

THE RIGHT TO REFUGE:

WHO HAS IT?

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## Abstract

As of June 2020, nearly 80 million people have been forcibly displaced from their homes, surpassing even post-World War II records. Refuge is a rather simple concept: people have the right to flee serious harm, and receiving countries have a corresponding, humanitarian obligation to assist. Refuge is as pertinent today as the time in which the refugee system was developed in the late 1940s. Yet, while the world has radically changed, the system constructed for a bygone era has not. Policies codified in the 1951 Refugee Convention, in subsequent protocols, in the Statute of the Office of the United Nations High Commissioner for Refugees, and through state practice have grown ossified, inflexible, and utterly unable to meet the urgent needs of the contemporary world. Ultimately, the most vulnerable of groups bear the weight of poor policy-crafting and implementation. The current global migration crisis reflects the realities of life as a refugee: prolonged and hopeless encampment in a refugee camp; destitution in proximate states, where the right to work is restricted; or treacherous journeys to distant and, usually, disinclined safe-havens. This paper seeks to explain who, under the current international legal framework, has the right to refuge, analyze the inadequacies of the present regime, and, ultimately, recommend policies to reconstruct the system, including redesigning the 1951 Convention, redefining the role of the UNHCR and other actors, and the establishment of a clear-cut burden-sharing mechanism amongst states.

## THE RIGHT TO REFUGE: WHO HAS IT?

- I. Introduction
- II. Origins of the International Refugee Regime
- III. Development of the International Refugee Regime
- IV. The Contemporary International Refugee Regime in Crisis
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*“I want to go home,  
but home is the mouth of a shark  
home is the barrel of the gun  
and no one would leave home  
unless home chased you to the shore  
unless home told you  
to quicken your legs  
leave your clothes behind  
crawl through the desert  
wade through the oceans  
drown,  
be hungry,  
beg  
forget pride  
your survival is more important.  
No one leaves home until home is a sweaty voice in your ear  
saying-  
leave,  
run away from me now  
I don't know what I've become  
but I know that anywhere  
is safer than here.”*

- Warsan Shire (2015).<sup>1</sup>

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<sup>1</sup> Warsan Shire, “Home,” Seekershub.org, accessed April 29, 2021.

## Introduction

As of June 2020, nearly 80 million people have been forcibly displaced from their homes, surpassing even post-World War II records.<sup>2</sup> Yet, the existing international framework afforded merely 26 million individuals the more protective “refugee” status, thus leaving those who are unable to meet the necessary legal requirements vulnerable to a lack of international protection.<sup>3</sup> With the emergence of new drivers of displacement, unprecedented levels of human flight, and a variety of humanitarian and political considerations, the contemporary world necessitates flexibility that the current system in place cannot provide. Refuge is as pertinent today as the time in which the refugee system was developed in the late 1940s. Yet, while the world has radically changed, the system constructed for a bygone era has not. Policies codified in the 1951 Refugee Convention, in subsequent protocols, and through state practice have grown ossified, inflexible, and utterly unable to meet the urgent needs of the contemporary world.

The limitations of the 1951 Refugee Convention inhibit the prosperity of the contemporary regime. The Eurocentric, legal definition of a refugee constructed to fit the Cold War era in which it was devised has become the status quo for all crises. This “one-size fits all” approach fails to allow for adaptation to the highly specific demands of individual crises. Additionally, the threshold of “persecution” is no longer a befitting standard, particularly with the emergence of new drivers of displacement, including climate and economic refugees. Inherently, a lack of protection for vulnerable populations who cannot meet the burden of proof for “persecution” is institutionalized.

Initial limitations have been compounded by state practice, which blatantly circumvents

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<sup>2</sup> United Nations High Commissioner for Refugees, “Figures at a Glance,” accessed April 29, 2021,

<sup>3</sup> Ibid.

the Convention through the pursuit of restrictionist, *refoulement*, and *non-entree* policies. Additionally, the doctrines in place impose no requirement for burden-sharing; as a result, state practice reflects restrictionist policy choices imbued with self-interest rather than humanitarian considerations, which invariably places the burden of coping with mass refugee influxes on less-developed, proximate states. Moreover, the mechanisms designed by the drafters to encourage dynamic interpretation have been abused by national jurisprudence to fit domestic concerns. A “refugee” in one state can mean something vastly different in another, and wide variations in legal interpretation impede any coherency when implementing collective policy. Furthermore, while initially tasked in its Statute with protecting and finding durable solutions for refugees, the UNHCR has adopted a “care and maintenance” standard operating procedure, which exiles refugees to camps for an average of nearly two decades without adequate access to local integration, resettlement, or repatriation.<sup>4</sup>

Ultimately, the most vulnerable of groups bear the weight of poor policy-crafting and implementation. The current global migration crisis reflects the realities of life as a refugee: prolonged and hopeless encampment in a refugee camp; destitution in proximate states, where the right to work is restricted; or treacherous journeys to distant and, usually, disinclined safe-havens.<sup>5</sup> One phenomenon is clear: there is no comprehensible, cohesive, nor collective strategy other than reverent abidance to antiquated dictums of a foregone era. The international refugee regime is failing those it is tasked with protecting, and reform of the doctrines in place is essential to meet the contemporary demands of the world.

This paper seeks to explain who, under the current international legal framework, has the

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<sup>4</sup> Alexander Betts and Paul Collier, *Refuge: Rethinking Refugee Policy in a Changing World* (New York: Oxford University Press, 2017), 8.

<sup>5</sup> *Ibid.*, p. 8.

right to refuge, analyze the inadequacies of the present regime, and, ultimately, recommend policies to reconstruct the system. The 1951 Convention must be redesigned not only to fit contemporary crises but to allow for dynamic flexibility for the demands of the future. In defining a “refugee”, the definition must create a more universal, inclusive, and applicable standard that accounts for past, present, and future drivers of displacement. To combat the “one-size fits all” approach, the scope of protection- including who, when, and how to protect- must also be broadened to cultivate the adaptive mechanisms paramount to a successful system. Additionally, the failures of the UNHCR call for an institutional overhaul to cultivate strong, centralized, and decisive leadership as well as a greater emphasis on other actors in the refugee regime. Finally, clear-cut burden-sharing mechanisms, such as implementing a broad proportionality principle through predetermined quotas on a country-to-country basis, must be established. In conclusion, all evidence indicates the need for refuge is not diminishing; therefore, modernizing the 1951 Refugee Convention, reforming and redefining the roles and responsibilities of actors in the international refugee regime, and establishing burden-sharing will facilitate clearer, more effective collective action and, most importantly, protect those in search of refuge.

## Origins of the International Refugee Regime

Refuge is a rather simple concept: people have the right to flee serious harm, and receiving countries have a corresponding, humanitarian obligation to assist.<sup>6</sup> Implicit in the traditional meaning of the word “refugee” lies an assumption the person concerned is deserving of, and should be, assisted, and, if necessary, protected from the causes and consequences of seeking refuge.<sup>7</sup> In theory, a refugee should be obliged the assistance of receiving countries; however, for a myriad of legal, political, economic, and social reasons, states have cultivated a restrictive criteria for the definition of a “refugee”, thus limiting those allowed access to assistance. The act of confining the scope of refuge is not one of the modern era, but dates back to the origins of the system itself. In analyzing the traditional sources of law in which the international refugee regime is built upon, the origins of issues are elucidated and therefore must be examined to paint the larger picture of the contemporary refugee system.

While refugees have existed as long as history, it was not until the establishment of the League of Nations (LON) for the international community to undertake the responsibility of providing protection and finding solutions for those seeking refuge. The early 20th century shaped the history of forced migration and, invariably, the contemporary refugee regime. The First World War left an estimated one million individuals displaced, a figure greater than the world had ever seen prior.<sup>8</sup> In post-war settlements, it became clear previous legal instruments did not extend to the unfolding refugee problem and were insufficient in setting legal parameters for coping with mass displacement. As borders both collapsed and were redrawn, the

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<sup>6</sup> Ibid., p. 35.

<sup>7</sup> Guy S. Goodwin-Gill and Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 2021), 15.

<sup>8</sup> Dennis Gallagher, “The Evolution of the International Refugee System,” *International Migration Review* 23, no. 3 (1989): p. 579.



question of a displaced person's status and the international community's responsibility to the individual became more pertinent to the political agenda. The large-scale crisis was unable to be coped with on a national basis, and the duration of displacement for refugees became longer than ever before. The unprecedented refugee problem demanded large-scale, coordinated action and, for the first time in history, forced migration was at the top of the political agenda.

Under the auspices of the League of Nations, arrangements and treaties adopted a "group or category approach", which meant "that someone [who] was (a) outside of their country of origin and (b) without the protection of the government of the States" would qualify as a refugee.<sup>9</sup> Henceforth, the concept of seeking refuge in an alternative territory became a cornerstone of refugee definitions. The Arrangements of July 1922, May 1924 and May 1926 provided a definition of Russian and Armenian refugees using the group approach. A Russian refugee, for example, was defined to include: "Any person of Russian origin who does not enjoy or who no longer enjoys the protection of the Government of the Union of Socialist Soviet Republics and who has not acquired another nationality."<sup>10</sup>

Determining whom to protect was a political and selective process in the League of Nations. The consistent use of the group approach in subsequent agreements, including the Convention relating to the International Status of Refugees of 1933 and the Provisional Arrangement concerning the Status of Refugees of 1936, circumscribed other considerations for protection, including social and political upheaval. A 1926 report by the High Commissioner extended legal protection to only eight groups analogous to refugees to Russia and Armenia.<sup>11</sup> Tommie Sjoberg argues the *ad hoc* expansion of protection by the League was largely the result

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<sup>9</sup> Goodwin-Gill and McAdam, p. 16-17.

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

of tenuous relationships between member states and the organization itself.<sup>12</sup> Foreign-policy considerations and political convenience heavily influenced states' acceptance of refugees, thus influencing the determination of status by the League. As a result, refugee definitions became more divorced from the political and social reality of events driving displacement, and protection gaps in international law began to emerge.<sup>13</sup>

The Bermuda Conference in 1943 marked the next major milestone in the developing refugee regime. Under the Inter-governmental Committee on Refugees' mandate: "All persons, wherever they may be, who, as the result of events in Europe, have had to leave, or may have to leave, their country of residence because of the danger to their lives on account of their race, religion or political beliefs."<sup>14</sup> The definition was crafted in an abstraction of the political events of the Second World War, specifically the intolerability and impossibility of continued residence in a displaced person's country of origin. The Bermuda Conference and the end of World War Two marked a shift from a basis in flexible and open groups to a more closed and legalistic approach for the definition of a refugee.<sup>15</sup>

Legal doctrines between 1922-1946 established the international community's responsibility to protect and provide durable solutions to those seeking refuge. By 1949, more than a million people were displaced and without access to a long-term solution.<sup>16</sup> As a result, the International Refugee Organization (IRO), a non-permanent, specialized UN agency, was established in July 1947. Its predecessor, the United Nations Relief and Rehabilitation Agency (UNRRA), was oriented towards relief, rehabilitation, and repatriation; however, the IRO

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<sup>12</sup> Tommie Sjöberg, *The Powers and the Persecuted: the Refugee Problem and the Intergovernmental Committee on Refugees, IGCR ; 1938-1947* (Lund: Lund Univ. Pr., 1991), 38.

<sup>13</sup> Goodwin-Gill and McAdam, p. 16-17.

<sup>14</sup> *Ibid.*, p. 18.

<sup>15</sup> *Ibid.*, p. 19.

<sup>16</sup> Gallagher, 579.

focused primarily on resettlement. The shift in focus was the result of growing awareness of the brutality of atrocities committed against European minorities, East-West tensions, and the post-war economic recovery.<sup>17</sup> Specific groups under the mandate included: “Victims of Nazi, Fascist, or Quisling regimes, persons of Jewish origin, foreigners or stateless people, and those displaced before outbreak of war as a result of race, religion, nationality or political opinion.”<sup>18</sup> For the IRO’s purposes, who was given the right to refuge was highly specific to the crisis and causes of displacement caused by the Second World War.

By 1951, the IRO completed its mandate. While helping resettle more than a million refugees, those seeking refuge continued to emerge in Europe as the Soviet Union consolidated power in Eastern Europe.<sup>19</sup> As these refugees were not covered by the IRO’s mandate and the refugee problem in Eastern Europe grew more pronounced, the need for a new regime capable of coping with refugees followed suit. Amid this backdrop, the international framework for the refugee system directly emerged.

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<sup>17</sup> Gallagher, 579.

<sup>18</sup> Goodwin-Gill and McAdam, p. 19.

<sup>19</sup> Gallagher, 579.

## Development of the International Refugee Regime

\_\_\_\_\_The foundations for the international legal concept of a refugee are securely fixed in the 1951 Refugee Convention and in the Statute of UNHCR. The 1951 Convention was the first and remains the only binding instrument for refugee protection of universal character. It is the baseline foundation in which the contemporary system is built upon. The doctrine itself was designed not towards understanding causes of flight nor for cultivating solutions for those displaced, but in addressing the question of status. According to Article I/A(2) of the 1951 Convention, the term "refugee" applies to any 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".<sup>20</sup>

In this definition lies the origin of problems in the contemporary refugee system. The 1951 Convention was an instrument of limited intent and hastily designed in the Cold War context in which it was devised. As East-West tensions increased, the issue of those displaced by communist regimes became the predominant concern on the forced migration agenda. The United States vehemently opposed displaced Eastern European repatriation to communist countries.<sup>21</sup> As a result, the refugee definition is highly Eurocentric and privileges persecution as the standard for making a status determination. The drafters acknowledged the refugee definition was designed to respond to a highly unique situation and not intended to be disseminated

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<sup>20</sup> UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

<sup>21</sup> Betts and Collier, p. 38.

throughout the world.<sup>22</sup> The Convention was silent on where and with what resources refugees should be provided with. Rather, the intention was for the definition to evolve dynamically through supplementary international agreements and interpretations by national courts.

Along with the 1951 Convention, the United Nations High Commissioner for Refugees (UNHCR) first came into existence. Under Article Twenty-two of the UN Charter, the UNHCR was established as a subsidiary body of the General Assembly for an initial time frame of three years. In December of 1950, the General Assembly adopted the Statute of the UNHCR, which established the organization's responsibilities to protect refugees and to seek durable solutions, or: "A pathway towards permanent reintegration into the state system."<sup>23</sup> These predominantly include:

- Resettlement - The transfer of refugees from an asylum/host country to another state, that has agreed to admit them and ultimately grant them permanent residence;
- Local Integration - Ending exile by allowing refugees to become full members of their host community in their first country of asylum;
- Repatriation - The voluntary return of refugees to the country of origin.<sup>24</sup>

The Office was initially designed only to offer legal expertise and guidance to governments, such as Korea, Palestine, and India, coping with refugee crises, both with the legality of protection and mechanisms to provide durable solutions. In its infancy, the UNHCR was limited to a protection role rather than one meant to provide material assistance. The United

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<sup>22</sup> Ibid.

<sup>23</sup> Ibid., p. 54.

<sup>24</sup> United Nations High Commissioner for Refugees, "Refugee Status Determination," UNHCR, accessed April 29, 2021, <https://www.unhcr.org/en-us/refugee-status-determination.html>.

States aimed to limit the independence and operational scope of UNHCR. Instead, the US created its own migration and refugee organizations, thus enabling the promotion of its own foreign policy priorities.<sup>25</sup> Despite this, the UNHCR attained unparalleled moral authority and a monopoly on legal and protection issues regarding refugees.<sup>26</sup>

The 1951 UN Refugee Convention and the Statute of the UNHCR formed the template for the international refugee regime. However, within the UNHCR Statute and 1951 Convention existed an inherent contradiction. The work of the Office per the Statue was designed to operate within the group approach, yet the Convention definition is inherently individualist and thus requires more of a case-by-case approach.

Against the backdrop of decolonization, Cold War proxy wars, and anticolonial struggles, the Convention definition was then applied unaltered to all crises in the 1967 Protocol. By acceding to the Protocol, states agreed to apply the core content of the 1951 Convention to all persons covered by the Protocol's refugee definition, without limitations of time or place. As a result, a hastily negotiated regime that was designed not to outlast a decade became the basis of refugee governance.<sup>27</sup> The 1951 Convention was designed to address the problem of European refugees in the 1950s, and yet became the standard global policy for refugee crises post-1967. The mismatch became obvious as the needs of those fleeing post-colonial violence in the 1960s and 1970s were vastly different from war-torn and Cold War Europe.

In particular, the flaw of applying the Eurocentric definition to the multitude of other conflicts and crises driving forced migration is rooted in privileging persecution as the standard for seeking refuge. In order to obtain refugee status, an asylum-seeker must establish a

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<sup>25</sup> Gil Loescher, "UNHCR's Origins and Early History: Agency, Influence, and Power in Global Refugee Policy," *Refuge: Canada's Journal on Refugees* 33, no. 1 (2017): pp. 77-86.

<sup>26</sup> Ibid.

<sup>27</sup> Betts and Collier, p. 39.

“well-founded fear of being persecuted”. Yet, with the emergence of new drivers of displacement, such as economic migrants and climate change, for example, persecution is no longer a befitting standard to measure one’s need for refuge. Moreover, through state practice, there is a disproportionate application of the standard of persecution: “In 2014, the recognition rate for Iraqis was 14% in Greece and 94% in France; for Eritreans it was 26% in France and 100% in Sweden. When persecution has no coherent or consistent meaning, how can it be a credible threshold for determining who gets to cross a border in search of rights?”<sup>28</sup>

Prioritizing persecution thus sets a precarious standard for the implications of one’s status. The international refugee regime operates on the basis of a number of definitions to determine one’s status and, as a result, their rights to refuge and the protections included. For the purposes of this paper, relevant status definitions from the UNHCR include:

- Asylum-seeker - An individual who is seeking international protection. In countries with individualized procedures, an asylum-seeker is someone whose claim has not yet been finally decided on by the country in which the claim is submitted. Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee was initially an asylum-seeker;
- Convention Refugees - Persons recognized as refugees by states under the eligibility criteria in Article 1 of the 1951 Convention, and entitled to the enjoyment of a variety of rights under that treaty;
- Internally Displaced Person (IDP) - An individual who has been forced or obliged to flee from their home or place of habitual residence, “...in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalized

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<sup>28</sup> Ibid., p. 47.

violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”;

- Economic Migrants - Persons who leave their countries purely for economic reasons unrelated to the refugee definition, or in order to seek material improvements in their livelihood. Economic migrants do not fall within the criteria for refugee status and are therefore not entitled to benefit from international protection.<sup>29</sup>

The UNHCR shifted its work towards a wider view of “persons of concern” to describe those in need of the UNHCR’s assistance who do not fit the Convention refugee definition. While the UNHCR adopted protection mechanisms to provide assistance to these groups, the extent in which protection can legally be provided is less certain. In the eyes of the law, an economic migrant is less deserving of, and less entitled to, the same rights afforded to a Convention refugee. Furthermore, what distinguishes a refugee from other persons of concern is a) having crossed a national border, and b) fleeing persecution. While there are nearly twice as many IDPs as refugees, these individuals are legally not entitled to the same rights and protections simply for their inability to leave their country of origin.<sup>30</sup>

The gray area of protection surrounding those not encompassed in the refugee definition imports varying legal consequences so that the obligations of states in matters such as *non-refoulement*, non-rejection at frontier, temporary refuge or asylum, and treatment after entry will depend upon the precise status of the particular class.<sup>31</sup> In particular, refugee status provides an individual with the guarantee of *non-refoulement*, which is defined as “No Contracting state

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<sup>29</sup> United Nations High Commissioner for Refugees.

<sup>30</sup> *Ibid.*

<sup>31</sup> Goodwin-Gill and McAdam, p. 49-51.



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 of political opinion."<sup>32</sup> Individuals are thus granted the right not to be returned to danger, but not the right to escape danger in the first place.

Moreover, the doctrines in place prioritize state rights over the humanitarian principles obliged to individuals seeking refuge. The 1951 Convention and 1967 Protocol, rather than being protection driven for individuals at risk, shift focus to the lack of capacity for the state of origin to uphold its social contract to provide protection and, in a corollary move, to the state of refuge and its obligation to provide for the individuals in question.<sup>33</sup> There was recognition amongst parties to the Convention that refugees had a right to seek asylum. However, states- protective of their territorial sovereignty- did not agree that they had an obligation to grant refugees asylum. Rather than place emphasis on one's right to refuge, focus has been shifted towards states' responsibilities. *Non-refoulement*, for example, places a negative obligation on states not to cause harm by expelling individuals at risk, but places no positive right on the state to assist the individual in the first place. In deference to states' rights and responsibilities, the object and purpose of the 1951 Convention, 1967 Protocol, and the contemporary refugee regime are thus one step removed from those seeking refuge.

Furthermore, state practice further inhibits emphasis on individual rights as alliances on protection are shifting. Some states that were formerly strict practitioners of the legal doctrines have begun to distance themselves from the basic practices inscribed in the 1951 Convention and Protocol. As the nature of conflicts continue to change, unprecedented numbers of vulnerable

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<sup>32</sup> UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85.

<sup>33</sup> Goodwin-Gill and McAdam, p. 10.

people arrive in greater figures, and a globalized irregular migration movement persists, states are seeking to redefine their responsibilities with a greater emphasis on their own rights.

In conclusion, the contemporary system resembles one designed for post-war Europe, not the radically different world we live in today. The decisions and policies of the past are no longer relevant to the contemporary world, yet their existence limits present capabilities. As conditions continue to change and the basis for the refugee system grows more ossified and inflexible to meet current demands, many individuals' right to refuge remains inhibited.

## The Contemporary International Refugee Regime in Crisis

\_\_\_\_\_The 1951 Convention and 1967 Protocol provided only a baseline for the international refugee regime. By the 1970s, a complex and inflated system of national, regional, and international relationships had developed through various other regional instruments and agreements.<sup>34</sup> The dimension of the problem of forced migration expanded beyond the legal rights and protections obliged to refugees, but emergency responses to crises, care and maintenance of those seeking refuge, and the development and use of durable solutions.<sup>35</sup> As new crises emerged in Africa, Asia, Europe, and Central America, new waves of refugees in vast circumstances of crisis began to elucidate problems with the system.

The 1970s saw a number of crises related to decolonization. Repatriation was used as the predominant durable solution, and millions of refugees from Bangladesh, Mozambique, Angola, Guinea-Bissau, and other countries were able to voluntarily repatriate.<sup>36</sup> However, those who returned often arrived in states where human rights remained unstable, infrastructure was weak as the result of conflict, and peace was fragile. Throughout the 1980s, the number of refugees grew exponentially as the result of conflict, particularly of inter-ethnic nature, in newly independent states. As breaches of humanitarian law became a conscious military objective, displacement became disproportionately high, and the prospect of repatriation as a durable solution grew more distant.<sup>37</sup>

The changing nature of conflict called into question the basic concepts of refuge, as well as the will of states to provide assistance and assume responsibility for those seeking safety.

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<sup>34</sup> Gallagher, 585.

<sup>35</sup> Ibid., 589.

<sup>36</sup> Ibid.

<sup>37</sup> Erika Feller, *The Evolution of the International Refugee Protection Regime*, 5 Wash. U. J. L. & Pol'y 129 (2001).

States grew increasingly concerned with large-scale refugee flows as a threat to domestic stability. As the result of democratization and debt crises, developed countries cut spending to the developing world, and host countries thus allocated less resources to non-citizens seeking asylum. In a panicked response, some governments resorted to denying entry, such as the example of Guinea closing its borders to Sierra Leonean refugees fleeing violent rebels<sup>38</sup>. As neighboring countries to conflict absorbed mass influxes of refugees, industrialized countries began reshaping asylum policies. The developed world grew concerned by overburdened structures coping with exponential rises in claims, increasing costs associated with operating their asylum systems, difficulties applying refugee concepts to groups of arrivals, and by a significant abuses of the asylum system<sup>39</sup>. As states undertook a more restrictive approach and large-scale flows of refugees exploded, a mismatch occurred between the institutional capabilities of the international refugee regime and the needs of the world. states in the Global North enacted policies to externalize refugees to proximate countries to conflict in the developing world, and states in the Global South were thus pressured to assume legal and financial responsibility for those seeking refuge. Growth of the laws and processes to achieve compatibility with circumstances remained tenuous, and the system left states unprepared and unable to adapt.

The crisis of the 1980s resulted in a significant shift in the UNHCR's identity. The Office had little option but to enact a protracted aid program for millions of individuals seeking refuge in the form of refugee camps. The Office shifted its responsibilities from legal guidance for protection and durable solutions to humanitarian assistance, thus undertaking a visible role in emergency response and long-term management of those displaced. According to the UNHCR,

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<sup>38</sup> Ibid., p. 135.

<sup>39</sup> Ibid.

refugee camps are “temporary facilities built to provide immediate protection and assistance to people who have been forced to flee their homes due to war, persecution or violence. While camps are not established to provide permanent solutions, they offer a safe haven for refugees and meet their most basic needs - such as food, water, shelter, medical treatment and other basic services - during emergencies.”<sup>40</sup> Within 72 hours of a humanitarian emergency, the UN Refugee Agency mobilizes to establish a refugee camp. From the 1980s onward, this “care and maintenance” model became the default instrument of coping with forced migration crises. While states endorsed a widening of the UNHCR’s responsibilities and role in forced migration, they failed to expand the refugee definition in a complementary move. The UNHCR has not undertaken systematic reform, but instead has changed in response to crisis. As a result, the Office has grown ossified in the standard operating procedure of care and maintenance of refugee camps.

The successes and failures of the traditional durable solutions have been shaped by reliance on the care and maintenance model.<sup>41</sup> While there were 21.3 million refugees in 2015, only approximately 300,000 were granted resettlement, repatriation, or integration.<sup>42</sup> This begs the question: if certain individuals have the right to refuge, what solutions does this right provide? Presently, the more unfortunate but realistic pathways available to refugees are protracted encampment, urban destitution, and perilous journeys to the Global North.<sup>43</sup>

As of December 2020, six million people, or 22% of the world’s refugee population, live in a refugee camp.<sup>44</sup> An organization initially tasked with protecting refugees and assisting in the

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<sup>40</sup> “What Is a Refugee Camp? Definition and Statistics: USA for UNHCR.” What is a Refugee Camp? Definition and Statistics | USA for UNHCR. Accessed April 29, 2021.

<sup>41</sup> Goodwin-Gill and McAdam, p. 4.

<sup>42</sup> Betts and Collier, p. 55.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

provision of long-term solutions is failing its purpose by relying on a funding model intended to be used for short-term, emergency response to crisis as a replacement for permanent solutions.<sup>45</sup> The shift in the Office's role allotted developing countries to abdicate financial responsibility to the international community and offered an "out of sight, out of mind" to industrialized countries seeking to externalize the mass influx of refugees abroad.<sup>46</sup> The UNHCR, intended to be a non-political entity, succumbed to international pressures by placing state will above the needs and rights of refugees, where refuge thus becomes inherently political. The result is a loss of prioritization of protection of the rights of refugees in exchange for provision of assistance.<sup>47</sup> The UNHCR provides basic needs, including food, water, shelter, and medical treatment. Yet, refugee camps are notoriously at over-capacity and present a number of physical security concerns, including: military attacks or raids, violence and intimidation, and breakdown of law and order.<sup>48</sup> Moreover, camps are designed to intern refugees and keep individuals in prolonged limbo for an average of 26 years, thus failing to provide adequate access to local integration, resettlement, or repatriation.<sup>49</sup>

Protracted internment in camps further denies refugees freedom of movement and the right to work. In the Za'atari refugee camp, parents explained how their children returned to Syria to fight rather than wait passively in the camp.<sup>50</sup> More commonly, refugees choose to relocate to urban areas in search of work. This difficult decision forces refugees to abdicate the assistance of the UNHCR in pursuit of better opportunities. Yet, as states have adopted a more

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<sup>45</sup> Betts and Collier, p. 53.

<sup>46</sup> Ibid., p. 41.

<sup>47</sup> Goodwin-Gill and McAdam, p. 4.

<sup>48</sup> "A 'Safety-First' Approach to Physical Protection in Refugee Camps," A 'Safety-First' Approach to Physical Protection in Refugee Camps, accessed April 29, 2021.

<sup>49</sup> Betts and Collier, p. 8.

<sup>50</sup> Ibid., p. 55.

restrictionist approach towards refugees, one method of curtailing influxes is denying the right to work. As a result of the UNHCR's inability to provide adequate access to durable solutions, many refugees find themselves in urban settings without aid and facing economic destitution. Recently, refugees have undertaken a third approach in their journey for refuge in the form of perilous journeys to countries in the Global North. In 2015, more than a million migrants arrived in Europe compared to 280,000 in 2014.<sup>51</sup> When the prospects of refuge present a long-term, undesirable, and inadequate quality of life, specifically protracted exile and economic destitution, refugees more commonly are risking their lives in search of refuge elsewhere.

The international refugee regime has been operating in inflexible dysfunction for decades. However, the 2015 Refugee Crisis overburdened an already broken system. Unsuspecting and unprepared policymakers, rather than reconstruct a coherent and collective policy, responded to crisis with panic. Waning public support for refugees and a resurgence of xenophobia have found their political expression, in many countries, in taking a harder line toward those who come uninvited.<sup>52</sup> Restricting the right to work is just one example of *non-entree* policies, or “comprising efforts by powerful states to prevent refugees from ever reaching their jurisdiction.”<sup>53</sup> States have utilized a myriad of obstacles to prevent and deter asylum-seekers, including but not limited to: “Increased detention, reduced welfare benefits, severe curtailment of self-sufficiency possibilities, [and] restricted family reunion rights.”<sup>54</sup> While not restricting refugees' right to flee, these policies in essence limit the responsibility and assistance provided by the state, thus making flight to disinclined safe havens difficult,

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<sup>51</sup> “Migrant Crisis: Migration to Europe Explained in Seven Charts,” BBC News (BBC, March 4, 2016).

<sup>52</sup> Feller, p. 129.

<sup>53</sup> James C. Hathaway and Thomas Gammeltoft-Hansen, “Non-Refoulement in a World of Cooperative Deterrence,” SSRN, August 13, 2014.

<sup>54</sup> Feller, p. 129.

undesirable, and treacherous. In particular, *non-entree* policies permit wealthier states to circumvent legal obligations and externalize the responsibilities of refugee protection to proximate states. *Non-entrée* mechanisms have proved highly effective: the Global North protects less than 20% of the world's refugees.<sup>55</sup> While lip service is paid to upholding the 1951 Convention, large sums of money are devoted to preventing asylum-seekers from entering. The prevalent use of *non-entree* policies thus elucidates a clear gap in what should be the humanitarian and functional responsibilities of states and their legal obligations.

Along with enacting policies to inhibit physical access as well as limiting asylum-seekers rights/opportunities as deterrence, states have reverted to an overly restricted application of the 1951 Convention. States have the right to conduct refugee status determination (RSD); as a result, mechanisms envisaged by the drafters of the 1951 Convention to allot for dynamic interpretation have created widespread differences in application. A refugee in one state may not be classified as a refugee in another. Abidance to the 1951 Convention definition elicits an oversimplified and unfortunate characterization of those seeking refuge. Those fleeing persecution are legally and morally deemed more genuine and deserving of assistance as opposed to climate or economic asylum-seekers, who are abusive of the asylum-system and thus undeserving.<sup>56</sup> The existing international framework afforded merely 26 million of the estimated 80 million displaced individuals the more protective "refugee" status, thus leaving those who are unable to meet the necessary legal requirements vulnerable to a lack of international protection.<sup>57</sup> Thus, reverent abidance to antiquated dictums of a foregone era enables states to err on the side of restrictive application without addressing the contemporary demands of those seeking refuge.

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<sup>55</sup> Hathaway and Thomas Gammeltoft-Hansen

<sup>56</sup> Adrienne Millbank, "The Problem with the 1951 Refugee Convention," Home – Parliament of Australia (Social Policy Group, February 18, 2013).

<sup>57</sup> United Nations High Commissioner for Refugees.



Moreover, as the Convention definition is inherently a case-by-case examination, states are given precedence over determining one's status. As state's espouse a more restrictive approach, the vast majority of people fleeing their countries of origin are not refugees - they are people seeking refuge. Until a state makes a status determination, asylum-seekers have the right to seek refuge, but are not entitled to the rights of a refugee. There is no right to assistance unless and until a signatory country is reached and status is determined. Some states housing the largest numbers of refugees, including Jordan, Lebanon, and Iraq, have never ratified the 1951 Convention. Those seeking refuge thus do not have the legal right to be deemed refugees in those states. While Turkey ratified the 1951 Convention, it has not ratified the 1967 Protocol, which removed temporal and geographic limitations of the Convention. As a result, Turkey only legally can recognize refugees from Europe. Those who have fled into Turkey's borders from Syria and other locations do not have the right to be recognized as refugees.<sup>58</sup> From the perspective of the Global North, the developing world is filled with refugees who become migrants once they cross into Europe; alternatively, in the eyes of the Global South, the region is filled with vulnerable and displaced people who can only become refugees once they cross into Europe.

The current system represents a severe and consequential collective action problem. The 1951 Convention does nothing to prohibit the transfer of responsibility for those seeking refuge- as is being seen in the more frequent use of *non-entree* policies- and thus inhibits burden-sharing. In the international refugee regime, burden-sharing has predominantly taken two forms: physical protection and financial assistance. Physical protection implies burden-sharing amongst the distribution of refugees through local integration and resettlement. Financial burden-sharing has

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<sup>58</sup> Phil Cole and About The Author(s) Professor Phillip Cole Lectures in Politics and International Relations at the University of the West of England, "What's Wrong with the Refugee Convention?," E, April 18, 2020.

come in the form of funding protection through the UNHCR or other means. Burden-sharing is often the result of geography, where developing countries who are proximate to conflict must cope with the legal and physical obligations of protection while distant countries in the Global North can abide at their discretion.<sup>59</sup> With the shift towards the care and maintenance model, states in the Global North could undertake the financial burden while proximate states undertake physical protection in the form of refugee camps. With an exponential growth in displaced individuals and the care and maintenance model acting as an ineffective option, this burden-sharing relationship is no longer viable.

Ultimately, the most vulnerable of groups bear the weight of poor policy-crafting and implementation. The current global migration crisis reflects the realities of life as a refugee: prolonged and hopeless encampment in a refugee camp; destitution in proximate states, where the right to work is restricted; or treacherous journeys to distant and, usually, disinclined safe-havens.<sup>60</sup> An extreme and undue burden is placed on persons merely seeking safety. If a refugee manages to reach a safe destination, they are often met with a myriad of cruel obstacles and limitations, including human rights abuses; refoulement; protracted detention; family separation; lack of access to legal care, education, and medical care; and violence and sexual abuse. The current international refugee regime is in crisis, and those seeking refuge are paying the price.

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<sup>59</sup> Betts and Collier, p. 48.

<sup>60</sup> *Ibid.*, p. 55.

## Recommendations

\_\_\_\_\_ This paper, in seeking to answer who has the right to refuge, outlines a number of flaws with the international refugee system stemming from reverent abidance to the 1951 Refugee Convention. The architecture of the contemporary system is built on an unstable foundation. The Convention definition privileges persecution as the result of the Cold War era in which it was devised. The 1967 Protocol then extended this inadequate, Eurocentric definition globally. The current international laws prioritize state rights over individuals at risk. As states have grown more restrictive in allowing refugees to enter their borders, the international refugee system shifted towards a long-term care and maintenance model instead of an emphasis on durable solutions. While the system operated in functional dysfunction for decades, the 2015 Refugee Crisis elucidated more problems than ever before. Unsuspecting policymakers inheriting a broken system have simply panicked and enacted policies imbued exclusively in self-interest. State practice reflects inconsistent application of the refugee definition, *non-entree* policies as deterrence, and an utter lack of an effective burden-sharing mechanism. Problems have grown insurmountable; rather than ignoring fundamental problems and continuing to operate in dysfunction, addressing the aforementioned problems is imperative to protect those most vulnerable.

In order to address the structural changes necessary for a more effective system, it is important to assess what the right to refuge means and who, under existing international laws and practices, has it. In theory, refuge is a rather simple concept: people have the right to flee harm, and receiving countries have a corresponding obligation to assist.<sup>61</sup> Implicit in the meaning of the word “refugee” is the assumption that the individual concerned is deserving of assistance and

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<sup>61</sup> Betts and Collier, p. 35.

protection from the causes and consequences of seeking refuge.<sup>62</sup> Article 1 of the 1951 Refugee Convention enshrines the right to flee persecution. Convention refugees should then be able to access basic rights and freedoms in exile until they can be repatriated or resettled. One thus has the right to flee but will only receive the other protections and rights of refuge if the individual is fitting of the legal definition of a refugee. Persecution is privileged as the standard for the right to seek refuge. With the emergence of new drivers of displacement, unprecedented levels of human flight, and a variety of humanitarian and political considerations, the 1951 Convention definition is no longer befitting. The current regime asks, “Who does *not* have the right to refuge?”, thus acting as a mechanism for exclusion rather than inclusion for vulnerable individuals who, at the core of it, are simply but desperately seeking help. Furthermore, the narrow scope of protection further allows states to derogate from responsibilities and ignore the genuine, humanitarian merits of providing assistance. A crisis of protection is institutionalized as the contemporary world necessitates flexibility the international refugee regime cannot provide.

Disengagement from the 1951 Refugee Convention is a necessary part of establishing a more effective regime. The Convention and its refugee definition must be redrafted to broaden the scope of protection. The current crisis demands a new, more universally applicable standard rather than reliance on an ossified and outdated metric to determine one’s right to refuge. “Refugee” should simply denote people who require a new state of residence, either temporarily or permanently, as the result of an absence of a reasonable choice but to leave.<sup>63</sup> Protection should thus be established by asking, “Who to protect? How to protect? Where to protect?”<sup>64</sup> and

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<sup>62</sup> Goodwin-Gill and McAdam, p. 15.

<sup>63</sup> Gibney, Matthew J. "Liberal Democratic States and Responsibilities to Refugees." *The American Political Science Review* 93, no. 1 (1999): 169-81. Accessed April 29, 2021. doi:10.2307/2585768.

<sup>64</sup> Betts and Collier, p. 60.

giving precedence to the most vulnerable. Rather than use the laws as exclusionary, adaptive mechanisms should be designed for a sustainable system. Having a comprehensive and universal standard will also eliminate inconsistencies in RSD made by national jurisprudence, thus encouraging a collective and coherent policy.

Redefining the 1951 Convention must take into account domestic considerations and constraints. States face a precarious position in balancing duties to their own citizens versus their responsibilities in the international system, including those entitled to refugees and migrants. A moral brinkmanship of sorts arises between the morality of undertaking refugees and domestic disharmony. Championing an open-door policy presents real, unintended consequences for both domestic and international audiences. The demands of morality and the majority view of a state's citizens are thus in direct contention. A balance must be struck to cater to the needs of the vulnerable, minimize adverse consequences for domestic audiences, and be politically feasible over time. Dr. Matthew J. Gibney proposes utilizing the principle of humanitarianism to achieve this balance.<sup>65</sup> Humanitarianism affirms the existence of certain responsibilities owed by states, but allows for these responsibilities to be reconciled with those that derive from competing communities.<sup>66</sup> Furthermore, humanitarianism concentrates on the positive duties of states to assist those in greatest need while accounting for citizens' interests and priorities.

To avoid the moral hazard of humanitarianism, there must be a specific criteria and limitation to refugee acceptance. At its core, an open-door policy is well-intentioned, yet it can serve to create a number of undesirable outcomes, as evidenced by Germany's 2015 response to Europe's migrant crisis. Angela Merkel's declaration: "*Wir schaffen das!*" ultimately resulted in

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<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

more than a million refugees seeking asylum within Germany's borders.<sup>67</sup> Open doors offered a symbol of hope and the prospect of a better life for those desperately fleeing violence and oppression. Yet, Germany offered little assistance in facilitating movement, which resulted in unprecedented deaths in the Mediterranean as migrants took hazardous measures to reach a safe destination. Those who survived the perilous journey often experienced abuse and exploitation at the hands of human smugglers. Even those who did not meet the standard of "persecution", predominantly economic migrants, laid claim to asylum in Germany in search for a better life than their country of origin could provide. Furthermore, Merkel's policy resulted in the rise of far-right movements within Germany and Europe as a whole. Political backlash, social divisions, and the rise of anti-immigrant sentiments continue to plague Europe. While well-intentioned, there is a moral hazard to humanitarianism; to combat this, limitations to refuge must be in place.

States also stand to take proactive measures to avoid the need for refuge in the first place. What industrialized states spend on domestic asylum systems and *non-entree* policies is many times over the UNHCR's budget.<sup>68</sup> Reallocation of resources to home states serves to prevent individuals from making the difficult choice to leave in the first place.

The lack of coherency in the contemporary regime demands a strong, centralized institution with decisive leadership that the UNHCR is presently not providing. Effective institutions should be capable of transcending political divergence and creating predictable patterns of collective action.<sup>69</sup> The Office currently provides neither. The UNHCR, in its current form, is failing to lead and coordinate international action for the worldwide protection of refugees effectively. Reactively, the UNHCR continues to defend an anachronistic standard

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<sup>67</sup> Matthew Karnitschnig, "5 Years on from Angela Merkel's Three Little Words: 'Wir Schaffen Das!'," *POLITICO* (*POLITICO*, August 31, 2020).

<sup>68</sup> Betts and Collier, p. 60.

<sup>69</sup> *Ibid.*, p. 223.

rather than proactively championing a bold vision of the future as the leading organization in refugee governance. As the UNHCR fails its purpose of providing durable solutions, faith in the effectiveness of the UNHCR wanes, and the willingness of the international community to cooperate diminishes, the demands necessitated for this role are arguably beyond the Office's current capacity. Therefore, the UNHCR must undergo a substantial overhaul while working with other actors who are capable of accounting for the Office's shortcomings.

Simply, the UNHCR's current role is unsustainable at scale. In undertaking the role of rescuer, provider of needs, seeker of durable solutions, and expert legal authority, the UNHCR is having a crisis of identity. It is unnecessary for the Office to monopolize the space of refugee protection. Instead, the Office's main functions should focus on political facilitation and expert authority.<sup>70</sup> By diminishing its role to political facilitator and expert authority, other official agencies, NGOs, businesses, and civil-society organizations can undertake humanitarian aid delivery, which accounts for a large majority of the UNHCR's work. The demands of the contemporary system necessitate a strong, centralized agency that can act as a broker between governments for agreements. In deploying expert moral and legal guidance, the Office stands to lead states to outcomes that present a "win-win", thus spurring international cooperation. A United Nations refugee organization has the capacity to bring legitimacy and coherence to collective action while delegating responsibilities to other entities. The international community stands immense gains should the UNHCR undergo reform.

While refugees are protected from physical harm and provided enough resources to stay alive, the system fails to help rebuild their lives and identify pathways for their long-term needs. The international refugee regime should reorient its objectives towards rescue and autonomy.

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<sup>70</sup> Ibid., p. 201.

The right to refuge implies protection and provision of one's most basic needs. However, the current system fails to move beyond this care and maintenance. Refugees are granted refuge in exchange for a protracted sentence. The right to refuge does not come with the caveat of abdication of autonomy. Seeking refuge should not deny one inclusion in the labor market, social services, and communities. In a corollary move with rescue, restoring autonomy should be a primary objective.

The private sector, international actors, and governments should work in tandem to empower refugees and provide long-term opportunities. Actors should provide humanitarian assistance in a way that promotes social and economic inclusion and allows the refugee to become self-reliant as quickly as possible.<sup>71</sup> Predominantly, development of socio-economic autonomy in the form of the right to earn a living is essential. As a humanitarianism system, the current international refugee regime lacks the necessary tools for sustainable development for refugees. One such tool could include a partnership between the UNHCR and the United Nations Development Programme (UNDP). In cooperating, the UNHCR and UNDP could act to address the root causes of forced migration as well as promote self-reliance.

An effective system is undeniably contingent on international cooperation. The current legal framework no longer encourages states to espouse this dynamic. Presently, states acting in isolation see a better trade-off than working in tandem. This is largely due to the perceptions of refugees as burdens and threats to domestic stability. Therefore, it is imperative for a fundamental change in the way in which forced migration issues are approached to reestablish a will for and legitimacy in international cooperation. Refugees present unprecedented opportunity,

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<sup>71</sup> Susan Fratzke Demetrios G. Papademetriou, "Beyond Care and Maintenance: Rebuilding Hope and Opportunity for Refugees (Transatlantic Council Statement)," December 12, 2016.



particularly with leveraging globalization, technology, the role of business, and the capacities of refugees themselves.<sup>72</sup>

Refugees are predominantly seen as burdens as the result of the structure of the current system. Without adequate burden-sharing, the brunt of responsibility, including both financial and physical protection, is inequitably dispersed. Adequate burden-sharing mechanisms are essential to an effective system. One method in which this could be established is through a broad proportionality principle and the use of refugee quotas on a country-to-country basis. Establishing a proportionality principle would require agreement by states on a strong norm to share responsibility; a process for determining who needs protection, which could be derived from a reformed 1951 Convention; a specified criteria for equitably distributing quotas; and an international authority to oversee the quota system.<sup>73</sup> The UNHCR in its reformed role as political facilitator could assign each participating state a refugee protection quota, which would delineate explicit guidelines for temporary or permanent resettlement for a specific number of refugees over a specific period of time.<sup>74</sup> The change in system would alleviate the immense pressures of undertaking mass refugee influxes on proximate states and, to some degree, neutralize the perceived need for *non-entree* policies in the Global North. Undertaking burden-sharing measures thus presents a “win-win” for all actors and will invariably reduce the perceived burdens of refugee protection.

This paper, in seeking to answer who has the right to refuge, proposes a number of recommendations to address the flaws in the contemporary international refugee regime. First, it is imperative for the 1951 Refugee Convention to be redesigned to broaden the scope of

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<sup>72</sup> Betts and Collier, p. 10.

<sup>73</sup> “Refugee Burden-Sharing: A Modest Proposal,” accessed April 29, 2021.

<sup>74</sup> Ibid.

protection. Secondly, the UNHCR must redefine its role as political facilitator and expert legal authority while other actors undertake humanitarian aid delivery. The regime as a whole should also reorient its objectives towards rescue and autonomy. In developing socio-economic autonomy opportunities, refugees will be more empowered and utilized as opportunities by host countries. In viewing refugees as opportunities and through establishing proportional burden-sharing with the use of quotas, states will be more inclined to participate in international cooperation. Ultimately, these recommendations will culminate in a more effective system capable of coping with mass displacement and, most importantly, improve the lives of those seeking refuge.

## Conclusion

Refuge is as pertinent today as the time in which the refugee system was developed in the late 1940s. Yet, while the world has radically changed, the system constructed for a foregone era has not. Policies codified in the 1951 Refugee Convention, in subsequent protocols, and through state and UN practice have grown ossified, inflexible, and utterly unable to meet the urgent needs of the contemporary world. In seeking to answer who has the right to refuge, this paper explores the historical background of the international refugee system, outlines apparent flaws and failures, and proposes recommendations for a more effective and sustainable system.

Following World War One, the League of Nations was the first to put forced displacement at the top of the political agenda. The LON undertook the responsibility of providing protection and finding solutions for those seeking refuge from the unprecedented number of forcibly displaced individuals following the First World War. As previous legal instruments did not extend to the unfolding refugee problem, the League of Nations undertook a “group or category approach”, which became a focal point of refugee policy between 1922-1946. From the onset of refugee protection, foreign-policy considerations and political convenience heavily influenced states’ acceptance of refugees, thus influencing the determination of status by the League. As a result, refugee definitions became more divorced from the political and social reality of events driving displacement, and protection gaps in international law began to emerge<sup>75</sup>.

The 1943 Bermuda Conference, influenced by the events of the Second World War, altered the standard of determining refugee status by including “danger... on account of their race, religion or political beliefs”. Danger would later become “persecution” in the 1951 Refugee

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<sup>75</sup> Goodwin-Gill and McAdam, p. 19.

Convention. The definition was crafted in an abstraction of the political events of the Second World War, specifically the intolerability and impossibility of continued residence in a displaced person's country of origin. The concept of seeking refuge in an alternative territory thus became a cornerstone of the contemporary refugee definition.

Following the Second World War, first the United Nations Relief and Rehabilitation Agency and later the International Refugee Organization were created to cope with finding solutions for the mass numbers of displaced persons in Europe. For the IRO's purposes, who was given the right to refuge was highly specific to the crisis and causes of displacement caused by the Second World War. By 1951, the IRO completed its mandate with more than a million refugees resettled.<sup>76</sup> Yet, as the Soviet Union began to consolidate power, refugees who were not covered by the IRO's mandate began to emerge. As East-West tensions increased and the refugee crisis in Eastern Europe grew more pronounced, the need for a new organization capable of coping with refugees came to the forefront of the political agenda.

Amid this backdrop, the international framework for the refugee system directly emerged. The 1951 UN Refugee Convention and the Statute of the UNHCR formed the template for refugee policy. The Convention definition privileges persecution as the result of the post-war and Cold War era in which it was devised. In this definition lies the origin of problems in the contemporary refugee system. The drafters acknowledged the refugee definition was designed to respond to a highly unique situation and not intended to be disseminated throughout the world<sup>77</sup>. Yet, in response to refugee crises in the 1960s, the 1967 Protocol then extended this inadequate, Eurocentric definition globally. This "one-size fits all" approach failed to allow for adaptation to the specific demands of individual crises. The mismatch became apparent: persecution is no

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<sup>76</sup> Gallagher, 579.

<sup>77</sup> Betts and Collier, p. 38.

longer a befitting standard to measure one's need for refuge and this prioritization sets a precarious standard for the implications of one's status. Furthermore, the mechanisms designed by the drafters to encourage dynamic interpretation have been abused by national jurisprudence to fit domestic concerns. Disproportionate application of the Convention definition allots for wide variations in legal interpretation and therefore impedes any coherency when implementing collective policy. The limitations of the 1951 Refugee Convention thus inhibit the prosperity of the contemporary regime.

An inherent emphasis on states' responsibilities further complicates one's access to refuge. There was recognition amongst parties to the Convention that refugees had a right to seek asylum; however, states did not agree that they had an obligation to grant refugees asylum. Current international laws and practices institutionalize an environment where one has the right to flee intolerable harm but is not guaranteed the right to refuge unless the individual is befitting of the anachronistic legal standard. States thus can use the laws to circumvent their obligations to assist and assume responsibility for the individual. As the doctrines in place impose no requirement for burden-sharing, state practice reflects restrictionist policies imbued with self-interest rather than humanitarian considerations, which invariably places the burden of coping with mass refugee influxes on less-developed, proximate states.

In response, the UNHCR has undertaken a long-term care and maintenance model instead of an emphasis on durable solutions. The UNHCR is failing its purpose of providing durable solutions to refugees in its over reliance on camps for care and maintenance. Refugee camps are designed to intern refugees and keep individuals in prolonged limbo for an average of 26 years, thus failing to provide adequate access to local integration, resettlement, or repatriation<sup>78</sup>. The

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<sup>78</sup> Betts and Collier, p. 8.

shift allotted developing countries to abdicate financial responsibility to the international community while providing an “out of sight, out of mind” option for industrialized countries externalizing mass influxes of refugees abroad<sup>79</sup>. The system represents a severe and consequential collective action problem as an appropriate burden-sharing mechanism has not been implemented.

The 2015 Refugee Crisis elucidated more problems than ever before, and problems have grown insuperable. Ultimately, those seeking refuge are bearing the brunt of poor policy-crafting and implementation. An extreme and undue burden is placed on persons merely seeking safety. The realities of life as a refugee include prolonged encampment in a refugee camp; economic destitution in neighboring states, where the right to work is restricted; or dangerous journeys to distant and disinclined safe-havens<sup>80</sup>. If a refugee manages to reach a safe destination, they are often met with a plethora of cruel obstacles and limitations. The system is in crises, and an institutional overhaul is imperative to protect those most vulnerable.

Simply, the 1951 Convention must be redesigned to broaden the scope of protection to account for who, when, and how to protect. Who has the “right to refuge” should simply be denoted as people who require a new state of residence, either temporarily or permanently, as the result of an absence of a reasonable choice but to leave<sup>81</sup>. Additionally, the failures of the UNHCR call for an institutional overhaul to cultivate strong, centralized, and decisive leadership. The UNHCR can do more by doing less by reorienting its objectives towards political facilitation and expert authority and allowing other actors, including official agencies, NGOs, businesses, and civil-society organizations, to assume responsibility for humanitarian aid

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<sup>79</sup> Ibid., p. 41.

<sup>80</sup> Ibid., p. 55.

<sup>81</sup> Gibney.

delivery. Furthermore, the international refugee regime as a whole should restructure its policies towards rescue and autonomy. The private sector, international actors, and governments should work in tandem to empower refugees and develop access to long-term opportunities that include socio-economic autonomy. Finally, a reformed regime should emphasize the benefits of international cooperation as well as establish clear-cut burden-sharing mechanisms, such as implementing a broad proportionality principle or predetermined quotas on a country-to-country basis.

In conclusion, all evidence indicates the need for refuge is not diminishing. As mass displacement continues to rise, a system capable of coping with crises is more relevant than ever. Rather than continue to operate in dysfunction, it is of the utmost salience to confront the challenges head on. Modernizing the 1951 Refugee Convention, reforming and redefining the roles and responsibilities of actors in the international refugee regime, and establishing burden-sharing will facilitate clearer, more effective collective action and, most importantly, protect those in search of refuge.

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