



No Country of Asylum: ‘Legitimizing’ Lebanon’s Rejection of the 1951 Refugee Convention

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ABSTRACT

How do States ‘legitimize’ their non-ratification of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees? This article examines the case of Lebanon, a country frequently hailed by the international community for its generosity towards refugees, and currently hosting the highest number of refugees in the world in proportion to its population size. While Lebanon engaged actively in the establishment of the international refugee regime, it has long insisted that it is not a country of asylum and steadfastly rejects ratification of the major refugee law instruments.

Based on 10 months of field research, this article makes four arguments as to why Lebanon continues to resist ratification of the 1951 Refugee Convention and its Protocol. First, it argues that there is a widespread and real, or simply politically expedient, uncertainty as to the obligations that come with the Convention. This includes a belief that the Convention requires that Lebanon allow for the permanent settlement of refugees on its territory. Secondly, it argues that the responsibility-shift for refugees to third parties such as the United Nations High Commissioner for Refugees brings about obvious advantages for Lebanon, and has made it less inclined to become a party to the Convention. Thirdly, it argues that the ‘good-neighbourliness’ principle between Arab countries holds that Lebanon should not employ the term ‘refugee’ because doing so would put the State into positions that could violate the good neighbour principle; essentially, ratifying the Convention would entail a duty to recognize certain forced migrants as refugees. Finally, the article argues that many Lebanese government officials and policymakers consider Lebanon’s accession to the Convention redundant for three key reasons. First, Lebanon applies the provisions of the Convention and Protocol on a voluntary basis, so that there is no need for ratification; secondly, Lebanon already has human rights obligations towards refugees on its territory by virtue of its membership of the United Nations and its

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ratification of a number of core human rights instruments; and, thirdly, due to the 'crisis' in international refugee law, in which many States appear to reject the Convention altogether, Lebanese decision makers are now questioning the relevance of these instruments.

1. INTRODUCTION

The 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees (the 1951 Refugee Convention) are the two primary international legal instruments that provide for the protection of the world's refugees. However, in the Middle East, few States have acceded to these instruments, and no regional refugee regime such as those found in Africa or Latin America exists.¹ This is seemingly paradoxical for a region in which forced migration has long been a standard element of life, and where refugees may even be seen as a 'defining feature'.²

In the literature, significant work has been done to explain Middle Eastern States' non-commitment to international refugee law.³ However, few studies have explored the particular circumstances of any one of these States.⁴ It is arguable that the reasons for non-accession to the Convention vary between States, and, although some explanations may be valid throughout the region, important nuances may be lost by viewing these States as a group. This article intends to address this gap in the literature by providing an examination of the key arguments used by one of these States – Lebanon – to 'legitimize' its rejection of the 1951 Refugee Convention.

Unlike many other States in the region, Lebanon engaged actively in the establishment of the international refugee regime. In addition, while many refugee populations in Lebanon have historically been marginalized and mistreated,⁵ the international community has often lauded the country's approach to refugees. In 2014, for example, the United Nations (UN) Secretary-General stated that, 'Lebanon is a key pillar in the international framework for the protection of Syrian refugees, and without it, that entire system would collapse.'⁶ Indeed, a strong national myth in Lebanon identifies it as the cradle of international human rights, and the country, with its perceived geography,

¹ Although attempts were made in 1992 with the drafting of the Declaration of Refugees and Displaced Persons in the Arab World. In the end, the Declaration has failed to be influential, endorsed only by Egypt.

² R Zaiotti, 'Dealing with Non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment' (2006) 18 *International Journal of Refugee Law* 333, 333. See also D Chatty, *Displacement and Dispossession in the Modern Middle East* (Cambridge University Press 2010).

³ See generally D Stevens, 'Legal Status, Labelling, and Protection: The Case of Iraqi "Refugees" in Jordan' (2013) 25 *International Journal of Refugee Law* 1; Zaiotti (n 2); M Kagan, 'The UN "Surrogate State" and the Foundation of Refugee Policy in the Middle East' (2012) 18 *University of California Davis Journal of International Law and Policy* 307.

⁴ For an important exception, see Stevens (n 3).

⁵ N Erakat, 'Palestinian Refugees and the Syrian Uprising: Filling the Protection Gap during Secondary Forced Displacement' (2014) 26 *International Journal of Refugee Law* 581; F De Bel Air, 'Migration Profile: Lebanon' (European University Institute, 2017/12) 4.

⁶ 'Lebanon Cannot Bear Brunt of Syrian Refugee Crisis Alone, UN Relief Official Warns' (*UN News Centre*, 18 March 2014).

diversity, freedom, and openness, is widely believed to have historically attracted those seeking refuge from persecution.⁷ Today, Lebanon hosts the highest number of refugees in the world in proportion to its estimated population size of 6.2 million.⁸ With 1,011,366 registered Syrian refugees in December 2016, Syrians represent the vast majority of refugees in the country.⁹ There are also an estimated 504,000 Palestine refugees registered with the United Nations Relief and Works Agency (UNRWA) and 42,000 Palestine refugees from Syria (PRS), in addition to a mere 16,000 from countries such as Ethiopia, Iraq, and Sudan.¹⁰

Despite these large numbers, the Lebanese government insists that it is not a country of asylum, and rejects, in principle, the local integration of refugees. This approach can be traced back to the Lebanese Constitution of 1926 (as amended in 1990), which appears to prohibit any permanent settlement of foreigners. It is also cemented in the key document laying out the UN and government response to the country's Syrian refugee presence, the Lebanon Crisis Response Plan (LCRP), which states that: 'Lebanon is neither a country of asylum, nor a final destination for refugees, let alone a country of resettlement.'¹¹

The unwillingness to host refugees is furthermore reflected in the lack of formal domestic refugee legislation. Asylum issues are instead attended to through immigration laws. The 1962 Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country¹² contains six articles relating to asylum. The asylum provisions in the 1962 Law on Entry and Exit have only been applied once since the end of

⁷ See generally I Salamey, *The Government and Politics of Lebanon* (Routledge 2014); W Harris, *The New Face of Lebanon: History's Revenge* (Markus Wiener Publishers 2006).

⁸ CIA, *The World Factbook* <<https://www.cia.gov/library/publications/the-world-factbook/>> accessed 24 October 2016. This figure is nevertheless disputed. For a discussion, see De Bel Air (n 5) 1.

⁹ The true number of Syrian refugees in Lebanon is nevertheless disputed, following the government's decision in May 2015 to suspend UNHCR's registration of Syrian refugees. M Janmyr, 'Precarity in Exile: The Legal Status of Syrian Refugees in Lebanon' (2016) 35 *Refugee Survey Quarterly* 58, 66.

¹⁰ UNHCR, 'The Situation of Palestinian Refugees in Lebanon' (2016) 2 <<http://www.refworld.org/pdfid/56cc95484.pdf>> accessed 29 May 2017. Other sources suggest that the number of Palestine refugees in Lebanon may be considerably lower; while 400,000 refugees were registered with UNRWA in 2010, a survey that same year estimated that the number of Palestine refugees effectively residing in the country was only 260,000 to 280,000. See J Chaaban and others, 'Socio-Economic Survey of Palestinian Refugees in Lebanon' (American University of Beirut (AUB) and the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) 2010) x <<https://www.unrwa.org/userfiles/2011012074253.pdf>> accessed 29 May 2017.

¹¹ UNHCR and Government of Lebanon, 'Lebanon Crisis Response Plan 2015–2016' (2014) (LCRP) <<http://reliefweb.int/report/lebanon/lebanon-crisis-response-plan-2015-16-year-two>> accessed 31 October 2016.

¹² *Liban: Loi du 1962 réglementant l'entrée et le séjour des étrangers au Liban ainsi que leur sortie de ce pays. Bulletin de Législation Libanaise (Journal Officiel)* No 28–1962 (10 July 1962) <<https://www.refworld.org/docid/3ae6b4f30.html>> accessed 24 October 2016.

the civil war in 1991, in a highly politicized case where a member of the Japanese Red Army received asylum in 2001.¹³ Refugees have thus been provided with no other status than that afforded to foreign nationals in general, causing many to live 'illegally' in the country and consequently under extremely harsh and marginalized conditions.¹⁴

This seemingly paradoxical and complex background arguably warrants examination of the particular reasons *why* Lebanon has remained outside the formal international refugee regime, despite having a key role in its establishment and the fact that it currently hosts an unprecedented number of refugees. This article seeks to discuss how Lebanon officially legitimizes its non-ratification of the 1951 Refugee Convention.¹⁵ It makes four arguments as to why Lebanon continues to resist ratification. First, there is widespread, real, or simply politically expedient, uncertainty as to the obligations that come with the Convention, including a belief that the Convention would require Lebanon to allow the permanent settlement of refugees on its territory. Its history with Palestine refugees is testament to the considerable ideological obstacles to any local integration or naturalization ('*tawteen*') of foreigners.

Secondly, the responsibility-shift for refugees to third parties such as the United Nations High Commissioner for Refugees (UNHCR) has obvious advantages for Lebanon, and has made it less inclined to become a party to the Convention. There is a general belief that, should Lebanon ratify the Convention, it would have to bear more of the 'burden'. Thirdly, the 'good-neighbourliness' argument between Arab countries holds that Lebanon should not employ the term 'refugee', since to do so would put the State in positions that could violate the good neighbour principle. Ratifying the Convention would, in essence, entail a duty to recognize certain forced migrants as refugees. Finally, it argues that many Lebanese government officials and policymakers consider Lebanon's accession to the Convention to be redundant.

The article is based on 10 months of fieldwork in Lebanon in 2015 and 2016, including interviews with key informants in the UN, non-governmental organizations (NGOs), and government agencies. A total of 30 key informants, selected through chain sampling, were interviewed. This involved well-informed individuals identifying other informants with knowledge of Lebanon's ratification of international instruments, and/or refugees. While all interviews were confidential, to maintain the anonymity of the sources, interviewees included individuals from national and international NGOs, as well as from UNHCR and other UN agencies. The nine informants in government agencies included government advisers from four ministries controlled by different political parties. In addition, the article is based on an analysis of historical and contemporary legal materials and policies.

¹³ JF Burns, 'Lebanon Grants Political Asylum to 1 of 5 Japan Terrorists' *New York Times* (18 March 2000) <<http://www.nytimes.com/2000/03/18/world/lebanon-grants-political-asylum-to-1-of-5-japan-terrorists.html>> accessed 26 May 2017.

¹⁴ Janmyr (n 9).

¹⁵ While this article considers the efforts of UN bodies to convince Lebanon to accede to the 1951 Refugee Convention, comprehensive examination of domestic mobilization efforts and discussions by and among Lebanese civil society on this topic falls outside its scope. Lebanon has a vibrant civil society that has increasingly engaged with the country's refugee policies. Of these, Frontiers Ruwad Association is perhaps the most well known.

The article is divided into five main parts. Following this introduction, the article briefly explores Lebanon's role in the origins of international refugee law, before examining the efforts that have been made at the international level to persuade it to ratify the Convention. The main part of the article provides, in part 4, an explanation of why Lebanon remains a non-party to the Convention: uncertainty about Convention obligations, third-party surrogacy, good-neighbourliness, and the perceived redundancy of the Convention. In the final section, brief conclusions are drawn.

2. LEBANON AND THE ORIGINS OF INTERNATIONAL REFUGEE LAW

Unlike most other Middle Eastern States, Lebanon played a key role in the foundation of international refugee law.¹⁶ First, it was one of only 20 States that formed the committee appointed by the UN General Assembly, in February 1946, to lay the basis for the International Refugee Organization (IRO). In December of that year, the IRO's proposed mandate, drafted in part by Lebanon, was adopted by the General Assembly.¹⁷ Following this, in 1949, Lebanon participated in creating UNHCR. Records of the drafting process reveal that Lebanon was actively engaged in, among other things, advocating for a broad definition of a refugee. As its representative argued at the time, 'there were new categories of refugees who did not come under the protection of the IRO; for example those in Greece, Pakistan, India and China ... any resolution the Committee adopted should establish the High Commissioner as the protector of *all* refugees'.¹⁸ In the end, however, Lebanon voted in favour of a Joint Resolution establishing UNHCR with a view to identify and assist refugees within Europe.¹⁹

The drafting process of the 1951 Convention began with General Assembly Resolution 8(1) of 12 February 1946 and was concluded when the UN Conference of Plenipotentiaries adopted the treaty on 28 July 1951. However, the largest and most intensive parts of the drafting process took place in 1950 and 1951.²⁰ Lebanon participated in certain aspects of this process, in addition to engaging in the largely concurrent drafting process of the UNHCR Statute. It was here that it, together with Egypt and Saudi Arabia, issued a joint resolution on behalf of Palestine refugees. It argued that the 'definition of the term "refugee" adopted by the Economic and Social Council [was] unduly restrictive, because it was limited in time and space and omitted certain categories of refugees'.²¹

¹⁶ It is, nevertheless, worth noting that Egypt, Turkey, and Israel participated in the Conference of Plenipotentiaries.

¹⁷ SE Davies, *Legitimising Rejection: International Refugee Law in Southeast Asia* (Martinus Nijhoff Publishers 2008).

¹⁸ UNGA, Official Records of the Third Committee, Fourth Session, 259th Meeting, 11 November 1949, 128 (emphasis added).

¹⁹ UNGA, Official Records of the Third Committee, Fourth Session, 265th Meeting, 18 November 1949, 150.

²⁰ T Einarsen, 'Drafting History of the 1951 Convention and the 1967 Protocol' in A Zimmermann, F Machts, and J Dörschner (eds), *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary* (Oxford University Press 2011) 37.

²¹ UNGA, Official Records of the Third Committee, Fifth Session, 328th Meeting, 27 November 1950, 358.

They were also critical of a United Kingdom resolution, which would 'submerge in the general mass of refugees certain groups which were the particular concern of the General Assembly and the right of which to repatriation had already been recognized by General Assembly Resolutions.'²² The group they were referring to was the Palestine refugee population. Thus, they successfully demanded that 'the mandate of the High Commissioner's Office shall not extend to categories of refugees at present placed under the competence of other organs or agencies of the United Nations.'²³

These States were specifically referring to the United Nations Relief and Work Agency for Palestine Refugees in the Near East (UNRWA), which has provided support to Palestine refugees since 1949. It is nevertheless interesting to note in this regard that the protracted Palestinian issue, which deems it necessary to retain the special status of Palestine refugees rather than subject them to the prevailing norms of resettlement or local integration, remains the most cited reason for the continued refusal by many States in the Middle East to sign the Convention. Thus, although the final text of the Convention explicitly addresses the concerns of these States with regard to the Palestinian issue, many Middle Eastern States still refuse to accede.²⁴

The final draft of the 1951 Convention was not passed until it was presented at the Conference of Plenipotentiaries in July 1951. After having been an active participant in forming the international refugee regime following the Second World War, Lebanon did not attend this vital conference, at which the Convention was unanimously adopted. Nor did countries such as Brazil, China, and India, which had all previously spoken out against aspects of the Convention and Statute.²⁵ Lebanon, however, opposed the Conference of Plenipotentiaries itself, arguing that the *General Assembly* should adopt the text of the Convention.²⁶ Lebanon's voluntary absence from the Conference of Plenipotentiaries thus appears to have had little to do with any opposition to the form or content of the Convention and Protocol.

In November 1957, the General Assembly took the decision to create UNHCR's Executive Committee. Lebanon has been a member of this body since 1963 – the same year that UNHCR first established its presence on Lebanese soil.²⁷ Membership of this Committee requires that States must be a member of the UN or of one of its specialized agencies; be elected by the Economic and Social Council; represent the widest possible geographical basis; and have a demonstrable interest in and devotion to the solution of the refugee problem.²⁸ Lebanon's active engagement during the early stages of the

²² *ibid.*

²³ *ibid.*

²⁴ See UNHCR, 'Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees' (2009) <<http://www.refworld.org/docid/4add77d42.html>> accessed 31 October 2016.

²⁵ Davies (n 17).

²⁶ UNGA, Official Records of the Third Committee, Fifth Session, 330th Meeting, 30 November 1950, 371; UNGA, Official Records of the Third Committee, Fifth Session, 332nd Meeting, 1 December 1950, 378, 380.

²⁷ UNHCR, 'ExCom Membership by Admission of Members' <<http://www.unhcr.org/excom/scaf/574c362c4/excom-membership.html>> accessed 24 October 2016.

²⁸ UNHCR, 'Background on the Executive Committee' <<http://www.unhcr.org/excom/announce/3b4f09faa/background-executive-committee.html>> accessed 24 October 2016.

international refugee regime, as well as its complicated history of hosting Palestine refugees, clearly demonstrates its interest in the refugee problem. Despite this, it may still appear peculiar that a non-party to the Convention is included in a Committee tasked to advise the High Commissioner 'in the exercise of his functions under the Statute of his Office' and to approve the High Commissioner's assistance programmes.²⁹

3. CALLS FOR LEBANON'S RATIFICATION

Lebanon's active participation in laying the foundations of the international refugee regime is contrasted with its unwillingness to formally bind itself to this same framework. This section explores recent discussions regarding Lebanon's potential accession to the 1951 Refugee Convention, which, quite surprisingly, have largely taken place outside the realm of UNHCR. With the notable exception of the negotiation of a 2003 Memorandum of Understanding (MoU) with Lebanon's General Security Office, discussed later, it is difficult to trace UNHCR's diplomatic efforts vis-à-vis the Lebanese government.

Working towards Lebanon's accession to the Convention has never been an explicit objective identified in UNHCR's Country Operations Plans,³⁰ although, on occasion, these have acknowledged that Lebanon 'has very strong reservations about acceding to the 1951 Refugee Convention.'³¹ In this regard, UNHCR has explained that:

undeniably, the presence of up to 400,000 Palestinian refugees under UNRWA's mandate is one of the principal reasons deterring the Lebanese authorities from accession to these refugee law instruments. Lebanon fears the potential local integration would upset the sensitive demographic and socio-economic balance in the country.³²

Other reasons include security and economic considerations.³³ In 2003, UNHCR also explained how:

UNHCR has acknowledged the fact that Lebanon's accession to the 1951 Convention and the 1967 Protocol is not an immediate option due to a variety of constraints faced by the GOL [Government of Lebanon]. Nevertheless, the

²⁹ *ibid.*

³⁰ UNHCR, 'Country Operations Plan 2002: Lebanon' (1 December 2001) <<http://www.refworld.org/docid/3c639a7f4.html>>; UNHCR, 'Country Operations Plan 2004: Lebanon' (1 September 2003) <<http://www.refworld.org/docid/3fd9c6a14.html>>; UNHCR, 'Country Operations Plan 2005: Lebanon' (1 September 2004) <<http://www.refworld.org/docid/4159634c4.html>>; UNHCR, 'Country Operations Plan 2006: Lebanon' (1 September 2005) <<http://www.refworld.org/docid/43327bde2.html>>; UNHCR, 'Country Operations Plan 2007: Lebanon' (1 September 2006) <<http://www.refworld.org/docid/45221e482.html>>; UNHCR, 'Country Operations Plan 2008: Lebanon' (1 September 2007) <<http://www.refworld.org/docid/47162496d.html>> (all accessed 24 October 2016).

³¹ UNHCR, 'Country Operations Plan 2006: Lebanon' *ibid.*

³² *ibid.*

³³ UNHCR 'Country Operations Plan 2008: Lebanon' (n 30).

Office arduously worked with its government counterparts to reach an understanding that helps UNHCR implement its mandate, and at the same time helps the government to put in place the necessary protection infrastructure without having to formally accede to the Convention and Protocol.³⁴

For reasons such as these, UNHCR has long focused on establishing an acceptable 'protection space' for the country's refugees, *inter alia* by 'strengthening institutional support for protection and community-based protection.'³⁵ This nevertheless includes training and outreach activities to disseminate knowledge of UNHCR's mandate, refugee and asylum law, and related issues, through, for example, workshops for university students, journalists, government officials, lawyers, judges, and prosecutors.³⁶

However, it appears that discussions on the issue of Lebanon's accession to the Convention have not been led by UNHCR. An examination of the engagement of the UN human rights bodies provides important insights into the sustained international pressure that has been placed on Lebanon. Most significant in this regard is the work of the Committees on the Convention on Ethnic and Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Violence against Women (CEDAW), and the Convention on the Rights of the Child (CRC). The following brief examination will show how the issue was first raised in the CRC Committee in 1996, how Lebanon appears to have considered accession in the mid-2000s, and how attempts to convince Lebanon to accede to the Convention have intensified in the past few years.

One of the most ardent proponents of Lebanon acceding to the 1951 Refugee Convention is the CRC Committee, which has raised the issue in all three of its Concluding Observations on Lebanon. During meetings in May 1996, Committee Member Thomas Hammarberg (Sweden) asked whether 'the Lebanese Government intended to ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.'³⁷ The Lebanese representative stalled in his response, explaining that he would send the 'information requested by Mr. Hammarberg ... to the Committee in writing.'³⁸ While in its Concluding Observations the CRC Committee subsequently recommended that Lebanon consider the ratification of the 1951 Refugee Convention and its 1967 Protocol,³⁹ Lebanon avoided the issue entirely in its second report to the Committee, submitted in December 1997.⁴⁰ The question was not raised during

³⁴ UNHCR 'Country Operations Plan 2004: Lebanon' (n 30).

³⁵ UNHCR (*Global Focus*) <<http://reporting.unhcr.org/node/2520?y=2016#year>> accessed 24 October 2016. For a critique of the notion of 'protection space', see generally M Jones, 'Moving beyond Protection Space: Developing a Law of Asylum in South East Asia' in S Kneebone, L Baldassar, and D Stevens (eds), *Refugee Protection and the Role of Law: Conflicting Identities* (Routledge 2014) 251.

³⁶ UNHCR Country Operations Plans for Lebanon: 2004, 2005, 2006, and 2008 (n 30).

³⁷ UN doc CRC/C/SR.291 (1996) para 34. Lebanon made no mention of its non-accession to the 1951 Refugee Convention in its first report to the UN CRC in 1995. See UN doc CRC/C/8/Add.23 (1995).

³⁸ UN doc CRC/C/SR.291 (1996) para 44.

³⁹ UN doc CRC/C/15/Add.54 (1996) para 41.

⁴⁰ UN doc CRC/C/70/Add.8 (2000).

the Committee's meetings on Lebanon in January 2002,⁴¹ although in its Concluding Observations, one month later, the Committee reiterated its previous recommendation that Lebanon accede to the Convention and Protocol.⁴²

Four years later, Lebanon submitted its third report to the CRC Committee, in which it not only emphasized its strengthened cooperation with UNHCR – exemplified by the 2003 MoU between UNHCR and Lebanon's General Security Office⁴³ – but also explained its 'delay' in ratifying *inter alia* the 1951 Refugee Convention. Reference was made to the 'complexity of the political situation relating to the issue of providing nationality to Palestinians in Lebanon, an issue unanimously refused by the Lebanese according to the documents of the national covenant, that was enacted at El Taef'.⁴⁴ While these arguments will be considered later, it is important to note the significance of Lebanon using the word 'delay', as it indicates that, far from being a situation in deadlock, there had been at least some movement towards acknowledging the Convention in the years between Lebanon's second and third reports to the CRC.

This development was clarified during the CRC's consideration of Lebanon's third report in May 2006.⁴⁵ Responding to comments by a Committee Member who regretted 'that the fact that Lebanon had not ratified the Protocol relating to the Status of Refugees meant that children of refugees and unaccompanied minors were expelled, in violation of international law',⁴⁶ the Lebanese representative revealed plans for strengthening the country's protection of refugees. He explained that not only was the MoU with UNHCR being amended, but that 'possible accession to those instruments [the 1951 Refugee Convention and the 1967 Protocol] was a topic of serious consideration in the country and had been the subject of a 2005 workshop'.⁴⁷ However, he continued, 'any decision thereon called for serious reflection, given national interests, the small size of the country and its limited integration capacities'.⁴⁸ These limitations notwithstanding, the Committee's Concluding Observations stressed the importance of Lebanon's accession:

While welcoming the improved collaboration between the State party and the Office of the United Nations High Commissioner for Refugees (UNHCR), the Committee is concerned at the gaps in the legal protection of refugees in the State party. It also welcomes the information that the State party undertakes activities

⁴¹ UN doc CRC/C/SR.751-752 (2002).

⁴² UN doc CRC/C/15/Add.169 (2002) para 53.

⁴³ UN doc CRC/C/129/Add.7 (2005) para 451.

⁴⁴ *ibid* para 453. Warring parties signed an Arab-brokered political deal in the Saudi city of Taef, known as the Taef Agreement, to end the 1975–90 civil war. For a background to the national covenant, see F el-Khazen, 'The Communal Pact of National Identities: The Making and Politics of the 1943 National Pact' (Centre for Lebanese Studies 1991).

⁴⁵ UN doc CRC/C/SR.1142 and 1144 (2006). See also list of issues, UN doc CRC/C/LBN/Q/3 (2006), pt 4, para 13, in which the Committee flagged the issue of asylum-seeking and refugee children to be raised during the dialogue with Lebanon.

⁴⁶ UN doc CRC/C/SR.1142 (2006) para 69.

⁴⁷ *ibid* para 70.

⁴⁸ *ibid*.

to accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Committee notes with concern that since the State party does not extend asylum, many children and their families seeking asylum are subject to domestic laws for illegal entry and stay, and thereby are at risk of detention, fines and deportation. In this context, the Committee also refers to the concerns and recommendations expressed under the right to a nationality.⁴⁹

It consequently urged Lebanon to 'accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and thus create an environment conducive to refugee protection in the country' and, further, to 'continue and strengthen its collaboration with UNHCR'.⁵⁰

Any move to amend the 2003 MoU with UNHCR or to ratify the 1951 Refugee Convention came to an abrupt halt in July 2006, when the armed conflict between Israel and Lebanon's Hezbollah raised political tensions in Lebanon. UNHCR has explained how this change in the political climate put on hold many initiatives that had been set in motion to improve refugee protection in Lebanon, including amendments to the national asylum legislation. While UNHCR had managed to garner the support of a number of members of parliament who were willing to endorse the proposed amendments, 'the same MPs, after the war, and because of the ongoing and unresolved political tensions, made it clear that any substantial discussion in the parliament on immigration/refugee issues would be postponed – possibly for a very long time'.⁵¹ Another factor that also negatively impacted efforts to strengthen refugee protection was the unprecedented increase in the number of Iraqi refugees coming to Lebanon in 2007, which, according to UNHCR, made most of the provisions in the MoU 'irrelevant and unimplementable [sic]'.⁵² Thus, only months after the July 2006 conflict, UNHCR published its 2007 Country Operations Plan, where it explained that:

The objectives of the UNHCR office in Lebanon take into account the fact that it is premature for UNHCR to build its strategy on the assumption that Lebanon will soon accede to the 1951 Convention / 1967 Protocol relating to the Status of Refugees. There are still many obstacles – both political and legal – to Lebanon's accession to the refugee instruments. The latter remains a long term objective but it is essential, in the meantime, to build an environment in which persons of concern do feel protected. To actively promote accession before identifying concrete remedies to the existing gaps would be inappropriate. The years to come will be crucial and should be used to build solid foundations on which an asylum system can at a later stage be established.⁵³

⁴⁹ UN doc CRC/C/LBN/CO/3 (2006) para 71.

⁵⁰ UN doc CRC/C/LBN/CO/3 (2006) para 72(b) and (d).

⁵¹ UNHCR, 'Country Operations Plan 2008: Lebanon' (n 30).

⁵² *ibid.*

⁵³ UNHCR 'Country Operations Plan 2007: Lebanon' (n 30). On UNHCR's 'both pragmatic and principled' approach, see also UNHCR 'Country Operations Plan 2008: Lebanon' (n 30).

It is surely for these reasons that UNHCR completely avoided mentioning Lebanon acceding to the 1951 Refugee Convention in recommendations submitted in 2010 to the High Commissioner for Human Rights on the occasion of the Universal Periodic Review of Lebanon.⁵⁴ At around the same time, UNHCR's evaluation of its operations for urban Iraqi refugees in Jordan, Lebanon, and Syria also briefly discussed whether or not it should adopt a more formal and principled approach, which encouraged these countries to sign the 1951 Convention. The authors of the report nevertheless concluded that 'there is no guarantee that such a strategy would be successful, and a risk that it would undermine the goodwill and cooperative relationships that UNHCR has been able to establish with the countries of asylum over the past few years.'⁵⁵

These political tensions were exacerbated following the Syrian conflict and the ensuing refugee influx into Lebanon. Lebanese political parties – one political block opposing the Syrian regime, and the other openly supporting it – demonstrated conflicting attitudes towards the conflict in Syria.⁵⁶ Thus, despite the promising developments in 2006, Lebanon's fourth and fifth reports to the CRC, submitted in November 2015, made no mention of any plans for acceding to the 1951 Refugee Convention.⁵⁷ UNHCR, no longer seeking to modify the MoU or to negotiate a new one, has continued to adopt a more pragmatic approach to Lebanon's accession to the Convention. In this regard, one senior UNHCR official explained that it matters less whether Lebanon has formally acceded to the Convention, and more that the country 'behaves as if it were' a party to the Convention.⁵⁸ This approach has nevertheless been questioned by UNHCR's donors, such as the European Civil Protection and Humanitarian Aid Operations, representatives of which, in late 2015, allegedly took it upon themselves to question UNHCR Lebanon's commitment to its mandate and to promoting Lebanon's accession to the Refugee Convention.⁵⁹

At the same time, it is clear that the Lebanese government has been feeling the international pressure to accede to the Convention. In October 2014, local papers reported how Prime Minister Tamman Salam, Foreign Minister Gibran Bassil, and Minister of Social Affairs, Rashid Derbas, 'thwarted an attempt to push Lebanon towards signing the 1951 Geneva Convention on the status of refugees' during the Berlin Conference on the Syrian Refugee Situation.⁶⁰ According to the report, the draft outcome document

⁵⁴ UNHCR, 'Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report – Universal Periodic Review: Republic of Lebanon' (April 2010) <<http://www.refworld.org/docid/4bcd705e2.html>> accessed 17 October 2016.

⁵⁵ J Crisp and others, 'Surviving in the City: A Review of UNHCR's Operation for Iraqi Refugees in Urban Areas of Jordan, Lebanon and Syria' (UNHCR 2009) paras 70–71.

⁵⁶ D Meier, 'Lebanon: The Refugee Issue and the Threat of a Sectarian Confrontation' (2014) 94 *Oriente moderno* 382, 383.

⁵⁷ UN doc CRC/C/LBN/4-5 (2015). These reports were due to be discussed at the CRC Committee's 75th session, May 2017, at the time of writing.

⁵⁸ UNHCR official (via Skype) 5 October 2016.

⁵⁹ UNHCR official, Beirut, 27 June 2016.

⁶⁰ 'Derbas Says Lebanon and Jordan United at Berlin Conference' (*Naharnet*, 24 October 2014) <<http://www.naharnet.com/stories/en/152503>> accessed 24 October 2016.

of the donor conference included a clause stating that Lebanon should ratify the 1951 Refugee Convention. The final document, however, included no such clause, but rather reaffirmed Lebanon's position on the 'voluntary application' of the Convention, an approach that will be considered later.⁶¹

Another example of this international pressure is found in the increasing engagement of the CEDAW and CERD Committees. While these Committees had previously disregarded the question of a Lebanese accession to the 1951 Refugee Convention,⁶² in 2008, the CEDAW Committee urged Lebanon not only to 'adopt laws and regulations relating to the status of asylum-seekers and refugees in Lebanon, in line with international standards', but also to 'consider accession to international instruments to address the situation of refugees and stateless persons, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol'.⁶³ In 2015, it reiterated this call,⁶⁴ while the CERD Committee, in its 2016 Concluding Observations, called upon Lebanon to 'establish a clear and comprehensive legal framework on asylum respecting the principle of *non-refoulement* and enabling asylum-seekers and refugees to exercise their fundamental rights without discrimination', and encouraged it to 'consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination'.⁶⁵

It is thus evident that despite Lebanon's strong opposition to ratifying the Convention, international efforts to persuade it to do so have continued and, in fact, appear to have strengthened. This raises the questions why Lebanon continues to reject the 1951 Refugee Convention, and how it seeks to legitimize this. The next section will seek to answer these questions.

4. LEBANON'S NON-COMMITMENT TO THE 1951 REFUGEE CONVENTION

4.1 Uncertainty about Convention obligations

4.1.1 *The permanent settlement of refugees*

It is arguable that Lebanon has remained a non-party to the 1951 Refugee Convention because of a real, or perhaps politically expedient, uncertainty about what the Convention obliges Contracting States to do. An example is the common argument that the Convention cannot be ratified because it would require the permanent settlement or local integration of refugees, including Palestinians. There is a

⁶¹ Berlin Conference on the Syrian Refugee Situation: Supporting Stability in the Region: Declaration <<http://www.regeringen.se/contentassets/728630fd951646bcae64d9e5a8277307/declaration-of-the-berlin-conference-on-the-syrian-refugee-situation>> accessed 25 October 2016.

⁶² See eg UN doc CERD/C/304/Add.49 (1998); UN doc CERD/C/64/CO/3 (2004).

⁶³ UN doc CEDAW/C/LBN/CO/3 (2008) para 41.

⁶⁴ UN doc CEDAW/C/LBN/CO/4-5 (2015) paras 11–12.

⁶⁵ UN doc CERD/C/LBN/CO/18-22 (2016) paras 28 and 46.

fear that refugees recognized under international refugee law would pose a threat to social and sectarian cohesion in the country. Lebanon, home to 18 different sects, has long sought to preserve its delicate demographic balance, and numbers have become important in power struggles. The last census was held in 1932 and, because political representation was based on its findings, it played a fundamental role in Lebanon's State-building process.⁶⁶ In such a context, the presence of refugees raises concerns about substantial demographic changes in the country, which would have major political implications.⁶⁷ Lebanon's experience with the predominantly Sunni Palestinians, who are often blamed for playing a substantial role in the build-up towards the Lebanese civil war (1975–90), is a key reason for the highly politicized refugee issue.

There is unanimous political agreement on the rejection of naturalization of refugees in Lebanon.⁶⁸ The government has long wished to reduce the numbers of Palestinians in its territory, and this is not only reflected in the long-term marginalization of Palestine refugees,⁶⁹ but also has arguably had an impact on the Lebanese Constitution (as amended in 1990). The preamble of this Constitution refers to the concept of *tawteen*, stating that there shall be no *tawteen* in Lebanon. It is not obvious what is meant by this term, and translations of the Constitution do little to clarify this. The official French version translates *tawteen* into '*l'implantation*', meaning 'implantation' in English, but no explicit mention is made of Palestinians, refugees, or foreigners.⁷⁰ It is thus unclear who or what is forbidden from being 'implanted'. The confusion is even greater in the English language versions of the Constitution, where (at least) three different versions translate *tawteen* in very different ways. An official version found at the Office of the Presidency states that:

Lebanese territory is one for all Lebanese. Every Lebanese shall have the right to live in any part thereof and to enjoy the rule of law wherever he resides. There

⁶⁶ See generally R Maktabi, 'The Lebanese Census of 1932 Revisited. Who Are the Lebanese?' (1999) 26 *British Journal of Middle Eastern Studies* 219.

⁶⁷ J Suleiman, 'Marginalised Community: The Case of Palestinian Refugees in Lebanon' (University of Sussex Development Research Centre of Migration, Globalisation, and Poverty 2006) 6. See also M Dumper, 'Palestinian Refugees' in G Loescher and others (eds), *Protracted Refugee Situations: Political, Human Rights and Security Implications* (UN University Press 2008).

⁶⁸ An important exception was when the government of former Prime Minister, Rafik Hariri, granted citizenship to thousands of Syrians and Palestinians in 1994. It is also noteworthy that Armenian refugees were naturalized in the pre-independence period. See GG Hourani and E Sensenig-Dabbous, 'Naturalized Citizens: Political Participation, Voting Behavior, and Impact on Elections in Lebanon (1996–2007)' (2012) 13 *Journal of International Migration & Integration* 187; International Crisis Group, 'Nurturing Instability: Lebanon's Palestinian Refugee Camps' (2009) 15.

⁶⁹ Erakat (n 5) 605.

⁷⁰ Constitution du Liban, preamble <<http://www.presidency.gov.lb/French/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>> accessed 25 October 2016.

shall be no segregation of the people on the basis of any type of belonging, and no fragmentation, partition, or *settlement of non-Lebanese in Lebanon*.⁷¹

However, in contrast, another official version found at the Ministry of Information reads:

Lebanese territory is one for all Lebanese. Every Lebanese shall have the right to live in any part of it and to enjoy the sovereignty of law wherever he resides. There shall be no segregation of the people on the basis of any type of belonging, and no fragmentation, partition, or *colonization*.⁷²

This latter translation of *tawteen* appears to make little sense, particularly as the proper term for colonization in Arabic is *istitan*, not *tawteen*. A third, unofficial, version, found at the University of Oxford's Constitute Project, is:

The territory of Lebanon is one for all Lebanese. Every Lebanese has the right to reside on any part thereof, and enjoy it under the sovereignty of the law. No segregation of the people on any belonging whatsoever. No segregation, no partition, and no *inhabitation*.⁷³

Again, it is unclear what is forbidden by the Constitution. The different translations of the same passage suggest that the concept of *tawteen* is far from being a term of art. Yet, it is key to understanding Lebanon's rejection of the 1951 Refugee Convention.

In the literature, some have argued that *tawteen* is in fact a type of 'Lebanese political jargon',⁷⁴ which, because of its multiple interpretations, 'lends itself easily to political and polemic usage'.⁷⁵ This suggests that the ideological and political background of each translator plays a decisive role in the interpretation of *tawteen* in the Lebanese Constitution. The term itself, understood by Lebanon scholar Daniel Meier to mean 'settlement' or 'implantation', is derived from the word for homeland (*watan*). While the verb *wattana* means more precisely to settle down, there appear to be shades of meaning; the similar term *tawattana*, coming from the same root, also means to settle down, but in an active sense. In comparison, *tawteen* 'is a situation that people endure as if they were obliged to settle down'.⁷⁶ The term is unquestionably primarily employed in relation to Lebanon's Palestine refugees, and some have even argued that the Constitution

⁷¹ Lebanese Constitution, preamble <<http://www.presidency.gov.lb/English/LebaneseSystem/Documents/Lebanese%20Constitution.pdf>> accessed 25 October 2016 (emphasis added).

⁷² Lebanese Constitution, preamble <<http://www.ministryinfo.gov.lb/en/sub/Lebanon/LebaneseConstitution.aspx>> accessed 25 October 2016 (emphasis added).

⁷³ Lebanese Constitution, preamble <http://www.constituteproject.org/constitution/Lebanon_2004.pdf?lang=en> accessed 25 October 2016 (emphasis added).

⁷⁴ Fel Khazen, 'Permanent Settlement of Palestinians in Lebanon: A Recipe for Conflict' (1997) 10 *Journal of Refugee Studies* 275, 275.

⁷⁵ D Meier, "'Al-tawteen': The Implantation Problem as an Idiom of the Palestinian Presence in Post-Civil War Lebanon (1989–2005)' (2010) 32 *Arab Studies Quarterly* 145, 147.

⁷⁶ *ibid* 147.

therefore institutionalizes the country's strong fear of the permanent settlement of Palestinians.⁷⁷ During the Lebanese civil war, *tawteen* was used in a mobilizing manner to pinpoint 'the enemy's intention and that which is threatened – the homeland and the nation.'⁷⁸ Importantly, it was used to denounce 'a conspiracy', which aimed at 'transforming Lebanese territory into a substitute homeland (*watan badil*) for foreigners (i.e. the Palestinians).'⁷⁹ Seen from this perspective, the English translations of *tawteen* as settlement, inhabitation, and colonization may appear to be two sides of the same coin. It is also noteworthy that Lebanese political actors have more recently also tied the concept of *tawteen* explicitly to the country's Syrian refugees, showing how Lebanon's history with Palestine refugees has now been directly linked to its response to the Syrian influx.

This institutionalized rejection of the Palestine (and now increasingly Syrian) refugee presence appears to have led to the belief that ratifying the Refugee Convention would give permanency to the country's refugees in general, and to its Palestinian population in particular. Political leaders frequently brand the Convention as a step towards the naturalization of the Palestinians,⁸⁰ and Lebanon's statements to international human rights bodies confirm this belief. As mentioned previously, in 2006, Lebanon explained its 'delay' in acceding to the Refugee Convention by referring to the complexity of providing nationality to Palestine refugees, which, it argued, is unanimously rejected by all political actors.⁸¹

What statements such as these suggest is that there is a widespread, real, or politically expedient, misperception of the obligations brought by ratification. First, it is evident that Palestine refugees under the mandate of UNRWA are excluded from the 1951 Convention, owing to Lebanon's and other Middle Eastern States' lobbying during the drafting process. Secondly, Lebanon would certainly not be obligated to permanently settle refugees if it ratified the 1951 Convention. Although article 34 of the Convention *inter alia* provides that 'the contracting states shall as far as possible facilitate the assimilation and naturalization of refugees', there is nothing in the Convention that obliges States to unreservedly and permanently host refugees. This provision is merely a recommendation – the drafters of the 1951 Convention considered the question of naturalization as a matter of 'such delicate nature that in every case the final decision must rest with the organs of the state concerned.'⁸² The adopted text, with the inclusion of 'as far as possible', mirrors the concerns States had during the drafting process. In any case, Lebanon would be free to decide upon an eventual reservation to article 34.⁸³ This suggests that

⁷⁷ An important exception to the taboo of Palestinian *tawteen* has been the many Christian Palestinians who have been naturalized via presidential decree. See Hourani and Sensenig-Dabbous (n 68); Suleiman (n 67) 18.

⁷⁸ Meier, *Al-tawteen* (n 75) 147.

⁷⁹ *ibid.*

⁸⁰ S Sikimic, 'Refugees Aplenty but No Convention' *Daily Star* (Lebanon, 28 May 2011) <<http://www.dailystar.com.lb/News/Lebanon-News/2011/May-28/139723-refugees-aplenty-but-no-convention.ashx>> accessed 25 October 2016.

⁸¹ UN doc CRC/C/129/Add.7 (2006) para 453; see also para 445.

⁸² A Grahl-Madsen, *Commentary on the 1951 Refugee Convention, Articles 2–11 and 13–37* (1963, republished by UNHCR 1997) 145.

⁸³ JC Hathaway, *The Rights of Refugees under International Law* (Cambridge University Press 2011) 95.

opposition to accession may not only be due to the failure by Lebanese policymakers to fully understand the obligations laid down in the Convention. Opposing accession may also serve the political purpose of appearing to 'defend' Lebanon from refugee naturalization, and thus to be seen to preserve Lebanon's sectarian balance.

4.1.2 *No country of asylum*

A related example of the real or politically strategic misconception of the obligations contained in the 1951 Convention is the Lebanese conviction that by not ratifying the Convention it avoids becoming a country of asylum. The strong opposition to being a country of asylum is due to the belief that it would entail the permanent settlement of refugees. In other words, Lebanon often equates the notions of 'asylum' with 'permanent settlement', or, in the language of international refugee law, with local integration. This idea appears to have its roots in the concept of *tawteen*, but was allegedly not properly formalized as a government policy before it was included in the 2003 MoU between UNHCR and Lebanon's General Security Office.⁸⁴ The agreement not only affirms that 'Lebanon does not consider itself an asylum country', but also specifies that an 'asylum seeker' means a 'person seeking asylum in a country other than Lebanon.'⁸⁵ It is, therefore, arguable that this document not only legitimizes the notion of Lebanon not being a country of asylum, but also that it helped to introduce a principle that has since found its way into numerous official documents, and even judicial decisions.⁸⁶ As already mentioned, the LCRP proclaims that 'Lebanon is neither a country of asylum, nor a final destination for refugees, let alone a country of resettlement'.

This may appear particularly paradoxical when examining the Lebanese Constitution. While forbidding *tawteen*, it also states that Lebanon shall 'without exception' abide by key international human rights instruments, such as the Universal Declaration of Human Rights (UDHR).⁸⁷ As will be discussed below, Lebanon played a key role in the development of the UDHR, which in article 14(1) provides that 'Everyone has the right to seek and to enjoy asylum from persecution in other countries.' This article does not contain a guarantee of permanent residence in the receiving State.⁸⁸ Rather, international law considers asylum to be 'the protection that a State grants on its territory or in some other place under the control of certain of its organs to a person who comes to seek it.'⁸⁹

⁸⁴ Lawyer, Beirut, 11 March 2016.

⁸⁵ 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' (9 September 2003).

⁸⁶ Lawyer, Beirut, 11 March 2016.

⁸⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA res 217 A(III) (UDHR).

⁸⁸ Einarsen (n 20).

⁸⁹ Institute of International Law (5th Commission), 'Asylum in Public International Law', Resolutions Adopted at its Bath Session, September 1950, art 1. See also MT Gil-Bazo, 'Asylum as a General Principle of International Law' (2015) 27 International Journal of Refugee Law 3.

Although the constitutional principle of international obligations taking precedence over national law has seldom been practised in Lebanese courts,⁹⁰ there are important exceptions. In a series of judgments concerning the irregular entry of Syrian refugees into Lebanon, issued from 2012 onwards, Tripoli-based Judge Nazek Khatib engaged with UDHR article 14. With a direct and well-argued reference to the right to seek asylum, Judge Khatib removed the irregular entry charges for a number of Syrian refugees.⁹¹ While some judges have followed suit, many remain sceptical, as Judge Khatib's judgments are in stark contrast to the standard operating procedure, which charges those who enter Lebanon irregularly with illegal entry, often resulting in deportation orders. It is illustrative of the politicized nature of the right to seek asylum in Lebanon that political groups have accused Judge Khatib of 'being with the Syrian opposition and the Revolution.'⁹²

Asylum is, in the Lebanese context, often understood as 'a final destination for refugees to be locally integrated or resettled.'⁹³ At the heart of these discussions lies the distinction between being either a *transit* or a *destination* country. Not only does the 2003 MoU reaffirm the 'transit country concept' by imposing strict time limits on refugees' residence, but Lebanon's report to CEDAW in 2014 also suggests that it sees a link between ratifying the Refugee Convention and becoming a 'destination country'. It states that it 'has not signed the Convention relating to the Status of Refugees (1951) and Lebanon is still considered as a transit country not a destination country.'⁹⁴ This view is reinforced in its report to the CRC Committee, submitted in November 2015, where Lebanon explains how:

The characterization 'refugee' does not apply to displaced Syrians who came to Lebanon as the Lebanese State does not grant them such characterization and considers their presence temporary and for purely humanitarian grounds, given that Lebanon has not signed the 1951 Convention on the Status of Refugees and its 1967 Protocol.⁹⁵

More recent examples, from August 2016, are the discussions in the CERD Committee of Lebanon's increasingly restrictive regulations for Syrian refugees. The Lebanese representative explained that Syrians could enter freely if they sought temporary residence under the new regulations, but not if they sought 'permanent' residence as 'refugees' or 'immigrants.'⁹⁶

The link being made between refugees and permanent residence is not coincidental. In fact, Lebanese actors go to great lengths to avoid the 'refugee' label, which

⁹⁰ ALEF – Act for Human Rights, 'Two Years On: Syrian Refugees in Lebanon' (September 2013).

⁹¹ G Frangieh, 'Judicial Ruling to Overturn "Preconceived Notions" in the Case of a Syrian Refugee: Practicing the Right to Asylum is Not a Crime' (*The Legal Agenda*, July 2012).

⁹² Judge, Beirut, 29 February 2016.

⁹³ Government official, Beirut, 10 June 2016.

⁹⁴ UN doc CEDAW/C/LBN/4-5 (2014) para 266.

⁹⁵ See UN doc CRC/C/LBN/4-5 (2015) fn 2.

⁹⁶ UN doc CERD/C/SR.2463 (2016).

is predominantly associated with Palestinians. There also appears to be the idea that the mere use of the term 'refugee' would trigger the application of the international refugee law regime.⁹⁷ Use of the 'refugee' label would, it is feared, become a back-door to ratifying the Refugee Convention. Similar fears have been described by Stevens in the Jordanian context.⁹⁸ As one government official explained:

For us, they're not refugees. Officially speaking ... we realize whether under the Convention, or international law, or whatever, they're acknowledged refugees, they're not [only] displaced. But because of the specificity of Lebanon in particular they are not considered as refugees.⁹⁹

Lebanese authorities have accordingly resorted to a myriad of different labels to refer to Syrians seeking protection in Lebanon.

4.1.3 *Terminological confusion on durable solutions*

Although international refugee law identifies three different durable solutions to the problem of refugees – local integration, voluntary repatriation, and resettlement – there appears to be a lack of clarity in Lebanon as to what these solutions entail. Some of this confusion is rooted in a common misunderstanding that both the notions of resettlement and voluntary return require local integration in Lebanon, which, as explained above, is unanimously ruled out. For example, in December 2015, when the UN Security Council adopted Resolution 2254, which referred to the 'voluntary return' of Syrian refugees, Lebanon's Foreign Minister, Gibran Bassil, voiced strong opposition to the Resolution, and wrote to the UN Secretary-General to argue that voluntary return could indicate attempts to 'settle Syrians' in Lebanon.¹⁰⁰ Many Lebanese political figures appear uncomfortable with the voluntary aspect of voluntary return, preferring to speak of 'safe return', a notion that human rights groups fear aims to clear a path for the non-voluntary return of refugees to ostensibly 'safe' areas in their countries of origin.¹⁰¹

Additionally, in the Lebanese discourse, the concepts of local integration and resettlement have often been used interchangeably. While 'resettlement' is understood in international refugee law as 'involving the selection and transfer of refugees from a State in which they have sought protection to a third state which has agreed to admit

⁹⁷ F Dionigi, 'The Syrian Refugee Crisis in Lebanon: State Fragility and Social Resilience' (2015) LSE Middle East Centre Paper Series 15.

⁹⁸ Stevens (n 3).

⁹⁹ Government official, Beirut, 10 June 2016.

¹⁰⁰ 'Lebanon to Revise Population Movement, Impacts' *Daily Star* (Lebanon, 25 December 2015) <<http://www.dailystar.com.lb/News/Lebanon-News/2015/Dec-25/328920-lebanon-to-revise-population-movement-impacts.ashx>> accessed 25 October 2016; 'UN Chief Allays Lebanon's Fears over Refugee Settlement' *Daily Star* (Lebanon, 5 March 2016) <<http://www.dailystar.com.lb/News/Lebanon-News/2016/Mar-05/340629-un-chief-allays-lebanons-fears-over-refugee-settlement.ashx>> accessed 25 October 2016.

¹⁰¹ 'Bassil: To Adhere to Lebanese Formula' (*National News Agency*, 15 February 2016) <<http://nna-leb.gov.lb/en/show-news/56822/nna-leb.gov.lb/nna-leb.gov.lb>> accessed 26 May 2017.

them – as refugees – with permanent residence status;¹⁰² in Lebanon, this term is often applied to situations of local integration or naturalization (*tawteen*) in both third countries and in Lebanon. An example of this conflation is found in the statements made by Lebanon to the CERD Committee in 2015, where one representative stated that 'Lebanon was not seeking to definitively resettle refugees [in Lebanon], as it hoped that they would be able to safely return home one day'.¹⁰³ Again, note the reference to the preferred notion of 'safe return'.

4.2 Third-party surrogacy

Another key reason why Lebanon is reluctant to ratify the 1951 Refugee Convention lies in the issue of third-party responsibility over Lebanon's refugees. Kagan has long written about the responsibility-shift from the sovereign State to the UN which is so prevalent in the Middle East for both Palestine and non-Palestine refugees.¹⁰⁴ In this context, when the UN becomes a 'surrogate State', many governments in the region are more likely to tolerate the presence of refugees on their territory if responsibility for them is assigned to a third party. In general, Palestine refugees fall under the mandate of UNRWA, while UNHCR has long done the 'handling' of all non-Palestine refugees. As one government official explained: 'UNHCR has *relieved* the Lebanese government from the *burden* of all non-Palestinian refugees for more than 50 years'.¹⁰⁵ It was, in the official's view, the 'normal order of things' that UNHCR was in charge of refugee situations, 'considering that Lebanon is not a country of asylum and that it has not signed the Refugee Convention'.¹⁰⁶ He/she also argued that 'when the host state disassociates itself from refugees, UNHCR's mandate requires that it provides refugees with the necessary protection'. The obvious advantages for Lebanon of such surrogacy have made the State less inclined to become a party to the 1951 Convention and take on many tasks itself. The general belief in Lebanon is that should it ratify the Convention, it would be required to bear more of the burden, practically and economically, but also politically.

Under the UN 'surrogate State' approach, UNHCR carries the heaviest burden of addressing refugees' positive liberties by carrying out status determination, registration, healthcare, education, nutrition, and livelihood assistance. Host States, on the other hand, are able to 'protect' refugees 'simply by restraining the impact of restrictive immigration policies through a policy of benign neglect'.¹⁰⁷ Indeed, Lebanon's statements to the international human rights bodies are quite revealing in regards to how it perceives the role of the UN, at least when it comes to Palestine refugees. It has *inter alia* claimed that the enforcement of Palestinian rights is UNRWA's responsibility,¹⁰⁸ and,

¹⁰² UNHCR, Resettlement Handbook (2011) <<http://www.unhcr.org/46f7c0ee2.pdf>> accessed 25 October 2016.

¹⁰³ UN doc CERD/C/SR.2463 (2016) para 45; see also para 9.

¹⁰⁴ Kagan (n 3) 308.

¹⁰⁵ Government official, Beirut, 10 June 2016 (emphasis added).

¹⁰⁶ *ibid.*

¹⁰⁷ Kagan (n 3) 312.

¹⁰⁸ Statement by Mr Nehme (Lebanon), UN doc CRC/C/SR.751 (2002) para 27.

more specifically, that 'the question of Palestinian refugees was the responsibility of the international community and not of Lebanon.'¹⁰⁹

Lebanon has similarly long been reliant on UNHCR to protect and assist, and to seek durable solutions for all non-Palestine refugees. In 1963, Lebanon and UNHCR entered into a 'Gentleman's Agreement', which remained in place until the late 1990s, when it finally broke down.¹¹⁰ It was replaced in 2003 with the MoU between UNHCR and Lebanon's General Security Office, which generally outlined the conditions for cooperation between the parties. Middle Eastern governments often consider such MoUs as more attractive than ratifying the Convention, but they may also, as Zaiotti has argued, 'represent an intermediate stage towards access to the international refugee regime'.¹¹¹ It may be for this reason that when the 2003 MoU broke down, only a few years after its negotiation, it was challenging for UNHCR to formally regulate its cooperation with the government. Recent negotiations regarding a new MoU failed to bear fruit, and one government official explained that the Lebanese government's 'concerns over an agreement is due to the fear of transforming Lebanon into a country of asylum as well as attracting more refugees from around the region'.¹¹²

A frequent argument made by several Middle Eastern governments is that they cannot bear the economic cost of refugee recognition, which incurs heavy financial burdens. Indeed, Lebanon has similarly argued before several UN human rights bodies that its efforts to implement the human rights provisions of, for example, the CRC, have been hampered by a lack of financial resources.¹¹³ During an interview, a government official claimed that the Refugee Convention would be detrimental to the government's work because 'with the number of Syrians here we would need to recruit half the population to do case work'.¹¹⁴ This suggests a lack of awareness or ignorance of the availability of group-based, or *prima facie*, refugee status.

While Lebanon has long had one of the highest levels of government debt in the world,¹¹⁵ estimates about the effect of the Syrian influx on Lebanon's economy are heavily politicized and contested. Government-affiliated studies have found the Syrian influx to have had a negative impact of on Lebanon's economy,¹¹⁶ while, in contrast, international organizations and independent researchers have found evidence that suggests that the Lebanese economy is sufficiently resilient to absorb new workers without

¹⁰⁹ UN doc CERD/C/SR.1629 (2004) para 19.

¹¹⁰ Kagan (n 3) 328.

¹¹¹ Zaiotti (n 2) 336.

¹¹² Government official, Beirut, 10 June 2016.

¹¹³ See eg statement by Mr Mekhael (Lebanon), UN doc CRC/C/SR.1142 (2006) para 3. See also statement by Mr Khalil (Lebanon), UN doc CRC/C/SR.291 (1996) para 41: 'With regard to the assistance given to non-Lebanese children, the budget available in his country was not sufficient even for Lebanese children.'

¹¹⁴ Government official, Beirut, 18 June 2016.

¹¹⁵ World Economic Forum, Competitiveness rankings: Government debt (2016) <<http://reports.weforum.org/global-competitiveness-index/competitiveness-rankings/#series=GOVDEBTGDP>> accessed 31 October 2016.

¹¹⁶ World Bank, 'Lebanon: Economic and Social Impact Assessment of the Syrian Conflict' (2013).

adverse effects for host-country residents.¹¹⁷ However, while the international community's humanitarian response has helped to mitigate the effects of the Syrian conflict, studies have shown that it has not completely offset them.¹¹⁸ In any case, keeping the country's refugees under the purview of the UN enables them to remain highly visible, and maintains the pressure on the international community to continue to support their care and maintenance. Equally important, in the Middle East, is that the involvement of a third party often portrays the refugee presence as temporary – although protracted refugee situations in other parts of the world have demonstrated that such an argument lacks basis.¹¹⁹

Politically, Lebanon has long considered UNHCR to be a useful tool in dealing with refugee flows. Lebanon is characterized by different communal groups seeking to dominate others politically, as well as by the need for consensus on all decisions and a *de facto* veto power that disrupts the political process.¹²⁰ In such circumstances, and when institutions are weak, it is particularly attractive to leave the refugee issue to a third party. Indeed, in the early stages of the Syrian influx to Lebanon, Lebanese political actors struggled to find a common approach to handling the situation, leading the Minister of Social Affairs to explain that the best way to deal with the Syrian influx was under the auspices of the UN: 'Working under the UN would be discrete and more effective in this case.'¹²¹ This, of course, has also had its downsides. As one government official, only half-jokingly, told me, in the course of the Syrian refugee response, 'UNHCR became stronger, became more important than the President of the Republic ... [it became a] major decision-maker in the country.'¹²² It is therefore no surprise that not all domestic actors are content with shifting the responsibility for important issues to a third party; Lebanon's Foreign Minister, renowned for his tense relationship with UNHCR, has on several occasions threatened to keep the agency on a short leash. In 2014, he commented to local media: 'From now on, Lebanon will be setting making refugee policies while the others, including UNHCR, will work according to them and not the other way around.'¹²³

There are further political reasons for Lebanon's reluctance to commit to the international refugee regime. The following section examines the good-neighbourliness argument.

¹¹⁷ International Rescue Committee, 'Emergency Economies: The Impact of Cash Assistance in Lebanon' (2014).

¹¹⁸ UNHCR and UNDP, 'Impact of Humanitarian Aid on the Lebanese Economy' (2015).

¹¹⁹ Notable examples are Kenya's camps for Somali and Sudanese refugees.

¹²⁰ Salamey (n 7).

¹²¹ A Amrieh, 'Syrian Refugees Begin to Trickle Back across the Border' *Daily Star* (Lebanon, 31 May 2011) <www.dailystar.com.lb/News/Lebanon-News/2011/May-31/139933-syrian-refugees-begin-to-trickle-back-across-the-border.ashx#> accessed 25 October 2016.

¹²² Government official, Beirut, 6 June 2016.

¹²³ H Lakkis, 'Bassil: Lebanon, Not UN, Sets Refugee Policies' *Daily Star* (Lebanon, 11 November 2014) <<http://www.dailystar.com.lb/News/Lebanon-News/2014/Nov-11/277234-bassil-lebanon-not-un-sets-refugee-policies.ashx>> accessed 25 October 2016.

4.3 Good-neighbourliness

The 1992 Declaration on the Protection of Refugees and Displaced Persons in the Arab World echoes the 1951 Refugee Convention in stating that 'the granting of asylum should not ... be regarded as an unfriendly act vis-à-vis any other State'.¹²⁴ However, this principle – the Declaration being endorsed only by Egypt – has had to give way to the 'good-neighbourliness' argument, which takes as central the general principle that States should not interfere in the 'sensitive issues' of neighbouring countries. Not wanting to accuse fellow Arab States of persecution, it is a political problem for many Middle Eastern States that refugees in this region typically come from neighbours.¹²⁵ One way of ameliorating these political sensitivities is thus to avoid responsibility for the refugees by handing over the responsibility to third parties, and by avoiding certain obligations towards refugees by remaining non-parties to the 1951 Refugee Convention. Ratifying the Convention would, it is often thought, entail a duty to recognize certain forced migrants as refugees.

While Lebanon's history with Palestine refugees demonstrates that refugees may indeed represent a geopolitical and strategic concern, these concerns became even more acute when Syrian nationals began seeking protection in Lebanon in the spring of 2011. Lebanese political groups are sharply split over the conflict in Syria.¹²⁶ At the same time, the country has long had special relations with Syria, evident not least in treaties such as the Treaty of Brotherhood, Cooperation and Coordination between the Syrian Arab Republic and the Lebanese Republic.¹²⁷ These special relations are also highlighted in the Taef Agreement that ended Lebanon's civil war in 1990. Here, Syrian forces were given a specific role in assisting the Lebanese government's assertion of authority over its territory, justified by the idea that Syria and Lebanon have 'the roots of blood relationships, history and joint fraternal interests'.¹²⁸

In June 2012, Lebanon's caretaker government established a policy of neutrality towards the events in Syria under the label of the 'disassociation policy'.¹²⁹ The policy aimed to preserve the delicate political balance between the various sectarian forces that, as political factions, were unable to come to agreement. Lebanese politicians were generally divided between pro-Syrian regime supporters and pro-opposition supporters, and there was no possibility of reaching a consensus even on how to respond to the refugee influx. This explains why Judge Khatib's ruling on the UDHR article 14 right to seek asylum was perceived by some as evidence of support for the Syrian opposition.

¹²⁴ Declaration on the Protection of Refugees and Displaced Persons in the Arab World (19 November 1992) <<http://www.refworld.org/docid/452675944.html>> accessed 31 October 2016.

¹²⁵ Kagan (n 3) 324.

¹²⁶ Meier 'Lebanon' (n 56) 383.

¹²⁷ 22 May 1991. See UN Treaty Series <http://peacemaker.un.org/sites/peacemaker.un.org/files/LB-SY_910522_TreatyBrotherhoodCooperationCoordination.pdf> accessed 25 October 2016.

¹²⁸ Taef Agreement (11 October 1989) 8 <<http://peacemaker.un.org/lebanon-taifaccords89>> accessed 25 October 2016.

¹²⁹ 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).

However, the Syrian regime still had a strong influence on segments of the Lebanese political field despite officially withdrawing from Lebanese territory in 2005.

The 'good-neighbourliness' argument nevertheless holds that Lebanon should not employ the term 'refugee' because by doing so the State would find itself in positions that could violate the good neighbour principle. Indeed, one strand of the Lebanese government's disassociation policy was the enforcement of the term 'displaced persons' ('*nazihoun*') rather than 'refugees' ('*lajoun*'). In this way, as a senior government adviser explained, 'the Lebanese government not only avoided labelling those who have fled to Lebanon as people escaping from persecution, it avoided acknowledging that there is a war in Syria.'¹³⁰ The difficulties of labelling Syrians seeking protection nevertheless continued long after the policy was adopted. This is evident in official government and UN documents, such as the LCRP, which introduces various terms – including the curious notion of '*de facto* refugees'¹³¹ – to refer 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.¹³²

The LCRP furthermore refers to the question of Lebanon's 'voluntary' application of the 1951 Refugee Convention, which leads to the next and final argument – that many in Lebanon consider the Convention redundant.

4.4 The 'redundancy' of the 1951 Refugee Convention

4.4.1 *Lebanon's 'voluntary' application of Convention provisions*

A more recent argument legitimizing Lebanon's non-accession to the 1951 Refugee Convention claims that accession to the Convention is redundant for a number of reasons. First, it is argued, Lebanon need not accede to the Convention as it already applies many of its provisions voluntarily. This sentiment was already discernable in 2006, when Lebanon sought to become a member of the UN Human Rights Council, and outlined its human rights record in a letter addressed to the UN Secretary-General. On the Refugee Convention, it wrote: 'Lebanon is not a party to this Convention, *but* the Lebanese authorities pursue a strategy of protecting refugees and persons who have

¹³⁰ Government official, Beirut, 10 June 2016.

¹³¹ The term '*de facto* refugees' has in comparison been used by scholars when forced migrants in Europe or North America have fallen outside the 1951 Refugee Convention's definition of 'refugee' but nevertheless cannot return home. They have therefore often been allowed to remain in countries of asylum under various temporary statuses. See WT Worster, 'The Evolving Definition of the Refugee in Contemporary International Law' (2012) 30 *Berkeley Journal of International Law* 93, 116.

¹³² UNHCR and Government of Lebanon 'LCRP' (n 11).

entered Lebanon illegally'.¹³³ A decade later, in August 2016, a Lebanese representative told the CERD Committee that: 'Lebanon had never closed its borders to persons at risk of persecution *although* it was not a signatory to the 1951 Convention relating to the Status of Refugees'.¹³⁴ The same argument was made to the CEDAW Committee in 2015, when the Lebanese representative stated that:

Lebanon, *although* it did not sign the 1951 Convention and 1967 Protocol Relating to the Status of Refugees, complies with the principle of non-refoulement of refugees. The General Directorate of General Security does not deport persons whom it believes will be subjected to danger, violence or threat in their countries.¹³⁵

It is arguable that Lebanon is bound by many key refugee protection principles by means of customary international law, or by other human rights treaties to which it is in fact a party. In other words, it need not apply the 1951 Refugee Convention *voluntarily* to be bound, for instance, by the principle of *non-refoulement*. In addition to the 1951 Convention, the principle of *non-refoulement* is expressed in article 3 of the 1984 UN Convention against Torture – a treaty ratified by Lebanon.¹³⁶ At the same time, some scholars have argued that *non-refoulement* is a long-standing rule of customary international law, which would then bind Lebanon irrespective of other treaty obligations.¹³⁷ However, non-ratification due to other human rights commitments appears to be a separate argument, as shown below. The claim of *voluntarily* applying the Refugee Convention's provisions appears to be a specific political and rhetorical point that has even been included in official Lebanese documents, as well as in those of the UN.

The LCRP, for example, sets out the premise of Lebanon's refugee response with regard to the international refugee regime. It notably includes a preambular text-box explicitly stating 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.¹³⁸

Interestingly, this approach has also been adopted in international donor documents. For instance, the outcome document of the Berlin Conference on the Syrian Refugee

¹³³ Permanent Mission of Lebanon to the UN, 'Lebanon's Pledges and Commitments: Lebanon's Candidature to the Human Rights Council' (2006) <<http://www.un.org/ga/60/elect/hrc/lebanon.pdf>> accessed 25 October 2016.

¹³⁴ UN doc CERD/C/SR.2463 (2016) (emphasis added).

¹³⁵ UN doc CEDAW/C/LBN/Q/4-5/Add.1 (2015) 6 (emphasis added).

¹³⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85.

¹³⁷ GS Goodwin-Gill and J McAdam, *The Refugee in International Law* (3rd edn, Oxford University Press 2007) ch 5.

¹³⁸ UNHCR and Government of Lebanon 'LCRP' (n 11).

Situation in 2014 includes a section stating that: 'some host countries are not State Parties to the 1951 Geneva Convention on Refugees and its 1967 Protocol, and ... they are implementing some of their provisions on a voluntary basis.'¹³⁹

Government officials argued during interviews that the Lebanese response to the Syrian influx in terms of what they call '*de facto* rights' had not been affected by the fact that Lebanon is a non-party to the Convention. As one explained, the measures taken by the government, 'although late and hesitant, were similar to the behaviour of a signatory country of the Convention.'¹⁴⁰ Another official not only stressed that Lebanon voluntarily applied most of the Convention's provisions, but also that this included voluntarily applying the Convention's derogation clause in article 9, which presupposes that there may be circumstances warranting and justifying that Contracting States withhold all or certain components of refugee status.¹⁴¹ This suggests that certain actors possess detailed knowledge of the contents and scope of the Convention, which might be explained by UNHCR's consistent efforts to increase knowledge of the basics of international refugee law. However, interviews with UN staff suggest that Lebanon's insistence on its *voluntary* application of the Convention has become an issue of apprehension.¹⁴² While UNHCR currently pragmatically accepts States not ratifying the Refugee Convention as long as they uphold the refugee protection principles embedded therein, some argue that the Lebanese claim of voluntary application of the Convention shifts the focus from being a question of obligation to being an issue of generosity and hospitality. This, it is argued, detracts from the fact that Lebanon *has* international law commitments stemming from a number of sources that are key in refugee protection. It is to these obligations that the next section turns.

4.4.2 *Lebanon: 'a human rights pioneer'*

By virtue of its membership of the UN and its ratification of a number of core human rights instruments, Lebanon has a number of human rights obligations towards refugees on its territory. For this reason, some argue, any ratification of the 1951 Refugee Convention is superfluous. Lebanese politicians often stress the measures Lebanon is taking to abide by 'international standards',¹⁴³ and, as one government official correctly pointed out, 'in order to provide basic rights to refugees, a country does not have to be a party to the Convention.'¹⁴⁴ Lebanon's history of participating in drafting some of the earliest international human rights instruments has, furthermore, brought about a notion of Lebanon being the cradle of human rights, and it is not uncommon to hear the argument that 'in the Middle East we are pioneers.'¹⁴⁵ A senior UN official commented:

¹³⁹ Berlin Conference (n 61).

¹⁴⁰ Government official, Beirut, 10 June 2016.

¹⁴¹ Government official, Beirut, 18 June 2016.

¹⁴² UNHCR official (via Skype) 5 October 2016; UNHCR official, Beirut, 27 June 2016.

¹⁴³ Lakkis (n 123).

¹⁴⁴ Government official, Beirut, 10 June 2016.

¹⁴⁵ Government Official, Beirut, 18 April 2016. This same argument was also made to UN Secretary-General, Kofi Annan. See Permanent Mission of Lebanon to the UN (n 133).

One day I was so surprised by one of the intelligence officers who was completely rejecting the 1951 Convention, but then went on and on about how Lebanon was part of drafting the UN Charter, or I don't know what, the ICCPR, or whatever. So I was thinking, 'Okay, you are telling me that you are completely ignoring the '51 Convention but everything else is thanks to Lebanon that we have all of these treaties ...'

And at the end of the conversation I was like, 'Do you realize that the 1951 Convention, except the definition of refugees, it's all the rights in all the other instruments that you claim Lebanon wrote, basically, almost wrote from scratch.' So I think that they have a sense of being very proud of a lot of achievements in the UN ...¹⁴⁶

Indeed, Lebanon was a member of the eight-person drafting committee for the UDHR, an accomplishment that was also emphasized during Lebanon's candidacy to the UN Human Rights Council in 2006:

Lebanon has consistently contributed towards the development of a balanced, fair and effective international human rights system that works for the promotion and protection of all human rights through dialogue, cooperation, capacity-building, and technical cooperation. Lebanon played a key role in the elaboration of the Universal Declaration through a leading Lebanese figure, Dr. Charles Malik, who chaired the UN Commission on Human Rights for two consecutive terms (1951–1952).¹⁴⁷

Lebanon's long relationship with the UN human rights system is also reflected in the preamble to the Lebanese Constitution, which states that:

Lebanon is also a founding and active member of the United Nations Organization and abides by its covenants and by the Universal Declaration of Human Rights. The Government shall embody these principles in all fields and areas without exception.¹⁴⁸

However, as mentioned above, while Lebanon has signed a number of international human rights law instruments that constitutionally take precedence over national law, their principles are seldom practised in domestic courts.

On other occasions, some have argued, Lebanon goes beyond what would be required of them as a party to the 1951 Convention. As one government official explained, 'Lebanon's international commitments to refugees go beyond the matter of signing the Convention and Protocol'.¹⁴⁹ Another insisted:

¹⁴⁶ UNHCR official, Beirut, 17 May 2016.

¹⁴⁷ Permanent Mission of Lebanon to the UN (n 133).

¹⁴⁸ Preamble, para (B).

¹⁴⁹ Government official, Beirut, 10 June 2016.

Lebanon is in fact more generous than the 1951 Refugee Convention: according to the Refugee Convention, refugees are allowed to work first after three years. The Lebanese government allows refugees to work as soon as they arrive, at least in these three sectors: cleaning, construction, agriculture.¹⁵⁰

4.4.3 *The global 'crisis' of the 1951 Refugee Convention*

Finally, many Lebanese decision makers consider the 1951 Refugee Convention redundant due to recent global developments in which many States appear to reject the Convention altogether. International refugee law is in crisis, many would argue, and calls to scrap or reform the Refugee Convention have been widely made.¹⁵¹ This, as well as European countries' deterrent policies – including the erection of barbed wire fences and the passing of more restrictive domestic refugee and asylum legislation – has not gone unnoticed in Lebanon. Lebanese media had almost daily coverage of Europe's refugee 'crisis' in 2015. Speaking to the CERD Committee in August 2015, the Lebanese representative made apparent reference to the situation: 'The Lebanese Government ... respected the principle of non-refoulement and it was not erecting walls or barbed-wire fences.'¹⁵²

The perceived crisis in international refugee law has been used to justify Lebanon's non-ratification of the Refugee Convention. A government official referred to the situation in Europe when asked about non-ratification, and claimed that 'even' Scandinavian countries now consider the Refugee Convention outdated: 'If they think so, why should Lebanon become a party?'.¹⁵³ It is clear that developments in Europe and elsewhere have influenced Lebanese perceptions about the importance and advantages of the 1951 Refugee Convention, and have provided justification for not becoming a party to this core refugee protection instrument.

5. CONCLUSIONS

This article has explored how Lebanon seeks to legitimize its rejection of the 1951 Refugee Convention. It has shown that there are many paradoxes in the behaviour of Lebanon towards refugees. On the one hand, it engaged actively in the establishment of the international refugee regime, and has been a member of UNHCR's Executive Committee since 1963. It hosts the highest number of refugees per capita in the world, and – although it often fails to safeguard the rights of refugees present in the country – its approach to refugees has often been lauded by the international community. Yet, on

¹⁵⁰ Government official, Beirut, 18 April 2016. However, what the official failed to disclose is that this permission to work generally only relates to the informal labour market; very few Syrians in Lebanon have been granted formal work permits since 2011. Also, it is an inaccurate reading of the 1951 Refugee Convention's art 17(2). See Hathaway (n 83) 747.

¹⁵¹ K Siegfried, 'Has the Refugee Convention Outlived Its Usefulness?' (*IRIN News*, 26 March 2012) <<http://www.irinnews.org/analysis/2012/03/26/has-refugee-convention-outlived-its-usefulness>> accessed 25 October 2016; 'Time to Reform the Way We Protect Refugees?' (*IRIN News*, 9 May 2016) <<http://www.irinnews.org/analysis/2016/05/09/time-reform-way-we-protect-refugees>> accessed 25 October 2016.

¹⁵² UN doc CERD/C/SR.2463 (2016) (emphasis added).

¹⁵³ Government official, Beirut, 18 June 2016.

the other hand, Lebanon insists that it is not a country of asylum, and rejects, in principle, the local integration of refugees.

The article has provided four examples of how Lebanon legitimizes its non-ratification of the 1951 Refugee Convention. First, there is widespread uncertainty and misunderstanding as to the obligations that come with the Convention, including a belief that the Convention would require Lebanon to allow permanent settlement of refugees on its territory. While such misunderstandings may sometimes be genuine, it is arguable that in many cases they are simply politically expedient; Lebanese political elites use opposition to the Convention as a source for political consensus and mobilization. Secondly, shifting the responsibility for refugees to third parties, such as UNHCR, has made Lebanon less inclined to become a party to the Convention. Thirdly, the 'good-neighbourliness' argument means that Lebanon rejects the term 'refugee', to avoid being put in positions that could violate the good neighbour principle. Finally, many Lebanese government officials and policymakers simply consider Lebanon's accession to the Convention redundant.

Lebanon's blatant 'rejection' of international refugee law places UNHCR and other refugee protection actors in a challenging position. This article has explored how, while UNHCR has chosen to adopt a 'pragmatic but principled' approach to avoid pressuring Lebanon into ratifying international refugee law instruments, as long as the country provides *de facto* protection to refugees, such pressure has increasingly come from other UN human rights bodies. Future research could therefore concentrate more precisely on the actual benefits of treaty ratification for strengthening refugee protection in Lebanon (and in other non-signatory States). Treaty ratification might increase the normative strength of obligations towards refugees, as well as shifting the underlying responsibility for refugees in Lebanon from UNHCR to the State. However, UNHCR's current focus on creating a politically negotiated and, therefore, pragmatic 'protection space' for refugees in Lebanon, rather than on persuading Lebanon to ratify the Convention, as well as Lebanon's perception that Contracting States do not necessarily offer better practice than non-signatory States, suggests that this issue is far from straightforward.