

Regional Refugee Regimes: Middle East

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Abstract

This chapter focuses on the Middle East as a region and defines the Middle East to include Arab States, Israel and Turkey but excluding North African countries, with the exception of Egypt. It explores the role of the Refugee Convention, the UNHCR and other influential NGOs and of international human rights law to protect asylum seekers and refugees in the region. The chapter opens with a brief outline of the Middle Eastern context, historical background in relation to international refugee law and the significance of the UNHCR/UNRWA in Arab states. It compares the approach of signatory and non-signatory states and considers the consequences of failures to incorporate the Convention as well as the use of relevant domestic legislation to deal with asylum seekers and refugees. An important focus of this chapter is how – and whether – refugee protection is achieved across the region in light of the different approaches adopted by states to refugeehood, arising from historical, political and religious (Islamic) notions of hospitality and the treatment of foreigners, as well as to the role of law.

Keywords

international law, human rights, immigration, asylum, refugees, internally displaced persons, *non-refoulement* Middle East, regional protection

1. Introduction

This chapter focuses on the Middle East as a region. While it is important to acknowledge at the outset that the Middle East (and Near East) is a Western and contested construct, for the purposes of the discussion, the following States are included in the analysis: Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, Saudi Arabia, Syrian Arab Republic (Syria), Turkey, United Arab Emirates (UAE), and Yemen. UNHCR's definition excludes Egypt, Iran, Palestine, and Turkey, but these are addressed here to provide a broader understanding and comparison. In addition, there is limited analysis of refugee law and policy in Iran, while Turkey, a country that is described alternatively as in Western Asia, the Middle East, and Europe, provides a very useful comparison in its approach to refugees, particularly in relation to Syrians.

In this chapter, it is not possible to cover all States in detail. The aim is to provide an overview of some key issues and highlight developments to assist the reader in understanding the refugee and human rights contexts of the Middle East.

2. Legal Framework

a. International Refugee Law

The Middle East provides a fascinating arena for the examination of international law and its application due to the range of States and varied approaches adopted towards refugee and human rights law. Geographically, it can be described as a region, but historically, nationally, culturally, religiously, the area is diverse and such diversity is reflected in the treatment of asylum seekers and refugees. Broadly speaking, most Arab States are not party to the Refugee Convention or Protocol, except for Yemen and Egypt.

Yemen acceded to the Refugee Convention and Protocol on 18 January 1980. Egypt acceded to the Refugee Convention and Protocol on 22 May 1968 and entered reservations in respect of articles 12(1), 20, 22(1), 23, and 24.¹ Iran, Israel, and Turkey are also Contracting States, but all have entered reservations. Iran acceded to the Refugee Convention and Protocol on 28 July 1976. It considers the stipulations in articles 17, 23, 24, and 26 to be recommendations only and has limitations on the most favourable treatment provisions of the Convention. Israel signed the Refugee Convention on 1 August 1951 and ratified it on 1 October 1954. It acceded to the Protocol on 14 June 1968. Israel entered statements and reservations to the Refugee Convention, such that articles 8 and 12 do not apply; article 28 is limited by national law; and permits issued under article 30 are discretionary.² Turkey signed the Refugee Convention on 24 August 1951 and ratified it on 30 March 1962. It acceded to the Protocol on 31 July 1968. Turkey also entered a reservation to the effect that ‘no provision of this Convention may be interpreted as granting to refugees greater rights than those accorded to Turkish citizens in Turkey’. Significantly, Turkey maintains its geographical limitation under article 1B of the Convention, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe.

While this chapter has adopted a definition of ‘the Middle East’ that excludes North African States (except for Egypt), it should be noted that most Arabic-speaking States of Africa are parties to the Refugee Convention and/or Protocol: Algeria, Djibouti, Egypt, Morocco, Somalia, Sudan, and Tunisia. They (including Libya) have mostly ratified the OAU Convention; Djibouti and Somalia have signed but not ratified it.

The reluctance of many Arab States to accede to international refugee and human rights law treaties is contentious and requires explanation. Various reasons have been proffered over the years. The most common is that Arab States do not wish to offer permanent residence, despite

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¹ There is some uncertainty regarding the validity of Egypt’s reservations due to its failure to include the reservations in the Official Gazette, which is required for legal enforcement: see US Committee for Refugees and Immigrants, ‘World Refugee Survey 2005—Egypt’ (20 June 2005).

² Article 28 applies with the limitations resulting from section 6 of the Entry into Israel Law, Law No 5712-1952.

their willingness to host large numbers of refugees.³ Linked to this is the Palestinian issue. Countries—such as Lebanon and Jordan—which are home to hundreds of thousands of Palestinians, are fearful that ratification of the Convention/Protocol would encourage local integration and potentially ‘upset the sensitive demographic and socio-economic balance’.⁴ In addition, there is the view that ‘the political situation in the region especially in relation to the situation for Palestinian refugees is not yet conducive to achieve [the] goal [of accession]’;⁵ in other words, an obligation to integrate is contrary to the Palestinian right to return. A more nuanced standpoint is that, while most North African Arab States are parties to the Convention/Protocol, only one Arab country in Western Asia is a party (Yemen), while many Asian countries are not. Since Arab States of Asia have participated in the Bangkok Principles on the Status and Treatment of Refugees,⁶ which contains similar principles to the international instruments on refugees (see below), ‘the problem is due, not to the essence of the principles but to procedural and formal difficulties’.⁷

It should also be noted that several States of the Middle East participated in the Refugee Convention’s drafting in 1950 and 1951: Egypt, Iran, Iraq, Israel, Lebanon, Saudi Arabia, and Turkey. Furthermore, insofar as refugee protection is concerned, some are members of UNHCR’s governing Executive Committee (ExCom), which, *inter alia*, advises on international protection. Currently, this includes both non-Contracting States in the Middle East (Jordan and Lebanon) and Contracting States (Egypt, Iran, Israel, Turkey, and Yemen). Membership and participation in ExCom, especially by non-Contracting States, does suggest that they accept ExCom’s Conclusions on the International Protection of Refugees as having ‘strong political authority as consensus resolutions of a formal body of government representatives’, and should be afforded real deference, notwithstanding their legally non-binding status.⁸

The States of the region voted to adopt the UN’s New York Declaration for Refugees and Migrants in September 2016,⁹ which included a ‘vision for a more predictable and more comprehensive response’ to large-scale refugee movements via the Comprehensive Refugee Response Framework.¹⁰ Pursuant to the Declaration, Member States also agreed to work towards the adoption of a Global Compact on Refugees, which was affirmed by the UN General

³ Michael Kagan, “‘We Live in a Country of UNHCR’: The UN Surrogate State and Refugee Policy in the Middle East”, *UNHCR New Issues in Refugee Research Series* (2011); Maja Janmyr, ‘No Country of Asylum: “Legitimizing” Lebanon’s Rejection of the 1951 Refugee Convention’ (2017) 29 *IJRL* 438.

⁴ <IBT>UNHCR, ‘Country Operations Plan 2006: Lebanon’ (1 September 2005) 2 <<http://www.refworld.org/docid/43327bde2.html>> accessed 22 September 2019</IBT>.

⁵ See eg *ibid*; UNHCR, ‘Country Operations Plan 2006: Jordan’ (1 September 2005) <www.refworld.org/docid/43327b4e2.html> accessed 27 April 2019.

⁶ Asian-African Legal Consultative Organization (AALCO), ‘Final Text of the AALCO’s 1966 Bangkok Principles on Status and Treatment of Refugees (“Bangkok Principles”)’ (24 June 2001) <www.refworld.org/docid/3de5f2d52.html> accessed 10 October 2019.

⁷ Ikbāl Al-Fallouji, ‘Arab Countries and Refugee Law’ (Seminar on Asylum and Refugee Law in the Arab Countries, San Remo, 16–19 January 1984) 47.

⁸ James C Hathaway, *The Rights of Refugees under International Law* (CUP 2005) 113–14.

⁹ On 19 September 2016, all 193 UN Member States adopted the Declaration.

¹⁰ See UNHCR, ‘Comprehensive Refugee Response Framework’ <www.unhcr.org/comprehensive-refugee-response-framework-crrf.html> accessed 22 September 2019.

Assembly on 17 December 2018.¹¹ Middle Eastern States appear to have embraced the process. Akram argues that ‘[t]he Global Compacts have generated a much-needed renewed focus on the protracted and interconnected nature of refugee, statelessness, and other displacement concerns across the region’.¹² Certainly, Arab States have engaged in high-level conferences and discussions to address issues on refugees and statelessness. One noteworthy outcome is the Memorandum of Understanding (MoU) signed between UNHCR and the League of Arab States (LAS) in September 2017 to establish a cooperation framework on refugee and stateless matters.

b. International Human Rights Law

All Middle Eastern States have ratified or acceded to some international human rights instruments, but none has ratified or acceded to all. For example, Jordan has a relatively good record amongst Arab States in the region, having ratified the ICCPR, ICESCR, CAT, CERD, CRC, CEDAW, and the Convention on the Rights of Persons with Disabilities.¹³ It has also agreed to two of three Optional Protocols to the CRC (but not Optional Protocols to other instruments).¹⁴ By contrast, Saudi Arabia has only acceded to the CAT, CERD, CEDAW, and CRC, including two CRC Optional Protocols. Turkey’s ratification of human rights treaties is almost complete with one exception—the Convention for the Protection of All Persons from Enforced Disappearance (CED);¹⁵ similarly, Iraq and Israel have a good accession record although Israel has signed neither the CED nor the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW).¹⁶

There is a lack of consistency in the region about the universality of some fundamental rights, especially amongst the Arab States. Furthermore, many States have entered significant reservations, often stated to be due to conflict between international law and national and/or Shari’a Law.¹⁷ Of course, signatures and ratification are not indicative of States’ willingness to enforce international human rights treaties and the reputation of Middle Eastern States in this regard is not good.

c. Regional Law

¹¹ In tandem with the refugee process, discussions took place on the Global Compact for Migration, which was adopted by the UN General Assembly on 19 December 2018 (although not all States voted in favour).

¹² Susan Akram, ‘Assessing the Impact of the Global Compacts on Refugees and Migration in the Middle East’ (2018) 30 *IJRL* 691.

¹³ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

¹⁴ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (adopted 25 May 2000, entered into force 12 February 2002) 2173 UNTS 222; Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (adopted 25 May 2000, entered into force 18 January 2002) 2171 UNTS 227.

¹⁵ Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, entered into force 23 December 2010) 2716 UNTS 3 (CED).

¹⁶ Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.

¹⁷ Mervat Rishmawi, *The League of Arab States Human Rights Standards and Mechanisms—Towards Further Civil Engagement: A Manual for Practitioners* (Open Society Foundations/Cairo Institute for Human Rights Studies 2015) 76.

The differences between States of the Middle East is further evidenced when considering regional law. There is a clear bifurcation between Arab States, when acting as the LAS, and the three non-Arab States of Israel, Iran, and Turkey. Unlike Israel, though, Iran and Turkey are members of the Organisation of Islamic Cooperation and participate in its deliberations over refugees (see below). Arguably, Arab States have revealed a preference for inter-Arab State instruments and regional principles, as opposed to international refugee law, although these, too, have long suffered from a reluctance by States to implement them fully.

i. Regional Refugee and Asylum Law

The regional law applicable to Middle Eastern States relates to international treaties of the Arab States, of the African Union and of the Council of Europe. Arab States have agreed a range of instruments relating to refugees, both Palestinian and non-Palestinian, and to human rights law, for example, the Casablanca Protocol on the Treatment of Palestinian Refugees 1965, the Declaration on the Protection of Refugees and Displaced Persons in the Arab World 1992, the Arab Convention Regulating the Status of Refugees in the Arab Countries 1994, and the Arab Charter on Human Rights 2004.¹⁸

The Casablanca Protocol is one of the first regional agreements to address refugee issues in the Middle East, and concerns Palestinians in Arab States.¹⁹ A brief document, it calls on Arab States to ensure that Palestinians residing in their lands have the same right of employment as citizens,²⁰ are permitted to leave and return to the State of residence,²¹ and are provided with travel documents if requested.²² Reference in the Casablanca Protocol is to ‘Palestinians’ rather than ‘refugees’.²³ Seven Member States signed without reservations,²⁴ while three others entered reservations.²⁵ Lebanon imposed the greatest number of restrictions, especially in relation to employment and entry. The Protocol was poorly implemented and applied and, thus, the 1991 Conference of Supervisors of Palestinians provided an opportunity for change. However, at the request of Kuwait and Saudi Arabia, a resolution was amended ‘in such a way as to compromise the force of the Casablanca Protocol’ and ‘essentially release[e] the signatories from their obligations under the Casablanca Protocol’ leaving the treatment of the Palestinians ‘up to their

¹⁸ League of Arab States (LAS), Protocol for the Treatment of Palestinians in Arab States (‘Casablanca Protocol’), 11 September 1965; Declaration on the Protection of Refugees and Displaced Persons in the Arab World (‘Cairo Declaration’), 19 November 1992; LAS, Arab Convention on Regulating Status of Refugees in the Arab Countries 27 March 1994 (not in force); LAS, Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008).

¹⁹ See Chapter 35 in this volume.

²⁰ <IBT>Casablanca Protocol (n 18)</IBT>, para 1.

²¹ *ibid* para 2.

²² *ibid* para 4.

²³ Lex Takkenberg, *The Status of Palestinian Refugees in International Law* (OUP 1998) 141.

²⁴ Jordan, Algeria, Sudan, Iraq, Syria, Egypt, and Yemen.

²⁵ Kuwait, Lebanon, and Libya.

discretion'.²⁶ Certainly, the consequence was that the Casablanca Protocol was severely weakened.²⁷

In 1991, at the Third Seminar of Arab Experts on 'Asylum and Refugee Law' held in Amman, participants—mainly from Arab States—arrived at several pro-refugee law conclusions that extended beyond the Palestinian issue.²⁸ These conclusions supported the significance of international and national refugee law for those in need of protection in Arab States. Yet, two years later, at the 1993 Fourth Seminar of Arab Experts on 'Asylum and Refugee Law' held in Cairo, a different approach was adopted.²⁹ Though it was reiterated that asylum and refugee law were inherent parts of human rights law, there was no expression of regret that Arab States had failed to accede to international refugee law or enact national refugee law;³⁰ rather, there was simple recognition 'that the United Nations Convention of 28 July 1951 and the Protocol of 31 January 1967 constitute the basic universal instruments governing the status of refugees'.³¹ The seminar did, however, go on to adopt a Declaration on the Protection of Refugees and Displaced Persons in the Arab World, in which a hope was expressed that Arab States that had not yet acceded to the Refugee Convention or the Protocol would do so.³² The Declaration is inclusive and far-reaching. Thus, for example, it recommends that:

pending the elaboration of an Arab Convention relating to refugees, Arab States adopt a broad concept of 'refugee' and 'displaced person' as well as minimum standard for their treatment, guided by the provisions of the United Nations instruments relating to human rights and refugees as well as relevant regional instruments.³³

The LAS was not long in fulfilling the avowed ambition of drafting an Arab Convention: in 1994, the Arab Convention on Regulating Status of Refugees in the Arab Countries was adopted.³⁴ The definition of a 'refugee' is similar to that of the Refugee Convention,³⁵ but is also broader, encompassing:

Any person who unwillingly takes refuge in a country other than his country of origin or his habitual place of residence because of sustained aggression against, occupation and foreign

²⁶ Oroub El-Abed, *Unprotected: Palestinians in Egypt since 1949* (Institute for Palestine Studies/Ottawa, International Development Research Centre, Washington 2009) 169.

²⁷ Takkenberg (n 23) 149.

²⁸ Conclusions of the Third Seminar of Arab Experts on 'Asylum and Refugee Law': Declaration on the Protection of Refugees and Displaced Persons in the Arab World, 2–4 November 1991. The Seminar was organized by the International Institute of Humanitarian Law in cooperation with the Jordanian national Red Crescent Society under the patronage of HRH Crown Prince Hassan of Jordan and under the auspices of UNHCR.

²⁹ Cairo Declaration (n 18).

³⁰ *ibid* preambular para 9.

³¹ *ibid* preambular para 10.

³² *ibid* art 4.

³³ *ibid* art 6.

³⁴ Arab Convention on Regulating Status of Refugees in the Arab Countries (n 18).

³⁵ 'Any person who is outside the country of his nationality or outside his habitual place of residence in case of not having a nationality and owing to well-grounded [sic] fear of being persecuted on account of his race, religion, nationality, membership of a particular social group or political opinion, unable or unwilling to avail himself of the protection of or return to such country'. Art 1.

domination of such country or because of the occurrence of natural disasters or grave events resulting in major disruption of public order in the whole country or any part thereof.³⁶

The inclusion of ‘natural disasters’ is certainly an advance on the traditional definition of a ‘refugee’ and to be commended.³⁷ The Convention also includes *non-refoulement*, non-discrimination obligations, and an expectation that treatment of refugees would be no less than for other foreign residents. However, its silence on education, housing, employment, welfare and access to courts means that it was a mixed bag of commitments. Ultimately, its main flaw is the failure of States to accede and, consequently, it has never entered into force.

Despite this apparent failure, the Arab Convention provided a template for further discussion. In 2010, prompted by the enormity of displacement in the Middle East, the Arab Parliament initiated its revision and, in 2012, adopted a revised text that was circulated to the Arab League General Secretariat and League bodies for further consideration.³⁸ Redrafting has continued in collaboration with UNHCR and, in 2018, the LAS announced that a final version should be adopted in the near future.³⁹ UNHCR has reported that the proposed Arab Convention adopts the extended refugee definition contained in the OAU Refugee Convention, but goes beyond it to include persons fleeing disasters or grave events disrupting public order.⁴⁰

African, Asian, and Middle Eastern States⁴¹ have also agreed to the 1966 Bangkok Principles.⁴² Two addenda—on the right to return and on principles of burden-sharing—were added in 1970 and 1987 and a revised text incorporating these changes was adopted in June 2001.⁴³ The definition of ‘refugee’ is similar to that of the Refugee Convention but extends the grounds of persecution to ‘colour’, ‘ethnic origin’, and ‘gender’;⁴⁴ the OAU Refugee Convention definition is also incorporated.⁴⁵ The Principles include familiar rights, such as the right to seek and to enjoy asylum from persecution,⁴⁶ *non-refoulement* and non-expulsion,⁴⁷ and minimum standards of treatment;⁴⁸ there is also a right of return to the country of nationality or habitual residence;⁴⁹

³⁶ Art 1.

³⁷ See further on natural disasters, Chapter 46 in this volume.

³⁸ Rishmawi (n 17) 83.

³⁹ LAS, ‘Contribution to The Sixteenth Coordination Meeting on International Migration’ UN/POP/MIG-16CM/2018/4 (New York, 15–16 February 2018) 4.

⁴⁰ UNHCR/Inter-Parliamentary Union, ‘A Guide to International Refugee Protection and Building State Asylum Systems—Handbook for Parliamentarians No 27’ (2017) 21.

⁴¹ Bahrain, Egypt, Iraq, Iran, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Palestine, Syria, Turkey, UAE, and Yemen.

⁴² There are 47 Member States in the Asian-African Legal Consultative Organization, which advises on international law issues and which led the drafting of the Principles. The original 1966 version of the Bangkok Principles is available at AALCO website: <www.aalco.int/scripts/view-posting.asp?recordid=461> accessed 22 September 2019. See also Chapters 21, 22, and 23 in this volume.

⁴³ At its 40th Session in New Delhi: Bangkok Principles (n 6).

⁴⁴ Art I(1).

⁴⁵ Art I(2).

⁴⁶ Art II.

⁴⁷ Arts III and V.

⁴⁸ Art IV.

⁴⁹ Art VI.

a right to compensation from the state of departure under certain circumstances;⁵⁰ and recognition of the need for burden-sharing.⁵¹ While the revised Bangkok Principles are only declaratory, some Arab States still entered reservations against the principal articles, undermining the instrument's effectiveness.

Some Middle Eastern States have participated in other non-binding discussions and arrangements. For example, Turkey and Iran (observer status) are part of the Almaty Process on Refugee Protection and International Migration⁵² from which the Almaty Declaration emerged.⁵³ Iraq, Jordan, Syria, Turkey, and the United Arab Emirates are members of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali Process). While the focus is evidently not on asylum or refuge, the Declarations often reflect the tenet of other Middle Eastern instruments. The 2016 Bali Declaration encourages Member States 'to explore potential temporary protection and local stay arrangements for asylum seekers and refugees, subject to domestic laws and policies of member states'.⁵⁴ Turkey is the most notable example of a State having vigorously pursued this approach, with its unique temporary protection regime (TPR) for Syrians (as discussed below), which pre-dated the 2016 Declaration. Interestingly, the 2018 Bali Declaration makes no reference to asylum and simply notes the development of the Global Compacts on Refugees and Migration 'as frameworks for international cooperation, seeking to address displacement and promote well-managed migration'.⁵⁵

There is growing recognition of the role of Islam in refugee protection, and the Ashgabat Declaration of 2012, adopted by Member States of the Organisation of Islamic Cooperation (OIC) is an example of an alternative approach to refugee issues. It opens with a recognition that 'Islam laid down the bases for granting refuge, which is now deeply ingrained in Islamic faith, heritage and tradition' and noted that the Refugee Convention and Protocol 'have enduring value and relevance in the twenty-first century' and 'the importance of respecting the principles and values' underlying the instruments.⁵⁶ The Declaration is a useful reminder of the pressing issues and challenges posed by refugee movements and calls on the international community to address

⁵⁰ Art XI.

⁵¹ Art X.

⁵² The objective of the Almaty Process is to promote sustained dialogue and exchange of information on migration issues and on refugee protection challenges in Central Asia and the wider region.

⁵³ Almaty Declaration Adopted by Participating States at the Regional Conference on Refugee Protection and International Migration held in Almaty, Kazakhstan, 16 March 2011. Available at: www.iom.int/files/live/sites/iom/files/What-We-Do/docs/2011_Almaty_Declaration.pdf accessed 21 April 2019.

⁵⁴ Declaration of the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime ('Bali Process') (Bali, 23 March 2016) para 6.

⁵⁵ Declaration of the Seventh Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Bali, 7 August 2018) para 6.

⁵⁶ Ashgabat Declaration of the International Ministerial Conference of the Organization of Islamic Cooperation on Refugees in the Muslim World (11–12 May 2012) www.refworld.org/pdfid/595c95ba4.pdf accessed 22 September 2019; for further discussion of asylum and Islam, see Volker Türk, 'Reflections on Asylum and Islam' (2008) 27(2) RSQ 7.

root causes of ‘the problem of refugees’ and to improve the global availability of resettlement. Yet, again, it is only a non-binding declaration.

ii. Regional Human Rights Law

There is a significant number of inter-Arab treaties on human rights, but, like their international equivalents, many suffer from either a low number of ratifications, weak enforcement, or both.⁵⁷ The Arab Charter on Human Rights is one such example. Initially adopted in 1994, it never entered into force due to lack of ratifications and was, in any event, criticized for failing to meet basic international human rights standards.⁵⁸ In 2004, the Charter was revised, and it was adopted and entered into force in 2008.⁵⁹ Its implementation is overseen by the Arab Human Rights Committee. While it continues to have its limitations, the 2004 Charter is regarded as an improvement on its forebear.⁶⁰ However, there are areas of concern. While article 28 protects the right to seek political asylum, and prohibits the extradition of political refugees, it excludes those ‘facing prosecution for an offense under ordinary criminal law’. Several rights are dependent on State legislation and a number only benefit the citizen.⁶¹ Finally, not all States have ratified it—for example, Egypt, Morocco, and Tunisia all signed in 2004, but have failed to ratify.

There are several other examples of inter-Arab human rights instruments that might appear to have a bearing on the rights of asylum seekers and refugees. However, there is no consistency in ratifications and many instruments are only applicable either to Arabs or to citizens. For example, the Charter on the Rights of the Arab Child 1983 and the Convention on Citizenship for Arab Residents of Arab States Other than their Native Countries 1952 are, as the titles state, restricted to the Arab child or resident;⁶² they will therefore not apply to non-Arab asylum seekers or refugees in Arab States. In the case of the Arab Child Charter, there are only seven signatories to date⁶³ and this Charter has been criticized for inconsistency with its international counterpart, the CRC.⁶⁴

While the clear direction of regional asylum and refugee law principles in the Middle East is to favour non-binding agreements and declarations, there is one country that is part of a binding regional human rights instrument: Turkey. Turkey stands alone in having ratified the European Convention on Human Rights (ECHR) and is therefore bound by the European Court of Human Rights’ judgments, many of which impact State treatment of asylum seekers and refugees.⁶⁵

⁵⁷ See for a useful list of LAS international treaties: Rishmawi (n 17) Annex 3.

⁵⁸ See further Mervat Rishmawi, ‘The Arab Charter on Human Rights: A Comment’ (1996) 10 *Interights Bulletin* 1.

⁵⁹ LAS, Arab Charter on Human Rights (n 18).

⁶⁰ See Mervat Rishmawi, ‘The Revised Arab Charter on Human Rights’ in Catarina Krause and Martin Scheinin (eds), *International Protection of Human Rights: A Text Book* (Turku/Åbo 2012).

⁶¹ eg arts 39 and 41.

⁶² LAS, Charter on the Rights of the Arab Child (adopted 6 December 1983); LAS, Convention on Citizenship for Arab Residents of Arab States Other than Their Native Countries (adopted 23 September 1952, entered into force 5 January 1956).

⁶³ Egypt, Iraq, Jordan, Libya, Palestine, Syria, and Yemen.

⁶⁴ Mervat Rishmawi, ‘The League of Arab States and Human Rights’ in Scott Sheeran and Sir Nigel Rodley (eds), *Routledge Handbook of International Human Rights Law* (Routledge 2013).

⁶⁵ See for further information the Council of Europe website: <www.coe.int/en/web/portal/home> accessed 22 September 2019; see further Chapter 19 in this volume.

However, in 2017 it was reported that Turkey was the worst rights violator in the 58-year history of the ECHR, and therefore its commitment to upholding the rights of asylum seekers and refugees is somewhat questionable.⁶⁶

d. Domestic Law

With the extant inter-State differences at international and regional levels, it is unsurprising that domestic law and policy on asylum seekers and refugees is also varied. Egypt, for example, though party to the Refugee Convention, has no domestic legislation on the treatment of refugees.⁶⁷ As Jones notes:

Both the constitution of 1971 (amended in 1980) and the more recently adopted constitution of 2014 recognize the right to ‘political asylum’ (in Articles 53 and 91, respectively) and the direct enforceability of international treaties (in Article 151 in both constitutions). The latter article unhelpfully, due to the lack of domestic legislation, requires the exercise of this right ‘according to the Law’.⁶⁸

In line with the norm in the region, Egypt applies several laws and decrees on foreigners to refugees and asylum seekers, but permits UNHCR to conduct refugee status determination (RSD) on its territory, though not for Palestinians (see below).

Israel, another State party and one of the first States to sign the Refugee Convention,⁶⁹ was also the first country to develop a national asylum determination system in 2001.⁷⁰ Initial screening and substantive interviews were conducted by UNHCR with the final decision taken by the Ministry of Interior. In July 2009, full transfer of the responsibility for RSD commenced, and, in January 2011, the 2001 Regulations were revised.⁷¹ Israel was, consequently, the first Middle Eastern country to establish an RSD process.⁷² However, these regulations are administrative instruments, focusing on process, rather than primary legislation.⁷³ There is a very low

⁶⁶ Sedat Ergin, ‘Turkey is the Champion of Rights Violations at the ECHR’, *Hurriyet Daily News* (20 December 2017) <<http://www.hurriyetdailynews.com/opinion/sedat-ergin/turkey-is-the-champion-of-rights-violations-at-the-echr-124411>> accessed 22 September 2019.

⁶⁷ Presidential Decree No 331–1980, Al-Jarīdah Al-Rasmīyah, 28 May 1981 ratified the Refugee Convention and Protocol: Leila Hilal and Shahira Samy, ‘Asylum and Migration in the Mashrek—Asylum and Migration Country Fact Sheet: Egypt’ 3 <https://idcoalition.org/wp-content/uploads/2009/09/factsheet_egypt_en1.pdf> accessed 22 September 2019.

⁶⁸ Martin Jones, ‘Legal Empowerment and Refugees on the Nile: The Very Short History of Legal Empowerment and Refugee Legal Aid in Egypt’ (2015) 19 *International Journal of Human Rights* 308, 315 note 8.

⁶⁹ Israel was the tenth country to sign. Ruvy Ziegler, ‘No Asylum for “Infiltrators”’: *The Legal Predicament of Eritrean and Sudanese Nationals in Israel* (2015) 29 *Journal of Immigration, Asylum and Nationality Law* 172.

⁷⁰ Israel introduced secondary legislation through a directive: Regulations regarding the Treatment of Asylum Seekers in Israel (2001).

⁷¹ Procedure for Handling Political Asylum Seekers in Israel (effective 2 January 2011). See Dallah Stevens, ‘Between East and West: The Case of Israel’ in Hélène Lambert, Jane McAdam, and Maryellen Fullerton (eds), *The Global Reach of European Refugee Law* (CUP 2013).

⁷² Michael Kagan and Anat Ben-Dor, *Nowhere to Run: Gay Palestinian Asylum Seekers in Israel* (Tel Aviv University/Buchmann Faculty of Law 2008) 23.

⁷³ Stevens (n 71).

acceptance rate of refugees in Israel (for example, since 2009, there has been a 0.01 per cent acceptance rate for Eritreans in Israel compared to 85–90 per cent in Canada).⁷⁴

Turkey, as a Contracting State to the Convention, also provides an interesting case study. In the mid-1980s, UNHCR commenced RSD in Turkey for non-European asylum seekers.⁷⁵ In 1994, Turkey adopted a Regulation on Asylum.⁷⁶ The system was complicated and the outcomes uncertain, with the possibility of *refoulement* or removal notwithstanding a positive UNHCR refugee determination.⁷⁷ In 2013, the Law on Foreigners and International Protection (LFIP)⁷⁸ and Temporary Protection Regulation were passed.⁷⁹ The Directorate General of Migration Management (DGMM) was established and the sole power for RSD was transferred to Turkey in September 2018.⁸⁰

States that are not parties to the Refugee Convention and/or Protocol tend to apply immigration law/law on foreigners to those who enter, irrespective of whether they are asylum seekers or refugees.⁸¹ The Gulf Cooperation Council (GCC) States and Lebanon routinely use the kafala system in which a migrant worker's immigration status is bound to an individual employer or sponsor (the kafil); this often leads to serious exploitation and vulnerability of the individual.⁸² While migrant workers in Jordan are not formally bound to sponsors, they are often vulnerable due to poor application of Jordanian employment laws.⁸³

3. Institutional Framework

a. UNHCR

Many States of the Middle East, including those that have not ratified the Refugee Convention, have long been heavily reliant on UNHCR (and the UN Relief Works Agency (UNRWA))⁸⁴ to help cope with large numbers of refugees. UNHCR expanded its operations into the region in the 1960s, when it emerged from being a largely European organization.⁸⁵ It began operations in

⁷⁴ René Provost, 'Israel's Treatment of Eritrean and Sudanese Migrants is Shameful', *The Globe and Mail* (14 February 201); Yonathan Paz, 'Ordered Disorder: African Asylum Seekers in Israel and Discursive Challenges to an Emerging Refugee Regime', UNHCR Policy Development and Evaluation Series, Research Paper No 205 (2011).

⁷⁵ Irem Sengul, 'Rethinking the Category of Temporary Protection in Turkey: Legality, Uncertainty, and Home-Making in the City of Gaziantep' (PhD thesis, University of Warwick, 2020).

⁷⁶ No 1994/6169, last amended 2006.

⁷⁷ Sengul (n 75).

⁷⁸ In force April 2014.

⁷⁹ In force October 2014.

⁸⁰ UNHCR, 'Turkey: Strengthening a Quality Asylum System' (September 2018)

<<https://data2.unhcr.org/en/documents/details/67139>> accessed 14 January 2020. UNHCR continues to conduct individual case assessment or resettlement in close cooperation with the government of Turkey.

⁸¹ See on Jordan, Dallah Stevens, 'Legal Status, Labelling, and Protection: The Case of Iraqi "Refugees" in Jordan' (2013) 25 *IJRL* 1.

⁸² ILO, 'Policy Brief No 2: Reform of the Kafala (Sponsorship) System'

<www.ilo.org/dyn/migpractice/docs/132/PB2.pdf> accessed 22 September 2019.

⁸³ See for further discussion on Jordan, Katharina Lenner and Lewis Turner, 'Making Refugees Work? The Politics of Integrating Syrian Refugees into the Labor Market in Jordan' (2019) 28 *Middle East Critique* 65.

⁸⁴ See Chapter 35 in this volume.

⁸⁵ See generally Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (OUP 2001).

Turkey in 1960, and in 1963 it established a regional office in Lebanon. Today, UNHCR has a presence in most States of the region, including a regional representation in Saudi Arabia, catering for the GCC States, and a Syria Regional Refugee Coordination Office in Amman, Jordan. Since 1987, UNHCR has also worked in Yemen, while in Israel UNHCR's honorary correspondent was replaced by an official representative office in 2007.⁸⁶

Characteristic of UNHCR's operations in the region is that it has adopted a pragmatic approach largely focusing on establishing what it considers an acceptable 'protection space' for refugees. This includes strengthening institutional support for protection and community-based protection, rather than (merely) promoting ratification of the Convention.⁸⁷ Stevens has noted how, 'to a large extent, UNHCR has considerable latitude, within its mandate to orient policy in a direction of its own choosing'.⁸⁸ UNHCR notably produces a 'multi-dimensional protection regime' by drawing on a range of instruments, including its own Statute as well as any MoU, to inform action on the ground.⁸⁹ At the same time, UNHCR's ability to execute its international protection mandate is heavily affected by Middle Eastern host State policies, leading to a constant negotiation and re-negotiation of refugee protection.⁹⁰

Currently, the largest groups of refugees falling under UNHCR's mandate in this region are refugees from Syria and Iraq, but its mandate has also been extended to internally displaced persons in, for example, Syria, Iraq, and Yemen, who outnumber refugees. Given that the States of the GCC are outside UNRWA's areas of operation, Palestinians are under international protection and covered by UNHCR's mandate.⁹¹ UNHCR therefore also monitors the situation of the estimated 300,000 Palestinians living in Saudi Arabia and the other Gulf States.⁹² They have generally first resided in one of the neighbouring States of Palestine and are believed to have been initially registered with UNRWA in their first country of asylum. Egypt, too, is outside UNRWA's areas of operation, but those Palestinians based there are excluded from UNHCR's mandate.⁹³

i. Memoranda of Understanding

⁸⁶ Paz (n 74).

⁸⁷ Janmyr (n 3); Dallal Stevens, 'Access to Justice for Syrian Refugees in Lebanon' in Maria O'Sullivan and Dallal Stevens (eds), *States, the Law and Access to Refugee Protection: Fortresses and Fairness* (Hart 2017).

⁸⁸ <IBT>Dallal Stevens, 'Rights, Needs or Assistance? The Role of the UNHCR in Refugee Protection in the Middle East' (2016) 20 *International Journal of Human Rights* 264</IBT>.

⁸⁹ *ibid.*

⁹⁰ Janmyr (n 3); Martin Jones, 'Moving Beyond Protection Space: Developing a Law of Asylum in South East Asia' in Susan Kneebone, Dallal Stevens, and Loretta Baldassar (eds), *Refugee Protection and the Role of Law: Conflicting Identities* (Routledge 2014).

⁹¹ UNHCR, 'UNHCR Country Operations Plan 2004—Saudi Arabia' (2003) <www.refworld.org/docid/3fd9c6cb7.html> accessed 24 May 2019.

⁹² UNHCR, 'UNHCR Country Operations Plan 2007—Kingdom of Saudi Arabia & Gulf Countries' (2006) <www.refworld.org/docid/45221de92.html> accessed 24 May 2019.

⁹³ Up-to-date statistics are difficult to establish but, in 2009, it was claimed that there were 50,000 to 70,000 Palestinians in Egypt: Oroub El-Abed, 'The Palestinians in Egypt: Identity, Basic Rights and Host State Policies' (2009) 28(2–3) *RSQ* 531.

UNHCR's presence in the region is often formalized through the negotiation of MoUs with the host authorities. For example, UNHCR negotiated an MoU with Saudi Arabia in 1988, an agreement that also laid the basis for a close working relationship between UNHCR and the OIC.⁹⁴ Today, UNHCR operates in Saudi Arabia under a 1993 MoU (as amended in 2010), when the country hosted roughly 35,000 Iraqi refugees in the Rafha camp.⁹⁵ Following the closure of this camp in 2006, UNHCR negotiated alternative protection solutions with Saudi authorities to allow the remaining 363 persons to leave the camp and settle in urban areas in Saudi Arabia. These refugees were provided with refugee identification cards issued by the Saudi Ministry of Interior as well as residence permits. They could work and access medical and education facilities.⁹⁶

MoUs can be viewed as alternative protection regimes to the Refugee Convention providing a legal framework to regulate the status of refugees in many Middle Eastern States. For example, UNHCR's 1998 MoU with Jordan adopts a refugee definition similar to that of the Refugee Convention (article 1) and declares Jordan's commitment to international standards of refugee protection (article 5), including the principle of *non-refoulement* (article 2). UNHCR's 2003 MoU with Lebanon, on the other hand, makes no mention of key refugee protection norms, and, rather, affirms that 'Lebanon does not consider itself an asylum country', and that an 'asylum seeker' means a 'person seeking asylum in a country other than Lebanon'.⁹⁷

The main purpose of several of UNHCR's MoUs with Middle Eastern governments appears to be to shift the responsibility of refugee protection from States to UNHCR, with host States' obligations frequently being 'limited to tolerating refugees' presence temporarily on condition that they be resettled to a third country'.⁹⁸ UNHCR's respective agreements with Lebanon and Jordan, for example, establish that residence in these States is intended to be temporary and there is no long-term governmental responsibility for refugee protection. The MoU with Lebanon only accepts UNHCR's protection role for specific cases and it is expected that UNHCR-recognized refugees will be resettled within 12 months. The agreements thus impose a responsibility for resettlement on UNHCR, even though it is resettlement States, not UNHCR, that have absolute

⁹⁴ UNHCR (n 91). This collaboration notably resulted in UNHCR sponsoring a study of Islamic influence on international refugee law in 2009. See UNHCR, 'UNHCR Sponsors Study of Islamic Influence on International Refugee Law' (22 June 2009) <www.unhcr.org/news/press/2009/6/4a3f95969/unhcr-sponsors-study-islamic-influence-international-refugee-law.html> accessed 24 May 2019.

⁹⁵ 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' (2013) <www.refworld.org/pdfid/5135c0902.pdf> accessed 24 May 2019.

⁹⁶ UNHCR, 'UNHCR Country/Regional Operations Plan 2008–2009: Saudi Arabia, Kuwait, UAE, Qatar, Bahrain, Oman' (2007) <www.refworld.org/docid/4756bb232.html> accessed 24 May 2019.

⁹⁷ 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).

⁹⁸ Ghida Frangieh, 'Relations between UNHCR and Arab Governments: Memoranda of Understanding in Lebanon and Jordan' (Blog at LSE Middle East Centre, 23 September 2016) <blogs.lse.ac.uk/mec/2016/09/23/relations-between-unhcr-and-arab-governments-memoranda-of-understanding-in-lebanon-and-jordan/> accessed 24 May 2019.

discretion as to which refugees to accept. This approach has garnered much criticism and the MoU was disused shortly after its negotiation.⁹⁹

GCC governments have similarly been reluctant to apply UNHCR's extended mandate to refugees other than Iraqis in the Rafha camp. Many individuals falling under UNHCR's mandate in the GCC States have uncertain status due to irregular entry or an expired residence permit or visa, and, as UNHCR has explained, on occasion this challenging situation left it with 'no other choice than to obtain from the concerned Governments clearance for a temporary stay of recognized refugees against a commitment to find durable solutions for them'.¹⁰⁰ Thus, through UNHCR intervention, refugees without residence permits in States such as Oman and Kuwait have managed to secure temporary residence permits pending the finalization of resettlement procedures to a third country.¹⁰¹

UNHCR's 1996 MoU with Kuwait, for example, limits Kuwait's duties to facilitating access of UNHCR to refugees and other persons falling within UNHCR's mandate. At the same time, it defines UNHCR's tasks to include providing international protection to refugees and other persons who fall within the scope of its mandate, organizing and providing humanitarian assistance for refugees, and to 'seek permanent solutions to their problems by facilitating their voluntary return to their States of origin, or their assimilation within new national communities'.¹⁰²

ii. Registration, RSD, and Resettlement

While the MoUs are one clear example of a shift of responsibility in this region from the sovereign State to UNHCR, UNHCR's role for RSD, registration, healthcare, education, and livelihood assistance for refugees appears so substantial that some scholars classify UNHCR as a form of 'surrogate State'.¹⁰³ Indeed, host States in the Middle East—including Contracting States to the Convention, such as Egypt and Yemen—have either partially or wholly handed over registration procedures and RSD to UNHCR.

Recently, however, several States have moved towards a nationalization of these procedures. While Israel historically outsourced the RSD process to UNHCR, in 2009 it assumed control via the newly established RSD unit within the Authority of Immigration at the Office of the

⁹⁹ Maja Janmyr, 'UNHCR and the Syrian Refugee Response: Negotiating Status and Registration in Lebanon' (2018) 22 *International Journal of Human Rights* 393.

¹⁰⁰ UNHCR (n 96).

¹⁰¹ 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 Sultanate of Oman' (2015) <www.refworld.org/docid/56371d0f4.html> accessed 7 April 2019; 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: State of Kuwait' (2014) <www.refworld.org/docid/54c236a34.html> accessed 7 April 2019.

¹⁰² UNHCR, 'Co-operation and Office Agreement between the Office of the United Nations High Commissioner for Refugees and the Government of the State of Kuwait' (1996) art 4 <www.refworld.org/docid/3ae6b3181b.html> accessed 7 April 2019.

¹⁰³ Kagan (n 3); Stevens (n 87); Ruben Zaiotti, 'Dealing with Non-Palestinian Refugees in the Middle East: Policies and Practices in an Uncertain Environment' (2006) 18 *IJRL* 333.

Interior.¹⁰⁴ UNHCR reported in 2018 that since Israel took over RSD from UNHCR in 2009, only 10 Eritreans and one Sudanese had been recognized as refugees.¹⁰⁵ Turkey similarly allowed UNHCR to take charge of all asylum issues until 2013, when it established a State agency tasked to take over gradually from UNHCR and become the sole decision-maker on asylum.¹⁰⁶ The development of a national registration and RSD process was also the stated objective of Lebanon's decision in 2015 to suspend UNHCR's registration of Syrian refugees.¹⁰⁷

In many States, UNHCR furthermore assumes responsibility for RSD processes for certain refugee groups, while other groups are under the purview of national authorities. Yemen has recognized *prima facie* Somali refugees and certain groups of Ethiopian and Eritrean refugees, but requests that UNHCR conduct individual status determination for all other asylum seekers.¹⁰⁸ Since the first Syrian arrivals, Turkish authorities have been exclusively in charge with respect to Syrians, but both UNHCR and Turkish authorities conduct registration and RSD for refugees with other national backgrounds.¹⁰⁹

While UNHCR has provided *prima facie* refugee status for several groups of refugees in the region, it has occasionally also developed alternative procedures. In 2003, it attempted to introduce a TPR for Iraqi refugees in Lebanon and Jordan, for example.¹¹⁰ The TPR sought to protect Iraqis from *refoulement* to Iraq and enable UNHCR to avoid processing asylum claims. Notably, the TPR in Jordan would 'reduce the burden on UNHCR by absolving it of the obligation to seek resettlement for the beneficiaries within six months, as demanded by the MOU for UNHCR recognized refugees'.¹¹¹ As the TPR was rejected by the Jordanian government, UNHCR started to apply *prima facie* refugee status for certain categories of Iraqi nationals, even though the status was not fully respected by some host States.¹¹²

As for refugees from Syria, UNHCR has adopted regional standard operating procedures for use in Lebanon, Iraq, Egypt, Jordan, and Turkey.¹¹³ These procedures provide that Syrians generally do not undergo RSD unless they are selected for resettlement screening. While resettlement

¹⁰⁴ Tanja R Müller, 'Realising Rights within the Israeli Asylum Regime: A Case Study among Eritrean Refugees in Tel Aviv' (2018) 37 *African Geographical Review* 134; Stevens (n 88); Paz (n 74).

¹⁰⁵ UNHCR, 'UNHCR Appeals to Israel over Forced Relocations Policy' (2018) <www.unhcr.org/news/briefing/2018/1/5a548e064/unhcr-appeals-israel-forced-relocations-policy.html> accessed 24 May 2019.

¹⁰⁶ AIDA, 'Country Report: Turkey' (2015) <www.asylumineurope.org/sites/default/files/report-download/aida_tr_update.i.pdf> accessed 24 May 2019; Kemal Kirişçi, 'UNHCR and Turkey: Cooperating for Improved Implementation of the 1951 Convention relating to the Status of Refugees' (2001) 13 *IJRL* 71.

¹⁰⁷ Janmyr (n 3).

¹⁰⁸ Nesya Hughes, 'Yemen and Refugees: Progressive Attitudes but Policy Void' (2003) 16 *Forced Migration Review* 36.

¹⁰⁹ AIDA (n 106).

¹¹⁰ <IBT>Stevens (n 81)<IBT> 1.

¹¹¹ *ibid.*

¹¹² Samira Trad and Ghida Frangieh, 'Iraqi Refugees in Lebanon: Continuous Lack of Protection' (2007) *Forced Migration Review* 35 (special issue on Iraq's displacement crisis); Andrew Harper, 'Iraq's Refugees: Ignored and Unwanted' (2008) 90(869) *International Review of the Red Cross* 169.

¹¹³ Janmyr (n 99); UNHCR Lebanon, 'Accelerated Processing of Claims from Syria in the context of Large Influxes into Lebanon' (2015) <<http://www.refworld.org.ru/pdfid/56c4>> accessed 10 October 2019.

screening and RSD are normally considered to be separate processes, UNHCR applies a ‘merged procedure’ that combines the resettlement procedure with an expedited RSD procedure. This alternative protection procedure was initiated in 2014, when UNHCR found individual status determination not to be feasible following the large scale of displacement, and aims to ensure that resources are deployed only where completely necessary.¹¹⁴

Characteristic of the pragmatism demonstrated by both UNHCR and host States towards refugees in this region is the differential treatment of refugees depending on their country of origin and time of arrival in the host country. In States hosting large numbers of Syrian refugees, including Lebanon and Jordan, UNHCR has adopted one approach for Syrians with respect to registration, RSD and resettlement, and another for ‘non-Syrians’ such as Sudanese and Somali asylum seekers and refugees. UNHCR has been criticized for failing to align its protection and assistance policies across the various nationalities, leading UNHCR Jordan to develop a ‘One Refugee’ policy for all groups under its protection.¹¹⁵

In many Middle Eastern States, refugee recognition by way of registration is a contentious issue, and governments have sometimes sought to control UNHCR’s registration activities. While Jordan considers registered Syrian refugees to have legal stay, in Lebanon the UNHCR registration certificate has not normally conferred formal status or exempted refugees from penalties associated with irregular entry or a lack of residency in the country. Thus, the certificate has predominantly entitled refugees to international protection and humanitarian assistance.¹¹⁶ In 2014, Jordan requested that UNHCR stop issuing certificates for those who left the designated refugee camps without government approval, namely, without providing a sponsor as per the bailout programme.¹¹⁷

In a similar attempt to reduce the official number of refugees in the country, the Lebanese government suspended UNHCR’s registration of Syrian refugees in 2015. It also adopted restrictive regulations that resulted in a loss of legal status for more than two-thirds of Syrian refugees. Some refugees were nevertheless granted legal stay based on UNHCR registration certificates in return for a pledge not to work, and this was the first time that UNHCR registration granted refugees the right to stay in the country outside the scope of the 2003 MoU.

b. Courts and Civil Society

Over the last two decades, refugee legal aid organizations have been established in a wide range of Middle Eastern States, including Turkey, Lebanon, Jordan, and Egypt.¹¹⁸ There is a degree of legal aid in Egyptian national courts, and the country has also seen some of the most well-developed programmes seeking to enforce refugee protection through legal mechanisms, such as

¹¹⁴ Janmyr (n 99).

¹¹⁵ UNHCR, ‘Global Focus Jordan’ <reporting.unhcr.org/node/2549> accessed 24 May 2019.

¹¹⁶ Janmyr (n 99).

¹¹⁷ ACAPS, ‘Quarterly Regional Analysis for Syria Report, 1 October–31 December 2014’ (2016) <www.acaps.org/country/jordan/special-reports#container-682> accessed 24 May 2019.

¹¹⁸ Barbara Harrell-Bond, ‘Starting a Movement of Refugee Legal Aid Organizations in the South’ (2007) 19 *IJRL* 729.

African and Middle East Refugee Assistance (AMERA), which has provided direct representation of individuals undergoing RSD with UNHCR. St Andrews Refugee Services (StARS) similarly provides resettlement-focused legal aid to all refugee communities.¹¹⁹

The increasingly hostile environment for civil society in many Middle Eastern States has negatively impacted refugee access to rights. In Egypt, growing xenophobia and State security concerns about the politics of certain refugee communities has been coupled with the shrinking operational space of legal advocacy organizations since 2011.¹²⁰ In Turkey, the government has since 2015 taken a much stricter approach against international NGOs.¹²¹

There is limited research focusing on the role of local courts in providing protection for refugees and asylum seekers in this region. Civil society organizations in Lebanon (including Frontiers Ruwad and Legal Agenda) and Israel (such as the African Refugee Development Centre (ARDC), the Refugee Law Clinic and the Hotline for Migrant Workers) have notably represented asylum seekers and refugees in national courts.¹²² UNHCR has also intervened before Israeli courts, for example in relation to Israel's application of the Anti-Infiltration Law to asylum seekers and refugees.¹²³

Through utilizing international human rights obligations and constitutional provisions, national courts have been instrumental in preventing detention and deportation of asylum seekers and refugees. In Lebanon, for instance, a series of court judgments removed irregular entry charges for several Syrian refugees with reference to the right to seek asylum as set out in article 14 of the UDHR.¹²⁴ Throughout the last decade, Israeli Supreme Court rulings have similarly protected asylum seekers from forced deportation to third States.¹²⁵

4. Contemporary Challenges and Conclusions

Ratification of international law instruments does not necessarily provide enhanced protection or greater individual rights in the Middle East. Most States in the region are party to some instruments of international human rights law, but implementation, enforcement, and access to justice are major issues in the majority. Few of them can be said to be (positive) international norm exporters and few are legal norm importers. Many States in the region turn to domestic law when dealing with migration issues—including refugees—with a tendency towards using laws on immigration, foreigners, or migrant workers, rather than asylum or refugee law, to control entry and migration (of all forms). This is the case in many States despite constitutional rights to political asylum.

¹¹⁹ <IBT>Jones (n 68)</IBT>.

¹²⁰ *ibid.*

¹²¹ AIDA (n 106).

¹²² See Frontiers Ruwad, 'Double Jeopardy: Illegal Entry—Illegal Detention' (2009)

<www.frontiersruwad.org/pdf/FR_DoubleJeopardy_Eng_FINAL_5January2009.pdf> accessed 24 May 2019.

¹²³ See UNHCR, 'UNHCR Intervention before the Supreme Court of Israel in the Case HCJ 7146/12'

(2013) <www.refworld.org/docid/51ad9be64.html> accessed 24 May 2019.

¹²⁴ Janmyr (n 3).

¹²⁵ Müller (n 104).

Turkey has ratified the greatest number of international human rights instruments in the region and has undergone significant developments in its handling of displacement. While some regard its TPR as a model for other States, and thus as a possible norm exporter within and beyond the region, there is now a clear body of evidence that many of those who have sought sanctuary in Turkey face increasing precarity and uncertain futures, contesting the appropriateness of TPR where assumed temporality extends into the long-term or even permanence.

The legal context in the Middle East is heavily influenced by political and economic considerations and, as shown in this chapter, there is no single approach to cross-border displacement or refugee protection that is widely accepted and applied. Perhaps the one constant is the pervasive regional claim to ‘hospitality’ as the underlying rationale for generous treatment of ‘guests’;¹²⁶ but this discourse is no longer universally accepted and, as with many of the region’s refugee policies, can be critiqued for ‘boosting the political value of receiving States’ and dividing social groups rather than unifying them.¹²⁷

¹²⁶ This argument is also put forward in relation to refugee protection in South Asia (see Chapter 22 in this volume).

¹²⁷ Estella Carpi and Pinar H Şenoğuz, ‘Refugee Hospitality in Lebanon and Turkey. On Making “The Other”’ (2019) 57 *International Migration* 126, 137. A different view is provided by Dawn Chatty, ‘The Duty to Be Generous (Karam): Alternatives to Rights-Based Asylum in the Middle East’ (2017) 5 *Journal of the British Academy* 177.