

THE OBLIGATIONS OF STATES TOWARDS REFUGEES UNDER INTERNATIONAL LAW: SOME REFLECTIONS ON THE SITUATION IN LEBANON

Lebanon – June 2016



Donors

This document has been produced with the financial assistance of the OSLO Students' Fund and the European Commission's Humanitarian Aid Department. The contents of the document are the sole responsibility of the Norwegian Refugee Council and can under no circumstances be regarded as reflecting the position or policies of the European Commission's Humanitarian Aid Department and/or the OSLO Students' Fund.



NRC ICLA Lebanon

NRC – www.nrc.no

The Norwegian Refugee Council (NRC) is an independent, international, humanitarian, non-governmental organisation which provides assistance and protection, and contributes to durable solutions for refugees and internally displaced people worldwide. NRC has been working in Lebanon since 2006 providing humanitarian assistance to communities affected by displacement. In early March 2012, NRC commenced its Information, Counselling and Legal Assistance (ICLA) programme in Lebanon, with a focus on assisting refugees and displaced persons to understand and enjoy their rights. All NRC services are free of charge.

For further information about NRC Lebanon's ICLA programme or to find out about making legal referrals or receiving NRC training or awareness sessions on legal issues, please contact Dr. Julia Herzog-Schmidt, ICLA Specialist at julia.herzog-schmidt@nrc.no or 01 366 113.

Copyright © 2016

By the NRC. All rights reserved. No part of this document may be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the NRC. The report should be duly cited when used as a reference.

Suggested citation: Achilles Skordas, The Obligations of States towards Refugees under International Law: Some Reflections on the Situation of Lebanon, NRC 2016, p. X.

Acknowledgements

NRC thanks each person who participated in the preparation of this report. NRC would like to extend special thanks to Prof. Achilles Skordas. This report is based on a presentation held by Prof. Achilles Skordas during the seminar on Refugee Law in March 2016 in Beirut. Prof. Achilles Skordas is professor of international law at the University of Bristol and member of the Odysseus network. He is also a Marie Curie fellow at the University Copenhagen.

The seminar on Refugee Law and was embedded in a Moot Court competition. NRC ICLA Lebanon in partnership with the Agence Universitaire de la Francophonie (AUF), l' École Doctorale de Droit du Moyent-Orient (EDDMO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) organised a Moot Court competition 21-23 March 2016 at the UNESCO Office in Beirut. 28 Lebanese, Syrian and Egyptian law students from seven universities participated in the competition.

NRC also thanks ICLA staff, who all continue to make great efforts to assist and support those affected by displacement.

Design and layout: BRANDIT

Photographs: NRC/Christian Jepsen

TABLE OF CONTENTS

I. The assessment of Lebanon's refugee policies by the United Nations	1
II. Obligations of the Contracting States to the 1951 Geneva Convention	3
1) General considerations	3
2) Absolute rights	4
3) Rights under the standard of national treatment	5
4) Rights under the standard of the most-favoured national treatment	5
5) Minimum standard and its transformation: treatment accorded to aliens generally	5
III. Obligations of States that are not parties to the Geneva Convention	7
1) Legal evolution and complementary protection	7
2) The rights of refugees to education and work	9
IV. Concluding remarks	11
Basic bibliography	11

I. THE ASSESSMENT OF LEBANON'S REFUGEE POLICIES BY THE UNITED NATIONS

The situation facing Lebanon and other States in the broader Middle East because of the refugee crisis is cause for concern. Lebanon in particular carries a disproportionate burden for the protection of Syrian and Palestinian refugees, taking into account the country's size and resources. Lebanon has an estimated population of 6,2 million,¹ of which 1.5 million are refugees. The UN Secretary-General stated in his latest UNIFIL Report that as of 31 December 2015, 1,069,111 Syrians were registered with the UNHCR.² Moreover, about 450,000 Palestinians are registered with the UN Relief and Works Agency (UNRWA).³

It is therefore obvious that the effective protection of the Syrian refugees requires a concerted international action and burden-sharing by the international community.

The Conference on Syria that took place in London in February 2016, pledged in total \$11 billion for assistance in the region for 2016, and further \$5.4 billion for the period 2017-2020. Lebanon requested \$4.9 billion for 2016 in order to cover the cost of the Lebanon Crisis Response Plan.

The situation of refugees in the Middle East is complex inter alia because of legal uncertainties. International treaties, for instance, are binding on States, if they ratify them according to their constitutional procedures. The 1951 Geneva Convention Relating to the Status of Refugees (hereinafter: Geneva Convention, or Convention), which is the core international instrument of refugee protection, does not enjoy broad recognition in the Middle East. The Convention has been ratified by 145 of the 193 Member States of the United Nations so far. However, Lebanon, Jordan, Syria, Iraq, Saudi Arabia, and the United Arab Emirates are not among the Contracting States, whilst Turkey recognizes only refugees as result of events that have occurred in Europe. Therefore, Turkey is not formally bound by the Geneva Convention with regard to Syrian, Iraqi, or Afghan refugees.⁴

The main purpose of the current study is to discuss the obligations of States towards refugees under international law, and to argue that States have obligations towards refugees regardless of the ratification of the Geneva Convention. The ratification of the Convention is not expected to impact the host societies disproportionately, but, on the contrary, would raise the international profile of the respective States, strengthen the voices of those who advocate for more humanitarian aid in support for Lebanon and for the region, and motivate more donors to contribute to these efforts.

Before considering the obligations of States under international law, it is necessary to address the current difficulties of the Lebanese system of protection as exemplifying the problems of the region as a whole. The UN Secretary General criticized the new rules introduced in January 2015, which permit admission of Syrian refugees to Lebanon only in 'exceptional humanitarian circumstances'.

¹ CIA, The World Factbook, available in: <https://www.cia.gov/library/publications/the-world-factbook/> (last accessed on 08.06.2016).

² Report of the Secretary-General on the implementation of Security Council resolution 1701 (2006) - Reporting period from 5 November 2015 to 26 February 2016, S/2016/189, para. 6.

³ <http://www.unrwa.org/where-we-work/lebanon> (last accessed on 08.06.2016).

⁴ See UN Treaty Collection, available in: https://treaties.un.org/Pages/ViewDetailsII.aspx?src=IND&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en (last accessed on 08.06.2016).

Here are some key findings of the Secretary General:

'42. Conditions for refugees in Lebanon are deteriorating. Refugees remain at risk of eviction from their dwellings and face increased challenges in residing legally in Lebanon, making them increasingly vulnerable to arrest and other forms of abuse. Women and children constitute 80 per cent of the refugee population. There continue to be reports of early and forced marriage, and survival sex, particularly among refugee women and girls. Two thirds of the 53,000 children born to Syrian refugee parents since March 2011 do not have a birth certificate.

*43. Over the course of the past five months, funding shortfalls have reduced food assistance to Syrian refugees by 60 per cent and over 103,000 Syrians no longer receive cash assistance. Over 300,000 refugee children remain without access to any education programmes. On 16 April, the Ministry of Education committed to doubling enrolment rates by increasing enrolment of 200,000 children in formal education and facilitating the admission of a further 100,000 refugee children in accelerated learning programmes, contingent upon international financing.'*⁵

The UN Special Rapporteur on the freedom of religion or belief referred to Lebanon's failure to ratify the Geneva Convention and added that 'its policies regarding refugees lack transparency, coherence, and a legal framework'. The Rapporteur also mentioned that the 'vast majority of Syrian refugees, although registered through the UNHCR, do not have a residence permit in Lebanon', and that three quarters of Syrian refugee children have difficulties in accessing education.⁶

In its 2015 Concluding Observations on Lebanon, the Committee on the Elimination of Discrimination against Women (CEDAW) criticized the 1962 Law on Entry into, Stay in, and Exit from Lebanon, which does not distinguish between immigrants and refugees. It also expressed its concern on the violence against refugee women, and about incidents of child marriage and forced marriages. The Committee called upon Lebanon to ratify the Geneva Convention, and implement UN Security Council Res. 1325/2000 on women and peace and security.⁷

Finally, in its conclusions of 17-18 March 2016, the European Council, composed of the Heads of State and Government of the EU Member States, reaffirmed 'its support to Jordan and Lebanon' and 'call[ed] for pledges to be disbursed promptly and EU Compacts to be finalised to enhance support to refugees and host communities in both countries'.

⁵ See Report of the Secretary-General on the implementation of Security Council resolution 1701 (2006) -Reporting period from 28 February 2015 to 26 June 2015, S/2015/475, paras. 42-43; see also Report of the Secretary-General on the implementation of Security Council resolution 1701 (2006) - Reporting period from 25 June 2015 to 4 November 2015, S/2015/837, para. 49.

⁶ A/HRC/31/18/Add.1, 30. November 2015, paras. 77-80.

⁷ Concluding Observations on the combined fourth and fifth periodic reports of Lebanon, CEDAW/C/LBN/CO/4-5, 24.11.2015, paras. 11-12.

II. OBLIGATIONS OF THE CONTRACTING STATES TO THE 1951 GENEVA CONVENTION

1. General considerations

There are three different international law sources establishing the obligations of States towards refugees under international law: treaty law, customary international law, and case-law of international and national courts. 'Soft refugee law' is a fourth, but informal source, and includes the Conclusions of the Executive Committee (ExCom),⁸ as well as the Guidelines of the UNHCR. Conclusions and Guidelines have policy character, but may be occasionally used by domestic courts in the interpretation of the Geneva Convention and in the identification of customary international law, depending on the context. Last, but not least, the European Union has created its own body of supranational refugee law in the framework of the so-called 'Common European Asylum System'(CEAS).

Judgments of national courts are either a subsidiary source of international law, or a dimension of state practice that may lead to customary law-creation. Domestic judgments have more weight in refugee law than in other areas of international law or human rights law for two reasons: first, because Contracting States have not used the avenue of the International Court of Justice for the resolution of disputes on the interpretation or application of the Convention;⁹ and second, because the UNHCR does not have the authority of deciding on individual or inter-state applications, or of adopting General Comments codifying international refugee law, as the respective organs of international human rights treaties do. As a consequence, the burden of interpretation falls on domestic courts, whose case-law should be explored in a comparative perspective.

The Geneva Convention contains a list of refugee rights that correspond to obligations of States. Refugee rights are, however, different in structure and philosophy compared to the rights recognized by subsequent universal human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The main reason is that at the time of the drafting of the Convention, the precise scope of human rights had not yet been crystallized, despite the adoption of the Universal Declaration of Human Rights in 1948.¹⁰

Some of the rights under the Convention are 'absolute', even though exceptions are occasionally possible, in the sense that they are provided without any comparison to other groups, and some are contingent on a comparison with other groups. There are three different standards of comparison in this regard: first, the standard of national treatment, second the standard of the most-favoured national (MFN) treatment, i.e., of the best treatment granted to nationals of another State, and third, the standard of treatment accorded to aliens generally.

⁸ On the legal nature of this source, see Sztucki, *The Conclusions on the International Protection of Refugees Adopted by the Executive Committee of the UNHCR Programme*, IJRL 1 (1989), 285-318.

⁹ See Art. 38 of the Geneva Convention, establishing the jurisdiction of the ICJ in such disputes.

¹⁰ UN General Assembly Res. 217 (III)/1948.

Another differentiation among rights is linked to the relationship of the refugee or asylum-seeker with the host State. According to Hathaway, the Convention introduced a gradation of rights depending on whether the beneficiary is physically present, lawfully present, lawfully staying, or whether he has durable residence in the host country.¹¹

2. Absolute rights

The distinction between absolute and contingent refugee rights lies at the heart of the Convention's system.¹² The core right and principle, which does not depend on other variables, is the right of non-refoulement, including the prohibition of expulsion (Arts. 33 and 32 respectively). Though this is an absolute right in the above sense, exceptions are still possible, but they have to be construed narrowly. Host States may expel or return refugees, if they constitute a danger to the security of the host country or, having been convicted by a final judgment of a particularly serious crime, they constitute a danger to the community of that country (Art. 33); expulsion of refugees lawfully present in the host State is permissible on grounds of public order or national security (Art. 32).

Another absolute right is the right to access to courts under Art. 16 para. 1, but not under paras. 2 and 3. Moreover, refugees who have their habitual residence in the host country, have the right of national treatment with regard to legal assistance, and obviously this is an additional right compared to the general right to access to courts under the first paragraph.¹³

The legal nature of the right of refugees to transfer assets which they have brought into the host State to another country where they have been admitted for resettlement 'in conformity with' the host State's regulations (Art. 30), is disputed. However, in view of the current international practice of liberalization of financial flows it seems more justified to follow the interpretation favouring the existence of a right that should not be effectively impaired by the host State.¹⁴

Rights dependent on the personal status, which have already be acquired by refugees in the country of origin (Art. 12) on the basis of either the theory of 'vested rights' or the principle of prohibition of retroactive application of the law of the host State, are also 'absolute' in the above sense.¹⁵

Last, but not least, host States are obliged to provide administrative assistance, identity papers and travel documents to refugees (Arts. 25, 27, 28). Obviously, there is no 'comparator' in the above rights, and there are, in this sense, 'absolute'. Also the obligation of host States not to impose penalties on refugees who come directly from a country where their lives or freedoms are threatened (Art. 31) 'corresponds to an absolute right of refugees'. However, it should be emphasized that this right is not activated in cases where refugees enter the host State via a safe third country, because in this case, they do not come 'directly' from a country where they are threatened with persecution.

¹¹ Hathaway, *The Rights of Refugees under International Law*, CUP, 2000, Chapter 3.

¹² On the distinction, see generally Hathaway, *Rights*, pp. 237-238.

¹³ Elberling, in Zimmermann (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol – A Commentary*, OUP, 2011, Art. 16, marginal numbers (MN) 22-23.

¹⁴ Nagy, in Zimmermann, *Commentary*, Art. 30, MN 26-29.

¹⁵ Metzger, in Zimmermann, *Commentary*, Art. 12, MN 43-46.

3. Rights under the standard of national treatment

A second category of rights are granted to refugees under the standard of national treatment. This means that refugees enjoy the rights under the same conditions with the citizens of the State of residence. These rights include the freedom of religion (Art. 4), the protection of intellectual property and artistic rights of refugees (Art. 14), the distribution of products in short supply (rationing, Art. 20), public relief and assistance (Art. 23), labour legislation and social security (Art. 24), taxation (Art. 29), and access of refugees to elementary public education only (Art. 22, para. 1).

4. Rights under the MFN standard

Some other rights are granted under the MFN standard, which is lower than the national standard. The MFN standard offers refugees the best treatment offered to citizens of a third State, who are in the same circumstances as refugees (for instance, concerning length and conditions of residence, Art. 6). The right to association (Art. 15) and the right to work, or, in the formulation of the Geneva Convention, 'the right to engage in wage earning employment' (Art. 17, para. 1) are also granted under the MFN standard.

With regard to work, the Geneva Convention grants broader safeguards to certain categories of refugees. Restrictive measures imposed on non-citizens for the protection of the national labour market are not applicable to refugees who fulfil one of the following three conditions: First, they have completed three years' residence in the country; or, second, they are married to a citizen of the country of residence; or, third, they have children who possess the nationality of the State of residence (Art. 17, para. 2).

5. Minimum standard and its transformation: treatment accorded to aliens generally

Under Art. 7, para. 1 of the Convention, 'except where this Convention contains more favourable provisions, a Contracting State shall accord to refugees the same treatment as is accorded to aliens generally'. This was meant to be the minimum standard with regard to Convention rights; more specifically, rights under this standard include property (Art. 13), self-employment (Art. 18), the right to exercise liberal professions, such as those of a lawyer, physician, engineer, journalist or artist (Art. 19),¹⁶ housing (Art. 21), freedom of movement (Art. 26), and the right to education other than elementary education (Art. 22, para. 2). At the time of its drafting, the 'same treatment as is accorded to aliens generally' was considered as a minimum standard of protection, because the other standards of the Geneva Convention (MFN treatment, national treatment, absolute rights) granted a higher level of protection.

¹⁶ See in particular Edwards, in Zimmermann, Commentary, Art. 19, MN 17.

As already indicated, the Convention recognizes the standard of national treatment only to elementary public education (Art. 22, para. 1). For other than elementary education, it applies the lower standard of treatment accorded to aliens generally. Under the term 'other than elementary education', the Convention means in particular access to further studies, including on University level, the recognition of foreign school certificates, diplomas, and degrees, the remission of fees and charges, and the award of scholarships (Art. 22, para. 2).

However, the nature of the standard of general treatment of aliens changed completely in the era of human rights. Indeed, human rights treaties grant protection to all persons under the jurisdiction of the Contracting States, without regard to citizenship or any other status.

The 'general treatment of aliens' was deeply transformed under the influence of human rights law. If human rights protect citizens and aliens alike, and if refugees are a subcategory of aliens, then refugees are granted human rights just as anyone else, and these rights may be 'thicker' than those granted by the Geneva Convention. According to the ICCPR General Comment No. 15 (1986) on 'the position of aliens under the Covenant', 'the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens'.

Thus, Art. 7, para. 1 provides the link between refugee rights and human rights; refugees may invoke the highest standard, depending on the circumstances of the case.¹⁷ Human rights treaties are also applicable to refugees in non-Contracting States to the Geneva Convention.

¹⁷ Skordas, in Zimmermann, Commentary, Art. 7, MN 54-60.

III. OBLIGATIONS OF STATES THAT ARE NOT PARTIES TO THE GENEVA CONVENTION

1. Legal evolution and complementary protection

Even though Lebanon and other countries in the Middle East are not Contracting States to the Geneva Convention, they still have obligations towards refugees. The lack of ratification of the Convention does not mean that States do not incur protection obligations. The normative evolution after the adoption of the Geneva Convention, practical necessities, and policy considerations combined to create additional safeguards for refugees.

These developments are relevant for both Contracting and non-Contracting States to the Convention. In the present context, it is important to explore more closely the implications of customary international law, and discuss the emergence of the so-called 'complementary protection', including humanitarian and subsidiary protection, outside of the Geneva Convention.¹⁸

First, non-Contracting States are obliged to respect rules of customary international law, e.g. rules that have been created by state practice and the so-called 'opinio juris'; this is a term indicating that States follow the practice in question in the belief that they fulfil a legal obligation.¹⁹ The most prominent protection norm, which is binding upon all States under customary international law is the principle of non-refoulement. Thus, even non-Contracting States to the Convention are bound to respect the above principle and not return refugees 'to the frontiers of territories' where their lives or freedom would be at threat.

However, there are doubts whether non-refoulement has acquired a peremptory character (jus cogens).²⁰ Moreover, the principle of non-discrimination in Art. 3 Geneva Convention constitutes the application of the general international law principle of non-discrimination in refugee law.

Second, the complementary protection is also linked to gaps in the Geneva Convention itself. One reason is the lack of procedural rules on the recognition of refugees in the Convention. As a consequence of different procedural rules of domestic law in Contracting States (deadlines, formalities), some applications may be rejected, even though the respective applicants may have fulfilled the substantive conditions of the Geneva Convention. The need to protect these individuals was a compelling ground for creating the humanitarian status, which was also significant for the protection of refugees in non-Contracting States to the Convention.

¹⁸ See Ruma Mandal, Protection Mechanisms outside of the 1951 Convention ('Complementary Protection'), PPLA/2005/02, UNHCR, June 2005.

¹⁹ See Art. 38, para. 1(b) of the Statute of the International Court of Justice.

²⁰ Kälén/Caroni/Heim, in: Zimmermann (ed.), Commentary, Art. 33, para. 1, MN 26-34.

Third, in view of the case-law of human rights courts and bodies and in the spirit of humanitarianism, States introduced complementary protection as a means of providing protection to individuals who would not be recognized as refugees, either because they did not fulfil all substantive conditions of the Geneva Convention, or because the host States had not ratified the Convention. Here, a distinction should be made between the structured regime of subsidiary protection granted by the European Union for individuals who do not fulfil the conditions of the Geneva Convention, and the various humanitarian statuses for the protection of individuals who are generally in need of international protection, such as those who come from areas of armed conflict.

At this point, it is necessary to clarify the distinction between refugees and other persons who are beneficiaries of international protection, even though they do not fulfil the substantive conditions of the refugee under Art. 1A Geneva Convention. Whilst refugees have 'a well-founded fear of persecution', war refugees are fleeing war, and they may not have a fear of persecution. According to the EU recast Qualification Directive, subsidiary protection is granted if there is 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict' (Art. 15c of the Directive).²¹ Indiscriminate violence, other than targeted violence against a group, indicates that there is no 'persecution' in the sense of the Geneva Convention.

However, the two categories are not always easy to distinguish. In the Syrian situation, war refugees are refugees in the sense of the Geneva Convention, if they belong to persecuted groups: for instance, opponents of the Assad government who live in the areas under government control, or any individual residing in Daesh-controlled areas and living under the inhuman regime of the terrorist group are Convention refugees. Other Syrians, however, who flee their country as a consequence of the destruction of their cities, towns or villages, and of the threats to their lives by indiscriminate shelling or bombing, may not be refugees under the Convention, but are still entitled to humanitarian protection as 'war refugees'. Therefore, the broader category 'Syrian refugees' includes both refugees under the Geneva Convention, and persons fleeing the war, who should also be protected under a humanitarian status.

The complementary protection emerged actually under the pressure of international human rights law. The European Court of Human Rights (ECtHR) has played here a vanguard role by the extensive interpretation of the Art. 3 of the European Convention on Human Rights (ECHR). According to this provision, 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'. In a long-standing jurisprudence, which goes back to the famous Soering case of 1989,²² the Court has extended the scope of the provision to situations of aliens or refugees under extradition, deportation, or expulsion that face a 'real risk' of torture, or inhuman or degrading treatment or punishment in the countries of origin. The Court interpreted the provision as embodying an absolute right not to be returned, but only as far as, and as long as, this is necessary.

²¹ OJEU, L 337/9, 20.12.2011.

²² ECtHR, Soering v. the UK, application no. 14038/88, Judgment of 7. July 1989.

This jurisprudence had significant impact beyond the 47 Members of the Council of Europe. In 1992, the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR), emphasized in General Comment No. 20, which codified Art. 7 of the Covenant, that 'States Parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.'²³ The ICCPR is binding on 168 States, including Lebanon.²⁴ Adopting a teleological interpretation of these provisions it should be also accepted that a country of destination should not reject individuals at its borders, in situations of an on-going armed conflict in a neighbouring country, if, by doing so, it would expose these individuals to immediate danger for their lives.

There are various forms of complementary protection; such protection is formalized through domestic or supranational law, or may be formed by administrative and judicial practice. States have the obligation not to return war refugees to the country of origin, as long as the threat of indiscriminate killing continues. In fact, they may return the protected individuals only after conditions of sustainable peace have been established.

2. The rights of refugees to education and work

As already indicated, refugees enjoy economic and social rights under international law, without regard to the ratification of the Geneva Convention. Obviously, these rights play a more important role in host States, which are not bound by the Geneva Convention. The main human rights instrument is the International Covenant on Economic, Social, and Cultural Rights (ICESCR),²⁵ which is binding upon 164 States, also including Lebanon.²⁶

The Covenant recognizes the right to education in Arts. 13 and 14. According to Art. 13, para. 1, 'the States Parties to the present Covenant recognize the right of everyone to education'. Moreover, States Parties were agreed that education should enable all persons to participate effectively in a free society, promote understanding and friendship among all nations and ethnic, religious, and racial groups, and 'further the activities of the United Nations for the maintenance of peace'. More specifically Art. 13, para. 2(a) provides that 'primary education shall be compulsory and available to all'.

²³ General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), para. 9.

²⁴ See UN Treaty Collection, available in: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en (last accessed on 08.06.2016).

²⁵ See generally Cholewinski, Economic and Social Rights of Refugees and Asylum-Seekers in Europe, Georgetown Immigration Law Journal 14 (2000), 709-755

²⁶ See UN Treaty Collection, available in: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en (last accessed on 08.06.2015).

Arts. 6 and 7 of the Covenant guarantee the right to work. According to Art. 6, 'the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right'; Art. 7 'recognizes the right of everyone to the enjoyment of just and favourable conditions of work'. The very recent General Comment No. 23 (2016) to Art. 7 ICESCR mentions specifically refugee workers, emphasizing that the term 'everyone' applies also this category of workers.²⁷ Furthermore, the GC calls upon States Parties to note the particular difficulties facing refugee workers, and to take the appropriate measures to rectify the situation:

*'Refugee workers: Because of their often precarious status, they remain vulnerable to exploitation, discrimination and abuse in the work place, may be less well paid than nationals, have longer working hours and more dangerous working conditions. States parties should enact legislation enabling refugees to work and in conditions no less favourable than for nationals.'*²⁸

A final question arises as to whether developing States incur the full range of Covenant obligations towards aliens and refugees. In fact, according to Art. 2, para. 3 ICESCR, 'developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.' Two points should be made here: First, the above provision refers only to 'economic', but not to social and cultural rights. Whether rights belong to the one and to the other category is sometimes controversial; for instance, General Comment 11 (1999) on plans of action for primary education (Art. 14 ICESCR) states that the right to education 'has been variously classified as economic right, a social right and a cultural right' and it concludes that 'it is all of them'.²⁹ Second, there should be a balance between Art. 2, para. 3, and the principle of non-discrimination as included in the ICESCR (Art. 2, para. 2),³⁰ but also in the Convention on the Elimination of Racial Discrimination.³¹

Here is how the Special Rapporteur of the Commission on Human Rights David Weissbrodt interpreted Art. 2, para. 3 ICESCR in his 2003 Report on the Prevention of Discrimination and the rights of non-citizens:

*'Article 2 (3) of the International Covenant on Economic, Social and Cultural Rights creates a third specific exception to the general rule of equality for developing countries: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals." As an exception to the general rule of equality, it should be noted that article 2 (3) must be narrowly construed, may be relied upon only by developing countries, and only with respect to economic rights. States may not draw distinctions between citizens and non-citizens as to social and cultural rights.'*³²

In view of the above, the above provision should exempt, at least, the right to compulsory primary education, which should be accorded to everyone, citizens and non-citizens alike.

²⁷ E/C.12/GC/23, 8. March 2016, paras. 4 and 5.

²⁸ Id., para. 47 (ix).

²⁹ E/C.12/1999/4, 10 May 1999, para. 2.

³⁰ General Comment No. 20 – non-discrimination in economic, social, and cultural rights (art. 2, para. 2 ICESCR), E/C.12/GC/20, 2. July 2009.

³¹ General Recommendation 30, Discrimination against non-citizens, CERD/C/64/Misc.11/rev.3.

³² Final Report of the Special Rapporteur Mr. David Weissbrodt on 'Prevention of Discrimination – The Rights of Non-Citizens, E/CN.4/Sub.2/2003/23, 26 May 2003, para. 19.

IV. CONCLUDING REMARKS

States have obligations towards refugees arising from various instruments and sources of international law. The 1951 Geneva Convention is the core protection instrument, but it is not the single one. States incur obligations also under human rights law and customary international law, irrespective of the ratification of the Convention. Moreover, the obligations of States for refugee protection are closely linked to the efforts of the international community to restore international peace and security. The ratification of Geneva Convention may contribute to the achievement of this goal, and is expected to strengthen the support of the international community for Lebanon.

Basic bibliography

Guy Goodwin-Gill/Jane McAdam, *The Refugee in International Law*, 3rd edition, Oxford, Oxford University Press, 2007

Kay Hailbronner/Daniel Thym (eds), *EU Immigration and Asylum Law: A Commentary*, 2nd edition, Beck/Hart/Nomos 2016

James Hathaway, *The Rights of Refugees under International Law*, Cambridge University Press, 2005

Ruma Mandal, *Protection Mechanisms outside of the 1951 Convention ('Complementary Protection')*, PPLA/2005/02, UNHCR, June 2005

Andreas Zimmermann (ed.), *The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol – A Commentary*, Oxford, Oxford University Press, 2011

The Norwegian Refugee Council (NRC) is an independent, international, humanitarian, non-governmental organisation which provides assistance and protection, and contributes to durable solutions for refugees and internally displaced people worldwide. NRC has been working in Lebanon since 2006 providing humanitarian assistance to communities affected by displacement. In early March 2012, NRC commenced its Information, Counselling and Legal Assistance ICLA (ICLA) programme in Lebanon, with a focus on assisting refugees and displaced persons to understand and enjoy their rights. All NRC services are free of charge.

For further information about NRC Lebanon's ICLA programme or to find out about making legal referrals or receiving NRC training or awareness sessions on legal issues, please contact Julia Herzog-Schmidt, ICLA Specialist at julia.herzog-schmidt@nrc.no or 01 366 113.

CONTACT US:

For legal assistance or more information on NRC's legal activities in Lebanon,
Please contact NRC from Monday to Friday, 09:00 to 16:00

BEIRUT & MOUNT
LEBANON HELPLINE
76 666 950

NORTH BEKAA HELPLINE
76 000 613

CENTRAL BEKAA HELPLINE
76 000 614

WEST BEKAA HELPLINE
76 898 121

EL MINIEH HELPLINE
76 700 525

WADI KHALED HELPLINE
78 801 313

TYRE HELPLINE
70 951 978
PALESTINIAN REFUGEES
FROM LEBANON **71 577 795**
BENT JBEIL HELPLINE
78 885 883
NABATIEH HELPLINE
70 888 265



Achilles Skordas (right), Layal Abou Daher NRC (middle) and Dominique Thome UNHCR (left) during the seminar 23 March 2016 in Beirut



www.nrc.no

