

## COMMENT

### MULTI-FACETED RISK: EXEMPTING TRAFFICKED ASYLUM SEEKERS FROM “SAFE THIRD COUNTRY” AGREEMENTS IN STATES NOT IN COMPLIANCE WITH TVPA MINIMUM STANDARDS

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#### ABSTRACT

*The “Safe Third Country” principle in international refugee law refers to a State’s ability to reject a person’s asylum application if they have already been granted protection by another country in compliance with the 1951 Refugee Convention. However, asylum seekers face higher risks of human trafficking because of their transient and vulnerable circumstances, and some of the most frequently implicated Safe Third Countries are consistently ranked in Tier 2 or below in the US State Department’s annual Trafficking in Persons Report; this ranking indicates that they are not in full compliance with the minimum standards provided in the Trafficking Victims Protection Act. This Comment argues that asylum seekers who have experienced human trafficking throughout their migration journey should be exempted from Safe Third Country agreements with States that rank in Tier 2 or below. It will survey Greece, Turkey, and the Northern Triangle as examples of States often deemed to be Safe Third Countries, yet have recurring difficulties prosecuting human trafficking violations and protecting victims; this Comment will ultimately propose a solution as to how these exemptions can be implemented in practice.*

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I. INTRODUCTION

Asylum seekers are people who are living outside their State of origin, are unable or unwilling to return home because of persecution or a well-founded fear of persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion, and are ultimately seeking refugee status from a receiving State.<sup>1</sup> Generally, asylum seekers face an

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1. See Anne P. Wilson, Executive Vice President, Lutheran Immigr. & Refugee Serv., *Trafficking Risks for Refugees* (Nov. 2011), in INTERDISC. CONF. ON HUMAN TRAFFICKING AT THE UNIV. OF NEB. (2011), at 2, <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1003&context=humtraffconf3> [<https://perma.cc/8KRW-QRM2>]; *Refugees, Asylum Seekers, and Migrants*, AMNESTY

increased risk of human trafficking exploitation due to their “vulnerable status, the devastating losses they have experienced, and their precarious life situations until durable solutions become available.”<sup>2</sup> Notwithstanding this instability, countries around the world are involved in “Safe Third Country” agreements with States that are consistently deemed to be noncompliant with the Trafficking Victims Protection Act’s minimum standards, in which asylum seekers are required to apply for asylum in the first signatory State they reach.<sup>3</sup> These agreements put asylum seekers who have experienced human trafficking throughout their migration journey at higher risk of continued exploitation.

This Comment argues that asylum seekers who have experienced human trafficking exploitation throughout their migration journey should be exempted from Safe Third Country agreements with States that rank in Tier 2 or below in the US State Department’s annual *Trafficking in Persons Report*.<sup>4</sup> Part II will provide background information on the Safe Third Country principle and *Trafficking in Persons Report*. Part III will examine the States of Greece, Turkey, El Salvador, Guatemala, and Honduras as recent parties to Safe Third Country agreements and principles, despite having difficulty complying with the Trafficking Victims Protection Act minimum standards. And Part IV will propose a solution as to how these exemptions can be implemented in practice.

## II. BACKGROUND

It is necessary to be familiar with the Safe Third Country principle and the US State Department’s annual *Trafficking in Persons Report* to understand why it is problematic to have Safe Third Country agreements with States that rank in Tier 2 or below. Part II will provide an overview of both topics.

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INTERNATIONAL, <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants> [<https://perma.cc/TPF9-Q7GR>] (last visited Dec. 17, 2023).

2. See Wilson, *supra* note 1, at 2.

3. See *infra* Section II.B.

4. See *infra* Part IV.

### A. *The Safe Third Country Principle*

A “Safe Third Country” is a State designated as a “safe” place for asylum seekers to pursue their asylum claims.<sup>5</sup> This designation is achieved through bilateral or multilateral agreement and is a part of the greater Safe Third Country principle, that is: it is not a violation of the principle of nonrefoulement for States to return asylum seekers to safe third countries that they passed through to arrive in the country of application.<sup>6</sup> Safe Third Country agreements are rooted in the spirit of international cooperation, as the Preamble of the 1951 Refugee Convention acknowledges that “the grant of asylum may place unduly heavy burdens on certain countries, and . . . [the problem of granting asylum] cannot therefore be achieved without international co-operation.”<sup>7</sup>

In addition to international cooperation, advocates of Safe Third Country agreements claim that these arrangements help ensure timely access to asylum procedures and application examination.<sup>8</sup> This is especially true of multilateral agreements, such as the Dublin III Regulation.<sup>9</sup> Additionally, proponents assert

5. See KAREN MUSALO ET AL., *REFUGEE L. & POL’Y* 949 (Carolina Academic Press, 5th ed. 2018) (defining a “safe” place to pursue claims as a State whose asylum procedures comply with the 1951 Refugee Convention).

6. See María-Teresa Gil-Bazo, *The Safe Third Country Concept in International Agreements on Refugee Protection: Assessing State Practice*, 33 *NETH. Q. HUM. RTS.* 42, 44 (2015). Nonrefoulement is the principle that no State shall expel or return (refoul) an asylum seeker or refugee in any manner to the country where their life or freedom would be threatened. *See id.* at 44.

7. Convention Relating to the Status of Refugees pmbl., July 28, 1951, 189 U.N.T.S. 137 [hereinafter 1951 Refugee Convention]; see MUSALO ET AL., *supra* note 5, at 949.

8. See *Country responsible for asylum application (Dublin Regulation)*, EUR. COMM’N, [hereinafter European Commission on Dublin Regulation], [https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation\\_en](https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/country-responsible-asylum-application-dublin-regulation_en) [https://perma.cc/9T7B-GPPS] (last visited Apr. 23, 2022); Susan Fratzke, *International Experience Suggests Safe Third-Country Agreement Would Not Solve the U.S.-Mexico Border Crisis*, *MIGRATION POL’Y INST.* (June 2019), <https://www.migrationpolicy.org/news/safe-third-country-agreement-would-not-solve-us-mexico-border-crisis> [https://perma.cc/XQ9X-5PSB] (“Handling cases through safe third-country procedures will be faster than conducting a full asylum determination, and thus reduce pressures on overstretched asylum systems.”).

9. See European Commission on Dublin regulation, *supra* note 8; MUSALO ET AL., *supra* note 5, at 949 (explaining that the Dublin III Regulation of the European Union is the Safe

that these agreements put forth a “more structured and common . . . approach to search and rescue,” thus advancing asylum seeker safety.<sup>10</sup> However, critics argue that these agreements raise doubt as to whether States transferring asylum seekers to “safe third countries” are truly fulfilling their obligations under international refugee and human rights law.<sup>11</sup> Similarly, the question arises of whether these agreements are made in light of qualitative determination procedures addressing “safety,” or if they are formed out of operational convenience.<sup>12</sup>

Two of the most prominent Safe Third Country agreements currently in place are the US-Canada Agreement and the aforementioned Dublin III Regulation.<sup>13</sup> The US-Canada Agreement is a bilateral treaty that considers both the United States and Canada to be safe countries for asylum seekers and refugees, and generally requires that an asylum seeker apply for asylum in the first of the two countries to which they arrive.<sup>14</sup> The Dublin III Regulation is a multilateral treaty among the European Union Member States that presumes all countries within the European Union to be safe countries for asylum seekers and

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Third Country agreement that determines which European Union Member State is responsible for examining an asylum application on behalf of the E.U.); *infra* Section III.A.

10. See European Commission on Dublin Regulation, *supra* note 8.

11. See Gil-Bazo, *supra* note 6, at 45. Critics specifically argue Safe Third Country agreements implicate the principle of nonrefoulement, that is: the idea that no State shall expel or return (refoul) an asylum seeker or refugee in any manner to the country where their life or freedom would be threatened. See *id.* at 44. The principle of nonrefoulement is found in Article 33 of the 1951 Refugee Convention. See 1951 Refugee Convention, *supra* note 7, art. 33.

12. See Gil-Bazo, *supra* note 6, at 65. See also MUSALO ET AL., *supra* note 5, at 951 (“Refugee advocates have opposed the [US-Canada] agreement since its inception on the basis that the refugee determination systems of the two countries are not comparable, and that the U.S. system ‘falls short on a number of minimum standards.’”).

13. See *generally* Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries, U.S.-Can., Nov. 14, 2002, T.I.A.S. No. 10-270, 2003 WL 320015737; Regulation (EU) No. 6042013 of the European Parliament and the Council of 26 June 2013, O.J. (L 180) [hereinafter Dublin III Regulation]. See also *supra* note 9.

14. See MUSALO ET AL., *supra* note 5, at 950. Some exceptions to this agreement are if the asylum seeker has a family member with legal status in the territory of the receiving country, if the asylum seeker has a family member at least eighteen years old who has a pending claim for refugee status in the receiving country, if the asylum seeker is an unaccompanied minor, or if the asylum seeker arrived with a visa or is not required to be in possession of a visa. *Id.*

refugees; therefore, asylum seekers entering the European Union must generally apply for status in the first country that they enter.<sup>15</sup>

*B. Human Trafficking and the US State Department's Trafficking in Persons Report*

The *Trafficking in Persons (TIP) Report* is a diplomatic tool that monitors governmental anti-trafficking efforts around the world.<sup>16</sup> It is published annually by the US Department of State and seeks to provide information on how well States adhere to the “3P Paradigm” of human trafficking protocols, as established in the Trafficking Victims Protection Act<sup>17</sup> (TVPA): Prosecution of perpetrators, Protection of victims, and Prevention of future trafficking.<sup>18</sup> The US State Department defines “human trafficking” as “a crime whereby traffickers exploit and profit at the expense of adults or children by compelling them to perform labor or engage in commercial sex.”<sup>19</sup> The State Department creates the *Report* with the help of information from US embassies, government officials, nongovernmental and international organizations, published reports, news articles, academic studies, consultations with authorities and organizations around the world, and information submitted via email.<sup>20</sup>

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15. See Gil-Bazo, *supra* note 6, at 44; *infra* Section III.A.

16. See *Trafficking in Persons Report*, U.S. DEP’T OF STATE, <https://www.state.gov/trafficking-in-persons-report> [https://perma.cc/T5AT-QNYX] (last visited Apr. 22, 2023).

17. See *generally* Trafficking Victims Protection Act, Pub. L. No. 106-386, 114 Stat. 1466 (2000) [hereinafter TVPA]. The 3P Paradigm is also mirrored in the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto (“Palermo Protocol”). See *generally* CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, opened for signature Dec. 12, 2000, 2225 U.N.T.S. 209. Both pieces of legislation are important because they acknowledge human trafficking as a legitimate domestic and international issue, respectively, and seek to provide protection to human trafficking victims.

18. See *3Ps: Prosecution, Protection, and Prevention*, U.S. DEP’T OF STATE [hereinafter 3Ps], <https://www.state.gov/3ps-prosecution-protection-and-prevention> [https://perma.cc/7J6T-QP64] (last visited Apr. 22, 2023).

19. U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT*, at 31 (2022) [hereinafter 2022 TIP REPORT], <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [https://perma.cc/XY2E-FXNE].

20. *Id.* at 52.

The bulk of every *TIP Report* is the division of States into one of five different categories, based on their compliance with the 3P Paradigm, and detailed explanations on how the categorization was determined.<sup>21</sup> The five categories are: Tier 1, Tier 2, Tier 2 Watch List, Tier 3, and the unofficial “Special Cases” categorization.<sup>22</sup> To define each categorization in turn, Tier 1 is for States whose governments fully meet the TVPA’s minimum standards for the elimination of trafficking.<sup>23</sup> Tier 2 is for States whose governments do not fully meet the TVPA’s minimum standards, despite making “significant efforts” to bring themselves into compliance.<sup>24</sup> The term “significant efforts” is not defined generally by the US State Department, but each State explanation includes specific examples of efforts being taken, or not being taken, by that country’s government.<sup>25</sup>

Tier 2 Watch List is for States whose governments are meeting the TVPA’s minimum standards to the same extent as Tier 2 States, but the estimated number of victims of severe forms of trafficking is either significant or is significantly increasing, or the State is either not taking proportional concrete actions or has failed to provide evidence of increasing efforts to combat severe forms of trafficking from the previous years.<sup>26</sup> Tier 3 is for States whose governments do not fully meet the TVPA’s minimum standards and are not making significant efforts to do so.<sup>27</sup> Finally, the “Special Cases” categorization is an unofficial raking for States experiencing ongoing political instability.<sup>28</sup>

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21. *See id.* at 77–607 (“Country Narratives”).

22. *See id.* at 55. The amended TVPA includes additional factors to determine whether a State should be ranked in Tier 2, Tier 2 Watch List, or Tier 3. *See generally* TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT, Pub. L. No. 108-193, 117 Stat. 2875 (2003).

23. 2022 TIP REPORT, *supra* note 19, at 55. Thirty States ranked Tier 1 in 2022. *See id.* at 69. Some include Australia, Canada, and the United States. *See id.* at 95–98, 161–64, 574–82.

24. *Id.* at 55. Ninety-nine States ranked Tier 2 in 2022. *See id.* at 69. Some include Italy, Mexico, and Ukraine. *See id.* at 306–10, 383–86, 561–64.

25. *See id.* at 76.

26. *Id.* at 55. Thirty-four States ranked Tier 2 Watch List in 2022. *See id.* at 69. Some include Algeria, El Salvador, and Haiti. *See id.* at 83–85, 217–19, 264–68.

27. *Id.* at 55. Twenty-two States ranked Tier 3 in 2022. *See id.* at 69. Some include Eritrea, Nicaragua, and Venezuela. *See id.* at 221–22, 414–16, 590–92.

28. *See* CONG. RSCH. SERV., R44953, *The State Department’s Trafficking in Persons Report: Scope, Aid Restrictions, and Methodology* (2019)

### III. CASE STUDIES

Conducting and examining case studies of individual States can be helpful in understanding the relationship between Safe Third Country agreements and human trafficking violations. Accordingly, Part III will analyze the Safe Third Country principles and *TIP Report* tier rankings of Greece, Turkey, El Salvador, Guatemala, and Honduras.

#### A. Greece

**Safe Third Country Principles:** As a Member State of the European Union,<sup>29</sup> Greece is party to the Dublin III Regulation.<sup>30</sup> This means that as a general rule, any asylum seeker who enters the European Union through Greece must apply for asylum status in Greece and undergo the national procedures of that State.<sup>31</sup> The policy of the Regulation is that every European Union Member State provides adequate protection to asylum seekers, meaning the protection complies with the standards of the 1951 Refugee Convention and asylum seekers will be “safe” in any Member State to which they apply.<sup>32</sup>

The reality of the situation, however, is that Greece’s geographic location, with its extensive coastlines and close

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<https://sgp.fas.org/crs/row/R44953.pdf> [<https://perma.cc/S4P7-KEZL>]. Only three States were ranked as “Special Cases” in 2022. See 2022 TIP REPORT, *supra* note 19, at 69. These States include Libya, Somalia, and Yemen. See *id.* at 601–07.

29. See *Countries in the EU and EEA*, GOV.UK [hereinafter *Countries in the EU*], <https://www.gov.uk/eu-eea> [<https://perma.cc/D6QA-ZMLL>] (last visited Apr. 23, 2022).

30. See European Commission on Dublin Regulation, *supra* note 8 (noting that the European Commission adopted the Dublin III Regulation in 2020 following consultations with the European Parliament and EU Member States, and that *all* Member States “must be able to determine if and when it is responsible for handling an asylum claim”) (emphasis added). See generally Dublin III Regulation, *supra* note 13.

31. See *Dublin III Regulation*, UNHCR: GREECE [hereinafter UNHCR GREECE], <https://help.unhcr.org/greece/applying-for-asylum/dublin-iii-family-reunification-and-other-legal-pathways> [<https://perma.cc/T5MQ-B749>] (last visited Apr. 23, 2022). There are some exceptions to this general rule, some including: if the asylum seeker is an unaccompanied minor and a member of their family is a legally present in a European Union Member State; if the asylum seeker is an adult and a member of their family is present in a European Union Member State as a beneficiary of international protection or applicant of international protection; if the asylum seeker has already submitted an application to another European Union Member State. See *id.* For a complete list of exceptions, see Dublin III Regulation, *supra* note 13, at 39–41.

32. See Gil-Bazo, *supra* note 6, at 66.



proximity to other European Union Member States, has long positioned it as an Eastern “gate” to the European Union.<sup>33</sup> Today, Greece hosts approximately 50,000 refugees and 120,000 asylum seekers, and is considered by some to be a “holding pen” for people seeking asylum.<sup>34</sup> The majority of asylum seekers and refugees in Greece are from Syria, Iraq, and Afghanistan—States with recent histories of war, civil unrest, and turmoil—and are especially vulnerable to humanitarian challenges because of their trauma.<sup>35</sup>

**TIP Report Tier Ranking:** The 2022 *TIP Report* ranked Greece as a Tier 2 State: despite making significant efforts to comply with the minimum standards for eliminating trafficking under the TVPA,<sup>36</sup> “the government did not meet the minimum standards in several key areas.”<sup>37</sup> For example, the government identified fewer trafficking victims and did not consistently screen asylum seekers for trafficking indicators; reports from several self-identifying authorities indicated that numerous, and sometimes violent, pushbacks against asylum seekers discouraged potential victims from self-identifying or cooperating with authorities; and judges continued to prohibit remote testimony and require that victims be examined in person—even in cases where testimony could cause re-traumatization.<sup>38</sup>

The *Report* also specifically notes that female refugees in Greece, and particularly those living in the island Reception and Identification Centers, are highly vulnerable to trafficking.<sup>39</sup> It explains that many refugees and asylum seekers “are believed to rely on smugglers at some point during their journey” and

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33. See *Greece: A History of Migration*, MIGRATION POL’Y INST. (June 1, 2004) <https://www.migrationpolicy.org/article/greece-history-migration> [<https://perma.cc/8DJG-RRSN>].

34. *Refugees in limbo: Greece*, INT’L RESCUE COMM. [hereinafter *Refugees in limbo: Greece*], <https://www.rescue.org/country/greece> [<https://perma.cc/G7E3-B5RF>] (last visited Apr. 23, 2023). Italy is another Eastern “gate” that faces a greater responsibility in addressing European Union asylum claims. See *id.*

35. See *id.* Examples of humanitarian challenges include economic struggle (especially in the aftermath of the 2015 Greek financial crisis), unemployment, and lack of integration with the local population. See *id.*

36. See *infra* note 42.

37. 2022 TIP REPORT, *supra* note 19, at 252.

38. *Id.*

39. *Id.* at 255.

sometimes are forced into trafficking exploitation upon arrival to Greece.<sup>40</sup>

Non-*TIP Report* sources agree that asylum seeker and refugee trafficking is a concern in Greece.<sup>41</sup> As such, it is possible that Greece may be demoted to the Tier 2 Watch List in future *Reports*. Although the 2022 *Report* states that Greece's government made "increasing efforts compared with the previous reporting period," it has ranked Tier 2 since 2015 and the *Report* explains that Tier 2 States that have failed to provide evidence of increasing efforts to combat trafficking from previous years can be moved to the Tier 2 Watch List.<sup>42</sup> This shift would provide even stronger evidence that asylum seekers and refugees in Greece are at great risk of experiencing human trafficking exploitation.

### B. Turkey

**Safe Third Country Principles:** Although not formally a member of the Dublin III Regulation,<sup>43</sup> Turkey is subject to Safe Third Country principles because of the EU-Turkey Statement.<sup>44</sup> Promulgated in 2016, the Statement is intended to deepen Turkey-EU relations and address the "migration crisis" between the two.<sup>45</sup>

40. *Id.* The *Report* also includes that "NGOs report rapes of migrant women in migrant and refugee camps and allege organized criminal groups in camps use tents and shipping containers as brothels." *Id.*

41. See *Refugees in limbo: Greece*, *supra* note 34 ("[Female refugees], many traveling alone with children, need protection from sexual violence and trafficking."); *Greece: General information: situation on trafficking in human being*, EUR. COMM'N [hereinafter *Greece: Situation on trafficking in human beings*], [https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/greece\\_en](https://home-affairs.ec.europa.eu/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-countries/greece_en) [<https://perma.cc/MCD4-AMGX>] (last visited Apr. 23, 2022) ("As Greece is one of the entry points for migration flows into Europe, presumed victims of trafficking may be identified amongst the undocumented migrants entering the country . . . [F]emale asylum seekers represent the majority of the adult victims of human trafficking, though mostly in their country of origin or along the migration route.").

42. 2022 *TIP REPORT*, *supra* note 19, at 252 (listing examples of Greece's "increasing efforts" as amending the trafficking law to again include forced begging as a form of exploitation; establishing financial incentives for business to hire vulnerable unemployed individuals, including trafficking victims; and creating a working group to simplify procedures to grant compensation to victims). See also *id.* at 55.

43. See *Countries in the EU*, *supra* note 29.

44. See generally Council of the European Union Press Release, European Council, EU-Turkey Statement (Mar. 18, 2016).

45. See *id.*

Its core provision is that any “irregular migrants” that cross from Turkey into the European Union, and particularly into Greece, will be returned to Turkey.<sup>46</sup>

In response to the Dublin III Regulation, the June 2013 European Union Procedures Directive provides that one of the only instances when a European Union Member State may consider an application for international asylum protection as inadmissible is if another country which is not a Member State is considered to be a “safe third country” for the applicant.<sup>47</sup> Further, the Directive defines a “safe third country” as a State where “a person seeking international protection will be treated in accordance with . . . principles” of the 1951 Refugee Convention.<sup>48</sup> The question then arises of whether this analysis, when considered alongside the EU-Turkey Statement, creates a *de facto* Safe Third Country agreement between the EU and Turkey.<sup>49</sup> In addition to hosting nearly 3.6 million Syrian refugees,<sup>50</sup> Turkey also encounters migrants from Afghanistan, Iraq, and Iran, many of whom are en route to Europe.<sup>51</sup>

**TIP Report Tier Ranking:** The 2022 *TIP Report* also ranked Turkey as a Tier 2 State: despite making significant efforts to comply with the minimum standards for eliminating trafficking under the TVPA,<sup>52</sup> “the government did not meet the minimum

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46. *See id.*

47. *See* Procedures Directive 2013/32/EU, art. 33, 2013 O.J (L 180/60).

48. *Id.* at art. 38. *See generally* 1951 Refugee Convention, *supra* note 7.

49. One factor that complicates this analysis is that in exchange for signing onto the agreement, Turkey received six billion euros to improve refugee humanitarian conditions and Turkish nationals were granted visa-free travel to Europe. *See What is the EU-Turkey deal?*, INT’L RESCUE COMM. (Mar. 16, 2023), <https://www.rescue.org/eu/article/what-eu-turkey-deal> [<https://perma.cc/ULT6-BX9K>].

50. *See Refugees and Asylum Seekers in Turkey*, UNHCR: TÜRKIYE, <https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey> [<https://perma.cc/M7JQ-LZ7Z>] (last visited Apr. 23, 2023).

51. *See* Ayhan Kaya, *The World’s Leading Refugee Host, Turkey Has a Complex Migration History*, MIGRATION POL’Y INST. (Nov. 1, 2023), <https://www.migrationpolicy.org/article/turkey-migration-history> [<https://perma.cc/RZ6M-JM66>].

52. The *Report* lists examples of Turkey’s “increasing efforts,” which include, “convening anti-trafficking boards in all providences and continued . . . delivery of trainings, . . . increase[ing] its number of officers dedicated to trafficking, . . . [and] allocate[ing] more resources to in-kind assistance to victims.” 2022 TIP REPORT, *supra* note 19, at 553.

standards in several key areas.”<sup>53</sup> For example, Turkish courts continued to acquit most of the defendants prosecuted for trafficking; State prosecutors continued to drop, acquit, or reclassify trafficking claims to lesser crimes; and domestic civil society stakeholders did not participate in anti-trafficking efforts.<sup>54</sup>

The *Report* also specifies that Turkey’s large refugee population is “highly vulnerable to trafficking.”<sup>55</sup> Nongovernmental organizations report that some refugee camp officials and volunteers work with criminal networks to recruit Syrian girls and women into sex trafficking and accuse Syrian boys and men in the camps of rape and sexual abuse,<sup>56</sup> and that refugees of all nationalities are vulnerable to forced labor in marginalized industries.<sup>57</sup> Non-*TIP Report* sources agree that asylum seeker and refugee trafficking is a concern in Turkey.<sup>58</sup>

### C. *The Northern Triangle*

**Safe Third Country Principles:** The Northern Triangle consists of three countries in Central America: El Salvador, Guatemala, and Honduras. During the Trump Administration, all three of these States signed bilateral “Asylum Cooperative Agreements” with the United States, under which asylum seekers who passed through the Northern Triangle en route to the United States would be returned to those States and required to apply for

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53. *Id.* Like Greece, it is possible that Turkey may be demoted to the Tier 2 Watch List in future *Reports*. Although the 2022 *TIP Report* noted that Turkey’s government made “increasing efforts compared with the previous reporting period,” it has ranked Tier 2 since 2015 and the *Report* explains that Tier 2 States that have failed to provide evidence of increasing efforts to combat trafficking from previous years can be moved to the Tier 2 Watch List. *See id.* at 553.

54. *See id.* at 553.

55. *Id.* at 555 (estimating that “approximately 3.7 million displaced Syrians and more than 350,000 refugees of other nationalities” resided in Turkey during the reporting period).

56. *See id.*

57. *See id.* (listing common jobs refugees are trafficked into including, “street begging . . . agriculture, restaurants, textile factories, markets, shops”).

58. *See Syrian Refugees in Turkey Particularly at Risk of Sexual Exploitation*, EPCAT, <https://ecpat.org/story/syrian-refugees-in-turkey-particularly-at-risk-of-sexual-exploitation> [<https://perma.cc/XH3N-2NWW>] (last visited Apr. 23, 2023).

protections there first.<sup>59</sup> Although these agreements were repealed during the Biden Administration,<sup>60</sup> they were extremely controversial even upon initial enactment because the Northern Triangle and United States have very different procedures for assessing asylum applications.<sup>61</sup>

Specifically, critics argued that El Salvador, Guatemala, and Honduras lacked the infrastructure to assist large numbers of asylum seekers and were incapable of providing the protection asylum seekers need.<sup>62</sup> Additionally, at least during the Trump Administration, these three States struggled with high rates of violence and poverty and experienced severe sociopolitical, economic, and environmental issues.<sup>63</sup> Many Salvadoran, Guatemalan, and Honduran nationals fled their home States themselves during this time to get away from these difficult conditions.<sup>64</sup> To say the least, El Salvador, Guatemala, and Honduras were not “Safe Third Countries.”<sup>65</sup>

Despite the Agreements’ acknowledgement of the principle of nonrefoulement<sup>66</sup> and understanding that asylum seekers at the

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59. See *The dangers of Trump’s “safe third country” agreements in Central America*, AM. FRIENDS SERV. COMM. (JULY 28, 2020) [hereinafter *The dangers of Trump’s “safe third country” agreements*], <https://afsc.org/news/dangers-trumps-safe-third-country-agreements-central-america> [<https://perma.cc/PY4V-W4FM>]; see generally Agreement Between the Government of the United States of America and the Government of the Republic of El Salvador for Cooperation in Examination of Protection Claims, U.S.-El. Sal., Sept. 20, 2019, T.I.A.S. 20-1210 (2020) [hereinafter U.S.-El Salvador Agreement]; Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala on Cooperation Regarding the Examination of Protection Claims, U.S.-Guat., July 26, 2019, 19-1115 (2020) [hereinafter U.S.-Guatemala Agreement]; Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Claims, U.S.-Hond., Sept. 25, 2019, 85 FR 25462 (2020) [hereinafter U.S.-Honduras Agreement].

60. Press Statement, Antony J. Blinken, Secretary of State, U.S. Department of State, Suspending and Terminating the Asylum Cooperative Agreements with the Governments El Salvador, Guatemala, and Honduras (Feb. 6, 2021), <https://www.state.gov/suspending-and-terminating-the-asylum-cooperative-agreements-with-the-governments-el-salvador-guatemala-and-honduras> [<https://perma.cc/48AU-LSNR>].

61. See *The dangers of Trump’s “safe third country” agreements*, *supra* note 59.

62. See *id.*

63. See *id.*

64. See *id.*

65. See *id.*

66. See Gil-Bazo, *supra* note 11 and accompanying text (defining the principle of nonrefoulement); 1951 Refugee Convention, *supra* note 7, art. 33.

US border would not be deported to their State of origin,<sup>67</sup> an estimated 377,000 people emigrated from the Northern Triangle, with a majority bound for the United States, between fiscal year 2018 and fiscal year 2021.<sup>68</sup> Additionally, thousands of Cuban, Venezuelan, Nicaraguan, Colombian, and other asylum seekers passed through the Northern Triangle during this time to get to the US-Mexico border.<sup>69</sup> This was a tremendous number of people subject to the Asylum Cooperative Agreements, as well as the Administration's "Remain in Mexico" policy.<sup>70</sup>

### 1. El Salvador

**TIP Report Tier Ranking:** The 2022 *TIP Report* ranked El Salvador as a Tier 2 Watch List State: despite making efforts to comply with the TVPA minimum standards, "the government did not demonstrate overall increasing efforts compared with the previous reporting period."<sup>71</sup> This was a downgrade from the 2021 *TIP Report*, in which it was ranked in Tier 2.<sup>72</sup> Over the 2022 reporting period, the government significantly reduced its number of special prosecutors; fewer than half of all identified victims received government services or referral to outside care

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67. See *The dangers of Trump's "safe third country" agreements*, *supra* note 59.

68. See CONG. RSCH. SERV., IF11151, *Central American Migration: Root Causes and U.S. Policy* (2023) <https://sgp.fas.org/crs/row/IF11151.pdf> [<https://perma.cc/HEJ3-DASM>].

69. See Adam Isacson, *Migration, country by country, at the U.S.-Mexico border*, WASH. OFFICE ON LAT. AM. (Nov. 23, 2022), <https://www.wola.org/2022/11/migration-country-by-country-at-the-u-s-mexico-border> [<https://perma.cc/N8J7-YQ4K>].

70. The Trump Administration's "Remain in Mexico" policy required asylum seekers and migrants to remain in Mexico upon arrival at the U.S.-Mexico border until their US immigration court date. See *Q&A: Trump Administration's "Remain in Mexico" Program*, HUM. RIGHTS WATCH (Jan. 29, 2020). The policy has been temporarily suspended by the Biden Administration, but not before nearly 75,000 migrants were forced to await their court date at the border under the policy's active period. See Kylie Madry, *Mexico opposes restart of U.S. 'Remain in Mexico' immigration policy*, REUTERS (Feb. 6, 2023), <https://www.reuters.com/world/americas/mexico-rejects-possible-remain-mexico-revamp-plan-2023-02-07> [<https://perma.cc/7PMG-NFHZ>].

71. 2022 TIP REPORT, *supra* note 19, at 217.

72. See U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT*, at 222 (2021), <https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf> [<https://perma.cc/CQF9-YP7C>].

providers; and the government's anti-trafficking council was inactive.<sup>73</sup>

Although the *Report* does not indicate that refugees attempting to resettle in El Salvador are within the primary trafficking profile,<sup>74</sup> it does note that traffickers exploit some migrants who pass through El Salvador on their refugee journey to other States, such as Guatemala, Mexico, the United States, and Canada.<sup>75</sup>

## 2. Guatemala

**TIP Report Tier Ranking:** The 2022 *TIP Report* ranked Guatemala as a Tier 2 State: despite making significant efforts to comply with the minimum standards for eliminating trafficking under the TVPA,<sup>76</sup> “the government did not meet the minimum standards in several key areas.”<sup>77</sup> For example, the government did not provide sufficient specialized victim services, which was problematic given the scope of the issue in Guatemala; monitoring and oversight in government shelters remained weak; and the government did not prosecute or convict any officials suspected of complicity in trafficking crimes.<sup>78</sup> The *Report* notes that Latin American refugees traveling to Guatemala en route to Mexico, the United States, and Canada are vulnerable to sex trafficking or forced labor within Guatemala, and traffickers have exploited refugees in migrant shelters.<sup>79</sup>

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73. See 2022 TIP REPORT, *supra* note 19, at 217. Additionally, the Salvadoran government “did not implement procedures to identify potential trafficking victims among children apprehended for illicit gang-related activity or persons forcibly displaced from their homes . . . it did not initiate any investigations, prosecutions, or convictions of officials allegedly complicit in human trafficking crimes or report progress on investigations from previous years, [nor did it] publish a report on the government’s 2021 efforts.” *Id.*

74. Compare 2022 TIP REPORT, *supra* note 19, at 217–19 (El Salvador), with *id.* at 252–55 (Greece) and *id.* at 553–55 (Turkey). See also *supra* Sections III.A, III.B.

75. See 2022 TIP REPORT, *supra* note 19, at 219.

76. *Id.* at 255. The *Report* lists examples of Guatemala’s “increasing efforts,” including, “prosecuting and convicting more sex and labor traffickers . . . referring more victims to public and NGO shelters, and increasing training for frontline officials to identify and assist trafficking victims.” *Id.*

77. *Id.*

78. See *id.*

79. See *id.* at 257.

## 3. Honduras

**TIP Report Tier Ranking:** The 2022 *TIP Report* also ranked Honduras as a Tier 2 State: despite making significant efforts to comply with the minimum standards for eliminating trafficking under the TVPA,<sup>80</sup> “the government did not meet the minimum standards in several key areas.”<sup>81</sup> For example, the government did not allocate adequate financial or human resources to effectively respond to trafficking or provide comprehensive victim support throughout the country, nor did it report holding any employers or employment agencies criminally accountable for fraudulent recruitment practices.<sup>82</sup> The *Report* specifically notes that “migrants from Africa, Asia, the Caribbean, Central America, the Middle East, and South America” who pass through Honduras en route to the United States are particularly vulnerable to being exploited through trafficking.<sup>83</sup>

Non-*TIP Report* sources agree that asylum seeker and refugee trafficking is a concern throughout the Northern Triangle, calling this journey to the United States “one of the world’s most dangerous migration routes.”<sup>84</sup> Girls and adolescents under eighteen years of age represent twenty percent of all women who migrate and the hardships of the journey make young women, especially, vulnerable to risks of human trafficking, kidnapping,

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80. *Id.* at 268. The *Report* lists examples of Honduras’s “increasing efforts,” some including: “amending the penal code to increase penalties for trafficking crimes, nearly doubling funding to an NGO that provides shelter for victims, . . . [and] approv[ing] a new victim assistance manual and standard operating procedures (SOPs) to strengthen victim identification and referral services.” *Id.*

81. *Id.* Like Greece and Turkey, it is possible that Honduras may be demoted to Tier 2 Watch List in future *Reports*. Although the 2022 *Report* noted that the Honduran government made “increasing efforts compared with the previous reporting period,” it has ranked Tier 2 since 2015 and the *Report* explains that Tier 2 States that have failed to provide evidence of increasing efforts to combat trafficking from previous years can be moved to Tier 2 Watch List. *See id.* at 55, 268.

82. *Id.* at 268.

83. *Id.* at 270.

84. *See Migrant girls risk trafficking, kidnapping, extortion*, PLAN INT’L (Mar. 14, 2023), <https://plan-international.org/news/2023/03/14/migrant-girls-risk-trafficking-kidnapping-extortion> [<https://perma.cc/X5WQ-TV3S>].



and extortion.<sup>85</sup> More so, sources claim that some trafficking markets “seem to be a direct by-product of migrant smuggling.”<sup>86</sup>

#### IV. RESOLUTION AND SOLUTION: EXEMPT TRAFFICKED ASYLUM SEEKERS FROM SAFE THIRD COUNTRIES WITHOUT MINIMUM STANDARDS

The purpose of the 1951 Refugee Convention is to outline the legal protections, rights, and assistance refugees are entitled to receive under international law.<sup>87</sup> Although the Convention preamble recognizes the importance of cooperation amongst States and the United Nations High Commissioner, this value cannot come at the expense of State responsibility to provide asylum seekers with safety, security, and freedom from exploitation.<sup>88</sup>

As most States in the world are signatories to both the 1951 Refugee Convention and the United Nations Convention Against Transnational Organized Crime (Palermo Protocol) (the international standard of the TVPA),<sup>89</sup> it is imperative that States involved in Safe Third Country agreements fulfill their duties under each piece of legislation.<sup>90</sup> States fail to fulfill this duty when

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85. *See id.*

86. *See* U.N. Office on Drugs & Crime, Trafficking of women and girls within Central America, 55 (Sept. 24, 2012), [https://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA\\_CACaribb\\_trafficking\\_womengirls\\_within\\_CAmerica.pdf](https://www.unodc.org/documents/toc/Reports/TOCTASouthAmerica/English/TOCTA_CACaribb_trafficking_womengirls_within_CAmerica.pdf) [https://perma.cc/DV55-VYFF] (last visited Apr. 23, 2023) (“Women and girls headed north find themselves compromised and exploited.”).

87. *See The 1951 Refugee Convention*, UNHCR, <https://www.unhcr.org/uk/about-unhcr/who-we-are/1951-refugee-convention> [https://perma.cc/5RZU-9XKL] (last visited Apr. 24, 2023).

88. *See* 1951 Refugee Convention, *supra* note 7, pmbl.

89. The Palermo Protocol was the first international treaty to define human trafficking, and it requires State parties to criminalize human trafficking and define anti-trafficking laws. *See The Protocol*, U.N. OFFICE OF DRUGS & CRIME, <https://www.unodc.org/unodc/index.html> [https://perma.cc/9QKC-G9MS] (last visited Apr. 24, 2023). It was passed during the same conversations under which the United States’ Trafficking Victims Protection Act was passed and contains similar principles. *See generally* TVPA, *supra* note 17.

90. *Compare Status of Treaties: United Nations Convention against Transnational Organized Crime*, U.N. TREATY COLLECTION (Apr. 24, 2023), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-12.en.pdf> [https://perma.cc/PB52-47X9] (listing States that have ratified the Palermo Protocol), *with Status of Treaties: Convention relating to the Status of Refugees*, U.N. TREATY

they create Safe Third Country agreements with other countries that do not comply with the TVPA's minimum standards for eliminating human trafficking.

The aforementioned case studies demonstrate that States ranking Tier 2 or below have recurring problems adhering to the TVPA and Palermo Protocol's 3P Paradigm, that is, prosecuting perpetrators, protecting victims, and preventing future human trafficking.<sup>91</sup> More so, they illustrate that there is some correlation between States designated as Safe Third Countries and States whose governments do not meet TVPA minimum standards for eliminating trafficking.<sup>92</sup> The *TIP Report* itself even explains that asylum seekers and refugees are especially vulnerable in States that do not comply with the TVPA minimum standards.<sup>93</sup> Therefore, a solution is needed to ensure that asylum seekers who have previously experienced trafficking exploitation do not face further exploitation by being required to apply for asylum in States that do not provide adequate protections.

One effective solution involves a statutory exemption. Specifically, if a State forms a bilateral or multilateral Safe Third Country agreement with a State that ranks in Tier 2 or below in the *TIP Report*, asylum seekers who have experienced human trafficking exploitation throughout their migration journey must be granted an exemption under the agreement to pursue asylum in (one of) the other States party to the agreement. In practice, this would look like an Afghan asylum seeker who had endured trafficking exploitation throughout their journey entering the European Union through Greece, but being able to pursue their asylum application in France or Germany—other Dublin III

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COLLECTION (Apr. 24, 2023), <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-2.en.pdf> [<https://perma.cc/25D7-RDMN>] (listing States that have ratified the 1951 Refugee Convention).

91. See *supra* Part III; 3Ps, *supra* note 18.

92. This assertion does not suggest that the Safe Third Country designation *causes* governments to fall short of the TVPA minimum standards, or vice versa. For further discussion on the difference between correlation and causation, see Pritha Bhandari, *Correlation vs. Causation: Difference, Designs & Examples*, SCRIBBR (Dec. 5, 2022), <https://www.scribbr.com/methodology/correlation-vs-causation> [<https://perma.cc/6T28-6DK2>].

93. 2022 TIP REPORT, *supra* note 19, at 255 (Greece), at 555 (Turkey), at 257 (Guatemala), at 270 (Honduras).

Regulation Member States that are ranked as Tier 1 and in full compliance with the TVPA minimum standards.<sup>94</sup> Or, a previously trafficked Panamanian asylum seeker who had traveled through the Northern Triangle being able to pursue their asylum application in the United States (under the Trump Administration’s Asylum Cooperative Agreements).<sup>95</sup>

It would not be burdensomely difficult for active Safe Third Country agreements to amend their legislation to add this exemption for human trafficking victims, nor for new Safe Third Country agreements to include it. Many contemporary Safe Third Country agreements are already structured to include some exceptions to the general rule. For example, the US-Canada Agreement notes that the “receiving” country need not return an asylum seeker to the “country of last presence” if they have a family member with legal status in the territory of the receiving country, if they have a family member who is at least eighteen years old with a pending claim for refugee status in the receiving country, if they are an unaccompanied minor, or if they arrived with a visa or are not required to be in possession of a visa.<sup>96</sup> Similarly, the Dublin III Regulation includes a list of exceptions to the general rule that asylum applicants are to be evaluated in the first European Union State which they enter.<sup>97</sup> Some of these include if the asylum seeker is an unaccompanied minor and they have a family member who is legally present in a different Member State, if they are an adult and a member of their family is present in a different Member State as a beneficiary or applicant of international protection, or if they have already submitted an application to a different Member State.<sup>98</sup>

Because the *TIP Report* tier rankings can change annually, exemptions need not list the names of specific signatory States. Instead, exemptions could use the same language the *Reports* use to account for the changes in categorization: “States whose

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94. See *Countries in the EU*, *supra* note 29; 2022 TIP REPORT, *supra* note 19, at 69.

95. The 2022 *TIP Report* ranked the United States in Tier 1. See 2022 TIP REPORT, *supra* note 19, at 69. See generally U.S.-El Salvador Agreement, *supra* note 59; U.S.-Guatemala Agreement, *supra* note 59; U.S.-Honduras Agreement, *supra* note 59.

96. See MUSALO ET AL., *supra* note 5, at 950.

97. See UNHCR GREECE, *supra* note 31.

98. See *id.* For a complete list of exceptions, see Dublin III Regulation, *supra* note 13, at 39--41.

governments do not fully meet the TVPA's minimum standards."<sup>99</sup> As such, a draft exemption statement for any Safe Third Country agreement could be phrased as follows:

If the applicant has experienced human trafficking exploitation throughout his or her asylum journey, no State whose government does not fully meet the Trafficking Victim Protection Act's minimum standards for the elimination of trafficking shall be responsible for evaluating his or her application.

The exception could also be phrased in the affirmative. For example:

If the applicant has experienced human trafficking throughout his or her asylum journey, only States whose governments fully meet the Trafficking Victim Protection Act's minimum standards for the elimination of trafficking shall be responsible for evaluating his or her application.

A practical barrier to this recommendation is that State and UNHCR actors conducting refugee status determination (RSD) will require additional training on how to evaluate measures of human trafficking exploitation. Some States have already started doing this; for example, in Greece, the National Centre for Social Solidarity—the competent authority for managing the National Referral Mechanism for the protection of human trafficking victims—has developed a specific curriculum for RSD of trafficked asylum seekers.<sup>100</sup> However, Greece is in the minority and most asylum authorities are “ill-equipped to identify victims of trafficking” among asylum seekers more generally, and also “lack the capacity to assess the relationship between an asylum seeker's actual or feared trafficking experience and their potential need for international protection as refugees.”<sup>101</sup> Therefore, even if these exemptions were to be added to existing Safe Third Country agreements and included in future agreements, it may take years of gradual training and education before the full effect of the exemption takes place.

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99. 2022 TIP REPORT, *supra* note 19, at 55.

100. See *Greece: Situation on trafficking in human beings*, *supra* note 41.

101. *Trafficking in Persons and Refugee Status*, INTER-AGENCY COORDINATION GROUP AGAINST TRAFFICKING IN PERSONS (Sept. 2017), <https://icat.un.org/sites/g/files/tmzbd1461/files/publications/icat-ib-03-v.2.pdf> [https://perma.cc/AE66-SZRZ].

### V. CONCLUSION

The experiences of seeking asylum and undergoing human trafficking exploitation are not mutually exclusive; asylum seekers experience heightened vulnerability and face a higher risk of trafficking exploitation because of their transient nature, lack of resources, and precarious life situations.<sup>102</sup> In order to protect trafficked asylum seekers from continued exploitation, it is crucial that Safe Third Country agreements include an exemption for asylum seekers who have experienced human trafficking throughout their migration journey from mandated application in States that rank Tier 2 or below in the annual *TIP Reports*. Although amending current Safe Third Country agreements will not effectuate this solution immediately, it will be a step in the right direction towards acknowledging the interrelatedness of asylum and human trafficking, complying with international legal responsibilities, and ultimately providing additional protection to trafficked asylum seekers.

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102. See Wilson, *supra* note 1.