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*Panel Discussion with Dawn Chatty, Jonathan McIvor, Khalil Gebara and Georges Corm*

## **Protecting Syrian Refugees: Laws, Policies and Global Responsibility-Sharing**

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### Introduction

Thank you to UNHCR and St. Joseph University for inviting me here to share the research conducted by the BU International Human Rights clinic. The Syrian refugee crisis has brought tremendous challenges to the region, and our research attempted to map out one aspect of the crisis that has received very little attention: that is, the laws and policies at the international, regional and domestic level affecting the rights and status of the refugees out of Syria.

Our aim with the study we completed in July 2014, was to first map the interplay of laws and policies at the domestic and regional level affecting the refugees in four main host states—Egypt, Turkey, Lebanon and Jordan—and then address the key protection gaps between existing legal obligations and implementation on the ground. Our second aim is to link those findings to international obligations of responsibility-sharing, and then assess key mechanisms that require third states outside the region to offer refugee and humanitarian status to the refugees in their territories.

Let me begin with an overview of the legal situation in the four countries.

#### 1. Overview

The UN estimates that approximately 40% of the refugee population in the region live in refugee camps in the host countries, with 17 camps in Turkey, three in Jordan, no official, but 400 unofficial tented settlements in Lebanon, none in Egypt or elsewhere in N. Africa or Iraq. The majority of Syrian refugees are living in rural or urban communities, in rental housing, with host families, or in other types of accommodations. This makes registration, determination and regulation of status, and of course delivery of services a huge challenge. Reports suggest that even for those Syrians who were able to bring financial resources with them when they fled, the resources have dwindled quickly, and they are either forced to move into a

camp—if available and they are eligible—or remain in areas where they are less and less able to provide the basic necessities for themselves.

Let me now give a quick overview of the situation in each of the four countries we have focused on, Egypt, Lebanon and Jordan, and Turkey, and some of the main protection problems.

## 2. Legal Framework

- a) applicable international laws and norms
- b) applicable domestic laws and norms

### Egypt

In Egypt, all registration, documentation and refugee status determination is carried out by UNHCR. This is the result of the Egyptian Government's 1954 MOU with UNHCR, in which UNHCR undertook all responsibility for identifying and registering refugees in the country under its mandate. The Egyptian government gives residence permits to those deemed refugees by UNHCR. Egypt is a party to both the 1951 Refugee Convention and the 1969 OAU Convention. OAU extends the definition of refugee to "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality".

Despite being a party to both these instruments, Egypt has not developed any domestic asylum procedures, and UNHCR performs RSD under both instruments. The combination of obligations under both treaties should create a very generous and protective refugee regime because of the much broader definition of refugee under OAU, but in fact the opposite is occurring. Because UNHCR performs RSD on the basis of both the CSR51 and the broader OAU definitions, the number of registered refugees has soared

In 1984, the Egyptian govt. created a Refugee Affairs Committee by presidential decree. The Committee created a Dept. of Refugee Affairs within the MFA, which was supposed to conduct RSD, but this has not happened. UNHCR's RSD process has two phases, and only after the second phase, with the issuance of the much-coveted 'blue card' can a refugee seek a residence permit from the MFA, which can issue them on authorization by the MOI. Unfortunately, resettlement countries with which UNHCR negotiates do not accept the 1969 OAU refugee definition; thus, there is little to no access to durable solutions for the vast majority of refugees in Egypt, and thousands of refugees have been waiting for years for resettlement prior to the Syrian crisis and today.

Syrian refugees arrive in the wake of large numbers of other refugees who have flooded Egypt: Palestinians, Sudanese, Ethiopians, Eritreans, Iraqis and Somalis. These refugees have faced significant hardships, and if they entered illegally through the Sinai and are caught trying to enter Israel, they are detained and removed. In

2008, 1,200 undocumented Eritreans were apprehended entering Egypt, were not given access to RSD and removed to Eritrea. There was another round of detentions and deportations of Eritreans in 2011.

Egypt initially said it would allow Syrians to enter, with visas or through its borders, but that has changed since political events in the summer of 2013. Initially, Syrians could enter for three months on a tourist visa, and when Syrians entered this way they did not go to UNHCR for registration. Entry requirements changed in July 2013 when the govt. required procurement of a visa prior to arrival along with security clearance. Once their visas expire, Syrians are expected to register with the govt. RSD in Egypt has increased dramatically, with appxly. 125,000 Syrian yellow card holders.

\*Palestinian Refugees in Egypt comprise one of the largest refugee populations in the country

\*Egypt is not an UNRWA field. Art. 1D in the 51 Conv. is interpreted as excluding Palestinians from protection in state parties where UNRWA operates, but even though UNRWA does not operate in Egypt, Egypt excludes Palestinians from protection or assistance from UNHCR and does not recognize them as refugees under either CSR51 or OAU 69.

\*Egyptian policies have changed over time towards Palestinians, and Palestinian Refugees have distinct challenges in Egypt. They can enter if they have Syrian travel documents, but most do not. UNHCR is ostensibly responsible for Palestinian Refugees, but the MFA has not allowed UNHCR to register them, and they have had difficulty renewing their visas. For the Palestinians from Syria, the situation in Egypt has become desperate, and many are being arrested and detained for illegal presence. There have been over 1,000 Palestinians from Syria detained, and the government has made their release conditional on their obtaining airline tickets out of Egypt. Since there is nowhere most Palestinians can go, the detention situation has become a crisis, and Palestinians are trying to leave Egypt illegally by boats heading to Italy, or getting out of Egypt any way they can.

## Jordan

Although Jordan has no established refugee law, the Kingdom has been quite open when it comes to dealing with refugee crises and refugees within its borders. Over two million registered refugees live in Jordan. Close to 1 million Syrian refugees are living in the country—the govt. claims the number is 1.3 million. As many as 450,000 Iraqi refugees may reside in Jordan, while the govt. gives the number of Palestinians in Jordan as 2 million.

Jordan has no established refugee law, and no established policy towards refugees, complicating the response to the Syrian crisis. Jordan is not party to the 51 Conv. or Protocol. Primary reference to refugees under Jordanian law is in its Constitution, which prohibits removal of 'political refugees.' But this is applied in only exceptional cases, and no provisions exist for defining asylum eligibility.

Of course, Jordan has received waves of refugees since the 1948 Nakba. Jordan granted full citizenship to all refugees from the 1948 conflict, and most from the 1967 conflict aside from the 140,000 ex-Gazans, whose situation remains unresolved. I understand that there have been recent denationalizations of Palestinians, but hard information about this is difficult to access.

Prior to the Syrian refugee crisis, the primary non-Palestinian Refugees were from Iraq. First wave following first Gulf War in 1991, when an estimated 1-2 million Iraqis crossed the border into Jordan. Jordan divided the Iraqi refugees into various categories: 'guests,' 'investors,' and 'residents.' As of 2007, UNHCR had registered only 1,300 Iraqis as refugees. For various reasons, Iraqis did not want to be registered and avoided contact with the UN agency, but as many as 450,000 Iraqis may be living in Jordan today.

UNHCR has been operating in Jordan since 1991, governed by Jordan's 1998 MOU with UNHCR, which was amended in 2014. This allows asylum seekers to remain in Jordan pending their status determination, and UNHCR-recognized refugees can remain in Jordan for six months after recognition. Jordan accepted this on the condition that refugees registered with UNHCR would be repatriated or resettled. The only procedure available to refugee in Jordan, which is operating for the refugees from Syria—other than Palestinians—is through UNHCR, which conducts RSD after the govt. clears them for documents and security, registers them, and then the govt. grants them resident permits. Despite the 6-month limit on permits, Jordan was renewing the permits and service cards of Syrian refugees until late last year, when Jordan closed its borders to new Syrian refugee arrivals.

The major protection and status problems in Jordan have been the conditions in the camps, the reluctance of many refugees to register, the inability to work, and the situation of PRS'. Palestinians are not entitled to any status, and the Jordanian govt. put a policy in place of 'not one more Palestinian in Jordan' early in 2014. Hence, there is detention and removal of Palestinians back to Syria, and neither UNRWA nor any of the NGO's has been successful at intervening in the detention and deportation of Palestinians. Hundreds of Palestinians have been deported, and mixed Palestinian-Syrian and Palestinian-Jordanian families have been separated as the non-Palestinian spouse has often been able to remain, but not the Palestinian spouse. At the same time, Syria has put an unofficial policy in place that any Palestinian who leaves the country will not be able to return.

### Lebanon

As of Jan. 2014, an estimated 1 million Syrian refugees are currently in Leb. (Kamel says 1 m. are registered with UNHCR, but there are likely 1.5 m. in the country)

### Lebanon's Domestic Legal Framework

Lebanon's constitution requires treaties to take precedence over domestic legislation, and Lebanon, as most of the other states has signed, ratified or acceded to a number of hr treaties: for Lebanon, this is CAT, CERD, CESC, CEDAW, ICCPR, CRC and the Arab Charter. Lebanon is not a party to the 1951 Refugee Conv. or Protocol

As in Jordan, UNHCR and UNRWA are the two main agencies dealing with refugees from Syria and Palestinian Refugees. UNHCR makes all refugee status determinations of non-Pal. Refugees. Aside from Syrian and Palestinian Refugees, the refugee population in Leb. Is primarily Iraqi and Sudanese: appxly. 8,000 Iraqi refugees and about 160 Sudanese refugees live in Leb., and about 110 refugees from other countries.

Lebanon is very similar to Jordan, in that it does not have a comprehensive domestic legal framework on the treatment of refugees and does not make a distinction between refugees and other types of immigrants. Refugees and all other foreigners fall under the Law Regulating the Entry, Stay and Exit from Leb. Of July 1962. Law has narrow definition of refugee, and has limited provisions on refugees. The Sept. 2003 MOU between UNHCR and Leb. Stipulates that Leb. Is not an asylum country, and that an "asylum seeker" means a 'person seeking asylum in a country other than Lebanon."

UNHCR's MOU allows registered refugees to obtain a temporary 'circulation permit' for 12 months, when UNHCR is supposed to resettle the individual. MOU allows temporary residence permits (circulation permits) to be given to non-Palestinian refugees, valid for 6 months and renewable for 3 months. Allow refugees free movement while UNHCR handles their cases. Art. 26 of the Law on Foreigners prohibits refoulement of political refugees, but removal is taking place, and Govt. does not typically inform UNHCR in advance of refoulement.

The major protection problems are the informal camp settlements that have sprung up in Lebanon, mostly on private land in rural areas and outside cities; the lack of registration of refugees in the cities, and hence difficulties with service provision; lack of status; lack of ability to get work permits; and arbitrary detention; and reported forced returns.

Lebanon has resisted official camp construction for Syrian refugees, although about 10% of the Syrian refugee population lives in tented settlements in Leb., not recognized by the govt. Non-Palestinians. Must apply to the Ministry of Labor for work permit. However, if they obtain work permits, they must withdraw their refugee claims with UNHCR.

Lebanese Law requires individuals working w/o permit to be sentenced to at least a month in prison and fined.

Problems with detention: Even before the Syrian crisis, Leb. was thought to be detaining hundreds of asylum seekers and refugees, incl. refugees registered with UNHCR. Authorities continue to arrest refugees for illegal entry. Most recently, Lebanon has stated that it has closed its borders to new refugee entrants from Syria.

Palestinians:

\*Lebanon has not signed or ratified the 1954 Conv. on the Status of Stateless Persons.

\*Palestinians have not been refouled, and the longtime Palestinian Refugee population lives in 12 camps throughout the country.

\*However, arbitrary detention is a significant problem for the Palestinian Refugee population.

\*UNRWA estimates that 51,000 Palestinians have fled to Leb. From Syria as of Dec. 2013.

\*In total, with the pre-existing Palestinian Refugee and current PSR's, UNRWA has registered appxly. 450,000 Palestinian refugees in Leb. —estimated to be about 10% of Leb's population as a whole.

Palestinian Refugees treated as foreigners, and despite lengthy stay in Leb, they have not enjoyed the same civil rights, access to social services, health and education as Lebanese Citizens or even other refugees. No access to the national healthcare or ss.

\*PRS' have no right to work.

\*PRS' are subject to a distinct visa policy from other Palestinian Refugees. Before the end of last year, PRS were given permits to stay for two days; now the borders are entirely closed to them.

Despite these policies, the borders remain open to Syrians and Palestinians.

## Turkey

\*Retained geographical limitation to 1951 Convention ( “events occurring in Europe” )

\*Currently, refugees in Turkey have no access to RSD or durable solutions

\*Turkey is respecting non-refoulement

## Turkey's Domestic Legal Framework

1994 Regulation on Procedures···Related to Possible Population Movements of Aliens

\*Did not use CSR51 language defining 'refugee' and 'asylum-seeker'

\*Does not formally define temporary protection

\*Grants wide discretion to the Ministry of Interior to promulgate asylum regulations

Under the 1994 Regulation, non-Europeans could obtain temporary asylum in Turkey through a two-track refugee status determination procedure. The applicant registered with local police—required within ten days of arrival. Once registered, applicant would register at a local UNHCR office and undergo UNHCR RSD procedure.

As the number of refugees from the Syrian conflict started growing in 2011, the Turkish govt. put in place through an unpublicized 'circular' issued by the MOI, a policy for granting people arriving from Syria “temporary protection” status. This is distinct from temporary asylum in that it does not involve a formal RSD interview

with the govt. and does not allow UNHCR to perform an RSD procedure. Given the rate of arrival of people fleeing the conflict, this was the only practical solution. Govt. informed us that their TP procedures were modeled on the EU Qualifications Directive on TP passed during the Balkan crisis.

As a practical matter, Syrian nationals arriving in Turkey and entering one of the seventeen camps run by the Turkish govt. have immediate access to an application for TP, and are immediately granted essentials: shelter, food and healthcare. Syrian nationals living in urban areas in Turkey are getting registered now with UNHCR. All registered refugees are guaranteed non-refoulement.

The biggest development in the entire region is the passage of Turkey's 2014 Law on Foreigners and International Protection (LFIP):

\*Creates agency (the Directorate General on Migration Management) dedicated to implementing policies and strategies related to migration, and coordinating work between agencies alongside Migration policies board

\*The DGMA will 'ensure coordination between the related agencies and organizations and carry out the tasks and procedures related to foreigners' entry into, stay in, exit and deportation from Turkey, international protection, temporary protection and protection of victims of human trafficking.'

This is a meaningful and long-awaited institutional change which removes the management of refugees and other protection seekers from the purview of the police. At the same time, registration of protection seekers will continue to be carried out locally by the governorates." Art. 92 of the LFIP provides broad outline for Temporary Protection scheme.

Other unique facets of Turkey's policy towards the Syrians:

1. Registration requirements
  - a) Currently: minimal, and undefined registration requirements with little underlying policy
  - b) UNHCR has launched mobile registration units to facilitate RSD
2. Camp and non-camp refugees
  - a) Camp refugees receive shelter, food, clothing and healthcare
  - b) Non-camp refugees are legally present, but do not receive govt. services
3. Vulnerable populations
  - a) Refugees present within country before start of crisis generally subject to Turkey's delineated refugee policies
  - b) Secondary movers from Iran, Afghanistan, and Palestine ex-Syria receive same treatment as Syrians.

The LFIP contains a provision which states, in line with Art. 1D of CSR51 that while persons receiving protection or assistance from an organ or agency of the UN other than UNHCR are excluded from international protection as a general matter, they may avail themselves of such protection in Turkey provided that the protection has ceased for any reason without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the GA of the UN. This text tracks both Art. 1D of the CSR51 and Art. 12(1)(a) of the EU's 2004 Directive on minimum standards for refugee status or subsidiary protection. It remains to be seen whether Turkey, in interpreting this provision of LFIP, would follow the

jurisprudence of the ECJ in its recent decision in *El Karem, El Kott and Others*, and extend international protection to Palestinians for whom UNRWA protection has ceased for reasons beyond their control.

This leads directly to the relationship between policies in the region and policies in other regions of the world that affect the Syrian refugees. You will notice in reading the Agency and Regional Response Plans, including the recent Regional Response plan from the EU Commission, that they focus on money. Billions of dollars have been spent already on the crisis—Turkey alone has spent \$4 billion of its own money, exceeding the entire donation of the EU so far to the crisis. But these plans all work on a paradigm of containment of the refugee crisis to the region. Our goal is to push back against that paradigm, and re-focus a refugee advocacy dialogue on a shared protection program that identifies status mechanisms to allow refugees to move out of the region and lift the crisis from the Middle East to become a shared responsibility towards refugees themselves.

Thus, the primary recommendation in our report is for a Comprehensive Plan of Action (CPA) for the Syrian refugee crisis. Our focus has been to identify legal obligations in the European and American regions, and in key third states to grant refugees and other displaced a combination of short and long term status through immigration, humanitarian, temporary protection, subsidiary protection, and family reunification mechanisms. A few main observations here:

\*No more than about 20,000 Syrian refugees have sought asylum in Europe to date, and very few have been granted so far;

\*The US and Canada together have recorded Syrian asylum-seekers only in the hundreds, and not likely to grow under current reception policies;

\*Visas to Syrians from Europe and the US fell dramatically, primarily as a result of the closing of embassies in Syria and more restrictions in other embassies in the region;

\*Other restrictive policies in Europe and the Americas penalizing illegal border-crossers and preventing access to refugee status are creating barriers to Syrian asylum-seekers;

\*All actors agree that resettlement under current policies will not address more than a few thousand Syrian refugees in the ME region. For example, the US's global yearly quota of 70,000 resettlement slots have not even been met over the last at least 5 years, let alone any serious discussion of expanding that number to respond to this crisis.

\*Although Egypt, Jordan and Lebanon have insisted on resettlement as a condition of their allowing refugee processing, they have grave concerns about being the state where large resettlement actually does take place to the West because it will make them a 'draw' for more refugees to come to their territories. They have also expressed distaste about the resettlement priorities they have been given; for example, Germany asked Jordan to allow them to resettle only Christians from Syria, which Jordan declined, but then Lebanon accepted. The Turkish govt. told us they were upset about the West only accepting educated people, professionals, and the elite of Syria, while "poor, starving Muslim peasants" were left behind.

\*All NGO's we met across the region have expressed concern about the huge backlog of refugee applications from all the other pre-existing populations: Somalis,

Sudanese, Eritreans, Ethiopians, Afghans, Iraqis, and Iranians, some of whom have been waiting for years after refugee registration for resettlement. One Egyptian NGO staff members said bitterly, our backlogged refugees have to make way for the flavor of the month (the Syrians).

\*And finally, a major concern about the Palestinians, who have been trapped in a region that has opted out of the international refugee regime, who have no protection agency or access to any durable solution, and each wave of Palestinian refugee flow has exacerbated their unique protection gap.

So, without more, taking these main issues into account, our recommendations are for a Comprehensive Plan of Action focusing, first, on a temporary protection plan in the region, modeled on Turkey's TP program, which is working incredibly well. We have proposed an extension of this plan for Lebanon, Jordan and Egypt, grounded in the Casablanca Protocol and the Arab Charter, but closely modeled on the Turkey/EU TP directive. The TP plan allows for basic rights to be afforded uniformly in each of the host states, with the assistance of the aid funding flowing into the region to make these feasible.

Second, a European Regional Protection plan, much like the one after the Balkan crisis, that puts in place a TP program that would allow Syrians to enter on 2-year status, hosted by refugee agencies and Arab communities in each state to guarantee short-term integration while the crisis plays itself out.

Third, expedited resettlement and expanded resettlement slots for the backlogged non-Syrian refugees throughout the region. Other refugees should not have to pay for the Syrian crisis, either, and there is a way to provide protection to both groups, one short-term, and one long-term, under existing laws.

Fourth, a separate temporary protection plan for the Palestinians--which Terry Rempel and I have researched and written about long before the Syrian crisis—coupled with 3-5 year statuses in key states in Latin America that paved the way for this kind of program after the Iraq war.