



# Syrian Refugee Crisis – Much more than what meets the Eye

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## **Contextual**

The ongoing Syrian Civil War that began in the spring of 2011 is a multifaceted armed conflict in Syria that is fought mainly between the government of President Bashar al-Assad, along with its allies, and various forces - the Free Syrian Army, the Syrian Democratic Forces (SDF), Salafi jihadist groups, a loose alliance of Sunni Arab rebel groups and the Islamic State of Iraq and the Levant (ISIL) - opposing the government.

The unrest in Syria began alongside a wave of revolutions in the Middle East, known as the Arab Spring, grew out of resentment and discontent with the Syrian government, and was inflamed into an armed conflict after protests calling for the removal of the Assad government were violently suppressed.

Syria, today, is experiencing more than just tensions between rebel and governmental forces. The country faces ethnic tensions, the involvement of world powers, jihadist groups, and other terrorist organizations. In 2016, the Office of the United Nations High Commissioner for Refugees (UNHCR) identified 13.5 million Syrians requiring humanitarian assistance, of which 6.3 million are displaced within Syria, and over 4.8 million are refugees outside of Syria; half of those affected are children. The refugee crisis created by the Syrian conflict is dire. António Guterres, United Nations High Commissioner for Refugees, has stated that “Syria has become the great tragedy of this century.”

Most Syrian refugees remain in the Middle East, in Turkey, Lebanon, Jordan, Iraq, and Egypt. Syrians are increasingly seeking protection outside these countries as well; slightly more than 10 percent of the refugees have fled to Europe.

The aim of this research paper is to analyze the notion, background, nature, scope and legal implications of the 'Syrian Refugee Crisis', while also looking at how the international community has responded to the crisis and proposing solutions to the crisis in general.

## **International Law and Definition of a 'Refugee'**

The key international legal instruments on refugee laws are the United Nations Convention Relating to the Status of Refugees, also known as the 1951 Refugee Convention, and the 1967 Optional Protocol relating to the Status of Refugees. The 1951 Refugee Convention is a legal document, ratified by 145 State parties that defines the term "refugee" and outlines the rights of individuals who are granted asylum, as well as the legal obligations and responsibilities of States to protect them.

The 1967 Protocol removed both the temporal and geographic restrictions of the 1951 Refugee Convention on the status of refugees, but also gave the States that had previously ratified the 1951 Convention the option to retain that restriction. Article 1 of the amended 1951 Convention defines a refugee as "A person who owing to a 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 former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.." It also sets out which people do not qualify as refugees, such as war criminals.

The 1951 Convention Relating to the Status of Refugees is built on Article 14 of the 1948 Universal Declaration of Human Rights, which is considered the foundation of international human rights law. Article 14 of the Declaration states that "Everyone has the right to seek and enjoy in other countries asylum from persecution." A refugee may enjoy privileges and rights in a state in addition to those provided for in the Convention. An inviolable part of this Convention is the principle of *non-refoulement*, considered a rule of customary international law. It asserts that a state receiving refugees or asylum seekers should not return them to a country where they might have reason to fear persecution or where they face serious dangers to their freedoms or life.

The preamble of the 1951 Convention states "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 co-operation." Thus, countries who have signed this convention agree that the burden should be widely

shared by all the countries. Signatories of the 1951 Refugee Convention are under legal obligation to protect Syrian refugees on their territory; however, the Convention does not provide permanent protection of refugees. Refugees can, under certain situations, integrate permanently in their country of asylum, but alternatively a person may cease to be a refugee when the basis for his refugee status ceases to exist. Countries who are not signatories to the Conventions have an obligation to not return people to countries where they face persecution, in accordance with the principle of *non-refoulement*.

## **Asylum, Refugee Resettlement, and Temporary Protection**

There are two main ways by which Syrian refugees can access protection in industrialized states beyond the region. They can either travel (legally or illegally) to a state and claim asylum there, or be recognized as a refugee for resettlement selection from an asylum country to another that has agreed to admit them. The main difference between these two avenues is the location of the person at the time of application. Refugee determinations and resettlement decisions are made while the person is outside the destination country. In contrast, a person seeking asylum submits an application while they are physically present in or at a port of entry in the territory where they are requesting refuge.

Asylum is a form of protection based on the principle of *non-refoulement* and internationally or nationally recognized refugee rights. A positive asylum decision can lead to refugee status (referred to as asylum in the United States), subsidiary protection status, or withholding of removal. No country is legally obliged to resettle refugees, and only a few states offer resettlement on a regular basis. Less than 1 percent of the world's refugees are resettled to a third country.

Temporary protection, which grants the right to enter or remain in a country for a limited time due to risk of serious harm in a person's home country, is another possible means for providing protection and is usually granted to large groups of people based on extraordinary and temporary conditions in their country of origin. Temporary protection is not intended to displace asylum, but rather to provide an intermediary, immediate measure of protection, and persons granted temporary protection should be able to apply for and be granted asylum if eligible.

## **Response of the International Community**

### **Providing Protection to Refugees**

An estimated 11 million Syrians have fled their homes since the start of the civil war. The number of Syrians seeking asylum outside the region has also greatly increased in the last three years. According to the United Nations High

Commissioner for Refugees (UNHCR), 4.8 million refugees have fled to Turkey, Lebanon, Jordan, Egypt and Iraq; this is around 95% of the total number of Syrian refugees globally. Out of these 5 countries, Turkey, Lebanon, and Jordan share most of the responsibility of responding to the refugee crisis with the support of the United Nations. Although other countries have taken in Syrian refugees, the numbers are much smaller. For example, between April 2011 and March 2017 a total of 937,718 asylum applications were submitted to Europe. Within Europe, Germany with 300,000 asylum applications and Sweden with 100,000 applications, have received the majority of Syrian asylum applications.

Hungary, Austria, Netherlands, Denmark, and Bulgaria combined have received 21% of the total number of asylum applications submitted to Europe, and the remaining countries have received 14% of the total number of applications. The U.K and the U.S have accepted around 10,000 Syrian refugees. In 2016, a total of 366 thousand persons were granted refugee status in the EU-28 at first instance, 258 thousand were given subsidiary protection status, and 48 thousand were given authorization to stay for humanitarian reasons; whereas, a total of around 37.7 thousand people received positive final decisions based on appeal or review.

Contrary to what many people think, the Gulf Cooperation Council (GCC) consisting of The United Arab Emirates (UAE), Bahrain, Saudi Arabia, Oman, Qatar, Kuwait, and Yemen, have accepted numerous Syrian refugees. According to the World Bank, from 2011 to 2013 alone the number of Syrians living in the Gulf increased 470 percent from 241,000 to 1,375,000.

The government of Saudi Arabia has stated that since the start of the Syrian conflict it has hosted 2.5 million refugees and the UAE government has said that it has provided residency permits to more than 100,000 Syrians. However, since GCC members have not acceded to the 1951 UN Convention Relating to the Status of Refugees, they do not recognize Syrians living in the Gulf Arab region as ‘refugees’, and so these people are not formally registered with the UN as refugees and are not part of UNHCR statistics. They are classified as “Arab brothers and sisters in distress” and are not entitled to certain protections such as the ability to eventually gain citizenship of the host country.

Despite the Russian Federation’s close ties with Syria and political involvement in the civil war, it has granted refugee status to only two Syrians out of an estimated of over 8000 citizens living in Russia. Out of these, around 2,000 Syrians have been given temporary asylum. China hosts approximately 300,000 refugees, but out of these less than 30 are Syrians. By the end of August 2016, there were only 9 Syrian refugees in China and 26 were seeking asylum. Amnesty International has stated that other high-income countries like Japan, Singapore, and South Korea have offered zero resettlements to Syrians.

## **Providing Financial Support to Refugees**

International support for the Syrian humanitarian situation has been mainly financial. The European Union has contributed the most amongst the international community in providing aid to the Syrian crisis. More than \$10 billion have been mobilized for humanitarian, developmental, economic, and stabilization assistance to Syrians in the country and to refugees and their host communities in neighboring Lebanon, Jordan, Iraq, Turkey and Egypt. The European Union has also pledged more than \$3 billion at the 'Supporting Syria' conference held in London in February 2016. The European Commission alone has contributed 18.6% of the total financial aid given to Syrian humanitarian situation.

The United States and Germany are the top single-state bilateral donors in the humanitarian aid for the Syrian crisis. In 2012 and 2013, USAID and other US governmental agencies provided nearly \$385 million of aid items to Syria. On 4 February 2016, US Secretary of State John Kerry announced another \$601 million in new humanitarian funding for Syria and neighboring countries, bringing its total contribution to more than \$5.1 billion in humanitarian assistance. The German government alone has contributed 9.4% of the total financial aid given to Syria. In total, since the start of the Syrian conflict, Germany has donated over \$2.4 billion to Syria and pledged in the 2016 Syrian donor conference that it would give \$2.5 billion through 2018. At the same conference, the United Kingdom pledged \$1.7 billion in new aid till 2020. The UK is the third largest donor and till now has donated just under \$ 2 billion.

Considerable amounts of aid have also been given by the Gulf Countries, in particular, Kuwait, Saudi Arabia, and the United Arab Emirates as well as Japan and Canada. For example, the UAE government, as of 2015, has reportedly provided \$750 million in aid since the Syrian crisis erupted. Kuwait was the third largest bilateral donor in 2014 for the Syrian Regional Refugee Response Plan, the UN's humanitarian program designed to assist Syrian refugees and vulnerable host communities. The Canadian and Japanese governments have provided \$94,539,102 and \$82,243,968 respectively.

Despite donations from governments and private organizations, resources to aid the humanitarian crisis have been insufficient to address the needs of displaced Syrians. For example, aid given to the Syrian Regional Response Plan reached only 61 percent of the estimated \$3.74 billion necessary to cover the needs for Syrian refugees and host communities in 2014. The lack of funds left Syrian refugees in danger of not receiving vital support.

## **Facts and Figures of three host countries**

## Lebanon

Lebanon, neighboring Syria, has close cultural, political, and economic links with Syria, illustrated by the fact that around 600,000 Syrian migrants were estimated to be working in Lebanon before the onset of the Syrian civil war. Border communities on both sides of the border have strong family and economic ties, and many Lebanese people found refuge in Syria during the Lebanese civil war and during the Israeli war on Lebanon in 2016.

Lebanon, with a population of 4 million, and an influx of around 1.5 million Syrian refugees, has the highest ratio of refugees per capita in the world. More than 75% of these refugees are children and women. Since Lebanon has not ratified the 1951 Refugee Convention, the Syrian refugees face several uncertainties regarding their legal status. Protection mechanisms for refugees are considered weak and Syrians who have fled the conflict zone are not recognized as refugees and are treated according to the normal laws and policies applicable to all Syrian nationals.

Due to strict regulations on the release of legal residence permits, a significant number of refugees are also undocumented. These conditions make it difficult for the refugees to secure employment, access justice, and exposes them to higher risks of abuse and exploitation. Moreover, there are no formal camps for Syrian refugees who are scattered across 2,100 urban and rural locations in Lebanon. In 2014, UNHCR estimated at least 40% of refugees live in inadequate accommodation ‘including in makeshift shelters (garages, worksites, one room structures, unfinished housing) and informal settlements’ whilst ‘others are at risk of eviction or live in overcrowded apartments.’ The 2015 UN Vulnerability Assessment of Syrian Refugees in Lebanon noted that “Each day represents a monumental struggle to meet the most basic needs,” and estimated that around 70% of the refugees live below the Lebanon extreme poverty line. Nearly half of the refugee children do not have access to any form of education and access to healthcare is limited due to the expensive cost, geographical challenges, and restricted coverage criteria.

In addition, although Lebanon has historically maintained an open-door policy towards Syrian refugees, in 2014 it imposed several restrictions on the entry of Syrian refugees. The Lebanese government declared that only refugees from areas where fighting is near the Lebanese border would be permitted access and asked UNHCR to stop registering Syrian refugees. Exceptions have been made for Syrians with qualifications, Lebanese sponsors, and on humanitarian grounds.

In 2015 the government announced a new policy, closing borders ‘de-facto’ for people fleeing violence. The mass influx of Syrian refugees has put great strain on Lebanon’s economy, infrastructure, and resources. The pressure is felt by all sectors

and increased competition for resources and jobs is fueling tensions in certain areas between Lebanese host communities and the refugees.

## **Jordan**

Jordan and Syria share relations that have ancient roots since Jordan was historically the southern part of Syria. Since the start of the Syrian civil war, Jordan has contributed substantial and generous assistance to Syrian refugees.

As of December 2016, Jordan hosts over 655,000 Syrian refugees, with children over 51% of the population. Approximately 80% of them live outside camps, while more than 140,000 have found shelter at the camps of Za'atari and Azraq.

The Jordanian government estimates that the total refugee count including unregistered refugees is over 1.4 million. Like Lebanon, Jordan is not a signatory to the UN 1951 Refugee Convention, and the country receives all its foreigners, including Syrian refugees, within the framework of its Alien Law. This threatens the welfare of many refugees. Nine out of ten refugees are considered highly or severely vulnerable in terms of basic needs, and UNHCR estimates that 93% of the refugees live below poverty line. Shelter is makeshift and unable to withstand the harsh winter weather. Medical care has been almost non-existent, and only five to six litres of water for each person is available every day - about a third of the international standard. Rise in housing costs and difficulties in obtaining work permits have contributed toward difficulties for refugees in meeting day-to-day needs. In some cases, this has been linked to high instances of child labor and early marriage. Moreover, the humanitarian space for Syrian refugees in Jordan is continuing to erode and an increased number of cases of forced return to camps or to Syria are being reported by UN Agencies and international NGOs.

Like Lebanon, Jordan maintained an open border policy for refugees from Syria, but has increasingly imposed restrictions to prevent more people from Syria entering Jordan. In 2013 Palestinian refugees from Syria were barred from entry and unaccompanied men, unable to prove family ties in Jordan, as well as those without identity documentation were prohibited to enter. In the last months of 2016, Jordan tightened its border policy. Following the attack in Ruqban, the Jordanian government announced the closure of the northern and north-eastern borders. These restrictions are unlikely to change as the refugee crisis has had a huge impact on Jordan's socioeconomic conditions. The country's community resources, infrastructure and social services are seriously overstretched. As one of the top ten driest countries in the world, the influx of refugees have put great strain on Jordan's water and agriculture. Rising rents and competition for jobs have contributed to increase tensions between refugees and host populations.

## Turkey

The Republic of Turkey was the first of Syria's neighbors to formally respond to the influx of Syrian refugees. Turkey, currently, hosts 2.9 million registered Syrian refugees. Out of these, around 260,000 people are hosted in 26 camps run by the Disaster and Emergency Management Presidency of Turkey (AFAD), where refugees have access to shelter, health, education food and social activities. However, despite efforts by the government, 90% of the refugees live outside the camps under very challenging circumstances with depleted resources. Registered refugees have, in principle, access to public services, including education and healthcare. However, for many, access to these basic facilities is often limited for various reasons, including problems in registering with local authorities and the language barrier.

Turkey is a signatory to the 1951 Refugee Convention and its 1967 Additional Protocol on the status of refugees. However, Turkey applies a geographical limitation to the 1951 Refugee Convention which limits the right to be recognized as refugees to asylum seekers originating from Europe. Syrian refugees are thus excluded from this form of protection and are instead only granted "temporary protection". Since 2011, Turkey has followed an open-door policy for Syrian refugees.

The government initially referred to them as "guests", then applied the temporary protection policy in October 2011 to deal with the large influx. In meetings with Amnesty International, Turkish officials acknowledged that official border crossings were only open to refugees with passports or "urgent medical or humanitarian needs," frequently citing the lack of capacity in Turkey's refugee camps as a justification. Despite this, there have been positive examples of Turkey facilitating open and regulated border crossing points for refugees from Syria without passports.

Studies indicate Syrian refugees in Turkey have had a positive impact on economic growth, but a negative impact on employment. The huge numbers of refugees means increased demand, which is estimated to have boosted Turkey's GDP between 0.5% and 1.7% in 2015. In addition, exports have increased, and according to data from the Union of Chambers and Commodity Exchanges of Turkey (TOBB), the number of companies set up in Turkey with at least one Syrian partner reached nearly 6,000 at the end of 2016. But since Syrian refugees compete with locals, especially in low-skilled jobs, unemployment has increased. Child labor, illegal labor, and rent are also increasing. Syrian refugees, thus, contribute to the economy in different aspects.

**Problems and Probable Solutions with respect to Lack of Global Consensus on the Refugee Crisis.**

A young boy found lying face-down on a beach near Turkish resort of Bodrum was one of at least 12 Syrians who drowned attempting to reach Greece. Reports suggested that their ultimate destination was Canada. Their refugee application was rejected by Canadian authorities. Like thousands of other Syrian Kurdish refugees in Turkey, the U.N. would not register them as refugees, and the Turkish government would not grant them exit visas.

## **Glitches**

The UK, Ireland – both outside the Schengen zone – and Denmark have opt-outs from the EU's common asylum policy, agreed in the Lisbon treaty. Britain insists that another piece of legislation should be upheld – the so-called Dublin regulation, under which displaced people should claim asylum in the first EU state they arrive in. Germany has unilaterally lifted the Dublin protocol. It says the regulation clearly isn't working, as tens of thousands of refugees head north through the western Balkans towards Austria and Germany.

Downing Street refused to take part in a new quota system proposed by Berlin, which would see refugees fairly distributed among all 28 EU states. Britain and east European countries including Hungary, Slovakia, Poland and the Czech Republic had fiercely resisted the plan. The Spanish were also not keen. The Home Office had indicated that Britain would not take part in any compulsory EU resettlement scheme or be bound by targets as part of a voluntary scheme.

Cameron does not want to join any Europe-wide resettlement programme for refugees, believing that if the UK became involved in a large-scale scheme, *it would act as a magnet for other migrants and it would be impossible to distinguish economic migrants from refugees.*

The European Union's sharpening divisions over a spiralling refugee crisis broke into the open with two leaders strongly disagreeing in public over whether the asylum-seekers were threatening *Europe's Christian roots.*

## **Probable Solutions**

The Syrian child's plight should concentrate minds and force the EU to come together and agree to a plan to tackle the refugee crisis. The European Union must intervene quickly to absorb the population, if the issue isn't internationalised on a UN level, every so often we will be discussing how to avoid the crisis.

Thousands of ordinary Germans have volunteered to help the refugees now arriving daily. Some have filled up their cars with shopping, and distributed clothes, nappies, food and cuddly bears. Others have offered German lessons, translation and

babysitting. Martin Patzelt, an MP from Merkel's CDU party, has housed two refugees from Eritrea. They are now living with him temporarily at his home in Brandenburg. Groups such as City of Sanctuary and the Unity Centre in Glasgow have long offered support to asylum seekers.

### **Should Men, Women and Children from Syria be treated differently and not at Par or Uniformly?**

Men, women and children from Syria need to be treated uniformly in respect to citizens of other countries. Many countries like Lebanon and Sudan are working towards providing an equitable framework by providing the same rights and services such as access to state education and healthcare similarly as to a local resident.

In Sudan, Syrians also get special treatment when it comes to securing residency permits; this is the result of an agreement between the two countries that dates to the 1960s. When it comes to survival in Sudan, the life is hard as it is a costly country but the refugees are not legally deprived and that is something which is praiseworthy.

In Lebanon, the Ministry of Education and Higher Education has taken several positive steps to enroll Syrian children in formal education. Under international law, all children in Lebanon including Syrian refugees have a legal right to free and compulsory primary education, and access to secondary education without discrimination. But, the burden of hosting refugees has cost Lebanon an estimated US\$13.1 billion, and the refugee influx has strained public services and infrastructure, including health, energy, water, waste collection, and education. International donor aid has been insufficient: the \$1.87 billion Lebanon Crisis Response Plan, designed to address the country's refugee crisis, was only 62.8 percent funded in 2015. So for Lebanon to live up to the expectations of public it is important that it receives proper funding from International Organizations so that its universal educational policy can be utilized.

Governments and aid agencies are failing to provide even basic protections to women refugees traveling from Syria. A new research conducted by Amnesty International shows that women and girl refugees face violence, assault, exploitation, and sexual harassment at every stage of their journey, including on European soil.

It is Human Rights violation and so more steps need to be taken to ensure that refugee women, especially those most at risk, are identified and special processes and services are put in place to ensure that their basic rights, safety and security are protected. Refugee men similarly face specific threats and circumstances that leave them vulnerable, they might be alleged for security reasons, to suffer from forms of police harassment, and to be forcibly encamped (or otherwise punished) by

authorities for labor market violations. Refugee men, like refugee women and refugee children, are subject to conditions that create vulnerabilities and insecurities for them in host states. They are liable to need and benefit from, albeit potentially in different ways, the aid and services that the refugee response can offer. The European Countries must also allow the aid and services as provided by Lebanon and Sudan so that the Syrian people can be treated uniformly if not at par to other citizens. This can only be done by creating legal frameworks for upliftment and funding by International Organizations.

### **Explanation of School of Thought that Refugees should be granted only Temporary Refuge**

The practice of temporary refuge emerged in the early part of the twentieth century and was soon extended to many parts of the world in order to provide a practical, humane, and immediate solution in cases of large-scale influx of refugees, pending the finding of a permanent home.

Thus, it was always meant to be a short-term solution to an emergency situation and has generally been applied for the duration of a conflict. However, due to the prolonged length of some armed conflicts, temporary refuge has in some cases developed into a de facto permanent resettlement in the country of refuge.

Inspired by the 1951 Convention Relating to the Status of Refugees and pre-existing humanitarian traditions (such as rescuing persons in distress at sea), temporary refuge developed as a key element of the response of states towards victims of armed conflict or massive violations of human rights.

There's the fear of radicals infiltrating across the border along with the families fleeing war. This fear forms a major argument for the countries granting only a temporary refuge.

Rapid population growth in Africa, South-Western Asia, etc., and the low demographic growth in Western countries is another important factor for these countries adopting this school of thought. It is believed that infiltration of refugees can a cause of social change in the receiving areas. The countries are apprehensive of dilution of their cultural identity due to this difference in rate of population growth.

Both the EU Temporary Protection Directive and Article 78(3) (together with Article 80) of the Treaty on the Functioning of the European Union foresee a solidarity mechanism in the case of a sudden influx of refugees. However, the response of the EU to the arrival of refugees from Syria has been slow and

idiosyncratic, raising serious concerns about the future of the Common European Asylum System.

## **A Scrutiny of Prevalent Laws and Policies in USA in context of Compliance with International Treaties and Conventions**

Refugee law has historically struggled with the difficult balance between, on the one hand, the humanitarian viewpoint that states, that are able to, should help those in need, and, on the other hand, domestic policy issues and the sovereign right of nations to decide whether or not to admit or deny entrance to anyone who is seeking to enter their borders. This tension makes refugee law a complex area of international law where opposing interests demand attention.

Historical events and various influxes of refugees to its borders have made many Americans suspicious of admitting too many people to the U.S. The terrorist attacks of September 11, 2001, and the continuous conflicts and hardship faced in countries in Central and South America resulting in large refugee flows to the U.S. are some, among many, factors that have exacerbated the overall negative view towards refugees and immigrants.

Donald Trump signed an executive order on January 27, 2017 which temporarily banned the majority of refugees coming from Syria to the US and suspended visas for those from seven, mainly Muslim, countries. The particular decision was taken at the cost of several international legal obligations applicable on the US, further made incumbent on it to comply, by way of its own domestic law. For a detailed deliberation on the subject matter at hand, one is required to be informed of the international treaties and conventions relating to refugees and the corresponding domestic laws and policies of the US which in turn would enable a person to reach to a conclusion as regards the repercussions of the aforesaid decision on the world at large, particularly on the banned refugees.

The United States laws and policies relating to refugees are The Immigration and Nationality Act (INA) of 1952 and The Refugee Act of 1980. According to Section 101(a) (42) of The Immigration and Nationality Act (INA) of 1952, a refugee is a person who is unable or unwilling to return to his or her home country because of a “well-founded fear of persecution” due to race, membership in a particular social group, political opinion, religion, or national origin.

This definition is based on the United Nations 1951 Convention and 1967 Protocols relating to the Status of Refugees, which the United States became a party to in 1968. Following the Vietnam War and the country’s experience resettling Indochinese refugees, Congress passed The Refugee Act of 1980, which incorporated the 1951 Convention’s definition of ‘refugee’ into U.S. law and provides the legal basis for

today's U.S. Refugee Admissions Program (USRAP). Article 3 of the Refugee Convention makes clear that all signatory states "apply the provisions ... to refugees without discrimination as to race, religion or country of origin". In 1980, Congress enacted the Refugee Act to bring the US into conformity with these obligations after ratifying the 1967 Protocol Relating to the Status of Refugees. Article 27 of the American Declaration on the Rights and Duties of Man and Article 22 of the American Convention on Human Rights also relate to refugees.

### **Analysis of the American Legal System in respect of Immigration**

The power to regulate immigration in the United States belongs to Congress. Immigration laws passed by Congress can be found in title 8 of the U.S.C. (the United States Code). The Immigration and Nationality Act of 1952 (INA) further forms the foundation for immigration law in the US. In 1980, Congress amended the INA by passing the Refugee Act, which consists of provisions relating to the status of refugees.

The Refugee Act broadened the previous definition of refugees in order to better comply with the international definition in the Refugee Convention and Protocol. The Refugee Act remains one of the very few statutes in U.S. domestic law that has directly incorporated the language and concepts of an international treaty.

Up until 2003, the Immigration and Naturalization Service (INS) was responsible for carrying out the nation's immigration laws. However, this agency was abolished when Congress passed the Homeland Security Act in 2002. Since then, three subdivisions, so called bureaus, under the Department of Homeland Security (DHS) have been responsible for enforcing and administering immigration law. The U.S. Citizenship and Immigration Services (USCIS) is responsible for asylum and refugee applications, the U.S. Immigration and Customs Enforcement (ICE) is responsible for enforcing the immigration laws, including the detention of non-citizens, and the U.S. Customs and Border Protection (CBP) is responsible for customs inspections at U.S. ports of entry and border crossings.

The United States has not only ratified the key treaty, Congress has adopted implementing legislation with the explicit intent of conforming fully to international obligations. An authoritative international guide, the UNHCR Handbook, exists on many important interpretive issues and the well-respected UNHCR eagerly dispenses advice to domestic decision-makers.

The U.S. refugee law has been seen to be at odds with international norms. Even where the international standard is clear and peremptory (as in the case of *non-refoulement*), embodied in a ratified treaty, and specifically implemented in domestic legislation for the express purpose of fulfilling international obligations, both

administrators and courts resist giving international law its full effect. In *Stevic* the Supreme Court privileged prior domestic law over the terms of the Protocol and assumed that the President and the Senate did not intend to change the domestic status quo when they brought the United States within the international refugee regime.

### **In context of USA, an Analysis of Significant Domestic Judicial Precedents and Judgments Relating to Refugees in General.**

The United States chose to join the international refugee regime by ratifying the 1967 Protocol relating to the Status of Refugees (Protocol) in 1968. In enacting the Refugee Act of 1980, Congress pointedly signalled its intention to conform U.S. refugee law to our international legal obligations. A striking similarity in terminology exists between Article 1 of the 1951 Convention relating to the Status of Refugees (Convention) and the U.S. asylum provisions, 101(a)(42)(A) and 208 of the Immigration and Nationality Act (INA). Especially significant is the close resemblance between the domestic provisions on mandatory withholding of deportation.

This article will address four areas in which U.S. decision-makers have failed to conform domestic lawfully to international standards: (1) the gap created by erroneous Supreme Court opinions dealing with Convention Article 33 and the INA provision on withholding of deportation; (2) the inconsistent deference paid to the views of the United Nations High Commissioner for Refugees (UNHCR); (3) the frequent neglect of international norms in assessing persecution under the INA; and (4) reliance upon restrictive concepts of causation that have no basis in international refugee law. Drawing upon the constructive approach of some recent judicial and administrative decisions, this article suggests giving greater prominence to the international law dimension of asylum in order to bridge the divide between international obligation and domestic implementation.

In three significant decisions since 1984, however, the Supreme Court unmoored U.S. law from the international norms it was adopted to implement. As a result, the United States is seriously out of compliance with the single most important and peremptory norm of refugee law - the prohibition on *refoulement*. The manner in which this divide between domestic and international law developed is symptomatic of the larger problem of a lack of coherent methodology for approaching international law requests for asylum were filed with the Executive Office for Immigration Review (EOIR) by aliens in deportation and exclusion proceedings. The gap can be traced to events associated with the ratification of the Refugee Protocol in 1968.

By ratifying the Protocol, the United States became a participant in the international refugee regime, whose prime binding principle is *non refoulement* that refugees may not be forcibly repatriated to a country in which their lives or freedom would be threatened on account of race, religion, nationality, political opinion or membership of a particular social group.

When congressional attention finally focused on drafting the Refugee Act in 1980, Congress was preoccupied with the need to construct a power-sharing regime between the Executive and Congress for overseas refugee admissions. As a result, the tasks of crafting a neutral, permanent asylum process and of revising the withholding provision were accomplished with relatively little discussion of their rationales or implications. Nevertheless, the legislative history of the Refugee Act is replete with general expressions of intent to bring U.S. law into conformity with international norms.

As the Supreme Court noted in *INS v. Cardoza-Fonseca*, "if one thing is clear from the legislative history of the new definition of 'refugee,' and indeed the entire 1980 Act, it is that one of Congress' primary purposes was to bring United States refugee law into conformance with the 1967 United Nations Protocol.

Three important textual changes were made to the withholding provision in 1980 to track more closely the international obligations assumed by the United States in 1968: (1) withholding was made mandatory; (2) language from Convention Article 33 ("life or freedom would be threatened") was adopted into the eligibility standard; and (3) the protected classes were expanded to include "nationality" and "membership in a particular social group."

Despite this clear effort by Congress in 1980 to amend the statute to implement the Protocol fully, the Supreme Court, in *INS v. Stevic*, perpetuated pre- 1968 standards by limiting eligibility for withholding to persons meeting the pre-1968 "more likely than not" evidentiary burden. Stevic had argued that the "well-founded fear" terminology of Convention Article 1A(2) and INA 101(a)(42)(A) set a lesser burden of proof of eligibility both for asylum and for withholding. In resolving the Stevic case, the Supreme Court relied upon the misleading assurances of executive branch witnesses in 1968 that no formal changes in domestic law were necessary to implement the Protocol.

In essence, Stevic permits prior non-conforming domestic law to operate as an unstated reservation to the Protocol. Not closely attuned to refugee protection norms, the Court seems to have taken the Administration's suggestion in 1968 that international obligations come virtually cost-free as an invitation to regard them as being without weight in interpreting ambiguous statutory provisions. When the INS attempted to extend Stevic's "more likely than not" standard to discretionary asylum

under INA 208, the Supreme Court belatedly took a serious look at international refugee standards in *Cardoza-Fonseca*.

In some respects, Justice Stevens' opinion in *Cardoza-Fonseca* is a high-water mark among U.S. asylum cases in its attention to international norms. The majority drew not only on the text of the Convention, but also on the UNHCR's explication of the origins of the refugee definition in the Constitution of the International Refugee Organization and on the works of leading refugee law scholars. As a result, the "well-founded fear" standard applied under INA closely tracks international standards and provides a flexible framework for asylum adjudication, which is in tune with the realities of the refugee situation.

At the same time, *Cardoza-Fonseca* is deeply flawed. The Court perpetuated its Stevic error by insisting that Convention refugees are not per se entitled to non refoulement under Article 33. While all "refugees" may apply for a discretionary grant of asylum under INA, an unlucky sub-set with negative discretionary factors and proof short of the "more likely than not" level may, according to the Supreme Court, be forcibly returned to their persecutors.

Nothing in the Convention or Protocol, the interpretive UNHCR Handbook or other relevant sources of international refugee law suggests that any group of bona fide refugees, not subject to the exclusion clauses, is left unprotected by Article 33.

### **Why did the Court create this Unnecessary and Potentially Harmful Gap between U.S. and International Refugee Law?**

The Court does not lack the ability to understand the relevant international standards. In *Cardoza-Fonseca* the majority fully embraced the textual, historical and policy arguments proffered by the UNHCR but only as to eligibility for asylum under INA. These same arguments were presented by the UNHCR in *Stevic*, where they were flatly ignored in construing INA 243(h).

Promising cases such as *Perkovic v. INS184*, however, draw explicitly on international human rights standards to reach results consistent with the humanitarian aims of refugee law. Although less clearly tied to international norms, the Ninth Circuit's Blanco-Lopez' principle-finding persecution where the government resorts to extrajudicial punishment rather than lawful prosecution likewise promises to bring U.S. asylum law into greater harmony with the protective principles of international refugee law.

In this light, it is sobering to gauge how frequently U.S. refugee law is at odds with international norms. Even where the international standard is clear and preemptory embodied in a ratified treaty, and specifically implemented in domestic legislation

for the express purpose of fulfilling international obligations, both administrators and courts resist giving international law its full effect.

In *Stevic* the Supreme Court privileged prior domestic law over the terms of the Protocol and assumed that the President and the Senate did not intend to change the domestic status quo when they brought the United States within the international refugee regime.

No weightier reasons than accommodation of administrative lethargy and lack of generosity toward the treaty's intended beneficiaries can be given to explain the Court's conclusion.

### **In context of USA, Identification of Issues and Gaps in Enactment and/or Enforcement of Domestic Laws, Policies and Processes relating to Refugees in General**

Every year, the United States provides opportunities to thousands of the world's most vulnerable refugees to resettle in the U.S., in a program endorsed by each President annually since 1980 through a Presidential Determination and notification to Congress. The President, each year, also, in consultation with Congress, determines the numerical ceiling for refugee admissions. For Fiscal Year (FY) 2016, the proposed ceiling was 85,000.

### **How does the U.S. Refugee Resettlement Process Work?**

The Refugee Admissions Program is jointly administered by the Bureau of Population, Refugees, and Migration (PRM) in the Department of State, the Office of Refugee Resettlement (ORR) in the Department of Health and Human Services (HHS), and offices within the Department of Homeland Security (DHS). U.S. Citizenship and Immigration Services (USCIS) within DHS conducts refugee interviews and determines individual eligibility for refugee status in the United States.

### **Issues and Gaps in Enactment of Domestic Law relating to Refugee**

The United States Refugee Act of 1980 (Public Law 96-212) is an amendment to the earlier Immigration and Nationality Act and the Migration and Refugee Assistance Act, and was created to provide a permanent and systematic procedure for the admission of refugees to the United States.

### **However there exist certain loopholes and gaps in the legislation**

The INA requires most prospective refugees to prove their individual case of “well-founded fear,” regardless of the person’s country, circumstance, or classification in a priority category.

Section 201(a) of the Refugee Act provides discretionary power to the President of the country to define “refugee” under ‘special circumstances’ and after ‘appropriate consultation’.

Further, under section 207(e) President has the discretionary power to decide the number of the refugees that the US will allow every fiscal year.

The term ‘appropriate consultation’ means *discussion* by designated cabinet level representatives of the president with the members of committees on the Judiciary of the Senate and House of Representatives.

(In short, the Executive has too much power to decide on the type of refugees and the number of refugees that can enter USA)

Before admission to the United States, each refugee must undergo an extensive interviewing, screening, and security clearance process conducted by Regional Refugee Coordinators and overseas Resettlement Support Centers (RSCs). This extensive system does not prove adequate to handle the large number of the refugee application pending. Moreover the process takes around 18 months.

The U.S. Government gives the Department of Homeland Security the authority to make the decision as to who qualifies for refugee status under *U.S Refugee Admission Program* and who doesn't.

### **Refugee Crisis not a Human Rights issue and more of a Socio-political Issue?**

Europe is experiencing one of the most significant influxes of migrants and refugees in its history. Pushed by civil war and terror and pulled by the promise of a better life, huge numbers of people have fled the Middle East and Africa, risking their lives along the way.

Poverty, human rights abuses and deteriorating security are also prompting people to set out from countries such as Eritrea, Pakistan, Morocco, Iran and Somalia in the hope of a new life in somewhere like Germany, Sweden or the UK.

As European countries struggle with the mass movement of people, some have tightened border controls. This has left tens of thousands of migrants stranded in Greece, raising fears of a humanitarian crisis.

The rights of asylum seekers arise from the Dublin regulation. Under the Dublin regulation, refugees are required to claim asylum in the member state in which they first arrive. The purpose of this Regulation, adopted in 2003, is to determine which State is responsible for examining an asylum application and to make sure that each claim gets a fair examination in one Member State. Normally the State where the asylum seeker first entered the EU is responsible for examining the application.

The idiosyncrasies of European Countries for not allowing Syrian refugees on the grounds of risks of infiltrating terrorists as refugees are logically unfounded.

The procedures in these countries are already very strict apart from the initial verification of the document and identities of the applicant by UNHCR. Moreover, most direct routes are fraught with danger. In 2015 more than 3,770 people drowned or went missing crossing the Mediterranean to Greece or Italy in flimsy dinghies or unsafe fishing boats.

There is a need to reduce the strain on neighboring countries, and increasing the level of burden sharing by the international community as a whole as well as increasing the distribution of this burden among industrialized states.

Rapid population growth in Africa, South-Western Asia, etc., and the low demographic growth in Western countries is another important migration driver and also a cause of social change in the receiving areas. The countries are apprehensive of dilution of their cultural identity due to this difference in rate of population growth.

If we can better understand the layers of decision-making, and the gatekeepers that shape policy at local, national, and regional levels, it will, in turn, point to new policy levers available to donor governments and the international community. Understanding how interests and power relations have played out at a micro-political level can open up new diplomatic channels to enhance protection space.

To take an example, in Jordan, in the governorate of Mafraq a series of opportunities to integrate Syrian refugees into local labour markets have emerged as a result of local political dynamics. Conversely, in Turkey, pressure on municipal authorities in Bodrum has created pressure on central government protection responses. Understanding these politics within the main host countries of first asylum is the key to unlocking protection space.

In Egypt, despite the government's initial commitments to provide refugees with access to public health and education on equal footing with Egyptians, the protection

available for Syrians has decreased due to a change in the political environment (Inter-Agency 2014c). In July 2013, the Egyptian government altered its policy and introduced visa requirements for Syrians, who had previously been exempt from this regulation (Inter-Agency 2014c).

The United States has a policy that aims to take at least 50 percent of all refugees referred for resettlement by UNHCR worldwide, and indicates that it will resettle more Syrian refugees in the near future (US PRM 2014). In contrast, the British government does not appear to be inclined to offer a large number of resettlement slots.

This could be due to its current policy objectives. The British government, under the leadership of Prime Minister David Cameron, has vowed to reduce net migration numbers, and resettling a large number of Syrian refugees could be perceived as contradictory to this goal.

This sudden and massive flow of population has already had a substantial impact on the domestic politics of most European countries. It has generated new tensions, and exacerbated pre-existing ones, between the member states of the EU, and promises to be critically important for the Union as a whole. The crisis also bears on Europe's security choices vis-à-vis the conflicts in the Middle East. This impact will be magnified as a function of the duration and the scale of the refugee crisis.

The refugee crisis is aggravating and accelerating the economic, social and political consequences of Europe's inability to deal jointly and severally, in an effective and legitimate manner, with the challenges of our age. The EU may survive more or less completely, with all or some of its current powers, but its constitutional and strategic ambitions of barely more than ten years ago are already receding in the mist of the pre-crisis age.

### **List of Recommendations and Way Forward in Resolving the Syrian Refugee Crisis**

“Financially broke” is how Antonio Guterres, the UN High Commissioner for Refugees, described UN agencies in September 2015. Wealthy countries quite simply aren't keeping their high-profile promises to fund aid for refugees abroad. For example, the UN has received less than half the funding it needs to support Syria's 4 million refugees. This is now forcing 80% of refugees living outside camps in Jordan to do dangerous, degrading jobs or send their children out to beg.

The challenge for humanitarian and development actors is to stabilize the precarious economic situation, forge a transition from assistance to development, promote economic development strategies which support host and refugee communities

equitably, and reduce the potential for negative economic impacts to exacerbate domestic and regional tensions.

There is the need to **promote respect for refugees' rights**, prevent violations and abuses towards refugees and reduce vulnerability by implementing community-based protection strategies and advocating for the involvement and inclusion of host communities in services and infrastructure provision for refugees.

Since the Syrian civil war began in 2011, many people have been killed, including children. The war has become deadlier since foreign powers joined the conflict. Peace in Syria would be the surest way of curbing the number of Syrian refugees.

Within Syria, a high percentage of people lack adequate healthcare, they lack regular access to clean water. Half the children are out of school. The economy is shattered and four-fifths of the population lives in poverty. Basic infrastructure should be provided and for that the World Bank and UN will have to raise funds.

One of the few things that would convince refugees to delay their sea crossing would be the realistic chance of reaching Europe through legal means. Syrians, Eritreans, and Afghans form the vast bulk of those fleeing to Europe. The swift, managed resettlement of, say, 2 million people from those countries could therefore persuade many others to remain in transit countries until their applications are processed.

This would not stop the boats entirely, and it will not satisfy those who think that migration is a possibility to be averted rather than an inevitability to be mitigated. However, it would allow Europe to manage the crisis better by controlling the flow of refugees, and their destinations. It wouldn't work unless EU members implement a common asylum policy, and unless a significant number of refugees are resettled. If resettlement remains a luxury then irregular migration will remain the norm.

Not all those seeking to come to Europe are fleeing for their lives; a good proportion is seeking work and opportunity.

Increasing options for labor migration to Europe is one way to begin to address this demand, and would also help disentangle flows of labor migrants from those of refugees.

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## Glossary

*Asylum:* Asylum is a form of protection given by a state on its territory based on the principle of non-refoulement (no repulsing/sending back) and internationally or nationally recognized refugee rights. It is granted to a person who is unable to seek protection in his/her country of citizenship and/or residence,

in particular for fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

*Asylum Seeker:* An asylum seeker is an asylum applicant awaiting a decision on an application for international protection, granting or refusing a refugee status or another form of international protection.

*Resettlement:* Resettlement is the transfer of refugees from an asylum country to another State that has agreed to admit them and ultimately grant them permanent settlement.

*Temporary Protection:* According to the European Commission, temporary protection is an exceptional measure to provide displaced persons from non-EU countries and unable to return to their country of origin, with immediate and temporary protection. It applies in particular when there is a risk that the standard asylum system is struggling to cope with demand stemming from a mass influx that risks having a negative impact on the processing of claim.

*First Instance Decision:* First instance decision means a decision granted by the respective authority acting as a first instance of the administrative/judicial asylum procedure in the receiving country.

*Final Decision on Appeal:* Final decision on appeal means a decision granted at the final instance of administrative/judicial asylum procedure and which results from the appeal lodged by the asylum seeker rejected in the preceding stage of the procedure. As the asylum procedures and the numbers/levels of decision making bodies differ between Member States, the true final instance may be, according to the national legislation and administrative procedures, a decision of the highest national court. However, the applied methodology defines that 'final decisions' should refer to what is effectively a 'final decision' in the vast majority of all cases: i.e. that all normal routes of appeal have been exhausted.

*Non-refoulement:* Non-refoulement is a fundamental principle of international law which forbids a country receiving asylum seekers from returning them to a country in which they would be in likely danger of persecution based on “race, religion, nationality, membership of a particular social group or political opinion.”

*Subsidiary Protection Status:* Person granted subsidiary protection status means a person covered by a decision granting subsidiary protection status, taken by administrative or judicial bodies during the reference period. Subsidiary protection status means status as defined in Art.2 (f) of Directive 2004/83/EC. According to Art.2(e) of Directive 2004/83/EC a person eligible for subsidiary protection means a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.

*Salafi jihadism:* Salafi jihadism or jihadist-Salafism is a transnational religious-political ideology based on a belief in "physical" jihadism and the Salafi movement of returning to what adherents believe to be true Sunni Islam.

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