

SYRIAN REFUGEES: POLITICS, PROCEDURE AND THE BURDEN

ABSTRACT

This essay initially talks about the plight of the Syrian refugees and talks about all the factors affecting them. Secondly, the essay discusses the lack and need for uniformity in the procedure adopted by different countries while determining the refugee status. Thirdly, the essay addresses the security concerns of developed countries in granting asylum to the refugees. Fourthly, the essay has discussed the regional impact caused by the Syrian crisis, the need for a global solution and burden sharing as solution to the problem. Lastly, it emphasizes on the need for a change in political view while addressing the refugee crisis.

INTRODUCTION

“They killed him,” she repeated. “After that, we didn’t go outside.” These were the words of Ghussoun al Hasan, a Syrian refugee who is now living in asylum in USA for three years, explaining her plight. As the war cleared the area, Al Hasan and her family joined the approximately 12 million Syrians who have fled their homes to get away from the slaughter, around 4 million of whom got to be displaced people by leaving the nation; this being the largest refugee population since World War II. In the wake of the late ruthless terrorist assaults in Paris, France, some have trashed the displaced people as potential ISIS specialists, to a great extent on the conjecture that one of the aggressors in France was having a fake Syrian visa. Even if this assailant is believed to be a Syrian refugee, we're literally talking about 1 out of 1 million which is quite less a number to be sufficient enough to shut the doors for the millions of innocent refugees. The organized assaults in Paris have fanned reasons for alarm that terrorists could penetrate the U.S. by slipping in among the displaced people—as it has happened on account of one of the aggressors in the Paris attacks..Australian Government senator Cory Bernardi also proposed that terrorists could be among the 12,000 Syrian evacuees that Australia is set to resettle, and Cabinet ought to truly consider dropping the admission.¹ Thus it’s hard to argue that national security should be a top concern in the debate over Syrian migrants. But as proposed by Anne Speckhard,² a national security expert, that ‘the larger part of Syrian refugees escaping war are not using the chance of refugee status to install themselves as terrorists in the West.’ The majority of them are attempting to escape barrel bombs, concoction assaults, and primitive brutality, got between the turbulence of dictatorial regime and that carried out by terrorists. It is highly implausible for these refugees to have been included in terrorism than to have been the victims of it. Indeed, refugees eventually turning into terrorists are highly uncommon. There are very few instances of refugees being arrested in the U.S. on terrorism charges. Security concerns ought not to be a motivation to dismiss refugees who have left their homelands so as to escape from a horrendous humanitarian crisis in their country and to protect their future generations from blatant terror. Therefore, the stubborn view that admission of Syrian refugees and the recent Paris attacks are inextricably linked needs to be rejected.

¹Senator Cory Bernardi, during an interview on ABC News 24’s Capital Hill, available at <http://www.abc.net.au/news/2015-11-23/terrorists-could-be-among-syrian-refugees-bernardi-says/6963608>(Last accessed on 8 December, 2015)

²AneeSpeckard is an Adjunct Associate Professor of Psychiatry at Georgetown University *in the School of Medicine and of security studies in the School of Foreign Service and author of Bride of ISIS.*

The increase in the number of procedural issues accounts for the unreasonable delay in the access to the basic human rights of these refugees. This rapid increase in the procedural issues has been due to the increase in the number of refugees by many folds due to continuous deteriorating condition in their home country. Out of the countries hosting significant numbers of Syrian refugees (Lebanon, Jordan, Turkey, Iraq and Egypt) only Egypt and Turkey have signed and ratified the 1951 Convention and its Protocol. As a result, the legal status of Syrian refugees is mostly governed by the host countries' national laws regarding foreign nationals. Though some of the international standards still apply³, the refugee status granting process is different in different nations. The disparity in refugee status determination procedures lead to inconsistent and irregular results. One of the reasons may be the difference of interpretation of international legal standards as well as national developments in refugee jurisprudence. Secondly, many states have established independent, expert authorities staffed by well-trained officials to determine refugee status, in some instances political signals and policies set by the executive branch of government could influence decision-making.⁴ Said another way, if we believe that international law is valuable and important then it is equally important to apply international standards with a high degree of consistency and predictability.⁵ As stated by one author: "In an asylum regime that delivers inequitable outcomes, 'asylum shopping' is simply a pragmatic way for an asylum-seeker to increase their chances of protection."⁶

The effect of the refugee inundation upon the communities, economies and social groups of the host nations is colossal. It further worsens the financial consequences made by the conflict: consequences that follow include loss of foreign direct investment, decreased trade flow and cross-fringe economic and commercial trades, and reduced tourism incomes. This pressure is felt by the host nations in areas of everyday life which calls for support and 'burden sharing' amongst not just the nations but also international financial institutions. Help to refugees hence

³For eg: The principle of 'non-refoulement' is a Customary International Law. Legal status of individuals fleeing Syria, available at http://reliefweb.int/sites/reliefweb.int/files/resources/legal_status_of_individuals_fleeing_syria.pdf(Last accessed on 9 December, 2015).

⁴Gorlick, Brian, Improving Decision-Making in Asylum Determination (August 15, 2005). UNHCR New Issues in Refugee Research paper no. 119 Available at <http://www.unhcr.org/42fb20c72.pdf>

⁵*Ibidat* page 6.

⁶ Mary-Anne Kate, 'The provision of protection to asylum-seekers in destination countries'(May 2005) UNHCRNew Issues in Refugee Research Working Paper no 114, Available at: www.unhcr.org.

should be tended to exhaustively, consider the necessities of the host populace and the extensive security, social and monetary effect. Thus universal solidarity and backing is critical.

PROCEDURAL ISSUES- THE NEED FOR UNIFORMITY

The 1951 Convention has neither set out procedures for the determination of refugee status, nor the procedure for exclusion from refugee status under Article 1F. It is therefore left to the contracting states to follow appropriate procedure in this respect.⁷ Therefore the UNHCR and other commentators have provided some of the procedural requirements from international human rights law instruments, which it is *recommended* be applied to refugee status determination process to ensure fair and efficient procedures.⁸ But there is no uniform process of obtaining the refugee status and the rights thereby. For e.g. in Egypt UNHCR registers and determines the status of refugees based on the 1954 MoU between UNHCR and the Government of Egypt. But UNHCR cannot register Palestinians coming from Syria as per the Egyptian authorities' instructions.⁹ Egypt though being a signatory to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, has made reservations to clauses within the Convention (including personal status, rationing, education and labour legislation) which limit refugees' access to public goods and services.¹⁰ Similarly, Turkey ratified the 1951 Geneva Convention and its 1967 Protocol but the process of refugee status is governed by the **Directive on Reception and Accommodation of Syrian Arab Republic Nationals and Stateless Persons (2011)** which guides the relevant state agencies as to the principles and procedures that apply to Syrians and others subject to the "temporary protection" scheme. This document remains classified and is not accessible for either the Syrians subject to it or lawyers and NGO's or legal information providers.¹¹ Other problems for these refugees is the discrimination amongst refugees who are 'lawfully in' and those 'lawfully staying in' the territory and the regularization process for those who enter officially and those who enter unofficially. Some

⁷UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html> [accessed 9 December 2015]

⁸SINGER SARAH, **TERRORISM AND EXCLUSION FROM REFUGEE STATUS IN THE UK: ASYLUM SEEKERS SUSPECTED OF SERIOUS CRIMINALITY**, 200, (Hotei Publishing,2015).

⁹*Legal status of individuals fleeing Syria* (June 2013) http://reliefweb.int/sites/reliefweb.int/files/resources/legal_status_of_individuals_fleeing_syria.pdf (Last accessed on 17 Dec 2015)

¹⁰*Ibid.*

¹¹*Ibid.*

Syrians entered host-nations via authority official border crossing, and regularized their stay by getting residency grants. For people who don't have Syrian ID and travel documents, it is extremely difficult to acquire the required papers. Therefore, a critical number of those escaping Syria are officially irregular or are not 'lawfully staying' in the host nations – they have crossed through unofficial focuses, they don't have the visa/residency papers or these papers have expired. Some Syrians who have entered a nation unofficially can regularize their status by enrolling with the Government, as in the case of Lebanon and Turkey. But this irregularity hampers the conceivable outcomes to get a work grant as in the case of Iraq where residency papers are required to get such a license.¹²Hathaway interprets 'lawfully staying' as not related to legal status, but rather to the *de facto* circumstance of a refugee.¹³ Thus there is no requirement of a formal declaration of refugee status, grant of the right of permanent residence or establishment of domicile.¹⁴ This appears to cover situations in countries in which there is no individual process to determine refugee status and where there is no method for clearly distinguishing between those refugees 'lawfully in' and those 'lawfully staying in' the territory. The general position at international law that refugee status is declaratory, rather than determinative, could be insightful.¹⁵ In these situations admissions in the territory may constitute 'lawfully in' the territory for prima facie refugees, but it may also coincide with 'lawfully staying' when a period of time has passed. To adopt an alternative approach which could allow states simply to refuse to process asylum claims in order to avoid having to grant rights due under the 1951 Convention.¹⁶The harmonization of procedural and material refuge law not just serves the interest of Member States in constraining auxiliary developments, but adds to fair and equitable treatment to refugees and asylum seekers. But this single procedure need to be based on a premise of common understanding of as to what will a valid asylum claim which calls for the establishment of single qualified and competent body, which will also have the power to

¹²*Ibid.*

¹³JAMES C. HATHAWAY, *THE RIGHT OF REFUGEES UNDER INTERNATIONAL LAW*, 730(Cambridge University Press 2005)

¹⁴*Ibid.*

¹⁵UN High Commissioner for Refugees (UNHCR), *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, December 2011, HCR/1P/4/ENG/REV. 3, available at: <http://www.refworld.org/docid/4f33c8d92.html> [accessed 20 December 2015].

¹⁶ZIMMERMANN ANDREAS, *THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES AND ITS 1967 PROTOCOL: A COMMENTARY* 965 (Oxford University Press, 2011).

review the decision of member states to not to grant Convention status.¹⁷ Though the establishment of a single procedure will make the refugee procedures swift, efficient and cost-effective, yet we will have to wait for an unacceptable period of time, before all the nations agree to be bound by the single procedure when currently most of the nations are not yet party to the refugee convention.

REFUGEES- TERRORISTS OR THE FIRST VICTIMS OF TERRORISM?

It has been argued by some authors that refugee camps and protracted refugee situations are potential sources of radicalization and terrorism. With few prospects for education, livelihood opportunities, or freedom of movement, young people in protracted refugee situations may represent a pool of potential recruits for terrorists.¹⁸ A more pragmatic approach could be that these refugees would never be a part of the issue again by being away from the danger of violence or radicalization. As in the case of Syria it is exceedingly doubtful that these Syrians will be future contributors to Middle East Violence. Having experienced the compelling aggravation of Syria's war brought by the Assad organizations and the subsequent misuse by ISIS, they are unlikely to delight illusions about the advantages of brutality. This is the '*no refugee no terrorism*' approach that most of the states which gave protection to these refugees had followed.

Only a small number of States surrounding Syria are party to either the 1951 Convention or the 1967 Protocol to the Convention¹⁹. None of the Gulf countries(**Saudi Arabia, UAE, Qatar, Kuwait, and Bahrain**)has signed the 1951 Refugee. These sates have not taken even a single Syrian refugee when the whole world is carving to settle these refugees. Moreover they follow a strict visa rule which makes the entry into these Gulf States even more difficult. One of the reasons that they have given is that it will add on to the country's demographic imbalance. In smaller Gulf States like Qatar and the UAE, number of foreigners has already exceeded the number of nationals. These countries have additionally argued that accepting huge numbers of

¹⁷UN High Commissioner for Refugees (UNHCR), *Communication from the European Commission "Towards a Common Asylum Procedure and a Uniform Status, Valid Throughout the Union, for Persons Granted Asylum"; UNHCR's preliminary observations*, January 2001, available at: <http://www.refworld.org/docid/3c7281914.html> [accessed 15 December 2015].

¹⁸ALEXANDER BETTS AND GIL LOESCHER, *REFUGEES IN INTERNATIONAL RELATIONS* 16 (Oxford University Press 2011)

¹⁹UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <http://www.refworld.org/docid/3ae6b3ae4.html> [accessed 10 December 2015].

Syrian refugees is a genuine risk to the safety of its nationals on the grounds that terrorists could conceal themselves among civilians.

Another sort of criticism that these Syrian refugees face is the contention that Islamic State is using the refugee crisis to develop a fifth column of Muslim fighters within the Western nations that are providing protection to the Syrian refugees. As specified by Author Robert Spencer , “This is no longer just a ‘refugee crisis.’ This is a hijrah.”²⁰ *Hijr* means to give up one’s own motherland.²¹ *Hijrah* means to emigrate in the reason for Allah – that is, to move to another land keeping in mind the end goal to bring Islam there. This fear increases when Syrian operatives claim that more than 4,000 prepared ISIS gunmen have as of now been smuggled into Europe. But this isn’t a sufficient reason to follow the Gulf countries approach. *Firstly*, their claim is no reason to believe it to be the truth. This claim can be one of the accomplished ways of threatening and a method of discouraging the states to provide shelter to the innocent refugees so that they can later use these abandoned refugees as potential recruits for their acts of terrorism. *Secondly*, the state will have proper records, finger prints and other identifiable information about the refugee which brings the so called terrorist into a prospect of being caught. *Thirdly*, ISIS operates very differently from the previous terrorist organizations like the Al Qaeda. Traditionally, these groups have recruited and trained operatives in terror safe havens overseas such as Afghanistan previously and nowadays Syria. When these recruits are ready they are dispatched to infiltrate and attack innocent civilians in other countries. But that isn’t the approach that ISIS seems to follow. It mostly recruits over the internet, using social media to try to radicalize people which are already present in the societies it wishes to target. In countries like USA the process is so exhaustive that it almost takes two years to get refugee status. Thus ISIS is more likely to put its effort in radicalizing those already in the country rather than attempting to infiltrate the country by a vigorous vetting process.²² Thus merely categorizing refugees as terrorist does not become a reason to deny the innocent civilians of their rights but indeed giving protection to such a huge number of refugees do put a huge burden on the western governments

²⁰Robert Spencer, *The Hijrah Into Europe*, Front Page Magazine (September 4, 2015) <http://www.frontpagemag.com/fpm/260019/hijrah-europe-robert-spencer>

²¹RAFIABADI, HIJRAH : A TURNING POINT IN ISLAMIC MOVEMENT 20 (Adam Publishers and Distributers 2005)

²²Seth Moulton, *Syrian refugees are not the problem in ISIS fight*(23 Nov 2015) <https://www.bostonglobe.com/opinion/2015/11/23/seth-moulton-syrian-refugees-are-not-problem-isisfight/OU0sY6eIx6mMfHjHEjwpFO/story.html>

to bring in efficient vetting process, monitor their internal movements and develop high intelligence for surveillance on their future actions.

REFUGEE PROTECTION: RESPONSIBILITY OR BURDEN?

The Syrian refugee crisis has been declared by the United Nations as the “worst humanitarian disaster since the Cold War and the most effective way to put an end would be immediate action by the international community to solve the Syrian conflict.” But it would not be wrong to assume that there is not much hope for the civil war in Syria to end in the near future. All logical options available to stop the war offer have been considered, but because of the sheer complexity of the situation with so many players, none of these options stand viable. The war in Syria is a proxy war, where each player has had outside reinforcement. The regime led by President Bashar al-Assad has had help from Iran, Hezbollah and Russia while the opposition has support from the Western countries and Islamic State which is a foreign jihadist group, considered by many as more radical than the al Qaeda, and has ruled out any scope for negotiated political agreement. The neighboring countries like Iran and Saudi Arabia have different interests associated with Syria which leads them to support and oppose the regime respectively. As the players are dependent on foreign assistance to continue their fight they have slowly lost control over the war. The different foreign investments and interests in Syria, the pro and anti-regime players involved and the raise of foreign jihadist groups like the Islamic state has made this situation “the problem from hell” a phrase coined by Barack Obama's ambassador to the United Nations, Samantha Power. This civil war has caused millions of people to abandon their homes and flee. The number of Syrians refugees is estimated to be around 3.45 million and about 6.8 million Syrians are estimated to be internally displaced from their homes.²³ The 3.45 million refugees have fled to the neighboring countries like Lebanon, Turkey, Iraq, Jordan and Egypt which has caused tremendous burden on these countries. The cost for support to these refugees has greatly affected already weakened economies. The pressure is not just economical in nature. The pressure on local authorities and host communities is felt heavily in all areas of everyday life – from education and health to housing, water and electricity supply. Across the region, employment opportunities, salaries and price levels have been affected, leaving refugees and local families,

²³ UNHCR, *Stories from Syrian Refugees* <http://data.unhcr.org/syrianrefugees/syria.php>

alongside each other, struggling to make ends meet.²⁴ As of November 30, 2015 there are 1,070,189 refugees registered in Lebanon alone.²⁵ Trade and tourism had earlier been the major contributors to the Lebanese economy, the insecurity and uncertainty because of the Syrian conflict has affected tourism and trade traditionally transiting through Syria. Unemployment has increased from 8.1 per cent in 2010 to 10.6 per cent in 2012, according to UN Economic and Social Commission for West Asia (ESCWA) July 2013 figures; in many locations Syrian refugees already account for more than 30 per cent of the local population, predominantly in the north and north-east (Bekaa). There is a strong coincidence between large refugee populations and documented levels of poverty among Lebanese communities. The resultant overcrowding, exhaustion of basic services and competition for jobs has led to a deterioration of social cohesion and inter-communal relations.²⁶ Jordan has always maintained an open border system keeping its border open to the Syrian refugee since the beginning of the crisis. There are approximately 632,762 registered refugees in Jordan as of 17th December 2015. The presence of refugees has created tremendous pressure on national resources. There has been a shortage of medicines because of higher demand for drugs as a result of an increase in communicable diseases and fatal infections amongst the refugees. The additional pressure of refugees has created heavy strain on the existing system and infrastructure which was already stretched prior to the arrival of refugees, making it a challenge to cater to the amenities. The government of Turkey declared that temporary protection regime would apply to all Syrian refugees in Turkey which effectively means that status determination by UNHCR is not a requirement. Today Turkey hosts about 2,291,990 Syrian refugees. The conflict has affected the Turkish economy as a lot of its investment and infrastructure projects in Syrian Arab Republic have been postponed. The sheer number of refugees has had a great impact on the social and economic conditions in Turkey, in some towns the number of Syrians and Turks are equal whereas in other towns the condition is such that Syrians sometimes even outnumber the Natives which has caused a demographic imbalance in the country. In situations where the population increases twofold in a small span of time, a lot of problems arise such as clean water shortage, absence of adequate nutrition thereby placing tremendous load on the medical services and other facilities provided by the

²⁴UNHCR, *Countries Hosting Syrian Refugees Solidarity and Burden-Sharing*, Background papers for the High Level Segment- Provisional release. (September 2013) <http://www.unhcr.org/525fe3e59.pdf>

²⁵*Syrian Refugee Response*, Inter Agency Information Sharing Portal <http://data.unhcr.org/syrianrefugees/country.php?id=122>

²⁶*Supra* Note 25.

municipality. The conflict in Syria has caused financial burden on the government not only because of huge flocking of refugees but due to the additional cost incurred in maintaining border security in order to check smuggling of refugees without identification, counterfeit currency, fuel and trafficking of drugs. Iraq faced by its own problem of having one million internally displaced persons plus the arrival of tens of thousands Iraqis returning from the Syrian Arab Republic along with the refugee communities of Turkish, Palestine and Iranian origin has also been struggling. The arrival of Syrian refugees is a real challenge for the government of Iraq. It is evident that the burden being placed on the neighboring countries is immense and one which they cannot carry by themselves, there is a need for global response to the situation.

SHARING THE BURDEN OR SHIFTING THE BURDEN?

The notion of “burden sharing” is not a new concept; it was born in the early 1950’s to promote international solidarity to refugees. The burden was shared by either providing financial assistance to countries granting asylum to refugees or physical burden sharing which means dispersal of refugees among states.. This notion of burden sharing which was to relieve the stress on the receiving host country was modified by the Western European countries as they were concerned about political and socio-economic costs of asylum and temporary protection systems; they argued for “reception in the region” which would mean creation of refugee camps closer to the origin of the refugees and offering assistance and protection there. This would reduce costs on the western European countries and also would be convenient for the refugees to stay close to their origin and hence would be easier to relocate after the end of the crisis. The 1950 burden sharing concept was used to relieve responsibilities from the richer asylum countries. A lot of other proposals for reception had emerged in the early 1990s. The proposals ranging from providing of additional resources, creation of “safe havens”, establishing international protected areas, which would be on land leased by the UN or group countries and creation of transit camps where camps would be created from where asylum application would be processed.. The criticism for these proposals is that these proposals intend to dilute the commitment promised by the countries to protect refugees and these proposals are indirectly making it more difficult for the refugees to get asylum in the developed countries. These proposals aim to shift the burden on to the developing countries rather than sharing the burden for which it was created. The principle of “reception in the region” is not feasible in the present scenario as is evident from the inability

of the neighboring countries to grant asylum to such an enormous population of Syrian refugees. The impact on the neighboring countries ranges from strain on the municipal services offered by the government, rise in unemployment, multi fold increase in rent of accommodation, and scarcity of natural resources. The solution to the Syrian refugee problem is burden sharing by the state in the essence it was conceptualized.

The question arises as to on what basis or criteria would the burden be distributed. The distribution has traditionally been based on either outcome or justice. Distribution by justice would mean the distribution be based on indicators like the population of the receiving country, the total area of the state, GDP of the receiving state and the number of refugees already present in the state. While distribution on basis of outcome would consider elements like effect on protection or welfare of the refugees, effect ethnic relations or civil contact, effect on internal security, repercussions in global relations.. What must be kept in mind is that in the countries granting asylum there might be societal tensions caused by the presence of the refugees; these tensions may not be addressed by the authorities. The authorities could be influenced by the financial assistance offered by the rich countries leading to unrest amongst the natives leading to disastrous consequences like revolt against the state. The developed countries must not limit its contributions to just financial aids to the asylum granting states. It is essential to consider both the justice based and outcome based criteria together while distributing the burden.

CONCLUSION

The one most important and most challenging change which must be bought about to solve the Syrian crisis is the way we view this problem politically. There are 19 million refugees in the world out of which 4 million are from Syria, it would be impossible to solve this refugee crisis without the help from the developed countries. They have the means and expertise to handle such large number of refugees. The western media has always related Islam and terrorism creating fear in the minds of the general people living in the developed states. This fear is taken advantage of politically by creating harsh refugee laws. This has also created a political risk factor being associated with the act of accepting refugees, if any terrorist activity is linked or caused by the accepted refugees in the host country this would lead to a political backlash against the political leaders who primarily supported the acceptance of refugees. The general people fear the change in demography which would definitely happen by accepting large number of refugees. The wide spread anxiety relating to the change which might take place by accepting

refugees has to be removed by focusing on the humanitarian need to help these refugees. The picture of the three year toddler Alan Kurdi went viral when his body was washed ashore after he drowned in the Mediterranean Sea, raising questions as to why enough steps have not been taken to prevent such horrific incidents. This incident immediately led to UK pledging to accept 20,000 refugees by the end of 2020 and France agreeing to accept 24,000 refugees in the next two years. Thus host states view refugees as encompassing humanitarian problems as well as security issues; consequently they adopt blended policies which, while offering support and protection to refugees, also have inbuilt mechanism to address their national interests.