

Received: 26/02/2023	Accepted: 16/04/ 2023
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Refugee protection's guarantees during international armed conflicts

Benamara Sabrina ^{*1}
Tamanraset University
bmrsbrn.droit1974@gmail.com
Environmental Laboratory

Abstract:

Refugee protection guarantees represent those rules that guarantee protection for his rights and freedoms during the international armed conflict. Within the framework of the subject of the research,two international laws frame both of these protections.

Namely international humanitarian law and international refugee law. So we have two measures, the first is the integration scale between international law and the second in the scale of continuity in the succession of the application of international law in time.

Keywords:

Humanitarian law - Protection - Guarantees - Refugee - International conflict.

INTRODUCTION

In some cases, a person is exposed to a violation of his rights during the armed conflict. Therefore, he does not find the necessary and appropriate protection. As a result, he is forced to leave his country of origin and flee from it to another country. Where he searches for protection and safety. Thus, he moves from a victim of an international armed conflict who did not find

* Corresponding author

protection under international humanitarian law to a refugee seeking protection under international refugee law (what is expressed in continuity).

International humanitarian law and international refugee law may meet when the refugee is in an international armed conflict. Here, he is under the double protection of both legalists at the same time, and this is expressed in the simultaneous application of them.

Therefore, this overlap between the two laws in application expresses a kind of complementarity, which generates protection for the person as a civilian whose rights have been violated in the light of an international armed conflict, and as a refugee seeking safety under international refugee law. Since both of the laws have the same goal is to protect him.

From it, in this research, we will focus on the guarantees of refugee protection during the international armed conflict, after identifying its concept in both international humanitarian law and international refugee law.

So what is the protection that international humanitarian law consecrated to the refugee?

The question will be answered through two axes as follows:

The first axis: Definition of "refugee"

First: Definition of a refugee in international refugee law

Second: Definition of a refugee in international humanitarian law

The second axis: Refugee protection

First: Refugee protection under the Fourth Geneva Convention of 1949.

Second: Refugee protection under the First Additional Protocol attached to the Geneva Conventions of 1949.

The first axis: the definition of "refugee"

We cannot address the protection devoted to the refugee in light of the international armed conflict until we know who a "refugee" is according the rules of international refugee law and international humanitarian.

First: Definition of 'refugee' in international refugee law

The study will focus here on the most important international conventions that dealt with the definition of the "refugee" person, especially the basic structure of asylum law, which is the Geneva Convention of 1951 and its Additional Protocol of 1967, and we also find at the regional level the African Convention of 1969.

1- Definition of a refugee in the Convention relating to the Status of Refugees of 1951

The Geneva Convention of 1951 is the cornerstone for the protection of refugees, as the protection of refugees was its primary objective¹, and it was adopted at the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons held under General Assembly Resolution No 429 (5) dated July 28, 1951.

The 1951 Convention defines the refugee in Article 1A² of which: "Everyone found as a result of events that occurred

before January 1, 1951, due to a well-founded fear of being persecuted because of his race, religion, nationality, affiliation to a certain social group. Or because of his opinions, or who does not wish to protect this country because of this fear, or all of them. Or anyone who has no nationality and is outside the country of his previous residence and is unable or unwilling, because of that fear, to return to that country”³ .

The Convention of 1951 defined the concept of a refugee person temporally, which is for all events that occurred before the date of "January 1951". And spatially, where those events took place mainly in "Europe" or in any other place, with the obligation to specify the Contracting State when announcing its signing, ratification or accession to the Convention, on which of these two meanings will depend for its obligations under the Agreement ⁴.

In addition to the time and place restrictions contained in the 1951 Convention, which it requires for a person to enjoy refugee status, we find the condition of fear of persecution, although the Convention does not define the concept of “persecution”. But it is understood from the provisions of Articles (1/31) and (1/33)⁵ . Threatening a person to his life or freedom because of race, nationality, political opinion, or belonging to a certain social group, reaches an intensity of gravity estimated by one of two criteria: the severity of a violation of a human right (the right to life, to physical integrity, etc.) or character repeated persecution⁶ .

The agreement mentioned the conditions for acquiring refugee status exclusively, which are: race, religion, nationality, political opinion, and belonging to a certain social group: meaning that all that a person may be exposed to due to natural

disasters, climatic factors, and other reasons on which a person may base his asylum request on basis of the 1951 Convention⁷.

2- The definition of a refugee in the 1967 protocol:

The New York Protocol came to complete the 1951 Convention⁸ Although it was independent of it, which was approved by the General Assembly in its resolution No. 2198 (D-21)⁹. Refugee means every person who meets the definition contained in Article 1 of the Convention, as if you did not see him in Paragraph 5 (2) of Subsection (a), including the following words “as a result of events that occurred before January 1, 1951” and the words “as a result of such events”.

What is noted about the definition of the 1967 Protocol as “refugee” is the removal of the temporal and spatial constraints. As the description of a refugee now applies to every person who experienced fear of persecution due to one or more of the reasons specified in the 1951 Convention without any temporal or spatial (geographic) limitation. Which expands the circle of possibility obtaining asylum status is more than it was under the agreement. However, the shortage remains with regard to the large and mass flows of people fleeing from various forms of persecution. As well as the emergence of new reasons for persecution such as wars, natural disasters... etc.

3- Definition of a refugee in the African Convention on Refugees:

The agreement that regulates the special aspects of refugee problems in Africa¹⁰ came to fill the shortcomings of the 1951 Convention, represented by its failure to include protection for many new categories of African refugees on the one hand, and its failure to accommodate the influx of refugee groups. The 1969 Convention considered every refugee: “a person who is forced to leave his habitual residence due to external aggression,

foreign occupation or domination, or serious disturbance of public order in all or part of the country of establishment or nationality in order to seek refuge in another place outside the country of establishment or nationality.

Through the previous definition, we note that the African Convention of 1969 expanded the reasons according to which refugee status is granted compared to the Convention of 1951. Where it mainly added the cause of wars and armed conflicts, but in return the circle of benefiting from the refugee status that it adopted remains incomplete because, for example, it did not adopt the cause of natural disasters. For example, gaining persecution, which prompts the request for asylum, despite its presence in reality on the African continent in a large number.

Second: Definition of a refugee in international humanitarian law

International humanitarian law came not to enact wars and limit their negative and unjustified effects.¹¹ It represents a set of rules that govern states of war from international and internal armed conflicts, and is mainly represented in the four Geneva Conventions of 1949 and their additional protocols of 1977.

International humanitarian law is characterized by ambiguity in its definition of a refugee. It is only limited within legal texts to protect civilians at the time of armed conflicts in general or to protect their victims, because many refugees may be present in the midst of an international armed conflict and are subject to the simultaneousness of two laws together, namely, international refugee law and international humanitarian law¹².

So who is the refugee in both the Fourth Geneva Convention of 1949 and the First Additional Protocol attached to it?

1 -The refugee in the Fourth Geneva Convention of 1949:

The Fourth Geneva Convention is an agreement on the protection of civilians in time of war¹³, and it means the protection of civilians, without giving any precise definition of who civilians are. If a conflict or occupation arises under the authority of a party to a conflict of which they are not nationals. Or of an occupying power of which they are not nationals, then they shall be among the persons protected by the Convention as refugees, who are among the civilians, as dealt with in Article 44¹⁴ of the same agreement in the context of the status of protected persons. And their treatment, by not treating the detaining state refugees, who do not actually enjoy the protection of any government, as enemy aliens. Simply because they are legally affiliated with an enemy country, here again there is no mention of any definition of a refugee without his protection as any civilian, but the text of the aforementioned article establishes two criteria through which a refugee can be contained with the protection prescribed for a civilian under it, namely:

- The criterion of not enjoying the protection of any government.
- The criterion of being under the authority of one of the conflict parties.

Referring to the text of Article 45/4 of the Fourth Geneva Convention, which is also mentioned, we find that it implicitly defines the refugee with his protection stipulated in it by stating that: "... no protected person may be transferred in any case to a

country where he fears persecution on account of his political views or religious beliefs... "

2 -The refugee in the first Additional Protocol to the four Geneva Conventions:

The First Additional Protocol to the four Geneva Conventions was adopted on June 18, 1977, and it is related to the protection of victims of international armed conflicts¹⁵.

Article 73 under the title "Refugees and Persons Not Belonging to Any State" stipulates the guarantee of protection and without any discrimination; the refugees have in the sense of international conventions related to the subject or killed by the concerned parties or in the sense of the national legislation of the host country or the country of residence. Stateless persons who do not belong to any state and refugees are protected without discrimination between them, provided that this is before the start of hostilities¹⁶.

Article 74 of the same protocol refers to facilitating the process of reunification of families separated because of armed conflicts by the conflicting parties and the contracting parties, referring to the separated refugee families¹⁷.

Article 4/85 (a) of the same additional protocol confirms the inadmissibility of transferring or deporting the civilian population to the occupied territories.as another evidence that the protocol prohibits some actions that are considered a violation of the rules of international humanitarian law, which makes the latter include the refugee particularly as a victim of the international armed conflict.

Therefore, all cases of people fleeing from their countries to other countries from international armed conflicts are the

basis, generating asylum and refugees individually or collectively in search of safety, as previously confirmed by the African Convention in its definition of a refugee.

The second axis: refugee protection

One of the manifestations of complementarity between international humanitarian law and refugee law is that they meet when refugees are on the territory of a party to an armed conflict in general (international armed conflict in particular). That person is a refugee and a victim of an armed conflict at the same time: he must be under the dual protection of the two laws. Together (simultaneous application of both)¹⁸. The research in this axis will focus on the stage of the refugee person being present in a state that is party to an international armed conflict only, and accordingly we will address protection at this stage as a civilian person, then we will deal with protection as a refugee.

International humanitarian law affirms that everyone has the right to leave his country to seek and enjoy asylum in other countries because of persecution¹⁹.

So, it has ensured a general protection for the refugee as a civilian within the provisions of the Fourth Geneva Convention for the Protection of Civilians of 1949. Another protection was confirmed in the First Additional Protocol annexed to the four Geneva Conventions of 1949, as guarantees that ensure that he is protected despite and under the international armed conflict.

First: Refugee protection under the 4th Geneva Convention of 1949

The Fourth Geneva Convention of 1949 dealt with the protection of a refugee as a foreigner residing in the territory of a party to the conflict and not as a citizen of the enemy state²⁰.

The aforementioned Fourth Geneva Convention guaranteed several rights to these refugees residing on the territory of a state party to the international armed conflict, stipulated in Articles 35 to 46 thereof, on the basis of two categories²¹ as follows.

- The category of refugees as foreigners in the territory of one of the parties to the conflict: Either they are nationals of the enemy, as Article 44 has approved²² from the Fourth Geneva Convention of 1949 special protection. whereby states parties are called upon to take into account the circumstances that bind the protected person to the country of asylum, as they have no interest other than those they have with the country that granted them asylum. Or they are either nationals of a neutral country, and here Article 4/1²³ stipulates of the aforementioned Convention, those who find themselves at any moment and in any way whatsoever in the event of an armed conflict or occupation under the authority of a party to the conflict are not its nationals or a state of occupation that they are not its nationals.

It also does not protect, according to the text of Article 4/2 thereof, the nationals of the state that is not associated with it. As for the nationals of the neutral country who are in international belligerent territory, and the nationals of the belligerent country are not protected because the country to which they belong is represented by ordinary diplomatic representation in the country under whose authority they belong.

Accordingly, the refugees are protected according to paragraph 1 of Article 4 mentioned above, and are not protected according to the text of Article 4/2 of the same agreement. But if the refugees are nationals of the belligerent country, then they

are intended to be charged with Article 4/2 of the Fourth Geneva Convention, when there are no relations Diplomacy between the country to which they belong and the one under whose control refugees then, they are not protected.

The category of refugees who are residents of the occupied territories is represented in the case of refugees who are nationals of the hostile country where they are protected basing on the text of Article 70/2. Which is that they may not be arrested if they resorted to the occupied lands before the start of the conflict. Or tried, convicted or deported from the occupied lands because of violations they committed after the outbreak of hostilities and justify their surrender to their government in peacetime in accordance with the law of the country whose territory is occupied.

Or that category is represented in the case of refugees who are nationals of the neutral country, which is the case of the existence of normal diplomatic relations. Article 4/1 of the same agreement mentioned above, when there are no diplomatic relations.

The guarantees of such protection for refugees as civilians during international armed conflicts are as follows:

- Article 16²⁴ of the Fourth Geneva Convention of 1949 AD included protecting the refugee from all consequences of armed actions, including the wounded, sick, shipwrecked, children, women, and everything that comes under the name of civilians.

- Article (2) 13 of the same agreement prohibits attacking civilian facilities, the basis of civilian hospitals, in order to preserve the lives of the wounded, the sick, the infirm, women, etc.

- Preventing forced population transfer, as they may be subject to persecution or discrimination according to Article 45 of the Convention, and all exile according to the text of Article 49/1.
- Ensuring humane treatment: according to the provisions of Article 2²⁵ of the Convention, for example, respecting their honor, family rights, religious beliefs, and traditions, protecting them against acts of violence or threats, and protecting women from rape and forced prostitution...etc.
- Ensuring the use of relief methods such as: preparation with medicines, various medical materials and necessary food ... etc., as stipulated in Articles 23 and 55 of the Convention, while ensuring the establishment of safe and neutral areas to protect the wounded, the sick and civilians in general without any discrimination (as stipulated in Article 15 of the Convention).

Second: Refugee protection under the First Additional Protocol attached to the Geneva Conventions of 1949

The First Additional Protocol attached to the four Geneva Conventions relates to the protection of victims of international armed conflicts.²⁶ It has amended the aforementioned provision of Article 4 of the Fourth Geneva Convention of 1949 in its text in Article 73²⁷ to grant protection even to nationals of neutral countries with relations diplomacy with the belligerent country concerned.

Accordingly, the text of Article 73 of the aforementioned protocol expanded the circle of persons protected in Article 4 of the Fourth Geneva Convention of 1949. In addition, they are refugees who are nationals of the country not associated with the Fourth Convention, and refugees from the neutral country that

has diplomatic relations with the country in whose territory these refugees are located. They were not covered by the agreement before²⁸

It is always clear to us in the text of Article 73 of the aforementioned protocol that it equated stateless persons with refugees in protection. And added a restriction in their protection, except that they had fled before the start of hostilities and not during it. And it was found through the same article mentioned above of the protocol that it granted protection to refugees as civilians where this protection referred to what was stated in the first and third chapters of the Fourth Geneva Convention of 1949 in its text:

“Protection is guaranteed in accordance with the provisions of Chapters One and Three of the Fourth Convention...” It is the protection applied by all parties to the conflict to civilians without regard to their nationality, including what is applied to civilians by the authority that is in its grip only and is not one of its nationals. Among the guarantees of the protection protocol, we mention: For example, his prohibition of any military attacks on civilian dwellings, or any acts of violence or threats, and all hostilities (Article 51).²⁹It prohibits harming women (rape, prostitution, outrages on modesty...etc.) according to Article 76 thereof, and respect for children is also ensured by ensuring that they do not involve them in hostilities (especially those under 15 years old), and protect them from all forms of outrages on their modesty... etc.

The aforementioned protocol also emphasized the guarantee of non-deportation through the text of Article 85³⁰ of it, which prohibits the occupying power from deporting the civilian population.

Conclusion:

The intersection of international humanitarian law in general and the rules for organizing and conducting armed conflicts in particular with international refugee law reflects the overlapping of their subjects. And the reality of their application sometimes since a “refugee” is a human being before he takes refugee status.

Through this study, we concluded that the refugee during the international armed conflict, in particular, benefits from significant protection within the provisions of the Fourth Geneva Convention of 1949. This convention is concerned with the protection of civilians as a civilian and as a refugee at other times. Neither the Convention nor its first Additional Protocol of 1971 but prevented many international behaviors that may harm him and violate his rights.

It was also found through the legal texts relied upon in the study the collective dimension of asylum. as some of these texts dealt sometimes with the individual refugee and at other times with groups of refugees (the case of mass flows), and this is what is calculated for the provisions of international humanitarian law, especially that which is relied upon in the study.

Based on the foregoing, we suggest some recommendations to support refugee rights during international armed conflict, as follows:

- The need to develop a unified definition of the refugee (adopting the collective dimension of asylum).

- Developing an international agreement for the protection of refugees during international armed conflicts to enhance the protection of their person and property.

- The need to devote special protection to refugees during the international armed conflict than it was under the first additional protocol to the four Geneva Conventions of 1949 under a complementary or temporary regime (complementary or temporary protection for them) in the form of, for example, a fourth additional protocol attached to the four international conventions of 1949.

References

¹ -Voir UNHCR (service de l'information et des relations avec les médias), protéger les Réfugiés (le rôle du H C R), septembre 2012, p p(13-14)

²-Which entered into force on April 22, 1954.

Dr. Françoise Bouchet-Spouleni, International Dictionary of Humanitarian Law, Doctors Without Borders, on the website: [https:// guid – humanitarian – law – org / content / article / 5/1jywh /](https://guid-humanitarian-law-org/content/article/5/1jywh/)

³-United Nations High Commissioner for Refugees, Guide to procedures and criteria to be applied to determine refugee status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, Geneva, September 1979, pg. 74.

⁴-Pursuant to Article 1(B(1): “...for the purposes of this Convention, the expression “events occurring before January 1, 1951.” in Article I, Section A shall be understood to mean: (a) events occurring In Europe before January 1, 1951 A.D. and B) Events that took place in Europe or elsewhere before January 1, 1951

⁵Which respectively state: “The Contracting States shall have the right to impose sanctions on account of the illegal entry or presence of refugees coming directly from a territory where their life or freedom would have been threatened within the meaning of Article 1”. and “The Contracting State shall be prohibited from expelling the refugee’s veins in any way to the frontiers or Territories where his life or freedom would be threatened because of his race, religion, nationality, membership of a particular social group, or political opinions.

⁶-Dr. Bouzid Sara ghania, Asylum in International Law.... Concept and Reasons, Maalem Journal for Legal and Political Studies, Issue 3, University of the Montouri Brothers - Constantine - Algeria, March 2018, pp. (161, 162).

⁷The United Nations High Commissioner for Refugees worked to devote the principle of family unity to enable all members of the refugee family to obtain that status, and called for the recognition of women victims of discrimination based on gender in that capacity, *ibid.*, p. 167.

⁸-Mabrouk Mohamed, The Situation of Refugees in Armed Conflicts (Master Thesis, University of Algiers-1- (Faculty of Law), Ben Aknoun, 2011, 2012, p. 8.

⁹J. S, Godin-Gill, the 1951 Convention Relating to the Status of Refugees and its Protocol.

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¹⁰-Adopted by the Organization of African Unity on September 10, 1969 AD, and which entered into force on June 20, 1974 AD.- See Dr. Frastor Bouchet, Saulnier, *ibid.*

¹¹-Dr. Muhammad Al-Nahi, Refugee Protection in International Law, Arab Center for International Humanitarian Law, October 26, 2020, available on the website. [Http; // arabrcrc. Org>acihl>...](Http://arabrcrc.Org>acihl>...)

¹²-Mabrouk Mohammad, previous reference, p. 12.

¹³-Adopted by the Diplomatic Conference to establish international agreements for the protection of war victims, held in Geneva from April 21 to August 12, 1949 AD, and entered into force on October 31, 1950.

¹⁴-Which states that "in applying the measures of control provided for in the present Convention, the Detaining Power shall not treat refugees, who do not in fact enjoy the protection of any government, as enemy aliens on the sole ground of their lawful dependence on an enemy Power."

¹⁵ -It entered into force on December 7, 1978

¹⁶-Mazen Ahmed Murad, Refugee Protection in the Framework of International Humanitarian Law, Journal of Human Sciences, Volume 33, Number 3, University of Constantine 1, Algeria, December 2022, p. 651.

¹⁷-Which stipulates that: "The High Contracting Parties and the parties to the conflict shall facilitate, as far as possible, the reunification of families separated as a result of armed conflicts, and encourage in particular the work of humanitarian organizations that devote themselves to this task in

accordance with the provisions of the Conventions and this Appendix "Protocol" and in compliance with their respective security regulations.

¹⁸Belmedioni Mohamed, *The Status of Refugees in International Humanitarian Law*, Academy of Social and Human Studies, Volume 9, Number 1, Hassiba Ben Bouali University, Chlef, Algeria, January 2017, p. 167.

¹⁹This is was stipulated in the Universal Declaration of Human Rights issued on December 10, 1948 by virtue of General Assembly Resolution No. 217 (A) in Article 14/1 thereof, which states: "1- Everyone has the right to seek and enjoy refuge in other countries in order to escape persecution'.

²⁰Balmadioni Muhammad, previous reference, p. 164.

²¹Ouarden Mazen Ahmed Murad, previous reference, pp. (646-647).

²²-It states: "In applying the measures of control provided for in the present Convention, the Detaining Power shall not treat refugees, who in fact do not enjoy the protection of any government, as enemy aliens on the sole ground of their lawful dependence on an enemy State."

²³-Which states that: "The persons protected by the Convention are those who find themselves at a given moment..".

²⁴See the text of Article 16 of the Fourth Geneva Convention of 1949.

²⁵-See the text of Article 27 of the Fourth Geneva Convention of 1949

²⁶-Adopted on June 8, 1977 AD within the framework of the Diplomatic Conference to reaffirm and develop international humanitarian law applicable to armed conflicts. It entered into force on December 7, 1978

²⁷-See the text of Article 73 of Additional Protocol I to the Geneva Conventions of 1949.

²⁸-Ouarden Mazen Ahmed Murad, previous reference, p. 651.

²⁹-See Article 51 of Additional Protocol I to the four Geneva Conventions of 1949.

³⁰-See Article 85 of Additional Protocol I to the four Geneva Conventions of 1949.