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'Lessons from Arusha and Cape Town: UNHCR's Perspective on the Relationship between IHL and International Refugee Law'

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Introduction

First, let me thank Jean-François Durieux and David Cantor for this excellent initiative as well as the opportunity to participate. I look forward to listening to the many presentations, learning more about the complexities and opportunities in this area of cross-fertilization, and to taking back some of the key messages to UNHCR Geneva. So again, thank you for this opportunity.

I have been asked to give an overview of UNHCR's perspective on the inter-relationship between international refugee law (IRL) and international humanitarian law (IHL), or the law of armed conflict. In particular, my presentation will draw from two recent expert roundtables that UNHCR organized in Arusha in 2011, together with the International Criminal Tribunal for Rwanda, and in Cape Town in 2012, in cooperation with the Refugee Rights Clinic at Cape Town University, ICRC participated in both roundtables. The first of these – the Arusha roundtable – dealt primarily with the intersections and complementarities between IRL and international criminal law, which necessarily involved discussion of IHL, in light of the fact that international criminal law is the body of law which criminalizes the proscribed acts in violation of IHL, although it was more squarely focused on ICL. The second roundtable – the Cape Town roundtable – sought to deal with the many legal obstacles surrounding the ability of "war refugees" to qualify for protection under the 1951 Convention relating to the Status of Refugees (1951 Convention)[2].

The summary conclusions and other documentation on both roundtables are available on UNHCR's website.[3]

[1] Enormous thanks to Tai Sayarath for her very thorough research for this presentation.
[2] *1951 Convention* (entered into force 22 April 1954) 189 UNTS137, available at: http://www.unhcr.org/refworld/docid/3be01b964.html.
[3] See http://www.unhcr.org/3e5f78bc4.html

My presentation will deal with two issues in turn: first, the question of the protection of refugees in armed conflict; and second, the refugee definition – for both IHL and IRL.

Fragmentation and specialization of international law

But first, a word about the broader discussion concerning the fragmentation and specialization of international law.

Marrti Koskenniemi's seminal report of the International Law Commission (ILC) notes that '[i]n conditions of social complexity, it is pointless to insist on formal unity [of rules]'.[4]

However, the report nonetheless emphasizes that there is a presumption of consistency that ought to apply in international law so that normative conflicts can - as far as possible - be avoided or at least mitigated.[5]

Fragmentation has been seen to be problematic where it leads, for example, to normative conflict between rules that relate to the same subject-matter yet compel different outcomes.[6] Yet it is not clear that it is necessarily a conflict of rules that is at issue in respect of the interaction between IHL and IRL. Rather, it seems to be how to reconcile different interpretations of the same terms – such as persecution or refugee – which appear in the legal instruments informing both regimes. It also is a question of the extent to which specific references to international humanitarian law in the 1951 Convention, for example in respect of the exclusion clauses in Article 1F, should engender a specific interpretation of that provision.

The presentation will be guided by a number of fundamental questions. Do such explicit references require a wholesale adoption of developments or latest trends in the other body of international law? As both areas of law have evolved, and continue to evolve, quite significantly since the late 1940s, often without regard for the other, is it right to import standards from one regime into the other? Is it right – as a matter of law?

Participants at the Arusha roundtable found that "[g]iven these shared foundational principles [between ICL/IHL and IRL], it might be assumed that these areas of law should, in principle, operate in a complementary manner, and that advances in one area should influence developments in another, to strengthen and consolidate the international normative order.
However, this is not necessarily the case. While these different international legal regimes may rely on similar concepts and terms in relevant treaties and international instruments, they were developed with distinct purposes and have a separate legal existence, which will in turn influence the manner in which these terms are interpreted and applied."[7]

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[4] International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law — Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi*, UN GAOR, 58th sess, UN Doc A/CN.4/L.682 (13 April 2006) [16] ("*Fragmentation of International Law*").
[5] Ibid. [37]–[39].
[6] Alexander Orakhelashvili, "*The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?*", *The European Journal of International Law*, Vol.19 no.1 (2008)161-182, 162.
[7] UN High Commissioner for Refugees (UNHCR), *Expert Meeting on Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law: Summary Conclusions*, July 2011, 2, ("*Arusha Roundtable*") available at: http://www.unhcr.org/refworld/docid/4e1729d52.html.

In other words, there are important reasons why one should not be automatically imported into the other.

Again, as Koskenniemi has pointed out: "the point of the emergence of something like 'international criminal law' or 'international human rights law' (or any other special law) is precisely to institutionalize the new priorities carried within such fields."[8] To require uniformity would potentially undermine the purpose of the particular regime at issue.

Therefore, harmonization of various bodies of law "is not an objective in and of itself; the overriding concern should be clarity on the ordinary meaning of the provisions at hand guided by the object and purpose of each regime or instrument, or the particular norm in question."[9] In regards to refugee protection, the impetus that shapes legal developments is the provision of the most comprehensive level of protection possible.

This is not to say that there are not lessons to be learned from IHL, or in fact from IRL for IHL, which is why we are all here; but rather it is to acknowledge that there are tensions and problems in expecting too close an alignment between the two bodies of law.

Common beginnings, distinct objectives

The purpose of the regime of international refugee law is to ensure that refugees receive protection of their basic rights which they no longer enjoy in their home country.

The regime centres on the 1951 Convention and its 1967 Protocol as well as regional refugee and other complementary protection instruments.

In contrast, IHL is concerned with the regulation of armed conflict. The principal goals, as described by the ICRC, are to protect persons and property that are, or may be, affected by the conflict and to limit the right of the parties to a conflict to use methods and means of warfare of their choice.[10]

Borne out of the horrors of the Second World War, they are both protection regimes – one of IHL's aims is to minimize harm to civilians, including refugees, in times of armed conflict; while IRL provides international protection to persons forced to cross an international border – either because of armed conflict (the protection provided to refugees at the end of the Second World War is indicative, as are the expanded definitions in the OAU Convention governing the Specific Aspects of Refugee Problems in Africa and Cartagena Declaration on Refugees), but in addition, IRL also provides sanctuary to persons fleeing peacetime oppression. For the 1951 Convention, it is irrelevant whether the refugee has escaped an armed conflict (properly so called), generalized violence, or peacetime violence. What is central – at least to the 1951 Convention – is whether the person has a well-founded fear of being persecuted for reasons of their race, religion, nationality, membership of a particular social group (MPSG) or political opinion.

[8] Marrti Koskenniemi, "The Fate of Public International Law: Between Technique and Politics", *The Modern Law Review*, Vol. 70 no.1, January 2007, 1-30, 5.

[9] Alexander Orakhelashvili, "*The Interaction between Human Rights and Humanitarian Law: Fragmentation, Conflict, Parallelism, or Convergence?",* para. 4.

[10] International Committee of the Red Cross (ICRC) Advisory Service on International Humanitarian Law, *International Humanitarian Law and International Human Rights Law Similarities and Differences*, January 2003, available at: http://www.icrc.org/eng/assets/files/other/ihl_and_ihrl.pdf.

So how do these two bodies of law with divergent yet overlapping objectives protect refugees and what exactly is the scope of this protection?

As the protection regime of the 1951 Convention only operates either at the frontier,[11] or once an individual has crossed an international border,[12] the protection of civilians inside a country at war is the concern of IHL, and International Human Rights Law (IHRL). I'll come to the question of whether IRL applies to refugees caught up in an armed conflict in a just a moment.

Under IHL, refugees are entitled to general protection as "protected persons" or civilians, as well as special protection owing to the recognized vulnerability of refugees as aliens in the hands of a party to a conflict.[13] For the purposes of this presentation, I will only deal with the special protections, rather than the general.

During the Second World War the number of refugees living in the territory of the belligerents was greater than ever before. Article 44 of the Fourth Geneva Convention reflects a number of countries party to the Second World War making allowances for this state of affairs by introducing laws exempting such persons from measures taken against enemy aliens.[14] In other words, refugees are protected from measures of control being imposed on them solely on a discriminatory basis – based on their nationality.

Refugees as "protected persons" are also protected - in all circumstances - from transfer to a country where they may have reason to fear persecution for political opinions or religious beliefs.[15] Here is

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[11] See, ExCom Conclusion on non-rejection at the frontier including Conclusion No. 22 (XXXII) 1981 para. (2), No. 81 (XLVIII) 1997 para. (h), No. 82 (XLVIII) 1997 para. (d)(1), No. 85 (XLIX) 1998 para. (q) and No. 99 (LV) 2004 para (l); see also *Hirsi Jamaa and Others v. Italy* , Application no. 27765/09, Council of Europe: European Court of Human Rights, 23 February 2012, available at: http://www.unhcr.org/refworld/docid/4f4507942.html.

[12] See *European Roma Rights Centre and Others v. the Immigration Officer at Prague Airport and the Secretary of State for the Home Department*, [2003] EWCA Civ 666, United Kingdom: Court of Appeal (England and Wales), 20 May 2003, available at: http://www.unhcr.org/refworld/docid/413c564c14.html.

[13] ICRC, *Refugees and Displaced Persons Protected Under International Humanitarian Law*, 2010 available at: http://www.icrc.org/eng/war-and-law/protected-persons/refugees-displaced-persons/overview-displaced-protected.htm.

[14] ICRC, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War ("Fourth Geneva Convention")*, 12 August 1949, 75 UNTS 287, Art. 44, available at: http://www.unhcr.org/refworld/docid/3ae6b36d2.html, "In applying the measures of control mentioned in the present Convention, the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact, enjoy the protection of any government."

[15] Ibid., Art. 45, "Protected persons shall not be transferred to a Power which is not a party to the Convention.
This provision shall in no way constitute an obstacle to the repatriation of protected persons or to their return to their country of residence after the cessation of hostilities. Protected persons may be transferred by the Detaining Power only to a Power which is a party to the present Convention and after the Detaining Power has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with.

one of those points of intersection – where the term "refugee" is used in Article 45 explicitly, albeit a more narrowly described group of refugees than those later agreed under the 1951 Convention. I'll come back to the refugee definition later.

Finally, Article 70 of the Fourth Geneva Convention, which governs the position of refugees vis-à-vis their own country of origin when it becomes the Occupying Power, is also protective, albeit less relevant given the character of today's conflicts.[16] It essentially ensures the continuation of asylum for refugees, and protection against prosecution or persecution by the Occupying Power, subject to a number of exceptions.[17]

Refugees thus enjoy special consideration under IHL due to their unique position as nationals without the protection of their countries of origin, or potentially without the protection of their countries of asylum.

The only exception to either the general or special protections per the Fourth Geneva Convention would be if the person loses their protected person status through taking part in activities hostile to the state which is viewed as compromising the security of the state in which they are located.[18]

At the same time, the 1951 Convention continues to apply to refugees in States parties to that instrument at or in war.

From the IHL perspective, this is based on a reading particularly of Article 73 of Protocol I, which defers to international instruments or national laws relating to refugees [I'll come back to this when dealing with the refugee definition], but also to the above-mentioned provisions collectively noting that they are all aimed in one way or another at the continuation of asylum/protection and treatment as refugees in times of war.

From the perspective of the 1951 Convention, as already mentioned, there is no legal distinction in its application in wartime (and in this context, whether an international or a non-international armed conflict) or peacetime, or the many situations in-between, and thus it would continue to apply – in full. The preambular paragraphs confer a commitment to the fullest enjoyment of human rights to refugees, which would be the guiding ethos even in times of conflict.[19] Article 9 of the 1951 Convention would provide the only scope for permitting derogations from the 1951 Convention

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In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs. The provisions of this Article do not constitute an obstacle to the extradition, in pursuance of extradition treaties concluded before the outbreak of hostilities, of protected persons accused of offences against ordinary criminal law."

[16] Ibid., Art. 70, para. 2 "Nationals of the Occupying Power who, before the outbreak of hostilities, have sought refuge in the territory of the occupied State, shall not be arrested, prosecuted, convicted or deported from the occupied territory, except for offences committed after the outbreak of hostilities, or for offences under common law committed before the outbreak of hostilities which, according to the law of the occupied State, would have justified extradition in time of peace."

[17] ICRC *Commentary* on *Fourth Geneva Convention,* Art. 70, available at: http://www.icrc.org/ihl.nsf/COM/380-600077?OpenDocument: Art. 70 does not apply to refugees who have committed offences "after the outbreak of hostilities" nor does it apply to concerns nationals of the Occupying Power who have committed ordinary criminal offences before the outbreak of hostilities and have taken refuge in the occupied territory in order to avoid the consequences of their action. In fact, the second category – depending on the seriousness of that crime – may well fall under the 1951 Convention, Art. 1F.

[18] *Fourth Geneva Convention,* Art. 5, and UN High Commissioner for Refugees, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, available at: http://www.refworld.org/docid/452b9bca2.html.

[19] *1951 Convention*, preamble, para. 1.

provisions to particular persons who present a threat to national security in times of war. Article 8 of the 1951 Convention, being based on Article 44 of the Fourth Geneva Convention, prohibits such restrictions being based solely on account of their nationality.

Overall therefore in terms of rights enjoyment in times of armed conflict – refugees continue to benefit from the 1951 Convention (except if Article 9 were to apply to their particular circumstances), as well as the protections under IHL as "protected persons". As Stephane Jaquemet had previously cleverly noted: individuals can be simultaneously refugees and conflict victims, and "should, in such circumstances be under the dual protection of IRL and IHL, which should apply concurrently."[20]

Definition of a refugee

As ever, much turns on the definition of "refugee". The term "refugee" is not defined in IHL but is traditionally given a broad connotation.[21] In fact, of the 550 articles and several annexes to the Geneva Conventions only three articles employ the word "refugee".[22]

According to the ICRC Commentary, in respect of previously mentioned Articles 44 and 70, the term "refugees" is employed to mean "people who have left their home country to seek refuge on alien soil as a result of political events or under the threat of persecution. They are thus in actual fact without the protection normally afforded by the State to which they belonged, but are not yet entitled to the legal protection of the State which has given them refuge."[23]

According to the ICRC, the Drafting Conference of the Fourth Geneva Convention "had to confine itself to laying down general rules of a sufficiently flexible character, leaving a great deal to the discretion of governments. In the absence of more detailed rules […] it was hoped that belligerents would apply the articles in the broadest humanitarian spirit, in order that the maximum use may be made of the resources it offers for the protection of refugees."[24]

With the adoption of Protocol 1, Article 73 specified that the term "refugees" should be construed as "under the relevant international instruments" or "under the national legislation of the State of refuge or State of residence".[25] It is thus clear that the definition of a refugee for IHL purposes is the same as that contained in relevant international instruments, including the 1951Convention.

Thus, for IHL, the matter now appears settled – that in identifying refugees, reliance should be given to applicable international instruments – including those developed at the regional level – or those recognized under national laws. And as refugees, they are to be considered "protected persons".

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[20] Stéphane Jaquemet, *Under What Circumstances Can a Person Who Has Taken an Active Part in the Hostilities of an International or a Non-International Armed Conflict Become an Asylum Seeker?*

[21] See ICRC, *Commentary* on *Protocol I* Art.44 available at: http://www.icrc.org/ihl.nsf/COM/380-600050?OpenDocument.

[22] *Fourth Geneva Convention* Art. 44; Art. 70 para. 2; ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 8 June 1977, 1125 UNTS 3, Art. 73, available at: http://www.unhcr.org/refworld/docid/3ae6b36b4.html.

[23] ICRC *Commentary* on *Fourth Geneva Convention,* Art. 70.

[24] ICRC, *Commentary* on *Protocol I,* Art.44.

[25] *Protocol I*, Art. 73, available at: http://www.unhcr.org/refworld/docid/3ae6b36b4.html. "Persons who, before the beginning of hostilities, were considered as stateless persons or refugees under the relevant international instruments accepted by the Parties concerned or under the national legislation of the State of refuge or State of residence shall be protected persons within the meaning of Parts I and III of the Fourth Convention, in all circumstances and without any adverse distinction."

This convergence, and nod to the 1951 Convention and other instruments, leads to harmony between the two regimes, and does not seem to give rise to any ambiguity as to who ought to be considered a refugee and therefore afforded protection. ICRC's Commentary on these provisions notes that, where the definition is in doubt because of different definitions at play, the one most favourable to the victim should prevail.[26] UNHCR would agree with this approach.

Having said this, Article 73 of Protocol I explicitly refers to persons recognized as refugees at the time of the armed conflict. So what about those persons who seek refugee status *during* an armed conflict?

Here, the only answer can be that the same approach should be taken, that the meaning of refugee is governed by international instruments or national laws. While the context of armed conflict may practically make it more difficult for a state to determine through asylum procedures whether someone is a refugee, especially from amongst enemy aliens, the 1951 Convention nevertheless applies. The question seems more to be a practical than a legal one. In the absence of status determination processes, which are often suspended or not functional in times of conflict, the broader interpretation of "refugee" would appear to be appropriate. Mechanisms such as *prima facie* recognition of refugee status could be applied, and have regularly been applied in armed conflict situations. Also, with the growing restrictive interpretations given to the 1951 Convention by many States, in particular the obstacles faced by victims of conflict from obtaining status, erring on the side of protection would be called for– which we would argue promotes the objectives of both regimes.

So what about the perspective of the 1951 Convention? Should the terms in IHL be used as means of interpretation of the definition of a refugee in the 1951 Convention?

Given the elucidation in Article 73 of the First Protocol, it would be circular logic, wouldn't it, to suggest that refugees, defined under IHL by reference to IRL, to then import IHL into IRL to define the same term? In fact, Article 73 recognizes and relies on the primacy of international instruments – 1951 Convention - as defining refugees. One could argue that nothing more is thus required, and there is total deference to the 1951 Convention.

Having said this, one has to acknowledge that Article 1F of the Refugee Convention does in fact explicitly refer, in paragraph (a) to "international instruments drawn up to make provision"[27] in order to "define" war crimes and crimes against humanity. So even with Article 73, IHL remains relevant – as does international criminal law – to defining who is (and who is not) a refugee. That said, this provision in Article 1F(a) does not however call for or require direct importation of all developments in these other branches of international law, but rather the approach taken should be guided by the respective purposes of these provisions and regimes. As there is a panel on exclusion at this conference, I do not propose to deal with exclusion in any more detail here.

Apart from exclusion, there are three further questions that call for a response and which I wanted to address:

- First, can violations of IHL constitute "persecution" giving rise to a claim to refugee status, and flight?

[26] ICRC, *Commentary* on *Protocol I,* Art.73, available at: http://www.icrc.org/ihl.nsf/COM/470-750094?OpenDocument.
[27] *1951 Convention*, Art. 1F(a),.

- Second, can/should the meaning of "persecution" in IHL/ICL inform the meaning of the term "persecution" in 1951 Convention?
- Third, does the fact of an armed conflict – or its designation as such - have any bearing on the qualification for refugee status?

On the first question, the short answer is that serious violations of IHL which constitute threats to life or freedom, meet the threshold of "persecution". The concept of persecution is not defined in the 1951 Convention and has not been given a uniform interpretation. But as Stephane Jacquemet has noted "there is agreement that some acts and threats, because of their intrinsic unlawfulness and gravity, are always considered to be persecution."[28]At a minimum, this would include crimes against humanity and grave breaches of the Geneva Conventions. It could also include lesser violations on a cumulative basis.

The Cape Town meeting held: "A risk of regular exposure to violent conduct and other consequences common in situations of conflict can amount to persecution within the meaning of Article 1(A)(2) of the Convention, either independently or cumulatively, depending on the seriousness of the conduct or its consequences. Such conduct can include more general conduct such as shelling and bombardments, cutting of food supplies, militarization of hospitals and schools, as well as conduct – or the consequences thereof – that are more long-term and indirect, such as food insecurity, poverty, collapse of the political, health care and education systems, or displacement. It can also include methods of warfare representing conduct that is more individual in nature such as security checks, house or office raids, interrogation, personal and property searches, forced evictions, sexual violence or restrictions on freedom of movement."[29]

The law of armed conflict is also particularly relevant to claims based on objection to military service, or draft evasion/desertion, where in particular a person's refusal to participate in military action is based on, for example, being required to commit acts contrary to the basic rules of human conduct – i.e. including serious violations of IHL. It is also obviously relevant (together with international human rights law standards) in respect of the participation of children in hostilities, and whether they qualify for refugee status.

Moving to the second question, like the term "persecution" in the 1951 Convention definition, "persecution" is also not defined under IHL. In fact, persecution in the Fourth Geneva Convention is mentioned only in Article 45, the provision specifically about refugees. It is not contained in any of the other instruments.

Thus, IHL has a relatively limited role to play here, as noted in respect of Article 73 of Protocol I which defers to international refugee law.

Developments in ICL, closely related to IHL, have however established a definition in the Rome Statute of the International Criminal Court (ICC), and thus the question whether or how ICL influences the refugee definition is a question that has been raised – and was one of the focuses of discussion in Arusha.[30]

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[28] Stephane Jacquemet, "The Cross Fertilization of International Humanitarian Law and International Refugee Law", *International Review of the Red Cross*, September (2001) Vol. 83 no. 843, 651-674, 666.

[29] UNHCR, *Summary Conclusions on International Protection of Persons Fleeing Armed Conflict and Other Situations of Violence; Roundtable 13 and 14 September 2012, Cape Town, South Africa*, 20 December 2012, para 21, ("*Cape Town Roundtable*") available at: http://www.unhcr.org/refworld/docid/50d32e5e2.html.

[30] *Rome Statute of the International Criminal Court (last amended 2010)*, 17 July 1998, ISBN No. 92-9227-227-6, Art. 7(1)(h) ('*Rome Statute*') available at: http://www.unhcr.org/refworld/docid/3ae6b3a84.html, under

While the Arusha meeting also acknowledged that crimes committed in conflict could rise to the level of persecution, and that there was significant overlap in the types of acts classified as persecution under both IRL and IHL/ICL, there was a **general caution** about importing particular aspects of the definition of persecution from the ICC Statute which render it a crime into the refugee definition.[31] The protection basis of international refugee law would call for a broader definition of persecution than required in international criminal law.

Where and how do we draw the limits on this cross-fertilization, and how do we benefit from the shared approaches, without giving further fuel to restrict the refugee definition? This seems to be one of the greatest challenges to the increasing integration of different regimes.

The Cape Town roundtable responded specifically to the third question, that is, does the fact of an armed conflict – or its designation as such - have any bearing on eligibility for refugee status?

The Summary Conclusions start by noting that: "Nothing in the text, context or object and purpose of the 1951 Convention hinders its application to armed conflict or other situations of violence."[32]

They then provide: "For the purposes of applying the 1951 Convention refugee definition, classifying a particular situation as an armed conflict can be a relevant component of the background to the refugee claim, but it too frequently distorts the basis for the claim, raising issues around generalized violence rather than persecution, as well as credibility issues. Participants noted that in every claim for refugee protection, it remains necessary to understand and analyze the factual situation in the country of origin in its proper context, including the causes, character and impact of the conflict and violence on the applicant and others similarly situated. Good country of origin information should avoid generalizations about the conflict and highlight groups that are persecuted."[33]

The roundtable also clarified that: "Where conflicts are rooted in ethnic, religious or political differences, or where there is a differentiated impact of the conflict or violence along ethnic, religious, political, social, or gender lines, persons fleeing such conflicts or violence may qualify as 1951 Convention refugees."[34]

In other words, the existence of an armed conflict does not a refugee make, but nor does it disqualify him/her. Nor should it lead to higher burdens or standards of proof – an individual simply needs to establish that s/he has a well-founded fear of being persecuted for a Convention reason.

Of course, I have not dealt with the refugee definition in the OAU Convention or Cartagena Declaration, where clearly the existence of an armed conflict would immediately bring someone who leaves their country of origin on account of that conflict within the refugee definitions in those instruments.[35]

"Crimes against humanity": "Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court."

[31] Such as discriminatory intent (or the *mens rea*), or the requirement that such acts take place within a widespread or systematic attack to establish a crime against humanity, *Arusha Roundtable,* see above note 7.

[32] *Protocol I*, Art. 73, para.6.

[33] Ibid., para. 7.

[34] Ibid.,para. 8

[35] See Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)*, 10 September 1969, 1001 UNTS 45, Art. 1, available at: http://www.unhcr.org/refworld/docid/3ae6b36018.html; *Cartagena Declaration on Refugees, Colloquium on*

Conclusion

I have only dealt with two amongst a myriad of areas of interaction between IHL and IRL namely, (i) the protection of refugees *in* armed conflict and (ii) the refugee definition. I look forward to learning from the other papers, and participating in these discussions.

Suffice to say that IRL has – over its 60 year existence – evolved, on its own accord, as well as by relation to other branches of international law, most notably international human rights law, international humanitarian law and international criminal law. While a focus on the impact of IHL on IRL is important, it can be seen that even this cannot (and perhaps should not) be done in isolation of developments in these other areas, as they may also have a bearing on refugee protection. The closer interaction between IHL and IHRL is a case in point; likewise the relationship between IHL and ICL. At the same time, the international refugee protection regime is a specialized legal regime, guided by its own internal dynamics, object and purpose; and that what is overriding is the need for clarity on the ordinary meaning of particular term in question, guided by the object and purpose of each regime, or the provision at hand.

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the International Protection of Refugees in Central America, Mexico and Panama (Cartagena Declaration), 22 November 1984, III (3), available at: http://www.unhcr.org/refworld/docid/3ae6b36ec.html.