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REFUGEES AND CONFLICTS: 74 YEARS AFTER GENEVA, WHERE DO WE STAND?

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ABSTRACT: As the 74th anniversary of the 1951 Geneva Convention on the Status of Refugees approaches in 2025, this article examines the evolution of the relationship between international refugee law (IRL) and international humanitarian law (IHL) in situations of armed conflict since 1951. The discussion highlights the significant progress made globally in understanding how these two legal systems interact, particularly in contexts where armed conflict exacerbates the plight of refugees. Key milestones in legal frameworks and case law illustrate a growing recognition of the necessity for cooperation between IRL and IHL to safeguard the rights of displaced individuals. Despite these advancements, considerable challenges remain in fully aligning their applications. These challenges include discrepancies in definitions of refugee status, complexities of enforcement, and varying interpretations of obligations under both legal regimes. Additionally, contemporary issues such as regional conflicts and increasing numbers of forcibly displaced people underscore the urgency of refining these legal frameworks. The article ultimately advocates for a more integrated approach to enhance the comprehensive protection of refugees caught in armed conflicts, emphasising the importance of collaboration between legal frameworks to effectively address the evolving needs of displaced populations.

KEYWORDS: the 1951 Geneva Convention on the Status of Refugees; International Refugee Law (IRL); Refugees; Internally Displaced Persons; Armed Conflicts; Civilian Persons; Retrospective View; Complementarism; Systemic Interpretation.

REFUGIADOS Y CONFLICTOS: 74 AÑOS DESPUÉS DE GINEBRA, ¿EN QUÉ PUNTO NOS ENCONTRAMOS?

RESUMEN: A medida que se acerca el 74º aniversario de la Convención de Ginebra de 1951 sobre el Estatuto de los Refugiados en 2025, este artículo examina la evolución de la relación entre el Derecho internacional de los refugiados (DIR) y el Derecho internacional humanitario (DIH) en situaciones de conflicto armado desde 1951. El debate pone de relieve los importantes avances logrados a escala mundial en la comprensión de cómo interactúan estos dos ordenamientos jurídicos,

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especialmente en contextos en los que los conflictos armados agravan la difícil situación de los refugiados. Los principales hitos en los marcos jurídicos y la jurisprudencia ilustran el creciente reconocimiento de la necesidad de cooperación entre el DIR y el DIH para salvaguardar los derechos de las personas desplazadas. A pesar de estos avances, sigue habiendo problemas considerables para armonizar plenamente sus aplicaciones. Entre ellos se encuentran las discrepancias en las definiciones del estatuto de refugiado, la complejidad de su aplicación y las distintas interpretaciones de las obligaciones derivadas de ambos regímenes jurídicos. Además, cuestiones contemporáneas como los conflictos regionales y el creciente número de desplazados forzosos subrayan la urgencia de perfeccionar estos marcos jurídicos. En última instancia, el artículo aboga por un enfoque más integrado para mejorar la protección integral de los refugiados atrapados en conflictos armados, haciendo hincapié en la importancia de la colaboración entre los marcos jurídicos para abordar eficazmente las necesidades cambiantes de las poblaciones desplazadas.

PALABRAS CLAVE: Convención de Ginebra de 1951 sobre el Estatuto de los Refugiados; Derecho Internacional de los Refugiados (DIR); Refugiados; Desplazados internos; Conflictos armados; Personas civiles; Visión retrospectiva; Complementarismo; Interpretación sistémica.

RÉFUGIÉS ET CONFLITS: 74 ANS APRÈS GENÈVE, OÙ EN SOMMES-NOUS?

RÉSUMÉ: À l'approche du 74e anniversaire de la Convention de Genève de 1951 relative au statut des réfugiés en 2025, cet article examine l'évolution de la relation entre le droit international des réfugiés (DIR) et le droit international humanitaire (DIH) dans les situations de conflit armé depuis 1951. La discussion met en évidence les progrès significatifs réalisés au niveau mondial dans la compréhension de l'interaction entre ces deux systèmes juridiques, en particulier dans les contextes où les conflits armés exacerbent le sort des réfugiés. Les étapes clés des cadres juridiques et de la jurisprudence illustrent une reconnaissance croissante de la nécessité d'une coopération entre le droit international des réfugiés et le droit international humanitaire pour sauvegarder les droits des personnes déplacées. Malgré ces avancées, il reste des défis considérables à relever pour aligner pleinement leurs applications. Il s'agit notamment des divergences dans les définitions du statut de réfugié, de la complexité de la mise en œuvre et des interprétations variables des obligations découlant des deux régimes juridiques. En outre, des problèmes contemporains tels que les conflits régionaux et le nombre croissant de personnes déplacées de force soulignent l'urgence d'affiner ces cadres juridiques. L'article plaide finalement en faveur d'une approche plus intégrée pour renforcer la protection globale des réfugiés pris dans des conflits armés, en soulignant l'importance de la collaboration entre les cadres juridiques pour répondre efficacement aux besoins changeants des populations déplacées.

MOT CLES: Convention de Genève de 1951 relative au statut des réfugiés; droit international des réfugiés (DIR); réfugiés; personnes déplacées à l'intérieur de leur propre pays; conflits armés; personnes civiles; vision rétrospective; complémentarité; interprétation systémique.

I. INTRODUCTION

More than seventy years after the Geneva Convention of 1951 on the status of refugees (hereinafter the 1951 Geneva Convention), the interplay between International Refugee Law (IRL) and International Humanitarian Law (IHL) remains vital. Its importance has only increased in today's world,

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where armed conflicts are a leading cause of mass displacement[2]. As wars continue to drive millions from their homes, the need to understand how these two legal frameworks intersect is crucial for ensuring the protection of displaced populations and upholding states' humanitarian responsibilities.

Over time, these two legal regimes have developed independently, each with its distinct sources, institutions, and guiding principles[3]. Despite their differences, they share several common normative characteristics that highlight their interconnectedness. Firstly, both frameworks are primarily framed as obligations of states rather than as individual rights, emphasising the responsibilities of governments in protecting vulnerable populations. Secondly, a fundamental aspect of both regimes is the traditional distinction between nationals and non-nationals, which plays a crucial role in identifying and defining the relevant norms applicable to refugees and displaced persons. Finally, both regimes operate within a decentralised implementation framework that lacks robust international oversight mechanisms, making it challenging to ensure compliance and protect those in need.

Throughout the year 2024, armed conflicts around the globe have continued to inflict immense suffering on refugees and displaced individuals. In September, Lebanon, now embroiled in its third conflict with Israel, joined a growing list of nations grappling with armed conflict, which includes Yemen, Syria, Ethiopia, the Democratic Republic of Congo, Myanmar, Ukraine, Israel, Russia, Palestine and Colombia. Once again, headlines have been filled with harrowing stories of massive displacement, civilian casualties, and the destruction of homes, communities, schools, hospitals, and essential infrastructure. The sheer scale of these losses is overwhelming, not only in terms of numbers but also because of the profound human tragedy they represent. In an era where climate change poses an existential threat and the

[2] Most displacements, whether they occur externally or internally, are caused by violence and armed conflict. Furthermore, see World Bank, "Strategy for Fragility, Conflict and Violence, 2020-2025", available at: https://documents1.worldbank.org/curated/ar/844591582815510521/pdf/World-Bank-Group-Strategy-for-Fragility-Conflict-and-Violence-2020-2025.pdf, who also emphasises that, regrettably, significant conflicts across the globe have increased threefold since 2010, resulting in a greater number of individuals facing risks associated with armed conflict and the ensuing violence.

[3] Amplius, see Chetail, V., "Armed Conflict and Forced Migration: A Systemic Approach to International Humanitarian Law, Refugee Law and Human Rights Law", in Clapham, A. and Gaeta, P., (eds.), *The Oxford Handbook of International Law in Armed Conflict*, Oxford, 2014, p. 702.

world's resources are more vital than ever, the intentional destruction of life and infrastructure —particularly affecting refugees crossing borders—feels even more heartbreaking and urgent, underscoring the necessity for effective legal protections and humanitarian responses.

In light of such devastation and given that the provisions of the Geneva Conventions of 1949[4], including those of the Fourth Convention relative to the Protection of Civilian Persons in Time of War[5], have to date been insufficient to ensure the protection of refugees and internationally displaced persons —who should be granted a status equally recognised by all parties to the conflict, including their state of origin— it can be tempting to lose faith in the international legal system. However, while it is important to acknowledge its shortcomings, I believe it is equally necessary to resist the urge to solely criticise the international legal frameworks in place. Instead, we should focus on enhancing and refining these legal tools to better meet the challenges we face. For those working on issues related to armed conflict, this means intensifying efforts to ensure that the laws intended to prevent atrocities be both clear and capable of being enforced effectively. This would help ensure that violations by those engaged in conflict are met with appropriate repercussions.

It is this perspective that has led the present author to explore the intricate and often tense relationship between International Refugee Law (IRL) and International Humanitarian Law (IHL) in situations of armed conflict. This year marks the 74th anniversary of the 1951 Geneva Convention on the Status of Refugees, a landmark treaty that first brought to light —but did not definitively resolve— the question of whether IRL and IHL can effectively operate in tandem during times of war. The ongoing relevance of this issue underscores the need for a deeper examination of how these two legal frameworks interact and the challenges that arise when conflict and displacement intersect. Marking this milestone offers a timely opportunity

[4] The four Geneva Conventions of 1949, together with their 1977 Additional Protocols, form the foundation of international humanitarian law and have been ratified or acceded to by 189 States. In comparison, 140 States are parties to the 1951 Refugee Convention and/or its 1967 Protocol.

[5] A key component of this protection is Article 44 of the Fourth Geneva Convention, which specifies that Detaining Powers should not treat refugees who do not actually receive protection from any government as enemy aliens. This provision is further supported by Article 73 of Additional Protocol I, which states that refugees must be regarded as protected persons in all circumstances and without any adverse distinction.

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to reflect on the progress made since the Convention's adoption. Although the theoretical relationship between International Refugee Law (IRL) and International Humanitarian Law (IHL) is much better understood today, significant challenges remain unresolved. Key questions persist, such as when these legal regimes cease to apply —whether to determine when someone is no longer considered a refugee or when it is truly safe for civilians to return home. Equally important is how IRL should continue to engage with and adapt to IHL principles as conflicts evolve, ensuring that both frameworks work together to provide the necessary protection to those affected by war and displacement.

II. APPLICATION OF INTERNATIONAL REFUGEE LAW TO ARMED CONFLICT: A RETROSPECTIVE VIEW

To establish a foundation for this analysis, the present article begins by outlining two different perspectives on the relationship between international refugee law (IRL) and international humanitarian law (IHL). While the 1951 Geneva Convention on the status of refugees might suggest that by 1951 there was broad consensus that IRL would apply in armed conflict situations, in reality, the idea was highly contentious 74 years ago, sparking intense debate over how IRL and IHL should interact[6]. To capture the unsettled nature of academic discourse in the 1950s, the present article identifies three principal schools of thought: separatist, complementarist, and integrationist. In this context, it first explains that scholars from the complementarist school regard International Refugee Law (IRL) and International Humanitarian Law (IHL) as distinct yet mutually reinforcing legal frameworks. Both frameworks are driven by a shared commitment to safeguarding the dignity of refugees and displaced persons, positioning this perspective as a middle ground between the two more extreme positions of the separatist and integrationist schools.

At one end of the spectrum, proponents of the integrationist approach advocate for a controversial merging of International Humanitarian Law (IHL) and International Refugee Law (IRL). This viewpoint is based on the

[6] Indeed, it is generally acknowledged that global and regional refugee protection regimes continue to be relevant during armed conflicts. Amplius, see e.,g, Young, M.A., (ed.), *Regime interaction in International Law: Facing Fragmentation*, Cambridge, 2012; Grahl-Madsen, A., *Commentary on the Refugee Convention of 1951*, Geneva, 1997, p. 4.

premise that an integrated legal framework is better equipped to tackle the complexities involved in safeguarding refugees during armed conflicts. It acknowledges that both refugee law and international humanitarian law possess inherent strengths and weaknesses, particularly in their reliance on field-based protection and assistance mechanisms. Furthermore, the protracted nature of certain displacement situations, which persist without resolution through one of the "traditional" refugee solutions —return, resettlement in a third country, or local integration— highlights the urgent need to rethink or develop international humanitarian law that is applicable in these circumstances. A principal argument supporting the integrationist viewpoint is that, unlike many other international human rights treaties, the 1951 Refugee Convention does not delineate a specific set of core rights that cannot be waived under any circumstances[7].

This absence of clearly defined, non-derogable rights raises significant concerns about the vulnerability of refugees, especially during armed conflicts when their situation may become precarious. Furthermore, a closely related argument posits that the obligations designated to specific groups, a hallmark of International Humanitarian Law (IHL), may offer a robust framework for the protection of refugees.

The notable absence of clearly defined protections raises significant concerns regarding the vulnerability of refugee rights, especially during periods of armed conflict or war. Without explicit legal guarantees, refugees may find themselves exposed to violations of their rights, as states may prioritise military objectives over humanitarian considerations. This situation underscores the urgent need for a more comprehensive legal framework that not only reinforces the existing protections under the 1951 Refugee Convention but also aligns these protections with the obligations outlined in International Humanitarian Law (IHL). Such an alignment is essential for creating a cohesive legal structure that can effectively address the unique vulnerabilities faced by refugees in conflict zones.

The current legal gap raises the troubling possibility that the rights and protections afforded to refugees may be suspended or inadequately upheld in these critical contexts. Without a unified framework, refugees may be left

[7] Incidentally, it is worth noting that the Refugee Convention is, in many respects, merely a basic statement of States' protection obligations and was never intended to be a comprehensive document.

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in a legal limbo, where their rights are neither fully protected by IHL nor adequately recognised by the 1951 Convention. As a result, individuals who are already in precarious situations may find themselves further marginalised and facing heightened risks of violence, exploitation, and other violations of their fundamental rights.

This marginalisation can lead to a cycle of vulnerability, where the lack of legal protections exacerbates their already dire circumstances. Therefore, the establishment of an integrated legal framework is not merely an academic exercise; it is a crucial step toward ensuring that refugees receive the comprehensive protection they are entitled to, safeguarding their dignity and human rights during tumultuous periods of armed conflict and displacement.

The potential implications of this legal ambiguity are profound: without a robust framework that explicitly safeguards refugee rights during times of conflict, vulnerable populations risk being left without the necessary protections to ensure their safety and dignity. Consequently, the integrationist approach posits that a comprehensive legal schema that intertwines IHL and IRL would not only enhance the protection of refugees but also foster a more cohesive understanding of their rights, ensuring that they are upheld even amidst the complexities of warfare.

Additionally, proponents of this approach highlight that Article 44 of the Fourth Geneva Convention serves as a significant precedent for the inclusion of Article 8 in the 1951 Refugee Convention, thereby establishing a critical link between humanitarian law and refugee law. This connection reinforces the notion that the protections afforded under IHL should inherently extend to refugees, particularly in times of conflict, when their situations often become precarious. The interdependence of these legal frameworks highlights the necessity for an integrated approach, as refugees frequently find themselves caught in the crossfire of armed conflict and are thus subject to both humanitarian and refugee law. This connection reinforces the idea that protections afforded under IHL should extend to refugees, especially during conflicts, as their situation often becomes precarious under such circumstances.

Some scholars within this integrationist camp have gone so far as to argue that IRL should be considered a subset of IHL, suggesting that the principles and protections of humanitarian law inherently encompass the rights and needs

of refugees[8]. By advocating for this perspective, they aim to create a more cohesive legal framework that addresses the complexities faced by displaced persons during armed conflicts, ultimately promoting a more comprehensive understanding of their rights and protections[9].

On the opposite end, the separatist camp firmly maintains that international law (IRL) and international humanitarian law (IHL) are fundamentally distinct legal systems that should not be merged. They argue that any attempt to combine these frameworks would create significant confusion and undermine their respective functions. Advocates of this position contend that once an armed conflict breaks out, the applicability of International Law (IRL) is entirely suspended, and the situation becomes exclusively regulated by International Humanitarian Law (IHL). While clearly in conflict with Article 9 of the 1951 Vienna Convention, these proponents claimed that IRL and IHL operate within completely independent spheres, with no areas of intersection. Furthermore, they argued that the impact of armed conflict justifies a total separation between the two legal frameworks, with IHL becoming the sole legal framework applicable to ensure the protection of human rights and the safeguarding of civilians in times of war. However, this position has been the subject of extensive debate, as many legal scholars assert that although IHL assumes a predominant role in situations of conflict[10], it does not completely eliminate the importance and relevance of IRL, which continues to influence

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[8] See ex multis Koutroulis, V., "Are IHL and HRL still two distinct branches of public international law?", in Kolb, R., Gaggioli, G. and Kilibarda, P., (eds.), *Research Handbook on Human Rights and Humanitarian Law. Further Reflections and Perspectives*, London, 2022, as well as references to other authors.

[9] See also Arenas Hidalgo, N., "Combatants and Armed Elements as Refugees. The Interplay Between International Humanitarian Law and International Refugee Law", in Fernández-Sánchez, P.A., (ed.), *The New Challenge of Humanitarian Law in Armed Conflict*, Leiden, 2005, pp. 207-226.

[10] The majority of displacements, whether occurring within a country or across borders, stem from violence and military conflicts. For example, many refugee flows, including the Syrian refugee crisis, are directly linked to such armed confrontations. Amplius, see Davidoff-Gore, S. and Huang, L., "Displacement and International Protection in a Warming World", MPI, available at: https://www.migrationpolicy.org/research/displacement-protection-warming-world#:~:text=Most%20climate%2Drelated%20displacement%20occurs,emergency%20assistance%20and%20protection%20needs

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legal dynamics even in wartime contexts[11]. Rather, they maintain that IRL continues to influence legal dynamics even in wartime contexts, suggesting that a more integrated understanding of both frameworks is necessary to effectively address the complexities of armed conflict.

III. COMPLEMENTARISM: THE MAIN APPROACH

Reflecting on the past seven decades of legal scholarship and practice, it is evident that there is significantly greater clarity regarding the relationship between International Refugee Law (IRL) and International Humanitarian Law (IHL) today compared to when the Geneva Convention was drafted in 1951.

The complementarist, or non-separatist, approach has clearly emerged as the prevailing theoretical framework. This contemporary interpretation posits, first, that each legal regime holds its own distinct value; second, that these values can and should be jointly applied to enhance the protection of refugees in armed conflict situations; third, that, unlike international humanitarian law, international refugee law is not specifically tailored to the conditions of war; fourth, that the designation of obligations owed to particular groups, which is characteristic of international humanitarian law, may be beneficial in these contexts, particularly when supplemented by the more individualistic, rights-based perspective of international human rights law concerning specific individuals; and finally, that during armed conflicts, international refugee law exhibits certain weaknesses that can be partially mitigated through the concurrent or complementary application of international humanitarian law.

Numerous examples of such complementarist frameworks exist today, including statements from esteemed international refugee lawyers affirming that IRL remains applicable during armed conflicts alongside IHL. Furthermore, the UN Security Council's resolution regarding the mandate of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO)[12] underscores the significant role of IRL norms in armed conflict. The once increasingly accepted notion that IRL alone can

[11] Article 9 of the 1951 Convention relating to the Status of Refugees allows a Contracting State to take: "provisionally measures" against asylum-seekers or refugees "in time of war or other grave and exceptional circumstances".

[12] Security Council of United Nations, Resolution 2717 (2023), S/RES/2717, 19 December 2023.

adequately address the protection of refugees during armed conflict appears to be waning[13]. A series of robust statements from UN treaty bodies recognise the relevance of International Human Rights Law (IHRL) norms in situations of armed conflict[14].

The International Committee of the Red Cross's reliance on both international refugee law (IRL) and international human rights law (IHRL) reflects a strong recognition that IRL applies during armed conflicts, alongside international humanitarian law (IHL)[15]. It also acknowledges that the application of IHRL can be crucial in various circumstances, such as when applying IHL to dissident groups, which is essential for refugee protection.

It has become commonplace for the UN General Assembly to frequently reference international humanitarian law norms in its resolutions and

[13] See Krill, F., "ICRC's action in aid of refugees", *IRRC*, No. 265, 1988, pp. 328-350; Lavoyer, J.P., "Refugees and internally displaced persons: International humanitarian law and the role of the ICRC", *IRRC*, No. 305, 1995, pp. 162-180; International Committee of the Red Cross, "Internally displaced persons: The mandate and role of the International Committee of the Red Cross", *IRRC*, No. 838, 2000, pp. 491-500.

[14] See General Comment on the right to adequate housing (art. 11.1 of the Covenant): forced evictions, in which the CESCR recognized that human rights obligations, particularly those related to housing and forced evictions, remain applicable during armed conflict and must be respected in accordance with IHL principles. Similarly, in General Comment No. 2 (2007) on the Implementation of Article 2 of the CAT, the CAT Committee reaffirmed that the prohibition of torture is absolute and applies in all circumstances, including armed conflict. Additionally, in General Comment No. 29 on Article 4: Derogations during a State of Emergency, the United Nations Human Rights Committee stated that during "international or non-international armed conflicts, rules of international humanitarian law become applicable and, alongside the provisions in Article 4 and Article 5(1) of the Covenant, help prevent the abuse of a state's emergency powers. Moreover, in General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children's Rights, the CRC reaffirmed that children's rights under the Convention on the Rights of the Child (CRC) continue to apply during armed conflict, alongside protections under IHL". For further examples and references, see LLysyk, V. and Shperun, K., "UN Practice in Protecting Human Rights During Armed Conflicts", *Evropský politický a právní diskurz*, Vol. 11, No. 4, 2024, pp. 16-26. See also Droege, C., "The Interplay Between International Humanitarian Law and International Human Rights Law in Situations of Armed Conflict", *Israel Law Review*, Vol. 40, No. 2, 2007, pp. 310-355.

[15] See ICR, "Humanitarian Law, Human Rights and Refugee Law-Three Pillars", 1 february 2024, available at: https://www.icrc.org/de/node/119764

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mandates concerning the protection of civilians[16]. The established work of the UN Office of the High Commissioner for Human Rights (OHCHR) and its field offices in contexts of armed conflict has proven invaluable in monitoring the conduct of parties involved, based on both IRL and IHRL. Similar significance is found in the UN Security Council's resolutions promoting the development of international refugee protection, which affirm the independent and complementary values of both legal frameworks. It is now widely acknowledged in practice that IHRL not only adds essential normative value to issues already governed by IRL but also addresses several crucial concerns that are either minimally covered or entirely unaddressed by IRL, such as the prohibition of collective punishment as encompassed in Article 4(2)(b) of Protocol II[17].

The broad acceptance of the applicability of international refugee law and policy during armed conflicts has, in recent decades, allowed international legal scholars to explore more nuanced inquiries. These include the obligations and responsibilities of armed groups under international refugee law, as well as how international humanitarian law addresses specific issues arising in armed conflicts, such as the detention of refugees, the principle of non-refoulement, the right to life, the definition of civilians, and the right to a fair trial.

This shift from high-level discourse to a more detailed examination of individual norms is also reflected in the statements of human rights bodies, such as the UN Committee on Economic, Social and Cultural Rights (CESCR), which supervises the implementation of the ICESCR. These bodies have made increasing efforts to clarify the relationship between specific norms within International Refugee Law (IRL) and International Human Rights Law (IHRL), offering further guidance on how these legal frameworks interact in practice[18]. Legal scholars have long noted that conflicts between these

[16] The General Assembly has exercised its normative powers to advance international refugee protection through its resolutions and in ongoing interaction with the practices of its subsidiary body on the ground, the UNHCR.

[17] The prohibition of collective punishment in Article 4(2)(b) of Protocol II is relevant to refugees because it prohibits the imposition of punishment on an entire group of persons for acts they have not personally committed.

[18] CESCR, "Duties of States towards Refugees and Migrants under the International Covenant on Economic, Social and Cultural Rights: Statement by the Committee on Economic, Social and Cultural Rights", UN doc E/C.12/2017/1, 13 March 2017, para. 18.

frameworks are most likely concerning non-armed states' obligations and the right to protection for refugees in non-armed international conflicts. In these two areas, the protections afforded by IHRL are founded on a different philosophical basis compared to those provided by IRL. With respect to the prohibition of collective punishment, IRL presents a protective vision based on an assessment of risk to life that considers spatial, temporal, and circumstantial immediacy, along with the principle that any force employed by the state must be both necessary and proportionate.

This perspective contrasts sharply with the philosophy underlying IHRL, which traditionally allows an individual's status (as a combatant, fighter, or civilian) to supersede any assessment of the immediate risk they may pose to others. Similarly, in the realm of detention, IHRL contains a prohibitive norm —the prohibition of arbitrary detention— which asserts that a person may only be detained when it is necessary due to their direct, present, and imperative danger to others or in connection with the prosecution of a crime. This encapsulates a philosophy distinct from that of IRL, which implies that certain individuals may be detained based on their status and, implicitly, the potential danger they could pose at an unspecified future time.

In grappling with the challenge of reconciling these conflicting philosophies while examining individual norms, various authors have offered guidance on how the two bodies of law should be applied[19]. For a considerable time, recourse was predominantly made to the *lex specialis derogat legi generali* interpretative principle, as suggested by the International Court of Justice (ICJ) in its famous *Nuclear Weapons Advisory Opinion* regarding the relationship between international human rights law and IHL[20]. However, reliance on this interpretative principle has at times been distracting, as it raises numerous questions concerning its scope. Disagreement not only existed on how and

[19] See e.g. Hathaway, J., "International refugee law: Humanitarian standard or protectionist ploy?", in Human Rights and the Protection of Refugees Under International Law: Proceedings of a Conference Held in Montreal, from 29 November to 2 December 1987, Geneva; Garvey, J. I., "Toward a reformulation of international refugee law", *Harvard International Law Journal*, Vol. 26, No. 2, 1985, p. 483.

[20] Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, p. 226, International Court of Justice (ICJ), 8 July 1996, https://www.refworld.org/jurisprudence/caselaw/icj/1996/en/71074, accessed 25 October 2024; The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, p. 136.

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when the principle should be applied but also on the crucial question of whether IHRL could serve as *lex specialis* in certain circumstances. Recently, particularly following the ILC's fragmentation study that categorises both international humanitarian law (IHL) and international refugee law (IRL) as "[s]pecial ('self-contained') regimes," there seems to be an increasing agreement that the *lex specialis* principle may not be the most effective means of addressing the relationship between these two legal frameworks[21].

This may stem from the notion that labeling one body of law as "special" compared to another resembles a separatist approach disguised as complementarism. It implies competition between the two legal frameworks rather than a complementary relationship. Indeed, it seems that the awkward fit of the *lex specialis derogat legi generali* principle has led to an increased reliance on the principle of systemic integration found in Article 31(3)(c) of the Vienna Convention on the 1969 Law of Treaties. According to this provision, a state's obligations under one legal regime must be interpreted in a manner that considers its obligations under other legal frameworks. Like the principle of mutual supportiveness[22], this approach has the potential to dismantle the silos that separate different legal systems, encouraging human rights and IHL monitoring bodies to interpret either IHL or IHRL in light of the broader system of international legal obligations to which the state in question is bound, including obligations related to the protection of refugees and internally displaced persons[23].

IV. OPPORTUNITIES FOR NEW TYPES OF INTEGRATIONISM?

[21] Considering this qualification, it is still uncertain whether IHL norms should take precedence in the interpretation of refugee protection frameworks or if IRL norms should be granted a "truly autonomous meaning" that ultimately prevails over IHL interpretation. Amplius, see Ziegler, R., "International Humanitarian Law and Refugee Protection", in Costello, C., Foster, M. and McAdam, J. (eds.), *The Oxford Handbook of International Refugee Law*, Oxford, 2021, p. 221.

[22] On the general principle of supportivenss, see Pavoni, R., "Mutual Supportiveness as a Principle of Interpretation and Law-Making: A Watershed for the 'WTO-and-Competing-Regimes' Debate?", *European Journal of International Law*, 2010, pp. 649-679.

[23] It is also important to emphasise that the experiences of the ICRC could improve certain practices of the UNHCR; nevertheless, both areas of law (International Refugee Law and International Human Rights Law) would benefit from stronger oversight and implementation of treaties.

Given the discussion in the previous section on the complementarity approach to the relationship between IRL and IHRL in armed conflict situations, and its general prevalence over other approaches, it is intriguing to explore whether the principle of systemic integration genuinely promotes a complementary approach or, in some instances, tends toward a merging of the two bodies of law with respect to specific norms.

As a legal instrument, systemic integration offers a solution that may at times be seen as aligning with an integrationist approach, though the nature of this integration differs significantly from what has generally been discussed and promoted in recent decades. Rather than advocating for one legal regime to be subsumed under the other, the principle fosters a permeability between the two legal frameworks concerning individual norms, theoretically allowing each body of law to maintain its distinct character while accommodating the other. This permeability ensures that, rather than forcing the two regimes into rigid coherence, there is room for flexible interaction where needed. Thus, systemic integration allows the bodies of law —such as international refugee law and international humanitarian law— to address gaps and overlaps in a way that better reflects the evolving nature of international legal issues, particularly in contexts involving complex conflicts or mass displacement. By doing so, systemic integration supports a more adaptable and functional legal framework for addressing the challenges posed by modern armed conflicts and refugee crises.

This approach is exemplified in the UN Committee on the Rights of the Child's (CRC) overall perspective on the international protection of refugee children. The CRC asserts that both legal spheres are complementary rather than mutually exclusive, and it recognises that the CRC can be invoked as a procedural safeguard to guide the refugee determination process. Similarly, the Committee on Economic, Social and Cultural Rights (CESCR) reaffirmed this principle in its *General Comment No. 23 (2016) on the Right to Just and Favorable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)*[24]. In this comment, the CESCR emphasised that provisions of International Human Rights Law (IHRL) can inform the interpretation and

[24] UN Committee on Economic, Social and Cultural Rights (CESCR), General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/23, 7 April 2016, https://www.refworld.org/legal/general/cescr/2016/en/122360, accessed 14 February 2025.

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application of Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), while reiterating that International Refugee Law (IRL) and IHRL are complementary rather than mutually exclusive.

Moreover, a comparable inclusive approach is evident in the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (MWC). In its concluding observations on Ecuador, the MWC recommended, among other measures, that the state ensure migration control efforts do not undermine the protections provided by the 1951 Geneva Convention relating to the Status of Refugees, or by the MWC itself[25].

While some may contend that similar outcomes could be achieved through the *lex specialis derogat legi generali* principle (understood as an interpretative rule), these documents demonstrate that there is no necessity to resort to a latin term that literally conveys the idea of one norm being "special".

The general principle of systemic integration promotes and enables a non-hierarchical co-application of IHRL and IHL, yielding complementary and additive protection. Conversely, a similar permeability can be observed in attempts to clarify the scope of IRL by referencing IHRL norms. Instances of IRL norms being utilised to interpret humanitarian norms are prevalent in the International Committee of the Red Cross's (ICRC) ongoing customary international law project. Drawing upon the interpretative principle of systemic integration articulated in Article 31(3)(c) of the 1969 Vienna Convention on the Law of Treaties, as well as the principle that a treaty should be "interpreted in good faith in accordance with the ordinary meaning of its terms in their context and in light of its object and purpose", the ICRC employs IHRL norms and case law to elucidate IRL concepts that have corresponding notions in IHRL. These concepts include the distinction between nationals and non-nationals, the definitions of detention and persecution, the prohibition of non-refoulement, and the prohibition of collective punishment, as well as ensuring the exclusively civilian nature of refugee camps and settlements, and, more broadly, of asylum[26].

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[25] Concluding Observations: Ecuador, 5 December 2007, para. 29.

[26] Amplius, see Jaquemet, S., "The cross-fertilization of international humanitarian law and international refugee law", *RICR*, 2001, p. 652 ff., also stressing that the purely civilian nature of refugee camps and settlements, as well as asylum in general, has been influenced and infused by a fundamental principle of international humanitarian law, specifically the principle of distinction, which prohibits attacks on civilian populations and civilian objects.

The legitimacy of employing complementary methodologies and tools that alter the interpretation of foundational norms as a legal matter will likely hinge, at least in part, on the textual flexibility of the original norm being interpreted. This flexibility is crucial, as it allows for a dynamic understanding of the law in response to evolving societal needs and contexts. Clearly, there exists considerable scope for elasticity in the customary international law ascertainment process, which is inherently adaptable to the nuances of different situations.

Moreover, the texts of Articles 7 and 8 of the 1951 Geneva Convention illustrate this flexibility well. Article 7, which addresses the exemption from reciprocity, and Article 8, which deals with the exemption from exceptional circumstances, both employ terminology that can be interpreted in various ways. This language serves as a lens through which the invocation of international human rights law (IHRL) rules can be legitimised. By allowing for such interpretations, these articles not only reinforce the relevance of IHRL within the framework of international refugee law (IRL) but also emphasise the interconnectedness of these legal regimes.

Consequently, the interplay between these articles and IHRL reflects a broader legal principle: that the protection of human rights is paramount, especially in situations involving vulnerable populations, such as refugees. Thus, the application of complementary methodologies may not only be justified but necessary to ensure that the fundamental rights of individuals are upheld in the face of complex legal challenges. This approach ultimately fosters a more holistic understanding of legal obligations and enhances the protection mechanisms available to those in need.

V. CONCLUDING REMARKS

This article has demonstrated that over the past 74 years, significant progress has been made in understanding and operationalising the relationship between refugee law and international humanitarian law. Notably, the discourse has evolved, with extreme integrationist and separatist viewpoints becoming less prevalent, reflecting a shift towards more nuanced and balanced perspectives. However, the persistence of both integrationist and separatist tendencies, the

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latter facilitated by the numerous differences between IRL and IHRL[27], indicates that the evolution of this relationship is far from settled. These competing tendencies require vigilant observation and continuous reassessment to ensure that the legal frameworks remain adaptive and responsive to the complexities of modern armed conflicts.

Given the current landscape, with over one hundred armed conflicts involving more than sixty states and a vast array of non-state armed groups[28], it is increasingly urgent to refine and strengthen the legal frameworks governing the intersection of international refugee law and international humanitarian law. This entails enhancing interpretative methods for treaties, clarifying jurisdictional issues, and addressing gaps in legal protections for refugees affected by these conflicts.

Furthermore, it is critical for human rights treaty bodies to make decisions grounded in well-established legal principles, promoting consistency and predictability across cases. This approach requires resisting the inclination to fabricate artificial coherence where divergence may be more appropriate and to avoid reviving outdated positions that not only impede the progress of legal discourse but also fail to address the lived realities of refugees caught in the crossfire of armed conflicts. In doing so, the international community can move closer to ensuring more robust protections and guarantees for those most vulnerable in times of war.

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[27] For a discussion on the key differences between international refugee law (IRL) and international humanitarian law (IHL), see Ziegler, R., "International Humanitarian Law and Refugee Protection"... *cit.*, p. 221 ff. Ziegler emphasises that, unlike IRL, IHL reflects a balance between two fundamental principles: military necessity, which permits the use of force required to achieve legitimate conflict objectives, and humanity, which restricts any suffering, injury, or destruction deemed excessive or unnecessary for those purposes.

[28] See Geneva Academy, "Today's Armed Conflicts", available at: https://geneva-academy.ch/galleries/today-s-armed-conflicts

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