

Response to the Syrian Refugee Crisis in Germany, the United States, and Japan: Who Should Be Prioritized in Light of International Obligations?

Rachel Morico*

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I. INTRODUCTION

In March 2011, peaceful protests broke out in Deraa, Syria, after a group of teenage boys were detained and tortured for painting graffiti with revolutionary symbols on a school wall.¹ The Syrian government, led by President Bashar al-Assad, responded to the protests by opening fire on hundreds of demonstrators, killing several among them.² In July 2011, a rebel group, angered by lack of freedoms, economic instability, a severe drought, and a Muslim sectarian split, was formed to overthrow the government, which prompted the beginning of the Syrian Civil War.³ After five years of violence and conflict, as many as 450,000 Syrian

* © 2017 Rachel Morico. J.D. candidate 2018, Tulane University Law School; B.A. 2015, Northwestern University. The author is from Houston, Texas. She would like to thank her parents, Rita and Paul Morico, for teaching her the importance of travel in order to learn about other parts of the world, and to develop a more global perspective.

1. *Syria's Civil War Explained from the Beginning*, AL JAZEERA (Sept. 25, 2017), <http://www.aljazeera.com/news/2016/05/syria-civil-war-explained-160505084119966.html>; *Syria: The Story of the Conflict*, BBC NEWS (Mar. 11, 2016), <http://www.bbc.com/news/world-middle-east-26116868>.

2. *Syria's Civil War Explained from the Beginning*, *supra* note 1; *Syria: The Story of the Conflict*, *supra* note 1.

3. *Syria's Civil War Explained from the Beginning*, *supra* note 1.

citizens have been killed, more than one million injured, and over twelve million (half of the country's pre-Civil War population) have been displaced from their homes.⁴ The majority of fleeing Syrians sought refuge in neighboring countries, including Turkey, Lebanon, Jordan, Egypt, and Iraq.⁵ Additionally, about one million Syrians requested asylum to Europe.⁶

With Syria's neighbors struggling to provide adequate food, shelter, water, health care, and education for the large influxes of refugees, increasing pressure was put on Western countries to open their doors and provide support.⁷ But because of concerns that large numbers of refugees place pressure on infrastructure, increase competition in the workforce, disrupt political stability, and pose a threat to national security, many countries were not keen on accepting Syrians for permanent resettlement.⁸

In order to send a message to the rest of the world and to encourage Western countries to follow suit, German Chancellor Angela Merkel implemented an "open door policy" in 2015, which allowed 1.1 million Syrian refugees to enter the country.⁹ Although Merkel was praised by the international community for her willingness to deal with this humanitarian crisis, she experienced great backlash at home.¹⁰ Most of the backlash was galvanized by several sexual assaults by asylum seekers,¹¹ an attack in Berlin, an axe attack on a public train, and a mass shooting in Munich.¹² In response, Merkel decided to limit the number of Syrian refugees coming into Germany in 2016 by requiring them to apply for asylum individually, as opposed to offering speedy asylum

4. *Id.*

5. *Syrian Refugees: A Snapshot of the Crisis—in the Middle East and Europe*, SYRIAN REFUGEES, <http://syrianrefugees.eu> (last updated Sept. 2016).

6. *Id.*

7. Lindsey Phillips, *Responding to the Syrian Refugee Crisis: A Conversation with T. Alexander Aleinikoff*, UN Deputy High Commissioner for Refugees, MIGRATION POL'Y INST. (Nov. 1, 2013), <http://www.migrationpolicy.org/article/responding-syrian-refugee-crisis-conversation-t-alexander-aleinikoff-un-deputy-high>.

8. *Id.*

9. Anton Troianovski & Marcus Walker, *Behind Angela Merkel's Open Door for Migrants*, WALL ST. J. (Dec. 9, 2015), <https://www.wsj.com/articles/behind-angela-merkels-open-door-for-migrants-1449712113>.

10. *Id.*

11. *Germany's Refugee Crisis*, AL JAZEERA (Mar. 3, 2016), <http://www.aljazeera.com/programmes/peopleandpower/2016/03/germany-refugee-crisis-160302135618356.html>.

12. Alice Foster, *Terrorism in Germany: Past Terror Attacks and Plots*, SUNDAY EXPRESS (Dec. 21, 2016), <http://www.express.co.uk/news/world/652765/Terrorist-attacks-Germany-Terrorism-Foiled-plots-Threat-Security-Islamic-State-ISIS>.

protection en masse.¹³ Although the change in policy made it harder for refugees to seek asylum, Germany continues to be the country with the largest share of requests and grants of asylum of all Western countries.¹⁴

In September 2015, President Obama ordered his administration to scale up the number of Syrian refugees welcomed into the United States.¹⁵ Obama set a target of admitting 10,000 refugees by the end of 2016, but only 1300 refugees had been admitted halfway through the year.¹⁶ The delays in hitting Obama's target number were primarily due to administrative limitations and now heightened fear as a result of terrorist attacks carried out in other parts of the world.¹⁷ Once President Trump took office, however, the policy on accepting Syrian refugees into the United States completely changed.¹⁸

On January 27, 2017, President Trump signed "Executive Order on Protecting the Nation from Foreign Terrorist Entry into the United States," which (1) placed a ninety-day travel ban on entry into the United States of citizens from seven Muslim-majority countries, including Iran, Iraq, Syria, Yemen, Sudan, Libya, and Somalia; (2) suspended the admittance of all refugees to the United States for 120 days; (3) terminated admission of Syrian refugees indefinitely; and (4) capped the total number of refugees entering the United States in 2017 at 50,000 (less than half of the previous year's 117,000).¹⁹ Trump explained that the suspensions were needed to protect the nation from potential terrorists who could sneak into the United States while he and his national security team agreed on the best way to strengthen vetting procedures.²⁰

In response to this executive order, Washington State's Attorney General sued Trump, arguing the ban was unconstitutional.²¹ The federal

13. Caroline Mortimer, *Thousands of Refugees Successfully Sue German Government Over Partial Asylum Status*, INDEPENDENT (Oct. 18, 2016), <http://www.independent.co.uk/news/world/europe/refugee-crisis-germany-government-bamf-angela-merkel-anti-immigration-a7368551.html>.

14. Michael Martinez, *Syrian Refugees: Which Countries Welcome Them, Which Ones Don't*, CNN NEWS (Sept. 10, 2015), <http://www.cnn.com/2015/09/09/world/welcome-syrian-refugees-countries/>.

15. Laura Koran, *Obama Pledge To Welcome 10,000 Syrian Refugees Far Behind Schedule*, CNN NEWS (Apr. 1, 2016), <http://www.cnn.com/2016/04/01/politics/obama-pledge-10000-syrian-refugees-falling-short/>.

16. *Id.*

17. *Id.*

18. Sabrina Siddiqui, *Trump Signs 'Extreme Vetting' Executive Order for People Entering the US*, GUARDIAN (Jan. 27, 2017), <https://www.theguardian.com/us-news/2017/jan/27/donald-trump-muslim-refugee-ban-executive-action>.

19. *Id.*

20. *Id.*

21. Matt Zapposky, *Federal Appeals Court Rules 3 to 0 Against Trump on Travel Ban*, WASH. POST (Feb. 9, 2017), <https://www.washingtonpost.com/world/national-security/federal->

judge hearing the case agreed and ruled that the ban was temporarily lifted, meaning people from those seven countries could temporarily enter the United States.²² The Justice Department appealed to get the ban put back in place.²³ Three judges from the U.S. Court of Appeals for the Ninth Circuit rejected the government's argument that suspension of the order should be lifted, and they asserted their authority to serve as a check on the President's power.²⁴ Although many thought the case would be appealed to the Supreme Court, the Justice Department asked the Ninth Circuit to suspend any further proceedings because Trump was planning on issuing a new executive order.²⁵

On March 6, 2017, Trump issued a revised executive order that included three major changes: (1) Iraq was removed from the list of seven countries subject to the ninety-day travel ban, (2) the ban did not apply to individuals who already had valid U.S. visas and green cards, and (3) Syrian refugees were no longer banned indefinitely, instead, they were subject to the 120-day suspension of the refugee program mandated under the first executive order.²⁶

Notwithstanding the negative criticism surrounding Trump's executive actions, there are countries with even stricter approaches to the Syrian crisis, namely, Japan.²⁷ In 2014, as the Syrian Civil War escalated, Tokyo donated \$181.6 million to the United Nations High Commissioner for Refugees (UNHCR), the United Nations' refugee agency, making it the second-largest donor after the United States.²⁸ However, Prime Minister Shinzo Abe recoiled at taking in Syrian refugees because "[Japan] needed to look after its own."²⁹ As of 2015, only six Syrians had been granted refugee status.³⁰ In the same year, only twenty-seven out of

appeals-court-maintains-suspension-of-trumps-immigration-order/2017/02/09/e8526e70-ed47-11e6-9662-6eedf1627882_story.html?pushid=breaking-news_1486682050&tid=notifi_push_breaking-news&utm_term=.a6608b720e82.

22. *Id.*

23. *Id.*

24. *Id.*

25. Laura Jarrett, Allie Malloy & Dan Merica, *Trump Promises New Immigration Order as DOJ Holds Off Appeals Court*, CNN NEWS (Feb. 16, 2017), <http://www.cnn.com/2017/02/16/politics/donald-trump-travel-ban-executive-order/>.

26. Ali Vitali, *President Trump Signs New Immigration Executive Order*, NBC NEWS (Mar. 6, 2017), <http://www.nbcnews.com/politics/white-house/president-trump-signs-new-immigration-executive-order-n724276>.

27. Adam Taylor, *Japan Has Accepted Only Six Syrian Refugees. Meet One of Them.*, WASH. POST (Oct. 27, 2016), https://www.washingtonpost.com/world/asia_pacific/the-singular-life-of-a-syrian-refugee-in-japan/2016/10/26/be0c6699-09f3-4a05-abeb-cad076b4cc02_story.html?utm_term=.54f5f6320395.

28. *Id.*

29. *Id.*

30. *Id.*

7856 applications of people from other nations were granted refugee status.³¹ Although Japan has historically been stringent on accepting any refugees,³² its approach to the Syrian refugee crisis and reasons for such a stringent approach may shed light on why Chancellor Merkel decided to cut back on her open door policy, and why President Trump signed executive orders making it difficult, if not impossible, for Syrians to obtain refugee status.

In light of the world's differing approaches to the Syrian refugee crisis, this Comment will (1) briefly summarize international law governing the status of refugees, (2) explain refugee laws and policies in Germany, the United States, and Japan, respectively, (3) compare and contrast each country's response to the Syrian refugee crisis, and (4) analyze each country's obligations to Syrian refugees under international law.

II. AN OVERVIEW OF INTERNATIONAL LAW GOVERNING REFUGEES

Based on article 14 of the Universal Declaration of Human Rights, which recognizes the right of persons to seek asylum from persecution in other countries, the United Nations Convention Relating to the Status of Refugees (Refugee Convention) was adopted in 1951 to give protection to persons fleeing Europe after World War II.³³ The Refugee Convention was amended in 1967 to apply universally and serves as the foundation for international refugee protection today.³⁴ The Refugee Convention defines who qualifies as a refugee, sets out the rights of individuals who are to be granted asylum, and establishes the responsibilities of contracting nations.³⁵

Article I of the Refugee Convention defines a refugee as:

A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it.³⁶

31. *Id.*

32. *Id.*

33. G.A. Res. 429 (V), Convention and Protocol Relating to the Status of Refugees (Dec. 14, 1950).

34. *Id.* at 2, Introductory Note.

35. *Id.*

36. *Id.* art. I.

The Refugee Convention does not apply to people who have committed war crimes, crimes against humanity, or serious nonpolitical crimes.³⁷ Nor does the Refugee Convention apply to people who benefit from the protection of a United Nations agency other than the UNHCR.³⁸

Article II makes clear that refugees under the Refugee Convention must abide by the national laws of the contracting nation.³⁹ In return, contracting nations must meet minimum standards for the treatment of refugees, including access to the courts, primary education, and work, *inter alia*.⁴⁰ Additionally, contracting nations have an obligation not to discriminate against refugees, take exceptional measures against a refugee solely on account of his or her nationality, impose penalties on refugees who entered illegally in search of asylum if they present themselves, expel refugees, and forcibly return refugees to the country from which they fled.⁴¹ At the same time, contracting nations can insist on refugees paying all taxes owed and otherwise following local laws in all respects.⁴²

The Refugee Convention's requirement that refugees should not be penalized for their illegal entry or stay implies that seeking asylum can require refugees to break immigration laws.⁴³ Accordingly, the Refugee Convention has implemented two safeguards for the legal protection of refugees: (1) the prohibition of penalties, including being charged with immigration or criminal law offenses, and being detained based on having sought asylum; and (2) the principle of non-refoulement, which provides that no one shall expel or return a refugee against his or her will to a territory where he or she reasonably fears threats to life or freedom.⁴⁴

Currently, there are 142 countries around the world that are parties to both the 1951 Refugee Convention and its 1967 amendment (1967 Protocol) and 148 countries that are parties to either one or the other.⁴⁵ Germany became a party to both the 1951 Refugee Convention in 1953 and the 1967 Protocol in 1969.⁴⁶ The United States became a party to the 1967 Protocol alone in 1968.⁴⁷ Ultimately, Japan did not become a party

37. *Id.* at 4, Introductory Note.

38. *Id.*

39. *Id.* art. II.

40. *Id.* at 3, Introductory Note.

41. *Id.* arts. III, VIII, XXIV, XXXI, XXXII, XXXIII.

42. *Id.*

43. *Id.* at 3, Introductory Note.

44. *Id.*

45. U.N. High Commissioner for Refugees, *States Parties to the 1951 Convention Relating to the Status of Refugees and 1967 Protocol* (Apr. 2015).

46. *Id.*

47. *Id.*

to the 1951 Refugee Convention until 1981 and a party to the 1967 Protocol until 1982.⁴⁸ In addition to adopting this multinational treaty, each of these countries has adopted its own laws and policies governing the status of refugees.⁴⁹

III. REFUGEE LAWS AND POLICIES IN GERMANY

The two most important immigration laws in Germany, which provide the rules for admission and handling of refugee claims, are the Asylum Act and the Residence Act.⁵⁰ The Asylum Act encompasses the process of granting and denying asylum, while the Residence Act provides rules about the entry, stay, exit, and employment of foreigners.⁵¹ In general, applications for asylum are approved for individuals who were politically persecuted or individuals who qualify as refugees under section 3 of the Asylum Act, which is a codification of article I of the Refugee Convention.⁵² Applications for asylum are usually denied for the following reasons: the facts in the application are unfounded, it is inadmissible because another European Union member state is responsible for processing the application, or the application was withdrawn.⁵³ If any of these circumstances come into play, the applicant must leave the country within thirty days of the issuance of a deportation order.⁵⁴

After an application is submitted to the responsible branch of the Federal Office of Migration and Refugees (BAMF), the individual seeking asylum must participate in an in-person interview with a BAMF caseworker, where he or she must provide proof of persecution or serious harm.⁵⁵ BAMF caseworkers inquire about time spent in other countries, travel routes, former residences, and whether or not the individual sought asylum in another country.⁵⁶ Additionally, every individual over the age of fourteen must submit to measures establishing his or her identity by

48. *Id.*

49. See *Refugee Law and Policy: Japan*, LIBR. CONGRESS, <http://www.loc.gov/law/help/refugee-law/japan.php> (last updated July 28, 2016); *Refugee Law and Policy: Germany*, LIBR. CONGRESS, <https://www.loc.gov/law/help/refugee-law/germany.php> (last updated June 21, 2016); *An Overview of U.S. Refugee Law and Policy*, AM. IMMIGR. COUNCIL (Nov. 18, 2015), <https://www.americanimmigrationcouncil.org/research/overview-us-refugee-law-and-policy>.

50. *Refugee Law and Policy: Germany*, supra note 49.

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *Id.*

presenting passports, all necessary certificates, fingerprints, photographs, and more.⁵⁷

While individuals participate in the application process for asylum or refugee status, most are housed in reception facilities and are provided with essential items, such as food, water, housing, heat, clothing, health care, and various household items.⁵⁸ Items for personal use are also provided, and states have discretion to provide refugees with cash if necessary.⁵⁹ Moreover, individuals who are housed outside of reception facilities receive cash allowances to purchase essential items on their own.⁶⁰

If the asylum application is accepted and refugee status is granted, the individual receives a temporary residence permit and is awarded the same status as Germans within the social insurance system.⁶¹ Such an individual would also be entitled to social welfare, child benefits, child-raising benefits, integration allowances, other forms of integration assistance, and a monthly stipend of 400 euros.⁶² In terms of finding a job, the German government relaxed the rules on requiring refugees to obtain employment by making the task easier: anyone granted refugee status can work without restriction.⁶³ The Federal Employment Agency assists refugees by helping them find German-language courses and then enrolling them in training programs, followed by internships and then various job opportunities.⁶⁴ If the individual wishes to become naturalized, he or she can apply for discretionary naturalization, which takes six years to obtain (two years shorter than individuals seeking naturalization who do not qualify as refugees).⁶⁵

As a consequence of the Syrian refugee crisis, several amendments were made to Germany's immigration laws.⁶⁶ On October 24, 2015, the Act on the Acceleration of Asylum Procedures was implemented, which accelerated the asylum process; substituted in-kind benefits for cash benefits; reduced the financial burden on the German states and

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Asylum and Refugee Policy in Germany*, FED. MINISTRY INTERIOR, http://www.bmi.bund.de/EN/Topics/Migration-Integration/Asylum-Refugee-Protection/Asylum-Refugee-Protection_Germany/asylum-refugee-policy-germany_node.html (last visited July 8, 2017).

62. *Id.*

63. Ben Mauk, *How Refugees Find Jobs in Germany*, NEW YORKER (Dec. 7, 2015), <http://www.newyorker.com/business/currency/how-refugees-find-jobs-in-germany>.

64. *Id.*

65. *Refugee Law and Policy: Germany*, *supra* note 49.

66. *Id.*

municipalities; enhanced integration policies for refugees; and designated Albania, Kosovo, and Montenegro as safe countries of origin.⁶⁷ Furthermore, on November 1, 2015, the Act to Improve Housing, Care, and Treatment of Foreign Minors and Adolescents was passed to improve the situation of young unaccompanied refugees and provide them with care.⁶⁸ Although no immigration laws or amendments were repealed, in March of 2016, asylum applications were suddenly required to be processed individually, as opposed to en masse, which significantly slowed down the process.⁶⁹ Moreover, BAMF changed its policy by only granting subsidiary protection, as opposed to full refugee status, which had the effect of eliminating several benefits (discussed below).⁷⁰

As a result of the change in laws and policies, thousands of Syrian refugees filed suit against BAMF for inaction and for the right to obtain full refugee status.⁷¹ In the first category of lawsuits, Syrian refugees complained about the amount of time it was taking BAMF to even start processing their applications—in some cases, it was taking up to one year.⁷² Additionally, refugee plaintiffs complained they were not allowed to start looking for work or take German classes while their applications were being processed.⁷³ Although some of the complaints were successful, many courts did not rule in favor of the refugees.⁷⁴

In the second category of lawsuits, Syrian refugee plaintiffs complained that subsidiary protection encompasses substantial legal disadvantages compared to full refugee status.⁷⁵ The most notable distinctions between subsidiary protection and refugee status are that with only subsidiary status, parents cannot bring their children or any other close relative out of Syria and into Germany for at least two years; full refugees get three years of temporary residence, whereas subsidiary protection only offers one year of temporary residence; and full refugees are entitled to permanent residency after three years, while those under

67. *Id.*

68. *Id.*

69. Mortimer, *supra* note 13.

70. Ben Knight, *German Court Rules Syrian Refugees Not Entitled to “Full Asylum” Status*, DEUTSCHE WELLE (Nov. 24, 2016), <http://www.dw.com/en/german-court-rules-syrian-refugees-not-entitled-to-full-asylum-status/a-36511284>.

71. Carla Bleiker, *Thousands of Refugees Are Suing Germany*, DEUTSCHE WELLE (Jan. 4, 2017), <http://www.dw.com/en/thousands-of-refugees-are-suing-germany/a-37004504>; Knight, *supra* note 70.

72. Bleiker, *supra* note 71.

73. *Id.*

74. *Id.*

75. *Id.*

subsidiary protection must wait five years, prove they can speak German, and have sufficient income to stay.⁷⁶ Although three quarters of the 3490 rulings made in 2016 came down on the refugees' side, the Higher Administrative Court of North Rhine Westphalia in Munster recently ruled that Syrian refugees are only entitled to subsidiary protection, rather than full asylum in keeping with immigration authority regulations.⁷⁷ As a consequence, thousands of refugees have appealed.⁷⁸

IV. REFUGEE LAWS AND POLICIES IN THE UNITED STATES

The two most important laws that govern refugees in the United States are the Immigration and Nationality Act (INA) and the Refugee Act of 1980 (Refugee Act).⁷⁹ While the INA defines refugee and the various categories for classifying refugees, the Refugee Act explains the application process, which is incorporated through the U.S. Refugee Admissions Program (USRAP).⁸⁰ USRAP is administered jointly by the Bureau of Population, Refugees, and Migration in the Department of State, the Office of Refugee Resettlement in the Department of Health and Human Services, and offices within the Department of Homeland Security (DHS).⁸¹ Within the DHS is the U.S. Citizenship and Immigration Services (USCIS), which is primarily responsible for conducting refugee interviews and determining which individuals are eligible for refugee status.⁸²

In addition to reaffirming the 1951 Refugee Convention's definition of "refugee," the INA separates refugees into three categories, based on priority: (1) priority one individuals are those who were referred by the UNHCR, a U.S. embassy, or a nongovernmental organization and are suffering from persecution of the most compelling sort; (2) priority two individuals belong to groups of "special concern" to the United States and are selected by the Department of State; and (3) priority three individuals are relatives of refugees who have already settled in the United States.⁸³

To qualify for admission as a refugee, an individual must not already be resettled in another country.⁸⁴ Moreover, not every individual

76. *Id.*

77. *Id.*

78. *Id.*

79. *An Overview of U.S. Refugee Law and Policy*, *supra* note 49.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

who falls into a priority category is automatically admitted.⁸⁵ In order to successfully gain admission, each individual must undergo an extensive interviewing, screening, and security clearance process.⁸⁶ The INA requires individuals to prove “well-founded fear” of harm regardless of where they came from, their particular circumstances, or classification in a priority category.⁸⁷ Individuals whose refugee applications are denied can be refused admission for any of the following reasons: health-related grounds, moral or criminal grounds, security grounds, misrepresentation of facts on a visa application, smuggling, or previous deportations.⁸⁸

Once an individual’s application has been approved, Resettlement Support Centers will send a request for specific placement, and the Refugee Processing Center (RPC) works with private volunteer agencies (VOLAG) to determine where the refugee is to live.⁸⁹ If an approved refugee has a relative currently living in the United States, the RPC and VOLAG will make every effort to place the refugee in the same city, or state, as his or her relative.⁹⁰ After one year of admission, a refugee may apply for Lawful Permanent Resident status.⁹¹ And after five years, he or she may petition for naturalization.⁹²

Once a refugee is placed in a city, the government’s goal is for the refugee to quickly gain self-sufficiency.⁹³ Within six months of arrival, refugees are expected to have a job, which VOLAG assists them in finding.⁹⁴ VOLAG also assures that most essential services are provided during the first three months.⁹⁵ Such services include food, housing, clothing, counseling, health care, and other basic necessities.⁹⁶ Refugees receive a lump sum of \$925 to pay for rent, and for the next eight months they receive cash assistance, which totals about \$230 per month.⁹⁷

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Matthew Hall, *This Is What Happens When Refugees Arrive in the United States (Specifically, Newark Airport)*, MEDIUM (Apr. 8, 2015), <https://medium.com/news-politics/this-is-what-happens-when-refugees-arrive-in-the-united-states-specifically-the-airport-at-newark-67e1e3f1da2#.o81t16vei>.

94. *An Overview of U.S. Refugee Law and Policy*, *supra* note 49.

95. *Id.*

96. *Id.*

97. Hall, *supra* note 93.

Additional financial support may be provided by state government programs or indirectly through private donations to agencies.⁹⁸

In September 2015, President Obama set a goal of admitting 10,000 Syrian refugees into the United States by the end of 2016.⁹⁹ However, halfway through the year, only 1300 had been admitted due to delays in the application process.¹⁰⁰ The reason why the application process was moving so slowly is because Syrian refugees were required to be subject to two additional layers of checks, which caused some applications to take up to two years to be processed.¹⁰¹

The typical process for a non-Syrian refugee applying for resettlement in the United States is as follows: (1) register with the United Nations, (2) interview with the United Nations, (3) refugee status granted by the United Nations, (4) referral for resettlement in the United States, (5) interview with State Department contractors, (6) complete first round of background checks, (7) complete a higher level background check (only for certain high-risk individuals), (8) complete another background check, (9) first fingerprint screening and photograph are taken, (10) second fingerprint screening, (11) third fingerprint screening, (12) extensive, in-person interview with a Homeland Security officer, (13) Homeland Security approval or denial, (14) screening for contagious diseases, (15) cultural orientation class, (16) match with an American resettlement agency, (17) multi-agency security check before leaving for the United States, and (18) final security check at an American airport.¹⁰²

There are two additional steps that Syrian refugees are subject to after the third fingerprint screening.¹⁰³ These steps include (1) having the case reviewed at the U.S. immigration headquarters, and (2) in some cases, referral for additional review.¹⁰⁴ Each of these additional steps is reviewed by an USCIS refugee specialist, and cases of individuals who pose high risks to national security are reviewed by the HSD's fraud detection unit.¹⁰⁵

98. *Id.*

99. Koran, *supra* note 15.

100. *Id.*

101. Larry Buchanan & Haeyoun Park, *Refugees Entering the U.S. Already Face a Rigorous Vetting Process*, N.Y. TIMES (Jan. 29, 2017), https://www.nytimes.com/interactive/2017/01/29/us/refugee-vetting-process.html?_r=0.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

Former Secretary of Homeland Security Jeh Johnson stated, “Of all the different ways to enter this country as an immigrant, doing so as a refugee is probably the most cumbersome and time consuming.”¹⁰⁶ Gina Kassem, who oversees the State Department’s refugee resettlement program in North Africa and the Middle East, explained:

Mostly we focus on victims of torture, survivors of violence, women-headed households, and a lot of severe medical cases . . . less than half of one percent of those from Syria who resettle in the United States are single young men. Those who qualify as among the most vulnerable, either because of several medical needs or minors who don’t have family to support them.¹⁰⁷

Interestingly, until Trump’s first executive order, most of the lawsuits dealing with the process of admitting Syrian refugees were brought by states, as opposed to the refugees themselves.¹⁰⁸ States, such as Texas, Alabama, and Tennessee, attempted to bar the federal government from resettling Syrian refugees because they claimed that the federal government was violating the Refugee Act, which requires resettlement agencies to consult with state governments before placing refugees in a state.¹⁰⁹ Although the agencies gave advanced notice, state officials wanted more specific information about the individual refugees who were to be resettled.¹¹⁰ The federal district courts rejected these states’ attempts to bar the federal government from resettling Syrian refugees and dismissed each lawsuit, arguing the language in the Refugee Act is advisory.¹¹¹

In response to Trump’s initial executive order, multiple class action lawsuits were filed on behalf of Syrian refugees, challenging the legality of the order.¹¹² One class action suit challenged the detention of individuals with valid visas from Syria who landed in the United States.¹¹³ As a result, a federal judge granted an emergency stay to bar the deportation of individuals with valid visas.¹¹⁴ Another class action suit

106. *Coming to the U.S. as a Refugee*, CBS NEWS (Jan. 29, 2017), <http://www.cbsnews.com/news/60-minutes-the-u-s-screens-syrian-refugees/>.

107. *Id.*

108. Matt Ford, *Texas Loses Its Syrian Refugee Lawsuit*, ATLANTIC (June 16, 2016), <https://www.theatlantic.com/news/archive/2016/06/texas-syrian-refugee-lawsuit/487424/>.

109. *Id.*

110. *Id.*

111. *Id.*

112. Javier E. David & Jacob Pramuk, *Judge Blocks US From Deporting Visa Holders Detained After Trump’s Refugee Order*, CNBC NEWS (Jan. 31, 2017, 1:23 PM), <http://www.cnbc.com/2017/01/28/aclu-mounts-legal-challenge-to-trumps-refugee-ban-calling-it-unlawful.html>.

113. *Id.*

114. *Id.*

challenged the constitutionality of the executive order.¹¹⁵ The complaint was that the order violated due process because the extreme vetting procedures were designed to delay and deny citizenship and permanent residence in the United States, despite legitimate eligibility under the law.¹¹⁶

In response to Trump's revised executive order, a federal judge agreed to hear a challenge to the new travel ban.¹¹⁷ Attorneys for the state of Hawaii filed a request asking the judge to issue a temporary restraining order blocking implementation of the revised order because of its discriminatory intent and effect, in addition to its harm to Hawaii's economy.¹¹⁸ Though this was the first legal challenge to the revised order, more challenges are likely to arise in the future.¹¹⁹

V. REFUGEE LAWS AND POLICIES IN JAPAN

The primary law that governs the status of refugees in Japan is the Immigration Control and Refugee Recognition Act, which codifies the definition of "refugee" found in the 1951 Refugee Convention.¹²⁰ In addition, in 2008, the Japanese government implemented a resettlement program, which was designed to help assimilate refugees into Japanese culture.¹²¹

When an individual first arrives at an airport in Japan and seeks to obtain refugee status, he or she must fill out a form for temporary permission to land, which is reviewed by an immigration inspector.¹²² Temporary permission forms are usually approved if the individual has escaped from a country where their life or freedoms were in danger and it is reasonable to allow the individual to disembark temporarily.¹²³ If granted, the individual is allowed to stay in Japan for up to six months while applying for refugee status.¹²⁴ During this time, the individual is

115. *Lawsuit Argues Trump Muslim Ban Unlawfully Targets U.S. Residents Seeking Citizenship and Immigration Status*, ACLU (Feb. 2, 2017), <https://www.aclu.org/news/class-action-lawsuit-challenges-trump-order-behalf-tens-thousands-immigrants-living-us-legally>.

116. *Id.*

117. Laura Jarrett, *Federal Judge To Hear First Lawsuit Against New Travel Ban*, CNN NEWS (Mar. 9, 2017, 7:24 AM), <http://www.cnn.com/2017/03/07/politics/hawaii-travel-ban-lawsuit/>.

118. *Id.*

119. *See id.*

120. *Refugee Law and Policy: Japan*, *supra* note 49.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

assigned to a specific facility where he or she must stay.¹²⁵ At the same time, refugees who fall under this status are not allowed to work or seek work.¹²⁶

In order to apply for refugee status, the individual must appear for an in-person interview with an application form and other necessary documents, including documents that prove persecution.¹²⁷ An evident threat of violence or danger must be demonstrated in the documents.¹²⁸ Such threats and dangers include attacks on the individual or his or her family, arrests, disappearance, confiscation of property, deprivation of employment and education, torture, ethnic cleansing, etc.¹²⁹ If the individual has sufficient proof of persecution, if he or she has not committed a serious nonpolitical crime outside of Japan, and if there is no proof of serious risk, the Minister of Justice will issue a certificate of refugee status.¹³⁰ If, however, an individual is denied refugee status, he or she can file an objection with the Minister within seven days from the date notice of denial is received, and the Minister will then re-examine the application.¹³¹

Pursuant to the resettlement program, once an individual is granted refugee status, the Japanese government provides the following benefits: 572 hours of Japanese-language classes, social adaptation training, and employment counseling and placement.¹³² While individuals are enrolled in the resettlement program, they are provided free accommodation for up to 180 days.¹³³ Additionally, individuals with refugee status are permitted to enjoy benefits, such as health care and education, and they are allowed to work and stay in Japan for up to five years before being required to apply for permanent resident status.¹³⁴

In order to obtain permanent resident status, approval is required from the Minister of Justice.¹³⁵ For permanent resident status to be granted, the individual must have lived in Japan for five consecutive years, be of good conduct, be at least twenty years old, have sufficient income to support him or herself, have no nationality, and have never

125. *Id.*

126. *Id.*

127. *Id.*

128. *Important Things To Know about Japan's Refugee Policy*, JAPAN INFO (Jan. 14, 2016), <http://jpninfo.com/39454> [hereinafter *Things To Know about Japan's Policy*].

129. *Id.*

130. *Refugee Law and Policy: Japan*, *supra* note 49.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Things To Know about Japan's Policy*, *supra* note 128.

135. *Refugee Law and Policy: Japan*, *supra* note 49.

been a member of an organization that seeks to harm the Japanese government.¹³⁶ If any one of these requirements is not met, the Minister of Justice has the discretion to deny permanent resident status.¹³⁷

Although the process for seeking refugee status in Japan is somewhat similar to the processes in Western countries, Japan has a much lower admittance rate for several reasons: Japan does not have strong ties with the countries from where refugees come, Japan is located far away from where refugees are from, there are language and cultural barriers, Japan's strict record on refugee acceptance deters refugees from seeking resettlement, and the standards employed by Japan's Ministry of Justice in recognizing refugee status are extremely demanding.¹³⁸ To illustrate this stark difference, in 2015, only twenty-seven out of the 7586 applications for refugee status in Japan were granted, while 480,000 out of 1.1 million applications for refugee status in Germany were granted.¹³⁹ Moreover, in 2015, only six Syrian refugees were granted refugee status, compared to the hundreds and thousands of Syrians granted refugee status in other parts of the world.¹⁴⁰

When asked why Japan would not tackle the issue of the Syrian refugee crisis, Prime Minister Shinzo Abe explained that Japan needed to improve conditions for its own citizens first, before aiding individuals from another country: "It is an issue of demography. I would say that before accepting immigrants or refugees, we need to have more activities by women, elderly people and we must raise our birth rate. There are many things that we should do before accepting immigrants."¹⁴¹

In response to criticism from the rest of the world, Prime Minister Abe announced in May 2016 that Japan would accept 150 Syrians over five years, treating them not as refugees but as exchange students.¹⁴² Prime Minister Abe explained that the Syrian students would be selected

136. *Id.*

137. *Id.*

138. *Id.*

139. Shusuke Murai, *Japan Recognizes Only 27 Refugees, Despite Rising Numbers of Applications*, JAPAN TIMES (Jan. 23, 2016), <http://www.japantimes.co.jp/news/2016/01/23/national/social-issues/japan-recognizes-27-refugees-despite-rising-numbers-applications/#.WKjDJng1XFI>.

140. Taylor, *supra* note 27.

141. Murai, *supra* note 139; Justin McCurry, *Japan Says It Must Look After Its Own Before Allowing in Syrian Refugees*, GUARDIAN (Sept. 30, 2015, 12:59 AM), <https://www.theguardian.com/world/2015/sep/30/japan-says-it-must-look-after-its-own-before-allowing-syrian-refugees-in>.

142. Ayako Mie, *Japan To Take in 150 Syrians as Exchange Students After Criticism of Harsh Refugee Policy*, JAPAN TIMES (May 20, 2016), <http://www.japantimes.co.jp/news/2016/05/20/national/japan-take-150-syrians-exchange-students-criticism-harsh-refugee-policy/#.WKjHF3g1XFI>.

through international organizations and would be allowed to attend Japanese universities in the five-year period.¹⁴³ Although this change in policy does not allow for permanent resettlement of Syrian refugees in Japan, and although it is only limited to students,¹⁴⁴ it is much more lenient than Japan's previous approach.

VI. RESPONDING TO THE SYRIAN REFUGEE CRISIS: WHO SHOULD BE PRIORITIZED IN LIGHT OF INTERNATIONAL OBLIGATIONS?

The responses to the Syrian refugee crisis in Germany, the United States, and Japan have been vastly different, yet they seem to overlap in interesting ways. Germany's open door policy was by far the most welcoming approach, as was evident by the 484,000 Syrian refugees admitted in 2015.¹⁴⁵ Although President Obama's goal of admitting 10,000 Syrian refugees by the end of 2016 was the United States' way of shouldering part of the weight of Europe's migrant crisis, the acceptance of 10,000 refugees in the United States compared to 484,000 refugees in Germany by itself demonstrates the huge difference in commitment in the two nations.¹⁴⁶ Japan's approach was clearly the most unwelcoming, since only a total of six Syrian refugees were admitted in 2015.¹⁴⁷

Beginning in 2016, Germany, the United States, and Japan all changed their policies with regards to the Syrian refugee crisis.¹⁴⁸ Chancellor Angela Merkel enforced stricter policies in Germany, which elongated the application process and took away some of the rights refugees were supposed to be awarded.¹⁴⁹ President Trump initially issued an executive order that banned Syrian refugees indefinitely, but then he revised the order by lifting the indefinite ban and placing a 120-day suspension on the refugee resettlement program instead.¹⁵⁰ Prime Minister Shinzo Abe implemented a new policy accepting 150 Syrian students over five years into Japanese universities, treating them not as refugees but as exchange students.¹⁵¹ While Germany and the United States cut back by making it more difficult for Syrians to obtain refugee

143. *Id.*

144. *Id.*

145. Frida Garza, *Germany Is Taking in More Refugees in 2015 Than the US Has in the Past 10 Years*, QUARTZ (Dec. 7, 2015), <https://qz.com/567469/germany-is-taking-in-more-refugees-in-2015-than-the-us-has-in-the-past-10-years/>.

146. *Id.*

147. Taylor, *supra* note 27.

148. *See* Siddiqui, *supra* note 18; Knight, *supra* note 70; Mie, *supra* note 142.

149. Knight, *supra* note 70; Mortimer, *supra* note 13.

150. Siddiqui, *supra* note 18.

151. Mie, *supra* note 142.

status, Japan did the opposite by creating a policy to admit twenty-five times as many Syrian refugees as the country had admitted in the past, which was close to zero.¹⁵²

Although 150 is still significantly fewer than the number of Syrian refugees in Germany and the United States, and although the Syrians admitted will only be designated exchange students, as opposed to legal refugees, Japan's change in policy from stringent to more accepting raises the question of why Germany and the United States decided to pursue the opposite course and make their policies more difficult for Syrians to obtain refugee status.

Two major factors that influenced Germany's change in policy include the inability to manage the sheer volume of refugees coming in and the fear that emerged as a result of deadly terror attacks carried out by asylum seekers.¹⁵³ Although Merkel's slogan in 2015 was "we can manage this," she regrettably admitted after a year that it was a "simple slogan, an empty formula."¹⁵⁴ The challenge to manage thousands of refugees was not a financial one, rather, it was logistical.¹⁵⁵ Providing enough housing, medical care, schooling, and teachers needed to assimilate such large numbers was much more difficult than Merkel had anticipated.¹⁵⁶ Thus, once reality sank in, implementing a policy to slow down the application process was almost necessary to give the country more time to plan and manage the huge influx of people.¹⁵⁷

As for the terrorist attacks in Berlin and Munich, Merkel was severely criticized for her idealistic approach to the humanitarian crisis because the attacks were carried out by individuals seeking asylum.¹⁵⁸ The fear that paralyzed the country jeopardized Merkel's approval ratings and forced her to implement stricter policies, which required individuals seeking refugee status to be more thoroughly vetted, as opposed to being granted refugee status as quickly as possible.¹⁵⁹ Although Merkel's

152. *See id.*

153. *See* Michelle Martin, *Germany Faces Logistical Nightmare as Refugee Inflows Hit Record*, THOMSON REUTERS (Oct. 4, 2015, 6:46 AM), <http://www.reuters.com/article/us-europe-migrants-germany-logistics-ins-idUSKCN0RY0E420151004>.

154. Jill Petzinger, *In a Rare Show of Regret, Angela Merkel Admits She Lost Control of Germany's Refugee Crisis*, QUARTZ (Sept. 20, 2016), <https://qz.com/786261/germany-and-europes-migrant-crisis-in-a-rare-show-of-regret-angela-merkel-admits-she-lost-control-of-her-refugee-policy/>.

155. Martin, *supra* note 153.

156. *Id.*

157. *See id.*

158. Philip Oltermann, *Deadly Attack on German Soil Is Worst Fear for Angela Merkel*, GUARDIAN (Dec. 20, 2016, 2:52 PM), <https://www.theguardian.com/world/2016/dec/20/angela-merkel-supporters-fears-berlin-attack>.

159. *See id.*

change in policies was enforced to ease the public's fears, she made clear that the change was not driven by Islamophobia because in her view, Germany's problem with extremists and terrorism predated the open door policy: "The phenomenon of the Islamist terrorism of ISIS is not a phenomenon that has come to us through refugees but rather one which we've already had here before."¹⁶⁰

While Trump's executive orders were ultimately issued to enhance national security, his motivations may have been in direct contradiction with Merkel's because his reason for singling out seven Muslim-majority countries was possibly driven by Islamophobia.¹⁶¹ Trump viewed individuals from those seven countries as detrimental to the interests of the United States:

I am establishing new vetting measures to keep radical Islamic terrorists out of the United States of America. We don't want them here. We want to ensure that we are not admitting into our country the very threats our soldiers are fighting overseas. We only want to admit those into our country who will support our country and love deeply our people.¹⁶²

Despite Merkel's and Trump's differing views on Islamic extremists, both leaders changed their policies to defend national security.¹⁶³ Curiously, Germany's and the United States' change in policies reflect the ultimate reason why Japan has always had one of the strictest refugee application processes in the world: prioritizing native-born citizens is more important than prioritizing refugees from other countries.¹⁶⁴ Whether this priority means providing more jobs for women, taking better care of the elderly, or enhancing national security, Japanese laws and policies relay the message that caring for your own should take precedence over caring for others, because at the end of the day, national leaders owe a primary duty to their people.¹⁶⁵

While national leaders always owe a duty to their people, the Refugee Convention of 1951 contemplates that contracting nations also owe a duty to refugees not to discriminate, not to take exceptional measures against a refugee solely on account of his or her nationality, not

160. Justin Salhani, *German Chancellor Call Out European Countries That Shut Out Muslim Refugees*, THINK PROGRESS (Aug. 29, 2016, 2:14 PM), <https://thinkprogress.org/merkel-hits-back-at-anti-muslim-countries-10abe17c4230#.fscd2whlf>.

161. See Dan Merica, *Trump Signs Executive Order To Keep Out 'Radical Islamic Terrorists'*, CNN NEWS (Jan. 30, 2017, 2:02 PM), <http://www.cnn.com/2017/01/27/politics/trump-plans-to-sign-executive-action-on-refugees-extreme-vetting/>.

162. *Id.*

163. See *id.*; Salhani, *supra* note 160.

164. See Murai, *supra* note 139.

165. See McCurry, *supra* note 141.

to impose penalties on those who entered illegally, not to expel refugees, and not to forcibly return them to the country from which they fled.¹⁶⁶ Accordingly, international law essentially imposes a duty on Germany, the United States, and Japan to be more welcoming and to not discriminate against Syrian refugees.¹⁶⁷

Though the Refugee Convention does not require contracting countries to admit a certain number of refugees, the purpose of the treaty is to protect refugees applying for refugee status and to protect those already admitted.¹⁶⁸ Germany's change in policy, which made the vetting procedure for Syrians more thorough, is not in violation of international law because the change in policy applied to all asylum seekers, as opposed to Syrians only.¹⁶⁹ Thus, Germany's change in policy did not "take exceptional measures against a refugee solely on account of his or her nationality."¹⁷⁰ In contrast, Trump's initial executive order which banned Syrians indefinitely, and which was partially motivated by religious discrimination, is in complete violation of the Refugee Convention.¹⁷¹ Although Japan has accepted the lowest number of Syrian refugees, because the application process and vetting procedures for Syrians is no different than the process for any other refugee, Japan has not discriminated against Syrians specifically and, thus, is not in violation of international law.¹⁷²

If an individual arrives in a country and claims asylum, and if that country is a contracting party to the Refugee Convention, that country has a legal obligation under international law to deal with the individual's claim.¹⁷³ Moreover, as was just discussed, under the Refugee Convention contracting parties cannot ban asylum seekers from certain countries because one of the obligations is to not discriminate on the basis of race, nationality, or religion.¹⁷⁴ Trump's initial executive order, which banned Syrian refugees indefinitely, violated the United States' international obligations as a contracting party to the Refugee Convention because singling out refugees from any particular country is discriminatory.¹⁷⁵ The United States is not required to grant refugee status to all Syrians

166. G.A. Res. 429 (V), *supra* note 33, at 3, Introductory Note.

167. *See id.* art. III.

168. *See id.* at 3, Introductory Note.

169. *See id.* art. III.

170. *See id.*

171. *See id.*

172. *See id.*

173. *See id.* at 4, Introductory Note.

174. *Id.*

175. *See id.*

who apply; however, the United States has a clear international obligation to at least go through the process of reviewing their applications.¹⁷⁶

Interestingly, there is no legal obligation under the Refugee Convention to have or operate a refugee resettlement program.¹⁷⁷ Accordingly, the 120-day suspension on the refugee program—which was implemented under both the original and revised executive orders—is not in violation of any international obligations.¹⁷⁸ The purpose of the suspension, according to Trump, is to allow for additional time to establish more stringent vetting procedures.¹⁷⁹ The purpose of the suspension is not to disallow individuals from seeking refugee status. Even though the suspension delays refugees from applying to the refugee resettlement program, the suspension does not prevent refugees from applying once the 120 days have passed.¹⁸⁰ Thus, because the United States will still go through the process of reviewing refugee applications to the refugee program after 120 days, the United States is not in violation of international law under the revised executive order.¹⁸¹

Perhaps, what is most concerning is that had Trump not revised his initial executive order to come into compliance with international obligations, there may not have been legal ramifications for attempting to ban Syrian refugees indefinitely.¹⁸² Under the Refugee Convention, there is no interstate supervisory body that holds states accountable if they fail to meet any of the defined obligations.¹⁸³ The only supervision provided by the Refugee Convention falls under article 38, which allows disputes about the interpretation or application of the Refugee Convention to be settled in the International Court of Justice (ICJ).¹⁸⁴ But because leaders of other countries simply condoned Trump's actions,¹⁸⁵ as opposed to taking greater action by filing suit in the ICJ, it is unclear whether or not the United States would have been punished for failing to meet an important international promise. What is even more concerning is that if other contracting parties to the Refugee Convention start mimicking

176. *Id.*

177. *Id.* at 11, Final Act.

178. *See id.*

179. Siddiqui, *supra* note 18.

180. *See id.*

181. *See* G.A. Res. 429 (V), *supra* note 33, at 4, Introductory Note.

182. James C. Hathaway, Anthony M. North & Jason Pobjoy, *Supervising the Refugee Convention*, 26 MICH. L.J. REFUGEE STUD. 1, 3 (2013).

183. *Id.*

184. G.A. Res. 429 (V), *supra* note 33; Hathaway et al., *supra* note 182, at 3, 5.

185. Alison Smale, *European Leaders Reject Trump's Refugee Ban as Violating Principles*, N.Y. TIMES (Jan. 29, 2017), https://www.nytimes.com/2017/01/29/world/europe/trump-executive-order-europe-merkel.html?_r=0.

Trump's actions by disregarding international obligations, refugees will begin to lose their basic rights and protections, which is something that only contracting parties can prevent.

Despite the various changes in policies regarding the Syrian refugee crisis in Germany, the United States, and Japan, none of these contracting countries is currently in violation of obligations under the Refugee Convention.¹⁸⁶ Thus, from this analysis, it follows that under international law, countries may prioritize their own and may make the process for applying for refugee status more difficult, so long as the country does not discriminate against refugees on the basis of race, nationality, or religion.

VII. CONCLUSION

The responses to the Syrian refugee crisis in Germany, the United States, and Japan have all been different, but the main reason for the change in responses in Germany and the United States can best be explained by Japan's reasoning for having one of the strictest refugee application processes: prioritizing native-born citizens is more important than prioritizing refugees from other countries.¹⁸⁷ Though such an approach makes sense from a nationalistic perspective, from a humanitarian perspective, such an approach is immoral and unjust. If first world countries with more than adequate resources start closing their doors to Syrian refugees, where are these politically persecuted individuals supposed to go? Based on international obligations and a range of other legal and moral values, Germany, the United States, and Japan should strive at all times to achieve a workable balance between admitting, and successfully managing and assimilating, a large influx of Syrian refugees and others, while ensuring the safety and security of their own citizens.¹⁸⁸ This is hardly an easy task, but it can surely be undertaken in good faith, consistent with international legal obligations and in a way that benefits both legitimate refugees and recipient nations.

186. See G.A. Res. 429 (V), *supra* note 33, art. XXXVIII.

187. See McCurry, *supra* note 141.

188. See G.A. Res. 429 (V), *supra* note 33, at 3, Introductory Note.