International Criminal Law and Refugee Law: Lessons Learned

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1 Introduction

This chapter discusses the relationship between international criminal law and refugee law. The emphasis is on the interplay between concepts developed in international criminal law with respect to the international crimes of war crimes and crimes against humanity as well as the notion of extended liability on one hand, and the exclusion provision in the 1951 Refugee Convention on the other. While a person seeking asylum is entitled to protection under this treaty if he or she has “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”, Article 1F sets an exception to this rule by excluding a person if:

a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
c) he has been guilty of acts contrary to the purposes and principles of the United Nations.

International criminal law has played a major role in the development of the various concepts set out in exclusion Article 1F(a) while in the context of Article 1F(c) most acts have been in the nature of human rights violations or terrorist activities. Additionally, in the UK, activities against international peacekeepers pursuant to a mandate of the Security Council of the United Nations were also brought within the parameters of this provision. The Supreme Court of

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2 Article 1A(2).
the United Kingdom acknowledged that international humanitarian law (IHL) could play a role in interpreting the level of protection owed to peacekeepers but was of the view that in the specific situation at hand it was not relevant.3

Before examining in detail the connection between exclusion ground 1F(a) and international criminal law, it is useful to briefly canvass other areas of possible convergence between refugee law and other aspects of international law. In this regard it is pertinent to observe that not only has international humanitarian law and international criminal law influenced refugee law, there have also been a number of areas of cross-fertilization with varying results.

2 Convergence between International Humanitarian Law, International Criminal Law and Refugee Law Outside the Area of Exclusion

With respect to IHL, the wording of four regional refugee instruments, which extend the definition of ‘refugee’ beyond what is contained in the 1951 Refugee Convention, contain a clear invitation to consider IHL. The 1966 Bangkok Principles on the Status and Treatment of Refugees, which is a non-binding document adopted by the Asian-African Legal Consultative Organization (AALCO), uses the Refugee Convention’s definition but goes on to state that ‘the term “refugee” shall also apply to every person, who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality’.4 The 1969 Convention on the Specific Aspects of Refugee Problems in Africa gives in Article I.1 the same definition as the Refugee Convention but then includes the same description as the Bangkok Principles.5 The 1984 Cartagena Declaration on Refugees, applicable in Latin America, while not a binding treaty, has considerable moral