



## Refugee protection in the context of armed conflicts

### A proteção de refugiados em contexto de conflitos armados

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## INTRODUCTION

It's fair to say that the "laws of war" have existed since the dawn of time, since the existence of war itself. Even if in a rudimentary way, limits and rules used in conflicts were established among the most diverse civilizations and peoples (BOUVIER; LANGHOLTZ, 2020). Many scholars consider the First Geneva Convention (1864) to be the emergence of what we understand in modern times as International Humanitarian Law (IHL), but it is worth saying that many of the principles established there, such as respect for and protection of human life in the context of wars, were already supported in earlier times, often in the form of customary law (BOUVIER; LANGHOLTZ, 2020).

However, it is possible to argue that in ancient times, the establishment of limits on the use of force in armed conflicts was motivated by economic reasons, which resulted in humanitarian benefits. Examples include restrictions on the use of poison in conquered areas, so that the territory could later be exploited by the victorious party (BOUVIER; LANGHOLTZ, 2020).

In the 3rd century BC, the Greek philosophical school of Stoicism introduced the world to the concept of empathy, which implied putting oneself in the other's shoes and respecting the other. Between the 16th and 13th centuries, with the Renaissance, it was common for the parties involved in conflicts to meet before the battle to establish certain rules (BOUVIER; LANGHOLTZ, 2020). In the mid-1970s, the term "*International Humanitarian Law*" (IHL) came to the fore. More specifically, in 1977, Additional Protocols to the Geneva Conventions were proposed, which, among other objectives, aimed to determine more efficiently what IHL would be, thus allowing its applicability. However, although these efforts were legitimate, the content of what was proposed was not able to clarify the limits and requirements of this new concept, or legal system that was being proposed. As such, it was widely criticized and its legal status challenged (ALEXANDER, 2015).



The concept of IHL was based on how war should be conducted, with humanitarian principles at its core. We are talking here about what we understand today as "*jus in bello*". The Geneva Convention focuses mainly on these humanitarian aspects of armed conflicts, as do its additional protocols. The end of the 20th century marked a milestone for IHL: it was during this period that Additional Protocol I of 1977 began to be recognized as legitimate, based on the efforts of international organizations dedicated to the protection of human rights, in particular the International Committee of the Red Cross (ICRC), and international jurists specializing in the field (ALEXANDER, 2015).

At this stage of the discussion, the ICRC, other authorities and jurists specializing in the area have reached a consensus that IHL is a part of human rights, those humanitarian principles and rights that must be safeguarded in the context of armed conflicts - wars. We can also say that IHL is an arm of Public International Law, which aims to mitigate the suffering caused by wars, and will do so by setting limits on the coercive conduct practiced in these conflicts (ALEXANDER, 2015).

An unquestionable milestone for International Humanitarian Law as we know it today was the Battle of Solferino (1859), a conflict that took place in northern Italy between the French and the Austrians. Jean-Henry Dunant, a businessman from Geneva, witnessed the horrors of this war and was particularly moved by the desperate situation of the wounded who were left adrift on the battlefields. With the support of the local population, Dunant set about rescuing and caring for the wounded in question. Out of this situation, Dunant wrote a work called *A Memory of Solferino*, which would go on to have a major influence on the field of human rights in armed conflicts (BOUVIER; LANGHOLTZ, 2020).

In his book, Dunant recounts the events of the Battle of Solferino, but more importantly, he presents the public with proposals for measures to be adopted in armed conflicts, which would provide a more dignified fate for those wounded in combat. It is worth mentioning three basic principles proposed by Dunant to alleviate the suffering of those who have been victimized by war (BOUVIER; LANGHOLTZ, 2020).

The first suggested the creation of a corps of volunteers who, in times of peace, would try to prepare themselves to act as auxiliaries to the military health staff, responsible for providing medical care to the wounded. This proposal was the cornerstone of the creation of the Red Cross. The second measure suggested was an international agreement for the protection of sick and wounded soldiers, as well as the creation of military hospitals and the appointment of health teams.

In fact, an international agreement has been established, the largest we have with regard to IHL, the Geneva Convention (1864), which has indirectly influenced the other international agreements on the subject. The third proposal suggests the implementation of a symbol that would be used by the health team, medical staff and inserted in the facilities responsible for providing medical care to the sick and wounded



in conflict. This measure was also adopted, and the Red Cross symbol became globally recognized and respected (BOUVIER; LANGHOLTZ, 2020).

Thus, it is valid to say that although the values and principles that underpin International Humanitarian Law were embedded to a certain extent in the practices and agreements between opposing parties in armed conflicts and wars, the most robust and efficient legal scope was established with the Geneva Convention. The movement initiated by Henry Dunant culminated in the establishment of these norms that we know as IHL.

## **OBJECTIVE**

Carry out an analysis of the legal treatment to be granted to refugees who find themselves in a context of armed conflict.

## **METHODOLOGY**

This is a literature review, developed using scientific articles that are relevant in the academic world. Therefore, only published articles dealing with the topic were included.

## **INTERNATIONAL HUMANITARIAN LAW**

International Humanitarian Law is a set of rules of international scope that are established through customary law or treaties, and which seek to remedy or reduce the humanitarian impacts caused by international or internal armed conflicts. Based on these IHL norms, limits are set on the methods and tactics used by the parties involved in the conflict, with the intention of achieving the aforementioned objective.

The terms "*International Humanitarian Law Applied to Armed Conflicts*" and "*International Humanitarian Law*" are synonymous. Among the military, there is a preference for the terms "*Law of Wars*" or "*Laws of Armed Conflict (LOAC)*". Both terms can be considered synonymous with IHL (BOUVIER; LANGHOLTZ, 2020).

According to Jean Pictet (1970), Hague Law establishes the rights and duties of combatants and limits the means used by them in armed conflicts. These rules were mostly laid down in the Hague Conventions of 1899, and later revised in 1907. The regulations stipulated here focus on military operations, their methods and their combatants. When we look at Geneva Law, we can see that it is dedicated to the protection of the individual and at its core are humanitarian principles.

Geneva Law was consolidated by the Geneva Conventions, which began in 1949. Since then, its four editions have been considered the most complete and relevant set of legal norms when it comes to protecting individuals in the context of armed conflicts. We can say that it goes beyond some of the rights already established in the Hague Conventions, since it is intended to protect human life, the individual, even if none



of the parties to the conflict is directly involved. In other words, it seeks to protect civilians in general (PICTET, 1970).

We can therefore distinguish Hague Law from Geneva Law by looking at their purposes, which are complementary in a way, even if they are different. Hague Law will focus on the military, the methods and means of its operations, establishing clear limits that must be respected. Geneva Law, on the other hand, focuses on the individual as a whole, non-combatants, civilians (BOUVIER; LANGHOLTZ, 2020). Thus, it is clear that both Hague Law and Geneva Law work to mitigate or curb the impacts and horrors of wars and armed conflicts. Although they are distinct, especially in terms of their object of interest, they go hand in hand in the application of International Humanitarian Law in its entirety.

## **THE MAIN LEGAL DOCUMENTS: GENEVA CONVENTIONS AND ADDITIONAL PROTOCOLS**

According to Bouvier and Langholtz (2020), the First Geneva Convention (1864) was the result of an existing international legal system, customary law. The First Geneva Convention was born from the great encouragement of Henry Dunant, through his work *"A Memory of Solferino"* - in which he proposed that states commit themselves through international agreements to protect military personnel wounded in conflicts, their facilities and medical teams.

Later, the original version of this 1864 convention was expanded. In 1949, we have the new version of the First Geneva Convention (1949) on the "Improvement of Conditions for Wounded and/or Sick Members of the Armed Forces in the Field". The aim of this convention was to protect soldiers who were already out of combat (AMERICAN RED CROSS, 2011).

The Second Geneva Convention (1949) on "Improving Conditions for Members of Maritime Armed Forces, the Wounded, the Sick and Shipwrecked". This convention extends the protections established for land forces in the previous convention to maritime forces. It thus protects wounded and sick military personnel who are on board, whether the vessel is at anchor or on the high seas (AMERICAN RED CROSS, 2011).

The Third Geneva Convention (1949) on the "Treatment of Prisoners of War" seeks to ensure that prisoners of war are treated according to humanitarian principles, with certain basic needs respected. It therefore stipulates that they receive shelter, food, clothing and medical treatment if necessary. In addition, it regulates and discusses disciplinary measures, trial, among other particularities of the prisoner's day-to-day life. Prisoners of war include members of the armed forces, irregular forces, members of popular resistance movements, among others (AMERICAN RED CROSS, 2011).



The Fourth Geneva Convention (1949) on the "Protection of Civilians in Time of War" deals with the protection of all persons who find themselves in territory in which an armed conflict is taking place, or occupied by one of the parties involved in the conflict (AMERICAN RED CROSS, 2011).

It is worth remembering that in the four Geneva Conventions there is a repeated article, article 3, which obliges signatory states to act in accordance with a series of essentially humanitarian guidelines in the context of non-international armed conflicts. It was established that any person who is not involved in the armed conflict must, under any circumstances, be treated in accordance with humanitarian principles and must not suffer any kind of discrimination. As well as the wounded and sick, castaways must be rescued and receive medical care if necessary (AMERICAN RED CROSS, 2011).

In other words, this article adds to the extent of the protection offered by the signatory countries. Under this article, states are also obliged to offer all the guarantees set out in the conventions in internal, non-international conflicts taking place on their own territory.

In addition to the Geneva Conventions, Additional Protocols were created to improve the protection offered to individuals affected by armed conflicts. The intention was to establish rules that would strengthen the protection of potential victims of armed conflicts, both international and internal. Additional Protocol I (1977) on the "Protection of Victims of International Armed Conflicts" expanded the protection already offered to the civilian population to health professionals working in these conflicts (AMERICAN RED CROSS, 2011).

Additional Protocol II (1977) on the "Protection of Victims of Non-International Armed Conflicts" provides for the protection of people who find themselves in the midst of violent internal conflicts, such as civil wars. There is a binding nature to the severity, intensity and level of violence of the conflict for the stipulations of this Protocol to apply (AMERICAN RED CROSS, 2011).

Additional Protocol III (2005) on the "Adoption of a Symbol" presents the "red crystal" as a symbol, the use of which is optional. This symbol is the same as the red cross and the red crescent (AMERICAN RED CROSS, 2011). Once again, we have the fundamental participation of Henry Dunant, who in "*A Memory of Solferino*" proposed the creation of an international symbol that would identify the medical and health teams working in armed conflicts, as well as the facilities set up to receive the wounded, so that they would be protected once identified through the symbol (JUBILUT, 2007).

## **INTERNATIONAL REFUGEE LAW**

It can be said that migration is a phenomenon that has always existed as an essential tool for human survival (BELELLI; BORGES, 2016). Since the dawn of humanity, there has been talk of people moving from one geographical space to another, either permanently or temporarily (MASSEY, 1990). However, it



was only between 1917 and 1918, with the start of the Russian Revolution and the end of the First World War, that the debate on the protection of refugees in Europe arose.

The institute of refuge emerged at the beginning of the 20th century, when Russians fled the USSR due to the political and economic conditions of the time. At first, they were sheltered by an institution called the Red Cross, which, due to the growing number of individuals, had to request support from the League of Nations, which in turn created the first organization to deal with the issue of refuge (BARICHELLO; ARAÚJO, 2014). This led to the emergence of international protection for refugees. In this sense, the author Marcelo Varella understands:

"Refuge is based on persecution of a group of individuals because of their race, religion, nationality or political choice. The refugee must have a well-founded fear of persecution in their country, where they will not find a fair trial with due process of law." (VARELLA, 2011, p. 198).

Thus, in 1920, the League of Nations was created, responsible for influencing the international community to tackle the problem of the refugee crisis. Consequently, in 1921, through the Council of the League of Nations, the first High Commissioner for Refugees (UNHCR) was created. However, this institution was exclusively focused on the humanitarian reception of Russian refugees (BARICHELLO; ARAÚJO, 2014). It can be seen, then, that the protection offered up to this point was neither comprehensive nor global.

Against this backdrop, the right to asylum was enshrined in the 1948 Universal Declaration of Human Rights, approved by the UN General Assembly (XAVIER, 2007). It guarantees the right of any individual persecuted in their country of origin to seek the protection of another country. Although it did not stipulate that the country of origin would be obliged to grant this right. The right to asylum is provided for in Article XIV of the aforementioned declaration:

"Everyone who is a victim of persecution has the right to seek and to enjoy asylum in other countries." (UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948).

Subsequently, international refugee law began to derive from the 1951 Convention, an international instrument drawn up by the United Nations Organization, which, in turn, began to ensure the protection and support of people who, due to force majeure, had to leave their country of origin. In this sense, the 1951 Convention defines refugees as people seeking asylum and protection in a country other than their own (UNHCR, 2019a, p. 2). Unlike traditional migrants, who move for economic reasons and a better quality of





life, refugees flee their home country in search of survival and fear of inevitable persecution. Thus, Article 1 of the 51st Convention contains an exhaustive list of what constitutes a refugee:

[...] owing to events occurring before January 1, 1951, and owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or owing to lack of nationality and being outside the country in which he formerly habitually resided is unable or, owing to such fear or for reasons other than mere personal convenience, is unwilling to return to it. (UNHCR, 2019a, p. 2).

In view of this, a unique evaluation process was implemented for each case, establishing prerequisites that characterize the individual as a *de facto* refugee. In other words, the 1951 Convention covers 5 grounds for obtaining refugee *status*: race, religion, nationality, membership of a particular social group or political opinions (UNITED NATIONS, 1951). In addition to the feeling of danger to one's life, as occurs in times of war and terrorist attacks, when the person's stay in their home state becomes unfeasible. It is worth noting that these 5 reasons stem from the three foundations of the French Revolution, which are liberty, equality and fraternity. Together, they prevent the repeated practice of discrimination and persecution, guaranteeing all refugees the protection of their most fundamental rights. In short, it is clear that these three pillars of the French Revolution embody the idea that all people are free and equal in their rights and duties.

Thus, with regard to the use of tools to make a dignified life possible for individuals in situations of refuge, it should be noted that, although some authors understand that refuge and asylum are different institutes (LOPES, MOURA, ROCHA & FILHO, 2010, p. 2), most states understand that there is no difference between them, and this is the position of the vast majority of countries, particularly those of Anglo-Saxon culture. Since both institutes are aimed at protecting people who suffer persecution within their country of origin, they are similar in nature.

It can be said that the 1969 American Convention on Human Rights, popularly known as the Pact of San José da Costa Rica, improved the matter by determining the duty of states to provide asylum to those who request it, in compliance with the *non-refoulement* principle, which gives refugees the right not to be sent back to their state of origin, except in cases where the asylum seeker is considered a threat to the national security of the host state (BELELLI; BORGES, 2016). This obligation towards states was not present in previous documents, which only guaranteed the individual's right to request and benefit from asylum, as is the case, for example, in the 1948 Universal Declaration of Human Rights.



## THE UNHCR AS AN INSTITUTION THAT PROTECTS THE RIGHTS OF REFUGEES

The United Nations High Commissioner for Refugees (UNHCR), also known as the UN Refugee Agency, is an autonomous body at the universal level, focused on protecting the rights of refugees and finding permanent solutions to resolve the refugee crisis (BARICHELLO; ARAÚJO, 2014). It was created on January 1, 1950, and although it initially had a mandate of only 3 years, due to the significant increase in the number of refugees, this mandate has been renewed every 5 years. And although it was initially made up of only 53 states, it currently has the participation of 137 countries and territories and several regional offices around the world, with the aim of enabling the implementation of refugee protection at a global level.

The creation of the UNHCR introduced a new phase for the international protection of refugees. First, with the codification of the sources of international refugee law, the 1951 Convention and the 1967 Protocol, which together contributed to an international systematization of refugee rights (GOMES, 2017). Subsequently, there has been a significant change in the qualification of refugees, since refugee *status*, which used to be based solely on collective criteria, is now based on individualized criteria (JUBILUT, 2007).

In addition, the UNHCR's universal nature has facilitated the application of refugee protection, resulting in better acceptance of refugees by host states and the international community. At the same time, it has contributed to the repercussion and awareness of the issue, facilitating its introduction into national legislation, thus guaranteeing its maximum effectiveness of application.

In view of this, based on the 1951 Convention and the 1967 Protocol, the UNHCR understands persecution to be any threat to an individual's life or freedom and, consequently, it is understood that when a country that has the resources to guarantee the realization of fundamental human rights fails to do so, there is persecution on the part of the state itself. Especially when it comes to hard core human rights, which are: the right to life, liberty and the physical integrity of the human person, which includes the protection of rights considered to be inalienable, such as the right not to be subjected to torture or slavery, freedom of religion and freedom of thought (BARICHELLO; ARAÚJO, 2014).

Today, it is up to the UNHCR to provide humanitarian assistance to refugees and although it is not the central theme of this chapter, over the years, the UNHCR's work has ceased to be limited to refugees and has started to cater for other types of displaced individuals considered to be "individuals of interest to the UNHCR", such as stateless persons and internally displaced persons, who although they do not have the same name, are in a similar situation to refugees. Therefore, it is understood that, in order to be fully effective, the UNHCR has two objectives: to guarantee the protection of individuals who request refuge and to promote permanent solutions to the refugee crisis (GOMES, 2017).

According to a historical analysis, international refugee law, although it emerged in the 20th century and became legal in the 1950s, is an area that is always in constant development, given that it is given great prominence on the international agenda in the search for the protection of human beings.





Thus, it can be seen that due to the significant increase in forced migratory flows and the constant disrespect for the dignity of the human person, the issue of refugees has grown more and more on the international stage (BOSCHETTI, 2017). And although the protection of refugees is still a major challenge, given the significant number of requests for refuge, there are still not many regulations promoting this protection on the part of states, which often create barriers believing they are protecting their national security, which consequently makes the realization of refugee rights a harder job than it should be (GOMES, 2017). In this way, it is clear that, although there will always be new obstacles to the realization of refugees' essential rights, there will also be new opportunities for improvement. In the same vein, it will always be necessary for both the UNHCR and the UN to join forces in raising awareness, spreading as much information as possible about the rights and protection of refugees, in order to reduce their rejection by the nationals of the receiving states.

## **THE LEGAL PROTECTION OF REFUGEES IN WAR SCENARIOS**

In order to show where "International Humanitarian Law" and "International Refugee Law" meet, we need to clarify their relationship with Human Rights (HR).

Human rights are basically those rights that all human beings enjoy. They are essential rights that seek to safeguard human life and dignity. The evolution of human rights extends throughout history, their origin, their moral and philosophical justification has been and still is widely discussed. Many authors and scholars have opted for the view that, wherever human rights have come from, they are essential humanitarian norms of irrefutable importance, with their origin being less relevant than their purpose (JUBILUT, 2007).

One of the milestones in the evolution of human rights was their legalization as a result of popular movements. In other words, the formalization at state level of legal documents that support the preservation of human rights, consequently leading to the right to life, liberty and equality. Later on, a second milestone in the evolution of human rights was consolidated through their generalization. National laws began to guarantee that each and every person's human rights would be respected within their state and that they would be able to claim them (JUBILUT, 2007).

Then, with the horrors generated during and after the Second World War (1945), it became clear that in order to reduce or limit the impacts caused by conflicts, human rights had to be internationalized. With the creation of the UN (United Nations Organization) in the same period, it was possible to put this idea into practice. In this context, the "Universal Declaration of Human Rights" (1948) emerged. By approving this document at the UN assembly, countries committed themselves internationally to respecting it and acting in accordance with the precepts of human rights. Thus, the individual currently has a broad system



of protection, the "International Law for the Protection of the Human Person", which includes "International Human Rights Law *Stricto Sensu*", "International Humanitarian Law and International Refugee Law" (JUBILUT, 2007).

When we talk about IHL and human rights, we are talking about the preservation of life, i.e. minimum guarantees for human survival and dignity. There are many similarities in the essence of these two legal systems. However, when it comes to HR, we have a more comprehensive system, and this is precisely because of the primary difference that distinguishes HR from IHL. This difference lies in the context in which both are applicable. International humanitarian law is designed for situations of armed conflict. As stated earlier in this article, it is based on humanitarian principles (just like human rights), but takes into account the specificities of the war scenario. As such, it seeks to protect people in general. Its focus is on the individual, considering that they must have minimum rights safeguarded.

However, when we talk about war, it is not feasible to guarantee that all the essential rights that all human beings should enjoy are actually respected. In other words, human rights, represented at international level by "International Human Rights Law", allows certain concessions to the state while it is going through the emergency situation of an armed conflict, and it can suspend (temporarily, until the conflict ceases) certain human rights norms. When it comes to IHL, whose applicability is inseparable from the armed conflict, the state is obliged to act in accordance with its precepts, apart from the exceptions described in Article 5 of the Fourth Geneva Convention (ICRC, 2010).

Therefore, it is clear that human rights are applicable in armed conflicts, but with restrictions, not in their conventional scope. IHL rules, on the other hand, are (or should be) applied in their entirety in this context, since they were specially created to meet the demands of armed conflicts. Having made this clarification, we will now talk about the relationship between IHL and International Refugee Law (IRL), which also includes International Human Rights Law (IHRL). According to Gieseken (2017), migrants, or more specifically, refugees, in a situation of armed conflict in the international sphere, are protected under International Humanitarian Law, just like other civilians living in this situation.

International refugee law is a branch of IHRL. The latter is more comprehensive. The aim of International Human Rights Law is to guarantee the right to life, dignity and freedom, establishing essential rights so that man can pursue his happiness and live in a dignified manner. IRD, on the other hand, protects human beings who are being persecuted because of their religion, nationality, ethnicity, political opinion or because they belong to a specific social group (JUBILUT, 2007). There are, therefore, limiting criteria for an individual to be protected under International Refugee Law.

We then have the IHL as a more comprehensive mechanism, followed by the IHL which has its applicability restricted to armed conflicts, and we have the International Refugee Law as a more specific set of rules, since unlike the IHL which welcomes all civilians, in the IRD the individual must meet certain



criteria to be considered a refugee. Furthermore, according to Jubilut (2007), the IHL and the IRD are similar in many respects, starting from the same principle (the latter being less comprehensive). A clear example of this is that they have the same objective, which is the protection of the human person in the international order, ensuring their rights through international norms. The IHL and the IRD also have the same subjects in common: the individual (who is to be protected) and the state (which must protect).

Consequently, we also have a natural convergence of IHL with these two aforementioned legal systems. IHL also has as its basic object and purpose the protection of the individual. In addition, it focuses on the same subject, the human person as the beneficiary and the state as the one that must guarantee the benefit, the preservation of rights. These guarantees are underpinned by international rules, just as they are in the IHRL and the IRD.

These systems, although diverse, are complementary and often overlap. Speaking more specifically about the encounter between IHL and ILR, we can say that these systems will converge, basically when the refugee is in the context of an armed conflict (CIVIC, 2010). Thus, IHL will be applied to the refugee, with the appropriate restrictions imposed by the nature of armed conflicts, IHL in its entirety and the IRD, provided that the individual is being persecuted and meets the criteria for refugee status.

## **FINAL CONSIDERATIONS**

Within the international legal system, there are a number of systems and institutes that are concerned with protecting human life. Some are more specific than others. In international armed conflicts, refugees enjoy rights arising from conventions, protocols, treaties, etc. And it is worth remembering that IHL is dedicated to individuals who are unprotected in the face of an international armed conflict.

With regard to International Refugee Law, we can point out that the documents, conventions and statutes that support it contain guidelines that seek to protect refugees as much as possible. Although indirectly, these international agreements made on behalf of the IRD stipulate duties for states that will contribute to reducing the suffering of these individuals in the event of armed conflicts.

According to Jubilut (2007), with the establishment of the United Nations Refugee Agency (UNHCR), fundamental legal instruments for the establishment of the IRD were finally put in place. These include the Convention Relating to the Status of Refugees (1951) and the Protocol Relating to the Status of Refugees (1967).

According to article 32 of the Convention Relating to the Status of Refugees (1951), states may not expel a refugee who is in a legal situation from their territory, except for reasons of public order and national security. What we can see is that even though there are loopholes, this type of document offers certain protections that help refugees in scenarios of international armed conflict.



We can also cite the institutes of asylum and refuge as laws that influence the situation of refugees in scenarios of international armed conflicts. Therefore, it is worth saying that, although some authors consider the institutes of asylum and refuge to be different, considering that they both start from the same principle and are essentially similar in their intention to protect human life in the face of persecution, we must in fact treat these institutes as similar and complementary legal tools (JUBILUT, 2007).

The term asylum, which is more traditional and duly enshrined in the Universal Declaration of Human Rights (1948), is broader than the term refuge. Both deal with the protection of persecuted people who migrate to a different state in search of protection. In the Asylum Institute, the persecuted person has the right to request this protection, but it is up to the discretion of the state whether or not to take them in. When it comes to Refuge, this changes. In this case, the mechanism is obligatorily associated with refugee status, which, once proven, implies the application of international laws that have already been consolidated and where states are obliged to offer refuge, it is a non-discretionary act (JUBILUT, 2007). Thus, in the event of an armed conflict, this mechanism which determines that the state must offer refuge ends up guaranteeing the refugee protection in this hostile environment.

According to Gieseken (2017), another way in which refugees fit more generally into international legislation that deals with the protection of individuals is under the heading of "protected persons". In other words, as long as their refugee status is properly established, they will be classified as "protected persons" within the rights provided for in the Fourth Geneva Convention. Refugees will always benefit as protected persons under Additional Protocol I. As such, they will enjoy the same rights as protected persons in the event of international armed conflicts.

Even though there are all these mechanisms under which refugees are protected. When we talk about protecting the individual in the context of international armed conflicts, the legal apparatus that deals with this issue is International Humanitarian Law, which comprehensively protects civilians so that they suffer as little as possible from the ills arising from this hostile context.

IHL meets IHL in terms of the objective of, above all, protecting those who would otherwise be unprotected. Once living under refugee status, in the midst of an armed conflict, this individual will be protected according to the IRD and also as a civilian (non-combatant) according to IHL (JAQUEMET,2014).

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III SEVEN INTERNACIONAL  
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