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Maja Janmyr

Faculty of Law, University of Bergen, Bergen, Norway

ABSTRACT

When a host state rejects the international refugee law regime, yet faces an unprecedented number of refugees, how does the United Nations High Commissioner for Refugees (UNHCR) execute its mandate to provide international protection to these refugees? This paper seeks to attend to this pertinent issue by focusing on the role and practice of UNHCR in the context of the large-scale Syrian influx to Lebanon. This country insists that it is not a country of asylum, and flatly rejects ratification of the 1951 Convention on the Status of Refugees and its 1967 Protocol. In proportion to both its geographical and population size, however, Lebanon hosts the highest number of refugees in the world. This paper argues that Lebanon's recent policies aiming to decrease the number of Syrians in the country, by reducing access to territory and encouraging return to Syria, have heavily affected UNHCR's own ability to execute its international protection mandate. The article seeks to explore this issue further by, on the one hand, examining UNHCR's policies to recognise Syrians in Lebanon as refugees under international law, and, on the other, exploring its practice when it comes to registration of Syrian refugees, and the meaning of these practices for refugee protection in Lebanon.

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1. Introduction

When a host state rejects the international refugee law regime, yet faces an unprecedented number of refugees, how does the United Nations High Commissioner for Refugees (UNHCR) execute its mandate to provide international protection to these refugees? This article seeks to attend to this pertinent issue by focusing on the role and practice of UNHCR in the context of the large-scale Syrian influx to Lebanon. This country insists that it is not a country of asylum, and flatly rejects ratification of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.¹ In proportion to both its geographical and population size, however, Lebanon hosts the highest number of refugees in the world.² With approximately 1.5 million Syrian refugees, Syrians represent the vast majority.³

Lebanon has long been reliant on UNHCR to protect and assist, and to seek durable solutions for many of its refugees. With the Syrian influx, UNHCR has strengthened its

CONTACT Maja Janmyr  Maja.Janmyr@uib.no

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position as the primary provider for the country's refugees – its country budget even decoupling between 2012 and 2015. Yet UNHCR's operations have not been shielded from Lebanon's unwillingness to host Syrian refugees. This article argues that Lebanon's recent policies aiming to decrease the number of Syrians in the country, by reducing access to territory and encouraging return to Syria, have heavily affected UNHCR's own ability to execute its international protection mandate. The article seeks to explore this issue further by, on the one hand, examining UNHCR's policies to recognise Syrians in Lebanon as refugees under international law, and, on the other, exploring its practice when it comes to registration of Syrian refugees, and the meaning of these practices for refugee protection in Lebanon.

This article is divided into three main parts. The introductory part considers Lebanon's relation to the international refugee regime, including efforts to formalise UNHCR's presence in the country. It also briefly outlines UNHCR's involvement in providing protection and assistance to Syrian refugees in Lebanon since 2011. The second part examines UNHCR's consideration of Syrians as refugees under international law. It discusses the politics around UNHCR's usage of the term 'refugee' in Lebanon, as well as its reluctance to declare *prima facie* refugee status for Syrians, and its characterisation of the flight of civilians from Syria as a 'refugee movement'. It also details UNHCR's innovative practice of merging refugee status determination with its procedures for resettlement of refugees. The article's third part concentrates on UNHCR's practice of registration and de-registration of Syrian refugees, including a discussion of the meaning of this process for refugee protection. Before concluding, it also explores the Lebanese government's request that UNHCR suspend all new registrations of Syrians as of May 2015. The article is based on 16 months of fieldwork in Lebanon between 2015 and 2017, including more than 40 interviews with key informants in UN, non-governmental (NGO) and government agencies. In addition, it draws on an analysis of historical and contemporary legal materials and policies.

1.1. Lebanon and the international refugee regime

Although Lebanon has long refused to ratify the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, it is deeply embedded with the international refugee regime. UNHCR has had a presence in the country since 1963 and is considered by the Lebanese government to be a useful tool in dealing with the country's non-Palestinian refugees. The heaviest burden of carrying out status determination, registration, health-care, education, nutrition and livelihood assistance has thus primarily been shouldered by UNHCR.⁴ At the same time, UNHCR has taken a pragmatic approach towards the Lebanese government, rarely pushing for a Lebanese ratification of the 1951 Refugee Convention, and rather focusing on establishing an acceptable 'protection space' for the country's refugees.⁵

UNHCR's presence in Lebanon has also been challenging to formalise. When UNHCR first established itself on Lebanese soil, it did so within the scope of a so-called 'Gentleman's Agreement'. Only in 2003 was a more formalised memorandum of understanding (MoU) reached between UNHCR and Lebanon's General Security Office.⁶ This agreement concerned the 'processing of cases of asylum seekers applying for refugee status with UNHCR Office' and assigned the registration of asylum seekers and the conduction of

refugee status determination in specific cases to UNHCR.⁷ The MoU has notably been criticised by a number of legal scholars and human rights organisations; being negotiated only with the country's security agency, some have argued, it adopts a Lebanese perspective on refugees that is strictly one in which refugees are considered security threats.⁸ Claims have furthermore been made that the MoU not only legitimises the notion of Lebanon not being a country of asylum, but also helped introduce this approach as a central principle.⁹ Ever since, this principle has been incorporated into numerous official documents, and even judicial decisions.

Even more worryingly, the 2003 agreement contains a number of structural flaws and makes no mention of key refugee protection norms such as that of non-refoulement. UNHCR has naturally no authority to force resettlement countries to accept refugees, yet the agreement only accepts UNHCR's protection role against the expectation that refugees recognised by UNHCR be resettled within less than a year.¹⁰ It is clear that UNHCR lacks both the authority and the actual capacity to deliver on its substantive commitments.¹¹ This fact is also acknowledged within the organisation, where UNHCR staff have admitted that the agreement fails to fulfil the standard normally required when negotiating such MoUs, some even referring to it as a 'mistake' on the part of UNHCR.¹² The MoU has been subject to considerable disagreements about its interpretation and therefore essentially broke down shortly after its negotiation.¹³

UNHCR has ever since struggled to find new ways to regulate formally its cooperation with the Lebanese government. In the past decade, there have been attempts at drafting a new MoU – most recently in 2011, when UNHCR presented the Lebanese government with a detailed proposal for a new MoU.¹⁴ This draft agreement was allegedly 'totally different' from the previous MoU in that it was 'closer to the 1951 Refugee Convention'.¹⁵ It addressed key protection gaps identified in the 2003 MoU, and included issues such as non-refoulement, refugee status determination, registration, detention and the right of refugees to work as well as durable solutions. The draft MoU was in any case flatly rejected 'by the Lebanese government, by the Ministries, by everybody'.¹⁶ Points of contention appear to have been not only the agreement's application of the (in Lebanon) politically loaded terms 'refugee' and 'asylum-seeker', but also refugees' right to work. This means that, today, the legal mandate for UNHCR's work is largely left undefined, allowing for more pragmatism on the part of UNHCR, but also – as this article will show – making the organisation more vulnerable when it comes to governmental interference in its operations.

1.2. UNHCR and the Syria refugee response in Lebanon

As peaceful protests in Syria transformed into open revolt, in April 2011, the first 5000 Syrian refugees entered Lebanon. In this early stage, the country won significant praise from human rights groups and UNHCR for its open borders and non-encampment policy.¹⁷ In reality, however, Lebanese political actors struggled to find a common ground for handling the situation and long adopted a policy of not creating a policy to deal with the emerging refugee crisis. With one political block opposing the Syrian regime and the other openly supporting it, the Lebanese state officially agreed to remain neutral regarding the Syrian conflict. One expression of this neutrality was arguably the increased transfer of responsibility for the country's refugees to organisations such

as UNHCR. As the then Minister of Social Affairs explained in May 2011, the best way to deal with the Syrian influx is under the auspices of the United Nations (UN): 'Working under the UN would be discrete [*sic*] and more effective in this case'.¹⁸ Another was the adoption of a so-called 'disassociation policy' to the events in Syria in June 2012.¹⁹

The pace and scale of displacement to Lebanon was nevertheless overwhelming, and between 2012 and 2014, host communities, civil society networks and UNHCR constituted primary providers for Syrian refugees with the Lebanese government more or less 'in the back seat'.²⁰ As the number of Syrian refugees in Lebanon passed the 100,000 mark in October 2012, one government official experienced how 'UNHCR assumed the role of the state to take care of the Syrian refugees'.²¹ In 2013 and 2014, UNHCR registered on average 47,000 refugees per month. At the same time, it saw an unprecedented increase in its Lebanon budget – from 49 million USD in 2012 to 362 million USD in 2013.²² As I have highlighted elsewhere, however, UNHCR did not use its expanded importance and influence to press for policy reform or for Lebanon to strengthen its commitment to international refugee law.²³

While calls by government politicians to 'stop receiving refugees' had been voiced already in 2013, it was only when the one million registered refugees mark had been passed, in April 2014, that the government took decisive action for greater control over the presence of Syrians.²⁴ Following the formation of a new government in September 2014, the Council of Ministers adopted its first clear policy on Syrian displacement. The policy had one explicit goal – to decrease the number of Syrians in Lebanon by reducing access to territory and encouraging return to Syria.²⁵ In addition to de facto sealing Lebanon's borders, the policy had devastating effects on the well-being of the country's Syrian refugees, leaving many Syrians living 'illegally' in the country and under extremely harsh and marginalised conditions.²⁶ In the view of one senior UNHCR staff member, the Lebanese government had used a 'sledgehammer when what they needed was minor surgical interventions. Everything was destroyed'.²⁷

The increased government involvement in refugee affairs also greatly affected UNHCR, which, in the eyes of one government official, had become 'more important than the President of the Republic ... [it became a] major decision-maker in the country'.²⁸ Indeed, UNHCR was faced with claims that it posed a threat to Lebanon's sovereignty, and as Lebanon's Foreign Minister Gebran Bassil commented to local media in November 2014: 'From now on, Lebanon will be making refugee policies while others, including the UNHCR, will work according to them and not the other way around'.²⁹ In an attempt to reduce the official number of refugees in the country – which by March 2015 had grown to almost 1,200,000 – in May 2015, the government suspended UNHCR's registration of Syrian refugees. I will discuss the circumstances of this suspension in a later section of this article.

Another clear example of the strengthened involvement of the Lebanese government in refugee affairs was its involvement in drafting the Lebanon Crisis Response Plan (LCRP) in the autumn of 2014. To date, two LCRPs have been drafted: the first released in 2015 and the other in January 2017. These plans are part of the Regional Refugee and Resilience Plan (3RP) that addresses refugee protection and assistance needs in the entire region, and are important not least because they lay down the premise of Lebanon's relation to the international refugee regime. The preamble notably establishes that:

Lebanon is not a State Party to the 1951 Convention Relating to the Status of Refugees and has not signed its 1967 Protocol. Lebanon implements some provisions of the Convention on a voluntary basis and considers that granting the refugee status to individuals lies within its margin of discretion.³⁰

And, further, that:

Lebanon is neither a country of asylum, nor a final destination for refugees, let alone a country of resettlement. Lebanon considers that it is being subject to a situation of mass influx and reserves the right to take measures aligning with international law and practice in such situations.

This latter wording has been modified slightly in the 2017–2020 LCRP, in which the phrase ‘measures aligning with international law and practice’ is replaced with a statement that Lebanon ‘reserves its sovereign right to determine their [temporarily displaced Syrians] status according to Lebanese laws and regulations’.³¹ However, because Syrian refugees/displaced have no status under Lebanese national law other than that afforded to Syrian nationals in general, it is unclear exactly on what basis in Lebanese laws and regulations the government seeks to assert status determination. In any case, this modification is yet another example of the increased control the Lebanese government is wielding when it comes to the refugee response.

The drafting of the 2015 LCRP nevertheless constituted one of the first instances where the Lebanese government and UNHCR properly met to work on a joint document. Interviews confirm that it was a difficult process riddled with misunderstandings.³² On the one hand, government representatives were frustrated with the fact that the LCRP was – at least in the initial stages – largely drafted by the UN. As one official expressed:

The UN brings in its best, but its best are not Lebanese, they’re not Arabs ... they barely understand the context. Their best are coming from a Sudan context, a Nairobi context, Kenya context, you know, sometimes a context where there isn’t even a government ... We’re not your textbook case. And for people to treat us like they would treat any other country, that would be a mistake. And this is the mistake that the UN committed at the beginning.³³

UNHCR staff equally perceived the negotiations as ‘protracted and quite bitter’.³⁴ In one staff member’s view the Lebanese government was far more concerned with terminology and window-dressing than it was with the plan’s activities and actual substance:

We didn’t always understand what they were after ... they had views on our use of terminology, but I also believe that they just wanted to mess with us ... to show us that ‘this is our country, you can’t just do what you like just because that’s what you’ve done in the past three years’.³⁵

Most disagreements appear to have concerned the employment of the ‘refugee’ label. I will discuss this more closely in the following section.

2. UNHCR’s consideration of Syrians in Lebanon as refugees

2.1. UNHCR and the ‘refugee label’ in Lebanon

The refugee label has been politically loaded in Lebanon for more than a half-century, and a widely shared opinion has prevailed that the only ‘official’ refugees in the region are the

Palestinians.³⁶ Since the negotiation of the 2003 MoU, the category of acknowledged refugees has expanded slightly, to include also those Iraqis and Sudanese who fall under the scope of the agreement.³⁷ I have elsewhere discussed in detail the key reasons why Lebanon seeks to avoid the refugee label, and these include a fear that doing so would not only entail the permanency of refugees on Lebanese territory, but also trigger the application of the international refugee law regime.³⁸ Avoiding the term altogether may in this sense be seen as an attempt to circumvent any legal obligations to those meeting the criteria set out in the refugee definition.

With the Syrian influx to Lebanon, discussions of how to label those seeking safety in the country were brought to a head. The Lebanese government was adamant about UNHCR not using the term ‘refugees’, and the initial ad-hoc registration was therefore simply of ‘Syrian citizens who have fled into Lebanon’.³⁹ A senior UNHCR staff recalls the pragmatic approach taken by UNHCR:

... I learned from one of my bosses when I first started with UNHCR – ‘We don’t care about terminology, we care about treatment’ ... And it’s true ... My question was, ‘Ok, if we don’t call them refugees, are they permitted to stay [in Lebanon]?’ And the answer was ‘yes’ – ok, fine, then we won’t call them refugees. So we didn’t call them refugees in the beginning ... It wasn’t a fight I wanted to take at the time.⁴⁰

At the time, UNHCR sought to be flexible not only towards the Lebanese government, but also in order to ‘tread carefully’ with the Syrian government.⁴¹ UNHCR’s Syria office was one of the organisation’s largest, providing protection and assistance to hundreds of thousands of – mostly Iraqi – refugees.⁴² One senior UNHCR staff member explains:

We were unwilling to risk that operation by brawling and fussing about a few thousand Syrians in Lebanon, who, in addition, everyone thought were returning to Syria within weeks. So we had to handle our relation also with the Syrian government. And we tried keeping a low profile.⁴³

Another senior UNHCR staff member confirms that

When this whole thing started [the refugee influx to Lebanon] we [UNHCR] didn’t want to make a big thing. And there were also concerns about exclusion. We had no idea who would cross the border, and in Lebanon there was a fear of a whole army coming over ... we could not go deep into doctrinal issues, that would have been very difficult and dangerous.⁴⁴

As the refugee response intensified, UNHCR appears to have found itself increasingly juxtaposed between the principles of international refugee law and local views on asylum. Lebanese political factions, split on the conflict in Syria, went to great lengths to avoid recognising those Syrians fleeing to Lebanon as individuals fleeing from persecution. In discussions with UNHCR, Lebanese authorities allegedly insisted upon labelling the Syrians crossing the border as ‘our brothers and sisters from Syria who are visiting us’, but later settled on the more expedient label ‘displaced Syrians’.⁴⁵ By this time, however, UNHCR’s response had grown more conventional; one senior UNHCR staff member recalls how ‘It was somewhere there that we insisted on using the refugee terminology ... Mostly out of practical reasons, to be honest’.⁴⁶ This approach was nevertheless not inconsequential; as one senior UNHCR official acknowledges: ‘I regret myself ...

sometimes I think I miscalculated our advocacy by not taking into account the heritage of the Palestinian issue in how people were discussing the Syrian question'.⁴⁷ In other Middle Eastern contexts, the application of what is perceived as an ahistorical 'humanitarian blueprint' when it comes to dealing with the particularities of displaced populations has indeed been heavily criticised.⁴⁸

In Lebanon, however, UNHCR continued to 'drag' more refugee terminology into the response, and in the summer of 2014, UNHCR 'again had to hear that we're [UNHCR] not supposed to call them refugees'.⁴⁹ At the time, its Representative to Lebanon, Ninette Kelley, pragmatically responded that: 'The important thing for us is the question of are people being protected. They are here. Whether they call them displaced persons or refugees, what this country has done should be held up as an example to the world'.⁵⁰ Despite Kelley's reconciliatory tone, terminology remained a main point of contention in the drafting process of the 2015–2016 LCRP. Lebanese authorities resisted the application of the refugee label in the plan notwithstanding UNHCR's argument that applying it was in Lebanon's own interest. UNHCR argued that the label would attract more donor funding,⁵¹ and as one government official recalls, 'Refugees, refugees, refugees. We can't get any assistance if we don't use the term refugees'.⁵²

The final document nevertheless attempts to resolve these conflicting views and includes a preambular text box that lays out the premise of the refugee response. It specifies, on the one hand, that the Lebanese government refers to individuals who fled from Syria to Lebanon after March 2011 as 'displaced', and, on the other, that: 'the United Nations characterises the flight of civilians from Syria as a "refugee movement", and considers that most of these Syrians are seeking international protection and are likely to meet the refugee definition'.⁵³ The text box also establishes the following terminologies when referring to persons who fled from Syria after March 2011:

1. "persons displaced from Syria" (which can, depending on context, include Palestine refugees from Syria and Lebanese Returnees as well as registered and unregistered Syrian nationals),
2. "persons registered as refugees by UNHCR", and
3. "de facto refugees". (both 2. and 3. referring exclusively to Syrian nationals who are registered with UNHCR or seeking registration).

The quite peculiar notion of 'de facto refugees' appears to have been a suggestion by the Lebanese government in direct response to UNHCR's concern over donor funding. However, as one senior UNHCR staff member comments, by adopting the wording 'de facto', it was clear that Lebanon wanted to emphasise that 'these people are not refugees legally speaking. They are not refugees falling under the Refugee Convention. These are other people'.⁵⁴

The current 2017–2020 LCRP mirrors largely the above categories – with one important exception. Six years into the Syrian conflict, Lebanon is increasingly worried about the permanency of the country's Syrian refugees. This concern is expressed by no longer referring to individuals who fled from Syria into Lebanon after March 2011 merely as 'displaced persons'; in the new LCRP, these are explicitly referred to as '*temporarily displaced individuals*'.⁵⁵

2.2. *Prima facie status and refugee character of flight*

UNHCR has not made any official declaration of *prima facie* refugee status for Syrians, in Lebanon or elsewhere, nor has it developed a temporary protection regime.⁵⁶ Rather, as exemplified in the above-mentioned LCRP, it equivocally characterises the flight of civilians from Syria as a ‘refugee movement’.⁵⁷ Scrutiny of UNHCR’s practice in Lebanon, however, suggests that UNHCR indeed applies what could be considered a policy of *de facto prima facie* refugee status determination.

Refugee status on a *prima facie* basis is normally recognised on the basis of readily apparent, objective circumstances in the country of origin.⁵⁸ UNHCR considers it equivalent to full refugee status in the country where such recognition is made, and a *prima facie* refugee therefore enjoys the full rights contained in the 1951 Refugee Convention and/or another applicable instrument.⁵⁹ In accordance with its mandate, UNHCR has the authority to declare persons to be refugees, based on a *prima facie* determination.⁶⁰ This means that UNHCR could have declared the flight of civilians from Syria as precisely *prima facie* refugees, as it has done in other, similar circumstances.

Rather than doing so, however, UNHCR has characterised the flight of civilians from Syria as a ‘refugee movement’. Its first International Protection Considerations with regard to people fleeing the Syrian Arab Republic, issued in June 2012, specify that ‘persons who left Syria and have approached UNHCR and the respective host Governments have been registered as *persons seeking international protection* and are being assisted. Arrivals need to be afforded international protection and associated rights ...’.⁶¹ In December 2012, UNHCR issued the first update to these Considerations, where it for the first time establishes that it ‘... characterises the flight of civilians from Syria as a *refugee movement*’.⁶² No mention is made of *prima facie* status, even though the updated considerations specify that Syrian civilians and persons who had their habitual residence in Syria will ‘continue to require international protection until such time as the situation in Syria improves and allows for voluntary return in safety and dignity’. This, and the notion of refugee movement, is reiterated in later updates.⁶³

UNHCR’s characterisation of the flight of civilians from Syria as a ‘refugee movement’ is also mirrored in the preambles of Lebanon’s Crisis Response Plans. Here, UNHCR considers that the Syrians in this refugee movement ‘are seeking international protection and are likely to meet the refugee definition’.⁶⁴ This approach has been emphasised in previous UNHCR Protection Considerations, where in 2014 UNHCR stated that most Syrians seeking international protection ‘... are likely to fulfil the requirements of the refugee definition contained in Article 1A(2) of the 1951 Convention, since they will have a well-founded fear of persecution linked to one of the Convention grounds’.⁶⁵ This appears to suggest that there is merely a *presumption* that a Syrian seeking protection is a refugee until the opposite is proven, and that there is a deliberate aim *not* to provide *prima facie* refugee status to these Syrians.

However, UNHCR has more recently specified that ‘only in exceptional cases will asylum-seekers from Syria not meet the criteria of the refugee definition in the 1951 Convention ...’.⁶⁶ Its practice in Lebanon and interviews with UNHCR staff also seem to suggest that it is indeed a *prima facie* refugee protection approach that prevails in Lebanon in all but in name. The concept of refugee movement is ‘a new construction’ that is ‘a more careful formulation’ than *prima facie* recognition.⁶⁷ It is a ‘confusing’

notion but nonetheless one that a senior UNHCR staff member considers to be ‘more or less – not formally – but more or less the same thing as prima facie status’.⁶⁸ UNHCR staff furthermore confirm that it is primarily the prima facie refugee protection approach that is applied: ‘in Lebanon we have used first and foremost – but not completely – but first and foremost a prima facie policy’.⁶⁹ Although avoiding explicitly issuing such a declaration, UNHCR stopped short ‘only millimetres before prima facie recognition’.⁷⁰

A question arises as to why, then, did UNHCR avoid formally declaring prima facie refugee status? One UNHCR staff member argues that

From a UNHCR legal policy perspective there is no added or lesser value to not formally declaring them as prima facie refugees due to the principle set out in paragraph 28 of the Handbook on Procedures and Criteria for Determining Refugee Status.⁷¹

Indeed, paragraph 28 of this handbook stipulates that:

A person is a refugee within the meaning of the 1951 Convention as soon as he fulfils the criteria contained in the definition. This would necessarily occur prior to the time at which his refugee status is formally determined. Recognition of his refugee status does not therefore make him a refugee but declares him to be one. He does not become a refugee because of recognition, but is recognized because he is a refugee.

In contrast to the view of this UNHCR staff, it is arguable that there is indeed a clear added value of formal declaration; recognition of a person as a refugee is vital to their protection and status. I will in a later section show precisely how refugee recognition by way of registration proved imperative for legal stay and adequate protection in Lebanon. And while the UNHCR staff interprets the above to mean that ‘one can rule out the possibility that the reason they were never formally declared as prima facie refugees had any legal basis’,⁷² it is arguable that the basis for UNHCR’s approach is essentially legal in the sense that it is without doubt related to the fact that the main countries hosting Syrian refugees are not signatories to the 1951 Refugee Convention. As I will show below, however, the reasons for the lack of declaration are *also* political and practical.

One suggestion is that UNHCR perceives the political costs associated with refugee status determination, however prima facie, to outweigh the potential protection gains. UNHCR has elsewhere stopped short of recommending a prima facie finding of refugee-hood, and rather resorted to ambiguous formulations regarding a risk group’s status (cf. ‘refugee movement’), due to a wariness of adverse reactions by states.⁷³ Previous experiences have also proven that host states in the Middle East have attached little value to neither UNHCR’s declaration of prima facie refugee status nor to its temporary protection schemes. In 2003, UNHCR first applied a temporary protection regime to the Iraqi influx, and in December 2006, it declared all Iraqi nationals – except those from Iraqi Kurdistan and those falling under the Convention’s exclusion clauses – to be refugees on a prima facie basis. None of these practices was formally acknowledged by the Lebanese authorities.⁷⁴ Lebanon’s current insistence that Syrians in Lebanon are not to be labelled ‘refugees’, and its aversion even to UNHCR refugee registration, furthermore suggest that the country would indeed be reluctant to acknowledge UNHCR prima facie refugee status for Syrians in the country.

Another suggestion is that it is a question of organisational efficiency. In light of the global rise in refugee numbers and the subsequent need to enhance the capacity of

UNHCR, the office has recently adopted a new strategic direction concerning the role of refugee status determination in ensuring protection and access to rights.⁷⁵ The key question in any given context is whether or not mandate refugee status determination (RSD) is necessary to secure access to refugee rights for the individual. Precisely because RSD consumes much of UNHCR's human and economic resources, in each operation, UNHCR now explicitly seeks to explore alternative protection strategies that do not require RSD.⁷⁶ Mandate RSD may as such be replaced by accelerated case processing, enhanced registration and simplified procedures, or, as in the Syrian case in the Middle East, the merging of RSD and resettlement case processing.⁷⁷ I will return to the question of the merged procedure in a subsequent section.

Equally related to the question of organisational efficiency is the prevailing concern about individuals who might fall under the Refugee Convention's exclusion clauses.⁷⁸ Legally, *prima facie* status carries no expectation that articles 1C to 1F do not apply. However, as decisions to reject refugee status require an individual assessment, the *prima facie* approach does not normally allow for the identification of individuals falling under these articles.⁷⁹ There is as such a fear that an opportunity arises for combatants and others to exploit the *prima facie* process. UNHCR has indeed had some painful experiences in relation to individuals who are excludable from refugee status, and when it came to the Iraqi influx, there was a real risk that some might wrongly be identified as persons of legitimate concern to UNHCR.⁸⁰ Because the exclusion of individuals from international refugee protection has severe consequences, however, it cannot be done without due process, which, evidently, is a resource-demanding and meticulous procedure.⁸¹ The enormous scale of Syrian displacement, coupled with the fact that it is predominantly UNHCR, and not host states, involved in RSD in this region, understandably makes UNHCR hesitant to engage in such costly exclusion practices. At the same time, considering the fact that *prima facie* refugee status determination was developed precisely to deal with situations that involved large-scale displacement and in cases where individual refugee status determination was deemed not necessary – or, perhaps more often, where host state/UNHCR capacities were thinly stretched – this approach must be seen as somewhat paradoxical.

A question remains then, as to what status, if any, UNHCR confers to Syrians in Lebanon. In contrast to *prima facie* refugee status, simply characterising a flow as a 'refugee movement' is not an established means of determining refugee status under international law. In Lebanon, however, some UNHCR staff appear to be convinced that UNHCR's characterisation of Syrians as a 'refugee movement' and the *prima facie* approach are more or less the same in all but formality, in consequence making the current policy 'difficult to understand'.⁸² Several factors point to a form of *de facto* *prima facie* refugee status being implemented in Lebanon despite this not being formally declared. As confirmed by UNHCR staff, it is essentially the *prima facie* refugee status approach that for the most part permeates the Office's operations in Lebanon; UNHCR unquestionably *treats* Syrians as *refugees*. Indeed, as one staff explicitly asserts, 'de facto they [Syrians in Lebanon] are *prima facie* because ... this assumption of refugee is there'.⁸³ This approach is confirmed in interviews with UNHCR staff, where one acknowledges that: 'as far as we are concerned, they are refugees',⁸⁴ and another confirms that: 'we consider all Syrians to be refugees'.⁸⁵ The consistent referral to 'Syrian refugees' by the High Commissioner himself lends further support to this finding.⁸⁶

The de facto prima facie-approach is also evident in UNHCR's registration of Syrians as 'refugees', and not, as UNHCR's International Protection Considerations would suggest, merely as 'persons seeking international protection'.⁸⁷ UNHCR's website on the Syrian Regional Refugee Response notably states the same number of 'registered Syrian refugees' and number of 'persons of concern'. As I will detail in a later part of this article, UNHCR's registration processes of Syrians in Lebanon is also similar to other procedures of prima facie refugee status determination, where information on the basis of flight from a given place during a specified period is readily and efficiently established during the process of registration.⁸⁸ Before discussing the particularities of these registration processes, however, I wish to explore UNHCR's practice of merging the refugee status determination and resettlement procedures.

2.3. Merged RSD/resettlement procedure

Apart from the registration process, which, as I will argue in another section below, may be seen as a form of prima facie refugee status determination, the only situation in which Syrians in Lebanon undergo any form of refugee status determination proper is during the resettlement procedure. As prima facie refugee status alone does not give rise to a right to consideration for resettlement, this 'extra' RSD step is not uncommon in UNHCR operations; although, as one senior UNHCR staff member admits, in Lebanon 'it is difficult for partners or for resettlement countries to understand the RSD step for the Syrians, when in fact everybody, including UNHCR, refers to them as refugees'.⁸⁹ However, the purpose of this RSD 'is not to determine the refugee status' but rather to confirm that 'there are no credibility concerns and no serious exclusion concerns'.⁹⁰

Normally, prima facie refugee status determination is seen as qualitatively different from other forms of refugee status determination as it necessitates a lower standard of proof and does not provide scope for consideration of exclusion or non-inclusion from the 1951 Refugee Convention.⁹¹ States have thus generally been reluctant to resettle such refugees without a further, substantive RSD interview.⁹² And while refugee status may be recognised on a prima facie basis pursuant to any of the applicable refugee definitions, including the UNHCR Statute,⁹³ in Lebanon, resettlement states request that UNHCR provide them only with bona fide refugees who meet the criteria in Article 1 (A) of the 1951 Refugee Convention. As one senior UNHCR staff member explains: 'Because resettlement countries do not want these so-called war refugees, the persecution must be individual. So we have to look into that, but we're doing it primarily in order to resettle refugees'.⁹⁴

While resettlement screening and RSD are related, they are normally considered to be separate processes.⁹⁵ In Lebanon, however, UNHCR combines the resettlement interview with an expedited RSD in what it calls a 'merged procedure'. This procedure aims to ensure that resources are deployed only where completely necessary. It was initiated in 2014 when UNHCR found individual status determination not to be feasible following the large scale of displacement. In light of the objective situation in Syria, and the strong nature of the claims, UNHCR also considered regular individual determinations not to be necessary.⁹⁶ As such, the process 'starts already with a strong assumption of eligibility'.⁹⁷ Regional standard operating procedures have been developed to this end for use not only in Lebanon, but also in Egypt, Iraq, Jordan and Turkey.⁹⁸

The merged RSD resettlement interview follows registration and case identification. The process is, as mentioned, 'not an RSD that is conducted by RSD staff, with ... the full procedures', but rather one in which 'a case gets identified for resettlement, we [UNHCR] identified that it's vulnerable, it then comes to the resettlement colleagues that will ascertain that it qualifies for inclusion: the person is a refugee and there are no exclusion concerns'.⁹⁹

The starting point for any merged procedure is thus vulnerability, which includes, for example, survivors of violence/torture, women and girls at risk, or those with medical needs or disabilities.¹⁰⁰ The process is described as follows:

Firstly we [UNHCR] do a selection where we pick out those who are most vulnerable. And then we look closer and closer: are you really vulnerable? Yes, but really, really vulnerable? And that's how the pool all the time decreases. And then when you're satisfied that you have the individuals that really are the most vulnerable, that's the time to confirm that they really are Convention refugees – that they meet the criteria in Article 1A and not in Article 1F.¹⁰¹

As explained by a senior UNHCR staff member, this procedure is allegedly 'different from how we normally do it within UNHCR ... In one sense we start off in the wrong end, and that's why it can look a little weird'.¹⁰² In addition to vulnerability, case identification includes an assessment of the individual's willingness and suitability for resettlement, as well as the absence of exclusion issues.¹⁰³ Peculiarly, this expedited RSD process does not exclude anyone from refugee status, but merely 'de-prioritises' them for the purposes of resettlement: 'If you don't have any dirt or red flags coming up, and you meet the criteria in Article 1(A), then you are forwarded to resettlement. Those who are removed from the resettlement programme, they are more question marks really'.¹⁰⁴

Importantly, the reasons for de-prioritisation vary, and are not necessarily in relation to having a claim under the 1951 Convention. While they are commonly related to possible exclusion triggers, they may also be related to family composition issues; cases that are 'complex enough that they would require more time to be able to clear, unless they are strictly urgent, will not be prioritised for resettlement'.¹⁰⁵ Individuals initially included in the resettlement programme, but who change their minds in the course of the process and are unwilling to be resettled, also fall under the category of 'de-prioritised' cases.

A formal determination of status is made after an in-depth interview, which also includes preparation of the Resettlement Registration Form. Once again, if a case does not meet the criteria for submission, it will be de-prioritised. In this merged procedure, UNHCR thus does not 'go deep into Article 1(F) and go through the whole way'.¹⁰⁶ It does not exclude any individual from refugee status:

We don't go and look at Article 1(F) and say that this person is really not a refugee. They may have been part of a militia, but there is nothing that suggests that their participation in that militia falls under Article 1(F), but we know that the resettlement countries will not accept this person anyway.¹⁰⁷

UNHCR specifically considers that the following profiles should be de-prioritised during the process:

- Military: e.g. post-March 2011, Lebanese civil war (1975–1991) involved in combat, etc., Republican Guards, Military Police, ranks of Captain onwards.
- Paramilitary/militant groups: Members of pro-government armed groups, e.g. Shabiha, People's Army, Free Syria Army (FSA), Islamic State (IS), Jabhat Al-Nusra, Muslim Brotherhood, Lebanese Hezbollah. Includes civilians engaged in armed conflict, individuals assisting combatants.
- Informants: Individuals who report political or criminal matters to the state apparatus or opposition groups (excludes persons providing information while under torture or threat of torture).
- Prisons/detention centres: Staff who work in detention facilities, including in courts, police departments, security apparatus, military, government ministries, ad hoc facilities.¹⁰⁸

While these profiles are typically de-prioritised, in certain situations a case may be considered 'strictly urgent' – for example due to a medical need or protection concerns.¹⁰⁹ A strictly urgent case is referred to UNHCR's RSD staff for a classic RSD procedure, and if the issues initially flagged as 'complex' are cleared, this case comes back to the resettlement unit and the merged procedure is continued.

There are two main reasons why UNHCR chooses to de-prioritise rather than to exclude individuals. Firstly, and as already mentioned, excluding an individual from refugee status is immensely resource demanding; the very purpose of the merged procedure is to ensure that resources are used only where entirely necessary. As such, de-prioritisation is simply a 'blunt tool' used to put aside cases in the resettlement process.¹¹⁰ Secondly, the humanitarian nature of UNHCR's operations entail that preserving life and limb is sometimes more important than the need to identify excludable individuals. In the words of one UNHCR staff member: 'we are looking at such a small percentage of the total refugee population – we've picked out the most vulnerable in Lebanon. We can't attack these! And remove their international protection, when we don't for anyone else'.¹¹¹ This approach parallels UNHCR's justification elsewhere that providing short-term protection to excludable people is inevitable under the prima facie refugee status determination approach: 'The humanitarian imperative of preserving life dictates that admission to safety and material assistance has to take precedence over the need to identify those who do not deserve refugee status'.¹¹²

3. UNHCR registration of refugees from Syria

3.1. Procedures and status

Registration procedures are a fundamental component of international protection, and, under the prima facie approach, they are the principal way in which individuals are identified as refugees.¹¹³ Yet UNHCR's registration of Syrian refugees is one of the more contentious issues in its Lebanon operations, with the government not only suspending registration but also requesting that UNHCR de-register certain individuals. I will get back to the details of this suspension and de-registration in sections below; first, I will briefly explore the registration procedures, and what being registered has meant for receiving protection and assistance in Lebanon.

In any given context, the level of registration is generally determined by the operational objectives and constraints.¹¹⁴ In Lebanon, however, UNHCR's registration of Syrian refugees appears to go beyond collecting the minimum amount of information seemingly required in similar circumstances.¹¹⁵ While the procedure is not considered to be a refugee status determination, it does address some RSD issues, including the collection of biodata (including religion and ethnicity), photographs, biometric data (iris scans), brief reasons for flight and fear of return, and copies of documents.

One of the most important issues during UNHCR's registration procedure in Lebanon is the collection of information on military history and the civilian character of asylum screening.¹¹⁶ Individuals who may be active combatants or who only recently renounced their arms undergo a more thorough interview process. Based on multiple indicators, an initial interviewer may flag a case as a potential combatant, and, once flagged, more senior registration staff do a combatant assessment. This assessment should follow very strict standard operating procedures and apply benefit of the doubt.¹¹⁷ Those who are believed to be or have been associated with armed groups are not registered, but may re-apply for registration after approximately six months.¹¹⁸ In general, however, only a very low percentage of Syrians who tried to register with UNHCR were deemed ineligible for registration. In March 2014, for example, only 1.5% of those who tried to register were considered ineligible, primarily because they were already registered or were Lebanese nationals.¹¹⁹

As of December 2016, 1,011,366 Syrians were registered with UNHCR as refugees. However, this figure is not believed to adequately reflect the true number of Syrian refugees in Lebanon. UNHCR essentially considers 'any Syrian outside Syria as a refugee',¹²⁰ and makes little distinction between those Syrians who are registered, and those it simply labels 'unregistered refugees'. The 2017–2020 LCRP, therefore, specifies that Lebanon has 'welcomed around 1.5 million refugees fleeing war-torn Syria'.¹²¹ The Lebanese government accepts – and even emphasises – this figure when it comes to explaining the effect of the sudden population growth on Lebanon's society and infrastructure.

The government is nevertheless reluctant to accept the figure when it comes to identifying those in need of refugee protection. In fact, government ministers have sometimes even invoked the 1951 Refugee Convention when arguing that not all Syrians entering Lebanon should be considered refugees. In 2014, the Minister of Social Affairs Rashid Derbas is quoted as saying: 'The only refugees that Lebanon is willing to accept are those coming from areas close to the fighting, in line with the Geneva Convention of 1951'.¹²² Thus, the Lebanese government frequently contends that many Syrians in Lebanon are simply economic migrants who are not fleeing violence but rather looking for work.¹²³ As I will explain below, this ambition to re-categorise Syrian refugees as economic migrants is reflected also in the Lebanese government's residency policies for Syrians.¹²⁴

Registered refugees receive a UNHCR registration certificate, which is valid for two years in the first instance and entitles refugees to international protection and humanitarian assistance. It has not traditionally conferred formal status recognised by the Lebanese government, nor has it exempted refugees from penalties associated with irregular entry or a lack of residency in Lebanon.¹²⁵ That said, the certificates initially provided an element of protection. As one senior UNHCR staff member explains:

The UNHCR certificate ... at the beginning of the crisis had a bit of value because it helped in checkpoints or things like that. But five years down the line it's a paper that does not help you at the checkpoint anymore. The first year, the authorities were a bit surprised, 'Ooh, it's an official document'. But after two years they were like, 'Yeah, it's an official document but it's not one which allows you to cross the checkpoint'.¹²⁶

Since the government's adoption of a new residency policy for Syrians and its concurrent suspension of UNHCR registration, however, it is arguable that being registered with UNHCR has become ever more important. The 2015 residency policy provides two primary options for Syrian nationals to obtain residency: sponsorship by a Lebanese citizen or reliance on a UNHCR registration certificate.¹²⁷ In other words, a Syrian can be lawfully staying in Lebanon if s/he is registered as a *refugee* with UNHCR, or is an *economic migrant* under the sponsorship system. This means that UNHCR registration has arguably been afforded legal value, even leading to what observers have called 'a semi-recognition of refugee status'.¹²⁸

In February 2017, Lebanon's General Security also announced that the 200 USD visa fee normally required would be waived for Syrian refugees who registered with UNHCR before 2015, or obtained residency through their UNHCR certificate at least once in 2015 or 2016.¹²⁹ The details and the implementation of this policy are yet to be decided upon but, in principle, it would allow almost a million Syrian refugees to stay legally in Lebanon and without the threat of arrest for visa violations. The policy nevertheless excludes the estimated 500,000 Syrian refugees not registered with UNHCR, and appears to exclude registered refugees who renewed their residency through sponsorship by a Lebanese national.

3.2. Refugee de-registration and cessation of refugee status

One of the more complex issues with regard to UNHCR's registration of Syrian refugees is its practice of de-registration.¹³⁰ Beginning in 2014, when the number of registered Syrian refugees hit the one-million mark, the Lebanese government has repeatedly tried to limit the number of registered refugees. It has done so, on the one hand, by setting out specific criteria, or profiles, for refugee registration, and, on the other, by simply requesting UNHCR to suspend registration and even to de-register Syrians already registered.¹³¹ In the summer of 2014, it began monitoring border crossings, and recorded about 18,000 Syrians registered as refugees who were allegedly commuting across the border. Claiming that these Syrians, as they did not appear to fear returning to their home country, were not entitled to their UN-designated 'refugee status', the government requested UNHCR to de-register the refugees in question. It also issued a new regulation that aimed at revoking the special status of those travelling back to Syria upon re-entry to Lebanon.¹³²

Interestingly, the Lebanese government once again invoked the 1951 Refugee Convention – to which it is not a party – to limit the entry of Syrian refugees and to decrease the number of registered refugees. The Ministry of Interior specifically cited Article 1(C) on cessation of refugee status, under which the Convention inter alia shall cease to apply to a refugee if s/he has voluntarily re-availed himself of the protection of the country of his/her nationality.¹³³ A key government official nevertheless acknowledges that the

Convention was used here simply in a strategic manner to justify the request to de-register certain refugees:

... someone told this to me. One of the human rights activists. You can use this as a leverage. I took note. I never read the Convention ... Because I was hammered with questions from UNHCR, and lawyers, and international human rights orgs ... I was like, 'Give me an answer!' So they gave me this!¹³⁴

UNHCR is of the opinion that registered individuals and their cases should be regularly reviewed to determine whether they should remain persons of concern. Once a person is no longer of concern to the organisation, they should be de-registered.¹³⁵ In Lebanon, however, UNHCR appeared surprisingly compliant when it de-registered people whose return to Syria showed that they are not in need of international protection or assistance.¹³⁶ By the end of June 2014, allegedly 12,345 Syrians had 'lost their refugee status specifically because of commutes into Syria'.¹³⁷

This was nevertheless only a small portion of the much larger number of refugees who were de-registered during this time. In October 2014, UNHCR's Representative to Lebanon Ninette Kelley told local media that 68,000 Syrian refugees had their 'status revoked' between June and October of that year.¹³⁸ While some of these cases involved individuals who failed to contact UNHCR after a period of time, other cases appear more questionable. UNHCR allegedly removed refugee status from certain individuals because they were 'deemed not to be in need of protection any longer, after a routine interview conducted annually prior to renewing refugee documents'. As the Representative explains:

We have looked at those names and tried to determine what number of those names, because there are a lot of names, also matches our database, and then we have called people in ... to interview them and find out the reasons for their going back. And we have deregistered people for whom their going back to Syria has shown that they aren't in need of international protection or assistance, and that's something that we have done willingly with the government, recognizing that refugee status is for persons who have a well-founded fear of persecution and are fleeing civil unrest inside Syria.¹³⁹

This statement is interesting for a number of reasons. The reference to refugee status strengthens the argument that the registration process in itself indeed constitutes a *prima facie* refugee status determination; de-registration cannot normally happen until after some form of refugee status determination has been made. UNHCR's Handbook for Registration notably specifies five conditions under which an asylum-seeker or refugee is no longer of concern and therefore can be de-registered: final rejection of asylum claim; cessation of refugee status; cancellation of refugee status; revocation of refugee status; and death.¹⁴⁰ This suggests that UNHCR's de-registration of refugees indicates the ending of a (*de facto*) *prima facie* refugee status established under the registration process.

While there are several conditions under which refugees may be de-registered, of most relevance here appear to be those on cessation of refugee status as laid out in Article 1(C) of the 1951 Refugee Convention. These notably include the voluntary re-availment of national protection and voluntary re-establishment in the country where persecution was feared. The application of the first of these conditions is precisely what the Lebanese government used as justification for requesting UNHCR de-registration in the first place.

It is nevertheless legally complex and rare. Not only must ‘the true intention of the individual to re-avail themselves of the protection of the country of nationality ... be confirmed’, the individual must also actually obtain such protection.¹⁴¹

Voluntary establishment, on the other hand, is understood as return to the country of nationality or country of former habitual residence with a view to residing permanently there. This means that ‘a temporary visit to the former home country, such as a “go and see visit” or to visit a sick family member, does not constitute “re-establishment” and will not involve loss of refugee status’.¹⁴² Merely entering the country is not sufficient. And as a senior UNHCR staff member explains in the Lebanese context, ‘most Syrians who returned did so perhaps only to check on their house, visit family or bury a family member that died. Or, often, to get healthcare which is cheaper in Syria than in Lebanon’.¹⁴³ For such reasons, and to the frustration of the Lebanese government, UNHCR allegedly de-registered far fewer individuals than the Lebanese government initially hoped and expected:

We [UNHCR] don’t normally go into each and every case, but often after a while we realise that this person is no longer here, or we realise that this person has twenty stamps in his passport in the past month. But now the Lebanese asked us to go through all of the cases, and that’s what we did, but we used our own criteria. And that of course led to that not as many as they were hoping were de-registered.¹⁴⁴

Notwithstanding UNHCR’s assurances that their own criteria and guidelines were used in the de-registration processes, some concern may still be warranted. UNHCR’s own Handbook on Registration notes that the processes around review and de-registration are rarely simple, and are sometimes nearly as detailed and complex as status determination.¹⁴⁵ For this reason, they are often unclear, and as UNHCR furthermore has warned:

Criteria for determining that a person is no longer of concern are not always well defined and their application is not evident. It can be difficult to assess or to know who is no longer of concern within a large and diverse population.¹⁴⁶

Yet legal scholars such as Michael Kagan have criticised UNHCR precisely for being ‘too casual’ in the past when it comes to taking refugee status away from people.¹⁴⁷ Similar concerns about whether the cases of the de-registered in Lebanon were adjudicated fairly have been expressed by scholar Dallah Stevens.¹⁴⁸ Indeed, for de-registration to be lawful, it would require a full range of procedural safeguards, including the chance to prepare a response.

Despite these concerns, the Lebanese government has continued to encourage the increased de-registration of Syrian refugees. After the issuance of new entry and residency regulations in January 2015, UNHCR received new requests to de-register 1400 Syrian refugees who had arrived in Lebanon after the new regulations entered into force.¹⁴⁹ Finally, in May 2015, UNHCR was instructed to suspend all registrations of Syrians.

3.3. Suspension of UNHCR registration

One way the Lebanese government has asserted greater control over the Syrian presence on its territory is by its involvement in UNHCR’s registration process by, on the one hand, and as explained above, requesting UNHCR to de-register refugees, and, on the other, suspending UNHCR’s registration practices altogether. As Lebanon’s Minister of Foreign

Affairs Gebran Bassil has reiterated on numerous occasions, 'It must be us, in our capacity as the Lebanese government, who decide who is a refugee and who is not. Not the UNHCR'.¹⁵⁰ The Foreign Minister has similarly argued that 'the conditions to register refugees should be the responsibility of the state rather than the UN'.¹⁵¹ Thus, in May 2015, when UNHCR had registered close to 1.2 million Syrian refugees, the Ministry of Social Affairs notified UNHCR that all new registrations of Syrians should be suspended, including individuals already in the country and new arrivals.

The official reason given for the suspension of registration was that a new mechanism for registration of refugees was to be established,¹⁵² but as of 2017, this new instrument has yet to materialise. There have been previous negotiations about a joint UNHCR–government registration apparatus, and more recently even a governmental attestation procedure for Syrians in the country, but both these initiatives appear to have been scrapped. The Lebanese government is nevertheless adamant about re-evaluating UNHCR's registration files – as one government advisor explains, for the Lebanese government, 'it's not a *prima facie* thing. And for us not everybody that comes from Syria is a refugee'.¹⁵³ Even though the Ministry of Interior has assured that no Syrian would be forcibly returned whatever the results of the new procedures, human rights concerns have been raised in connection to the increased governmental influence on evaluation and registration of Syrians in the country.¹⁵⁴

For the Lebanese government, a more important aim with the suspension was simply to 'stop the numbers'.¹⁵⁵ As local media reports, 'at the end of the year, the calculations should show more deactivations than new refugees'.¹⁵⁶ Essentially, this decrease in refugee numbers would correspond with an increase in the number of Syrian economic migrants. In other words: when registration with UNHCR no longer was an option, Syrians could not obtain a residency visa in Lebanon by way of a UNHCR registration certificate, and were instead forced to secure residency as economic migrants through the sponsorship system. This was hoped to ease societal and political tensions among Lebanese; because Lebanon long has hosted a considerable number of Syrian labourers, the 'Syrian migrant', unlike the 'Syrian refugee', is perceived by many as less of a threat to Lebanon's social fabric. This re-labelling of refugees as economic migrants would therefore be 'easier to manage' since 'by saying [that the Lebanese government has] 700,000 economic migrants in Lebanon ... the pressure of refugee settlement ... will decrease'.¹⁵⁷

UNHCR officials point out that the suspension of registration is simply 'window-dressing': 'when the government decides that UNHCR no longer should register new refugees, that's just a question of perception. The refugees are there whether or not UNHCR registers them'.¹⁵⁸ For some in the government, however, this new policy appeared at first sight to be a 'win-win situation': 'So we increase the number of Syrian economic migrants and we decrease the number of Syrian refugees. But we keep everybody in Lebanon! But under different hats. What's wrong with that?'¹⁵⁹ That said, it did not take long until government officials internally began to question the viability of the policy's dichotomy between economic migrants and refugees. This system, one government official argues, 'was built on the wrong assumptions ... it was built on the idea that I can separate between real refugees and economic migrants'.¹⁶⁰ Indeed, the suspension of registration appears thus not to have had any particular effect on the number of Syrians in Lebanon, in contrast to, for example, Lebanon's largely concurrent decision to *de facto* close the official border.

However criticised, the suspension of UNHCR's registration remains ongoing, the only exception being newborn babies, born in Lebanon to Syrian parents who are already registered with UNHCR.¹⁶¹ This practice nevertheless stirred political debate in 2015 and 2016, when the Ministry of Foreign Affairs argued that the registration of newborns 'would constitute a disguised and hidden prelude to resettle those displaced Syrians on Lebanese territory'.¹⁶² UNHCR was similarly accused of 'exceeding its prerogatives' and 'violating Lebanese sovereignty'.¹⁶³ The issue was eventually solved *inter alia* by officially referring to the registration of Syrian newborns as 'add-ons' rather than 'registration of newborns'.

While UNHCR considered itself 'duty bound to comply' with the suspension order,¹⁶⁴ it has in the absence of registration procedures resorted to 'recording' individual refugees. This is done by collecting only basic information and biometrics in UNHCR's Refugee Assistance Information System (RAIS) database.¹⁶⁵ One government official estimates that UNHCR had recorded an approximate 40,000 Syrians by June 2016.¹⁶⁶ While recording is ostensibly done only for assistance purposes, what UNHCR in practice considers assistance in these cases appears to be very broad. As a senior UNHCR official explains, 'for us it is also protection, so if a case approaches us and needs psychosocial, legal assistance, protection, etc., that's part of our assistance ...'.¹⁶⁷ Recorded individuals are reportedly also eligible for resettlement abroad.¹⁶⁸ This essentially means that the main difference between those who are recorded and those who are registered is that those who are recorded do not get a UNHCR certificate, which, as previously explained, has for many become essential for residency in Lebanon.¹⁶⁹

4. Conclusions

One decade ago, Lebanese lawyers and refugee activists Ghida Frangieh and Samira Trad observed that no protection regime can be effective 'when it is solely implemented by UNHCR without the involvement of the Lebanese authorities and in the absence of any national framework for refugee protection ...'.¹⁷⁰ In the current Syrian influx to Lebanon, this statement has proved particularly true. This article has examined the role and practice of UNHCR when it comes to exercising its international protection mandate in the context of the large-scale Syrian influx to Lebanon. It finds that UNHCR has often been juxtaposed between the principles of international refugee law and Lebanon's own approach to asylum and Syrian refugees.

Although UNHCR appears to have filled a leadership vacuum and shouldered much responsibility for the refugee response, due to the lack of any formalisation of its presence the legal mandate for its work in Lebanon has largely been left undefined. As such, UNHCR has arguably become increasingly exposed to governmental interference in its operations. This article has shown how the Lebanese government has repeatedly tried to limit the number of registered refugees, on the one hand by setting out specific criteria, or profiles, for refugee registration, and, on the other, by simply requesting UNHCR to suspend registration and even to de-register Syrians already registered.

The uncertain political climate has also entailed more pragmatism on the part of UNHCR, with Lebanon's constantly shifting policy positions cultivating ambiguity and uncertainty when it comes to UNHCR refugee status determination and registration. Being a registered refugee is increasingly being directly linked to being allowed to live legally in Lebanon; yet, as this article finds, UNHCR's registration of Syrian refugees is

one of the more contentious issues in its Lebanon operations. The situation for Syrian refugees in Lebanon has in consequence become legally more complex and piecemeal, with different systems of law and policy being applied on both a global and a local level.

In such blurred circumstances, the level and quality of protection *inter alia* differs among those individuals whom UNHCR considers refugees but who are not registered; those who are registered refugees; those who are not registered but are recorded refugees; and those who are registered refugees but may at some point have renewed their residency in Lebanon under the sponsorship system. An additional layer of uncertainty is added when the starting point for many of UNHCR protection interventions is *vulnerability*, by which certain categories of people are perceived to be, by definition, vulnerable. The arguably essentialist categorical 'ideals' of 'vulnerables' have been critiqued for overlooking heterogeneity and implying a fixed state of being which conceptually rules out a change of circumstances.¹⁷¹ Herein lies much potential for future research when it comes to UNHCR's operations in Lebanon.

The article particularly explored one legally grey area in which the bases and parameters are far from properly defined, namely UNHCR's policies to recognise Syrians in Lebanon under international law. UNHCR has avoided formally declaring *prima facie* refugee status to those individuals fleeing Syria, preferring to equivocally characterise the influx as a 'refugee movement'. Yet it is unclear what this means legally speaking, or what it means, as the article finds, that UNHCR considers Syrians in Lebanon to be, if not *prima facie* refugees, then *de facto* *prima facie* refugees. An examination of UNHCR's position suggests that it is intentionally vague in an effort to avoid unnecessary, and, from a protection point of view, potentially detrimental, confrontations with an unwilling host state while at the same time keeping within the boundaries of established refugee protection norms. This stopping short of *prima facie* declaration, coupled with rather ambiguous formulations regarding a risk group's refugee status, appear indeed to be a practice that UNHCR has applied elsewhere.¹⁷²

This practice also appears to be in line with UNHCR's recent policy position to, in each operation, explicitly explore alternative protection strategies that do not require refugee status determination.¹⁷³ What it leads to, however, is the cultivation of an approach in which refugee status appears essentially irrelevant to securing protection and refugee rights. In such an approach, it appears as if vulnerability assessments, and not refugee status, are the primary guide to UNHCR's protection work. UNHCR's practices in Lebanon thus suggest that it is by being pragmatic that UNHCR believes it best offers protection on the ground. Sometimes, however, such pragmatism appears to be at the expense of core international norms and humanitarian values.

Notes

1. *Convention Relating to the Status of Refugees*, 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954); *Protocol Relating to the Status of Refugees*, 31 January 1967, 606 UNTS 267.
2. Lebanon is estimated to have an approximate 6.2 million inhabitants. Central Intelligence Agency (CIA), 'The World Factbook', www.cia.gov/library/publications/the-world-factbook/.
3. UNHCR and Government of Lebanon, 'Lebanon Crisis Response Plan 2017–2020' (2017), www.3rpsyriacrisis.org/wp-content/uploads/2017/01/Lebanon-Crisis-Response-Plan-2017-2020.pdf.

4. Michael Kagan, 'The UN "Surrogate State" and the Foundation of Refugee Policy in the Middle East', *University of California Davis Journal of International Law and Policy* 18 (2012): 307–42; Ruben Zaiotti, 'Dealing with Non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment', *International Journal of Refugee Law* 18, no. 2 (2006): 333–53.
5. Maja Janmyr, 'No Country of Asylum: "Legitimizing" Lebanon's Rejection of the 1951 Refugee Convention', *International Journal of Refugee Law* 29, no. 3 (2017): 438–65.
6. UNHCR, 'The Memorandum of Understanding between the Directorate of the General Security (Republic of Lebanon) and the Regional Office of the UN High Commissioner for Refugees, Concerning the Processing of Cases of Asylum-Seekers Applying for Refugee Status with the UNHCR Office' (Geneva, 9 September 2003).
7. UNHCR, 'Memorandum of Understanding', art. 8.
8. Interview with legal scholar, 8 March 2016. All interviews were conducted in confidentiality, and the names of interviewees are withheld by mutual agreement.
9. Interview with lawyer, 11 March 2016. The MoU affirms that 'Lebanon does not consider itself an asylum country', and specifies that an 'asylum seeker' means a 'person seeking asylum in a country other than Lebanon'. UNHCR, 'Memorandum of Understanding', preamble.
10. UNHCR, 'Memorandum of Understanding', art. 5, 9.
11. Kagan, 'UN "Surrogate State"'.
12. Interviews with UNHCR officials, 13 April 2016; 17 May 2016.
13. Interview with UNHCR official, 13 April 2016; interview with lawyer, 11 March 2016.
14. UNHCR and Government of Lebanon, 'Draft Memorandum of Understanding between the Government of Lebanon and the Office of the United Nations High Commissioner for Refugees'. See also UNHCR, 'UNHCR Global Appeal 2013 Update: Lebanon' (Geneva: UNHCR, 2013).
15. Interview with government official, 10 June 2016.
16. Ibid. This was confirmed in the interview with a lawyer on 11 March 2016.
17. Lewis Turner, 'Explaining the (Non-)Encampment of Syrian Refugees: Security, Class and the Labour Market in Lebanon and Jordan', *Mediterranean Politics* 20, no. 3 (2015): 1–19.
18. Antoine Amrieh, 'Syrian Refugees Begin to Trickle Back across the Border', *Daily Star*, 31 May 2011, <http://www.dailystar.com.lb/News/Lebanon-News/2011/May-31/139933-syrian-refugees-begin-to-trickle-back-across-the-border.ashx#>.
19. Permanent Mission of Lebanon to the UN, 'Baabda Declaration Issued by the National Dialogue Committee on 11 June 2012', annexed to UN doc. A/66/849-S/2012/477 (2012). For a discussion of Lebanon's disassociation policy, see Daniel Meier, 'Lebanon: The Refugee Issue and the Threat of a Sectarian Confrontation', *Oriente moderno* 94 (2014): 382–401.
20. Interview with government official, 10 June 2016.
21. Ibid.
22. For an overview of UNHCR's budgets in Lebanon year by year, see UNHCR website, http://reporting.unhcr.org/node/2520#_ga=1.61195755.63040930.1444294083.
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Note on contributor

Dr Maja Janmyr is currently a research fellow at the Faculty of Law, University of Bergen, and will in 2018 begin work as a professor of International Migration Law at the Faculty of Law, University of Oslo. Janmyr is also an affiliated scholar at the Issam Fares Institute (American University of Beirut). She has published widely on a range of refugee law issues, including a monograph on the human rights responsibilities of the United Nations High Commissioner for Refugees (UNHCR). Her research interests are broadly in the fields of international refugee law and socio-legal approaches to international law.