

## ARTICLES

# Saudi Arabia and the International Refugee Regime

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### ABSTRACT

As a non-signatory to the 1951 Refugee Convention and its 1967 Protocol, Saudi Arabia is often portrayed as a State that refuses engagement with the global legal norms and supporting institutions focused on the protection of refugees. This article contends that this is not the case, and closely examines Saudi Arabia's relationship with the international refugee regime by asking what was Saudi Arabia's role in the drafting of the main refugee protection instruments, and what is its approach – past and present – to acceding to the 1951 Convention? How does Saudi Arabia engage with the United Nations High Commissioner for Refugees (UNHCR) – on the global plane but also through UNHCR's activities in the country?

Drawing on hitherto unresearched material from the UNHCR archives pertaining to the years 1962–94, as well as interviews with key government and UNHCR actors, this article argues that Saudi Arabia engages substantively with the international refugee regime. It discusses how Saudi Arabia participated in the drafting processes of the main refugee protection instruments and shows that accession to the 1951 Convention appears to have been seriously considered at certain junctures.

The article also explores Saudi Arabia's relationship with UNHCR. In addition to focusing on Saudi Arabia's role in the UNHCR Executive Committee, it looks more closely at UNHCR's activities in the country, identifying three phases of UNHCR involvement – establishment (1987–97), expansion (1998–2005), and consolidation (2005–). It finds that UNHCR's approach to Saudi Arabia is characterized by pragmatism rather than by principle, and that Saudi Arabia has been able to influence the way UNHCR implements its mandate in the country, as well as beyond. Importantly, Saudi Arabia is a gatekeeper for UNHCR operations in the Gulf region and in Muslim-majority countries more generally. Similarly, UNHCR is an important vessel for Saudi Arabian humanitarianism.

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## 1. INTRODUCTION

It is often assumed that Saudi Arabia and other Member States of the Gulf Cooperation Council (GCC) refuse engagement with the international refugee regime – that is, the global legal norms and supporting institutions focused on the protection of refugees. In 2015, one commentator observed that Saudi Arabia and other GCC States ‘simply don’t “do” refugees.’<sup>1</sup> While Saudi Arabia is not a party to either the 1951 Refugee Convention or its 1967 Protocol,<sup>2</sup> it is arguable that simplified depictions like that made by the commentator are flawed in a number of ways; they suppose that States such as Saudi Arabia are and have been wholly absent in the development of international refugee law, that they fundamentally contest the key principles underlying this regime, and that they play no significant role in global refugee protection. This article takes as its starting point that this is not the case, and contends that, while the involvement of Saudi Arabia in the international refugee regime should not be exaggerated, nor should it be discounted.

Previous research by one of the authors has emphasized the need to examine more closely the relationship between the international refugee regime and States that are not parties to the 1951 Convention (described as ‘non-signatory States’).<sup>3</sup> To date, however, discussions about non-signatory States’ engagement with this regime have principally focused on those States hosting large refugee populations. By shining a light on a State that formally hosts few refugees but is a major donor to the United Nations High Commissioner for Refugees (UNHCR), this article aims to bring new and important insights into the broader debate about non-signatory States. For decades, UNHCR has sought to tap into Saudi Arabia’s – and the broader region’s – ‘immense fund raising potential.’<sup>4</sup> In 2021, the country was among UNHCR’s top 20 government donors and ranked as the third largest humanitarian donor country globally.<sup>5</sup> The ‘considerable political and economic influence’<sup>6</sup> that is achieved through its monetary donations arguably warrants a closer examination of Saudi Arabia’s engagement with the international refugee regime more generally.

The focus of this article is also important because international refugee law scholarship only rarely includes insights from the broader Middle East region, the GCC States included. In the event that these States are encompassed in discussions of international refugee law, the Member States of the GCC – that is, Kuwait, Qatar, Bahrain, the United Arab Emirates (UAE), Oman, and Saudi Arabia – are often grouped together as if their approaches are one and the same.<sup>7</sup> While these States do share certain features, such as a high percentage of non-citizen residents and the application of the *kafala* system as the dominant system of regulating migration, the

- 1 Julie M Norman, ‘Saudi Arabia Doesn’t “Do” Refugees – It’s Time to Change That’ (*The Conversation*, 23 September 2015) <<https://theconversation.com/saudi-arabia-doesnt-do-refugees-its-time-to-change-that-47307>> accessed 3 August 2022.
- 2 Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (1951 Convention); Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267 (1967 Protocol).
- 3 Maja Janmyr, ‘The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda’ (2021) 33 *International Journal of Refugee Law* 188.
- 4 UNHCR, ‘Situation Operations Plan Gulf Countries’ (2001) <<https://www.unhcr.org/3c6398174.pdf>> accessed 3 August 2022; Maja Janmyr and Charlotte Lysa, ‘UNHCR’s Expansion to the GCC States: Establishing a UNHCR Presence in Saudi Arabia 1987–1993’ (2023) *Middle East Critique* <<https://doi.org/10.1080/19436149.2023.2235860>>; Paul Lewis, ‘UN Refugee Chief Seeking Help from the Gulf Nations’ *The New York Times* (10 November 1991) <<https://www.nytimes.com/1991/11/10/world/un-refugee-chief-seeking-help-from-the-gulf-nations.html>> accessed 3 August 2022.
- 5 United Nations Office for the Coordination of Humanitarian Affairs, ‘The UN Financial Tracking System: Humanitarian Aid Contributions’ <<https://fts.unocha.org/global-funding/overview/2021>> accessed 6 November 2022.
- 6 UNHCR, ‘UNHCR Country Operations Plan 2004 – Saudi Arabia’ (1 September 2003) <<https://www.refworld.org/docid/3fd9c6cb7.html>> accessed 3 August 2022. See also Georgia Cole, ‘Non-Signatory Donor States and UNHCR: Questions of Funding and Influence’ (2021) 67 *Forced Migration Review* 56.
- 7 These States are also subject to a regional refugee protection regime. See eg Maja Janmyr and Dallal Stevens, ‘Regional Refugee Regimes: Middle East’ in Cathryn Costello, Michelle Foster, and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (Oxford University Press 2021).

ramifications and political realities are far from identical.<sup>8</sup> Qatar, for example, is the only GCC State that has passed a domestic law on refugees and asylum.<sup>9</sup> Additionally, in Saudi Arabia, the dynamic of migration is uniquely impacted by the geographical location of Mecca and Medina in the Hijaz region. As home to the two holiest places of Islam, Hijaz is historically considered as a space of refuge for Muslims.<sup>10</sup> There is a pressing need, as has been noted, for more knowledge about and understanding of refugeehood in Saudi Arabia.<sup>11</sup>

Against this backdrop, this article seeks to nuance the understanding of Saudi Arabia's relationship with the international refugee regime. It specifically asks: what was Saudi Arabia's role in the drafting of the main refugee protection instruments, and what is its approach to acceding to the 1951 Convention? How does Saudi Arabia engage with UNHCR – on the global plane but also through UNHCR's activities in the country? Importantly, in this context, how does UNHCR implement its mandate of international protection? In answering these questions, this legal historical article draws on hitherto unresearched material on Saudi Arabia from the UNHCR archives pertaining to the years 1962–94, and archival material – notably UNHCR country operations plans (available until 2009) – available through the United Nations (UN) Digital Library and the UNHCR website. It also draws on interviews with key government and UNHCR actors.<sup>12</sup>

The article proceeds in four parts. Following this introductory part, which also includes a brief section on refugees and migration in Saudi Arabia, part 2 explores the country's historical relationship with, and contemporary approach to, the 1951 Convention and other refugee protection instruments. Part 3 focuses on UNHCR–Saudi Arabia relations, including a discussion of UNHCR's presence in the country, as well as Saudi Arabia's involvement in international fora such as UNHCR's Executive Committee (ExCom). Part 4 offers conclusions. Overall, the article argues that Saudi Arabia engages substantively with the international refugee regime – and has done so over time.

### 1.1 Saudi Arabia as a migrant- and refugee-hosting State

Despite the popular perception that there are no refugees in Saudi Arabia, the country has a long history as a place of migration and refuge, and a large proportion of the population are non-citizens.<sup>13</sup> Even before the establishment of the contemporary Saudi State in 1932, foreign Muslim dissidents commonly sought refuge in the Hijaz region.<sup>14</sup> The introduction of residence and immigration restrictions during the 1950s – including most notably the 1952 Residence Regulations<sup>15</sup> – solidified a system (*kafala*) of regulating migration that largely centres on labour

8 See eg Maysa Zahra, 'The Legal Framework of the Sponsorship Systems of the Gulf Cooperation Council Countries: A Comparative Examination', Explanatory Note No 10/2015 (Gulf Labour Markets and Migration) <<https://cadmus.eui.eu/handle/1814/37966>> accessed 4 August 2022.

9 See Law No 11 of 2018 on Regulating Political Asylum. The original text of the law can be found at <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/107347/132094/F-925224199/15.pdf>> accessed 4 August 2022, and <<https://www.almeezan.qa/LawPage.aspx?id=7738&language=ar>> accessed 4 August 2022; US Department of State, '2021 Country Reports on Human Rights Practices: Qatar' (undated) <<https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/qatar>> accessed 3 November 2022.

10 Michael C Low, *Imperial Mecca: Ottoman Arabia and the Indian Ocean Hajj* (Columbia University Press 2020); Michael C Low, 'Unfurling the Flag of Extraterritoriality: Autonomy, Foreign Muslims, and the Capitulations in the Ottoman Hijaz' (2016) 3 *Journal of the Ottoman and Turkish Studies Association* 299; Ulrike Freitag, *A History of Jeddah: The Gate to Mecca in the Nineteenth and Twentieth Centuries* (Cambridge University Press 2020).

11 Georgia Cole, 'Pluralising Geographies of Refuge' (2021) 45 *Progress in Human Geography* 88.

12 Between 2020 and 2022, one of the authors conducted a total of 13 semi-structured interviews (remotely, and in person in Riyadh, Saudi Arabia). Interviews were carried out in English, supplemented by Arabic. All interviewees have been anonymized. Ethical approval was obtained from the Norwegian Centre for Research Data (NSD), Ref No 785863/ 510076.

13 In 2018, approximately 12.6 million of the total population of 33.4 million were non-citizens. Kingdom of Saudi Arabia General Authority for Statistics, 'Population by Gender, Age Groups and Nationality (Saudi/Non-Saudi)' (2019) <<https://www.stats.gov.sa/en/5680>> accessed 3 August 2022.

14 Low 2016 (n 10).

15 Saudi Arabia: Residence Regulations No 17/2/25/1337, 4 June 1952 (unofficial translation) <<https://www.refworld.org/docid/3fb9fd44.html>> accessed 27 September 2023.

migration. In general, a foreign national's residence in Saudi Arabia requires a sponsor (*kafil*), principally a company or a Saudi citizen.<sup>16</sup> Temporary residence permits are thus commonly tied to work contracts. Additionally, due to its special status in the Muslim world, Saudi Arabia receives as many as 2.5 million pilgrims every year for hajj and about 4.5 million for umrah.<sup>17</sup> A considerable number of these pilgrims overstay their special visas and become irregular migrants in the country.<sup>18</sup>

A large proportion of Saudi Arabia's migrant population, including those arriving on pilgrim visas, arrive from 'refugee-producing' countries. While it is difficult to ascertain how many of the country's regular and irregular migrants are refugees,<sup>19</sup> both the Saudi government and UNHCR have suggested that more than five per cent of Saudi Arabia's total population are refugees.<sup>20</sup> Of course, this estimate stands in stark contrast to the very small number of asylum applications registered annually by UNHCR; in 2020, UNHCR's Riyadh office registered merely 9,434 asylum applications, and in 2021, the official number of refugees registered under UNHCR's mandate was only 340.<sup>21</sup>

Despite the very low numbers of formal asylum applications to UNHCR, over the years the Saudi government has introduced special residence policies for certain groups of *de facto* refugees. Adaptable policies such as these, Thiollet has argued, may function as 'indirect asylum policies.'<sup>22</sup> Through such policies, more than 400,000 Yemenis were able to regularize their status in 2015,<sup>23</sup> with some 670,000 Syrians having done so by 2018, and about 250,000 Rohingya in 2013.<sup>24</sup> Nonetheless, most refugees in Saudi Arabia remain regulated as ordinary labour migrants in accordance with the *kafala* system. Although reforms have been introduced in recent years, the system still raises several human rights concerns, including great risks of exploitation.<sup>25</sup>

- 16 Certain groups, primarily pilgrims and students, are exempt from this requirement. For a more detailed account of the legal framework, see Zahra (n 8).
- 17 Françoise De Bel-Air, 'Irregular Migration in the Gulf States: What Data Reveal and What They Conceal' in Philippe Fargues and Nasra M Shah (eds), *Skilful Survivals: Irregular Migration to the Gulf* (Gulf Research Centre 2017) 41; Marwa Rashad and Aziz El Yakoubi, 'Saudi Arabia Considers Barring Overseas Haj Pilgrims for Second Year, Sources Say' (*Reuters*, 5 May 2021) <<https://www.reuters.com/world/india/saudi-arabia-considers-barring-overseas-haj-pilgrims-second-year-sources-say-2021-05-05/>> accessed 3 August 2022.
- 18 In 2014, the total number of irregular migrants in the country was estimated to be 5.3 million. Fargues and Shah (eds) (n 17) 17. See also Fahad Alsharif, 'Undocumented Migrants in Saudi Arabia: COVID-19 and Amnesty Reforms' (2022) 60 *International Migration* 188; UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009: Saudi Arabia, Kuwait, UAE, Qatar, Bahrain, Oman' (1 September 2007) <<https://www.refworld.org/docid/4756bb232.html>> accessed 3 August 2022.
- 19 Françoise De Bel-Air, 'A Note on Syrian Refugees in the Gulf: Attempting to Assess Data and Policies', Explanatory Note No 11/2015 (Gulf Labour Markets and Migration, 2015) <<https://cadmus.eui.eu/handle/1814/37965>> accessed 4 August 2022; Marko Valenta and Jo Jakobsen, 'Mixed Migrations to the Gulf: An Empirical Analysis of Migrations from Unstable and Refugee-Producing Countries to the GCC, 1960–2015' (2017) 36 *Refugee Survey Quarterly* 33.
- 20 Commentators have pointed to this number being an understatement, with the number of *de facto* refugees in Saudi Arabia being higher. Aqeel GM AlGhamdi, 'King Salman Humanitarian Aid and Relief Centre Speech for the 69th Session of the Executive Committee of the High Commissioner's Programme (1–5 October 2018)' <<https://www.unhcr.org/excom/speeches/5bb368d14/statement-of-saudi-arabia.html>> accessed 4 August 2022. A similar claim has also recently been made by a UNHCR representative: Aisha Jaafari, 'UNHCR Representative to Asharq Al-Awsat: Refugees in Saudi Arabia Are 5.5% of the Total Population' *Asharq al-Awsat* (London, 20 June 2021) <<https://english.aawsat.com/home/article/3037076/unhcr-representative-asharq-al-awsat-refugees-saudi-arabia-are-55-total>> accessed 4 August 2022. The exact number varies slightly, and includes Syrian, Yemeni, and Rohingya refugees.
- 21 UNHCR, 'Refugee Data Finder' <<https://www.unhcr.org/refugee-statistics/download/?url=3HJ0lc>> accessed 3 August 2022.
- 22 Héléne Thiollet, 'Refugees and Migrants from Eritrea to the Arab World: The Cases of Sudan, Yemen and Saudi Arabia 1991–2007' (Migration and Refugee Movements in the Middle East and North Africa Conference, Cairo, 23–25 October 2007) <<https://spire.sciencespo.fr/notice/2441/1385rj6c119mu88dct8ffb1uor>> accessed 4 August 2022.
- 23 UNHCR Executive Committee (ExCom), 'Update on UNHCR's Operations in the Middle East and North Africa (MENA)' (24 September 2015) <<https://www.unhcr.org/uk/560505e09.pdf>> accessed 4 August 2022.
- 24 *ibid*; Emina Osmandzikovic, 'Integration of Displaced Syrians in Saudi Arabia' (2020) 10 *Border Crossings* 91; Morad Alsahafi, 'Language Proficiency and Usage among Second- and Third-Generation Rohingya Refugees in Mecca' (2021) 42 *Journal of Multilingual and Multicultural Development* 37.
- 25 For an overview of the gaps that exist in terms of refugee protection, see eg Charlotte Lysa, 'Governing Refugees in Saudi Arabia (1948–2022)' (2023) 42 *Refugee Survey Quarterly* 1.

## 2. SAUDI ARABIA AND THE 1951 CONVENTION

This part examines Saudi Arabia's relationship to the 1951 Convention by first discussing its role in the drafting history of key refugee protection instruments, and then examining more closely its deliberations on accession to this Convention.

### 2.1 The drafting history of key refugee protection instruments

Saudi Arabia was one of the 51 founding Member States of the UN, and was actively involved in the drafting processes of the key international human rights instruments, including the Universal Declaration of Human Rights (UDHR),<sup>26</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>27</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>28</sup> Its most important representative – Jamil Baroodi – remains to this day one of the most longstanding diplomats at the UN, joining the Saudi Arabia Delegation to the San Francisco Conference in 1945 and ending his career in 1979, holding the rank of ambassador.<sup>29</sup> Originally of Lebanese origin, Baroodi was an active participant during the drafting of several core refugee protection instruments, including the 1951 Convention and the UNHCR Statute.<sup>30</sup> This section focuses on Saudi Arabia's involvement in the drafting processes of the (asylum-related provision of) the 1948 UDHR, the 1951 Convention, the 1950 UNHCR Statute, and the 1967 Declaration on Territorial Asylum.<sup>31</sup>

#### 2.1.1 1948 *Universal Declaration of Human Rights*

While Saudi Arabia abstained from the UN General Assembly's vote to approve the UDHR in December 1948, the official records of the proceedings register several Saudi interventions during the drafting process.<sup>32</sup> Article 14, concerning the right to seek and enjoy asylum, appears to have been of particular concern. Initially draft article 12, it sought to grant the right of asylum in cases of political crime: 'Everyone has the right to seek and be granted, in other countries, asylum from persecution.'<sup>33</sup> Saudi Arabia's Baroodi proposed amendment of this article, seeking to omit from the draft the section which promised that asylum would be granted. While acknowledging that the right to seek asylum was itself acceptable, Saudi Arabia argued against formulating a right that could be seen as subverting State sovereignty. According to Piscatori, Saudi Arabia's position stemmed from a concern that it might be obligated to accept refugees hostile to the regime.<sup>34</sup> Baroodi proposed that the right be limited by deleting the words 'and be granted'.<sup>35</sup> The amendment was adopted and Saudi Arabia supported the British proposal which, by the time the General Assembly voted on the UDHR on 10 December 1948, had

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

27 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

28 International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR).

29 Susan Waltz, 'Universal Human Rights: The Contribution of Muslim States' (2004) 26 *Human Rights Quarterly* 799, 810–11.

30 Statute of the Office of the United Nations High Commissioner for Refugees, UNGA res 428 (V) (14 December 1950) (UNHCR Statute).

31 UDHR (n 26); 1951 Convention (n 2); UNHCR Statute (n 30); Declaration on Territorial Asylum, UNGA res 2312 (XXII) (14 December 1967).

32 Waltz (n 29).

33 The draft art also had a qualifier: 'Prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations do not constitute persecution'. UN Economic and Social Council, *Report of the Third Session of the Commission on Human Rights*, Annex A: Draft International Declaration of Human Rights, UN doc E/800 (28 June 1948).

34 James P Piscatori, 'Islam and the International Legal Order: The Case of Saudi Arabia' (PhD thesis, University of Virginia 1976).

35 UNGA, 'Minutes of the 121st Meeting of the Third Committee', UN doc A/C.3/SR121 (3 November 1948).



become article 14(1): 'Everyone has the right to seek, and to enjoy, in other countries, asylum from persecution.'<sup>36</sup>

### 2.1.2 1951 Convention and 1950 UNHCR Statute

Saudi Arabia also influenced certain aspects of the 1951 Convention and the UNHCR Statute. The drafting process of the 1951 Convention started with UN General Assembly resolution 8(I) of 12 February 1946 and was concluded when a UN Conference of Plenipotentiaries adopted the treaty on 28 July 1951. While Saudi Arabia did not attend the conference, it participated in other stages of the drafting, perhaps most notably in the 1950 Third (Social, Humanitarian and Cultural) Committee of the General Assembly discussions. During the same period, Saudi Arabia also took part in discussions relating to the UNHCR Statute. An examination of these processes shows that Baroodi took an active role in often intricate legal discussions and proposed several amendments to both the draft Convention and the draft Statute. His proposals appear to have been taken seriously by the other participants, with some of the proposed amendments adopted.<sup>37</sup>

Perhaps the most important Saudi Arabian influence on the Convention and the Statute concerned the position of Palestine refugees. In the discussions regarding the drafting of the UNHCR Statute, delegates from Egypt, Lebanon, and Saudi Arabia jointly proposed an amendment that the '[m]andate of the High Commissioner should not extend to refugees currently under the mandate of other UN organs'.<sup>38</sup> It was clear that this exclusion was to apply to Palestine refugees; in the discussions, Baroodi argued that they should continue to be granted special status, and that it was essential that the continuity of protection be ensured.<sup>39</sup> Importantly, he emphasized that: 'If the General Assembly were to include the Palestine refugees in a general definition of refugees, they would become submerged and would be relegated to a position of minor importance'.<sup>40</sup> Thus, 'he could not vote for any definition which did not include the substance of the paragraph proposed for insertion'.<sup>41</sup>

The proposed amendments met with approval from the drafters, and the UNHCR Statute was adopted by the Third Committee of the General Assembly on 14 December 1950, with paragraph 7(c) containing a clause in line with the amendment proposed by Egypt, Lebanon, and Saudi Arabia. Notably, this amendment also influenced the final wording of the 1951 Convention: paragraph 7(c) of the UNHCR Statute was debated at the Conference of Plenipotentiaries and the language was reflected in what became article 1D in the final text of the Convention.<sup>42</sup>

36 General Assembly, 3rd Session, Official Records, Third Committee (1948) 331, 343–44.

37 See eg Saudi Arabia's suggested amendments to the refugee definition of art 1 of the 1951 Convention. Saudi Arabia's proposal was adopted by 14 votes to 6, with 18 abstentions. See General Assembly, 5th Session, Official Records, Third Committee, 329th Meeting, UN doc A/C.3/SR.329 (29 November 1950) paras 70, 78. Concerning the refugee definition in the UNHCR Statute, see also General Assembly, 5th Session, Official Records, Third Committee, 334th Meeting, UN doc A/C.3/SR.334 (4 December 1950) paras 36–83.

38 UNHCR, 'Egypt, Lebanon, Saudi Arabia Amendments to Draft Statute', UN doc A/C.3/L.128 (27 November 1950).

39 General Assembly, 5th Session, Official Records, Third Committee, 344th Meeting, UN doc A/C.3/SR.344 (11 December 1950) paras 24–25, 52, 55.

40 General Assembly, 5th Session, Official Records, Third Committee, 328th Meeting, UN doc A/C.3/SR.328 (27 November 1950) para 52.

41 *ibid* para 53.

42 See 'Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons', UN doc A/CONF.2/108/Rev.1 (25 July 1951) 138. See also the Statement by Mostafa Bey, Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons, 'Summary Record of the Twenty-Ninth Meeting', UN doc A/CONF.2/SR.29 (28 November 1951). The final text of art 1D reads as follows: 'This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.'

### 2.1.3 1967 Declaration on Territorial Asylum

While Saudi Arabia's involvement in the 10-year drafting process for the 1967 Declaration on Territorial Asylum should not be exaggerated, it was engaged in certain parts. When, for example, the draft Declaration developed by the UN Commission on Human Rights was considered by the Third Committee of the General Assembly at its 17th session in 1962, Saudi Arabia actively participated in discussions on the Declaration's preamble and core article 1. By the end of that session, the Third Committee had adopted a new text of both the preamble and article 1.

Baroody considered the substantive content of the preamble and the proposed article 1 to be of 'vital importance'.<sup>43</sup> The draft preamble, *inter alia*, reiterated article 14 of the UDHR, and draft article 1 read: 'Asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration of Human Rights shall be respected by all other States.'<sup>44</sup> Baroody appeared content with draft article 1 but was generally opposed to the amendments suggested by, among others, Belgium, which notably had proposed the following second paragraph to article 1:

The right to seek and to enjoy asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes.<sup>45</sup>

Baroody was 'unable to support' the Belgian amendments. 'His first objection was to the expression "serious reasons"; it was inept, since one State could obviously regard as "serious" reasons which another State would find absurd. In that regard, article 14, paragraph 2, of the Universal Declaration was more appropriately drafted.'<sup>46</sup> Furthermore, Baroody did not support a Belgian amendment of article 1 on war crimes, crimes against peace, and crimes against humanity, stating that the 'reference to war criminals, seemed equally out of place, since once an enumeration of types of criminals was begun it could be continued indefinitely.'<sup>47</sup> The Belgian amendment was nonetheless adopted in its entirety by 38 votes to 7, with 40 abstentions. Article 1, as amended, was adopted by 85 votes to none, with 4 abstentions. Following these discussions, the Third Committee made no progress on the proposed Declaration until 1966.<sup>48</sup> Saudi Arabia did not formally engage further with the drafting of the Declaration.

## 2.2 Accession to the 1951 Convention

While Saudi Arabia has remained a non-signatory to the 1951 Convention, its stance has changed over time. There have been periodic discussions about its potential accession to the Convention, often initiated by UNHCR.

43 General Assembly, Official Records, Third Committee, 1199th Meeting, UN doc A/C.3/SR.1199 (3 December 1962) para 26.

44 UN Commission on Human Rights, *Report of the Sixteenth Session*, UN doc E/3335 (supp) (29 February – 18 March 1960) 17.

45 A/C.3/L.1039/Rev.3 point 1, as cited in General Assembly, 17th Session, Official Records, Third Committee, 1200th Meeting, A/C.3/SR.1200 (4 December 1962) para 3.

46 General Assembly, 17th Session, Official Records, Third Committee, 1200th Meeting, A/C.3/SR.1200 (4 December 1962) para 39.

47 *ibid* para 40.

48 Guy S Goodwin-Gill, 'The 1967 Declaration on Territorial Asylum' (*UN Audiovisual Library of International Law*, 2012) <[https://legal.un.org/avl/pdf/ha/dta/dta\\_e.pdf](https://legal.un.org/avl/pdf/ha/dta/dta_e.pdf)> accessed 3 August 2022.

The 1951 Convention does not appear to have been on the agenda during the Deputy High Commissioner's high-level visit to Saudi Arabia in 1962,<sup>49</sup> but in the early 1970s UNHCR began addressing the possibilities of Saudi Arabia's accession to the Convention directly. In August 1974, for example, an exchange of letters took place between Bert B Lockwood of the World Peace Through Law Center's Treaty Project – who at the time appeared to have close ties with UNHCR – and Saudi Arabia's Permanent Mission to the UN. Lockwood queried why Saudi Arabia had not acceded to either the Convention or its Protocol, whereupon the Saudi chargé d'affaires, Gaafar Allegani, responded on behalf of Ambassador Baroody:

We are, at the moment, in the process of translating these instruments into Arabic at the request of our Government and are advocating an early consideration of same with a view to their ratification.

As you know it is in our tradition to grant refugee asylem [sic] to anybody that genuinely requests it, and in fact no such request has ever been denied, there are even cases where King Abdulaziz the founder of the Kingdom of Saudi Arabia has refused, under immense pressure, to surrender a refugee to Great Britain and instead offered his eldest son in his place. Therefore we anticipate no difficulty in ratifying these instruments, which we hope, will be in the near future.<sup>50</sup>

It seems, therefore, that accession to the 1951 Convention and its Protocol was not categorically refused by the Saudi government. Rather, it appears to have been a topic of very serious consideration. Indeed, other Arab States acceded to the Convention around this time – Yemen in 1980, and Egypt in 1981.

While no accession subsequently ensued, UNHCR made a new attempt at reaching out to the Saudi government during the early 1980s. An exchange of letters took place between the UNHCR Regional Representative for the Middle East, Juan Amunategui, and the United Nations Development Program (UNDP) Office in Saudi Arabia, through which UNHCR operated at this time (see part 3 below). Amunategui told UNDP that he had discussed the issue of accession with the Saudi delegation at the 1981 Migration in the Arab World Conference, organized in Cyprus by the UN Economic Commission for Western Asia. The Saudi delegation had 'advised UNHCR to present this Convention through the intermedium of the UNDP Office in Riyadh to the Ministries of Foreign Affairs and the Ministry of Interior.'<sup>51</sup> Now, UNHCR was seeking UNDP's help to follow up on the question of accession. Responding over a year later, in December 1982, the UNDP representative squarely told UNHCR that:

We refer to your letter No SAU/UNHCR/G dated 10 August 1981 and enclose [sic] copies of the 1951 United Nations Convention and the 1967 Protocol on the status of refugees requesting us to accede to the above-mentioned Agreement and Protocol. We should like to advise you that we received a cable from the Ministry of Foreign Affairs advising us that the Government of Saudi Arabia is unable to comply with the 1951 Convention and 1967 Protocol.<sup>52</sup>

While the letter provided no explanation for the Saudi government's position, other archival sources from the period reveal that the government had growing concerns about stability and

49 UNHCR Archives, 'Missions to the Middle East' (Fonds 13 Series 1: Mission to Greece, Pakistan, Iran, Irak, Jordan and Saudi Arabia (hereafter 13/1), 1 November 1962).

50 UNHCR Archives, 'Letter from Mr Gaafar Allagany to Mr Bert B Lockwood' (Fonds 11 Series 2 (hereafter 11/2): 651.SAU 1951 Convention Relating to the Status of Refugees – Saudi Arabia (hereafter 651.SAU), 3 September 1974).

51 UNHCR Archives, 'Letter to Mr Ibrahim Adly, UNDP Resident Representative' (11/2, 651.SAU, 3 July 1981).

52 UNHCR Archives, '1951 United Nations Convention on the Status of Refugees' (11/2, 651.SAU, 11 December 1982).



the large number of foreigners in the country. In the early 1980s, Saudi Arabia was adopting increasingly restrictive policies towards refugees, fearing that they might become a ‘Trojan horse’ of ‘subversion’.<sup>53</sup> In UNHCR’s view, this was a result of the 1979 Mecca revolt, which ‘traumatized the Saudis’ and led to a considerable increase in ‘their distrust in foreigners’.<sup>54</sup> ‘This disquieting situation,’ UNHCR wrote at the time, ‘increasingly pushes the Saudis into denying that there are any refugees at all in their country’.<sup>55</sup>

When UNHCR established a formal presence in Saudi Arabia in the early 1990s, promoting accession to the Convention nonetheless became one of its main strategic goals.<sup>56</sup> As part 3 explores further, for decades UNHCR worked systematically with, and within, Saudi Arabia to promote international refugee law, an understanding of UNHCR’s mandate, and, essentially, accession to the Convention. UNHCR’s 2001 Regional Operations Plan, for example, clearly stated that its ‘strategic objective is primarily the strengthening of the Gulf countries’ adherence to refugee law principles and the improvement of the protection conditions and ultimately the promulgation of domestic refugee laws and the accession to the 1951 Convention’.<sup>57</sup>

In the early 2000s, there were again indications that Saudi Arabia was headed in the direction of accession. At the time, UNHCR had recently concluded its 1998 global campaign seeking to secure ‘universal’ accession to the Convention by 2000 and, as such, was very motivated to put the question of accession onto the agendas of non-signatory States.<sup>58</sup> The ‘growing interest’ of Saudi Arabia in accession was identified by UNHCR as a ‘momentum’ of which the Regional UNHCR Office needed to take advantage ‘in order to make more tangible progress in the coming year towards the achievement of its strategic objective’.<sup>59</sup> It was clear that UNHCR believed that accession was, if not imminent, then at least very likely in the near future. Not only did Saudi Arabia reportedly establish a ‘Committee on Accession to the 1951 Convention on Refugees’,<sup>60</sup> but in October 2002, the UN High Commissioner also personally visited Saudi Arabia, with a view to promoting accession.<sup>61</sup>

Seemingly, there was good reason for advocates of the 1951 Convention to believe that a Saudi Arabian accession was close. In 2000, Saudi Arabia had acceded to the Convention on the Elimination of All Forms of Violence against Women<sup>62</sup> and expectations were high that it would also accede to the ICCPR and the ICESCR, two instruments in whose drafting the country had also been involved.<sup>63</sup> Certainly, UNHCR officials were well aware of the regional importance of a Saudi Arabian accession to the Convention, hoping for a domino effect to follow throughout the Gulf countries should Saudi Arabia become a Contracting State. Indeed, UNHCR’s country reports reveal large discrepancies among the GCC States in how they related to the international refugee regime; Saudi Arabia stands out as perhaps the most positively inclined, with serious

53 UNHCR Archives, ‘Mission to Saudi Arabia from 7–14 December 1981’ (Fonds 12 Sub-fonds 2 Series 2: Proposed Mission to Saudi Arabia, 9–11 February 1982 – Cancelled, undated).

54 *ibid.*

55 *ibid.*

56 Janmyr and Lysa (n 4).

57 UNHCR, ‘Situation Operations Plan Gulf Countries’ (n 4).

58 UNHCR, ‘UNHCR to Push for Wider Ratification of Refugee and Statelessness Conventions’ (8 October 1998) <<http://www.unhcr.org/news/press/1998/10/3ae6b81138/unhcr-push-wider-ratification-refugee-statelessness-conventions.html>> accessed 3 August 2022.

59 UNHCR, ‘Situation Operations Plan Gulf Countries’ (n 4).

60 *ibid.*

61 UNHCR, ‘UNHCR Country Operations Plan 2005 – Saudi Arabia’ (1 September 2004) <<https://www.refworld.org/docid/4159637923.html>> accessed 3 August 2022.

62 Convention on the Elimination of All Forms of Violence against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

63 These national considerations appear nonetheless to drag on. In 2018, the Saudi National Report to the UN Human Rights Council stated that a high-level governmental committee is currently studying the ICCPR and the ICESCR ‘with a view to accession’. See Government of Saudi Arabia, *National Report submitted in accordance with paragraph 15 (a) of the Annex to Human Rights Council Resolution 5/1*, UN doc A/HRC/WG.6/31/SAU/1 (20 August 2018) para 28.

discussions of accession having taken place over the course of many years. Similar developments do not appear to have occurred in States such as the UAE, Qatar, Kuwait, and Bahrain.

In the years following the High Commissioner's 2002 visit, UNHCR continued to report on Saudi Arabia's 'expressed serious interest in the accession to the 1951 Convention',<sup>64</sup> noting that 'encouragement of accession' remained a 'strategic objective'.<sup>65</sup> However, the momentum and enthusiasm that had been tangible in previous years appeared to have waned. UNHCR reported that 'the conclusions reached by inter-ministerial committee were not made public' and, without further explanation, that 'it is apparent that though the governments of the region are cognisant of the importance of acceding to the instruments, the political climate within the region was not conducive for accession'.<sup>66</sup>

Over the years, many complex and entwined reasons have been proffered as to why Saudi Arabia has remained a non-signatory. As is the case elsewhere in the Middle East, 'the outstanding Palestinian refugee problem' has for decades been put forward as a common explanation for non-accession, with Arab States fearful that accession would encourage local integration and be contrary to the Palestinian right to return.<sup>67</sup> Other frequent explanations concern Saudi Arabia's geographic location, its demographics, and its special place in the Muslim world. UNHCR, for example, has pointed to the 'volatile situation in the Middle East' as a reason for Saudi Arabia and other GCC States' unwillingness to accede.<sup>68</sup>

Relatedly, UNHCR has suggested that the restrictive immigration policies of the GCC States are due to the 'geographic proximity to the less privileged hotbeds in Southwest Asia, Middle East and the Horn of Africa'.<sup>69</sup> In other words, a solid asylum system, in which accession to the Convention would be an integral part, has been perceived by the authorities as a 'pull factor' that would attract more asylum seekers from neighbouring regions. This situation is seen to be aggravated by, on the one hand, the large numbers of migrant workers in Saudi Arabia who come from 'refugee-producing States', and, on the other hand, Saudi Arabia's religious duty to keep its borders open to Muslim pilgrims.<sup>70</sup>

That said, for a long period, accession continued to be a key strategic objective for UNHCR,<sup>71</sup> and several treaty bodies in the UN human rights system also urged Saudi Arabia to accede to the 1951 Convention and its Protocol. This included the Committee against Torture in 2002,<sup>72</sup> 2009,<sup>73</sup> and 2016,<sup>74</sup> the Committee on the Rights of the Child in

64 UNHCR, 'UNHCR Country Operations Plan 2004' (n 6).

65 UNHCR, 'UNHCR Country Operations Plan 2005' (n 61). See also UNHCR, 'UNHCR Country Operations Plan 2006 – Saudi Arabia' (1 September 2005) <<https://www.refworld.org/docid/43327b902.html>> accessed 5 August 2022.

66 UNHCR, 'UNHCR Country Operations Plan 2005' (n 61). For a discussion of Saudi Arabia's domestic policies during these years, see Lysa (n 25).

67 Janmyr and Stevens (n 7); UNHCR, 'UNHCR Country Operations Plan 2007 – Kingdom of Saudi Arabia and Gulf Countries' (1 September 2006) <<https://www.refworld.org/docid/45221de92.html>> accessed 3 August 2022; UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009' (n 18).

68 UNHCR, 'UNHCR Country Operations Plan 2007' (n 67).

69 UNHCR, 'UNHCR Country Operations Plan 2005' (n 61).

70 UNHCR, 'UNHCR Country Operations Plan 2007' (n 67); UNHCR, 'UNHCR Country Operations Plan 2006' (n 65).

71 UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009' (n 18). See also UN Human Rights Council, 'Compilation [Universal Periodic Review]: Saudi Arabia, prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the Annex to Human Rights Council resolution 5/1 and paragraph 5 of the Annex to Council resolution 16/21', UN doc A/HRC/WG.6/17/SAU/2 (6 August 2013) para A (2); 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: The Kingdom of Saudi Arabia* (March 2013) <<https://www.refworld.org/docid/5135c0902.html>> accessed 4 August 2022.

72 Committee against Torture (CAT), 'Conclusions and Recommendations of the Committee against Torture: Saudi Arabia', UN doc CAT/C/CR/28/5 (12 June 2002) para 3.

73 CAT, 'List of Issues Prior to the Submission of the 2nd Periodic Report of Saudi Arabia (CAT/C/SAU/2)', UN doc CAT/C/SAU/Q/2 (2 July 2009) para 17.

74 CAT, 'Concluding Observations on the Second Periodic Report of Saudi Arabia', UN doc CAT/C/SAU/CO/2 (8 June 2016) paras 46–47.

2006<sup>75</sup> and 2016,<sup>76</sup> and the Committee on the Elimination of Racial Discrimination in 2018.<sup>77</sup> In its submission to the Universal Periodic Review on Saudi Arabia in 2013, UNHCR explained the importance of Saudi Arabian accession:

Accession to the 1951 Refugee Convention and establishment of a national legal framework would provide a clearer basis for the Government of KSA to provide refugees with international protection. This would formally recognize the KSA's solidarity towards refugees and underline the importance attached by the KSA to cooperate with the international community in efforts to finding solutions for refugees. It would also allow the Government to deal with issues related to asylum in a structured manner, thus complementing KSA's obligations under international human rights instruments, as well as provisions in its Constitution.<sup>78</sup>

More recently, however, UNHCR's position appears to have changed considerably. Interviews conducted by one of the authors in 2021 suggest that UNHCR currently considers Saudi Arabian accession 'unlikely'.<sup>79</sup> During a 2022 webinar discussion on accession to the Convention, UNHCR's Riyadh-based Regional Representative to the GCC, Khaled Khalifa, even argued that:

I think this is not the only option that we can consider going forward. There are alternative pathways. I mean, to be honest, whether a country, a government accedes or not, as long as they are respecting the spirit of the Conventions, and as long as their legal frameworks within the country provide a conducive environment for refugees to survive, I personally think the issue of ratifying or signing or acceding to the Conventions to be a secondary point. I'd rather have a government that respects the rights of refugees without signing, than a country that signs, without respecting the rights of refugees.<sup>80</sup>

While this appears to indeed be the personal opinion of the representative, there are ongoing discussions suggesting that UNHCR no longer promotes accession as actively as it did in previous decades.<sup>81</sup>

The interviews mentioned above similarly suggest that Saudi authorities view the Convention as redundant, since the government is already doing what it can to assist and protect refugees both within and outside Saudi Arabia, based on local traditions and norms.<sup>82</sup> Thus the protection and assistance afforded by the Convention would be superfluous. Such contemporary ideas about the redundancy or irrelevance of the Convention have also been found in a recent

75 Committee on the Rights of the Child (CRC), 'Concluding Observations, Saudi Arabia', UN doc CRC/C/SAU/CO/2 (17 March 2006) paras 67, 68.

76 CRC, 'Concluding Observations on the Combined Third and Fourth Periodic Reports of Saudi Arabia', UN doc CRC/C/SAU/CO/3-4 (25 October 2016) para 37.

77 Committee on the Elimination of Racial Discrimination (CERD), 'Concluding Observations on the Combined Fourth to Ninth Periodic Reports of Saudi Arabia', UN doc CERD/C/SAU/CO/4-9 (8 June 2018) paras 33–34.

78 UNHCR, *Submission by the United Nations High Commissioner for Refugees* (n 71) 2.

79 Interview with a UNHCR official, Riyadh, September 2021; (online) interview with a UNHCR official, February 2022.

80 King Faisal Centre for Research and Islamic Studies and the REF-ARAB project at University of Oslo, online panel discussion, 'The Right to Asylum in International Refugee Law and Islamic Law: Theory and Practice' (17 January 2022) from 01:04:00 <<https://kfcris.com/en/eve/view/317>> accessed 4 August 2022.

81 For a more general discussion, see Maja Janmyr, 'From State Petitions to Protection Space: UNHCR's Promotion of the 1951 Refugee Convention' (*Volkerrechtsblog.org*, 2 June 2021) <<https://volkerrechtsblog.org/from-state-petitions-to-protection-space/>> accessed 4 August 2022.

82 Interview with a UNHCR official, Riyadh, September 2021. See also Joseph A Kéchichian and Fahad Alsharif, *Saudi Policies towards Migrants and Refugees: A Sacred Duty* (Sussex Academic Press 2021) 87–88.

study of other Middle Eastern States.<sup>83</sup> It is also argued that the Convention would be inappropriate to the Saudi Arabian context because it is underpinned by ‘secular’ or ‘Western’ values and norms.<sup>84</sup> This view, however, appears to disregard the fact that, as the previous section has shown, Saudi Arabia participated in the drafting of key instruments of the international refugee regime.<sup>85</sup> Moreover, a UNHCR official interviewed in 2021 points to common misperceptions among government actors regarding the ramifications of accession, that is, that the Convention would be in conflict with national immigration regulations, and oblige the State to ‘open its borders’ and even to establish refugee camps.<sup>86</sup>

### 2.3 Discussion

As part 2 has shown, Saudi Arabia has engaged with the drafting processes of several key refugee protection instruments. The prominent role of Baroody nonetheless raises a number of additional questions. What importance can be ascribed to Baroody as an individual in the drafting of these instruments? How much did his position reflect that of the Saudi Arabian government, and to what degree was it his own? Historical research into the role and position of other Arab governments during these processes shows that the individuals representing them sometimes had considerable independence and received very limited instructions on human rights.<sup>87</sup> The comment made by Deputy High Commissioner Sadruddin Aga Khan in his 1962 mission report from Saudi Arabia seems to suggest that Baroody might have been given a certain latitude: ‘As with other Arab governments (see Irak [sic]), the delegation in New York has “carte blanche” to act as it pleases in the various committees, except when it comes to financial questions.’<sup>88</sup>

Since accession to the 1951 Convention would certainly have financial implications, it is likely that Baroody had less leverage to influence the Saudi Arabian government’s decision in this regard than he had as a representative during its drafting process. His optimism in the 1970s that his country would soon accede to the Convention might therefore have been misplaced. While there have been other junctures at which accession might have been achievable, today there are no signs that Saudi Arabia will accede to the Convention in the near future. This position is arguably only strengthened by high-level UNHCR staff stating outright that it matters less whether a State has ratified the 1951 Convention and more that it essentially *behaves* as if it has done so. Amid an ongoing global discussion about whether or not accession to the Convention automatically leads to ‘better’ refugee protection (as UNHCR has long argued), UNHCR’s pragmatic rather than principled position towards State accession is noteworthy.

Thus, while the historical explanations for Saudi Arabia’s reluctance to accede to the 1951 Convention are complex and have shifted over time, the prevailing argument is that such accession is superfluous since Saudi Arabia already provides protection for refugees, albeit in its own particular ways. Such an approach arguably positions Saudi Arabia *within* the international refugee regime but *without* formal commitment to any precise refugee protection norms. As the next part discusses in more detail, Saudi Arabia’s role as an important donor State to UNHCR further complicates this picture, as it arguably allows Saudi Arabia to informally shape

83 Maja Janmyr, ‘No Country of Asylum: “Legitimizing” Lebanon’s Rejection of the 1951 Refugee Convention’ (2017) 29 *International Journal of Refugee Law* 438.

84 Kéchichian and Alsharif (n 82) 7, 35, 87–88.

85 Many Arab States, Saudi Arabia included, participated in the Bangkok Principles on the Status and Treatment of Refugees (established by the Asian–African Legal Consultative Organization, 31 December 1966), which contain similar principles to the international instruments on refugees. Al-Fallouji has thus argued that ‘the problem is due, not to the essence of the principles but to procedural and formal difficulties’. Ikbal Al-Fallouji, ‘Arab Countries and Refugee Law’ (seminar on ‘Asylum and Refugee Law in the Arab Countries’, San Remo, 16–19 January 1984) 47, cited in Janmyr and Stevens (n 7) 336.

86 Interview with a UNHCR official, Riyadh, September 2021.

87 See eg Glenn Mitoma, ‘Charles H Malek and Human Rights: Notes on a Biography’ (2010) 33 *Biography* 222.

88 UNHCR Archives, ‘Missions to the Middle East’ (13/1, 1 November 1962).

developments within international refugee law. This insider/outsider position that Saudi Arabia appears to have held for more than half a century can be seen as a way for it to formally avoid both responsibility and accountability.

### 3. SAUDI ARABIA AND UNHCR

Part 3 explores Saudi Arabia's relationship with UNHCR. In addition to focusing on Saudi Arabia's role in the UNHCR ExCom, it looks closely at UNHCR's activities in Saudi Arabia, identifying and examining in particular three phases of UNHCR involvement: establishment (1987–97), expansion (1998–2005), and consolidation (2005–).

#### 3.1 Establishment 1987–97

Before 1987, UNHCR's activities in Saudi Arabia were limited. One of the earliest UNHCR interactions with the country was in 1962, when then Deputy High Commissioner, Sadruddin Aga Khan, visited with the aim of securing funding for UNHCR's large-scale operations in Algeria. His trip included an audience with the Saudi king and, in his subsequent report, he noted that the mission 'was useful in that the Government was totally unaware, at the top level, of HCR or its work in the past and present'.<sup>89</sup> Another high-level visit took place in 1981, when High Commissioner Poul Hartling attended the third Organisation of Islamic Cooperation (OIC) Islamic Summit Conference.<sup>90</sup> A third high-level mission was scheduled to take place in 1982, but was cancelled just days prior. In the time before 1987, however, whenever UNHCR sought to engage with actors in Saudi Arabia, it did so primarily through UNDP.

In 1987, UNHCR established a Liaison Office (LO) within the premises of UNDP's Riyadh office. Reporting to the UNHCR Regional Office in Cairo, Egypt, the LO essentially consisted of a single Senior Liaison Officer whose primary role was fundraising and public relations.<sup>91</sup> Individual asylum applications were routinely referred to Cairo, and – to a lesser extent – Bahrain, for consideration. That said, the LO had a degree of latitude concerning individual cases and occasionally negotiated these with the Saudi Arabian Director of Deportation at the Ministry of Interior.<sup>92</sup> More than anything else, however, the LO was important in that it laid the groundwork for UNHCR cooperation with key regional bodies such as the GCC, the OIC, and the Islamic Development Bank (IDB).<sup>93</sup>

The 1991 Gulf War marked a crucial turning point in UNHCR relations with Saudi Arabia. A Branch Office was established, and relations were both deepened and formalized. As coalition forces prepared to withdraw from Iraq, UNHCR sent a high-level mission to Saudi Arabia with a view to assist in finding solutions for the displaced Iraqis.<sup>94</sup> After negotiations, Saudi Arabia agreed to offer temporary asylum to approximately 33,000 Iraqis in two separate camps: the Rafha refugee camp, hosting civilians and families, and the Artawiyah camp, for those initially

89 *ibid.*

90 UNHCR Archives, 'Note for the file. Mission to Saudi Arabia to attend the third Islamic Summit Conference – Separate discussions' (Fonds 13 Sub-fonds 2 Series 2: Mission to Saudi Arabia (23–27 January 1981), 27 January 1981).

91 UNHCR Archives, 'UNHCR Final Report: Mission to Kingdom of Saudi Arabia 17 October – 18 December 1991' (Fonds 11 Series 3 (hereafter 11/3): 010.SAU External Relations. Relations with Governments. Saudi Arabia (1986–1994) (hereafter 010.SAU), 24 December 1991).

92 UNHCR Archives, 'UNHCR 1991 Annual Protection Report: Kingdom of Saudi Arabia' (11/3, 010.SAU, 24 December 1991); UNHCR Archives: 'UNHCR Memorandum: Report from 1–31 July 1990, from Fadhil A Khalil/UNHCR Riyadh to Mr A Essaied, UNHCR Regional Representative for Middle East, Manama, Bahrain' (Fonds 464 Sub-fonds 90 Series 4 (hereafter 464/90/4): 022.SAU Reports BO Reports Saudi Arabia (1988–1992) (hereafter 022.SAU), 12 August 1990).

93 See eg UNHCR Archives, 'UNHCR Incoming Cable from UNDP/HCR Riyadh/SAU to HCR' (464/90/4, 022.SAU, 13 June 1988).

94 Kamel Morjane, 'Terms of Reference for the Mission to Saudi Arabia and Kuwait by Mm N Morris and M Menning' (UNHCR, 1991).



designated as prisoners of war. Both groups were consolidated in the Rafha camp in November 1992.<sup>95</sup> Because Saudi Arabia had little to no experience in managing refugee camps, UNHCR was permitted to take on a more prominent role in the monitoring of camp and protection conditions, as well as in finding durable solutions for the Rafha refugees.<sup>96</sup> Indeed, in September 1991, Saudi Arabia had made a formal request to UNHCR to assist in their resettlement.<sup>97</sup> This resettlement operation soon became one of UNHCR's key activities; in fact, at the time, it constituted the bulk of its resettlement efforts worldwide.<sup>98</sup> As at 2006, approximately 24,000 Rafha refugees had been resettled to 16 countries.<sup>99</sup>

A main concern for UNHCR during this period was to formalize its presence in Saudi Arabia through legal means.<sup>100</sup> In January 1992, a *note verbale* by the Saudi Ministry of Foreign Affairs semi-formalized UNHCR's presence by approving the opening of an office in Riyadh, as well as field offices in Rafha and Artawiyah.<sup>101</sup> After lengthy negotiations, a formal MoU was reached in July 1993.<sup>102</sup> Albeit slightly amended in 2010, the MoU continues to provide the basis for UNHCR–Saudi relations today. The MoU is pragmatic and takes a broad-brush approach, for example, when it comes to key intricate concepts such as ‘protection’ and ‘durable solutions’, but it is also detailed, for example, on Saudi Arabia's financial contribution to the running costs of UNHCR's offices in the country.

The establishment phase also saw increased engagement by Saudi Arabia in UNHCR activities globally. During 1993, discussions took place about Saudi membership in UNHCR's ExCom, but to this day Saudi Arabia remains a non-member.<sup>103</sup> That said, Saudi Arabia first participated as an observer at the ExCom plenary session in 1995, and has sent delegations almost every year since then.<sup>104</sup> Observers may be given the right to speak at the discretion of the ExCom Chairperson, but do not have voting rights and are formally unable to participate in decision making.<sup>105</sup>

Saudi Arabia's participation in the ExCom has not necessarily been passive; during its first meeting in 1995, for example, a heated exchange took place between its representatives and those of Iraq concerning the treatment of Iraqi refugees in Rafha.<sup>106</sup> The observer for Iraq called for a strengthening of UNHCR's role in Saudi Arabia and claimed that Saudi Arabia was acting ‘contrary to refugee law’, and that Iraqi refugees were being ‘exploited in Saudi Arabia in a manner inconsistent with the requirements of international law.’<sup>107</sup> The observer for Saudi Arabia answered that Saudi Arabia had given ‘refugee status’ to Iraqis in order to enable them to be ‘transferred to safe places’,<sup>108</sup> and that ‘all refugees benefited from full rights, including the

95 UNHCR, *Report of the United Nations High Commissioner for Refugees*, UN doc A/48/12 (6 October 1993) para 165.

96 UNHCR, *Report of the United Nations High Commissioner for Refugees*, UN doc E/1996/52 (13 May 1996) para 190.

97 Human Rights Watch, ‘Human Rights Watch World Report 1992: Events of 1991’ (HRW, undated) <<https://www.hrw.org/reports/1992/WR92/MEW2-02.htm>> accessed 9 August 2022.

98 UNHCR, *UNHCR Activities Financed by Voluntary Funds: Report for 1994–1995 and Proposed Programmes and Budget for 1996: Part V. South West Asia, North Africa and the Middle East: Section 12 – Other Countries in Western Asia*, UN doc A/AC.96/846/Part V/12 (18 July 1995) para 2 (d); UNHCR, *Report of the United Nations High Commissioner for Refugees*, UN doc A/49/12 (31 August 1994) paras 54–55. See also UNHCR, *Report of the United Nations High Commissioner for Refugees* (n 95) para 58.

99 UNHCR, ‘UNHCR Country Operations Plan 2007’ (n 67).

100 UNHCR Archives, ‘Incoming cable from El Solh to ARE/HCR/SAU/0980 (Att: F Khalil/De Brancovan); SWANAME (Morjane, Djemali and Ouanes – for info)’ (11/3, 010.SAU, 23 September 1991).

101 UNHCR Archives, ‘Incoming cable, from LO Riyadh to UNHCR Geneva, 29 January 1992. SAU/HCR/006’ (11/3, 010.SAU, 29 January 1992).

102 Janmyr and Lysa (n 4).

103 UNHCR Archives, ‘UNHCR Electronic Cable, HCR/SAU/0768, 28.12.93’ (11/3, 010.SAU, 28 December 1993).

104 Except 1996 and 2007, according to the lists of participants and the summary records.

105 UNHCR, ‘ExCom Plenary Sessions’ <<https://www.unhcr.org/excom-plenary-sessions.html>> accessed 4 August 2022.

106 UNHCR ExCom, ‘Summary Record of the 505th Meeting’, UN doc A/AC.96/SR.505 (24 October 1995) para 20;

UNHCR ExCom, ‘Summary Record of the 506th Meeting’, UN doc A/AC.96/SR.506 (24 October 1995) paras 1–3.

107 UNHCR ExCom, ‘Summary Record of the 505th Meeting’ (n 106) para 20.

108 UNHCR ExCom, ‘Summary Record of the 506th Meeting’ (n 106) para 1.

right of protection against forced return.<sup>109</sup> The exchange was nonetheless exceptional in terms of its vehemence.

### 3.2 Expansion 1998–2005

After the initial establishment phase and the end of the Rafha resettlement programme in 1997, UNHCR sought to expand its activities in Saudi Arabia. In 1998, the Branch Office in Riyadh was restructured to become a Regional Co-ordination Centre (RCC), tasked with coordinating and overseeing UNHCR activities in the entire Gulf region.<sup>110</sup> For UNHCR, there were clear strategic reasons behind this expansion: it considered that Saudi Arabia held a ‘prominent position in the Gulf region’, as well as playing an ‘increasing role in providing assistance to refugees and displaced persons world-wide.’<sup>111</sup> Importantly, UNHCR believed that its expanded presence would have a ‘tremendous impact on the whole region which is intended to be in the long run one of UNHCR’s major counterparts world-wide, especially in terms of fund raising.’<sup>112</sup>

More concretely, the transformation of its Riyadh Branch Office into an RCC ‘re-oriented’ and ‘expanded’ UNHCR’s role by ‘extending UNHCR’s protection mandate to new categories of refugees and reinforcing its promotion of Refugee law and capacity building and fund raising activities.’<sup>113</sup> UNHCR activities now focused largely on ‘widening the protection space’, understood as an ‘integrated approach in undertaking promotion of Refugee law and capacity building, improvement of protection conditions, fund raising, enhancing of UNHCR’s capacities in the Gulf region and finding of durable solutions.’<sup>114</sup> Taken together, these activities essentially constituted the rationale for UNHCR’s involvement in the GCC region.<sup>115</sup>

During this period, UNHCR explicitly sought to institutionalize its relations with governmental and non-governmental actors, regional organizations, business communities, and civil society. These partnerships were key mechanisms for the promotion of international refugee law, and often included regular training courses for actors such as ministry officials, judges, and law enforcement officials. In 2001, UNHCR also initiated the Gulf NGOs Network,<sup>116</sup> and through a series of MoUs it strengthened its collaboration with actors such as the OIC, IDB, and GCC.<sup>117</sup> The MoU with the GCC, for example, aimed at placing ‘refugee issues in the collective political agenda of the GCC countries’, among other things.<sup>118</sup>

UNHCR was regularly invited to attend the ministerial and summit meetings of the OIC,<sup>119</sup> and a joint OIC/UNHCR Ministerial Conference on the Problems of Refugees in the Muslim World was even held.<sup>120</sup> Similarly, in 1999, UNHCR cooperated with the GCC on a ‘very important Seminar on Refugee Law.’<sup>121</sup> In 2003, UNHCR also concluded an MoU with the Naif Arab Academy for Security Sciences (later renamed the Naif Arab University for Security Sciences), with a view to cooperating in the dissemination of refugee law to law enforcement

109 *ibid* para 2.

110 UNHCR, ‘Situation Operations Plan Gulf Countries’ (n 4).

111 *ibid*.

112 *ibid*.

113 *ibid*.

114 UNHCR, ‘UNHCR Country Operations Plan 2005’ (n 61).

115 UNHCR, ‘UNHCR Country/Regional Operations Plan 2008–2009’ (n 18). See also *ibid*.

116 See eg UNHCR, ‘UNHCR Country/Regional Operations Plan 2008–2009’ (n 18).

117 UNHCR, ‘UNHCR Country Operations Plan 2006’ (n 65).

118 UNHCR, ‘UNHCR Country Operations Plan 2005’ (n 61).

119 UNHCR, ‘Situation Operations Plan Gulf Countries’ (n 4).

120 UNHCR, ‘UNHCR Country Operations Plan 2006’ (n 65); UNHCR, ‘UNHCR Country/Regional Operations Plan 2008–2009’ (n 18).

121 UNHCR, ‘Situation Operations Plan Gulf Countries’ (n 4).

officials from all the GCC countries, in addition to other Arab countries.<sup>122</sup> Furthermore, during the High Commissioner's visit to Saudi Arabia in 2007, UNHCR signed an MoU with the Saudi Red Crescent organization.<sup>123</sup>

In 2000, due to 'persistent and tremendous efforts' by the RCC, UNHCR expanded its mandate to new categories of refugees in Saudi Arabia, as well as in Bahrain, Qatar, and Oman.<sup>124</sup> Seen as a 'crucial breakthrough', the expanded protection mandate allowed UNHCR to deal not only with those in the Rafha camp, but also for the first time with urban asylum seekers and refugees. On behalf of this category, UNHCR sought to ensure the Saudi government's commitment to basic principles of refugee law, including the principle of *non-refoulement*, and also assessed asylum claims through refugee status determination.<sup>125</sup> In 2005, for the first time, the Saudi authorities agreed to secure an 'alternative solution' for some 363 persons who remained in the Rafha camp, allowing them to leave the camp and settle in urban areas in Saudi Arabia.<sup>126</sup> The Rafha camp formally closed in 2009.

UNHCR's expanded role was nonetheless limited by a number of issues, including a 'persistent protection gap'<sup>127</sup> that was due not only to a shortage of qualified and experienced UNHCR staff,<sup>128</sup> but also to the Saudi government's insistence on *temporary* protection for refugees, pending resettlement to third countries.<sup>129</sup> UNHCR's efforts were also limited by the fact that UNHCR certificates were not recognized by the Saudi authorities as proof of refugee and/or asylum seeker status, and by Saudi pressure on UNHCR to only protect and assist – and process the asylum claims of – those holding, or having held, residence permits.<sup>130</sup>

During the expansion phase, Saudi Arabia continued to participate as an observer in the annual meetings of UNHCR's ExCom, as well as in other high-level meetings and fora related to refugees. When UNHCR organized a Ministerial Meeting on the occasion of the 50th anniversary of the 1951 Convention in 2001, Saudi Arabia participated as an observer.<sup>131</sup> However, no Saudi Arabian pledges were made, and Saudi Arabia did not make any statements at those meetings.

### 3.3 Consolidation 2005–

Once UNHCR had expanded its operations, a – still ongoing – period of consolidation followed. UNHCR's focus on capacity building and providing protection space has continued, but fundraising activities have undoubtedly gained in prominence. In recent years, Saudi Arabia has been among UNHCR's top 20 government donors, with government funding being

122 UNHCR, 'UNHCR Country Operations Plan 2005' (n 61). See also UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009' (n 18); Saudi Press Agency, 'Naif University to Organize Forum on "Asylum and Its Security, Political and Social Dimensions"' (Saudi Press Agency, 24 August 2015) <<https://www.spa.gov.sa/viewstory.php?newsid=1390766>> accessed 5 August 2022.

123 UNHCR, 'UNHCR Signs Agreement with Saudi Red Crescent Society' (18 April 2007) <<https://www.unhcr.org/news/latest/2007/4/46264e9e4/unhcr-signs-agreement-saudi-red-crescent-society.html?query=saudi%20arabia>> accessed 5 August 2022.

124 UNHCR, 'Situation Operations Plan Gulf Countries' (n 4).

125 *ibid.* See also UNHCR, 'UNHCR Country Operations Plan 2007' (n 67); UNHCR, 'UNHCR Country Operations Plan 2004' (n 6).

126 UNHCR, 'UNHCR Country Operations Plan 2007' (n 67).

127 UNHCR, 'Situation Operations Plan Gulf Countries' (n 4) 3. See also UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009' (n 18).

128 UNHCR, 'UNHCR Country Operations Plan 2004' (n 6).

129 UNHCR, 'UNHCR Country Operations Plan 2006' (n 65); UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009' (n 18).

130 UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009' (n 18) 5.

131 UNHCR, 'Ministerial Meeting of States Parties to the 1951 Convention and/or Its 1967 Protocol relating to the Status of Refugees 12–13 December 2001'; UN doc HCR/MMSP/2001/09 (16 January 2002); UNHCR, *Report of the Preparatory Session to the Ministerial Meeting of States Parties to the 1951 Convention and/or Its 1967 Protocol relating to the Status of Refugees*, UN doc HCR/MMSP/2001/03 (23 October 2001); UNHCR, 'Ministerial Meeting' <<https://www.unhcr.org/ministerial-meeting.html>> accessed 4 August 2022.

channelled primarily through three sources: the Ministry of Foreign Affairs, the Saudi Fund for Development, and the King Salman Humanitarian Aid and Relief Centre (KSRelief).<sup>132</sup> Reporting directly to the Saudi king, the latter has quickly emerged as an institution of increasing importance. This is evidenced not least in that, in addition to its main Riyadh office that also covers Qatar, Bahrain, and Oman, a smaller UNHCR (fundraising) office has been established at the premises of KSRelief.

A defining feature of the current phase is that the normative and financial cooperation between UNHCR and Saudi Arabia has become increasingly intertwined. This approach means that UNHCR seeks more often to accommodate regional understandings of humanitarianism and asylum. It is also within this normative framework, then, that UNHCR can agree with the Saudi authorities – and even insist – that the number of refugees in the country equals five per cent of the total population.<sup>133</sup> More than previously, UNHCR appears to have acquiesced to Saudi Arabia's approach to refugees and asylum seekers, rarely challenging Saudi policies but rather keeping its advocacy efforts largely within a set of boundaries seen as acceptable by the Saudi authorities. In 2007, for example, UNHCR noted that a 'major constraint' on the applicability of UNHCR's mandate in Saudi Arabia and the whole GCC was 'the apprehension not to jeopardise the nascent protection space by creating pull factors in countries having porous land and sea borders with some refugee producing countries'.<sup>134</sup>

Islamic philanthropy plays a growing role in UNHCR's activities in Saudi Arabia. As early as 2009, UNHCR sponsored a study of Islamic influence on international refugee law, a publication it hoped to use 'as an important awareness-raising tool throughout the region'.<sup>135</sup> Since then, it has increased its emphasis on both Islamic law and philanthropy, including establishing the post of Senior Advisor to the High Commissioner for Refugees on Islamic Philanthropy. This position is currently held by the Regional Representative in Saudi Arabia, Khaled Khalifa. During a lecture at the OIC in 2021, Khalifa notably emphasized how 'Islamic philanthropy ... has become an important strategic trend for the UNHCR to provide the required support to persons of concern'.<sup>136</sup> In the same year, UNHCR also signed a five-year MoU with the International Islamic Fiqh Academy (IIFA), a Jeddah-based subsidiary of the OIC. Importantly, the partnership seeks to 'provide UNHCR with the necessary scholarly support and jurisprudential advice to further strengthen its activities in the area of Islamic philanthropy'.<sup>137</sup>

UNHCR has increasingly also sought to target new 'growth markets' for philanthropic and State-based funding.<sup>138</sup> Within the framework of the Islamic concept of Zakat, in 2019 it established the Refugee Zakat Fund, with the 'intention to target Saudi Arabia, Indonesia and Turkey as three countries which it considers offer the greatest potential for Zakat donations in the Islamic world'.<sup>139</sup> UNHCR's partnership with IIFA includes the outlining of Sharia provisions related to the collection and distribution of such funds.<sup>140</sup> In 2021, UNHCR announced

132 In 2021, Saudi Arabia was ranked 18th among government and European Union donors; in 2020 and 2019, it was ranked 14th, and in 2018, 12th. See UNHCR, 'Donor Ranking' <<https://reporting.unhcr.org/donor-ranking>> accessed 6 November 2022.

133 Jaafari (n 20).

134 UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009' (n 18).

135 UNHCR, 'Note on International Protection', UN doc A/AC.96/1085 (20 June 2010) para 15. See also UNHCR, 'UNHCR Sponsors Study of Islamic Influence on International Refugee Law' (22 June 2009) <<https://www.unhcr.org/news/press/2009/6/4a3f95969/unhcr-sponsors-study-islamic-influence-international-refugee-law.html>> accessed 4 August 2022.

136 Organisation of Islamic Cooperation (OIC), 'OIC Highlights Islamic Philanthropy and Refugee Zakat Fund in Its Monthly Lecture' (28 June 2021) <[https://www.oic-oci.org/topic/?t\\_id=28255&t\\_ref=18430&lan=en](https://www.oic-oci.org/topic/?t_id=28255&t_ref=18430&lan=en)> accessed 4 August 2022.

137 'UNHCR, IIFA Sign MoU to Alleviate Plight of Refugees and Displaced Persons' *Saudi Gazette* (27 March 2021) <<https://saudigazette.com.sa/article/604880/World/Mena/UNHCR-IIFA-sign-MoU-to-alleviate-plight-of-refugees-and-displaced-persons>> accessed 3 August 2022.

138 Cole (n 6).

139 *ibid* 58.

140 *Saudi Gazette* (n 137).

that the Mecca-based Muslim World League published a fatwa ‘permitting giving Zakat to eligible refugees and internally displaced people (IDPs) through the Refugee Zakat Fund’.<sup>141</sup>

Saudi Arabia has continued to increase its engagement in global arenas focusing on refugee protection. When UNHCR organized a Ministerial Meeting on the occasion of the 60th anniversary of the 1951 Convention in 2011, Saudi Arabia participated as an observer.<sup>142</sup> Since 2013, it has also had prepared statements at almost every ExCom meeting, which is indeed notable for an Observer State. Saudi Arabia’s comments can generally be divided into two strands, focusing either on its financial contribution to global humanitarian and refugee responses, or on the number (and well-being) of refugees in the country itself.<sup>143</sup> International criticism of Saudi Arabia’s (perceived lack of) response to the Syrian refugee situation in 2015 appears, in particular, to have prompted a number of quite defensive statements by the Saudi delegation.<sup>144</sup> In 2016, for example, the Saudi observer stated that:

In the previous five years [Saudi Arabia] had hosted Syrian refugees and half a million Yemenis, who had been granted legal residence and access to the labour market, as well as to health care and education services. In 2015 and 2016, Saudi Arabia had provided them with US\$1.73 billion worth of aid.<sup>145</sup>

Similarly, speaking of refugees in Saudi Arabia, in 2018 the Saudi observer stated that:

These visitors do not live in camps in the Kingdom, as is the case in many countries. Instead, they have the right to stay in the country, where they receive free education and health care services and access to employment opportunities – the same privileges enjoyed by Saudi citizens.<sup>146</sup>

It is also noteworthy that Saudi Arabia’s contribution to the international refugee regime has often been singled out for praise by the UN High Commissioner during the ExCom sessions, despite Saudi Arabia’s non-member status.<sup>147</sup>

More recently, Saudi Arabia has participated, first, in the UN General Assembly negotiations leading to the adoption in the General Assembly on 19 September 2016 of the New York Declaration for Refugees and Migrants, which sets out principles to guide the global response to refugee displacement;<sup>148</sup> secondly, in the General Assembly negotiations leading to

141 UNHCR, ‘Muslim World League | KSA’ (13 January 2021) <<https://zakat.unhcr.org/blog/en/fatwa/muslim-world-league>> accessed 3 August 2022.

142 UNHCR, ‘Ministerial Meeting’ (n 131).

143 See eg UNHCR ExCom, ‘Summary Record of the 695th Meeting’, UN doc A/AC.96/SR.695 (29 November 2016) para 31; UNHCR ExCom, ‘Summary Record of the 732nd Meeting’, UN doc A/AC.96/SR.732 (14 October 2020) paras 8–9; UNHCR ExCom, ‘Summary Record of the 721st Meeting’, UN doc A/AC.96/SR.721 (2 April 2020) paras 32, 33; UNHCR ExCom, ‘Summary Record of the 712th Meeting’, UN doc A/AC.96/SR.712 (23 October 2018) paras 31, 33; UNHCR ExCom, ‘Summary Record of the 705th Meeting’, UN doc A/AC.96/SR.705 (20 November 2017) paras 1, 2, 3; UNHCR ExCom, ‘Summary Record of the 695th Meeting’, UN doc A/AC.96/SR.695 (29 November 2016) para 27; UNHCR ExCom, ‘Summary Record of the 679th Meeting’, UN doc A/AC.96/SR.679 (20 April 2015) para 13; UNHCR ExCom, ‘Summary Record of the 668th Meeting’, UN doc A/AC.96/SR.668 (18 October 2013) para 18.

144 ‘Saudi Arabia Says Criticism of Syria Refugee Response “False and Misleading”’ *The Guardian* (12 September 2015) <<https://www.theguardian.com/world/2015/sep/12/saudi-arabia-says-reports-of-its-syrian-refugee-response-false-and-misleading>> accessed 3 August 2022.

145 UNHCR ExCom, ‘Summary Record of the 695th Meeting’ (n 143) para 27.

146 King Salman Humanitarian Aid and Relief Centre Speech (n 20). See also UNHCR ExCom, ‘Summary Record of the 721st Meeting’ (n 143) paras 32, 33.

147 See eg UNHCR ExCom, ‘Summary Record of the 732nd Meeting’ (n 143) para 39; UNHCR ExCom, ‘Summary Record of the 712th Meeting’ (n 143) para 35; UNHCR ExCom, ‘Summary Record of the 695th Meeting’ (n 143) para 31.

148 New York Declaration for Refugees and Migrants, UN doc A/RES/71/1 (3 October 2016).



the adoption of the Global Compact on Refugees (GCR) on 17 December 2018;<sup>149</sup> and thirdly, in the first Global Refugee Forum in late 2019, where pledges were made to give effect to the commitments made in the GCR. Notably, Saudi Arabia was one of the 181 UN Member States that voted for the adoption of the GCR.<sup>150</sup> Its support for the GCR was also expressed in a speech at the 69th session of the ExCom in October 2018, when it stated that: ‘Refugees around the world are facing many challenges, and the large annual increase in their proportion calls for the development of a program of action based on the good practices, effective and sustainable measures in the Global Compact on Refugees.’<sup>151</sup>

### 3.4 Discussion

UNHCR’s approach to Saudi Arabia is characterized by pragmatism rather than by principle. There is no doubt that UNHCR, over several decades, has found it challenging to cooperate with – and operate within – Saudi Arabia. Historically, the clearest example of this pragmatism is the negotiation of the 1993 MoU, which takes a broad-brush approach to, and is vague about, a number of core refugee protection issues, including the key concept of ‘protection.’ UNHCR’s altered position on the importance of accession to the 1951 Convention is another example, where it no longer appears to believe that accession to the Convention leads in all cases to better refugee protection. Concentrating instead on widening the protection space for refugees in Saudi Arabia, UNHCR has sought to influence the country’s approach to refugees more indirectly, for example by training key government officials in improved understanding of international refugee law and UNHCR’s mandate.

At the same time, Saudi Arabia has been able to influence the way UNHCR implements its mandate in the country, and beyond it. The growing importance of this country for UNHCR’s finances has contributed to the intertwining of normative and financial cooperation between Saudi Arabia and UNHCR. This has arguably meant that UNHCR often seeks to accommodate Saudi Arabia’s approach, evident not least in UNHCR’s increased focus on Islamic philanthropy. As has been identified elsewhere, UNHCR’s dependency on key donors means that the agency is ‘more constrained today than ever before.’<sup>152</sup> Notably, its ability to criticize the refugee and asylum policies of important donor States has contracted, and, in many places, UNHCR thus finds itself in ‘somewhat of an advocacy bind.’<sup>153</sup> Saudi Arabia’s leading regional role, and its position among the world’s Muslim States, arguably makes UNHCR more willing to be pragmatic and seek compromises.

Given Saudi Arabia’s growing influence on UNHCR operations, it is peculiar that the country has not become a member of the ExCom, particularly considering that many of the ExCom’s 107 Member States are also non-signatories to the 1951 Convention. As the ExCom adopts consensus-based conclusions, Saudi Arabia’s observer status does not allow it to formally influence these processes.<sup>154</sup> That said, as this part has shown, Saudi Arabia is not necessarily a passive observer, and its position as an important donor State to UNHCR may furthermore also have an influence on deliberations in the ExCom. The fact that during the ExCom meetings the High Commissioner has singled out and praised Saudi Arabia’s contribution is arguably an example of this. It is clear that Saudi Arabia also seeks to use the ExCom as a platform to promote

149 Report of the United Nations High Commissioner for Refugees: Part II, *Global Compact on Refugees*, UN doc A/73/12 (Part II) (2 August 2018) (GCR).

150 General Assembly, 73rd Session, Official Records, 55th Plenary Meeting, UN doc A/73/PV.55 (17 December 2018) 10.

151 King Salman Humanitarian Aid and Relief Centre Speech (n 20).

152 Rebecca Hamlin, *Crossing: How We Label and React to People on the Move* (Stanford University Press 2021) 82.

153 *ibid.*

154 Marion Fresia, ‘Building Consensus within UNHCR’s Executive Committee: Global Refugee Norms in the Making’ (2014) 27 *Journal of Refugee Studies* 514.

itself as a major humanitarian actor, as well as to promote a regional understanding of refugee protection. This implies an indirect critique of the hegemonic refugee protection norms that currently pervade the international refugee regime.

#### 4. CONCLUSION

The popular depiction of Saudi Arabia as a State without refugees appears to be a quite recent perception. In contrast, in 1981, its history of being an important place of regional refuge was described in internal UNHCR documents in the following way:

The Kingdom of Saudi Arabia has, since its foundation, been one of the great asylum countries. One can easily imagine what might have become of the masses of Middle Eastern asylum-seekers who have found refuge in this welcoming land, had the country not existed. One can also draw a mental picture of the cruel fate awaiting hundreds of thousands of refugees if this regional safety valve were to blow out.<sup>155</sup>

While Saudi Arabia's role in refugee protection certainly should not be exaggerated, and its practice towards refugees can be critiqued on a number of points, as this article has shown, it has a long history of active engagement with the international refugee regime. Its representative at the UN for many years – Baroody – participated in the drafting processes of the main refugee protection instruments, and a historical examination also shows that accession to the 1951 Convention has not always been categorically refused by the Saudi government. Rather, accession to the Convention appears to have been seriously considered at certain junctures. Currently, however, there are no indications of Saudi Arabia acceding to the 1951 Convention in the near future, and even UNHCR appears to ascribe less importance to accession than it has done in the past.

Saudi Arabia's close ties with UNHCR are nonetheless worth noting. For UNHCR, Saudi Arabia is an important gatekeeper for its operations in the Gulf region and in Muslim-majority countries more generally. Formalizing an official presence in Riyadh in connection with the 1991 Gulf War was arguably of immense strategic importance for UNHCR as it opened up new operational opportunities in the entire Gulf region. UNHCR's cooperation with Saudi Arabia in establishing and managing the Rafha camp notably intensified Saudi Arabia's engagement with the international refugee regime and allowed UNHCR to set an operational foot in the region. That said, as shown in this article, UNHCR's approach to Saudi Arabia is characterized by pragmatism rather than by principle, and UNHCR has often found it challenging to cooperate with – and operate within – this country.

Similarly, UNHCR is an important vessel for Saudi Arabian humanitarianism, evident in its current position as a key donor State, but also in UNHCR's greater focus on Islamic philanthropy. Over the course of the last few decades, UNHCR has increased its emphasis on Islamic law and philanthropy, negotiating MoUs with key Islamic institutions and establishing the post of Senior Advisor to the High Commissioner for Refugees on Islamic Philanthropy. As there are close connections between Saudi Arabia's normative and financial approaches, it is important, then, to recognize the principles underpinning these donations. Future research should more thoroughly scrutinize the impact these approaches have on the development of the international refugee regime.

Overall, Saudi Arabia can be perceived as an important actor in the international refugee regime. Even though it has not acceded to the main refugee protection instruments, and has chosen not to become a member of the ExCom, in many respects Saudi Arabia acts as a full member of this regime. It engages in global discussions about refugee protection both in the ExCom and elsewhere and, as a donor, it influences this protection while simultaneously avoiding the (perceived) responsibility that inevitably comes through formal commitment.