Caught in the Middle?
Refugees and Displaced of the Syrian Civil War and the Limits of the International Law of Protection

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Overview

(1) Exodus. **NUMBERS**

(2) Overview of the **INTERNATIONAL LAW**
protecting displaced persons

(3) International humanitarian law

(4) International human rights law

(5) How the law relating to internal conflict
induced displacement, its applicability and facts
are playing out in the **worst possible of ways** in
the Middle Eastern exodus
(1) The numbers

Migration from conflict – internally
(1) The numbers

Migration from conflict – externally
(1) The numbers

War – also on numbers

- **UN**: stopped counting in 2013 due to impossibility to confirm sources/numbers
- **Research institutions**: rough estimates

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**How many Syrian civilians have died?**

The body count depends on who’s tallying...

- **VDC**: 88,688
- **SOHR**: 115,627
- **SCSR**: 117,089
- **SNHR**: 179,291
Exodus from Syria
UNHRC

- 2011: Syria host nation for refugees (2./3. globally)
- 2013: Syria origin of 2.5 million refugees, 6.5 million IDPs
- 2015: Syria origin of 4+ million refugees, 7.6 million IDPs
- 2016: refugees 4,8 millions, ➔ 2013: on average 9,500 Syrians displaced EACH DAY during 2013

(1) The numbers

<table>
<thead>
<tr>
<th>Country</th>
<th>Registered Syrian Refugees (30/11/2015)</th>
<th>Total Estimated number of Syrians **</th>
<th>Projected Registered Syrian Refugees by Dec 2016 ***</th>
<th>Members of Impacted Communities (Targeted Direct Beneficiaries) ****</th>
</tr>
</thead>
<tbody>
<tr>
<td>Egypt</td>
<td>127,681</td>
<td>260,000</td>
<td>107,000</td>
<td>1,200,000</td>
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<tr>
<td>Iraq</td>
<td>244,765</td>
<td>250,000</td>
<td>250,000</td>
<td>100,000</td>
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<td>Jordan</td>
<td>633,644</td>
<td>1,400,000</td>
<td>630,000</td>
<td>824,000</td>
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<tr>
<td>Lebanon *****</td>
<td>1,075,637</td>
<td>1,500,000</td>
<td>950,000</td>
<td>1,268,000</td>
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<tr>
<td>Turkey</td>
<td>2,181,293</td>
<td>2,750,000</td>
<td>2,750,000</td>
<td>565,000</td>
</tr>
<tr>
<td>Total</td>
<td>4,289,792*</td>
<td>6,160,000</td>
<td>4,687,000</td>
<td>3,957,000</td>
</tr>
</tbody>
</table>

Kilde: UNHCR/IDMC

➔ 2013: on average 9,500 Syrians displaced EACH DAY during 2013
Saturation

(1) The numbers

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**SYRIA REFUGEE RESPONSE**
LEBANON Time-series Syrian Refugees Registered by Cadastral in Lebanon
as of 30 April 2014

- June 2012: 25,411
- June 2013: 480,512
- April 2014: 1,044,898

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(unit: 1,000)
(2) Overview of the INTERNATIONAL LAW protecting displaced persons
(2) Overview international law

Core elements

• **Half the population** in Syria is displaced by the armed conflict
  – Magnitude of crisis reminiscent of post- World War II.

• **Interaction** of various regimes of international law:
The great schism: refugee $\Leftrightarrow$ IDP

- **Refugee:**
  - UN Refuge Convention relating to the Status of Refugees (RCSR) 1951
  - Additional Protocol 1967

RCSR 1A(2) “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country”
Definition

• Outside of country of origin
• Inability or unwillingness to seek or to take advantage of the protection of country of origin
• Reason for persecution: well-founded fear of persecution on the basis of race, religion, nationality, membership of a particular social group or political opinion

➔ reason for persecution irrelevant (war or HR violation)
Internally displaced person: IDP

- IDP: “means persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border” – Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009) Art 1
  - IDP = not covered by RCSR
  - No global treaty on IDPs: major gap
  - UN Guiding Principles on IDPs

FROM THE PERSPECTIVE OF INTERNATIONAL REFUGEE LAW

➢ Irrelevant WHY you are persecuted (HR violations or war)
➢ Important whether you cross international border
PROTECTION OF DISPLACED PERSONS

• CORE AREA: International refugee law
  – **RCSR** = universal human rights instrument to protect refugees from persecution, prevent their *refoulement* (forced return) and guarantee their wider rights.
  – **IDPs** = Kampala Convention, soft law instruments

• ADJACENT PROTECTIONS OF INTERNATIONAL LAW:
  – *International Bill of Human Rights (IHRL)*
    ➔ displaced persons not protected by RCSR
    ➔ additions to refugee law for those protected
  – *International humanitarian law (IHL/LOAC)*
    ➔ person displaced by armed conflict
    ➔ protections by the parties to the armed conflict.
3 legal regimes

- **Refugee law**
  - at all times
- Protection against persecution by NNs home state.

- **Humanitarian law**
  - in armed conflict
- Protection against certain types of violence by any party to an armed conflict. Protection against persecution by enemy state.

- **Human rights law**
  - at all times
- Protection against persecution by the state under whose control or jurisdiction NN is under.

Any state can have obligations under RL, IHL, IHRL
1) IHRL applies at all times
2) IHL applies only linked to armed conflict
3) IRL applies to refugees at all times
(3) International Humanitarian Law (IHL/LOAC)

• International armed conflict (between two or more states) (IAC)
  – IHL: Geneva Conventions I-IV, Additional Protocol I
    • Common Article 2: international armed conflict (between High Contracting Parties)
    • Status provided to displaced persons: ‘protected persons’, aliens, refugees, civilians.

• Non-international armed conflict (between non-state actor and state(s), or between non-state actors). (NIAC).
  – Common Article 3: non-international armed conflict  NB: **not** limited to internal armed conflict!
  – No specific status, protected as civilians
• Common Article 2: international armed conflict (between High Contracting Parties) = IAC

• Protection during displacement
  – As civilian population
    • GCIV 49. OP ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.
    • GCIV 49. OP not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand
  – As aliens in the territory of a state party to a conflict (GCVI)) .
    • Enjoy basic protections and rights of “protected persons”
      – Guarantees of means of existence
      – Strictest means: internment or assigned residence
      – Protection against forced transfer
      – Right to leave the territory, subject to national interest of the state
  – Better protection than enemy aliens. Refugee undefined – de facto situation decisive..
    • GCIV 44. Refugees shall not be treated as alien enemies
    • Protection as ‘protected persons’ if home state becomes occupying power in country of refuge
    • API.73. Refugees and stateless persons are “protected persons” under GCI-IV.
    • API. 74 Reunification of families
IHL: NIAC
Geneva Conventions Additional Protocol II

- Conflict not of an international character (with threshold APII article 1)
  - Additional Protocol II
    - Protection as civilian population (APII13,14), no direct attack, starvation as method prohibited
    - Particular protection of children (aid and care), facilitate reunion of separated families, APII 4 (3)
    - Displacement of civilians only for imperative military reasons. If displacements, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. APII 17
    - Supplies and relief action for civilians – subject to the consent of State authorities. APII 18
    - Respect and protection of medical personnel, facilities, transport units and emblems APII 7-12
IHL: NIAC
Geneva Conventions CA3 + customary law

• **Common Article 3.** Essentially two rules.
  – 3(1) Duty treat humanely persons in the hands of a party to the conflict
  – 3(2) Duty to care for the wounded and sick.

• **Customary law (for NIAC)**
  – International Society of the Red Cross (ICRC)
    Customary study of international humanitarian law (2005/2010)
Protection in NIAC

• Protection (to *prevent* displacement)
  – Protection as *civilians* APII 13
    • Protection against direct attack, APII 13 (2), (ICC 8(2) 8e) (i) (‘protracted armed conflict’)
      – EXCEPTION: for such time as take a direct part in hostilities APII 13(3)
    • Protection against indiscriminate attack

• Protection *against* displacement
  – APII article 17 (IDPs)
    • (1) The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand.
    • (2) Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.
  – ICC 8(2) e (viii). War crime in ‘protracted armed conflict’.
(4) International Human Rights Law (IHRL)
(4) International Human Rights Law

UN CONVENTIONS

– UNDHR Article 1, ICCPR article 12. Everyone has the right to freedom of movement and residence within the borders of each State
– Everyone has the right to leave any country, including his own, and to return to his country.
  • Assad regime 2012: imprisonment for all Syria males between the ages of 18 – 45 who leave the country
    – If caught – imprisoned. Very high risks to life and physical integrity.
– UN Declaration on Territorial Asylum Article 3.
  • 1. No rejection at the frontier. Neighboring countries: closed borders
  • 2. Exception for overriding reasons of national security or in order to safeguard the population, as in the case of a mass influx of persons.
  • 3. Shall consider the possibility of granting going to another State.
Derogation from IHRL

• Derogation clauses are provided for in various treaties:
  – International Covenant on Civil and Political Rights (ICCPR) Article 4
  – European Convention on Human Rights (ECHR) Article 15
  – American Convention of Human Rights (ACHR) Article 27
  – Arab Charter on Human Rights (ACtHR) Article 4
    • Different states may be subject to different emergency derogation regimes, depending on the states’ adherence to these treaties as the list of non-derogable rights may vary from treaty to treaty.
      – Public emergency threatening the life of the nation
      – Notification (ICCPR 4(3))
      – Proportionality
      – Consistency
      – Non-discrimination
      – Non-derogable rights

• Main problem not derogation, but violation..
(5) Applicability to Syria

• How the law relating to internal conflict induced displacement, its applicability and facts are playing out in the worst possible of ways in the Middle Eastern exodus
– Regional Regional Response Plan (RRP), Syrian Humanitarian Assistance Response Plan (SHARP)

– Three options:
  • repatriation;
  • local integration
  • resettlement
Core elements

• **Half the population** in Syria is displaced by the armed conflict
  – Magnitude of crisis reminiscent of post- World War II.

• **Interaction** of various regimes of international law:
  - International human rights law
  - International humanitarian law
  - International refugee law
  - International criminal law
PROBLEMS...?

- Problem 1: The applicability of international treaties protecting refugees in the Middle East
Legal state of affairs in the region

• 1951 Refugee Convention/1967 Protocol
  – Egypt, Israel, Yemen, Iran. Turkey with reservations.

• Regional refugee frameworks
  – AU, Latin-America, Asia, EU

➤ Middle East did not have appropriate legal or institutional framework for refugees prior to this exodus

Explanation: Palestinian refugees, general treaty reluctance

➤ Customary law

Syrian and Iraqi displaced are reaping the legal heritage of the Palestinian refugee problem
• Problem 2: The cause of the Syrian exodus and the nature of the conflict: non-international armed conflict
• IHL: Geneva Conventions IV, Additional Protocol I

• Protection *during* displacement
  – As civilian population
    • GCIV 49. OP ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.
    • GCIV 49. OP not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand
  – As *aliens* in the territory of a state party to a conflict (GCVI).
    • Enjoy basic protections and rights of “protected persons”
      – Guarantees of means of existence
      – Strictest means: internment or assigned residence
      – Protection against forced transfer
      – Right to leave the territory, subject to national interest of the state
      • GCIV 44. Refugees shall not be treated as alien enemies
      • Protection as ‘protected persons’ if home state becomes occupying power in country of refuge
      • API. 73. Refugees and stateless persons are “protected persons” under GCI-IV.
      • API. 74 Reunification of families

• Common Article 2: international armed conflict (between High Contracting Parties)
Nature of conflict: internal armed conflicts

- **IHL: Geneva Conventions I-IV, Additional Protocol I**
  - Status provided to displaced persons: ‘protected persons’, aliens, refugees, civilians.
    - Common Article 2: international armed conflict (between High Contracting Parties)
- **Conflict not of an international character (not between High Contracting Parties).**
  - Additional Protocol II
    - Protection as *civilian population* (APII13,14), no direct attack, starvation as method prohibited
    - Particular protection of children (aid and care), facilitate reunion of separated families, APII4 (3)
    - Displacement of civilians only for imperative military reasons. If displacements, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. APII 17
    - Supplies and relief action for civilians – subject to the consent of State authorities. APII 18
    - Respect and protection of medical personnel, facilities, transport units and emblems APII 7-12
  - Ratified by most Middle Eastern States. On territory, between State-actor and Non-state actors, APII 1(2)
  - Except: IRAQ, SYRIA, TURKEY
Nature of conflict: internal armed conflicts

Customary law (ICRC Study on IHL, 2006/2010)

BINDING ON ALL PARTIES TO NIAC

- Rules of NIAC:
  1) Rules for conduct of hostilities
     “Refugees no particular protection”
  2) Protection of victims of war
     “Refugees protected”
Nature of conflict: internal armed conflicts

• **Common Article 3.** Essentially two rules.
  – 3(1) Duty treat humanely persons in the hands of a party to the conflict
  – 3(2) Duty to care for the wounded and sick

• **Customary law (for NIAC)**

• The formal legal nature of the conflicts in Syria and Iraq has the effect that only minimal protection under IHL applies
  - foreign involvement of the current type does not alter the formal classification of the conflicts
  - the dangers arising for displaced due to dynamics in the conflicts are similar to dangers rising in international conflicts

De facto international conflict (dangers), de jure non-international (protections): the worst of two worlds for the displaced
Problem 3: The legal regimes of refugee law and human rights law (treaty law and customary law alike) is premised on “Nation states” corresponding to de facto states/legal entities on the ground.
(a) differences *de jure* states $\Leftrightarrow$ *de facto* entities
• October 2014 policy Lebanon: “Encouraging displaced to leave to Syria or other countries by all means possible”
• January 2015: will not register more than 1 million refugees
(b) sectarian loyalties (ethnic)
(c) sectarian loyalties (religion)
Crossing of border is no longer that which DE FACTO provides the protections offered by international law (crossing of frontlines is)

States inability to protect persons formally under their jurisdiction:

Example: SYRIA ratifying party to
- ICCPR, ICESCR, CEDAW (2003)
- Arab Charter on Human rights (2007)

1) Human rights obligations on regime (no control)
2) Human rights obligations by aspiring authorities (?!?)....

HOST STATES : # Lebanon.
- Guests/Illegal ?
- Registration/Camps /urban settlement ?
Nature of displacement: the issue of borders

Crossing of border

- Obligations of protection by STATE other than the State-actor unable or unwilling to protect
  - Protection of displaced (custom)
    - Non-refoulment
      (Not refugees, but ‘visitors’?)
  - HR obligations of host State
    - Derogations
  - “Crossing of international border” that
    (1) does not exist (KRG)
    (2) does exist but is disputed (ISIL)

No crossing of border

- Obligations of protection by same STATE actor party to conflict causing displacement
  - Internally displaced persons (IDPs). No particular status.
  - HR obligations. SCOPE:
    - Obligations on State actor (Assad, Abadi)
      - Derogations
    - Obligations on non-state actors?
    - Outside of control/jurisdiction:
      - IHL of state-actor /non-state actor
        - Less clear extensions
        - Less clear delineations
        - Relief subject to consent of national

A fatal combination of the factual and legal landscape is depriving the displaced of even the most elementary legal protections under international law
Displaced Syrians live in the worst of all worlds

- **Lack of respect** for international law
- Legal protection of displaced people is considerably less robust in non-international conflicts.
  - Refugee law (does not protect IDPs)
  - Humanitarian law. De facto ‘international conflict’ (dangers), de jure non-international (protections): offers the worst of two worlds.
  - Human rights law (serious limits in civil war)

- International law applicable is **not calibrated** at all to the actual dangers facing the displaced (in or beyond borders) due to a combination of lack of ratification, formal classification of the situation and de facto borders on the ground
  - Applicable law is **minimal**
  - It is **customary** in nature
    - Not always clear (IHL in NIAC)
    - Contentious content due to restrictive/legitimizing effects

The Syrian and Iraqi exodus are primarily caused by political developments. However, the international law applicable has helped neither to contain nor ease the suffering of the displaced of this crisis in ways international law is intended and calibrated to do
UN Declaration on Territorial Asylum Article 2

“Where a State finds difficulty in granting or continuing to grant asylum, States individually or jointly or through the United Nations shall consider, in a spirit of international solidarity, appropriate measures to lighten the burden on that State”
What to do about it

• Solve the conflicts!
• International law: part of conflict management – scheme
  – Change the law?
  – Change the scope/application of the law?
  ➔ Insist on that which is agreed in treaties for such conflicts.
    • APII obligations applicable to all parties is a substantial improvement for the displaced compared
    • ICC rules for protracted armed conflict
    • CCW implicit rules of conduct of hostilities applicable to CA3 conflicts

Thank you for your attention
UNSC Res 2139(2014)

— “Expressing grave concern at the increasing number of refugees and internally displaced persons caused by the conflict in Syria, destabilizing impact on the entire region, admirable efforts, need for all parties to respect security and civilian character of camps for refugees and internally displaced persons

— 6. “Demands that all parties, in particular the Syrian authorities, promptly allow rapid, safe and unhindered humanitarian access for UN humanitarian agencies and their implementing partners, including across conflict lines and across borders, in order to ensure that humanitarian assistance reaches people in need through the most direct routes;
UNSCR 2165 (2014)

⇒ “deteriorating humanitarian situation in Syria = a threat to peace and security in the region”

⇒ *Decides* that the United Nations humanitarian agencies and their implementing partners are authorized to use routes across conflict lines and border crossings
African Instruments

• Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted in 2009, entered into force in 2012): the first convention to address the plight of IDPs

• A reflection of a long history of displacement (mostly as a result of armed conflicts)
Refugees

Qualification as refugee

- 1951 Convention: not enough alone to flee conflict
  - “temporary protection”

- A person who is outside his or her country of nationality or habitual residence; has a well founded fear of persecution because of his or her race, religion, nationality, membership of a particular social group or political opinion; and is unable or unwilling to avail himself or herself of the protection of that country, or to return there, for fear of persecution.

Syrian refugees with limited legal status in Lebanon fall into three main categories:

1. refugees who have entered Lebanon through unofficial border crossings and do not possess any identity documents;
2. refugees who have entered through unofficial border crossings but have identity documents; or
3. refugees who entered Lebanon through official border crossings but have not renewed their Lebanese residency permit once it has expired.