**Legal Brief: International Violation of Refugee Refoulement by European and Middle Eastern Nations**

*Is returning refugees to Syria where their freedom and life are threatened a violation of international Law?*

2021

**Statement of the Issues:**

With political power hanging in the balance and the unpopularity of refugee resettlement within its borders during an economic downturn, Turkey has created buffer zones, or Turkish occupied territory formerly in Syrian and ISIS control as resettlement zones despite ongoing conflict in those regions (Sochi Consensus - Erdogan: Russia informed our authorities that terrorist organizations have been removed from the safe zone, 2019). Lebanon which does not recognize domestically or internationally the refugee status of Syrians has been accused of refoulement by human rights organizations. (Lebanon: Authorities must immediately halt deportation of Syrian refugees, 2019)

**Statement of the Facts:**

This brief contends that European and Middle Eastern nations violate international law by refusing to retain Syrian refugees and in the case of Turkey specifically resettling Syrian refugees in buffer zones in conquered Syrian territory. We will focus on two specific nations most impacted by Syrian refugees: Turkey and Lebanon, to demonstrate how varying international laws and customs are being violated with refugee refoulement processes.

Turkey is a signatory of the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol but with a reservation, that only recognizes those of European citizenship for asylum[[1]](#endnote-1). Lebanon is only a party to the 1984 Convention against Torture and Other Cruel Inhuman or Degrading Punishment. (UNHCR) The international laws governing both regions differ, however customary law still prevails with the Independent International Commission of Inquiry on the Syrian Arab Republic’s report verifying human rights abuses and war crimes, including torture, are carried out by both sides of the conflict. (UNHCR, 2016)

**Argument:**

Lebanon grants only political asylum, according to article 26[[2]](#endnote-2) of its 1962 domestic policy regulating state entry, and as mentioned before is not a part of any international treaties acknowledging the normative treatment of refugees. (Lebanon Migration Foreign Status Entry, 1962) Syrian refugees have a stronger international claim of civil disorder and violence than political threat, speculatively aiding Lebanon in their denial to consider Syrian fleeing nationals refugees. (Sanderson, 2015) Without any domestic or international protections, Lebanon has consistently treated all asylum seekers as illegal immigrants. (Sanderson, 2015)

In Turkey’s updated Law of Foreigners (Law of Foreigners and International Protection, 2013), European asylum seekers are given full refugee status, with conditional status to be provided to potential refugees as determined by the Turkish government via article 62.[[3]](#endnote-3) While Syrians fleeing conflict were granted temporary protected status initially (Cavusoglu, 2016), economic, geopolitical (including suspected ISIS terrorist infiltration via Syrian refugees) and political instability of Erdogan’s APK party has urged the state to seek an end to the temporary protection and a suitable resettlement solution. (Makovsky, 2019)

Both nations justify refoulement by arguing that neither is beholden to international law that applies to the current Syrian refugee crisis. However, this is incorrect as customary law and international humanitarian laws support the international custom of non-refoulement as argued below.

Both Lebanon and Turkey and signatories of the Convention Against Torture (Sanderson, 2015). Article 3 of said treaty pertains to refoulement, and parties agree that no persons should be extradited to a state where the dangers of torture upon return are prevalent.[[4]](#endnote-4) With a plethora of UNHRC evidence to verify crimes against humanity being conducted by both sides of the Syrian conflict (UNHCR, Independent International Commission of Inquiry on the Syrian Arab Republic, 2016) neither Turkey nor Lebanon can feign ignorance that the second addendum of Article 3 applies to the Syrian refugees living amongst their borders.

Even more so, non-refoulment is customary international law as argued by UNHCR in their Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.[[5]](#endnote-5) To further back this claim, Sir Elihu Lauterpacht and Daniel Bethlehem note that “170 of the [189] members of the UN, or around 90% of the membership, are a party to one or more conventions which includes non-refoulement as an essential component. (Sanderson, 2015)

Though not legally binding, the United Nations General Assembly, which Turkey and Lebanon are members of, in December 2001 adopted the Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees which recognized:

“…the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law (Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees, 2001).”[[6]](#endnote-6)

Non-refoulement as jus cogens can also be argued, though this is not recognized as an accepted international norm where no derogation is permitted (Allain, 2001). The Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol addresses this by declaring non-refoulement a component of jus cogens concerning torture or the risk of torture upon return to a home country.[[7]](#endnote-7)

**Conclusion:**

While Lebanon and Turkey are not the only states in defiance of non-refoulement, they are representatives of states with little recognized protection for refugees, and therefore the more difficult case to argue. While geographically located in Europe, Turkey is not a member of the European Union and therefore not subject to the Common European Asylum System or like laws and regulations. There are no regional treaties that mandate refugee protections, and domestic policy is allowed arbitrary application. My conclusion is this: despite the international legal rigamarole by not participating in the two major treaties regarding the rights of asylum seekers, there is ample evidence through additional treaties such as the Convention against Torture, and the recognition of non-refoulement as international customary law to coerce Turkey and Lebanon into compliance.

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**Endnotes**

1. **TURKEY** **Reservation to the 1967 Protocol**

   The instrument of accession stipulates that the Government of Turkey maintains the provisions of the declaration made under section B of article 1 of the Convention relating to the Status of Refugees, done at Geneva on 28 July 1951, according to which it applies the Convention only to persons who have become refugees as a result of events occurring in Europe, and also the reservation clause made upon ratification of the Convention 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.

   **Article 1 Section B of the 1967 Protocol**

   B.(1) For the purposes of this Convention, the words “events occurring CHAPTER I: General Provisions convention and protocol 15 before 1 January 1951” in article 1, section A, shall be understood to mean either: (a) “events occurring in Europe before 1 January 1951”; or (b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention. [↑](#endnote-ref-1)
2. **Article 26** **of Order No. 319 Regulating the Status of Foreign Nationals in Lebanon**

   Any foreign national who is the subject of a prosecution or a conviction by an authority that is not Lebanese for a political crime or whose life or freedom is threatened, also for political reasons, may request political asylum in Lebanon. The definition of political crime contained in articles 196 and 197 of the Penal Code shall be taken into consideration. The provisions of articles 30 to 36 of the Penal Code respecting extradition shall remain applicable. [↑](#endnote-ref-2)
3. **Conditional refugees ARTICLE 62 of Law of Foreigners and International Protection**

   (1) A person who as a result of events occurring outside European countries and owing to 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 or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it, shall be granted condi­tional refugee status upon completion of the refugee status determination process. Conditional refugees shall be allowed to reside in Turkey temporarily until they are resettled to a third country.

   Subsidiary Protection

   **ARTICLE 63** **of Law of Foreigners and International Protection**

   (1) A foreigner or a stateless person, who neither could be qualified as a refugee nor as a conditional refugee, shall nevertheless be granted subsidiary protection upon the status determination because if returned to the country of origin or country of [former] habitual residence would:

   a) be sentenced to death or face the execution of the death penalty;

   b) face torture or inhuman or degrading treatment or punishment;

   c) face serious threat to himself or herself by rea­son of indiscriminate violence in situations of international or nationwide armed conflict;

   and therefore is unable or for the reason of such threat is unwilling, to avail himself or herself of the protection of his country of origin or country of [for­mer] habitual residence. [↑](#endnote-ref-3)
4. **Article 3 of Convention against Torture**

   1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

   2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. [↑](#endnote-ref-4)
5. **2. *Non-Refoulement* of Refugees Under Customary International Law of** the **Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol**

   14. Article 38(1)(b) of the Statute of the International Court of Justice lists “international custom, as evidence of a general practice accepted as law”, as one of the sources of law which it applies when deciding disputes in accordance with international law.28 For a rule to become part of customary international law, two elements are required: consistent State practice and *opinio juris*, that is, the understanding held by States that the practice at issue is obligatory due to the existence of a rule requiring it.29

   15. UNHCR is of the view that the prohibition of *refoulement* of refugees, as enshrined in Article 33 of the 1951 Convention and complemented by *non-refoulement* obligations under international human rights law, satisfies these criteria and constitutes a rule of customary international law.30 As such, it is binding on all States, including those which have not yet become party to the 1951 Convention and/or its 1967 Protocol.31 In this regard, UNHCR notes, *inter alia*, the practice of non-signatory States hosting large numbers of refugees, often in mass influx situations.32 Moreover, exercising its supervisory function,33 UNHCR has closely followed the practice of Governments in relation to the application of the principle of *non-refoulement*, both by States Party to the 1951 Convention and/or 1967 Protocol and by States which have not adhered to either instrument. In UNHCR’s experience, States have overwhelmingly indicated that they accept the principle of *non-refoulement* as binding, as demonstrated, *inter alia*, in numerous instances where States have responded to UNHCR’s representations by providing explanations or justifications of cases of actual or intended *refoulement*, thus implicitly confirming their acceptance of the principle.34 [↑](#endnote-ref-5)
6. **Preamble Section 4 of Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees**

   4. Acknowledging the continuing relevance and resilience of this

   international regime of rights and principles, including at its core the

   principle of *non-refoulement*, whose applicability is embedded in customary

   international law, [↑](#endnote-ref-6)
7. **Section 1.B.2.21of Advisory Opinion on the Extraterritorial Application of Non-**

   **Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and**

   **its 1967 Protocol.**

   21. The prohibition of torture is also part of customary international law, which has attained the rank of a peremptory norm of international law, or *jus cogens.*48 It includes, as a fundamental and inherent component, the prohibition of *refoulement* to a risk of torture, and thus imposes an absolute ban on any form of forcible return to a danger of torture which is binding on all States, including those which have not become party to the relevant instruments. The prohibition of arbitrary deprivation of life, which also includes an inherent obligation not to send any person to a country where there is a real risk that he or she may be exposed to such treatment, also forms part of customary international law.49 The prohibition of *refoulement* to a risk of cruel, inhuman or degrading treatment or punishment, as codified in universal as well as regional human rights treaties is in the process of becoming customary international law, at the very least at regional level [↑](#endnote-ref-7)