



# Refugee Governance in the Arab World



# Refugee Governance in the Arab World

*The International Refugee Regime and  
Global Politics*

Tamirace Fakhoury and Dawn Chatty

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## Foreword

Most of us are likely aware that the number of refugees in the Arab region is large – 10 million or so persons. But we are less likely to know much about how the protection of those refugees is *governed* at the transnational level.

Indeed, it often seems like there is little transnational governance at all. Only two Arab states, Egypt and Yemen, are parties to the UN's Refugee Convention or Protocol. The most visible group of refugees in the region, the Palestinians forced out upon the creation of Israel, are largely excluded both from the protection of those UN refugee treaties and arguably even from the competence of the UN's refugee agency, UNHCR. Perhaps most strikingly, the regional refugee convention drafted some thirty years ago by the League of Arab States has still not attracted enough accessions for the treaty to come into force. We might be forgiven for imagining that Arab states have simply decided to stand apart from any refugee governance structure that would shape or constrain their domestic regimes.

But Dawn Chatty, Tamirace Fakhoury and their colleagues argue otherwise in *Refugee Governance in the Arab World: The International Refugee Regime and Global Politics*. Eschewing legal formalism, they show in this book how the multi-centric conceptions, histories and practices of refuge and sanctuary in Arab states played an important role in shaping the global refugee regime. At least as important, they challenge the accuracy of the contemporary picture of seemingly little more than atomized local protection regimes in the Arab world, arguing instead that Arab states have been transnational norm cooperators, challengers and manipulators. They have been very much at the table as universal norms have been enhanced, even as they helped to subvert those same norms by adopting cooperative deterrence and warehousing policies.

The net result is what is termed here a hybrid refugee order, in which '[c]onventions and protocols interlace with forms of hospitality, transborder kinship loyalties, and blurred boundary-making between guests, foreigners, refugees, and economic migrants'. But mistake it not: this complex web of norms and practices is, Chatty and Fakhoury contend, very much a transnational refugee governance regime. This is a wonderfully subversive claim, turning the top-down Western understanding of transnational lawmaking on its head.

Importantly, this book not only is about state interactions but also takes time to grapple with what is surely the critical humanitarian question: Just how are refugees themselves to make sense of (and secure protection within) such a complex governance structure? Acknowledging that in practice refugees are often forced to entrust their well-being to unscrupulous intermediaries, the authors contend nonetheless that refugee precarity in the Arab world coexists with opportunities for refugee agency. This is a powerful counter to received wisdom, calling into question whether legal precision and clarity should in all cases be assumed to be the best friends of refugees.

In the end, *Refugee Governance in the Arab World* is much more than its title suggests. Yes, it provides us with a path-breaking and truly comprehensive historical, political and deeply socially embedded understanding of how transnational governance of refugee protection actually works in the Arab world. But it is also a book that raises hard questions about how transnational asylum governance is most effectively conceived and implemented, forcing us to confront the possibility that non-traditional approaches might in fact produce positive (perhaps even better) outcomes for refugees and for the countries that receive them.

James C. Hathaway,  
October 2023

# Acknowledgments

This anthology on refugee governance in the Arab world has been a long time in the making, but it took shape within the collaborative research space that Sciences Po in Paris facilitated. Dawn Chatty and Tamirace Fakhoury were both part of the Kuwait Program back then. In 2021, Dawn was appointed as visiting professor in the Kuwait Program where she taught a graduate course on displacement and dispossession in the modern Middle East. Tamirace was appointed as the visiting Kuwait Chair at Sciences Po from 2020 until 2022 with a view to developing a research agenda on refugee governance in the Middle East. This provided an ideal opportunity for collaborating to develop a joint research agenda.

At the time, Covid lockdowns and mobility restrictions prevented the convening of an in-person workshop around the theme of refugee governance in the Middle East and North Africa. In the Fall of 2021, it was possible to hold a workshop at Sciences Po, *Rue de la Chaise* in Paris. This event brought together more than fifteen potential authors, discussants and commentators who reflected on the workshop's book project idea and discussed its theoretical premises. The aim of the authors' workshop was twofold: contribute to the vibrant debate on decentring the international refugee regime and reflect through an interdisciplinary lens on the role of the Arab world in shaping refugee norms, histories and practices. Except for Gerasimos Tsourapas' chapter, which is based on an article formerly published in *the Digest of Middle East Studies*, all the chapters of this anthology evolved out of the workshop's discussions.

We would like to thank all the contributors, discussants and speakers at the Sciences Po workshop who enriched our workshop and anthology with invaluable insights and comments. We are indebted to the workshop's discussants, Annika Rabo, Jeff Crisp, Clothilde Facon, Jennifer Gordon, Emma Empociello and Jill Alpes, for their invaluable comments on authors' presentations during the workshop. We would also like to thank Miriam Aitken for her research assistance and support during the workshop. We are also immensely grateful to James Hathaway for writing the foreword. We are also indebted to the reviewers of the anthology who provided insightful comments.

We extend our deepest appreciation to Omar Fakhoury for generously providing one of his paintings, titled *Boat* as the cover artwork for our anthology. This piece serves as an allegory, placing the journeys, struggles and aspirations of refugees at the forefront of our collection. *Boat* depicts a scene where a vessel rests upon grass, symbolizing the blurred boundary between mobility and immobility, arrival and departure. The black cat, with its penetrating gaze, represents the complex spectrum of emotions—hope, anticipation and despair—that accompany such journeys.

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# An Introduction

Tamirace Fakhoury and Dawn Chatty

The Arab region hosts some of the world's most protracted refugee emergencies. Nevertheless, interest in how Arab states have shaped the so-called modern refugee regime remains marginal (Fakhoury 2022a). Arab politics and societies may be hyper-visible in the debate around refugee numbers. Their history of refugee hosting and their international politics of refugee governance remain little known and often concealed (Chatty 2021). How have Arab states contributed to the normative understanding and development of asylum practices in relation to refugees? And how have their practices of sanctuary, legal systems and discursive practices interacted with a complex international order?

Over the years, global consultations, declarations and agreements recognizing the generosity of refugee-hosting states in the many 'Global Souths' and their contribution to what the European Union (EU) frames as 'global public welfare' (Council of the EU 2017) have abounded. Finally, in 2018 the Global Compact on Refugees (GCR) was endorsed by 181 member states of the United Nations with only one Arab state abstaining from voting. The GCR took on the historical task of broadening inclusiveness and participation in the international refugee regime, defined here as the set of norms, regulations and practices that guide cooperation around refugee solutions (Loescher 1994). In its programme of action, the GCR acknowledges that 'countries that receive and host refugees, often for extended periods, make an immense contribution from their own limited resources to the collective good'. It ambitiously adds that 'it is imperative that these countries obtain tangible support of the international community as a whole in leading the response' (UNHCR 2018).<sup>1</sup>

Scholarship, however, has debated how inclusive, participative and deliberative global refugee policy has been (Achiame 2017; Chimni 1998; 2018; Maple et al. 2023). Of major concern is the extent to which non-Western regions have been included as (i) protagonists in world histories tracing the development of global refugee law, (ii) leading agents at the negotiation table of global refugee policy (iii) and actors with normative power in global refugee law (Bhattacharya and



Biswas 2021; Samaddar 2017; Krause 2021). Research has further questioned the very epistemologies that shape knowledge and policy about ‘refugeehood, mental maps of who is a refugee, ideas about where refugees come from, and who takes the responsibility for receiving and caring for refugees’ (Madokoro 2022: 1). In this line of thinking, there is a conspicuous lack of knowledge on how – beyond the Western-driven refugee order – multiple cosmologies have influenced dynamics and understandings of *refugeeness* (Maple et al. 2023; Zardo and Wolff 2021).

Our book seeks to address some of these concerns by exploring the Arab world as an important ‘regional domain’ (Fawcett 2004) from where we can view the international refugee regime as ‘ontologically multiple’ and constituted by ‘constant encounters across multiple worlds’ (Trowsell, Behera and Shani 2022: 787). While acknowledging that regions of the world are constructed and contested, we focus in this book on the Arab world – framed at times as the Arab Middle East (Tripp 1995) – as a prominent geopolitical realm in international refugee governance. We look at it as a ‘regional domain’ (Fawcett 2004) in which states display commonalities and variation in their histories, political systems and responses to asylum.

Officially, the Arab world comprises twenty-two countries that share the same language and that are member states of the League of Arab States (LAS). It is commonly divided into three overarching sub-regional groups: the Arab East or the *Mashrek* on the Eastern Mediterranean, the Arab West or the *Maghreb* countries on the Southern Mediterranean and the Arab Gulf (*Al Khalij*). Transnational interconnections of a strategic, economic and cultural nature have shaped Arabism across polities and societies. Inflection points such as colonial legacies and American domination, the long-standing Arab-Israeli conflict, the First and Second Gulf Wars (1980s and 1990s) and the most recent wave of Arab Uprisings (2010 onwards and 2019) have created dense top-down and bottom-up ties across states and societies. At the same time, such junctures have affected differently the trajectories of states and their foreign, domestic and refugee-reception policies (Dalacoura 2012; Tripp 1995; Salem 2018).

Against this complex backdrop, the book sets out to explore Arab states’ multilayered encounters with the so-called international refugee regime. It shies away from analyses that look at the role of Arab *refuge* states as recipients of aid and ‘recalcitrant implementers’ of norms (Fakhoury 2021a). Instead, it explores their agency as shapers and challengers of solutions and practices in the realm of displacement.

By creating new knowledge on refugee hosting in Arab polities and societies and analysing how the region has co-constituted global refugee policy, the book

seeks to break new ground both theoretically and empirically. Theoretically, it contributes to rethinking how multiple regional orders (traditionally seen as marginal to the development of international refugee law) have impacted the global refugee regime or the norms and expected rules of conduct around refugee treatment and protection (OKafor and Dzah 2021; Jubilut, Espinoza and Mezzanotti 2021; Kapoor 2021; Sajjad 2022). It also joins seminal literature in decentring Western knowledge both on the so-called regional ‘margins’ of our international order (Acharya 2014; Smith and Tickner 2020; Fisher-Onar and Nicolaidis 2013) and on migration governance in world politics (Zardo and Wolff 2021).

Empirically, through interdisciplinary case studies, the book provides concrete knowledge on how Arab polities and societies have been agenda setters, lawmaking entities, norm makers, contesters and disrupters as far as the development of refugee policy and law is concerned. Here, we join the vibrant scholarly ‘multilogue’ (Fisher-Onar and Nicolaidis 2021) set to (re)capture plural histories and narratives of governance in the international order (Bajpai and Laksmana 2023).

### What governance narratives and norms matter in the international order?

To recapture these pluralist narratives and resituate the role of the *Arab refuge state* in the world order, the book sets out to unpack several assumptions on how we make sense of orders, governance and norms. The international order may be defined as ‘the dominant set of norms and institutions that govern inter-state relations’. Yet stark disagreements have arisen about whether there is a ‘singular’ order or a set of ‘different’ orders shaping the world (Bajpai and Laksmana 2023: 1372). At the heart of defining international order-building lies the contested term of governance. Governance is not to be confused with government. James N. Rosenau defines governance as a set of ‘rule systems’ or ‘steering mechanisms’ that acquire and deploy authority both through formal and informal means. While formal means include treaties and laws, informal means encompass habits and practices that become authoritative through their recurrence. In this context, governance evolves into an assemblage of ‘spheres of authority’ that shape the ‘bifurcated system’ of world politics (Rosenau 2004: 31–2; Bache and Flinders 2004: 6). Simply put, governance relies on a spectrum of ‘traditional norms’, ‘informal agreements’ and ‘other practices’ to generate

compliance and yield effectiveness (Rosenau 2004: 32). Within this spectrum, norms, usually defined as expected rules of conduct or established standards for appropriate behaviour, take a life of their own. As they travel and diffuse across time and space, they espouse multiple forms. They also emerge and develop not only as codified rules but also out of informal networks, through policy mimicry or simply through repetitive practices (Milner 2014: 488). Recent scholarship has emphasized how norms further evolve through political subjectivities and affective politics (İşleyen 2023). As they travel from one setting to the other, norms face various forms of thick or thin contestation (Del Sarto and Tholens 2020). In this context, scholars have stressed the importance of understanding non-Western regions, bottom-up actors and/or so-called weaker states as core challengers of norm-making and order-building, traditionally seen as a 'Western enterprise' (Acharya 2011: 86).

The contemporary global refugee regime may expect all states to respond to displacement in accordance with norms and treaties enshrined at the heart of international refugee law (Chatty 2021). On the ground, however, multiple and contradictory spheres of authority including habits and recurrent practices have moulded refugee lives and the complex configuration of refugee governance in world affairs (Milner 2014). Regions, host communities and refugees have contributed through various ways and at different times to shaping a multi-centric refugee regime.

Refugee scholars do acknowledge that a so-called refugee regime architecture which intersects with other regimes and norms characterizes today's world order (Betts 2010). Still, the dominant story on the origins and development of the global refugee order is often set within the post-Westphalian European order which saw the creation of the modern state system after the Peace of Westphalia in 1648 (Haddad 2008). Successive wars, revolutions, processes of state unification leading up to two world wars have produced the refugee figure as a key consequence of international political history (Betts 2014: 62). The post-Second World War period, dubbed as the post-1945 era of institutional explosion, saw the establishment of the United Nations Refugee Agency (UNHCR) and the adoption of the 1951 Refugee Convention on the Status of Refugees, considered as the cornerstone of our modern refugee regime (Barnett 2002). In this context, as various scholars note, alternate narratives and legal orders of sanctuary often go missing or remain off the radar.

A rich universe of socio-legal, ethnographic and historic research has highlighted the importance of seeing beyond the modern refugee regime (Janmyr 2021; Sajjad 2022; White 2021). This is neither to weaken nor question

the validity of the 1951 Refugee Convention, which remains a major milestone guaranteeing refugee protection (Hathaway 2021, 2023). Rather the aim is to reconstruct socio-legal entanglements across regions and borders. This exercise is further grounded in the effort to rethink what James Hathaway (2023) calls the ‘delegalization of global refugee protection’. States shirk human rights and refugee law, including the 1951 Refugee Convention, through a palette of measures from forceful push backs, turn-backs to extraterritorializing asylum or adopting temporary protection measures that dilute refugee status.

The call to read between the lines of and beyond the 1951 Convention is joined by a transdisciplinary current of thinking that strives at both ‘pluralizing’ and ‘decentring’ the way we make sense of regional treaties and legal orders in a multiplex world. Carving a bigger role for regions that have been seen conventionally as peripheral to the dominant world order has become a major scholarly area of scrutiny (Bajpai and Laksmna 2023; Trowsell, Behera and Shani 2022).

The decentring debate has made much headway in the international studies of refugee governance. Still, a few questions beg further study. How have multi-centric conceptions, histories and practices of refuge and sanctuary impacted global refugee policy? And how have they shaped its development, its outreach as well as its compliance-generating power? What version of refugee norms do states choose to subscribe to or contest? And to what extent can we derive insights from refugee hosting in the Arab region as a gateway into the multiplicity of refugee lawmaking and agenda-setting histories?

## The Arab *refuge* state in the international order

Just like top refugee-hosting states in Africa, the Americas and Asia, Arab states have played an oversized role in hosting refugees. Historically, refugee displacement has been a defining feature of the region, considered at the same time the source of and a host to some of the largest displaced populations worldwide (Chatty 2021). Data from the World Bank, the UNHCR and UNRWA shows that the Arab region hosts about 9,413,234 refugees and asylum seekers (World Bank 2022). Top countries hosting refugees are Lebanon, Jordan, Sudan, Iraq and Egypt. The Levant or the Mashreq countries host on their own about 60 per cent of all refugees registered with UNHCR in the Arab region (IOM 2021).

The displacement of more than 6 million Syrians remains at the forefront of international politics. Nevertheless, historical and ongoing waves of displacement

from Iraq, the State of Palestine, Somalia, South Sudan, Eritrea and Western Sahara have deeply impacted traditions of asylum in the region (IOM 2019; Babar 2020; Hanafi 2014; Fakhoury 2019). A distinct characteristic of Arab refugee states is that they have been at the same time countries of origin and destination for displaced populations, refugees and internally displaced people. Historically, rural areas, grazing lands, cities and refugee camps have evolved as complex sites of governance where overlapping waves of displacement have unfolded (Chatty 2021; Fiddian-Qasmiyeh 2020).

These complex dynamics notwithstanding, a paucity of literature engages with refugee norm creation and contestation in the Arab world (Fakhoury 2021a) as a process reflecting what Acharya Amitav frames as an ‘agency role’ (Acharya 2011: 118) in world politics. Why this omission? We argue that knowledge production on the Arab migration/refuge state on the one hand, and its framing through an Orientalist policy and legal imaginary on the other hand may have contributed to these silences.

### **The Arab world in a shifting academic field**

Much research has looked at the Arab world and the broader MENA region less as a *refugee norm actor* and more of a *geographical locus* in terms of producing, receiving or integrating refugees. Various studies focus on the demographics, conflict causes, drivers and consequences of migration. They also pivot attention to the geopolitical and security factors that shape states’ responses to large-scale displacement (Hanafi 2014; Fargues 2013; Shteivi 2016). In such studies, the normative power of the Arab world in global refugee affairs is not necessarily the key line of research. Indeed, as Anita Fábos reminds us, ‘the strong policy orientation of much of the work in the field’ and the security ‘concerns and discourses’ that are inherent to the migration debate have shaped academic and practitioner perspectives on refugee hosting in the Arab world (2015: 96).

Focusing predominantly on the Arab region as a geopolitical laboratory for understanding refuge as a consequence of conflict has arguably contributed to sidelining debates on the role of agency of the Arab states in the international refugee regime. It may also have deepened the disciplinary divide between migration and refugee studies in the Arab world, on the one hand, and streams of thought on the political agency of non-Western regions in international relations (IR) on the other hand. This is, however, changing. A rich universe of conceptual reflections and case studies seeks to de-exceptionalize the gaze towards the *refuge/migration state* in both the Arab world and the broader

MENA region (Jones 2017; Norman 2020; Mencütek 2019; Stel 2021; İşleyen 2023; Sadiq and Tsourapas 2021). Several works have dispelled the perception of an absent, anomalous or archaic MENA refugee governance regime, showing rather that Arab and, more broadly, MENA states share several characteristics in terms of governance practices and norms with the wider international system. Questioning ‘the implicit assumption that non-Western refugee cases are in some way or another abnormal’ (Mencütek 2019: 33), research has looked at how Arab and MENA polities interact with the broader context of refugee norms and practices from the 1951 Refugee Convention to temporary protection and responsibility-sharing or shirking. Additionally, various literature streams suggest focusing on entangled refugee orders rather than disconnections between the Global North and the Global South (Stel 2021; İşleyen 2023).

### **The Orientalist policy/legal imaginary**

Understanding how knowledge production may have contributed to the isolation of the Arab refugee state in wider debates on norm agency and how this is changing is fundamental. Equally important is accounting for the Orientalist imaginary that has shaped policy and legal perspectives on the MENA region. This imaginary has conventionally painted the Arab state as archaic or through a lens positing a binary between the medieval and the modern (Moussawi 2020; Makdisi 2008).

In predominant policy and news analyses, Arab states’ legal and asylum systems are understood in *counter position* to rather than in *juxtaposition* with the evolution of the modern refugee regime. With the codification of a rule-based international refugee regime, the assumption that regional asylum systems would *derive from* rather than *co-shape* this regime is often left unquestioned. Given that few Arab states have ratified the 1951 Geneva Convention, it is commonplace to argue that they have deviated far from global refugee law (Zaiotti 2006; Fargues 2013). Mainstream policy-oriented analyses look at standards of refuge in the region in accordance with Western parameters on integration, asylum and refugee treatment. This entrenches an Orientalist gaze which casts Arab states either as outsiders to the usual rule-based norms of the international refugee regime or spoilers in global refugee management.

However, what is yet to be fully accounted for is how states’ legal systems, policy legacies, repeated practices and discursive scripts may have co-constituted and interacted with authoritative norms and narratives in refugee policy. Indeed, an analysis of Arab states’ long-standing interactions with the international refugee

regime tells a different story. First, the Arab region's norms and legislation to deal with the mass influx of forced migrants did not start with the 1951 Convention or with the post-First World War Nansen era. Rather it had precursory roots in the nineteenth-century Ottoman efforts to codify and enact practices built upon Islamic traditions of hospitality to address the critical situations of millions of forced migrants who entered the empire between 1860 and 1920 (Chatty 2010, 2018). Yet, most prominent analyses that trace the origins and development of the contemporary refugee regime rarely account for these 'preternatural' temporalities.

Second, as various contributions in this volume show, Arab politics and societies have reshaped international norms of refugee hosting and burden-sharing, significantly impacting global refugee policy (Stevens, Janmyr, Cassarino, Arar and Tsourapas in this volume). This perspective resonates with a new body of scholarship that recasts the policy script of the so-called 'archaic' Arab state in the face of the 1951 Convention. Researchers focus instead on the state's agency role in negotiating with the UNHCR on the terms of accession to the 1951 Convention. They further unpack the diverse policy trajectories that have led Arab states either to express reservations, reject or adopt the 1951 Convention (Janmyr 2017; Stevens 2016; Fujibayashi 2022) and to contest cooperation with the European Union (EU) as a regional migration governor in the Mediterranean (Fakhoury 2022b). This perspective explicitly calls for abandoning the 'Orientalist gaze' that obscures engagement with the motives, historical trajectories and traditions as to why Arab states have not adhered to certain Western conventions.

In the following sections, we retrace histories and refugee trajectories in the Arab world before fleshing out the approach of this book and its structure.

### Retracing refugee histories and orders beyond an 'Orientalist fantasy'

The Arab region's asylum norms and legislation have historical roots dating back to Islamic notions of hospitality (Oesterle 2020), and more systematically, to the nineteenth-century Ottoman era. During this time, the Ottoman Empire grappled with mass influxes of millions of forced migrants. This immense displacement was the result of six wars fought between Imperialist Russia and the Ottoman Empire between the 1790s and 1890s as Russia sought to push its borders both westward and south. During these 100 years,

an excess of 4 million mainly Muslims and Jews were pushed out of Central Europe, the Trans Caucasus and the Balkans into Anatolia and the southern Arab provinces of the Ottoman Empire. Of all the imperial encounters of the time, the Ottoman Empire uniquely rose to the challenge and implemented systems of refuge, resettlement and reterritorialization to manage the mass influx of peoples from its frontier regions into the Balkans and its southern provinces.<sup>2</sup>

Notably, the Ottoman Empire's diverse and multi-ethnic nature allowed for the movement of various social groups across its extensive territories. It was the only state at the time which did not tie culture or ethnicity to specific territory (Argenti 2019), making it easier to move social groups around its extensive land mass (Kasaba 2009). Identity throughout the empire was based not on physical birthplace alone but included socio-religious communities or *millets* – Muslim, Christian and Jewish. The priority of social place was in the *millets* of the state, where the Muslim *millet* was made up of Arabs, Kurds, Albanians, Turks and Kosovars; the Christian *millets* of Arabs, Greeks, Armenians, Serbians and Bulgarians, and the Jewish *millet* of Arab (Mizrahi), Sephardic and Ashkenazi Jews. Thus, belonging within the empire was horizontally constructed among widely physically dispersed social groups enabling easy movement and internal migration. These social communities, with religious hierarchies, were dispersed throughout the empire (Loizos 1999: 237–63)

However, 'millet' systems of organization clashed with the emerging European concept of the nation-state, which sought to establish homogenous ethno-religious identities linked to specific territories. This European movement resulted in the eventual carving up of the Ottoman lands of the Balkans into the Kingdom of Greece (1829), Bulgaria (1878), Serbia (1878), Montenegro (1878), Crete (1908) and Macedonia (1913), resulting in massive dispossession of millions of Muslims to the rump Ottoman Balkans (Rumeli) and the southern Ottoman territories of Greater Syria (*Bilad al-Sham*).

Against this backdrop, the Ottoman government, also referred to as 'the Sublime Porte', often received political exiles and refugees from neighbouring lands and refused to return them to the authorities of their countries of origin. This can be seen as a preternatural performance of non-refoulement, which came to be codified with the 1951 Refugee Convention. Further, the Sublime Porte disseminated policy practices that were associated with open borders and sanctuary, based on pre-Islamic traditions of hospitality and on the moral ideal of *karam* (generosity). In later decades, the Sublime Porte extended these refugee-related practices to norms or ideas embedded in Muslim doctrines



of *hijra* (migration), *ijarah* (asylum), *amān* (safety), *malja* (refuge) and *jiwar* (protection) (Abou El-Wafa 2009).

Following the Crimean War of 1853–6 and the Congress of Paris Peace negotiations of 1856, which saw more than 2 million forcibly displaced individuals flee to the empire, the Ottoman Empire developed a set of policies and practical measures to integrate these new migrants/refugees as subjects (citizens) of the state and to rapidly disperse them from the emergency camps near Constantinople to agricultural lands and provincial towns. Those forced migrants, prepared to abide by the rules of the state, could settle within certain parameters anywhere where state land was available. Turning public lands into productive agricultural areas where taxation on farm produce could be reinvigorated was an important goal for the state. Ottoman policy also instrumentalized many of these new migrants as buffers between warring local communities.

In 1856, at the close of the Crimean War, the Sublime Porte adopted the Refugee or Immigrant Code which outlined policy provisions for land allocation, exemptions from military conscription and exemption from taxation while the new immigrants became settled.<sup>3</sup> Subsequent conflicts and wars led to additional waves of forced migrants and prompted the establishment of specialized administrative bodies and practices to manage refugee and immigrant affairs. By 1860, a Refugee and Immigrant Commission under the Ministry of Trade was formally organized to enact the requirements of the Refugee Code. In 1877, a second body, the Charity Commission, was established to assist Muslims, Christians and Jews entering the empire (Karpát 1972). The last war of the Ottoman-Russian Wars (1877–8) saw another mass influx of 2 million Circassians and Chechnyans forced to move a second time from the Balkans into Anatolia and *Bilad al-Sham*. In response, the Sublime Porte created the General Administration for Refugee/Immigrant Affairs which was entrusted with the welfare of refugees and immigrants from the moment they disembarked at ports or crossed into Ottoman territory until they were resettled. More significantly, it also managed relations with the growing number of foreign missionaries and other ‘humanitarian’ actors who were becoming increasingly concerned with the welfare of the empire’s Christians, mainly the Armenian and Assyrian Christians.

The Ottoman Empire’s approach to displacement evolved during these decades but remained liberal, generous and open, serving purposes beyond humanitarian concerns, such as repopulating agricultural areas and promoting self-sufficiency through taxation relief and exemption from military service

for up to twelve years for new arrivals. According to Karpas (1972), this was probably the first instance of rational state social planning to regulate refugee and immigration movements and devise a successful resettlement policy.

The legacy of these policies persisted through various eras. However, during the First World War the Ottoman state-sponsored genocide perpetrated against Armenians in Eastern Anatolia (especially between 1915 and 1917) marked a watershed in perceptions of its humanitarian and refugee integration efforts. The significant measures that the Sublime Porte had put into place for the successful integration of refugees were wilfully forgotten.

Nevertheless, the history of refugee governance through the Ottoman empire (especially during the reform period (Tanzimat) of the late Ottoman empire) has impacted the practices of open borders, temporary protection and sanctuary in what later came to be regarded as Greater Syria (*Bilad al-Sham*) or the Levant.

Following the end of the Second World War, and despite the codification of the modern refugee regime which formalized the distinction between forced migrants and economic migrants, Arab states did not necessarily adhere to the emerging Western asylum norms. Even if some states such as Lebanon did participate in the establishment of the international refugee law regime (Janmyr in this volume), it is important to understand the making of the 'Arab modern world' as a process *in its own right*. Ussama Makdisi (2008) calls for letting go of an 'Orientalist fantasy' which may condition researchers to adopt an analytical binary opposing the so-called 'medieval' with the so-called 'modern'.

With the consolidation of the international refugee regime after 1945, Arab states, each in their own way, have developed a hybrid refugee order. Conventions and protocols interlace with forms of hospitality, transborder kinship loyalties and blurred boundary-making between guests, foreigners, refugees and economic migrants (Chatty 2017a; Fakhoury 2019; Janmyr and Stevens 2021; Hitman 2019). Legally speaking, the reception and treatment of the displaced plays out as a multi-level field where instruments derived from international refugee law, international human rights law, regional refugee law and domestic law, as well as normative practices, intersect (Janmyr and Stevens 2021; Fakhoury 2021b).

In the face of major refugee-producing conflicts such as the Palestinian-Israeli conflict, the First and the Second Gulf Wars, Arab states adopted informal open-border practices, but they also developed important legal machinery such as the 1965 Casablanca Protocol set to deal with Palestinian displacement and the 1994 Arab Convention on Regulating the Status of Refugees in the Arab Countries. Most recently, the displacement of millions of people in the wake of the post-

2011 Arab revolts has revealed extremely diverse and rich notions of refuge and sanctuary among the displaced, the hosting communities and the states in the Arab region (Chatty 2017b). In Iraq, Egypt, Lebanon and Jordan (the key states that have hosted displaced Syrians), refugee treatment has been informed by an assemblage of norms and practices ranging from informal hospitality, local customs, national laws, international human rights law and UN-based refugee recognition criteria. States opened their borders to forcibly displaced individuals based on social norms and responsibilities identified as ‘brotherly’ duty, ‘*karam*’ (generosity) or ‘temporary guest hood’. At the same time, they have engaged in multi-level negotiations with a spectrum of actors to update Memorandums of Understanding with the UNHCR, facilitate access to the labour market and collaborate on financial responsibility-sharing. Amid shrinking plans of global resettlement, they have further developed an everyday politics of refugee and border governance – also in the face of neighbouring Europe’s efforts to keep potential asylum seekers out. The picture is, however, complex. Practices of hospitality overlap with border closures as well as regular and often ineffective crack-downs on refugee hosting. Degrees of hospitality or hostility towards the displaced fluctuate further within the same state and across localities and municipalities (Mourad 2019).

Far from ascribing judgemental value to such practices or actions, we ask: How do they shape the international refugee regime as a multi-centric order? To what extent do they give us an insight into ‘alternative orders’ and to what extent does their *separateness* from global refugee policy allow us to understand Arab states’ *relational* role?

### The approach of this book: Positioning the normative power of the Arab world

In this book, we conceptualize Arab states’ engagement with the international refugee regime as multi-centric, variegated and diverse, relying on a variety of top-down, side-by-side, network, bottom-up and everyday governance structures.<sup>4</sup> We seek to capture the intersecting as well as colliding ‘regimes’ that span the relations between and across Arab states, between Arab societies and the global stage of refugee governance and across networks of ordinary people, governments, international alliances and international organizations. We also account for how refugees in Arab states navigate such colliding top-down, side-by-side and push-pull dynamics.

It is worth noting that the Arab world reveals much diversity and variation in terms of asylum laws and historical legacies (Fakhoury 2019), and one single volume cannot do justice to the wealth of country cases and regional systems within the broader Arab Middle East. We decided, therefore, to privilege depth rather than breadth.<sup>5</sup>

To conceptualize the Arab world's *separateness* from as well as *relationality* with the international refugee regime, we build on a fourfold typology. This typology seeks to map the intersecting and paradoxical 'norm regimes' that shape Arab polities' engagement with the global refugee order(s). While norms are usually defined as regulative rules or standards, understandings as to whether norms emerge in the context of rationalist calculations, expectations of an explicit or implicit nature, or complex perceptions of identity differ from one school of thought to the other (Wunderlich 2013: 20–2). It is beyond the scope of this edited volume to conceptualize norm formation and dynamics, an endeavour that has inspired seminal work in international relations (Kratochwil 1989). We are rather interested in how norm regimes provide a conceptual lens to understand how actors construct their agency through intersections, entanglements, collisions and contestations. Here, we highlight four interdependent themes of inquiry that allow us to understand the Arab world's entanglements with but also *separateness* from the international refugee regime(s).

First, we explore how Arab states, *as norm creators and developers*, have contributed to the international refugee aid regime. States have adopted local and national social norms and practices which are not necessarily aligned with international refugee law, but which have contributed to shaping histories of refugee humanitarianism, codes of hospitality and forms of responsibility-sharing (Dallal, Janmyr and Cassarino in this volume). In this view, international refugee law has not been the only way to address refugee hosting in the Arab East nor has it been 'sacrosanct' in shaping the journeys of refugees. As we have underscored, seminal work has already dispelled the idea of an absent refugee regime in many of the Arab states. Scholars have looked at 'endogenous' regional law instruments that have originated from the specific histories of the Arab region such as the Casablanca Protocol of 1965 which offers temporary protection to Palestinians, and the 1994 Convention, which remained unratified, but which set out to adopt a broader refugee definition than the 1951 Convention, including mention of natural disasters (Janmyr and Stevens 2021). A bottom-up view at refugee law in the Arab world helps us to understand how civil society and local judges have inspired innovative interpretations of asylum and access to justice.<sup>6</sup>

Secondly, we look at how Arab states, *as norm cooperators*, have crafted synergies with various regional and global actors, shaping ideas, discursive practices and instruments at the heart of refugee governance and responsibility-sharing. Research has already considered how Arab states have actively participated in drafting key refugee instruments such as the 1966 Bangkok Principles on the Status and Treatment of Refugees (Janmyr and Stevens 2021) and shaping more recently negotiation processes at the heart of the Global Compact on Refugees and the Global Refugee Forum.<sup>7</sup> In the context of mass displacement from Syria, states such as Lebanon, Iraq and Jordan have developed annual response and resilience plans in coordination with a myriad of regional and supranational organizations and donor states.

Collaborative governance, however, entails many 'shades of grey'. Cooperation may fall short of creating virtuous synergies as states may half-heartedly follow up on Cooperation Agreements or may simply fail to turn policy rhetoric into action. It is also important to consider the darker side of cooperation, whereby Arab states have evolved into partners in 'cooperative deterrence' (Gammeltoft-Hansen and Tan 2021) with Western states in securitizing refuge. In exchange for security and border management, capacity-building and equipment aid, many states, such as Lebanon, Tunisia and Libya, have engaged with the EU in monitoring borders, returning migrants and refugees, extending, digitalizing and codifying the European Union's management regime beyond EU soil (Natter and Müller-Funk and Tsourapas in this volume). In yet another perspective, cooperation creates 'reverse conditionalities' whereby MENA states localize, reinterpret and reappropriate norms (Cassarino in this volume).

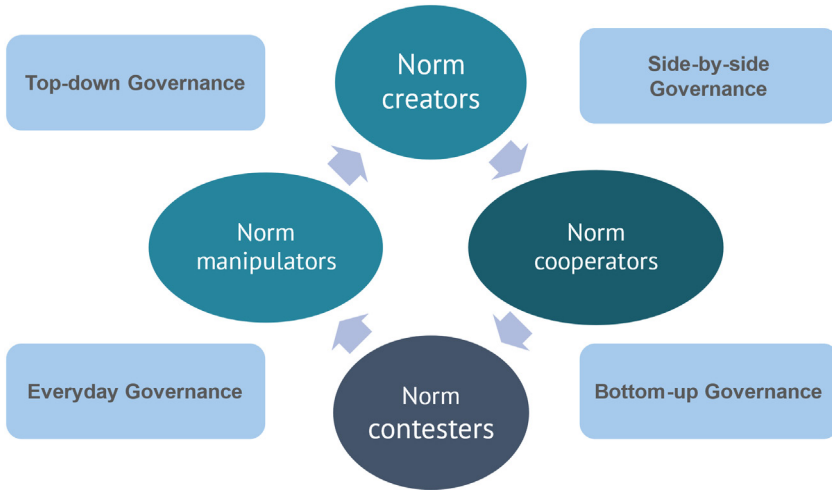
Thirdly, we explore how and why Arab states, *as norm challengers*, have contested and reframed international and transregional practices on refugee governance. Countries such as Morocco, Algeria and Lebanon have opposed/recast the European Union's externalization strategies, readmission agreements, return migration schemes or fiscal burden sharing dispensed by affluent states located in the so-called Global North (Arar 2017; El Qadim 2018; Fakhoury 2022b; Cassarino and Del Sarto 2018). Contestation has taken various forms: discursive confrontation, overt dismissal of or renegeing on refugee Cooperation Agreements with donor states, or criticism of the Western world's insufficient efforts at burden sharing. Take for instance Tunisia's refusal to set up refugee facilities in exchange for German funding in 2017 (Espace Manager 2017) or Lebanon's backtracking on the implementation of the 2016 Refugee Compact

signed with the EU (Fakhoury 2022b). Understanding dynamics of contestation requires here an inquiry into how local policy legacies clash with external scripts of refugee governance.<sup>8</sup>

Fourth, to add another layer of complexity to the debate, we explore how states, *as norm manipulators*, have sought to ‘play the system’, leverage their hospitality and construct a strategic role as *buffer states* with a view to extracting resources and scoring geopolitical gains. Manipulation takes on several forms. States draw on refugee diplomacy platforms and tools to leverage their role from auxiliary to leading ‘gatekeepers’ in the Mediterranean system of refugee management (Natter and Müller-Funk, Tsourapas and Cassarino in this volume). Manipulation can also be as blatant as withholding commitments or relinquishing responsibility in refugee protection. Examples vary from Jordan leveraging its sovereignty and the politics of refugee numbers to extract more international aid to Lebanon threatening to return 15,000 Syrian refugees every month and to cut electricity in Syrian and Palestinian refugee camps if the UN does not pay its owed electricity fees in the camps. Manipulation can also be as crude as officials shifting the responsibility of mass displacement in Syria to ‘external interference’ (IOM 2019: 111) or the Syrian cabinet setting up a refugee return committee as early as 2018 in the context of large-scale violence (IOM 2019: 88). Chapters seek in turn to contextualize the motives, interests and needs, prompting actors to ‘manipulate’ and ‘steer’ norms. International systemic inequalities, the political economy of displacement and policy legacies arise as key variables (Arar, Cassarino, Tsourapas, Zuntz et al. in this volume).

Creating, contesting and cooperating over norms are part of a multilayered field of power that grassroots actors constantly challenge (De Genova 2017; Fawaz 2017; Fiddian-Qasmiyeh 2020). Indeed, understanding norm dynamics entail that we turn to what is commonly framed as *the view from below* or to how refugees as actors make sense of such entanglements (Zuntz et al.; Moawad in this volume).

Rather than casting the Arab region as a distinct site of inquiry for norm dynamics, this framework invites scholars to explore whether and if so how, such levels of analysis speak to relational geographies (Hart 2006). Indeed, through this interactive framework, as Figure 0.1 shows, we aim to look at refugee norms and practices within Arab states and between Arab states and the international refugee regime(s) (i) as cascading, intersubjective and interrelational and (ii) as part and parcel of broader and varying forms of networks and governance. Creation, cooperation, contestation and manipulation of norms and practices



**Figure 0.1** Norm regimes and networks of governance.

are part of a mutually constitutive process whereby states' norms and practices feed on each other and are shaped in relation to multiple actors. They are also part of a broader push and pull dynamic. For instance, to understand why Morocco developed a law on political asylum only in 2019 after deferring it for several years, scholars account for Morocco's complex policy agency in the Mediterranean, a region that the EU has heavily sought to shape and (re)border (Khallaf et al. 2021; Cassarino and Del Sarto 2018). Additionally, to understand why Libya abstained from voting on the Global Compact on Refugees, it is crucial to factor in how Libya perceives itself as trapped between 'negative international cooperation and its own problems' (Khallaf et al. 2021).

Commenting on Egypt's policy towards Syrian refugees back in 2021, legal scholar Parastou Hassouri describes it as an entangled web of discursive practices that necessitates an understanding of how both the government and international actors construct their policy *intersubjectively*:

There has long been discussion of Egypt adopting a national asylum law transferring UNHCR responsibilities to local authorities. This has not happened yet. UNHCR conducts RSD in Egypt through individualized interviews, (though there is also *prima facie* refugee status granted at times). Refugees in Egypt (not only Syrians) must update their residency permits in Egypt – with the anticipation that they could be resettled after that. This was based on an original MOU signed between Egypt and the UNHCR, because Egypt did not want to become the permanent place of settlement for refugees. Yet resettlement remains

a far-fetched goal, and only a minority of refugees go to the Global North. In this ambiguous decision-making zone where both Egypt and the UNHCR draw on each other to promise solutions, refugees navigate temporality.<sup>9</sup>

## The structure of the book

The book is divided into three parts. The first part provides a critical historical engagement with the creation of the international refugee regime and the reproduction as well as the re-ordering of the Arab region as an orientalised imaginary. We depart from a key premise. To understand how the agency of Arab states has been silenced in the international debate, it is important to retrace how Western legal and normative imaginaries have reproduced the Arab region as both a 'refugee warehouse' and 'a regional system' dependent on external migration management. It is also important to understand how the Arab refuge state strikes back, repositioning itself vis-à-vis this imaginary.

Matthieu Rey, in his chapter, historicizes our understanding of the terms 'refugee' and 'migrant' as reflected in a long-term process of Europeanization of international attitudes towards population movements. The term 'refugee' is increasingly used to describe the individual forced to leave one's country due to external circumstances while the term 'migrant' is used to evoke associations of job-hunting for better living conditions or the anonymous traveller seeking to enter Europe. Tracing the origin of the term 'refugee' to mostly the context of nineteenth-century European revolutionary upheavals, Rey argues that the term 'refugee' was a politically defined category that ascribed specific positions to such people within a broader context of political state tensions and crises. Hence, he regards the category of refugees as foremost a European creation introduced into the international humanitarian system in the post-war era but engendered with other meanings connected to the European order. In this way, the term 'refugee' directly echoed the extension of European power over the world, creating refugee-hosting peripheries.

In his chapter, Are Knudsen traces how the rebordering of Europe has reified Arab refugee-hosting states as warehouses that are expected to host refugees indefinitely, reflecting Orientalism's imaginative geography of the Middle East. Arguing contra the Betts and Collier argument that refugees be liberated from camps and instead be confined to neighbouring 'host countries' where they can become economic migrants, Knudsen articulates that these states should not function as long-term storage centres for 'European neighbourhoods'; that



European states' help to keep refugees in host countries is not an equitable burden-sharing mechanism between 'host' countries of the Middle East and the 'donor' countries of Europe. The forced migration numbers proposed to remain in 'storage' scream at the injustice, and moral corruption in expecting the neighbouring countries of the Middle East to carry the burden of providing sanctuary. All the while Europe 'free rides' via financial incentives and bilateral agreements which shift the sharing of responsibility for refugees almost entirely to designated 'host' countries. Knudsen asks us to consider what is the reason that the Middle East has become a designated storage place for refugees and migrants destined for Europe. Proximity, he argues, has developed into a new hosting paradigm that reinforces the existing aid architecture that cements refugee protection as a national and regional problem and not an international one.

Against this backdrop, the second section shifts the gaze to the role of agency of Arab states in developing, cooperating, contesting and leveraging refugee norms. It provides a variety of legal and empirical examples as to how the region has interacted with the world refugee order(s). Debunking the myth of an absent asylum system, these contributions look at variation and diversity across states' responses to displacement as well as their role in the gestation of the international refugee regime.

Dallal Stevens focuses on the alternative models or understandings of refugee protection that have emerged from the Arab world. After providing a brief introduction to refugee law in the Arab world and the role – or otherwise – that Arab countries have played in international refugee law development, Stevens tests what role that Arab countries might have played in norm development. Here she turns her gaze to the fundamental norm of refugee protection and explores the 'shifts in responsibility' between the UN Agency for Refugees, UNHCR and the Arab Memorandums of Understanding (MOUs), protection and Palestinians, and the effects of the Iraqi and Syrian displacement on protection in practice and policy. She concludes with what she refers to as the new norm-al, that is a greater understanding and appreciation of the impact Arab states have played, and continue to play, in norm development in relation to refugees.

Maja Janmyr looks specifically at Lebanon in her chapter and asks what role Lebanon played in the establishment of the international refugee law regime. The chapter focuses on Lebanon's involvement in creating the international legal norms and supporting institutions focused on the protection of refugees. She argues that Lebanon has been involved in the international refugee law project from the very beginning and in fact advocated for remarkably progressive understandings of these norms. However, Lebanon was both an outsider and insider in this refugee law regime. Although Lebanon remains a non-signatory of

the 1951 Refugee Convention and its 1967 Protocol, it remains heavily involved in and engaged with the question of asylum as well as refugee status and the institutions of protection. Janmyr argues that it is noteworthy that Lebanon has a progressive stance when it comes to the individual's right to asylum.

Katharina Natter and Lea Müller-Funk turn their gaze to the Maghreb states (Morocco, Algeria, Tunisia and Libya), all of which have enacted the international refugee regime since their independence in the 1950s and 1960s. Each of these states has developed national policies and practices to deal with people fleeing conflict, war and persecution with an eye to advancing their domestic and geopolitical priorities at the intersection of Europe and Africa. As a result, they have oscillated between three approaches: aligning with European trends of securitization; developing alternative regional norms through mobility agreements and practices; and confronting external demands on asylum policy and refugee reception. Examining these three approaches, the chapter reveals that strategic alignment and cooperation with international actors is not rights-enhancing per se; it can also lead to rights-denying policy. Overall, the chapter showcases that the Maghreb states are not only passive receivers of external demands from Europe but also proactive agents in this transnational policy field of migration management.

Gerasimos Tsourapas furthers Natter and Müller-Funk's argument by examining in his chapter the extent to which Arab states are engaged in the production of global norms regarding forced migration management. He argues that in the aftermath of the Arab Spring there were multiple attempts at using refugees as an instrument of inter-state bargaining in the Middle East. He challenges the perception of the Arab world as passive actors in the management of forced migration and instead, drawing on the concept of the 'rentier state', argues that we are witnessing an increasing commodification of forced migration across the region as states engage in issue-linked strategies of *quid pro quos*. He argues that Arab states are versatile actors in the international system constructing roles for themselves as refugee host states while also securing external economic aid. Hence refugee rentierism has diffused globally and features increasingly in how states (re)negotiate the international refugee regime beyond the West.

Jean-Pierre Cassarino examines the irreducibility of refugee governance in the Middle East and North Africa (MENA), by examining the regional consultative processes that have contributed to the so-called joint management of international migration within and across the Mediterranean. What he lays out are the two interrelated consequences of these consultative processes: the sense

of empowerment among the MENA countries in the fight against ‘irregular’ migration and the MENA countries’ recognition of their strategic positions in defending their own interpretation of what cooperation on migration governance entails. Thus, over the past twenty years, some MENA countries have been able to buttress their own credentials and set what Cassarino labels as reverse conditionalities. Hence empowerment, altered patterns of interdependence, accommodation and reverse conditionalities all intersect to delimit a complex international system.

Finally, juxtaposing policy and practice, Rawan Arar explores how MENA refugee-hosting countries negotiate and design norms and practices of refugee integration and protection with international actors. She turns her attention to the durable solutions of refugee displacement as promulgated by the UN Agency for Refugees, UNHCR. These are third country resettlement, return or local integration in host countries. Of the more than 27 million refugees currently registered with UNHCR, only 2 per cent are either repatriated to their home country (429,300) or are resettled to a third country (57,500). This leaves 98 per cent of refugees registered with the agency to be assisted in local settings. How that is measured and to whom that applies is the larger issue that Arar tackles. Local integration, as she rightly states, is a process and not a movement as the other two durable solutions are. Return or forward movement can be identified easily and empirically documented. But integration is an elusive concept and process that is hard to identify empirically. In her chapter Arar asks, who is integrating? And into what receiving contexts in the MENA region? Can integration be measured by rates of naturalization as it tends to be in the Global North? Is that even possible in these host states – non-signatories of the 1951 Convention – which reject the durable solution of integration as not durable. Local accommodation, co-ethnic affinity and shared histories often create forms of temporary protection. There exists a significant contraction between local integration as policy of the UN aid architecture and the processes by which refugees and their host states negotiate residence and a set of rights. Arar argues that juxtaposing local integration as policy with the process of integration in the Middle East helps to decentre the humanitarian aid system and identify contradictions in humanitarian knowledge production. This approach provides insights into how Arab and Middle Eastern state actors negotiate and coordinate with international humanitarian organizations and how state priorities shape the experience of refugees on their territory. It also foregrounds systemic inequalities as an important variable sustaining difference in ‘refugee reception’ in the Global North and ‘hosting’ in the Global South.

In Part III, chapters examine how refugees *have* made sense of intersecting norm regimes, and of political economies generated by dense interactions between hosting states and the world refugee order. Ann-Christin Zuntz et al. and Paul Moawad focus on the emergence of ‘middlemen’ liaison persons between refugees and the UN agencies and other international players in humanitarianism in Lebanon. In doing so, they depict how the international refugee regime – as an assemblage of messy normative practices – refracts on refugees’ everyday realities.

Ann-Christin Zuntz and her team of research associates specifically focus on how former agricultural ‘gangmasters’ were able to repackage themselves to become the intermediaries, called *shaweesh*, between displaced Syrian agricultural workers, refugees and the humanitarian system in Lebanon. Economic transactions, kinship and hospitality have long shaped the relationship between the *shaweesh* and the seasonal Syrian agricultural workers in Lebanon. However, with the arrival of international actors, and the lack of a coordinated response, power dynamics in agricultural communities have been reshaped. And the *shaweesh* have emerged as powerful interlocutors for aid providers. By turning their attention to the intimate social relationships at the heart of the Syrian refugee communities, Zuntz et al. reveal the precarious connection between Syrian refugee workers and intermediaries. This study suggests the importance of understanding how securitizing migration and incorporating refugee labour into global capitalism go hand in hand and how these complementary processes are mediated by trusted actors amid refugee communities.

Paul Moawad gives us a darker vision of the precarious and ambivalent conditions in which Syrian refugees live in the peri-urban areas of Lebanon’s Beqaa region. He focuses on the role of the *shaweesh*, which Zuntz et al. describe in their chapter, to deconstruct the shared power-nexus with landlords and to examine their newly expanded roles beyond the traditional management and supervision of agricultural lands. He zones in on the *shaweesh*-refugee relationships and unveils the control measures that the *shaweesh* deploy. He further unwraps the landlord-refugee relationship, which is generally an illegal, detention-like relationship based on precarious and racketeering forms of labour.

The chapter contributes to the largely unexplored or underexplored themes in refugee governance, namely the conflicting roles of the *shaweesh* and the landlords. This *shaweesh*-landlord nexus emerges as a powerful internal force imposing hegemonic control over Syrian refugee livelihoods. It further magnifies the daily sense of precarity in everyday lives of Syrian refugees.

## Final thoughts: De-exceptionalizing the gaze

This anthology is an invitation to look beyond the international refugee regime as a monolithic order and instead to probe into the multi-centric norm regimes that various political geographies have developed. Moving our focus from Western geographies and in some ways also de-colonizing the prevalent discourses around refugee, asylum and humanitarian protection, the chapters in this volume focus on the Arab world as one step in decentring the humanitarian aid architecture built around the 1951 Refugee Convention agreed by the member states of the United Nations and its 1967 protocol removing its original territorial and temporal limitations. Many member states of the United Nations have not signed the 1951 Convention; it is not only the majority of the Arab states that have demurred. However, these states have generally established alternate means to provide asylum and sanctuary, sometimes using other international treaties of human rights or regional agreements such as the Casablanca Protocol. Other countries have created their own domestic asylum laws. In shifting our focus from Europe and the West in general, we are able to not only decentre the discussion on sanctuary and the provision of asylum to those in need, but also to document the existence of a large body of norms, practices and legislation in the Arab region that can help to broaden the legal accountability framework upon which international refugee law operates.

By employing an interdisciplinary approach combining historical, legal, political science and anthropological viewpoints, we have sought also to answer a broader question: How do Arab societies and polities regard and position themselves vis-à-vis the creation of global norm regimes? The politics of refugee governance offers an insightful terrain to study the political agency of non-Western actors and how they co-create political norms on an everyday basis. It is our hope that with this volume, we will see a greater interest among scholars to further decentre what has largely been a Western and European enterprise.

## Notes

- 1 UNHCR, 2018. Global Compact on Refugees. <https://www.unhcr.org/media/global-compact-refugees-booklet>
- 2 For further reading, see Chatty (2017b).
- 3 The Ottoman term '*muhacir*' is imprecise in meaning and has been variously translated as refugee or migrant.

- 4 We borrow from Rosenau's typologies of governance (2004: 42).
- 5 Different contributions focus on single and comparative case studies from the *Mashrek* (the Levant) and from *the Maghreb* (North Africa). The introduction and various contributions that set the broader stage for understanding refugee governance (see Stevens, Knudsen, Arar) account for the multi-scalar complexity of 'the Arab world' and its interactions with the international refugee regime(s).
- 6 Roundtables and consultative processes with civil society in Lebanon in the framework of the project Syrian Refugee Access to Justice in Lebanon, Lebanese American University, December 2015 and March 2016.
- 7 One of the authors' interviews with UNHCR officials, July 2022.
- 8 Interview with Jean Pierre Cassarino, April 2021.
- 9 Parastou Hassouri, Egypt's refugee response to Syrian displacement, online seminar, Copenhagen, March 2021.

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Part I

# Refugee hosting imaginaries and their reproduction



# The genealogy of a political concept

## 'Refugee' or the Europeanization of the world system

Matthieu Rey

Summer 2015: a massive flow of people mostly from Syria and Iraq reached the European borders of Greece, Hungary and Italy. This displacement had been triggered by the Syrian war and the evolution of European migration policies. The refugee displacement wave seemed to come as a surprise to most observers. Journalists were faced with the dilemma of how to qualify the phenomenon. Were these people migrants or refugees? The two terms, often used imprecisely in newspapers and mainstream media, carry different connotations. 'Refugee' describes the unfortunate individual forced to take the hard road by 'external' circumstances. From the hegemonic perspective of humanitarians that dominated relations between the West and the rest of the world, such unhappy circumstances might be seen to justify the movement – even if these people reached Europe. On the other hand, the term 'migrant' evokes a variety of associations, from a person looking for job and better living conditions to the anonymous traveller who decides to enter Europe. The motivations associated with migration were harshly criticized in European public opinion. This chapter will trace the historical emergence of the 'refugee' to understand how the term has acquired positive connotations, in contrast to 'migrant'. This categorization reflected a long-term process of Europeanization of international attitudes towards population movements.

In 1951, the United Nations adopted a universal definition of 'refugee' in the United Nations Convention relating to the status of refugees. For the first time, an international institution clarified who could qualify for refugee status. This concluded several decades during which authorities had to contend with sudden and massive movements of certain groups from their homelands towards neighbouring countries. Scholars have rightly considered that the First World



War and the consequences it had in terms of population movements caused the authorities considerable concern. In the aftermath of the war, a dual process affected the category of 'refugee'. First, humanitarian activities expanded in an attempt to resolve various crises such as famine and homelessness. Second, acknowledging that the failure of dialogue between the Great Nations had triggered the catastrophe of 1914, a new platform for debate was created. The new League of Nations was designed to pacify the international order; one of its duties echoed the recent expansion of humanitarian activities.

Previous research has highlighted the importance of the Nansen passport: the first international document that allowed stateless people to travel (Piana 2013). This first step paved the way for the 1951 refugee status (Hathaway 1984). However, while suggesting that forced migrations were nothing new in 1919, previous research did not explain how a particular word – refugee – came to encapsulate new meanings through the institutionalization of a status. Other scholars have focused on the emergence of a certain type of refugee, mostly in the context of nineteenth-century European revolutionary upheaval (Polasky 2023). Both academic trends highlighted the particularities of the 'refugee': this was a politically defined category that ascribed these people a specific position within a broader context of tensions and crisis.

This chapter extends this argument by showing how the category of 'refugee' was first and foremost a European creation, and how its introduction into the world system in the post-war era engendered other meanings connected with the European order. In this way, the term 'refugee' was part of the adoption of sectarian criteria that permitted the Great Powers to define various populations as a 'people' – in other words, as a potential sovereign entity unified by a particular identity. The evolution of the meaning directly echoed the extension of European power over the world, and its particular expression as the 'Eastern question' in the Mediterranean context. At the same time, in the colonial forms of subjection, authorities started to refine their categories. This process led them to classify human groups. From this perspective, the expansion of British power over Southern Africa helps illuminate a worldwide dynamic.

This process needs further attention as it has framed the capacities of current states to cope with Western order and to build an original response. The Europeanization of the categories largely explained how the Middle East became a 'warehouse' of refugees. This region in relation with the European colonial expansion also played a central role in determining which authorities qualified human groups as refugees, and which groups were denied from this notion. From this perspective, this chapter does not explore the motilities in themselves,

the mechanisms of movement, but rather how relations between internal and external stages in Europe underpinned the emergence of two broad kinds of mobile people – the migrant and the refugee. This dialogue reflected how in framing of the word ‘refugee’ were echoes of a certain political philosophy which defined the space of the opportunities for the actors and the political entities outside Europe. In this matter, discussing the unconsciousness of the refugee brings to light what the notion carries and how the ‘others’, mostly the Arab states and actors in civil society today, developed an agency with regard to what the notion offers. Local actors have since captured what opportunities these definitions of the refugee offered in their bargaining with international agencies and foreign partners. In order to understand how and why the concept of ‘refugee’ became prevalent as a political tool in the late twentieth century, this chapter explores the archaeology of the word and its meaning.

The chapter will build upon three main sets of work. First, it follows the new approach towards migrations provided by Robert Zetter (Zetter 2007). From this perspective, similar reasons trigger economic and forced migrations, blurring the two categories beyond their formal jurisdictional understanding. Migration studies insist on the performativity of the norm. Second, the chapter engages with Mahmoud Mamdani, showing how the European engagement with African populations was underpinned by two main categories: race and tribe (the latter used as a designation only for Black populations) (Mamdani 2015). Finally, this chapter builds upon the work of Henry Laurens, who has explored the key moment of the Grecian crisis in the 1820s during which the Eastern question emerged (Laurens 2017). This dynamic entangled the West into local conflicts of the Ottoman lands. It also affected the representation of who deserved the right to be a people. This scholarship helps refine the concept of the refugee. This chapter is built on extensive analysis of different kinds of documents in which the word ‘refugee’ appears, an exploration that reveals different temporalities.

## The European creation of the ‘refugee’

Migrations and forced displacements constitute historical phenomena that go back to the very first human societies. It was not until the modern era and the emergence of the state as a sovereign territorial authority over large populaces, however, that specific categories were defined for these groups. The connection between state-building and ‘refugee’ was made explicit when the word was first integrated into English and French documents. By charting the mention of

'refugees' in such texts, it is possible to draw up a chronology of the term from the moment of its inception to the beginning of the twentieth century:

Figure 1.1 allows us to identify three main periods. From the late seventeenth century to the beginning of the nineteenth century, the term was only to be found in a few texts. The usage of the term then increased significantly in the 1830s and the 1850s. On the eve of the twentieth century, the term had become common in many documents, reflecting various circumstances. The outline of this chronology and considerations of the broader historical context underline the connection between the use of the term 'refugee' and the evolution of state policies towards foreigners.

Both French and English dictionaries indicate a shift in the meaning of 'refugee' at the end of the seventeenth century. Until then, 'refuge' had meant shelter, while 'refugee' was only really used in a zoological context.<sup>2</sup> As of the 1690s, all mention of 'refugees' referred to the same group: the French Protestants deported from France after the revocation of the Edict of Nantes. Louis XIV decided to suppress all rights and protections afforded to Protestants in France that had been granted at the end of the War of Religions in 1589. The king's decision sought to homogenize the population by forging a single sectarian bond. However, in the context of late seventeenth-century Europe, it created a breach in the new order. After 1648, the Treaty of Westphalia paved the way for establishing peace after a long period of religious struggles. It declared *cuius regio, eius religio*: common sectarian bonds should unify the king and his subjects to build a sovereign territory or a political entity. At the same time, a new term entered the dictionary: sectarianism (Breuilly 2011). This concept specified that social groups should be defined predominantly by their confessional or religious identity, irrespective of other characteristics. In this sense, the Peace of Westphalia sectarianized the European order by equating sectarian bonds and



**Figure 1.1** Occurrence of 'refugee' or 'réfugié' in digitalized texts from 1800 to 1920.<sup>1</sup>

national identity. Louis XIV's decision contributed to this process by eliminating those who refused to be Catholic. This decision was a milestone in building the French monarchy following two key principles: the king represented and acted for the state and the nation unified under his tutelage echoed the state. Building a monarchical and Catholic kingdom created a de facto excluded group, the Protestant.

Yet on the international stage, deportations and forced exiles made it necessary to find a name for these groups who were neither French subjects nor integrated into another state. At the same time, the French process of homogenization did not differ from other European experiments. Within the Christian populations, those who did not belong to the king's faith had to move. This process led to two different outcomes. As observed by Zolberg, refugees were those of the refuge, that is, a sub-Christian group recognized by others; while at the same time European authorities denied the Jews, the same category (Zolberg, Suhrke and Aguayo 1989: 7–8). This twin process – sectarianization of the European order and the emergence of a legitimated migrant group – went hand in hand. Thus, whenever these people settled elsewhere, they were described as refugees. From Cape Town to the Thirteen Colonies, writers referred to 'refugees' or 'French Protestant refugees'.

This single meaning was challenged at the very end of the eighteenth century. Thomas Jefferson and other American authors used 'refugees' to describe groups in favour of Great Britain. On the eve of the American Revolution, divisions between refugees and autochthonous people were rife throughout the population living in the colony. This distinction was politically motivated by the fight between the colonies and the state. Those who refused to adopt the new principle and become part of 'we, the people' were designated as refugees. This precise moment revealed the progressive entanglement of the several meanings attributed to 'refugees'. In the words of Jefferson and his compatriots, refugees were either a political group (partisans of the British king) or a 'national' entity (the British living in the new United States). This slight difference underscores the slow evolution of the meaning of nations, citizens and their counterparts, the refugees. As the new republic established a common white male citizenship, the authorities regarded anyone living within its territory that refused the new order as a foreigner and representative of the old colonial power. This change was part of the Europeanization of the world. In dialogue with European authorities – the British and their Canadian colonial counterpart – the white Christian politicians of the recently born United States designated a group as a nation within their state – the British who refused the new order. Westernization and Europeanization

were entangled in this dynamic. This process moreover underpinned a conceptual shift: from a sectarian definition, it became associated with political and ethnical origins. A 'nation' in exile might pretend to be refugees.

The concept of 'refugees' during the Age of Enlightenment remained deeply attached to the traditional understanding of 'nation' as a group of people unified either by a location (a city), by sectarian bonds or by profession. Individuals designated as refugees were not viewed positively or negatively but were rather excluded from the general body politic. At the same time, the notion was used very cautiously compared to the extent of population movements, which multiplied in different areas during the second half of the seventeenth century. Soldiers, priests, merchants and, to some degree, peasants started to migrate across different continents (Osterhammel 2015). But most written documents spoke of travellers, settlers or adventurers, rather than migrants or refugees. A new era began in 1815.

## European order and the balance of Great Powers

On the eve of the nineteenth century, several changes affected the status of the 'subject' as an inhabitant of a state. The French Revolution and the Napoleonic Wars profoundly altered considerations of the 'people' as a cultural and political unit, the link between subjects and authorities, and finally population movements. Previous understandings of what it meant to be a 'nation' vanished and the term began to refer to a political community unified by cultural bonds. This implied that 'foreigners' and 'subjects' were two different groups: 'foreigners' had the right to live outside their own country if they were in possession of a passport. Finally in 1815, the Great European powers tried to settle peace in Europe during the Congress of Vienna. Without entering into a detailed explanation of the discussions, the negotiators reached three major conclusions: (1) stability in Europe meant the preservation of the established states and their rulers; (2) if future continental conflict was to be avoided there had to be a 'concert of nations', through international conferences between the representatives of the Great Powers; (3) slavery would be declared illegal, a resolution which constituted the first 'universal' European decision. The combination of these three determinations not only initiated a new relationship between Europe and the world in the age of European colonization but also created new perspectives on European stages. In parallel, the start of the Industrial Revolution provoked a massive influx of rural inhabitants to

European cities along with population movements across the newly established borders. These political, economic and cultural dynamics reached a climax in the late 1820s, further complicating the question of how to distinguish a refugee from a migrant.

The question was debated in two different arenas: within each country and at the European level. Naturally these two theatres of political discourse were linked. For example, the 'refugee' question arose in France due to the events in Poland. However, the discourse differed from what people thought. Successive French legislation tracks the changes that occurred between 1830 and 1850.<sup>3</sup> Three evolutions provided the background to these laws. First, the authorities who rose to power after the glorious revolution of 27–9 July 1830 tried to encapsulate the spirit of the French Revolution by instituting a liberal monarchic order. Eighteen years later, a new revolution challenged the political order. Most discussions revolved around political representation, the rights of citizens and the structure of power. In parallel, European insurgencies, predominantly in Russian, German, Ottoman and Austrian lands, echoed the French demand for the establishment of political order based on the 'people'; the deposed leaders appealed to international solidarity and sought shelter. Finally, these two decades saw people flocking to the new industrial centres as the old labour market crumbled. Together these dynamics fuelled heightened tensions that were reflected in the legislation.

From 1830 to 1850, the volume of decrees, laws and administrative orders amounted to several hundred pages. A few examples broadly illustrate how debates concerning the 'refugee' question framed the content of the law:

I will simplify as much as possible the writing of the account. (. . .) The account will present: 1. the numeric situation, by nation and by class of refugee, the degree of help to be given according to the new quota. The result will be shown in a column entitled 'population per nation'.

This instruction sent by the Comte d'Argout to the provincial *préfets* (state representatives) exemplified the first method of recognizing refugees. Some foreigners found shelter in France and were offered help and support. The circulars mostly gave details of the procedures for counting and calculating the necessary resources, which explains the second circular:

Foreigners arrive at the border every day claiming they have been forced to leave their country in order to avoid political persecution, and demanding subsidies as soon as they touch French soil. The ease with which such individuals gain admission to our territory, whose legitimacy is guaranteed solely by their word,

constitutes a severe abuse which in the interests of public security and those of genuine refugees, needs to be put to an end.

I therefore recommend, Sir, that henceforth you take special care to ensure entry into your department is forbidden to any traveller not in possession of a legal passport, or unable to justify in a satisfactory manner the impossibility of obtaining one from the authorities of his country.

The question of population movements led to interactions between the internal and external stages. While authorities had to recognize refugees – as a consequence of the 1820–30 turmoil – they attempted to place strict limits on the extent of their obligations. Controlling migration and defining the status of refugees became closely linked. The understanding of what it meant to be a ‘refugee’ remained closely related to the concept of ‘nation’ as a legitimate national group. Carlists from Spain, Polish insurgents and others received subsidies and papers allowing them to stay in France. At the same time, travellers were suspected of wandering into the country, creating trouble and disturbing the public order. A refugee, then, was a member of a ‘people’ who was no longer able to live in their country. A shift took place that placed increased emphasis on national identity, as defined by those in power, over sectarian bonds.

Like most of the Great Powers, from the 1830s onwards the post-Vienna order posed difficulties for France. On the one hand, the European peace depended on agreement between the powers, thereby curbing any desire the different populations might have had of contesting those powers. When Polish officers rebelled against the Russian authorities, they upheld the constitutional goals of French political groups in their fight to establish their sovereign nation. While France welcomed these Polish dissidents, according them the status of refugees, the authorities could not be seen to support the insurrection. The reasons behind the recognition of their status related to broader discussions and dynamics revolving around exactly who should be recognized as a ‘people’.

Changes in the Mediterranean underscored the gradual emergence of identifiable ‘peoples’. Two different cases occurred simultaneously. First, in July 1830, French troops invaded Algiers and occupied the coast; France then started to colonize the country. The task of defining the status of local inhabitants sparked debates in French institutions. For some, adopting the ‘American solution’ – extermination – seemed the best way to avoid future trouble. Others argued that local inhabitants should become subjects but not citizens. They would be treated as minors. All these debates presumed that colonization (the transfer of sovereignty) of Muslim populations was legitimate, as no ‘people’ were living in

the country – that is, inhabitants who might claim political rights. A few months earlier, thanks to the concert of nations, France, Great Britain and Russia had forced the Ottoman Empire to recognize Greek independence under the London Protocol – the second pertinent case for the present discussion. In real terms, the European powers recognized a sectarian group (Orthodox) living in a particular geographic region (the Peloponnese) as a people who consequently had the right to be independent and sovereign. The main status criteria to emerge from the Greek War of Independence were sectarian belonging and racial origin: white Christians could constitute a ‘people’ as body politics and therefore be recognized as sovereign or ‘refugees’ if obliged to leave their lands.<sup>4</sup>

The outcomes of these two events created distinctions that divided the world’s population into subjects who were free to migrate but not to become political actors, and people who were free to claim refuge. The issues these distinctions raised were echoed in different contexts. No contemporary documents mentioned refugees in other parts of the world, such as Asia or Latin America. There was one exception: the situation on the borders of the Colony of the Cape of Good Hope.

I have been assured by Dr Smith, one of the best-informed and most enlightened travellers who have lived among the people of South Africa, that in that country every tribe of the native races, who have submitted to social regulations, however imperfect, and have acquired some wealth by the cultivation of the soil or by pasturage, have, in their immediate neighbourhood, hordes of outcasts or refugees who hover on their borders, and live by depredation, or on the precarious produce of the chase, or the spontaneous fruits of the earth, roaming through forest and desert places. The Bushmen are thus the outcasts of the Hottentots; and Dr Smith has clearly proved that this is the real origin of the Bushman race. Many tribes of Kafirs have also hordes of outcasts answering to the Bushmen in their vicinity, who rob and plunder strangers, and wander in pursuit of an uncertain livelihood. The Fingoes, who were subject to the Kosah Kafirs, appear to have been a tribe of this description. Civilised nations, like those of Europe, imprison or put to death unruly people, who cannot be kept in subjection to the laws of society, or they transport them beyond seas; a greater number transport themselves to the colonies and elsewhere. But in countries such as those to which I have alluded, there is no similar resource.<sup>5</sup>

This last example highlighted the connection between civilization, peoples, refugees and population movements. Those referred to as ‘kaffirs’, the Black population on the borders, did not meet Western criteria. They could not be considered refugees in the new European sense of the word. However, new



categories inside the African tribes received the qualification of refugees. Understanding this point requires a quick overview of the dynamics in Southern Africa. First, the foregoing document cited refers to the explorations of Dr Smith, conducted nearly fifteen years before the published article.<sup>6</sup> As Etherington highlights, this travel formed part of a broader enterprise to study the borderlands of the Cape Colony. Movements of population transformed demographic realities from the end of the eighteenth century to the mid-nineteenth century (Etherington 2002). These movements came mostly from the Cape and the distant eastern coastline, the region of present-day Kwa-Zulu Natal. On the one hand, what was called 'Great Trek' designated a progressive expansion of European settlement and the different wars connected to this movement. On the other hand, it denoted the internal struggles between political entities (mostly Ndwande, Ngwane, Cele, Hlubi) pushed as a result of displacements from the coast and towards the interior (Hamilton and Wright 2017; Rasmussen 1978). New groups, moreover, came into contact with the expansive European powers.

The encounter was accompanied by intense discursive production to determine whether the new political entities on the Natal coast belonged to the 'civilized' world or barbaric realm. While battles ensued between neighbouring polities and the new ruler of the northern part of Kwa-Zulu Natal, Shaka, pushing them in all directions to find shelter, the new European settlement around Durban, along with the British forces pushing through the frontier of the Eastern Cape, precipitated further investigation from the colonial authorities to determine if they could ally with the new Zulu kingdom or if it represented a threat. As Carolyn Hamilton revealed, the debate quickly pinpointed the barbaric character of the new political entity, a way to undermine its legitimacy as being a legitimate body politic (Hamilton 1998). At the same time, the arrival of groups such as the Fingo (Mfengu) – a European designation for people fleeing Natal – pushed colonial authorities to recognize them as victims of barbaric power. Therefore, they progressively became integrated groups that potentially could become viable polities. But, as they faced barbaric violence and defeat, they were forced into migration. This recognition paved the way for establishing 'refugees' laws' (1854,1858), to determine the status of Black local migrant in the Natal Province. Three interrelated processes explain the use of 'refugees' to qualify these groups: the distinction between barbaric and non-barbaric political entities, the facts of forced migration and, finally, British attempts to determine which human group may become legitimate polities or people.

Following up the discussion of the works of Laurens and Mamdani, the use of the term 'refugee' points to a novel way of qualifying human groups. Three criteria

were combined to determine whether forced migrants – who could also be part of economically driven movements – could receive the title of refugee. First, this group needed to belong to certain sectarian or tribal groups which could serve as intermediaries between those acknowledged as part of civilization and those disqualified as barbarians. Second, refugees referred to members of potential body politics. Third, groups qualifying as refugees participated in distinguishing communities as a result of the expansion of colonial study. Travellers, explorers, artists and scientists all contributed to the study of people on the borderlands of European colonies and territories. From the Mediterranean Sea to Southern Africa, similar modes of categorization emerged which attributed the status of refugee to certain human groups with particular sectarian and racial identities. Discussions regarding refugees and migrants also reflected both the amplification of public opinion through the press, media and other publications, and the new humanitarian concern for southern territories.

Around the 1860s, the meaning of the term ‘refugee’ changed somewhat from that of the pre-revolutionary era. Authorities recognized people or nations in exile through the allocation of resources. The first criterion centred on whether or not a group of individuals belonged to a ‘people’ or recognizable political entity. But as European affairs showed, the predominant criteria remained racial and sectarian. White Christians could constitute a ‘people’ and found a state while others were predominantly rejected from the public sphere and classified as minors and subjects. Thus, the initial meaning of ‘refugee’ continued to influence contemporary understandings of the term. In the post-Westphalia order, the sectarian identity of the Huguenots on the European stage was translated into national belonging, which equated on the world stage to being part of the white Christian population. New developments related to the Eastern question affected this initial understanding and paved the way for the emergence of a new status in 1919.

## Oppressed peoples and war: The emergence of refugees

Over the course of the 1860s, recorded uses of the term ‘refugee’ increased from dozens to hundreds of documents. Looking at the different texts, several circumstances are described as having provoked population movements that created ‘refugees’. As previously established, ‘nations’ in exile were granted refugee status. From the 1890s, Russian Jews were classed as refugees when arriving in the United States or England. They were designated either as ‘Jew’

or 'Russian', showing the close connection between sectarian and national bonds in the public imagination.<sup>7</sup> A new meaning emerged from the American context: 'refugees' became people displaced due to conflict, who mostly settled in cities and camps. The authorities remained principally concerned with health issues, as they considered these individuals as potential carriers of disease.<sup>8</sup> This understanding of 'refugee' appeared in certain publications around the time the British entered Alexandria in 1882.<sup>9</sup> Reports referred either to 'refugees' secured in Malta and others places by the navy or to the return of 'refugees', meaning the displaced people who had left the city during the brief war period. The medical and humanitarian point of view also emerged in this publication, a perspective clearly adopted by another text in relation to the population fleeing persecution in Barotseland who were also qualified as 'refugees'. Lastly, several texts adopted the term (although often with only one use in several hundreds of pages) to refer to individuals fleeing conflict in Asia (two occasions in Korea, one in the Safavid Empire, three in Jamaica).

In the mid-nineteenth century, the range of those who qualified as 'refugees' appeared to expand, revealing several new dynamics that affected public opinion, the status of various human groups and the changing conflict and power relations between Europe and the rest of the world. These different factors were interlinked but each factor deeply modified the status accorded to a 'people'. First, technical military expertise, more widespread conflict and the industrialization of war and its consequences all blurred the boundaries between military and civil populations. If people fleeing warzones had been a very common phenomenon, responses changed in several respects during the 1860s. Two dynamics intersected to provide a new framework for war activities. The medical improvements necessitated by the industrialization of war were accompanied by a broadening of the scope of medical concerns. People affected by war became the object of a new rhetoric concerning such health issues as disease and epidemics. The new by-products of war involved new actors. From this perspective, refugees came to represent something different. They were victims, or what we might today call civilian casualties. In parallel, the cruelty of European warfare and the denunciation of barbarity in general – mostly against slavery – led to the constitution of humanitarian discourses. Massacres and conflict had to be controlled, either through intervention or remedial action. With the emergence of humanitarian concerns in the previous decade (for evidence, we need to look no further than Delacroix's painting *The Massacre at Chios*), humanitarian discourses and practices became more technical, adhered to accepted definitions of 'victimhood' and were supported

by new organizations specialized in offering aid and rescue, such as the Red Cross. However, the organization's main activities, as highlighted by their reports, concerned war and medicine; not one report mentioned refugees between 1870 and 1910. In addition to this, several texts referred to people fleeing natural disasters as refugees, such as those affected by earthquakes in Turkey and Italy.

This use of the term played a crucial role in improving the image and fostering a more sympathetic understanding of what it meant to be a refugee. The violence of war introduced an element of inevitability and highlighted the innocence of people facing modern means of destruction. In other contexts, such as the situation in Barotseland, the presence of refugees justified the civilizing mission in which colonizers claimed to be engaged. Nonetheless, this new understanding was not matched by the passing of any new legislation. On the contrary, giving somebody refugee status meant that medical authorities removed this individual from the political realm.

In parallel, as a consequence of discussions regarding refugees, the concept of 'asylum' acquired a new meaning. One text explained: 'Neither nation has ever tolerated the idea of the surrender of political refugees for trial in their own country. This is all that is generally meant by the "right of asylum".'<sup>10</sup> But what were the conditions for becoming a political refugee? Was it exclusively a question of political motivation? On the contrary, links made between 'Jews' and 'refugees' in several documents highlight how the notion of sectarianism was refined during the second half of the nineteenth century. When talking about the Jewish Russians generally, or when referring specifically to a group of people that had recently arrived, the port authorities spoke of refugees, in the press and in parliament, when discussing the plight of Jewish people fleeing the Russian Empire. This extension of the concept echoed the word's original seventeenth-century meaning by defining a sectarian group as refugees. It also mirrored the long process of emancipation of the Jews in the Western world (Laurens 1999). From this perspective, mostly in the discussion with the Ottoman Empire legislative treatment of the Jews became a criterion to ascribe a degree in a fictional hierarchy of civilization to the southern countries: the communities giving maximal freedom to the Jews were recognized as civilized. Progressively, this move and the rise of anti-Semitism led authorities to acknowledge Jewish groups as potential body politics. Thus, most discussions concerning Jewish 'refugees' revolved around conditions of asylum and protection. Their refugee status was, in essence, recognition of the existence of the Jewish 'people', as outlined earlier.

In spite of these additional meanings, contemporary reports neglected large groups of displaced populations. There were, for instance, significant population flows from the Balkans and the Caucasus to Anatolia. Similarly, rebellion in Asia sparked departures. An examination of the categories used to describe events in the Ottoman Empire highlights the clear difference in attitudes to refugees depending on their geographic and ethnic origins. From the European point of view, Hungarians, Bulgarians and Greeks could all be refugees. The Cherkess expelled from the Caucasus and the Bosnians from Anatolia were, however, not afforded the same status (Chatty 2017). On the contrary, Ottoman authorities granted them with full rights provided they followed the imperial rules (Shaw 1977: 141–6). This differentiation coincided with a new relationship between the Great Powers and the Ottoman authorities. Since the fifteenth century, special privileges had allowed France and Great Britain to protect non-Muslim groups in the Ottoman Empire. During the nineteenth century, there was increasing pressure on the Ottoman authorities to push for reforms, while at the same time consular privileges protected large groups of Christian and Jews. These individuals became both Ottoman and subjects of French, British or Russian protection. This situation was made more complicated in 1878. At the Congress of Berlin, the Great Powers requested that the Ottoman authorities protect the Armenians (Sluglett and Yavuz 2011). A new national sectarian group emerged from these debates, but their representatives did not receive any specific protection from the Great Powers. However, Armenians progressively entered into the European debates as a potential body politic. However, those who migrated in the wake of the massacres that took place in 1894–6 were not considered refugees.<sup>11</sup>

On the eve of the First World War, the meaning of refugee had thus shifted slightly since its first use in the late seventeenth century. The term now referred to various different groups who could claim to belong to a given ‘people’, largely defined by sectarian and racial criteria. When war broke out, the authorities were suddenly confronted with new challenges. Within a few weeks, large concentrations of people were under fire. The intensity of the conflict forced massive displacement throughout Europe (to the east and west) and elsewhere. Moreover, the play of alliances drove certain groups into exile. As Annette Becker reminds us, the French authorities had great difficulty adopting a consistent vocabulary to describe these displaced people, recognizing refugees as potential beneficiaries of help (Becker 2001). On the Ottoman front, there were other dynamics in play. In every country at war, foreign communities aroused suspicion and as the war got underway different administrative measures were taken to ensure control was

maintained. In the Ottoman Empire on the eve of the war, some foreign nationals were able to leave the country. However, the start of the conflict complicated travel. In this context, the British authorities held intense discussions to try and decide how to deal with these 'refugees.' A closer look at archival documents reveals the characteristics of the displaced people, who were predominantly members of two sectarian groups: the Jews and the Armenians. Hosting them in the region created technical problems until the building of camps near Port Said.<sup>12</sup> This last initiative demonstrated the extent to which the war blurred the lines between who could and who couldn't be considered a refugee. It also changed the overall significance of the term – in part by returning to its original meaning.

When the war ended, there was a massive flow of prisoners of war and displaced people throughout Europe and the Middle East, preventing any one national authority from being able to tackle the refugee issue. In parallel, international organizations such as the ICRC or Near East Relief were only able to focus on groups in certain areas. Five peace treaties were signed with the defeated states and a new international organization emerged: the League of Nations. One of the League's duties in 1919 was to deal with groups categorized as 'refugees.' The institutionalization of the category of refugee was undertaken through several different stages. First, Fridtjof Nansen was appointed as High Commissioner for Refugees. In collaboration with colleagues, he examined the situation of three main groups: the Russians, the Bulgarians and the Armenians. Rescue and emergency measures helped to settle these people in host countries. After intense negotiations, the League of Nations finally issued a new passport for the Russians and the Armenians who had fled Russia (then the USSR) and Turkey that would allow them to travel. This initiative represented the very last step in the process of analysis concerning the Eastern question: certain displaced groups were acknowledged as 'a people' and therefore gained the right to be recognized as refugees in exile, but the vast majority were not eligible for this status. Finally, in 1923 the League of Nations delegated responsibility for travellers, migrants and displaced people who were not refugees to a new international institution: the International Labour Organization. This institutionalized for the first time the previously opposing categories of 'migrant' and 'refugee'.

## Final thoughts

A long-term history of the meaning of 'refugee' highlights several implicit dynamics. First, the labelling (or not) of groups as refugees is inextricably linked

to the history of European state-building. Following the Peace of Westphalia, sectarian identity emerged as the core element to achieving subject status and sovereignty. Changes around the time of the American Revolution and the later European uprisings provided a new context and therefore gave new meanings and practical value to being a refugee. Authorities used the concept to define people belonging to supposedly European national groups such as the Italians and the Polish, even though Poland and Italy did not exist. This recognition meant support had to be offered to these people. However, further discussions concerning other peoples around the world highlighted an implicit assumption underpinning this system of categorization: only white Christian groups could be classified as refugees. The second half of the nineteenth century witnessed important growth in the use of the term and its signification. Two different dynamics changed its connotations. By referring to people affected by wars and natural catastrophes as refugees, reports on these events created a more sympathetic image of refugees as innocent victims, emphasizing the neutrality of the term and its potential implementation as a social-scientific category. In administrative discourse, the term 'refugee' was used solely to designate specific groups, mostly based on their sectarian identity. The First World War accelerated the development of refugee status by translating this new sympathetic understanding through a strong institutionalized basis with the creation of a new international organization. This long history, therefore, highlights how European intellectual categories underpinned the new international order from 1919.

This chapter has aimed to uncover the prejudices framing the notion of the refugees. The long-term history highlights the connection between this word, European expansion and its political outcome. It mainly emphasizes that acknowledging somebody as a refugee was part of a broader process of defining which human group was a potential body politic. Two criteria interplayed, race and sectarian identity, with a progressive extension of the scope of potential 'people'. These two criteria also determined the relation between imperial authorities and the different countries on which the West established its control, or in which Europe claimed to play a humanitarian role. Therefore, in the course of uprisings or political revolts, Western authorities progressively accorded white, Christians groups both the status of potential body politics and, for those in exile, refugees. This status was progressively extended to other groups and situations: displaced white people in the United States during the Secession War; Jews, victims of pogroms; and finally, during the First World War, the Armenians. In the aftermath of the war, new legislative and transimperial

discussions settled this status as a new way to deal with the massive flow of population.

This conceptual archaeology serves to remind us how the agency of populations depended on untold criteria. From a postcolonial perspective – that is, the adoption by independent powers of colonial attitudes and habits – it also helps in understanding how the states interacted with Western powers vis-à-vis refugees to grab resources, defending their abilities to keep migrants or illegitimate mobile people while being in charge of important groups of refugees. Fierce contemporary debate concerning what qualifies an individual for the status of a refugee must thus be seen as linked to debates that have raged since the concept's inception and throughout its subsequent evolution.

## Notes

- 1 The present graph was built upon n-gramme viewer. Certainly, the graph does not determine a perfect number of occurrence (Peccatte 2012), nor a precise frequency, but rather the curve highlights clear global trends. This chapter crosses this general framework with extensive exploration of text corpus on Google and JSTOR (nineteenth century).
- 2 See <https://www.dictionnaire-academie.fr/article/A9R1267>
- 3 See <https://asileurope.huma-num.fr/circulaires-sur-les-refugies>
- 4 See, for example, 'An appeal on behalf of the Greeks', *Bristol Selected Pamphlets*, 1824.
- 5 See, for example, Anniversary Address for 1848, to the Ethnological Society of London on the Recent Progress of Ethnology Author(s): James Cowles Prichard, *Journal of the Ethnological Society of London* (1848-1856), Vol. 2 (1850), pp. 119–49.
- 6 See the report published, D. Smith, *Travels in Southern Africa*, 2 vols.
- 7 For example, Divad Sulzberger, 'The Beginnings of Russo-Jewish Immigration to Philadelphia', *Publications of the American Jewish Historical Society*, No. 19 (1910), pp. 125–50.
- 8 Walter Wyman, R. D. Murray, Horlbeck, Robert Smalls, L. E. Cofer, H. R. Carter, F. T. Lincoln, J. L. Horsey, S. Kenan, J. J. Kinyoun, Wm. T. Jenkins, G. M. Guitéras, S. C. Wrightington, Edw. F. McSweeney and Jno. J. S. Bodgers, *Abstract of Sanitary Reports*, Vol. 8, No. 41 (13 October 1893), pp. 985–1000.
- 9 'Sanitary Arrangements on Board The Refugee Transports At Alexandria', *The British Medical Journal*, Vol. 2, No. 1128 (12 August 1882), pp. 288–9.
- 10 Sedgwick, *The North American Review*, Vol. 136, No. 318 (May 1883), pp. 497–505s.



- 11 On the massacres, see Boris Adjemian et Mikaël Nïchanian, «Les massacres de l'époque hamidienne, global narratives and local approaches», *Etudes arméniennes contemporaines*, vol 1 et vol. 2 (2018). On Western responses, see Stéphanie Prévost, 'Channelling Ottoman Armenian Refugees During the Hamidian Massacres: Immigration Restrictions and British Liberal Imperial Humanitarianism at Stake (1894-1896)', *The Journal of Imperial and Commonwealth History* (2023), pp. 1–33.
- 12 R. G. White, *Report of an Outbreak of Pellagria amongst Armenian Refugees at Port Said, 1916–1917*.

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# Continental containment

## Crafting Arab Middle East ‘host states’

Are John Knudsen

### Introduction

In the dystopic film thriller *Children of Men* (2006), global war and conflict have created massive flows of refugees and migrants, but almost no country can or will admit them. In a decaying world order threatened by global depression, Britain is the last functioning state and therefore flooded by asylum seekers and at war with militant immigrant groups.<sup>1</sup> Watchtowers, electric fences and militarized border control are used to protect the country against alien invaders as the British Army arrests, detains and executes illegal immigrants. Although the film is a futuristic science-fiction drama, it is just as much a ‘vision of the present’ (Amago 2010) and several of the elements the film depicts are already in place, such as high-tech fences, militarized border control, air and sea surveillance where many perish attempting to reach safety (Brian and Laczko 2014). Both in the Asia-Pacific (Australia), America (USA-Mexico) and Europe (EU), large migration flows now to meet some of the world’s most restrictive immigration regimes and sophisticated technological barriers (Shapira 2013).

Since 2014, more than 29,000 deaths and disappearances have been recorded in the Mediterranean, making this the deadliest sea-crossing in the world (MMP Online). In the years since the 2015 ‘migration crisis’, Europe’s borderlands, the liminal zones between countries and continents (Agier 2016), have effectively been sealed off by the European Border and Coast Guard Agency (Frontex) with logistical support from member states, non-member states and NATO. Inside the EU and Schengen area, nation-states have reinforced their border control to the degree of preventing onwards migration across Europe. The Mediterranean is now enclosed by a panopticon of high-tech barriers designed to deter ‘irregular

migrants' and protect 'Fortress Europe' (Andersson 2014). They serve to limit mobility, restrict the right to seek asylum and delegitimize migration as a security threat (Bendixsen 2016). The rebordering of Europe has served to contain refugees and migrants in the Middle East, made possible by the European Union's (EU) crafting of 'host states', that now serve as a continental zone of internment that keeps millions at bay across the countries in the Middle East. Refugees have been labelled 'undesirables', a precarious category that no state wants to take responsibility for (Agier 2011). They share this fate with irregular migrants who are likewise an unwanted, underpaid and disenfranchised labour reserve (Bauman 2004). The broader Middle East region now hosts more than 5 million Syrians who can neither return nor proceed legally to Europe. While the United Nations High Commissioner for Refugees (UNHCR) has estimated that 10 per cent of the Syrian refugees need resettlement to third countries, on a global scale, less than 1 per cent of the world's refugee population is resettled. With little opportunity to leave the region legally, many are forced to resort to irregular migration alternatives that turn Syrian war refugees into undocumented and therefore irregular migrants.

The willingness to receive asylum seekers is low in Europe, especially in the so-called frontline states such as Greece and Italy. Some EU countries will not accept any, while others will accept only very few of the many asylum seekers, and this unwillingness has doomed attempts to share the burden between member states.<sup>2</sup> To avoid hosting more asylum seekers (refugees), the EU uses financial instruments and humanitarian aid to liberate itself from international obligations and pays third countries to host refugees. In this way, the retention of asylum seekers in third countries has become the EU's main strategy and contributes to crafting Middle East host states. Several Middle East countries have not signed the 1951 Refugee Convention or, like Turkey, have introduced limitations to its geographic reach and are therefore not obliged to grant refugees asylum, yet offer what has been termed 'territorial protection' (Cole 2021: 99).

Paradoxically, it is Syria's neighbours, now renamed or rebranded as 'host countries' that must carry the responsibility and bear the costs of providing refugee protection. In this way, the countries that reluctantly grant temporary residence rather than asylum are the ones who will have to accommodate them. Except for Turkey, the Middle East host states have not signed the Refugee Convention, but they are committed to respecting it based on MOUs with the UNHCR (Janmyr 2017) and grant temporary protection (rather than asylum) to those who meet the requirements, but they are not obliged to grant them citizenship. The same applies to the right to resettlement, where it is up to the

individual country to decide whether they want to receive refugees, how many and who they want to admit. For most of the Western countries, the answer is as few as possible, reflective of the failure of international burden-sharing mechanisms that has made the UNHCR's three 'durable solutions' – return, local integration and resettlement – an enduring and spectacular failure.

The term 'Orientalism' was coined by Edward W. Said, the Palestinian intellectual, academic and philosopher who critiqued the conceptualization of the 'Orient' (Middle East) as inferior, subservient and dependent on help from the West (Said 1978). It is important to revisit Said's critique here because the EU and the member states' handling of Syria's refugee crisis is based on a comparable logic, with the region now being rebranded as a hosting zone that serves the needs of Western states and draws on the region's chequered conflict history.

Historically the Middle East region was the scene of large-scale displacement crises (Chatty 2010), some of the earliest refugee camps (White 2019a) and the first relief camps and soup stations of modern humanitarianism (Watenpaugh 2015). Additionally, novel resettlement and protection schemes ('Nansen passport') under the League of Nations (Long 2013; Gatrell 2017), culminating with the Palestinian exodus and tented camps across the host countries in the Levant (Berg 2015). The millions of displaced persons (DPs) in Europe in the aftermath of the Second World War (Gatrell 2019) led to the creation of the UNHCR in 1950, and a year later, to the 1951 Convention on Refugees, amended in 1967 that removed geographical and temporal limitations.

The Arab and Middle East's history as a refugee-producing and hosting region presaged the region's future role as an imagined landscape of protection and hosting zone for refugees and migrants (Knudsen and Berg 2023). The region's history as a customary 'territory of protection' is one reason why most Middle East states did not sign the 1951 Convention or, like Turkey, introduced limitations to its geographic reach. The convention's legalistic and Eurocentric bias has, argues Cole (2021: 99), favoured convention countries offering asylum, while neglecting non-signatory states like those in the Middle East that offer geographical space for sanctuary through 'territorial protection'. International refugee law does not say anything about where the right to asylum is located geographically, only that it should exist as a 'protection space' (Herscher 2017). Likewise, the 1951 Convention is silent on both where and with what resources refugees should be provided. This means that the location of the 'landscapes of protection' ('refuge'), the support accruing to refugees and the obligations of host states are subject to dispute and reflective of tensions with the convention's 'landscapes of asylum' (Cole 2021: 96). The chapter is structured as follows: I

first present Betts and Collier's (2017) argument in favour of hosting refugees outside of continental Europe, as cheaper, fairer and more sustainable. This flawed argument, I contend, makes states across the Middle East and North Africa (MENA) permanent hosting solutions and contributes to an 'on-shoring' of refugees and migrants prevented from reaching Europe. As Europe's new buffer states, the non-signatories to the Refugee Convention are crafted to host refugees and migrants indefinitely.

## Rethinking refuge?

In their influential book *Refuge: Rethinking Refugee Policy in a Changing World*, Betts and Collier (2017) argue that the international system of refugee protection is broken. The Syrian displacement crisis in 2015 was an opportunity to reform the 'system' but instead exposed its many weaknesses and descended into chaos as states and UN agencies struggled to cope with the mass migration towards Europe. Their strongest criticism is reserved for the UNHCR, which has continued a humanitarian framework that is mired in the past, is ill-fitting for the twenty-first-century displacement crises and disregards the needs of refugees, confining them in camps (Betts and Collier 2017: 4–11). In this chapter I argue, contra Betts and Collier, that what they present as novel development solutions that can liberate refugees from camps instead confine them in 'host countries'. The fact that they are neighbouring countries does not mean that they should function as a long-term storage for refugees as 'host countries' in what is called 'European neighbourhoods' comprising regional policies and financial instruments, which are examples of orientalizing the region. In 2015, about a million Syrian asylum seekers reached Europe, yet more than five times as many remain displaced throughout the Middle East region. About half of Syria's pre-war population has been displaced, of these, about 5.4 million as refugees in neighbouring countries. Although the numbers are uncertain, there are about 3.7 million Syrian refugees in Turkey, about a million in Lebanon, 600,000 in Jordan, and an additional 260,000 in Iraqi Kurdistan (UNHRC database).<sup>3</sup> In addition to the many refugees in the region, a large number reside as labour migrants in the Gulf countries, but in legal terms, they are not interpreted as having been offered protection since they are non-signatory states beyond the 'geographies of asylum' (Cole 2021). During the six-year period 2015–21, about 303,000 voluntary returnees to Syria were registered by the UNHCR,<sup>4</sup> the majority

from Turkey, demonstrating the protracted nature of the crisis and the strong deterrent to returning. Onwards ('secondary') migration has been curtailed by national legislation, bilateral return agreements (EU-Turkey agreement, Italy-Libya agreement), multilateral border control (Schengen agreement) and asylum regulations (Dublin agreement), in addition to new border fences and surveillance systems (Knudsen 2019).<sup>5</sup>

These measures turned the host countries in the Middle East into long-term hosting zones. The new host countries became the 'solution' to mass migration because they represent what Cole (2021) has termed 'geographies of protection', that is countries that, although non-signatories to the 1951 Refugee Convention, offer a 'protection space' comparable to that enshrined in the convention. Paradoxically, the non-signatory states have taken on obligations that accrue to Europe's many convention states. The 2015 'European migration crisis' was solved by expanding the role of the Middle East as a regional hosting archipelago (Mountz 2011).

The migrants and refugees are held back in the Middle East as part of the EU's regional refugee response after 2015. There are no legal channels available for seeking asylum in Europe from third countries because this is used as to 'regulate' immigration (Vevstad 2017). This means that it is impossible to start an asylum process from Turkey or other so-called transit countries other than as a UNHCR 'resettlement refugee' (aka, 'quota refugee'). The quota refugees are selected based on the criteria set by the recipient country, but their number is far less than the UNHCR's estimate of need. Europe's fear of being flooded by migrants has prompted the development of more advanced methods, measures and laws to stop migrants in their tracks. In the Mediterranean, boats and dinghies with migrants are still capsizing and sinking, but the EU's many maritime operations have been terminated. Those remaining are not search and rescue (SAR) missions but monitor the ineffective Libya arms embargo.<sup>6</sup> Most of those who manage to reach Europe will be returned after vetting stays in centres and camps across Europe's migration frontiers. This points to a situation where European countries, for fear of being flooded by migrants, have made the Middle East an integral part of the EU's 'external' migration policy.

### Burden sharing or free riding?

Is it morally right to help more migrants in third countries in the Middle East, rather than admitting them to Europe? As we have seen from the Syrian crisis, it is



not given that migrants and refugees should remain indefinitely in neighbouring countries, now referred to as 'host countries.' Their role as host countries is due to the fact that neighbouring countries are the main destination for those who flee (Moore and Shellman 2006, 2007). The Refugee Convention calls for solidarity among convention states in sharing responsibility for refugees. However, because neighbouring countries are often the first point of arrival for the displaced, they will be responsible for protection. The 'non-refoulement' clause in the Refugee Convention means that the first arrival turned host countries cannot evict them, and therefore 'the number of refugees a country is to host is simply a function of its geography' (Devictor, Do and Levchenko 2021: 2). The other countries (signatories), however, can freely decide whether or not to contribute to burden sharing, something that can lead to 'free riding' (Suhrke 1998). As Suhrke has shown, the fundamental weakness in the international refugee regime as codified after the Second World War was the absence of principles, let alone more specific instruments, for the sharing of responsibility for the world's refugees.<sup>7</sup> The parties to the 1951 Convention (and the 1967 Protocol) only accept responsibility for asylum seekers appearing on their doorstep. Except for some refugee flows closely connected to the interests of the large powers, geographic proximity to conflict has been the primary distributive mechanism. Secondary movements and large-scale, organized resettlement to third countries such as in the case of Vietnamese 'boat refugees' (Lipman 2020) have been limited and appear in retrospect as exceptional events.<sup>8</sup>

Analysing the spatial distribution of refugees over a thirty-year period (1987–2017) finds that the hosting of refugees falls disproportionately on neighbouring countries, most of them located in the developing world (Devictor, Do and Levchenko 2021). However, while most of the refugees are fleeing to neighbouring countries, some are travelling further which leads to a gradual globalization of refugee flows. There are now three times as many refugees who reside in OECD countries as compared to the situation in the 1990s (up from 5 per cent to 15 per cent), thus leading to a 'geographic diffusion' and greater sharing of responsibilities across countries. Nonetheless, despite the slow trend towards diffusion over the past thirty years, more than 80 per cent of the refugees remain in the Global South. In the Syrian displacement crisis, about 5.4 million people, that is about 80 per cent of the refugee population, reside in the four main host countries: Turkey, Lebanon, Jordan and Iraqi Kurdistan.<sup>9</sup> The main reason many remain is that since 2015 several measures were put in place to counter the trend towards globalized south-north refugee flows, specifically targeting refugees and migrants destined for Europe, a result of the

geographically graduated protection and human rights provision (Cole 2021: 92). The scale of onwards migration towards Europe mandated extraordinary measures to contain refugees and migrants in Middle East host states and expand their role as long-term hosting solutions.

In the 2015 European refugee crisis, about 1 million Syrians (and several other nationalities) reached Europe and filed for asylum. The large majority, however, remained in Middle East host countries as detailed earlier and, in short order, several measures were put in place to prevent them from reaching Europe and restrict their access to asylum (Sciurba and Furri 2018), a process that has been termed a rebordering of Europe (Bendixsen 2016; De Genova 2017). The strengthening of border control included constructing thousands of kilometres of border walls and fences, as well as maritime patrols to deter smuggling (Casas-Cortes, Cobarrubias and Pickles 2014). In addition, a network of transit- and internment and camps were established to intern irregular migrants and refugees (Kreichauf 2018), as well as new 'hot spots' streamlining asylum procedures and returns in the most trafficked sites in the Mediterranean and the Aegean (Pallister-Wilkins 2018; Pascucci and Patchett 2018). The main goal of these measures was to deter refugee and migrant arrivals and contain them in the Middle East region. This also mandated expanding and cementing their role as a long-term hosting solution through new funding modalities targeting host states and refugees (3RP, 2015-present), bilateral agreements with host states (EU-Turkey deal 2016), new 'compacts' offering jobs for refugees (Jordan and Lebanon 2016), and return agreements as part of the EU's externalization of border management.

### Cost sharing as burden sharing?

The world's refugee problem is unresolved and growing. Today more than 120 million people are displaced as refugees, asylum seekers or internally displaced persons (IDPs), but less than 1 per cent of refugees are resettled in third countries. There are now better systems, more resources and opportunities not only to deal with, but also solve refugee crises (White 2019b), yet the solutions are predominantly found in the Global South. In the debate about how to aid refugees and share the burden, the question is not only how to assist them, or with how much (money), but where. The three are interrelated and inform the main reason why most refugees are hosted by poor states in the Global South (Devictor, Do and Levchenko 2021).

The rationale behind the argument for helping refugees in Middle East host states rather than in Europe is first and foremost that it is cheaper, and available funds therefore can aid more of the needy. In other words, an economic ‘cost-benefit’ rationale mandates supporting refugees and migrants in middle-income host countries rather than admitting them to Europe (Betts and Collier 2017: 77). How much does aiding the about 5 million Syrian refugees cost? If one pays USD 1,000 per refugee in one year, an absolute minimum, it would cost USD 50 billion a year to help the Syrian refugees now living in Middle East host states.<sup>10</sup> This is five times more than the UN’s record-breaking budget (USD 10.5 billion) for the entire Syrian Refugee Regional Resilience Plan (3RP) in 2022 which includes aid to refugees, internally displaced persons in Syria and support for the host countries.<sup>11</sup> At the same time, the preliminary results of the 2021 Vulnerability Assessment of Syrian Refugees (VASyR) indicate that nine of ten Syrian refugees live in extreme poverty.<sup>12</sup> This demonstrates that there is not enough aid to support refugees and prevent them from falling into chronic poverty.

According to Betts and Collier, the main problem is that ‘host countries’ do not get the help they need to cover the costs of hosting refugees until they are able to voluntarily return or resettled. To illustrate this problem, they use figures showing that in 2016–17 an EU member state like Germany spent 135 times more money per Syrian asylum seeker than the UNHCR did per refugee (Betts and Collier 2017).<sup>13</sup> The figures used in this calculation are at best imprecise, something the authors readily admit, yet demonstrate the importance of closing the UNHCR’s ‘funding gap’ and that wealthy states in Europe must increase their funding to the Middle East host states. While neighbouring countries should host the refugees, the rich countries in Europe must pick up more of the bill. This, they argue, is an equitable burden sharing between the wealthy countries in Europe and the middle-income host states in the Middle East. Indeed, more funding is needed by the host countries at a time when the 3RP, the UN’s largest call, is also one of the most underfunded. In 2021, the plan’s budget call was USD 5.6 billion, but less than half was funded, the lowest percentage since it was launched in 2015.<sup>14</sup>

The UN only covers 3 per cent of the UNHCR’s annual budget (Loescher 2021). The organization, therefore, depends on voluntary contributions, which in 2019 totalled 8.6 billion dollars as financial support and donations from wealthy, industrialized countries. A recurring problem with funding for humanitarian crises is that with time ‘donor fatigue’ reduces the available funding. This is a recipe for turning the countries in the Middle East into ‘buffer states’ for the

long-term storage of refugees and migrants (FitzGerald 2019), a cheaper solution than receiving and integrating them in Europe as Betts and Collier's cost estimate demonstrates. However, because the countries in the Middle East are neither obliged to grant refugees citizenship nor civil rights, parallel systems for housing and food aid, schooling and health services must be created, all funded by long-term bilateral and multilateral assistance from the UN system and administered by the UNHCR (Knudsen 20190).

This does not mean that Europe should open the borders to everyone but demonstrates that the economic argument that we can help more people if they remain in host countries has several limitations. Still, Betts and Collier (2017) promote this as an equitable burden-sharing mechanism between 'host countries' in the Middle East and 'donor countries' in Europe. The host countries in the Middle East are closest to the refugees' country of origin and share strong cultural and religious ties, making them the most suited place to host the refugees. Those who stay closer to their home country will also more often return, while exiled groups and diasporas in many cases do not. In Europe, the labour market is in principle open to asylum seekers, but they lack professional training, proper education and relevant skills to get a job. In the Middle East, the refugees have the professional knowledge, language skills and cultural competence to succeed in the local labour market, from which they are excluded. The cost-efficient solution to this problem is to expand legal job openings in low-skilled professions such as the 'Jordan Compact' described later.

Supporting refugees in host countries, rather than in Europe, is equitable, economical and efficient because refugees staying close to their home country can easily return when conditions allow, while among those in Europe many will seek to stay. The 'proximity principle' also forms the basis for Norway's humanitarian strategy, which states that the 'Government will continue to give priority to helping refugees where they are [living, residing]', in other words, aiding them in the 'host states' that border the sending country and collectively referred to as 'proximity areas' (MFA 2018: 32, *'nærområdene'*). It is not unreasonable to use costs in assessing where, how many and how to best aid or assist refugees and migrants, but it is important to be aware of what this entails. This is also linked to who should be admitted and whose responsibility it is to offer protection and asylum.

Most of the Syrians who made it to Europe during the 2015 'refugee crisis' were highly educated: half of the young men had a university education, compared to only one in thirty in Syria (Betts and Collier 2017: 199). Moreover, about half of the men had completed high school, against only one in eight in Syria. This

represents a significant ‘brain drain’ and loss of competence for the Syrian society but does not prove that they are economic migrants. These figures can also be used to argue that Syrian refugees are simpler and cheaper to integrate into Europe since they are highly educated when compared to other immigrant and asylum groups. Instead, Betts and Collier make an artificial distinction between legitimate refugees (‘real’) and illegitimate (‘irregular’) migrants. Because they are highly educated and not forced to flee, the latter are not seeking a ‘safe haven’ but a ‘honey pot’ (Betts and Collier 2017: 199). They chose to migrate, rather than fled violence and persecution; therefore they are not refugees as defined by the Refugee Convention. This argument is also linked to the question of who has the right, and need, to come to Europe.

Betts and Collier argue that the right to protection must not be confused with an unlimited right to reside in rich European countries or a moral obligation on the part of European countries to host them. Rather, what is at stake is safeguarding the right to asylum with temporary residence in countries that can be compared with, or are close to, the ‘sending country’, that is the countries bordering Syria. This is both an ethical (moral) and economic argument in favour of furthering the Middle East as a refugee-hosting archipelago that is more cost-efficient (‘cheaper’) and more equitable (‘fair’) than hosting them in Europe. As I will show next, the EU and member states have concluded migration agreements with non-signatory states in the MENA to expand their role as ‘buffer states’ and hosting solutions for migrants destined for Europe.

## From off-shoring to on-shoring

Australia’s controversial ‘Pacific Solution’ and ‘Sovereign Borders’ operations involve paying poor island states and third countries to host and operate internment camps for migrants and asylum seekers (FitzGerald 2019). In Europe, likewise, the EU has since 2016 compensated Turkey for hosting more than 3.5 million Syrian refugees and returning those who arrive irregularly on Greece islands.<sup>15</sup> The EU-Turkey deal compensates Turkey for functioning as a buffer state (FitzGerald 2019). Turkey and the other host countries in the Middle East have changed from transit to host countries for refugees that can ‘warehouse’ them indefinitely (Smith 2004).

The EU-Turkey agreement was a response to the migratory pressure on Europe and the many refugees that in 2015–16 reached Europe along the Balkan route (Župarić-Ilijić and Valenta 2019) or by sea to the Greek islands (Pollozek

and Passoth 2019). Hosting millions of Syrian refugees, Turkey had become the most important transit country for onwards ('irregular') migration to Europe. A few months after the agreement was signed, there was a sharp reduction in irregular migration from Turkey to Europe, which demonstrates that the agreement not only succeeded in stopping irregular migration but in the longer term contributed to making the Middle East region a permanent storage space for refugees and migrants. Australia's 'off-shore' detention of refugees and migrants is now counterpointed by the EU's 'on-shoring' of refugees and migrants in the Middle East host states with comparable systems for financial compensation and rewards. The host states may also turn hosting to their advantage; Jordan uses humanitarian aid to refugees to subsidize the state bureaucracy, while Turkey seeks visa-free access to Europe for its citizens. They are therefore both 'refugee rentier states': that is, states that use refugees as political capital to attract financial assistance or concessions from the UN system, countries and donors as well as dampen the domestic opposition to hosting so many refugees (Tsourapas 2019). Turkey has also leveraged refugees to heap pressure on the EU and repeatedly threatened to open its borders with Europe as well as created 'safe zones' in Syria where refugees have been returned.

Since the EU-Turkey agreement entered into force in 2016, Syrian refugees arriving in Greece have, as a rule, no longer received asylum in the EU. Those who have been able to overcome the many obstacles along the way are subject to assisted and involuntary return schemes introduced by bilateral cooperation agreements (FitzGerald 2019). So far, only a small number of migrants have been returned to Turkey and even fewer are resettled in EU countries. Legal experts have been critical of the agreement, because Turkey does not give Syrians refugee status, it is not a safe third country, and may lead to the forced return to Syria (Vevstad 2017). The agreement between the EU and Turkey is not unique. The EU has also entered into similar agreements that provide financial support to transit countries to limit secondary migration to Europe, among other things by increasing legal work options, which will help refugees and migrants stay and reduce the need for humanitarian aid. As part of the EU's policy of externalization, two new agreements, so-called compacts, were established under the European Neighbourhood Policy (ENP). The ENP includes financial instruments and bilateral agreements with sixteen countries, including Lebanon and Jordan. The main goal of the Jordan and Lebanon compacts was to retain refugees and increase the number of legal job openings. The Jordan Compact combined cash incentives with special economic zones (SEZs) where Syrian labour made up a significant part. Labour licences for refugees are rewarded

with preferential market access for goods in the EU area, which has been termed a win-win solution for both parties (Betts and Collier 2017). Only about half of the about 200,000 work permits for Syrian refugees needed to complete Jordan's agreement with the EU has been filled (Lenner and Turner 2019). The EU sought to conclude a similar agreement with Lebanon, but the plans stalled on the government's unwillingness to grant refugees legal employment options (Turner 2015). The parallel employment systems that form the basis of the 'compact' programmes create a hybrid, aid-financed labour pool, that many employers ignore due to the extra costs and paperwork involved (Tobin et al. 2021). The comparative 'advantage' for refugees and migrants is that they will accept low-paid work that other groups can or will not (Abdulrahim and Khawaja 2010). The result is solidifying the global inequities in the international refugee regime and expanding job options to reduce secondary migration to Europe, thus turning host and transit countries into 'buffer states'.

### Buffer states?

Using Middle East host countries as 'buffer states' and establish migrant holding centres has at different points been proposed by Danish, British, French and other European countries (FitzGerald 2019). In 2001, the Danish government raised this issue based on the experience with the United States' interdiction of Haitians and Australia's Pacific Solution. A couple of years later, the Blair government made a similar proposal to halve asylum applications, using 'safe havens' established outside the UK to process asylum claims. Denmark and three other member states supported the proposal, while Sweden, Germany and France, among others, opposed the plan. Nonetheless, in 2004–5, Germany's interior minister proposed that migrants rescued in the Mediterranean should be transferred to EU-funded camps in North Africa, but the UNHCR as well as many member states were critical of the plan because the asylum seekers' safety could not be guaranteed.

Australia's Pacific Solution (2001–07) has been universally condemned as inhumane and breaching international conventions, yet in 2004 several European states proposed a strategy resembling Australia's: the 'Mediterranean solution' would reward the states in the MENA for acting as a repository for migrants on their way to Europe, thus becoming part of Europe's policy of exclusion (Marfleet 2006: 275). Similar plans were relaunched after 2015 when Italy supported the establishment of refugee centres in Niger, Tunis and Sudan,



while the Hungarian president Victor Orbán proposed constructing a large refugee city in Libya (FitzGerald 2019: 215). French president Macron likewise proposed establishing 'hot spots' in Libya to process asylum applications for migrants destined for Europe. None of the plans were implemented due to political opposition, legal obstacles or were rejected by the prospective host states in North Africa (FitzGerald 2019: 216–17). Rather than geographical limitations, it was the legal and political ramifications that prevented EU states from implementing solutions reminiscent of the United States and Australia's redefinition of areas as being outside the regular asylum jurisdiction. Recently, England has looked at the possibility of relocating asylum seekers to Ascension, one of three islands in the South Atlantic that are part of England's overseas territories.<sup>16</sup> At the EU summit in Brussels in June 2018, EU heads of state agreed to work to establish asylum and reception centres outside the EU. Not only are several European countries unwilling to admit refugees and migrants, they also seek to move asylum claimants and asylum claims to third countries much in the same way as Australia's 'Pacific Solution' may have created a 'ripple effect' among states seeking to avoid offering protection (Hargrave, Pantuliano and Idris 2016).

Third country 'off-shoring' is a cost-cutting measure as demonstrated by England's plan to move asylum seekers to Rwanda. In April 2022, Britain's prime minister Boris Johnson announced that African asylum seekers would be transferred to Rwanda and their asylum application processed there.<sup>17</sup> The plan met with strong protests from politicians, Human Rights Watch (HRW) and the UNHCR and have appealed the measure to the European Court of Human Rights in Strasbourg. Flying deported asylum seekers 7,000 km from England to Rwanda, one of the world's poorest countries, costs GBP 30,000 per person.<sup>18</sup> The agreement with Rwanda has a budget of GBP 120 million, yet it is still cheaper than the approximately GBP 1.5 billion that England spends annually on hosting migrants. In June 2022, the court stopped the first flight to Rwanda with seven asylum seekers on board,<sup>19</sup> but the British government is determined to press ahead with the plans. Rwanda is yet another example of the forced transfer of migrants to poor third countries that are tasked with processing their asylum applications.<sup>20</sup> Moreover, the UK's 'small-boat policy' will return all irregular arrivals across the Channel without asylum procedures, in contravention of the country's obligations vis-à-vis the Refugee Convention. Another example is Italy's controversial agreement with Libya. Since 2017, the Libyan coastguard has forcibly returned migrants and interned them in camps where torture, rape and abuse are commonplace. The appalling treatment made Médecins Sans Frontières pull its staff from two overcrowded 'internment camps' in Tripoli.<sup>21</sup> In 2021, more than



23,000 migrants were forcibly returned to Libya. The Libyan coast guard's patrols and the operation of the camps are financed by the EU's Emergency Trust Fund for Africa (EUTF). The multi-donor fund has a budget of 5 billion euros, of which Norway since 2016 has contributed about 27 million euros,<sup>22</sup> that is earmarked for poverty reduction and reducing irregular migration to Europe. In 2016, more than 180,000 refugees and migrants came to Europe via Libya. Three years later the number was reduced to less than a tenth, which shows the dramatic reduction in the number of migrant arrivals because of EU-funded patrols and pushbacks.<sup>23</sup> In 2023, there were more than 300,000 illegal pushbacks along Europe's frontiers.<sup>24</sup>

### Bilateral partnerships and global agreements

Prior to the migration crisis in 2015, border controls and border surveillance in the EU area were largely phased out as part of the Schengen cooperation and replaced by a common European asylum regulation and a set of status directives and regulations (Vevstad 2017). As a result, there was no longer a need for internal border control among the member countries; access to one country in the Schengen zone gave access to all. After a record number of migrants reached Europe during the 'European migration crisis' in 2015, both the EU and member states' asylum policies were changed in several areas. The EU's emphasis on agreements with sending and transit countries now went hand in hand with stronger border control. The EU's bilateral agreements with third countries also changed and a larger proportion of the funds were earmarked for measures that could reduce migration to Europe (Concord 2018).

An important part of the EU's migration management is not only agreements that can restrict migration to the EU and the Schengen area but also returning migrants to their country of origin. The EU has established return agreements with several countries, most of them with states in North Africa. While the first ones can be traced to the time after the Second World War, their number increased enormously after 1990 when more than 300 agreements were entered into over a ten-year period (1990–2000). Most of these agreements are bilateral and concluded with buffer states, not with the sending countries (FitzGerald 2019).

The agreements are biased towards the needs and goals of the EU, hence underpinning asymmetric partnerships. Although they are voluntary measures, much is at stake for the prospective partner countries: only if they manage migration as set out under the terms of the agreement will they receive financial assistance from the EU. Morocco was one of the countries that did not want

to be included in the EU's new migration agenda. Yet, in 2003, Morocco criminalized irregular migration after strong pressure from Spain and at the same time the two countries began joint coastal patrols in the Strait of Gibraltar and the Canary Islands. After years of negotiations, in 2013 Morocco and the EU reached an agreement that included trade, visa facilitation and remittances in exchange for better border controls, asylum returns and cooperation with Frontex. Since 2014, this fund has paid 243 million euros to Morocco to curb migration, a sum that includes 148 million euros to strengthen Morocco's border controls and combat smuggling and trafficking. Morocco is the EU's most important partner in migration control in the MENA region and over a five-year period (2013–18) has received 1 billion euros from the EU's mobility partnership agreement which, despite its name, aims to delimit migration. This made Morocco a key partner country for the EU's migration management and an example of the externalization of border control. The Morocco example also demonstrates how regional 'migration dialogues' and bilateral agreements combine financial support from the EU with stricter border control to counter the growing migration pressure.<sup>25</sup>

The Syrian refugee crisis has also given rise to international strategies to deal with it, such as the Global Compact for Refugees (GCR) and the Global Compact for Migrants (GCM), both endorsed by the UN General Assembly in December 2018. The GCR has four main goals: to reduce the pressure on host countries, increase the refugees' ability to cope, expand the possibility of resettlement in third countries and facilitate safe return to the home country or country of origin. The agreements are non-binding and lack compliance mechanisms. They therefore have limited significance for the countries' asylum practices. This underlines that global agreements to protect refugees and migrants do not change the political and institutional frameworks that prevent them from reaching Europe (Hyndman and Reynolds 2020). Since 2016, the 'externalization' of Europe's borders and the EU's framework for external migration policy, the Global Approach to Migration and Mobility Management (GAMM), restricts mobility rather than enables it and contributes to the refugees and migrants' closure within the Middle East region.

## Conclusion: Continental containment

What is the reason that the Middle East has become a designated storage place for refugees and migrants destined for Europe? And why is this region so often claimed

as holding the key to Europe's refugee problem? In this chapter, I have argued that the reason for this is that neighbouring countries have become designated as 'host states' where refugees tend to stay indefinitely. Over time, this refugee-hosting mechanism is complemented by humanitarian aid and development assistance (3RP), new hosting and return agreements (EU-Turkey 2016) that have merged into a humanitarian strategy that assists refugees in host states based on their proximity to their country of origin. Since 2015, the 'proximity principle' has developed into a new hosting paradigm that is reinforced by an aid architecture that cements refugee protection as a national and regional problem rather than an international one. Turkey, Lebanon and Jordan share borders with war-torn Syria, but they should not, by implication, host Syrian refugees indefinitely. Neighbouring countries are obliged to host refugees but assisting them is an international obligation that is shared between convention states. Instead, wealthy countries and regions, such as Europe and Australia, have freed themselves from their protective obligations and pay neighbouring 'host states' for warehousing refugees, which is both simpler and cheaper than receiving and integrating them. The retention of refugees in third countries has become an economic strategy for both the EU and the 'host states', that contributes to maintaining the Middle East as a refugee-hosting region. The proximity paradigm has overburdened the Middle East 'host states', many beset by internal problems, and turned the region into a hosting archipelago. The outcome of this policy can be termed continental encampment, whereby the Arab and Middle East 'buffer states' host refugees and migrants indefinitely, hence can be considered an outgrowth of Orientalism's imaginative geography of the Middle East.

## Acknowledgement

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## Notes

- 1 The film was co-written and directed by Alfonso Cuarón and adapted from the novel by P. D. James (1992).
- 2 In August 2020, EU president Ursula von der Leyen announced that the Dublin Agreement would be replaced by a new migration and asylum pact in which

- EU countries that would not participate in the internal quota system for the distribution of migrants between member states would instead contribute to a common fund that covers the costs of returning rejected asylum seekers, 'A Fresh Start with a New Pact on Migration and Asylum', [https://www.eeas.europa.eu/eeas/fresh-start-new-pact-migration-and-asylum\\_en](https://www.eeas.europa.eu/eeas/fresh-start-new-pact-migration-and-asylum_en)
- 3 Despite the host countries' generous reception, there have also been examples of periodic and permanent border closures, pushbacks and forced returns as well as the creation of 'hosting zones' in Syria's border areas.
  - 4 UNHCR Registered Syrian Refugees in Host Countries, [https://www.3rpsyriacrisis.org/wp-content/uploads/2022/01/Durable\\_Solutions\\_Dec2021.pdf](https://www.3rpsyriacrisis.org/wp-content/uploads/2022/01/Durable_Solutions_Dec2021.pdf)
  - 5 Since 2015–16, the EU has spent USD 3.7 billion on research and development of new technologies that can identify and stop migrants, such as automated border surveillance that combines drones, satellite data, night cameras and binoculars with listening devices, sensors and high frequency sound cannons, 'Migrants, Refugees Will Face Digital Fortress in Post-pandemic', <https://www.aljazeera.com/news/2021/5/31/migrants-refugees-will-face-digital-fortress-in-post-pandemic-eu>
  - 6 Libya arms embargo 'totally ineffective': UN expert panel, <https://news.un.org/en/story/2021/03/1087562>
  - 7 However, freedom of movement and the right to asylum was enshrined in the 1948 Universal Declaration of Human Rights, Articles 13 and 14.
  - 8 Astri Suhrke, pers. comm.
  - 9 UNHCR Refugee Statistics, <https://www.unrefugees.org/refugee-facts/statistics/>
  - 10 Betts and Collier use the number of Syrian refugees in 2015 (4 million). In this example, I use current estimates of about 5 million Syrian refugees.
  - 11 UN launches joint appeal for Syria: 'Apathy is not an option', <https://news.un.org/en/story/2022/05/1117932>
  - 12 UNHCR's most underfunded situations in 2021, <https://reporting.unhcr.org/sites/default/files/Underfunding-Report-2021.pdf>
  - 13 This calculation is based on Germany's budget to assist 1 million Syrian asylum seekers in one year (USD 54.3 billion, 2016–17). The UNHCR's budget for the same year to aid 16.1 million refugees was USD 6.5 billion. This gives a ratio of 135:1 (Betts and Collier 2017: 135, fn 1).
  - 14 UNHCR's most underfunded situations in 2021, <https://reporting.unhcr.org/sites/default/files/Underfunding-Report-2021.pdf>
  - 15 The agreement was signed on 7 March 2016 and is based on a mechanism whereby every person who arrives 'irregularly' to the Greek islands after 20 March 2016 will be returned to Turkey. The EU will receive one Syrian refugee from Turkey for each returned person, with a maximum number of 72,000 migrants. The agreement provides Turkey with a compensation package of 6 billion euros paid in two instalments.
  - 16 No 10 confirms UK offshore asylum plan under consideration, <https://www.ft.com/content/9baaf989-f64d-417d-90c5-b0ea8f78bf0c>

- 17 UK to send asylum seekers to Rwanda for processing, <https://www.theguardian.com/uk-news/2022/apr/13/priti-patel-finalises-plan-to-send-asylum-seekers-to-rwanda>
- 18 UN refugee agency condemns Boris Johnson's Rwanda asylum plan, <https://www.theguardian.com/uk-news/2022/apr/15/un-refugee-agency-condemns-johnsons-rwanda-asylum-plan>
- 19 UK to challenge court ruling that halted Rwanda deportations, says minister, <https://www.theguardian.com/uk-news/2022/jun/15/uk-challenge-european-court-ruling-rwanda-deportations-asylum>
- 20 Norway is one of the top ten donors of the 3RP and has paid NOK 50 million to fund building and operating of the Gashora camp in Rwanda. The Gashora camp is a collaboration between Rwanda, the UNHCR and the African Union. The African refugees and migrants who are transported there are interviewed by the UNHCR and will have their asylum applications processed in Rwanda. If they are entitled to protection, they will be able to obtain asylum in an EU country, a Schengen country or Canada. Those who are not eligible for asylum will be returned to their country of origin. In total, Rwanda can receive up to 30,000 asylum seekers under this scheme, 'Takket være Frp kan Mohamed få asyl i Europa' [Thanks to the Progressive Party, Mohamad Can Receive Asylum in Europe], <https://www.nrk.no/urix/takket-vaere-frp-kan-mohamed-fa-asyl-i-europa-1.14866528>
- 21 Lidelsene Norge snur ryggen til [Norway's neglect of suffering], <https://www.nrk.no/ytring/lidelsene-norge-snur-ryggen-til-1.15654418>
- 22 EU Emergency Trust Fund (EUTF), [https://ec.europa.eu/trustfundforafrica/content/trust-fund-financials\\_enAfrica](https://ec.europa.eu/trustfundforafrica/content/trust-fund-financials_enAfrica) (europa.eu)
- 23 Hundreds of migrants returned to Libya after rescue at sea, <https://www.al-monitor.com/originals/2021/06/hundreds-migrants-returned-libya-after-rescue-sea>
- 24 Number of illegal pushbacks at Europe's external borders exploded in 2023, <https://pers.11.be/number-of-illegal-pushbacks-at-europes-external-borders-exploded-in-2023>
- 25 Similar agreements cover several sending countries in Africa (FitzGerald 2019).

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## Part II

How do Arab states shape, negotiate,  
and interact with the international  
refugee regime?



## Refugees and Arab states

### The new norm-al?<sup>1</sup>

Dallal Stevens

The aim of this book – ‘to shed light on four interdependent themes of inquiry that problematize how Arab refugee hosting states have created, cooperated on, challenged, and manipulated international and state social and political norms’ – is vital not only for a deeper comprehension of refugee regimes in the Arab world but also in the context of international law and international legal theory more generally. To examine non-dominant approaches and actors is to appreciate better the intertwining of international law and politics, how the vertical (non-state actors, non-governmental organizations, local communities, individuals) influences the horizontal (state to state), how and when choices are made about norm adoption and how and why international law is – at times – resisted.

For the purposes of this chapter, and to test the role that Arab countries might have played in norm development and how far they have influenced refugee governance more generally, I shall focus on a single but fundamental norm – the norm of refugee protection. As suggested earlier, the very nature of refugee governance in the Middle East necessitates an interdisciplinary approach, and I therefore include some history, international relations theory and politics, alongside international law, but the discussion is, I hope, also grounded in the realities experienced by refugees in the various countries in which they are hosted.

While the literature has explored the relationship between the global and the domestic/local from political, legal, theoretical and practical perspectives (Brumat, Geddes and Pettrachin 2022; Brumat, Geddes and Pettrachin 2021; Janmyr 2021; Pincock, Betts and Easton-Calabri 2021; Betts and Orchard 2014; Barnes 2009), the analysis of the concepts of international refugee protection has tended to be ‘top-down’: that is, the focus of scholarship has historically considered whether or how the norm of international refugee protection has been

adopted and applied in the domestic setting. Less consideration has been given to alternative models or understandings of refugee protection, which incorporate a ‘bottom-up’ approach, where actions and views of individual actors on the ground – or indeed refugees – also feed into the conceptualization of ‘protection’ and its provision. Equally, the role that non-contracting states, contracting states that have weak or non-existent refugee determination processes, or states from the Global South have played in the development of the norm of refugee protection has also been under-analysed and under-appreciated. This chapter seeks to redress the imbalance in part.

The chapter is divided into three sections:

- i) First, I explain the context of refugee law in the Arab world.
- ii) I then move on to the norm of (international) refugee protection.
- iii) I conclude with some reflections on ‘the new norm-al’ and implications for understanding refuge in the Arab world.<sup>2</sup>

## Context of refugee law in the Arab world

When speaking of refugee protection, a lawyer from the Global North would find their natural starting point to be international refugee law in the guise of the Refugee Convention. Currently, 149 states are party to the Refugee Convention, with 44 UN members not party to either (Janmyr 2021: 189). International refugee law is, thus, founded on treaty law and has, since 1951, depended on judicial interpretation in case-law, academic analysis and UNHCR guidance for deeper understanding and domestic application. There is no supranational court tasked with oversight of the Convention, although the UNHCR has a duty to supervise the application of the provisions of the Convention (Article 35).

One of the main aims of international refugee law is to ensure that states take responsibility for refugee movements and hosting, as proposed by the Final Act of the UN Conference of Plenipotentiaries on the status of refugees and stateless persons. For decades, it has been accepted that (international) refugee law – through the Refugee Convention – provides the answer to refugee protection and that states should accede. The UNHCR has, understandably, advocated for this since its inception, and continues to do so. In 2001, for example, it published a document entitled ‘The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: Signing on Could Make All the Difference’; there, it stated ‘Accession means better protection’ and, further, to help tackle the ‘refugee “phenomenon”’ effectively, ‘UNHCR believes that it is necessary to

broaden the base of state support for these refugee instruments, ensuring that the protection provided to refugees is more universal in scope and the burdens and responsibilities of governments are equitably distributed and consistently applied' (UNHCR 2001). More recently, in the 2018 Global Compact on Refugees, which can be viewed as an expression of 'the political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and host countries', four key objectives were set out: to ease the pressures on host countries, to enhance refugee self-reliance, to expand access to third-country solutions and to support conditions in countries of origin for return in safety and dignity (UNHCR 2018: Introduction: A, para. 4).

In many senses, the international refugee law system can be regarded as unique and extraordinary: it provides a specific group of peoples – 'refugees' – with a range of protections that sets them apart from other groups and that has lasted the test of time; its 'architecture', as Hathaway has recently described it, is based on 'two interlocking UN treaties – the Refugee Convention and the Protocol' (Hathaway 2021: 172); those who qualify as refugees are entitled to a range of 'rights' set out in the Convention; these rights 'arise on the basis of a sophisticated structure of levels of attachment' and the content of most rights is 'contingent on what a particular host state provides to a specified group of non-refugees under its jurisdiction' (Hathaway 2021: 172); contracting states can enter reservations against many obligations in the Convention but not against five core articles, including the refugee definition and the principle of *non-refoulement* (Articles 1A(2) and 33).

Arabic-speaking countries that are party are Egypt, Yemen, Algeria, Djibouti, Egypt, Morocco, Somalia, Sudan and Tunisia, but many Arab states in the Levant and Gulf have refused to sign the Refugee Convention (see, for further discussion of refugee law in the Middle East, Janmyr and Stevens 2021: 334–51).<sup>3</sup> This refusal to sign occurred despite involvement by some Arab countries – Egypt and Iraq – in initial drafting at the Conference of Plenipotentiaries. So, why the reluctance? One explanation might point to the somewhat tortuous relationship Arab states have had with international law and some of its key norms throughout the twentieth century, and which arguably continue today. As Jean Allain opens in his book, *International Law in the Middle East* (Ashgate Publishing Ltd 2004), 'Where international law in the Middle East is concerned, it is impossible to escape the simple fact that law on the books and law in practice do not equate' (Allain, 2004: 1). He continues:

The ramifications of [a] lack of impartial application of international law in the Middle East are that it is instrumental in nature and simply another political

tool of statecraft to be used by the strong as against the weak. This alignment of international law in the Middle East closer to power than justice means that it loses much of its independence from international politics. No longer can one clearly attribute, in this region, a set of principles that should be acted upon – a normative framework. Instead of overriding legal principles – acting in good faith, the exclusion of the unilateral projection of uses of force, the peaceful settlement of disputes, etc – the region is left to its own devices. (Allain, 2004: 3)

Though written in 2004, and arguably lacking recognition of historical contributions to international law development by some Arab countries – such as to the drafting of the Refugee Convention – or surpassed by updated views, for some, there might still be much that holds true about Allain's central argument – that international law in the Middle East is often closer to power than justice.<sup>4</sup> By this, he means that international law had been 'blatantly disregarded, selectively applied and enforced, and used and abused to the advantage of powerful States'. In support of this proposition, one case study addresses 'the abandonment of Palestinian refugees'. Allain argues that there has been a 'twin abandonment' – between Israel, which rejects the Palestinians' right of return, and the neighbouring Arab states, which refuse to permit them to resettle or integrate for fear that to do so will undermine their ambitions for a Palestine state (though Jordan has granted Jordanian citizenship to Palestinians following the 1948 and 1967 Arab-Israeli wars). Allain's conclusion is that 'it is not surprising that in a region of the world where the fate of millions of Palestinians remains indeterminate, denied their fundamental rights for more than fifty years, this has engendered a healthy disrespect for the legitimacy of international law' (Allain 2004: 125). While elements of this argument are supported by events on the ground, perhaps, in light of some Arab states' participation in the drafting of the Refugee Convention and in a range of regional and international laws, and in long-standing membership of the UNHCR's governing Executive Committee (ExCom) (see later in this chapter), the more accurate claim is that there is a selective and self-serving respect for international law.

The more widely expressed reason for early and continuing refusal to sign the Convention relates to the lack of resolution of the 'Palestinian issue'. Certainly, those countries closest to Palestine, and arguably most impacted by the flight of Palestinians in 1948 and 1967 – Jordan, Lebanon and Syria – have continued to ignore accession, ostensibly in order to avoid granting Convention refugee status, and to ensure that Palestinians are not fully integrated or permanently resettled so that the right of return remains a viable option.<sup>5</sup> Most Palestinian refugees are excluded from the Refugee Convention by the (in)famous Article

1D.<sup>6</sup> During drafting of the 1950 UNHCR Statute and 1951 Refugee Convention, it was felt by UN delegates that refugees from Palestine were sufficiently catered for in terms of protection and relief by UNCCP and UNRWA;<sup>7</sup> and, thus, the UNHCR's mandate should not extend to those refugees covered by the mandates of other UN bodies (Akram 2021: 645–6). In fact, Arab refugees from Palestine had been excluded from the mandate of the High Commissioner for Refugees as a result of the action taken by the delegations of the Arab states at the fifth session of the General Assembly. At the Conference of Plenipotentiaries, Egypt submitted its amendment (A/CONE.2/13), submitted jointly by the Egyptian, Lebanese and Saudi Arabian delegations (Goodwin-Gill and Akram 2000/2001: 247), to ensure that Palestinian refugees were not wholly excluded from the Refugee Convention if the protection and relief provided by UNCCP or UNRWA ceased.<sup>8</sup> In the Refugee Convention's final text, this became Article 1D.

Egypt is an unusual case. Despite its important involvement in the drafting of the Convention and Article 1D, among other articles, it chose not to accede until 1981. In a recent article exploring Egypt's accession to the 1951 Refugee Convention, and employing a historiographical and process-tracing methodology, Fujibayashi provides some fascinating insights into the decision-making process of an Arab state in this regard (Fujibayashi 2022). What emerges is the clear political motivation in the 1950s not to sign the new Convention as an expression of 'a sense of solidarity with and sympathy for the Palestinians, whilst keeping the Palestinian question alive on the international scene' (Fujibayashi 2022: 8; Jalal Al Hussein 2007: 435–63). Its decision to accede, concludes Fujibayashi, ultimately arose from a unique combination of circumstances: Egypt's then (negative) relationship with Arab states, changing directions of Egyptian foreign policy, internal governmental and ministerial politics, and the influence of a charismatic individual inside government – Boutros-Ghali – who worked persistently to persuade hard-liners of the benefits of accession.

Some commentators now suspect that it suits non-contracting Arab states to maintain the status quo, and refusal to sign constitutes a form of resistance as well as a demonstration of power. Such resistance might assist their financial leveraging influence with states of the Global North, the European Union, the World Bank and the UNHCR, and certainly post-2016, from the time of the Jordan Compact, much has been achieved in financial terms (Stevens 2022). And ongoing resistance to accession can be further justified – not only in relation to the failure of the Global North to resolve the Palestinian issue but also in the face of the many problems associated with refugee governance globally. Janmyr, in a recent article (Janmyr 2021: 193), helpfully summarizes the range of alternative



concerns and arguments outlined by refugee law scholars about the drafting and subsequent development of international refugee law, beyond the Palestinian question, all of which could justify refusal to accede: the lack of universal application of the 1951 Convention with its option to limit its coverage to pre-1951 refugees coming from Europe;<sup>9</sup> its focus on Western political thought and Western political goals (Hathaway 1990: 141); the ‘myth of difference’ between European and non-European refugees (Chimni 1998) and the racialization of the international legal definition of the refugee (Achiume 2021). To these we can also add the focus on civil and political rights in the Convention definition of a refugee, at the expense of economic, social and cultural rights; the *non-entrée* policies of the Global North; limited resettlement; externalization and regional containment policies; a refusal to share responsibility for refugee hosting on an equitable basis (Chimni 1998) and, more recently, the likely belief by donor states of the Gulf that they have a right to exert influence without the need to ratify the Refugee Convention (See, further, Cole 2021).

Yet, what several refugee scholars have also pointed out is the strange anomaly of Arab states – their involvement in drafting of the 1950 UNHCR Statute and Refugee Convention, their participation at the Conference of Plenipotentiaries and their continuing involvement in refugee law and policy development through UNHCR’s ExCom, established by the UN Economic and Social Council (ECOSOC) in 1958 and which functions as a subsidiary organ of the General Assembly (United Nations, 30 April 1958).<sup>10</sup> ExCom meets annually to review and approve UNHCR’s programmes and budgets, advise on international protection and discuss various issues with UNHCR and intergovernmental and non-governmental partners. Currently, the non-contracting states of Jordan and Lebanon and the contracting states, Egypt and Yemen, are members. At first, it might seem counter-intuitive that non-contracting states are permitted to continue to serve on ExCom, but the call in 1957 by the General Assembly for such a committee specified that it should be comprised of representatives ‘elected . . . on the widest possible geographical basis from those states with a demonstrated interest in, and devotion to, the solution of the refugee problem.’<sup>11</sup> Jordan and Lebanon, despite their enduring refusal to sign the Convention, have an incontrovertible and long-term ‘interest in, and devotion to, the solution of the refugee problem.’

ExCom’s Standing Committee, established in 1995 and which meets three times per year, ‘examines thematic issues included by the plenary in its programme of work, reviews UNHCR’s activities and programmes in the different regions (as well as its global programmes), adopts appropriate decisions and conclusions

on issues included by the plenary in its programme of work, and discusses other issues that it deems of concern.<sup>12</sup> Countries can apply to have observer status and, from October 2021 to October 2022, the two Arab states that were observers were Iraq and Libya, and from October 2022 to October 2023, just Iraq. In addition, Arab states have been active participants in international meetings discussing refugee and human rights issues, whether it be at a regional or international level, and whether relating to Palestinians or non-Palestinians. Thus, Arab countries have contributed to various meetings organized over decades by the UNHCR, including the 2016 New York Declaration on Refugees and Migrant and the 2018 Global Compact on Refugees (see Janmyr 2021 for further discussion). In addition, the League of Arab States (LAS) has been active in initiating regional discussions and outcomes,<sup>13</sup> but implementation has been rather poor and Arab states have shown a lack of commitment to the enforcement of strong norms that they have themselves agreed (Janmyr and Stevens 2021: 338–43). Thus, recent attempts to redraft the 1994 Arab Convention on Regulating Status of Refugees in the Arab Countries, which failed to come into force due to lack of accession, appears, once more, to have ground to a halt in 2018, despite suggestions by the LAS that it would shortly come into force (Janmyr and Stevens 2021: n 3).

An important aspect of the delivery of international refugee law, policy and practice in Arab states (and others) is the Memorandum of Understanding (MOU), or Cooperation Agreement, signed with the UNHCR, agreeing to the presence of the office in the relevant country. We find MOUs between the UNHCR and the following, *inter alia*: Egypt (in force in 1954; Egypt became party to the Refugee Convention in 1981, but the MOU is still operational);<sup>14</sup> Yemen (1992; Yemen became party to the Refugee Convention in 1980);<sup>15</sup> Saudi Arabia (1993, as amended 2010);<sup>16</sup> Jordan (1998, as amended 2014)<sup>17</sup> and Lebanon (2003).<sup>18</sup> Despite accession to the Refugee Convention, in the case of Egypt and Yemen, the MOUs are still operational and the presence and activities of the UNHCR are a significant if not crucial part of refugee protection and support on the ground. Many MOUs are difficult to obtain, in both Arabic and English, regarded by the parties as a confidential document, but nonetheless unofficial versions have appeared on the internet and help provide a context for understanding the complex application of the MOU and the relationship between UNHCR and state. An example of such complexity is provided by Egypt; Badawy argues that ‘the coming into force of the Refugee Convention and its Protocol, Egypt’s ratification of the OAU Convention, the passing of Decree 188/1984, and the increase in the numbers of refugees in Egypt due to regional and continental instability nullified the effects of

Article 2 of the MOU' (2010: 19).<sup>19</sup> Consequently, he questions the utility of the agreement 'other than that of preventing the integration of refugees in Egypt' (Badawy 2010: 19) and calls for a redrafting of the MOU to reflect the realities of refugee protection in Egypt and to provide refugees with greater clarity on their rights and local integration (Badawy 2010: 18–21).

In relation to refugee law regimes in the Arab world, countries can be divided, *inter alia*, between those that have ratified the Refugee Convention and those that have not, between those hosting a large number of refugees and those with fewer or those with UNRWA presence and those without. Despite variations in refugee reception policies, many Arab countries have an active interest in refugee matters and participate in regional and international fora, often seeking to influence policy. The ongoing refusal of important refugee-hosting countries – Jordan and Lebanon – to become party to the Refugee Convention is particularly interesting, since they, as members of ExCom, are part of global norm discussion and development. Arab states have exerted – and continue to exert – influence over international refugee law norm development but their choices of legal norm adoption or rejection need exploration and analysis, since there has been little written on such choices or their broader influence. The next section briefly explores such influence through the norm of refugee protection.

### The norm of (international) refugee protection and its role in the Arab world

It does not seem controversial to propose that one of the most important norms in refugee governance is that of refugee protection. Indeed, it would seem self-evident that a major aim of refugee law and policy is the protection of refugees. Yet, the concept of protection has been surprisingly unclear and elusive due to lack of treaty definition, a variety of usages of the term 'protection', a wide range of legal, scholarly, contextual and actor-driven interpretations, and differing application in practice or 'on the ground'. In 2013, I wrote an article entitled 'What Do We Mean by "Protection"?' where I attempted to expose some of the confusion with the usage of the term in the refugee context (Stevens 2013a). Subsequent analyses have explored in greater detail the range of meanings attributed to protection – in relation to the Refugee Convention's definition of a refugee, the rights contained in the Convention, the responsibility of the state on whose territory the refugee is hosted, and the actions of UNHCR, UNRWA and other I(NGOs) (Stevens 2016; Storey 2016; Lehmann 2020).

For the purposes of this chapter, I am interested in what is termed ‘international protection’ – the form of ‘protection’ that is provided for the ‘refugee’. Lehmann, who focuses on the Refugee Convention in his recent monograph on *Protection in European Union Asylum Law*, summarizes the complexities well. ‘Protection’, he argues, ‘is a term that is so frequently used in asylum law and policy that it is hard to see how the term retains distinct, analytical value’ (Lehmann 2020: 7–8); while ‘international protection’, he suggests, ‘is surrogate human rights enfranchisement for lacking domestic protection’ (Lehmann 2020: 202). Goodwin-Gill and McAdam, in their updated text on *The Refugee in International Law*, state that ‘The lack or denial of protection is a principal feature of refugee character, and it is for international law, in turn, to substitute its own protection for that which the country of origin cannot or will not provide. *Non-refoulement* is the foundation stone of international protection’ (Goodwin-Gill and Jane McAdam 2021: 481). They opine further:

Day-to-day protection activities are necessarily dictated by the needs of refugees and asylum seekers, but a summary reading of both the UNHCR Statute and the 1951 Convention gives a general picture. There are, first, both direct and indirect aspects to the protection function, with the latter comprising UNHCR’s promotion activities already mentioned. Direct protection activities, including intervention on behalf of individuals or groups, involve protection of the refugee’s basic human rights, for example, non-discrimination, liberty, and security of the person. UNHCR is also concerned specifically with the following: (1) the prevention of the return of refugees to a country or territory in which their life or liberty may be endangered; (2) access to a procedure for the determination of refugee status; (3) the grant of asylum; (4) the prevention of expulsion; (5) release from detention; (6) the issue of identity and travel documents; (7) the facilitation of voluntary repatriation; (8) the facilitation of family reunion; (9) the assurance of access to educational institutions; (10) the assurance of the right to work and the benefit of other economic and social rights; (11) treatment generally in accordance with international standards, not excluding access to and by UNHCR, the provision of physical and medical assistance, and personal security; and (12) the facilitation of naturalization. Of these, the first four, together with the general function, are traditionally considered to be of prime importance, with the principle of *non-refoulement* standing as the essential starting-point in the search for permanent solutions. (Goodwin-Gill and Jane McAdam 2021: 513–14)

I have selected to include this long quotation because it reveals, I think, the extent of the problem with the concept of ‘protection’ – its breadth and

multi-faceted nature. There are direct and indirect functions, and it involves both rights and needs assessments and delivery. However, the reality of international protection provision in the host state remains complex, especially in the Arab world, where refugee determination, and much else, is mainly conducted by the UNHCR,<sup>20</sup> described famously by Kagan as a 'shift of responsibility' from state to UN body (Kagan 2011). This shift has occurred in all states – whether contracting or non-contracting – since Arab countries have not yet established their own refugee status determination (RSD) processes, preferring instead to cede such responsibility to the UNHCR (though maintaining a right to demand cessation of registration or RSD by the UNHCR when so inclined).<sup>21</sup> Yet, over many decades of refugee hosting, the position has arguably become much more nuanced with both contracting and non-contracting states pursuing individualized approaches to refugees in their territories, such that the shift in responsibility can now be described as more akin to 'shifting responsibilities' between UNHCR, NGOs and state in a complex network of coordination and responsibility-sharing (Stevens 2021).

The Arab MOUs, previously mentioned, are not always reserved for practical, operational matters between UNHCR and state but can (and arguably should) reference protection norms. They tend, however, to be individualized to each specific country. For example, while both Jordan and Lebanon consider themselves not to be countries of asylum, and this is specified in their MOUs, there is no mention of *non-refoulement* in the Lebanese MOU, while the Jordanian MOU commits the Government of Jordan to uphold the principle (Stevens 2013b; Janmyr 2017). The Egyptian MOU is rather opaque on the issue of protection. With its reference to "bona fide" refugees, residing in Egypt, who fall within the High Commissioner's mandate' (Article 6) (Badawy 2010: 23), the presumption is that refugee status determination has been conducted by the UNHCR and that certain rights will arise as a consequence and as set out in the MOU. There is, however, no specific mention of *non-refoulement*. Saudi Arabia provides further interest. Janmyr and Lysa (2023: 15), in their groundbreaking article targeting a historical analysis of UNHCR's presence in Saudi Arabia, inform us that '[w]hile the draft MoU stipulated that UNHCR would "assume the function of providing international protection to refugees who fall within the scope of its Statute," the final version states that UNHCR shall "assume the function of its known international reconized [*sic*] role"'. At the same time, the 1993 MOU states that Saudi Arabia will provide protection to refugees in the Kingdom but fails to define the term in any meaningful way (2023: 14).

It would be inappropriate to exclude consideration of the protection of Palestinian refugees, despite the separate regime that exists for them under the mandate of UNRWA. In fact, the issue of protection of Palestinian refugees has moved to the foreground in a manner that was not always obvious. UNRWA's stated focus has been – and continues to be – on human development and humanitarian services, but more recently it has highlighted its provision of 'protection for registered Palestine refugees', which it describes as 'what UNRWA does to safeguard and advance the rights of Palestine refugees under international law'. UNRWA adopted a protection policy in 2012 and sets out on its website:

Four complementary elements to the Agency's protection approach:

- UNRWA ensures that it provides protection in and through its service delivery programmes by meeting minimum protection standards;
- UNRWA implements protection programmes that respond to protection threats and promotes the resilience of Palestine refugees;
- UNRWA addresses cases of violence, abuse, neglect and exploitation of vulnerable groups, including women and children; and
- UNRWA promotes the rights of Palestine refugees under international law, through the monitoring and reporting of violations and by engaging in private and public advocacy.<sup>22</sup>

Equally, an improved partnership between UNHCR and UNRWA now exists with the aim of ensuring the 'continuity of protection and assistance to Palestinian refugees as necessary' (UN, UNHCR 2009: 1). Notwithstanding such developments, Albanese and Takkenberg have called for 'a more comprehensive protection function' (2023: 15). Though they acknowledge this still needs further exploration, they propose that a comprehensive approach to Palestinian refugees is required, 'including proper mapping of their dispersal and protection needs, systematization of data, harmonization of registration procedures and strategic planning to make sure that protection needs are met' (2023: 15). They argue strongly, too, for an expanded focus on durable solutions.

For many decades, the study of refugees in the Middle East tended to focus on Palestinian refugees, though there have been refugees arriving in Arab countries from many parts of the world for generations, and throughout the twentieth and twenty-first centuries.<sup>23</sup> With the Iraqi displacement to neighbouring countries, in the wake of the 1991 Gulf War and the US-led invasion in 2003, and then the arrival of Syrians following the 2011 uprising and subsequent civil war, attention turned in greater depth to the countries to which the majority travelled: Jordan, Lebanon and Syria (in the case of Iraqis) and Jordan, Lebanon and Turkey (in

the case of Syrians).<sup>24</sup> Hundreds of thousands of people were permitted to cross borders and remain.<sup>25</sup> UN and non-governmental organizations poured into the Arab countries, offering operational and financial support. Research scholars – anthropologists, ethnographers, historians, lawyers, political specialists – also arrived en masse, keen not only to study what was happening on the ground in Jordan and Lebanon, to seek explanations for the apparent generosity and willingness to admit large numbers, despite the lack of clear international refugee law obligations to do so, but also to critique the management of refugees in the Levant.<sup>26</sup>

In 2009, Anne Evans Barnes, then Associate Resettlement Officer for UNHCR in Damascus, Syria, published a research paper entitled ‘Realizing Protection Space for Iraqi Refugees: UNHCR in Syria, Jordan and Lebanon’, which became highly influential for those working on the region and beyond (UNHCR 2009). Barnes explained how these countries were unable or unwilling to determine who met the legal definition of ‘refugee’, leaving such determination to a stretched UNHCR. She described the living conditions of Iraqis and their ability to access safety, assistance, services – such as education and healthcare – and work. Perhaps most significantly, Barnes introduced the term ‘protection space’ to a wider audience, which she defined as an environment conducive to the facilitation of protection (in other words, it is an environment that enables the delivery of protection activities and within which the prospect of providing protection is optimized) (UNHCR 2009: 1;12), and she noted that the UNHCR faced a challenge to create protection space as it needed simultaneously to meet the needs of refugees and of states (UNHCR 2009: 1).

Subsequently, the protection space approach has been critiqued. Jones, for example, accepts that the negotiation of protection space can achieve short-term results, but is concerned that ‘there are structural concerns which bias the types of short-term results which are achieved, and which undermine the achievement of long-term results’ (Jones 2014: 257). He posits three critiques of the negotiation of protection space: privileging of international actors, fora and interests; undermining of the normative strength of obligations towards refugees of both states and UNHCR and shifting the underlying responsibility for the provision of refugee protection from the state to UNHCR (Jones 2014: 257–60). Notwithstanding these pertinent and accurate observations, the protection space model continues to pertain in many parts of the world, including Arab states, albeit often alternatively named. Furthermore, Barnes’ contention that the countries of the Levant ‘were unable or unwilling to determine who met the legal definition of “refugee”’ fails to take sufficient account of the fact that a ‘legal



refugee' could be regarded as an international or Western construct and ignores the historical preference for the 'displaced', 'guest' or even 'temporary worker'.<sup>27</sup>

It took some time for the UNHCR to feel progress was being made on Iraqi displacement, with many challenges and complexities encountered on the way, as well as missteps, but the experience in Jordan, Lebanon and Syria helped pave the way for the approach adopted to handle the Syrian flight. Regional Response Plans were developed and, more recently, these have been replaced with the 3RPs – regional, response and resilience plans. The first Syria RRP was published in March 2012 and was a strategic framework document prepared by the UNHCR to address the needs for protection and assistance of refugees fleeing from Syria into Jordan, Lebanon, Turkey and Iraq. The 3RP Annual Report 2022 describes itself as a regional plan, with standalone chapters that focus on five specific countries – Türkiye, Lebanon, Jordan, Iraq and Egypt – and that incorporates 'strategic, coordination, planning, advocacy, fundraising, and programming platform with over 270 humanitarian and development partners' in response to the refugee crisis in the region (3RP 2022: 2). Individual countries now, additionally, produce their own response plans: in the case of Jordan, this is led by the Government of Jordan (see, e.g., The Hashemite Kingdom of Jordan Ministry of Planning and International Cooperation, 2020–2); Lebanon's is a joint plan between the Government of Lebanon (GoL) and its international and national partners, and produced by the GoL and the UN (see Government of Lebanon and the United Nations 2022); while the producers of Egypt's plans are not named overtly, but it can be presumed to be the UNHCR/partners and the Government of Egypt.<sup>28</sup>

Without doubt, the way the Iraqi and Syrian displacement was handled by Arab countries has heavily influenced policies on the reception, protection and support of refugees in the region and beyond – both at domestic and international levels. The political and legal dance in which governments in the Arab world, global institutions, NGOs and – latterly – individual refugees are engaged (such as labour migration) has influenced the norm of refugee protection itself in unexpected ways, and it is to this that I now turn in the final section.

### Some reflections: The new norm-al?

International refugee protection can be regarded as a concept constructed and developed at the global level – that is, through discussions by state representatives in global fora, through guidance delivered by UNHCR and



through the interpretation of international and regional law – with the aim of applying it top-down. In recent times, there has been a push for a rights-based approach to refugee protection, but this has not always been so clear or straightforward. Indeed, insofar as the norm of refugee protection in the Middle East is concerned, as I have outlined elsewhere, it has assumed quite varied and remarkable qualities, alternating between rights, needs and assistance, which add to the confusion (Stevens 2016). In an article published in 2017, Chatty (2017: 196) takes this further and argues that ‘[t]he international humanitarian aid regime’s prioritising or protection to a category of people who fit the legal definition of “refugee” is a rigid-rights-based construction that leaves many gaps in its implementation’. She contends that generosity or hospitality – *karam* – is ‘a social obligation’ and ‘effectively operates to provide the asylum seeker with sanctuary and refuge in an environment where international protection does not exist’ (Chatty 2017: 196). Others express caution, however. For example, Norman has recently argued that ‘[w]hile not dismissing the concept of *karam* – or generosity – as a principle that can guide the actions of individuals and potentially governments, this explanation is unsubstantiated’. Rather, she claims, ‘In the case of MENA states, the most influential cultural legacies are likely to be Islam, former rule under the Ottoman Empire, and notions of pan-Arabism’ (Norman 2020: 196).

At the same time that the UNHCR was talking about ‘protection space’, countries in the Levant, hosting the most refugees, referred repeatedly to their traditional concept of ‘hospitality’ and to Islamic principles of asylum. Rather than using the word ‘refugee’, many Arab countries preferred the term ‘guest’ or ‘Arab brethren’ (though ‘refugee’ is now the standard term used in relation to Syrians). Generosity and/or social duty were deeply embedded in Arab culture. The idea of hospitality – traced back to desert inhabitants – is still regarded as a most important principle among Arabs (Aranout 1987: 13); and it influenced the emergence of Islamic doctrines of *hijra* (migration), *ijarah* (asylum), *amān* (safety), *malja* (refuge) and *jiwar* (protection). The Qur’an expects refugees and migrants to be welcomed and well-treated, and includes prohibitions against admission, rejection at the borders or return to their own countries (Abou-El-Wafa 2009: 46).

The interesting aspect to the norm of refugee protection in the Arab world is that it is an apparent merging of cultural principles, such as hospitality; religious principles, such as *amān* and *jiwar*; and international law, such as *non-refoulement*. We have seen how *non-refoulement* is regarded as foundational to refugee law; yet, we know, too, that many Arab states adhere

(mostly) to *non-refoulement* of refugees, despite a lack of international refugee law implementation and questionable human rights practice. Why is this? One answer is provided by some Arab scholars, who contend that Islam provided the first adoption of a *non-refoulement* principle, including the non-extradition of those who had committed political offences (Aranout 1987: 21). Advisers on Islamic law point to evidence that ‘the principle of *non-refoulement* has been accepted as law in pre-Islamic Arab culture and under Islamic law for more than 15 centuries’ and that while there are differences between international law and the concept of *amān*, the basic idea that ‘a person whose life and person is threatened must not be transferred into the hands of the persecutor’ is the same (Al-Dawoody and Rodenhäuser 2021). *Non-refoulement* is not so alien or Western in its conceptualization and, thus, more likely to be accepted and applied. In fact, countries such as Jordan and Lebanon have acceded to many human rights to prohibit the return of people to countries where their life or freedom are threatened; or where they might face torture, inhuman or degrading treatment.

In the early stages of flight of Iraqis and Syrians to Jordan and Lebanon, while evidence exists of *non-entrée* or removal and deportations, overall, the vast majority were not returned to the countries of origin. Whether this has been due to acceptance of international law – or as part of cultural or religious custom – has not always been clear. Yet, in an important development in Jordan, in 2016, the Court of Cassation finally confirmed that a Syrian refugee could not be returned to Syria, in accordance with Art 3 of Convention Against Torture (CAT), and that international treaties had supremacy over domestic law. However, there remains some discussion on the bindingness or otherwise of customary international law in Jordan. The fact that the supremacy of treaty or customary international law has taken so long to resolve – or continues to remain somewhat contested – partly explains the ambivalence or ad hoc application of international human rights norms generally. Similarly, in Lebanon in 2008, the Court of First Instance revoked a deportation order against an Iraqi refugee, referring to the right to seek asylum (Article 13 of the Universal Declaration of Human Rights) and the prohibition against refoulement in both Refugee Convention and CAT.<sup>29</sup> Such cases are, however, scarce.

From 2015, increasing numbers of Syrians have been returned from Jordan, Lebanon, Egypt and Iraq. Jordan and Lebanon have closed their borders, and Palestinian refugees from Syria have found themselves to be refused entry or removed. In addition – as Crisp and Long reported in 2016 – hosting states have created conditions so dire that there is no other choice than to return – a form,

I would suggest, of constructive *non-refoulement* (Crisp and Long 2018: 141–7). Norman, among others, has also posited that states of the Global South are using the threat of deportation or removal ‘in instances where Global North states have failed to provide adequate financial support or resettlement options for refugees’ (Norman 2020: 152–3). Thus, we see the notion of leveraging emerging in a particularly distasteful but effective manner, a manner that can facilitate norm change in favour of the leveraging state.

When examining refugee protection in the Arab world, attention to implementation – rather than purely participation in international law and/or compliance – is fundamental.<sup>30</sup> Through an implementation lens, it is evident that the key (treaty) norm of *non-refoulement* and the (principle/cultural) norm of hospitality/*karam* have been contested, adapted or crafted at the national and local levels. Previously, the UNHCR spoke of ‘protection space’ and ‘protection needs (or rights to be realized)’ (UNHCR 2009), but refers now to a ‘protection environment for refugees’ (3RP Regional Strategic Overview 2023 : 41, in the case of Jordan). Arab hosts were providing a ‘territorial space’ for Iraqis and Syrians and were extremely instrumental in developing a notion of *karam*, hospitality or protection that met their political interests and that referred to only those rights obligations that they were willing to accept. The negotiation and re-negotiation between government and UNHCR/implementing partners are evident in the Response Plans, where compromise on both sides is identifiable. Some Arab states, particularly Gulf states – and individual refugees – are side-stepping refugee protection regimes altogether in favour of alternative laws and policies, such as labour laws (see Bastaki 2021, who discusses how significant numbers of Syrians preferred to travel to the Gulf states to seek work rather than refuge in a neighbouring country). There is increasing evidence, too, of the influence refugees themselves are having on the provision of needs, services, assistance and protection – the important push from the ‘bottom up’ that might lead to lessening of suffering and greater human flourishing, as well as normative change.

My final reflection relates to RSD. As discussed earlier, Arab states have not engaged with refugee status determination procedures, preferring to hand over responsibility to the UNHCR in this regard. However, as with much in the Middle East, theory is not reflective of actuality. UNHCR does – and has – conducted RSD in the region, but recent events have altered practices in some countries. Recent research has identified that in countries such as Jordan and Lebanon, full RSD proceedings are no longer the ‘norm’ for people seeking international protection, heightening the significance of registration (Costello et al. 2022: 45). And, further

that a 'merged procedure' has been adopted in which RSD is conducted only where resettlement is being considered (Costello et al. 2022: 6). In such a context, prohibition of registration of certain refugees by UNHCR in Jordan and Lebanon<sup>31</sup> has obviously impacted UNHCR's role in these countries as well as the delivery of protection through legal status. The consequences can be severe. As Turner notes, 'it is the ability to register with UNHCR, and to receive an asylum seeker certificate, rather than refugee status itself, that is central to protection seekers' status in Jordan, as well as their (albeit varied for different nationalities) security of residency, ability to work, access to healthcare, and a range of other services' (Turner 2022: 10).

The UNHCR's *New Approach to Strategic Engagement with RSD*, published in 2016, states as follows at paragraph 2:

Although States have the primary responsibility for determining refugee status, UNHCR may do so in accordance with its mandate, de facto substituting for States where they do not perform this function. In practice, UNHCR often conducts RSD in countries and territories that are not party to the 1951 Convention, or which have not yet established the legal and institutional framework to support a RSD process. This process can be done on an individual or group basis. Historically, UNHCR has advocated for an individual procedure to be conducted, wherever possible, following an in-depth examination of the individual circumstances of the applicant's case. More recently, however, UNHCR has published guidance on the use of prima facie recognition and on temporary protection and stay arrangements, methodologies that should be considered when conditions for their use are in place.

Costello et al. (2022: 13) comment that 'The New Approach was motivated by a recognition that in some cases, formal recognition as a refugee was not necessary to protect refugees – they could access the full range of refugee rights through other means'. This seems to me to be particularly significant in a chapter that is reflecting on the impact *on* international norms *by* Arab states. For students of Arab refugee policies, the New Approach and the relaxation of individualized (and even group) RSD have a direct link to historical events in the Arab world. The resort to 'temporary protection' or 'protection space' that occurred in the 2000s; the behaviour of governments and UNHCR in the face of large-scale movements; the considerable pressure encountered by host populations and international and national support organizations; the limitations of the MOUs and the alternatives to protection routes have all filtered through to a change in direction, identifiable in the New Approach. That there is this link, and considerable influence on global policy and norms by Arab states is clear; the

surprise is that there has, hitherto, been relatively little discussion of the extent of such influence and impact.

In conclusion:

- This brief foray into refugee governance in the Arab world has, I hope, shown that its role in norm development is of much greater significance than previously acknowledged and corrects a historical oversight. Further, not only have many Arab countries been involved in the drafting of the Refugee Convention, but they continue to influence UNHCR global guidance and initiatives on refugee law, policy and procedure, whether through formal fora, such as ExCom, through financial and political leveraging or through sustained practice on the ground.
- The Arab world provides a superb example of the multilayered complexity of norms in refugee governance. As we have seen, it is not only *legal* normativity that can lead to refugee protection; other forms of normativity – the moral, religious, cultural and political – have been highly influential. Thus, we can argue, alternatively, that refugees are accepted (and not returned) from a moral and social obligation of *karam*; or we can point to religion and identify the origins of protection (and non-return) in Islam, rather than from a Western or Eurocentric legal doctrine; or we can see the influence – albeit slow – of binding international law. Or we might conclude that there is much more cross-fertilization of ideas and concepts than we have hitherto acknowledged, as well as a selectivity – or an ebb and flow in approach – dependent on the circumstances and refugee groups confronted.
- The study of actual implementation of the norm of refugee protection reveals that it can no longer be defined in a top-down manner (though some aspects of the definition are, of course, still relevant) but that there needs to be much greater attention paid to – and acceptance of – local principle, custom and practice. Further research is required in this area.
- Arab states have undoubtedly engaged in norm creation, norm cooperation, norm challenging and norm manipulation, and various examples abound, beyond the social and cultural norm of hospitality: for example, the approach to burden-sharing; financial leveraging of the World Bank, the EU, and individual states; alternatives to refugee regimes, such as labour migration and laws; and recent significant changes to RSD, registration and resettlement. Here, too, there is much scope for further analysis of Arab influence and the changing role and practice of UNHCR in Arab states.

- It is important not to over-generalize when discussing Arab states and to examine the specific country context closely before being able to assert regional or inter-state normative developments or impact. Certain behaviours, approaches or policies have been adopted on an individual state basis and for individual reasons, and further study is still needed on Global-South to Global South influences.
- For doctrinal lawyers, the somewhat complicated compromise that exists in Arab countries can be an uncomfortable conclusion, since certainty of the ‘rule’ is often lacking, with consequent effects on enforcement and consistent application. But there is a balance to be drawn between what is achievable (through practice) and what is aspirational (though law): the study of refugee protection in the Arab world teaches us that, with patience and persistence, there is a mid-point, a new norm-al where rights, needs and assistance can work together in the interests of the refugee, but where clearly there is still much work to be done, as there is in all countries.

## Notes

- 1 My thanks to Maja Janmyr, Martin Jones, Dawn Chatty, Mirjam Twigt and Abdullah Omar Yassen for their comments on an earlier draft of this chapter. Law correct as at June 2024.
- 2 Please see Research project REFARAB which also engages with some of these issues: <https://www.jus.uio.no/ikrs/english/research/projects/ref-arab/>
- 3 Algeria, Egypt, Morocco, Sudan, Tunisia and Libya have ratified the 1969 Organisation of the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa; Djibouti and Somalia have signed but not ratified.
- 4 One must acknowledge, though, that such a contention is equally applicable to many countries and regions in the world.
- 5 It is important to note that some Palestinians, who no longer benefit from the protection of UNRWA, can fulfil the criteria of the Refugee Convention, as recognized in recent national and regional case-law and supported by scholarly argument and UNHCR. For a complete analysis, see Albanese and Takkenberg (2020). See, too, UNHCR (December 2017).
- 6 ‘This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being

definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention' (United Nations, 25 July 1951).

- 7 The United Nations Conciliation Commission for Palestine (UNCCP) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).
- 8 'When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the United Nations General Assembly, they shall ipso facto be entitled to the benefit of this Convention' (United Nations, 3 July 1951).
- 9 The Refugee Convention did contain the option for states to limit the definition of a refugee to those coming from 'events occurring in Europe before 1 January 1951' or extending it to 'events occurring in Europe or elsewhere before 1 January 1951' (Art. 1B). The 1967 Protocol lifted these temporal and geographical limitations, making the refugee definition of universal application.
- 10 United Nations General Assembly Resolution 1166 (XII) (26 November 1957) requested that the new ExCom 'consist of representatives from twenty to twenty-five States Members of the United Nations or members of any of the specialized agencies, to be elected by the Council on the widest possible geographical basis from those States with a demonstrated interest in, and devotion to, the solution of the refugee problem.'
- 11 *Ibid.*, para. 5.
- 12 See <https://www.unhcr.org/standing-committee-meetings.html> (accessed 22 February 2023).
- 13 League of Arab States Protocol for the Treatment of Palestinian in Arab States ('Casablanca Protocol'), 11 September 1965, and Declaration on the Protection of Refugees and Displaced Person in the Arab world ('Cairo Declaration'), 19 November 1992; League of Arab States, Arab Convention on Regulating Status of Refugees in the Arab Countries, 27 March 1994 (not in force); League of Arab States, Arab Charter on Human Rights (adopted 22 May 2004, entered into force on 15 March 2008).
- 14 For further discussion, see Badawy (2010).
- 15 For further discussion, see Hughes (January 2003).
- 16 See, for further discussion, Janmyr and Lysa (2023); Lysa (2023).
- 17 See, for further discussion, Stevens (2013b) and Malkawi (31 March 2014).
- 18 See, for further discussion, Janmyr (2017).
- 19 Article 2 states:

The tasks entrusted to the High Commissioner Delegation in Egypt will be in particular, the following: a) Cooperate with the governmental authorities in view of undertaking the census of and identifying the refugees eligible under

the mandate of the High commissioner; b) Facilitate the voluntary repatriation of refugees; c) Encourage, in cooperation with the Egyptian Government, and the international organizations competent in immigration matters, the initiative leading to resettle, in every possible measure, in the countries of immigration, the refugees residing in Egypt; d) Help, within the limits of the funds received to this effect, the most destitute refugees within his mandate residing in Egypt; e) Insure the coordination of the activities undertaken in Egypt in favour of refugees under his mandate, by welfare societies duly authorized by the Government.

- 20 In an unusual move, Qatar introduced the first domestic refugee law in the Gulf: Law No. 11/2018 on Organizing Political Asylum. It has been met with guarded optimism as well as considerable cynicism: see, for example, Human Rights Watch (30 October 2018) and Al Hasyim and Syauqillah (2020).
- 21 In the case of Syrians, this occurred in Lebanon in 2015, and in Jordan in 2019 for non-Syrians who entered for medical treatment, study, tourism or work (Human Rights Watch, 5 September 2019).
- 22 See <https://www.unrwa.org/what-we-do/protection>.
- 23 Jordan, for example, has over fifty nationalities of refugees.
- 24 Turkey is part of the Refugee Convention but applies the geographical limitation so that it considers only those coming from Europe to be eligible for refugee status under the Convention. Syrians are therefore treated as beneficiaries of a temporary protection regime established under the Law on Foreigners and International Protection 2013, which entered into force in April 2014, and Temporary Protection Regulation 2014. See, for further discussion of Turkey's position regarding asylum and refuge, Ineli-Ciger and Yigit (October 2020).
- 25 In 2009, for example, UNHCR estimated that there are 1.2 to 1.4 million Iraqis in Syria, 500,000 to 600,000 in Jordan and 20,000 to 30,000 in Lebanon (though some of these figures have been contested as inflated): Stevens (2013b). For Syrian refugees, at 15 July 2023, there were 659,030 'active registered refugees and asylum seekers' in Jordan: <https://reliefweb.int/report/jordan/registered-refugees-and-asylum-seekers-jordan-15-july-2023>; the latest number of registered Syrian refugees in Lebanon is 839,788; in Iraq, 256,861; and in Egypt, 138,853: <https://data2.unhcr.org/en/situations/syria>
- 26 Both Jordan and Lebanon have Memoranda of Understanding with UNHCR which makes it clear that they are not to be seen as countries of asylum and with the expectation that 'refugees' are resettled within six months (which rarely happens).
- 27 My thanks to Dawn Chatty for this point.
- 28 See, for example, *Egypt Response Plan for Refugees and Asylum Seekers from Sub-Saharan Africa, Iraq and Yemen 2020*: <https://reliefweb.int/sites/reliefweb.int/files/resources/ERP2021EN.pdf>



- 29 Lebanese Court of First Instance (Criminal), Judge Mkanna, 15/4/2008 cited in Clutterbuck et al. (2021).
- 30 See, for discussion of international relations theory, Betts and Orchard (2014).
- 31 See n. 21.

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# Lebanon and the establishment of international refugee law

Maja Janmyr

## Introduction

What role did Lebanon play in the establishment of the international refugee law regime? Through a legal-historical approach, this chapter examines Lebanon's involvement between 1946 and 1967 in creating the legal norms and supporting institutions focused on the protection of refugees. While there is an emerging literature focusing on how Arab states dispute and leverage key refugee protection norms (Fakhoury 2021; Geha and Talhouk 2019; Arar 2017), little attention has been placed on the role of these states in historically developing these same norms. Based on a close reading of the *travaux préparatoires* of the main legal instruments, this chapter aims to show how Lebanon has been involved in the international refugee law project from the very beginning, and how Lebanese representatives to the United Nations in fact advocated for remarkably progressive understandings of some of these norms.

Lebanon has engaged with the protection of refugees from its very inception. The first few years following Lebanon's 1943 independence largely coincided with the construction of the UN human rights and refugee protection standards. Lebanon's involvement concerned, on the one hand, the question of asylum and, on the other hand, refugee status and the institutions of protection. Yet, today, the Lebanese government insists that it is not a country of asylum and rejects, in principle, any local integration of refugees (Janmyr 2017). Importantly, Lebanon remains a non-signatory to the primary international legal instruments that provide for the protection of the world's refugees – the 1951 Convention and its 1967 Protocol – even though, as this chapter will show, it participated in drafting these key frameworks.

What makes Lebanon's involvement in the development of international refugee law so noteworthy when compared with many other states globally, and certainly in comparison with states in the Arab East, is the key role that a handful of individuals played throughout these processes. While there was a near total turnover among participating diplomats in the process of drafting the human rights and refugee law standards, Lebanese diplomats stand out because of their lengthy engagement (Waltz 2004). Perhaps the most well-known figure is diplomat and philosopher Charles Malik, who is widely considered to have had a leading role in, and a decisive influence on, the development of, for example, the 1948 Universal Declaration on Human Rights (UDHR) (Mitoma 2017; Hobbins 1994; Morsink 1999). Malik represented Lebanon at the San Francisco conference at which the United Nations was founded and was thereafter closely associated with the UN Human Rights Commission (HRC) between 1946 and 1953.

Working closely alongside Malik was also Karim Azkoul, a professor of history, Arab and French literature and philosophy. Azkoul's career at the UN stretched from the late 1940s when he was Rapporteur of the Committee on Genocide until the late 1950s when he headed the Permanent Delegation of Lebanon to the UN. While lesser known than Malik, Azkoul played a key role in the establishment of UNHCR and participated in drafting the UDHR and the 1951 Convention. Later, during the drafting of the 1967 Declaration on Territorial Asylum, Lebanon was, in addition to Azkoul, represented first by Edward Rizk and then by Georges Hakim, while Souad Tabbara represented Lebanon during the drafting of the 1967 Protocol.

Following this introduction, which also includes a brief section discussing the notions of asylum and refugee status, this chapter is divided into two main parts. The first part examines the question of *asylum* and focuses on Lebanon's engagement in the drafting of the UDHR as well as in the drafting of the 1967 Declaration on Territorial Asylum. The second part zooms in on *refugee status and protection*, examining in particular Lebanon's involvement in the drafting of the 1946 IRO Statute, the 1950 UNHCR Statute, the 1951 Convention and the 1967 Protocol. In a final section, conclusions are drawn.

### A note on asylum and refugee status

Asylum and refugee status are not one and the same in international law; asylum constitutes the institution for protection, while refugee status concerns only one

of the categories of individuals who benefit from such protection (Gil-Bazo 2015). The most distinct feature of the practice of asylum throughout centuries is its vocation of permanence. As such, the right to reside constitutes the essential and distinct content of asylum. In contrast, refugee status is temporary by nature; it exists so long as the circumstances that turn an individual into a refugee exist. The 1951 Convention, therefore, does not enshrine a right of asylum or a right of residence.

While there is currently no internationally agreed definition of what asylum encompasses, it is undisputed that asylum is a *right of states*. As an expression of state sovereignty, it is the protection that a state *grants* on its territory or on some other place that it controls. In this sense, asylum as a right of states has well-known and well-established historical roots in state practice, predating the international refugee regime. It is less clear to what extent asylum is a *human right of individuals*. Asylum has not found expression in any international treaty of universal scope. Today, it is nonetheless recognized as a human right in *regional* instruments of international law, including in the American Convention on Human Rights, the African Charter on Human and Peoples' Rights and in the Charter of Fundamental Rights of the European Union.

## Asylum 1947–67

### **1948 Universal Declaration on Human Rights**

Lebanon's engagement in key parts of the drafting processes of the 1948 Universal Declaration of Human Rights (UDHR) and, later, the 1967 UN Declaration on Territorial Asylum sheds important light on its approach to questions of asylum. The drafting of the UDHR was primarily carried out by the UN Human Rights Commission, and there, Lebanon's Charles Malik and Karim Azkoul played important roles. During 1947 and 1948, Malik and Azkoul alternated to represent Lebanon in the HRC, and when Malik in the autumn of 1948 chaired the Third (Social and Humanitarian) Committee of the General Assembly debates, Lebanon was represented by Azkoul.

This section will highlight some of the main developments, in particular with regard to what became Article 14 on the right to asylum:

Everyone has the right to seek and to enjoy asylum from persecution in other countries.



This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

The question of the right to asylum was one that passionately engaged the Lebanese delegation. Overall, their views on asylum must be seen as progressive – even by today’s standards. In the early stages of the drafting process, when the HRC considered the Secretariat Draft Outline of the International Bill of Rights in June 1947, Malik notably expressed that ‘political asylum is something sacred and ought to be preserved in the community of nations.’<sup>1</sup> For this reason, Malik insisted, ‘the principle of asylum must have a place in the Declaration.’<sup>2</sup> The modality and application of this principle, he thought, could nonetheless be dealt with in a separate convention. This remained the general Lebanese approach throughout the UDHR drafting process.

Ahead of the HRC’s Third Session, in May 1948, a Drafting Sub-Committee composed of the representatives of China, France and the United Kingdom formulated the following draft article on asylum:

Everyone shall have the right to seek and may be granted asylum from persecution. The United Nations is bound to secure this asylum in agreement with Member States.

Prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution.<sup>3</sup>

The subsequent debate at the HRC Session was intense, and early in the discussion the Lebanese delegation voiced strong opposition to the Drafting Sub-Committee’s proposal, with Azkoul stating that he

could not accept the text of the Drafting Sub-Committee. The right to asylum should be stated clearly and explicitly. Moreover, any measures implementing the exercise of that right were out of place in the Declaration, and should be laid down in a Convention, one on nationality, for example.<sup>4</sup>

Azkoul suggested the following alternative wording for the first sentence: ‘Everyone has the right to seek and to be granted asylum during persecution.’<sup>5</sup> While China, France and the United Kingdom spoke in terms of there being a right to *seek* asylum and that such asylum *may* be granted, Azkoul emphasized that everyone has the right to *seek* and *to be granted* asylum during persecution. As such, the Lebanese delegate opposed the permissive character of wording like ‘may be granted’, which he found had no real value.

In particular, Azkoul was concerned about establishing a right without at the same time laying down an obligation or duty to grant that right: that is, proclaiming a right to asylum without enabling persecuted persons to find such an asylum. His views on the importance of including a right to asylum in the UDHR, and that any implementing measures should be laid down in a separate treaty, closely harmonized with those Malik presented one year earlier. The perspective of the Lebanese delegation proved nonetheless to be a minority view, and by the end of the debate Azkoul had withdrawn his proposed amendment to the draft article's first sentence. The discussion had shown, Azkoul stated, 'that the Committee was not prepared to proclaim unconditionally the right to asylum.'<sup>6</sup> The HRC nonetheless voted on the Lebanese suggestion to include the expression 'during persecution', but this addition was rejected by three votes to two with one abstention.

During the debate, Azkoul also had comments on the Drafting Sub-Committee's second sentence concerning the role of the United Nations. Stressing the need for responsibility sharing to ease the pressure on those states granting asylum, he argued that the United Nations must 'bear a share of the burden falling upon the countries granting asylum to persecuted persons.'<sup>7</sup> Such a principle was in the view of Azkoul not, however, to be included by a clause in the UDHR but rather through a General Assembly resolution. That said, he nonetheless 'approved the action of the Drafting Sub-Committee in mentioning the obligations of the United Nations as regards the right to asylum. Otherwise, the first sentence would proclaim the right for all persecuted persons to seek asylum without really enabling them to find such an asylum.'<sup>8</sup> Indeed, throughout the session, Azkoul and Malik both pushed for the need to 'entrust the United Nations with the problem of asylum.'<sup>9</sup>

The Lebanese proposal to exclude a concrete obligation on the United Nations from the Declaration was shared among the delegates, and by five votes to none, with two abstentions; the Committee adopted the following draft of the first sentence: 'Everyone has the right to seek and may be granted asylum from persecution.' By six votes to none, with one abstention, it also adopted the addition of the expression 'in other countries' as proposed by the US delegation. Thus, following lengthy discussion in the HRC during the summer of 1948, the Commission adopted the following text as proposed Article 12:

Everyone has the right to seek and be granted, in other countries, asylum from persecution.

Prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution.<sup>10</sup>

Draft Article 12 on the Right to Asylum was once again heavily debated in November 1948 – this time in the Third Committee that was being chaired by Charles Malik.<sup>11</sup> Again, the discussion focused on the question of *who* was to assure the enjoyment of the right of asylum. States like France were in favour of making clear in the Declaration who should assure this right; the French delegation proposed to add the sentence ‘The United Nations, in concert with the Countries concerned, is required to secure such asylum for him’ simply because, in the view of the French delegation, ‘there is no point in proclaiming a right without at the same time stating whose duty it is to give effect to that right.’<sup>12</sup> Other states – like the United Kingdom – were of the opinion that no state could accept the responsibilities imposed by draft Article 12, and that providing asylum rather should be at their discretion.

The Lebanese delegation was nonetheless pleased with the text that had been adopted by the HRC, and rather opposed the discussion that was taking place, which, Azkoul noted, had shifted from one about the right of the individual to one about the obligation of the state. As the summary records expose:

Mr. Azkoul (Lebanon) thought that in the discussion which had just taken place, the conception of the right of the individual had been replaced to a certain extent by that of the obligation of the State. The statement of a right should not, however, depend on the possibility of States to comply with that right. If it were part of the birthright of man, it should be established even if, for accidental reasons, it did not seem possible to ensure immediate implementation. The particular difficulties of each State should be dealt with in the covenant which was to be drawn up. The declaration therefore should limit itself to setting forth the rights inherent in the human person.

For those reasons, the Lebanese delegation would be inclined to support the text proposed by the Commission on Human Rights which ensured the individual not only the right of seeking asylum, but also the right of being granted asylum.<sup>13</sup>

Speaking about the amendment proposed by the French delegation to add a sentence on the role of the UN, Azkoul notably stated that in the view of the Lebanese delegation, the text proposed was

rather dangerous, as it placed on the United Nations all the responsibility of granting protection to victims of persecution. Respect for the declaration of human rights and the implementation of its principles should not depend

on the existence of the United Nations. Even if the United Nations were to disappear, the principles set forth in the declaration would retain all their moral force.<sup>14</sup>

Thus, while Azkoul had previously argued that the UN had a responsibility to bear when it came to asylum, he resisted that it carry all of this responsibility. Again, he also opposed that these types of details be included in the Declaration. Finally, in that same discussion, Azkoul strongly resisted an amendment made by the USSR representative to restrict the granting of asylum to certain categories of persons, stating to the Third Committee that: 'Even the least distinguished person, merely by reason of the fact that he was a human being, had . . . a right to escape from persecution, and it was the duty of the international community to help him do so.'<sup>15</sup>

Considering this engaged involvement in the drafting of the right to asylum, it is peculiar that Lebanon was not represented the following day when the Third Committee voted on the right to asylum. As such, Lebanon never participated in the voting, where it was decided that the final wording of the first sentence would be: 'Everyone has the right to seek and to enjoy in other countries asylum from persecution.'<sup>16</sup> Following this, the draft declaration was sent to the General Assembly for formal adoption in December 1948.

## **1967 Declaration on Territorial Asylum**

As the UDHR fell short of formulating a concrete right to asylum, efforts to arrive at an international instrument that enshrined the right to asylum in international law were renewed and eventually resulted in the 1967 Declaration on Territorial Asylum (Holborn 1975: 228–9). This Declaration was largely drafted in three arenas: in the UN Human Rights Commission (1956–60), in the UN General Assembly's Third Committee (1962) and in the UN General Assembly's Sixth Committee (1966). Lebanon's active participation was essentially limited to the work in the Commission, where the country was represented by Edward Rizk (1956–7), Karim Azkoul (1958) and Georges Hakim (1959–60).

Following a French-initiated resolution in 1956 to discuss the right to asylum during the thirteenth session of the HRC in 1957, a draft declaration on the Right to Asylum was circulated by the French delegation.<sup>17</sup> The topic of asylum was more thoroughly discussed at the fifteenth session in March 1959.<sup>18</sup> Here, Lebanon's representative Hakim elaborated on Lebanon's approach to asylum, emphasizing the importance of the right to asylum:

Mr. HAKIM (Lebanon) said that there was indeed a need for a specific declaration on the right of asylum, the right was an important one and article 14 of the Universal Declaration was expressed in general terms which called for further elaboration. However, he recognized that that view was by no means unanimously shared. There was, moreover, considerable divergence of opinion regarding the nature of the right. It was clear therefore that if there was to be a declaration it must contain a precise definition of the right of asylum.<sup>19</sup>

The Lebanese approach to asylum as expressed a decade earlier by Malik and Azkoul was as such reiterated also in the context of the 1967 Declaration. The decade between these discussions had nonetheless seen both the Lebanese Civil War of 1958 and the arrival in large numbers of Palestine refugees to Lebanon. Perhaps these experiences led Hakim to in the same discussion also advocate for a need to distinguish between the categories of 'ordinary political refugee' and those arriving as part of a mass influx situation. The two scenarios, he argued, required different responses:

A distinction would have to be made between the case of the ordinary political refugee seeking asylum who was entitled to protection in the territory of another State and mass movements of refugees who were not individually in fear of arrest or prosecution. The two problems were entirely different. In the first case, the responsibility of the Government granting asylum was generally confined to affording the refugee protection by refusing to issue an extradition order. In the second case, the problem of extradition did not arise, but the receiving Government had to provide immediate relief and might well have to provide permanent homes on a considerable scale. The international community undoubtedly had a responsibility to share that burden, as indeed it had done in a number of instances.<sup>20</sup>

Hakim argued that the French Draft Declaration did not make a clear distinction between the two categories, and that, 'in his opinion, the draft declaration should define the different categories of refugees to which the right of asylum was applicable and provide for whatever type of action the Commission deemed necessary in each case.'<sup>21</sup> At the end of the session, the French delegation put forward a revised draft declaration; while Lebanon's proposal to distinguish between ordinary political refugees and mass movements of refugees was not observed, the revised version did make reference to the duty of other countries to take all appropriate steps, either in the form of aid and assistance or admission to their territory, in situations where a country finds it difficult to continue to grant asylum.

The actual drafting of a Declaration took place at the sixteenth session of the HRC in March 1960, prior to which twenty-eight states had submitted comments on the revised French Draft Declaration.<sup>22</sup> Together with India, Iraq and the United States, Lebanon submitted an amendment to proposed Articles 2 and 4 – an amendment which was also orally revised during the Commission discussions.<sup>23</sup> The four powers proposed that Article 2 reading:

Every person whose life, physical integrity or liberty is threatened, in violation of the principles of the Universal Declaration of Human Rights, shall be regarded as entitled to seek asylum.

was to be replaced by:

The situation of persons who are forced to leave their own or another country because of persecution or well-founded fear of persecution is of concern to the international community.

During the discussions, the four powers agreed to insert in the first paragraph the phrase ‘without prejudice to the sovereignty of States’ before the phrase ‘of concern to the international community’.<sup>24</sup>

Another proposed amendment by the same group of states concerned draft Article 4 that read:

(a) Irrespective of any action taken by particular States, the United Nations shall, in a spirit of international solidarity, consult with States as to the most effective means of providing help and assistance for the persons referred to in article 2.

(b) Other States shall examine, in a like spirit of solidarity, appropriate measures to lighten the burden of countries of first asylum, including admission to their territory of a certain number of persons first granted asylum in another State.

The four powers proposed the following, new text that eventually became Article 2(2):

Where a country finds difficulty in continuing to grant asylum States individually or jointly or through the United Nations should consider, in a spirit of international solidarity, appropriate measures to lighten the burden on the country granting asylum.

While heavily debated, the four-power amendment to draft Articles 2 and 4 was, as orally amended, eventually adopted by fifteen votes to none, with three abstentions.<sup>25</sup>

During the same debate, the Lebanese and Indian delegations also proposed an amendment to draft Article 3(2), reading:

This principle shall not apply in the case of persons whom there are reasonable grounds for regarding as a danger to the security of the receiving country or who, having been convicted by a final judgement of a particularly serious crime or offence, constitute a danger to the community of that country.

Lebanon and India proposed to amend the draft Article as follows:

The principle contained in paragraph 1 is not applicable in cases where, for reasons of national security or public safety and welfare, a State considers it necessary not to grant asylum.<sup>26</sup>

While considered favourably by many member states, the proposed amendment was initially rejected through a voting procedure. That rejection nonetheless led to so much discussion that the representative of Iraq proposed that the Commission revisit the article at a later meeting.<sup>27</sup> Following an agreement on this, on 15 March 1960, the amendment of India and Lebanon, as orally revised by the sponsors, was adopted by fourteen votes to none, with four abstentions. Draft Article 3(2) subsequently read:

Exception may be made to the foregoing principle only for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.

In that same session, Lebanon proposed the inclusion of an entirely new article, proposed as draft Article 4:

Persons enjoying asylum should not engage in activities contrary to the purposes and principles of the United Nations.<sup>28</sup>

The proposal met strong support during the discussions, and Lebanon's proposal was adopted by fourteen votes to none, with four abstentions.<sup>29</sup> The final version of what is today Article 4 reads:

States granting asylum shall not permit persons who have received asylum to engage in activities contrary to the purposes and principles of the United Nations.

The draft declaration adopted by the HRC was then transmitted to the General Assembly for consideration.<sup>30</sup> When the Commission's draft was considered by the Third Committee of the General Assembly in 1962,<sup>31</sup> Lebanon's participation was minimal.<sup>32</sup> Following this discussion, however, the Third Committee made

no progress on the proposed Declaration until 1966, when the Sixth Committee picked up on and finalized the Declaration.<sup>33</sup> Lebanon did not participate in these discussions, and on 14 December 1967, the General Assembly unanimously adopted resolution 2312 (XXII), 'Declaration on Territorial Asylum'.

## Discussion

Lebanon's engagement in the drafting of UDHR's Article 14 on the right to asylum and the 1967 UN Declaration on Territorial Asylum is significant and noteworthy.

During the UDHR process in the 1940s, both Azkoul and Malik arguably expressed progressive ideas around asylum; among other things, they emphasized that *all* persecuted individuals should without distinction have a right to asylum. In some important respects, the protection they proposed for those seeking asylum also went well beyond what we today find in UDHR Article 14; they essentially wanted the article on asylum to be made up of two notions: that of *seeking*, and that of *being granted*, asylum. Lebanon wanted asylum to be a right of the individual, and not only of the state to grant. That said, Azkoul and Malik also emphasized that a right to seek asylum must be accompanied by a corresponding duty to provide that asylum, and they supported the development of a separate treaty that dealt with the modality and application of a principle on the right to asylum as laid out in the UDHR. It was also during this process that we saw the first Lebanese emphasis on responsibility sharing to ease the pressure on those states granting asylum.

The generous and rights-focused ideas around asylum as promoted by Azkoul and Malik when drafting the UDHR were, in part, also furthered in the drafting process around the 1967 Declaration. The Lebanese delegation once again emphasized the importance of the right to seek asylum, as well as the need for a separate document that elaborated on the details of UDHR Article 14. A significant difference, however, was that during the drafting of the 1967 Declaration, Lebanon expressly advocated for the categorization of persons seeking asylum. This could be seen in stark contrast to some of the statements made one decade earlier, when Azkoul strongly opposed the USSR proposal to grant the right of asylum only to certain categories of persons, arguing then that asylum was a right of everyone by virtue of being human.

The drafting history evidences not only Lebanon's approach to issues of asylum but also that Lebanon made a substantial contribution to the development of key



instruments in this regard. During the UDHR drafting, it was indeed Lebanon that proposed to exclude from Article 14 a concrete obligation on the United Nations, while during the drafting of the 1967 Declaration, Lebanon's proposal that persons who have received asylum shall not be permitted to engage in activities contrary to the purposes and principles of the United Nations was equally met with widespread approval. In light of this active engagement, it appears nonetheless as peculiar that Lebanon, for reasons unknown, was either absent or silent in the very final stages of drafting both the UDHR and the 1967 Declaration. Interestingly, and as we will see in the following section, this *modus operandi* continued also during the drafting of instruments relating to refugee status and protection.

## Refugee status and protection 1946–67

### **1946 IRO Statute and 1950 UNHCR Statute**

Already at its very first session, on 12 February 1946, the UN General Assembly unanimously adopted Resolution 8(I) that instructed the Economic and Social Council (ECOSOC) to consider every aspect of the refugee problem, in the expectation that a new international body would be created.<sup>34</sup> This new organization was to be charged with the solution of the problem of refugees and displaced persons in the context of the Second World War. By December 1946, ECOSOC had drafted the Constitution for the International Refugee Organization (IRO),<sup>35</sup> and the IRO's proposed mandate – developed in part by Lebanon – was adopted by the General Assembly. The IRO's principal activity was the resettlement of mainly Central European refugees.

Lebanon, primarily through its representatives at the Lebanese Legation in London – Victor Khouri and Joseph Shadid – played an active role during the drafting process. It was one of only twenty states that together formed the Special Committee on Refugees and Displaced Persons.<sup>36</sup> The question of Palestine was already then of paramount importance to Lebanon, who at the time was advocating for the international recognition of Palestine.<sup>37</sup> In Committee discussions of the Report of the ad hoc Sub-Committee for the examination of Correspondence, Khouri voiced discontent that, in his view, 'too much prominence was being given, in the report, to Palestine as a country of potential resettlement'. For Khouri, 'the refugee problem, being essentially a problem of humanitarian character, should not be linked with political questions'.<sup>38</sup>

The definition of refugees in the IRO Statute appears also to have been of particular concern to the Lebanese delegation, who, in fact, voted against the definition that was developed and adopted by the Committee on 17 May 1946.<sup>39</sup> Importantly, the delegation objected to the fact that the new international body for refugees would only be called on to assist and protect persons who are *outside* their countries of origin. This, the delegation argued,

is contrary both to the spirit of the General Assembly resolution of 12 February 1946, and to the resolution of the Economic and Social Council, which lay down that the main task as regards displaced persons is to encourage and assist in every way possible their early return to their country of origin and not their departure from it.

In conformity with accepted principles, the new refugee organization will not be required to concern itself with refugees and displaced persons who have returned to the countries whose nationality they hold, or in which they had their habitual residence. When all states are anxious to retain or repatriate their nationals for the work of common reconstruction, paragraph 3 above-mentioned [the refugee definition] constitutes an encouragement of, and puts a premium on, emigration.<sup>40</sup>

Lebanon never became one of the IRO's twenty-six member states, and, as we will see later, Lebanon was notably discontent with the work of the organization. In 1952, the operations of the IRO ceased, and it was replaced by the Office of the United Nations High Commissioner for Refugees (UNHCR).

The process of creating UNHCR began already in 1949 – just after Lebanon had participated in drafting the UDHR – when in Resolution 319 (IV) of 3 December 1949, the UN General Assembly decided to establish a High Commissioner's Office for Refugees as of 1 January 1951. Lebanon took part in drafting the UNHCR Statute and was even a member of the Drafting Sub-Committee – along with Canada, France, Israel, Pakistan, the United Kingdom, the United States and Venezuela.<sup>41</sup> During the Third Committee discussions about a new organization that would replace the IRO, Lebanon's disappointment in the latter was nonetheless overwhelmingly clear. As Azkoul tells the Third Committee:

Although IRO had accomplished a great and historical achievement, it had also one very serious error. At a time when it should have been concentrating on repatriation, it had sent countless refugees to resettle in Palestine, thereby contravening some of the general principles set forth in its Constitution. It was indeed specified in Annex I to the Organization should make sure that its

assistance was not exploited in order to encourage subversive or hostile activities directed against the Government of any State Member of the United Nations. It was also laid down that the Organization should avoid disturbing friendly relations between nations and that special care should be exercised when the resettlement of refugees in non-self-governing countries was contemplated. In such cases, it was stated, due weight should be given to any evidence of genuine apprehension felt in regard to such plans by the indigenous population of the non-self-governing country in question.

In its policy of resettling refugees in Palestine, the IRO had consistently violated both those provisions. It could not even be argued that the organization had acted unwittingly. Ever since 1923, the Arab countries had made their position quite clear with regard to immigration into Palestine, and the inhabitants of that non-self-governing country had shown their apprehension not only by words but by deeds. Some might say that the IRO had allowed humanitarian ideals to outweigh the strict provisions of its constitution. It was sufficient to consider the results of the immigration into Palestine to see that humanitarian ideals would have militated against it. For each refugee sent to Palestine ten new ones had been created, and the IRO was directly responsible for the tragic plight of a million Arab refugees.<sup>42</sup>

While it was this perspective and experience that Lebanon brought with it to the drafting table, there was no doubt that Lebanon was positive about the creation of a new refugee organization. In this regard, Azkoul presented a clear vision of what the new organization should look like; it was to have a very simple structure and a minimum number of staff, and was to be a High Commissioner's Office rather than a special section within the United Nations Secretariat.<sup>43</sup> As he argued:

The protection of refugees might well involve bitter political controversies in which the United Nations Secretariat should not become implicated. Moreover, a High Commissioner would have a greater degree of autonomy and would thus be able to take action more speedily than the Secretariat. He would have more authority to conclude agreements with Governments and it would be easier for him to enter into negotiations with non-member States.<sup>44</sup>

Importantly, in the view of Azkoul, 'the High Commissioner's Office would have to continue work for as long as the necessity for legal protection of refugees continues'.<sup>45</sup>

More broadly, Lebanon's most important contribution to the UNHCR Statute arguably concerned the exclusion of Palestine refugees receiving

protection and assistance from UNRWA. Together with Egypt and Saudi Arabia, Lebanon issued a joint resolution on behalf of Palestine refugees, where they were critical of a United Kingdom resolution, which would 'submerge in the general mass of refugees certain groups which were the particular concern of the General Assembly and the right of which to repatriation had already been recognized by General Assembly Resolutions'.<sup>46</sup> The group they were referring to was the Palestine refugee population. Thus, they successfully demanded that 'the mandate of the High Commissioner's Office shall not extend to categories of refugees at present placed under the competence of other organs or agencies of the United Nations'.<sup>47</sup> It is clear from the drafting history that they were referring to the United Nations Relief and Work Agency for Palestine Refugees in the Near East (UNRWA), which has provided support to Palestine refugees since 1949. Today, paragraph 7(c) of the UNHCR Statute codifies this approach.

The drafting history furthermore reveals that Lebanon was actively engaged in advocating for a broad refugee definition. The joint Lebanon-Saudi Arabia-Egypt resolution argued that the 'definition of the term "refugee" adopted by the Economic and Social Council [was] unduly restrictive, because it was limited in time and space and omitted certain categories of refugees'.<sup>48</sup> As Azkoul furthermore contended in the Third Committee that 'there were new categories of refugees who did not come under the protection of the IRO; for example those in Greece, Pakistan, India and China . . . any resolution the Committee adopted should establish the High Commissioner as the protector of *all* refugees'.<sup>49</sup> While Azkoul agreed that 'for the first few years he could be asked to concentrate on providing legal protection for the special class of refugees covered by IRO . . . it should be possible for the United Nations to extend his services to cover all refugees at a later stage'.<sup>50</sup> In the end, however, Lebanon voted in favour of a Joint Resolution establishing UNHCR with a view to identify and assist refugees within Europe.<sup>51</sup>

The UNHCR Statute was adopted by the General Assembly on 14 December 1950 as an Annex to Resolution 428 (V). An Advisory Committee on Refugees was also established and later reconstituted as the UN Refugee Fund (UNREF) Executive Committee before finally becoming the Executive Committee of the High Commissioner's Programme (ExCom) in 1958. The ExCom has long been seen as an important way through which international refugee law is developed. UNHCR has had an official presence in Lebanon since 1962, and the following year Lebanon became a member of the ExCom.<sup>52</sup>

## **1951 Refugee Convention and 1967 Protocol**

Largely concurrent with the drafting of both the UNHCR Statute and the UDHR, Lebanon also participated in creating the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees. The drafting process of the former began with GA Resolution 8(I) of 12 February 1946 and was concluded when the UN Conference of Plenipotentiaries adopted the treaty on 28 July 1951. In between, the drafting included participation from the UN Secretary-General, an ad hoc (Expert) Committee, ECOSOC's Social Committee, the Third Committee of the GA, and a plenary debate in the GA. The most intensive parts of the drafting process took place in 1950 and 1951, which is also primarily when Lebanon participated.

Unlike several of the other drafting processes described in this chapter, Lebanon was not a member of the Ad Hoc Committee tasked with developing a Draft Convention.<sup>53</sup> The Draft Convention was reviewed by ECOSOC in August 1950, whereupon the Committee met again for a second session from 14 to 25 August 1950, now under the name of the Ad Hoc Committee on Refugees and Stateless Persons.<sup>54</sup> The new Draft Convention was thereafter submitted to the UN General Assembly.

At this point, in August 1950, Lebanon submitted written comments on some of the individual draft articles – notably on what is today Article 18 concerning self-employment and Article 31 on refugees unlawfully in the country of refuge (Weis 1990: 201).<sup>55</sup> Article 18 essentially entails an obligation on contracting states to accord refugees the possibility of engaging in independent economic activity, subject to a number of limitations. The inclusion of explicit rights to self-employment in the Convention was unprecedented, and the standard to be applied was deliberated at length during the drafting process. What is today Article 31 of the 1951 Convention was initially made up of five paragraphs, the fourth of which stated: 'A refugee (or stateless person) authorized to reside regularly in the territory of any of the High Contracting Parties may not be expelled save in pursuance of the decision of a judicial authority.'

Lebanon's comments to the draft provisions on self-employment and on refugees unlawfully in the country of refuge are notable, as it is one of the first times that Lebanon actually refers to its domestic refugee situation and its perceived ability to take on further commitments:

The Ministry commends the noble and humanitarian motives which inspired the Draft Convention and the documents in question, but it wishes to emphasize generally that Lebanon, a country which is already quite densely populated, and

which for a number of years has shown the greatest liberality and hospitality towards the Palestinian refugees, could not safely afford to increase her undertakings in this direction.

This hesitation applies particularly to certain provisions of the Draft Convention it is feared might give certain undesirables access to Lebanese territory or asylum there. Articles 3, 13 and 14 of the Draft go even further; they make no distinction between such categories of undesirables and for instance, the Palestinian refugees now in the Lebanon.<sup>56</sup>

While the unlawful entry of refugees and their subsequent movements was the subject of immense discussion and debate, for Lebanon, the question of Palestine refugees was at the forefront of concerns. It was explicitly used as an excuse not to take on more obligations. That said, it remains unclear who the 'certain undesirables' mentioned in the Lebanese statement are.

Lebanon's perhaps most significant contribution to the 1951 Convention was nonetheless less direct. While the representative of the United States in January 1950 had been the first to suggest the exclusion of Palestinian refugees from the 1951 Convention's scope,<sup>57</sup> Egypt, Lebanon and Saudi Arabia proposed to exclude from the Convention refugee definition Palestine refugees receiving protection and assistance from UNRWA. The proposal, which was submitted in December 1950 in connection with the Third Committee debate, was similar to what these states had maintained with regard to the UNHCR Statute just one month earlier. A consensus favoured this proposal, which was subsequently included in the Draft Convention in the form of section C of Article 1: 'The present Convention shall not apply to persons who are at present receiving from other organs or agencies of the United Nations protection or assistance.'<sup>58</sup> As in the discussions about the UNHCR Statute, the Arab states sought to maintain the special status granted to Palestinian refugees.<sup>59</sup> Following a detailed debate at the Conference of Plenipotentiaries, Article 1D was adopted following a general agreement among states.<sup>60</sup>

The final draft of the 1951 Convention was not passed until it was presented and unanimously adopted at the Conference of Plenipotentiaries in July 1951. Lebanon did not attend, allegedly opposing the Conference of Plenipotentiaries itself, arguing that it was the *General Assembly* that should adopt the text of the Convention.<sup>61</sup>

In 1964, UNHCR began to consider a modification of the 1951 Convention's temporal limitation, and an independent group of experts was entrusted with developing a draft independent protocol to the Convention. Two years later,

UNHCR submitted a Draft Protocol to the members of the ExCom and to the 1951 Convention's contracting states.<sup>62</sup> Thirty-five states – Lebanon included – submitted responses to the proposal, and all of them wanted the personal scope of the 1951 Convention to be extended by means of a protocol that would make the Convention applicable to new refugee situations.<sup>63</sup> ExCom members welcomed the proposed protocol, and the debate itself was short.<sup>64</sup> The 1967 Protocol was formally adopted on 31 January 1967.

Positive to a protocol, Lebanon submitted the following written statement during the drafting process: 'Subject to the position previously adopted by the Government with regard to the Convention, the Government supports the extension of the personal scope of the Convention by a Protocol.'<sup>65</sup> The 'position previously adopted' appears to refer to Lebanon's unwillingness to accede to the 1951 Convention. In the Third Committee discussions, the Lebanese representative Souad Tabbara detailed Lebanon's position further: 'The 1951 Convention appeared to discriminate against the new categories of refugees and she was in favour of the draft protocol which would make that Convention universal. The draft protocol was sufficiently important for the Committee to devote the necessary time to it.'<sup>66</sup> Voicing support for the UNHCR, Tabbara also peculiarly stated that 'Lebanon had no refugees but it was concerned with the humanitarian problem they represented and had contributed to the best of its ability to helping the Office of the High Commissioner in its task.'<sup>67</sup>

## Discussion

Lebanon's engagement in the drafting of the key refugee status and protection instruments shall not be exaggerated, but neither shall it be discounted. The drafting history suggests a more hands-on involvement by Lebanon when it comes to creating the institutions of refugee protection, and a more hands-off approach when it comes to creating the norms of the 1951 Convention and its 1967 Protocol. One reason for this may indeed be the 1951 Convention's inherent focus on the situation in Europe, while both the work of IRO and UNHCR had a potentially more global outreach. The 1967 Protocol, seen to globalize and universalize the 1951 Convention, was also largely drafted by a group of experts, allowing for less engagement on the part of states.

Whatever the case, Lebanon never acceded to the 1951 Convention nor to its 1967 Protocol. Recent research into the historical and contemporary reasons for this position has presented four main arguments as to why this is the case:

first, that there is a widespread and likely politically expedient uncertainty as to the obligations that come with the Convention (Janmyr 2017). Second, the responsibility-shift for refugees to third parties such as UNHCR brings about obvious advantages for Lebanon and has made it less inclined to become a party to the Convention. Third, the 'good-neighbourliness' principle between Arab countries holds that Lebanon should not employ the term 'refugee' because doing so would put the state into positions that could violate the good neighbour principle; essentially, acceding to the Convention would entail a duty to recognize certain forced migrants as refugees. Finally, today, many Lebanese government officials and policymakers consider the Convention simply redundant.

With this in mind, it is noteworthy that Lebanon has participated in several UNHCR-organized ministerial meetings seeking to reaffirm the centrality of the 1951 Convention. For example, in 2001 during the fiftieth anniversary of the 1951 Convention, Lebanon was one of thirty-four non-signatory states that participated, while in 2011 at the fiftieth anniversary event, it was one of twenty-two non-signatory states to participate. Additionally, the UNHCR ExCom, of which Lebanon is a member, also regularly calls on states who are not yet parties to accede to the 1951 Convention and actively contributes to developing the substance of refugee law by means of drafting the Annual Conclusions that interpret this Convention and seek to address gaps in international refugee law. Today, the ExCom is made up of 107 states, many of which, like Lebanon, have not acceded to the 1951 Convention.

## Conclusion

Lebanon is both an outsider and an insider to the international refugee law regime. While remaining a non-signatory to the 1951 Convention and its 1967 Protocol, as this chapter has shown, Lebanon was heavily involved in creating the legal norms and supporting institutions focused on the protection of refugees. Its engagement concerned the question of *asylum* as expressed in the UDHR and through the UN Declaration on Territorial Asylum, as well as *refugee status* and the *institutions of protection*, as formulated through, for example, the 1951 Convention, its 1967 Protocol and the UNHCR Statute. Lebanon's progressive stance when it comes to the individual's right to asylum is particularly noteworthy – both when seen through a historical and through a more contemporary lens.

The case study on Lebanon also has broader implications for our understanding of refugee norms and hosting in the Arab region. It challenges



the traditional depiction of Arab states as either passive or recalcitrant actors in the international refugee regime and shows instead how these states have made important contributions to the establishment of international refugee law. The Lebanese example brings forth a rarely studied perspective that hopefully will inspire future research avenues on how we study and perceive Arab states' participation in shaping refugee norms and practices. There is a sore need to historicize how Arab states, as norm creators, have regionally and internationally shaped treaties and agreements at the core of the international refugee regime.

While detailed, however, in important respects this chapter provides merely a broad-brushed and non-exhaustive account of Lebanon's participation in the development of international refugee law. The issues the chapter has examined expose several crucial questions that should be addressed in future research on Lebanon.

First, what importance can be ascribed to the individuals – notably Charles Malik and Karim Azkoul – who represented Lebanon in drafting the international refugee protection instruments? How much did their positions reflect those of the Lebanese government, and how much were they those of the individual concerned? Historical scholarship elsewhere has emphasized Malik's independence vis-à-vis the Lebanese government, and how he pursued a vision of international human rights that was more personal than representative of the Lebanese government's views or interests. Mitoma (2010: 225), for example, has argued that the nascent Lebanese government gave Malik very limited instructions on human rights. If correct, how did this take shape with regard to the international refugee law regime? And how true is this when it comes to the other leading figures, and, not the least, how true does it hold over time?

Second, future research should also concentrate on the participation of Lebanon in the UNHCR ExCom as well as in other high-level meetings. Lebanon participated, first, in the UN General Assembly negotiations leading to the adoption in the UN General Assembly of the 2016 New York Declaration for Refugees and Migrants – which sets out principles that would guide the global response to refugee displacement – second, in the UN GA negotiations leading to the adoption of the Global Compact on Refugees (GCR) in December 2018 and third, in the first Global Refugee Forum in late 2019 where pledges were made to put the GCR into action. A closer examination of Lebanon's involvement in these initiatives is crucial in order to understand more in-depth Lebanon's contemporary role in the ongoing development of international refugee law.

## Notes

- 1 UN Commission on Human Rights (UN HRC) Drafting Committee, 'Summary Record of the Fourth Meeting' (13 June 1947) UN Doc E/CN.4/AC.1/SR.4.
- 2 UN HRC Drafting Committee, 'Summary Record of the Ninth Meeting' (3 July 1947) UN Doc E/CN.4/AC.1/SR.9.
- 3 UN HRC Drafting Committee, 'Report of the Drafting Sub-Committee' (18 May 1948) UN Doc E/CN.4/AC.1/39.
- 4 UN HRC Drafting Committee, 'Summary Record of the Thirty-Seventh Meeting' (28 May 1948) UN Doc E/CN.4/AC.1/SR.37.
- 5 Ibid.
- 6 Ibid.
- 7 Ibid.
- 8 Ibid.
- 9 Statement by Malik. UN HRC Drafting Committee, 'Summary Record of the Fifty-Seventh Meeting' (7 June 1948) UN Doc E/CN.4/SR.57.
- 10 United Nations General Assembly (UNGA) Third Committee, 'Compilations of Amendments Submitted to the Draft Declaration of Human Rights Submitted to the Third Committee before four P.M. 6 October' (6 October 1948) UN Doc A/C.3/230. See also UN HRC Drafting Committee, 'Summary Record of the Fifty-Seventh Meeting' (7 June 1948) UN Doc E/CN.4/SR.57.
- 11 UNGA Third Committee, 'Official Records, Third Session, 121st Meeting' (3 November 1948) UN Doc A/C.3/SR.121.
- 12 UNGA Third Committee, 'Draft International Declaration of Human Rights: Amendments to the Draft Declaration (Document E/800) / France' (12 November 1948) UN Doc A/C.3/244.
- 13 UNGA Third Committee, 'Official Records, Third Session, 121st Meeting' (3 November 1948) UN Doc A/C.3/SR.121, 335–6.
- 14 Ibid.
- 15 Ibid.
- 16 UNGA Third Committee, 'Official Records, Third Session, 122nd Meeting' (4 November 1948) UN Doc A/C.3/SR.122.
- 17 UN HRC, 'France: Draft Declaration of the Right of Asylum' (12 April 1957) UN Docs E/CN.4/L.454 and E/CN.4/L.454 Rev.1; UN HRC, 'Report of the Thirteenth Session' (1–26 April 1957) UN Doc E/CN.4/753/Rev.1. See also summary records of the discussions: UN Doc E/CN.4/SR.560 and UN Doc E/CN.4/SR.572–575.
- 18 UN HRC, 'Report of the Fifteenth Session' (16 March–10 April 1959) UN Doc E/GN.4/789. See also summary records of the discussions: UN Docs E/CN.4/SR.618–622.
- 19 UN HRC, 'Summary Record of the 620th meeting' (18 August 1959) UN Doc E/CN.4/SR.620, 12–13.

- 20 Ibid.
- 21 Ibid.
- 22 UN HRC, 'Report of the Sixteenth Session' (29 February–18 March 1960) UN Doc E/CN.4/804.
- 23 UN Doc E/CN.4/L.556/Rev.I. Mentioned in UN HRC, 'Summary Record of the 654th Meeting' (9 March 1960) UN Doc E/CN.4/SR.644.
- 24 UN HRC, 'Summary Record of the 654th Meeting' (9 March 1960) UN Doc E/CN.4/SR.644, paras. 97ff.
- 25 UN HRC, 'Report of the Sixteenth Session' (29 February–18 March 1960) UN Doc E/CN.4/804, para. 108 b.
- 26 Ibid, paras. 117–25.
- 27 Ibid, para. 146.
- 28 Ibid, paras. 135–138. Lebanon's proposal: UN Doc E/CN.4/ L.563.
- 29 UN HRC, 'Report of the Sixteenth Session' (29 February–18 March 1960) UN Doc E/CN.4/804, para 138.
- 30 UN HRC, 'Report of the Commission on Human Rights. Report of the Social Committee' (15 July 1960) UN Doc E/3409, 5.
- 31 UNGA Third Committee, 'Official Records, Seventeenth Session, [1192th–1102th] meeting' (26 November–5 December 1962) UN Docs A/C.3/SR.1192 – 1202; UNGA Third Committee, 'Official Records, Seventeenth Session, 1209th meeting' (13 December 1962) UN Doc A/C.3/SR.1209. See also UNGA, Res 1682(XVI) (18 December 1961) UN Doc A/RES/1682(XVI).
- 32 For small exceptions, see UNGA Third Committee, 'Official Records, Third Committee, 1198th meeting' (30 November 1962) UN docs A/C.3/SR.1198, para. 43 and UNGA, 'Official Records, Seventeenth Session, 1201st meeting' (4 December 1962) UN Doc A/C.3/SR.1201, paras. 20, 25.
- 33 UNGA Sixth Committee, 'Official Records, Twenty-First Session, [919th–923<sup>rd</sup>] Meeting' (26–31 October 1966) UN Docs A/C.6/SR.919–923; UNGA Sixth Committee, 'Official Records, Twenty-First Session, [925th–926th] Meeting (4–7 November 1966) UN Docs A/C.6/SR.925–926; UNGA Sixth Committee, 'Official Records, Twenty-First Session, 953rd meeting' (9 December 1966) UN Doc A/C.6/SR.953.
- 34 UNGA, Res 8(I) (12 February 1946) UN Doc A/RES/8(I).
- 35 UNGA, RES 62(I)(II) (15 December 1946) UN Doc A/RES/62(I)(II). See also UN Economic and Social Council (ECOSOC), 'Special Committee on Refugees and Displaced Persons: Provisional List of Delegates' (4 April 1946) UN Doc E/REF/4; ECOSOC, 'Special Committee on Refugees and Displaced Persons: Provisional List of Delegates: 1st Supplementary List' (8 April 1946) UN Doc E/REF/4/Rev.1.
- 36 ECOSOC, 'Resolution Establishing a Special Committee on Refugees and Displaced Persons Adopted' (16 February 1946) UN Doc E/15/Rev. 1.

- 37 See, e.g., General Committee, 'Verbatim Records of [28th-34th] Meetings' (29 April–7 May 1947) UN Docs A/BUR/PV.28–34; A/BUR/PV.28; A/BUR/PV.29; A/BUR/PV.30; A/BUR/PV.31; A/BUR/PV.32; A/BUR/PV.33; A/BUR/PV.34.
- 38 ECOSOC, 'Special Committee on Refugees and Displaced Persons: Summary record of 28th meeting' (13 May 1946), UN Doc E/REF/70.
- 39 ECOSOC, 'Special Committee on Refugees and Displaced Persons: Final report: annex 2' (13 May 1946) UN Doc E/REF/75/AnnexII.
- 40 *Ibid.* Emphasis in original.
- 41 UNGA Third Committee, 'Official Records, Fifth Session, 341st Meeting' (8 December 1950) UN Doc A/C.3/SR.341, para. 17. See also UNGA Third Committee, 'Official Records, Fifth Session, 337th Meeting' (6 December 1950) UN Doc A/C.3/SR.337, paras. 7, 10; UNGA Third Committee, 'Official Records, Fifth Session, 341st Meeting' (8 December 1950) UN Doc A/C.3/SR.341, paras. 16–26.
- 42 See UNGA Third Committee, 'Official Records, Fourth Session, 260th Meeting' (11 November 1949) UN doc A/C.3/SR.260, paras. 28–9.
- 43 *Ibid.*, paras. 31–3.
- 44 *Ibid.*, para. 32.
- 45 *Ibid.*, para. 32.
- 46 UNGA Third Committee, 'Official Records, Fifth session, 328th Meeting' (27 November 1950) UN Doc A/C.3/SR.328, 358.
- 47 *Ibid.*, 358.
- 48 *Ibid.*, 358.
- 49 UNGA Third Committee, 'Official Records, Forth Session, 260th Meeting' (11 November 1949) UN Doc A/C.3/SR.260, para. 33. Emphasis added. See also UNGA, 'Refugees and Stateless Persons: Lebanon: Amendments to the draft resolution submitted by France and the United States of America (A/C.3/L.29)' (15 November 1949) UN Doc A/C.3/L.30.
- 50 UNGA Third Committee, 'Official Records, Forth Session, 260th Meeting' (11 November 1949) UN Doc A/C.3/SR.260, para. 33. Emphasis added.
- 51 UNGA Third Committee, 'Official Record, Fourth Session, 265th Meeting' (18 November 1949) UN doc A/C.3/SR.265, 150.
- 52 ECOSOC, 'Official Records, Thirty-Sixth Session, 1307th Meeting' (16 December 1963) UN Doc E/SR.1307 paras. 11–15; UNGA, RES 1958 (XVIII) (12 December 1963) UN Doc A/RES/1958(XVIII).
- 53 ECOSOC, 'Study of Statelessness' (8 August 1949) UN Doc E/RES/248(IX).
- 54 Ad Hoc Committee on Statelessness and Related Problems (1950) UN Doc E/AC.32/SR.33, 1.
- 55 (10 August 1950) UN Doc E/AC.32/L.40, 6.
- 56 (10 August 1950) UN Doc E/AC.32/L.40, 16.
- 57 Ad Hoc Committee on Statelessness and Related Problems (1950) UN Doc E/AC.32/SR.33, para. 38.

- 58 UNGA, Res 429 (V) (14 December 1950) UN Doc A/RES/429.
- 59 Cf., e.g., statements of Azmi (Egypt), Azkoul (Lebanon), and Baroody (Saudi Arabia), UNGA Third Committee, 'Official Records, Fifth Session, 328th Meeting' (27 November 1950) UN Doc A/C.3/SR.328, paras. 37–55.
- 60 UN Conference of Plenipotentiaries, 'Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons' (12 March 1951) UN doc A/CONF.2/1, 5.
- 61 UNGA Third Committee, 'Official Records, Fifth Session, 330th Meeting' (30 November 1950) UN doc A/C.3/SR.330, 371; UNGA Third Committee, 'Official Records, Fifth Session, 332nd Meeting' (1 December 1950) UN Doc A/C.3/SR.332, 378, 380.
- 62 UNHCR, 'Proposed Measures to Extend the Personal Scope of the Convention Relating to the Status of Refugees of 28 July 1951' (12 October 1966) UN Doc A/AC.96/346 Annex I, 1–6.
- 63 UNHCR, 'Report on the 16th Session of the Executive Committee of the High Commissioner's Programme, 31 October to 8 November 1966' (18 November 1966) UN Doc A/AC.96/352, 9.
- 64 Ibid., 9.
- 65 Ibid., 5.
- 66 UNGA Third Committee, 'Official Records, Twenty-First Session, 1449th meeting' (6 December 1966) UN Doc A/C.3/SR.1449, para. 49.
- 67 Ibid., para. 48.

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# Maghreb states in the international refugee regime

## Between strategic alignment, alternative pathways and confrontations

Katharina Natter and Lea Müller-Funk<sup>1</sup>

### Introduction

This chapter analyses how Maghreb states strategically use, integrate and renegotiate the international refugee regime to advance their domestic and geopolitical priorities at the intersection of Europe and Africa. In particular, it explores to what extent the international refugee regime has (not) been enacted by Maghreb states since their independences in the 1950s and 1960s and what national policies and practices have been developed to deal with people fleeing conflict, war and persecution. To account for the entire spectrum of responses by Maghreb states – ranging from managerial approaches in cooperation with international organizations (IOs) to *laissez-faire* and non-policy as well as the creation of alternative (legal and extra-legal) pathways – in this chapter we use the term ‘refugees’ to refer to people who have been displaced across borders due to violent conflict, war and persecution *regardless* of their legal status.

Morocco, Algeria, and Tunisia have been among the first non-European countries to ratify the 1951 Geneva Convention Relating to the Status of Refugees and, together with Egypt, they remain the only Arab countries having adhered to the Convention and its 1967 Protocol so far. Libya, on the other hand, has neither signed nor ratified the Convention (UNTC 1951, 1967). At the same time, none of the four countries has enacted domestic asylum law to date or has a national refugee determination system in place – the legal or administrative process which determines whether a person seeking international protection



is considered a refugee. Instead, Maghreb states deal with refugees through their immigration policies or through cooperation with the United Nations High Commissioner for Refugees (UNHCR). Here as well, the responsibilities attributed to UNHCR and its cooperation with national authorities vary across the Maghreb, often depending – as we will show – on the refugee populations concerned.

Since their independences (Libya in 1951; Tunisia and Morocco in 1956; Algeria in 1962), the four Maghreb states have experienced a series of refugee arrivals – initially from Algeria, Palestine and Western Sahara, and more recently from West and East Africa as well as Libya and Syria. For example, in the early 1960s, in the context of Algeria's Independence War, Morocco and Tunisia hosted up to 110,000 and 200,000 Algerian refugees, respectively, almost all of whom returned to Algeria upon independence in 1962 (Rahal and White 2022). Furthermore, since 1975, Algeria hosts around 173,000 Sahraouis from Western Sahara, of whom most are still living in the South-West of Algeria, in refugee camps run by the Sahrawi government in exile – the Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (Polisario) – with Algerian support (ACAPS 2022; Fiddian-Qasmiyeh 2011b).

Today, UNHCR has registered around 20,000 refugees and asylum seekers in Morocco (25 per cent Syrians, followed by Guineans, Ivorians, Cameroonians, Yemenis and Congolese), 12,500 in Algeria (80 per cent Syrians and 20 per cent from sub-Saharan African countries), 10,000 in Tunisia (30 per cent Ivorians and 25 per cent Syrians, followed by Sudanese, Cameroonians and Guineans) and 44,000 in Libya (42 per cent Sudanese and 34 per cent Syrians, followed by Eritreans, Palestinians, Ethiopians and Somalis) (see UNHCR 2022a, 2022b, 2022c, 2022d). However, apart from Morocco, UNHCR statistics do not capture these countries' refugee populations accurately for political and other reasons: in Algeria, UNHCR data does not include the several thousand Iraqis and Palestinians who arrived since the 1980s, nor all those fleeing from sub-Saharan African countries (Guillet 2012; Teevan 2020). In Tunisia, the several hundred thousand Libyans who settled in Tunisia since 2011 are not registered by UNHCR (Natter 2023). In Libya, refugee figures only include groups that UNHCR is entitled to register. Libya's general migration statistics, for instance, suggest the presence of other refugee groups such as 280,000 Palestinians, 102,000 Somalis and 67,000 Iraqis (UN, DESA-Population Division and UNICEF 2014).

In response to these diverse regional refugee flows, Maghreb states have adopted different approaches over time and across refugee groups. While the reception and treatment of refugees until the late 1980s was mainly framed

through decolonization dynamics and regional politics, such as Pan-Arabism, the Palestinian question or the Western Sahara conflict, since the 2000s, Europe's growing efforts at externalizing migration controls provide the context in which the right to asylum is discussed – and contested – across the Maghreb. In particular, Maghreb states have oscillated between three approaches over the decades: (1) strategically aligning with certain principles of the international refugee regime and European trends of securitization, (2) developing alternative regional norms and pathways to entry and stay for specific refugee groups through mobility agreements and laissez-faire practices and (3) explicitly confronting external demands on asylum policy and refugee reception, such as through rejecting EU policy proposals or expelling UNHCR.

To analyse this repertoire of engagement strategies and the power dynamics characterizing the contentious field of refugee politics in the Maghreb, the chapter draws on a systematic review of laws, conventions and policies enacted by Morocco, Tunisia, Algeria and Libya regarding refugees since the 1950s, on materials from the UNHCR Archive in the 1950s and 1960s, as well as on interview data and press material collected across the Maghreb over the 2016–21 period. The analysis shows that strategic alignment and cooperation with international actors are not per se rights-enhancing; it can also lead to rights-denying policy developments in the context of securitization of migration and asylum. Furthermore, strategic alignment always also contains an element of subtle contestation to externally imposed norms of refuge and asylum in the form of inaction or the development of alternative legal or political frameworks. In this context, external demands on asylum are sometimes also met with outright contestation and confrontations between Maghreb states and European or international actors. Ultimately, this chapter showcases how, by shifting between different strategies of engagement with the international refugee regime, Maghreb states are all but passive receivers of external demands but proactive agents in this contentious, transnational policy field, as also previous research has pointed out (El Qadim 2015; Paoletti 2011; Cassarino 2014).

### Strategic alignment and non-alignment

First of all, our analysis shows that the four Maghreb states strategically align with the international refugee regime depending on their domestic and geopolitical interests, while always remaining vigilant to safeguard their national sovereignty, especially over domestic asylum law. Particularly the variegated

roles and responsibilities attributed to UNHCR in refugee status determination are emblematic of how Maghreb states strategically align or non-align with the international refugee regime.

### **An early, symbolic ratification of the Geneva Convention**

Morocco, Algeria and Tunisia stand out for their early ratification of the 1951 Geneva Refugee Convention. Originally developed to deal with massive displacement across Europe after the Second World War, the Geneva Convention provided the first universal definition of a refugee and recognized refugees' right to remain and right to return, the right of asylum and the fundamental principle of non-refoulement. In the context of decolonization, ratifying or reiterating their adherence to the Geneva Convention was a strategic step for national governments of Maghreb states to affirm their role as responsible and fully fledged members of the international community.

In Morocco and Tunisia, the Geneva Convention had still been ratified by French colonial authorities, in 1955 and 1954 respectively. Upon independence in 1956, and with Algerian refugees arriving on their territories, Moroccan and Tunisian authorities formally confirmed their adherence to the Geneva Convention (Boubakri 2007; Natter 2023). This was a strategic move to raise awareness that the refugee question was not limited to the European continent and led to UNHCR's first mission outside of Europe (Rahal and White 2022). In Algeria, the ratification of the Geneva Convention was also tightly linked to the decolonization process: while the French colonial authorities refused to ratify the Convention on behalf of Algeria (considering Algeria to be an integral part of the French state), the Provisional Government of Algeria ratified the Convention in 1960, *de facto* acting like a sovereign state two years before formal independence (Mackinnon 2019). Across the Maghreb, only Libya did not sign the Geneva Convention until today.

### **A progressive and selective formalization of UNHCR's presence**

Despite its early ratification, the norms of the Geneva Convention have not been translated into domestic asylum law across the Maghreb until today, so refugee status determination is mostly done by UNHCR in cooperation with non-governmental organizations and not national governments. Indeed, in all four countries, UNHCR's presence has been progressively formalized over time,

with UNHCR selectively tasked with providing refugee status determination and humanitarian aid to refugees.

Early on, UNHCR had honorary representations in Tunisia (since 1963) and Morocco (since 1965). In the context of decolonization in the late 1950s to early 1960s, both countries actively reached out to UNHCR to involve it in refugee status determination and the provision of humanitarian aid to Algerian refugees (Rahal and White 2022). The dynamics surrounding the Algerian relief effort were, however, deeply politicized: while independent Tunisia and Morocco had a clear position against France and in support of Algerians fleeing a war of independence that they had luckily avoided, they were also aware that without international and European support, they would not be financially and organizationally able to host Algerians (Müller-Funk and Natter 2023). This prompted their request for UNHCR involvement in refugee reception and humanitarian aid, albeit within clear limits, as we discuss later. After Algerian independence in 1962 and the return of Algerian refugees, UNHCR kept honorary representations in Morocco and Tunisia, but these were largely inactive and were not involved in refugee status determination or humanitarian aid provision until the 1990s and 2000s.

In Tunisia, the Ministry of Foreign Affairs granted UNHCR the right to conduct refugee status determination in 1991 without, however, signing a formal Cooperation Agreement, and the Tunisian Red Crescent was in charge of receiving asylum requests and transmitting them to UNHCR. In practice, the number of asylum seekers registered remained minimal until the revolution in 2011, as there was allegedly an informal quota set by Tunisian authorities that UNHCR had to conform to (Planes-Boussac 2012). With large numbers of asylum seekers crossing Tunisia's South-East borders in the spring of 2011, Tunisia signed a Cooperation Agreement in June 2011, granting UNHCR the right to open a fully fledged representation and to conduct refugee status determination procedures. But while UNHCR has played a major role in dealing with incoming refugees from neighbouring Libya by opening and administering the Choucha refugee camp in the South-East of the country, it has not been charged with registering the several hundred thousand Libyan citizens who have moved to Tunisia over the past decade and are faced with *laissez-faire* and benign neglect by the Tunisian state apparatus (Natter 2023). While UNHCR can register Libyans, in practice, UNHCR does not grant refugee status, allegedly based on an informal agreement between Tunisian authorities and UNHCR in order to remain neutral in the Libyan conflict: 'So in fact UNHCR had almost no right to issue refugee cards to Libyans or Syrians, Palestinians a little more, but Syrians and Libyans, no. (. . .)

They can apply for asylum, so they can be asylum-seekers, but they will never have the card, the refugee status in Tunisia. This is a political issue' (TUNEX43).

In Morocco, UNHCR started to register asylum seekers in the early 2000s despite not having formal responsibility over it. Lengthy negotiations between the Ministry of Interior, Ministry of Foreign Affairs and UNHCR ultimately led to a Cooperation Agreement in 2007, which allowed UNHCR to open a fully fledged representation and to conduct refugee status determination (Valluy 2007). Since 2013, refugee status determination is done with the increasing involvement of national authorities, as we detail later (Natter 2023; Benjelloun 2018).

Algeria, where UNHCR also had an honorary representation since 1979, was the first country to sign a formal Cooperation Agreement with UNHCR in 1984. While the agreement was mainly signed in view of UNHCR supporting the Polisario Front in setting up the Tindouf camp for Sahrawi refugees in South-West Algeria, the formalization of their relations with Algeria enabled UNHCR to open a fully fledged representation and conduct refugee status determination procedures (Fiddian-Qasmiyeh 2011b). However, although Algeria tolerates UNHCR's role in supporting the self-administered Sahraoui refugee camps and provides infrastructure (water, electricity access) to the camps, the refugee identification cards issued by UNHCR are not recognized as residence permits by Algerian authorities and do not grant Sahrawis the right to work (ACAPS 2022). Furthermore, Algerian authorities do not allow UNHCR to register potential sub-Saharan asylum seekers and regularly conduct large-scale expulsions of migrants towards Niger or Mali, including those in possession of a UNHCR-issued refugee card (UNHCR 2018a; Zardo and Loschi 2022).

In Libya, UNHCR has been allowed to operate since 1991 and to register asylum seekers of specific nationalities, yet, without a Memorandum of Understanding (MoU), which makes its position fragile and highly dependent on the changing interests of the Libyan regime(s). Until 2011, the Qaddafi regime, for example, repeatedly used refugees for geopolitical ends by providing some groups with easier access to entry and citizenship, but also by carrying out large-scale deportations (Fiddian-Qasmiyeh 2011a; Paoletti 2011). In particular, Libyan authorities have defined a series of nationalities (Eritreans, Iraqis, Palestinians, Sudanese from Darfur, Somalis, Syrians, Yemenis and South Sudanese) which UNHCR is allowed to register:

It's very easy for us to characterize what their approach is towards Arabs in general and say – see, they are quite tolerant towards Syrian refugees, when in

fact there is nothing in that tolerance beyond the flexibility which they might extend to any other Arab population in the country contributing as . . . teachers, merchants or whatever else. (LIBEX8, 4/11/2020)

## A stalemate over national asylum legislation

Across the Maghreb, the presence of refugees and work of UNHCR is thus tolerated to diverging degrees – varying across countries and over time, depending on broader geopolitical considerations – but none of the states recognizes the agency’s status determinations by granting residence permits to status holders. This legal vacuum is reinforced by the fact that none of the four Maghreb countries has enacted a national asylum law so far. Over the decades, some steps were made in this direction – largely initiated by cooperation with external actors – but Maghreb authorities have remained vigilant to safeguard national sovereignty over their borders, which can partly explain why no national refugee determination systems have been set up yet.

### **Leveraging the space between action and inaction**

At a constitutional level, all four countries – including Libya, which did not ratify the 1951 Geneva Convention – guarantee political refugees protection from extradition in their constitutions, in Tunisia since 1959, in Libya since 1969, in Algeria since 1976 and in Morocco since 2011 (UNHCR 1980). Furthermore, Morocco and Tunisia now guarantee the right to asylum in their constitutions, since 2011 (Article 30) and 2014 (Article 26) respectively.

At an institutional level, the Ministries of Foreign Affairs of Morocco and Algeria set up bureaus for refugees and stateless people in 1957 and 1963, respectively, to deal with refugee determination – but *de facto* the criteria and procedures to apply for refugee status remained arbitrary and vague, and the system therefore ineffective (BO 1957; JORA 1963). In Morocco, the Bureau of Refugees and Stateless People (Bureau des Réfugiés et des Apatrides, BRA) was even formally closed in 2004 (Alioua, Ferrié and Reifeld 2018). However, in the context of the migration reform launched by King Mohammed VI in September 2013, the BRA was reopened and is since then working together with UNHCR to confirm refugee status determination decisions (Jiménez-Alvarez, Espiñeira and Gazzotti 2021). With the BRA taking on part of the refugee determination procedure, Morocco is signalling its independence from UNHCR

and reaffirming national sovereignty – a similar move Turkey performed in 2018 when it transferred refugee termination completely from UNHCR to national authorities and took sole authority over refugee statistics (Mencütek 2022: 8). In the other Maghreb countries, there is as of now no functioning national institution involved in refugee status determination.

At a policy level, in the context of regional political upheavals and democratization tendencies after 2011, as well as increased funding for cooperation projects between UNHCR and national authorities, all four countries also started to elaborate national asylum laws – but ultimately none of these laws have been enacted. As we explain later, this non-enactment has been the consequence of other – more urgent – domestic political priorities, power struggles within and between institutions as well as geopolitics, especially concerning the relations of Maghreb states with the European Union (EU) and its migration policy externalization.

In Libya, a plan for elaborating a national asylum system was launched in 2009, still under the regime of Qaddafi and shortly after Libya signed a MoU with three NGOs operating on Libyan territory in 2008 that aimed at ensuring the protection of asylum seekers and supporting the Libyan authorities in designing and implementing asylum management strategies (UNHCR 2008). UNHCR subsequently got the right to visit migrant detention camps and to identify possible refugees (Di Bartolomeo, Thibaut and Perrin 2011). However, these efforts never bore fruits, in part because of the regime change in Libya and the civil war that started in 2011 and triggered the political fragmentation of the country. More recent attempts to introduce a national asylum policy in Libya have fallen short in light of militias making increasingly large profits from kidnapping, imprisoning and asking ransom for migrants (UNHCR 2018b): ‘They want to assert that [they are a country of no-policy for asylum], that’s what they say, if you do xyz, people will think that we do have a policy. Yes, we maybe signed the agreement or however it is called, but we haven’t signed any of your laws, they are very clear about that’ (LIBEX8, 4/11/2020). For Libyan militias, the renewed MoU between Italy and Libya in 2020 and the informal pushbacks of migrants across the Mediterranean that resulted from it have been highly lucrative, as migrants can be exploited multiple times if they are brought back to Libyan shore. At the same time, the Libyan governments rely on the support of some of these militias and have therefore little interest in advancing in the development of a national asylum policy.

Similarly in Algeria, the development of national asylum legislation has been mostly discussed in its external relations with Europe. In this context, Algerian



authorities perceive the implementation of a national asylum law as giving in to European externalization pressures to outsource its own refugee status determination to the Maghreb, with Algeria refusing to be a 'subcontractor of European migration policy' (Baghzouz 2017: 42–5). While the development of a draft asylum law was announced by the Algerian prime minister in 2017, probably to showcase some – limited – cooperation with Europe in this matter, the project never saw the light of the day (Zerzouri 2018). At the same time, Algeria let an estimated number of 12,000 Syrian refugees enter the country after 2011 and provided ad hoc humanitarian aid, without, however, providing a legal solution for them (and other groups of refugees) to stay in the country long-term.

In contrast, in Morocco and Tunisia, full drafts of asylum laws were elaborated: in Tunisia, the Ministry of Justice was tasked by the new democratic government in 2011 to draft an asylum law and UNHCR started to support the process in 2015. According to the draft asylum law, all refugees recognized by UNHCR would automatically receive a refugee status from the Tunisia state (TUNEX38). However, while there was some enthusiasm to enact a national asylum system within the Tunisian administration in 2011–12, as well as in 2014 after the ratification of the new constitution, the draft has been shelved since 2016. Two main factors account for this dynamic: on the one hand, Tunisian authorities had to legitimize policies in front of an electorate – which was split between those supporting an asylum law in the spirit of the revolution and rule of law and those highlighting the need to first take care of Tunisians' needs and fearing new influxes of asylum seekers from Libya (Natter 2022). On the other hand, next to pressures from the international community to develop a national asylum law, EU countries also suggested to introduce extraterritorial processing of asylum claims in North Africa. In this context, not only Tunisian authorities but also civil society were critical of a genuine partnership between South and North in terms of refugee protection and careful not to give into European and international pressures. Also in Morocco, an asylum law has been elaborated throughout 2014 as a consequence of the new migration strategy launched in September 2013 (Alioua, Ferrié and Reifeld 2018). However, while a draft law has been finalized around 2017, the political process has stalled since then, as the draft has not been discussed by the Council of Ministers or parliament yet and there are no indications that this will happen in the foreseeable future (Natter 2023).

The overall ambiguity and inaction characterizing lawmaking on asylum across the Maghreb showcases how strategic alignment and non-alignment



always go hand in hand. Ultimately, while incipient policy developments have not led to changes in national legislations, they remain crucial in signalling to the international community – and European partners particularly – the willingness to stay engaged and in dialogue on asylum-related issues and migrant rights.

### **An indirect criminalization of refugees via migration laws**

Importantly, strategic alignment with the international refugee regime does not only concern potentially rights-enhancing policies, it also concerns rights-denying, criminalizing policies. In fact, in the absence of national asylum legislations, refugees across the Maghreb are often dealt with by domestic migration laws, rather than a dedicated asylum policy, placing them in a vulnerable legal situation.

Over the 2000s, these migration laws have been reformed across the Maghreb (Morocco in 2003, Morocco in 2004, Algeria in 2008 and Libya in 2010), criminalizing irregular migrants and their supporters (Perrin 2005, 2015). Libya's Law No. 19/2010 on Combating Irregular Migration is the most notorious example in this regard, as it criminalizes any irregular entry, stay or departure, with no distinction made between migrants, refugees and victims of trafficking. Article 19 of the law even allows for the indefinite detention, as well as deportation, of irregular migrants once their sentence is complete (Healy and Forin 2017). Also in Tunisia, Law 2004–06 Relative to Passports and Travel Documents criminalized irregular entry, stay and exit of migrants, as well as introduced sanctions for anyone failing to report contact with irregular migrants, including those protected by professional secrecy, such as lawyers or doctors (Ben Achour 2006; Ben Jemia 2009; Meddeb 2012). With these reforms, authoritarian regimes across North Africa effectively ensure their survival – both domestically and internationally – by stepping up surveillance of their citizens and territory, as well as demonstrating their alignment with Europe's migration securitization agenda.

### **Alternative pathways and selective openings**

In parallel to this strategic alignment with the international refugee regime as represented by the 1951 Geneva Convention, as well as the broader securitization agenda pursued by European countries since the late 1990s, Maghreb countries have engaged in regional norm creation around refugee

protection and experimented with alternative pathways to respond – selectively and pragmatically – to certain refugee situations on the ground, based on their own geopolitical priorities. These regional norms or ad hoc policy instruments facilitated an easier entry to and stay in Maghreb countries for some refugee groups but have often been poorly or selectively implemented and have not provided legal protection.

### **Regional norm creation**

First of all, Maghreb countries partook in regional initiatives of norm creation around asylum that sought to provide a less-Eurocentric alternative to refugee issues across Africa and the Middle East and reflected geopolitics of the time. Maghreb countries, for instance, have generally supported Palestinians in the name of Arab brotherhood and solidarity and offered political support to their national cause. However, Palestinians were not recognized as refugees and were instead accepted as a much-needed work force (Albanese and Takkenberg 2020: 183). In line with the pro-Palestinian stance of Maghreb states in the 1960s, Algeria and Libya supported the 1965 Casablanca Protocol for the Treatment of Palestinians in Arab States, initiated by the League of Arab States, which granted Palestinians the right to enter and stay, as well as the right to employment on a par with citizens (League of Arab States 1965). However, the protocol was poorly implemented and was amended in such a way in 1991 that it essentially released the signatories from their obligations (Janmyr and Stevens 2021: 5).

Decolonization and Pan-Africanist thought also impacted regional norm creation. Over the 1970s and 1980s, all four Maghreb countries ratified the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, which had been initiated by the Organization of African Unity (since 2002 the African Union) at a moment when many African states were struggling against colonial rule. Designed as a regional complement to the 1951 Geneva Convention, it broadened the refugee definition (Okello 2014; Sharpe 2012) and ‘translat[ed] the core meaning of refugee status to the reality of the developing world’. It has been heralded as a model for legal developments in other regions of the world, providing stronger protection rights on paper, even if these norms are not met in practice (Wood 2019).

In the context of the Algerian War of Independence, Tunisia and Morocco also lobbied UNHCR for a broad legal definition of refugees when dealing with Algerian displacement and entered into heated discussions with UNHCR officials in this regard, which ultimately changed the definition UNHCR officials

were applying. For UNHCR, defining who was considered a refugee and who was not was key to budget its relief operation and to appease France's worries that Algerian fighters could benefit from assistance. Tunisian and Moroccan authorities, on the other hand, advocated for a broad refugee definition to maximize access to aid. This led UNHCR to drop Algerian nationality as a selection criterion for material assistance in 1960: 'The High Commissioner had already made a tremendous concession in dropping the criterion of nationality thus adopting by far the most liberal definition ever accepted by this Office.'<sup>22</sup>

Pan-Arabism and the ambition of the League of Arab States to create a regional refugee regime ultimately led to the Arab Convention on Regulating Status of Refugees in the Arab Countries in 1994, which the four Maghreb states also signed (Aynaou 2020; Janmyr and Stevens 2021). The convention adopted an equally broad definition as the OAU Convention (UNTC 1969), including grounds for asylum based on sustained aggression against occupation and foreign domination or the occurrence of natural disasters (Article 1). While it guaranteed that refugees are to be treated no less than other foreign residents on their territories (Article 5), it also included exceptions to the principle of non-refoulement such as grounds of national security or public order (Article 8) and did not incentivize signatory countries to establish a domestic refugee determination system. While the Arab Refugee Convention itself is not legally enforced, some of its principles – especially the equal legal treatment of refugees and foreigners, as well as refoulement on alleged grounds of national security – have inspired practices across the Maghreb.

More recently, Morocco has made significant efforts to play a regional and international leadership role with regards to migration: in 2013, Morocco launched the African Alliance for Migration and Development at the UN General Assembly in New York; in 2017, Morocco was charged to coordinate the migration dossier at the African Union; and in 2018, Morocco launched the African Migration Observatory of the AU in Rabat and hosted the UN International Migration Conference, leading to the signature of the Global Compact for Safe, Orderly and Regular Migration (Natter 2023; Benjelloun 2021). While these efforts are not necessarily refugee-specific, they symbolize Morocco's strategic efforts to carve out an independent voice and agenda on regional and international migration governance.

### **Group-specific, ad hoc solutions**

Next to such legal and diplomatic developments at the regional level, Maghreb states have also developed alternative pathways to facilitate refugees' legal entry

to their countries without granting asylum or fully fledged refugee protection. These alternative pathways are often driven by national or geopolitical interests of the country's leadership and are generally selective – availing only certain groups of refugees preferential access to their territory, humanitarian aid and support. They are also often not sustainable, prone to abrupt changes in protection levels.

For instance, since 1975, Algeria has been hosting around 173,000 refugees from Western Sahara, who have fled the conflict between Morocco, Mauritania and the Polisario over the decades and live in UNHCR-supported, but self-governed refugee camps in Algeria's South-West. Algeria plays a crucial role in hosting the refugees and providing education and infrastructure but does not grant Sahrawi refugees legal stay and work permits to keep the pressure on Morocco and the international community to consider the Polisario's claim for independence.

Another refugee group that has benefited from preferential treatment is Palestinians. For example, from the early 1970s onwards, Libyan authorities granted Palestinian refugees multi-faceted support. This included opening an office for the Palestine Liberation Organization (PLO) in Tripoli and offering scholarships for Palestinian refugees to complete their secondary and tertiary studies (Fiddian-Qasmiyeh 2011a). Their legal status resembled other Arab foreigners, in terms of easier access to residency and citizenship. Additionally, Tunisia hosted several thousand Palestinians in the early 1980s during the Israeli-Lebanese war. Between 1982 and 1994, Yasser Arafat even relocated the PLO headquarters to Tunis (Kasar 2005). However, when Palestinian leader Arafat engaged in peace negotiations with Israel in 1995, Libyan authorities decided not to renew the one-year residency visas of around 30,000 Palestinians and to deport them, in order to showcase their disapproval. This shift away from Libya's Pan-Arabism narrative resulted from the perceived lack of support from Arab countries in the aftermath of the 1992 UN embargo and was soon followed by a shift towards Pan-Africanism. Libya's geopolitical shift manifested itself in the liberalization of its policy towards sub-Saharan African migrants over the 1990s and early 2000s and explains the increasing presence of refugee populations from East African countries in Libya, such as Somalia, Ethiopia, Eritrea and Sudan, which do not figure in UNHCR's refugee statistics.

A more recent example of ad hoc policy is Tunisian authorities' *laissez-faire* approach to the large-scale settlement of Libyan citizens: Libyans are not considered refugees – but 'guests', 'brothers' or 'neighbours' – and do not have access to a formal stay permit but they are tolerated and not subject to

detention or expulsion practices other migrants may face. Tunisian authorities and other actors justified the *laissez-faire* approach by emphasizing that the historical free mobility agreement with Libya in 1973 provided them with a 'de facto protection status' that did not necessitate further regulation or attention. In fact, Libyans can enter and stay on Tunisian territory legally for three months, upon which they need to exit (and re-enter) Tunisia. While the Tunisian state has tolerated and accommodated the presence of Libyans by not enforcing laws related to overstaying and irregular stay, there has also been no attempt at registering or legalizing the situation of Libyans through giving them refugee status or issuing stay permits. In such a context, many Libyans do not consider it worthwhile to even try regularizing their papers (LIBTUN2; LIBTUN4; LIBTUN10).

Another example of such alternative pathways is the situation of Syrians in Morocco: while several thousand have been recognized as refugees by UNHCR since 2011, they have not received refugee status from the Moroccan government since the re-opening of the BRA in 2013, allegedly for security reasons (Sidi Hida 2015). Instead, they have received residence cards through the exceptional regularizations conducted in 2013–14 and 2016–17, availing them with a legal status but not the same level of protection as refugees. These examples paint a complex picture in which certain refugee groups are privileged over others, receiving *de facto* protection by national authorities for geopolitical or other reasons. Yet, these *ad hoc* protection responses are also fragile and can easily be reversed if the broader political context changes – showcasing the extent to which refugee reception is an inherently political enterprise in the Maghreb.

## Targeted confrontations

As the three previous sections have shown, refugee reception and asylum remains a contested policy field in all four Maghreb states, even more so since the EU has increasingly externalized its borders towards North Africa. In addition to strategic (non-)alignment and the development of alternative pathways, which represent subtle contestations of the international refugee regime, Maghreb states at times also choose the path of confrontation with external actors – through not accepting foreign NGOs or IOs on their territories, rejecting European policy proposals and employing blackmailing strategies using potential asylum seekers as threats in their negotiations with the EU.

## **Choosing your partners**

For instance, authorities of Maghreb states have been selective in hosting IOs and NGOs working on migrant and refugee rights: back in the 1960s, in the context of independence, Tunisia's government wanted to keep the management of the relief operation for Algerian refugees in Tunisian hands by deciding which IOs and foreign NGOs were allowed to operate on its territory and how. Most strikingly, Tunisia repeatedly refused to allow the American NGO CARE to operate in Tunisia: 'The [Tunisian] government does not want teams representing foreign organizations operating in the frontier districts, and they do not want any such organizations to establish more or less independent operations to assist the refugees.'<sup>3</sup> Similarly, in more recent decades, Moroccan authorities have regularly prevented civil society activists operating on or accessing Moroccan territory: most strikingly, in the early 2010s, Doctors without Borders (MSF) was repeatedly prevented from conducting humanitarian assistance in the border regions in Northern Morocco, ultimately leading to MSF ending their Moroccan mission in 2013 (Gazzotti 2021). In Libya, UNHCR was even expelled in 2010 within the context of tense negotiations with the EU over the control of irregular migration, although it was readmitted only a few weeks later (Di Bartolomeo, Jaulin and Perrin 2011; Amnesty International 2010): 'In Libya, we don't have formal acknowledgement of our right to operate there, it is used against us consistently, as a threat . . . that it can be taken away, we are constantly reminded that the space that we have is not very well secured, it's one of the drawbacks of informally established arrangements' (LIBEX8).

## **Discursive opposition**

In addition to circumscribing external actors' activities on the ground, North African states have also confronted European externalization efforts on a discursive level. Indeed, since the late 1990s, the EU has developed financial, diplomatic and informal policy tools at bilateral and multilateral levels that aim at outsourcing migration control and hereby circumventing Europe's international legal obligations towards refugees (Geddes 2021; Lavenex 2006; Reyhani 2021; Wunderlich 2012; Zardo 2020) – despite widely known human rights violations on the ground, especially in Algeria and Libya (The Guardian, 5 February 2019; Global Detention Project 2015, 2020).

For instance, at the EU Summit of Migration of June 2018, EU leaders suggested to explore the possibility of establishing 'regional disembarkation

platforms' in countries such as Algeria, Egypt, Libya, Morocco, Niger and Tunisia to screen migrants and process refugee claims outside the EU (European Council conclusions, 28 June 2018). The reaction to Europe's announcement was clear and cohesive across North Africa, with all Maghreb countries refusing to set up migrant screening centres to process refugee claims (Abderrahim 2019; *The Guardian*, 21 June 2018; *Libyan Express*, 25 June 2018; *Le Soir*, 20 June 2018). In Tunisian print media, the European proposal to establish disembarkation platforms was framed as a consequence of a deep political crisis in Europe and the failure of European countries to create a common European asylum regime (Fröhlich and Müller-Funk 2020). The idea of disembarkation platforms was described as vague and incompatible with Maghreb principles, labelling the platforms as 'counterproductive mechanisms' (*La Jeune Afrique*, 29 August 2018) and portraying Europe as barricading itself and obsessing over its fear of foreigners (*Al Chourouk*, 2 July 2018).

Opposition to financial cooperation with the EU has been less frequent, but particularly Algeria has taken a clear stance in this regard. While Libya, Morocco and Tunisia are the main recipients of the Emergency Trust Fund for Africa – with Libya receiving funding of 455 million euros, Morocco 238 million euros and Tunisia 91 million euros (EUTF 2021a, 2021b, 2021c) – Algeria has refused to take part in this funding instrument. More generally, Algeria is not involved in any bilateral project related to migration and asylum funded by one of the many EU funding instruments, except for broad regional projects (Zardo and Loschi 2022).

### **Strategic issue-linkage**

Lastly, Maghreb authorities have actively sought confrontation with European actors by instrumentalizing (refugee) migration for broader political goals and openly threatening the EU to leave migration uncontrolled. For instance, in 2017, Moroccan authorities threatened to loosen their border control and let sub-Saharan migrants 'storm' the Spanish border fence in Ceuta to demonstrate its opposition to EU's stance in the Western Sahara conflict. In 2016, the European Court of Justice decided that Western Sahara was not concerned by a free trade agreement on agricultural and fishing products between the EU and Morocco, as the EU did not consider the Western Sahara to be part of Morocco. In reaction to this decision, the Moroccan Ministry of Agriculture Aziz Akhannouch warned that 'Europe is exposed to a real risk that migratory flows will resume, which, thanks to a sustained Moroccan effort, have been contained so far' (*La Manche*

Libre, 20 February 2017). Qaddafi used a similar strategy in March 2011 after the United States and NATO began to bomb Libya to overthrow his government. In his speech before the fall of Tripoli, Qaddafi threatened that he will open the borders for sub-Saharan migrants to reach Europe: 'Now listen, you people of NATO. You're bombing a wall which stood in the way of African migration to Europe and in the way of al-Qaeda terrorists. This wall was Libya. You're breaking it' (BBC, 7 July 2018).

Ultimately, such episodes of outright confrontation highlight the fragile foundation on which much of Europe's externalization of migration control and refugee reception is based. They nuance the still dominant narrative of an imbalance of power in EU-African relations, with a powerful Europe imposing its will on North African authorities deemed weak and dependent. Indeed, the examples show that Maghreb states are not shy from using their power over population movements to advance their broader political goals, as European states also do, and that, ultimately, governments across Europe and the Maghreb use a similar discursive repertoire with regards to (refugee) migration.

## Conclusion

While the Maghreb does not host such large shares of refugees compared to other parts of the Arab world, its historical and contemporary experiences with national, regional and international attempts at shaping rules and norms of refugee reception are rich and diverse. As this chapter has shown, Maghreb states have navigated the international refugee regime and pressures stemming from externalization attempts since their independences with a mixture of cooperation in the form of strategic alignment, contestation through strategic non-alignment and the development of alternative pathways, as well as outright confrontation. The chapter has also demonstrated that alternative pathways for refugee groups to enter and stay, such as *laissez-faire* and selective refugee protection, can be both beneficial and detrimental to the situation of people in need on the ground. While they provide certain refugee groups with easier access to entrance and stay, their legal status remains in most cases temporary and fragile, prone to abrupt changes for domestic and geopolitical ends.

Hereby, this analysis expands on previous research showing that Maghreb countries, far from only being passive recipients, have been active creators of regional norm regimes surrounding refugees that suit their own national identity narratives and geopolitical priorities (El Qadim 2015; Paoletti 2011;



Cassarino 2014). In particular, our analysis suggests that it is the combination of three factors that can explain different state responses to displacement in the Maghreb over time and across refugee groups: the safeguarding of national sovereignty towards the (European, African) other, the balancing of different domestic, geopolitical and economic interests and the integration and also the control of international organizations. This insight offers key analytical tools to understand potential future developments on refuge and asylum in the region and in other parts of the world.

## Notes

- 1 Katharina Natter and Lea Müller-Funk are equal contributors to this chapter and designated as co-first authors.
- 2 UNHCR Archive, Document No° 11\_1-13\_1\_31 TUN, MOR, GEN (volume 3) Assistance to Algerian Refugees in Morocco and Tunisia (Part1) QA complete, pp. 87–8: Interoffice Memorandum, UNHCR Morocco to UNHCR Geneva; criteria for material assistance, 29 October 1960.
- 3 UNHCR Archive, Document No° 11\_1-13\_1\_31\_TUN, vol. 1, part 2, p. 23, Mr Björnberg to Mr Lindt, 2 October 1959.

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# The refugee rentier state and norm manipulation in the Arab world

Gerasimos Tsourapas

## Introduction

One of the most striking developments in the post-2011 Middle East has been overt attempts to employ refugees as instruments of inter-state bargaining. From Egypt and North Africa to Turkey and the Levant, states across the Middle East and North Africa (MENA) region have tried, in some form or another, to secure material and non-material concessions from the European Union (EU) and its member states by tying the management of forced migration to their diplomatic issue-linkage strategies.<sup>1</sup> In fact, the multiplicity of formal and informal diplomatic *quid pro quos* across the region has affected a range of sub-state and supra-state practices (Anholt and Sinatti 2020; Fakhoury and Stel 2022; Şahin-Mencütek and Tsourapas 2022), and this serves as proof of the complex cooperation modalities that have emerged in the Middle East over the last decade.

The extent to which Arab states became embedded in regional and global diplomatic negotiations over the fate of refugees and asylum seekers brings a key question to the fore: To what extent are Arab states engaged in the production of global norms regarding the management of forced migration, and how does this relate to the international refugee regime? This chapter complements the volume's aim of challenging a key assumption in much contemporary scholarly work, which traditionally examines the Arab world – and the Global South more generally – as passive actors in the management of forced migration. A closer analysis of post-2011 migration diplomacy processes demonstrates that Arab states are versatile actors in the international system and able to construct a strategic role for themselves to secure external economic aid. At the same time,



I examine how Arab states are able to facilitate the diffusion of such practices on a regional and, ultimately, global scale.

Drawing on a range of primary and secondary sources, I identify a rising trend in the commodification of forced migration across Arab refugee rentier states (Freier, Micinski and Tsourapas 2021) and examine how the concepts of the refugee rentier state and refugee rent-seeking (Tsourapas 2019) can shed light on Arab states' interactions with the international refugee regime. In keeping with the theme of this volume, I embed my analysis in questions of norms. However, rather than examining Arab states as norm creators or cooperators, I examine their impact in terms of processes of norm manipulation. I demonstrate how, for several reasons, Arab states resorted to employing their geopolitical position and importance as leverage in applying pressure for additional aid, or refugee rent, on the global stage. Although Arab states are not responsible for creating the norm of refugee rentierism, their approach to hosting forcibly displaced populations contributes to the global diffusion of such behaviour across refugee host states of first asylum in the Global South. I conclude my analysis by highlighting the need for further interregional research on how states (re)negotiate the international refugee regime beyond the West.

### Forced migration, norms and refugee rentierism

Political science has approached the international politics of forced migration in several ways, most recently by examining Western states' 'externalization' practices, which seek to hold refugees away from their territories (for instance: Agnew 2019). However, these accounts tend not to examine the rationale of states in the Global South. This is an argument that may be raised in relation to scholars examining this issue to identify the inefficiencies of the international refugee regime (Betts 2017) or the erosion of the distinction between refugees and migrants (Mourad and Norman 2020). Security scholars have referred to refugees and the way in which they are used in international relations as 'weapons' or 'demographic bombs', not without criticism (see discussion in Marder 2018). The fact that the question of norms is often at the forefront of this discussion highlights the need to understand how Arab states attempt to interact with the international refugee regime – or, as recent research has highlighted, how they attempt not to (Norman 2017; for a broader discussion, see: Mielke 2022). With the aim of shifting the focus to the rationale of refugee host states and drawing on non-Western frameworks, this chapter employs the concept of *refugee rentier*

*states* (Tsourapas 2019; Freier, Micinski and Tsourapas 2021), meaning refugee host states that seek to secure external economic and political concessions in return for continuing to maintain forcibly displaced communities within their borders.

Scholars of Middle East politics might not find the use of refugees as instruments of foreign policy particularly novel (indicatively: Thiollet 2011; Frost 2020; Müller-Funk and Natter 2023). Libya's Muammar Gaddafi would often resort to coercion to extract payoffs from target states, be they Arab or European. A year before his death, in the context of a 2010 EU-Africa Summit, he famously stated that the cost of non-compliance would be that 'Europe will turn black' (Tsourapas 2017). In Jordan, King Abdullah would often quip that the country finds itself between 'Iraq and a hard place'. This led to repeated calls for international aid following the 2003 Iraq War, which forced hundreds of thousands of Iraqis to seek shelter in Jordan (Baylouny 2020). By 2007, Jordanian secretary general of the Interior Ministry Mukhaymar Abu Jamous declared that the Iraqis were costing Jordan USD1 billion per year. In response, the United Nations High Commissioner for Refugees (UNHCR) allocated \$21 million (almost 60 per cent of its operating budget) to the country in aid (Seeley 2019). Since even further back in time, the fate of Palestinian refugees, forcibly displaced from their homeland through successive waves in 1948, 1967 and 1973 has been tied to inter-state bargaining (Frost 2020; Gutkowski 2022).

Yet, despite similarities with the past, the Arab Uprisings and the Syrian Civil War also constitute a turning point in the international politics of refugee assistance (Chatty 2018; Seeberg and Völkel 2020; Buehler, Fabbe and Kyrkopoulou 2022). As this volume demonstrates, the post-2011 context in the wider Middle East granted Arab states the ability to contest and (re)create the international refugee regime by placing them at the forefront of policymakers' attention. In this chapter, I examine the post-2011 context to identify the workings of refugee rentier states, defined as 'states seeking to leverage their position as host states of displaced communities for material gain' (Tsourapas 2019). Through this, I identify three novel developments across three dimensions of norm contestation: the rationale behind the use of issue-linkage strategies in the global management of forced displacement, which goes beyond traditional expectations of international practices on refugee governance; the manner in which 'refugee rentierism' is exercised within the asymmetric relations between the EU and MENA countries as part of Arab states' norm contestation strategies; and, finally, the consequences of such arrangements for the diffusion of refugee rentierism as a norm both within the Middle East and beyond it.

The origins of refugee rentierism arguably lie in the set-up of the international refugee regime and, in particular, the evolution of UNHCR as an institution tasked with the management of forced displacement in ways that would not pose political or economic obligations to UN member states (Loescher 2001). UNHCR today bears little resemblance to the institution created in the context of the 1951 UN Convention Relating to the Status of Refugees to protect forcibly displaced populations in Europe. The organization's massive expansion during and after the Cold War – both geographically, tasked with covering the entire world, and organizationally, tasked with helping internally displaced persons – was not accompanied by additional state funding. This led to UNHCR's gradual weakening as an institution providing support to refugee host states in the Global South – particularly in light of the proliferation of other instruments, or parallel institutions, tasked with managing forced migration at the regional or international level (Betts 2009).

With the burden of managing refugees falling to refugee host states in the non-West, a new 'grand bargain' was struck in 2003 aimed at offering payoffs relating to migration for donor states of the Global North and to development for Southern host states. More recently, the international responses to the Syrian refugee crisis and, in particular, the Regional Refugee and Resilience Plan have put additional emphasis on host-state 'resilience' that has accelerated a shift towards refugee rentierism (Arar 2017). Ten years after the Arab Uprisings, North-South cooperation on refugee protection shifted away from questions of burden-sharing and human rights protection as, gradually, an economic lexicon of 'bargains', 'deals' and 'compacts' came to dominate the workings of the international refugee regime, as it still does.

One of the regions in which this novel normative framework of refugee protection was to be tested was the post-2011 Middle East. The Arab Uprisings had led not merely to state collapse and civil war across the region – in the cases of Libya, Yemen and Syria – but also to a range of political processes that culminated in the strengthening of authoritarian rule against political and religious dissent in much of the region. In response, activists and their families sought asylum in Western states, as the worsening economic climate also contributed to the phenomenon of irregular migration across the Mediterranean. Emerging from a deep economic crisis itself, coupled with the rise of far-right and populist politics, the EU was unprepared. A 'fortress Europe' rationale characterized policy responses from Brussels and key EU member states (Laube 2021; Ozcurumez 2021).

This set the stage for a confrontation between refugee host states of first asylum across the Middle East, which found themselves undergoing the worst refugee crisis in recent history, and Europe. Drawing on international relations theory, we can trace refugee rent-seeking behaviour across two sets of Middle East states. One group of states engages in *tactical issue-linkage* strategies aimed at adding an extra issue of concern – namely, migration – to bargaining negotiations with international donors. One such state is Egypt, which enjoys a strategic position in the region and has received EU policymakers’ attention due to its utility as a transit state. More broadly, Brussels’ multilateral engagement across the MENA region has also linked development aid with target states’ ability and willingness to prevent irregular migration. Separate agreements – in EU terminology, ‘mobility partnerships’ – have been negotiated and agreed with a range of other Arab states, including Morocco and Tunisia.

In recent years, a second group of Middle East states has engaged in *substantive issue-linkage* strategies that seek to alter the perceived relationship between refugee protection and aid in negotiations with Western actors. This includes Jordan, Lebanon and Turkey, all three of which engaged in direct negotiations with the EU and other international donors, culminating in three separate agreements in 2016: the Jordan Compact, the Lebanon Crisis Response Plan and the EU-Turkey Statement (or ‘Deal’). In all three cases, as I have described elsewhere, the host states secured substantial economic and political concessions (or *refugee rent*) in return for continuing to host forcibly displaced populations within their territories: the EU-Turkey Statement included €6 billion of economic concessions to Turkey, while the Jordan Compact and the Lebanon Crisis Response Plan included a minimum of \$700 million and \$400 million, respectively.

This shift towards refugee rentierism has understandably polarized academic assessments of the global protection of refugees. On the one hand, some scholars highlight how North-South cooperation is necessary if we are to restore a functioning international refugee regime. The flow of development aid to refugee host states of first asylum is seen as a necessity in the absence of more durable modes of global burden sharing. With forcibly displaced populations also encouraged to enter the labour markets of host states, scholars and particularly policymakers see more opportunities to reach a sustainable *modus operandi* of ‘win-win-win’ approaches that benefit the Global North, the Global South and refugee populations themselves.

## Norm manipulation and refugee commodification

Not surprisingly, a range of critical voices has been raised against refugee rentierism in addition to long-standing critiques of Global North states' migration externalization processes. I argue that refugee rentier approaches ultimately lead to a process of refugee commodification across three dimensions.

In terms of domestic politics, we have already seen how a normative encouragement of refugee rentierism at the state level cascades down to individual- and local-level responses. In Jordan and Lebanon, for instance, it has given rise to a phenomenon whereby Jordanian and Lebanese citizens have been able to sell 'sponsorship' for hundreds of dollars to Syrian refugees aiming to escape encampment. In 2015, a \$200 residency fee was introduced in Lebanon for all Syrians over fifteen years of age, and anyone unable to pay this exorbitant fee was arrested. In turn, bribery has proliferated, as detainees' friends and relatives need to offer money to have them released.

Beyond domestic politics, refugee rentierism also raises issues in terms of the future of Global North-South cooperation. For one, there is a rise in the use of migrants and refugees as instruments of coercion by states that seek to overcome asymmetric power relations (Malit and Tsourapas 2021). Kenya, for instance, has repeatedly threatened to close the Dadaab camp (hosting over 275,000 refugees) unless it receive more economic aid. When Turkey felt let down by the post-2016 European economic concessions, it sought to create a second 'European refugee crisis' at the land border with Greece in March 2020. A second set of concerns relates to the extent to which Western refugee rent may sustain non-democratic rule across the Global South (Tsourapas 2021). Negotiations between the EU and Middle East refugee host states have demonstrated how thorny questions regarding the protection of human rights or freedom of the press tend to be downplayed in favour of securing the EU's external borders. Taking this further, it could be argued that significant portions of this economic aid – which flows directly into government coffers – may, in fact, sustain authoritarianism.

Finally, a broader set of questions relates to how refugee rentierism as a global norm affects the future of the international refugee regime. One revolves on questions of sustainability: to what extent will Western states continue to give financial support to refugee host states of first asylum in the Global South, and how will this affect the future of bilateral and multilateral aid (cf. Gazzotti 2022)? Evidence from Jordan and Lebanon suggests that the desire to create self-reliant states is not easy to implement. At the same time, we can see that refugee rent-seeking strategies are spreading across the Global South: issue-linkage processes and attempts at leverage are evident in

South and Southeast Asia (Missbach 2022; Paliwal 2022), sub-Saharan Africa (Betts 2021) and elsewhere. As a rising number of refugee host states of first asylum seek to secure economic concessions roughly commensurate with those afforded to Eastern Mediterranean states, the future of the international refugee regime is in question (on this, see: Freier, Micinski and Tsourapas 2021).

## Conclusion: Norm manipulation and refugee rentierism in the Arab world

Overall, this chapter seeks to problematize the interaction between Arab refugee host states of first asylum and the international refugee regime to identify how the former may not necessarily act as norm creators or cooperators but as norm manipulators. In doing so, it takes a sober look at the realities of post-2011 refugee protection across the Middle East to better understand the workings and implications of the substantive and normative shift towards refugee rentierism. It seeks to trace the evolution of refugee rentierism in the context of the weakened post-1951 global refugee regime, which paved the way for the commodification of forced migration in states' international relations. This has been particularly evident in the MENA states most affected by the Syrian refugee crisis – such as Lebanon and Jordan – but also countries such as Turkey, Iraq and Egypt.

At the same time, this chapter offers a sober outlook for the future, as it recounts the perils of refugee rentierism across three dimensions – the domestic, the international and the contextual – of the global refugee regime. The chapter paints a different picture of how Arab states navigate the international refugee regime in ways that have domestic and international socio-political and economic implications. Ultimately, it seeks to offer food for thought as we strive to pave the way towards a sustainable future for international cooperation on refugee protection, both in the Middle East and beyond.

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## Note

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# The irreducibility of refugee governance in the MENA region

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The ongoing conflicts in Syria and Iraq, the civil wars in Yemen and Libya, the repression and political violence in Egypt, Jordan, Morocco, Tunisia and Algeria and the dramatic economic recessions in Lebanon have triggered major population movements within and beyond the Middle East and North Africa (MENA) region. Wars, ethnic cleansing, political violence and economic crises are factors forcing people to move, internally and across national borders, for their own safety. Their implications for population movements are well documented. Moreover, their enduring effects have also contributed to reshuffling the cards of the geopolitics of migration and asylum at a time when, by all accounts, the securitization of migration policies constitutes a *fait accompli*. MENA countries have not been immune to this process of securitization. Over the last twenty years, most of them have adopted legal provisions to sanction irregular immigration and exit, as well as human trafficking following their adherence to and readaptation of the 2000 Palermo Protocol on Trafficking in Persons.

In a context of heightened securitization and restrictive entry policies, irregular migration is, by definition, intertwined with refugee movements. In a number of MENA countries, laws have been introduced to legislate on access to international protection. Also, camps and detention centres have proliferated in the whole MENA region<sup>1</sup> while exposing migrants and asylum seekers to vulnerability, precarious living conditions, poverty and, at times, ostracism and violence. Just like in the West, compliance with international standards on human rights and refugee protection in MENA countries has clashed with states' sovereign right to control the entry of aliens, be it for transit or residence. Nevertheless, what specifically differentiates the reaction of MENA countries to the abovementioned challenges lies precisely in the ability of some of them to

make their responsiveness to international standards and the fundamental right to seek asylum conditional upon the attainment of goals that are often unrelated to migration and asylum matters. This is the purpose of this chapter.

For some MENA countries, decades of regional and multilateral consultations have been crucial for talking the talk of 'migration management' (Cassarino 2018) while learning how to maximize the benefits of their proactive engagement in the control of migration and borders with a view to defending their own priorities and preferences (be they connected with migration matters or not). This is what reshuffling the cards of the geopolitics of migration and asylum is all about. This formulation pertains to altered state-to-state interactions on migration matters having deep implications for international cooperation in the broadest sense. First, by drawing on international cooperation theory, this chapter starts by examining such altered interactions. Reference is made to the emergence of unprecedented patterns of interdependence having wide-ranging implications for cooperation in general and for how the control of population movements, including refugees and migrants, has been addressed by some MENA countries in their iterative interactions with the European Union and its member states. Secondly, a broader perspective highlights the enhanced exposure of the latter to the reverse conditionalities of the former, including their capacity to set the conditions of their responsiveness to cooperation on the containment of refugee flows. Finally, as shown in the last part of the chapter, the notion of enhanced exposure acquires its full analytical significance when it comes to demonstrating that refugee governance in the MENA region is never reducible to refugee governance alone.

### Reciprocity, reputation and iteration in international cooperation theory

In his landmark book on international cooperation, Robert Keohane stated that 'cooperation is elusive enough, and its sources are sufficiently multifaceted and intertwined, that it constitutes a difficult subject to study' (1984: 10). His introductory remark is still relevant today. The core question of his research was aimed at analysing how cooperation can be organized when common or mutual interests exist. The existence of mutual interests is taken as a given (1984: 6) by Keohane when analysing the conditions under which such interests will lead to cooperation. Cooperation results from mutual policy adjustments among self-interested states, which, once adequately designed, can avoid discord and

lead to (a modicum of) cooperation. However, actors, be they state or non-state actors, may express their interests in the cooperation while having, at the same time, conflicting goals. More than the mutual interest to cooperate, conflicting goals epitomize the uncertainties that determine, over the long run, the full implementation of a bilateral or multilateral agreement.

Perhaps, considering that circumstances and the strategic choices of the actors involved shape the scope and intensity of the cooperative framework helps explain why, over the last decades, so much scholarly attention has been devoted to the puzzle of international cooperation. This puzzle has been partially solved with the devices of reciprocity, reputation and iteration (Dai, Snidal and Sampson 2017).

Reciprocity has been addressed in Axelrod's landmark work with reference to the tit-for-tat (TFT) strategy. Namely, one actor will replicate the action of the counterpart with a view to avoiding defection. She will reciprocate because the 'shadow of the future' matters in their bilateral interactions. This axiom impeccably cuts to the chase. However, as Jonathan Bendor (1987) rightly noted, ordinary international relations are all too often fraught with unknown and unpredictable circumstances, nor are they characterized by complete information about what the counterpart can or wants to achieve. Uncertainties not only relate to exogenous factors that may affect reciprocities. They also pertain to endogenous factors (e.g. domestic politics, local interest groups, bureaucracies, national legislation, public opinion) that determine the consequences of the actors' commitments and behaviours (Katzenstein 1976; Putnam 1988). Uncertainties turn out to be even more problematic when recognizing that, in real world systems, reciprocities may not be as reciprocal as expected, leading to a zero-sum game. For example, when cooperating on the control of migration, states may express their common interests in the so-called management of international migration, be it legal or irregular, without necessarily sharing the same goals, for contingencies faced by each contracting party vary too much. This contingency gap affects reciprocity. Incentives and compensatory measures are usually put forward with a view to offsetting unequal costs and benefits. However, experience has shown that such measures may not suffice. For instance, in the MENA region, cooperation on the readmission of rejected asylum seekers and irregular migrants has been based on unequal costs and benefits that compensatory measures (financial support, technical equipment, trade concessions) never managed to address consistently, leading to uncertainties in the cooperation. This aspect is further developed later.

Reputation constitutes another essential analytical device in international cooperation theory. Being a trustworthy party to a cooperative scheme motivates

governments to preserve their own reputation, even those who are deemed egoistic (Keohane 1984: 106). Governments' compliance with the rules and international norms enshrined in a given cooperative scheme is motivated by their awareness that rules ought to be obeyed. This, however, does not mean that governments will be rule-abiding. Compliance only denotes states' awareness of the legitimacy of rules, norms and principles, not necessarily their willingness to respect them consistently (Hurd 1999: 381). More problematically, when bilateral or multilateral cooperative patterns are beyond public purview, namely not subject to parliamentary oversight, their reputational impact is often limited in case of renege by one of the contracting parties. For example, because of their secrecy, informal agreements have, by definition, a low reputational impact (Lipson 1991: 509). They are hardly observable, and outsiders know little about them. Non-compliance with the commitments stipulated in informal agreements, including lack of responsiveness or defection, is unlikely to be discussed, let alone denounced in domestic politics, for it would necessarily imply disclosing the initial intentions of the signatories, as well as the detailed content of the secret agreement. Like a boomerang effect, public denouncing might expose the action of the aggrieved party to discredit criticisms from opposition parties, at a domestic level, let alone to diplomatic tensions with the defector. Moreover, if we try to adopt the perspective of former colonies in the MENA region and in Africa, lack of compliance does not always lead to a loss of reputation in international politics. Cooperation on the control of migration flows, including its unequal costs and benefits, may be negatively laden with the colonial past. This skilful reappropriation of the colonial repertoire matters in migration talks involving European, Middle Eastern and African countries (Hansen and Jonsson 2014; Gabrielli 2016; Perrin 2020; Savio Vammen et al. 2021), although it is far from explaining, in a comprehensive manner, the diverse perceptions, subjectivities and positions of all the actors involved (Acharya 2004; Bayart and Bertrand 2006). Against this background, defection or lack of compliance is rarely conducive to loss of reputation in international relations. Rather, it may be presented as a form of 'postcolonial resentment' (Acharya and Buzan 2019: 283; Adebajo 2023), or be motivated by emancipation and self-affirmation (Grovgoui 1996: 196).

Iteration is another device that has provided important insights in international cooperation theory, especially with reference to the role of international institutions in framing state-to-state interactions and in fostering a form of transparency in their negotiations. In the field of migration and asylum, numerous institutions, be they formal or informal, have been created

by states (for states) with a view to overcoming the uncertainties mentioned earlier and to promoting compliance. Regular or iterative interactions constitute an essential ingredient to making the long-term benefit of cooperation ('the shadow of the future'; Axelrod 1984) indefinite while ensuring (some degree of) mutual understanding about the management of migration and asylum, despite its unequal costs and benefits. Over the last thirty years, regional consultative processes (RCPs) on migration matters have proliferated around the globe, often by following the same blueprint and orientations (Thouez and Channac 2006; Hansen 2010). Mobilizing decision-makers, stakeholders and practitioners from all countries of migration has been a key objective of these recurrent RCPs.

Countries of destination, of origin and of transit do share one fundamental common interest in managing international migration: introducing mechanisms to strengthen states' centrality in controlling the mobility of their nationals and foreigners. This shared interest is sufficient to explain the meaningfulness of RCPs despite states' contrasting goals and intentions, as will be shown. RCPs constitute a product of states designed for states. Countries in the South of the Mediterranean have been proactively involved in regional consultations showing their willingness to open talks on migration governance. The 5+5 Dialogue initiated in 2002, the dialogue on transit migration in the Mediterranean launched in 2003, the 2006 Euro-African Partnership on Migration and Development (or the Rabat Process), the 2008 Paris Process, the 2014 Khartoum Process and the 2015 Valletta Summit on migration constitute regional consultative processes in which various MENA and African countries have taken part. This is not the place to analyse them in detail. What is, however, noticeable is the gradual repositioning of states and their law-enforcement agencies well beyond the realm of migration management matters. As explained later, MENA countries are a case in point.

Arguably, iteration has been a core ingredient to instil in the minds of stakeholders a sense of meaningfulness (Goodman and Jinks 2004), whereas socialization and material incentives (Ikenberry and Kupchan 1990) have often been used to establish channels of communication aimed at persuading elites in so-called recipient countries. However, despite the manifest involvement of various MENA countries, such iterative and informal talks have been biased towards a predominant Western structure-oriented approach (Jabri 2013). The EU and its member states have been pushing their own views and vested interests while jeopardizing any genuine discursive interaction aimed at achieving a 'reasoned consensus' (Risse 2000: 10). Reasoned consensus, as

defined by Thomas Risse, is contingent on three preconditions: first, the ability to understand and factor the contingencies and subjectivities of the partners involved; second, the legitimation of a common system of norms and rules and, third, the fact that actors involved in the consultations are recognized as equals. To date, none of these preconditions have been met.

## The double articulation

Today, various academic studies have shown that MENA countries have not been passive recipients vis-à-vis the diffusion of norms, practices and policies imported from abroad (Cassarino 2007; Wolff 2014; El Qadim 2015; Lemberg-Pedersen 2019; Cuttitta 2020; Perrin 2020; Natter 2021). Their visible inclination to open dialogues through consultations on migration governance with their European counterparts cannot be equated with a 'reasoned consensus'. Rather, various MENA countries have excelled in the selective reception of global norms – with a view to limiting their domestic social and political costs – and in their readaptation to existing local systems. Concomitantly, they started to (re-)construct their own interests and preferences. Initially, they became aware of their empowered position vis-à-vis the EU and its member states in the fight against irregular migration and in the reinforced control of the EU's external borders. Then, they started to disclose and defend their own representation of what cooperation on migration governance would entail, precisely in the framework of regional consultations which were initially designed to shape non-EU countries' subjectivities and behaviours.

It is through this double articulation (empowerment and disclosed representation) that RCPs on migration governance in the EU-MENA context have changed radically since the mid-2000s. In other words, not only have MENA countries opened communicative channels with their European counterparts, they also expressed their own visions as applied to migration governance while capitalizing on their empowered position (Cebeci 2016; Adam et al. 2020; Del Sarto 2021). Their empowerment resulted from the emergence of unprecedented patterns of interdependence in the field of migration and border controls. It also resulted in their skilful ability to defend their own preferences and contingencies.

Twenty years ago, externalization was a recurrent analytical notion in academia to describe the EU's attempt 'to engage sending and transit countries

in strengthening border controls, combating illegal entry, migrant smuggling and trafficking, or readmitting migrants who have crossed into the EU illegally' (Boswell 2003: 619–20). Indeed, externalization has been deeply rooted in the EU's external action (Lavenex and Schimmelfenning 2009), especially since the EU's ambitious commitment to strengthening its Common European Asylum System and to mobilizing non-EU countries in the 'fight against irregular migration', readmission, and reinforced border controls. Today, however, the perceptible empowerment of some non-EU countries in their repeated interactions with the EU and its member states has laid bare the analytical limits of externalization (Gabrielli 2016; Fakhoury 2022).

The double articulation mentioned earlier has been overlooked for too long by (Western) scholarship. Instead of recognizing its analytical relevance to the study of international cooperation on migration governance in the EU-MENA context, scholarly attention has focused on conventional observations. The EU and its member states have been portrayed as the major leaders of consultations on migration and asylum matters, the unique socializers, the ones who transfer normative values and practices to so-called recipient non-EU countries. However, from the very beginning of the play, the original script told a different story even if European actors (namely the EU and its member states) have been skilful in continuing to perform their roles as if nothing had happened. A pervasive and constructed 'meta-narrative'<sup>2</sup> about the EU as a model of virtue for others to follow or replicate arguably contributed to short-sightedness in both Western academic and policy circles.

The flipside of the story was that iterative RCPs were gradually conducive to a mutual learning process whereby non-EU countries, including MENA countries, became increasingly aware of the inter-state rivalry within the EU on how migration and asylum should be managed. Such internal divisions generated, and still generate today, windows of opportunity on which some MENA countries have capitalized in their bargaining. In a similar vein, resilient tensions between supranationalism and intergovernmentalism have left unimpaired bilateral patterns of cooperation on migration and border control with MENA countries (Zardo and Loschi 2020). The predominance of bilateralism certainly has the advantage to lubricate interactions in case of discord. However, it might heighten member states' exposure to the claims of some empowered and strategic non-EU countries prone to defend their own preferences and priorities, be they connected with migration matters or not. This challenge is addressed in the next section.



## Reverse conditionalities and the consequences of interdependence

Cooperation on migration and asylum governance has been conducive to reinforced patterns of interdependence which expand well beyond the migration domain. This aspect is now well documented by various scholars across disciplines (Cassarino 2007, ; Greenhill 2010; Paoletti 2011; İçduygu and Aksel 2014; Wolff 2014; El Qadim 2015; Tsourapas 2018; Del Sarto 2021).

Studying interdependence is one thing. Analysing the *consequences* of interdependence in global politics, as David Baldwin remarked (1980: 488), is another. Consequences may be positive and negative, intended and unintended. Two (state or non-state) actors may decide to continue their cooperation despite its ineffectiveness or because there is no likely alternative, or because of the 'shadow of the future'. Interrupting the cooperation might bring more losses (both internationally and domestically) that leaders would prefer to avoid (Stein 1990: 204). Loss avoidance, as analysed by Janice Gross Stein (1990), is a useful concept to explain why cooperation continues regardless of whether or not it is conducive to the expected outcomes. The issues at stake justifying cooperation may be framed differently by the actors involved. It is also useful to understand that the intentions of the contracting parties may vary over time as they learn from each other or as a result of new (unpredicted) circumstances.

Cooperation with MENA countries on the deportation (or readmission) of irregular migrants and rejected asylum seekers is a case in point. For example, cooperation on deportation has often been fraught with uncertainties not only because costs and benefits have been extremely asymmetric, as argued before, but also because the ways the 'problem' of deportation is framed has varied significantly (as illustrated in the next section). Mutual interests never stimulated MENA countries' responsiveness to bilateral cooperation on readmission. Rather, cooperation on readmission with MENA countries has occurred because it has been embedded into a broader framework of interactions that has codified and affected patterns of cooperation. MENA countries quickly realized that the strong emphasis put by European leaders on the fight against irregular migration and on the need to externalize their migration and asylum policies would potentially reinforce their leverage on their European counterparts. There is no question that the aforementioned embeddedness of migration governance coupled with MENA countries' growing awareness of their empowered strategic position have jointly shaped the scope and intensity of the cooperation on the management of international migration. As shown later, both awareness and

embeddedness can be analytically treated as *consequences* of interdependence in EU-MENA relations.

An additional consequence closely linked with these unprecedented developments lies in the manifestation of reverse conditionalities. Reverse conditionalities result from a highly interconnected system of relations where international actors (be they state or non-state actors) are empowered enough, first, to produce and set the conditions of their responsiveness to cooperation, two, to make such conditions possible and acceptable by other actors and, third, to reverse the flow of diffusion. Reverse conditionalities become so contingent that the other actors have no option but to accommodate them with a view to ensuring a modicum of cooperation. Consequently, they result from a process that shifts the focus away from the centre to the periphery. Reverse conditionalities uncover a broader investigative area where ‘non-Western’ diversities, practices and discourses can be unveiled and conceptualized by making our understanding and interpretations of international cooperation more ‘inclusive’ (Acharya and Buzan 2019: 295; see also Qin 2020: 5; Bilgin 2018). In this connection, the drive for informalization (Cassarino 2007, 2018; Slominski and Trauner 2020; Adam et al. 2020) that has gained momentum over the last twenty years in the field of migration and asylum policies constitutes a good indicator of how the EU and its member states have, as it were, accommodated, if not internalized, the preferences and subjectivities of some strategic non-EU countries, especially those located in North Africa. Both the EU and its member states have realized that they have had no option but to recalibrate their cooperative patterns and framework of interactions with the demands of some empowered non-EU countries in order to ensure a modicum of cooperation on the containment of irregular migration flows.

In sum, empowerment, interdependences, accommodation and reverse conditionalities all intersect to delimit a complex international system where diffusion is far from being unidirectional. In this complex international system, informal patterns of cooperation have been normalized with a view to responding to heightened uncertainties. Concomitantly, they have been designed to address the empowerment of some MENA countries by accommodating their claims and preferences.

Reverse conditionalities constitute a useful concept to shed light on the exposure of a state or non-state actor (Actor A) to the collateral demands and conditions of another one (Actor B). This exposure is not the outcome of interdependence alone. Rather, it results from a learning process whereby Actor B realizes (or becomes aware of) her strategic and unparalleled position in the

bilateral cooperation with Actor A. This is a key feature that neorealists would dismiss offhand given their focus on hegemonic power. However, one has to admit that RCPs and their inherent iteration have been the ideal platforms where this learning process has taken place. What needs to be achieved through the bilateral cooperation between Actors A and B turns out to be so paramount for Actor A that the latter will gradually accept to accommodate the exigencies of the former, at the cost of contradicting her values or principles. Moreover, given its asymmetric costs and benefits, cooperation will be ensured thanks to incentives (be they material or immaterial) or thanks to soft conditionalities. For exerting pressure to bear on Actor B would be unrealistic, if not counterproductive given Actor B's strategic and empowered position. Often, irrespective of the full implementation of the cooperation, the stakes at play lie in *acting*, politically speaking. Indeed, as mentioned before, a modicum of cooperation needs to be achieved with a view to showing to Actor A's constituencies that something is being done to protect them from externalities. The entanglement of domestic and international politics reflects a two-level-games logic (Putnam 1988) that adds much to our findings.

### Enhanced exposure

In EU-MENA relations, EU member states' exposures to reverse conditionalities have been legion, although their expression remained quite implicit until recently. For example, when North African countries were negotiating their respective Association Agreements with the European Union during the mid-1990s, the former used their cooperation on migration and border controls as leverage to obtain trade concessions and preferential tariff treatment from the latter (Del Sarto 2021: 136). In 2003, as the European bloc was about to enlarge its territory towards the East ('wider Europe'), North African countries were expressing their public concerns about the stability of their relations with their European neighbours. In a public address, former president Zine El-Abidine Ben Ali was keen to recall that the security concerns of the EU regarding migration flows would never be adequately addressed without the preservation of 'Euro-Mediterranean solidarity' (Réalités 2003). Similarly, during the December 2003 Summit of the Heads of State and Government of the Western Mediterranean Basin (Dialogue 5+5 2003), a common declaration was issued stressing 'the importance of seeing the European Union accompany its enlargement process by similar supportive efforts towards the countries of

the South-West Mediterranean' (Dialogue 5+5 2003: 1). The same year, Morocco publicly warned that its involvement in the fight against irregular migration was contingent on the 'great responsibility of the EU to support its development efforts' (Maroc Hebdo International 2003: 11).

To be clear, such warnings are not conditionalities. Nor are they automatically conducive to reverse conditionalities. Nonetheless, they denote the *awareness* on the part of North African leaders that their role in the containment of migration flows en route to Europe was becoming significant and meaningful. North African countries quickly understood that their proactive engagement in border and migration controls could be integrated into a broader framework of cooperation where regime survival would be (re-)asserted, strategic alliances with European major powers would be built or (re-)configured to address new challenges, territorial integrity would be (re-)proclaimed to serve vital national interests. As shown in previous works, under the tip of the iceberg lies an array of factors, often unrelated to migration matters, that account for the ways in which North African countries have selectively responded to European calls for reinforced cooperation on the governance of migration (Cassarino 2018).

As the framework of cooperation was broadening, by clustering together highly different issues (Keohane 1984: 244), migration governance ceased to be politically treated by North African countries as an end in itself. Thus, cooperation on migration governance started to be viewed as a *means* to achieve other goals. Once highly different issue areas are clustered together, even the threat of non-cooperation or underperformance may carry with it great benefits in terms of bargaining, leverage and influence.

The use of flexible patterns of cooperation on migration governance (based on pacts, memoranda of understanding, administrative arrangements and exchanges of letters, to mention but a few) is symptomatic of the uncertainties with which the EU and its member states have been confronted over the last thirty years. Actually, heightened uncertainties explain the perceptible drive for informalization in migration governance, given its lower transaction costs and also because it allows 'adjustment in the face of international uncertainty without dismantling cooperation' (Koremenos 2005: 561; see also Lipson 1991). A modicum of cooperation, be it effective or not, had to be preserved at all costs.

However, flexible patterns of cooperation are not only aimed at dealing with uncertainties. They may sometimes be the best option to accommodate the preferences and contingencies expressed by empowered non-EU countries. Invariably, this empowerment generated additional challenges to which the EU

and its member states have been obliged to respond. Their responses converged towards the gradual normalization of an array of informal instruments that sideline democratic accountability, weaken human rights observance and deflect parliamentary scrutiny.

To date, patterns of interdependence have developed despite the contrasting interests and the asymmetric costs and benefits that have constantly characterized the so-called joint management of international migration. Again, the abovementioned examples show that informalization does not necessarily result from the need to make cooperation on migration governance more responsive to uncertainties. Rather, it may also result from the need to *accommodate* empowered third countries' preferences and exigencies in a context marked by strong patterns of interdependence between EU and non-EU countries. To be sure, the EU and its member states have witnessed the ability of some non-EU countries to buttress their own credentials in the field of migration governance with a view to defending their own preferences and interests, be they connected with migration matters or not.

It is important to underline that reverse conditionalities relate to the instrumentalization of migration. However, the former cannot be equated with the latter. What this study seeks to show is that reverse conditionalities result from a mix of processes including an iterative learning process, the gradual clustering of highly diverse issue areas, an empowerment process and a necessary process of accommodation. In the making of reverse conditionalities, domestic and international affairs are closely entangled. In turn, this entanglement affects the options of the actors involved, as explained earlier.

The cooperation on migration control between Morocco, on the one hand, and Spain and the EU, on the other hand, is emblematic of the making of reverse conditionalities and of their broader implications for the EU's external relations. Despite its overt opposition to the EU's security-driven approach to migration, Morocco became proactive in the control of the EU's external borders, especially as of 2004, when the first Zapatero government (2004–8) set out to reinvigorate its relations with the Kingdom, after years of tensions under the former Aznar government. The terrorist attacks in Casablanca (May 2003) and in Madrid (March 2004) arguably contributed to the reinvigorated relations between the neighbouring countries in the fight against international terrorism and the reinforced control of border-crossings. Both policy areas were clustered together, in bilateral consultations, denoting the mutual interests shared by Morocco and Spain. However, Morocco's goals in the cooperation starkly differed from those of Spain.

From the mid-2000s up to the early 2010s, Morocco's reinforced cooperation on border controls and deportation with Spain alienated the country from its traditional sub-Saharan African partners, especially Senegal, Mali, Niger and Cote-d'Ivoire. Subsequently, the collapse of the regime of Muammar Gaddafi and the declining influence of Libya in sub-Saharan Africa opened a new window of opportunity. Morocco reactivated its 'African strategy' (El Qadim 2015) based on a form of soft power which incidentally turned out to be consonant with its desire to co-opt some sub-Saharan countries with a view to narrowing Algeria's African playground and to buttressing the territorial claims of Morocco on Western Sahara (Cassarino 2018).

By all accounts, Morocco realized that bolstering its credentials in the field of border controls would reinforce its strategic position with regard to Spain and the EU. It also became aware that other prominent priorities (e.g. territorial integrity) could be clustered together with migration management matters. Clustering motivated Morocco to conclude in June 2013 a mobility partnership (MP)<sup>3</sup> with the EU. More precisely, Morocco skilfully linked the negotiations of its MP with the prior conclusion in March 2012 of an exchange of letters with the EU concerning reciprocal liberalization measures on agricultural products, processed agricultural products, fish and fishery products (henceforth Fisheries Partnership Agreement – FPA). At the time, the FPA raised a lot of controversies in the EU owing to its geographical scope covering the territory and waters off the coasts of Western Sahara. The Popular Front for the Liberation of Saguia el-Hamra and Río de Oro (henceforth Polisario Front) brought a legal action to the Court of Justice of the European Union (CJEU), in November 2012, against the Council of the European Union for 'breaching the right to self-determination of the Sahrawi people and [for] encouraging the policy of annexation followed by the Kingdom of Morocco'.<sup>4</sup>

It is important to highlight that the signature of the MP with Morocco preceded the judgement of the CJEU regarding the FPA and its compliance with international law. These chronological developments speak volumes about the guarantees that were offered at the time to Morocco regarding the seamless implementation of the FPA despite the legal action brought by the Polisario Front. After years of legal disputes at the CJEU, the FPA entered into force<sup>5</sup> in February 2019 with the full support of the European External Action Service, the European Commission and the approval of the European Parliament.

The Polisario Front reacted by bringing another legal action in June 2020 against the entry into force of the FPA. Among many other pleas, the applicant denounced that the FPA 'denies the existence of the Sahrawi people by using the expression

“the people concerned” [and] organises, without the consent of the Sahrawi people, the exploitation of its resources.’<sup>6</sup> By early 2021, there were rumours that the judgement of the General Court of the European Union would be in favour of the Polisario Front. Arguably, in an attempt to express more explicitly its vigilance on the legal pending case, Morocco reportedly facilitated in May 2021 the massive border-crossing between its territory and the Spanish enclave of Ceuta. Thousands of migrants irregularly crossed the border. In compliance with the logic of two-level games (Putnam 1988), the May 2021 Ceuta events had repercussions which went well beyond the mere management of international migration and borders. Domestically, the Spanish government was confronted with a political crisis on which Spanish anti-immigrant political parties capitalized. Internationally, Morocco successfully demonstrated that it had the power to exert its own leverage if its claims were not accommodated by EU leaders.

In September 2021, the General Court decided to annul Council Decision 2019/217 (Kassoti 2021) dated 28 January 2019 on the conclusion of the agreement in the form of an exchange of letters between the European Union and the Kingdom of Morocco. However, the annulment of Council Decision 2019/17 did not lead to the suspension of the FPA, for ‘the annulment of the contested decision with immediate effect may have serious consequences for the European Union’s external action and call into question the legal certainty of the international commitments to which it has consented and which are binding on the institutions and the Member States’ (GCEU 2021: para. 395).

The General Court ordered the effects of Council Decision (EU) 2019/217 to be maintained as long as the judgement of the Court of Justice on the appeal of the Council is delivered. To date, the case is in progress (and the February 2019 FPA is still effective) given the decision of the Council and the Commission to appeal the recent judgement of the General Court. Moreover, in March 2022, Spain publicly endorsed Morocco’s plan to administer Western Sahara (Fuentes 2022) without any parliamentary debate at the *Cortes Generales*, namely the two houses of the Spanish parliament. This decision was arguably predictable given Spain’s exposure to Morocco’s reverse conditionalities, including the necessity to accommodate Morocco’s claims and preferences.

## Conclusion

This chapter has demonstrated the irreducibility of refugee governance in the MENA region. Namely, refugee governance implies much more than governing

refugees or controlling the mobility of people. Refugee governance has had implications that extend well beyond its own remit if one considers how some MENA countries have managed to capitalize on their strategic position in their interactions with the EU and its member states. In this connection, reverse conditionalities epitomize such unprecedented developments. The analysis has shown that the making of reverse conditionalities lies at the intersection of iterative learning processes, the clustering of highly diverse issue areas, the empowerment of an actor over another one and the subsequent necessity of the latter to accommodate the claims of the former. Reverse conditionalities politicize the agency of so-called norm-recipient countries and challenge, at the same time, the dichotomy opposing a powerful norm-making (Western) actor with a norm-recipient (non-Western) actor, namely between a major power viewed as a socializer in international migration talks, and a socializee.

One could argue that the explicitness with which some MENA countries are today expressing their own reverse conditionalities is what has turned them into an analytically relevant topic in international cooperation theory. Reverse conditionalities are probably as old as the externalization of migration controls. More than twenty years ago, the EU member states' porosity to forms of reverse conditionalities was perhaps too arcane to be properly decrypted and understood.

With reference to the puzzle of international cooperation, the transition from implicit to explicit manifestations of reverse conditionalities has contributed to extending our empirical observations. Today's outright manifestations raise, however, a host of concerns about the *consequences* of interdependence, not only in the field of migration and asylum governance, and not only in the EU-MENA context. As we have seen, policymakers know that they will continue to be confronted with a dilemma between compliance with their international obligations and constitutional guidelines, on the one hand, and the necessity to accommodate the explicit claims of their empowered strategic partners, on the other hand. The making of reverse conditionalities in international relations leads to a perilous balancing act.

## Notes

- 1 As documented by the Global Detention Project: <https://www.globaldetentionproject.org/detention-centres/map-view>
- 2 I draw on Münnever Cebeci's concept. 'Meta-narrative' is used by Cebeci 'to underline the power-knowledge relations behind the construction of the EU's



- identity as ideal. This conceptual framework is employed to reveal how the European Foreign Policy researchers and practitioners convey the EU's story in a positive way and how such a positive depiction of the Union legitimizes its acts in global politics' (2016: 166–7).
- 3 MPs are political declarations, namely non-binding arrangements, proposed by the EU to non-EU countries. MPs condition the possibility of promoting the temporary entry and residence of legal labour migrants in Europe upon reinforced and effective cooperation on readmission (see Parkes 2009; Reslow 2012).
  - 4 Official Journal of the European Union, Action brought on 19 November 2012 – *Front Polisario vs. Council*. Case T-512/12 (2013/C 55/26), p. C55/14.
  - 5 This is not the place to delve into the technical and legal details of this controversial ruling by the CJEU. Ángela Suárez-Collado and Davide Contini note that 'the Court used a counterfactual legal analysis that did not take into account the practice of the agreement, but rather the theory on which it was based' (Suárez-Collado and Contini 2021).
  - 6 Official Journal of the European Union, Action brought on 23 June 2020 – *Front Polisario vs. Council*. Case T-393/20 (2020/C 279/62).

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## Juxtaposing policy and practice

### An analysis of 'local integration' in MENA host states

Rawan Arar

The Middle East and North Africa (MENA) has a long history of forced displacement and reception (Chatty 2010; Arar et al. 2022). Contemporary refugee reception has been shaped by a reliance on humanitarianism across MENA states. Humanitarianism is an ethos that calls upon a moral imperative to stop suffering and improve the human condition, especially for those in crisis such as refugees. As Barnett explains, 'Humanitarianism helped to create a global concern for refugees, and refugees helped to create contemporary humanitarianism' (2014: 242). These goals take form in institutions. Humanitarianism is written into law, guided by policies, implemented by organizations and practised by various actors. According to Lohne and Sandvik, actors within humanitarian spaces include 'affected populations, civil society, host governments, the private sector, international organizations, humanitarian practitioners, the international humanitarian sector and donors' (2017: 5). The ways in which these actors coordinate, cooperate and compete can be analysed through the study of humanitarian governance.

MENA's response to refugees has been characterized by an extensive and interdependent group of humanitarian organizations, many of which follow the lead of the UN Refugee Agency known as the UNHCR (United Nations High Commissioner for Refugees). MENA host states allow humanitarian organizations to operate on their territory because they benefit from international humanitarian support; however, the character and extent of humanitarian intervention is continuously being negotiated. Scholars have broached the question of humanitarian governance from various angles, theorizing the UN's role as a surrogate state that operates within the sovereign country (Kagan 2011; Deardorff Miller 2018), considering the role of humanitarian

intervention in multi-level governance (Fakhoury 2019; Micinski 2021), and exploring how states leverage their bargaining power, cooperate and delegate with the international community through humanitarian interventions (Arar 2017; Norman 2020; Abdelaaty 2021; Freier, Micinski and Tsourapas 2021), among others. Regardless of which critical approach scholars have taken, the fact remains that the presence of humanitarian organizations influences refugee experiences and MENA state responses.

In this chapter, I contribute to this scholarship by considering the UNHCR's dual role as an organization that provides protection to refugees *and* produces knowledge that is widely circulated and cited. In collecting data, publishing reports and facilitating scholarly and media access to refugee populations, the UNHCR influences what we know about refugees in MENA and how we think about their experiences. I build on the notion of *humanitarian fiction*, a concept that I began developing in previous scholarship (Arar forthcoming). This term captures the incongruence between refugee-hosting realities and humanitarian frames that operate within the realm of international aid. Akin to the concept of legal fiction, humanitarian fiction recognizes that fictitious renderings of empirical reality are accepted within systems of aid and governance to achieve specified goals. Humanitarian fiction is premised upon the fact that humanitarianism operates through institutions with unique rules, norms and practices to deliver aid. Naming and identifying how humanitarian knowledge production operates provide an opening to acknowledge distinctions between empirical reality and institutional constructs. These points of difference may be analysed as sites of negotiation among various stakeholders – notably MENA host states, the UN and international actors.

I examine humanitarian fiction as it relates to the UNHCR's durable solution of 'local integration' and its application and measurement in MENA host states. Specifically, I examine how humanitarian governance contributes to a lexicon of displacement, which runs the risk of conflating operational language with factual reflections of empirical reality. These disjunctions, I argue, can obscure MENA states' responses to refugees. I begin with an overview of MENA demographics, recognizing that MENA states are both refugee producers and hosts – often simultaneously (Fiddian-Qasmiyeh 2020). Then, I provide a discussion of the UNHCR's policy of 'local integration' to identify the shortcomings in its empirical explanatory power. This comparison between integration as a humanitarian policy as compared to integration as a process provides a lens through which to recognize MENA states as active actors in shaping responses to displacement.

## Refugees in MENA

In 2021, MENA hosted most of the world's displaced Syrians and Palestinians, who composed the two largest refugee groups at 5.7 million and 6.8 million refugees respectively.<sup>1</sup> Palestinians, most notably those who were displaced as a result of the 1948 *Nakba*, experienced refugeehood for more than seventy-five years as of the writing of this chapter. Syrians were displaced after the start of the war in 2011, although there has been a steady effort to incentivize return, most notably from Lebanon (Fakhoury 2021). Other contemporary displaced populations from the region included Sudanese (825,290), Somali (776,678), Iraqi (343,899), Saharawi (117,041), Yemeni (37,615), Mauritanian (39,279) and Libyan (19,090) refugees. Note that if one were to search the UN's Refugee Data Finder by region, they would find that the MENA category excludes two major refugee-producing states that are included in the Arab League: Sudan and Somalia. This is another example of how humanitarian knowledge production should be assessed critically when drawing upon humanitarian sources to make scholarly contributions. By 2022, Ukrainians became the largest refugee group in the world with approximately 8.2 million refugees displaced. Despite this important shift in the global distribution of the world's UN-recognized refugees, the majority of refugees continue to live in the Global South in 2023 – most of whom have been displaced for more than a decade.

MENA countries must be understood as both refugee producers and receivers. Most refugees from MENA states find safety in neighbouring countries. According to the UN, Turkey hosted the largest number of refugees and asylum seekers in 2021, approximately 4 million people, most of whom were displaced after the start of the Syrian war. For large states with equally large populations such as Turkey, refugees comprise a relatively small percentage of the overall population. Conversely, for some smaller territories and states, refugees comprise a larger percentage of the total population, including 74 per cent in Gaza, 30 per cent in Jordan and 20 per cent in Lebanon.<sup>2</sup>

Establishing this sketch of contemporary refugee demographics in MENA is vital for considering the scale of humanitarian involvement in state-led responses to refugee reception. Scholarship on integration has largely bracketed questions surrounding humanitarianism despite the breadth of the literature. This gap has occurred for at least two reasons: first, the study of immigrant integration developed its canon through an examination of economic migrants, not refugees (FitzGerald and Arar 2018). Second, when the focus has been



on refugee integration, much of the research continues to examine reception in the Global North (see discussion in Abdelhady and Norocel 2023). In both cases, humanitarian organizations, including the UNHCR, play a smaller role in the daily lives of refugees and others on the move. Northern-focused scholars have uncovered transferable insights about institutions through their study of resettlement agencies and their critical approaches to the examination of social, political and economic obstacles to belonging (Tran and Lara-García 2020; Fee 2019; Gowayed 2022; Sackett and Lareau 2023). Yet, these institutional critiques cannot account for the distinct realities of refugee reception in MENA and other Southern hosts, where contemporary reliance on humanitarian organizations is often unavoidable and intervention from powerful states and supranational institutions influences state responses to refugee reception.

There is a plethora of robust and important studies that address aspects of refugees' lived experiences, including markers that have been theorized through the study of refugee and immigrant integration such as access to education and employment, trends in intermarriage and experiences of discrimination and feelings of belonging. The study of refugee integration in Southern states is often theorized through a different lens that does not deeply engage with the work on immigrant integration, while several notable works have directly addressed the question of 'local integration' in various contexts as one of UNHCR's durable solutions (Agblorti and Grant 2019; Kuch 2017; Hovil 2014; Crisp 2004; Harrell-Bond 2002). After examining the explanatory limitations of the policy language around 'local integration', I draw upon some of this scholarship to consider what integration looks like on the ground across MENA host states and how integration – studied as a process – provides insights into MENA state agency that can be obscured through language that homogenizes refugee experiences.

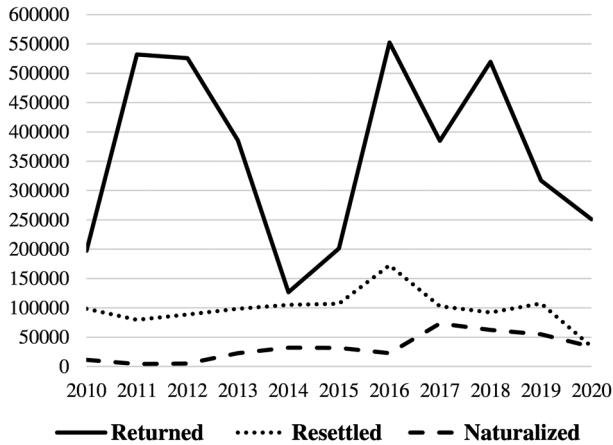
### 'Local integration' and the limits of policy-oriented language

The UNHCR's mandate is 'to provide international protection and humanitarian assistance, and to seek *permanent solutions* for persons within its core mandate responsibilities', which include UN-recognized refugees and internally displaced persons (UNHCR Mandate, my emphasis). Permanent solutions refer to regaining membership in a political community, ideally through obtaining citizenship. When refugees secure 'a right to have rights', they no longer need to rely on humanitarian protections and fall outside the UNHCR's mandate (Arendt 1973 [1951]: 296–7). While the UNHCR may seek durable solutions,

the agency cannot secure refugees' rights like a state. Durable solutions reflect the contemporary state system in which rights are territorially contingent and citizenship is the gold standard.

Each year, the UNHCR – the leading UN Refugee Agency – publishes its *Global Trends* report that provides an assessment of refugees' needs and outlines progress made towards addressing the challenges of displacement. The agency advances three 'durable solutions' to address the problem of refugee displacement: voluntary repatriation to the refugees' country of origin, local integration usually in a neighbouring state in the Global South and resettlement to a third country usually in the Global North. Refugees do not have equal access to these humanitarian solutions. Less than 2 per cent of the 27.1 million refugees registered with the UN in 2021 either repatriated to their home country (429,300) or were resettled to a third country (57,500) in 2021 (UNHCR 2022). For greater regional context, note that in 2021, the MENA region saw 40,598 refugees returned and 25,653 resettled. From an operational perspective, the UNHCR measures return and resettlement by tracking movements when individuals cross an international border. In stark comparison to voluntary return and resettlement, local integration is a *process* not a movement and its assessment – let alone completion – remains elusive. While the UNHCR tallies the number of refugees who have returned or resettled, there is no count for the number of refugees who are considered locally integrated. Therefore, there is no clear indication of how many people have benefited from this proposed solution to displacement.

The UNHCR defines local integration as 'a complex and gradual process with legal, economic, social and cultural dimensions' (UNHCR Local Integration n.d.). Yet in lieu of counting the number of individuals who are locally integrated each year, the UNHCR tracks naturalization – the act of acquiring citizenship – as the strongest measure of refugee integration. Figure 8.1 shows the number of refugees who returned, resettled and naturalized from 2010 to 2020. Policy and scholarship agree that naturalization is an important measure of integration. Yet, a closer examination of the UNHCR's naturalization counts reveals that this is a poor substitute for assessing durable solutions because it conflates 'resettlement' with 'local integration'. For example, in 2020 'an estimated 33,800 refugees from 126 countries of origin were naturalized in 28 countries' (UNHCR Global Trends 2021). A breakdown of these numbers reveals that the top three countries of naturalization were the Netherlands (25,714), Canada (4,986) and France (2,515), which account for 98 per cent of all naturalizations in 2020. This measure of naturalizations conveys very little information about refugee



**Figure 8.1** Number of individuals who experienced ‘durable solutions’ from 2010 to 2020. *Source:* United Nations High Commissioner for Refugees (2021) Data Finder (<https://www.unhcr.org/refugee-statistics/download/?url=f7YLUR>)

integration in MENA or the Global South more broadly. There are cases in which MENA states permit refugees to gain citizenship – such as when Sudan allowed Palestinians, Syrians, Yemenis and Iraqis to naturalize after a short stay in the country in 2014, albeit this policy was soon reversed (*Al Monitor* 2021). Naturalization is not an option for most of the world’s refugees. They do not have a pathway to full legal incorporation where integration includes acquiring full membership in the polity through citizenship.

Assessing refugee experiences and reception through an empirical lens introduces a second confounding matter. The ‘solution’ of local integration is often indistinguishable from the ‘problem’ of protracted displacement – another operational term used by humanitarian organizations and policymakers to describe a situation ‘in which 25,000 or more refugees from the same nationality have been in exile for at least five consecutive years in a given host country’ (*Global Trends 2021*: 20). It is important to note that there are refugee populations who have been displaced for decades but do not qualify in 2022 as protracted refugee situations because they do not meet the 25,000-person population threshold. This excludes not only smaller refugee populations who have been displaced for decades but also refugee populations that decrease over time when some refugees return to their home country. In 2020, the number of Iraqi refugees in Iran decreased to 20,000 people, which removed the ‘protracted displacement’ that no longer applies. The Iraqi refugee population in Iran has been over 25,000 people from at least 1979 to 2019 (UNHCR data finder, N.d.).

Empirically, local integration and protracted displacement may look identical despite the fact that these terms are intended to capture opposite phenomena. Refugees live in protracted situations, while they also experience some level of integration. Palestinian refugees have experienced the longest temporal displacements, especially those who were displaced in 1948. Palestinians are not able to access the same durable solutions that are available for other refugee groups. They are registered with United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), not the UNHCR. UNRWA administers relief and humanitarian aid, but the agency does not resettle refugees. Palestinians are also unable to return to their homeland despite the 'right of return' outlined in UN General Assembly Resolution 194 (III). Palestinians' experiences differ across five states and territories where UNRWA operates: the West Bank, Gaza, Lebanon, Syria and Jordan. Most Palestinians in Syria and Lebanon have not had a pathway to citizenship while in Jordan most Palestinians are simultaneously refugees in protracted displacement and citizens. Despite their legal status, thousands of Palestinian-Jordanians have had their citizenship arbitrarily revoked since 1998. In Gaza, where 1.4 million refugees live among a population of 1.9 million people, Palestinian refugees and non-refugees alike experience life under blockade. Protracted displacement, naturalization and statelessness intersect in unique ways across the five territories, making the study of refugee integration highly context specific.

## Integration as a process in MENA

Integration is simultaneously a *policy* ('local integration') and an informal *process* that takes place when refugees move and settle (see Jacobsen 2001). Parsing the two is complicated – if not impossible – because the policy facilitates and informs the process. Humanitarian goals to support local integration can include cash-for-work schemes that give refugees more autonomy to buy goods, support schooling and education for refugee children, help create regulations that protect refugees who rent housing in urban areas and advocate for refugees' free movement in and out of refugee camps. The UNHCR recognizes the dynamic relationship between refugees and receiving states in which local integration 'imposes considerable demands on both the individual and the receiving society' (UNHCR Local Integration). Local integration as a policy may inform how aid is spent on refugee-related, but not refugee-centric, issues such as support for 'host community resilience' projects in MENA states.

Scholarly research on refugee integration can interrogate failures in policy-centric characterizations that do not accurately capture refugees' lived experiences. 'Local integration' as a matter of humanitarian-led policy confronts the *problem of displacement*, not the obstacles to full incorporation or belonging. As Katy Long has demonstrated, durable solutions resolve the problem of 'physical dislocation', which gives primacy to geography over refugees' access to rights (2014: 475). To emphasize this point, one may consider how the process of integration remains relevant even after a durable solution has been provided. Humanitarian 'solutions' usher in their own forms of unsettledness. Returnees may repatriate to their homeland but find that their home, or sense of home, has disappeared (Schwartz 2019). Others may be 'resettled but displaced' as they face challenges to incorporation, economic mobility and racial discrimination in a new country (Fee 2022). Policy-oriented constructions of integration leave several questions underexamined. Broaching a comprehensive answer to these questions further requires that scholars question static operational categories that appear throughout the vocabulary of displacement such as 'refugee' and 'host'. To engage a more dynamic understanding of the process of integration, scholars may ask the following questions: Who is integrating? What contexts are they integrating into? These questions allow scholars to critically examine who benefits from integration, how incorporation may be facilitated or impeded and political dynamics that provide a lens through which to consider the priorities and interests of MENA host states.

### **Who is integrating?**

The first step to examining refugee integration is identifying who refugees are. Doing so, however, is complicated by limitations that are introduced through language, including legal definitions and the ways that the UN and host states reference refugee displacement. Selecting only UN-recognized refugees to examine integration would preclude millions of people who sociologically experience similar circumstances. From a humanitarian operational lens, some groups may not be categorized as populations in need of humanitarian relief, and therefore, they fall outside the scope of humanitarian knowledge production. Excluding refugees who are not recognized by the UN means that their host states and societies are consequently also unrecognized. For example, when Saudi Arabia was criticized for closing its borders during the 2015 mass influx of refugees in Europe, an official from the government's ministry of foreign affairs stated that the country 'made it a point not to deal with them

[Syrians] as refugees', but to instead issue residency permits which provided Syrian nationals with access to education, healthcare and employment (*The Guardian* 2015). In her comparative study of Somali reception in the United Arab Emirates, South Africa and the United States, Cawo Abdi (2015) finds that Somalis who are categorized as refugees in one context are seen as economic migrants in another. These examples remind us that refugee recognition – or the lack thereof – reflects state interests and priorities. When scholars uncritically consume, reproduce and build upon humanitarian knowledge production, they run the risk of excluding sociological refugees who are not included in UN counts (Arar and FitzGerald 2023). Their presence, however, is often recognized and monitored by the host state.

Scholars risk forfeiting precision in defining who refugees are when they use nationality as shorthand for all refugees from one specified country. References to 'the Syrians' or 'the Iraqis' overlook ethnic difference among displaced populations, which can be a marker that both facilitates and impedes reception and integration (Abdelaaty 2021). For example, not all refugees displaced from Syria after 2011 were Syrian nationals. Before the start of the war, Syria was home to more than 1 million refugees who fled Iraq after the US-led invasion in 2003. After 2011, many were displaced again along with their Syrian neighbours. Syria's pre-war population also included more than 526,000 UNRWA-registered Palestinians and 3 million Kurds, 517,000 of whom were living without Syrian nationality. Referring to all of these displaced people as 'Syrians' overlooks variation in refugees' experiences, structural barriers that they may face and unique network ties that may influence their displacement and reception.

Ethnic difference can be relevant to receiving states and societies. In 2012, the Jordanian government repurposed a six-story facility called Cyber City to house Palestinians from Syria. Once in Cyber City, Palestinian refugees from Syria were not permitted to leave, unlike refugees in other Syrian camps, including Za'atari and Azraq who could exit and re-enter the camp with written permission. The residents of Cyber City also had less access to humanitarian-led projects that operated in the main camps for refugees from Syria. Conversely, ethnic difference can also facilitate incorporation, as is the case with refugee reception in Iraq. The country hosts more than 280,000 refugees, the majority of whom reside in the Kurdistan region of the state located in the north of the country. Of this total population, most have fled from Syria and would identify as ethnically Kurdish. Ethnicity, therefore, is salient for the empirical study of refugees' decision-making, states reception and incorporation into the host society. Recognizing ethnic variation among refugee populations has important

implications for understanding why people leave (especially when they are the targets of individualized persecution) and where they go. Ethnic identity also informs how refugees are treated at state borders, who is allowed entry and where they may settle after crossing the border. Homogenizing language can conceal such differences in treatment that reflect MENA state practices and priorities.

Counting refugees is a political project that requires cooperation and compromise among host states and humanitarian organizations. It is not uncommon for host states to disagree with the UN and other humanitarian organizations about the number of refugees on their territory. The UNHCR counts refugees who are registered with the agency to plan budgets, allocate resources, track the progress of humanitarian interventions and convey information to donors. The calculus is different for states that bear the costs of reception whether or not a person is registered with the UN as a refugee. Officials may emphasize the number of nationals present on their territory over the number of registered refugees. Inflated refugee numbers allow host states to advocate for their own needs and seek greater international support, which is especially relevant when the international 'refugee response' is chronically underfunded (Crisp 1999, 2022).

### **Into which receiving contexts do refugees experience integration?**

MENA host states are compared on the basis of national-level statistics, but a snapshot of national-level statistics tells only part of the story. Shifting from the national to the subnational – including a focus on cities, towns, rural areas and refugee camps – reveals important insights regarding the context of reception. Governance may differ within a host country as local leaders introduce various restrictions or create allowances (Mourad 2021). Citizens and residents in the host community may also harbour dynamic and complicated feelings about refugees, which may also respond to governance practices and humanitarian interventions. Vocal grievances have propelled state and humanitarian actors to pay increased attention to 'host community tensions', shifting relief priorities to include refugees and citizens. As the response to Syrian displacement stretched over several years, the Jordanian Ministry of International Planning and Cooperation (MOPIC) created new restrictions on how aid dollars could be spent in the country by requiring that humanitarian interventions that propose to take place outside of refugee camps should consider refugees and citizens equally as 'beneficiaries' of aid.

While refugee reception is often considered at the state level, it is important to consider which communities refugees enter. Elena Fiddian-Qasmiyeh interrogates the refugee-host binary by demonstrating that, sometimes, refugees are hosts. She describes Syrian refugee reception in the Baddawi refugee camp, a Palestinian camp established in 1955, in which interlocutors explain ‘we arrived in the camp . . . [and just] passed through Lebanon’ (2020: 406). Writing about the Palestinian refugee camp of Yarmuk in Syria, established in 1957, Nidal Bitari explains that Yarmuk included ‘an interlinked network of streets and open spaces’ that were home to approximately 650,000 Syrians and 150,000 Palestinians. Bitari explains that despite the Syrian (host) majority, ‘Yarmuk’s identity has always been distinctly Palestinian, with its politics and public events focused on Palestine, and the Syrian residents themselves often becoming “Palestinianized”’ (2013: 62).

Refugees’ experiences in host countries vary based on *when* they arrived. The question of timing is closely tied to who is recognized as a refugee, which in turn sets the parameters of incorporation. The year in which refugees were displaced, as well as the year of their reception in a particular country, and the amount of time they have lived in exile are all important factors. Refugees do not all enter a country at once but, instead, migrate over time. The timing of displacement may be tied to where people live inside their country of origin, their financial status or ability to access resources through other forms of social or human capital, and individualized risk tied to racial and sectarian discrimination. Many refugees are internally displaced several times before ever crossing into a neighbouring state. Considering refugees’ ties between sending and receiving contexts, especially with regards to familial connections, can inform how refugees access information and secure the means to leave.

Despite the stated goal to promote local integration, segregation has been an incentivized practice that serves humanitarian organizations and Southern state interests. The notion that ‘the real refugees live in camps’ has made camps an important marker of visibility for host-state actors who wish to appeal to the international community for financial support (Kagan 2011). Many of the steps that humanitarian organizations take in cooperation with states facilitate refugee reception through *segregation* (Arar 2023). The best example of official segregation is the use of refugee camps, which are spaces that shelter refugees while separating them from the larger host community, albeit to varying degrees. Camps are usually run either by the state or with the oversight of state officials, who provide at least a modicum of material support. While all camps separate refugees from members of the host community, the porousness of



camp borders may differ. Some camps allow for free movement. In such cases, the camp may become more like a neighbourhood, such as Yarmuk described earlier, while other camp borders are strictly guarded to separate recognized refugees from others in society. When it comes to refugee camps, the policy goal of local integration is undermined by the operational mechanisms established to provide emergency relief.

## Conclusion

MENA host states depend on humanitarian relief to meet refugees' basic needs and manage the challenges of reception. The UNHCR broaches the 'problem of displacement' by offering three durable solutions, of which, 'local integration' potentially applies to around 98 per cent of UN-recognized refugees who are unable to return to their home country or resettle in a third country. 'Local integration' is a humanitarian *policy*, the assessment of which is difficult to measure outside of naturalization. Turning to the scholarship on the *process* of integration brings to the fore important considerations. Scholars can decentre humanitarian knowledge production by juxtaposing MENA hosting practices against pervasive humanitarian constructions of refugee reception. Drawing from cases throughout the MENA region, this chapter examined contradictions between humanitarian fictions about local integration and empirical reality that reflects the challenging dynamics that inform the process of (dis)integration. Contrasting empirical hosting practices with humanitarian-led knowledge production allows scholars to consider state-centric priorities and practices.

I have demonstrated that humanitarian intervention influences the process of integration for refugees in MENA by defining who refugees are and shaping their experiences of reception. Assessments of refugees can be limited by a legalistic bias when some forced migrants are not recognized as refugees. The lack of recognition, however, is not to suggest that MENA states are either unaware of their presence or unwilling to respond to the needs of 'de facto refugees' (Galli 2023). To neglect this fact overlooks MENA practices that fall outside the globally legible response to refugee reception. Furthermore, refugees are homogenized when they are identified by a singular nationality group. Doing so conceals ethnic variation among refugee populations who flee from any particular country, including immigrants, stateless people and previous refugee populations. Ethnic difference has informed how the state – and its citizens and residents – respond to refugees from a particular group.

Recognizing ethnic difference is particularly important when it shapes who can secure refuge. Co-ethnic affinities also inform how and where people seek sanctuary.

Refugees' integration experiences are shaped by *when* they flee and *where* they arrive in the host country. The question of 'when' is especially relevant for addressing changes in MENA state policies over time, including restricted reception at the border. While a snapshot of the global distribution of the world's refugees highlights national contexts, reception at the local level remains relevant to states. Broad variation in governance and reception differs from cities and towns to refugee camps. One of the clearest contradictions between integration as policy and integration as process can be analysed by recognizing residential disintegration. Even though refugee camps provide emergency relief during times of crisis, they largely segregate refugees from receiving communities. By juxtaposing 'local integration' as policy and the process of integration, scholars are well positioned to identify contradictions in humanitarian knowledge production and empirical reality. This approach provides insights into how MENA state actors negotiate and coordinate with international humanitarian organizations and how state priorities shape the experiences of refugees on their territory.

## Notes

- 1 An additional 103,581 Palestinian refugees live in the region, but outside the five countries where UNRWA operates. They are registered with UNHCR (UNHCR data finder n.d.).
- 2 Most of the 2.3 million UNRWA-registered Palestinian refugees in Jordan also have Jordanian citizenship.

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Part III

Norm entanglements

Refugees' everyday lives and the political  
economy of dispossession



## Bread, salt and book-keeping

### The shaweesh as the interface between Syrian refugees and the humanitarian system in Lebanon

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#### Introduction

*Okay, let me explain to you how it works. The [Lebanese] boss has nothing to do with [Syrian] workers. He calls me, or in other cases, we agree in advance, he tells me that on this day, I want 30 female workers, or 30 workers males and females, he says, I want 30 workers today. He has nothing to do with their names, phone numbers, or identities. Let's say, we work for one month for this boss, he pays me, and in turn I pay workers their wages.*

*You know the Lebanese authorities here, they know everything that happens inside the camps. I only hope that the topic [of this interview] is general and does not inflict any harm on us.*

Abu Musa, Lebanese intermediary<sup>1</sup>

Migrant labour has become vital to farming in the Mediterranean and in the Middle East, as neoliberal reforms and the inclusion of regional economies into transnational food supply chains have increased pressure on farmers to minimize costs through resorting to cheap, exploitable workforces (Corrado, De Castro et Perrotta 2016). In the context of the Syrian conflict, Syrian refugees' dependence on informal agricultural labour is the product of hostile refugee-reception policies, combined with insufficient humanitarian support (Zuntz et al. 2022). Through focusing on displaced workers' relationship with intermediaries, called *shaweesh* in Arabic, this chapter explores how globalized agriculture becomes intertwined with multi-actor processes of



refugee governance in Lebanon. In the Middle East, Syrian farmworkers' dealings with landowners are usually negotiated by the *shaweesh*. Since before the Syrian conflict, this practice has been well documented for Syrian migrant workers within Syria itself (Abdelali-Martini and Dey de Pryck 2015) and in Lebanon (Chalcraft 2009; Fawaz, Saghiyeh and Nammour 2014). Since 2011, it has also emerged among Syrian refugees in Turkey (Akay Erturk 2020; Development Workshop 2016; Pelek 2019) and in Jordan (Kattaa, Byrne and Al-Arabiya 2018; Zuntz 2021). As Abu Musa, a Lebanese intermediary working with Syrian refugees in eastern Lebanon, explains at the beginning of this chapter, he liaises between employers and labourers. His tasks include the recruitment of refugees, driving them to fields and greenhouses, overseeing their work and arranging their payment. His second quote speaks to the contentious relationship between agricultural intermediaries and the Lebanese security services, evoking a general climate of surveillance in the informal camps that house refugee workers. Contrary to what the quote may suggest, Syrian and Lebanese intermediaries like Abu Musa are not simply the target of but also complicit in policing refugee workers. This chapter tells the story of humanitarian governance in Lebanon from the point of view of the *shaweesh*. Drawing on remote ethnographic interviews with Syrian and Lebanese labour intermediaries in Lebanon conducted for the Refugee Labour under Lockdown project in winter 2020/21, it provides an account of how intermediaries turn Syrian workers into humanitarian subjects. A greater interest in how refugee norms are shaped by host countries in the Middle East that have *not* signed the 1951 Refugee Convention has drawn attention to how states like Lebanon deal with displaced populations (Fakhoury 2022; Janmyr 2021). Recent scholarship also goes beyond state governmentality, asking how non-state actors become involved in forced migration management (Carpi and Fiddian-Qasbiyeh 2020). Here, we look beyond the policymaking elite, that is, states and international organizations, and beyond regional capitals such as Beirut, to capture the contribution of local actors in rural Lebanon to actualizing humanitarian governance. Through discussing the everyday practices and intimate relationships of the *shaweesh*, we make visible how agricultural worksites become places where displaced Syrians become not only workers, but also aid beneficiaries and objects of surveillance.

Since the 2000s, intermediaries have made a comeback in anthropological studies of the development and migration industries. In the development sector, intermediaries broker aid beneficiaries' access to assistance (e.g. James 2011; Mosse and Lewis 2006). Powerful intermediaries also help aspiring

migrants deal with migration bureaucracy, filing the paperwork necessary to obtain visas and plane tickets (e.g. Alpes 2017; Piot with Batema 2019), and channelling them into employment abroad (e.g. Lindquist 2015). In recent years, the international humanitarian system's 'localization of aid agenda' has given new impetus to research on intermediaries (Kraft and Smith 2018): at the 2016 World Humanitarian Summit, leading governmental and non-governmental donors signed the 'Grand Bargain', pledging to transfer decision-making power and resources to the local level, for example, to civil society and faith-based organizations. This has drawn attention to municipal and other actors who can facilitate more egalitarian partnerships between international and local aid providers. At the same time, anthropologists have cautioned against romanticizing the role of such intermediaries; a common theme of research is their ambivalent role as those who help disadvantaged people access resources, but also exploit them (e.g. Boissevain 1974). The *shaweesh*, as we argue in this chapter, is one such intermediary. Through his knowledge of and contacts in multiple sectors – the humanitarian system, Lebanon's security apparatus, and agriculture – he assists Syrians in Lebanon who are marginalized both as 'refugees' in a restrictive asylum system and as 'workers' in the informal economy. What makes the *shaweesh* special is that his different roles cannot be studied in isolation from each other: he connects Syrian refugee workers to not only landowners but also to aid organizations and security services. We show that the *shaweesh's* own ambivalent positioning in the refugee community and the power differential between him and the workers make him the ideal target for implementing ambivalent refugee-reception policies in Lebanon.

In this chapter, we analyse the testimonies of four intermediaries: two Lebanese, 51-year-old Abu Musa and 58-year-old Abu Anas, and two Syrians, 55-year-old Abu Farhan and 35-year-old Abu Samer. The interviews were conducted as part of the Refugee Labour under Lockdown project, a collaborative research between agricultural and social scientists and humanitarian and cultural practitioners from the University of Edinburgh's One Health FIELD Network and two organizations based in Türkiye: Syrian Academic Expertise, a Syrian-led network of Syrian academics and experts and Development Workshop, a Turkish non-profit cooperative.<sup>2</sup> For this project, we spoke with eighty Syrian farmworkers, twenty intermediaries and twenty employers in Turkey, Lebanon, Jordan and northern Syria. The protagonists of this chapter were interviewed remotely through WhatsApp in winter 2020/21, at a time when COVID-19-related movement restrictions made it impossible for our research team to travel to Lebanon. They were recruited through the professional networks of one of

the research partners, Syrian Academic Expertise. All intermediaries in this chapter live in Qob Elias, a provincial town in the heart of the Beqaa Valley, a region of intense agricultural production in eastern Lebanon and home to almost 40 per cent of the country's registered refugee population (i.e. 830,000 Syrians, UNHCR 2022). While Abu Farhan and Abu Samer are themselves refugees and reside in informal tent settlements alongside their workers, the Lebanese intermediaries own houses nearby. All men were agricultural workers before becoming a *shaweeesh*; most had undergone an informal apprenticeship with a friend, brother, or father already working as an intermediary. During the harvesting season in 2020, our interlocutors exclusively hired Syrian refugees, supervising between 30 and 100 workers. In many groups, most labourers were women, and they often earned less than men. Intermediaries' income, as well as money for fuel and car maintenance, came from a commission deducted from workers' daily wages – usually around 20 per cent.

The working and living conditions of Syrian refugees and their intermediaries described here are not representative of *all* Syrian refugees working in agriculture in the region. In the Refugee Labour under Lockdown project, we found that displaced Syrian agricultural workers in the Middle East live in a variety of situations, including in rented accommodation and dwellings in urban and semi-urban areas. Only a minority of them migrates seasonally within host countries, and payment modes differ across agricultural regions, seasons, and products. Most importantly, not all of them use intermediaries to find jobs (for an overview of our findings, see Zuntz et al. 2021b). However, we present the following cases of intermediaries in Lebanon because they allow us to highlight a certain entanglement that is crucial to understanding the nexus between displacement, labour, and humanitarian governance in the Middle East. In the remaining sections, we first attend to the link between Lebanon's ambivalent refugee-reception policies and the production of disposable workers. We begin by providing some context about the humanitarian response in Lebanon, shaped by overlapping sovereignties of different governmental and non-governmental actors. We then show that the Lebanese state's prevailing security discourse on Syrians can be complemented by a political economy perspective highlighting refugees' value to the Lebanese economy as low-wage labourers. Next, we introduce the complex moral economy of refugee labour: financial and moral debts bind Syrians and their intermediaries together, reproducing cheap workforces, and also a sense of belonging and solidarity in exile. In the final part of this chapter, we discuss intermediaries' ambivalent roles in the humanitarian system: as aid workers and agents (and objects) of surveillance.

## Lebanon's non-politics of asylum

With more than one million Syrian refugees, Lebanon hosts the highest number of refugees per capita in the world. To put this into perspective: Syrians account for around one-fourth of the population on Lebanese territory (UNHCR 2022). Lack of humanitarian assistance and the combined effects of the economic crisis in Lebanon (since 2019) and the COVID-19 pandemic (since 2020) have plunged many refugees into poverty: in 2021, half of Syrian households in Lebanon were food insecure (Inter-Agency Coordination Lebanon et al. 2021). Yet Lebanon refuses to be seen as a country of asylum: through framing Syrian refugees as 'economic migrants' and a security threat, it makes them easy targets for labour exploitation and deportation (Fakhoury 2021).

A number of scholars have called out Lebanon's ambivalent refugee response, alternatively described as 'institutional ambiguity' (Nassar and Stel 2019: 44; cf. Stel 2021), 'liminal' (Carpi 2019b: 83), a 'policy of the non-policy' (Abi Khalil 2015: 11) or even an '[absent] formal refugee regime' (Fakhoury 2017: 681). However, such ambivalence is not exceptional. It has to be understood in the context of the country's dysfunctional sectarian political system (Fakhoury 2017), and its recurrent economic and political crises (Carpi 2019b). As Boustani et al. (2016) point out, the mass arrival of Syrian refugees after 2011 happened while Lebanon's economy and infrastructure were still reeling from the after-effects of the 2006 war with Israel, which had also led to domestic political paralysis. At the same time, many international organizations were already present on the ground, assisting vulnerable Lebanese, but without clear mandates. The early years of the Syrian refugee presence in Lebanon were thus marked by the uneasy coexistence of two sovereignties: on the one hand, a fragmented state with a fragile balance of power-sharing, exerting agency through intentional neglect and occasional security crack-downs on refugees, on the other hand, a parallel system of humanitarian government delivering ad hoc emergency relief, public services, and infrastructural development (Boustani et al. 2016; Carpi and Fiddian-Qasmiyeh 2020; Dinger 2022; Fakhoury 2017). After 2014, as the crisis became protracted, there was a greater interest in coordination, notably through the 2015 Lebanese Crisis Response Plan. This involved burden-sharing and capacity-building between state and humanitarian actors, the involvement of municipalities, and the creation of new inter-agency and inter-sectoral tools and spaces of exchange. However, in the absence of a shared vision on Syrian refugees' future in the country, divergent rationalities of governance and short-

term crisis management, rather than integration efforts, have persisted. Dinger (2022: 2018) polemically asks: ‘coordination around *what* [emphasis added by authors]?’ In the tradition of its treatment of Palestinian refugees, the Lebanese state has been keen to prevent the settlement and naturalization of Syrians; the UNHCR and other international organizations, on the other hand, treat them as de facto refugees. For now, keeping these tensions unresolved allows humanitarian actors to remain operational. Meanwhile, a number of violent incidents, such as 2014 clashes between Islamists and the Lebanese army in the Beqaa Valley, have shaped the Lebanese state’s approach to Syrians as a threat to national security. On the ground, institutional neglect thus translates into arrests, check-ups, and deportation. In 2018, the Lebanese government began to forcefully repatriate thousands of refugees, often putting them at risk of internal displacement upon their return (Sewell 2017). In summer 2022, it was announced that Lebanon would begin deporting 15,000 Syrians each month (The New Arab 2022).

One strategy through which the Lebanese state has put off finding a long-term solution to the refugee ‘problem’ is through the multiplication of legal identities for the displaced; this has produced confusing layers of illegality and assistance for Syrians in the country. In her 2021 article, Mourad draws up an impressive list of labels through which Syrians are identified on banners put up to announce municipal curfews: they are alternatively referred to as ‘foreigners, Syrians, displaced, labourers, brothers or [through] the disembodied motorcycle’ (Mourad 2021: 1387). These multiple and overlapping labels are the results of years of increasingly restrictive asylum policies. In 2015, the UNHCR had to suspend registration at the request of the Lebanese government (Janmyr and Mourad 2018). In the same year, the Lebanese government put an end to open-border policies and free movement, subjecting Syrians to new, and much stricter, visa restrictions. Syrians registered with the UNHCR had to sign a pledge not to work (Janmyr 2016). The Lebanese government also introduced an annual USD 200 residency fee for Syrians that proved prohibitive for many. In 2017, fees were waived for Syrians registered with the UNHCR, but not for Palestinian refugees from Syria, unregistered refugees, and those registered refugees who had renewed their residency through a Lebanese sponsor (Human Rights Watch 2017). Taken together, these policies have pushed the majority of the Syrian population in Lebanon into illegality. In 2021, only 16 per cent of Syrians aged fifteen years and above held legal residency in the host country (Inter-Agency Coordination Lebanon et al. 2021). As Dinger (2022: 224) remarks, such legal confusion serves to reduce the number of

deserving refugees *on paper*: ‘Whatever the actual size of the Syrian population in Lebanon, the official number can only go down as registered Syrians pass away, leave the country, or find themselves stripped from the registry failing to meet status renewal deadlines.’

## Producing disposable workers for Lebanon’s agriculture

So far, Lebanon’s securitization of the refugee response, related to efforts of maintaining fragile domestic stability, has dominated academic studies. However, adopting a political economy perspective makes visible another, overlooked effect of such policies: the production of a disposable, cheap workforce for the host country (Zuntz et al. 2021a). The proliferation of bureaucratic categories used by the UNHCR, and the host state causes many Syrian refugees to be treated as economic migrants, not as vulnerable people in need of protection (Janmyr and Mourad 2018). Syrians’ lack of full protection under the 1951 Refugee Convention, compounded by the irregular nature of humanitarian assistance, compels them to get by in the informal economy (Bellamy et al. 2017). Some forced migration studies scholars have framed the problem as merely one of insufficient labour market integration in countries with weak economies and ambivalent asylum policies (Betts and Collier 2017). Others, however, have adopted a political economy approach: instead of treating refugee flows as a series of disconnected emergencies, they study them in the context of global capitalism and widening North-South inequalities (Castles 2003; Easton-Calabria 2022; Garelli and Tazzioli 2017). Seen through a labour lens, displacement is not simply the source of humanitarian crises but also a process that generates cheap workers. Hence, the problem is not Syrian refugees’ economic exclusion but rather the contentious terms of their *inclusion* in economies that require mobile workers and prefer the most vulnerable, and thus the cheapest, labourers (Kavak 2016; Phillips 2013). Refugees, then, are not a humanitarian anomaly in host economies like Lebanon but can be considered a specific kind of precarious workforce (Rajaram 2018; Ramsay 2020). It is worth noting that Syrians made up between 20 and 40 per cent of Lebanon’s workforce before 2005, when the assassination of Lebanon’s ex-premier Rafik Hariri spurred the withdrawal of Syrian occupation forces, and workers, from Lebanese territory (Chalcraft 2009). After 2011, the mass return of Syrian refugees, together with Lebanon’s non-encampment policy, gave the country renewed access to huge numbers of cheap labourers (Turner 2015).

When it comes to industries requiring migrant workforces, Middle Eastern agriculture is a case in point. The inclusion into global agricultural supply chains has compelled producers across the region to cut labour costs through resorting to migrant labour (Gertel and Sippel 2014). As Corrado, De Castro and Perrotta (2016) succinctly put it, globalized agriculture in this part of the world is based on ‘cheap food, cheap labour, [and] high profits.’ Lebanese agriculture is no exception: in the second half of the twentieth century, it shifted to large-scale and export-oriented farming. Its high dependency on importing inputs and exporting produce has made it vulnerable to economic shocks and disruptions. In April 2021, for example, Lebanese farmers were hit hard when Saudi Arabia imposed an export ban on Lebanese produce, after a shipment of Lebanese pomegranates was found to contain Captagon pills (McKelvey 2021). The current economic crisis and the devaluation of the Lebanese pound have also driven up prices for inputs. These structural issues are compounded by a clientelistic system of control over resources, the concentration of most arable land in the hands of a few wealthy landowners, and poor infrastructure and logistics (Hamadé 2020).

Access to a cheap Syrian workforce has long helped Lebanese farmers cope with these pressures. Work in agriculture is mainly informal; work permits for foreigners only became a legal requirement in 2019, and enforcement mechanisms are still not fully in place for seasonal agricultural workers (Government of Lebanon & UN 2020). Before 2011, Syrian migrants took advantage of the 1993 bilateral Agreement for Economic and Social Cooperation and Coordination to work in Lebanon as seasonal migrants (Janmyr and Mourad 2018). Poor rural and working-class Syrians regularly complemented their families’ income with wages from work abroad, often with little or no legal protection (Chalcraft 2008). Like Abu Farhan, one of the Syrian intermediaries interviewed for this chapter, many former Syrian migrants have since returned as ‘refugees’ to former sites of circular migration and to work with previous employers (Carpi 2020; Mourad 2021). Satellite pictures show that the arrival of Syrian refugees even led to the expansion of agricultural land after 2011, including in the Beqaa Valley (Hamadé 2020). The return of Syrian workers has also been reported in other rural parts of Lebanon, for example, to Akkar in the north of the country (Carpi 2019b). The link between Syrians’ pre-war histories of precarious labour migrations and current patterns of displacement is well documented also in other parts of the Middle East (e.g. for Jordan: Lagarde and Dorai 2017; Zuntz 2021).



*I have been coming to Lebanon every April since 1976 when I was still a kid. [. . .] Before the war in Syria, we used to move to Lebanon in early April and stay there until November. In November, we would wrap up work and head back home to Raqqa or Aleppo. We would spend the winter there until April. When the troubles began in Syria in March 2011, the situation became uncomfortable, so we decided to get out. I was already planning to come to Lebanon to work. [. . .] We came here in 2011 and have been here since then.*

Abu Farhan, Syrian intermediary

This backstory of Syrian farmworkers' migrations to Lebanon matters to the study of present-day humanitarian governance, and the *shaweesh's* role in it, because the relationship between intermediaries and refugees often predates their current displacement. Many, such as Abu Samer and his workers, used to regularly migrate together before the onset of the Syrian conflict. After 2011, their annual working arrangement turned into long-term cohabitation in informal camp settlements in Lebanon:

*I thought of starting to supervise a number of agricultural workers and I began doing so in March 2010. I had a group of 50 workers, males and females, whom I began to assign tasks. The following year war broke out in my country, so I stayed in Lebanon with workers I supervise and was joined by so many others. I had by that time between 100 and 120 agricultural labourers. Many sought refuge in Lebanon because of the war. [. . .] We lived there in summer and winter with the hope that the situation would stabilise in Syria in 2012 and we would return home. But as you saw, the war evolved. As a result, the camp still exists until today. [. . .] I myself became a refugee; I could no longer go to Sheikh Said in Aleppo.*

Abu Samer, Syrian intermediary

What is the lived reality of becoming incorporated into the global capitalist economy? For a Syrian refugee in a tent somewhere in eastern Lebanon, the mundane face of capitalism starts with an early morning phone call about the availability of a handful of days of work in the olive harvest nearby, and a trip in the back of a pick-up, one's shawl or headscarf tightly wrapped around the face to protect against the cold and unwanted glances. And it ends ten hours later with the payment of 10,000 Lebanese Pound (approx. USD 7; in winter 2020/21, a kg of tomatoes cost 4,000 Lebanese Pound). For this, Syrian refugees never sign a work contract. All arrangements are made informally with the *shaweesh*, to whose multiple roles we turn now.



## The moral economy of refugee labour

The relationship between intermediaries and refugee workers is not purely transactional. Rather, a complex and shifting moral economy, made up of financial and moral debts and expectations, binds them together, blurring the boundaries between the workplace, community, and family. Hence, keeping track of one's debts is vital, and agricultural intermediaries are avid bookkeepers. Our interviews abound with references to notebooks, ledgers and receipts, as well as complicated financial scenarios involving debts, promised payments and exchange rates in local and far-away markets. Accountancy, as we will see, is central to how intermediaries manage the day-to-day economics of refugee labour, but it also proves useful to their other roles in the humanitarian system.

*My camp is not very big and compared to other camps, it is civilized and quiet. The camp has around 25 or 30 tents and each tent is inhabited by six or seven people. The females are more than males. I have more details, but they are recorded on paper in the office.*

Abu Anas, Lebanese intermediary

Abu Anas, who started working as a *shaweesh* in 1997, lives in a house outside the camp where his workers reside. But he also keeps a makeshift office in a tent among the Syrians, so they can settle their accounts more easily. So much paperwork might come as a surprise from a man who runs an informal business; after all, all agreements with labourers and landowners are oral and entirely based on trust. However, like the other intermediaries in this article, Abu Anas is not only the local one-man equivalent of a job agency; he also functions as a landlord, service provider, and informal bank. The following quote by Abu Farhan, a Syrian intermediary, illustrates how intermediaries keep track of these multiple relationships of dependency.

*I visit each tent every evening and give workers instructions. For example, I ask this female worker to prepare food to take with her tomorrow. I tell her: 'You will work in garlic for two days starting tomorrow.' I tell another female: 'You have to take with you a bucket tomorrow, you a shovel.' I give instructions to workers of every single tent each evening. Once they finish working at the end of each day, I record on a card how many hours each family has worked and how much they earned. I give a card to each family. I pay workers what they're owed each two or three months or at the end of the year. I have a notebook to record expenses. I record every time a family takes from me 100,000, 50,000 or one million [Lebanese*

*Pound]. I record that x took this amount of money from me on this date. I allocate two or three pages of my notebook for each family. I deduct the annual rent and electricity fee from the wages which I pay to workers. You know I pay the electricity fee and I pay for bread in advance on their behalf. The bread vendor visits our camp every day at 7 am and provides us with 100 or 150 bags of bread. [At the end of the year], I pay each worker what they're owed after making the necessary deductions and I renew the work agreement with each worker for the next year.*

Abu Farhan, Syrian intermediary

As Abu Farhan explains, the *shaweesh* records not only workers' income but also rent and utility bills: in a nutshell, he manages their complete finances. In case of disagreement over work issues, the *shaweesh* can expel refugees from the camp, exposing them to the risk of homelessness. Syrians' finances are made even more complex by the widespread practice of advance payments. Using an intermediary for informal loans is nothing new. In pre-war rural Syria, rural populations were often excluded from the official banking system and had to rely on informal money lenders instead (Imady 2014). In informal camps, however, delayed payments ensure that workers do not abandon the fields and their *shaweesh*. Abu Anas explains how refugees enter into convoluted, and sometimes long-lasting, webs of debt:

*A worker, Abu Ahmad let's say, would sometimes ask me for 100,000, 200,000 or 300,000 Liras in advance. I have a separate page for each family on my notebook. I record on this page that a member of this family took 200,000 Liras on this day as an advance payment. We settle the accounts at the end of the year. The worker will have receipts confirming that he worked for a specific number of days. I tell him: 'Abu Ahmad, you did 1,000 shifts during the year so you are owed 10 million Liras. But you already withdrew 200,000 Liras as an advance payment on this day.' He would have this recorded already. So I deduct the advance payment from what he's owed, and he gets the remaining money.*

Abu Anas, Lebanese intermediary

It is worth noting that refugees' debts work on more than one time scale: some workers receive an advance payment at the beginning of the agricultural season, which they gradually pay back through their wages. In the meantime, they also accrue additional loans, for example through rent and shopping. Their financial dependency on the intermediary is further compounded by the latter's own reliance on those further up the production chain: local landowners and employers. Often, intermediaries' expenses come out of their own pockets and agriculture can be a losing game, not only for workers, but also

for intermediaries. What may look at first sight like a local informal business is in fact a multi-faceted financial enterprise, with multiple actors and unknown factors. The intermediary's profit and ability to pay wages are influenced by changing exchange rates, price fluctuations for agricultural inputs and outputs, border closures and movement restrictions that may cut access to markets, and even the weather, and next year's harvest.

*In most cases, a landowner might delay paying a huge sum of outstanding money to a shaweesh until the following season. Some landowners still owe me money for two years now. At the end of the season the landowner tells me 'he's broke and cannot pay'. In this case, I am obliged to pay the workers their wages from my own pocket and wait for the landowner to pay me back when he can.*

Abu Anas, Lebanese intermediary

However, if we only look at the balance sheets that intermediaries provide, we may end up with a cartoonish image of evil gang masters, working together with landowners keen to increase their profit margins. Media and NGO reports tend to portray the *shaweesh* as an evil gang master (e.g. Ghaddar 2017), but this fails to do justice to his complex relationship with Syrian workers. In truth, intermediaries guarantee timely payment, in an informal economy where refugees lack even basic labour rights and the means to hold employers accountable. What is more, intermediaries occupy a position higher up in the agricultural work hierarchy based on expertise and the extent of one's social networks:

*Few of [the workers find jobs on their own]. Because the shaweesh supervises work. I mean, if you were a student wanting to join a class at a school, you'd get in touch with the teacher. If you want to get admitted at a hospital, there's the chief of physicians, physicians, nurses, this is life. A camp is like an institution with a manager and lower rank officials.*

Abu Samer, Syrian intermediary

This hierarchical relationship goes beyond the workplace. Syrian intermediaries often recruit workers from their extended families, and many, like Abu Farhan, employ their own children as workers or personal assistants. Abu Musa, one of the Lebanese intermediaries in this study, is married to a Syrian woman and hires her relatives. Through daily contact and spatial proximity, all intermediaries, regardless of their nationality, have developed close family-like ties with their workers. In the interview transcripts, words of affection index the histories of kinship and belonging that unite refugee workers

and intermediaries and that are crucial to understanding the complex nature of refugee labour. Many intermediaries speak of workers not as ‘employees’, but as ‘kin’ and ‘wards’. They call Syrian refugee workers ‘brothers’, ‘parents’, and ‘children’, arrange their weddings, settle fights, and share meals. As one interlocutor puts it, ‘there is bread and salt between us’ (بيننا خبز وملح), a sign of hospitality between family and friends, and intermediaries’ testimonies are saturated with memories from a shared past in pre-war Syria. There is also an important gendered dimension: many intermediaries feel particularly protective towards widows and young women. As one of them proudly recalls, his female workers call themselves ‘the daughters of Abu Musa’. His paternal attitude coexists with his exploitation of female refugee labour: Abu Musa employs twice as many women as men, some as young as fourteen, and many of them pregnant, and women are paid the same wages as children, that is, less than men.

One aspect that many intermediaries insist upon, despite the hierarchical nature of agricultural work, is the ‘sameness’ of intermediaries and workers. Asked about their relationships with workers, Abu Anas and Abu Samer reject the idea of a purely ‘professional’ connection:

*You are not present in person to understand my relationship with my workers. I behave as if I am one of them, I live with them most of the time. I barely spend two hours at my house in total at day and night. Our relationship is no longer one between a shaweesh and workers. I consider that all of us are people of the same country now. They have been here for so many years and I used to visit them in Syria before. When I spend five or ten hours with the same person everyday, we become very close.*

Abu Anas, Lebanese intermediary

*Doctor, we are all Syrians coming from the same country, I treat my workers just like someone treats their fellow countryman, brother and son. I treat an elderly woman like my mother, the old man like my father, the girls like our sisters and honour and the young men like our brothers.*

Abu Samer, Syrian intermediary

Anthropologists of the Middle East have extensively documented the use of the family idiom to describe social relationships, and how people access resources through kinship and patriarchal structures (cf. Joseph 1994, 2004). In pre-war Syria, extended Syrian families often functioned as profitable economic units, with different household members taking on paid or unpaid tasks (Rabo 2008;

Rugh 1996), although there is mixed evidence on how well these ties hold up when families are dispersed (Stevens 2016; Zuntz 2021). The intermediaries we interviewed make a claim to being a member of extended ‘families’, be they based on actual kinship or years of working together. Quite tellingly, when asked about the availability of sick leave and paid healthcare, several respondents evoke not labour rights, but rather conventional forms of hospitality.

**Interviewer:** *You offer your workers sick leave and healthcare, right?*

**Shaweesh:** *Yes I definitely do. For example, I invite people over for mansaf [traditional Arab dish made of lamb cooked in a sauce of fermented dried yoghurt and served with rice or bulgur] every now and then and distribute any leftovers of bread and meat to the tents.*

Abu Farhan, Syrian intermediary

As Abu Farhan’s answer illustrates, he thinks of his obligation towards workers not in terms of employment rights, but in terms of hospitality and alms-giving, more traditional forms of mutual support within Middle Eastern communities. In a similar vein, Sajadian (2021) documents the complex debt relationships between a Syrian *shaweesh* and his workers in an informal camp in Lebanon where the latter can expect not only the payment of their wages but also ceremonial ‘gifts’, for example, on the occasion of the Islamic holidays. At times, lines between Syrian refugees and intermediaries are blurred, to the extent that Abu Anas, a Lebanese intermediary, starts speaking in the first person plural when he discusses his Syrian workers, rhetorically including himself into a group of refugees:

*The [Lebanese] owner of the land on which the camp was created is pressuring us to leave. He’s been doing so for the past three or four years. But we are not being able to leave. We rented a land in a different place, we applied to move, but the governorate rejected our application.*

Abu Anas, Lebanese intermediary

Of course, we should be careful not to romanticize these claims to kinship, since making family and exploitation often go hand in hand. Displays of hospitality in Middle Eastern societies can take on a competitive nature, cementing the host’s higher status (Meneley 1996; Shryock 2012), and family elders often control the labour and income of younger generations (Rabo 2008). In this regard, the gaze of a benevolent, caring patriarch already contains an element of surveillance that also benefits the *shaweesh*’s role as a security agent, as discussed later.

But nor should we discard them as simple rhetoric. As these interviews show, economic calculation can be found alongside sincere affection, shared identities, and histories of belonging. Real-life refugees are more than simply ‘alienated’ cogs in the economy. Rather, intermediaries’ accounts testify to a peculiar form of globalization: not one in which displaced people join a pool of other marginalized workers that interchangeably provide the fodder of globalized businesses, but one where some types of production chains, at least at their very beginning, rely on intimate connections, practices of care, and emotional labour (cf. Bear et al. 2015).

### Aid workers

As the previous section attests to, economic transactions, kinship and hospitality have long shaped the relationship between the *shaweesh* and his Syrian workers. However, the arrival of international actors and the lack of a coordinated aid response have reconfigured power dynamics in agricultural communities. The backstory of Lebanon’s multilayered and contradictory humanitarian system, as told earlier in this chapter, is relevant to understanding how intermediaries have acquired new forms of agency. In the Lebanese context, most scholarship has focused on how international aid organizations have partnered with local village authorities and civil society organizations (e.g. Carpi 2019a). However, private economic actors, such as the *shaweesh*, have also emerged as powerful interlocutors for aid providers (Fawaz, Saghiyeh and Nammour 2014; Sanyal 2017).

As previously discussed, the *shaweesh* is situated at the top of the social hierarchy of the camp, assuring that workers’ wages are paid and taking on other patriarchal tasks, including conflict resolution and marital match-making. All of this happens in rural areas with pseudo-feudal societies and power-sharing between local elites. The arrival of humanitarian assistance has exacerbated relationships of dependency, while investing the *shaweesh* with new responsibilities. As Carpi (2019b: 91) remarks, ‘aid becomes a new resource within the local network of political clientelism’. In the early days of Syrian displacement, Syrian and Lebanese intermediaries became preferential partners for national and humanitarian actors. Abu Samer, displaced himself, co-organized emergency relief for his group of workers:

*As a shaweesh in the camp, I was tasked by the Lebanese authorities with monitoring who enters and leaves the camp and with addressing any dispute.*

*We began to build a tent for every family seeking refuge in our camp and help them with available means. The UN also offered some help, and refugees of the camp helped each other. Some would offer money, others a pillow, sheets etc. So we would build a tent for each family and allowed them to work with us. We were first around 22 but then we reached around 60 or 62 families. Around five or six families eventually left to Syria and we are left with around 56 families.*

Abu Samer, Syrian intermediary

Besides, aid providers often use intermediaries to organize ad hoc interventions. Abu Farhan, for example, tells us how he was contacted by an aid organization:

*I received a telephone call a short time ago from an organization and was informed that [name unclear], from Germany, will provide us tomorrow morning with clothing coupons and a basket of detergents. They told me they will show up tomorrow at 9 am.*

Abu Farhan, Syrian intermediary

During the COVID-19 pandemic, intermediaries also acquired a new role in monitoring public health and implementing safety precautions.

**Shaweesh:** *It is the task of the United Nations medical teams, they provide people with medical alcohol (might mean hand sanitisers).*

**Interviewer:** *Okay. The UN does so. What do you do?*

**Shaweesh:** *Of course we prevent gatherings such as weddings. [. . .] We have contacts for UN officials and we were instructed to get in touch to report on any suspected coronavirus case. Thank God, this has not happened so far and everyone in the camp is doing well.*

Abu Samer, Syrian intermediary

To our knowledge, intermediaries are not paid for these services and they seem to have little influence over how humanitarian assistance is delivered. Rather, aid providers capitalize on the moral and financial authority that intermediaries already hold over camp inmates. Aid distribution through clientelistic and patriarchal networks raises a serious challenge for humanitarian principles of neutrality and impartiality. Of course, intermediaries' role in organizing shelter and other types of assistance for displaced people is complicated by the fact that they charge refugee-workers rent and can evict them from camps and make them lose their jobs. Their economic, humanitarian, and security roles are thus conflated, exacerbating the power differential between themselves and the workers.

## Agents and objects of surveillance

There is also a darker side to intermediaries' book-keeping efforts: because of their intimate knowledge of refugees' circumstances, they must account not only for their wages but also for their location. What makes the position of the *shaweesh* unique is his positioning at the intersection of different forms of (il) legality. As we argued earlier, Lebanon's ambivalent refugee-reception policies have made many Syrian refugees illegal, pushing them to work in the informal economy with no labour or residency rights. But these workers are not simply invisible to the state; on the contrary, the co-optation of the *shaweesh* makes them hyper-visible. Abu Anas explains how Syrian migrants' pre-war legal limbo has since been transformed into a different form of uncertainty, one in which the irregularization of Syrian labour and containment policies go hand in hand and are condensed in the figure of the *shaweesh*.

**Shaweesh:** *[My workers] don't carry [work] permits. Look, from before the start of the war in Syria, working in agriculture in Lebanon did not require a work permit. This is because workers used to come and work for six months, four or five months and then leave.*

**Interviewer:** *Great. Are you registered as a shaweesh?*

**Shaweesh:** *Yes for sure I am registered with the security authorities.*

**Interviewer:** *Since when? Do you mind if I know?*

**Shaweesh:** *What?*

**Interviewer:** *Since when have you been registered as a shaweesh? Since what year?*

**Shaweesh:** *Since 1995.*

Abu Musa, Lebanese intermediary

The foregoing dialogue encapsulates the insecure legal status of Syrian refugees working in Lebanese agriculture today; it is noteworthy that both the Syrian and the Lebanese intermediaries that we interviewed are registered with Lebanese security services. In a situation in which refugees are framed as a security risk to the Lebanese state, intermediaries have been enlisted to provide up-to-date information to multiple security agencies. Abu Farhan, for example, reports to 'the State Security Apparatus, the Information Branch Apparatus, and all other security bodies' and is himself registered 'with the municipality, the Lebanese Army Intelligence, and all other security agencies as required'. Even though the Lebanese government's refugee policies have made many Syrians illegal, the involvement of



*shaweeshs* allows it to keep track of mobile displaced populations along the Syrian-Lebanese border. At the same time, intermediaries such as Abu Anas are very much aware that such policies produce disposable workers for Lebanese agriculture.

*[The workers] don't have work permits. But there's a tacit oral understanding with the state that in Lebanon, in the Bekaa area in particular, landowners are in need of workers and that the shaweesh provides these workers [emphasis added by authors]. [ . . . ] With the outbreak of the Syrian revolution and the flock of refugees, the state now knows how many workers I supervise and how many people live in the camp through the Army Intelligence, the State Security, the municipality, the Information Branch [of Lebanon's Internal Security Forces]. I officially inform the state that I am a shaweesh, I have a code for my camp which the state and the UN knows. I disclose how many workers I supervise and receive a report from the Army Intelligence on a regular basis. I have to inform the intelligence when anyone leaves my camp. A few days ago, two families left my camp to the Akkar area. I took them to the intelligence and informed them that these people want to leave. They crossed their names out of the list of workers for whom I am responsible.*

Abu Anas, Lebanese intermediary

The relatively straightforward nature of this registration procedure, as described by Abu Anas, contrasts with the myriad legal processes many refugees face when trying to obtain assistance and residency in Lebanon (Janmyr and Mourad 2018). Importantly, the *shaweesh's* surveillance role also extends to his relationship with Lebanese landowners. Abu Farhan, a Syrian intermediary, for example, was tasked by the army intelligence to provide a photocopy of the Lebanese man on whose land refugee workers are currently toiling. The *shaweesh* is thus placed at the heart of a shady network of policing that extends upstream and downstream of the agricultural supply chain. At the same time, intermediaries complain that their relationship with Lebanese security services is one-sided, failing to translate into greater security for refugees themselves.

**Shaweesh:** *The security agencies don't inform us about anything. The municipality usually informs us about any lockdown. We heard there will be a lockdown on Thursday.*

**Interviewer:** *My question is: What can the government do to help workers cope with the health and economic repercussions of coronavirus?*

**Shaweesh:** *They provide nothing at all. The municipality lets us know every time there's a lockdown. They say: 'No one is allowed in and out of the camp . . . there's a curfew starting at 5 pm.'*

Abu Farhan, Syrian intermediary

Another Syrian *shaweesh* that we interviewed in the Beqaa Valley complained about night-time raids of his camp by Lebanese security services and violence against inhabitants, including the elderly and women. Intermediaries, and in particular Syrian intermediaries living in camps alongside their workers, are not only the agents but also objects of surveillance. Some Syrian intermediaries are not registered with the UNHCR and have no official residency status in Lebanon; like their workers, they thus face deportation to Syria. In return, this may increase the leverage that security agencies have over the *shaweesh*.

## Conclusion

In this chapter, we have discussed interviews with four intermediaries working with Syrian refugees in agriculture in Lebanon. We have shown that an analysis of humanitarian governance in Lebanon needs to integrate a political economy perspective and account for multiple actors and processes at the national, global, and local level. Such an approach allows us to understand how Lebanon's restrictive asylum policies produce a cheap, exploitable workforce for the host country. These refugee labourers keep afloat a globalized Lebanese agriculture, vulnerable to price shocks and supply chain disruptions. At the same time, we can only understand how humanitarian governance unfolds if we pay attention to intimate social relationships at the heart of refugee communities: the connection between refugee workers and intermediaries. We find that refugees' family affiliations help turn them into precarious labourers *and* humanitarian subjects. Kinship structures within refugee families matter if we want to understand the workings of humanitarian governance, in concert with global capitalism: they cannot simply be relegated to the 'nonmarket realm' of dispossessed communities, nor are they external to the multilayered legal apparatus that engulfs refugees in Middle Eastern host countries. Studying the multiple roles and affections of the *shaweesh* makes visible these intersections of kinship, intimacy, humanitarian governance, and Syrians' incorporation into global capitalism. At the same time, our chapter provides a window onto refugees' lived reality of ambivalent humanitarian governance: in a context in which refugees are treated as 'economic migrants' and a security threat rather than people deserving of protection, and see their civil and employment rights severely limited, Lebanese security agencies capitalize on ambivalent figures within refugee communities themselves. As Sanyal (2017) points out, the multiple roles of intermediaries as aid providers and security agents blur distinctions between

camp-based and urban refugees, as comparable levels of care and surveillance, known from more institutionalized camps, also present themselves in informal tent settlements. The involvement of private sector actors in aid delivery allows the Lebanese state to bypass a rights-based approach to displacement, putting off the acknowledgement of Syrians as ‘refugees’ worthy of protection. The study of the *shaweesh* thus contributes to an emerging body of literature on how everyday bordering processes become decoupled from physical frontiers, penetrating mobile people’s workplaces and private lives (e.g. Van Houtum 2010). While many such studies focus on the use of biometric and digital data for extending surveillance, our chapter highlights how trust, intimacy, and shared memories can be leveraged to facilitate the policing of refugees.

In conclusion, we draw attention to two ways in which the study of the *shaweesh* can reorient forced migration scholarship. First, looking at refugees through a labour lens shifts the focus from individual acts of exploitation to broader unequal power relations within labour markets and between worker-sending and receiving countries (cf. Zuntz et al. 2021a); it can also provide a counter-point to humanitarian attempts at enhancing ‘refugee self-reliance’. There is now a robust body of research showing the shortcomings of market-based solutions to displacement that seek to turn refugees into ‘micro-entrepreneurs’ and model workers, without addressing how illegality, lack of access to the formal labour market, and the threat of deportation, all limit refugees’ opportunities to attain economic stability (e.g. Easton-Calabria and Omata 2018; Easton-Calabria 2022). Still, enhancing refugee self-reliance has become a leading approach during the Syrian crisis – but when Syrians become ‘self-reliant’ in unexpected ways, humanitarians are often quick to curtail their efforts. In Zaatari Camp, Jordan, for example, Syrian refugees have received much praise from aid organizations for opening informal shops; but their economic activities are also tightly controlled inside the camp (Turner 2020). In informal camp settlements in the Beqaa Valley, Lebanon, the reality of ‘refugee self-reliance’ is that refugees work extremely hard, but their labour and community relationships entrap them further in Lebanon’s securitized approach to humanitarian governance. Ironically, while aid providers focus on enhancing *female* employment, framing women as more trustworthy entrepreneurs and aid beneficiaries (e.g. Blackwell et al. 2019; Carpi 2020; Turner 2019), refugee workforces in the Beqaa Valley are predominantly female. As we found in the Refugee Labour under Lockdown project, women workers are often paid less than men, while having to cope with the double burden of farming and

domestic labour (Zuntz et al. 2021b). This study of agricultural intermediaries suggests that we need to understand better how securitizing migration and displacement, and the incorporation of refugee labour into global capitalism, go hand in hand – and how these complementary processes are mediated by trusted actors in the midst of refugee communities.

Second, acknowledging the pivotal role of intermediaries redirects our gaze from binary oppositions between refugees and states, host communities and aid providers, to relationships *between* refugees. In the Middle East, many people have experienced displacement more than once, and sometimes seek asylum in communities made up of earlier refugees. Humanitarian and policy actors tend to understand refugee agency only in limited ways, for example as the result of empowerment through NGO programmes, or as security threats (Fiddian-Qasmiyeh 2020). This narrow approach has been challenged by Fiddian-Qasmiyeh's research on Palestinian refugees hosting newly displaced Syrians in camps in Lebanon, and the contribution of Syrian diaspora-led organizations to aid delivery in the vicinity of the Syrian conflict (e.g. Al-Ashmar 2022; Flanigan 2022; Sweis 2019). In a similar vein, the study of the *shaweesh* shows that not only policymakers and aid professionals but also refugees themselves emerge as 'norm makers.' Displaced Syrians such as Abu Farhan exploit the ambivalences of humanitarian responses to impose their own ideas of who should be assisted, where, and how; they identify which fellow refugees should receive humanitarian assistance, paid work, and so on. Complex power dynamics within refugee communities produce new configurations of social stratification and informal governance systems. These findings call for greater attention to how displaced people themselves contribute to shaping forced migration management, be it as members of existing multilayered communities, refugee-led civil society organizations, private sector actors, or as workers in the informal economy.

## Notes

- 1 To protect research participants, the names of all Syrian and Lebanese interviewees in this chapter have been changed.
- 2 For more information on the Refugee Labour under Lockdown project and all outputs, please visit our website: <https://onehealthfieldnetwork.com/refugee-labour-under-lockdown>

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# Landlord-*shaweesh* power-nexus and repercussions on Syrian refugees' coping mechanisms and 'waiting' modalities

## Informal tented settlements along the Lebanese-Syrian borderscape in Beqaa Governorate

Paul Moawad

### Introduction

Syrian protracted refugees in peri-urban areas of the Lebanese Beqaa region are living in precarious and ambivalent conditions. They live in a limbo-like state in informal tented settlements (ITSs) and their transient living mode induces subordination and exclusion from the surrounding hosting communities (Moawad 2022). Within these ITSs, a constellation of external and internal power mechanisms and hegemonic practices emerge on a daily basis. It is these forces that are examined in this chapter. Findings are drawn out of an ethnographic and qualitative methodology that took place from 2019 till early 2020, including field ethnographic observations in ITSs in the Beqaa region, visual documentation and in-depth interviews with refugees, *shaweesh* (assigned settlement coordinators), landlords living in and adjacent to informal settlements at the outskirts of a town located in Central Beqaa and multisectoral representatives (Moawad 2022).

External (exogenous) and internal (endogenous) forces are hereto investigated with a focus on the role of the *shaweesh* in further deconstructing refugees' interrelationships and the resultant repercussions on their daily habits and livelihood conditions. Exogenous forces are power-generated tools and measures implemented by governmental bodies, municipalities and multisectoral humanitarian agencies over ITSs and refugees. Endogenous

forces are internally produced power interrelationships between landlords, *shaweesh* and refugees. These power-generated forces resonate with the scholarly works of both Agamben (1998) in his 'space of exception' concept and Foucault's (2009) decoding of multi-power mechanisms and concepts such as 'bio-politics' and 'bio-power'. In this chapter, an analytical framework constructed upon power, control, hospitality, subordination, community and refugee-to-refugee relationships is used to deconstruct the shared power-nexus between landlords and *shaweesh*. Depicted as micro-variable entities, this type of power-nexus co-shared by landlords and *shaweesh* manifests itself in ITSs along the Lebanese-Syrian borderscape. It is traced to the pre-crisis bond where the *shaweesh* (male individual) or *shaweeshi* (female figure) used to be a part of a group of labourers employed by landlords to manage and supervise their agricultural lands. The *shaweesh* post-Syrian crisis has a distinct role in managing, supervising and reporting all activities within ITSs to landlords and governmental security agencies. The *shaweesh* can be denoted as the ITSs' liaison coordinator with multisectoral agencies as well as their supervisors, 'managers' and controllers.

The chapter is structured in a threefold framework. The first section gives a brief overview of how external, macro and meso-level measures driven by governmental, multisectoral agencies and municipalities impact refugees living in ITSs along the borderscape, developed on former agricultural lands. The second section zooms in on endogenous factors and unravels the interrelationships between the landlord-*shaweesh* nexus and Syrian refugees settling in these lands. This reveals the *shaweesh*-refugees' relationships, the control measures and power of the *shaweesh*, their unjust treatment of the refugees, and the inhibitions it engenders among refugees. It also unwraps the landlord-refugee underlying illegal, detention-like relationship which is accompanied by landlords' eviction threats, based on precarious and racketeering forms of labour. The third section develops further how these internal measures augment refugees' state of limbo and encampment, adding to their sense of uncertainty and inhibiting their mobility and productivity. A specific form of 'waiting' modality emerges: a 'manipulative waiting' condition imposed by the landlord-*shaweesh* nexus (Moawad 2022).

This chapter contributes to unravelling the colliding exogenous and endogenous forces that Syrian refugees endure in ITSs along the Lebanese-Syrian borderscape. It unearths an underexplored theme in refugee governance, hereto noted as a micro-power node referred to in this study as the landlord-*shaweesh* nexus. This nexus emerges as an internal force imposing hegemonic control over

Syrian refugee livelihoods and generating an in-limbo state of uncertainty and perpetual 'waiting'.

### The multi-agency power-nexus endured by Syrian refugees in ITSs

The substructure of control over refugees can be traced to the early phases of the Syrian crisis back in 2011 where divided responsibilities were haphazardly assumed by several governmental agencies inducing confusion among stakeholders and community members as well as refugees (Moawad 2022; Moawad and Andres 2020a, 2020b). The repercussions of the governmental 'laissez-faire' approach led to the formation of a state of uncertainty and a transformation of what was considered a welcoming hospitality towards refugees to a conditional one. It is within this uncertainty that the primal locus of control over refugees is unraveled. This state of uncertainty is generated due to a disorganized response, a lack of preparedness to host over a million Syrian refugees and an ill-defined delegation of roles and responsibilities between ministries, governmental agencies, local municipalities and multisectoral humanitarian agencies. This constellation of disorderly responses is a derivative of refugees' and asylum seekers' rights in the Lebanese legal spectrum. It is essential to note that Lebanese and Syrian states did not ratify nor are parties to the 1951 Refugee Convention or its 1967 Protocol (UNTC 1951, 1967). Thus refugees' governance in Lebanon is entangled in subjective legislative embroidery. The implication of these multilayered historic legal norms or their absence has led to a pre-eminence of national legal restrictions and a series of irregular measures directed towards refugees and asylum seekers. Such uncertainty has been particularly harmful for the poorer Syrian refugees who settled on agricultural lands that had been turned into ITSs.

To grasp the context of this chapter, it is imperative to define what is an 'ITS' and its current conditions. According to the United Nations High Commissioner for Refugees (UNHCR), an informal settlement is 'a settlement that was established in an unplanned and unmanaged manner, through a direct agreement between refugees and landlords' (UNHCR 2019). The UNHCR and Lebanon Shelter Sector Strategy (LSSS) (established by the Ministry of Social Affairs (MoSA) and UNHCR in 2015 to deal with the shelter sector) define informal settlements differently within the Lebanese context. They are an 'unofficial group of temporary residential structures, often comprising of plastic sheeting and timber structures and can be of any size from one to several

hundred tents. Informal Settlements may have some informal community-led management' (UNHCR 2019). The difference lies in the permanent-temporary parameter, size and shelters' materiality. The total informal settlements surveyed up to 2019 stands at a staggering number of 5,682 with 2,811 ITSs having four tents and above. Syrian refugees living in those informal settlements constitute approximately 20 per cent of the total Syrian refugee population in Lebanon with 297,000 individuals inhabiting them. Out of these, 72 per cent live in 'inadequate conditions' described as congested, not safe and in poor conditions. The area of research of this study, the Beqaa Governorate, has the most informal settlements with 121,323, closely followed by the nearby adjacent area of Baalbek-Hermel. Both of these Governorates stretch along the eastern Lebanese-Syrian borderscape (UNHCR 2019).

Since March 2013, MoSA and UNHCR collaborated in enhancing the shelter sector in response to the Syrian refugee crisis through the LSSS. The LSSS assesses the shelter conditions, allocates necessary funding to improve the situation, rehabilitates the conditions of shelters and mitigates conflicts with host community members arising from concerns linked to construction, environmental issues and infrastructure. The unplanned nature of such ITSs has been present since pre-Syrian crisis where tents were informally set up on agricultural lands for those working in the fields (Turner 2015) and were dismantled shortly after the spring and summer farming seasons. The massive influx of refugees changed these agricultural fields into marginalized refugee communities with poor shelter conditions. Quasi-permanent vulnerability replaced what were once only seasonal and temporary labour settlements. The lack of planning coordination combined with national and local 'laissez-faire' (or neglect) also carried political undertones of a 'no camp' policy (Palestinian spectrum) (Sanyal 2017) and led to the transformation of many agricultural fields. Hence, ITSs in the Beqaa area were formed through already forged pre-crisis relationships with landlords, a 'patron-client relationship overshadowing more participatory and transparent management of humanitarian aid' (Chatty 2016: 22). This impacted an already inconsistent and fragile agriculture-dependent local economy while challenging any attempts to develop regulatory land use planning frameworks.

The impact of such newly formed ITSs on the environment and infrastructure is extensive and, in some instances, intractable in terms of abiding by the guidelines set by the MoSA, the MoEW (Ministry of Energy and Water), the MoE (Ministry of Environment) and local municipalities' environmental policies, such as the collection and treatment of waste and wastewater

management. ITs are off-grid. The shelter and WASH (Water, Sanitation and Hygiene) sectors generate huge spatial and health consequences for refugees and host community members. For instance, the use of temporary and easily dismantled materials to provide shelter does not provide adequate hygiene and disease-free environments. Rodents, reptiles and insects pose serious illness-related threats to refugees who place chicken wire around their tents to mitigate these non-hygienic concerns (Moawad and Andres 2020b). The environmental issues contribute to increasing tensions leading to stigmatization and rejection (Thorleifsson 2016; Moawad and Andres 2022). Syrian refugees living in these ITs face heightened safety concerns in dire hygiene conditions with a magnified vulnerability and daily uncertainty of eviction since the 2019 Higher Defense Council announcement. These substandard living conditions are widespread in ITs in the Beqaa area, and Syrian refugees inhabiting them are among the most vulnerable of the refugee population in Lebanon in terms of hygiene conditions and environmental pollution.

To sustain the temporary nature of those ITs, the Higher Defense Council of the Government of Lebanon (GoL) imposed construction guidelines in 2019 where any shelters in Syrian refugees' informal settlements that were not built with timber or plastic sheeting were liable to be demolished (IFRC 2019). This decision targeted ITs built on agricultural lands and was justified as a re-enactment of the Lebanese Construction Law Act No. 646, which prohibits semi-to-permanent structures, where a permit is needed for non-permanent timber structures if constructed on agricultural lands (HRW 2019). Thus, the only permitted materials in these ITs need to be easily disassembled, such as timber and plastic. Concrete masonry construction systems and metal sheets are not allowed. As an implementation of this decision, several ITs were raided in August 2019 with non-compliant refugees' tents demolished by the LAF (Lebanese Armed Forces), leaving Syrian refugees homeless and evicted (STC 2019). Paradoxically, landlords at the beginning of the crisis predominantly built these semi-permanent shelters due to the 'laissez-faire' approach that was adopted with the objective to rent them out quickly. Such external control variables are thus produced by macro-entities such as governmental bodies, multisectoral agencies and meso-variable entities such as municipalities.

These exogenous power mechanisms compounded with endogenous power measures exerted a power form aligned with Lukes' 'third dimension' power on refugees (Lukes 2005: 20). This 'third dimension' power imposed an absolute state of dominance on Syrian refugees demanding complete acquiescence (Moawad 2022). It manifested itself on several occasions in demolishing shelters



when not aligned with refugee-tailored construction regulations, from imposed obligations by ITSs landlords, and from the *shaweeshs*' reporting duties to landlords and government security agencies. This situation is specific to ITSs positioned on the Lebanese-Syrian borderscape, transforming their spaces into Foucauldian spatial 'laboratories' (Foucault 1975: 237, author's translation) and detention-like territories. The next section further elaborates this spatial laboratory-like condition.

### The power interrelationships between landlords-*shaweesh* and Syrian refugees

ITSs' landlords' behaviour share similarities with Foucauldian panopticon apparatuses in surveilling, monitoring and imposing their own hospitality laws (refer to Figures 10.1 and 10.2) erecting their properties in a manner to continuously supervise and monitor refugees' activities. Landlords' power, reminiscent of Foucauldian power- 'dispositive' (dispositive), is exerted via surveillance and continuous observation (Foucault 1975). This panopticism reaches beyond the spatial manifestation of their buildings and physical



**Figure 10.1** Landlord's property acting as a panopticon erected at the entrance of an ITS.



**Figure 10.2** Landlord's property acting as a panopticon erected at the back of an ITS.  
*Source:* Photos taken by author during fieldwork.

presence and expands to their relationships with refugees and the *shaweesh*, where surveillance and subordination are daily constant power measures.

Landlords appear to have engineered their own opportunistic hospitality at the expense of refugees' vulnerability and lack of any local political relationship. Hence, the 'unconditional hospitality' that emerged in the first few years of the crisis was transformed into a 'conditional' one. As a result of the crisis, underperforming agricultural lands became real estate investment opportunities for landlords taking advantage of Syrian refugees' vulnerabilities. A WASH refugee coordinator drew a cognitive schema of ITSs' inception:

Informal settlements grew in a random way with no safe distance between the tents nor a proper access or an organized layout. The space pattern of camps relies on the nature of the land pre-crisis, the landlord's spatial conception, along with the negotiation that took place between the landlord and refugees. Note that refugees used to farm these lands pre-crisis, but the difference now is that they brought their families, neighbours and friends. (E01, 06/02/2020)<sup>1</sup>

Thus, the rapid growth of ITSs due to an unprecedented demand led to several unsafe construction measures, lack of hygienic considerations and a crowded master plan layout based on profitability and density. This fast-track construction, negating safe distancing between tents, led, in some occasions, to fires breaking out within the compounds.

Agricultural landowners then came to operate, draft and impose their own regulations on Syrian refugees. Agricultural landowners became real estate landlords compounding their profits by transforming underperforming agricultural land into profitable ones. These fairly nascent types of landlords, typical of borderscape ITSs, avoided municipality taxations and thrived on an illegal change in land use on land classified as agricultural. A municipal official interviewed for this study jotted down a draft calculation of possible profits made by landlords on the back of an envelope and shared the following:

Instead of producing from the agricultural land they do it from the new camps. These lands when they were agricultural producing plants the profit would have been less. Taking for example an agricultural land of an area of 1,000 m<sup>2</sup> the revenue per year would be roughly 800\$. Thus, transforming it into an ITS with tents occupying 25 m<sup>2</sup> each the profit would be much higher as the charge per tent is around 50\$ per month. (M01, 09/01/2020)

This land use change is deemed illegal, but the GoL does not pay heed to these irregularities, nor does it inspect these transformations or hold landlords accountable. Governmental and municipal powers are turning a blind eye to these zoning violations, and in doing so, they increase landlords' power over refugees. This power has its roots in the landlords' relationship with the political class and their ability to get approval for their illicit activities. A government official conveyed this cyclical process to me, tracing the genesis of an ITS and illustrating the multi-bureaucratic channels that give an ITS an official approval and political endorsement:

The *Shaweesh* searches for suitable land and agrees with the landlord who is usually in favour due to the financial benefit of renting his land. Once the land is found, the landlord and *Shaweesh* request the approval of the municipality who in turn refers the request to the Governorate. The Governor in turn refers the request to MoIM [Ministry of Interior and Municipalities] and MoSA for approval. Once approved by both ministries and sent back to the Governorate, the Governor consults with the security forces [state security and military intelligence]. If no objections are reported, the Governor approves of the establishment of the tents and refers back to the municipality to inform

the *Shaweesh* that approval was granted. (G01, 23/01/2020, government field coordinator)

This political stratum and advocacy allow landlords to bypass legal frameworks when it comes to leasing agreements, accentuating their control over refugees' inability to contest decisions in Lebanese courts. Tenancy security and formal leasing agreements are not applied for nor respected and refugees become vulnerable due to their illegal (irregular maybe a better word in the Lebanese context) status. These combined forces of control plant fear among refugees and force them to agree to any requests by their landlords and assigned *shaweesh*. It is noteworthy to underline that *shaweeshs* are typically assigned by landlords and rarely elected or chosen by ITSs' refugees. Hence, different arrangements apply in every ITSs leading to different living conditions between one refugee and another and with their *shaweesh*. In one ITS and in a rare situation there was an opportunity to interview a newly elected *shaweesh*. The elected *shaweesh* disclosed the financial burdens and the high occupancy of refugees per each tent:

Each tent has its own electric meter. People pay for electricity and the rent of the land which hovers between 50\$ to 75\$ depending on the landlord. In ITS 01 there are 200 families where each is composed of eight members. The total number of refugees in ITS 01 is around 2,000 people and there are ten landlords controlling the land. (S01, 29/12/2019 Syrian refugee and *shaweesh*)

This detailed description of the current living conditions highlights the hefty profit that a consortium of landlords is making and the high financial and economic burden imposed on Syrian refugees. It also unearths a fact that stands in contrast to the public perception that refugees are benefiting from cash programmes and other aids from non-governmental organizations (NGOs). The subordination and control measures on refugees are further exacerbated among vulnerable refugees with special needs. Refugees with physical or mental disabilities do not have the capacity to work in landlords' agricultural lands and hence rely on their spouse, family members and cash assistance from international non-governmental organizations (INGOs), both uncertain variables which condition their ability to stay in the camp (or be threatened to having to leave). Female refugees can also be victims of sexual harassment, verbal abuse and physical harm according to several conducted interviews. It is worth noting that some refugees perform agricultural farming duties in landlords' terrains in exchange for a free stay and do not get paid. Therefore, this mutual agreement appears to be unfair and unbalanced. Power is in the hands

of landlords, leaving refugees with limited choices. Refugees without jobs from landlords and agricultural work are forced to find other financial routes to pay for basic services and living expenses such as food and water. This exposes them to unpredictable work opportunities and long-term periods of unemployment, augmenting their financial debts. Several refugees mentioned that their situation forces them to default on payments and be in debt.

It is worth mentioning that landlords do not provide assistance (typically if a fire occurs and tents are destroyed) and also enforce their own directives in terms of materials or tent design, further increasing refugees' vulnerability and exacerbating dire living conditions. As such, landlords stand as power-wired apparatuses dictating their own control mechanisms through spying, judging and modifying refugees' behaviour (Foucault 1975: 238, author's translation). They occupy a pivotal social position impacting horizontally and vertically on Syrian refugees' livelihood. These practices are reminiscent of Foucauldian decoding of hegemonic power mechanisms in which an investigative hegemony is implemented (Foucault 1975). Landlords can be characterized as a tacit 'panoptic' Foucauldian figure having the *shaweesh* as their mediator and implementer. If landlords are implicit 'panopticon-s' the *shaweesh* acts as explicit 'panopticon-s' sharing quasi-similar power privileges over refugees (Moawad 2022). Both generate a combined power-nexus that hampers all aspects of Syrian refugees' coping and livelihood mechanisms.

The *shaweesh* coordinates, reports and manages the camp. They induces arbitrary power affecting the realms of every aspect of refugees' life from livelihood to productivity and mobility. The *shaweesh* appears to be an Aristotelian 'despotikon' (Moawad 2022), implementing a despotism-like regime in ITs where the human rights of refugees are daily violated (Turchetti 2008: 162). This type of power-nexus co-shared by landlords and *shaweesh* is atypical of urban contexts manifesting itself in pre-agricultural ITs along the Lebanese-Syrian borderscape. It is traced to the pre-crisis bond where the *shaweesh* used to be a labourer employed by landlords to manage and supervise their agricultural lands. A municipal official reflected on the social and political genesis of *shaweesh*:

Historically the *Shaweesh* used to bring labourers for Lebanese landlords. They are familiar with the Lebanese community so they started establishing the camps. In addition, they established a relation with the security services becoming the proxy for them. Thus, they start to have a higher social status. The

*Shaweesh* is the proxy for controlling the camp, that is for sure, and he reports everything. Thus, the power of the *Shaweesh* comes from the landlords and from the Lebanese security services. (M02, 09/01/2020)

Another INGOs expert illustrated how *shaweeshs* were familiar with these lands pre-crisis and how they have metamorphosed from seasonal workers to becoming ITSs' controllers:

The *Shaweesh* used to be a seasonal worker. *Shaweesh* used to come and work for their landlords living in small tents on usually the same ITS lands. They have residency and landlords facilitated their entry into Lebanese territories. When the crisis started, those seasonal workers came back to the same landlords with a deal to lease their lands and sublease individual tents for other compatriot refugees. (E03, 22/01/2020, INGO aid expert)

*Shaweeshs* draw their power from both landowners and security officials. Having landlords as their sponsors provides them with official documentation and anchors additional power in their socio-political status. In this configuration, their political spectrum is augmented. Refugees have reported when asked about their perception of their *shaweesh*, that they plant fears in the ITSs and implement labour racketeering, hence inhibiting their freedom. By doing so, *shaweeshs* destabilize the social equity within ITSs. *Shaweeshs* hold absolute control over the allocation of aid offered by INGOs to vulnerable refugees. Their given power over the ITSs supersedes that of INGOs, hindering productivity and any livelihood support refugees might be seeking. This shared perspective was dominant among interviewed experts, and concomitantly the recurrent words that were repeated by INGO representatives in their input on *shaweesh* were 'power', 'discrimination' and ITSs' 'gatekeepers'. The following interviewee elaborates further on that aspect and shared the following:

Refugees cannot complain about anything to anyone. The *Shaweesh* have control over their lives, their access to sources of income, their access to support. Their control also is on NGOs and INGOs accessing the camps. Everything goes through the *Shaweesh*. The *Shaweesh* is a barrier. (RC01, 14/12/2019, refugee consultant)

In the suspension of refugees' rights, the *shaweesh* contributes to further transforming borderscape ITSs into Agamben's 'biopolitical space(s)' (Agamben 1998: 72) and 'spaces of exception', thus turning refugees into carceral 'detainees'



and the 'object of a pure de facto rule' with no judicial provisions nor legal justice (Agamben 2005: 3–4). The *shaweeshs* regularly count the number of refugees, monitor their mobility and activities and directly report back to the army intelligence and security officials, bypassing landlords' approval. They also control ITSs' celebratory rituals, festivals, weddings and funerals. An NGO expert shared the following:

The *Shaweesh* are not only abusing the elderly but also other gender, and people from different age groups. Let's say if he/she finds a kid that seems to be active, he doesn't allow that kid to go to school but instead he/she will send him to work. *Shaweesh* use the refugees for different types of labour in an abusive manner whether it is inside the camp or outside the camp. (E02, 03/01/2020)

Refugees' mobility is undermined by *shaweesh's power*, in being continuously supervised and screened, making them imprisoned and stuck. This imposed isolation is further confining ITSs' spaces that are incessantly shrinking in the presence of the *shaweeshs*. *Shaweeshs*, as reported by refugees, act as mediator when conflicts occur, offer 'protection' inside and outside the camp, allocate work and control aid distribution. The *shaweeshs'* control practices are reminiscent of a decentralized despotism (Mamdani 2018). This decentralized despotism is first flagrant in recruiting a Syrian national as a *shaweesh* to govern and control the ITSs. This is a typical political practice where landlords and security forces enlist Syrian nationals as *shaweeshs* to bolster a traditional ethnic type of control. This decentralized despotism is tied to how indirect colonial ruling recruited leaders with the same ethnic and national background to rule (McNamee 2019: 145).

As a result, the *shaweesh* is an obstacle in building social integration and providing assistance to improve refugees' livelihoods. they are tools for a despotic type of enforcement distinctively present in ITSs along the borderscape, an atypical practice in urban areas hosting Syrian refugees. In this despotic ruling human spontaneity is impeded making the Syrian refugees 'superfluous' with 'conditioned reflexes' and dominated 'marionettes' (Arendt 1973: 455). The *shaweesh's* endogenous, coercive power countervails any social relationship between the refugees and the community, a setback to INGOs' efforts seeking social cohesion and socio-political gain for the governmental explicit anti-integration agenda. This leads into an exacerbation of the refugees' state of limbo and hence their 'political waiting'.

## The 'manipulative waiting' nexus and its hegemonic mechanisms

Refugees, due to the multiple internal control measures affecting their livelihoods, find themselves in a state of limbo and encampment. The context of uncertainty in which they find themselves inhibits their mobility and productivity and induces a specific form of 'waiting' modality; the '*political waiting*'. This concept is built upon Derrida's concept of hospitality (Derrida 2000) in which the 'giving' and 'receiving' dictate host-guest social exchanges and Foucault's 'bio-politics' (2009). While intersecting hospitality and bio-politics, an intentional imposed and forced 'waiting' is generated which is a top-down mechanism where the 'powerless wait – the powerful enforce waiting' (Singer 2019: 1). These top-down mechanisms emerge as Foucauldian 'dispositives'.

This 'political waiting' is constructed from both external and internal forces that gather a plenitude of actors and stakeholders starting from the top with the GoL branch ministries, the political governing entities, the multi-sectoral NGOs, local municipalities, landlords and *shaweeshs* who interact, impact and dictate refugees' policies. Hage (2009) denotes that 'waiting' is infused with politics and has a sociological facet. Thus, this enforced 'political waiting' is more sensed from implemented hybrid forces formed by landlords and *shaweeshs*. Together they disperse power impacting all ITSS' inhabitants, their social integration, and a healthy relationship with the host community. Hence, in transforming refugees' daily habits, a 'manipulative waiting' is induced by the landlord-*shaweesh* apparatus.

The landlord-*shaweesh* power-nexus is a Foucauldian-like apparatus with a twofold characteristic in being implicit (landlord) and explicit (*shaweesh*), sharing power privileges over refugees and manipulating their time and needs. In dealing with these power mechanisms, Syrian refugees become 'patient model(s)' in which their submission is 'created and re-created through innumerable acts of waiting' (Auyero 2012: 24); their power mechanisms are 'enacted and re-enacted' equating their 'waiting' to being 'subordinated to the will of others' (Turnbull 2016: 77). The landlord-*shaweesh* apparatus keeps refugees waiting for something in the near future to occur or to take place, and that something might not happen. One example is a refugee waiting to be called at short notice, to perform work requested by landlords while the *shaweeshs* manipulate the 'waiting' situation to strengthen and preserve their hegemonic status by subjectively choosing the necessitated labour force. Additionally, this



manipulation and impartial selection is accentuated when it comes to assistance, unevenly distributing aid allocations and food parcels. One interviewee (E03) added the following when asked about *shaweesh's* power privileges:

They have a coercive power on refugees. Refugees reported bullying, and situations where children were forced to go to work just for profitability purposes. (E03, 22/01/2020, INGO aid expert)

The *shaweesh*, thus, inhibits refugees' productivity while they wait. While some refugees were supportive of the role of the *shaweesh*, other refugees expressed feelings of deepening discontent and seeds of dismay in the unfair distribution of aid, mistreatment and lack of respect:

The *Shaweesh* takes all the help received and distributes it to his family and relatives first. I prefer the camp without a *Shaweesh* because he is the one who is in charge of goods' distribution. We always fight because he is not being fair! (R01, 06/01/2020, Syrian female refugee)

All the help we receive is given to the *Shaweesh* and he is not being fair. He made me wait till the end when I needed to pay for the electricity. I am an old man and I cannot wait that long; he is always disrespectful and he takes half of the help for his family and distributes the rest to selected refugees. (R02, 06/01/2020, Syrian male refugee)

These multidimensional, hierarchical, vertical and horizontal control mechanisms, whether coming from governmental, multisectoral or landlord-*shaweesh* apparatus, instil a daily fear in Syrian refugees. The juxtaposition of these power tools leads to immobility, ennui and a lack of productivity, hence impacting livelihoods. Refugees in their perpetual 'waiting' and protracted situation became increasingly conscious of their in-limbo conditions and irregular refugee status.

## Conclusion

Power mechanisms and forces exercised by landlords and *shaweesh* along with external agencies complement each other and stem from a triadic hierarchical structure where the macro-meso-micro nodes are activated on a daily basis, further cementing control and power over Syrian refugees. This triadic structure is positioned at the intersection of multi-vertical and multi-horizontal forces. It directly and indirectly imposes subordination mechanisms over

refugees inhibiting their productivity and mobility, and further reducing any opportunities for social inclusion with the host community members. Thus, it is apparent that constellations of hierarchical measures inhibit refugees' everyday practices, rhythmic activities and livelihood coping mechanisms making them hostages (Derrida 2000) and detained incomers. This demonstrates that power mechanisms travel vertically and horizontally in encamped ITSs along the Lebanese-Syrian border. It also unravels a key finding, a multidimensional despotism exercised by *shaweesh(s)* controlling practices supported externally by GoL and local municipalities and internally by landlords.

This illegal detention-like relationship is apparent when visiting ITS terrains and engaging with Syrian refugees. It is a pivotal finding and reminiscent of Foucauldian power micropolitics in which power is dispersive and domineering. This prevalent power is spreading throughout all agencies (i.e. governmental, multisectoral, landlords and *shaweesh*). Each node appears to embed within its panoptic mechanisms in which a hierarchical power system is imposed. These mechanisms, when decoded via power and control lenses, reveal findings such as variegated layers of xenophobic perceptions towards Syrian refugees exacerbating their vulnerability and exclusion.

In investigating the micro-power node, a key finding in triggering a hegemonic control over Syrian refugees' livelihood is found in the landlord-*shaweesh* nexus. Both appeared to be power-wired apparatuses affecting Syrian refugees' daily practices. When decoupling internal power mechanisms implemented by landlords and *shaweesh(s)*, their power relationships emerged as divisive and widespread inhibiting refugees' productivity, their mobility and increasing their reliance on landlords' labour opportunities and requests. Their control practices are reminiscent of the Foucauldian decoding of power mechanisms and social hierarchies. This underlying power-nexus inhibits Syrian refugees' opportunities to socially integrate and connect with the community.

Thus, ITSs' social spaces not only are politicized but also socially and hierarchically generate power and control. These power mechanisms reintroduce a despotic regime in which basic human needs are transgressed with wider repercussions in a context of economic and health crisis (Moawad and Andres 2020a, 2020b). In such configurations, refugees turned into abject subjects and ITSs into abject, liminal spaces during the pandemic (Moawad and Andres 2022), enhancing even further the detrimental impact of such power-nexus relationships on refugees' livelihoods. Refugees' increased vulnerability impacts their abilities to survive, inhibits any sense of hope they may have left and does keep them stuck in a non-ending 'waiting'.

## Note

- 1 A code was assigned to interviewed participants to preserve their anonymity and ensure their identity protection.

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## In lieu of a conclusion

### Pluralizing the international refugee regime *orders, entanglements and refugee voices*

Tamirace Fakhoury

In the Middle Ages, some Arab historiographers depicted the Mediterranean Sea as a hostile space, inviting military invasions and piracy from the European continent (Matar 2019: 19). At the same time, the story is far more complex. Arab societies had their own ‘nomenclatures’ of the Sea, and their attention turned to alternate maritime worlds such as the Indian Ocean and the Red Sea (Matar 2019: 16, 18–19). While Europe had sought in later centuries to shape the Mediterranean as the ‘in-between sea,’ Arabs’ political, trade and artistic imaginary had already decentred this space, placing it within broader entangled worlds.

Europe’s construction of the Mediterranean as both a unifying narrative and a governance site spanning both shores has sparked contentious debates on geopolitical space-making (Jones 2006), and the way it conceals alternative histories and epistemologies (Chatty 2020; İşleyen and El Qadim 2023; Fakhoury 2022). Following the inception of the European Union (EU), policies concerning democracy promotion, security, migration and trade, negotiated through mechanisms such as the Barcelona Process (1995), the European Neighborhood Policy (2004) and the Union for the Mediterranean (2008), have extended Europe’s so-called normative power (Pace 2007) into Europe’s ‘borderlands’ (Del Sarto 2021). Through the external dimension of its migration policy, the EU has negotiated with its near ‘Neighborhood’ a toolbox of policy portfolios from readmission agreements, migration partnerships to refugee compacts. Simultaneously, however, the EU’s so-called borderlands have reappropriated EU practices in various ways. States have leveraged and contested Europe’s normative power either through ‘thin or thick contestation’ (Del Sarto and Tholens 2020), rhetorical dissent or simply non-compliance (Fakhoury 2022).

## ‘Decrypting’ the agency of MENA states

Approaching the Middle East and North Africa as a *subject* rather than merely an *object* of inquiry has sparked a rich body of literature, particularly in migration and refugee governance (Chatty 2018; Qadim 2014; Fiddian-Qasmieh 2020). Expanding on this literature, this anthology sets out to fill some blind spots. It privileges the lens of entanglements, interconnections and contestations. It also privileges a theoretical prism that makes complex and diversifies Arab states’ roles in the international refugee regime. Contributions in this anthology explore states as policy and norm shapers, negotiators as well as agents of contestation and disruption. Part I looks at how colonial space-making and visions of neoliberal governance and migration management have produced and reproduced refugee-hosting imaginaries in the region (Rey and Knudsen in this anthology). Part II examines how states and societies negotiated their politics of refugee hosting through the lens of multiple entanglements, if not collisions and ‘reverse conditionalities.’ Rather than limiting the analytical lens to whether, and if so how, states comply with international refugee law and standards, these chapters set out to make them legible to researchers, practitioners and policymakers. Contributions in this anthology trace how Arab states have adapted, contested and reinterpreted the global refugee regime in the light of shifting political opportunity structures and policy legacies, and how they have shaped the practice of UNHCR’s humanitarian tools (see Stevens, Natter and Müller-Funk, Arar and Cassarino). Understanding how states’ interactions with the international refugee regime have fluctuated over time emerges as an important finding. Lebanon played once an important role in the development of asylum and refugee protection standards in the international refugee regime (Janmyr in this anthology). Now, it advocates for the rash return of Syrian refugees. Morocco, Algeria and Tunisia have been frontrunners in signing the 1951 Geneva Convention Relating to the Status of Refugees and Its 1967 Protocol. They have also negotiated a plethora of formal and informal dialogue initiatives with the EU in the 1990s. They are now recrafting the EU’s and the UNHCR’s normative power through a complex policy mix combining strategic alignment, non-alignment, ad hoc policymaking, and confrontation (Natter and Müller-Funk in this anthology). After all, as Cassarino argues in this chapter, the concept of refugee governance is ‘irreducible.’ It implies much more than setting regulations to manage the mobility of people. It also cannot be reduced to a set of immutable criteria and norms.

Analyses extend beyond the scope of policy entanglements and collisions with Europe and international organizations. They recentre the focus on Arab states as actors, examining how Arab states have enacted policymaking, legislated on asylum, and negotiated or commodified the global refugee regime (see Stevens, Janmyr and Tsourapas). In doing so, the anthology stresses how the region has not only challenged or resisted Western and European policy scripts but has also developed its own normative and policy repertoire.

Ultimately, this anthology joins the call to ‘decrypt’ (Parlar Dal 2018: 2208) the actions of non-Western powers based on their own behaviours rather than normative and policy projections. Why do states favour certain practices over others? What policies do they contest and under what conditions do they seek cooperation in multilateral settings? What pathways do they choose to negotiate certain norms and practices? When do they implement reforms and when do they view them as costly (Parlar Dal 2018)? How do their perceptions of *order-making* dynamically change across space and time (Delgado-Caicedo et al. 2022; Ero 2024)? And lastly, when and how do contestations impact refugee protection and under what conditions do they enable new policy meanings and legal pathways? These are some of the inquiries we hope the chapters will elicit.

## Multi-level entanglements and contestations in global politics

By raising such questions, the anthology embraces the invitation to re-imagine global politics through a ‘pluriversal’ (Blaney and Trowsell 2021) and ‘dialectical’ lens (Hofmann 2024). Contributions to the anthology seek to transcend the duality between the North and the South, the liberal and the illiberal, the modern and the archaic and so on. Rising beyond these binaries requires not only acknowledging separations and unequal power relations. It also requires multiplying ‘the subjects of entanglements’ (İşleyen and El Qadim 2023: 3). How do we, then, pluralize and multiply ‘subjects of entanglements’? We build here on the call to generate empirical research as an important strategy for decentring then recentring knowledge on plural political orders (Sabaratnam 2011; Fiddian-Qasmieh 2020; Hellmüller et al. 2023).

This issue has major implications for understanding our current global order. Here, a twofold question has taken centre stage in scholarly and policymaking debates. The first question is whether we may still speak of a contemporary liberal international order or of ‘multiple modernities’ (Acharya 2017). The second is whether the contemporary world order is adrift, or whether it is transforming



into a ‘multifaceted system of global governance’ (Eilstrup-Sangiovanni and Hofmann 2020: 1077). Various powers have increasingly contested the so-called post-1945 order, depicting it as a relic of the past (Frachon 2023). The UN’s New Agenda for Peace (2023) advocates for a ‘new multilateralism’ that is better equipped to deal with ‘geopolitical transitions’, ‘interlocking threats’ and fragmentation.<sup>1</sup> A myriad of grassroots actors from social movements to farmers have lately called for a fairer, kinder and more inclusive multilateral world order. How might we, then, reclaim ‘the normative foundations of multilateralism’ (Balzacq and Ramel 2023: 93)? Amid conflicting visions, what constitutes order-making, and hasn’t contestation always been the norm rather than the exception (see Hofmann 2024)?

Such puzzles are at the core of the global refugee regime and its dynamics, too (Lavenex 2024). Various interpretations of norms, treaties and practices have prevailed in the light of power hierarchies and ambiguities around refugee protection (Chimni 2024; Odinkalu 2023; Fakhoury 2019). Here, fragmentation, disengagement, contestation and emancipation from ‘ordering’ are distinct modes of regulation that would benefit from further study. In the wake of recent waves of displacement from Syria, Palestine, Sudan and Ukraine, first host states such as Egypt, Iran, Lebanon and Turkey have reclaimed a fairer model of responsibility-sharing. Initially fervent supporters of the GCR in 2018, some of these states have become increasingly sceptical of its effectiveness. Some of them have further sidestepped multilateral UN frameworks, favouring unilateral approaches to refugee solutions.<sup>2</sup> States’ motives include the aspiration to assert authority, contest liberal norms or achieve foreign policy goals through the governance of migration. Concurrently, at the grassroots level, alliances have at times sought emancipation from donors’ scripts, resisting co-optation by the so-called liberal international order.<sup>3</sup> Against this backdrop, we are called to understand *complex pluralities* as both a defining and enduring feature of the global refugee regime.

## Refugee voices

While research has made strides in decentring notions of refugee and migration governance (Zardo and Wolff 2021), there is ultimately no decentring without centring the politics of refugees’ voices. Of major concern is the missing voice of refugees in policymaking (see Krause and Schmidt 2020) beyond their symbolic presence at international forums like the Global Refugee Forum (GRF).<sup>4</sup> Refugees assert their agency daily, by crossing borders amid adverse conditions, staging

protests and, at times, governing their own camps (Fakhoury and Mencütek 2023; McConnachie, 2014). Yet their participative and bargaining power within the multilateral refugee regime is nearly non-existent. It is against this backdrop that Part III examines the effects and outcomes of norms' entanglements on refugees' everyday lives. The political economy of dispossession and power hierarchies perpetuated at the local level through the relationships between the *Shaweesh* (broker), landlords and refugees exemplifies some of these adverse feedback effects (see Moawad and Zuntz et al. in this anthology).

Pushed to the sidelines of policy and politics, refugees have not been, however, passive bystanders in the history of the Middle East and North Africa (Chatty 2024; Fakhoury and Icaza 2023; Janmyr 2024). Their long-standing albeit underrecognized politics of contention (e.g. the mobilization of Sudanese refugees in Egypt in 2005) invites us to reassess the way we produce knowledge on their presence/absence in the global refugee regime. Refugees' politics of activism may be an integral part of the everyday world. Still, we know little about its genealogy, forms and outcomes across various MENA states. Recently, in January 2024, Palestinian refugees and activists gathered outside the regional office of the United Nations Relief and Works Agency for Palestinian Refugees (UNRWA) in Beirut to express their discontent over the decision to stop funding to the organization amid the war in Gaza. Protests resurged in February and March. Activists gathered this time near the premises of the supranational organizations such as the European Union Office in Beirut. Previously, amid Lebanon's financial crisis in 2019, Syrian refugees staged protests outside the offices of the UNHCR in Tripoli and Beirut, calling for dignified lives and futures.

The politics of refugee activism goes beyond episodic protests. Refugees' grievances have cut to the core of large-scale waves of contention. Take the Arab Uprisings wave. Protesters formed transnational solidarity networks with refugee, migrant, feminist and environmental groups, challenging authoritarian practices as well as the exclusionary concept of citizenship in various polities such as Egypt, Syria, Lebanon and Libya.<sup>5</sup> In 2023, significant protests erupted in the Suwayda governorate in Syria, drawing attention to the neglected issue of the peace process in Syria under Resolution 2254 which draws attention to the fate of the displaced among other issues.

Grassroots contention raises a critical question about the way refugee spaces unravel and recraft norm entanglements – a key issue that we hope future research on the genealogy of refugee activism in the MENA region will comprehensively address.

## Notes

- 1 See the UN's 'A New Agenda for Peace' (2023) <https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-new-agenda-for-peace-en.pdf>
- 2 See for instance Turkey's, Iran's and Russia's regional initiatives on Syrian refugee returns. See also the 2019 Arab Summit in Beirut, which sought to forge an Arab understanding of refugee-hosting and refugee returns.
- 3 Conversations with activists in Beirut, 2019–2020.
- 4 Conversation with Stefan Rother, 2024.
- 5 The author's field research and informal conversations with activists since 2012.

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