University of Arkansas at Little Rock Law Review

Volume 40 | Issue 1 Article 2

2017

50 Years Was Too Long to Wait: The Syrian Refugee Crisis Has Highlighted the Need for a Second Optional Protocol to the 1951 Convention Relating to the Status of Refugees

Yvonne S. Brakel

Rachel E. Kester

Samantha L. Potter

50 YEARS WAS TOO LONG TO WAIT: THE SYRIAN REFUGEE CRISIS HAS HIGHLIGHTED THE NEED FOR A SECOND OPTIONAL PROTOCOL TO THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES

Major Yvonne S. Brakel,[*] Rachel E. Kester, and Samantha L. Potter[**]

I. INTRODUCTION – THE WORLD AND ITS LAW WERE NOT READY FOR THE SYRIAN REFUGEE CRISIS

President Trump stated "we don't want them here"[1] as he signed an executive order barring travelers from seven predominantly Muslim countries for at least 90 days and refugees from anywhere in the world for at least 120 days.[2] He assured the American public that this order was not a Muslim ban, but instead, was a move intended to "keep radical Islamic terrorists out of the United States of America."[3] With that official act, he kept his campaign promise and halted former-President Obama's commitment to welcome 110,000 refugees into the United States in fiscal year 2017.[4] The effects of his order were instant and highly criticized by voices across the globe. Within hours, the headlines were flooded with stories of refugees being denied

---

[*] Major Yvonne S. Brakel is an active duty Air Force judge advocate currently assigned to the Dean of Faculty Department of Law, United States Air Force Academy. Major Brakel received her Juris Doctorate at Seattle University School of Law in 2006 and her Master of Laws in International and Comparative Law at the George Washington University Law School in 2014.

[**] Rachel E. Kester and Samantha L. Potter are sophomores and legal studies majors at the United States Air Force Academy. They have contributed to this article as part of an independent study project focusing on the Syrian Refugee Crisis.

1. Jeremy Diamond & Steve Almasy, *Trump's Immigration Ban Sends Shockwaves,* CNN (Jan. 30 2017), http://www.cnn.com/2017/01/28/politics/donald-trump-executive-order-immigration-reaction/.

2. Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017). This order has since been replaced with the President's most recent executive order, 13780.

3. Diamond & Almasy, *supra* note 1.

4. Juliet Eilperin, *White House Raises Refugee Target to 110,000*, WASH. POST (Sept. 14, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/09/14/white-house-plans-to-accept-at-least-110000-refugees-in-2017/?utm_term=.58adfbf37619.

boarding onto the flights that should have delivered them to their new lives in the United States.[5]

Among the hundreds of Syrian refugees who found themselves stranded following issuance of President Trump's executive order, were Rafiq al-Saleh and his family.[6] After Syrian airstrikes began targeting civilians in Aleppo, Rafiq and his then-pregnant wife Ghada Dibo made the difficult and dangerous decision to flee their home in Syria.[7] They escaped with their two young children to Jordan, moving through the desert at night to avoid detection.[8] After two years of waiting in Jordan, Rafiq, Ghada, and their three children were accepted for resettlement in the United States.[9] Having plane tickets in hand and a new home waiting for them in upstate New York, they sold all their possessions and prepared to embark on a journey to a place where Rafiq said there is "democracy and freedom."[10] At the time his story was published on NPR, he had never met an American, but his friends who resettled in the United States assured him that there "you feel like you are a human being — a citizen. You have rights. No one can oppress you. Even the children have rights."[11] With one stroke of a pen, President Trump may have changed Rafiq al-Saleh's feelings about the United States forever. Hours before they were scheduled to embark upon their journey to 'democracy and freedom,' he and his family were told they could not board their flight to New York.[12] Devastated, Rafiq began hoping for salvation in another country. He heard that Canada had offered to take in the Syrian refugees who had been approved for resettlement in the United States. "Maybe they will let us go to another country — to Europe or Canada."[13]

It is natural to get lost in the emotion of the refugee stories, but one must also remember the catalyst behind President Trump's immigration order. The violent attacks in Paris and Brussels were carried out by members of the Islamic State who managed to infiltrate the migration of Syrian refugees.[14] Recall also the boasting of an Islamic State commander, "[w]e have

5. Jane Arraf, *Trump's Immigration Ban Has Left Syrian Family Stuck in Jordan*, NPR (Feb. 2, 2017), http://www.npr.org/sections/parallels/2017/02/02/512998371/trumps-immigration-ban-leaves-syrian-family-stuck-in-jordan.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Arraf, *supra* note 5.

12. *Id.*

13. *Id.*

14. Anthony Faiola & Souad Mekhennet, *Tracing the Path of Four Terrorists Sent to Europe by the Islamic State*, WASH. POST (Apr. 22, 2016), https://www.washingtonpost.com/world/national-security/how-europes-migrant-crisis-became-an-opportunity-for-

sent many operatives to Europe with the refugees . . . Some of our brothers have fulfilled their mission, but others are still waiting to be activated."[15] After watching the news coverage of bloody terrorist attacks throughout Europe, the Middle East and the United States, fear of an uncontrolled mass migration of refugees is understandable. But, President Trump's order did not just stop an uncontrolled migration of Syrians into the United States. It stopped the controlled resettlement of refugees who had completed an extensive screening process lasting anywhere between 18 and 24 months before even being approved to enter the United States.[16] Prior to President Trump's election, the Obama administration was also heavily criticized for accepting a limited number of Syrian refugees for resettlement.[17] And, the United States was not alone. Many of the rich Gulf States and close neighbors to Syria, including Kuwait, the United Arab Emirates, Qatar, and Bahrain, do not accept Syrian refugees.[18] Nor do Russia, Japan, Singapore, or South Korea.[19] Eastern Europe, Slovakia, Bulgaria, and Estonia have taken steps to reduce the influx of Syrian refugees. Hungary, perhaps the most extreme case, has built a border fence to keep refugees seeking asylum out.[20]

The fundamental right to seek asylum[21] is recognized in multiple human rights instruments, including the Universal Declaration of Human

---

isis/2016/04/21/ec8a7231-062d-4185-bb27-cc7295d35415_story.html?utm_term=.f14f23430ccd.

15. Marc Thiessen, *ISIS Is Smuggling Terrorists Among Syrian Refugees*, NEWSWEEK (Apr. 27, 2016), http://www.newsweek.com/how-isis-smuggles-terrorists-among-syrian-refugees-453039.

16. United Nations High Commissioner for Refugees, *US Resettlement Facts*, UNHCR, http://www.unhcr.org/en-us/588a14fc4 (last visited Apr. 20, 2017).

17. Jordan Fabian, *NY Attack Hangs over Obama Push for Action on Refugees,* HILL (Sept. 20, 2016), http://thehill.com/homenews/administration/296739-ny-attack-hangs-over-obama-push-for-action-on-refugees.

18. *Facts & Figures: Syria Refugee Crisis & International Resettlement,* AMNESTY INT'L (Dec. 5, 2014), https://www.amnesty.org/en/latest/news/2014/12/facts-figures-syria-refugee-crisis-international-resettlement/.

19. *Id.*

20. Rick Noack, *This Map Helps Explain Why Some European Countries Reject Refugees, and Others Love Them*, WASH. POST (Sept. 8, 2015), https://www.washingtonpost.com/news/worldviews/wp/2015/09/08/this-map-helps-explain-why-some-european-countries-reject-refugees-and-others-love-them/?utm_term=.e66b9341ce01.

21. "An asylum seeker is an individual who is seeking international protection. In countries with individualised procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it. Not every asylum seeker will ultimately be recognised as a refugee, but every refugee is initially an asylum seeker." *What's the Difference Between a Refugee and an Asylum Seeker?*, AMNESTY INT'L AUSTL. (Nov. 6, 2016), https://www.amnesty.org.au/whats-the-difference-between-a-refugee-and-an-asylum-seeker/.

Rights[22] and the 1951 Convention Relating to the Status of Refugees.[23] The 1951 Convention, which was created in response to the mass influx of European refugees following WWI and WWII, attempted to create a "comprehensive codification of the rights of refugees at the international level."[24] Though it remains the cornerstone of the international refugee regime, the 1951 Convention has several shortcomings. The Convention does not require states to grant asylum, nor does it specify how states are to share the burden of refugee resettlement.[25] As a result, the world is left with a patchwork of domestic refugee laws and policies, which increase regional instability and security concerns posed by the current refugee crises.

With no true burden-sharing requirements on the international community, states of first asylum[26] are left alone to bear the cost of protracted refugee situations. Further complicating the problem, the refugees are oftentimes exposed to abject poverty and deplorable living conditions, placing them at risk of exploitation, radicalization, violence, injury, and illness. The United Nations High Commission for Refugees (UNHCR) estimates that there are currently 65.3 million forcibly displaced persons worldwide,[27] 21.3 of whom are refugees, meaning they have left their country seeking refuge in another state.[28] Despite numbers that surpass those following WWII, only a small number of states are carrying the current weight of world's refugees.

A Second Optional Protocol to the 1951 Convention is needed to create a predictable and equitable refugee resettlement plan among the international community. Section II discusses the current international treaties relevant to refugees, including a discussion of individual rights and state duties under the 1951 Convention on Status of Refugees and the 1967 Optional Protocol.[29] After highlighting the limited duties imposed upon states, the authors will illustrate the inconsistent state practices of a handful of states in Part III.[30] In Part IV, the authors will then explain that the patchwork of immigra-

22. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter Universal Declaration of Human Rights]. Article 14 specifically provides refugees the right "to seek and to enjoy in other countries asylum from persecution."

23. U.N. Conference of Plenipotentiaries, *Convention Relating to the Status of Refugees*, 189 U.N.T.S 150 (July 7, 1951) [hereinafter *Convention Relating to the Status of Refugees*].

24. *Id.*

25. *See id.*

26. First states of asylum are those countries that are geographically close to the conflict and will, solely based on their proximity, face the initial brunt of any mass refugee movements. In the case of the Syrian refugee crisis, the first countries of asylum are Turkey, Jordan, and Lebanon.

27. Forcibly displaced persons include 21.13 refugees, 40.8 internally displaced persons, and 3.2 asylum seekers. UNITED NATIONS HIGH COMM'R FOR REFUGEES, GLOBAL TRENDS: FORCED DISPLACEMENT IN 2015 2 (2016), http://www.unhcr.org/576408cd7.

28. *Id.*

29. *See infra* Part II.

30. *See infra* Part III.

tion policies poses a significant threat to both regional and international security.[31] In light of those threats, a Second Optional Protocol to the 1951 Convention is needed to promote efficient and fair resettlement of refugees. Part V of this paper will explain how the Optional Protocol could distribute the refugee burden across many states, as well as addressing the obvious obstacles to concluding a binding international agreement.[32] Finally, Part VI provides a conclusion.[33]

II. THE CURRENT STATE OF INTERNATIONAL REFUGEE LAW

> "CONSIDERING that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination . . ."[34]

The current legal framework of the international refugee regime acknowledges the fundamental right to seek asylum. The key documents establishing and reiterating this right include the Universal Declaration of Human Rights, the 1951 Convention on the Status of Refugees, and its Optional Protocol.[35] Together these agreements establish some basic protections that must be afforded to refugees and asylum-seekers; however, the existing regime affords states significant discretion in their interpretation of obligations.

A. Universal Declaration of Human Rights

Following the devastation of the Second World War, the international community vowed to prevent similar atrocities from occurring in the future. In addition to the newly drafted UN Charter, world leaders wanted a separate document highlighting fundamental human rights common to individuals around the globe.[36] Representatives from 18 nations with culturally di-

---

31. *See infra* Part IV.
32. *See infra* Part V.
33. *See infra* Part VI.
34. *Convention Relating to the Status of Refugees*, *supra* note 23.
35. Many other instruments discuss the right to asylum. For example, the Convention on Rights of the Child (CRC) reinforces children's rights to asylum. The CRC was developed to recognize the serious injustices children faced, as well as their particularly special needs. Stemming from the UDHR and the 1951 Convention, Article 22(1) requires that state parties take appropriate measures to ensure that children who are considered refugees or are seeking refugee status shall receive protection and humanitarian assistance in the enjoyment of applicable rights, whether accompanied by their parents or not. However, similar to the other Conventions, protections are still limited in the name of state sovereignty.
36. *History of the Document*, UNITED NATIONS, http://www.un.org/en/sections/universal-declaration/history-document/ (last visited Apr. 21, 2017).

verse backgrounds drafted the Universal Declaration of Human Rights (UDHR), which was unanimously adopted by the UN General Assembly on 10 December 1948.[37] The UDHR marks a milestone in the evolution of human rights and represents the global interest of protecting basic standards for the dignity and rights of individuals.

Among the many rights acknowledged in the Declaration, Article 14 provides that "everyone has the right to seek and to enjoy in other countries asylum from persecution."[38] Alternative language guaranteeing the right to be *granted* asylum was rejected by many participating states as an infringement upon sovereignty.[39] The result of that change continues to plague international refugee laws and customs to this day. The UDHR provides a basic right to individuals, yet states are given significant discretion when interpreting and defining their responsibility toward refugees and asylum seekers. As Christian Joppke explains, "states are not just free to grant, but also to prescribe, the conditions under which asylum is to be enjoyed."[40] Unfortunately, subsequent agreements have not corrected this inconsistency.

B. The 1951 Convention on the Status of Refugees and the 1967 Optional Protocol

While the Universal Declaration of Human Rights acknowledged the basic right to asylum, the mass increase in refugees post-WWII showed that more legal guidance was needed. In 1946, the United Nations created the International Refugee Organization (IRO),[41] a "resettlement agency" for displaced persons.[42] The IRO was given control over the "legal and political protection of persons who are its concern."[43] In an attempt to inform future international refugee efforts, the IRO requested the creation of a comprehensive study of the history of refugee policy from the time of the League of Nations to the current IRO efforts. This study, *A Study of Statelessness*, outlined the aspects of statelessness, which included travel, personal status, education, reciprocity, expulsion, taxation, among other concerns.[44] At the conclusion of the study, the IRO recommended the creation of a new independent agency dedicated to protecting stateless persons when national

37. Universal Declaration of Human Rights, *supra* note 22.

38. *Id.* at art. 14 (outlining the right to seek asylum).

39. Christian Joppke, *Asylum and State Sovereignty: A Comparison of the United States, Germany and Britain*, *in* CHALLENGE TO THE NATION-STATE: IMMIGRATION IN WESTERN EUROPE AND THE UNITED STATES 109, 110–111. (1998).

40. *Id.* at 111.

41. G.A Res. 62 (I), (Dec. 15, 1946).

42. *Id.*

43. Gilbert Jaeger, *On the History of the International Protection of Refugees*, 83 INT'L REV. OF THE RED CROSS 727, 732 (2001).

44. *Id.* at 733.

agencies cannot.[45] After considering the results of the *Study of Statelessness,* the Economic and Social Council authorized the creation of an ad hoc committee with the purpose of investigating refugees and stateless persons,[46] thus beginning the negotiations to create a universal document outlining the rights of refugees and the responsibilities of high contracting parties to support these rights.

After nearly a year of negotiations and thirty-five committee meetings, the Convention on the Status of Refugees came into force on 28 July 1951.[47] This Convention was designed to be the "universal international instrument for the protection of refugees."[48] It was the first document to specify the rights afforded refugees while emphasizing the duties agreed upon by the High Contracting Parties.[49] As drafted, the Convention restricted refugee status to persons whose circumstances had come about "as a result of events occurring before 1 January 1951," "events occurring in Europe," or "events occurring in Europe or elsewhere."[50] As the world refugee situation evolved, so did the law. In 1967, the Optional Protocol to the 1951 Convention entered into force and removed both the temporal and geographic restrictions.[51] Thus, all refugees were granted equal status under the definition of the Convention, irrespective of time or nationality.[52]

1. Rights Afforded to Refugees

The 1951 Convention established the internationally recognized definition of a "refugee," the principle of *non-refoulement*, and a multitude of rights afforded to refugees.[53] Article 1A(2) states that a refugee is a person:

> 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 of the protection of that country; or who, not having a nationality and being outside the country of his

45. *Id.* at 735.
46. *Id*. at 735.
47. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, THE REFUGEE CONVENTION, 1951: THE TRAVAUX PRÉPARATOIRES ANALYSED WITH A COMMENTARY BY DR. PAUL WEIS (1990), http://www.unhcr.org/en-us/protection/travaux/4ca34be29/refugee-convention-1951-travaux-preparatoires-analysed-commentary-dr-paul.html.
48. *Id.* at 4.
49. *Id.*
50. *Id.* at 4–5.
51. *Convention Relating to the Status of Refugees*, *supra* note 23.
52. G.A Res. 2198 (XXI), Protocol Relating to the Status of Refugees (Dec. 16, 1966).
53. *See Convention Relating to the Status of Refugees*, *supra* note 23.

> former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[54]

The cornerstone protection provided to refugees under the 1951 Convention is the principle of *non-refoulement* as expressed in Article 33. This principle protects asylum-seekers or refugees from being returned to a country "where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."[55] Protection against refoulement is afforded to all persons unless they have been deemed a danger to the security of the country, or having been convicted of a particularly serious crime, and considered a danger to the community.[56] The Convention also provides a variety of other important rights to refugees. For example, Article 31 ensures that Contracting States will not impose penalties on those who enter a country illegally to seek asylum. It further prohibits Contracting States from restricting the movements of refugees unless those restrictions are necessary to fulfill the refugee application process.[57] Article 32 maintains that Contracting States "shall not expel a refugee lawfully in their territory save on grounds of national security or public order."[58] The Convention also protects refugees' rights to education, employment, and access to justice.

2. Duties Agreed upon by the High Contracting Parties

While the Convention provided numerous protections, including the critical obligation of *non-refoulement*, the drafters left it to the states to decide which refugees they would allow to resettle in their countries.[59] "[S]tates remain under no obligation to grant to refugees asylum in the sense of lasting protection against the exercise of jurisdiction by another state and an opportunity to integrate themselves indefinitely in the state of refuge."[60] Further complicating the matter, the Preamble highlights the potential for unequal burdens posed by refugees in specific regions and calls all nations to co-operate,[61] yet what that cooperation should consist of is not addressed, described, or defined anywhere in the Convention.

Respect for state sovereignty also places limits on the amount of support states are required to provide to the Office of the United Nations High

---

54. *Id.* at art. 1, A(2).
55. *Id.* at art. 33.
56. *Id.* at art. 33.2.
57. *Id.* at art. 31.1, 31.2.
58. *Id*. at art. 32.
59. James C Hathaway, *Why Refugee Law Still Matters*, 8 MELB. J. INT'L L. 89, 100 (2007).
60. GUY GOODWIN-GILL, THE REFUGEE IN INTERNATIONAL LAW 225 (1983).
61. *Convention Relating to the Status of Refugees*, *supra* note 23, preamble.

Commissioner for Refugees (UNHCR).[62] Article 35 of the 1951 Convention also calls upon states to *undertake* to cooperate with the UNHCR in the exercise of its functions.[63] Recognizing the duty of the Office of the High Commissioner to make reports to the UN on issues of its concern, the Convention also asks states to *undertake* to provide with requested statistical data concerning the condition of refugees, the implementation of the Convention and any laws, regulations, and decrees relating to refugees.[64] Unfortunately, protection of state sovereignty has created an inconsistent patchwork of national refugee laws and policies across the globe, which in turn, has led to an inequitable distribution of the burden posed by the current refugee crisis and poor quality protections provided to the world's 65.3 million displaced persons.

The existing international refugee regime firmly establishes the principle of *non-refoulement*, but it fails to place specific obligations upon states governing the grant of asylum or sharing the burden of refugee resettlement. As a result, individual states are left free to pursue their own agendas, which are often guided by short-term self-interests rather than equitable goals enshrined in the spirit of the current framework.

III. INTERNATIONAL PATCHWORK OF STATE REFUGEE LAWS AND POLICIES

> "CONSIDERING that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms . . ."[65]

The Syrian refugee crisis has highlighted significant deficiencies in the international refugee regime. Without a binding obligation to grant asylum or assist with the equitable resettlement of refugees, states are free to decide their own asylum laws and policies. As a result, there are dramatically different domestic approaches to accepting asylum-seekers and refugees, most of which do not necessarily afford the "the widest possible exercise" [66] of the fundamental right to asylum envisioned by the Convention. First, the refugee policies found in Turkey, Jordan, and Lebanon, the states of first asylum, and how their laws and policies have adapted with the crisis are discussed. Then, the authors will explore immigration policies in a handful of

62. The General Assembly established the UNHCR in 1951. Its two principle functions include ensuring international protection to refugees under its competence and seeking durable solutions for refugees in cooperation with state governments. *See* G.A. Res. 428 (V), Statute of the Office of the United Nations High Commissioner for Refugees (Dec. 14, 1950).

63. *Convention Relating to the Status of Refugees*, *supra* note 23, at art. 35.

64. *Id.*

65. *Id*. at Preamble.

66. *Id.*

countries removed from the Syrian crisis, both geographically and in political response to the crisis. The list of countries discussed is intended to be representative of the greater international community but is by no means exhaustive. The states of first asylum for the Syrian refugee crisis have become overrun with refugees and, as result, more than one million of the refugees have opted to seek asylum in Europe. Despite regional agreements, Europe's asylum policies also vary dramatically and, similar to those in the states of first asylum, have changed rapidly in response to the recent flood of refugees.

A. The States of First Asylum

The states of first asylum[67] for the Syrian refugee crisis are Syria's bordering neighbors—Turkey, Jordan and Lebanon. These three nation states bear a high burden of the crisis, together taking in over 4 million of the estimated 5.9 million Syrian refugees. While these states have shown great generosity toward the Syrian refugees, each has sought to restrict the massive influx of refugees with a variety of administrative, legal, and physical barriers at times throughout the conflict.[68]

1. Turkey

As of February 2017, it was estimated that Turkey had accepted 2.9 million Syrian refugees, more than double the number taken by Lebanon, the second greatest receiver of Syrian refugees.[69] Turkey is a party to the 1951 Convention on the Status of Refugees; however, it has not ratified the 1967 Optional Protocol thus limiting its definition of a refugee to European asylum seekers.[70] Turkey implemented its international obligations under the Convention through the Turkey Settlement Act (TSA) and, more recently, the Law on Foreigners or International Protection (LFIP). The TSA grants

67. States of first asylum are the first safe countries that refugees reach. *See* Ariane Rummery, *Greater Support in Countries of First Asylum Needed to Stem Refugee Outflows*, UNHCR (Aug. 26, 2015), http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&skip=819&docid=55ddd2c86&query=greater support in countries of first.

68. Human Rights Watch, *Syria: Events in 2016*, HUM. RTS. WATCH, https://www.hrw.org/world-report/2017/country-chapters/syria#634b1d (last visited Mar 29, 2017).

69. *Syria Regional Refugee Response Data,* UNHCR, http://data.unhcr.org/syrian refugees/regional.php (last visited Jan. 15, 2018).

70. *States Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol,* UNHCR, http://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html (last visited Apr. 15, 2018).

persons of Turkish descent and culture eligibility for settlement in the country and possible citizenship.[71]

In early 2011, the Turkish government tried to convince Syrian President Bashar al-Assad to engage in reforms that could have contained the militarization of the Syrian uprising.[72] After that attempt failed, Turkey took a clear stance against the Assad regime and opened its borders to fleeing Syrians providing humanitarian assistance to civilians and internally displaced persons (IDPs) inside Syria.[73] While the Syrian nationals were not recognized as refugees under Turkish law, Turkey did consider the incoming Syrians "guests" deserving of temporary protections.[74] In 2013, Turkey created the LFIP which allows non-European refugees limited protection under one of several types of temporary status—"conditional refugee status, humanitarian residence permit, or temporary protection"– allowing them to remain in the country until a long-term place of settlement outside Turkey is determined.[75] The LFIP also protects the Syrians against refoulement.[76]

In recent years, however, Turkey has significantly restricted its policy. Since March 2015, Turkey has maintained a closed-border policy prohibiting entry of all but seriously injured Syrian refugees.[77] Implementing this policy has been two-fold: first, Turkey has focused efforts on the construction of a planned 511 kilometer concrete wall along its border;[78] second, Turkish border guards have pushed back thousands of Syrians, forcing those fleeing violence and persecution to either continue their perilous journey for asylum elsewhere or return to their war-torn homeland.[79] Those returned to Syria are often forced to seek shelter in dangerous Syrian border displacement camps or hide in man-made ditches along the Syrian-Turkish border.[80] Asylum-seekers who have resisted Turkey's push-back have faced severe

---

71. Wendy Zeldin, *Refugee Law and Policy: Turkey*, LIB. OF CONGRESS (Mar. 2016), https://www./law/help/refugee-law/turkey.php.

72. *See* Souad Ahmadoun, *Turkey's Policy Toward Syrian Refugees: Domestic Repercussions and the Need for International Support*, 47 SWP COMMENTS 1 (2014).

73. *Id.*

74. DEMOCRATIC PROGRESS INSTITUTE, THE SYRIAN REFUGEE CRISIS: REFUGEES, CONFLICT, AND INTERNATIONAL LAW 64 (2016).

75. Zeldin, *supra* note 71.

76. *Id.*

77. *UN: Press Turkey to Open Border Summit Should Tackle Responsibility for Refugees*, HUM. RTS. WATCH (May 20, 2016), https://www.hrw.org/news/2016/05/20/un-press-turkey-open-border [hereinafter *UN: Press Turkey to Open Border*].

78. Chase Winter, *Turkey Builds More than Half of Syrian Border Wall*, DW.COM (Feb. 26, 2017), http://www.dw.com/en/turkey-builds-more-than-half-of-syrian-border-wall/a-37723820.

79. *UN: Press Turkey to Open Border*, *supra* note 77.

80. *Turkey: Open Borders to Syrians Fleeing ISIS: At Least 30,000 Trapped Amid Northern Syria Fighting*, HUM. RTS. WATCH (Apr. 14, 2016), https://www.hrw.org/news/2016/04/14/turkey-open-borders-syrians-fleeing-isis [hereinafter *Turkey: Open Borders*].

punishments. According to a report by the Human Rights Watch, Turkish border guards have killed at least five Syrians and seriously injured approximately 14 others who tried to cross the border into Turkey.[81]

The Turkish government defends its decision to close its borders and promotes the creation of a "safe zone" within Syria to which people can seek refuge. In July 2015, President Recep Tayyip Erdoğan of Turkey said that "cleansing the region of all threatening elements and establishing a safe zone constitutes the basis of 1.7 million Syrian refugees' return."[82] The same month, Mevlüt Çavuşoğlu, the foreign minister, said that, "[w]hen areas in northern Syria are cleared of the [ISIS] threat, the safe zones will be filled naturally . . . People who have been displaced can be placed in those safe areas."[83] Unfortunately, attacks on numerous Syrian "safe zones" have proven his assessment inaccurate.[84]

In March 2016, Turkey marginally altered its closed-border policy by signing an agreement with the European Union that forced all new irregular migrants crossing from Turkey to the Greek islands to be returned to Turkey.[85] For every Syrian being returned to Turkey from the Greek islands, the EU agreed to resettle another Syrian living in Turkey to a European nation.[86]

2. Jordan

Jordan houses upwards of 1.1 million refugees, including 658,000 Syrians, but is neither a party to the 1951 Convention nor the 1967 Protocol.[87] Under its domestic laws, there is no distinction between foreigners and refugees.[88] In 1998, Jordan signed a Memorandum of Understanding with the UNHCR, which improved protections for refugees within its territory.[89] Pursuant to the MOU, Jordan accepted the 1951 Convention's definition of "refugee" [90] and agreed to respect the principle of non-refoulement.[91] The

81. *UN: Press Turkey to Open Border*, *supra* note 77.

82. *Turkey: Open Borders, supra* note 80.

83. *Id.*

84. *Id.*

85. European Commission, *EU-Turkey Statement: Questions and Answers*, EUROPEA.EU (Mar. 19, 2016), http://europa.eu/rapid/press-release_MEMO-16-963_en.htm.

86. *Id.*

87. Issam Saliba, *Refugee Law and Policy: Jordan*, LIB. OF CONGRESS (Mar. 2016), https://www.loc.gov/law/help/refugee-law/jordan.php.

88. SARAH BIDINGER ET AL., PROTECTING SYRIAN REFUGEES: LAWS, POLICIES, AND GLOBAL RESPONSIBILITY SHARING 60 (2014), http://www.bu.edu/law/files/2015/07/FINAL FullReport.pdf.

89. Memorandum of Understanding Between the Government of Jordan and UNHCR (Apr. 5, 1998), http://mawgeng.a.m.f.unblog.fr/files/2009/02/moujordan.doc, *archived at* https://perma.cc/N28J-MV22t.

90. *Id.* at art. 1.

91. *Id.* at art. 2.

UNHCR also gained the ability to provide assistance to the refugees located in Jordan.[92]

In response to the Syrian refugee crisis, Jordan initially had an open-door policy with the Syrian refugees.[93] Syrian nationals were exempted from visa requirements ordinarily required by Jordanian law.[94] Unfortunately, as the number of refugees in Jordan dramatically increased so did the strain on its already limited resources and water.[95] These economic pressures led to changes in refugee policies, including restrictions on the occupations available to the Syrian refugees.[96] It was ultimately security threats that finally ended Jordan's open-door policy. In June 2016, Jordan sealed its borders to Syrian refugees after a suicide bomber attacked the entry point at Rukban, killing seven Jordanian military members and injuring 14 other personnel.[97] As a result, there are an estimated 60,000 Syrians living in make-shift camps along the border in an area designated by Jordan as an official "military zone."[98] The Jordanian military does not permit humanitarian aid workers into the military zone because it has been infiltrated by ISIS and is unsafe.[99] Aid workers fear that the people stuck in what they call a "no man's land" are in danger of starvation.[100]

3. Lebanon

The UNHCR estimates that there are almost 1 million Syrian refugees currently living in Lebanon.[101] Similar to Jordan, Lebanon is not a party to the 1951 Convention or its 1967 Protocol[102] and has not enacted any domestic legislation specifically addressing the status of refugees.[103] Refugee status is determined by the provisions of a 2003 MOU between Lebanon and

---

92. *Id.*
93. BIDINGER ET AL., *supra* note 88, at 55.
94. *See id.*
95. *Id.*
96. *Id.* at 69–70.
97. Jane Arraf, *Along Syria-Jordan Border, Refugees Struggle at a Camp Aid Workers Can't Visit*, NPR (Mar. 20, 2017), http://www.npr.org/sections/parallels/2017/03/20/520857305/along-syria-jordan-border-refugees-struggle-at-a-camp-aid-workers-cant-visit.
98. *Jordan: 70,000 Syrians Trapped at Border: Resume Food, Water, Medical Care for Asylum Seekers*, HUM. RTS. WATCH (July 1, 2016), https://www.hrw.org/news/2016/07/01/jordan-70000-syrians-trapped-border.
99. Arraf, *supra* note 96.
100. *Id.*
101. *Syria Regional Refugee Response*, UNHCR, http://data.unhcr.org/syrianrefugees/country.php?id=122 (last visited Apr. 18, 2017).
102. Issam Saliba, *Refugee Law and Policy: Lebanon*, LIB. OF CONGRESS (Mar. 2016), https://www.loc.gov/law/help/refugee-law/lebanon.php.
103. *Id.*

the UNHCR.[104] Under the terms of the MOU, the Lebanese government agreed to issue a temporary residence permit to asylum seekers and the UNHCR works to find durable solutions for the refugees.[105]

Despite its MOU with the UNHCR, Lebanon has reversed its longstanding open-door policy for Syrian nationals. In 2015, it began imposing visa-like restrictions on Syrians[106] and has closed its border with Syria on and off since 2013.[107] In 2016, newly elected president, Michel Aoun, called for Syrians to return to Syria despite the ongoing conflict.[108] Aoun and other political leaders in Lebanon have also supported the creation of safe zones in Syria where refugees could return.[109]

B. Europe

With limited prospects in the states of first asylum and closing borders, a wave of Syrian refugees migrated into Europe in high numbers, either taking the Balkan Route[110] or the risky journey across the Mediterranean Sea.[111] In 2015 alone, it was estimated that more than one million migrants and refugees arrived in Europe hoping to be granted asylum there.[112] European leaders are divided on how best to respond to the sudden influx of human beings and took varying approaches to the crisis.[113] Some European countries opened their doors to the refugees without limits; other countries limited the number of refugees they were willing to accept; and a number more took measures to close their borders to refugees all together.[114]

---

104. UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, UNHCR COUNTRY OPERATIONS PLAN 2004 – LEBANON 4 (2003).

105. *Id.*

106. *Syria Events of 2016*, HUM. RTS. WATCH, https://www.hrw.org/world-report/2017/country-chapters/syria#634b1d (last visited Mar. 31, 2018).

107. Elena Fiddian-Quasmiyeh, *Syrian Refugees in Turkey, Jordan and Lebanon Face an Uncertain 2017*, REFUGEE HOSTS (Jan. 3, 2017), https://refugeehosts.org/2017/01/03/syrian-refugees-in-turkey-jordan-and-lebanon-face-an-uncertain-2017/.

108. *Id.*

109. *Id.*

110. The Balkan Route into Europe begins in Turkey. From there migrants cross through Macedonia, Serbia, and Hungary before reaching Austria. *See Europe Migrants: Tracing Perilous Balkan Route to Germany*, BBC NEWS (Aug. 26, 2015), http://www.bbc.com/news/world-europe-34039968 [hereinafter *Europe Migrants*].

111. Data Team, *Migration to Europe: Death at Sea—How Many Migrants Are Dying Trying to Reach Europe?*, ECONOMIST (Sept. 3, 2015), http://www.economist.com/blogs/graphicdetail/2015/09/migration-europe-0.

112. *Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC NEWS (Mar. 4, 2016), http://www.bbc.com/news/world-europe-34131911.

113. Ian Traynor and Nicholas Watt, *European States Deeply Divided on Refugee Crisis Before Key Summit,* GUARDIAN (Feb. 17, 2016), https://www.theguardian.com/world/2016/feb/17/european-states-deeply-divided-on-refugee-crisis-ahead-of-summit.

114. *Id.*

Twenty-eight of the forty-four European countries[115] are members of the European Union. Since 1999, the European Union (EU) has worked to reform its asylum legislation to establish a Common European Asylum System (CEAS).[116] Under the CEAS, protection is granted to migrants who meet the criteria of a refugee based upon a well-founded fear of persecution.[117] Subsidiary protection status is granted to migrants who do not meet the refugee criteria but face a real risk of suffering serious harm if returned to his or her country of origin.[118] The CEAS is made up of several directives and regulations that require action by the EU Member States or are directly applicable within their national legal systems. New rules have recently been adopted by the parties, establishing standards and cooperation to ensure that asylum seekers are treated equally throughout the EU.[119]

Despite efforts to create a consistent body of protections throughout the EU, the Union was not prepared for the current refugee crisis and significant division exists as to the best and most equitable way to resettle the refugees.[120] The next section will discuss Hungary, the United Kingdom, and Germany to illustrate the range of responses found in Europe and, more specifically, the EU, Hungary, and the United Kingdom took protective measures to slow the influx of refugees. Adding to the chaos, Germany opened its doors without placing limits on the number of refugees they were willing to accept, causing a mass migration through the maze of open and shut states to the German border.[121]

---

115. *UNSD — Methodology*, UNSTATS.UN.ORG, https://unstats.un.org/unsd/methodology/m49/ (last visited Apr. 20, 2017).

116. European Commission, *Common European Asylum System*, EUROPA.EU, https://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en (last updated Mar. 31, 2018).

117. *Id.*

118. *Id.*

119. These revised regulations include the revised Asylum Procedures Directive, which aims for fair and efficient asylum decisions; the revised Reception Conditions Directive, which ensures humane reception and respect for fundamental rights of the asylum seekers across the EU; the revised Qualification Directive which clarifies the grounds for granting international protection; the revised Dublin Regulation which enhances the protection of asylum seekers during the process of establishing the state responsible for examining the application and clarifies the rules governing the relations between states; and the revised Eurodac Regulation that allows law enforcement access to the EU database of the fingerprints of asylum seekers under strictly limited circumstances in order to prevent, detect or investigate the most serious crimes, such as murder and terrorism. *See id.*

120. *Understanding Migration and Asylum in the European Union*, OPEN SOC'Y FOUND., https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union (last updated Dec. 2016).

121. Rick Noack, *Germany Said It Took in More than 1 Million Refugees Last Year. But It Didn't*, WASH. POST (Sept. 30, 2016), https://www.washingtonpost.com/news/worldviews/wp/2016/09/30/germany-said-it-took-in-more-than-1-million-refugees-last-year-but-it-didnt/?utm_term=.b2c3e1bba421.

1. Hungary

Hungary's response to the Syrian refugee crisis is possibly the most criticized by other members of the EU and human rights groups. In 2015, Prime Minister Viktor and members of the Hungarian Cabinet declared a state of emergency.[122] The government installed razor wire fences on its borders with Serbia and Croatia to stop the flow of thousands of refugees and reinforced its borders with soldiers and police.[123] Government officials also instituted harsher penalties for illegal crossings, including jail time.[124]

Hungary is party to the 1951 Convention and the Optional Protocol.[125] They are also a member of the EU[126] and bound by the CEAS. Despite its commitments under the Dublin Regulation,[127] Hungary passed new legislation in March of 2017 authorizing the detention of asylum-seekers on its borders until their applications are processed.[128] Pending decision on their cases, the asylum-seekers will be held in border camps and not be permitted to move freely about the country. If they choose to leave Hungary, they are only authorized to leave through a border gate to Serbia, a non-EU country where the asylum-seekers cannot benefit from the Schengen agreement which allows for free movement throughout Europe. [129]

---

122. Jane Onyanga-Omara, *Hungary Declares State of Emergency Amid Migrant Crisis*, USA TODAY (Sept. 15, 2015), http://www.usatoday.com/story/news/world/2015/09/15/hungary-migrants-state-of-emergency/72295914/.

123. *Id.*

124. *Hungarian Refugee Detention Bill Comes into Force*, WORLD BULL. (Mar. 28, 2017), http://www.worldbulletin.net/world/186989/hungarian-refugee-detention-bill-comes-into-force [hereinafter *Detention Bill*].

125. *States parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol,* UNHCR, http://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html (last visited Apr. 15, 2018).

126. *EU Member Countries in Brief,* EUROPEA.EU, https://europa.eu/european-union/about-eu/countries/member-countries_en (last visited Dec. 18, 2017).

127. The Dublin Regulation was created to determine which EU State is responsible for examining an asylum application. This examination normally occurs in the State where the asylum seeker first entered the EU and to ensure that all asylum claims get a fair examination in one Member State. *See The Dublin Regulation: Asylum in Europe—Now It's Up to You*, UNHCR, http://www.unhcr.org/4a9d13d59.pdf (last visited Apr. 19, 2017).

128. *Detention Bill, supra* note 121. *See Schengen Agreement*, SCHENGEN VISA INFO, http://www.schengenvisainfo.com/schengen-agreement/ (last visited Dec. 18, 2017).

129. The Schengen Agreement allows for the free movement between many European countries. Schengen Countries include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland and Liechtenstein. *Id.*

2. The United Kingdom

Despite its longstanding role in the development of international human rights law and commitment under the 1951 Convention and its Optional Protocol, Britain has only pledged to accept 20,000 refugees over the course of five years.[130]

The UK's Immigration Act of 1971, and the Immigration Rules, create the statutory basis for immigration law in the United Kingdom.[131] Yet, these laws are "fluid" and "change frequently."[132] This is significant because changing opinion often coincides with changing refugee policy. For instance, the United Kingdom saw a drastic increase in the number of refugees entering the country in the early 2000s. In 2002, the number of refugees peaked with 84,132 cases filed. [133] The Parliament reacted by increasing the difficulty of gaining refugee and asylum status in the United Kingdom and decreasing the benefits allotted to each group.[134] The United Kingdom has also restricted the geographical areas where refugees and asylum seekers can live, thus concentrating them into peripheral provinces. For instance, the two areas with the highest number of refugees coincide with the nation's poorest districts.[135] The United Kingdom also passed the Refugee or Person in Need of International Protection Regulations in 2006, which amended the definition of a refugee from the 1951 Convention. The policy expanded on the definition outlined in the 1951 Convention, adding that a refugee must have no reasonable grounds to be considered a national threat where subsequent refusal of his application would force him to leave to an area where he would be threatened.[136] These policy changes had startling results—in 2010, the number of cases filed dropped to 17,916.[137] Applicants who are successful in their claim for refugee status gain permission to reside in the United Kingdom for a period of at least five years, with access to welfare benefits and the right to work.[138]

---

130. Jon Stone, *Britain Is Not Taking Enough Syrian Refugees, Peter Mandelson Says*, INDEP. (Mar. 1 2016), http://www.independent.co.uk/news/uk/politics/britain-is-not-taking-enough-syrian-refugees-peter-mandelson-says-a6904706.html.

131. Clare Feikert-Ahalt, *Refugee Law and Policy: United Kingdom*, LIB. OF CONGRESS (Mar. 2016), http://www.loc.gov/law/help/refugee-law/unitedkingdom.php.

132. *Id.*

133. OLIVER HAWKINS, HOUSE OF COMMONS LIBR., ASYLUM STATISTICS 6 (2017), http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01403#fullreport.

134. Stone, *supra* note 127.

135. *Marginal Benefits*, ECONOMIST (Feb. 13, 2016), http://www.economist.com/news/britain/21692914-asylum-seekers-are-sent-poorest-parts-britain-what-happens-next-marginal-benefits.

136. Feikert-Ahalt, *supra* note 128.

137. *Id.*

138. *Id.*

In response to the Syrian Refugee Crisis, the United Kingdom developed a new program to address Syrian refugees seeking asylum and refugee status in the United Kingdom. The new program, the Syrian Vulnerable Persons Refugee Scheme, allows particularly vulnerable Syrians, such as those who are "victims of sexual violence and torture, the elderly, and the disabled" to come to the United Kingdom.[139] Previously, the United Kingdom's policy was to continue to provide humanitarian aid to Syria and the surrounding countries. As a testament to their donor capability, the United Kingdom is the second largest humanitarian donor to Syria and the surrounding region, donating approximately $1.85 billion per year to aid refugees.[140]

The Syrian Vulnerable Persons Refugee Scheme was expanded on September 7, 2015, to accept 20,000 Syrian refugees in the country over the next five years.[141] The program only applies to refugees who are in Syria and the surrounding areas and does not consider refugees who are already in Europe or are a part of another program. The program selects refugees from a predetermined list provided by the UNHCR. Upon recommendation from the UNHCR, the Home Office will conduct further checks on eligibility and place refugee applicants into a suited internal program for resettlement.[142]

While the United Kingdom has made significant policy changes to accommodate an influx in refugees and has remained one of the largest donors in support of refugees, increasing anti-refugee public sentiment poses a potential threat to future UK policies. One of the principal reasons for the British referendum in support of leaving the European Union was a fear that the European Union was incapable of managing the refugee crisis, placing the United Kingdom at a security risk.[143]

3. Germany

Unlike many of its European partners, Germany opened its doors to more than 890,000 refugees in August 2015.[144] It was among 29 nations accepting Syrian refugees at the time, but was one of the few that did not place limits on the numbers it was willing to accept.[145]

---

139. *Id.*
140. *Id.*
141. *Id.*
142. Feikert-Ahalt, *supra* note 128.
143. Jacob Poushter, *European Opinions of the Refugee Crisis in 5 Charts*, PEW RES. CTR. (2016), http://www.pewresearch.org/fact-tank/2016/09/16/european-opinions-of-the-refugee-crisis-in-5-charts/.
144. Noack, *supra* note 118.
145. Casper Rigsby, *Germany Opens Borders for Syrian Refugees*, INQUISITR (Sept. 7, 2015), http://www.inquisitr.com/2398087/germany-opens-borders-for-syrian-refugees/.

Germany is a party to both the 1951 Convention and 1967 Optional Protocol.[146] Its international commitment to asylum is incorporated into its federal law. Specifically, Article 16a of Germany's Basic Law states that the right to asylum is a constitutional right granted to everyone fleeing "political persecution."[147] In addition, Germany has implemented two acts concerning the status of refugees—the Asylum Act, which codifies the process and consequences of granting and denying asylum, and the Residence Act, which provides the rules concerning the entry, stay, exit, and employment of foreigners. According to German law, an asylum seeker is allowed to stay in Germany so long as he or she is granted political asylum, refugee status, or subsidiary protection.[148]

In August 2015, German Chancellor Angela Merkel pledged to provide refuge to anyone fleeing Syria or persons seeking protection from violence and warfare elsewhere.[149] Chancellor Merkel's "open door" policy was modified in February 2016, when the German government passed the Asylum Procedures Acceleration Act, also known as "Asylpaket II," which was designed to accelerate the asylum process in Germany and reform integration policies for refugees.[150] Under Asylpaket II, more Syrians were able to attend hearings and it became apparent that many were fleeing civil war and not actual persecution. As a result, many Syrian refugees now receive subsidiary protection instead of full asylum.[151] Subsidiary protection is granted to those who cannot show that they have been personally persecuted, such as those fleeing general situations like civil war. Although Germany will not send Syrians nationals back to their war-torn country, persons only entitled to subsidiary protection status receive a renewable one-year-permit and are required to wait two years before being allowed to bring their families to Germany.[152] According to Die Linke, an opposition party in Germany's parliament, a total of 43,300 Syrians have appealed their status decisions in hopes of being recognized as a refugee.[153]

---

146. *Convention Relating to the Status of Refugees*, *supra* note 23.

147. Jenny Gesley, *Refugee Law and Policy: Germany*, LIB. OF CONGRESS (Mar. 2016), https://www.loc.gov/law/help/refugee-law/germany.php.

148. *Id.*

149. Nicola Abé et al., *Mother Angela: Merkel's Refugee Policy Divides Europe*, SPIEGEL ONLINE (Sept. 21, 2015), http://www.spiegel.de/international/germany/refugee-policy-of-chancellor-merkel-divides-europe-a-1053603.html.

150. Jenny Gesley, *supra* note 144.

151. Bleiker Carla, *Thousands of Refugees Are Suing Germany*, DW.COM (Apr. 1, 2017), http://www.dw.com/en/thousands-of-refugees-are-suing-germany/a-37004504.

152. *Id.*

153. Christina Ruta, *Germany's Revamped Asylum Law, One Year Later*, DW.COM (Feb. 26, 2017), http://www.dw.com/en/germanys-revamped-asylum-law-one-year-later/a-37722393.

C. North America and Beyond

Most countries are geographically separated from the Syrian conflict, thus spared from the influx of refugees seen in the states of first asylum in the Middle East and later in Europe. In recognition of the heavy burden placed upon certain countries, other states are bound to cooperate toward a "satisfactory solution."[154] Unfortunately, there has been limited international burden-sharing of refugee resettlement. Some countries have accepted modest amounts, but many countries have not agreed to accept any Syrian refugees for resettlement. This list below discusses the immigration policies of Canada and the United States. Afterwards, notable countries that are currently not accepting Syrian refugees will be discussed briefly.

1. Canada

Similar to Britain and Germany, Canada has a longstanding history of commitment and compliance with international refugee law. Canada is party to the 1951 Convention and its 1967 Protocol. Internally, Canada has adopted numerous statutes, which create a robust refugee and asylum system where almost 100 percent of claimants receive a formal hearing and free legal advice.[155]

In May 2001, the Canadian Parliament passed the Immigration and Refugee Protection Act.[156] It was created "to permit Canada to pursue the maximum social, cultural and economic benefits of immigration . . . "[157] The current Canadian refugee system is composed of the Refugee Humanitarian Resettlement Program and the In-Canada Asylum Program. The Refugee Humanitarian Resettlement Program assists applicants who are actively seeking protection from areas outside of Canada. The In-Canada Asylum Program assists individual seeking refugee protection claims from within Canada.[158] Unlike other countries, private organizations play an important role in refugee resettlement in Canada, through programs such as the Sponsorship Agreement Holders program and Groups of Five.[159] These groups all seek to provide refugees placement and other necessities. Private sponsorship helps to ease the transition of refugees from life in refugee camps to

154. *Convention Relating to the Status of Refugees*, *supra* note 23.

155. James Bissett, *Canada's Asylum System: A Threat to American Security?*, CTR. FOR IMMIGR. STUD. (May 1, 2012), http://cis.org/articles/2002/back402.html.

156. Immigration and Refugee Protection Act, R.S.C. 2001, c. 27 (Can.).

157. *Id.*

158. *How Canada's Refugee System Works*, GOV'T OF CAN., http://www.cic.gc.ca/ENGLISH/refugees/canada.asp (last visited Apr. 20, 2017).

159. *Canada's Sponsorship System*, ORCA, http://orcabc.org/canadas-sponsorship-system/ (last visited Apr. 20, 2017).

normalcy in Canada. These programs also aid refugees and communities by decreasing the initial strain on the community from refugee placement. All benefits afforded to refugees underneath private programs are in addition to government assistance and enable Canadians to ensure protection and permanent housing to refugees who may not have received the opportunity.[160]

In recent years, Canada has increased its refugee intake to ease the burden of refugees from the Syrian Civil War and other conflicts. Between 2005 and 2014, Canada accepted 263,702 refugees.[161] Despite the rise in refugee acceptance, Canada still maintained a strong economy and other factors indicative of a thriving state. In response to the heightened severity of the Syrian Refugee Crisis, Canada increased its acceptance of Syrian refugees in late 2015 and implemented new legislation to ameliorate the strain Syrian refugees placed on their already extended refugee programs. Toward the end of 2015, the Canadian government announced that "[Canada] would resettle 10,000 Syrian refugees by the end of 2015 and another 15,000 by the end of February 2016."[162] On February 29, 2016, the Canadian government had reached their intended target. To implement this plan, Canada worked extensively with the UNHCR to "identify people in Jordan and Lebanon," who were considered low-risk refugees, and accepted them into Canada's Resettlement Program.[163] Single, unaccompanied men were excluded from the program, placing preference on women, children, and the disabled.[164]

2. The United States

The United States joined the international refugee regime in 1968 by ratifying the 1967 Optional Protocol to the 1951 Convention on the Status of Refugees.[165] Refugee admissions and resettlement into the United States is authorized and governed by the Immigration and Nationality Act (I.N.A.),

160. Tariq Ahmad, *Refugee Law and Policy: Canada*, LIB. OF CONGRESS (Mar. 2016) https://www.loc.gov/law/help/refugee-law/canada.php.

161. Daniel Schwartz, *Canada's Refugees by the Numbers: The Data*, CBC NEWS (Oct. 4, 2015), http://www.cbc.ca/news/canada/canada-s-refugees-by-the-numbers-the-data-1.3240640.

162. Ahmad, *supra* note 157.

163. *Id.*

164. *Id.*

165. Joan Fitzpatrick, *The International Dimension of U.S. Refugee Law*, 15 Berkeley J. of Int'l L. 1, 1 n.1 (1997) ("Protocol relating to the Status of Refugees, done Jan. 31, 1967, entered into force Oct. 4, 1967, 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 [hereinafter Protocol]. US ratification of the Protocol bound it to respect Articles 2 through 34 of the 1951 Convention relating to the Status of Refugees, done July 28, 1951, entered into force Apr. 22, 1954, 189 U.N.T.S. 137").

which was amended by the Refugee Act of 1980.[166] The 1980 Act, which was passed to end the ad hoc approach characteristic of U.S. refugee policy dating back to WWII, aimed to create a uniform procedure for refugee admissions and to authorize federal assistance for refugee resettlement and promote refugee self-sufficiency.[167]

Modeled after the definition found in the 1951 Convention, a "refugee" is described under the I.N.A. as a person who is outside his or her country and who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.[168]

Refugees are processed and admitted to the United States from outside the country with the help of UNHCR.[169] The UNHCR has first contact with the refugees outside of the United States. They assess individual refugee claims and, in some cases, refer the case to the United States (or other nations) for resettlement. In addition to interviewing refugees, the UNHCR collects biometric data and seeks to determine if the refugees fall into one of 45 categories of concern.[170]

Under the INA, the President has the power to determine the number of refugees admitted into the United States after appropriate consultation with Congress and prior to the new fiscal year. The President makes this determination based upon humanitarian concerns or other national security interests.[171] In the case of an unforeseen refugee situation that cannot be accommodated by the existing ceiling, the President is also granted the power to fix a number of refugees that may be admitted during the succeeding period in response to that emergency.[172] Conversely, the INA also grants the President the power to suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate, if he finds that the entry of any

166. Immigration and Nationality Act, ch. 477, Pub. L. No. 414, 66 Stat. 163 (codified as amended at 8 U.S.C. §§1101 *et seq.*); Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

167. Anastasia Brown & Todd Scribner, *Unfulfilled Promises, Future Possibilities: The Refugee Resettlement System in the United States*, 2 J. ON MIGRATION AND HUM. SECURITY 101, 102 (2014).

168. 8 U.S.C. § 1101(42) (2014).

169. *See Who We Help*, UNHCR, http://www.unhcr.org/en-us/who-we-help.html (last visited Dec. 19, 2017). In contrast, an asylum seeker is a person who meets the refugee criteria, but is physically present in the United States.

170. Molly O'Toole, *Are Refugees Really a 'National Security' Threat to America?*, UNHCR (Nov. 10, 2015), http://www.unhcr.org/cgi-bin/texis/vtx/refdaily?pass=52fc6fbd5&id=561b46b25.

171. 8 U.S.C. § 1157(a)(3).

172. 8 U.S.C. § 1157(b).

aliens or of any class of aliens into the United States would be detrimental to the interests of the United States.[173]

Following the terrorist attacks on September 11, 2001, the United States refugee program was significantly updated to ensure national security despite the fact that none of the attackers had entered the country as a refugee.[174] Refugee admissions were suspended pending a review of refugee-related security procedures and implementation of enhanced security measures.[175] As an obvious result, United States refugee admissions plummeted from 70,000 in fiscal year 2001 to historic lows. In fiscal year 2002, for example, refugee admissions totaled a mere 27,131.[176] Admissions subsequently rebounded with resettlements nearing the 70,000 ceiling set for fiscal years 2013, 2014, and 2015.[177]

By mid-2015, the Syrian Refugee crisis had reached the shores of Europe, with an estimated 350,000 seeking refuge beyond the camps of Jordan, Turkey, and Lebanon.[178] Under significant pressure from the international community to assist with resettlement, President Barack Obama vowed to take in at least 10,000 displaced Syrians over the next year. He issued a Presidential Determination increasing the refugee ceiling to 85,000[179] and by

---

173. 8 U.S.C. § 1182(f) (2013).

174. MICHELLE MITTELSTADT ET AL., THROUGH THE PRISM OF NATIONAL SECURITY: MAJOR IMMIGRATION POLICY AND PROGRAM CHANGES IN THE DECADE SINCE 9/11 1 (Migrant Policy Institute 2011).

175. ANDORRA BRUNO, REFUGEE ADMISSIONS AND RESETTLEMENT POLICY 2 (2017), https://fas.org/sgp/crs/misc/RL31269.pdf.

176. *Id*.

177. *Id.*

178. Krishnadev Calamur, *The U.S. Response to Syria's Refugee Crisis: The White House Says It Is Preparing to Accept at Least 10,000 Refugees in the Next Fiscal Year*, ATLANTIC (Sept. 10, 2015), https://www.theatlantic.com/national/archive/2015/09/the-us-response-to-syrias-refugees/404728/.

179. Office of the Press Sec'y, *Presidential Determination -- Presidential Determination on Refugee Admissions for Fiscal Year 2016*, OBAMAWHITEHOUSE.ARCHIVES.GOV (Sept. 29, 2015), https://obamawhitehouse.archives.gov/the-press-office/2015/09/29/presidential-determination-presidential-determination-refugee-admissions. The Determination does not specifically state that 10,000 Syrian refugee will be admitted. Instead, it states more generally that "[t]he admissions numbers shall be allocated among refugees of special humanitarian concern to the United States in accordance with the following regional allocations; provided that the number of admissions allocated to the East Asia region shall include persons admitted to the United States during FY 2016 with Federal refugee resettlement assistance under section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 1988, as contained in section 101(e) of Public Law 100-202 (Amerasian immigrants and their family members): Africa 25,000, East Asia 13,000; Europe and Central Asia 4,000; Latin America/Caribbean 3,000; Near East/South Asia 34,000; Unallocated Reserve 6,000. The 6,000 unallocated refugee numbers shall be allocated to regional ceilings, as needed. Upon providing notification to the Judiciary Committees of the Congress, you are hereby authorized to use unallocated admissions in regions where the need for additional admissions arises." *Id.*

August 29, 2016 the United States accepted its 10,000th Syrian refugee one month ahead of schedule.[180] Vowing to do more in 2017, President Obama increased the fiscal year 2017 ceiling to 110,000 in his September 28, 2016 Presidential Declaration.[181] By December of 2016, the United States was on-track to reach the 2017 ceiling, with an estimated 26,000 refugees having been accepted during the first quarter.[182]

After taking office in January 2017, President Trump exercised his powers under 1182(f).[183] On January 30, 2017, he issued an order calling for a 90-day travel ban for persons coming from Iraq, Syria, Iran, Somalia, Sudan, Yemen and Libya. Specifically relevant to refugees, the order placed a 120 day suspension on acceptance of all refugees regardless of origin and an indefinite suspension on refugees traveling from Syria.[184] It also reduced the fiscal year 2017 ceiling from 110,000 to 50,000.[185] After significant political backlash and legal action, he issued a revised order on March 6, 2017. The new order retained the 120-day suspension on refugees, but it removed the indefinite suspension for Syrian refugees. Additionally, the order also retained the reduction in the fiscal year ceiling and limited the number of accepted refugees to 50,000.[186] At the time the order was issued, the United States had accepted 37,027 refugees; 5,557 of those refugees were Syrian.[187] Now that the 120-day suspension has been lifted, the United States will open its doors for a mere 12,973 refugees in the remainder of the fiscal year.

While critics complain that the United States, the United Kingdom, or even Canada should do more to help the Syrian refugees, it must be noted that those countries have at least opened their doors to some refugees. Most countries across the globe, including some of the wealthiest, have not done the same. For example, Japan was the second largest contributor of financial support to the UNHCR in 2014, donating the equivalent of $181.6 mil-

---

180. Allie Malloy, Elise Labott & Laura Koran, *US Welcomes Its 10,000th Syrian Refugee Ahead of Schedule*, CNN (Aug. 29, 2016), http://www.cnn.com/2016/08/28/politics/syrian-refugees-resettling-us-obama-administration/.

181. Office of the Press Sec'y, *Presidential Determination–Refugee Admissions for Fiscal Year 2017*, OBAMAWHITEHOUSE.ARCHIVES.GOV (Sept. 28, 2016), https://obamawhitehouse.archives.gov/the-press-office/2016/09/28/presidential-determination-refugee-admissions-fiscal-year-2017.

182. Phillip Connor & Jens Manuel Krogstad, *U.S. on Track to Reach Obama Administration's Goal of Resettling 110,000 Refugees this Year*, PEW RES. CTR. (Jan. 20, 2017), http://www.pewresearch.org/fact-tank/2017/01/20/u-s-on-track-to-reach-obama-administrations-goal-of-resettling-110000-refugees-this-year/.

183. 8 U.S.C. § 1182(f).

184. Exec. Order No. 13769, 82 Fed. Reg. 8977 (Jan. 27, 2017).

185. *Id.*

186. Exec. Order No. 13780, 82 Fed. Reg. 13209 (Mar. 6, 2017).

187. *Admissions & Arrivals*, REFUGEE PROCESSING CTR., http://www.wrapsnet.org/admissions-and-arrivals/ (last visited Apr. 20, 2017).

lion.[188] Despite its significant financial contribution, Japan only accepted six Syrian asylum seekers who made it to Japan and not a single refugee for resettlement from the states of first asylum.[189] Japanese Prime Minister Shinzo Abe justified his country's inaction by explaining that Japan needed to look after its own citizens first.[190] Similarly, Russia has contributed to military action in Syria, but it has offered zero resettlement places for Syrian refugees. Russian officials unapologetically explained that receiving Syrian refugees is simply not on the Russian agenda.[191]

IV. THE IMPACT OF THE PATCHWORK OF STATE REFUGEE LAWS AND POLICIES

> "EXPRESSING the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States . . ."[192]

The Syrian refugee crisis has trampled the Middle East, cost thousands of innocent lives, exhausted the resources of neighboring states and damaged the foundation of the European Union. Despite the devastating toll on humanity and potential for disastrous results, many nations cling to state sovereignty and national security to justify their opposition to more generous refugee resettlement policies, while other nations have opened their borders, at times encouraging thousands of asylum seekers to move through Europe with little, if any, screening. Ultimately, both approaches pose a significant threat to international security by allowing some states to become overwhelmed and encouraging irregular migration to surge and extremist rhetoric to flourish.

A. Overburdened States of First Asylum

Turkey, Jordan, and Lebanon are stretched beyond the limits of their resources. The infrastructure, including water, sewage, electricity, and edu-

188. Adam Taylor, *Japan Has Accepted Only Six Syrian Refugees. Meet One of Them,* WASH. POST (Oct. 27, 2017), https://www.washingtonpost.com/world/asia_pacific/the-singular-life-of-a-syrian-refugee-in-japan/2016/10/26/be0c6699-09f3-4a05-abeb-cad076b4cc02_story.html?utm_term=.34847f8e366a.

189. *Id.*

190. *Id*.

191. *Russia: Failing to Do Fair Share to Help Syrian Refugees*, HUM. RTS. WATCH, (Sept. 14, 2016) https://www.hrw.org/news/2016/09/14/russia-failing-do-fair-share-help-syrian-refugees.

192. *Convention Relating to the Status of Refugees*, *supra* note 23, preamble.

cation, of these states is overwhelmed.[193] As a direct consequence of the overcrowding and limited financial opportunities in the first line states, the refugees have naturally begun migrating to Europe in large numbers. Since 2015, Germany has opened its doors to more than 1,000,000 refugees, not only from Syria, but from Afghanistan, Iraq, and Eritrea. Greece was overrun by more than 800,000 Syrian refugees in 2016. Italy is overwhelmed with refugees escaping persecution and failed states in Africa.[194] The number of refugees is staggering, leaving the host nations on the brink of disruption to their political order.[195] Given the sheer number of refugees in their territories, countries are struggling to ensure refugees receive adequate protection afforded under the 1951 Convention or UDHR.[196] Further adding to the instability, tensions between the local populations and the refugees is on the rise, and many states are opting to close their borders.

1. Human Rights Concerns

Many, and perhaps most, of the Syrian refugees are living in desperate conditions, even those who have made it to Europe. The United Nations estimates that only one out of every ten Syrian refugees lives in a refugee camp, leaving the rest to settle in foreign and unfamiliar environments.[197] Their locations vary, spanning from cities to towns, urban to rural areas. Out of camp, refugees are faced with a range of shelter conditions, and varied access to services. In Lebanon, for example, many refugees live in informal settlements in crude shelters with limited access to water and sanitation services. Of particular concern to human rights organizations, many of those refugees are living in flood zones and or unstable areas with the potential for conflict.[198] Their precarious circumstances make them highly susceptible to protective risks and economic pressures.[199]

---

193. *See* MICHAEL IGNATIEFF ET AL., THE UNITED STATES AND THE SYRIAN REFUGEE CRISIS: A PLAN OF ACTION (2016).

194. *Id.* at 3.

195. *Id.* at 8.

196. Jordan, Iraq, Lebanon, and Turkey do not have legal obligations to the Syrian refugees pursuant to the 1951 Convention or the Optional Protocol; however, they are bound to protect the fundamental human rights as reflected in the UDHR. The UDHR is considered to be a statement of customary international law. *See* Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT'L & COMP. L. 287, 323–24 (1995).

197. Mercy Corps, *Quick Facts: What You Need to Know About the Syria Crisis* (Mar. 9, 2017) https://www.mercycorps.org/articles/iraq-jordan-lebanon-syria-turkey/quick-facts-what-you-need-know-about-syria-crisis.

198. JEFF CRISP ET AL., FROM SLOW BOIL TO BREAKING POINT: A REAL-TIME EVALUATION OF UNHCR'S RESPONSE TO THE SYRIAN REFUGEE EMERGENCY 13 (2013), http://www.unhcr.org/52b83e539.pdf.

199. *Id.* at 3.

Life in the refugee camps is not always better than in the settlements. By most reports, the conditions in refugee camps are deplorable. The camps are overcrowded and often lack running water, electricity, and other necessities,[200] leaving the refugees trapped in an environment arguably worse than their war-torn homeland. For example, refugees at Domeez camp in Iraq were found to be at high risk of contracting communicable diseases such as measles and meningitis, due to extreme overcrowding.[201] Doctors determined that camp conditions were inadequate and residents did not have access to clean water.[202] Conditions in Greek refugee camps are even more alarming. A recent report from the Refugee Rights Data Project indicates that refugees' personal security, health, and wellbeing are at risk.[203] Despite cold temperatures, refugees are still living in summer-weight tents, which pose a significant fire threat.[204] Camp residents lack privacy, basic necessities, and are exposed to raw sewage.[205] NGO workers also report that women and children have gone missing, probably falling victim to human traffickers.[206] In Jordan, camps are run by the government and the United Nations, offering more structure and support than other countries, but many families still feel trapped in the overcrowded situation.[207]

Employment opportunities for the Syrian refugees are limited by many of the host nations. In 2016, Turkey and Jordan finally agreed to issue Syrian nationals work permits, but only did so in exchange for financial aid and other economic benefits.[208] However, employers apply for the permits on behalf of Syrian employees after their residency, registration, and health requirements are met.[209] In both countries, employers agree to pay minimum

---

200. *See Finding Solutions for Syrian Refugees: Resettlement, Humanitarian Admission, and Family Reunification*, UNHCR (Oct. 18, 2013), http://www.refugee.org.uk/sites/default/files/Fact%20sheet%20on%20resettlement-humanitarian%20admissions%20Syrian%20refugees%20-%2018%20D%20%20.pdf.

201. *Id.*

202. Medicins sans Frontieres, *Iraq: Poor Living Conditions in Domeez Camp Put Health of Syrian Refugees at Risk* (May 15, 2013), http://www.msf.org/en/article/iraq-poor-living-conditions-domeez-camp-put-health-syrian-refugees-risk.

203. Rachel Banning-Lover, *Greek Refugee Camps Remain Dangerous and Inadequate, Say Aid Workers*, GUARDIAN (Feb. 10, 2017), https://www.theguardian.com/global-development-professionals-network/2017/feb/10/greek-refugee-camps-dangerous-inadequate-aid-workers.

204. *Id.*

205. *Id.*

206. *Id.*

207. Mercy Corps, *supra* note 194.

208. Omer Karasapan, *Syrian Refugees and the Promise of Work Permits,* BROOKINGS INST. (June 20, 2016), https://www.brookings.edu/blog/future-development/2016/06/20/syrian-refugees-and-the-promise-of-work-permits/.

209. *Id.*

wage and social security payments, and to renew the permits annually.[210] Unfortunately, there is little incentive for the employers to take these steps since the majority of Syrian nationals in these countries are willing to work in low-skill, low-wage labor markets where the pay is below the minimum wage.[211] As a result, a large percentage of the Syrian refugees continue to live in acute poverty in Turkey and Jordan.[212] In Lebanon, Syrian nationals are obligated to pay a prohibitive fee annually to work. As a result, adults either do not work or work illegally, risking deportation if caught.[213]

Education prospects for Syrian children in Turkey, Jordan, and Lebanon are also grim. It is currently estimated that there are 1.5 million school-age children among the Syrian refugee population living in the states of first asylum. Of that 1.5 million, only half have access to formal education.[214] While host nations have taken steps to increase refugee enrollment, barriers such as language difficulties, transportation, religious accommodation, child marriage, and child labor keep children out of the classroom.[215] Alarming recent statistics indicate rates of child marriage among refugee girls have doubled from 12% to 26%.[216] Child labor among out-of-school children is rapidly worsening—one recent survey estimates that a third of the displaced children have become laborers, often working illegally in dangerous environments.[217] In light of the poor prospects in Turkey, Lebanon, and Jordan, many families opt to make what one writer describes as the "death voyage" to Europe where educational opportunities are better.[218]

2. Risk of Radicalization

Slow refugee resettlement also means many Syrian refugees will remain in refugee camps longer, which under the wrong conditions, increases the risk of radicalization. Many national security experts argue the refugee camps, in particular, are "incubators and recruitment centers for jihad ex-

210. *Id.*
211. *Id*.
212. Fiddian-Qasmiyeh, *supra* note 104. According to Fiddian-Qasmiyeh, 38% of Syrians in Turkey live in the poorest regions of that country where employment opportunities are at their worst. She also indicates that 93% of the Syrians living in Jordan, regardless of location, fall under the poverty line.
213. *Id.*
214. *Education for Syrian Refugee Children*, HUM. RTS. WATCH, https://www.hrw.org/tag/education-syrian-refugee-children (last visited Mar. 31, 2018).
215. *See* SHELLY CULBERTSON & LOUAY CONSTANT, EDUCATION OF SYRIAN REFUGEE CHILDREN (2015), http://www.rand.org/pubs/research_reports/RR859.html.
216. Gordon Brown, *Without Education Syrian Children Will Be a Lost Generation*, GUARDIAN (Jan. 12, 2016) https://www.theguardian.com/commentisfree/2016/jan/12/syria-refugee-children-lebanon-double-shift-schools.
217. *Id*.
218. *Id*.

tremism." [219] Fran Townsend, the former Assistant to President George W. Bush for Homeland Security and Counterterrorism and former Chair of the Homeland Security Council recently stated, "[t]o not bring the [Syrian] refugees in, right, you leave these people in desperate circumstances and you see the battlefield [sic] that are the refugee camps to the recruitment of ISIS, [and] al Qaeda over the long term."[220] In addition to evidence of Islamic State activity within camps, the above-mentioned human rights concerns increase the risk of radicalization. A recent RAND study evaluated factors that tend to foster radicalization and determined that six of those proved significant across the "worst cases" studied. Five of the six factors on their list are relevant to the Syrian refugee crisis including: host nation limits on refugees' rights and opportunities; inadequate security in and around camps; overcrowded and unsanitary living conditions; poor host nation economic situations; and limited education opportunities.[221] The longer refugees are confined in these camps, with substandard living conditions and poor employment prospects, the higher the risk that they may become discouraged and susceptible to radicalization.[222]

3. Tensions with Local Population

Initially, the response to the Syrian refugees in the first-line countries was welcoming and generous, especially considering that most are not party to the Refugee Convention.[223] Unfortunately, "as the influx has continued, infrastructure and services for health, education, shelter, water and sanitation have faced increased pressure; competition for jobs has increased and wages have fallen; and the cost of basic goods has risen."[224] Left unaddressed, experts predict "the strain will feed instability and trigger more violence across the region, which will have consequences for U.S. national security."[225] These negative side-effects have fueled tensions between the

219. IGNATIEFF ET AL., *supra* note 190.

220. Interview by John Dickerson with Fran Townsend, former Homeland Security Advisor to George W. Bush, FACE THE NATION (Nov. 22, 2015), https://www.cbsnews.com/news/face-the-nation-transcripts-november-22-feinstein-mccaul-mcgurk-paul/.

221. BARBARA SUDE, DAVID STEBBINS & SARAH WEILANT, LESSENING THE RISK OF REFUGEE RADICALIZATION: LESSONS FOR THE MIDDLE EAST FROM PAST CRIMES 5 (2015).

222. *Id*. at 11.

223. POLICY DEVELOPMENT AND EVALUATION SERVICE, FROM SLOW BOIL TO BREAKING POINT: A REAL-TIME EVALUATION OF UNHCR'S RESPONSE TO THE SYRIAN REFUGEE EMERGENCY 3 (2013).

224. *Id*.

225. Ryan C. Crocker, Opinion, *The Case for Accepting Syrian Refugees: The U.S. Vetting System Is Strong, and so Is the American Tradition of Welcoming the Oppressed*, WALL STREET. J. (Nov. 17, 2015), https://www.wsj.com/articles/the-case-for-accepting-syrian-refugees-1447803302. Crocker is a former ambassador to several Middle Eastern countries

local population and the refugees. Sadly, a rise in xenophobic offenses has been documented even in the most accepting countries. For example, Germany noted 3,500 attacks against refugees in 2016, up from 1,031 in 2015.[226] Of that number, 420 incidents were physical attacks upon refugees, including children, and 750 were acts of arson or property damage.[227]

B. Jihadist Narrative

Experts caution that such hostility toward the refugees can be easily exploited by jihadists.[228] The Islamic State sees the flight of Syrian refugees out of its controlled territory as a significant threat to the legitimacy of its so-called caliphate.[229] They have appealed to the Syrian nationals to return by trying to convince them that they will be abused by the 'infidels' and forced to convert.[230] Since it has failed to slow the mass exodus, the Islamic State is working to create a backlash against Syrian refugees in Europe and elsewhere.[231] By using "terror as a tool," they build upon Western fears and suspicions of people from Muslim countries.[232] So, they attack civilians in the streets of Paris, Brussels, London, or Orlando. The resulting intolerance and xenophobia has led to immigration restrictions, which in turn has sent a dangerous message that Muslim refugees are unwelcomed in the West.

State action, such as closing borders to the Syrian refugees, also reinforces the jihadist narrative that the West conspires to oppress Muslims across the world.[233] As Madeleine Albright, Henry Kissinger, David Petraeus, and other security experts argued in a joint letter to the U.S. Congress, "[c]ategorically refusing to take [refugees] only feeds the narrative of ISIS that there is a war between Islam and the West, that Muslims are not welcome in the United States and Europe, and that the ISIS caliphate is their

---

and current Dean of the George Bush School of Government & Public Service at Texas A&M University. *Id.*

226. Simon Cullen & Susannah Cullinane, *Germany: Thousands of Migrants Targeted in Attacks*, CNN (Feb. 27, 2017), http://www.cnn.com/2017/02/27/europe/germany-attacks-on-migrants/index.html.

227. *Id.*

228. SUDE & STEBBINS, *supra* note 218, at 12.

229. Donald Kerwin, *Treating Syrian Refugees as a National Security Threat: Do the Means Fit the End?*, CTR. FOR MIGRATION STUD. (2016), http://cmsny.org/publications/kerwin-syrians-national-security/.

230. *Id.*

231. *Id.*

232. Ana Diamond, *Closing the Borders Won't Help Fight Terrorism*, HARV. KENNEDY SCH. REV. (Feb. 24, 2017), http://harvardkennedyschoolreview.com/closing-the-borders-wont-help-fight-terrorism/.

233. Jared Malsin, *Experts Warn President Trump's Refugee Ban Could Backfire: ISIS 'Rubbing Their Hands with Glee'*, TIME (Jan. 28, 2017), http://time.com/4651729/president-trump-refugee-suspension-backfire/.

true home."[234] Anti-immigration policies provide the Islamic State with an opportunity to fill the void and advance its agendas across the region,[235] adding more fuel to the jihadist propaganda machine, and allowing them to lure new followers.[236] "If anything it's going to antagonize the narratives of terrorists. They're going to use this as further indication that we have a war with Islam, and they'll use that for marketing purposes."[237]

C. Irregular Migration

In addition to the dangers posed by overburdened nations and actions that feed into the jihadist narrative, another significant danger to individual, state, and international security is the irregular migration that is encouraged, in part, by inconsistent immigration policies. While there is no universally accepted definition of irregular migration, the term is often used to characterize "movement that takes place outside the regulatory norms of sending, transit and receiving countries."[238]

Denying legal migration allows human traffickers access to vulnerable persons, it increases crossing deaths, and makes it difficult for states to identify persons seeking admission into their territory.[239] Hundreds of thousands of Syrians desperate for better conditions have made the dangerous journey to Europe. To do so, it is estimated that almost 90% of the refugees paid criminals or smugglers to get them across borders, bypassing lawful channels.[240] Thousands have not survived the journey. In August of 2015, the bodies of 71 people believed to be Syrian nationals were found in an abandoned truck in Austria, and at least 300 were feared dead after trying to cross the rough seas of the Mediterranean in February of 2016.[241] Those who survive the irregular migration journey frequently report being victims of exploitation, violence, or abuse by their traffickers.[242]

---

234. Letter from twenty national security leaders, including Henry Kissinger, General David Patraeus (Ret.), Michael Chertoff, Madeleine Albright, and Leon Panetta to Members of Congress dated Dec. 1, 2015.

235. Diamond, *supra* note 229.

236. Malsin, *supra* note 230.

237. *Id*. Prior to his current position, Clint Watts was an FBI counterterrorism special agent and U.S. Army infantry officer. *Id*.

238. *Key Migration Terms*, INT'L ORG. FOR MIGRATION, https://www.iom.int/key-migration-terms (last visited Dec. 26, 2017).

239. Donald Kerwin, *How Robust Refugee Protection Policies Can Strengthen Human and National Security*, 4(3) J. ON MIGRATION & HUM. SECURITY 83, 119 (2016).

240. The European Commission, *The EU and the Migration Crisis* (July 2017), http://publications.europa.eu/webpub/com/factsheets/refugee-crisis/en/.

241. *Why Is EU Struggling with Migrants and Asylum*, BBC NEWS (Mar. 3 2016), http://www.bbc.com/news/world-europe-24583286.

242. *Id.*

By 2015, European states determined that trying to stop the relentless flow of Syrian asylum-seekers was futile and harmful. Led by Germany, members of the EU worked together to allow the unscreened masses to proceed to the countries in which they wanted to seek asylum.[243] By the end of that year, it was estimated that more than one million refugees had arrived in Europe by way of sea routes or the Balkans crossing.[244] Instead of regulating the flow, entry states accelerated refugee travel with little to no screening to other countries like Germany, where the borders were open to an unlimited number of asylum-seekers. While most of the refugees were simply trying to get to a safe place, the poorly regulated flow made it easy for potential jihadists to get onto European soil undetected.[245] DW, a German news agency, indicates that members of the Islamic State have "explored and exploited" the Balkan route into Europe, including two of the assailants in the Paris attacks.[246]

In 2016, EU support for the uncontrolled migration waned as hostility toward the refugees increased. Many countries, including Hungary, Serbia, Macedonia, and Austria began building fences to slow the influx of refugees into their countries.[247] In March 2016, the EU abruptly changed course and negotiated an agreement with Turkey to stop refugees from moving onward into Europe in exchange for significant financial support.[248] Unfortunately, that agreement failed to close the border and refugees again have to pay smugglers to get them across borders.

Frustrated with restrictive policies, many refugees have begun protesting and, in some cases, resorted to violence. In Greece, one man set himself ablaze to protest the deplorable living conditions.[249] In Jordan, protests commonly occur in the Zaatari refugee camp over poor conditions. In the same camp, a refugee was killed during a riot that occurred after police arrested a group of refugees who were trying to leave the camp. In Bulgaria, refugees clashed with police after their refugee center was sealed off following reports alleging outbreaks of disease among camp residents.[250] The new-

243. *Understanding Migration and Asylum in the European Union*, OPEN SOC'Y FOUND., https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union (last updated Dec. 2016).

244. HOMELAND SECURITY COMMITTEE, SYRIAN REFUGEE FLOWS: SECURITY RISKS AND COUNTERTERRORISM CHALLENGES 7 (2015).

245. *Id.*

246. *The Risk of Open Borders*, DW.COM (Aug. 24, 2016), http://www.dw.com/en/the-risk-of-open-borders/a-19496770.

247. *Why Is EU Struggling with Migrants and Asylum*, *supra* note 238.

248. OPEN SOC'Y FOUND., *supra* note 240.

249. Banning-Lover, *supra* note 200.

250. *Poor Conditions Lead to Refugee Protest in Bulgaria*, WORLD BULL. (Nov. 24, 2016), http://www.worldbulletin.net/haber/180645/poor-conditions-lead-to-refugees-protest-in-bulgaria.

ly constructed walls and changing immigration policies of overwhelmed countries have only served to make the situation more volatile. All of the resulting tension reinforces the jihadist narrative. The Syrian refugee crisis proves the international refugee regime is inadequate in the face of large scale forced migrations.

V. PROPOSED SOLUTION: A SECOND OPTIONAL PROTOCOL TO THE 1951 CONVENTION

> On the Status of Refugees
>
> "CONSIDERING that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international-scope and nature cannot therefore be achieved without international cooperation . . ."[251]

Former UN High Commissioner for Refugees, Antonio Guterres, recently acknowledged that [Turkey, Jordan, and Lebanon] "are crucial pillars of peace and stability in their regions, and with conflicts and terrorism threatening to spill across borders, they de facto form the first line of defense for our collective security."[252] After five years of carrying the unduly heavy burden, it is unrealistic to expect that the states of first asylum in the Middle East, and now a handful in Europe, can continue to absorb the seemingly endless flow of refugees. Humanitarian aid and financial support from countries like Japan[253] does not offer a satisfactory solution to the problem, especially given the protracted nature of the Syrian crisis. The rest of the international community must share the burden of refugee resettlement, humanitarian admission, and family reunification.[254]

Over the last seventy years, the world has seen horrific refugee situations unfold, yet no legal mechanism exists to allocate burden-sharing responsibilities among states. Burden-sharing, the process by which a third country affords refugees permanent residence and rights similar to nationals,[255] is only done on a voluntary basis. Given the voluntary nature, international resettlement has fallen below the need identified by the UNHCR. In

---

251. *Convention Relating to the Status of Refugees*, *supra* note 23, at Preamble.

252. António Guterres, *Opening Remarks at the 66th Session of the Executive Committee of the High Commissioner's Programme*, UNHCR (Oct. 5, 2015), www.unhcr.org/admin/hcspeeches/56122bd76/opening-remarks-66thsession-executive-committee-high-commissionersprogramme.html.

253. Taylor, *supra* note 185.

254. *Finding Solutions for Syrian Refugees*, *supra* note 197.

255. Executive Committee of the High Commissioner's Programme, *The Strategic Use of Resettlement (A Discussion Paper Prepared by the Working Group on Resettlement),* (Jun. 3, 2003), http://www.refworld.org/docid/41597a824.html.

2015, for example, the UNHCR identified 1.1 million refugees for resettlement, but it only had the ability to process resettlement submissions for 59,563 of those refugees.[256] The UNHCR also reported that there are approximately 7.2 million refugees living in a protracted refugee situation, which means they have been in exile for five or more years without the hope of a durable solution.[257] Based on these numbers from 2015, voluntary resettlement commitments from states, it would take more than 87 years to resettle all refugees currently eligible for resettlement.

Voluntary burden-sharing is not a sufficient solution. The world needs a Second Optional Protocol establishing a predictable and equitable burden-sharing agreement among states. Fortunately, there is some international momentum moving toward a binding burden-sharing agreement. In 2000 at the Millennium Summit and again in 2016 at the UN Summit for Refugees and Migrants, world leaders acknowledged a collective responsibility to protect refugees around the world.

A. Millennium Declaration

In September of 2000, leaders of the international community gathered at the Millennium Summit of the United Nations to set the international agenda for the twenty-first century. The most important result was the creation of the Millennium Declaration, a document that reaffirmed states' faith in the United Nations and recognized a collective responsibility to uphold human dignity, equality, and equity.[258] Article VI of the Declaration reflects the states' commitment to protect the vulnerable from the "consequences of natural disasters, genocide, armed conflicts and other humanitarian emergencies" and "are given every assistance and protection so that they can resume normal life as soon as possible."[259] Pursuant to that objective, the states resolved to "strengthen international cooperation, including burden sharing in, and the coordination of humanitarian assistance to, countries hosting refugees and to help all refugees and displaced persons to return voluntarily to their homes, in safety and dignity and to be smoothly reintegrated into their societies."[260] Despite agreeing to share the burden that refugees place upon hosting countries, the states did not provide specific instruction on how that should be done.

---

256. JAMES MILNER, WHEN NORMS ARE NOT ENOUGH: UNDERSTANDING THE PRINCIPLE AND PRACTICE OF BURDEN AND RESPONSIBILITY SHARING FOR REFUGEES 5 (2016).

257. *Id*.

258. *Millennium Summit of the United Nations*, UNITED NATIONS (Nov. 8, 2000), http://www.un.org/en/development/devagenda/millennium.shtml.

259. G.A. Res. 55/2, United Nations Millennium Declaration (Sept. 8, 2000).

260. *Id.*

B. New York Declaration on Refugees and Migrants

In September 2016, members of the international community met at the UN Summit for Refugees and Migrants. That event marked the first time the General Assembly called for a summit at the head-of-state-level to discuss large movements of refugees and migrants.[261] During that Summit, the General Assembly adopted the New York Declaration for Refugees and Migrants, a document expressing the "political will of world leaders to save lives, protect rights and share responsibility on a global scale."[262] While the Declaration is not a binding agreement, it does call for the creation of a comprehensive refugee response (CRR) "based on the principles of international cooperation and on burden- and responsibility-sharing. . . ."[263] Specifically, world leaders called upon the UNHCR, in conjunction with relevant states and UN agencies, to develop and initiate a CRR framework for each situation involving large movements of refugees in close coordination with relevant states and other UN agencies.[264] While the Declaration lists elements that should be addressed in a CRR,[265] it does not attempt to establish a mechanism allowing for the calculation of a particular state's obligations or the imposition of binding obligations; instead, it relies entirely on voluntary commitments.[266] At the Summit, the General Assembly also committed to adopting a global compact on refugees (GCR).[267] The content of the GCR were not specified, but the overarching objectives are easing pressures on host countries; enhancing refugee self-reliance; expanding-third country solutions; and supporting conditions in countries of origin for return in safety and dignity.[268]

The New York Declaration has been heavily criticized. The New York Times reported that "after days of intense negotiations over an international agreement, the nations of the world on Tuesday adopted a draft that contained virtually no concrete commitments to make their journeys better or

261. *U.N. Summit for Refugees and Migrants 2016*, UNITED NATIONS, https://refugeesmigrants.un.org/summit (addressing large movements of refugees and migrants) (last visited Mar. 31, 2018).

262. *New York Declaration*, UNITED NATIONS, http://refugeesmigrants.un.org/declaration (last visited Mar. 28, 2017).

263. G.A. Res. 71/1, New York Declaration for Refugees and Migrants, Annex 1 ¶ 1 (Sept. 19, 2016).

264. *Id*. at ¶ 69.

265. *Id.* at Annex I. These elements include reception and admission, support for immediate and ongoing needs, support for host countries and communities, and durable solutions.

266. Emma Larking, *The New York Declaration for Refugees and Migrants- What's Missing?* REGARDING RTS. (Oct. 24, 2016), http://asiapacific.anu.edu.au/regarding-rights/2016/10/24/the-new-york-declaration-for-refugees-and-migrants-whats-missing/.

267. *The UNHCR Quick Guide*, UNHCR, http://www.unhcr.org/57e4f6504.pdf (last updated Jan. 28, 2018).

268. *Id*. at 7.

safer. Nor does it have any force of law."[269] The Center for Migration Studies concluded that the declaration failed to create a new framework for the protection of refugees and migrants around the world. Instead, they saw the document as no more than a reaffirmation of the status quo and in some areas, it actually weakened current protections.[270] T. Alexander Aleinikoff, a former official at the United Nations refugee agency who is now a senior fellow at the Migration Policy Institute in Washington, D.C., concluded that the Declaration was too focused on the present and failed to prepare for future crises.[271]

The international rhetoric pledging a commitment to international cooperation and burden-sharing have done little to correct the disproportionate burden that refugees place upon states of first asylum.[272] These states, which just happen to be located in close proximity to failed states, conflicts, or gross human rights violations, bear the brunt of mass movements of refugees based simply upon shared borders, while countries located further away are under no legal obligation to assist with resettlement. Various regional instruments such as the EU Common European Asylum System[273] could have significant impact among state parties, but alone, they fail to solve the greater international problem.[274] Accordingly, a stronger mechanism in which parties agree upon a method of burden-sharing is overdue. The idea of burden-sharing is not new—scholars have struggled to resolve the issues created by the 1951 Convention for decades. Over the years, many ideas have been proposed by scholars. The following section will highlight three burden-sharing proposals,[275] including market-based agreements, group or regional agreements, and soft quota agreements. While all models have positive and negative attributes, the authors argue that the soft-quota model offers the best solution to the current global refugee problem

269. Somini Sengupta, *U.N. Drafts Agreement on Refugees and Migrants*, N.Y. TIMES (Aug. 2, 2016), https://www.nytimes.com/2016/08/03/world/un-united-nations-refugees-migrants-agreement.html?_r=0.

270. *Id*.

271. *Id*.

272. Peter Schuck, *Refugee Burden-Sharing: A Modest Proposal*, 22 YALE J. INT'L L 243, 256–57 (1997).

273. Common European Asylum System is a set of laws in the EU that set out the minimum standards and procedures for asylum applications. *See* European Commission, *supra* note 112.

274. Tally Kritzman-Amir, *Not in My Backyard: On the Morality of Responsibility Sharing in Refugee Law*, 34 BROOK. J. INT'L L. 355, 377–78 (2009).

275. As discussed in this section, burden-sharing refers to the physical resettlement of refugees in third countries.

1. Market-Based Quotas

In the 1990s, Peter Schuck introduced the idea of refugee quotas and market trading into the dialogue.[276] Under this system, Schuck proposed that states must agree that all ought to bear a share of temporary protection and that permanent resettlement must be divided proportionately based upon state burden-bearing capacity.[277] States first determine their protective capacity. Then, based upon that determination, quotas will be assigned to participating nations. States would then be free to buy or sell quota obligations.[278] Shuck believes this plan would increase state participation and resources. Using Japan as an example, one writer explains that wealthy countries with ethnically homogenous societies and historically limited protection for refugees would be inclined to pay other nations to assume their obligation.[279] Under this plan, the cost of the protection system would be reduced by transferring protection from high-cost countries to low-cost countries. Shuck indicates an agency such as the UNHCR would have to regulate the system to ensure refugee rights were respected in the process.[280]

For obvious reasons, applying a market-based solution to the protection of human beings has been viewed with skepticism.[281] One author explains, markets create inequities and "there may be market imperfections that, while tolerable in the case of commodities, are unacceptable when dealing with human lives."[282] Others add that this approach will not foster meaningful burden-sharing, but instead is just one more way to confine refugees to developing countries.[283]

2. Group or Regional Responsibility-Sharing

Another popular burden-sharing mechanism was proposed by James Hathaway and Alexander Neve in the 1990s. They argued that regional or group agreements to share responsibility were the most effective solution to

276. Schuck, *supra* note 268, at 279-85.
277. *Id.*
278. Benjamin Cook, *Method in Its Madness: The Endowment Effect in an Analysis of Refugee Burden-Sharing and a Proposed Refugee Market*, 19 GEO. IMMIGR. L. J. 333, 348 (2004) (discussing Peter Schuck, *Refugee Burden-Sharing: A Modest Proposal*, 22 YALE J. INT'L L 243, 251 (1997)).
279. *Id*. at 349.
280. *Id*.
281. *Id.*
282. *Id.*
283. Kritzman-Amir, *supra* note 270, at 303 (citing Deborah Anker et al., *Crisis and Cure: A Reply to Hathaway/Neve and Schuck,* 11 HARV. HUM. RTS. J. 295, 303 (1998)).

mass influx of refugees.[284] Their model, which operates very much like an insurance scheme, calls for collective responsibility in which member countries within designated groups agree ahead of time to contribute to the protection of refugees arriving within their territory.[285] Hathaway and Neve also maintain that the smaller group size allows for more efficient cooperation and creates a greater incentive for states to cooperate since the effects of a refugee crisis are felt locally, which also makes reaching an international agreement more likely.[286]

Under the regional or group mechanism, a member country experiencing a mass influx of refugees will not take actions to stem the flow since other members in the region will assist in a predetermined manner.[287] One proponent of regional agreements highlights the EU's asylum agreements, including the Dublin Accord, as a promising example of this model.[288] Yet, the EU's CEAS has been heavily criticized for lack of state consistency and unfair dealings with the Syrian refugees.[289] In particular, while EU asylum laws do not require asylum seekers to claim asylum in the first EU country they reach, the Dublin Accord allows EU states to return refugees. Northern states have used the Dublin Accord to their advantage and returned asylum-seekers to overcrowded southern states.[290] In that sense, the EU agreements have disproved Hathaway and Neve's belief that states within a regional agreement will cooperate honestly and take an interest in the treatment of refugees in other countries.[291] This model is also criticized for placing a greater burden upon developing nations and for creating an incentive for countries with similar resources and risks to reach agreements to the exclusion of poor countries.[292]

3. Soft Quotas

In many ways, the countries currently willing to resettle refugees loosely follow the soft quota model proposed by Atle Grahl-Madsen in the late 1970s.[293] Similar to the other proposals mentioned above, Grahl-Madsen's

284. James C. Hathaway & R. Alexander Neve, *Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection*, 10 HARV. HUM. RTS. J. 115, 141 (1997).

285. *Id*. at 143–46.

286. Kritzman-Amir, *supra* note 270, at 380.

287. Cook, *supra* note 274, at 347.

288. Kritzman-Amir, *supra* note 270, at 382.

289. *Understanding Migration and Asylum in the European Union*, *supra* note 239.

290. *Id.*

291. Kritzman-Amir, *supra* note 270, at 380.

292. *Id*. at 381.

293. Atle Grahl-Madsen, *Ways and Prospects of International Cooperation in Refugee Matters*, 21/30 AWR BULL. 278 (1983).

proposal recognizes that "collective action strengthens protection for refugees by reducing inequalities among receiving states."[294] Specifically, the "soft quota" proposal calls for equitable distribution of refugees based upon an index that considers individual country GNP and population density. After countries of first asylum reach their maximum capacity, the burden-sharing mechanism would be triggered and other countries would resettle refugees based upon a predetermined yearly quota. If quotas were surpassed, the remaining resettlements would be decided on an ad hoc basis.[295] Unlike Hathaway and Neve's model, quotas are not limited to regions or groups, but instead are spread across all states.

Under this model, a conflict in State A causes a migration of refugees to State B. When State B reaches a predetermined maximum capacity, the international burden-sharing mechanism would be triggered, and States C through Z would accept a predetermined number based upon their GNP and population. Thus, refugees would be redistributed across many nations, not just those in the affected region. If this model had been applied to the Syrian refugee crisis, the burden on the states of first asylum and Europe would have been significantly reduced. As discussed, the conflict in Syria led to the mass migration of 5.9 million people. More than 4 million of those people sought asylum in Turkey, Jordan, and Lebanon, presumably well above those countries' maximum capacity. Upon reaching maximum capacity (at a much lower predetermined threshold), Syrian refugees would have been distributed across the globe and not just in Europe.

It was previously mentioned that some members of the international community already loosely follow the soft-quota model.[296] For example, the United States and Canada, in coordination with the UNHCR, both accept a certain number of refugees each year for resettlement from states of first asylum.[297] So why has it not worked? First, only a limited number of countries currently accept refugees for resettlement. Second, the states that do accept refugees for resettlement do so not based upon any binding arrangement, but instead because of international pressure, sense of responsibility, and self-interest.[298] Returning to the Syrian refugee crisis hypothetical, had the United States been bound to accept a specified number of refugees pursuant to an international agreement, it would have been more difficult for President Trump to abruptly reduce the number of spots for refugees in the United States.

---

294. A. Suhrke, *Burden-Sharing During Refugee Emergencies: The Logic of Collective Versus National Action*, 11 J. OF REFUGEE STUD., 396–415 (1998).

295. Cook, *supra* note 274, at 347.

296. *See infra* footnote 289.

297. Sec. III, *supra* note 65.

298. Kritzman-Amir, *supra* note 270, at 379–80.

For the soft quota proposal to work, the United Nations, its subordinate organizations, and member nations would need to be actively involved in the refugee quota determination. Since all member states are represented at the United Nations,[299] it is an appropriate forum for international decision-making. Additionally, if the UN is in charge of the coordination of burden-sharing agreements, then member states would have to comply pursuant to their obligation to act in good-faith in support of the UN.[300]

The role of the UNHCR, in particular, would need to expand. Currently, the UNHCR facilitates voluntary responsibility-sharing related to refugees. Pursuant to its statute as a "nonpolitical, humanitarian, and social body," the UNHCR has the expertise and apolitical character that makes it the most appropriate entity to work with member states to determine an equitable distribution of responsibility.[301] While a precise explanation of how the UNHCR would implement a burden-sharing mechanism is beyond the scope of this paper, it is important to note that the UNHCR would have to oversee the process of establishing state quotas and maximum capacity rates. It would also need the ability to enforce agreed upon quotas.[302]

Domestic and international courts would have to assist the UNHCR in the enforcement of responsibility sharing. The International Court of Justice or various regional human rights courts would be likely candidates for international adjudication, but many nations are not party to those bodies. Additionally, burden-sharing agreements are viewed as diplomatic in nature. As a result, may refrain from examining them.[303] In either situation, domestic courts would have to uphold their country's commitment to international burden-sharing agreements.

Similar to other models, the soft quota proposal is not without its faults. For example, it requires a second migration to a new country, resulting in a variety of negative side-effects. Using quotas also damages immigrant communities which are an invaluable source of comfort and assistance to their members. Bureaucratically dispersing refugees from the first state of asylum to countries located potentially thousands of miles away will deteriorate immigrant communities.[304] Additionally, this mechanism risks further human rights violations in the form of an institutionalized forced removal by allowing governments to transfer refugees to other states without regard to

299. *See Overview*, UNITED NATIONS, http://www.un.org/en/sections/about-un/overview/index.html (last visited Apr. 25, 2017).

300. U.N. Charter art. 2.

301. Kritzman-Amir, *supra* note 270, at 389–90.

302. *Id.* at 391.

303. *Id.* at 392.

304. *Id.* at 379.

the adequacy of protection they might receive.[305] However, as with other human rights treaties, international trends pull an increasing number of states into the fold and into compliance. With time and international pressures, countries currently unwilling to accept refugees may change their position

The soft quota model is just one of many potentially viable burden-sharing proposals. Regardless of the model chosen, the international community has a duty to come together and find a satisfactory solution to the world's refugee problem. As noted by UN High Commissioner for Refugees António Guterres in 2015, "if there is one Protocol that is yet to be drafted to complement the 1951 Convention, it is one on international solidarity and burden sharing."[306] Though there has been significant resistance, there is also momentum building. The number one obstacle preventing conclusion of an agreement is state sovereignty, but the current refugee crisis may finally be the catalyst needed to overcome that wall.

C. Obstacles that Can Be Overcome

There are obvious obstacles standing in the way of a new treaty imposing costly duties upon states in addition to selecting and implementing an effective burden-sharing mechanism. One only has to look to recent reports from the New York Summit to see that, despite the current crisis, significant opposition still exists. States rarely prefer the sovereign responsibilities over sovereign rights,[307] but history shows us that times of crisis allow for extraordinary achievements. The most prominent example was the creation of the UN Charter. The events of World War II were so atrocious that all states were willing to give up some sovereign rights to "save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."[308] Other examples include the 1977 Additional Protocol to the Geneva Conventions of 1949, which was drafted following the Vietnam War to prevent indiscriminate attacks against civilians, civilian objects, cultural objects, and the natural environment, among others.[309]

---

305. *Id*. (citing Joanne Thorburn, *Transcending Boundaries: Temporary Protection and Burden-Sharing in Europe,* 7 INT'L J. REFUGEE L. 459, 476–77 (1995)).

306. Guterres, *supra* note 248.

307. *See* Oona Hathaway et al., *Consent-Based Humanitarian Intervention: Giving Sovereign Responsibility Back to the Sovereign,* 46 CORNELL INT'L L. J. 499 (2013).

308. U.N. Charter preamble.

309. *Fact Sheet on the 1977 Protocols Additional to the Geneva Convention*, INT'L COMM. OF THE RED CROSS, https://www.icrc.org/eng/resources/documents/legal-fact-sheet/protocols-1977-factsheet-080607.htm. (last visited Mar. 31, 2018). *See also*, GEOFFREY C. CORN, THE WAR ON TERROR AND THE LAWS OF WAR: A MILITARY PERSPECTIVE 75 (2015).

These are but two examples that show, in the right circumstances, that states will put humanitarian concerns above sovereign rights.

The current refugee crisis can spur meaningful change in the international refugee regime. Not only would participation in a burden-sharing agreement give states the moral high ground, it would be in their self-interest to do so. Within this context, a burden-sharing agreement would operate as an insurance policy. Countries may initially incur losses in the short-term, but they are protected against much higher costs in the future.[310] Again, looking at the situation in Syria—had there been a burden-sharing agreement in place, resettlement out of the first states of asylum could have moved more efficiently, Europe would not have been overrun, and countries like Greece, Germany, and Sweden would not have been alone to carry most of the weight of the refugee-initiated resettlement.

National security interests are also promoted by a binding resettlement agreement. First, equitable resettlement will ensure overburdened countries do not collapse and can preserve the availability of refugee protection in states of first asylum. Michael Ignatieff from the Shorenstein Center on Media, Politics and Public Policy, recently concluded "it is in America's national interest to help Europe manage and overcome this crisis by lending strong political support to its major European allies, particularly Germany, and by re-asserting its leadership role in refugee resettlement and integration."[311] In his White Paper, Ignatieff urges the United States accept 65,000 of the Syrian refugees to relieve pressure on the states of first asylum and to show solidarity with Europe who is also struggling with the influx. By doing so, the United States will strengthen and stabilize critical allies in both regions.[312]

Refugees and migrants also make important contributions in the fight against terrorism, which further promotes national security. For example, after the 9/11 terrorist attacks, U.S. law enforcement and intelligence experts worked extensively with immigrant communities for intelligence, and enlisted members in counterterror efforts.[313] They found that immigrant communities had strong interests and incentive to cooperate and overwhelmingly rejected extremist ideologies and terrorism.[314]

An equitable resettlement agreement also promotes international security by encouraging legal migration, curbing the use of human smugglers, limiting the risk of trafficking, and making life more difficult for terrorists

---

310. Cook, *supra* note 274, at 346.

311. IGNATIEFF ET AL., *supra* note 189, at 3.

312. *Id*. at 6.

313. Donald Kerwin & Margaret Stock, *The Role of Immigration in Coordinated National Security Policy.* 21 GEO. IMMIGR. L.J. 3, 383–430, 418–19 (2007).

314. *Id*.

who depend upon and often profit from smuggling networks.[315] Further, a recent study from the World Economic Forum (WEF) cautioned that a "large-scale involuntary migration" poses the most likely international risk and is intrinsically connected to other worrisome risks, including interstate conflicts and state collapse.[316] The WEF found that three factors increase threat of migration. [317] First, it determined that refugees are staying in host nations longer than they used to stay.[318] If unable to integrate into society, refugees can become frustrated and more vulnerable to disenchantment and radicalization. Second, similar to other experts, the WEF found that the international refugee regime is simply not able to respond to today's challenges.[319] It reached this conclusion because many countries, including Syria's neighbors, are not parties to the 1951 Convention, or if they are, they do not uphold it.[320] The final factor that increases the threat to the international community is that most refugees move to other developing countries, where government systems are already weak or likely to fail.[321]

Refugees can be of great benefit to their new states. In fact, refugees are credited with significant economic, scientific, diplomatic, cultural, and ethical contributions. The United States enjoyed successes from several famous immigrants, including Albert Einstein, Enrico Fermi, Elie Weisel, Madeleine Albright, Andrew Grove, and Sergey Brin. The Council on Foreign Relations' Independent Task Force on US Immigration Policy cautioned that to "keep out talented immigrants or significantly disrupt legitimate cross-border traffic or commerce" would weaken "the long-term foundations of America's economy and military strength, and consequently its security. . . ."[322] Refugees are also needed in countries like Germany, Japan, and the United States, which are facing rapidly aging populations, where "young, well-educated, and highly motivated" workers are needed to fill hundreds of thousands of available jobs.[323] A recent study on the effects of 80,000 Iraqi, Bosnian, and Somalian refugees in Denmark revealed that the presence of less-skilled refugees encouraged native workers to move up the employment ladder to more complex and less manually-intensive occupa-

315. Kerwin, *supra* note 235, at 83–140, 920–93.

316. The World Economic Forum, *Humanity on the Move*, WEFORUM.ORG, http://reports.weforum.org/global-risks-2016/humanity-on-the-move/ (last visited Apr. 2, 2017).

317. *Id*.

318. *Id*.

319. *Id*.

320. *Id*.

321. *Id*.

322. J. BUSH & T. MCLARTY, COUNCIL FOREIGN RELATIONS: INDEPENDENT TASK FORCE ON U.S. IMMIGRATION POLICY 21 (2009).

323. Noack, *supra* note 20.

tions."[324] In addition, the influx of refugees can help fund a country's welfare system, which tends to become increasingly strained as more retirees have to be financed by fewer working-age and tax-generating citizens.[325]

VI. CONCLUSION – THE INTERNATIONAL COMMUNITY WAS NOT READY FOR THE SYRIAN REFUGEE CRISIS, BUT IT CAN BE READY FOR THE INEVITABLE "NEXT TIME"

> "Syria is the biggest humanitarian and refugee crisis of our time, a continuing cause of suffering for millions which should be garnering a groundswell of support around the world."[326]

The Syrian refugee crisis is but one of many crises occurring in the world today. The UNHCR estimates that there are currently 65.3 million forcibly displaced persons worldwide, 21.3 million of whom are refugees who escaped persecution in their homelands and sought asylum elsewhere. During times of conflict, regardless of location, people fleeing persecution will continue to travel to neighboring states to seek protection.

The international rhetoric pledging a commitment to international cooperation and burden-sharing have done little to correct the disproportionate burden that refugees place upon states of first asylum.[327] These states, which just happen to be located in close proximity to failed states, conflicts, or gross human rights violations, bear the brunt of mass movements of refugees based simply upon shared borders while countries located further away are under no legal obligation to assist with resettlement. A Second Optional Protocol to the 1951 Convention is needed to establish binding international quotas to ensure states of first asylum do not become overwhelmed and close their doors to humanitarian crises.

The world's refugees have grown impatient. Looking at the Syrian conflict, thousands of refugees rejected the poor conditions in the states of first asylum and began risking their lives for the chance at something better in Europe.[328] They did not wait for state-sponsored resettlement—they resettled themselves. It is too late to catch up with the Syrian refugee crisis, but it is not too late to be better prepared for future crises. But to be ready, states must be willing to relinquish a minimal amount of sovereignty and agree to accept an equitable number of refugees for resettlement on an annual basis.

---

324. METE FOGED & GIOVANNI PERI, IMMIGRANT'S EFFECTS ON NATIVE WORKERS: NEW ANALYSIS ON LONGITUDINAL DATA (2015).

325. Noack, *supra* note 20.

326. Filippo Grandi, UNHCR High Commissioner.

327. Schuck, *supra* note 268, at 246–47.

328. T. Alexander Aleinikoff, *Rethinking the International Refugee Regime*, 41 YALE J. INTL' L ONLINE 1–14, 11 (2016), https://www.youtube.com/watch?v=SylBY0IOCDI.