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The Challenges and Consequences of the Recognition of the Legal Status of Syrian Refugees in Lebanon

Masters Dissertation in International Public Law

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The Lebanese university is not responsible for the views expressed in this dissertation. They only reflect the opinion of the author.

To
The Holy Spirit, My Inspiration
And
My Family, my All

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TABLE OF CONTENTS

INTRODUCTION	1
CHAPTER ONE: MIGRATION POLICIES AND THEIR CORRESPONDENCE WITH STATE POWERS	5
1. Migration Categories and Corresponding Migrant Rights	7
1.1. Internal and International Migration	7
1.1.1. Internal Migration	8
1.1.2. International Migration	10
1.2. Status Recognition and Corresponding Rights	12
1.2.1. Refugees Status: Inclusion and Exclusion	12
1.2.1.1. Fundamental Refugee Rights	13
1.2.2. Complementary Protection Mechanisms	15
1.2.2.1. Supplemental International Legal Instruments	17
2. State Powers	18
2.1. State Sovereignty	19
2.1.1. National Security	19
2.1.2. Border Control	20
2.1.3. Residency Regulations	22
2.2. Limitations to State Authority	23
2.2.1. Admission Authority	24
2.2.2. Expulsion Authority	25
2.2.3. Non-Refoulement	26
CHAPTER TWO: THE OBLIGATIONS OF THE LEBANESE STATE UNDER INTERNATIONAL LAW IN LIGHT OF THE ROLE OF THE INTERNATIONAL COMMUNITY	27
1. The obligations of The Lebanese State under International Law	28
1.1. Lebanon's Obligations under International Human Rights Law	29
1.1.1. The Universal Declaration of Human Rights	29
1.1.2. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)	30
1.1.3. The International Covenant on Civil and Political Rights (ICCPR)	30
1.1.4. The International Covenant on Economic, Social, and Cultural Rights (ICESCR)	31
1.2. Lebanon's Obligations as a Refugee Host Country between State Sovereignty and International Law	32
1.2.1. The Sovereignty of the Lebanese State	33
1.2.2. The 1951 Geneva Convention and Its 1967 Optional Protocol	34

1.2.3.	International Humanitarian Law	35
1.2.4.	Security Council Resolutions 1559 and 1701	36
2.	The Recognition of Refugees and the Underlying Role of the International Community	37
2.1.	Refugee Status Determination	37
2.1.1.	The Question of the Ability and Willingness of Lebanon in Recognizing Refugees	38
2.1.1.1.	Lebanon's Ability	38
2.1.1.2.	Lebanon's Willingness	40
2.1.2.	UNHCR Refugee Status Determination Mandate	42
2.1.2.1.	Refugee <i>Prima Facie</i> Recognition	42
2.1.2.2.	Complementary Protection: The Humanitarian Status	44
2.1.2.3.	The 2003 Memorandum of Understanding between Lebanon and UNHCR	45
2.2.	The Role of the International Community in Burden Sharing	46
2.2.1.	The Charter of the United Nations	47
2.2.2.	The 1951 Geneva Convention	48
2.2.3.	The UNGA Resolutions on International Solidarity	49
2.2.4.	The Regional Legal Instruments on International Solidarity	50
2.2.5.	The Executive Committee of the High Commissioner's Program (EXCOM)	50

**CHAPTER THREE: THE SYRIAN REFUGEE DILEMMA IN LEBANON AND ITS RESOLUTIONS
UNDER THE INTERNATIONAL LAW**

		52
1.	The Question of the Applicability of the Refugee Status of Syrians in Lebanon	53
1.1.	The Lebanese Legal System Applicable to Syrian Refugees	54
1.1.1.	The 1962 Law Regulating the Entry, Exit and Stay of Foreigners in Lebanon	54
1.1.2.	The 1993 Bilateral Agreement for Economic and Social Cooperation and Coordination between Lebanon and Syria	54
1.1.3.	Lebanese General Security Office Measures on Territory Access and Legal Stay	55
1.1.3.1.	Territory Access	56
1.1.3.2.	Legal Stay	59
1.1.4.	The Implicit Recognition of the Refugee status	60
1.2.	The Incompatibility of the Situation of Syrians in Lebanon with the Refugees Status	62
1.2.1.	Crossing Back and Forth between Syria and Lebanon	62
1.2.2.	Participating in the Syrian Presidential Elections	62
1.2.3.	Territory Settlement Attempts	63
1.2.4.	Potential Terrorist Threats	63
2.	The Syrian Refugee Dilemma Resolutions under International Law	64
2.1.	Resolutions on the National Level	65
2.1.1.	Reinforcing Border Management and Control	66
2.1.2.	Temporary Asylum Followed by Resettlement	67
2.2.	Resolutions on the International Level	69
2.2.1.	Establishing Safe Zones	69

2.2.1.1. Concept	70
2.2.1.2. Arguments Supporting Safe Zones	71
2.2.1.2.1. Security Council Resolutions	71
2.2.1.2.2. Responsibility to Protect	72
2.2.1.2.3. Potential Non-Application of the Munich Agreement	72
2.2.1.2.4. NATO Faces an Emergency Situation on Two Fronts	72
2.2.2. Voluntary Repatriation	73
2.2.2.1. Legal Basis	73
2.2.2.2. Return Circumstances	73
2.2.2.3. Return Conditions	74
CONCLUSION	75
BIBLIOGRAPHY	79

LIST OF TABLES

Table No. 1: Territory Access and Residency Criteria for Syrians attempting entry to Lebanon	57
Table No. 2: Residency Renewal Criteria for Syrians in Lebanon	59

LIST OF ABBREVIATIONS

Art.: Article

ACHPR: African Charter on Human and People's Rights

ACHR: American Convention on Human Rights

CAT: The 1984 Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment

CEDAW: The Convention on the Elimination of All Forms of Discrimination Against Women

CERD: The International Convention on the Elimination of All Forms of Racial Discrimination

CIS: Center for Immigration Studies

COM: Council of Ministers

CRC: Convention on the Rights of the Child

EU: European Union

EXCOM: The Executive Committee of the High Commissioner's Programme

GCC: Gulf Cooperation Council

GOL: Government of Lebanon

GSO: General Security Office

HQ: Head Quarter

ICCPR: The International Covenant on Civil and Political Rights

ICESCR: The International Covenant on Economic, Social and Cultural Rights

ID: Identification Documents

IDPs: Internally Displaced Persons

IDPs: Internally Displaced Persons

IHL: International Humanitarian Law

IOM: The International Organization for Migration

IS: The Islamic state

ISF: Internal Security Forces

ISIL: Islamic State in Iraq and the Levant

ISIS: Islamic State in Iraq and Syria

LAF: Lebanese Armed Forces

LPRs: Lawful Permanent Residents

MOFA: Ministry of Foreign Affairs

MOI: Ministry of Interior

MOL: Ministry of Labor

MOSA: Ministry of Social Affairs

MOSA: Ministry of Social Affairs

MOU: Memorandum of Understanding

NATO: North Atlantic Treaty Organization

No.: Number

NPMLT: National Physical Master Plan for the Lebanese Territories

OAU: Organization of African Unity
PLO: Palestine Liberation Organization.
PRS: Palestine Refugees from Syria
RES: Resolution
RO: Registration Office
RSD: Refugee Status Determination
SCR: Security Council Resolution
SG: Security General
U.S.: United States (of America)
UDHR: The Universal Declaration of Human Rights
UN: United Nations
UNGA: United Nations General Assembly
UNHCR: the United Nations High Commission for Refugees
UNIFIL: United Nations Interim Force in Lebanon
UNRSR: 1951 UN Convention Relating to the Status of Refugees
UNSC: United Nations Security Council
UNSCR: United Nations Security Council Resolution
USA: United States of America
USD: United States Dollar

INTRODUCTION

Ever since the dawn of humanity and in parallel with the formation of states, People from all parts of the world have been subjected to persecution, political violence and/or armed conflict. Consequently, they were forced to flee their innate countries in pursue of safety. Whether represented through a massive displacement, or by a simple individual border crossing, irrespective whether escaping persecution, or seeking better livelihood opportunities, Migration involves at least two distinct states or more, who are collectively responsible for organizing, facilitating and monitoring such displacements. Such phenomena remain complex encompassing distinct cross border movement forms which vary according to their driving reasons or their sought purposes. However, the significance of such matter rises upon the necessity to achieve equilibrium between state sovereignty and human rights provision within the rise of globalization on the international level.

In this sense, the Universal Declaration of Human Rights (UDHR) provides for the right to recognition everywhere as a person before the law, for all people.¹ This recognition intuitively entitles the person to human rights that may amount to specific privileges paralleled with certain legal obligations. On the other hand, Human rights then only exist insofar as they are agreed upon and codified by international and domestic law. However, “when framed as more inviolable than state sovereignty, the human rights regime can claim humanitarian grounds to impinge on state sovereignty and put the state’s treatment of its citizens under external scrutiny.”²

This impingement will affect the treatment of non-citizens as well, safeguarding their protection mechanism on one hand, however placing receiving states under pressure that overruns their capacity and will.

States remained reluctant to action until World War I erupted, and resulted with devastating destructions, that they recognized that protecting refugees required coordinated global action.³ This is when the notion of International protection emerged through the

¹ United Nations General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 10 December 1948, Art.6. Available at: <http://www.refworld.org/docid/3ae6b3712c.html>. [accessed on February 2018]

² Wade M. Cole. “Sovereignty Relinquished? Explaining Commitment to the International Human Rights Covenants, 1966–1999”, *American Sociological Review*, Stanford University, vol. 70, no. 3, 2005, pp. 472–495, p. 473.

³ UNHCR, “An Introduction to International Protection Protecting Persons of Concern to UNHCR”, *Self-study module* 1, 2005, p.6, available at <http://www.refworld.org/docid/4214cb4f2.html> [accessed 20 November 2017].

establishment of the League of Nations, a concept that evolved throughout history to be currently defined by the United Nations High Commissioner for Refugees (UNHCR), as essentially constituting “a range of concrete activities that ensure that all women, men, girls, and boys of concern to UNHCR have equal access to and enjoyment of their rights in accordance with international law. The ultimate goal of these activities is to help them rebuild their lives within a reasonable amount of time.”⁴

By the end of 2015, UNHCR reported the number of forcibly displaced persons worldwide including refugees, asylum seekers, and people in refugee-like situations and internally displaced people, was at historically high levels, totaling 65.3 million.⁵ Under its mandate, the global number of refugees reached 21.3 million; the highest in almost two decades. These populations, who have endured displacement for years, have also tested the limits of capacity and hospitality in countries particularly affected by protracted refugee situations. Many of which were stuck for five years or more in a given asylum country.⁶

Since 2011, as a result of the Syrian conflict, infrastructure and economy have been demolished, the state has been dispersed into semi-anarchical or warlord-ruled areas,⁷ and at least 250,000 civilians have been killed. Millions of Syrians have fled their homes to seek refuge either in different areas of the country or abroad. According to official sources there are 6.6 million internally displaced persons and 4.7 million refugees. About half of the Syrian population is forcibly displaced. The scale of this forced migration has no precedent in the modern history of the Middle East.⁸

Looking at the issue from a different point of view it is sensed that displacement does not only affect the displaced, but also the host communities. Syrian Displacements were mostly directed towards the neighboring countries of Lebanon, Jordan, Turkey and Iraq. Since then, this crisis has had economic and social impacts on several states in the region.

⁴ UNHCR, “International Protection”, *The Protection Induction Programme Handbook*, p. 12, available at: <http://www.unhcr.org/44b4fcb32>.

⁵ UNHCR, “UNHCR Global Trends: Forced Displacement in 2015”, P.5, available at: <http://www.unhcr.org/statistics/country/576408cd7/unhcr-global-trends-2015.html> [accessed on 20 June 2016].

⁶ UNHCR, “Global Trends 2014: World at War”, 2015, P.8, available at: <http://www.refworld.org/docid/55g8292924.html> [accessed 20 November 2017].

⁷ David Butter, “Syria’s Economy: Picking up the Pieces”, *The Royal Institute of International Affairs*, London, 2015, available at: <https://www.chathamhouse.org/news/2015-06-23-syrias-economy-picking-pieces> [accessed 10 February 2017].

⁸ UNOCHA, “Syrian Arab Republic”, 2016, available at: <http://www.unocha.org/syria> [accessed on 8 February 2016].

However, the burden fell the heaviest on Lebanon, who is already troubled with its insubstantial governance system and sub-standard infrastructure currently hosting the largest per capital refugee population in the world; around 1,001,051 registered with the UNHCR as of mid-2017. According to the National Physical Master Plan for the Lebanese Territories (NPMPLT), the population in Lebanon was projected to reach around 5,230,000 in 2030.⁹ In 2015, coinciding with the Syrian refugee crisis, the population in Lebanon was predicted to outpace the 2030 projection to reach 5,900,000, 15 years ahead of time.¹⁰ This accelerated population increase not only enormously strains the country's infrastructure, services, and shelter options for these refugees scattered around Lebanon but also, more importantly raises the question concerning the legal consequences of acknowledging a certain legal status.

Furthermore, in 2015 Lebanon reached the highest percentage of refugees compared to local population amounting to 26.20%, while refugees amount to 9.5% of Jordan's population and 3% of Turkey's population with less than 1% in Egypt, Iraq and North Africa.¹¹ In this sense, it is to be noted that, as of 1 July 2017, UNHCR Lebanon Office reported that they only received 13% of its claimed required funds in order to be able to deliver the concerned assistance according to its mandate.¹²

At the beginning of the crisis, and noting that the admission of Arab nationals in the fellow Arab countries is meant to be a mere gesture of hospitality, rather than an acceptance of Asylum claims. Expectations with regards to the Syrian conflict were oriented towards a near silence likewise other resembling disturbances in the region had.¹³ However, challenges elevated on all levels, and despite the collaborative endeavors that were carried by the government, the International community and civil society to diminish the concussion of the Syrian crisis on Lebanon and the protracted response, nevertheless, both affected populations, Syrians and host communities, have grown needs that exceed

⁹ The United Nations Human Settlements Programme (UN-Habitat) & the Issam Fares Institute for Public Policy and International Affairs (IFI) at the American University of Beirut (AUB), "No place to stay", *Reflection of The Syrian Refugee Shelter Policy in Lebanon*, 2015, p. 14; based on the National Physical Master Plan for the Lebanese Territories (NPMPLT), this estimate projects a growth of 0.92% per annum from 1997 to 2030, available at:

https://www.aub.edu.lb/ifi/publications/Documents/research_reports/20150907_noplacetostay.pdf.

¹⁰ UNOCHA, "Lebanon Crisis Response Plan 2015-2016", *projection for 2015*, March 26, 2015, p.6., available at: https://docs.unocha.org/sites/dms/Syria/LCRP_document_EN_26Mar2015.pdf.

¹¹ UN-Habitat and IFI, "No place to stay", *op. cit.*, P.14.

¹² UNHCR, "Syria Regional Refugee Response", *Inter-agency Information Sharing Portal*, available at: <http://data.unhcr.org/syrianrefugees/country.php?id=122> [accessed January 2016].

¹³ Ruben Zaiotti, "Dealing with Non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment", *International Journal of Refugee Law*, Vol. 18. Series 2, 2006, p. 338, available at: doi:10.1093/ijrl/eel006. [accessed March 2016].

the Government of Lebanon (GOL) and its partners' capacity to promote satisfactory services, in addition to the newly introduced coping strategies that are under experiment.¹⁴

This dissertation intends to observe the Syrian refugee controversy through the Lebanese lens alongside the argument over the recognition of the refugee status alleged, which portrays a unique case illustrating the distinctions between the local framework and the need to comply the response with the realities on the ground. This requires pausing to understand the complication of local contexts prior to proposing solutions, taking into consideration, the legal status of Syrians migrating into Lebanon and discussing Lebanon's response, challenges and level of compliance with the international law in this regard.

Therefore, what is migration and how is it managed under the corresponding state powers and responsibilities? And on the other hand, what are the challenges and consequences of the recognition of the legal status of Syrians in Lebanon under the relevant International and national legal systems? Then finally, what are the resolutions considered in International law in light of the role of the International community?

In order to answer the above dissertation's questions, this subject can be treated into three chapters. The first chapter studies migration policies and their correspondence with state powers. The second chapter comes down to the obligations of the Lebanese state under international law in light of the role of the international community. And finally the third chapter tackles the Syrian refugee dilemma in Lebanon and its resolutions under the international law.

¹⁴ Government of Lebanon and the United Nations, "Lebanon Crisis response Plan (LCRP)", *projection for 2017-2020*, January 2017, p. 5, available at: <http://www.3rpsyriacrisis.org/wp-content/uploads/2017/01/Lebanon-Crisis-Response-Plan-2017-2020.pdf>.

CHAPTER ONE: MIGRATION POLICIES AND THEIR CORRESPONDENCE WITH STATE POWERS

Migration is the movement of a person or a group of persons, either across an International border, or within a State. It is a sort of population mobility, encompassing any kind of movement of people, whatever its length, composition and causes; it includes migration of refugees, displaced persons, economic migrants, and persons moving for other purposes, including family reunification.¹⁵

Forms and types vary relatively to the purpose sought or the causing reason. When this migratory movement includes an element of constraint, together with intimidation to life and livelihood, whether originating from natural or man-made causes,¹⁶ it is then referred to as, “forced migration”.¹⁷ On the contrary, cultivating or supporting of regular migration by simplifying travel which may take the form of a streamlined visa application process, or efficient and well-staffed passenger inspection procedures- is referred to as “facilitated migration”.¹⁸

However, when the movement of persons across states, or within their own country of residence, occurs for the purpose of employment, it is called “economic migration”, which is addressed by most States in their migration laws. In addition, some States take an effective role in administering outward labor migration and pursuing favorable circumstances for their nationals abroad.¹⁹

It is also relevant to address migration according to its legality or lack of it. Sometimes, the migratory movement occurs outside the supervising measures of the sending, transit and receiving countries, which is considered “irregular migration.” Although not owning an acknowledged interpretation, the irregularity is usually expressed in cases where a person crosses an International boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving the country. “There

¹⁵ IOM, “Glossary on Migration”, *International Migration Law Series*, 2004, P. 41, available at: http://www.iomvienna.at/sites/default/files/IML_1_EN.pdf [accessed on 20 Nov 2017].

¹⁶ For example; movements of refugees and internally displaced persons as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.

¹⁷ IOM, “Glossary on Migration”, *op. cit.*, P. 25.

¹⁸ *Ibid.*, P. 24.

¹⁹ *Ibid.*, P. 21.

is, however, a tendency to restrict the use of the term “illegal migration” to cases of smuggling of migrants and trafficking in persons.”²⁰

As opposed to “Orderly migration”, this is the movement of a person from his or her habitual place of residence to a different one, abiding by the laws and regulations controlling exit of the country of origin and travel, transit and entry into the destination or host country. This usually happens according to various governmental functions within a national system for the orderly and humane management for cross-border migration, specifically regulating the entry and presence of foreigners within the borders of the State and the protection of refugees and others in need of protection. It points out to a planned approach towards the improvement of policy, legislative and administrative responses to key migration affairs.²¹

This leads us to the concept of “Border management”, which represents both, the facilitation of lawful influx of persons across a border; including business people, tourists, migrants and refugees, and the disclosure and prohibition of irregular entry of non-nationals into a given country. Measures to manage borders include the imposition by States of visa requirements, carrier sanctions against transportation companies bringing irregular migrants to the territory, and interdiction at sea. International standards require a balancing between facilitating the entry of legitimate travelers and preventing that of travelers entering for inappropriate reasons or with invalid documentation.²²

Human mobility entails different types of movements. It is therefore of central importance to clearly define them if a thorough analysis of their impacts on development has to be undertaken. The International Organization for Migration (IOM) distinguishes between Internal and International migration and defines them as follows: Internal migration consists in “a movement of people from one area of a country to another for the purpose or with the effect of establishing a new residence. This migration might be temporary or permanent. Internal migrants move but remain within their country of origin (e.g. urban-rural migration).”²³ On the other hand, International migration is the “movement of persons who leave their country of origin or the country of habitual residence, to establish themselves either permanently or temporarily in another country.”²⁴

²⁰ *Ibid.*, P. 34-35.

²¹ IOM, “Glossary on Migration”, *op. cit.*, P. 46.

²² *Ibid.*, P. 10.

²³ *Ibid.*, P. 32.

²⁴ *Ibid.*, P. 33.

1. Migration Categories and Corresponding Migrant Rights

The main difference between internal and International migration is the element of border crossing. This entails different legal consequences in terms of rights and obligations of both, relocated people and states involved. As long as the person has not crossed internationally recognized border, he/she will be under the protection of his/her state in which he/she remains within its official borders. Crossing borders involves one or more foreign states, it raises on one hand, the responsibility of these states which is derived from the International principle that provides for International cooperation and burden sharing, while on the other hand, is faced by the limits of this responsibility rooted in the principle of sovereignty.

1.1. Internal and International Migration

Derived from the above scope of related components, the concept of migration can be described as the phenomenon of crossing of the boundary of a political or administrative unit for a certain minimum period of time. This movement can be that of refugees, displaced persons, uprooted people as well as economic migrants.²⁵ It is essential to distinguish between types of migration according to the border crossing factor which will set different categories under different sets of protection that are guaranteed by different laws. “Internal migration refers to a move from one area (a province, district or municipality) to another within one country. International migration is a territorial relocation of people between nation-states.”²⁶

However, a couple of relocation forms are not considered within this global definition; “first, a territorial movement which does not lead to any change in ties of social membership and therefore remains largely inconsequential both for the individual and for the society at the points of origin and destination, such as tourism; second, a relocation in which the individuals or the groups concerned are purely passive objects rather than active agents of the movement, such as organized transfer of refugees from states of origins to a safe haven.”²⁷

²⁵ UNESCO, “Migrant/Migration”, *Social and Human Sciences, International Migration, International Migration Convention*, available at:

<http://www.unesco.org/new/en/social-and-human-sciences/themes/International-migration/glossary/migrant/>

²⁶ *Ibid.*

²⁷ *Ibid.*

The latter is mainly the subject of study in this dissertation, as I will be studying the nature of the relocation of Syrians into Lebanon, their rights and obligations according to this nature, and the obligations of the Lebanese state and adjacent challenges.

1.1.1. Internal Migration

“Internal migration is the movement of a person or a group of persons without crossing an internationally recognized state border. Concerned persons or groups of people are referred to as Internally Displaced Persons (IDPs); Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an Internationally recognized State border.”²⁸

According to this universally adopted definition, and applying this to the current Syrian crisis. And even though, a fair segment of Syrians are crossing into Lebanon, in particular as a result of or in order to avoid the effects of the armed conflict, the situations of generalized violence, the human rights violations or even the human-made disasters, it is rather legally irrelevant to refer to them as IDPs, as the primary distinctive factor when identifying internal displacement is looking into cross-border movement. Thus it is a false characterization which in turn wrongfully entitles them to a specific set of rights under a wide range of protection guidelines, which they are indeed not entitled to, unless they stay within the Syrian borders. Furthermore, it would not be the responsibility of the state of Lebanon to provide this protection nor guarantee these rights on its territory, and that is based on the fact that Lebanon is an independent, sovereign state with internationally recognized borders adjacent to the Syrian state borders. In other words, the Syrian state official authorities are the primary responsible actors who are supposed to protect and assist affected populations under their control, and when they cannot discharge that responsibility for lack of capacity, to seek assistance from the International community.

Response to internal displacement can either be through return, resettlement or reintegration. “Competent authorities are responsible to facilitate the safe and dignified voluntary return of internally displaced persons, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. They must also facilitate

²⁸ UNHCR, “Guiding Principles on Internal Displacement”, UN doc e/cn.4/1998/53/add.2, 1998, P. 5, Scope and Purpose, Art. 2.

the reintegration of returned or resettled internally displaced persons.”²⁹ In this sense, they should assist them in recovering their property and possessions as possible. Contrarily, they should provide them adequate compensation or another form of just reparation.³⁰

Confining the above legal standards to the subject under study in this dissertation, it can be concluded that the Syrian state official authorities are responsible, under International law, for ensuring protection and humanitarian assistance to IDPs within their jurisdiction. Actually, they were initially required to avoid the occurrence of displacement in the first place through seeking attainable alternatives. Syrians still however; have the right to choose to move away from their habitual place of residence. They have the right to choose between staying in Syria and seeking safety in another part of it, such as safe zones or seek asylum in a third country where they must be protected against forcible return. In this sense, the Syrian authorities would be responsible for facilitating either procedure through providing the necessary documentation. Otherwise, the relevant International organization must act alternatively. The duty of the Syrian authorities is not a passive one, as the guidelines embody specific affirmatory actions in the sense of providing a safe environment in addition to creating a mechanism in which IDPs are offered a dignified voluntary return and reintegration to their original homes or to another part of the country, as they may choose.

Internal displacement must in the first place be prevented. “Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.”³¹ Within their jurisdiction, National authorities hold the primary responsibility to provide protection and humanitarian assistance to internally displaced persons.³² “All authorities and International actors shall respect their obligations under International law preventing conditions that might lead to displacement of persons.”³³ Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.”³⁴

Once it occurs, internal displacement shall be confronted; internally displaced migrants are therefore entitled to protection. “IDPs have the right to seek safety in another part of the country or totally leave to another country and seek asylum, where they are entitled to the protection against forcible return to or resettlement in any place where their

²⁹ UNHCR, “Guiding Principles on Internal Displacement”, *op. cit.*, principle 28 (1).

³⁰ *Ibid.*, principle 29 (2).

³¹ *Ibid.*, principle 6(1).

³² *Ibid.*, principle 3(1).

³³ *Ibid.*, principle 5.

³⁴ *Ibid.*, principle 7(1).

life, safety, liberty and/or health would be at risk.”³⁵ Every human being is entitled to be legally recognized everywhere as a person.³⁶ Consequently, the authorities concerned shall issue IDPs all documents necessary for the enjoyment and exercise of their legal rights.”³⁷

1.1.2. International Migration

It is the “Movement of persons who leave their country of origin, or the country of habitual residence, to establish themselves either permanently or temporarily in another country. An international frontier is therefore crossed.”³⁸ However, it has to be accomplished as an active will of the migrant on one hand and to occur without breaking ties with states of origin.³⁹

“One of the difficulties for any publication that aims to address problems of migration, in law or in practice, is the complexity and diversity of the migration experience. The reasons why people migrate are varied, complex, and subject to change; and the people who migrate are not easily classifiable—they come from a range of circumstances and backgrounds.”⁴⁰ They may be seeking economic or educational opportunities, or they might be escaping persecution, human rights abuses, threats to life or physical integrity, war or civil unrest. The distinction is not clear and the International law horizon does not necessarily mirror the reality of migrant’s lives. As an example, leaving a country might be a result of subjection to persecution which will therefore entitle the migrant to claim refugee status and consequently captivate International protection. In other cases migration can happen due to suffering from extreme poverty, which even though the threat to the individual’s life may be just as significant as that of the former, however fetching better economic status will not provide for a protection entitlement.⁴¹

With respect to entry, or attempted entry, of a migrant to a foreign country, a number of broad, sometimes overlapping, groups of migrants may be distinguished.⁴² Migrants who enter the State after having obtained an authorization, whether temporary or not, by the destination State, are called regular migrants. Those who enter the State in an irregular fashion, without having the proper documentation; or those who entered in a

³⁵ UNHCR, “Guiding Principles on Internal Displacement”, *op. cit.*, principle 15.

³⁶ *Ibid.*, principle 20(1).

³⁷ *Ibid.*, principle 20(2).

³⁸ IOM, “Glossary on Migration”, *op. cit.*, P. 33.

³⁹ UNESCO, *op. cit.*

⁴⁰ Gabriela Rodríguez Pizarro, “UN Special Rapporteur on the rights of migrants”, *Annual Report 2004*, UN Doc. E/CN.4/2005/85, 27 December 2004, Para. 74.

⁴¹ *Ibid.*

⁴² *Ibid.*

regular fashion but whose authorization have expired and who have remained, nonetheless, in the national territory, they are called undocumented migrants. Moreover, the terminology recommended by the UN General Assembly,⁴³ is avoiding the term “illegal migrant” and using “undocumented or irregular migrant” as synonyms. It must be stressed that the term “irregular” migrant does not express a quality of the person but a mere reference to his or her situation of entry or stay. However, migrants who enter a country, whether regularly or irregularly, in order to escape persecution in their country of origin as defined by Article 1A of the Geneva Refugee Convention, are called either Asylum seekers or refugees. Nevertheless, several kinds of migrants whose status is not well-defined would still be in need of International protection, recognized, to varying extents, by International law. Such as: stateless persons (whether or not they are asylum-seekers or refugees), victims of trafficking, unaccompanied children whose status has not been defined, failed asylum-seekers or undocumented migrants who cannot be expelled due to principle of *Non-Refoulement*.

This categorization is only appropriate to a certain degree. As according to the Global Commission on International Migration, an individual migrant may belong to one or more categories at simultaneously. She or he may favorably maneuver from one category to another during the migratory movement, or may attempt to be reclassified from one category to another, for instance the case when an economic migrant submits a claim to asylum in the hope of gaining the privileges associated with refugee status.⁴⁴ “By choice or force of circumstance, the status of a migrant is almost never stable. An economic migrant might become a refugee while in the country of destination. A refugee might lose his status and become an undocumented migrant because the circumstances which led to a fear of persecution cease to exist in his country of origin. A regular migrant might become undocumented if he/she overstays a residence permit term, or might be regularized, through amnesties, or regular employment.”⁴⁵ According to ILO estimates, around 90% of International migration is composed of economically active migrants and their family members. While no more than 8% of migrants are refugees and asylum-seekers.⁴⁶ “In

⁴³ UNGA, *Measures to Ensure the Human Rights and Dignity of All Migrant Workers*, A/RES/3449(XXX), United Nations, UN documents, 9 December 1975, p. 90, para. 2, available at: <https://documentsddsny.un.org/doc/RESOLUTION/GEN/NR0/001/62/IMG/NR000162.pdf?OpenElement> [accessed 5 July 2017].

⁴⁴ UNHCR, “Migration in an interconnected world: New directions for action”, *Report of the global commission on the International migration*, 2005, P. 7, Para. 15.

⁴⁵ Pizarro, *op. cit.*

⁴⁶ ILO, “A Rights-based Approach”, *International Labor Migration*, Cornell University ILR School, p. 2, para.1, 2010, available at:

2009, an estimated 50 million people were living or working in a foreign country with irregular status.”⁴⁷

The legal and normative framework on International migration includes both binding and non-legally binding International law best practices and principles. Some International instruments concerning migration management have been widely ratified. Others have entered into force with nearly few parties.

1.2. Status Recognition and Corresponding Rights

International legal standards for the protection of forced migrants are mostly regulated in refugee, human rights and humanitarian law. The 1951 UN Convention is considered as the most sophisticated framework that addresses the rights of refugees; Persons who have a well-founded fear of persecution and persons who would be tortured if they were returned to their home countries. However, there is an increasing International concurrence regarding the rights of persons who have been displaced by conflict and other situations that are likely to cause serious detriment in case of return.

1.2.1. Refugees Status: Inclusion and Exclusion

As a result of World War II and fascist/Nazi persecution, hundreds of thousands of refugees were displaced. For the purpose of explicitly resolving their situation, the 1951 UN Convention was formulated back in the early days of the Cold War.⁴⁸ In its essence, this treaty interchanges the protection of the International community for that of an unable or unwilling sovereign state. It confers this alternate protection to those who were unable or unwilling to avail themselves of the protection of their home countries because of a “well-founded fear of persecution based on their race, religion, nationality, political opinion or membership in a particular social group”. The Convention had time limits (refugees displaced by 1951) and geographic restrictions (Europe) that were revoked and amended in the 1967 Protocol Relating to the Status of Refugees.

States are not compelled to afford asylum or permit refugees for long-lasting settlement, and they may relocate refugees in safe third countries that are willing to receive

<http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1086&context=intl>.

⁴⁷ United Nations Development Programme, “Barriers to Movement”, *Overcoming Barriers: Human Mobility and Development*, Human Development Report, UNDP, NY, USA, 2009, p. 2, para. 5.

⁴⁸ UNHCR, “The State of the World’s Refugees 2000: Fifty Years of Humanitarian Action”, *Oxford University Press*, New York, 2000, p. 17, available at: <http://www.unhcr.org/publications/sowr/4a4c754a9/state-worlds-refugees-2000-fifty-years-humanitarian-action.html>.

them. However, Convention interpretations imply that States are required to undertake status determinations for asylum applicants at their borders or on their territories in order to dictate whether they have credible allegations to refugee protection.⁴⁹ “The core legal obligation of States pursuant to the Convention/Protocol is *Non-Refoulement*; to refrain from forcibly returning refugees to countries in which they would face persecution”.⁵⁰

In practice, this has often meant admission and asylum in the host country. The Convention also ensures that states cannot impose penalties on refugees if they enter or stay illegally, as long as the refugees “present themselves without delay to the authorities and show good cause for their illegal entry or presence.”⁵¹ Refugee populations may include individuals whose actions made them ineligible for International protection. “Exclusion” clauses were set by the Convention drafters which mainly describe two kinds of such individuals, human rights violators and serious criminals. Those who have committed a crime against peace, a war crime, a crime against humanity, or a serious non-political crime are excluded from International protection. That is, they are not to be granted refugee status and its consequent benefits.⁵²

Article 33 of the 1951 UN Convention sets two exceptions to a state’s *Non-Refoulement* obligation. States may return to a country of persecution an individual regarded “as a danger to the security of the country” of refuge, as well as someone who “having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.”⁵³

1.2.1.1. Fundamental Refugee Rights

Non-nationals enjoy all of the implicit rights pertinent in International law. This prerogative is insured in various legal instruments. *The International Covenant on Civil and Political Rights (ICCPR)* specifies that basic human rights are to be provided without distinction of any kind, such as race, color, sex, language, religion, political or other

⁴⁹ Suzan Martin, “The Legal and Normative Framework of International Migration”, *Institute for the Study of International Migration Georgetown University*, 2005, p. 20, available at: https://www.peacepalacelibrary.nl/ebooks/files/GCIM_TP9.pdf; see also: UNHCR, “Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees”, December 11, para. 51; no clear definition of “persecution”; however, it may be inferred that it is a threat to life or freedom based on Art. 33.

⁵⁰ *Ibid.*, p.20.

⁵¹ UN General Assembly, *Convention Relating to the Status of Refugees*, United Nations, Treaty Series, vol. 189, July 28, 1951, Art. 31, available at: <http://www.refworld.org/docid/3be01b964.html>.

⁵² Martin, “The Legal and Normative Framework of International Migration”, *op. cit.*, p. 20.

⁵³ UNGA, *Convention Relating to the Status of Refugees*, *op. cit.*, Art. 33(2).

opinion, national or social origin, property, birth or other status.⁵⁴ *The International Covenant on Economic, Social and Cultural Rights, (ICESCR)* which guarantees the right to work, free choice of employment and just and favorable conditions of work. In a clause specifically referring to non-nationals, the ICESCR recognizes that “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”⁵⁵ *The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* requires State Parties to act to eliminate gender discrimination in rural areas. Protection from such discrimination is important in helping to ensure that rural women need not migrate in search of their rights and employment opportunities.⁵⁶ *The International Convention on the Elimination of All Forms of Racial Discrimination (CERD)* serves as a further instrument for protecting the rights of migrants, since many of them experience racial discrimination. *The Convention on the Rights of the Child (CRC)* includes several articles useful in protecting migrant children.⁵⁷ Beyond these universal rights, the rights of persons moving across borders vary depending on the purposes of their movement and the circumstances they will face upon return to their home countries.

However, refugees who have been admitted into the territory of another country are also entitled to certain fundamental human rights that are unfolded in the 1951 Refugee Convention. Such as freedom of religion⁵⁸ and access to courts⁵⁹ are secured to be somewhat similar to those granted to the citizens of the host state. Thus Refugees must enjoy legal assistance⁶⁰ and must receive elementary education is similar to citizens.⁶¹

⁵⁴ *International Covenant on Civil and Political Rights (ICCPR)*, United Nations, Treaty Series, vol. 999, p. 171, 16 December 1966, available at: <https://treaties.un.org/>; <http://www.refworld.org/docid/3ae6b3aa0.html>, Art. 2.

⁵⁵ *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, United Nations, Treaty Series, vol. 993, p. 3, 16 December 1966, available at: <https://treaties.un.org/>; <http://www.refworld.org/docid/3ae6b36c0.html>, Art. 2.

⁵⁶ *Convention on the Elimination of All Forms of Discrimination Against Women*, United Nations, Treaty Series, vol. 1249, p. 13, 18 December 1979, available at: <http://www.refworld.org/docid/3ae6b3970.html>, Art. 14.

⁵⁷ *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p.3. Available at: <http://www.refworld.org/docid/3ae6b38f0.html>; For instance, Art. 11 forbids trafficking of children under 18 years old; Art. 19 demands States to protect children from violence, abuse, neglect, exploitation and sexual abuse.

⁵⁸ UNGA, *Convention Relating to the Status of Refugees*, *op. cit.*, Art. 4.

⁵⁹ *Ibid.*, Art. 16.

⁶⁰ *Ibid.*, Art. 16 (2).

⁶¹ *Ibid.*, Art. 22 (1).

Refugees lawfully residing in a host country are guaranteed public relief.⁶² In addition, the Convention must not be applied in a discriminatory manner regarding race, religion, and country of origin.⁶³ However, many important rights enjoyed by recognized refugees, do not necessarily match those of citizens. Those which are as fundamental as the right of association⁶⁴ and freedom of movement⁶⁵ are accorded to refugees to the same degree as to nationals of other countries. Rights regarding employment,⁶⁶ property,⁶⁷ public education beyond elementary school⁶⁸ and housing⁶⁹ are also granted to refugees in a manner no less favorable than those accorded to citizens of other countries. However, with regard to wage-earning employment, refugees are accorded national treatment after three years of residence in the host country.⁷⁰

Some legal elements are entirely left to the host state. States are encouraged to facilitate the naturalization of refugees, though they are not required to match any naturalization rights provided to other non-citizens.⁷¹ The main causes of flight of most refugees are war and civil strife. However, the 1951 Refugee Convention's focus on persecution as the cause of forced migration which constrained its relevance.

1.2.2. Complementary Protection Mechanisms

In 1990, the United States (US) adopted legislation granting Temporary Protected Status (TPS) to persons fleeing armed conflict and natural disasters. Although established by statute, the Attorney General was granted significant discretion in determining which nationals qualify for TPS, selecting only some of the many countries experiencing conflict for this status. However, this status is limited to those who have already reached the U. S. at the time of the Attorney General's proclamation.

TPS entitles the concerned population to work and attend public schools but they generally remain ineligible for public assistance. Even though TPS does not provide for family reunification, it still is awarded on a group basis. And although experts have

⁶² UNGA, *Convention Relating to the Status of Refugees*, *op. cit.*, Art. 23.

⁶³ *Ibid.*, Art. 3.

⁶⁴ *Ibid.*, Art. 15.

⁶⁵ *Ibid.*, Art. 26.

⁶⁶ *Ibid.*, Art. 17.

⁶⁷ *Ibid.*, Art. 13.

⁶⁸ *Ibid.*, Art. 22 (2).

⁶⁹ *Ibid.*, Art. 21.

⁷⁰ *Ibid.*, Art. 17 (2(a)).

⁷¹ *Ibid.*, Art. 34.

proposed individual determinations, The US does not offer any complementary humanitarian status.⁷²

In the same sense, in 2001, The Council of the European Communities adopted a Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons. The protection is granted in situations of mass influx if the Council, upon recommendation by the Commission and taking into account reception capacities of the Member States, so decides by a qualified majority. Temporary protection may last up to a maximum of three years and obliges Member States to grant beneficiaries a residence permit, employment authorization, access to suitable accommodation, social welfare and medical assistance, access to education for those under the age of 18, and nuclear family reunification. The Directive requires States to allow beneficiaries to lodge an asylum application, but allows States to suspend the examination of such applications until after the end of temporary protection. According to a leading expert, the Directive is, in principle, compatible with the requirements of International refugee law, although much will depend on the quality of the asylum procedure when temporary protection ends and most beneficiaries can return home in safety and with dignity.

In addition to temporary protection in the event of mass forced migration, European states provide complementary or subsidiary protection to individuals who do not qualify for refugee status under the 1951 Convention but still need protection from return to their home countries. In 2000-2002, for example, European states granted protection complementary to Convention protection to an average of 70,000 applicants each year.⁷³ About 57,000 individuals received asylum in those same states in each of those years.⁷⁴ European Union Council Directive 2004/83/EC of 29 April 2004 states that subsidiary protection shall be accorded to any person who cannot return to the country of origin because of serious harm, which consists of (a) death penalty or execution; or (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of International or internal armed conflict.

⁷² Martin, "The Legal and Normative Framework of International Migration", *op. cit.*, p. 22.

⁷³ UNHCR, "Asylum Applications and Refugee Status Determination in Selected European Countries", *Population Data Unit*, Population statistics 2000-2002, February 20, 2004, Table 2, available at: <http://popstats.unhcr.org/en/overview>.

⁷⁴ *Ibid.*

1.2.2.1. Supplemental International Legal Instruments

While acknowledging the UN Refugee Convention as the basic and universal instrument regarding the protection of refugees, The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, in recognition of the actual forced movements occurring regularly in Africa, broadened the definition and extended protection beyond those who flee persecution, to include the individual who “owing to external aggression, occupation, and 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.”⁷⁵

Similarly, the 1984 Cartagena Declaration on Refugees expanded the definition of protected refugees in the Latin American region. It protects those who have fled their country “because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order.”⁷⁶ In addition to that, the 1984 Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) provides for states parties to commit themselves not to return a person “where there are substantial grounds for believing that he would be in danger of being subject to torture.”⁷⁷

A similar provision is included in the European Convention on Human Rights and Fundamental Freedoms; to prohibit the return to a State where there is a “real risk”, that the person will be subject to inhumane or degrading treatment and punishment.⁷⁸ Unlike the Refugee Convention’s *Refoulement* provision, CAT contains no exceptions on the basis of national security. While the norms and International legal frameworks are well accepted, implementation problems continue.

⁷⁵ Organization of African Unity (OAU), *Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)*, 1001 U.N.T.S. 45, 10 September 1969, Art. 1(2), available at: <http://www.refworld.org/docid/3ae6b36018.html>.

⁷⁶ Recently, the forty-five-member state Asian-African Legal Consultative Organization adopted the OAU refugee definition in its revision of the Bangkok Principles on the Status and Treatment of Refugees (Asian-African Legal Consultative Organization Resolution 40/3, June 24, 2001, New Delhi). As with the Latin American expansion of the refugee definition, the Bangkok Principles are declaratory in nature. The United States and European nations have developed more limited policies on protecting civil war refugees and others covered by the OAU Convention and the Cartagena Declaration.

⁷⁷ *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*, United Nations, Treaty Series, vol. 1465, p. 85, 10 December 1984, available at: <https://treaties.un.org/>; <http://www.refworld.org/docid/3ae6b3a94.html>, Art. 3.

⁷⁸ Alexander T. Aleinikoff, and Vincent Chetail, Eds., “Migration and International Legal Norms”, *T.M.C. Asser Press*, 1st ed., 2003, p. 13.

“These legal frameworks must be seen in the context of growing confusion about the nexus between asylum and other forms of migration. No International treaty provides for a right to asylum—only a right to seek asylum.”⁷⁹

Individuals usually migrate for a complex variety of reasons, which makes determining who is a refugee, as compared to an economic migrant, an extremely difficult task.⁸⁰

States have maintained various policies to prevent asylum seekers from reaching their territory or to shift the burden of making refugee status determinations to other States. Policies that fall short of actual *Refoulement* nevertheless deter *bonafide* refugees from seeking protection.⁸¹

Providing for meaningful access in asylum systems will benefit both States and forced migrants especially when operated fairly and efficiently, both towards the people and by the obligated states. National and regional approaches⁸² are the most efficient ways to ensure legal protection for refugees. Finally, to help ensure the compelling protection of refugees in their region of origin, the International community should grow into holding a greater responsibility and commitment towards displaced people through ratifying the relevant International legal instruments, in addition to the states which are already parties, to comply with their obligations.

2. State Powers

“International society is organized into basic state units. States have the authority to determine individually the management of migration relative to their territory.”⁸³ In this

⁷⁹ Attempts to secure a right to asylum in the 1960’s and 1970’s were rejected by the United Nations Conference on Territorial Asylum in 1977. Given the lack of consensus on this issue, the Conference simply recommended that the General Assembly consider its reconvening at a suitable time. The Conference has never been reconvened. Sovereign states have consistently chosen to retain their discretion over asylum.

⁸⁰ For example, an individual may leave his or her home because of persecution or life endangering conflict, but he or she may choose a destination because of family connections or employment opportunities or, even, the decision may be made for the individual by a smuggler.

⁸¹ The policies sometimes include actual *Refoulement*. The US Supreme Court in *Haitian Refugee Center versus Sales* determined that the government could return Haitians directly to Haiti, without access to a refugee determination, if the Haitians were interdicted on the high seas. They also include visa restrictions imposed on nationals of certain States, sanctions against carriers that transport persons without proper documentation, safe third country and safe country of origin provisions through which States return asylum seekers without hearing their applications, transfer of asylum seekers interdicted on the high seas to processing centres in other countries, expedited processing provisions that turn away certain applicants (those judged to have no credible claim or a manifestly unfounded claim) without benefit of a full asylum hearing, and mandatory detention of asylum seekers.

⁸² For example, the OAU Convention and the Cartagena Declaration.

⁸³ IOM, “Authority and responsibility of states”, *Essentials of Migration Management*, Migration Management Foundation, Vol. 1, p. 4.

manner, they are empowered to determine the non-nationals admitted to their territory, to dismiss non-nationals in certain circumstances, to control their borders and protect their security.

However, this migration management power is not fully controlled by states which in turn must exercise it with full respect of the fundamental human rights and freedoms of migrants that are granted under a wide range of International human rights and customary International law instruments.⁸⁴

2.1. State Sovereignty

“It is an accepted maxim of International law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.”⁸⁵

States enjoy a considerable authority in managing the mobility of foreign nationals across their borders.⁸⁶ Despite the fact that these authorities are not absolute, states generally exercise their sovereign powers to determine who will be admitted and for what period. Practically, States may enact internal law and regulations on such matters as passports, admissions, exclusion and expulsion of aliens and frontier control.⁸⁷ States vary in the types of laws and regulations adopted, some more restrictive than others, but commonly, all States adopt rules that govern entry into and exit from their territories.

2.1.1. National Security

Even when States recognize the rights of certain foreign nationals to remain in their territory, concerns about national security often outmaneuver any exercise of migrant rights.

Security exceptions may be formulated explicitly. For instance, limitation clauses which typically allow exception to the right as long as the restrictions are “provided by law, are necessary to protect national security, public order, public health or morals or the rights

⁸⁴ IOM, “Authority and responsibility of states”, *op. cit.*, p. 5.

⁸⁵ *Nishimura Ekiu v. United States*, 142 U.S. 651,658 (1892); compare *Musgrove v. Chun Teeong Toy*, 1891 AC 272.

⁸⁶ David Martin, “The Authority and Responsibility of States”, Eds., Aleinikoff, T. A. & Chetail, V., *Migration and International Legal Norms*, The Hague, T.M.C., Asser Press, pp. 31-45.

⁸⁷ Louis B. Sohn, and Thomas Buergenthal, Eds., “The Movement of persons across border”, *American Society of International Law*, Washington D.C., 1992, p. 3.

and freedoms of others, and are consistent with the other rights recognized” in the applicable treaty.⁸⁸

An example of such clause would be the decision of the President of USA, Donald Trump which have halted Syrian refugees indefinitely, blocked all refugee admissions for four months and ban citizens of seven countries ; Iran, Iraq, Somalia, Syria, Sudan, Libya and Yemen, from entering the United States for at least 90 days. White House spokesmen Sean Spicer termed this order as it was a right “first step,” he said “Being able to come to America is a privilege, not right.” He supports his arguments with data⁸⁹ proving direct ties between terrorism and migrants accessing the American territory. And based on the principle of sovereignty, He wraps up saying: “there should be no entitlements at our borders, only accountability.”

Also there exist derogation clauses which permit States to abrogate otherwise protected rights in exceptional circumstances. They generally are temporary, required by the exigencies of the situation and must be applied in a nondiscriminatory manner.⁹⁰ Measuring the significance of national security exceptions, the need of states for security-related information about aliens applying for admission generally trumps migrant rights.

2.1.2. Border Control

Considering their vulnerable situation, asylum-seekers are sometimes forced to enter their country of refuge unlawfully. The 1951 Geneva Convention does not stipulate that states are required to grant asylum-seekers entry to their territory. “Entering a state party to the Convention unlawfully does not forfeit protection. Illegal entrants can still qualify as refugees if they fulfil the relevant criteria. Even though they should not be punished for their illegal entry if they come directly from the territory where their life and freedom was threatened and if they report themselves immediately to the authorities, showing good reason for their illegal entry.”⁹¹ Restrictions on their movement can still be

⁸⁸ David Fisher, Susan Martin, and Andrew Schoenholtz, “Migration and Security in International Law”, in Aleinikoff, *Migration and International Legal Norms*, pp. 97-99.

⁸⁹ Mark Metcalf, “Border Security Means That Entering is Privilege, Not a Right”, Washington Times, 2017, available at: <http://cis.org/OpedsandArt.s/Metcalf-Border-security-means-that-entering-is-privilege-not-a-right> [accessed February 2017].

⁹⁰ Fisher et al., *op. cit.*

⁹¹ UNGA, *Convention Relating to the Status of Refugees op. cit.*, Art. 31.

inflicted until their status is regularized;⁹² unlike lawfully entering refugees who are entitled to choose their residence and to move freely.⁹³

In certain countries, refugees are confined to refugee camps and their movement is restricted. In other countries, including in many developed countries, detention of irregular migrants until their status as refugees is determined is a common practice.⁹⁴ In developing rules to regulate movements across borders, States possess full authority to implement different laws and regulations, based on the reason for entry and exit and the nationality of the persons moving across the border.⁹⁵

Going back to the same American example, White House spokesmen Sean Spicer explains that Trump's entry ban order's purpose is broad and far-reaching. As opposed to congesting airports, frustrating legitimate travel or penalizing the blameless. It is actually intended to immediately harden the borders against threats offered by those traveling to and from places with tangible ties to terrorism.⁹⁶

State authority is more constrained in regulating the movement of its own nationals across its borders than it is in regulating the movement of non-nationals. States have authority under the ICCPR to place legitimate limitations on exit if related to national security, public order, public health or morals or the proper administration of justice.⁹⁷ The ICCPR provides, however, that States may not expeditiously deny nationals the right to re-enter. The Human Rights Committee held that "there are few, if any circumstances in which deprivation of the right to enter one's own country could be reasonable."⁹⁸

⁹² UNHCR considers that detention of asylum-seekers should be a measure of last resort. It has drafted a set of guidelines for the use of detention of asylum-seekers.

⁹³ UNGA, *Convention Relating to the Status of Refugees*, *op. cit.*, Art. 26.

⁹⁴ Volker Türk and Madeline Garlick, "From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees", *International Journal Refugee Law*, Vol. 28, Issue 4, 2016; doi: <https://doi.org/10.1093/ijrl/eew043> 28 (4): 656-678, doi: 10.1093/ijrl/eew043 eew043, available at: <https://academic.oup.com/ijrl/Art./28/4/656/2743476/From-Burdens-and-Responsibilities-to-Opportunities>.

⁹⁵ Sohn and Buergenthal, *op. cit.*, p. 13.

⁹⁶ Metcalf, "Border security means that entering is a privilege, not a right", *op. cit.*

⁹⁷ Sohn and Buergenthal, *op. cit.*, pp. 6-7; see also, Fisher et al., pp. 111-112 (right to exit), 104-105 (right to enter).

⁹⁸ Fisher et al., *op. cit.*, p. 105; see also, Human Rights Committee, "Freedom of movement", *General Comment 27*, Art.12, U.N. Doc CCPR/C/21/Rev.1/Add.9, 1999; Restrictions, Art. 11, para. 3, available at: https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/HRC_GC_27e.pdf [accessed on May 9, 2017].

Furthermore, with regards to the refugee situation, the *Non-Refoulement* obligation under the 1951 Convention “generates highly uneven refugee burdens”, with some countries hosting a ‘hugely disproportionate share’ of refugees compared with others.⁹⁹

2.1.3. Residency Regulations

Rights are granted to refugees depending on the legality of their situation in their host country and the duration of their stay there. The first set of rights applies merely on the basis of presence within a state party’s territory, even if this presence is illegal. They have a limited right to move freely, subject to reasonable restrictions.¹⁰⁰ The second set of rights is to be accorded when refugees are 'lawfully present' in the host state (for example, while their asylum claim is processed) including the right to move freely, subject to regulations applicable to aliens in general.¹⁰¹ States are given a considerable discretion in according rights to refugees, and that is primarily due to the inexistence of a definition of the concepts of 'present lawfully', 'staying lawfully', or 'residing lawfully'. Practically, states are free to grant permanent or temporary residence and to assign, or decline rights to work and move freely. This leads to great differences among refugees' rights.¹⁰²

States may impose different rules and expectations on foreign nationals based on the purpose of their entry. For example, persons who are working are regarded differently from those studying, conducting business or touring the country. States may establish special rules based on treaty relations, traditional or cultural ties that ultimately give preference or greater access to admissions of nationals of certain other countries. States are restrained, however, in applying entry and exit rules in a manner that discriminates on such grounds as race, sex, language or religion.¹⁰³

Generally, States have an extensive authority to prevent foreign nationals from entering their territory and expel or deport¹⁰⁴ persons already in their countries.¹⁰⁵ Usually, exclusion and deportation grounds are common, such as: public health, criminal

⁹⁹ James Milner, “Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security”, *Oxford University, Refugee Studies Centre*, September 13, 2011, available at: <https://yorkspace.library.yorku.ca/xmlui/handle/10315/9916?show=full> [accessed May 16, 2017].

¹⁰⁰ UNGA, *Convention Relating to the Status of Refugees*, *op. cit.*, Art. 31 (2).

¹⁰¹ *Ibid.*, Art. 26.

¹⁰² Türk and Garlick, *op. cit.*

¹⁰³ *Ibid.*

¹⁰⁴ Joan Fitzpatrick, “The International Dimension of U.S. Refugee Law”, *Berkeley Journal of International Law*, Vol 15, no. 1, available at: <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?Art.=1154&context=bjil>.

¹⁰⁵ Martin, “The Authority and Responsibility of States”, *op. cit.*, p. 34; the authority to expel or deport its own citizens is far more limited.

convictions or activities,¹⁰⁶ earlier violations of immigration law,¹⁰⁷ and economic reasons, in addition to the national security grounds previously discussed.

Steven A. Camarota, Director of Research at CIS says: “Foreign-born militant Islamic terrorists have used almost every conceivable means of entering the country. They have come as students, tourists, and business visitors. They have also been Lawful Permanent Residents (LPRs) and naturalized U.S. citizens. They have snuck across the border illegally, arrived as stowaways on ships, used false passports, and have been granted amnesty. Terrorists have even used America’s humanitarian tradition of welcoming those seeking asylum.”¹⁰⁸

Procedures may differ extensively; however, States generally, in consistency with International law, provide more rights to persons already in the countries to challenge the deportation or expulsion. Article 13 of the ICCPR provides that aliens legally present in a State hold the right to procedural protections prior to being expelled, including review by a competent authority and the opportunity to submit reasons against the expulsion. However, if a national security concern arises, procedural rights may be withheld. Moreover, States shall establish a procedure to determine if the alien falls into a category protected against return.¹⁰⁹

2.2. Limitations to State Authority

Although states restrict the admission of foreigners and set qualifications for entrance, both through visas issued or denied by their consular officers posted in foreign territory and through inspection at the border. They tend to enter into International

¹⁰⁶ Art. 33(2) of the Convention excludes from the prohibition on *Refoulement* aliens who “having been convicted by a final judgment of a particularly serious crime, constitute a danger to the community of that country.” See also, Metcalf, *op. cit.*; from 2001 through 2014, 580 people were convicted in the U.S. of terrorism-related offenses. At least 380 of them — some 65 percent — were foreign-born. Only 76 people — 20 percent of the group — came from countries outside the SDCs. Since 2001, 40 individuals entering the United States claiming refugee status were implicated in terrorist plots. A profile of al Qaeda incidents in the United States is just as revealing as it is troubling. Of the 171 al Qaeda operatives who committed terrorist acts between 1997 and 2011, 63 percent were born outside the United States. From this group of foreign-born terrorists, some 94 people — or 85 percent — were born in SDC countries. Nearly a third of this group became citizens before launching their schemes. Ominously, their trips back to their home countries didn't always alert U.S. authorities to risks the executive order seeks to minimize, available at: <http://cis.org/OpedsandArt.s/Metcalf-Border-security-means-that-entering-is-privilege-not-a-right>.

¹⁰⁷ Such as Syrians entering Lebanon illegally.

¹⁰⁸ Steven A. Camarota, “National Security”, *Center for Immigration Studies*, available at: <http://cis.org/NationalSecurity> [last accessed 25 November 2017].

¹⁰⁹ For example, persons fearing persecution or torture.

agreements that limit their discretion over migration and that also provide for transnational cooperation in formulating and exercising immigration rules.”¹¹⁰

International human rights law and other bilateral and multilateral treaty obligations, limit the state sovereignty, however, the underlying principle of state authority remains, and restrictions on state authority arise only by way of exception.¹¹¹ States can structure migration policy to suit security concerns and political objectives. Their authority extends from laying down standards for admission to and exclusion from their territory. They can enact grounds for expulsion that are more constrained than those prohibiting entry.

Populations strongly support broad state authority especially during difficult circumstances such as economic stress or security threat¹¹². Under International law, states shall accept the return of nationals when other state seeks to expatriate them. They are also required to recognize a range of civil, political, economic, social and cultural rights towards its citizens.¹¹³ It is evident to note that this obligation extends to all persons within the jurisdiction of the state, citizen or alien. However, the human rights norms do not significantly affect the ongoing authority of the state to set its own criteria for deciding who may enter or stay.¹¹⁴

2.2.1. Admission Authority

States may set multiple extremities on admissions or on particular categories of admission. Also, bilateral treaties address permission to migrate and treatment of migrants between states covered by the treaty. These treaties, especially consular, investment, friendship, commerce and navigation treaties have often been used to set particular procedures, rules, restrictions, or protections that apply to migrants covered by the treaties.¹¹⁵

¹¹⁰ IOM, “Authority and responsibility of states”, *op. cit.*, p. 6.

¹¹¹ *Ibid.*, p. 8.

¹¹² *Ibid.*, p. 7; for example: after September 11, 2001 attacks on the US, national security has been sharply brought into focus, increasing the concern that foreigners present threats to the security and safety of a country and its citizens. In resolution 1373, the UNSC called on states to prevent the movement of terrorists or terrorist groups by effective border controls and by controlling how identity papers and travel documents are issued, migrants were suddenly regarded with more suspicion than before, and asylum seekers, refugees and economically motivated migrants are being regarded as potential enemies. After Sep 11 events, a number of states took action to tighten immigration systems (biometrics, finger printings), increased data exchange and border control, and tighter entry control.

¹¹³ *Ibid.*, p. 8.

¹¹⁴ *Ibid.*, p. 9.

¹¹⁵ *Ibid.*, p. 11.

States may also restrict migration in order to shield a favored position for their own citizens within the internal labor market. States usually request potential immigrants to show that they are capable of supporting themselves during their stay.¹¹⁶ Diseases, past criminal convictions or activities, earlier violations of immigration law, national security or public order concerns, can be grounds for preventing admission on state borders.¹¹⁷

Various economic and humanitarian factors play a major role in granting the permission for permanent immigration. These include family connections, specified employment skills, and humanitarian grounds.¹¹⁸ However, International law does not obligate a transit country to accept return of someone who crossed through its territory, even when that individual may have remained there for a quite tedious period.¹¹⁹

2.2.2. Expulsion Authority

“States can exercise wide discretion when establishing grounds for deporting or expelling those who have made an entry into their national territory. States will deport if the person entered the territory in violation of the law, failed to comply with the terms of admission, or has been involved in criminal activities. Or, when the person is a threat to national security, or should be expelled for foreign policy reasons.”¹²⁰

However, human rights measures may impose nominal limits in some settings. For example, several human rights instruments bar the collective expulsion of aliens. Furthermore, most states prioritize immigration by family members of citizens or relatives of persons with durable residence rights as well.¹²¹

Article 13 of the ICCPR, provides “an alien lawfully in the territory may be expelled there from only in pursuance of decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.” This procedural guarantee applies only to those lawfully in the territory and does not cover clandestine entrance or those at the border applying for admission.¹²²

¹¹⁶ IOM, “Authority and responsibility of states”, *op. cit.*

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, p. 12.

¹¹⁹ *Ibid.*, p. 13.

¹²⁰ *Ibid.*, p. 16.

¹²¹ *Ibid.*, p. 17.

¹²² *Ibid.*, p. 19.

2.2.3. *Non-Refoulement*

A highly compelling impediment on expulsion is deduced originally from the *Non-Refoulement* obligation in article 33 of the 1951 Convention. It eradicates return or expulsion to a state where the refugee's life or freedom would be threatened due to discrimination against his race, religion, political opinion, nationality, or membership in a particular social group.

Non-Refoulement is universally acknowledged as a human right. Comparable non-return obligations have since developed under other treaty regimes, both global and regional. It is expressly stated in human rights treaties such as Article 3 of the Convention against Torture and Article 22(8) of the American Convention on Human Rights, "Pact of San Jose", Organization of American States (OAS), Costa Rica, 22 November 1969.¹²³ For example, the CAT bars return of a person where there are substantial grounds for believing that he/she would be in danger of being subjected to torture. Moreover, Art. 3 of The European Convention for the Protection of Human Rights and Fundamental Freedoms has been interpreted to bar return to another country if there is a real risk of torture or inhumane treatment there.

However, although becoming an obligation under International customary law, exceptions remain permitted when the person may reasonably be regarded as danger to the host state's security or has been convicted of a particularly serious crime.¹²⁴

Moreover, *Non-refoulement* does not prevent expulsion to a third state (although the expelling state has some obligation to avoid chain *Refoulement* to the persecuting state). Nor does it automatically lead to asylum, permanent residence or other durable status. As such status guarantees are within the discretionary prerogative of states. Developing states usually withhold broader grants of status and look to the International community to assist in finding other solutions even while refraining from return of the covered individuals to the country of origin.

In addition to that, Professor Zaiotti, the former editor in chief of the Journal of International Law and International Relations argued that foreigners, whether refugees or not, are liable to be sent back to their country of origin if they try to enter the country without authorization (if a visa is required). Similarly, recognized refugees may be sent

¹²³ Available at: <https://treaties.un.org/>; <http://www.refworld.org/docid/3ae6b36510.html>; according to UNHCR's 2013 Report on Legal Status of Individuals Feeling Syria, Lebanon officially states that it is bound by the Non-Refoulement principle.

¹²⁴ UNGA, *Convention Relating to the Status of Refugees*, Art. 33(2).

back to their home country in the case of a serious violation of the law of the land, or for surpassing the permitted length of stay.

Going back to the Syrian crisis within the Lebanese state, one *Refoulement* incident has been reported in which it was based on the lawful grounds insert reference in bib, for the violation of the Article 32 of the Lebanese Law of Entry and Exit of 1962 permits the arrest and deportation of foreign nationals who enter the country illegally; there has not been any official records of grave actions taken by the Lebanese government to be regarded as *Refoulement*. “State practice varies, however and controversy persists over whether most states involved see this abstention as a matter of legal obligation or as a sound use of their discretionary powers.”¹²⁵

CHAPTER TWO: THE OBLIGATIONS OF THE LEBANESE STATE UNDER INTERNATIONAL LAW IN LIGHT OF THE ROLE OF THE INTERNATIONAL COMMUNITY

¹²⁵ IOM, “Authority and Responsibility of States”, *op. cit.*, P. 23.

The legal system governing the International community is mainly derived from two main sources; treaties between states and custom.¹²⁶ “States follow the practice in question in the belief that they fulfil a legal obligation.”¹²⁷ There is no existence for any explicit entitlement to asylum for the individuals concerned, or an obligation on states to grant asylum, neither in International refugee law nor in International human rights treaties. Acknowledging their right to seek asylum, Individuals are never ensured that they will certainly be granted asylum. On the other hand, states have the right to grant asylum, but are in no way obligated to do so. Moreover, there are no guarantees under the Geneva Convention that asylum-seekers are directly entitled to refugee status, even if they fulfil the conditions, this matter remains at state discretion.¹²⁸

However, States shall abstain from actions that are deemed dangerous to asylum-seekers, especially the act of returning them to their country of origin. In this sense, each state has the power to establish the conditions for granting asylum. “This situation is reinforced by the fact that nobody is entitled to interpret the Geneva Convention authoritatively, unlike most other International human rights treaties. UNHCR has the duty to supervise its application, but has no authority to provide mandatory interpretations. The task of interpreting the Convention has thus fallen to domestic law-makers and courts.”¹²⁹

1. The obligations of The Lebanese State under International Law

Even though Lebanon is not a contracting State to the Geneva Convention, some obligations towards refugees remain existent despite the lack of ratification. It is important to explore more closely the implications of customary International law, and discuss the emergence of the so-called ‘complementary protection’, including humanitarian and subsidiary protection, outside of the Geneva Convention.¹³⁰

¹²⁶ Andre Da Rocha Ferreira, Cristieli Carvalho, Fernanda Graeff Machry, and Pedro Barreto Vianna Rigon, “Formation and Evidence of Customary International Law”, *UFRGS Model United Nations Journal*, 2013, vol.

1, p. 182, available at: <https://www.ufrgs.br/ufrgsmun/2013/wp-content/uploads/2013/10/Formation-and-Evidence-of-Customary-International-Law.pdf> [accessed on April 25, 2017].

¹²⁷ United Nations, *Statute of the International Court of Justice (ICJ)*, 18 April 1946, Art. 38, available at: <http://www.refworld.org/docid/3deb4b9c0.html>.

¹²⁸ Lonel Zamfir, “Refugee Status under International Law”, *European Parliamentary Research Service Blog*, Members' Research Service, October 27, 2015, available at: <https://epthinktank.eu/2015/10/27/refugee-status-under-international-law/>.

¹²⁹ *Ibid.*

¹³⁰ Ruma Mandal, “Protection Mechanisms Outside of the 1951 Convention”, *Complementary Protection*, UNHCR, Department of International Protection, Protection Policy And Legal Advice Section PPLA/2005/02, Research series, Geneva, Switzerland, 2005.

1.1. Lebanon's Obligations under International Human Rights Law

Apart from the Palestinian case and despite its importance, throughout their recent history, Middle Eastern states disregarded the issue of forced migration; it was scarcely addressed in their political agendas. Policies towards these individuals were developed extemporarily, thus refugees in this area only enjoyed few guarantees and the lowest protection possible.¹³¹ Besides, Lebanon is not party to any of these instruments, despite the fact that it is one of the founders of UNHCR's Executive Committee and one of its current members.¹³² However, "Lebanon is a founding active member of the United Nations Organization, committed to its Charter and the Universal Declaration of Human Rights. The State embodies these principles in all sectors and scopes without exception."¹³³ There are several International conventions and declarations that have been ratified by Lebanon and thus directly impose obligations on the state with regards to the consideration of recognizing the status of refugees where the relevant conditions apply.

1.1.1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) was a major turning point in the history of human rights.¹³⁴ In its preamble, it is considered that "all peoples and all nations must promote respect for the rights and freedoms mentioned in the declaration and take progressive measures, national and International, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. Then it refers to the equality of all people before the law and to the right to equal protection against any discrimination in violation of the Declaration."¹³⁵

It has been made certain that the UDHR is responsible for pledging the rights and freedoms that are set forth in it. However, it is also notable that the UDHR had tackled the issue of human rights and freedoms in general, stressing that it only serves as a moral obligation with no legal accountability. Moreover, it only mentioned the right to asylum in

¹³¹ Zaiotti, *op. cit.*, p. 334.

¹³² Other Middle Eastern countries not included in this study that are party to the 1951 Convention and 1967 Protocol are Algeria (which became party to the Convention in 1963 and the Protocol in 1967), Djibouti (1977), Iran (1976), Israel (1954 and the Protocol in 1968), Mauritania (1987), Morocco (1956; the Protocol in 1971), Somalia (1978), Sudan (1974), and Yemen (1980).

¹³³ *The 1926 Lebanese Constitution*.

¹³⁴ The Declaration was proclaimed by the UNGA in Paris on 10 December 1948 GA RES/ 217 A, as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

¹³⁵ UDHR, Art. 7.

relation to persecution,¹³⁶ which is a notion to be assessed and validated by the competent authorities in the host country, otherwise, by UNHCR, in case the former expressed incapability, non-obligation or reluctance to carry out such appraisal. It depends on the domestic legal systems along with the complexity of the Asylum seeker situation.

1.1.2. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

“No State Party shall expel, return “refouler” or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”¹³⁷ Although being a non-Contracting State to the 1951 Convention, Lebanon is a party to the CAT, which implies its obligation to respect the above principle and not return refugees, or in this case torture victims, “to the frontiers of territories” where their lives or freedom would be at threat. The term “torture” encompasses “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹³⁸

1.1.3. The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR is binding on 168 States, including Lebanon.¹³⁹ It entrusts all State parties to protect the civil and political rights of all individuals.¹⁴⁰ It introduces protection of the right to life; liberty; fair trial; freedom of expression, religion and association and freedom from slavery and torture.

In 1992, the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) accentuated in General Comment No. 2, which systemized Art. 7 of the Covenant, that “States Parties must not expose individuals to the danger of torture or cruel, inhumane or degrading treatment or punishment upon return to another country by

¹³⁶ *Ibid.*, Art. 14(1).

¹³⁷ CAT, Art. 3(1).

¹³⁸ *Ibid.*, Art. 1(1).

¹³⁹ See UN Treaty Collection, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en [last accessed on 6 August 2016].

¹⁴⁰ ICCPR, when combined with the ICESCR and the UDHR, makes up what is referred to as the International Bill of Human Rights.

way of their extradition, expulsion or *Refoulement*.”¹⁴¹ In another words, destination countries should not renounce individuals at their borders, in situations of a continuous armed conflict in a neighboring country, in case such rejection may subject their lives to imminent danger.

1.1.4. The International Covenant on Economic, Social, and Cultural Rights (ICESCR)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) is binding upon 164 States, also including Lebanon.¹⁴² These states recognize the right of everyone to education’.¹⁴³ The Covenant also acknowledges the right of everyone to the enjoyment of just and favorable conditions of work.¹⁴⁴

Nevertheless, an exception was made with respect to developing countries; “... with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”¹⁴⁵ As an exception to the general rule of equality, it should be noted that it must be narrowly construed, may be relied upon only by developing countries, and only with respect to economic rights. States may not draw distinctions between citizens and non-citizens as to social and cultural rights.”¹⁴⁶

The above interpretation serves as reassurance that according to Lebanon’s classification as a developing country, it can determine to what extent it can guarantee economic rights, especially the right to work. According to the World Bank records;¹⁴⁷ “The crisis is expected to worsen poverty incidence among Lebanese as well as widen income inequality. In particular, it is estimated that as a result of the Syrian crisis, some 200,000 additional Lebanese have been pushed into poverty, adding to the erstwhile 1

¹⁴¹ UN Committee Against Torture, “Implementation of Article 2 by States Parties”, *General Comment No. 2*, CAT/C/GC/2, 24 January 2008, Art. 7, para. 9, available at: <http://www.refworld.org/docid/47ac78ce2.html>.

¹⁴² See UN Treaty Collection, available at:

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-3&chapter=4&lang=en.

¹⁴³ ICESCR, Art. 13, para. 1

¹⁴⁴ *Ibid.*, Art. 7.

¹⁴⁵ UN Sub-Commission on the Promotion and Protection of Human Rights, “The Rights of Non-Citizens”, *Final Report of the Special Rapporteur Mr. David Weissbrodt on “Prevention of Discrimination”*, E/CN.4/Sub.2/2003/23, submitted in accordance with Sub-Commission decision 2000/103, Commission resolution 2000/104 and Economic and Social Council decision 2000/283, 26 May 2003, para. 19, available at: <http://www.refworld.org/docid/3f46114c4.html>; He interpreted Art. 2 (3) of the ICESCR in his 2003 Report on the Prevention of Discrimination and the rights of non-citizens, emphasizing that it creates a third specific exception to the general rule of equality for developing countries.

¹⁴⁶ *Ibid.*

¹⁴⁷ Data available at: <http://www.worldbank.org/en/country/lebanon/overview> [Last Updated April 01, 2017].

million poor. An additional 250,000 to 300,000 Lebanese citizens are estimated to have become unemployed, most of them unskilled youth.”

However, Lebanon has shown a legitimate commitment to the ICESCR, especially with the exception that the Council of Ministers (COM), which has happened multiple times, and most recently by virtue of decision No. 4,¹⁴⁸ granting students fleeing the conflict in Syria the right to sit for the official exams which mainly guarantees their right to access education in the host country. In addition to that, another exception¹⁴⁹ was made for Syrians in the Lebanese Labor market, despite the economic challenges and consequences noted above. They were granted the right to work in Lebanon, yet only in relation to fields of agriculture, construction and environment.

1.2. Lebanon’s Obligations as a Refugee Host Country between State Sovereignty and International Law

Besides the compulsory legal instruments which place Lebanon at a fair level of responsibility towards ensuring human rights in general on one hand, and protecting refugees and asylum seekers, on the other hand. In addition, there remains a notable channel in which the duty of recognition of status, granting rights and securing protection paves its way into effect. However, The United Nations Charter contains a contradiction that is quite problematic. As a reaction to Nazi aggression during World War II, it stated clear defense of the territorial integrity of states. Simultaneously, it contains commitments to individual human rights and the rights of groups to self-determination.¹⁵⁰ This demonstrates a concrete proof that there is a room for debate when it comes to international obligations, their according level of applicability and the derived rights which is perceived differently based on the position from where the issue is regarded.

¹⁴⁸ The Lebanese Council of Ministers (COM), *Decision No. 4*, 17, 02, 2017; allowing Lebanese students who were enrolled in schools in the Syrian Arab Republic or any other country outside Lebanon, as well as Syrian students and students of other nationalities, to sit for the official exams for the year 2017, for Grade 9 (Brevet) and Grade 12 (Baccalaureate) in its four sections, even if they were unable to provide all required certified candidature documents, as long as this inability derives from the exceptional circumstances witnessed by the Syrian Arab Republic and all other countries of origin of concerned non-Lebanese and non-Syrian students; and to provide the students who pass the exams with certificates based on the fact that they could not submit all the required certified documents and to consider the students who fail the exams qualified to sit again for the same exams even if they are unable to submit the required candidature documents.

¹⁴⁹ The Lebanese Ministry of Labor (MOL), *Decision No. 41/1*, September 2, 2017.

¹⁵⁰ Eric Brahm, “Sovereignty”, *Beyond Intractability*, Eds., Guy Burgess and Heidi Burgess, Conflict Information Consortium, University of Colorado, Boulder, September 2004, available at: <http://www.beyondintractability.org/essay/sovereignty>.

1.2.1. The Sovereignty of the Lebanese State

There are several legal instruments which set forth the legal basis for Lebanon's independence and sovereignty on one hand, and recognize its legal incapacity of hosting refugees and integrating them as a durable solution on the other hand. The former explains Lebanon's power as a state to enact law to the best interest of its people and the state. However, the latter clarifies the reasons why the Lebanese policy towards Syrians in Lebanon is somehow disconnected from the refugee concept and is more in parallel with foreign migrants' regulations.

Lebanon is a free, sovereign and independent country. These state elements are embodied in and thus recognized under the highest national legal instrument; the Lebanese constitution which literally mentions that there shall be no settlement of a non-Lebanese in Lebanon.¹⁵¹ This in turn provides for the primary legal obstacle in the way of considering Lebanon a country of refuge, as this consideration puts the state under an obligation International law obligation to recognize refugees, eventually grant them permanent settlement for the purpose of local integration, and finally providing citizenship. Apart from the humanitarian aspect of this obligation, and from a legal point of view, the act of recognizing refugees is definitely inconsistent with the Lebanese constitution, therefore in conflict with the national law, considering the long-term consequences of such recognition.

In addition to this assertion of sovereignty, other legal instruments addressed the importance of protecting the co-existence and assured the disengagement of Lebanon in regional and International conflicts. In this sense, it is relevant to highlight The Ta'if Agreement, which ended the civil war in Lebanon, was negotiated in Ta'if, Saudi Arabia, in September 1989 and approved by the Lebanese parliament on 4 November 1989. In addition to recognizing Lebanon as an independent and sovereign state, it mentions the following: "Lebanon's soil is united and it belongs to all the Lebanese... The people may not be categorized on the basis of any affiliation whatsoever and there shall be no fragmentation, no partition, and no repatriation [of Palestinians in Lebanon] (Para H). Then adds to that, spelling out the following: "No authority violating the common co-existence charter shall be legitimate" (Para I).

¹⁵¹ The Lebanese Constitutional Law of September 21, 1990, "Fundamental Provisions Preamble", Part one; *"Lebanon is a sovereign, free, and independent country. It is a final homeland for all its citizens. It is unified in its territory, people, and institutions within the boundaries defined in this constitution and recognized internationally. Lebanese territory is one for all Lebanese. Every Lebanese shall have the right to live in any part thereof and to enjoy the rule of law wherever he resides. There shall be no segregation of the people on the basis of any type of belonging, and no fragmentation, partition, or settlement of non-Lebanese in Lebanon."*

On the other hand, In June 2012, all political parties adopted the Baabda Declaration,¹⁵² which formally stated Lebanon's dissociation policy from regional and International conflict as a part of its National Dialogue framework. Interestingly, the declaration did not refer to the refugee situation, but mentioned the importance of the right to humanitarian solidarity as guaranteed under the constitution and the law.¹⁵³

According to the above mentioned legal instruments. It is clear that there exists a contradiction with the notion of refuge within the Lebanese context. Repatriation is not to be adopted as a solution for the Palestinian refugee crisis, whose experience plays a big role in the strict attitude adopted by the Lebanese government in the formulation of the policy regulating Syrian legal status in Lebanon. in addition to the fact that integrating Syrians in the Lebanese community which might later be considered as a preparatory stage in the process of a permanent settlement would definitely affect the co-existence charter, knowing that most Syrians are Sunnis, which will cause sectarian disequilibrium; and that is only unacceptable due to its inconsistency with the co-existence charter and the sectarian division on which the Lebanese state has been founded, that on top of all the historical, social, economic, cultural and political challenges of such cohesion, which were addressed earlier.

Furthermore, there are several International law instruments that deviate Lebanon from the consideration of a refuge state. Either through dismissing Lebanon from this responsibility or simply seizing their application based on lack of ratification or because the concerned conditions of application do not exist.

1.2.2. The 1951 Geneva Convention and Its 1967 Optional Protocol

The major legal instrument regulating refugee law is the 1951 Convention relating to the Status of Refugees (1951 Convention) and its 1967 Optional Protocol Relating to the Status of Refugees (1967 Optional Protocol). The 1951 Convention sets out the definition of a refugee as well as the principle of *Non-Refoulement* and the rights incurred to those granted refugee status. Lebanon is not a party to the 1951 Refugee Convention, hence the limited legal protection for refugees and asylum seekers in Lebanon, although bound by the customary law principle of *Non-Refoulement* and by the obligations of the human

¹⁵² UN Security Council, "Baabda Declaration", *Permanent Mission of Lebanon to the UN*, the National Dialogue Committee, Report 477, A/66/849-S/2012/477, New York, 11 June 2012, available at: <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3CF6E4FF96FF9%7D/Lebanon%20S%202012%20477.pdf>.

¹⁵³ *Presidency of the Republic of Lebanon*, "National Dialogue", 2004, available at <http://www.presidency.gov.lb/English/News/Pages/NationalDialogue.aspx> [accessed on February 8, 2016].

rights treaties which it signed and incorporated into its Constitution. International standards under these obligations only recommend the minimal adoption of temporary protection measures to ensure the safe admission of refugees, to protect them against *Refoulement* and to respect their basic human rights.

1.2.3. International Humanitarian Law

“International humanitarian law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare.”¹⁵⁴

It distinguishes between International and non-International armed conflict. “International armed conflicts are those in which at least two States are involved. They are subject to a wide range of rules, including those set out in the four Geneva Conventions and Additional Protocol I. Non-International armed conflicts are those restricted to the territory of a single State, involving either regular armed forces fighting groups of armed dissidents, or armed groups fighting each other. A more limited range of rules apply to internal armed conflicts.”¹⁵⁵

Applying this to the Syrian case, the ongoing armed conflict would be classified as a non-International armed conflict noting that the fighting is restricted to the territory of a single state, and that the conflict is between the state of Syria and other armed forces, which has also been reaffirmed by the UN Security Council.¹⁵⁶ This means that Lebanon is not a part of this conflict, and thus, theoretically IHL imposes no obligations on the Lebanese state in this regard. Therefore, the State of Syria, particularly the Syrian authorities must comply with their obligations under International humanitarian law; as States have an obligation to teach its rules to their armed forces and the general public. They must prevent violations or penalize them. Particularly, they must enact laws to punish

¹⁵⁴ International Committee of the Red Cross (ICRC), “When does international humanitarian law apply?”, *Advisory Service on International Humanitarian Law*, July 2004, available at: https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf.

¹⁵⁵ ICRC, *op. cit.*, see also Article 3, common to the four Geneva Conventions as well as in Additional Protocol II.

¹⁵⁶ UNSC, *Resolution 2191 on the humanitarian situation in the Syrian Arab Republic and the establishment of a monitoring mechanism*, S/RES/2191, 17 December 2014, available at: <http://www.refworld.org/docid/549415b44.html>; “Demands that all parties to the Syrian domestic conflict, in particular the Syrian authorities, immediately comply with their obligations under International humanitarian law and International human rights law, and fully and immediately implement all the provisions of Security Council resolutions 2139 (2014) and 2165 (2014) and the Presidential Statement of 2 October 2013 (S/PRST/2013/15), and recalls that some of the violations and abuses committed in Syria may amount to war crimes and crimes against humanity” which in turn means that Lebanon is not a part of this conflict, and thus, theoretically IHL imposes no obligations on the Lebanese state in this regard.”

the most serious violations of the Geneva Conventions and Additional Protocols, which are considered as war crimes.¹⁵⁷

1.2.4. Security Council Resolutions 1559 and 1701

According to Article 25 of the United Nations Charter, all members of the United Nations “agree to carry out and accept the decisions of the SC in accordance with the present Charter.”

Aside from this being a primarily guaranteed notion under the Lebanese constitution, it has also been guaranteed in several United Nations security general resolutions.

Most significantly are resolutions 1559 and 1701. It is relevant to quote what resolution 1559 had added, when it spelled out the following: “reiterates its strong support for the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized borders, noting the determination of Lebanon to ensure the withdrawal of all non-Lebanese forces from Lebanon.”

On the other hand, and in addition to the other guarantees which were mentioned in SCRES 1701, it stressed on the strict application of the Ta’if Accords in addition to previous relevant resolutions, as well as the necessity of securing its borders in relevance to the Syrian conflict which is currently concerning. In this regard it spelled out the following:

“Emphasizes the importance of the extension of the control of the Government of Lebanon over all Lebanese territory ... for it to exercise its full sovereignty, so that there will be no weapons without the consent of the Government of Lebanon and no authority other than that of the Government of Lebanon”;

“full implementation of the relevant provisions of the Taif Accords, and of resolutions 1559 (2004) and 1680 (2006), that require the disarmament of all armed groups in Lebanon, so that, pursuant to the Lebanese cabinet decision of 27 July 2006, there will be no weapons or authority in Lebanon other than that of the Lebanese State; no foreign forces in Lebanon without the consent of its Government”;

“Calls upon the Government of Lebanon to secure its borders and other entry points to prevent the entry in Lebanon without its consent of arms or related materiel and

¹⁵⁷ Measures have also been taken at an International level: tribunals have been created to punish acts committed in two recent conflicts (the former Yugoslavia and Rwanda). An International criminal court, with the responsibility of repressing inter alia war crimes, was created by the 1998 Rome Statute.

requests UNIFIL as authorized in paragraph 11 to assist the Government of Lebanon at its request.”

2. The Recognition of Refugees and the Underlying Role of the International Community

It is of a crucial significance for the purpose of being recognized as a refugee to undergo Refugee Status Determination (RSD). It constitutes the legal or administrative process by which governments or UNHCR identify whether a person seeking international protection is considered a refugee under international, regional or national law.¹⁵⁸ On the other hand there is a common understanding that refugee issues are of concern to the entire International community, which entails an approach towards refugee obligations established by International solidarity and shared responsibility.¹⁵⁹

2.1. Refugee Status Determination

Refugee status at the universal level is governed by the 1951 *Convention Relating to the Status of Refugees* (hereafter the 1951 Convention) and its 1967 Protocol. States parties to the 1951 Convention have assumed specific obligations towards refugees, including establishing procedures to identify who is a refugee and is therefore entitled to rights and protections afforded under the 1951 Convention. The assessment as to who is a refugee under the 1951 Convention is incumbent upon the Contracting State to which the refugee submits an application for refugee status. States therefore have the primary responsibility for determining the status of individuals who arrive on their territory, and in particular for determining whether an individual is a Convention Refugee entitled to international protection. However, UNHCR may also under certain circumstances conduct RSD under its mandate to identify persons of concern.

This Recognition has a vital protection function and is the precondition to implementing durable solutions.¹⁶⁰

¹⁵⁸ <http://www.unhcr.org/refugee-status-determination.html>

¹⁵⁹ Christina Boswell, “Burden-sharing in the New Age of Immigration”, *The Online Journal of the Migration Policy Institute*, November 1, 2003, available at: <http://www.migrationpolicy.org/article/burden-sharing-new-age-immigration> [accessed 10 February 2017].

¹⁶⁰ UNHCR, “Refugee Status and Resettlement”, *UNHCR Eligibility and Status Determination*, Chapter 3, p. 75

2.1.1. The Question of the Ability and Willingness of Lebanon in Recognizing Refugees

First asylum states have the primary responsibility for determining the status of asylum-seekers. Alternatively, UNHCR may do so where states are unable or unwilling.¹⁶¹ In this regard, it is important to shed the light on Lebanon's ability and willingness towards recognizing Syrian Refugees.

2.1.1.1. Lebanon's Ability

"The stability of the country or countries in reception of large refugee populations is a major risk factor in increasing or decreasing the likelihood of conflict. A country troubled by economic hardship, political strife, or some combination of the two, may experience the burden of providing for an unfeasibly large population of refugees as a significant negative externality."¹⁶² "While they are commonly perceived as a burden on the receiving country, scholars have challenged the assumption that refugees necessarily constitute a negative externality to the receiving country. Refugee crises do not necessarily entail economic costs to receiving governments, and may indeed provide economic opportunities to the receiving country."¹⁶³ Usually, Refugee communities seek to engage in economic activity, including by trading with receiving communities within existing economic and regulatory frameworks. However, a disproportionately large number of refugees can easily exceed the capacity of the receiving country to provide for them.¹⁶⁴

Since 2014, and a couple of years after,¹⁶⁵ Lebanon had no president. Because of the sectarian power balance, the parliament has been unable to reach a unanimity regarding the presidency. Consequently, the country has been run by an unstable government which was incapable of developing an inclusive refugee policy.¹⁶⁶ Even after the 2016 election of the president, the government was still unable to reach a common view for the country, and the parliamentary sessions were constantly being postponed.¹⁶⁷

In addition to the instability that the Lebanese Government is going through, the divided Lebanese political parties failed to reach an agreement in terms of a unified view

¹⁶¹ <http://www.unhcr.org/refugee-status-determination.html>, op. cit.

¹⁶² Democratic Progress Institute, "Refugees and Conflict Risk Factors: Instability in the Receiving Country." *The Syrian Refugee Crisis: Refugees, Conflict, and International Law*, UK, 2016.

¹⁶³ *Ibid.*

¹⁶⁴ Democratic Progress Institute, op. cit.

¹⁶⁵ Samuel A. Davidoff-gore, "Compliance without obligation: examining state responses to the Syrian refugee crisis", *Brown university*, Providence, RI, May 2015, p. 135.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Ibid.*

that Lebanon must adopt in response to the Syrian refugee crisis. Statements have been made by ministers providing that they would take action regardless the consent of the full COM.¹⁶⁸

In the absence of an adhesive policy due to the divided political system, only some shifts in policy occurred through the COM, which mainly urged for closing the borders.¹⁶⁹ Thus, it can be concluded that, the government can only come to a compromise under one concurrence, which regardless of its articulation, the inability of Lebanon to host Syrian refugees.

“Economic and social processes increasingly fail to conform to nation-state borders, making it increasingly difficult for states to control their territory, a central component of sovereignty.”¹⁷⁰ The signing of The Bilateral Treaty of Brotherhood and Cooperation with Syria has definitely approximated Lebanon’s relationship with Syria. Syrians and Lebanese may cross without being required to provide specific identification documents or a visa. Syrian migrants are accorded a special treatment in Lebanon, facilitated migration and a protected status compared to other foreigners. Syrians have represented a fair section of the labor force in Lebanon for decades. This is evidently due to the open border and the informal employment which on the other hand, makes it difficult to find statistics on this phenomenon. It is however strongly believed that in past decades hundreds of thousands of seasonal and construction workers from Syria have come to Lebanon as economic migrants. Some sources estimate that there are between half a million and one million Syrians working in Lebanon,¹⁷¹ while the International Labor Organization (ILO) estimates a figure between 200,000 and 600,000.¹⁷² This issue has been a great challenge for the Lebanese security General which has now been diverging from this open-border policy and formulating new regulations that guarantee state’s sovereignty.

The recent restrictions at border crossings have caused complaints in the agricultural sector, knowing that the Syrian labor force constitutes an important economic resource.¹⁷³ The explanation of this complex situation mainly lies in the issue of economic imbalances between Lebanon and Syria. The Lebanese currency possesses a stronger

¹⁶⁸ *Ibid.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Brahm, *op. cit.*

¹⁷¹ Filippo Dionigi, “The Syrian Refugee Crisis in Lebanon State Fragility and Social Resilience”, *LSE Middle East Centre*, series 15, 2016, p. 31.

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

purchasing power than the Syrian one, when compared to the US Dollar. In addition to the fact that, and unlike Syria's economy, "Lebanon's economy is generally service-based and capital intensive."¹⁷⁴ Also, Syrians tend to be more proactive in the job market when it comes to labor exhaustive sectors such as construction and agriculture. In addition to that fact that Syrians are usually paid low and even though they operate under poor work conditions,¹⁷⁵ yet because of the profit they gain from the currency difference discussed previously, they stay motivated to keep working and send allowances to their families back home.

2.1.1.2. Lebanon's Willingness

Furthermore, likewise its political system, the Lebanese public has distinct opinions regarding Lebanon's treatment to Syrian refugees. As discussed earlier, in addition to the financial impact that the Syrian refugee crisis has had on the Lebanese economy, it has also increased unemployment and poverty among Lebanese citizens. Aid provisions to Syrian refugees initiated resentment among the poor Lebanese population who do not benefit from the aid even though they live in the same circumstances and suffer from corresponding conditions.¹⁷⁶ Not to forget, the increase in crime rate which has happened in parallel with the huge presence of Syrian refugees.¹⁷⁷ Stories regarding violent crimes committed by Syrian refugees spark fear among Lebanese communities.¹⁷⁸

However, some communities still support refugees. For instance, Shebaa, a town in Lebanon, facilitates assistance to Syrian refugees and asserts that there is no anti-Syrian bias.¹⁷⁹ Despite this positive example, much of news regarding interactions between Lebanese and Syrian refugees focuses on the wariness they have for each other, in addition to the restrictive municipal policies towards Syrians,¹⁸⁰ Which are not necessarily compliant with the International protection principles, especially with regards to arbitrary detentions, however are practically implemented in some areas.

"The birth and development of Lebanon itself is the result of a process whereby the country's territory was carved out a unified "Greater Syria." Since then, Pan-Arabism has

¹⁷⁴ *Ibid.*, p. 31; In Lebanon the services sector accounts for about 70% of the GDP, agriculture accounts for about 5% of the GDP and industry 25% of the GDP. See World Bank Data, available at <http://data.worldbank.org/country/lebanon> [accessed 13 February 2016].

¹⁷⁵ *Ibid.*, p. 32.

¹⁷⁶ Davidoff-gore, *op. cit.*, p. 136.

¹⁷⁷ Dionigi, *op. cit.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

posed both external and internal challenges for Lebanese sovereignty.”¹⁸¹ The 1958 civil unrest, the 1975-1989 Lebanese Civil War, Syria’s military presence in Lebanon from 1976 to 2005 and the phase of the so-called ‘Pax Syriana’ licensed by the Ta’if Agreement of 1989 represent some of the clearest incidents from which the indeterminate border division revealed. Further confirmation lies in the first diplomatic mission that was opened by Syria in Lebanon back in 2008 following the withdrawal of its forces in 2005.¹⁸² Nevertheless, the fact that Lebanon is an independent, sovereign country ever since 1943, as has been recognized by the declaration of independence and the Lebanese constitution surpasses all the legal arguments that challenge the Lebanese state’s sovereignty.

The rapidly developing predicament of mass displacement from Syria to Lebanon is not only caused by the conflict’s brutality, its damaging consequences, and the geographic adjacency of Lebanon to Syria. It is rather rooted in deeper explanations and derived from further reasoning. There are political, social, and economic relations that have made the border between Syria and Lebanon exceptionally porous. The Syrian Regime has often interfered within the Lebanese politics, influencing political parties. This interference was due to flagrant lack of recognition from the Syrian regime of Lebanon’s sovereignty.

“The main refrain among Syrian and Lebanese supporters of the idea of ‘Greater Syria’ is ‘one people two countries’ Which has been recently paraphrased by the Lebanese Foreign Minister, Gebran Bassil as ‘two peoples in one state’ with reference to the Syrian refugee presence in Lebanon.”¹⁸³

Furthermore, the treatment of Syrian refugees in Lebanon has been largely influenced by the past experience of hosting Palestinian refugees. The latter constitute an enduring community who lives in refugee camps that have existed for decades. They participated in the Lebanese Civil War fighting where the PLO used Palestinian refugee camps as militarized bases. This represents one of the most compelling reasons behind the Lebanese resistance to the establishment of Syrian refugee camps.¹⁸⁴ Adopting this argument, the Lebanese people are trying to avoid the eruption of an identical situation to that of the Palestinian where Syrian camps will become permanent settlements.¹⁸⁵

¹⁸¹ *Ibid.*, p. 30.

¹⁸² *Ibid.*

¹⁸³ UNHCR, “Bassil: Refugees Threaten Lebanon’s Existence”, *Refugees daily, Refugees Global Press Review, The Daily Star*, 29 September 2013, available at: <http://www.unhcr.org/cgi-bin/txis/vtx/refdaily?pass=52fc6fbd5&id=524917555> [accessed 8 February 2016].

¹⁸⁴ Davidoff-gore, *op. cit.*, P. 137.

¹⁸⁵ *Ibid.*

Moreover, provided that the PLO used Palestinian camps to base their militarized operations and given that there has already been some asserted terrorist activity in Syrian refugee populations, Lebanese assume that Syrian refugee camps could develop into terrorist environments allowing for the facilitation of terrorist activities. Along with the aforementioned parallel factors between both the Palestinian and the Syrian refugee situation in Lebanon, it is evident that a sectarian oratory might rise with regards to the issue of Syrian refugees' naturalization which would in turn cause sectarian fallouts knowing that many of Syrians are Sunnis. However, rumors of such potential threat have been denied by the UN.¹⁸⁶

In sum, a weak and divided government, a divided population, security threats, and a negative history of hosting Palestinian refugees explain the weak nature of Lebanon's compliance with International law as a first asylum country or further as a host state.

2.1.2. UNHCR Refugee Status Determination Mandate

UNHCR conducts refugee status determination under its mandate to address protection gaps. Such determination takes place under different circumstances. Such as when States are not party to the 1951 Convention or the Protocol, states party to the Convention but have not established asylum procedures or retain the geographic limitation thereby denying some access to their asylum procedures, or when UNHCR has assessed serious shortcomings in the State's asylum procedure such that refugees are unlikely to obtain the protection they need, either because they are not recognized, or because recognition does not entail the protection it should.¹⁸⁷

In this sense, noting that Lebanon is not a party to the 1951 Convention, and thus in addition to that have not established asylum procedures, also noting that the Convention itself is somehow interpreted as insufficient in terms of the strict definition it adapts and the tight interpretation in the sense of describing individuals concerned and situations involved, UNHCR plays the primary and only role in determining the refugee status of Syrians in Lebanon.

2.1.2.1. Refugee *Prima Facie* Recognition

Despite the fact that Refugee status must normally be determined on an individual basis and according to Article 1 of the Convention, once critical situations take place, such

¹⁸⁶ *Ibid.* p. 138.

¹⁸⁷ UNHCR, "Refugee Status and Resettlement", *op. cit.*, p. 76.

as internal conflicts, resulting in large influxes of people fleeing their country, the Convention shifts assessment strategies and thus regards each member of that population as a *prima facie* refugee.¹⁸⁸ These situations usually lead to the displacement of large populations under circumstances indicating that most members of the population could be considered individually as refugees. The need to provide protection and assistance is often extremely urgent and it may not be possible for purely practical reasons to carry out an individual determination of refugee status for each member of that population. Recourse is therefore made to group determination of refugee status, whereby each member of the population in question is regarded *prima facie* (in the absence of evidence to the contrary) as a refugee.¹⁸⁹ The rationale behind this procedure, according to the UNHCR Handbook, is that in such situations the need to provide assistance is often immensely indispensable and it may not be conceivable for purely practical reasons to perform an individual determination of refugee status.

Currently, all Syrians entering Lebanon can register with UNHCR according to the *prima facie principle*.¹⁹⁰ Theoretically, they are fully entitled to enjoy the rights afforded by the Convention, including the principle of *Non-Refoulement*. Furthermore, The Executive Committee of UNHCR's Note on *Non-Refoulement* states that the principle is being to a great extent considered in jurisprudence and in the work of jurists as a generally recognized principle of International law, and relates that to the fact that it is universally accepted. The note also refers to the fact that both regional and domestic courts have interpreted the rights to life and freedom from torture to include a prohibition against *Refoulement*.

Those Syrians that reach the UNHCR registration premises and go through the due formalities, including a short interview, are given identification documents that confirm their status. These documents need to be renewed or checked after periodically, but the status of refugee is not subject to time limits unless the situation changes in the country of origin or it is cancelled or revoked according to UNHCR regulations derived from the 1951 Convention.

¹⁸⁸ UNHCR, "Prima Facie Recognition of Refugee Status", *Guidelines on International Protection No. 11*, HCR/GIP/15/11, Geneva, 24 June 2015, P. 3, C (9), available at: <http://www.refworld.org/pdfid/555c335a4.pdf> [accessed on 21 November 2017].

¹⁸⁹ UNHCR, "Refugee Status and Resettlement", *op. cit.*, p. 77.

¹⁹⁰ Dionigi, *op. cit.*, p 25.

2.1.2.2. Complementary Protection: The Humanitarian Status

Considering the absence of operational regulations on the recognition of refugees in the Convention and since contracting States' domestic laws constitute different procedural rules in (such as deadlines, formalities) some applications may be refused, despite the fact that the respective applicants may have adhered with the nominal conditions of the Geneva Convention. Safeguarding these individuals was an imperative terrain for establishing the humanitarian status, which was also significant for the protection of refugees in non-Contracting States to the Convention.

In view of the jurisprudence in place in relation with human rights and in application of the principles of humanitarianism, States introduced complementary protection as an instrument to sustain a shield to individuals who would not be acknowledged as refugees, either because they did not conform with all substantive conditions of the Geneva Convention, or because the host state is not a party to the Convention.

Those who do not fulfill the conditions of the Geneva Convention are distinct from those who are in need of International protection (fleeing areas of armed conflict). 'A well-founded fear of persecution' is what the refugee notion built upon, whereas war refugees are fleeing war, and they may not necessarily have a fear of persecution.

However, it gets complicated when it comes to differentiating between the two categories. Applying this distinction on the Syrian refugees, war refugees can be considered under the Geneva Convention, if they belong to persecuted groups, for example, those who are in opposition to the Assad government but live in the areas that are controlled by the government. Alternatively, individuals residing in areas under the control of ISIS terrorist regime and surviving their brutal treatment are Convention refugees. However, Syrians who flee their country escaping the threats to their lives by indiscriminate shelling or bombing, or as a result of the destruction of their homes and towns, may not be considered as Convention refugees, yet fleeing war, they become deserving of humanitarian protection as 'war refugees'. Hence, by 'Syrian refugees', it is meant to encompass both refugees under the Geneva Convention, and those fleeing the war, who should also be protected under a humanitarian status.

According to the EU recast Qualification Directive,¹⁹¹ subsidiary protection is granted if there is ‘serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict’.¹⁹²

Taking into consideration that Lebanon is not a party to the 1951 Convention, and according to international principles on minimum requirements of protection that are requested from any state playing a role as a unit of the international community, Lebanon can be considered as bound to comply with the obligation of providing complementary protection to people in need of International protection regardless from the fulfillment of their refugee status.

2.1.2.3. The 2003 Memorandum of Understanding between Lebanon and UNHCR

Lebanon has a provision concerning the granting of refugee status, but it has been applied only once since the end of the civil war in 1991.¹⁹³ An auspicious transformation is evident by the memoranda of understanding (MOUs) negotiated between UNHCR and governments in the area. Although not conclusive, these agreements represent a transitional stage towards access to the International refugee regime.

In September 2003, GOL and UNHCR signed a Memorandum of Understanding (MOU), which regularizes the situation of asylum seekers and refugees registered with UNHCR during their temporary stay (6 to 9 months) in Lebanon. Whenever requested and justified by UNHCR, this period can be exceptionally extended. The General Security Office (GSO) issues them provisional residence permits in the form of identification cards, pending the finding of durable solutions for their cases. It also provides a temporary residence permit of 3 months to asylum seekers in the country, during which UNHCR should process their application on both first instance and appeal levels, provided that they lodge their asylum claims with their office during the two months following their arrival to the country. Following the signing of the MOU, The Lebanese judicial authorities recognized the existence of gaps in the domestic law related to foreigners with regard to its

¹⁹¹ European Union, “Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted”, *Council of the European Union, (recast)*, 20 December 2011, Art. 15(c), available at: <http://www.refworld.org/docid/4f197df02.html>.

¹⁹² Official Journal of the European Union, “L 337/9”, December 20, 2011.

¹⁹³ Zaiotti, *op. cit.*, p. 337.

ramifications on refugee issues and stressed the need to amend the law in conformity with the provisions of the MOU and other principles of International refugee law.¹⁹⁴

The work of the UNHCR in Lebanon, according to the MOU, will focus on legalizing the status of the asylum seekers and refugees in the country. In parallel, UNHCR Registration Office (RO) Beirut shall cooperate with HQs and foreign embassies to achieve appropriate durable solutions to the refugees through resettlement or repatriation, if or when appropriate, within the limited time frames set by the MOU.¹⁹⁵ “For the majority of the other groups of refugees, and given that local integration is not a valid option for refugees in Lebanon, resettlement will remain the most viable durable solution.”¹⁹⁶ This in turn reassures that Lebanon was never considered a country of refuge, but only that of transit as a first asylum country to provide temporary protection which is mainly dependent on UNHCR’s efforts considering the weak state capacity and the national legal restraints.

2.2. The Role of the International Community in Burden Sharing

Burden-sharing principle usually arises in cases where large refugee flows place a very disproportionate and strenuous burden on the countries of first asylum receiving the refugees. While the physical presence of refugees in a certain state definitely triggers the jurisdiction of that state, the distribution of refugee protection obligations is often unfair.¹⁹⁷ While the narrow meaning of the concept refers to specific arrangements regarding the physical distribution of refugees (for example, resettlement),¹⁹⁸ UNHCR has also elaborated that burden-sharing measures can take various forms, from financial assistance to extending physical protection.¹⁹⁹ Milner described “burden-sharing” as “the mechanism through which the diverse costs to a State of granting asylum to refugees are more

¹⁹⁴ UNHCR, “Executive Committee Summary”, *Country Operations Plan*, Lebanon, planning year 2005, p.2; UNHCR has offered the authorities its assistance and technical expertise in this respect. In addition, UNHCR plans to initiate talks with the authorities in order to create, develop and maintain an International protection regime through the establishment of an effective structure to deal with refugee issues.

¹⁹⁵ *Ibid.*

¹⁹⁶ *Ibid.*, p.4.

¹⁹⁷ James L. Carlin, “Significant Refugee Crises since World War II and the Response of the International Community”, *Michigan Yearbook of International Legal Studies*, vol. 3, pp. 12–21, 1982.

¹⁹⁸ The UNHCR defines refugee resettlement as “the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them, as refugees, for permanent resettlement”, available at: <http://www.unhcr.org/information-on-unhcr-resettlement.html>.

¹⁹⁹ UNHCR, “Burden Sharing”, *Discussion paper submitted by UNHCR Fifth Annual Plenary Meeting of the APC*, 2000, available at: http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/rcp/APC/2000-Discussion-Paper-UNHCR-submission-5th-plenary.pdf.

equitably divided among States.”²⁰⁰ Many commentators have criticized the negative connotations of the reference to ‘burdens’ in connection with refugees.

Vibeke-Egglie notes that refugees are “generally seen by their hosts as a burden and not a valuable asset”.²⁰¹ Discomfort with this approach has prompted the increasing use of the term “responsibility-sharing”, wording favored by UNHCR and civil society. Responsibility can be seen to imply legal obligations and a requirement to take positive action.

Considering that Lebanon has not ratified the refugee Convention, it would definitely not classify on the top of the list in this cooperation phenomenon, yet its geographical situation has forcibly opened its borders and pressured the country to receive Syrian migrants and asylum seekers who could potentially be recognized as refugees under UNHCR. The following section represents the legal framework constituting the legal bodies and instruments upon which states are bound to cooperate in the process of consuming refugees and accordingly protecting them, each according to its capacity and its scope of obligations under International law.

2.2.1. The Charter of the United Nations

“A mass influx may place unduly heavy burdens on certain countries; a satisfactory solution of a problem, International in scope and nature, cannot be achieved without International cooperation. States shall, within the framework of International solidarity and burden-sharing, take all necessary measures to assist, at their request, States which have admitted asylum seekers in large-scale influx situations.”²⁰²

According to the Charter of the United Nations, Art.1 (3), accomplishing International cooperation on solving economic, social or humanitarian International problems, constitutes an underlying UN purpose.²⁰³ The obligation of States to cooperate is expressed in articles 55 and 56 of the UN Charter, in which all Member States pledge to “take joint and separate action in co-operation” with the UN in order to achieve defined goals, including the resolution of International economic, social, and related problems.

²⁰⁰ James Milner, “Burden-Sharing”, Eds., M Gibney and R Hansen, *Immigration and Asylum: From 1900 to the Present*, ABC-CLIO, 2005, pp. 56–57.

²⁰¹ Ann Vibeke Egglie, “Mass Refugee Influx and the Limits of Public International Law”, *Refugees and Human Rights*, Vol. 6, Brill, Nijhoff, 2002.

²⁰² UNHCR, “International Solidarity, Burden-Sharing and Duties of States”, *Executive Committee Conclusion No 22 (XXXII)*, 1981, P. 29, IV (1).

²⁰³ Rudiger Wolfrum, “International Law of Cooperation”, *Max Planck Encyclopedia of Public International Law* (MPEPIL), Oxford University Press, 2010.

The UN charter did not necessarily elaborate on the means by which International cooperation may practically be achieved in this area. However, subsequent treaties, International resolutions, as well as relevant State and organizational practice, provide a framework for such cooperation. Notably, the 1970 UN Friendly Relations Declaration affirms the cooperation duty that states have, irrespective of the differences in their political, economic and social systems. This affirmations aims at maintaining International peace and security and promoting International economic stability and progress.²⁰⁴

2.2.2. The 1951 Geneva Convention

The Refugee Convention's preamble specifically requires the International community to cooperate, share burdens and aim to achieve durable solutions for refugees, who should be “integrated in the economic system of the countries of asylum and will themselves provide for their own needs and for those of their families.”²⁰⁵ It explicitly refers to International cooperation, providing in paragraph 4 that: “The grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of the problem of which the United Nations has recognized the International scope and nature cannot therefore be achieved without International cooperation.”

While it is true that this preamble reference does not serve as a part of the Convention’s operative provisions, it is still widely recognized that it plays a significant role in the interpretation of the latter. This has also been proven to be an important element in state’s practice through the numerous examples of International cooperation in relation to refugee protection that have occurred over the years since the Convention’s entry into force. As Goodwin-Gill and McAdam note, “a significant level of practical cooperation ... exists, even if contributions and political and moral support for the displaced waver and formal obligations are elusive.”²⁰⁶

Article 35 of the 1951 Convention also obliges States Parties to cooperate with UNHCR in the exercise of its functions and, to particularly promote its duty of supervising the application of the Convention itself. Among other things, this includes a requirement for States to provide UNHCR with information and statistical data in relation to the condition of refugees, the Convention’s implementation in their territory, and laws or

²⁰⁴ Türk and Garlick, *op. cit.*

²⁰⁵ UNGA, *Convention Relating to the Status of Refugees*, Preamble, Para. 4.

²⁰⁶ Guy S Goodwin-Gill and Jane McAdam, “The Refugee in International Law”, 3rd ed., *Oxford University Press*, 2007, p. 504.

proposed laws affecting refugees and other “persons of concern”.²⁰⁷ States can restate their obligation to cooperate within the International protection regime, and to accordingly encourage other States to follow their example through the Fulfilment of the strict requirements of article 35(2) and the respect for UNHCR’s guidance and interventions in the exercise of its mandate. “This reflects the view that the principle of International cooperation is said to be expressed, inter alia, through the establishment of International organizations, which effectively serve as a form of ‘institutionalization’ of the duty to cooperate.”²⁰⁸

2.2.3. The UNGA Resolutions on International Solidarity

An assorted number of UNGA resolutions in distinct thematic areas, have referred to the concept of solidarity in terms of provision of support by States to others, especially in relation to humanitarian and refugee affairs. In its Millennium Declaration of 2000, UNGA referred to solidarity as a “fundamental value” being “essential to International relations in the twenty-first century”, pursuant to which “global challenges must be managed in a way that distributes the costs and burdens fairly, in accordance with basic principles of equity and social justice. Those who suffer or who benefit least deserve help from those who benefit most.”²⁰⁹

In specific terms, The UNGA’s 1967 Declaration on Territorial Asylum states that “where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of International solidarity, appropriate measures to lighten the burden on that State.”²¹⁰ After the adoption of the Declaration, attempts were carried out to initiate a sense of obligation rather than mere consideration, in the sense of “taking appropriate measures” in the spirit of solidarity, through a binding International Convention on Territorial Asylum.²¹¹

²⁰⁷ UNGA, *Convention Relating to the Status of Refugees*, Art. 35(2).

²⁰⁸ Türk and Garlick, *op. cit.*

²⁰⁹ UN General Assembly, “United Nations Millennium Declaration”, *Resolution Adopted by the General Assembly*, A/RES/55/2, United Nations, UN documents, 18 September 2000; see also *Resolution on Promotion of a Democratic and Equitable International Order*, A/RES/56/151, 19 Dec 2001; *Resolution on the Promotion of a Democratic and Equitable International Order*, A/RES/57/213, 2002. A similar formulation was adopted subsequently in UNGA *Resolution 59/193 on the Promotion of a Democratic and Equitable International Order*, 2004.

²¹⁰ UN General Assembly, *Declaration on Territorial Asylum*, A/RES/2312(XXII), 14 December 1967, Art. 2, available at: <http://www.refworld.org/docid/3b00f05a2c.html> [accessed 6 July 2017].

²¹¹ Türk and Garlick, *op. cit.*

2.2.4. The Regional Legal Instruments on International Solidarity

Solidarity among Member States in general has been associated with the principle of genuine cooperation, disclosed in the treaties and long-established jurisprudence. Article 80 of the Treaty on the Functioning of the European Union provides that the EU's policies on asylum, migration, and borders and their implementation "shall be governed by the principle of solidarity and fair sharing of responsibility."

The Organization of African Unity (OAU) Convention holds an imperative stipulation for States to display solidarity through mutual assistance. Article 2 provides that: "where a Member State finds difficulty in continuing to grant asylum to refugees, it may appeal directly to other Member States and through the OAU and such other Member States shall in the spirit of African solidarity and International cooperation take appropriate measures to lighten the burden of the Member State granting asylum."²¹² In the same sense, Along with subsequent follow-up Declarations and Plans of Action, The Cartagena Declaration of 1984 emphasized the importance of solidarity and burden-sharing and set it out in more detail in the Latin American context.²¹³

2.2.5. The Executive Committee of the High Commissioner's Program (EXCOM)

In 1978, EXCOM proclaimed that solidarity was crucial to maintain the International protection regime, in the sense that International solidarity is considered an ultimate condition for a compelling implementation of International protection.²¹⁴ In 1981, EXCOM stated that, "a mass influx may place unduly heavy burdens on certain countries; a satisfactory solution of a problem, International in scope and nature, cannot be achieved without International cooperation. States shall, within the framework of International solidarity and burden-sharing, take all necessary measures to assist, at their request, States which have admitted asylum seekers in large-scale influx situations."²¹⁵

Nevertheless, the Committee's most comprehensive proclamation on solidarity conceivably emerges in its 1988 Conclusion on "International solidarity and refugee protection", at the time of large-scale refugee movements in South-East Asia. EXCOM at that point emphasized that "the principle of International solidarity has a fundamental role to play in encouraging a humanitarian approach to the grant of asylum and in the effective

²¹² OAU, *Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)*, 1001 UNTS, 10 September 1969, Art. 2(4).

²¹³ Organization of American States, *Cartagena Declaration on Refugees*, OAS/Ser.L/V/II.6, doc 10, 1984, rev 1, 190-93.

²¹⁴ Türk and Garlick, *op. cit.*

²¹⁵ *Ibid.*

implementation of International protection in general”, and recalled that, “in all circumstances, the respect for fundamental humanitarian principles is an obligation for all members of the International community, it is being understood that the principle of International solidarity is of utmost importance to the satisfactory implementation of these principles.”²¹⁶

In 2000, EXCOM recognized that “countries of asylum carry a heavy burden, in particular developing countries, countries in transition and countries with limited resources which host large numbers of refugees and asylum seekers”. It reiterated “its strong commitment to International solidarity, burden-sharing and International cooperation to share responsibilities”.²¹⁷ EXCOM also reaffirmed UNHCR’s decisive role in assisting and supporting countries receiving refugees through mobilizing assistance from the International community to address the impact of large-scale refugee populations.

By that, The Committee fortified the idea of supporting UNHCR as a form of International cooperation and solidarity, and stressed on UNHCR’s vital position in supervising and harmonizing inter-State cooperation.²¹⁸

This committee has constantly referred to the role of International cooperation as a fundamental principle for the sufficient functioning of the International protection system, along with solidarity and sharing of burdens and responsibilities among States.²¹⁹ This persuasive phrasing, compared to previous, more general references to the arguments explaining why States should show solidarity to others, interlineates that solidarity is to be acknowledged as an integral principle and granted high priority in States’ engagement with refugees.

Therefore, conclusively, States are under a legal obligation to cooperate with each other in regard to refugee matters, directly among themselves and through cooperation with UNHCR. Such cooperation thus emanates from the UN Charter, UNHCR’s Statute, and subsequent relevant UNGA resolutions in combination with the 1951 Convention, as well as other international refugee instruments and corresponding State practice. In the absence of specific elaboration, a significant challenge arises in determining precisely what form and content such cooperation would take, and what States’ respective contributions thereto should be.²²⁰

²¹⁶ Türk and Garlick, *op. cit.*

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ Türk and Garlick, *op. cit.*

CHAPTER THREE: THE SYRIAN REFUGEE DILEMMA IN LEBANON AND ITS RESOLUTIONS UNDER THE INTERNATIONAL LAW

In light of the discussed arguments in relation to the disassociation of Lebanon from the obligation of granting refugee status among the stochastic mixed Syrian migrating population, being neither capable nor willing to, especially that the security and stability of the state is seriously threatened and likewise the Palestinian and the Iraqi refugee

population,²²¹ the legal status of Syrians in Lebanon currently lies in a grey area between “alien”,²²² “displaced” (*nazih*) and “*de facto* refugee”. The government has continually avoided the internationally recognized notion of “refugee”, anticipating the devotion to the obligations that such a status can demand.²²³ However, the regulations governing the legal status of Syrians in Lebanon shifted over time, and although this might imply an implicit recognition of their refugee status, there remain some actual factors that deprive them of this status under relevant international legal mechanisms.

1. The Question of the Applicability of the Refugee Status of Syrians in Lebanon

Noting the lack of Lebanon’s ratification to the 1951 Geneva Convention, adding to the absence of a sufficient definition of refugees, or even a legal structure that organizes their presence and status, and although in some parts of the legislation the term “refugee” is used,²²⁴ there is on paper, an inter-institutional committee responsible for the consideration of political asylum requests.²²⁵ Political asylum is regulated by title VIII of the ‘Law Regulating the Entry to, Stay in and Exit from Lebanon’ of 10 July 1962.²²⁶ However its application is limited to requests for political asylum only and its efficiency is not confirmed. Besides, the 2003 MOU remains underemployed and its consequences have not been applied upon Syrians in Lebanon.²²⁷ In the absence of an effective national asylum procedure, UNHCR has therefore been processing asylum applications and undertaking individual refugee status determination.²²⁸ Nevertheless, it’s been established

²²¹ Souheil al-Natour, “The Legal Status of Palestinians in Lebanon”, *Journal of Refugee Studies*, October, 1997; The question of whether Palestinians in Lebanon are considered in accord with International legal standards is disputed; they are more commonly defined as “special foreigners”.

²²² Much of the legal conditions for aliens to entry and exit Lebanon are regulated by Law 10 of July 1962, its implementing decrees and various amendments.

²²³ This does not mean that the Lebanese state has been necessarily averse to refugee rights in general, by looking at the current crisis and the Iraqi crisis it can be seen that at least some of the fundamental obligations related to refugee status, such as *Non-Refoulement*, have been respected overall.

²²⁴ See for example Law to regulate access to Lebanon, Residency and Exit, 10 July 1962, *Ministry of Justice*, Lebanon, Arts. 26-31, available at <http://ahdath.justice.gov.lb/law-nearby-Foreigners.htm> [accessed 8 February 2016]. In this context the definition of refugee is limited to political refugee. The same piece of legislation also refers to asylum procedures.

²²⁵ The committee is composed of the Minister of Interior, the Directors of Justice, Foreign Affairs and General Security.

²²⁶ *The Lebanese Law of July 1962, op. cit.*

²²⁷ Suzan Akram, “Protecting Syrian Refugees: Laws, Policies and Global Responsibility Sharing”, *University talk at St Joseph University*, Oxford University, UNHCR, Beirut, 2015, available at <http://www.bu.edu/law/files/2015/07/FINALFullReport.pdf> [accessed 8 February 2016]. According to some interpretations the Memorandum does not apply to cases of mass displacement and that is why it is not applied to the Syrian situation.

²²⁸ Relations between UNHCR and the Government of Lebanon (GOL) were governed for years by unwritten agreements, according to which, the Lebanese authorities tolerated to a certain extent the presence of persons of concern to the High Commissioner.

that the admission of Arab nationals in the governments' perception does not amount ipso facto to the granting of asylum, but instead is meant to be a mere gesture of hospitality.²²⁹

1.1. The Lebanese Legal System Applicable to Syrian Refugees

As a result of the absence of an explicit national refugee measures, asylum issues in Lebanon are merely regulated by immigration laws, which supervise border movement and consolidate a reference to refugees. These laws are complemented by the regulations of the Lebanese General Directorate of General Security who mandated to deal on practical basis with the border movement and the residency status of foreigners on the Lebanese territories.

1.1.1. The 1962 Law Regulating the Entry, Exit and Stay of Foreigners in Lebanon

The Lebanese Law of Entry and Exit lays down six articles in relationship to asylum. Relevantly, Article 26 states that "Every foreigner who is persecuted or sentenced for a political crime outside Lebanon, or whose life or liberty is threatened on account of political activity, may apply for asylum in Lebanon." Additionally, Article 31 spells out the *Non-Refoulement* principle of a former political refugee. Even though the Law outlines a procedure for making asylum decisions, which inter alia includes the establishment of an asylum-granting Committee composed of the Minister of Interior, the Director-General of the Ministries of Justice, Foreign Affairs and General Security, asylum through this Committee has only be granted once. Asylum provisions in Lebanon are inessential, as Lebanon has relied on the UNHCR RSD (Refugee Status Determination) as an alternative.

1.1.2. The 1993 Bilateral Agreement for Economic and Social Cooperation and Coordination between Lebanon and Syria

In the beginning, Syrians attempting entry to Lebanon were subject to the domestic law provisions which apply to other foreigners, in addition to the 1993 bilateral agreement for Economic and social cooperation and coordination between Lebanon and Syria which set forth the principles of free movement of goods and people, which as well authorized freedom of work, residence, and economic activity for nationals of both countries. It facilitated the mobility of Syrian refugees who entered Lebanon through an official border point with a valid national Syrian identity card or passport received an "entry coupon" and

²²⁹ Zaiotti, *op. cit.*, p. 338.

“entry stamp” that grants legal residency for an initial period of six months (for free), and could be renewed free of charge for an additional six months.²³⁰ After one year Syrian refugees were obliged to renew their residency against a USD 200 fee per person/per year for everyone 15 years old and above. While those residing in breach of the Law of Entry and Exit, like those who entered unofficially or have an expired legal stay, would be in danger of arrest, prosecution, and deportation, (referred to by Lebanese security general as “departure order”- where no forced deportation occurs, rather the so-called-displaced Syrian is given a period of 14 days to leave the country on the account that he would be subject to arrest and the issuance of another departure order, renewing the deadline that was first granted. In other words, no practical deportation occurs, only an order for voluntary departure). However, Irregular entrants generally can also regularize their status upon payment of a high fee.²³¹

1.1.3. Lebanese General Security Office Measures on Territory Access and Legal Stay

As a result of this complicated situation, two main groups of Syrians have been created in Lebanon. One includes those who enjoy the sponsorship of a Lebanese employer. Those usually do not encounter obstacles entering and staying in the country, as long as they provide an ID at the border and have the necessary documentation regarding their employment status. Also, they should be able to afford the renewal of their permits, and remain employed to sustain a lawful stay in Lebanon.²³² moreover, Syrians with sufficient and certified funds such as businesspersons, owners of real estate in Lebanon, or those in possession of a regular rent agreement, are likewise the former description; legal residents.

The other group of Syrians comprises those who escaped the conflict in Syria into Lebanon (the so-called displaced or *nazihin*) but neither enjoy sponsorship via employment nor fall in any of the preceding categories. They were subject to the ordinary visa scheme until 2015. Which means that they were considered like the rest of the foreigners, which are granted a six-month period of stay, renewable consequently for a yearly fee.²³³

²³⁰ International Alert Lebanon, “Citizens’ Perceptions Of Security Threats Stemming From The Syrian Refugee Presence In Lebanon”, *Background Paper*, 2015.

²³¹ *Ibid.*

²³² Dionigi, *op. cit.*, p. 24.

²³³ Dionigi, *op. cit.*, p. 24.

In addition to that, new denominations began to appear in the political deliberation; mainly ‘Displaced’ (nazih) and ‘de facto refugee’. They comprise ad hoc categories that have been defined ambiguously. As a governmental source explained, “the term ‘displaced’ has been intended in this context exclusively in its literal meaning: someone being forced out of his or her usual place of residence, with no reference to International legal standards.” Another governmental source discussed the issue of the definitions being indicative of the government and International organizations being incapable to harmonize a suitable status of Syrians in Lebanon. To simplify the confusion caused, the term ‘De facto refugee’ was adapted to refer to Syrian refugees registered with the UNHCR. These regulations are seen as irrelevant, as the costs are expensive for the majority of refugees. Also, because of the discretion of SG, renewal can be refused despite possessing all required documents and funds.²³⁴

Moreover, The Lebanese Government has asserted that the Syrian refugee crisis is not to be governed by law, rather by governmental decisions.²³⁵ As one Lebanese lawyer more precisely confirms, “the Syrian situation is not governed by law, but by security policy.”²³⁶ Consequently, national law and bilateral agreements have been constantly evaded. However, entry restrictions were gradually laid down. In 2013, Palestine Refugees from Syria PRS were forbidden entry. Then in 2014, Syrians were allowed entry only if fleeing areas bordering Lebanon where the fighting occurred.²³⁷

1.1.3.1. Territory Access

In December 2014, entry requirements and residency renewal permits shifted for Syrians, excluding PRS. The Implementation of these new rules started on January 5, 2015. After that, GSO circulated additional regulations,²³⁸ only applicable to Syrians, concerning their entry, renewal and regularization which represents the “Policy on Syrian Displacement” adopted in October 2014 to withhold Syria’s refugees from pursuing protection in Lebanon.²³⁹

²³⁴ *Ibid.*

²³⁵ Oxfam, “Oxfam Discussion Papers”, *Oxford*, 2015, available at:

<https://www.oxfam.org/en/research/lebanon-looking-ahead-times-crisis> [last visited 1 Oct. 2016].

²³⁶ Dallal Stevens, “Shifting conceptions of refugee identity and protection: European and Middle Eastern approaches”, Eds., Kneebone, Susan and Stevens, Dallal and Baldassar, Loretta, *Refugee protection and the role of law: conflicting identities*, Routledge, Taylor & Francis Group, London; New York, 2014, pp. 73-97, 2014.

²³⁷ Amnesty International, “Pushed To The Edge: Syrian Refugees Face Increased Restrictions in Lebanon”, 24 July, 2013, available at: <https://www.amnesty.org/en/documents/mde24/1785/2015/en/>.

²³⁸ On Jan 13, Feb 3 and Feb 23, 2015.

²³⁹ Dionigi, *op.cit.*, p. 10.

Admission to Lebanon for Syrians is conditioned upon providing valid identity documents and achieving legal status that is abiding by the approved entry categories. A list of categories²⁴⁰ for which admission would be granted is shown in the below table No. 1²⁴¹ which describes the required documents and the type of residency granted.

Table No. 1: Territory Access and Residency Criteria for Syrians attempting entry to Lebanon		
Purpose	Required documents	Visa/Residency
1.Tourism	ID and passport, written hotel reservation, amount of money proportional to duration of stay in Lebanon	Renewable tourist visa- duration of hotel reservation
1.Business visit	ID and passport, proof of occupation, OR pledge from company or conference	Temporary residence up to 1 month
1.Property owner	ID and passport, recent title deed (showing property) At the renewal of the residence. a signed and notarized declaration by the Syrian applicant pledging that the person will not to work will be requested	Temporary residence for 6 months renewable for another 6 months (free of fees). Parents and siblings will be granted 1 week renewable permit to visit
1.Tenant	ID and passport, lease agreement for residential premises registered at Municipality and GSO; and, Proof of livelihood (i.e., bank account) The validity of the registration of the lease agreement at GSO is of 3 months unless the Duration of the lease agreement. This implies that Syrian nationals need to enter Lebanon before the 3 months have elapsed; At the renewal of the residence. a signed and notarized declaration by the Syrian applicant pledging that the person will not to work will be requested	Temporary residence for 6 months renewable for duration of the lease (free of fees). Parents and siblings will be granted 1 week renewable permit to visit
1.shopping	ID and passport, car papers with insurance	Entry permit for 24 hours
2.study	ID and passport, certificates, valid university card	Temporary permit for 7 days, student permit after registration
3.transit	Passport, ticket, visa for third country, pledge by maritime transport	48-hour visa (airport), 24-hour visa (port)
5.Medical	ID and passport, medical report or certificate from hospital in Lebanon	Temporary visa for 72 hours renewable once. Can be accompanied by one family member
6.Embassy appointment	Proof of appointment	Temporary visa for 48 hours

²⁴⁰ Category one for tourism, shopping, business, landlords, and tenants;

- Category two for studying;
- Category three for transiting to a third country;
- Category four for those displaced;
- Category five for medical treatment;
- Category six for an embassy appointment;
- Category seven for those entering with a pledge of responsibility (a Lebanese sponsor).

²⁴¹ UNHCR, "Refugee Response in Lebanon", *Briefing Documents*, Lebanon, March 2015, p 10,11, available at: http://www.europarl.europa.eu/meetdocs/2014_2019/documents/droi/dv/95_finalbriefingkit_/95_finalbriefingkit_en.pdf [accessed on: March 20, 2017]

7.sponsorship	Pledge/guarantee from Lebanese sponsor: With payment of USD 200 in advance of the arrival of the Syrian to Lebanon Where the Lebanese sponsor does not pay USD 200 in advance of arrival.	Temporary residence of 6 months and renewable for additional 6 months. If entry is related to work, the employer commits to obtain a work permit from the Ministry of Labor Temporary visa of 7 days, renewable for another 7 days.
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In consonance with the GOL policy paper of October 2014, those who do not fulfil the above criteria would be allowed entry upon the consideration of exceptional *humanitarian reasons*, according to criteria that shall be established by the Ministry of Social Affairs (MOSA).²⁴²

All categories require particular documents in line with the requirements and a visa approval by the MOSA and the MOI before being allowed entry into Lebanon. These categories mainly allow entry into Lebanon for a limited period of time, ranging from 24 hours to one month for a temporary business visa, and sometimes for 6 extendable months. The entry permit can sometimes be lengthened, such as, in medical cases and embassy appointments.²⁴³

It is as well notable, in the new regulations, there are no categories for those fleeing armed conflict, violence, or persecution and seeking safety in Lebanon; the category for “displaced” persons actually proclaims conformity with one of the other categories, or with the Government’s “humanitarian exceptions criteria.”²⁴⁴ The criteria for this last requirement were first revealed in April 2015 in order to particularly apply to “Unaccompanied and/or separated children with a parent already registered in Lebanon; persons living with disabilities with a relative already registered in Lebanon; persons with urgent medical needs for whom treatment in Syria is unavailable; persons who will be resettled to third countries.”²⁴⁵

²⁴² UNHCR, “Refugees from Syria”, *Lebanon*, March 2016, p. 3.

²⁴³ Amnesty International, “Pushed To The Edge”, *op. cit.*, p. 10, 11.

²⁴⁴ Norwegian Refugee Council (NRC) and International Rescue Committee (IRC), “Legal Status of Refugees from Syria”, June 2015, P. 14.

²⁴⁵ Amnesty International, “New Entry Requirements for Syrians Likely to Block Would-be Refugees”, *Public Statement*, London, April, 2015, available at: http://www.amnesty.eu/content/assets/public_statements/Lebanon_New_entry_requirements_for_Syrians_likely_to_block_would-be_refugees.pdf [last accessed 1 October 2016].

1.1.3.2. Legal Stay

The Lebanese authorities divide Syrians who apply to renew their residency permits into two main categories.²⁴⁶ Requirements vary according to the factor of registration with UNHCR; the table No. 2²⁴⁷ below shows the difference between those who are registered and those who are not.

Table No. 2: Residency Renewal Criteria for Syrians in Lebanon	
Syrians not registered with UNHCR	Syrians registered with UNHCR
Housing commitment' signed by landlord and stamped by <i>mukhtar</i> must be accompanied by certified copies of the Lebanese landlord's identity document and lease agreement or real estate deed	Housing commitment' signed by landlord and stamped by <i>mukhtar</i> must be accompanied by certified copies of the Lebanese landlord's identity document and lease agreement or real estate deed
Personal pledge of responsibility signed by the Lebanese sponsor must be accompanied by extract of the family civil registry record of the Lebanese sponsor	UNHCR registration certificate with a validity between three and six months
	Signed and notarized pledge not to work
USD 200 per year of renewal, plus notary and <i>mukhtar</i> Fees	USD 200 per year of renewal, plus notary and <i>mukhtar</i> Fees

Those living in informal tented settlements are required to provide a residency statement from the local municipality stating so. While Syrians who are registered with UNHCR must provide additional documents: A pledge not to work, certified by a notary;²⁴⁸ UNHCR registration certificate; proof of their financial means such as bank statements, documents showing money transfers or proof of charitable or UN support, such as World Food Program prepaid cards.²⁴⁹

According to UNHCR, some refugees are required to provide a notarized pledge that they will return to Syria upon the expiry of their permit or when asked by the Government. For refugees not registered with UNHCR, they are additionally required to provide a “pledge of responsibility”; it can either be a sponsorship for an individual work

²⁴⁶ Syrians who are registered with UNHCR and Syrians who are not registered with UNHCR. Both categories are required to: pay a fee of USD 200; provide a housing commitment (certified copies of a lease agreement or real estate deed); provide a certified attestation from a *mukhtar* (village leader) that the landlord owns the property; Show valid ID or passport, as well as entry slip and return card.

²⁴⁷ UNHCR, “Refugee Response in Lebanon”, *op.cit.*, p. 11.

²⁴⁸ In the summer of 2016, the Lebanese Government agreed to replace the pledge not to work with a commitment to abide by Lebanese law. Discussions are on-going as to the implementation of these procedural changes.

²⁴⁹ UNHCR, “Syrian Refugees in Lebanon”, *Quarterly Snapshot January–March 2015*, Inter-agency Information Sharing Portal, Lebanon, 2015, available at: <https://data.unhcr.org/syrianrefugees/download.php?id=8804> [accessed 1 October 2016].

permit by a Lebanese individual, or a group pledge of responsibility provided by a registered entity that hires a number of Syrian nationals.²⁵⁰

Furthermore, Syrians in Lebanon are currently only allowed to work in three sectors: agriculture, construction, and environment (formerly referred to as “cleaning”). When enquired about these restraints, a Government representative explained how, “These are the chosen fields because Lebanon sees the necessity of these fields and because Syrians are experts in these fields.”²⁵¹ Lebanon has relied on Syrian Labor force whose remuneration was quite low compared to Lebanese or other foreign laborers.²⁵² Indeed, although exact figures do not exist, estimates for the early 2000s claimed that Syrians constituted between 20 and 40 per cent of Lebanon’s labor force.²⁵³

The sponsorship system, which formerly only applied to third-country migrants and domestic workers, entails that employers take full responsibility for the concerned individual. The sponsor is in this sense not only responsible for the Syrian national’s living expenses and accountable for his/her misdemeanors, but is also required to be present at the General Security Office to accompany the sponsored Syrian national upon renewal of his residency permit. Many Syrians remain incapable of renewing their residency permits because of the exhausting and expensive new procedures in addition to the fact that most of them cannot produce the documents required by these regulations

Also, most Syrians do not have formal lease agreements or ways of demonstrating that they have financial means to live in Lebanon. And it has been evident in many cases where municipal councils decided to refrain from registering any lease agreements concluded by Syrians.²⁵⁴

1.1.4. The Implicit Recognition of the Refugee status

According to the Lebanese GSO, Syrians are being referred to as “immigrants”.²⁵⁵ However, despite this General categorization, there lies a sort of divergence in relation to the act of actually recognizing refugees and granting them the right to free residency,

²⁵⁰ Amnesty International, “Pushed To The Edge”, *op. cit.*, p.14.

²⁵¹ Maja Janmyr, “Precarity in Exile: The Legal Status of Syrian Refugees in Lebanon”, *Oxford Academic*, November 29, 2016, available at: <https://academic.oup.com/rsq/article/35/4/58/2609281/Precarity-in-Exile-The-Legal-Status-of-Syrian> [accessed 6 January 2017].

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ Lebanese Institute for Democracy and Human Rights (LIFE), “Unprotected Refugees”, *The Legal Report on the Situation of Syrian Refugees in Lebanon*, Beirut, 2015, available at: <http://lifeinstitute.me/uploads/The%20legal%20report%20on%20the%20situation%20of%20Syrian%20refugees%20in%20Lebanon%20-%20eng.pdf> [accessed on October 1, 2016].

²⁵⁵ Lebanese GSO official website, see: <http://www.general-security.gov.lb/en/posts/216>.

considering the fact that these persons have been recognized as refugees by the UNHCR office in Lebanon. This acknowledgement happened in response to the advocacy that has been undergone by UNHCR for this reason.

Taking into consideration the registration of Syrians with UNHCR and the according recognition of their status as refugees, the Lebanese GSO changed residency regulations in favor of those Syrians granted refugee status by UNHCR, thus, to a low extent, fulfilling the concept of the 2003 MOU. GSO started accepting applications for the renewal of the residencies of Syrians displaced in Lebanon who have a valid registration certificate issued by the UNHCR and who have previously been granted temporary residence in 2015 or 2016 based on the registration certificate issued by the UNHCR or those who submit any document confirming registration with UNHCR before 01/01/2015, renewed and valid upon submission of the application.²⁵⁶

This facilitation can imply that the General Directorate of General Security has implicitly recognized UNHCR registered Syrians as refugees even though restrictively to the measures of the MOU referred to in the decision.²⁵⁷ However, despite this potential implicit recognition, the residency granted is of a temporary manner, only for the sake of legalizing the temporary residence of Syrians until they are found a durable solution either by resettlement or through voluntary return under the mandate of UNHCR. And for this purpose, and even if integration within the host community is to be considered, Lebanon as a first asylum country can never accomplish protection alone. Considering the fact that it is a developing country that is still already striving to fulfill the needs of its own people, the massive displacement that has occurred and still is happening can in no way be handled by Lebanon solely.

Also, the fact that the Lebanese GSO has recently considered the refugee status of those Syrians who are registered with UNHCR before 2015, by granting them the right to a one year long residency, renewable without any charges, indicates that Lebanon has to some extent recognized the homogeneous refugee presence, recognizing their right to a temporary residency, both on the International level according to the refugee Convention (article 31), and the national level, implementing the 2003 UNHCR-Lebanon MOU.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*

1.2. The Incompatibility of the Situation of Syrians in Lebanon with the Refugees Status

In addition to the legal grounds which derogate Lebanon from the consideration of being a refuge country, and despite the fact that UNHCR has granted them refugee status whether on individual or group basis, there are several incidents and practices which reveal a discordance between the elements that constitute the refugee status and the actual situation of Syrians pledging this status in Lebanon.

1.2.1. Crossing Back and Forth between Syria and Lebanon

During the summer of 2014, the Ministry of Interior (MOI) began supervising border crossing activities and reported about 18,000 Syrians travelling back and forth between Syria and Lebanon.²⁵⁸ Some political groups alleged that these Syrians were not entitled to a refugee status and its benefits, as they did not fear returning to their home country.²⁵⁹ Consequently, the Minister of Interior circulated a new regulation that aimed at abrogating the status of “displaced”²⁶⁰ (*nazih*) of those Syrians travelling back to their country. However, it is not certain how effective the application of this regulation is.²⁶¹

1.2.2. Participating in the Syrian Presidential Elections

The Syrian regime held its presidential elections in June 2014, with Syrians abroad allowed to vote, including those in Lebanon, at local embassy offices. Syrians were told that voting would help them get their passport stamped by the Syrian authorities, inevitably illustrating allegiance to president Bashar al-Assad, hence promoting their future return to Syria, otherwise their passport renewal.²⁶²

Concurrently, tens of thousands of Syrians marched down the streets of Beirut, many shouting in support of president al-Assad. This momentous disruption in Beirut²⁶³ made the Syrian presence more apparent than ever. Furthermore, it demonstrated that the Syrians in Lebanon were more subject to politicization than was mainly expected. Following this, Lebanese public opinion started disagreeing with the idea of the Syrian presence in the country. Another deliberation that turned up was that, as opposed to the situations of Turkey and Jordan, Syrians in Lebanon were probably far from being an

²⁵⁸ Dionigi, *op. cit.*, p. 13.

²⁵⁹ *Ibid.*

²⁶⁰ *Ibid.*, p. 13.

²⁶¹ *Ibid.*

²⁶² *Ibid.*, p. 14.

²⁶³ *Ibid.*

invariable anti-regime group and had tendency to be assembled by the Syrian regime. Lebanese critics reacted towards president al-Assad in a rough manner; some even supported the repatriation of refugees who supported the regime.²⁶⁴

1.2.3. Territory Settlement Attempts

In August 2014, the Lebanese Armed Forces (LAF) commenced a military operation against Salafist groups operating in the border area of Aarsal (North-East of Lebanon), spreading their domination from their territory in Syria. LAF desired to reclaim control of an area that was to a greater extent under the repercussion of groups such as Jabhat al-Nusra and the Islamic State, which were deluging from Syria. During this operation Salafist groups abducted at least 30 members of the LAF and Internal Security Forces (ISF). They killed some of them and kept the others in their custody until 1 December 2015, when the government of Qatar interfered to facilitate a contentious prisoner swap between Lebanon and the kidnappers.²⁶⁵ Some of the abducted soldiers and security forces were kept in detention by Syrian Islamist groups. Therefore, the perception grew among some Lebanese political actors that there was a risk of Syrian settlements becoming lineage grounds for Salafism in Lebanon.

1.2.4. Potential Terrorist Threats

The presence of Syrian refugees in large numbers, especially along the Syrian-Lebanese border, carries a security threat. In 2014, for the purpose of overcoming these dangers, LAF raids were conducted for the sake of confiscating any sort of arms or military sites hidden in refugee.²⁶⁶ They found hidden weapons and flags of The Islamic State of Iraq and Syria (ISIS).²⁶⁷ Similarly, Most Lebanese and the UN, acknowledge the prominence of abolishing security threats that could exist in refugee camps.²⁶⁸

In conclusion, despite the existence of International law instruments that do in fact consider Lebanon a country of refuge, there is on the contrary a set of other universal tools that do not. Even if International customary law is to some extent legally binding, however its binding force does not amount to the level of mere obligation, not if compared to the refugee Convention or the UN Security Council decisions that are obligatory and have

²⁶⁴ Dionigi, *op. cit.*

²⁶⁵ *Ibid.*, p. 15.

²⁶⁶ Davidoff-gore, *op. cit.*, p. 136.

²⁶⁷ *Ibid.*, p. 137.

²⁶⁸ *Ibid.*

confined limits and provide for clear measures, and eventually have stricter form of accountability.

However, considering the incidents that are related to the concerned persons under this study which deprive those claiming refuge from this questionable status, such arguments do not necessarily negate the fact that the crisis does exist and that Syrians were displaced, and even though a proportion of them does not qualify completely under the refugee status, however other individuals, families and children are considered refugees, or at least in need of International protection. Therefore, for the purpose of putting an end to this forced displacement phenomenon on one hand, and in order to provide the appropriate international protection to those whom been proved to be deserving of, it is important to discuss the resolutions to such dilemma and raise recommendations towards the implementation thereof. Such resolutions may occur on both the national and international level, and are either guaranteed under international law instruments or the international customary law.

2. The Syrian Refugee Dilemma Resolutions under International Law

In line with International law principles on minimum standards for protection of refugees and persons who are in need of International protection. And despite the fact that Lebanon is not bound by the 1951 Convention and its protocol, it is a guaranteed right under customary International law and many Security Council resolutions, that those persons are entitled to durable solutions to their situations each according to their pledge of need of International protection, the validity of their claims, the situation in the country of origin which they have fled, and the capacity of the host community on all levels; social, economic, political and legal. There is a need to clarify the apportioning of responsibilities and to promote a better sharing of responsibilities by States, notably in the context of mass influxes and mixed migratory flows, as well as for durable solutions.

Besides the rules pertaining to refugee status determination, the protection of refugees and the granting of minimum rights, a keystone of the International regime is the search for what in UNHCR parlance are defined as ‘durable solutions’. The 1951 Convention refers to three options: voluntary repatriation, local integration, and resettlement.

With regard to repatriation, UNHCR supervises the return of refugees and asylum seekers to their country of origin, its main task being the organization of the necessary documentation and of other travel-related measures. Governments generally have not been

involved, although in some instances they have ‘promoted’ the return of some refugees.²⁶⁹ The second solution, local integration, entails the granting of permanent status to refugees in the country of asylum, and generally involves the concession of citizenship. The applicable formal rules are therefore included in the various nationality laws.²⁷⁰ As no specific change has occurred recently, the requirements to receive nationality remain particularly restrictive, applicable mainly to Arab nationals or to individuals with long residence in the host country. Most countries in the region formally acknowledge the possibility of granting nationality to refugees. In practice, however, given the sensitive nature of the issue, this has rarely occurred.²⁷¹

2.1. Resolutions on the National Level

Moving back into the current refugee crisis, the Lebanese government has detected a high threat in terms of over population. In May 2014, discomfort emanated as the number of Syrians registered with the UNHCR reached 1 million.²⁷² As a response, the government set up a so-called inter-ministerial Crisis Cell to supervise crisis management, headed by the Prime Minister and comprising the MOFA the MOI, the MOSA and, then later the GSO was as well added. Particular roles were appointed for these ministries.

For instance, MOI is responsible for managing the situations of refugees internally according to International standards. MOFA’s task however was to explore the potential possibility of establishing safe zones in Syria in order to relocate refugees. The MOSA is in charge of achieving coordination among relations with International organizations and local administrations.²⁷³ Besides this already adopted response strategy, there are a few legal remedies that could be adopted in the process of minimizing the current consequences of this huge mass influx and even preventing its extension any further, through reinforcing sovereignty and achieving public order.

²⁶⁹ Due to the unstable and insecure situation prevailing in most refugee-producing countries in the region in the last decade, voluntary repatriation has only occurred on an exceptional basis. Most of these cases have involved the return of individuals to Ethiopia, Eritrea, Somalia and Bosnia.

²⁷⁰ The relevant legislation in Egypt is the *1975 Law No. 26 Concerning Egyptian Nationality*; in Syria, *The 1969 Nationality Act*; in Jordan, *The 1954 Law of Jordanian Nationality*; in Lebanon, *The 1960 Law Concerning Naturalization*. The latter is not applicable any longer and a new law has not yet been formalized.

²⁷¹ The unsolved question of the 2 million Palestinian refugees living outside the West Bank and Gaza Strip — mostly residing in Jordan, Lebanon and Syria — certainly plays a role in this regard. In Lebanon, other important factors are involved, such as the delicate demographic balance of confessional groups upon which the local political system is built, and the still large number of stateless people residing in the country.

²⁷² UNHCR, “Syria Regional Refugee Response”, *op. cit.*

²⁷³ *The Lebanese Council of Ministers Decision No. 72, 23 March 2014.*

2.1.1. Reinforcing Border Management and Control

“At its core, sovereignty is typically taken to mean the possession of absolute authority within a bounded territorial space.”²⁷⁴ Nations enjoy the freedom to open or close their borders at their preference, restrict it to their own nationals, and are independently in full authority to determine who these nationals are.²⁷⁵ Moreover, those who seek to claim refugee status are not accorded the right to enter under the 1951 refugee convention, which explains how some of them still enter illegally.²⁷⁶ The Convention does however require that refugees not be punished for illegal entry.²⁷⁷ Nevertheless, this provision cannot shield refugees from the effects of a moral dread towards illegal migration. It can neither protect them from public and political condemnation, nor from detention until their status is determined.²⁷⁸

Recently in 2017, The report of the Secretary-General on the implementation of Security Council resolution 1701 (2006), highlighted the necessity of securing the Lebanese-Syrian border several times, first stressing on the need for the Lebanese security forces to have greater means at their disposal to manage and control the border due to the reported movement of armed groups and weapons and the recurrent cross-border incidents,²⁷⁹ Second it highlighted the importance of delineation and demarcation as soon as practicable due to the Cross-border violence as a result of the Syrian crisis and it referred to the lack of progress towards delineating and demarcating the Syrian- Lebanese border, including in areas where it is uncertain or disputed, as called for by the UNSC Res 1680 (2006) and 1701 (2006).²⁸⁰ It then added regarding the results of the conflict in the Syrian Arab Republic which posed challenges for the security and stability of Lebanon, in addition to the repeated violations of the Lebanese territorial integrity, which have caused death, injury and material damage to property.

Then the Government of the Syria was called upon to cease all violations of the border and to respect the sovereignty and territorial integrity of Lebanon in accordance

²⁷⁴ Brahm, *op. cit.*

²⁷⁵ Catherine Dauvergne, “Challenges to sovereignty: migration laws for the 21st century”, *New Issues in Refugee Research*, Faculty of Law University of British Columbia, Working Paper No. 92, UNHCR, Vancouver, Canada, July 2003, p. 4, available at: <http://www.unhcr.org/3f2f69e74.pdf>.

²⁷⁶ This is not true of all refugee claimants because they can also enter on visa and then seek refugee status, or in some countries can enter without a visa.

²⁷⁷ UNGA, *Convention Relating to the Status of Refugees*, *op. cit.*, Art. 31 (1).

²⁷⁸ Dauvergne, *op. cit.*, p. 9.

²⁷⁹ UNSC, *Report of The Secretary-General on The Implementation of Security Council Resolution 1701(2006, S/2017/201*, 8 March 2017, para 46, available at: <http://reliefweb.int/report/lebanon/report-secretary-general-implementation-security-council-resolution-1701-2006-7>.

²⁸⁰ *Ibid.*, para. 51.

with Security Council resolutions 1559 (2004), 1680 (2006) and 1701 (2006).²⁸¹ Then last, but not least, it came across the issue of the involvement of certain Lebanese elements in the conflict in the Syrian Arab Republic which is contrary to the policy of disassociation adopted by Lebanon and that continued cross-border arms smuggling is causing obvious dangers for Lebanon. the latter's political leaders were then called to act to ensure that Lebanon remains neutral in respect of external conflicts consistent with their commitment in the Baabda Declaration.²⁸²

In conclusion, in order to ease the effects of the crisis on Lebanon, strict border control and management must be applied. Yet, it is indeed the responsibility of both the Lebanese and Syrian states, were the former has the duty to commit to its adopted policy of disassociation in consistency with the Baabda Declaration. Nevertheless, the latter shall respect the sovereignty and territorial integrity of Lebanon in accordance with Security Council resolutions 1559 (2004), 1680 (2006) and 1701 (2006).

2.1.2. Temporary Asylum Followed by Resettlement

Since the chances of local integration are insubstantial, and when repatriation becomes unattainable, the only option remaining is resettlement. Throughout the 1990s, resettlement to third countries was the most favored option for Middle Eastern countries. Most refugees recognized by UNHCR have therefore been submitted for relocation, particularly those (for example, Iraqis in Jordan) who are not allowed to remain in the country beyond the rightful six months and who face security problems in the host country. Taking into account the erratic nature of the region, the refugee issue does not seem to be resolvable in the near future which brings up the significance of achieving a dedicated stand in pursuing remedies.

However, there is a timeline between receiving the asylum seeker in the first asylum county and finding a resettlement country willing to permanently integrate recognized refugees, upon which asylum seekers are entitled to protection. Based on the MOU between GOL and UNHCR that was signed in 2003, it was proclaimed that Lebanon is not a country of refuge, and that it will only deliver temporary protection in a very narrow manner across a limited period of time (6-9 months), where UNHCR is responsible to seek adequate solution for the sake of those acknowledged as refugees according to its mandate mainly through their resettlement in a third country. Otherwise, in case of non-

²⁸¹ UNSC, S/2017/201, *op. cit.*, para. 62.

²⁸² *Ibid.*, para. 63.

recognition in addition to lack of any other consideration for the person's need for International protection, they must be returned.

“Resettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement. UNHCR is mandated by its Statute and the UN General Assembly Resolutions to undertake resettlement as one of the three durable solutions. Resettlement is unique in that it is the only durable solution that involves the relocation of refugees from an asylum country to a third country. Resettlement States in turn, provide the refugee with legal and physical protection, including access to civil, political, economic, social and cultural rights similar to those enjoyed by nationals.”²⁸³In many situations, refugees may have been effectively protected, but have not been provided with a durable solution. If prolonged, this situation can generate restlessness among the hosting communities and possibly grow a sense of resentment within the refugee population itself. Resettlement, as a durable solution, can ease the situation for refugees²⁸⁴ and promote some consistency to their lives.

Resettlement could be employed as part of a collection of durable solutions in order to create an inclusive resolution. It could take place in resettling persons who might be incapable of returning to their original country or remain in the country of first asylum after the majority has returned. Having this representing the case of individual protection resettlement, the projected use of resettlement in such a situation can stimulate the pursuance of a final decision on repatriation or local integration of the larger population, where feasible. This extended implementation, Produces a purposeful outcome that surpasses the gain awarded to the individual refugees, constituting a strategic use of resettlement.²⁸⁵

Assessing this solution based on the case of Lebanon, in which it is classified under a mass outflow, the immediate need is to provide material assistance to the refugees in a secure protected environment. The initial International response will normally be the provision of material and financial aid, such as food and emergency cash assistance, to support the first asylum country in coping with the influx. However, due to the large number of refugees, material aid remains inadequate which in turn explains why

²⁸³ See: <http://www.unhcr.org/resettlement.html>.

²⁸⁴ UNHCR, “The Strategic Use of Resettlement”, *A Discussion Paper Prepared by the Working Group on Resettlement*, standing committee, WGR/03/04.Rev3, para. 9, available at: <http://www.unhcr.org/3ee6dc6f4.pdf>.

²⁸⁵ *Ibid.*, para. 12.

resettlement is as well not as useful or appropriate as a primary response.²⁸⁶ Nevertheless, “once the refugee situation has stabilized, or in the context of small or moderate ongoing outflows with little near term likelihood of improving conditions in the country of origin, resettlement could play a role in alleviating some of the burden. This may require the provision of multi-year resettlement commitments by the International community to assure the first asylum country of ongoing support in return for that country’s commitment to the maintenance of open borders and provision of effective protection.”²⁸⁷

2.2. Resolutions on the International Level

Aside from the resolutions suggested on the national level, the International law provides as well for resolutions that can be achieved on the International level. Such resolutions are under the responsibility of the International community as a whole.

Having addressed the durable solutions earlier, exhausting the possibility of local integration, and not having control over resettlement pace and different requirements between states, it is relevant to note that voluntary repatriation, as a solution to refugee problems has been receiving increased attention from the international community. The Executive Committee urged the High Commissioner to continue its efforts to realize durable solutions for refugee problems, in particular voluntary repatriation, which was recognized as the preferred durable solution where feasible.²⁸⁸ In this sense it is necessary to discuss preparatory circumstances for such solution to become attainable. This preparation starts by ensuring that returnees have a safe place to repatriate to.

2.2.1. Establishing Safe Zones

There has been both International and national suggestion in this regard, some of which have been a part of the UN Security Council decisions and few others were mentioned in national legal debates.²⁸⁹

²⁸⁶ UNHCR, “The Strategic Use of Resettlement”, *op. cit.*, para. 20.

²⁸⁷ *Ibid.*, para. 22.

²⁸⁸ UNHCR, Voluntary Repatriation, EC/SCP/41, available at: <http://www.unhcr.org/excom/scip/3ae68cca4/voluntary-repatriation.html>

²⁸⁹ Part of the Lebanese debate on refugees is a proposal by authorities to set up camps in Syria to which refugees would be relocated. See: “Lebanon Foreign Minister Calls for Refugee Camps inside Syria”, *The Daily Star*, June 19, 2015, available at <http://www.dailystar.com.lb/News/Lebanon-News/2015/June-19/302888-lebanon-foreign-minister-calls-for-refugee-camps-inside-syria.ashx> [accessed 26 April 2017]; A plan which the Ministry of Foreign Affairs and Migrants was in charge of assessing the feasibility of Notwithstanding much advocacy for this measure, especially from the Lebanese Minister for Foreign Affairs Bassil, “Bassil Calls for Safe Zone inside Syria to House Refugees”, *The Daily Star*, October 1 2015, available at <http://www.dailystar.com.lb/News/Lebanon-News/2015/Oct-01/317196-bassil-calls-for-safe-zone-inside-syriato-house-refugees.ashx> [accessed 26 April 2017].

2.2.1.1. Concept

“However difficult it might be to implement safe zones after years of inaction, the humanitarian disaster will only grow without them, as will the threat to regional and European stability.”²⁹⁰ Having been already classified among the worst humanitarian catastrophes since World War II, The Syrian civil war seems to even worsen. According to the German ambassador to the U.S., Peter Wittig, This enormous tragedy that has claimed over 400,000 lives and displaced over 12 million people has not only destabilized the Middle East, but, has also become an “existential threat to Europe.”²⁹¹

“Safe zones” or “safe areas” are areas designated by agreement of parties to an armed conflict in which military forces will not deploy or carry out attacks.²⁹² Such areas can also be created by virtue of UN Security Council resolutions. They sometimes include a sort of zones in which some or all parties to the conflict are prohibited from carrying air operations, for the sake of protecting civilians fleeing from the hostilities and facilitating their access humanitarian aid. These areas are referred to as “no-fly” zones; they may be defended by UN peacekeepers or other forces.²⁹³ Despite that the 1949 Geneva Conventions and their additional protocols do not specifically mention safe areas or safe zones; they recognize similar arrangements, particularly a sort of buildings or small areas where the parties to the conflict agree that civilians can get protections in addition to those already provided under International humanitarian law, or the laws of war. These areas are referred to as “protected zones” and “demilitarized areas.”²⁹⁴

The Geneva Conventions also allow parties to a conflict to carry out “special agreements” to enhance civilian protection. “The creation of safe zones has no bearing on the prohibition under International humanitarian law of attacks targeting civilians, whether those civilians are inside or outside the designated safe zone. That is, civilians outside safe zones remain protected from deliberate attacks.”²⁹⁵ Based on the legal analysis²⁹⁶ carried

²⁹⁰ Anna Borshchevskaya, “Safety First in Syria”, *The Washington Institute*, February 19, 2016, available at: <http://www.washingtoninstitute.org/policy-analysis/view/safety-first-in-syria> .

²⁹¹ *Ibid.*

²⁹² Human Rights Watch, “Q & A: Safe Zones and the Armed Conflict in Syria”, March 16, 2017, available at: https://www.hrw.org/news/2017/03/16/q-safe-zones-and-armed-conflict-syria#_What_are_“safe_

²⁹³ *Ibid.*

²⁹⁴ Human Rights Watch, “Q & A”, *op. cit.*

²⁹⁵ *Ibid.*

²⁹⁶ James F. Jeffrey, “Legal Justifications for a Safe Zone in Syria”, *The Washington Institute*, Policy Watch 2564, February 19, 2016; The Institute For The Study Of War (ISW), “U.S. Options for a Syria No-Fly Zone”, *November report*, available at:

out by James F. Jeffrey at the Washington Institute²⁹⁷ on the International legal aspects of a no-fly zone, the following legal considerations are relevant to consider.

2.2.1.2. Arguments Supporting Safe Zones

Safe zones as an option underlying the voluntary return durable solution, was suggested in several domains. Several Security Council resolutions whether addressing ISIS or the Syrian state, reassured the authority of the Syrian state and the necessity of securing safe zones. In addition to the protection mandate that the international community holds and which as well is encompassed in International Human Rights Law and International Humanitarian Law. Not to forget the surrounding external socio-political situations that indirectly prepared the environment for such initiative.

2.2.1.2.1. Security Council Resolutions

UNSCR 2170,²⁹⁸ Allows states to act against IS, and constitutes the basis upon which the United States and other coalition nations are conducting military operations in Syria without permission from Damascus. UNSCR 2249,²⁹⁹ passed after a series of IS-linked terrorist incidents culminating in the Paris attacks, urged member states to “take all necessary measures, in compliance with International law, in particular with the United Nations Charter, as well as International human rights, refugee and humanitarian law, on the territory under the control of ISIL also known as *Daesh, in Syria* (emphasis added) and Iraq, to redouble and coordinate their efforts to prevent and suppress terrorist acts committed specifically by ISIL.” That same resolution also urges member states "to intensify their efforts to stem the flow of foreign terrorist fighters to Iraq and Syria"; which would serve one of the no-fly zone's specific purposes. Also, UNSCR 2118³⁰⁰ and 2254,

<http://www.washingtoninstitute.org/policy-analysis/view/legal-justifications-for-a-safe-zone-in-syria>.

²⁹⁷ *Ibid.*

²⁹⁸ UN Security Council, *Resolution 2170 on threats to International peace and security caused by terrorist acts by Al-Qaida*, S/RES/2170, 15 August 2014, available at: <http://www.refworld.org/docid/53f729b84.html> [accessed 15 August 2017].

²⁹⁹ UN Security Council, *Resolution 2249 on terrorist attacks perpetrated by ISIL also known as Da'esh*, S/RES/2249, 20 November 2015, available at: <http://www.refworld.org/docid/5656a4654.html> [accessed 15 August 2017].

³⁰⁰ UN Security Council, *Resolution 2118 on the use of chemical weapons in the Syrian Arab Republic*, SS/RES/2118, 27 September 2013, available at: <http://www.refworld.org/docid/524d3540707.html> [accessed 15 August 2017].

presses for a ceasefire and calls for humanitarian assistance to the Syrian population (Article 12).³⁰¹

2.2.1.2.2. Responsibility to Protect

Although it was not established in International law, this principle has been used to justify action without Security Council resolutions, notably in Kosovo in 1999. In particular, UNSCR 2249 authorizes “all necessary measures” against IS, inter alia, in compliance with “International human rights, refugee and humanitarian law.”

2.2.1.2.3. Potential Non-Application of the Munich Agreement

The Assad regime and its partners might ignore the cessation of hostilities called for in the Munich agreement which was negotiated under UNSCR 2254³⁰² and other resolutions. Then such a violation could justify a *force majeure* argument. For example, Washington could uphold the fact that the parties are unwilling to adhere to any International understandings and agreements on an issue of war and peace, thereby allowing other states to take action in their own interest.³⁰³

2.2.1.2.4. NATO Faces an Emergency Situation on Two Fronts

Member state Turkey could become implicated broadly, direct hostilities with Russia and other members of the Assad alliance, and the Syrian refugee crisis could have an undermining effect on the alliance's entire European side. Both threats would apparently legalize limited U.S. and International action to create a zone to protect civilians, release IS, and serves as an intermediary between Turkey and the Assad front.

Emphasizing on the above arguments, and applying them on actual grounds, it is relevant to note that potential safe zones in Syria do exist. Both Idlib and eastern Aleppo provinces have been somewhat spared from the Syrian fighting. Rural communities remain strong and generally benefit from effective basic services and distribution of humanitarian aid provided through their local governments. Therefore, either region can constitute a safe zone which could promot return of

³⁰¹ Similar resolutions aimed at Saddam Hussein's Iraq served as implicit cover for no-fly zones over that country, the resolutions themselves did not establish the zones, but their general admonitions about humanitarian concerns and threats to peace emanating from Iraq post-1991 served to justify action by the United States and other parties without significant legal challenge.

³⁰² UN Security Council, *Resolution 2254 on the situation in the Syrian Arab Republic*, S/RES/225, 18 December, 2015, Art. 13; this particular article uses the strongest possible language to “demand” an end to attacks on civilians. available at: <http://www.refworld.org/docid/568fc0f54.html> [accessed 6 July 2017].

³⁰³ UNSC RES 2254, *Ibid.*

refugees and IDPs to the villages and small towns where initiating decent livelihood is much less complex than it is in large cities where massive destructions took place.

2.2.2. Voluntary Repatriation

According to the relevant provisions of International humanitarian law and the United Nations guiding principles of humanitarian emergency assistance, UNSC issued SCR 2328 (2016)³⁰⁴ that Stressed on the importance to ensure the voluntary, safe and dignified passage of all civilians under the monitoring of and coordination by the United Nations and other relevant institutions, to a destination of their choice.

2.2.2.1. Legal Basis

Although the Declaration is by virtue of a General Assembly Resolution and thus is not a binding treaty, it sets a code of conduct and serves as a point of reference for all universal and human rights instruments subsequently adopted. The right to return has subsequently been consecrated in binding International and regional human rights instruments.³⁰⁵ This right is also embodied in Article 10 of the CRC, and in this respect it is closely linked to the right of family unity. Article 10(2) in particular reads as follows, “...States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country.”³⁰⁶

2.2.2.2. Return Circumstances

It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but mainly it is mostly relevant in the context of acts of persecution by localized non-state agents. Had there been a segment in the home country where a returnee would not have a well-founded fear of being persecuted and can actually remain there, then this person will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of

³⁰⁴ UN Security Council, *Resolution 2328 on humanitarian evacuations in Aleppo, Syrian Arab Republic*, S/RES/2328, 19 December 2016, available at: <http://www.refworld.org/docid/585bd8e94.html> [accessed 15 August 2017].

³⁰⁵ See for example Art 12(4) of *ICCPR*; Art. 5(d)(ii) of *the ICEFRD*; Art. 12(2) of the *ACHPR*; and Art 22(5) of the *ACHR*.

³⁰⁶ UN General Assembly, *Convention on the Rights of the Child (CRC)*, 44/25, 20 November 1989, Art 10(2).

suffering deliberate harm and they can rationally be anticipated to stay there, then they will not be eligible for humanitarian protection.

When considering return possibilities, “both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.”³⁰⁷ Nevertheless, the right of refugees to return to their country of origin is fully recognized in International law Article 13 (2) of the Universal Declaration of Human Rights provides that: “Everyone has the right to leave any country, including his own, and to return to his country.”

2.2.2.3. Return Conditions

A Repatriation decision must be voluntary, safe, dignified, promoted and facilitated. In this sense, a voluntary decision implies two major elements. One that is related to the situation in the country of asylum which therefore is freedom of choice and the other is related to the situation in the country of origin which in turn entails an informed decision. Return must occur safely, encompassing public assurances of personal safety, integrity, freedom from fear of persecution or arbitrary punishment on return, citizenship status, Physical security, including protection from armed attacks and mines. Refugees must not be arbitrarily separated from family members. They should be treated respectfully by the authorities and shall receive full acceptance by the national authorities, including the full restoration of their rights. Repatriation must be promoted and facilitated through actively attempting extensive measures to advocate refugees return; when from an objective point of view, it appears safe for most refugees to return and that such returns are likely long-lasting. UNHCR may facilitate voluntary repatriation regardless of its consideration of whether the return is safe or not, and that when refugees demonstrate a strong desire to return voluntarily and have done so on their own initiative.

The 1951 Convention makes it clear that refugee status is a transitory condition which will cease once a refugee resumes or establishes meaningful national protection. International protection becomes irrelevant when the situation in the country where persecution was feared changes, because the circumstances upon which a person has been recognized as a refugee have terminated. Thus the person can no longer refuse to avail

³⁰⁷ United Kingdom Home Office, “Operational Guidance Note: Syria”, *Draft Syria OGN*, vol. 7, 3 October 2012, available at: <http://www.refworld.org/docid/506c31e62.html> [accessed 28 November 2017].

himself or herself of the protection of the country of his or her nationality/habitual residence.³⁰⁸ The country of origin should seek lasting solutions omitting the core basis of refugee flows and creating favorable conditions for voluntary return and reintegration. It shall fully support the efforts of UNHCR and other actors in the same manner.³⁰⁹

It is finally relevant to note, that the United Nations are in support of the return option. This standpoint has been made strongly evident especially within the 2006 report of the Secretary-General on the implementation of Security Council resolution 1701³¹⁰ stating that: “...*The rate at which new refugees have crossed into Lebanon in the past two reporting periods has accelerated markedly and creates increasing challenges within the country...The United Nations will continue to stand by Lebanon in tackling this challenge until such time as the refugees are able to return to their homes.*”

CONCLUSION

The world has become an open border entity. Human mobility has enormously increased as a result of globalization. Moreover, this movement occurs in different shapes; it varies according to the circumstances initiating it or is affected by the purposes sought thereof. Labels are different, but the concern is one; safeguarding human rights while preserving state sovereignty.

Many countries and regions nowadays face serious challenges especially due to the huge wave of movements occurring between states. Whether it is for the purpose of seeking asylum, refuge, or simply better livelihood conditions, there is a strong urge for a

³⁰⁸ UNGA, *Convention Relating to the Status of Refugees*, *op. cit.*, Art. 1(c); Cessation clauses 5, 6.

³⁰⁹ UNHCR, “Voluntary Repatriation”, *Handbook on Voluntary Repatriation*, International Protection, January 1996, available at: <http://www.refworld.org/docid/3ae6b3510.html> [accessed 6 July 2017].

³¹⁰ The 2006 report of the Secretary-General on the implementation of Security Council resolution 1701, para. 68.

fortified International cooperation and responsibility-sharing system to be cultivated. States' ability to receive refugees and promote protection is being constrained due to the amplification of circumstantial tensions along with a number of strongly rooted chronic situations and deficient financing. Although some states are willingly undertaking their responsibilities, where an impressive fair portion of them is successfully adapting, other states fell behind and showed incapability and/or unwillingness to commit similarly; demonstrating the notion of "asylum fatigue".³¹¹

The institution of Asylum is under challenge. It is being devastatingly affected by democratic politics, and unaware public deliberations, inflamed by reckless media reporting. This institution is at risk of deterioration so long as there is divergence of purpose and unilateral responses prevail, taking into account the serious security incidents occurring recently. Whether actual or anticipated, security concerns alongside domestic political agendas irrelevant to the presence of refugees, in regions like the Middle East, South West Asia, and parts of Africa, are condensing protection space. In this sense, access to territory has become critically limited and restrictions come in many shapes; entry blockages including fences, return agreements involving asylum seekers and refugees, a panoply of visa requirements, strict interdiction policies, and other restrictions.³¹² Therefore, it is urgently alarming that actions must be taken in the form of a certain governance framework towards achieving a comprehensive allocation of responsibilities in order to secure the rights of refugees and guarantee that their flight is not unequally tolerated by certain states or regions due to their geographical closeness to refugees' countries of origin. However, on the other side of this global dilemma constituting a lingering risk threatening the rights of refugees as human beings, there exists another aspect related to the host state whose sovereignty is at stake.

"Control over migration is interpreted, therefore, as being somehow intrinsic to what it is to be a nation, to 'Stateness' and to the core of membership and national identity."³¹³ "When a nation commits itself to the Convention, it does so as a sovereign act. It chooses, voluntarily, to respect its provision, including where necessary the implication that some refugees will have permission to remain. This commitment does not redefine or challenge sovereignty as traditionally understood and is a commonplace of International

³¹¹ Türk and Garlick, *op. cit.*

³¹² *Ibid.*

³¹³ Dauvergne, *op. cit.*, p. 2.

law.”³¹⁴ On the contrary, when a state chooses not to commit, it is because it is reflecting its limited capability and/or unwillingness and thus is incapable of, or refuses to commit itself to overburdening or undesired obligations. As so when this state is forced to provide its share in International responsibility, it is usually disproportional to its capacity and incoherent with its domestic policies that are formulated in a sense that adheres with the higher public interest, which in turn poses threat to its sovereignty; as it becomes a case of compliance without obligation.

Illegal migration is considered offending to sovereignty because it is an indication that a nation is not in control of its borders.³¹⁵ Persons present in a nation state without a nationality or a legal authorization are technically illegal migrants. The majority of those have overstayed tourist, student or work visas.³¹⁶ What is relevant to add here is that, claimants of refugee status are not granted the right to enter under the Refugee Convention. Some people seeking refugee status enter illegally.³¹⁷ However, the Convention does require that refugees not be penalized for illegal entry.³¹⁸ This provision cannot protect refugees from the classification as illegal migrants or even from *Refoulement* as long as they have not been recognized as refugees. If the Convention prevents states from punishing illegally entering refugees, then this would not apply to a non-party state which will still have the authority to impose penalties upon detention of an illegal immigrant.

In conclusion, Lebanon as a UN member is indeed bound by International law. However, this binding obligation has limits that have been defined by International law itself, and by the extent to which Lebanon as a sovereign state has decided to commit itself as a member of the International community. When it comes to refugee law, which is mainly governed by the 1951 Geneva Convention and its additional 1967 protocol, Lebanon, having not acceded nor adhered to it or practically applied it, is evidently not obliged to comply. And although it is bound to provide protection, under International customary law according to the International principle of burden sharing, especially to persons whom don't necessarily qualify as refugees, rather as persons in need of International protection, Lebanon can only do so up to its economic, social, demographic, legal and political capacity, taking into consideration that the state's sovereignty and the safety and security of the Lebanese people are not hindered.

³¹⁴ *Ibid.*, p. 4.

³¹⁵ *Ibid.*, p. 6.

³¹⁶ *Ibid.*, p. 7.

³¹⁷ This is not true of all refugee claimants because they can also enter on visa and then seek refugee status, or in some countries can enter without a visa.

³¹⁸ UNGA, *Convention Relating to the Status of Refugees*, *op. cit.*, Art. 31(1).

Finally, in terms of improving the current situation and seeking durable solutions, and in order to better address a global resolution to the refugee situation in Lebanon, several suggestions on feasible action guidelines³¹⁹ exist in a manner that involves all concerned stakeholders to take on their responsibilities each according to their own role.

With regards to the Lebanese Institutions, actions must be taken on different levels. The Lebanese public institutions shall formulate a clear legal structure that guarantees refugees the right to the minimum standards of International customary law under a well-defined status. Taking into consideration the limited capacity of Lebanon being a developing country, Syrians in Lebanon should still have access to basic services and enjoy indispensable rights, especially the right to work. Political groups should address the Syrian presence as a purely humanitarian issue, refraining from the politicization of refugee identity by associating their presence with various political or sectarian factions. The academic and civil society community should be supported in developing research and communications strategies to show the real implications of the crisis from a problem-solving perspective. And most importantly is for the security forces to become better equipped in managing and controlling the border through delineation and demarcation.

States and Supranational Institutions such as The European Union (EU) and the Gulf Cooperation Council (GCC) play an important role in sustaining financial support and achieving efficient humanitarian action through developmental projects for both refugees and host communities in fulfillment of their aid and funding pledges as claimed in International forums. All states in general and Convention states in particular on basis of International customary law, binding Conventions, and the principle of Burden sharing, shall engage in resettlement procedures and/or in the reconsideration of visa and migration regulations in proportionality to the significance of the crisis.

International Organizations must in turn ensure that aid does not cause a sense of relative deprivation in order to improve relations between host communities and refugees through emphasizing the progress in crisis management for local communities and the national government at first, then adhering to their commitments to carry out durable solutions.

Likewise, International institutions and Civil Society Organizations must as well cultivate a positive environment between refugees and hosting nationals with regards to aid

³¹⁹ Dionigi, *op. cit.* p.7, 8.

provision. They should do so in a neutral manner apart from political and sectarian agitation.

And lastly, the General Public is expected to donate to transparent aid organizations. They shall only bear information if communicated through trustworthy and documented means, apart from superficial stereotyping and unjustified perceptions of insecurity associated with migration processes. They must always be aware that states and their governments (whatever their political orientation) have a universal legal obligation to help and protect refugees, grounded in International customary law and further reinforced by several International treaties regularly ratified by a majority of states, each according to its identified capacity and voluntary will.

Finally, having addressed the challenges of the recognition of a definite legal status, generally under the international refugee protection system, and specifically under the Lebanese Legal system. Also having discussed the according consequences, and after calling for the necessary recommendations locally, regionally, and internationally, the question remains; under what title shall Syrians in Lebanon now be regarded? And where will the international community stand from it?

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