons affected by hostilities, while refugee law focuses on persons who cross international borders because of persecution. Refugees caught in conflict situations may therefore require protection under both regimes. Article 73 of Additional Protocol I expressly recognizes refugees and stateless persons as protected persons under the Fourth Geneva Convention.¹⁶ However, differences in enforcement and state practice may prevent these protections from being fully realized.

4.2 Access to Asylum, Border Restrictions and Refoulement

One of the major challenges is obtaining safe access to territory and asylum procedures. During armed conflicts, states may impose border restrictions because of national-security concerns or large-scale refugee movements. Such restrictions can expose refugees to return, persecution, or other serious harm. The principle of **non-refoulement**, contained in Article 33 of the 1951 Refugee Convention, prohibits returning refugees to territories where their life or freedom would be threatened.¹⁷ UNHCR considers non-refoulement a fundamental protection principle and emphasizes that people seeking protection should not simply be pushed back at borders.¹⁸

¹⁵ Id.

¹⁶ Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts art. 73, June 8, 1977, 1125 U.N.T.S. 3.

¹⁷ Convention Relating to the Status of Refugees art. 33, July 28, 1951, 189 U.N.T.S. 137.

¹⁸ U.N. High Comm'r for Refugees, Access to Territory and Non-Refoulement, UNHCR Emergency Handbook.

4.3 Protection of Women and Children During Armed Conflicts

Women and children are particularly vulnerable during displacement and armed conflict. They may face sexual violence, trafficking, exploitation, family separation, and recruitment by armed groups. IHL provides special protection to civilians and requires humane treatment without adverse distinction.¹⁹ However, the practical implementation of these protections remains difficult where humanitarian access is restricted or institutions are weak. Refugee children may additionally face difficulties in accessing education, healthcare, documentation, and family reunification.

4.4 Accountability and International Responsibility-Sharing

Another significant challenge is the unequal distribution of responsibility for refugee protection. Countries neighbouring conflict zones frequently receive large numbers of displaced persons and may face considerable economic and social pressures.²⁰ Effective protection therefore requires international cooperation through financial assistance, resettlement, humanitarian aid, and technical support. Stronger accountability mechanisms are also necessary to address violations such as unlawful displacement, refoulement, and attacks against civilians. Bridging these legal and practical gaps is essential for ensuring that refugee protection remains effective during armed conflicts.

CHAPTER V

FINDINGS AND CONCLUSION

5.1 Findings

The study finds that **International Humanitarian Law (IHL) and International Refugee Law provide complementary protection to refugees affected by armed conflicts**, but significant gaps remain in their practical implementation. The 1951 Refugee Convention and the 1967 Protocol establish the basic legal status and rights of refugees, while the Geneva Conventions and Additional Protocols protect civilians and other persons affected by armed conflicts.

A major finding is that the **principle of non-refoulement** remains one of the most important safeguards for refugees. However, border closures, restrictive asylum

¹⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 27, 32, Aug. 12, 1949, 75 U.N.T.S. 287.

²⁰ U.N. High Comm'r for Refugees, Implementation of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees—Some Basic Questions.

procedures, national-security concerns, and forced returns can prevent refugees from effectively enjoying this protection. Refugees fleeing armed conflicts may also experience violence, exploitation, trafficking, family separation, and inadequate access to food, healthcare, shelter, and education.

The study further finds that **women and children require special protection** because they are particularly vulnerable to sexual violence, trafficking, exploitation, and recruitment by armed groups. Although international law provides protection, enforcement remains inconsistent, particularly during prolonged conflicts and humanitarian emergencies.

Another important finding is the lack of **equitable international responsibility-sharing**. States neighbouring conflict zones frequently receive large refugee populations and may lack sufficient resources to provide long-term protection. Greater international cooperation, humanitarian assistance, resettlement opportunities, and financial support are therefore necessary.

5.2 conclusion

There is a need for stronger coordination between IHL and Refugee Law. States should strengthen asylum procedures, respect non-refoulement, facilitate humanitarian assistance, and prevent unlawful forced displacement. International organisations should improve protection mechanisms for vulnerable refugees. States should also cooperate through financial assistance, resettlement, and other responsibility-sharing measures.

Refugee protection during armed conflict requires more than the existence of international legal rules. **Effective implementation, international cooperation, accountability, and respect for human dignity are essential.** Bridging the gap between IHL and Refugee Law can provide stronger and more comprehensive protection to refugees and ensure that displacement caused by armed conflict does not result in further violations of fundamental human rights.