Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law

Concept Note

The establishment of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and of the International Criminal Tribunal for Rwanda (ICTR) in 1994 marked the start of a new era, with the international community unequivocally recognizing its duty to fight impunity and prosecute the perpetrators of gross violations of international humanitarian law and other international crimes.

In over fifteen years, these institutions have, through their extensive jurisprudence, made significant contributions to international law as it relates to war crimes, crimes against humanity and genocide. The Special Court for Sierra Leone and the International Criminal Court, which have been established thereafter, have also made important strides in the development of international criminal justice.

The linkages between international criminal justice and forced displacement are multifaceted. They range from the very crimes over which international criminal courts have jurisdiction, including the war crimes of deportation and forcible transfer, as well as persecution, deportation and forcible transfer as crimes against humanity, to the application of the Refugee Convention’s exclusion clauses to individuals indicted by these institutions. International human rights instruments have also proven particularly crucial in upholding standards of due process in international criminal proceedings. Areas of cooperation between UNHCR and international criminal institutions include the appearance of staff members as expert witnesses, the relocation of protected witnesses who are refugees, and the use of evidence adduced in international criminal proceedings for the purpose of refugee status determination.

The expert roundtable to be held in Arusha, Tanzania, between 11 and 13 April 2011 will bring together academic experts, legal practitioners and policy makers to examine complementarities between international refugee law, international criminal law, and international human rights law, highlighting potential conflicts and converging trends. The event will lead to the issuance of concluding observations addressing both the doctrinal and operational aspects of the various themes explored during the meeting.

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International Crimes and Forced Displacement

In terms of substantive law, the statutes of international criminal tribunals include the very act of forcibly displacing people as war crimes and crimes against humanity, reflecting the fact that in many contemporary conflicts, displacement is a key objective in the political and military strategy of warring parties. The jurisprudence of the tribunals also offers fresh insights on potential convergences and divergences between international criminal law and international refugee law with respect to the scope of persecution. The tribunals’ judges have had to determine, for instance, whether summary dismissals from public office on a discriminatory basis or hate speech could amount to persecution as a crime against humanity.

International Tribunals have developed groundbreaking jurisprudence in other areas of relevance to forced displacement. Such is the case with respect to the definitions of rape and of torture developed by ICTY, which resulted from a thorough analysis of comparative law and international humanitarian and human rights law. Similarly, the ICTY adopted a relatively low threshold for the existence of an “internal armed conflict”, which is particularly relevant for the determination of subsidiary protection claims under EU law and of exclusion under Article 1F(a) of the Convention relating to the Status of Refugees.

International Criminal Law and Exclusion

According to UNHCR’s Guidelines on the application of the exclusion clauses, an indictment by an international criminal tribunal creates a rebuttable presumption of excludability. The Guidelines do not explicitly indicate, however, that exclusion should continue to apply with respect to acquitted individuals. Far from being hypothetical, this issue has come up with several of the individuals acquitted by the ICTR, who refuse to return to Rwanda for fear of ill-treatment. In such situations, what ought to be the respective roles of UNHCR and international criminal institutions and how can these often difficult cases best be resolved?

Other relevant questions relate to the doctrines of international criminal liability which are still evolving under international criminal law and are important for the assessment of exclusion cases under international refugee law.

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2 See e.g. Prosecutor v. Slobodan Milosevic, Case No. IT-02-54-T, Second Amended Indictment, 27 July 2003, para. 26 c).
5 Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees (HCR/GIP/03/05), 4 September 2003, para. 34.
International Criminal Proceedings and Forced Displacement

Interaction between international criminal justice institutions and UNHCR is frequent with respect to a host of procedural issues. Many witnesses who have testified in international criminal proceedings are in fact refugees and may be granted protective measures by judges, in which case UNHCR may have a role to play.

Before the International Criminal Court, individuals who are recognized by a Chamber as victims have the right to participate in proceedings\(^7\) and the question arises as to whether such recognition may then be used in refugee status determination procedures. This specific point is in fact part of broader considerations on the weight to be accorded to evidence adduced before international criminal courts in asylum procedures.

Finally, the potential cooperation of humanitarian agencies with international criminal institutions also generates difficult dilemmas.\(^8\)

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\(^7\) See Article 68.3 of the Statute of the International Criminal Court; Rule 89 of the International Criminal Court’s Rules of Procedure and Evidence adopted by the Assembly of State parties, 3-10 September 2002.

Draft Agenda

Day 1

9:00-9:15  Opening Remarks

9:15-10:45  Panel 1 – Forced Displacement and International Criminal Justice: Key Case Studies

The first panel of the conference will highlight the linkages between forced displacement and international criminal justice in four situations: the former Yugoslavia, the Democratic Republic of Congo, Rwanda, and Sierra Leone.

10:45-11:00  Coffee break

11:00-12:30  Panel 2 - Displacement as an International Crime: Deportation and Forcible Transfer

This panel will examine relevant legal developments with respect to deportation and forcible transfer as war crimes and crimes against humanity.

12:30-2:00  Lunch

2:00-3:30  Panel 3 - The Meanings of Persecution: Insights from International Refugee Law, International Criminal Law and International Human Rights Law

This panel will consider the scope and nature of the concept of persecution in light of recent developments under international criminal law, international human rights law and international refugee law.

3:30-4:00  Coffee Break

4:00-5:30  Panel 4 - The Definition of Internal Armed Conflict under International Criminal Law and International Humanitarian Law

This panel will examine how the notion of “internal armed conflict” has evolved based on ICRC doctrine and the jurisprudence of international criminal tribunals and whether such progressive interpretations have been fully taken into consideration by asylum adjudicators.

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Day 2

9:00-11:00  Panel 5 - Exclusion and Acquittal: Legal and Policy Considerations

This panel will discuss under what circumstances individuals acquitted by international criminal courts may be excluded pursuant to Article 1(F)(a) of the 1951 Convention relating to the Status of Refugees. The panel will also address ways in which cooperation between UNHCR and international criminal institutions may be strengthened to resolve these situations.

11:00-11:30  Coffee break

11:30-1:00  Panel 6 - Exclusion and Doctrines of International Criminal Liability

This panel will examine the evolving doctrines of international criminal liability and the implications of such evolving interpretations in the application of the exclusion clauses.

1:00-2:00  Lunch

2:00-3:30  Panel 7 - Assessing the Evidence: Factual Findings and their Use in Asylum Proceedings

This panel will examine how evidence adduced before international criminal courts may be used in asylum proceedings, and the impact of an individual’s participation in ICC proceedings as a victim on his or her claim for international protection.

3:30-4:00  Coffee Break

4:00-5:30  Panel 8 - Gathering and Production of Evidence

This panel will debate the role of humanitarian actors in this area.

5:30-6:30  Panel 9 - Refugees as Protected Witnesses

This panel will assess existing cooperation between UNHCR and international criminal tribunals with respect to refugees who are granted protective measures by an international criminal institution.

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Day 3

9:30-11:00  *Panel 10 - Fragmentation or Complementarity?*

This wrap up session will, based on the conclusions reached in previous panels, identify ways in which international refugee law, international criminal law, and international human rights law can best complement each other and meet the twin objective of fighting impunity while ensuring the protection of forcibly displaced populations.

11:00-12:00  *Final Remarks and Concluding Observations*

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