

GLOBAL PUBLIC POLICY
NETWORK ESSAY

AN ARGUMENT FOR USING FROZEN ASSETS FOR HUMANITARIAN ASSISTANCE IN REFUGEE SITUATIONS¹

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As demonstrated by the recent crisis in Syria, the international community is failing to respond effectively to refugee crises around the world. With the civil war in Syria and the massive influx of Syrian refugees into neighboring countries such as Lebanon, Jordan, Iraq, and Turkey, as well as many countries in Europe, the efficacy of the international human rights regime in responding to complex humanitarian emergencies has once again come under question. In January 2015, the Office of the United Nations High Commissioner for Refugees (UNHCR) declared that Syrians overtook Afghans as the largest refugee population aside from Palestinians.¹ UNHCR estimates that more than 12 million Syrians have been internally displaced and close to 4 million Syrians were forced to leave their country since the outbreak of the civil war, fleeing mostly to Syria's immediate neighbors.²

In most of Syria's neighboring countries, Syrian refugees are living in harsh conditions—in overcrowded camps, with little or no income and poor access to services. According to the UNHCR, “Half of all Syrian refugees in Lebanon live in insecure dwellings [and] a survey of 40,000 Syrian families in Jordan's urban areas found that two-thirds were living below the absolute poverty line.”³ Turkey, now the world's biggest refugee-hosting country, has managed to offer better conditions to the more than 2 million refugees it currently hosts but at huge political and financial costs.⁴ So far, Ankara has spent more than \$6 billion in direct assistance on refugees.⁵

The influx of Syrian refugees has also placed strains on local economies and the provision of public services in communities with large refugee populations. A January 2015 study by the Turkish think tank, the Center for Middle Eastern Strategic Studies (ORSAM), reported a steady decline in the quality of education and healthcare.⁶ Housing rents were found to have risen over 50 percent in refugee-hosting large cities like Gaziantep, Kilis, Hatay, and Urfa.⁷ The influx of Syrian

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refugees is estimated to have resulted in an additional 1.5–2.0 point increase in price inflation and around 15 percent decline in wages.⁸ These circumstances have also exacerbated tensions between the locals and the refugee populations, even escalating to mob violence and targeted attacks against refugee-owned businesses.⁹ Not surprisingly, Turkey has emerged as one of the most vocal critics of the Syrian regime, and considering the turbulent history of Syrian-Turkish relations, it is not difficult to imagine how the Syrian Civil War is going to cast a long shadow on

bilateral relations for decades to come.¹⁰

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Although it stands out due to its scale and magnitude, Syria is only one among many regions currently facing humanitarian disasters. In addition to Syria, the UN is conducting emergency operations in sixteen other countries including Iraq, the Central African Republic, and South Sudan, where UNHCR is providing emergency relief to

over 5 million internally displaced persons (IDPs) and refugees.¹¹ Despite their many humanitarian responsibilities, however, agencies such as the UNHCR are “chronically underfunded and understaffed” and are struggling to effectively fulfill their missions with their very limited resources.¹² The dearth of resources is an even more pronounced problem for protracted refugee situations, which even senior UNHCR officials bemoan “are not the high-profile operations preferred by donors, and hence are almost invariably neglected and underfunded.”¹³ Senior UN leaders have acknowledged these shortcomings. For example, in early 2014, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator Valerie Amos stated, “The world’s collective response capacity and resources are being stretched to the limit.”¹⁴ Jim Y. Kim, president of the World Bank Group, additionally called the international response to Syrian refugees a “failed” enterprise and described the situation as a “humanitarian crisis of enormous proportions, and right now we are not responding effectively... [because] there are many political difficulties in deciding [who is] going to step up, [who is] going to provide the funds.”¹⁵

This article argues that the international human rights regime has been intentionally designed to remain ineffectual and reliant on political leadership in order to allow for as large a space as possible for political discretion in managing refugee situations and, as such, its shortcomings can only be addressed by political initiative. The political initiative proposed in this article is the exercise of a right to remedial compensation against refugee-generating states through the United Nations Security Council (UNSC) to assist UN agencies in funding and

coordinating humanitarian relief efforts. In other words, international agencies would be granted limited access to a state's assets abroad or—in more divisive cases like Syria—a state's assets that have been frozen through unilateral action by member states would be made available to UN agencies providing humanitarian relief. Theoretically, this argument could also be applied to recipient countries that incurred an undue financial burden. This article, while acknowledging the latter possibility, recognizes its politically contentious nature and, therefore, will refrain from discussing it extensively. It will argue, however, that such a practice, through the UNSC and solely for the benefit of UN agencies coordinating humanitarian relief efforts, aimed at the refugee-generating country's citizens is permissible from moral, legal, and political perspectives, and that there exists within the Charter of the United Nations, a legal and doctrinal basis for such a practice to be adopted under the auspices of the UNSC.

PURPOSEFULLY AMBIGUOUS: DEFINING REFUGEES AND THE RIGHT TO SAFE HAVEN

A key question in the international refugee regime is the nature of the category to which the title refers: Who is a refugee? In the 1951 United Nations Convention relating to the Status of Refugees (the “Geneva Convention”), a refugee is defined as someone 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.”¹⁶ Moreover, this is applied only to persons who became refugees due to events occurring in Europe before 1 January 1951. Under this formula, the criterion determining refugee status is persecution, which indicates a deliberate act of the government against individuals and therefore excludes victims of general insecurity, exposure to violence, denial of human rights, or systematic mistreatment, and people who have not crossed national frontiers to seek refuge (i.e., IDPs).

In the decades since, there have been efforts to expand the scope of the Geneva Convention. With the 1967 Protocol, the geographical and time limits were removed.¹⁷ Regional instruments such as the 1969 Organization of African Unity Convention later expanded the category beyond the criterion of persecution.¹⁸ In addition to these attempts, there have been efforts to argue that the Geneva Convention provides for protection beyond the narrowly defined category in Article 1. Andrew Shacknove, a former UNHCR lawyer and current University of Oxford professor, argued that the bond between the citizen and her state can be damaged in ways other than persecution and that a proper definition of a refugee must account for the broader ways in which this bond can be cut off.¹⁹ Legal

experts Atle Grahl-Madsen, and Edoardo Arboleda and Ian Hoy similarly argue that the loss of the bond between the citizen and her state warrants protection under the Geneva Convention.²⁰

The political nature of this ambiguity is revealed by how the international attitude toward refugees has changed over time. From the end of World War I to the conclusion of the Cold War, there was an “interest-convergence between refugees and developed countries” because

... refugees seeking protection ... were of European stock, their cultural assimilation was perceived as relatively straightforward ... [and] helped meet post-war labor shortages. The reception of refugees opposed to communist regimes moreover reinforced the ideological and strategic objectives of the capitalist world.²¹

Since the end of the Cold War, however, these political, economic, and cultural incentives for reception have disappeared, and advanced industrialized nations have become increasingly protective against refugees and asylum-seekers.²² While some scholars have raised strong arguments for a renegotiation of the refugee legal regime on the grounds that it is under-inclusive, others, such as Joan Fitzpatrick and Michael Dummett, counter that abandoning the current convention to negotiate for better terms could result in the loss of even existing rights.²³

In essence, there is a single privilege afforded to a qualified refugee under the existing legal regime: the right to safe haven (“non-refoulement”), defined under Article 33 of the Geneva Convention.²⁴ Looking at the early history of the concept reveals that even this limited right was a negotiated settlement apart from a universal right to asylum, as per the inherent contention between state interests and individual rights. As experts Guy S. Goodwin-Gill and Jane McAdam observe, “The right to asylum appertains not to the refugee but to the State, a discretion to grant or withhold asylum.”²⁵ Indeed, the 1948 Universal Declaration of Human Rights (UDHR) enumerates no right to asylum.²⁶ The declaration offers two provisions relevant to international refugee law: (i) “the right to leave any country, including his own, and to return to his country,” and (ii) “the right to seek and to enjoy in other countries asylum from persecution.”²⁷ Since these are two rights afforded to refugees, what the UDHR actually offers is a peculiar situation where one has the right to leave a country without a guarantee that she will be granted asylum in another; asylum can be sought, but states keep their prerogative to not grant it, if they so choose. Practically, what a refugee has is the right to statelessness.

This dynamic is also apparent in the funding of the international refugee regime. UNHCR depends overwhelmingly on voluntary contributions for its

field operations. The agency receives around 2 percent of its funds from the UN general budget and the remainder, exceeding \$1 billion, is raised through voluntary contributions from UN member states and other donors. These voluntary contributions are mostly from a small group of advanced industrialized countries.²⁸ Approximately 50 percent of voluntary contributions continue to originate from the top three donors, with the top ten donors making up some 77 percent of contributions.²⁹ Close to 80 percent of these funds are being contributed to the UNHCR's

Special Programs budget as conditional funds earmarked to special countries or activities according to donor interests, and this structure has "significantly curtailed [the UNHCR's] freedom of decision."³⁰

To regain some of its budgetary independence, it has increasingly turned to private sector contributions. Since 2009, private sector

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contributions to the UNHCR have increased by some 300 percent, now representing around 7 percent of UNHCR's overall projected contributions.³¹ The UNHCR is hoping to further mobilize private contributions by turning to small donors, planning to reach 2.5 million individual donors by 2018.³² This approach, however, is not without its problems. Nongovernmental organizations (NGOs) have criticized this approach as the "privatization" of the international human rights regime, arguing that private contributors have been vocally using their contributions as leverage to "corporatize" the institutional cultures of the UN agencies that they believe to be "outdated and bureaucratic."³³

This funding structure is resulting in a deeply imbalanced situation in which the refugee burden is carried overwhelmingly by poor states.³⁴ At the end of 2012, before the advent of the Syrian Civil War, eight of the ten major refugee-hosting countries were from the developing world; three of them African countries (Kenya, Ethiopia, and Chad) and five from the Muslim world (Pakistan, Iran, Syria, Jordan, and Turkey).³⁵ Pakistan hosted the largest number of refugees in relation to its economic capacity with 552 refugees per \$1 GDP (PPP) per capita while Ethiopia (303) and Kenya (301) ranked second and third, respectively.³⁶ This is not a new trend; Gil Loescher observed in 1993 that the twenty countries with the highest ratio of refugees had an annual average per capita income of \$700.³⁷ In poor countries where the state is barely capable of responding to its citizens' basic needs, even a modest influx creates a severe strain on the country's social services and physical infrastructure and may radically distort local economic conditions. In

such a context, refugees are rendered vulnerable to abuse by recipient states, small and big powers, and even by refugee warrior groups for their strategic or military objectives.³⁸

USING FROZEN ASSETS FOR HUMANITARIAN ASSISTANCE: WHY AND HOW?

Quoting from Loescher, “Financial vulnerability and reliance on powerful donor governments as well as host states impede the UNHCR in carrying out its principal function of providing protection to refugees.”³⁹ How then is this vulnerability to be addressed to create an international regime that could offer a more robust response to refugee crises? The proposal of this article is to grant humanitarian agencies, like UNHCR, access to the frozen assets of regimes such as Syria in order to assist in their humanitarian relief operations. This access would be intended not to cover private assets (e.g., a government leader’s personal bank accounts), but rather only the public assets (e.g., central bank reserves).

The idea of providing refugees or a refugee-receiving states compensation from the refugee-generating country is not a new idea.⁴⁰ Sir Robert Y. Jennings hinted at the idea in his 1939 article in the *British Yearbook of International Law*.⁴¹ In the past, there have several instances of compensation for individuals (e.g., victims of Nazi persecution, expellees from Uganda, and the United Nations Compensation Commission).⁴² In the 1980s, Luke Lee generated some interest in the topic as a special rapporteur for the International Law Association and wrote about it in the *American Journal of International Law*.⁴³ All of the above proposals, however, were similar in that they envisioned compensation ex post facto and as a punitive measure.

However, compensation should be remedial, not punitive, and designed to assist in humanitarian relief. This distinction is important for a number of reasons. Firstly, the current doctrine conceives of a refugee’s right to asylum as a state’s imperative and reserves the state’s right to deny asylum or assistance to refugees. By providing assistance to refugees, states (or a community of states, such as the UN) are engaging in a voluntary act and, accordingly, they should not be compensated for it. Secondly, to apply this practice to private assets would imply an indictment of the asset holders. Such an apportionment of blame would immediately politicize the proposal and prevent its implementation. The operative presumption behind this article’s proposal is that had it not been for the malignant elements ruling and/or fighting the state, these funds would have been used for the good of the citizens to whom these assets rightfully belong. Thirdly, the UNSC can take any punitive action in the form of sanctions against any state as long it is within its enforcement power under Chapter VII.⁴⁴ This authority, however, does not apply

to private persons since they are not under the jurisdiction of international law. As illustrated by the European Court of Justice's *Kadi* and the U.S. Supreme Court's *Medellín v. Texas* decisions, domestic courts tend to interpret any such international actions against private persons as a breach of fundamental rights.⁴⁵ If the regime in a country is overthrown, the incoming regime could seek the recovery of private assets under United Nations Convention Against Corruption provisions, or a state could release its freeze on the assets once it recognizes the new regime but, aside from these limited possibilities, there seems to be no legal basis for further action.

The main strength of using frozen assets in humanitarian assistance on a remedial basis is that it conforms to all five elements outlined above. From a utilitarian

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perspective, the positive consequences of this approach outweigh the negative consequences. Refugees are a burden to third-party states and they create spillover effects that threaten political stability. The failure of the international humanitarian regime can also offer countries a pretense for military intervention, undermining international order as well as the credibility of international organizations. This proposal envisions no additional commitment, such as putting troops on the ground, and it could save the asset-freezing entities from further political engagements, such as whether to offer a warring party (e.g., rebel forces) access to the frozen assets. Even leaders of countries whose assets are frozen would have incentive to consent to such a regime because it prevents rebel groups from using the funds against these leaders in the event that a rebel group is officially recognized as the conflict progresses. It also offers regime leaders the opportunity to claim that they are still committed to their duties as a state, assisting in the provision of service to their now-displaced citizens. From a natural law perspective, effective assistance for refugees is merely the fulfillment of the universal right to hospitality, and, where a state can no longer unite its people under laws of right, any moral responsibility not to intervene in its affairs has vanished. According to John Rawls' Theory of Justice, a state such as Syria would either be an outlaw state or a burdened society that is struggling with social and economic conditions that make it difficult to maintain either liberal or decent institutions (depending on how the particular history is interpreted). In either case, there would be a duty to assist. Universal participation in the UN regime and the common resort to asset freezes as an economic sanction suggests that the method proposed herein is defensible within the international social contract and aligns with the shared preferences of

its constituent communities. As argued below, there is a legal and doctrinal basis to such a practice under the UN Charter and examples in UNSC resolutions; therefore, it would require solely a Security Council decision for such a practice to be adopted.

Even when benefiting from a state's municipal services, which are funded by taxes from all citizens, not all citizens are entitled to these benefits at all times. Making prank calls to a 911 emergency line is subject to criminal penalties, and

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setting one's own home on fire is a felony because it puts the lives of others in danger. In a sense, the refugee regime could be likened to a municipal service of the international order, and using a country's frozen public assets for humanitarian assistance for its refugees would be akin to using the water in the owner's swimming pool to put out the fire he started in his home. Just as the existence of the fire brigade does not give one the right to set one's home on fire, a state does not have the right to fail its

citizens and free-ride on the refugee regime. Unlike municipal services, the refugee regime is funded through voluntary contributions and states are primarily responsible for providing their citizens goods and services such that they do not need to become refugees. If a state has been negligent or outright criminal, it should face an appropriate penalty. One could argue for exceptions in extreme circumstances such as drought-induced famines but, even then, it is as compelling an argument that only the fittest survive in the state of nature and that it is the state's own imperative to ensure its survival.

As the Responsibility to Protect (R2P) doctrine reflects, the international legal regime defines statehood on a performative basis: States are expected to perform certain duties, the least of which is protecting their citizens, and when they fail to fulfill these duties, they may lose their privileges of sovereignty.⁴⁶ For realists, the practice of this principle is rather straightforward: "The strong do what they can, the weak suffer what they must."⁴⁷ Hans Morgenthau writes, "There is no such thing as the policy of an organization, domestic, or international, apart from the policy of its most influential member."⁴⁸ As such, a realist would not oppose the use of frozen assets of countries like Syria for humanitarian assistance as long as it was in the interests of the given realist's own state. Such a policy would indeed likely be in their interest since, as described above, its positive utilitarian consequences outweigh the negatives.

For non-realists, however, it would also be necessary to demonstrate a legal and doctrinal basis for such a practice. Basically, there are three legal mechanisms to implement such a practice: (i) the UNSC, (ii) special claims mechanisms under the UN, or (iii) domestic courts of the countries that have frozen the assets. This article will not discuss the second and third mechanisms beyond saying that such legal venues are imaginable through means such as special claims compensation regimes (i.e., the United Nations Compensation Commission in Iraq, Eritrea-Ethiopia Claims Commission, and the Commission for Real Property Claims of Displaced and Refugees in Bosnia and Herzegovina) or through *in rem* lawsuits in domestic courts.⁴⁹ Arguing beyond this, however, would require a lengthy effort in comparative law and civil procedure and, even if sufficiently justified, these mechanisms would only apply on a case-by-case basis, whereas such a power under the UNSC would apply universally.

The UN Charter permits the UNSC to take jurisdiction under Article 39 when any situation poses a “threat to peace and security.”⁵⁰ Article 41 regulates all non-forcible or non-military measures, and where these measures fail, the UNSC is authorized to use force under Article 42.⁵¹ It is widely observed that the Security Council plays a progressive role in adopting and promulgating human rights norms.⁵² Asset freezes, for example, were adopted as a norm after the terrorist attacks of September 11 with Security Council resolution 1267 to prevent illicit financing of terrorism.⁵³ Likewise, the UN Compensation Commission was a novel practice that was applied for the first time within the UNSC’s Chapter VII enforcement powers on Iraq.⁵⁴

There are four legal and doctrinal bases for granting humanitarian agencies and recipient countries access to frozen assets. The first is the UNSC’s powers under Articles 39 and 41. It has been demonstrated that the presence of refugees from neighboring countries leads to an increased probability of violence. Furthermore, it has also been demonstrated that refugees cause conflicts to endure longer because refugee camps offer rebel groups sanctuaries while the influx of refugees weakens recipient states by putting them under an additional burden.⁵⁵ Hence, refugee situations, especially in potentially unstable regions, could be viewed as a threat to international peace and security and merit action under Chapter VII.

Secondly, the notion of burden-sharing under Article 50 potentially allows for a state to consult the UNSC with regard to special economic problems arising from Security Council actions.⁵⁶ Legally, the same provision allows a state to consult the UNSC with regard to special economic problems arising from threats to international peace and security that the council has failed to address effectively. In the highest-profile application of the relief provision, twenty-one states that were dependent on Iraqi oil, remittances from migrant workers in Kuwait, or

made substantial exports to Iraq and Kuwait, consulted the UNSC to seek relief from the trade embargo.⁵⁷ There is, however, no legal definition or precedent that constrains the application of the “special economic problems” clause to any particular type of economic activity. If a state can petition the UNSC for the undue burdens arising from the performance of certain duties (e.g., sanctions) under UN law, it is difficult to see why it cannot petition the UNSC for burdens incurred by the council’s failure to perform its duty to address threats to international peace and security or the UNHCR’s inability to effectively provide refugee assistance. Of course, how the UNSC would respond to such a petition is a valid question that has no universally applicable answer. It is highly likely that the cases that would muster the sufficient political agreement for the action this article proposes to be implemented will be few and far between. There is no easy argument to show that a trade embargo creates a different category of “special economic problems” that is legally distinct from the direct financial assistance a refugee-receiving country has to provide or the indirect financial burdens it has incurred in a way that would deny a member state “standing” to petition the UNSC to this end. Using a judicial analogy, a jury’s final decision is an entirely separate question from whether a case can be claimed or not.

Thirdly, there exists a case law precedent for frozen assets to be used for compensatory purposes. In 1991, after Iraq refused UNSC resolutions 705 and 706, which envisioned the UN Compensation Commission in Iraq to be funded through Iraq’s oil proceeds, the UNSC decided under resolution 778 to compensate claims using Iraq’s frozen assets. In 1995, after three years, Iraq agreed to fund claims compensation through a portion of oil proceeds with resolution 986 and this clause was forgotten.⁵⁸ Had this not been the case, however, this article’s argument might have already been an established practice in international law.

Finally, the UNSC is already allowed to pursue this course of action in an indirect way. Pursuant to Article 94(2), the UNSC may be called upon for enforcement of International Court of Justice (ICJ) judgments.⁵⁹ As Kristen E. Boon observes, “A state could request that the UNSC seize assets in a recalcitrant state in order to satisfy an ICJ judgment.” While the UNSC has not been called upon to enforce ICJ decisions as such to date, private arbitration agreements do make reference to enforcement by the UNSC.⁶⁰ Doctrinally, it is widely accepted that Security Council decisions, especially under Chapter VII, are procedurally non-judicial and that they are, in essence, political decisions.⁶¹ It is within reason to argue that the same authority should apply directly.

In conclusion, granting international agencies and recipient countries access to the frozen assets of the refugees’ country of origin in order to provide humanitarian assistance offers an effective, cost-efficient, and politically palatable means

by which to address refugee crises. It has a legal and doctrinal basis under existing law and complies with almost all moral approaches to interventions in refugee situations. This approach deserves consideration as an innovative solution that can be applied immediately. 

NOTES

¹ Stephanie Nebehay, “Syrians largest refugee group after Palestinians: UN,” *Reuters*, 07 January 2015, <http://www.reuters.com/article/2015/01/07/us-mideast-crisis-syria-refugees-idUSKBN0KG0AZ20150107>.

² The author is indebted to Michael W. Doyle, Elizabeth Lindenmayer, Guy Goodwin-Gill, Beth Elise Whitaker, and Anuj Shah for invaluable comments and suggestions on earlier proposals.

³ UNHCR, “UNHCR warns of bleaker future for refugees as Syrian conflict enters 5th year,” *UNHCR News Stories*, 12 March 2015, <http://www.unhcr.org/55016fff6.html>.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Harun Ozturkler and Turkmen Goksel, “The Economic Effects of Syrian Refugees on Turkey: A Synthetic Modeling” (report, Ortadogu Stratejik Arastirmalar Merkezi (ORSAM) Reports No. 195 (January 2015), 22–24.

⁷ *Ibid.*, 21.

⁸ *Ibid.*, 15–20.

⁹ Ali Aslan Kilic, “Tensions run high as protesters target aid groups, Syrian refugees” *Today’s Zaman*, 16 July 2014, http://www.todayszaman.com/anasayfa_tensions-run-high-as-protesters-target-aid-groups-syrian-refugees_353237.html.

¹⁰ Ece Toksabay and Dasha Afanasieva, “Turkish PM says negotiating with Assad like shaking hands with Hitler,” *Reuters*, 17 March 2015, <http://www.reuters.com/article/2015/03/17/syria-crisis-usa-turkey-idUSL6N0WJ2GQ20150317>; Nebehay.

¹¹ UNHCR, “UNHCR Global Appeal 2015 Update,” 106-07, <http://www.unhcr.org/5461e5f30.pdf>.

¹² Gil Loescher, *Beyond Charity: International Cooperation and the Refugee Crisis*, (Oxford: Oxford University Press, 1993), 5.

¹³ Erika Feller, “Where Principle and Pragmatic Meet: The World of UNHCR’s Protection Work,” *Durham Law Review*, (2013), 159.

¹⁴ Melissa McGlensey, “2013 Global Emergencies Stretched Resources ‘To The Limit: Report,’” *Huffington Post*, 19 Mar 2014, http://www.huffingtonpost.com/2014/03/19/humanitarian-crisis_n_4986961.html.

¹⁵ “World Bank chief Jim Yong Kim: Global response to Syrian refugees failing,” *CNN*, 24 January 2014, <http://www.cnn.com/2014/01/24/business/davos-world-bank-syria/index.html>.

¹⁶ “Convention relating to the Status of Refugees,” (United Nations: 29 July 1951), Article 1(2), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>.

¹⁷ “Protocol Relating to the Status of Refugees,” (United Nations: 31 January 1967), Article 1(2), <http://www.unhcr.org/3b66c2aa10.html>.

¹⁸ “Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa,” (UN Treaty Series 14691, United Nations: 10 September 1969), Article 1(2), <http://www.unhcr.org/45dcla682.html>

¹⁹ “[Refugees are] persons whose basic needs are unprotected by their country of origin, who have no remaining recourse other than to seek international restitution of their needs, and who are so situated that international assistance is possible.” Andrew E. Schacknove, “Who is a Refugee” *Ethics* 95, no. 2 (January 1985), 277.

²⁰ Atle Grahl-Madsen, *The Status of Refugees in International Law*, (Leiden: A. W. Sijthoff, 1966), 97. "Many asylum seekers today may not fit strictly within the parameters of the Convention refugee definition but do merit international protection in accordance with Article 33 of the 1951 Convention, primarily because of situations of generalized violence that prevail in their countries of origin." Eduardo Arboleda and Ian Hoy, "The Convention Refugee Definition in the West: Disharmony of Interpretation and Application," *International Journal of Refugee Law* 5, no. 1 (1993): 67.

²¹ James C. Hathaway and R. Alexander Neve, "Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Approach," *Harvard Human Rights Journal* 10 (1997), 119.

²² Erika Feller, "The Evolution of the International Refugee Protection Regime," *Washington University Journal of Law and Policy* 5 (2001), 129.

²³ An example of this under-inclusiveness is forced migration due to discrimination against homosexuals. See Deborah A. Morgan, "Not Gay Enough for the Government: Racial and Sexual Stereotypes in Sexual Orientation Asylum Cases," *Law and Sexuality* 15, (2006), 135–161; Maryellen Fullerton, "A Comparative Look at Refugee Status Based on Persecution Due to Membership in a Particular Social Group," *Cornell International Law Journal* 26, (1993), 534; "The reluctance of the international community to abandon the 1951 foundation reflects not only a sense that the Convention embodies indispensable and enduring values, but also a pragmatic awareness that hoped-for advances might instead dilute standards of protection." Joan Fitzpatrick, "Revitalizing the 1951 Refugee Convention," *Harvard Human Rights Journal* 9 (1996), 234. "Any suggestion of renegotiating the Convention is dangerous: there are many signatory states that now consider its terms too generous." Michael Dummett, *On Immigration and Refugees* (London: Routledge, 2001), 37.

²⁴ "Convention Relating to the Status of Refugees," Article 33. "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

²⁵ Guy Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2007), 49. Also, see Felice Morgenstern, "The Right of Asylum," *British Yearbook of International Law* (1949), 327; Kay Hailbronner, "Molding a New Human Rights Agenda," *Washington Quarterly* 8 (1985), 183; Roman Boed, "The State of the Right of Asylum in International Law," *Duke Journal of Comparative and International Law* 5 (1994), 4.

²⁶ The right to asylum has been defined as a state's right to grant asylum but never as an individual's right to be granted asylum ever since its first formulations in the UDHR's earlier Humphrey and Cassin drafts. The right to be granted asylum was revised only during the proceedings of the Third Committee where it was diluted, on the motion of Saudi Arabia, to the right to enjoy. The 1946 Arab-Israeli war had broken out during the deliberations on the Declaration, dispersing close to a million Palestinians into neighboring Arab countries. Saudi Arabia, by motioning for the right to be granted asylum, was heeding the refugee problem it was facing, as did Lebanon, which had motioned to include the right to return in the Declaration in an attempt to provide a legal basis for the repatriation of the Palestinian refugees it had received. See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, (New York: Random House), 152–153.

²⁷ "Universal Declaration of Human Rights," (United Nations General Assembly, resolution 217 A: 10 December 1948), Articles 13(2), 14(1).

²⁸ Beth Elise Whitaker, "Funding the International Refugee Regime: Implications for Protection," *Global Governance* 14 (2008), 243.

²⁹ UNHCR, "UNHCR 2013 Global Trends Report" (report, UNHCR: 2013), 103, <http://www.unhcr.org/539809dc0.html>.

³⁰ Raimo Vayrynen, "Funding Dilemmas in Refugee Assistance: Political Interests and Institutional Reforms in UNHCR," *International Migration Review* 35, no. 1 (Spring 2001), 151; Alexander Betts and Gil Loescher, "Introduction: Continuity and Change in Global Refugee Policy," *Refugee Survey Quarterly* 33, no. 1 (2014), 6.

³¹ UNHCR, 101.

³² *Ibid.*, 102.

³³ For a critique of increasing corporate influence in the international human rights regime, see Joshua Karliner, John Cavanaugh, Phyllis Bennis, and Ward Morehouse, *A Perilous Partnership: The United Nations Development Program's Flirtation with Corporate Collaboration*, (San Francisco: Transnational

Resource & Action Center, 1999); Jens Hansegard, "U.N. Refugee Agency Needs to Think Like a Business, Says IKEA Foundation," *Wall Street Journal*, 5 February 2014. A chief executive of the UNHCR's top private contributor, IKEA Foundation, was even boasting about this leverage: "They get money this year and they have to spend it this year and they don't know what sort of budget they will get next year [so] they can't make long-term investments."

³⁴ Eiko R. Thielemann and Torun Dewan, "The Myth of Free-Riding: Refugee Protection and Implicit Burden-Sharing," *West European Politics* 29, no. 2 (March 2006), 352.

³⁵ UNHCR, "UNHCR 2013 Global Trends Report," 13.

³⁶ *Ibid.*, 3.40.

³⁷ Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (Oxford: Oxford University Press, 1993), 24.

³⁸ Gil Loescher, *The UNHCR and World Politics: A Perilous Path* (Oxford: Oxford University Press, 1991), 48.

³⁹ *Ibid.*, 350.

⁴⁰ Alan Dowty and Gil Loescher, "Refugee Flows as Grounds for International Action," *International Security* 21, no. 1 (Summer 1996), 43–71.

⁴¹ R. Yewdell Jennings, "Some International Law Aspects of the Refugee Question," *British Yearbook of International Law* 20 (1939), 98–115.

⁴² See Hannah R. Garry, "The Right to Compensation and Refugee Flows: A Preventative Mechanism in International Law," *International Journal of Refugee Law* 10 (1998), 97–118; See Kurt Schwerin, "German compensation for victims of Nazi persecution," *Northwestern University Law Review* 67 (1972): 479–528; See Ronald W. Zweig, "Restitution of Property and Refugee Rehabilitation: Two Case Studies," *Journal of Refugee Studies* 6, no. 1 (1993), 56–64; See David J. Bederman, "The United Nations Compensation Commission and the Tradition of International Claims Settlement," *NYU Journal of International Law & Politics* 27 (1994), 1–43.

⁴³ Luke T. Lee, "The Right to Compensation: Refugees and Countries of Asylum," *American Journal of International Law* 80, no. 3 (July 1986), 532–567.

⁴⁴ "Charter of the United Nations," (United Nations: 24 October 1945), 1 UNTS XVI, Chapter VII, Article 39. "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

⁴⁵ For the Kadi Decision, see Peter Fromuth, "The European Court of Justice Kadi Decision and the Future of UN Counterterrorism Sanctions" *Insights* 13, no. 20 (October 2009), <http://www.asil.org/insights/volume/13/issue/20/european-court-justice-kadi-decision-and-future-un-counterterrorism>; Albert Posch, "The Kadi Case: Rethinking the Relationship Between EU Law and International Law," *Columbia Journal of European Law Online* 15, no. 1 (Winter 2009), http://www.cjel.net/online/15_2-posch/; Gráinne de Búrca, "The EU, the European Court of Justice and the International Legal Order after Kadi," *Harvard International Law Journal* 51, no. 1 (Winter 2010), 1–50. For the *Medellín v. Texas* U.S. Supreme Court case, see Curtis A. Bradley, "Intent, Presumptions and Non-Self-Executing Treaties," *American Journal of International Law* 102, no. 3 (July 2008), 540–551. Also see Andrew Hudson, "Not a Great Asset: The UN Security Council's Counter-Terrorism Regime: Violating Human Rights," *Berkeley Journal of International Law* 25, no. 2 (2007), 203–227.

⁴⁶ See International Development Research Centre, "International Commission on Intervention and State Sovereignty, The Responsibility to Protect: The Report of the International Commission on Intervention and State Sovereignty" (report, International Development Research Centre, Ottawa: 2001).

⁴⁷ Thucydides, *History of the Peloponnesian War*, 5.89.

⁴⁸ José E. Alvarez, "Hegemonic International Law Revisited," *American Journal of International Law* 97, no. 4 (October 2003), 873.

⁴⁹ See Francis E. McGovern, "Dispute System Design: The United Nations Compensation Commission," *Harvard Negotiation Law Review* 14 (2009), 171–195; See Won Kidane, "Civil Liability for Violations of International Humanitarian Law: the Jurisprudence of the Eritrea-Ethiopia Claims Commission in The Hague," *Wisconsin International Law Journal* 25 (2007), 23–89; See Hans Van Houtte, "Mass property claim resolution in a post-war society: The commission for real property

claims in Bosnia and Herzegovina,” *International and Comparative Law Quarterly* 48, no. 3 (1999), 625–638; On the use of *in rem* lawsuits for compensatory purposes in international money laundering, see Bruce Zagaris and Elizabeth Kingma, “Asset Forfeiture International and Foreign Law: An Emerging Regime,” *Emory International Law Review* 5 (1991), 445–515.

⁵⁰ UN Charter, Article 39.

⁵¹ *Ibid.*, Article 41, 42.

⁵² C. Cora True-Frost, “The Security Council and Norm Consumption,” *NYU Journal of International Law and Politics* 40, no. 1 (Fall 2007), 116.

⁵³ United Nations Security Council, resolution 1267, S/RES/1267: 15 October 1999. “Freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, or by any undertaking owned or controlled by the Taliban, as designated by the Committee established by paragraph 6 below, and ensure that neither they nor any other funds or financial resources so designated are made available, by their nationals or by any persons within their territory, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly, by the Taliban, except as may be authorized by the Committee on a case-by-case basis on the grounds of humanitarian need.”

⁵⁴ Lea Carol Owen, “Between Iraq and a Hard Place: The U.N. Compensation Commission and Its Treatment of Gulf War Claims,” *Vanderbilt Journal of Transnational Law* 31, no. 2 (March 1998), 502.

⁵⁵ Idean Salehyan and Kristian Skrede Gleditsch, “Refugees and the Spread of Civil War,” *International Organization* 60, no. 2 (Spring 2006), 335–366; Idean Salehyan, “Transnational Rebels: Neighboring States as Sanctuary for Rebel Groups,” *World Politics* 59, no. 2 (January 2007), 217–242.

⁵⁶ UN Charter, Article 50. “If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.”

⁵⁷ Oscar Schachter. “United Nations law in the Gulf conflict.” *American Journal of International Law* (1991), 455.

⁵⁸ Francis E. McGovern, “Dispute System Design: The United Nations Compensation Commission,” *Harvard Negotiation Law Review* 14 (Winter 2009), 187–188.

⁵⁹ David Schweigman, *The Authority of the Security Council Under Chapter VII of the UN Charter: Legal Limits and the Role of the International Court of Justice* (Leiden: Kluwer Law International, 2001), 47.

⁶⁰ Kristen E. Boon, “Coining a New Jurisdiction: The Security Council as Economic Peacekeeper,” *Vanderbilt Journal of Transnational Law* 41 (2008), 1005.

⁶¹ Lori Fisher-Damrosch, “Enforcing international law through non-forcible measures,” *Recueil des Cours de l’Académie de Droit International* 269 (1997), 138. “Procedurally, of course, Security Council decisions under Chapter VII are non-judicial and surely non-criminal in character; they are not governed by anything like the standards of proof that apply to criminal trials in the national courts of the countries seeking surrender of the accused; nor is there any legal obligation for the Council to afford ‘due process’ to a potential target of Chapter VII sanctions.” Swiss Federal Office for Foreign Economic Affairs, Second Interlaken Seminar on Targeting United Nations Financial Sanctions (Bern: Staatsverlag, March 1999), 11. “The basis for action in a sanctions context is a political decision by the UN Security Council, while it is penal law in a money-laundering context.”