EXECUTIVE SUMMARY
The Syrian Refugee Crisis: Refugees, Conflict, and International Law

In March 2016 amidst ongoing serious violations of the rights of refugees Al-Marsad together with The Democratic Progress Institute (DPI) completed an interdisciplinary research paper outlining the current Syrian refugee crisis both from a human rights and conflict-resolution point of view. The research paper aims to provide readers with a comprehensive understanding of the current refugee movement crisis with a dual focus on conflict resolution and outlining the concept of burden-sharing as an avenue through which human rights and security issues can be addressed. The relevant international legal frameworks, academic understandings and the relationship between refugees and conflict as well as past historical precedents are provided, along with a clear examination of the current refugee situations in Lebanon, Jordan and Turkey. The detailed country case studies examine not only the legal and security situation of refugees in the three countries listed but also draw directly from the testimonies of Syrian refugees themselves. Finally the paper explores precisely how the dual needs of securing the human rights of refugees and maintaining regional and international security can be met together.

Currently efforts to help millions of Syrian refugees are under-resourced and underfunded; many are afflicted by extreme poverty and are at risk of exploitation. The burden of the refugee crisis has fallen disproportionately on a few countries bordering Syria, namely Lebanon, Turkey, and Jordan, who together have received around three-quarters of Syrian refugees. A new deal which authorises the European Union to deport refugees back to Turkey has sparked desperation and riots in Greece and has come under sustained criticism from the United Nations. Given the current state of instability in the region, along with the much-discussed but little understood potentiality for refugee crises to worsen regional conflict, this situation is especially concerning.

On the 19 September 2016 the UN General Assembly called for a summit at the Heads of State and Government level on large movements of refugees and migrants. The UNGA Summit is the most high-profile political meeting and a historic moment which clearly signalled the urgency of the refugee issue. Triggered by the European refugee crisis and it's problematic relationship with the Syrian displacement this meeting also proved to be a widespread recognition that a change is needed in the current multilateral system created to address the large-scale movement of refugees and migrants. Currently there are serious institutional challenges in place when it comes to efforts to address large-scale refugee movements as the Syrian crisis has become. Prior to the Summit the UN Secretary General's office published a report confirming a pathway to change precisely the mechanism this paper explores - that of

responsibility sharing as a main component of responding to the current refugee crisis.

For the first time at such a high level it was acknowledged that one of the most fundamental obstacles to refugees' access to protection is precisely the absence of a clearly defined obligation and a wide-spread commitment to engage in pro-active burden-sharing amongst the international community. International civil society recognised that an unprecedented crisis as the one caused by the Syrian civil war requires a response that goes far beyond humanitarian action. It is precisely with this issue that this paper is concerned.

Through the six chapters bringing together various components of the current crisis this report argues for a more humane and coordinated approach in line with specific human rights commitments. The current fragmented landscape of the refugee crisis is explored with the aim to present burden-sharing as the logical framework for effective change. This research paper argues that the norm for burden-sharing already exists therefore the question is how states will utilise it in their commitment to offer solutions. Examining the current existing legal regime and juxtaposing it to the largely humanitarian approach currently implemented this paper aims to prove that the current approach has become largely removed from the real challenges on the ground. Systematic non-compliance in regard to well-entrenched legal principles and international instruments is shown to be one of the main challenges in both fulfilling human rights obligations and also countering conflict in the region.

International Law

The first chapter of this paper presents the international legal framework currently in place aimed at protecting the rights of refugees and internally displaced persons in situations of civil war and ethnic conflict. The key international norms of refugee protection stem from several sources. The principle of *non-refoulement* is a cornerstone principle of this body of law as it is considered both an inviolable part of international customary law and a key provision of the 1951 Convention Relating to the Status of Refugees. *Non-refoulement* means non-return: states cannot return foreign nationals to territories where they might be subjected to torture, inhumane or degrading treatment, or where their lives and freedoms might be at risk. Article 14 (I) of the Universal Declaration of Human Rights, considered the foundation of international human rights law and a key determiner of customary international law, states that 'everyone has the right to seek and enjoy in other countries asylum from persecution'. This means that all people fearful of persecution in one country – such as Syrians fleeing conflict – have the right to asylum in another. It is important to note that the type of asylum or legal status accorded to refugees is crucial to their future and well-being, setting out the rights and obligations pertaining to people who have been forced to leave their country.

The controlling international legal tools on refugee law are the 1951 Convention relating to the Status of Refugees (1951 Convention) and the 1967 Optional Protocol relating to the Status of Refugees (1967 Optional Protocol). From a legal perspective, the Convention provides the basic guiding standards on which international refugee protection should be carried out. From a political one, it provides a truly universal framework which states can utilise in cooperating to share the burden resulting from forced displacement. Finally, it has ethical significance, in that it constitutes a unique declaration by the 140 signatories of their commitment to protect and uphold the rights of some of the world's most vulnerable people.

Refugees and Conflict

The complexity of the relationship between refugees and conflict resists any attempts at generalisation. It is clear that large populations of refugees are affected by, and in turn affect, conflict in diverse ways. One potential dynamic at play here is that refugee crises have the potential to exacerbate and even trigger conflict; it has been demonstrated that countries experiencing a marked influx of refugees fleeing neighbouring conflicts are themselves more likely to experience conflict. When considering how likely a refugee crisis is to trigger conflict, there are in general three broad risk factors to survey. First the stability of the country or countries in reception of large refugee populations is a major risk factor in increasing or decreasing the likelihood of conflict. Second the risk of conflict may be increased or decreased depending on how likely a refugee population is to contain individuals willing to provide shelter and resources for armed groups. Finally another risk factor that may work to inculcate conflict in the case of a refugee crisis comprises the agendas of receiving governments, foreign governments, and multinational agencies.

All these factors are examined in detail and offer the conclusion that the care, protection, and if necessary, resettlement of refugees is of the utmost importance if conflict is to be avoided. A pressing priority from a security perspective during a refugee crisis, then, is to ensure that refugees are adequately protected, their needs met, and in the long term to institute measures which will enable either their repatriation to a third country or integration within the country they currently reside in. Three ways in which the risk of conflict ensuing from a refugee crisis can be reduced have been identified. The first is allowing refugees to directly participate in the labour force, meaning that they are able to provide for themselves and are less at risk of exploitation within the informal labour market. Second, refugees are to be allowed freedom of movement, so that they may settle in the places where they can best secure housing, employment, and services. And finally aiding communication and co-operation between refugees and receiving communities is also essential.

Country Case Studies

The international refugee protection regime as outlined may appear comprehensive, however a closer look shows that in practice the rights that Syrian refugees in Lebanon, Jordan, and Turkey are granted depend on fragmented national legal frameworks. Despite concern in Europe centring around the migration of Syrian refugees to the continent it should be remembered that Turkey, Lebanon and Jordan have essentially absorbed the brunt of the Syrian refugee crisis; all three countries must contend with the presence of hundreds of thousands – in Turkey's case, millions – of Syrian refugees, while managing economic difficulties, varying degrees of negative public opinion, and a spectrum of pre-existing political and governmental issues.

While it is important to recognize both the gravity of the situation and the considerable efforts taken by many of Syria's neighbours to provide for refugees we cannot ignore the fact that serious and systemic protection gaps exist within the domestic legal frameworks of Lebanon, Jordan, and Turkey. For these countries the legal status of asylum seekers and refugees is mostly governed by the countries' national laws concerning foreign nationals. Treatment of refugees will always depend on the ability of domestic legislation to properly incorporate the requirements of international treaties. What has made the current refugee crisis even more complex is that out of the three main host countries with the highest numbers of Syrian refugees examined; only Turkey has ratified the 1951 Convention and its 1967 Protocol. Both

Jordan and Lebanon have chosen not to ratify these two legal instruments. Moreover, while Turkey has chosen to ratify the 1951 Convention and 1967 Protocol – it ratified the 1967 Protocol with a reservation that maintains a geographical limitation. This has meant that Turkey only recognises refugees if they are from Europe. This means that *those displaced Syrians residing in Lebanon, Jordan, and Turkey have no legal right to be recognized as refugees under domestic legal framework,*: despite the vast majority fulfilling the criteria of refugees as set out in the Refugee Convention.

JORDAN

Syrian refugees in Jordan now constitute 8 per cent of the country's entire population, with more than 640,000 refugees – the large majority of them Syrian – having sought sanctuary within Jordan since 2011. As a result of their precarious legal status in Jordan the welfare of many refugees in Jordan is considerably threatened. Nine out of ten refugees are considered highly or severely vulnerable in terms of basic needs, a direct result of the way in which most refugees find themselves on the fringes of Jordanian society without access to employment. The situation in Jordan has been described by experts as tense.

LEBANON

The situation is similar in Lebanon. Both refugees and the native population in Lebanon are experiencing strain as a result of the Syrian crisis. Lebanon has a population of 4 million, but has received between 1.1 and 1.5 million refugees, giving it the highest ratio of refugees per capita in the world. While there is no specific status or protection offered to those fleeing Syria, limited protection from deportation is offered by prohibitions on forcible returns. Lebanon is not a country of asylum and there an asylum-seeker is defined as "a person seeking asylum to a country other than Lebanon". Among the refugees whose testimonies we gathered, uncertainty over their legal situation and their rights was very high, and they were generally forced to rely on friends and contacts to seek out information.

Refugees, existing in a grey area where the legality of their stay in Lebanon is constantly in question, cannot secure employment and face substantial difficulty integrating into Lebanese society, their lack of legal status exposing them to higher risks of abuse and exploitation, as well as impeding their ability to access justice. As in Jordan, the isolation of refugee communities along with their obvious deprivation has exacerbated tensions with some elements and groups within the native population. In addition, the delicate sectarian situation and political instability in Lebanon means that the influx of refugees has political ramifications.

TURKEY

Turkey has received the largest number of Syrian refugees to date, reaching well over two million as of February 2016, most settled in urban areas where opportunities for informal employment, and passage out of Turkey, were more readily available. At the outbreak of conflict in Syria, Turkey treated Syrian nationals as "guests", granting temporary protection without formal refugee status, but the 2013 Law on Foreigners and International Protection (LFIP) later created a new framework for dealing with people fleeing conflict. The new framework encompasses the three main policy responses, providing for temporary protection, upholding, the principle of *non-refoulement*, and allowing for the provision of humanitarian assistance. While the humanitarian situation, still a cause for concern, is in general markedly less severe than in Lebanon and Jordan, people fleeing Syria are unable to

secure full asylum, establish sustainable livelihoods, or integrate into society due to legal barriers which, by denying them full refugee status, has left vulnerable people trapped in a state of perpetual uncertainty.

Burden-Sharing

Despite its significance, the implementation of burden-sharing has been very limited in relation to the Syrian refugee crisis. The current approach of the international community has been almost exclusively focused on humanitarian assistance, which has meant that an effort to formulate sustainable, long-term solutions has been largely avoided. Given the challenges experienced by refugees in Lebanon, Jordan, and Turkey, it is unsurprising that the exodus resulting from the current crisis in Syria cannot be contained in the Middle East. This is evident by the thousands risking their lives to undertake perilous boat journeys in desperate attempts to reach Europe, and hundreds of thousands more undertaking arduous migration routes through the Balkans to reach Northern Europe. This migration pattern has put Europe's borders under severe strain, with many refugees trapped in make-shift camps in the Southern Balkans.

The international community has not been able to develop a response that shares the obligation to give asylum to Syrian refugees equitably. On the contrary, so far the EU response to the Syrian refugee crisis has been mainly focused on strengthening national borders to reduce the number of refugees able to enter. This has encompassed countering smuggler networks without ensuring safe passage, and several deals of which the legality is under question, such as one negotiated on the 18 March 2016, which would repatriate refugees in Europe to Turkey. At the time of writing, the impact of the deal is unclear. So far, European Union member states have neglected to uphold their pledge under the deal to reallocate refugees in Greece, in fact taking only a small handful of the number originally promised.

While the focus so far has been on the response of European states to the refugee crisis, states within the MENA region have also failed Syrian refugees. Saudi Arabia, the UAE, and Israel have together not taken any Syrian refugees, despite being some of the wealthiest countries in the region. As is the case for European donor states, the Gulf response has focused mainly on humanitarian aid rather than refugee resettlement, an approach which has left most Syrian refugees stranded in states incapable of meeting their needs.

Examining international refugee regimes and the relationship between refugees and conflict is done in order to place the current Syrian refugee crisis within its larger legal and political context. It has been established that the two central challenges of the crisis – the struggle to protect the rights of refugees, and the struggle to prevent conflict from spreading – are in fact twinned, and must be addressed together if durable answers are to be found. Burden-sharing in response to the Syrian refugee crisis has been consistently offered as a viable and sustainable solution to the crisis by the UNHCR and various actors such as scholars, NGOs and civil society members. It is clear that the Syrian refugee crisis is not a problem for the Middle East alone; neither is it the sole responsibility of states such as Greece and Turkey. The suffering of Syrian refugees across the region has become a humanitarian tragedy of such scale that should it continue to be ignored, it has the potential to threaten the peace and security of the broader international system.

The failure to implement burden sharing, then, has led to a failure to develop a sustainable solution to the humanitarian crisis in the region. Providing humanitarian aid without affording refugees basic rights to seek employment or move freely has forced refugees into

dependency on aid and humanitarian assistance, and created a disturbing dynamic whereby refugees are increasingly marginalised and extremely vulnerable to abuse. The legal situation examined in each country has proven that the domestic laws of the three countries do not incorporate the obligations of international refugee law. This, in turn, has severely curtailed the rights of those fleeing the conflict in Syria. Essentially millions of Syrian's right to life is maintained but a number of their most fundamental rights – such as to work, to move freely, to receive asylum are suspended. To reiterate: many refugees are essentially unable to independently sustain themselves and are instead, trapped in legal systems which deny them the right to lead independent lives. This, in turn, threatens to have serious ramifications for security in the region.

It has already become clear that political willingness to assist refugees in some limited manner is not commensurate with the scale of the current crisis. So far, the response to the Syrian refugee crisis has been characterised by an absence of long-term solutions, with political discretion utilised by states to avoid duties beyond the provision of humanitarian aid to the forcefully displaced. This avoidance of international legal responsibilities has been at the centre of the current fragmented response to mass migration.

Conclusion

It has been argued that burden-sharing, as an inherent component of a functioning refugee protection system, is central to finding an effective solution to the Syrian refugee crisis. The Refugee Convention's preamble specifically requires the international community to cooperate, share burdens and aim to achieve durable solutions for refugees, who should be 'integrated in the economic system of the countries of asylum and will themselves provide for their own needs and for those of their families'. Specifically, burden-sharing addresses cases where large refugee flows (such as the current refugee crisis) place a very disproportionate and difficult burden on the countries of first asylum receiving the refugees.

It encompasses a shift away from current approaches, which have dealt with people fleeing violence and destruction in Syria dealt with under disparate national frameworks inconsistent with international refugee law, towards an international administration of refugee protection that would allow for the rights of refugees fleeing conflict in Syria to be addressed with clarity, predictability, and stability. By exploring the various security and protection challenges that emerge as a result of the current Syrian refugee crisis carefully and systematically and putting the various concerns and outcomes together it becomes evident that effective responsibility-sharing is the most logical response to contemporary displacement challenges.

Some 65 years ago, when the Refugee Convention was first introduced, the new international refugee regime was understood to have ushered in a new phase "characterised by the fact that the refugees will lead an independent life in the countries which have given them shelter.... they will provide for their own needs and for those of their families." Yet while the underlying rationale of the Refugee Convention has been to avoid the creation of long-term dependency, the international community's response to the Syrian refugee crisis has constituted almost entirely the inverse of this principle. As the UNHCR has warned, the 'greatest challenge to refugee protection is certainly not the 1951 Convention itself, but rather ensuring that states comply with it, in 'a spirit of international co-operation and responsibility-sharing'.