

A Tale of Two Organizations: UNRWA and UNHCR in Lebanon

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ABSTRACT

This thesis discusses the respective roles of UNRWA and UNHCR in Lebanon. These two United Nations agencies illustrate the multifaceted nature of the international refugee regime today. While their mandates do not overlap, both are facing extremely complicated issues. The thesis draws on historical accounts of their emergence as well as on contemporary material and interviews discussing the mass influx of refugees from Syria. The current Syrian refugee crisis is emblematic of the refugee regime complex where other regimes, such as human rights or humanitarian regime, play a salient role in refugee protection. By the same token, the international refugee agencies have become increasingly humanitarian in their character. Despite the changing realities of the current refugee regime, the cooperation between UNRWA and UNHCR has been limited. The cornerstone of the international refugee regime – the 1951 Geneva Convention – remains in force but there is a need for adapting the international refugee regime so that all refugees receive adequate protection.

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INTRODUCTION

Always side by side but never fully engaged with each other. This could be the description of the two organizations which will be discussed in this thesis – United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and United Nations High Commissioner for Refugees (UNHCR). UNHCR is the main global actor in the field of refugee protection.¹ However, there is another agency which takes care of approximately one third of the world's refugees – UNRWA.² UNRWA operates the Middle East, namely in Lebanon, Syria, Jordan, Occupied Palestinian Territories and Gaza. This agency has a mandate to provide assistance to Palestinian refugees. In this thesis, both of the mandates of UNHCR and UNRWA will be compared and the implications will be drawn for the current refugee regime, whose complexity will be problematized in light of the Syrian refugee crisis.

The current Syrian refugee crisis is a major problem, which influences the stability of the whole Middle East. The choice of Lebanon as a case study was not coincidental. Lebanon is currently overwhelmed by mass influx of refugees from Syria. In a country of four million, there is an estimate of one million Syrian persons.³ Not all of them are recognized as Convention refugees but the majority of them are fleeing the Syrian conflict. The conflict in Syria has entered its third year and it is the most important factor forcing the Syrians to leave their homes. The number of UNHCR recognized refugees in Lebanon stands at staggering 400,000.⁴ This number

¹ UN General Assembly, *Refugees and Stateless Persons*, 3 December 1949, A/RES/319, accessed 4 May, <http://www.refworld.org/cgi-bin/tehis/vtx/rwmain?docid=3b00f1ed34>.

² UN General Assembly, *Assistance to Palestine Refugees*, 8 December 1949, A/RES/302 (IV), accessed 2 May 2013, <http://unispal.un.org/UNISPAL.NSF/0/AF5F909791DE7FB0852560E500687282>.

³ UNHCR, "Syria Regional Refugee Response," accessed 23 May 2013, <http://data.unhcr.org/syrianrefugees/country.php?id=122>.

⁴ UNHCR, "Syria Regional Refugee Response."

makes it comparable to the 441,543 Palestinian refugees in Lebanon who are registered under UNRWA.⁵

UNRWA has also responded to the conflict in Syria, albeit on a lesser scale in line with its mandate. So far, there have been around 10,000 Palestinian refugees who have fled the Syrian conflict and entered Lebanon.⁶ Nevertheless, UNRWA is struggling to provide assistance to the Palestinians who are already living in Lebanon. It has been noted that the Palestinians living in Lebanon suffer from the worst human rights records in the region and do not enjoy equal social, work or legal rights with the Lebanese citizens.⁷ The current refugee crisis in Syria is a large-scale humanitarian crisis which has so far only been described to a limited extent in the academia. This thesis will thus contribute both to the International Relations literature on international regimes and to the understanding of the current Syrian refugee crisis. Moreover, the topic of a regime complex, a newly discussed topic in International Relations, will be explored in the case of Lebanon.

My research question is: What are the differences between the work of UNRWA and UNHCR in Lebanon? During the research, various other themes emerged, for example, the issue of the Syrian Palestinian “double refugees,” who are catered for by UNRWA despite fleeing the very same conflict as other Syrian refugees. Therefore the issue of cooperation between these two agencies will also be discussed in the thesis. As has been stated by UNRWA, Palestine refugees have left their homes in Syria due to the lack of basic services and availability of food, destruction and loss of property, violence and general insecurity, persecution as well as torture

⁵ UNRWA, “Statistics 2012,” accessed 14 April 2013, <http://www.unrwa.org/etemplate.php?id=253>.

⁶ UNRWA, “UNRWA Syria Crisis Response,” accessed 12 May 2013, <http://www.unrwa.org/userfiles/2012122163648.pdf>.

⁷ Dawn Chatty et al., “No refugee: Palestinians in Lebanon,” RSC Working Paper No. 64, (Refugee Studies Centre, Oxford, 2010), accessed 25 March 2013, http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSCworkingpaper64.pdf, 5.

and targeted killings.⁸ But these are the very same reasons that prompted the Syrians to flee. This creates a potentially problematic situation and an overlap in the work of these agencies as well as a window of opportunity for deepening cooperation between them. Currently, the split in their mandates creates a two-level refugee regime with different treatment of refugee groups.

This thesis uses some primary legal sources which will be complemented by the literature on international regimes from the field of International Relations. Furthermore, documents published by both UNRWA and UNHCR will be analyzed and interpreted. This thesis would not be complete without the interviews with experts on refugee protection which were carried out in Beirut in April 2013. All of the interviews were semi-structured in order to allow me to address cross-cutting themes salient for refugee protection in Lebanon. Apart from interviewing the officials of UNHCR and UNRWA, I have interviewed several workers in local and international non-governmental organizations (NGOs) which are dealing with refugees. These organizations have been selected from a list of NGOs in Lebanon on UNDP and UNHCR websites and contacted prior to my field visit to Lebanon. However, due to the nature of the research, I decided to provide confidentiality to my sources, with an exception of official spokespeople of UNHCR and UNRWA.

The thesis begins with discussing the framework of international regimes, their definitions and the aspects which are particular to the international refugee regime. Chapter 1 includes an account of the historical emergence of the current international refugee regime and its wider relevance to the current situation. It also discusses the general framework of the international refugee regime. Chapter 2 focuses on the work of UNRWA. It inquires about the condition of the Palestinian refugees in Lebanon, the work of the agency, the legal framework

⁸ UNRWA, "Syria crisis situation update (Issue 44)," accessed 11 May 2013, <http://unrwa.org/etemplate.php?id=1732>.

which excludes the Palestinian refugees from the 1951 Geneva Convention and, *mutatis mutandis*, from the international refugee regime. Article 1D is especially salient in this debate. Moreover, there is an important distinction between protection and assistance in the work with refugees and this distinction will be taken up in the example of the work of UNRWA.

The role of UNHCR will be discussed in Chapter 3, which looks into the details of its response to the current Syrian refugee crisis. This chapter forms the core of the whole thesis as it incorporates the empirical research and the response by UNHCR but also many of its implementing partners and contains their views on the whole situation. The final chapter discusses some of the implications of the situation in Lebanon, the Middle East and possibly beyond the region. It investigates the refugee regime complex surrounding the Syrian crisis, the role of these two agencies in the regime complex and a suggestion for future improvements. The intellectual odyssey of thesis writing has taken me to Lebanon and it is now time for me to take you on this journey.

CHAPTER 1 - INTERNATIONAL REGIMES

In order to understand the current situation in Lebanon, the origins of the international refugee regime need to be discussed first. Therefore a part of this chapter will be dedicated to the analysis of origins of the international refugee regime and the organizations which have been created as part of it. Central to this endeavour are two refugee organizations which are at the core of the international refugee regime – UNHCR and UNRWA. These two organizations and their respective roles will be scrutinized in the framework of the international refugee regime. Moreover, the international refugee regime and its core norms in relation to the 1951 Geneva Convention will be introduced.

1.1 Regimes in International Relations

Regimes co-exist in various areas of IR – trade, climate change, nuclear non-proliferation, or security. According to the famous definition by Stephen Krasner, international regimes are “implicit or explicit principles, norms, rules and decision-making procedures around which actors’ expectations converge in a given area of international relations.”⁹ Regimes can also be defined as “explicit rules and implicit norms guiding the actions of states and individuals, together with institutions and organizations expressing these rules or norms.”¹⁰ The second definition identifies actors salient for regimes as the states, international organizations as well as the individuals. Therefore the locus of regimes is broader than formal organizations and yet narrower than the international structure.¹¹ The study of the international regimes can also be

⁹ Stephen Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” in *International Regimes*, ed. Stephen Krasner (Ithaca: Cornell University Press, 1983), 2.

¹⁰ Laura Barnett, “Global Governance and the Evolution of the International Refugee Regime,” *International Journal of Refugee Law* 14, 2/3 (2002): 238.

¹¹ Stephan Haggard and Beth A. Simmons, “Theories of International Regimes,” *International Organization* 41, 3 (1987): 492.

treated, more narrowly, as the study of evolution of the multilateral agreements among states which regulate actions within a given issue-area.¹²

The aftermath of the Second World War specially engendered new forms of coordination and cooperation which did not fit easily within the realist framework.¹³ These developments were followed by the emergence of the international regimes theory in 1970s.¹⁴ Three schools of thought within the study of international regimes developed: “realists, who focus on power relationships; neoliberals, who base their analyses on constellations of interests; and cognitivists, who emphasize knowledge dynamics, communication, and identities.”¹⁵ The neoliberal theories of regimes have been the most influential ones and they have become the default approach in analysing international institutions.¹⁶ In spite of their divisions, the regimes analysts tried to reconcile both liberalism and realism by assuming that states act according to norms but such a norm-governed behaviour was consistent with national interest.¹⁷ This thesis will take a wide neoliberal stance when analyzing the cooperation which takes place in the international refugee regime.

¹² Ibid., 495.

¹³ Ibid., 491.

¹⁴ Friedrich Kratochwil and John Gerard Ruggie, “International Organization: A State of the Art on an Art of the State,” *International Organization* 40, 4 (1986): 759.

¹⁵ Andreas Hasenclever, Peter Mayer and Volker Rittberger, *Theories of international regimes* (Cambridge: Cambridge University Press, 1997), 1-2.

¹⁶ Ibid., 4.

¹⁷ Haggard and Simmons, “Theories,” 492.

1.2 Cooperation in International Refugee Regime

Refugee issues have often been taken up in the legal or sociological literature rather than in International Relations. The exception represents the study of cooperation in international refugee regime, often portrayed by various models.¹⁸ A state-centric perspective is often put forward. According to Betts, “states’ responsibilities towards refugees on the territory of other states are not made clear, explicit, or binding either in the 1951 Convention or in other supplementary inter-state agreements.”¹⁹ Hence, to establish cooperation in the international refugee regime can be problematic because the states have more to lose by cooperation. Suhrke argues that free-riding becomes likely in the international refugee regime because benefits are distributed to all states even if they do not take part themselves and therefore refugee regime can be described by collective action failure.²⁰ This has important implications for the weak normative and legal framework of burden-sharing.²¹

The behaviour of the states is important for the international refugee regime. It has been discussed and critiqued in terms of the lack of willingness of the states of the North to host refugees. According to Betts, the Northern states’ contribution to burden-sharing has been relatively rare and it has occurred when the refugee protection was perceived to be related to other issue areas, such as immigration, security and trade.²² Clearly, regimes do not emerge in the vacuum but are influenced by the prevailing power relations. Institutions are equally important for the functioning as well as the study of regimes.

¹⁸ Alexander Betts, “International Cooperation in the Refugee Regime,” in *Refugees in International Relations*, eds. Alexander Betts and Gil Loescher (Oxford: Oxford University Press, 2010), 57.

¹⁹ Alexander Betts, “International Cooperation in the Global Refugee Regime,” GEG Working Paper 2008/44, November 2008, 5.

²⁰ Astri Suhrke, “Burden-sharing during Refugee Emergencies: The Logic of Collective Action versus National Action,” *Journal of Refugee Studies* 11, 4 (1998).

²¹ Betts, “International Cooperation in the Refugee Regime,” 57.

²² Betts, “International Cooperation in the Global Refugee Regime,” 4.

Chimni argues that “the knowledge production and dissemination functions of the organization [UNHCR] are steered by the dominant coalition of states.”²³ The leading states also represent their largest donors. Hence, funding represents an important issue because the organization cannot be expected to bear the brunt of confronting their powerful members who contribute significant amounts to their funds.²⁴ Therefore the international organizations serve as arenas in which power is contested and new relations created between the power wielding states. Nevertheless, “the role of an international organization is to be a guardian of the larger interests of the coalition which establishes and sustains it, not the individual interests of its members.”²⁵ But this does not mean that the international organizations do not possess a degree of autonomy and a will of their own.²⁶ On the contrary, the organizations also strive to realize their *volonté distincte*.

It is now acknowledged that the international refugee regime needs to be strengthened.²⁷ However, not only the tasks of refugee protection but also the international regimes have become more complex. This complexity has so far been perceived as the contestation of international refugee protection with other regimes such as humanitarian or human rights regime.²⁸ Nevertheless, tensions are also created within the regimes themselves when there are two or more contesting organizations. What I will be analyzing further is a refugee regime complex, “in which different institutions overlap, exist in parallel to one another, and are nested within one

²³ B. S. Chimni, “The Geopolitics of Refugee Studies: A View from the South,” *Journal of Refugee Studies* 11, 4 (1998): 366.

²⁴ *Ibid.*, 368.

²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ Gil Loescher, “The Origins of International Refugee Regime” in *Beyond Charity: International Cooperation and the Global Refugee Crisis*, (New York/Oxford: Oxford University Press, 1996), 152.

²⁸ Alexander Betts, “Regime Complexity and International Organizations: UNHCR as a Challenged Institution,” *Global Governance* 19, 1 (2013): 73.

another in ways that shape states' responses towards refugees."²⁹ The two major organizations in the international refugee regime are UNHCR and UNRWA. There are also other organizations they cooperate with and some of these do not constitute a part of the international refugee regime. Hence, this situation can be described as a regime complex.

Raustiala and Victor define a regime complex as an "array of partially overlapping and non-hierarchical institutions governing a particular issue area."³⁰ As Orsini, Morin and Young argue, regime complexes show "a degree of divergence regarding the principles, norms, rules, or procedures of their elemental regimes."³¹ This divergence is at least potentially problematic but complexes may also contain non-diverging relations.³² What is important here is that there is a set of international norms, principles and institutions, all of which in a way deal with the international refugee issues. For example, as illustrated by Betts, the refugee regime complex can cover human rights regime, development regime, humanitarian regime, security regime, labour migration regime, and travel regime.³³ All of this shows the increased complexity which the organizations and states encounter when dealing with refugee issues.

Regime complexes remain a relatively new analytical field but there have also been some critiques of the original concept of a regime. Strange has noted that the use of regimes is imprecise and claimed that "people mean different things when they use it."³⁴ However, the concept of a regime has been developed since that time and it has proven to be a useful analytical

²⁹ Ibid., 71.

³⁰ Kal Raustiala and David G. Victor, "The Regime Complex for Plant Genetic Resources," *International Organization* 32, 2 (2004): 279.

³¹ Amandine Orsini, Jean-Frederic Morin and Oran Young, "Regime Complexes: A Buzz, a Boom, or a Boost for Global Governance?" *Global Governance* 19, 1 (2013): 29.

³² Ibid., 29.

³³ Betts, "Regime Complexity," 73.

³⁴ Susan Strange, "Cave! Hic Dragones: a Critique of Regime Analysis," in *International Regimes*, ed. Stephen D. Krasner (Ithaca, NY: Cornell University Press, 1983), 343.

tool important for the study of the international refugee regime. As will be shown, international refugee regime has always been fluid and complex. Furthermore, the emergence of the international refugee regime and the twin role played by UNRWA and UNHCR will be illustrative of wider issues relevant for the regimes theory.

1.3 The Emergence of International Refugee Regime

In order to understand the current international refugee regime, its origins need to be recalled here. The international refugee regime has been evolving for a long time but it was given a formal recognition only in the 20th century. Barnett claims that the international refugee regime in Europe goes back to the Treaty of Westphalia in 1648.³⁵ However, a more comprehensive refugee regime emerged after the First World War under the auspices of the League of Nations and underwent a dramatic change after the Second World War.³⁶ Hathaway divides the emergence of “law governing the refugee status” into three distinct periods: 1920-1938; 1938-1950; and 1950 and beyond.³⁷ However, it is likely that the end of the Cold War brought yet another period in the refugee protection.³⁸

During the first period, the refugee regime was dealing with national groups, rather than individual refugees. The first High Commissioner for Refugees, Fridtjof Nansen, was appointed in 1921 by the League of Nations and was given the task to deal specifically with Russian refugees.³⁹ Nansen had to deal with the practical issues of the Russian refugees who had been denaturalized by the Soviet Union and whose travel documents had been rendered void. So-

³⁵ Barnett, “Global Governance,” 238.

³⁶ Ibid., 239.

³⁷ James C. Hathaway, “A Reconsideration of the Underlying Premise of the Refugee Law,” *Harvard International Law Journal* 31, 1 (1990).

³⁸ Charles B. Keely, “The International Refugee Regime(s): The End of the Cold War Matters,” *International Migration Review* 35, 1 (2001).

³⁹ Loescher, “The Origins,” 37.

called Nansen passports were created and recognized by 51 states so that the refugees could move from the states where they were often staying illegally to more hospitable areas.⁴⁰ However, states were often unwilling to extend legal protection to refugees, particularly in the cases when it would curtail their sovereign right to exclude foreigners.⁴¹ Furthermore, only the right to leave was granted, without a guarantee to enter the states. This distinct issue is still mirrored in the UN Universal Declaration of Human Rights.⁴²

The League of Nations provided only for administrative costs, and other aid depended on direct financial assistance from states or voluntary agencies.⁴³ Therefore the political concerns played an important role in the direction of the refugee regime. There was a widespread belief that assistance should be dealt by private agencies and national governments.⁴⁴ The refugee regime was dependent on the ability of the High Commissioner Refugees to raise funds and most of the assistance was dependent on the foreign policies of the governments.⁴⁵ The refugee protection from the beginning was inherently political and politicized. After Nansen died in 1930, the Nansen International Office was in charge of refugee protection and assistance.⁴⁶ The weakness of the international refugee regime during this period is attributable not only to the general weakness of the League of Nations and its agencies but also to the absence of a credible international commitment to resolving refugee issues.⁴⁷ The interwar period left an important legacy not only in the form of institutions upon which to build later but also the idea that

⁴⁰ Ibid.

⁴¹ Ibid., 43.

⁴² UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), accessed 15 April 2013, www.refworld.org/docid/3ae6b3712c.html.

⁴³ Loescher, "The Origins" 37.

⁴⁴ Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime* (Oxford: Clarendon Press, 1995), 86.

⁴⁵ Loescher, "The Origins," 39.

⁴⁶ Skran, *Refugees in Inter-War Europe*, 75.

⁴⁷ Loescher, "The Origins," 41.

refugees are victims of human rights abuses for whom the international community has a responsibility.⁴⁸

Large numbers of refugees were generated during and after the Second World War. During this period, it was not enough to be a member of a group of displaced persons but an analysis of each person's motives for flight was a necessary precondition for recognition as a refugee.⁴⁹ In November 1943, the United Nations Relief and Rehabilitation Agency (UNRRA) was set up in order to provide relief and temporary emergency protection for everyone displaced by the war.⁵⁰ One of UNRRA's main functions was to oversee repatriation.⁵¹ However, unlike in the 1920s, many persons were unwilling to return to their countries of origin, although their governments were keen to have them back.⁵²

In 1947, UNRRA ceased to exist and a new refugee organization, the International Refugee Organization (IRO) was created.⁵³ The new organization promoted refugee resettlement as well as repatriation. However, soon thereafter, in December 1949, the UN General Assembly (UNGA) decided to replace the IRO with UNHCR for an initial period of three years under article 22 of its Charter.⁵⁴ The United States sought to limit the UNHCR's role by the ban to seek any voluntary contributions without the UNGA approval.⁵⁵ Due to the geographical limitation on the scope of its work and its restricted budget, the UNHCR had a minimal impact on the situation of refugees in the post-World War II period. Later on, in the second half of the 20th century, the

⁴⁸ Ibid., 46.

⁴⁹ Hathaway, "A Reconsideration," 139.

⁵⁰ Loescher, "The Origins," 47.

⁵¹ Ibid.

⁵² Ibid., 49.

⁵³ Ibid., 49-50.

⁵⁴ Erika Feller, "The Evolution of the International Refugee Protection Regime," *Washington University Journal of Law and Policy* 5 (2001): 130.

⁵⁵ Loescher, "The Origins," 56.

divide between East and West became particularly salient for its work as the agency gradually extended its mandate.

The Palestinian refugees have been excluded from the mandate of UNHCR from the outset. At the time of the drafting of 1951 Refugee Convention, there were two UN agencies providing assistance to Palestinian refugees: the UNCCP (United Nations Conciliation Commission for Palestine) and UNRWA. UNHCR's role was limited to that of a "safety net" – to step in if protection provided by UNRWA and UNCCP would "cease for any reason."⁵⁶ The UNCCP was created in order to resolve the Arab-Israeli conflict, including the refugee problem and to provide protection to the refugees by maintaining their right to return, including the right to property.⁵⁷ All this was in line with the UN General Assembly Resolution 194 (III). However, it soon became clear that the enforcement of this resolution would take more than a toothless agency to implement the resolution. By the early 1950s, the UNCCP recognized that it was unable to realize its mandate and the UN General Assembly passed several measures curtailing the role of UNCCP.⁵⁸ Hence, the UNCCP no longer has an office in the UN, nor does it play an important protection role in the protection of the Palestinian refugees.⁵⁹ The inability of the UNCCP to provide protection to the Palestinian refugees has important implications for their current situation. These will be discussed in detail in Chapter 2.

⁵⁶ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, Vol. 189, p. 137, accessed 20 March 2013, www.refworld.org/docid/3be01b964.html.

⁵⁷ BADIL Resource Center, "Closing Protection Gaps: A Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention," August 2005, accessed 13 April 2013, http://www.badil.org/phoca_download/Badil_docs/publications/handbook, 44.

⁵⁸ Ibid., 45.

⁵⁹ Ibid., 46.

1.4 The 1951 Geneva Convention as the Norm-Setting Instrument

Hathaway argues that “refugee law, with its predominant emphasis on the establishment of secure conditions of exile, is fundamentally a product of European political culture.”⁶⁰ However, the international refugee regime has a worldwide relevance, despite some regional variations. The most authoritative text in the refugee law is the 1951 Geneva Convention Relating to the Status of Refugees which was extended by the 1967 Optional Protocol.⁶¹ The refugee definition is stated under the Article 1A (2) and a refugee is defined as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.⁶²

This definition highlights the importance of persecution and individualized threat which is essential for granting of refugee status. For those who cannot prove “well-founded fear of persecution,” there are very few other options left such as subsidiary protection status. The determination of refugee status is regulated by each state party to the 1951 Convention according to its particular constitutional and administrative structure.⁶³ States are taking control of the process of refugee determination in a manner consistent with their own national interest and “the current framework of refugee law, even if it were to be fully and universally implemented, is largely inconsistent with the attainment of either humanitarian or human rights ideals on a

⁶⁰ Hathaway, “A Reconsideration,” 134.

⁶¹ Ibid., 163.

⁶² UN General Assembly, *Convention Relating to the Status of Refugees*.

⁶³ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, accessed 20 March 2013, <http://www.refworld.org/docid/4f33c8d92.html>.

universal scale.”⁶⁴ These other two regimes often complement the international refugee regime. According to Jane McAdam, “the Convention acts as a type of *lex specialis*. It does not seek to displace the *lex generalis* of international human rights law, but rather complements and strengthens its application.”⁶⁵

The international refugee regime is strongly influenced by the behaviour of the states which are its constitutive part. However, international refugee law does not challenge the behaviour of the states which is conducive to flight of the refugees.⁶⁶ Instead, it tries to remedy the consequences of this flight. Hathaway criticizes the discrepancy between the discourse of humanitarianism and human rights and the unwillingness of developed states to enhance their contribution to refugee protection.⁶⁷ By the same token, Kelley argues that there have been persistent attempts of the states to limit their protection responsibilities, often motivated by economic pressures, security considerations or other migration management objectives.⁶⁸ Often the UNHCR takes a surrogate role of the state in the refugee status determination procedure.⁶⁹ For example, Lebanon lacks the capacity or willingness to legally determine the refugee status and therefore determining who classifies as a refugee falls upon UNHCR.⁷⁰

The importance of the role of UNHCR in the international refugee regime cannot be overstated. UNHCR has helped to “improve refugee protection, safeguarding people from

⁶⁴ Hathaway, “A Reconsideration,” 144.

⁶⁵ UNHCR, *The Refugee Convention as a rights blueprint for persons in need of international protection*, 5 July 2006, accessed 27 May 2013, <http://www.refworld.org/pdfid/4ff15cd52.pdf>, 4.

⁶⁶ *Ibid.*, 174.

⁶⁷ *Ibid.*, 180.

⁶⁸ Ninette Kelley, “International Protection Challenges and Opportunities,” *International Journal of Refugee Law* 19, 3 (2007): 404.

⁶⁹ Anne Evans Barnes, “Realizing Protection Spaces for Iraqi Refugees: UNHCR in Syria, Jordan and Lebanon,” UNHCR Research Paper No. 167, 2009, accessed 2 April 2013, www.unhcr.org/4981d3ab2.pdf, 6.

⁷⁰ *Ibid.*, 18.

refoulement and arbitrary detention and facilitating to assistance, family reunification and durable solutions by generating more comprehensive demographic profiles of populations of concern.”⁷¹ Durable solutions are threefold and all of them have been used to deal with refugee crises.⁷² The most preferable of these is repatriation, which means a voluntary return to the country of origin. However, this is not feasible if the well-founded fear of persecution persists. The next option is integration in the country of asylum but sometimes the political situation in the host country does not allow for this. That is the case in Lebanon with the Palestinian refugees as well as with the newly arriving Syrian refugees. The third option is represented by a resettlement to a third country which agrees to take them.⁷³

As has been the case in many countries, including Lebanon, the role of the international refugee organizations cannot supersede the willingness of the states to provide the refugees with meaningful protection. Lebanon is not a party to the 1951 Geneva Convention. Nevertheless, the text of the Convention is authoritative and possibly forms a part of customary international law.⁷⁴ Moreover, the UNHCR Handbook states that “a person who meets the criteria of the UNHCR Statute qualifies for the Protection of the United Nations provided by the High Commissioner regardless of whether or not he [or she] is in a country that is party to the 1951 Convention or 1967 Protocol.”⁷⁵

Lebanon has other international obligations under the 1965 Protocol for the Treatment of Palestinians in the Arab States (“Casablanca Protocol”). This Protocol guarantees the Palestinian

⁷¹ Kelley, “International Protection Challenges and Opportunities,” 408.

⁷² Donna E. Arzt, *Refugees into Citizens: Palestinians and the End of the Arab-Israeli Conflict* (New York: Council on Foreign Relations Press, 1996), 84.

⁷³ B. S. Chimni, “From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems,” *Refugee Survey Quarterly*, 23, 3 (2004).

⁷⁴ James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005), 363.

⁷⁵ UNHCR, *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status*, para. 16.

refugees the right to work on the same level as the Lebanese citizens and the right to leave and return to the country.⁷⁶ Nevertheless, the reality does not always reflect the Protocol. Due to the complexity of the refugee movements, Loescher argues that “the basic international instruments of refugee protection offer neither a comprehensive nor a sufficiently flexible response to the diverse forced population movements taking place today.”⁷⁷ Moreover, when combined with the political climate coupled with the lack of states’ willingness to deal with the refugee problems, a mixture of intricate issues emerges. These issues will be taken up in the next two chapters which analyze the work of UNRWA and UNHCR in Lebanon.

⁷⁶ League of Arab States, Protocol for the Treatment of Palestinians in the Arab States (“Casablanca Protocol”), 11 September 1965, accessed 20 March 2013, <http://www.refworld.org/docid/460a2b252.html>.

⁷⁷ Loescher, “The Origins,” 164.

CHAPTER 2 – UNRWA IN LEBANON: EMPHASIZING ASSISTANCE

The division between Palestinian and other refugees is embodied by the division of work between UNHCR and UNRWA.⁷⁸ The situation of Palestinian refugees is protracted and represents a salient part of the international refugee regime. Kagan argues that the lack of solutions for the Palestinian refugees “involves an absence of political will on the part of the Security Council rather than a problem of agency mandates between UNRWA and UNHCR.”⁷⁹ Nevertheless, this split between those two agencies has led towards the emphasis on assistance and neglecting protection in UNRWA’s work. Alongside functioning as a service provider and fulfilling the surrogate role of the state, UNRWA has also embodied the mythologies of Palestinian refugees and their right to return.⁸⁰ In the words of Schiff,

UNRWA has been the vehicle for international actors seeking to deal with the refugee problem, the possessor of material resources coveted by regional actors, a political symbol and tool for Palestinians, and a successful humanitarian organisation with its share of difficulties traceable to a unique mandate, structure and environment.⁸¹

This chapter will discuss the specific role of UNRWA, the split between the protection and assistance mandate of the agency and the problems UNRWA faces illustrated by a recent legal case brought in front of the Court of Justice of the EU.

⁷⁸ Michael Kagan, “The (Relative) Decline of Palestinian Exceptionalism and Its Consequences for Refugee Studies in the Middle East,” *Journal of Refugee Studies* 22, 4 (2009): 427.

⁷⁹ *Ibid.*, 433.

⁸⁰ Robert Bowker, *Palestinian Refugees: Mythology, Identity and the Search for Peace* (London: Lynne Rienner Publishers, 2003), 123.

⁸¹ Benjamin Schiff, *Refugees unto the Third Generation* (Syracuse, NY: Syracuse University Press, 1995), 5.

2.1 Palestinian Refugees in Lebanon

Palestinian refugee is any person whose “normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict.”⁸² The Palestinian refugees who are registered with UNRWA amount to 5 million.⁸³ Furthermore, not all Palestinian refugees are registered with UNRWA and the number of non-registered refugees in the Middle East is estimated at 1.4 million.⁸⁴ The number of refugees is steadily increasing because the descendants of fathers (but not mothers) registered with UNRWA are also eligible for registration.⁸⁵ The main stakeholders of the agency are only the refugees but also the host state authorities, Israel, Palestinian Authority, the donors and the United Nations system. Approximately one million refugees have no identification except for their UNRWA cards, which means that no single state is responsible for them under international law.⁸⁶

In Lebanon, there are 455,000 Palestinian refugees registered with UNRWA and many of them live in the country’s 12 refugee camps.⁸⁷ The majority of the refugees are registered by both UNRWA and the Lebanese authorities.⁸⁸ Some of these refugees were not registered by UNRWA until 2004 because they left Palestine after 1948 and therefore fell outside of the scope

⁸² UNRWA, “Palestine Refugees,” accessed 2 May 2013, <http://unrwa.org/etemplate.php?id=86>.

⁸³ Alex Joffe, “UNRWA Resists Resettlement,” *Middle East Quarterly* 19, 4 (2012): 17.

⁸⁴ BADIL Resource Center, “What Role for UNRWA? Opportunities and Constraints,” Discussion Paper Prepared for the PRN Workshop on the Future of UNRWA, February 2000, accessed 5 May 2013, <http://prn.mcgill.ca/prn/papers/unrwa-role.html>.

⁸⁵ Bowker, *Palestinian Refugees*, 65.

⁸⁶ *Ibid.*, 63.

⁸⁷ UNRWA, “Lebanon,” accessed 2 May 2013, <http://unrwa.org/etemplate.php?id=65>.

⁸⁸ Jad Chaaban et al., “Socio-economic Survey of Palestinian Refugees in Lebanon,” Report Published by the American University in Beirut (AUB) and UNRWA, 2010, accessed 10 April 2013, <http://www.unrwa.org/userfiles/2011012074253.pdf>, 4.

of the previous UNRWA's definition of a refugee.⁸⁹ Nevertheless, they were still registered by the Lebanese authorities but had no access to UNRWA services. Finally, there are several thousand unregistered refugees, who possess no form of valid documents or identification.⁹⁰ Clearly, this group is the most vulnerable among the refugees.

All of the refugees in Lebanon are affected by the lack of political will to grant them citizenship. It has been noted that that Palestinian refugees in Lebanon have been excluded from key aspects of political, social and economic life of the country.⁹¹ They have no rights to invest and have a limited access to employment opportunities.⁹² Their right to work is curtailed as they cannot access some professions.⁹³ Moreover, only those Palestinian refugees who fled to Lebanon in 1948 are eligible for residency.⁹⁴ However, since 2001, Palestinians cannot legally acquire housing in Lebanon.⁹⁵

The Palestinian refugees in Lebanon constitute a special category of foreigners.⁹⁶ To obtain a Lebanese citizenship is an insurmountable task for them. The main issue in Lebanon seems to be the fear of *tawteen* (naturalization) of the refugees due to fragile political situation in the country. The Lebanese fear that granting Palestinians more rights would be the first step towards *tawteen*.⁹⁷ Opposition to their permanent settlement is one of the few issues uniting the

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Ibid.

⁹² Bowker, *Palestinian Refugees*, 75.

⁹³ Ibid., 13.

⁹⁴ BADIL Resource Center, "Closing Protection Gaps," 15.

⁹⁵ Chaaban et al., "Socio-economic Survey," 14.

⁹⁶ Ibid.

⁹⁷ Fida Nasrallah, "Lebanese Perceptions of the Palestinians in Lebanon: Case Studies," *Journal of Refugee Studies* 10, 3 (1997).

public opinion across most of the sectarian communities.⁹⁸ Moreover, the exclusion of Palestinian *tawteen* is written into the post-war Ta'if Accords.⁹⁹

It is clear that “no plan to resolve the refugee problem will work without a comprehensive, viable, and *bona fide* peace that can be carried out in good faith.”¹⁰⁰ There probably will not be any change in the situation of the Palestinian refugees, unless more protection is accorded to them. Next section will discuss the general legal framework under which the Palestinian refugees are treated in the international refugee regime. The Geneva Convention is important for their current predicament but it should not be mistaken with the political situation and the willingness of the states to grant Palestinian refugees more rights.

2.2 Article 1D of the 1951 Geneva Convention

The 1951 Geneva Convention has clearly delineated the scope of the work of UNHCR and UNRWA. Article 1D of the 1951 Geneva Convention states:

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.¹⁰¹

Article 1D is mirrored in the EU Qualification Directive. Article 12(1) (a) of Directive 2004/83 also refers to the exclusion from the scope of the Convention.¹⁰² The word “agencies” in the first paragraph implies both UNRWA and the UNCCP as those were the only other agencies

⁹⁸ Rosemary Sayigh, “Palestinians in Lebanon: Harsh Present, Uncertain Future,” *Journal of Palestine Studies* 25, 1 (1995): 37.

⁹⁹ Sayigh 1995, 43.

¹⁰⁰ Arzt, *Refugees into Citizens*, 83.

¹⁰¹ UN General Assembly, *Convention Relating to the Status of Refugees*.

¹⁰² EC Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304/12, 30 September 2004.

providing protection or assistance at the time when the Convention was drafted. Hence, the Palestinian refugees have been deliberately excluded from the scope of the Convention. The *travaux préparatoires* of the 1951 Convention show that the states presumed that the Palestinian refugee problem would be solved according to the principles of UN General Assembly resolution 194 (III) and that the protection under the 1951 Convention would not be eventually needed.¹⁰³ This happened due to preferences of the Arab states who wanted to highlight the necessity for a separate refugee regime for the Palestinians due to the perceived salience of the issue.¹⁰⁴ Guy Goodwin-Gill notes that there is a discrepancy between the text of the Convention (“at present receiving”) and the UNHCR Statute, paragraph 7 (c) “who continue...” to receive protection.¹⁰⁵

The question here is whether UNRWA continues to provide protection which was supposed to be accorded by the UNCCP. The resolution of the UN General Assembly seems to suggest that the role of UNRWA is the provision of services rather than the work on achieving a solution of the refugee situation. The UNCCP had the mandate to work towards the final solution and to facilitate “the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation.”¹⁰⁶ The UNCCP’s task was to provide conciliation between the parties of the conflict and provide protection to the refugees, including their right to property.¹⁰⁷ However, the UNCCP indicated that it was unable to fulfil its mandate because the relevant parties were unwilling to implement paragraph 11 of Resolution 194 (III).¹⁰⁸ Its mandate was then mostly reduced to property identification and documentation and its funding was

¹⁰³ BADIL Resource Center, “Closing Protection Gaps,” vii.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid., vi.

¹⁰⁶ UN General Assembly, *Palestine*, 11 December 1948, A/RES/194 (III), accessed 2 May 2013, <http://unispal.un.org/UNISPAL.NSF/0/C758572B78D1CD0085256BCF0077E51A>.

¹⁰⁷ BADIL Resource Center, “Closing Protection Gaps,” 44.

¹⁰⁸ Brenda Goddard, “UNHCR and the International Protection of Palestinian Refugees,” *Refugee Studies Quarterly* 28, 2/3 (2009): 480.

brought in line with this mandate.¹⁰⁹

The UNCCP's annual report which is less than two pages long "symbolizes the ineffectiveness of the protection component of the special regime established for Palestinian refugees, a regime which was to provide *heightened* and not diminished protection."¹¹⁰ Even today, we can see that the UNCCP as a painful reminder of the ineffectiveness of the international refugee regime to protect Palestinian refugees. On 18 December 2012 the UN General Assembly passed the following resolution. It

1. *Note[d] with regret* that repatriation or compensation of the refugees, as provided for in paragraph 11 of General Assembly resolution 194 (III), has not yet been effected, and that, therefore, the situation of the Palestine refugees continues to be a matter of grave concern and the Palestine refugees continue to require assistance to meet basic health, education and living needs;

2. *Also note[d] with regret* that the United Nations Conciliation Commission for Palestine has been unable to find a means of achieving progress in the implementation of paragraph 11 of General Assembly resolution 194 (III), and reiterates its request to the Conciliation Commission to continue exerting efforts towards the implementation of that paragraph and to report to the Assembly on the efforts being exerted in this regard as appropriate, but no later than 1 September 2013;

3. *Affirm[ed]* the necessity for the continuation of the work of the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the importance of its unimpeded operation and its provision of services for the well-being and human development of the Palestine refugees and for the stability of the region, pending the just resolution of the question of the Palestine refugees;

4. *Call[ed] upon* all donors to continue to strengthen their efforts to meet the anticipated needs of the Agency, including with regard to increased expenditures arising from the serious socioeconomic and humanitarian situation and instability in the region, particularly in the Occupied Palestinian Territory, and those needs mentioned in recent emergency appeals and in the consolidated humanitarian response plan for the Syrian Arab Republic.¹¹¹

Since the resolution 194 (III) which established the UNCCP, the lack of progress in the resolution of the Palestinian situation is remarkable. The inability of UNCCP and the UN in general to provide protection for the refugees should be taken as an indicator of the lack of

¹⁰⁹ BADIL Resource Center, "Closing Protection Gaps," 45.

¹¹⁰ BADIL Resource Center, "What Role for UNRWA?"

¹¹¹ UN General Assembly, *Assistance to Palestine Refugees*, 14 January 2013, A/RES/67/114, accessed 24 April 2013, <http://unispal.un.org/UNISPAL.NSF/0/9034043F0BE12585257AF600527CF2>.

protection accorded to Palestinian refugees in general. The role of UNRWA in the resolution above is perceived as provision of services and assistance. This is especially important given the needs of Palestinian refugees who are in Syria or are under the mandate of UNRWA in other Middle Eastern countries.

However, the ineffective provision of protection by the UNCCP does not mean the second paragraph of Article 1D of the 1951 Geneva Convention is void because UNRWA also offers limited protection. However, the protection provided by UNRWA is incommensurate with the protection offered by UNHCR. As has been argued elsewhere,

perhaps there is no need to “re-invent” a role for UNRWA, but rather to put in place a complete refugee regime, one that could provide protection through UNHCR as mandated under Article 1(d) of the 1951 Refugee Convention, assistance and future development through UNRWA, while compensation could be administered through the UNCCP.¹¹²

Perhaps there is no need to resuscitate the UNCCP but what is needed is more protection to be given to the Palestinian refugees, which could happen under the mandate of UNHCR or by extending the protection function of UNRWA. Therefore a brief analysis of the protection function of UNRWA and its relation to its provision of assistance is in order here.

¹¹² BADIL Resource Center, “What Role for UNRWA?”

2.3 Protection versus Assistance in the Work of UNRWA

In the absence of a resolution of the Palestinian refugees' situation, the mandate of UNRWA has been renewed every three years and currently extends until 30 June 2014.¹¹³ The uncertainty about the future of the agency as well as unstable political situation proved challenging for its work. From the durable solutions, comprehensive repatriation, the option desired by the Palestinians and the Arab states, was untenable because of the on-going Israeli presence.¹¹⁴ The mandate of UNRWA did not extend to the resettlement to Western countries.¹¹⁵

Arzt argues that the integration of the Palestinian refugees was hindered because the countries harbouring Palestinian refugees were either too poor (Jordan), too unstable (Lebanon) or used the refugees as political pawns in the continuing regional conflict (Syria).¹¹⁶ Middle Eastern states were not willing to grant citizenship to Palestinian refugees unless there was a commitment to a final settlement of the Arab-Israeli conflict.¹¹⁷ According to Loescher, "this was necessitated by the foreign policy objectives of the Arab states, since the refugees' resettlement or assimilation would have made it difficult if not impossible for them to contest the legitimacy of the newly established Jewish state or to construct a Palestinian state in the future."¹¹⁸ Therefore political considerations prevailed over ensuring protection of the refugees.

Given this unfavourable situation, the agency had to adopt a pragmatic stance. It started focusing on a relatively low-key tasks and more development oriented work. Its priorities

¹¹³ UNRWA, "Overview," accessed 3 April 2013, available at <http://unrwa.org/etemplate.php?id=85>.

¹¹⁴ Ibid.

¹¹⁵ Loescher, "The Origins," 61.

¹¹⁶ Arzt, *Refugees into Citizens*, 84.

¹¹⁷ Ibid., 83.

¹¹⁸ Loescher, "The Origins," 61.

emerged in the fields such as education where its activities were seen as a success.¹¹⁹ Healthcare was another cornerstone of its activities. According to Bowker, the mandate of the agency was considerably broad to allow room for a changing interpretation.¹²⁰ Kagan claims that the most developed functions of UNRWA are in the area of promoting the general welfare of large groups of Palestinian refugees.¹²¹ Therefore material assistance took clear precedence over the protection mandate of the agency.

According to Joffe, the mandate of UNRWA had expanded by the 1980s to include some protection of refugees' rights.¹²² By the same token, Parvathaneni argues that a limited sort of protection was given during the *Intifada* of 1987-1993 by the Refugee Affairs Officer (RAO) Programme.¹²³ This programme aimed to facilitate ongoing UNRWA operations in the difficult material circumstances and to provide "a degree of passive protection for the refugee population."¹²⁴ However, the protection was only passive and did not represent the main emphasis in the tasks of the agency. The main task of UNRWA has always been to assist Palestinian refugees in material terms and to an extent, replaced the state services.

The provision of assistance dependent on a status of a "Palestine refugee" is one the peculiarities of the agency. This status-centred assistance provided to UNRWA-registered refugees is different from needs-centred aid, dependent on vulnerability of the person.¹²⁵ It is

¹¹⁹ However, there has been some controversy over UNRWA educational materials. See, for example, Jacob Hoigilt, "Islamism and Education: The Nature and Aims of Islamic Schools in the Occupied Palestinian Territories," *Middle East Critique* 22, 1 (2013).

¹²⁰ Bowker, *Palestinian Refugees*, 124.

¹²¹ Kagan, "Is There Really a Protection Gap?" 432.

¹²² Joffe, "UNRWA Resists Resettlement," 33.

¹²³ Harish Parvathaneni, "UNRWA's Role in Protecting Palestine Refugees," BADIL Working Paper No. 9, December 2004, accessed 23 April 2013, <http://www.badil.org/en/documents/category/2-working-papers?download=34%3Aunrwa-s-role-in-protecting-palestine-refugees> 17.

¹²⁴ Ibid.

¹²⁵ Bowker, *Palestinian Refugees*, 77.

clear that assistance provided by UNRWA is more substantial than protection provided by the agency. A recent legal case, which will be discussed next, is illustrative of the assistance provided by UNRWA as well the application of Article 1D.

2.4 When Does Protection or Assistance Cease? (The Case of El Kott and Others)

The case of three Lebanese men against the Hungarian Office of Immigration and Nationality (C-364/11) was brought in front of the Court of Justice of the European Union (CJEU) and the final judgement was given in 2012.¹²⁶ This case follows the case of Palestinian Ms Bolbol, which established that “a person receives protection or assistance from an agency other than UNHCR, when that person has actually availed himself [or herself] of that protection or assistance.”¹²⁷ The case of El Kott and Others is equally significant because it was established, for the first time, that “it can be considered that UNRWA’s assistance has ceased when it is impossible for the Agency to accomplish its mission and when refugees are forced to leave its area of operations as otherwise their personal safety would be at serious risk.”¹²⁸ This interpretation means that if Palestinian refugees are outside of the area of operation of UNRWA, automatic granting of asylum in a third country would follow. In the view of UNHCR, “when protection or assistance has ceased for any reason, persons falling within the scope of Article 1D are automatically entitled to the benefits of the 1951 Convention, provided that Articles 1C, 1E or 1F of the 1951 Convention do not apply.”¹²⁹

¹²⁶ Case C-364/11 - Abed El Karem El Kott and Others (2012), accessed 5 March 2013, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-364/11>.

¹²⁷ Case C-31/09 - Bolbol (2010), accessed 5 March 2013, <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-31/09>, para. 57.

¹²⁸ Hungarian Helsinki Committee, “ECJ landmark ruling on automatic refugee status for Palestinians from Syria,” 8 February 2013, accessed 25 March 2013, http://helsinki.hu/en/el_kott_ecj_interview.

¹²⁹ UNHCR, *UNHCR Observations in the case C-364/11 El Kott and Others regarding the interpretation of Article 1D of the 1951 Convention and Article 12(1)(a) of the Qualification Directive*, 27 October 2011, accessed 8 April 2013, www.refworld.org/docid/4eaa95d92.html, 11.

In this legal case, the three applicants claimed that their protection under UNRWA had ceased within the provision of the article 1D of the Geneva Convention and hence, they are entitled to recognition as refugees under that provision.¹³⁰ The wording “for *any* reason” in the second paragraph of Article 1D indicates that reasons other than UNRWA’s cessation of activities remain valid.¹³¹ The application submitted states that Mr El Kott lived in difficult material circumstances at the Ein El-Hilweh refugee camp in Lebanon and after his house had been burned down and he had been threatened, he left Lebanon. Another applicant, Mr A Radi, had to leave the Nahr El-Bared camp, where his house had been destroyed as a result of the clashes between the Lebanese army and the Islamic Fatah. He had been arbitrarily arrested and mistreated by the Lebanese soldiers. The final applicant, Mr Kamel Ismail, who lived in the Ein El-Hilweh camp, was threatened by the extremists who wanted to use the roof of his house and when he refused, they threatened him with death. All of the cases have in common similar threats of violence which have driven them out of UNRWA’s area of operation as well as difficult material circumstances present in UNRWA refugee camps.

The ruling argues that the abolition of the agency itself is not the only possible ground for the cessation of protection but it can also terminate when that agency is unable to carry out its mission.¹³² Therefore the existence of assistance, rather than the existence of the agency itself, must cease for the ground for exclusion from the refugee status to be no longer applicable.¹³³ Importantly, “a Palestinian refugee must be regarded as having been forced to leave UNRWA’s area of operations if his personal safety is at serious risk and if it is impossible for that agency to guarantee that his living conditions in that area will be commensurate with the mission entrusted

¹³⁰ C-364/11 - Abed El Karem El Kott and Others, para. 37.

¹³¹ UNHCR, *UNHCR Observations*, 12.

¹³² Abed El Karem El Kott and Others, para. 56.

¹³³ *Ibid.*, para. 57.

to that agency.”¹³⁴ Unfortunately, UNRWA spokesperson declined to comment on the above statement but it is clear that this is an important judgment which will have implications for the Palestinian refugees who are not given sufficient protection and assistance by the agency. It is an unorthodox court ruling which would imply that the material conditions which the agency provides need to be sufficient for the person to be able to continue living in the area of its work. Yet it is difficult to establish such a threshold.

The dire situation of the Palestinian refugee camps in Lebanon showed that the agency was not able to provide security (however, this is the responsibility of the Lebanese state) and the services provided to the refugees by UNRWA were not sufficient. It has also been established that when the assistance provided by UNRWA has ceased, persons are entitled to the benefits of the EU Directive which means that they will be recognized within the meaning of Article 2 (c) of the Directive and will be granted refugee status.¹³⁵ It is yet to be shown what impact this judgment will have on the future legal cases involving the Palestinian refugees.

From the above legal case and from this chapter, it can be seen that assistance is central to the endeavours of UNRWA but sometimes its provision is not sufficient. The main emphasis of the agency is on health and education. This focus of UNRWA is in line with its mandate. Furthermore, education and health attract greater attention from the donors than more nuanced protection activities. The failure of UNCCP can also be an important factor attributable to the lack of protection given to the Palestinian refugees. However, the role of the states in dealing with the refugee issue is equally crucial.

The Palestinian refugees stand aside of the international refugee regime because they are excluded from the 1951 Geneva Convention due to the incorrect application of Article 1D. Yet

¹³⁴ Ibid., para. 63.

¹³⁵ Ibid., para. 81.

some of the recent cases have begun to acknowledge that persons who find themselves outside of UNRWA's area of operation are entitled to the benefits of the Convention. This has some implications for the international refugee regime and as a result, it could lead to deepening cooperation between UNRWA and UNHCR.

CHAPTER 3 – UNHCR IN LEBANON: RESPONDING TO MASS INFLUX SITUATION

As has become apparent in the previous chapter, the situation in Lebanon is especially contentious due to its fragile consociational system which is anchored in the Lebanese constitution. The Syrian crisis has further exacerbated the problems which the country faces. The rate by which the Syrian refugees entered Lebanon was, at times, 8,000 people per day.¹³⁶ The issue of Syrian refugees in Lebanon currently takes precedence over any other issue such as the Palestinian refugee issue (except for the Syrian Palestinians) or the issue of Iraqi refugees in Lebanon, whose numbers currently total less than 10,000.¹³⁷ An unprecedented humanitarian crisis is unfolding in the region with very little attention from the outside world. Furthermore, this issue is often overlooked or silenced in the discourses in Lebanon.

The simple presence of a large number of Syrians is visible. The UNHCR reports that the population of Lebanon has recently increased by at least 10%.¹³⁸ However, these numbers only refer to the registered refugees, and the real Syrian presence in Lebanon is much higher. In the streets of Beirut, you can see small children begging or selling roses late into the night. They are Syrian, they were not here months ago and no one knows how long they will stay. The UN High Commissioner for Refugees António Guterres recently stated, “the system is at breaking point. There is limited capacity to take many more. Where are the people going to flee? Into the sea?”¹³⁹ In light of this situation, this chapter will investigate about the role of UNHCR and it will contrast it with the one of UNRWA.

¹³⁶ The Guardian, “Half of Syrian population will need aid by end of year,” 19 April 2013, accessed 25 April 2013, <http://www.guardian.co.uk/world/2013/apr/19/half-syrian-population-aid-year>.

¹³⁷ UNHCR, “2013 UNHCR Country Operations Profile – Lebanon,” accessed 8 April 2013, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486676>.

¹³⁸ UNHCR, “Syria Regional Refugee Response.”

¹³⁹ The Guardian, “Half of Syrian population.”

3.1 Mandate of UNHCR and its Funding

UNHCR is probably the most salient actor dealing with the Syrian crisis and this section will expand upon its mandate and its funding. Article 35 of the 1951 Geneva Convention establishes the cooperation of the contracting states with the UNHCR.¹⁴⁰ Moreover, the states agree to provide the UNHCR with the appropriate data concerning “the condition of refugees; the implementation of this Convention; and laws, regulations and decrees which are, or may hereafter be, in force relating to refugees.”¹⁴¹ Therefore the UNHCR is supposed to work with governments on the international issues of refugees. Even countries not acceding to the 1951 Convention, such as Lebanon, cooperate with UNCHR. According to the first article of its Statute, the UNHCR,

shall assume the function of providing international protection, under the auspices of the United Nations, to refugees who fall within the scope of the present Statute and of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of such refugees, or their assimilation within new national communities.¹⁴²

As no permanent solution for “the problem of refugees” has been reached, the UNHCR continues to carry out its mandate. Its mandate emphasizes the protection of the refugees as well as cooperation with the respective governments.

It is important to emphasize that “the work of the High Commissioner shall be of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees.”¹⁴³ The current role of UNHCR in Lebanon is perceived as

¹⁴⁰ UN General Assembly, *Convention Relating to the Status of Refugees*.

¹⁴¹ Ibid.

¹⁴² UNHCR, “Statute of the Office of the United Nations High Commissioner for Refugees,” accessed 2 April 2013, available at <http://www.unhcr.org/3b66c39e1.html>.

¹⁴³ UNHCR, “Statute,” Art. 2.

humanitarian to a large extent. Hathaway argues that the competence of UNHCR has evolved in the direction of emphasizing its material assistance role which is consistent with the Western states' desire to keep non-European refugees away from their borders.¹⁴⁴ During the 1990s, the UNHCR has expanded its mandate. Barutciski argued that the expansion of the mandate of UNHCR was "not concomitant with an increase in the actual protection accorded to refugees."¹⁴⁵ This could refer to the fact that assistance and protection are two different things and material support should not replace the actual protection given to the refugees. As has been argued in the previous chapter, there is a difference between those two in the work of UNRWA and this has a profound effect on the protection accorded to the refugees.

In my interview, it became clear that the current assistance provided by the UNHCR often replaces the one provided by the state. The UNHCR spokesperson in Lebanon asserts,

We try as much as we can to cover basic needs so [we deliver] food vouchers through the World Food Programme and non-food items including clothes, heating, blankets, mattresses, hygiene kits, baby kits [...] but we are also covering health care, [...] education, schooling, everything that has to do with schooling, with subsidizing health care, as much as we can. Every month we pay 1.2 million dollars on health care alone. We cover shelter as much as possible because many Syrians are not able to pay their rents anymore and we do not have the budget to cover every one but we try to select the people who are really in the need of assistance and assist them.¹⁴⁶

The people who are eventually assisted are chosen according to how vulnerable they are, which is different from a status-based assistance provided by UNRWA. From the list above, it is clear that the emphasis on material assistance prevails in the current concerns of the agency as well as in the concerns of the people fleeing the conflict. The UNHCR stated that the people are not

¹⁴⁴ Hathaway, "A Reconsideration," 168.

¹⁴⁵ Michael Barutciski, "A Critical View on UNHCRs Mandate Dilemmas," *International Journal of Refugee Law* 14, 2/3 (2002): 366.

¹⁴⁶ Interview with UNHCR, Beirut, 22 April 2013.

asking for refugee status, “they just ask to be protected and to be assisted and this is the area where we are trying to set up assistance but [...] we are not able to give it to them because of the limited resources today.”¹⁴⁷

Funding represents a large problem for the current work of UNHCR in Lebanon. According to the spokesperson,

The main issue today is assisting Syrians inside Lebanon and this is the area we are suffering today because of lack of funding. Lebanon is a very small country and it is hosting the biggest number of refugees in the region. So it does not have the infrastructure or the capacity financially to support Syrians and we are getting to a point with our partners when we feel the strain financially as well.¹⁴⁸

Hathaway criticized the UNHCR for remaining “largely impotent due to its lack of regulatory authority and fiscal autonomy.”¹⁴⁹ However, it is difficult to strike a balance between being impartial and pleasing the main donors. In the words of Barutciski, which refer to the earlier period of UNHCR under Sadako Ogata, “rather than assuming a prudent role, UNHCR boldly made unrestrained assertions that in the short term managed to please donors.”¹⁵⁰ However, in the long run the agency was destined to disappoint donors due to this lack of modesty.¹⁵¹

The agency receives only two percent of its funding from the UN budget and the rest must be raised through appeals.¹⁵² The main donor to UNHCR is the US government, with contributions three times as high as those of the second state (Japan), and the third largest donor is the European Commission.¹⁵³ The funding given to the UNHCR can impact on both assistance

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Hathaway, “A Reconsideration,” 168.

¹⁵⁰ Barutciski, “A Critical View,” 379.

¹⁵¹ Ibid.

¹⁵² Beth Elise Whitaker, “Funding the International Refugee Regime: Implications for Protection,” *Global Governance* 14 (2008): 243.

¹⁵³ UNHCR, “Donors,” accessed 4 May 2013, www.unhcr.org/pages/49c3646c26c.html.

and protection as those two are interconnected. The same has been argued by Whitaker who stated that low levels of funding not only impact the levels of material assistance but also influence refugee protection.¹⁵⁴ The funding cuts can have an adverse outcome because they not only lower the standards of protection but also weaken the whole international regime.¹⁵⁵ The UNHCR, in turn, finances its implementing partners and the funding cuts impact them as well.

3.2 Cooperation with Other Actors

The UNHCR Statute provides that UNHCR shall “facilitate the co-ordination of private organizations concerned with the welfare of refugees” and it shall distribute the funds amongst the private and public agencies which are “best qualified to administer such assistance.”¹⁵⁶ The current Syrian refugee crisis requires a broad network of actors who help ameliorate its impact. Except for the two UN agencies, there are many NGOs working with the Syrian refugees as well as other actors on the ground, such as Islamic charities. On the other hand, states are also significant for dealing with the refugee crisis. For example, the local municipalities are important for UNHCR. As stated by UNHCR, “local municipalities are vital in our cooperation, they informed about the newcomers and their needs. We need their infrastructure.”¹⁵⁷ First, I will inquire about the UNHCR implementing partners in Lebanon and second, I will investigate UNHCR’s cooperation with UNRWA concerning the issue of Syrian Palestinian refugees, which is central to understanding the different role played by these two agencies. This will lead to comparing their different roles in the current mass influx situation.

¹⁵⁴ Whitaker, “Funding the International Refugee Regime,” 244.

¹⁵⁵ Ibid., 242.

¹⁵⁶ UNHCR, “Statute,” paras. 8 (i) and 10.

¹⁵⁷ Interview with UNHCR, Beirut, 22 April 2013.

3.2.1 Implementing Partners of UNHCR

UNHCR has an unprecedented expertise in the area of emergency situations and forced displacement. In the current crisis, it assists 4 million Syrians who are internally displaced persons (IDPs) and also the Syrians who are outside of the country.¹⁵⁸ Its work is supported by various implementing and operational partners. UNHCR in Lebanon currently has nine implementing partners amongst the local NGOs.¹⁵⁹ One of its implementing partners, an NGO offering counselling, legal advice and financial assistance to refugees, claims that the protection provided to the refugees by UNHCR “is a simple protection, the basics.”¹⁶⁰ Moreover, “the refugee certificate given by UNHCR has no legal effect vis-à-vis the Lebanese authority.”¹⁶¹

When I asked UNHCR about Lebanon not acceding to the 1951 Refugee Convention, the spokesperson answered that “it is not that important actually because the government has kept the borders open and has welcomed them.”¹⁶² It seems that from the point of view of the UNHCR, the international legal framework is not that salient and more pragmatic concerns how to help the people from Syria prevail. The situation, as described by UNHCR, of Lebanon having open borders and welcoming the refugees, changes when it is discussed by the NGO providing legal aid,

we have worked for those who have only been arrested for having entered Lebanon illegally, not for any other crime. We present a request based on the Convention against Torture to avoid deportation. Illegal entry entails prison, legal fees plus deportation. We pay those fees. Once they finish their prison sentence, they must be transferred to the General Security. Once they are released, they must have a specific sponsor or a place to go or they [the General Security] would send them back. They have to find

¹⁵⁸ Ibid.

¹⁵⁹ The partners of UNHCR are Amel Association, Association Justice et Miséricorde, Caritas – Migrant Centre, Danish Refugee Council, International Medical Corps, Makhzoumi Foundation, Norwegian Refugee Council, Restart and Save the Children International.

¹⁶⁰ Interview, Beirut, 19 April 2013.

¹⁶¹ Ibid.

¹⁶² Interview with UNHCR, Beirut, 22 April 2013.

a sponsor, we cannot do that for them, we are an NGO.”¹⁶³

It seems that the situation in Lebanon is critical because of its large scale. This goes hand in hand with the recent statement by the UN High Commissioner António Guterres who claimed that the Syrian crisis might be the worst humanitarian disaster the UN body has dealt with.¹⁶⁴ The scale of the crisis has been confirmed by an NGO, whose main focus is on education and health. This NGOs works with both registered and non-registered refugees, but the non-registered refugees need to sign a document in which they agree to become registered.¹⁶⁵ The registration process run by UNHCR is painfully slow due to high numbers of new arrivals. As stated by this NGO, “If they submit a request now [in April], they might become registered in July.”¹⁶⁶ And the official UNHCR numbers concur. By the end of April, there were 111,346 persons awaiting registration in Lebanon.¹⁶⁷ That is about a third of the total number of registered Syrian refugees in Lebanon.

3.2.2 UNRWA and Syrian Palestinian “double refugees”

The Syrian Palestinian refugees who escape to Lebanon are emblematic of the whole complexity of the international refugee regime. More than 400,000 Palestine refugees caught up in the conflict in Syria require humanitarian assistance, and over 42,000 of them have fled to Lebanon.¹⁶⁸ However, despite fleeing the same kind of violence as the Syrians, they fall under a different agency and they are assisted by UNRWA. As claimed by UNHCR: “We assist the

¹⁶³ Interview, Beirut, 19 April 2013.

¹⁶⁴ The Guardian, “Half of Syrian population.”

¹⁶⁵ Interview, Beirut, 24 April 2013.

¹⁶⁶ Ibid.

¹⁶⁷ UNHCR, “Syria Regional Refugee Response.”

¹⁶⁸ UNRWA, “Syria crisis situation update (Issue 44).”

Palestinians as much as possible but they fall under UNRWA's mandate. They would be referred to UNRWA."¹⁶⁹ By the same token, UNRWA spokesperson stated:

We have regular institutional meetings with UNHCR and extraordinary ones where necessary. The distinction between refugees from Syria served by UNRWA and UNHCR is clear. We deal only with registered Palestine refugees. We offer education, health services, relief and social services and emergency assistance.¹⁷⁰

Similar services to those offered by UNRWA, such as education and health, are also provided by UNHCR through its implementing partners.¹⁷¹ According to Loescher, the activities of various UN agencies are often uncoordinated.¹⁷² Hence, it might be difficult to determine what the rationale is for similar services being offered by two agencies instead of one. Gilbert also notes that in various situations there is multi-agency activity which makes it difficult to attribute responsibility to a single actor.¹⁷³

Concerning the current crisis, one of the NGOs also noted that some refugees benefit from multiple NGO services but others do not receive external support at all.¹⁷⁴ There is also another problem which has to do with organizations not being familiar with the situation on the ground. AMEL, a local Lebanese NGO, writes, "whereas some international donors prefer to provide free services for refugees as this is a portrayed need in the media, local dynamics show that this can result in misunderstanding and potential conflict in the field."¹⁷⁵ This can result in tensions between the refugees who benefit from free services and local inhabitants who have to

¹⁶⁹ Interview with UNHCR, Beirut, 22 April 2013.

¹⁷⁰ Christopher Gunness, e-mail message to author, 2 May 2013.

¹⁷¹ Interview, Beirut, 24 April 2013.

¹⁷² Loescher, "The Origins," 187.

¹⁷³ Geoff Gilbert, "Rights, Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order," *International Journal of Refugee Law* 10, 3 (1998): 349.

¹⁷⁴ AMEL Association, "Emergency Response: One year of humanitarian action with Syrian refugees in Lebanon," April 2013, accessed 12 May 2013, data.unhcr.org/syrianrefugees/download.php?id=1891, 6.

¹⁷⁵ *Ibid.*, 11.

pay for the very same services. A solution seems to be to offer the services for a nominal fee. Hence, coordination needs to be improved but more funding is also needed. Clearly, financial concerns are an important consideration in who is to take care of the Syrian Palestinian refugees but this split is running a risk that the Syrian Palestinian “double refugees” will become refugees nobody wants.

Unlike Jordan, which has refused to let in some of the refugees of Palestinian origin, Lebanon has kept the borders open and given the refugees 15-day visa which can be renewed for an additional fee. The Economist stated referring to the situation in Jordan:

Unlike the Syrians who stream into Jordan each night in their hundreds, no one formally recognizes the Palestinians as asylum seekers. The UN shunts responsibility from one agency to the next. Yet the Palestinians who are let into Jordan are relatively lucky. The UN says three-quarters of the 500,000 Palestinian refugees who have been living in Syria have been harmed in the uprising. More than 600 of them are thought to have been killed.¹⁷⁶

This shows that the Palestinian Syrian refugees are discriminated against by the host states. This issue is potentially the most problematic in the current refugee regime. At first sight, the mandate of UNHCR and UNRWA is clear. UNRWA is supposed to take care of the Palestinian refugees. Yet the current situation might not justify different treatment of these refugees just because of their ethnicity. Furthermore, the assistance provided by UNRWA and UNHCR is in many ways similar and hence, to justify the complementary existence of these two agencies can be difficult, if not impossible.

¹⁷⁶ The Economist, “Syria’s Palestinians: Stateless and hapless as ever,” 12 November 2012, accessed 2 April 2013, <http://www.economist.com/news/middle-east-and-africa/21566708-syrias-palestinian-refugees-are-being-both-thumped-and-cold-shouldered-stateless>.

3.3 State of Exception

The current predicament of Syrian refugees can be described as the state of exception. For Agamben, “the state of exception is not a special kind of law (like the law of war); rather, insofar as it is a suspension of the juridical order itself, it defines law’s threshold or limit concept.”¹⁷⁷ Moreover, it is “a situation in which the emergency becomes the rule, and the very distinction between peace and war (and between foreign and civil war) becomes impossible.”¹⁷⁸ There is no civil war in Lebanon, yet the mass influx of refugees to the country can be seen as the state of exception. Furthermore, it is clear that the situation in which the Syrians find themselves in Lebanon is in the realm of the extraordinary.

Many Syrians who stay in Lebanon rent apartments. The following situation described by Zeina, a Syrian refugee, can be seen as the norm in Lebanon. “We live in a house with 3 other Syrian families. We are pooling together our resources in order to be able to pay the high rent that has been soaring for the past 6 months.”¹⁷⁹ The rents in Lebanon have gone up and this drains the Syrian families’ resources. Hence, many refugees may have become homeless. As acknowledged by one NGO worker: “The concern of the Syrians is to survive. There are not enough job opportunities.”¹⁸⁰ The situation in Lebanon is even more difficult given the non-existence of the refugee camps.

As a response to influxes of persons fleeing from persecution, the UNHCR has from the very beginnings provided protection to refugees in the camps in the receiving states.¹⁸¹

¹⁷⁷ Giorgio Agamben, *State of Exception* (Chicago: University of Chicago Press, 2005), 4.

¹⁷⁸ Agamben, *State of Exception*, 22.

¹⁷⁹ AMEL Association, “Syrian Refugees Weekly Update,” submitted to UNHCR on 24 April 2013. On file with author.

¹⁸⁰ Interview, Beirut, 24 April 2013.

¹⁸¹ Gilbert, “Rights, Legitimate Expectations, Needs and Responsibilities,” 359.

Interestingly, official discourse does not acknowledge that the refugee camps for Syrian refugees exist in Lebanon. This is in spite of their resemblance to camps only lacking the official UNHCR logo. When asking the UNHCR in Lebanon, you get the answer: “There are no camps in Lebanon.”¹⁸² Another NGO concurs, “we have no camps, we have groups of people who are living together.”¹⁸³ Around 50% of the refugees are concentrated in the north of Lebanon, 40% in the Bekaa, and the rest in Beirut, its suburbs and the south.¹⁸⁴ When travelling outside of Beirut to the border with Syria, there are many of these shelters. At most, these places are acknowledged as “gatherings.” The semantic is not coincidental. Many people would not say it openly but it has been stated that “we [the Lebanese] don't have refugee camps because of the political situation.”¹⁸⁵ According to Agamben,

the paradoxical status of the camp as a space of exception must be considered. The camp is a piece of land placed outside the normal juridical order, but it is nevertheless not simply an external space. What is excluded in the camp is, according to the etymological sense of the term “exception” (*ex-capere*), *taken outside*, included through its own exclusion.¹⁸⁶

Interestingly, the structures of the Palestinian refugee camps in Sabra and Shatila are made into permanent buildings, yet they are referred to as “shelters” by the UNRWA employees. On the other hand, places which really are shelters and host the newly arriving Syrian refugees are not referred to as camps.

This chapter has investigated the role of UNHCR and its implementing partners in Lebanon in responding to the Syrian refugee crisis. It has been shown that UNHCR is suited to dealing with mass influx situations. Nevertheless, this crisis is nothing short of extraordinary and the funding which the UNHCR receives is not adequate to cover it. Another problem is the

¹⁸² Interview with UNHCR, Beirut, 22 April 2013.

¹⁸³ Interview, Beirut, 19 April 2013.

¹⁸⁴ UNHCR, “2013 UNHCR country operations profile – Lebanon.”

¹⁸⁵ Interview, Beirut, 24 April 2013.

¹⁸⁶ Giorgio Agamben, *Homo sacer: sovereign power and bare life* (Stanford: Stanford University Press, 1998), 96.

possible overlap between the work of UNHCR and UNRWA in assisting people taking refuge in Lebanon. This situation will be discussed further in the frame of the refugee regime complex.

4. REFUGEE REGIME COMPLEX

The current Syrian crisis has left Lebanon and other states neighbouring Syria overburdened with a large scale mass influx situation. The situation of mass influx means “the arrival across an international border of persons seeking protection in such numbers and at such a rate as to render individual determination of their asylum claims impracticable.”¹⁸⁷ Nevertheless, the refugee status determination in Lebanon is still ongoing. The international refugee regime represents a toolbox to deal with many refugee situations but one needs to be critical and ask whether there are some gaps and how to ensure that some people are not falling through the cracks of the international refugee regime. Hence, this chapter will deal with the respective roles of UNHCR and UNRWA in the current refugee crisis. The need to provide assistance is extremely urgent and the existing emergency response mirrors such concerns. Furthermore, this chapter will discuss the refugee regime complex in Lebanon and the recommendation to extend temporary protection in order to improve the present refugee regime.

4.1 UNHCR and UNRWA in Lebanon

International refugee regime is embodied in the work of the agencies of UNHCR and UNRWA. This section will compare the role of these two agencies and some similarity in their work in Lebanon will be noted. Furthermore, the critiques of both of these agencies will be unravelled. Clearly, there are differences between the mandates of UNRWA and UNHCR. The most obvious difference is the scope of their work. UNRWA was created to assist “Palestine refugees” in the Middle East, while UNHCR assists all other global refugees. In terms of staffing, UNRWA employs 29,000 staff, mainly Palestinians, and is the main employer in the

¹⁸⁷ UNHCR, *UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention Relating to the Status of Refugees*, 7 February 2005, accessed 3 April 2013, <http://www.refworld.org/docid/43f48c0b4.html>, para. 1.

refugee camps.¹⁸⁸ It also has around a hundred expatriate workers, mainly in senior decision-making positions. UNHCR, on the contrary, employs 7,000 officers.¹⁸⁹ However, many of its programmes are conducted by the local implementing partners, hence, reducing the need for the involvement of its already overstretched staff. Furthermore, both of the agencies struggle with the funding but it seems that the Syrian crisis has attracted more funding for both UNHCR and UNRWA.

As has been revealed in the previous chapters, both of these agencies are underfunded. This has to do with the need to raise their funds through *ad hoc* appeals rather than receiving a constant sum from the UN. Contrary to the common perception, the Syrian crisis has not diverted all the funds towards UNHCR but it has also increased the necessary emergency funding of UNRWA.¹⁹⁰ Nonetheless, the agency remains seriously underfunded. The total pledged amount against the UNRWA 2013 Response Plan stood at US \$55.6 million as of April 2013, which is equivalent to 61% of the total budget required (US \$ 91.24 million). The UNHCR is also lacking the necessary funding. The UNHCR Syria Regional Response Plan requires US \$ 493.76 million, out of which only 33% of the sum has been met as of 4 April 2013.¹⁹¹ The budget for UNHCR is much higher than that of UNRWA but it needs to be made clear that UNHCR works with numerous implementing partners. When the total levels of funding of those two agencies are compared and when it is adjusted for the numbers of refugees they are responsible for, their levels of funding are roughly equivalent.

¹⁸⁸ UNRWA, "Working at UNRWA," accessed 5 April 2013, <http://www.unrwa.org/etemplate.php?id=232>.

¹⁸⁹ UNHCR, "Staff Figures," accessed 5 April 2013, <http://www.unhcr.org/pages/49c3646c17.html>.

¹⁹⁰ Christopher Gunness, e-mail message to author, 2 May 2013.

¹⁹¹ UNHCR, "Syria Regional Refugee Response."

The funding is not the only problem for both of these agencies. UNRWA has often been criticized for perpetuating the Palestinian refugee problem.¹⁹² Especially during and after the Oslo Peace Process, the dissolution of UNRWA has been a discussed topic.¹⁹³ It needs to be questioned whether the arrangements made in early 1950s which were even then perceived as temporary can still work in the contemporary setting. UNHCR has also been criticized, albeit to a lesser extent than UNRWA. For example, Barnett claims that UNHCR is paternalistic and that it encourages early repatriation.¹⁹⁴ He argues that repatriation became equivalent to protection and that UNHCR sometimes manipulated information on purpose so that refugees will consent to returning home. This does not seem to be the case in the current Syrian crisis but it is problematic to predict how the situation will develop.

It does not seem that the mandates of UNHCR and UNRWA overlap but it is at least questionable why the persons fleeing the same conflict should be accorded different protection from two different agencies. Maybe it is high time for the two agencies to adjust their mandates and to incorporate the Palestine refugees who fall under UNRWA into the protection mandate of UNHCR. It is undeniable that UNRWA has a high level of expertise in assisting Palestinian refugees and it would be unwise to dismantle it entirely despite some of its shortcomings. This step would drastically damage the life chances of the Palestinian refugees. The next section will inquire about the refugee regime complex in Lebanon and the problems it poses for the international refugee regime as well as for the UN agencies.

¹⁹² For an example of these critiques see *Middle East Quarterly* 19, 4 (2012).

¹⁹³ UNRWA, "Exploding Myths," accessed 10 April 2013, <http://www.unrwa.org/etemplate.php?id=1029>.

¹⁹⁴ Michael Barnett, "Humanitarianism, Paternalism, and the UNHCR" in *Refugees in International Relations*, eds. Alexander Betts and Gil Loescher, (Oxford/New York: Oxford University Press, 2010), 123.

4.2 Regime Complex in Mass Influx Situation

The affinity between the humanitarian and international refugee regimes has been noted. During the current Syrian refugee crisis, it seems that humanitarian concerns prevail in dealing with the situation.¹⁹⁵ Chimni argued that nowadays, refugees no longer possess such an ideological or geopolitical value and this leads to the erosion of fundamental principles of refugee protection which are subtly replaced by the ideology of humanitarianism.¹⁹⁶ The Agambenian figure of the *homo sacer* seems to be interwoven in both the refugee and humanitarian regimes. The following excerpt shows the interplay between those two regimes.

The separation between humanitarianism and politics that we are experiencing today is the extreme phase of the separation of the rights of man from the rights of the citizen, in the final analysis, however, humanitarian organizations – which today are more and more supported by international commissions – can only grasp human life in the figure of bare or sacred life, and therefore, despite themselves, maintain a secret solidarity with the very powers they ought to fight.¹⁹⁷

Betts recently argued that IR literature has neglected “what complexity means as an independent variable for explaining the behaviour of international organizations.”¹⁹⁸ A part of the complexity that these organizations have to deal with has been described in the previous two chapters. However, the complexity goes beyond the international refugee regime when the institutionalized cooperation extends into human rights, security, or humanitarian regimes. Betts argues that there has been some overlap between refugee regime and other regimes such as human rights regime, which has complemented and reinforced the refugee regime.¹⁹⁹ For example, the Article 3 of the

¹⁹⁵ Interview, Beirut, 19 April 2013.

¹⁹⁶ B. S. Chimni, “Globalisation, Humanitarianism and the Erosion of Refugee Protection.” RSC Working Paper No. 3, February 2000, accessed 2 May 2013, http://www.rsc.ox.ac.uk/publications/working-papers-folder_contents/RSC_workingpaper3.pdf, 3.

¹⁹⁷ Agamben, *Homo sacer*, 78.

¹⁹⁸ Betts, “Regime Complexity,” 70.

¹⁹⁹ *Ibid.*, 71.

European Convention on Human Rights (ECHR) and of the Convention against Torture have strengthened the principle of *non-refoulement*.²⁰⁰ This was also acknowledged in an interview with one of the NGOs providing legal assistance to refugees when it has been ascertained that, in a way, “the Convention against Torture is more important than the [1951] Refugee Convention.”²⁰¹

What has been observed in Lebanon is the increased cooperation between the UN refugee agencies and other UN bodies (such as UNDP) and different NGOs. For example, the World Food Programme (WFP) is the only organization currently delivering food supplies.²⁰² Within this environment, the UNHCR has taken up the role of “protection cluster lead.”²⁰³ Hence, it has been recognized that the UNHCR can decide about manoeuvring in the different context and linking its work to other regimes and international organizations.²⁰⁴ These organizations can include the bodies within the UN as well as a range of other international institutions. However, this shift can also hinder the work of the current refugee regime. According to Betts, “the access of refugees to protection and solutions is determined as much within the security, development, human rights, humanitarian, labour migration, and travel regimes as it is by what happens in the refugee regime.”²⁰⁵ However, this complexity has encouraged a shift in the state policies to go beyond the confines of a regime.²⁰⁶ Moreover, there is a possibility for a regime shifting when

²⁰⁰ Betts, “Regime Complexity,” 72.

²⁰¹ Interview, Beirut, 19 April 2013.

²⁰² Interview, Beirut, 24 April 2013.

²⁰³ Betts, “Regime Complexity,” 74.

²⁰⁴ Betts, “Regime Complexity,” 75.

²⁰⁵ Betts, “Regime Complexity,” 75.

²⁰⁶ Betts, “Regime Complexity,” 76.

states avoid addressing problems through one regime and turn to a more favourable regime to their policy concerns.²⁰⁷

Finally, it can be said that a refugee regime in mass influx situation is even more vulnerable to change due to the complexity of the tasks. Regime complex has become a norm in the dealing with the refugee situation and this has been evidenced in the way how the Syrian refugee crisis has been handled. UNHCR has taken up the leading role in the distribution of aid, rather than other UN agencies. Hence, “it has gone beyond its traditional mandate of protecting and finding solutions for refugees to take on a growing role in humanitarian relief.”²⁰⁸ Crisp argued that UNHCR has entered a new “humanitarian marketplace” in which different organizations and agencies “simultaneously co-operate and compete with each other, all of them seeking to enhance their visibility, their fundraising potential, and hence their operational presence and impact.”²⁰⁹ The expansion of UNHCR’s mandate goes hand in hand with this trend and it has also been evidenced by its work in Lebanon. Furthermore, in line with UNHCR changing its role, there is a need to adjust the legal framework. Its alignment with the changing realities will be discussed further.

4.3 Extension of Temporary Protection

Given the multifaceted situation in the refugee regime complex, there is a need to extend the legal framework of the temporary protection of refugees. This needs to be done in order to adjust for the changing realities. Martin has argued for extending the Convention to “those migrants internally and externally displaced due to repression, conflict, natural disasters,

²⁰⁷ Betts, “Regime Complexity,” 76.

²⁰⁸ Betts, “Regime Complexity,” 77.

²⁰⁹ Jeff Crisp, “Refugees, Persons of Concern and People on the Move: The Broadening Boundaries of UNHCR,” *Refuge* 26, 1 (2009): 76.

environmental degradation, and development-induced displacements.²¹⁰ In the situation in which more regimes can be theoretically responsible for forced migrants, no one can be accountable for failures.²¹¹ Currently, the distinction between refugees and internally displaced persons (IDPs) is eroding and this is evident in the work of UNHCR. Crisp stated, “UNHCR has indeed been transformed from the Office of the High Commissioner for Refugees into something which is beginning to resemble an Office of the High Commissioner for Forced Migrants.”²¹² This has had an effect on the tasks UNHCR undertakes and its role vis-à-vis other international actors. For example, the UNHCR spokesperson in Lebanon stated that the refugees are not asking to be recognized as refugees but rather they seek assistance from UNHCR.²¹³ Therefore the humanitarian tasks of UNHCR are eroding its more traditional mandate.

As the UN High Commissioner for refugees claims: “The extent of human mobility today is blurring the traditional distinctions between refugees, internally displaced people, and international immigrants. Yet attempts by the international community to devise policies to pre-empt, govern, or direct these movements in a rational manner have been erratic.”²¹⁴ The expansion of UNHCR into areas beyond refugee protection is a practice which is deemed necessary by the existing humanitarian needs.²¹⁵ The humanitarian needs seem to prevail in tackling the Syrian refugee crisis and it is UNHCR who is responding to them and taking the lead role in this complex.

²¹⁰ Susan F. Martin, *The Uprooted: Improving Humanitarian Responses to Forced Migration* (Boulder: Lexington Books, 2005), 123.

²¹¹ Ibid.

²¹² Ibid., 74.

²¹³ Interview with UNHCR, Beirut, 22 April 2013.

²¹⁴ António Guterres, “Millions Uprooted: Saving Refugees and the Displaced,” *Foreign Affairs*, September–October 2008, 90.

²¹⁵ Crisp, “Refugees, Persons of Concern and People on the Move,” 76.

As the mass influx of Syrian refugees made apparent, there is a need for the extension of temporary protection of refugees to other areas. For more than a decade, UNCHR has been lobbying for the applicable procedures of the temporary protection as well as procedures for the operation of *prima facie* refugee status.²¹⁶ Such proposed adjustment of the international refugee regime, following the example of African and Asian states, would doubt make the current system less cumbersome.

Some change has already been happening on the EU level. In 2001, the EU passed the Council Directive 2001/55/EC whose purpose is

to establish minimum standards for giving temporary protection in the event of a mass influx of displaced persons from third countries who are unable to return to their country of origin and to promote a balance of effort between Member States in receiving and bearing the consequences of receiving such persons.²¹⁷

This Directive made clear how the EU states should act, should there be an instance of mass influx. However, this Directive has not been used one single time since its adoption. The movement of Syrians into Lebanon and neighbouring countries without doubt constitutes a mass influx and would benefit from a legal standing. So far, the Lebanese state has kept its borders open to newcomers but it can also decide to close them at a whim due to the lack of international law binding it. Should there be a temporary protection legal instrument on a global level, no such act would be permitted.

Despite consensus on the global level that there is a need for the extension of the temporary protection to persons fleeing civil strife, no further steps have been taken. In the “Note

²¹⁶ UNHCR, *International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations*, 8 October 2004, No. 100 (LV) - 2004, accessed 11 April 2013, <http://www.unhcr.org/42a6f1512.pdf>.

²¹⁷ EC Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, OJ L 212, 7 August 2001, Art. 1.

on International Protection in Mass Influx,” the UNHCR has highlighted the necessity “to extend protection to all persons fleeing conflict, whether or not they have been recognized formally as refugees.”²¹⁸ Moreover, “recognizing that States have often undertaken such protection as a humanitarian responsibility, without specific reference to international legal obligations, UNHCR considers it desirable to elaborate a clear basis which would enhance the security and predictability of this protection.”²¹⁹ Finally, political will is needed in order to work on the stated goal. UNHCR has emphasized that its role in the area of providing protection involves ensuring that the governments hosting refugees protect them and thus, the fulfilment of its protection mandate requires cooperation on governments’ part.²²⁰ This is clearly linked to governments providing funding to UNHCR and despite UNHCR having a legal personality on its own, it still depends on its cooperation with the governments.

International burden or responsibility sharing remains an important part of the international refugee regime. Some states might be lacking the necessary resources or capacity to provide protection for the incoming refugees. The international community should support the capacity of those states to provide effective protection of these refugees and where needed, contribute to burden-sharing. A common political response to the Syrian refugee crisis is needed. Given the graveness of the current conflict in Syria and the refugee flows it generates, it is of utmost importance to extend the protection outside of the scope of the 1951 Geneva Convention and to grant temporary protection to the people fleeing the conflict. This step has already been taken on the European level but perhaps a similar instrument could be adopted globally. Without the legal grounding, there is no guarantee that the protection to people will, in fact, be given and

²¹⁸ UNHCR, “Note on International Protection: International Protection in Mass Influx (submitted by the High Commissioner),” A/AC.96/850, accessed 2 May 2013, <http://www.unhcr.org/3ae68d404.html>, para. 9.

²¹⁹ *Ibid.*, para. 10.

²²⁰ *Ibid.*, para. 9.

the persons deserving protection could continue to be excluded at will. Despite the important role of the UNHCR, there is a need for the states to be willing to cooperate on the creation of this legal instrument.

CONCLUSION

This thesis recalls a story of two UN refugee agencies which are working side by side in Lebanon. It has evaluated the current international refugee regime and whether it is still adequate more than 60 years after its inception. As has been discussed in the first chapter, the nascent regime was deeply influenced by the legacy of the two World Wars and this was projected into the decision-making about classifying who counts as a refugee. These agencies – UNHCR and UNRWA - were set up within days from each other. No one was sure for how long they will last and today we can still see the consequences of their creation. A separate refugee agency recognized the Palestinians as refugees due to their ethnicity and place of residence. The Palestinian refugee issue has been rendered separate from the international refugee regime by the virtue of Article 1D of the 1951 Refugee Convention. Nevertheless, it was deeply influenced by the international refugee regime and shared many of its norms and restrictions.

At times, there has been an adjustment in the organizations' mandate, especially in the 1990s with a limited protection function during the Palestinian *Intifada* on part of UNRWA. UNHCR expanded its mandate during the war in the former Yugoslavia, which steered its direction away from its non-political mandate and towards advocacy. However, this advocacy or protection function is still lacking in the work of UNRWA. Protection was supposed to be accorded to the Palestinian refugees by the UNCCP, yet this body has been defunct since the 1950s. UNRWA has been of great importance in terms of addressing humanitarian needs of the Palestinian population and it has also proven invaluable when faced with the lack of political willingness in the host states. Therefore, the “anomaly” of the international refugee regime is not UNRWA itself but the fact that a group of refugees is excluded from the benefits of the

Convention due to their nationality. Therefore UNRWA should work together with UNHCR whose mandate is to provide protection, or it should extend its own protection mandate.

The Syrian crisis has represented a window of opportunity for increased cooperation between these two agencies. The issue of Syrian Palestinian “double refugees” has aroused some attention and it seemed that the time was ripe for the agencies to increase their cooperation and for the UNRWA refugees to be included within the new international refugee regime framework. As has been found out, the work performed by UNRWA is not that dissimilar from the work of UNHCR. The current Syrian refugee crisis shows that both agencies perform similar tasks and provide humanitarian support to the persons fleeing the conflict.

As has been shown throughout the thesis, the international refugee regime is influenced by other international regimes such as human rights and humanitarian regimes. In the case of Lebanon, the regimes are working together and exerting strong influence on each other. Their aims are increasingly similar and the humanitarian concerns prevail in the protection of the refugees and persons of concern in Lebanon. UNHCR and UNRWA are working with many partners who are either other UN agencies or international and local NGOs. As a result, the agencies whose main focus are not refugees, are increasingly working with refugees. By the same token, UNHCR is becoming increasingly humanitarian. Finally, the lack of cooperation between UNRWA and UNHCR in the areas outside of the issue of Palestinian Syrian “double refugees” is problematic due to similar nature of their work and a potential for overlap. Their lack of cooperation can be explained by historical reasons but with the shifting international refugee regime, closer cooperation between UNRWA and UNHCR is necessary. Both of these agencies, as well as the Palestinian refugees, would benefit from a closer cooperation between them.

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