

# The Statelessness of Syrian War Refugees: Seeking Refuge through the Universal Human Right to *Non-Refoulement* in International Law?

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## **Abstract**

The Syrian crisis has forced the mass displacement of refugees attempting to escape the armed conflict in search of security at the borders of surrounding states. Amidst the chaos, the question of whether international law obligates the international community to take action arises. This paper examines whether the principle to non-refoulement under Article 33(1) of the 1951 Convention Relating to the Status of Refugees is a universal human right for persons seeking asylum from the war-torn state of the Syrian Arab Republic. Syrian asylum-seekers experience the ‘war flaw’ – the failure of international law to account for persons fleeing from armed conflict as legitimately entitled to refugee status. This paper argues that a human right to non-refoulement may exist in international law for war refugees. This may legally obligate states to accept Syrians as refugees entitled to non-refoulement without forcing their return under such critical circumstances.

## **Introduction: The ‘War Flaw’ in International Law for Refugees Fleeing Armed Conflict**

The Syrian crisis has led to the mass displacement of refugees fleeing from the armed conflict in search of security at the borders of other states (The United Nations High Commissioner for Refugees 2015). Amidst the chaos, the question of whether international law requires states to accept Syrian refugees into their territories without forcing their return arises. The legal regime that governs the international protection of persons fleeing armed conflict is known as international refugee law. Currently, a gap in international legal protection exists for Syrian ‘war refugees’, persons fleeing from war to seek asylum due to fear of insecurity and violence during an armed conflict. This gap is known as the ‘war flaw’, – the failure of international law to address the exceptional predicament of refugees not facing persecution on a specific ground, but as persons fleeing from war itself (Storey 2012, 1). International law, in reference to refugee law specifically, fails “to address the protection of persons fleeing the *indiscriminate effects* of generalized violence, such as where the feared harm is an *indirect* consequence of hostilities,” (Cantor 2014, 937). War refugees differ from other persons that fall under the traditional category of ‘refugees’ as they flee due to fear of indiscriminate violence and insecurity from armed conflict, rather than from persecution due to a specific reason (Cantor and Durieux 2014, 3). Historically, the systemic exclusion of war refugees from effective legal protection in international refugee law has been prevalent. Presently, most war refugees do not fulfill the requirements of refugee status that guarantees them legal protection, which traditional refugees are entitled to. The decision of states to force return because they are not persecuted on any particular ground(s) as stateless persons is the main reason for this (Darling 2009, 742). In the current case, the question is: can states legally *refoule* or force the return of Syrian war refugees fleeing from the armed conflict without a specific ground for persecution?

This paper examines whether the principle of *non-refoulement* (Convention Relating to the Status of Refugees 1950, art 33(1)) under Article 33(1) of the 1951 Convention Relating to the Status of Refugees (the 1951 Refugee Convention) reflects a universal, human right for persons seeking asylum from the war-torn state of Syria as war refugees. The term *refoulement* originates from the French word ‘refouler’,

“meaning to drive back or repel in the context of immigration control”. It refers to expulsion, removal, extradition, deportation, sending back, return or rejection of a person from a state to another state where they face the danger of persecution or ill-treatment (Khan 2014, 62). The legal right to asylum is as articulated in Article 14 of the Universal Declaration of Human Rights, which states: 1. Everyone has the right to seek and to enjoy any other country’s asylum from persecution; and 2. This right may not be invoked in the case of persecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations (Universal Declaration of Human Rights 1948, article 14). The 1951 Refugee Convention guarantees legal rights to persons who qualify as refugees under the traditional definition. It is questionable whether war refugees are entitled to international legal protection, namely the right to *non-refoulement* under Article 33(1). If a universal human right to *non-refoulement* exists in international law for war refugees, it may give rise to legal obligations for states forcing the return of Syrian war refugees to instead accept them upon their arrival. This is critical for the case of war refugees fleeing Syria. In the current context, some states are concerned about possible security threats, such as terrorism, that may arise from a blanket acceptance of Syrian war refugees, heightening the vulnerability of refugees immensely. For this reason, among others, the search for a legal duty to guarantee their right to *non-refoulement* may provide a solution to their widespread displacement as the armed conflict in Syria intensifies (Sanderson 2013, 776-779).

This paper first provides a factual background on the Syrian refugee crisis. Secondly, it examines Article 33(1) of the 1951 Refugee Convention as a guarantee for *non-refoulement* to suggest that international legal protection for Syrian war refugees exists. Thirdly, further inspection of international human rights law establishes a universal human right to *non-refoulement* for war refugees through two conventions: the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) (International Covenant on Civil and Political Rights 1976; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984). Fourth, a parallel customary international norm of *non-refoulement* is found through state practice and *opinio juris*, legally necessitating the compliance of states to accept Syrian war refugees. The legal and political implications of a universal human right to *non-refoulement* for Syrian war refugees is discussed thereafter. Through said discussion, this paper determines whether the entitlement to international legal protection exists for war refugees. In considering international law and customary international law, it is evident that Syrian war refugees are entitled to refugee status and thereby granted the right to *non-refoulement* under international law.

### **Factual Background: Seeking Refuge from Armed Conflict in Syria**

The armed conflict in Syria has led to the mass displacement of Syrians, who have traveled facing precarious conditions to seek asylum as refugees in surrounding countries. In 2011, the turmoil began with protests against President Bashar al-Assad’s regime, and subsequently became a civil war with states intervening with military support for both the Assad regime and the rebel factions, such as the Islamic State of Iraq and the Levant (ISIL). Throughout the conflict, all parties have committed serious violations of international humanitarian law including torture, murder, rape, war crimes, crimes against humanity, hostage-taking and attacking protected areas in the territory (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, paras 40-190). The Syrian regime reportedly attacked civilians with chemical weapons in the heavily-populated area of Ghouta in Eastern Damascus (United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic, 2013; The White House, Office of the Press Secretary, 2013; Human Rights Watch 2013). In the current context, the Assad regime has allegedly continued to conduct chemical attacks against Syrian civilians not taking part in the armed conflict. In reference to this, Human Rights Watch has produced strong evidence of photos, videos and inquiries that in 2015 Syrian government forces have used deadly

chemicals, including chlorine gas, in barrel bomb attacks in Idlib from March 16<sup>th</sup> to 31<sup>st</sup> (Human Rights Watch 2015).

Gross violations of human rights by the Assad government forces, factions supporting the government, and rebel forces against the government are arguably giving rise to an unprecedented humanitarian catastrophe (Office of the United Nations High Commissioner for Human Rights 2013). Amnesty International has called the Syrian refugee crisis the world's largest humanitarian catastrophe since World War II (Amnesty International 2015). Approximately two and a half million people have fled Syria with an estimated four million remaining internally displaced. In 2014, the death toll of Syrians was estimated to be nearing 200,000 according to the United Nations High Commissioner for Human Rights (Price, Gohdes and Ball 2014, 1). As the fighting continues, the flight of Syrians seeking sanctuary in neighboring states is also growing. Syrians that survive the journey are mainly arriving at the borders of five states near Syria: Egypt, Iraq, Jordan, Lebanon, and Turkey (Sanderson 2013, 778). Also on the rise are concerns that terrorist groups such as ISIL will infiltrate the migratory paths sustaining refugee flows, subsequently raising concerns that incidents of terrorism will increase for those countries (Homeland Security Committee 2015, 2-3). Syrian refugees are more vulnerable as they face a greater risk of being denied asylum. In such critical circumstances, the Syrian crisis urgently requires a solution to their mass displacement not only within Syria, but also at the borders of other states.

### **The 1951 Refugee Convention: The Principle of *Non-Refoulement***

The basic legal instrument guaranteeing protection for refugees under international law is the 1951 Refugee Convention, supported by the 1967 Protocol (Convention Relating to the Status of Refugees 1951, article 33(1); Protocol Relating to the Status of Refugees 1967). The convention is a multilateral treaty with 142 state parties, as of April 2015. In Article 1(A)2, the 1951 Refugee Convention defines a refugee as a person who,

As a result of events occurring before 1 January 1951 and owing to well-founded fear from 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 of the protection of that country [emphasis added]... (Convention Relating to the Status of Refugees 1951).

The 1967 Protocol modifies the 1951 Refugee Convention to allow Article 1(A)2 to be applied to persons without the condition of events occurring prior to 1951, and without the geographic restriction to events occurring in Europe, except for in cases where state parties to the Protocol have preserved this restriction (Protocol Relating to the Status of Refugees 1967). Emphasis on the 1951 Refugee Convention is justified, in that it is a global legal instrument guaranteeing protection to refugees. In the 1951 Refugee Convention, the principle of *non-refoulement* is found in Article 33(1) as the prohibition against the forced return of refugees or persons seeking asylum. Article 33 of the 1951 Refugee Convention provides: 1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion; 2. The benefit of the present provision may not, however be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country (Convention Relating to the Status of Refugees 1951). In reference to the *non-refoulement* provisions, the 1951 Refugee Convention is not a guarantee to the legal right of entry into a state in itself. However, if a person claims

asylum and admission is the only way to avoid returning the asylum seeker “to the frontiers of territories where his life or freedom would be threatened,” then this will often amount to a *de facto* right of admission; this is so even if the state does not want to admit them into its territory (Hathaway 2012, 177, 193). Furthermore, it is acknowledged that Article 33(2) does appear to grant an exception to the right to *non-refoulement* for security reasons. The provision outlines an exception to the guarantee of *non-refoulement* in cases in which the security of a state may be at risk due to the asylum-seeker’s commitment of a serious offence that imposes a danger upon it. (Convention Relating to the Status of Refugees 1951, article 33(2)). The main concern of this paper is to address the legal obligations of states that arbitrarily deny refugee status to all Syrians by claiming that accepting them into their territory would establish security threats. It is the cases of such blanket denial of any entitlement to *non-refoulement* and other legal rights guaranteed by granting Syrian asylum-seekers refugee status that is the focus.

As an international legal instrument, the 1951 Refugee Convention possesses two key gaps in the protection it guarantees. First, only two of the states surrounding Syria, namely, Egypt and Turkey, are parties to both the 1951 Refugee Convention and the 1967 Protocol. Iraq, Jordan, and Lebanon have experienced a massive influx of Syrians in the past years, but are not parties to both legal instruments, leaving Syrian war refugees at risk of being forced to return to Syria (United Nations High Commissioner for Refugees 2015).

Furthermore, whether Syrians seeking asylum fulfill the definition of refugees under Article 1(A)2 of the 1951 Refugee Convention is a concern. In order to qualify for refugee status, the asylum-seeker must possess the “well-founded fear of persecution” by “reasons of race, religion, nationality, membership of a particular social group or political opinion,” (Convention Relating to the Status of Refugees 1951, article 1(A)2). Known as the “causal nexus” requirement, the persecution that is feared must be causally connected to one of the grounds enumerated in Article 1(A)2. In some cases, Syrians have fled their country due to legitimate fear of persecution for reasons of political beliefs or religion in accordance to the wording of Article 1(A)2. However, in most cases, Syrians have fled due to fear of civil disorder and indiscriminate attacks from the armed conflict. The latter case of Syrian refugees may not be legally entitled to asylum or refugee status according to Article 1(A)2.

Given that the precise definition of ‘refugee’ has the causal nexus requirement, the question of how war refugees can be legally protected by *non-refoulement* in international law arises. Is it truly necessary that this requirement be fulfilled in the case of refugees? As war refugees, can they be protected under the principle of *non-refoulement* grounded in Article 33(1) of the 1951 Refugee Convention? This is the main issue to be resolved in determining whether Syrian war refugees are entitled to international legal protection, namely the right to *non-refoulement* per the 1951 Refugee Convention under international law and customary international law. If states adopt restrictive policies that reflect the notion of a causal nexus requirement grounded in Article 1(A)2, most Syrian refugees may not be entitled to the right to *non-refoulement* under Article 33(1) of the 1951 Refugee Convention as they fail to fulfill the requirements under the definition of a refugee. Therefore, the evident problem is that most Syrians would not fulfill the traditional requirements necessary to grant them status as ‘refugees’. However, the emerging notion of ‘war refugees’ may counter the need to fulfill the ‘nexus requirement’ for Syrians currently fleeing armed conflict (Sanderson 2013, 776).

In efforts to resolve this second issue, the main question that arises is that of whether the fear of insecurity, civil disorder, and violence due to the armed conflict, grants the right to *non-refoulement* for

Syrian refugees under Article 33(1) of the 1951 Refugee Convention, without the “causal nexus” articulated in Article 1(A)2. International human rights law and customary international norms suggest that Syrian war refugees are entitled to the universal human right to *non-refoulement* without the causal nexus, establishing a solution to the Syrian refugee crisis in international law. Such a finding may bind all states to guarantee the right to *non-refoulement* for refugees as a customary international law regardless of whether they have acceded to the 1951 Refugee Convention or to the 1967 Protocol.

### **International Human Rights Law and the Right to *Non-Refoulement***

The universal human right to *non-refoulement* absent the requirement of a causal nexus is substantially reinforced by the protection afforded not only to Syrian war refugees, but all war refugees in international human rights law. Currently, international human rights are guaranteed by two prevailing legal instruments: the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) (International Covenant on Civil and Political Rights 1966; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984). The five aforementioned key states surrounding Syria are parties to both conventions. Both the ICCPR and CAT guarantee absolute and non-derogable rights against torture (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, article 2(2); International Covenant on Civil and Political Rights 1966, article 4(2)). More importantly, the CAT guarantees an explicit right against *non-refoulement* in Article 3(1) by providing that, “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,” (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, article 3(1)). The relevance of such prohibitions against torture is that they reflect a prohibition against ill-treatment. The Article 1 guarantee against torture in the CAT is supported by a broader, although derogable, Article 16 guarantee against “cruel, inhuman, or degrading treatment,” (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984, article 1, article 16). Article 7 of the ICCPR also provides a non-derogable entitlement to protection against ill-treatment (International Covenant on Civil and Political Right 1966, article 7). Furthermore, the Committee against Torture has particularly stressed the obligation that states have to prevent all kinds of ill-treatment in the CAT,

...the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment. Accordingly, the Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and its prevention to be an effective and non-derogable measure,” (UN Committee against Torture 2007).

In addition to this, the Committee on Human Rights has elaborated on the ICCPR guarantee against the arbitrary deprivation of life in Article 6 with specific reference to the threat to life that exists in armed conflict. In its General Comment 6, the Committee emphasized that,

The right to life enunciated in Article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4)...It is a right which should not be interpreted narrowly...The Committee observes that war and other acts of mass violence continue to be a scourge of humanity

and take the lives of thousands of innocent human beings every year...The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. Every effort they make to avert the danger of war, especially of thermonuclear war, and to strengthen international peace and security would constitute the most important condition and guarantee for the safeguarding of the right to life," (UN Human Rights Committee 1982, article 6).

Notably, it is critical to note that both conventions do not require Syrians to fulfill the causal nexus requirement to be entitled to *non-refoulement* as refugees. This is critical as it implies that Syrian war refugees would not need to fulfill the definitional requirements of Article 1(A)2 to qualify as refugees entitled to the right to *non-refoulement* in Article 33(1) of the 1951 Refugee Convention. International human rights law through two primary legal instruments, the ICCPR and the CAT, thereby entitles Syrian war refugees to the universal, human right to *non-refoulement* without requiring them to fulfill the causal nexus requirement in both conventions (Human Rights Watch 2012; Nebehay 2013; Sanderson 2013, 793-794).

On an equally important note, denying Syrian refugees the protection they are guaranteed by *non-refoulement* per Article 33(1) of the 1951 Refugee Convention would violate their right under Article 14(1) of the Universal Declaration of Human Rights, which states that "Everyone has the right to seek and to enjoy in other countries asylum from persecution," (Universal Declaration of Human Rights 1948, article 14(1)). Accordingly, a state's failure to grant Syrian refugees asylum and forcing their return due to the absence of persecution based on an enumerated ground would deny their right to asylum under Article 14(1) of the Universal Declaration of Human Rights (Chowdhury 1995, 103-104). Considering such implications, international human rights law appears to afford significant protection for *non-refoulement* as a universal, non-derogable human right that Syrian war refugees are entitled to. Through this, such a right exists for Syrian war refugees in the current case. In addition to the protection guaranteed for Syrian war refugees by international human rights law for the right to *non-refoulement* reflected in Article 33(1) of the 1951 Refugee Convention, there appears to be a guarantee of a universal human right to *non-refoulement* for Syrian refugees in customary international law.

### **Parallel Guarantee of the Right to *Non-Refoulement* in Customary International Norms**

In examining customary international norms on *non-refoulement*, it appears that the principle of *non-refoulement* is also legally binding upon states which are not party to the 1951 Refugee Convention, the ICCPR and the CAT. This also binds state parties beyond the scope of rules on *non-refoulement* in other treaties they have acceded to. According to Article 38 of the Vienna Convention, the rules set forth in a treaty can become binding as customary international norms. "Article 38 states that "Nothing in articles 34 to 37 precludes a rule set forth in a treaty from becoming binding upon a third State as a customary rule of international law, recognized as such," (Vienna Convention on the Law of Treaties 1969, article 38). In order to establish that the right to *non-refoulement* is a rule of customary international law that Syrian war refugees are entitled to, two requisite elements must be established: state practice and *opinio juris* (*North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v The Netherlands)* 1969, 3, 43). It is important to note that the test for determining whether a customary international norm or rule exists is not a clearly-established one, although these two requirements are widely recognized.

### **State Practice**

The first required element of state practice is evident in the widespread membership of states to the UN, with 170 of 193 members being party to one or more conventions that guarantee *non-refoulement* in some form or another (Chan 2006, 232-233). Furthermore, Article 42(1) of the 1951 Refugee Convention provides that states cannot make reservations to Article 33(1). Article 42(1) provides, "At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1,3,4, 16 (1), 33, 36-46 inclusive," (Convention Relating to the Status of Refugees 1951, article 42(1)). This demonstrates state practice of committing to protecting the non-derogable right to *non-refoulement* held by asylum-seekers, including Syrian war refugees, even in cases without any persecution based on an enumerated ground in Article 1(A)2 of the 1951 Refugee Convention (Chan 2006, 232-233). Additionally, 148 states are parties to either the 1951 Refugee Convention or the 1967 Protocols as of April 2015. The legal commitment of such a significant number of states further exemplifies the guarantee of protection to the right to *non-refoulement* without a causal nexus in customary international law. This includes the European Convention on Human Rights, the OAU Refugee Convention, and the Banjul Charter that determine the status of the right to *non-refoulement* as a rule customary international law beyond the guarantee in the 1951 Refugee Convention and conventions in international human rights law, such as the ICCPR and the CAT (Convention for the Protection of Human Rights and Fundamental Freedoms 1950; Organization of the African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa 1969; Organization of the African Unity (OAU), African (Banjul) Charter on Human and Peoples' Rights 1982). This also demonstrates state practice of guaranteeing *non-refoulement* in several regional legal instruments, such as those mentioned above.

It is important to note the consistency of state practice in guaranteeing protection for the right to *non-refoulement* historically through several conventions (Chan 2006, 233). The existence of international and regional state practice of legally committing to such conventions in an effort to uphold the right to *non-refoulement* of refugees, such as Syrian war refugees, is extensive proof of widespread state practice of guaranteeing *non-refoulement*. Such evidence that states concede on the significance of *non-refoulement* at a global and regional level grants *non-refoulement* the status of a rule of customary international law. In parallel to the right to *non-refoulement* secured in the ICCPR and CAT, the customary norm of *non-refoulement* does not seem to require there to be a causal nexus in this respect. Therefore, the widespread evidence of state commitments to protect the right of *non-refoulement* exemplifies the first required element of state practice needed to grant it to be a rule of customary international law (Sanderson 2013, 794-796; Chan 2006, 231-234).

### **Opinio juris**

In reference to the second requisite element to establish a rule of customary international law, *opinio juris* is proven to grant Syrian war refugees the right to *non-refoulement* status as a customary international norm (North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v The Netherlands 1969, 3, 43). The late Hersch Lauterpacht noted that state conduct evidenced the *opinio necessitates juris* itself without the need to necessarily prove it separately from state conduct in order to attribute the right to *non-refoulement* status as a rule of customary international law (Chan 2006, 234-235). Resultantly, the conclusion that a universal, human right to *non-refoulement* exists in international law for Syrian war refugees can be drawn in light of the significant number of state parties to the 1951 Refugee Convention and its 1967 Protocol, the adoption of legal commitments by states to protect the right to *non-refoulement* at a global level and regional level beyond the 1951 Refugee Convention and the absence of a causal nexus requirement in international human rights law and customary international norms on *non-refoulement*. Through this, it appears that *non-refoulement* has

gained status as a norm in customary international law for which no derogation is permitted through the global, national, and regional consensus that states have displayed in legally committing to guaranteeing the universal, non-derogable right to *non-refoulement* (Chan 2006, 234-235). Therefore, the necessary *opinio juris* has been found by reference to the state practice noted above. In public international law, the right to *non-refoulement* appears to exist as a universal human right in customary international law – one in which Syrian war refugees fleeing the armed conflict are legally entitled to asylum claims (Sanderson 2013, 794-795; Chan 2006, 234-235).

### **Implications of the Universal Right to *Non-Refoulement* for Syrian War Refugees**

In the context of the current Syrian crisis, the finding of a universal, human right to *non-refoulement* gives rise to many legal and political implications for states intending to force the return of Syrian refugees who arrive at the borders of their territory. Firstly, states may be found in violation of human rights by failing to grant asylum or forcing the return of Syrian war refugees. The reason for this is states would effectively violate: (1) the right to *non-refoulement* for Syrian war refugees as guaranteed by Article 33(1) of the 1951 Refugee Convention, and (2) their legal obligations under the ICCPR and CAT and customary international norms granting *non-refoulement* status as a rule in customary international law. In this respect, the Vienna Convention provides that “if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates,” (Vienna Convention on the Law of Treaties 1969, article 64). This exemplifies the requirement of states to ensure no derogation from *non-refoulement*. It also ensures that state practice is consistent with this principle regardless of other commitments they have under other treaties that may be inconsistent with *non-refoulement*. Such violations are prohibited by the character of the right to *non-refoulement* held by Syrian war refugees as a rule in customary international law.

The second implication is largely related to the first. Notably, the key states neighbouring Syria face legal obligations to protect the right to *non-refoulement* for Syrian war refugees, regardless of the current treaties or domestic laws they have adopted that may be inconsistent with this. Despite being a party to both the 1951 Refugee Convention and the 1967 Protocol, Egypt has failed to adopt the relevant domestic asylum law. Egypt has also not developed the necessary institutions and procedures to comply with its legal obligations in accordance to the memorandum of understanding it signed with the UNHCR in 1954 (United Nations High Commissioner for Refugees 2012). In addition to this, Lebanon’s Law Regulating the Entry and Stay of Foreigners presently only grants political asylum, to effectively disqualify many Syrians currently fleeing armed conflict. Lebanon also treats all refugees and asylum-seekers as illegal immigrants, granting legal protection only through its arbitrary discretion (Law Regulating the Entry and Stay of Foreigners in Lebanon and their Exit from the Country 1962, article 26). Similarly, despite acceding to the 1967 Protocol, Turkey has restricted its law to protect only persons fleeing persecution because of “events occurring in Europe” (Law on Foreigners and International Protection Law 2013, article 61). This effectively excludes Syrians from receiving asylum from Turkey upon arrival, violating their right to *non-refoulement* through the prospect of being forced to return to Syria due to the absence of any other alternative. Essentially, the universal human right to *non-refoulement* appears to obligate states facing the arrival of Syrian war refugees to abide by the provision on *non-refoulement* in the 1951 Refugee Convention, in other relevant conventions in international human rights law, and in customary international norms (Sanderson 2013, 794-796).

The political implication of a non-derogable right to *non-refoulement* for Syrian war refugees is that restrictive policies sanctioned by states facing their arrival would be nullified by the character of *non-*



*refoulement* for war refugees as a rule in customary international law. Several countries have adopted a political regime of characterizing Syrian, Iraqi, Afghani, Israeli, and Palestinian refugees as security threats capable of increasing the risk of terrorism if accepted into their territories. States have viewed this as a legitimate justification for shunning war refugees at their borders (CNN, Martinez 2015). In such cases, states that seek to arbitrarily deny entry to Syrians claim the security threats posed by terrorists who may use the same routes travelled by asylum-seeking refugees. These concerns would be nullified by their legal obligation to the *non-refoulement* of war refugees in international law (Sanderson 2013, 776-779).

### **Conclusion: The Right to *Non-Refoulement* for Syrian War Refugees**

In the current case of Syrian war refugees, the observed gap in international legal protection for war refugees, in general, is surmounted by a universal human right to *non-refoulement* that legally binds states to grant asylum. This paper has demonstrated this in examining international human rights law, including the ICCPR and CAT, and parallel customary international norms that reflect a universal human right to *non-refoulement* related to Article 33(1) of the Refugee Convention for war refugees (Convention Relating to the Status of Refugees 1951, article 33(1)). Precisely, the absence of a causal nexus requirement to guarantee the right to *non-refoulement* is significant in this case as it appears to afford war refugees international legal protection (Sanderson 2013, 794-797). The wider, long-term repercussions of this finding are yet to be clear. Nonetheless, the main implication is that states may be unable to derogate from their obligation to protect the right to *non-refoulement* that Syrian war refugees are legally entitled to by forcing their return to Syria (Chan 2006, 235-236). The extent to which states currently recognize and guarantee *non-refoulement* in accordance with international law is questionable. Admittedly, this significantly undermines the claim that such a legal obligation to guarantee the right to *non-refoulement* for war refugees will be followed, including for Syrians in the current context. More notably, the recognition and protection of the existing universal human right to *non-refoulement* by states would set a precedent in the international legal regime for the protection of persons fleeing from armed conflict who do not fit the traditional definition of refugees under Article 1(A)2 of the 1951 Refugee Convention (Convention Relating to the Status of Refugees 1951, article 1(A)2). This would provide a legal solution that is critical to resolving the mass displacement of war refugees in the Syrian crisis at the present time.

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