

Given the unevenness of treatment, the different ways that the 1951 Geneva Convention and its 1967 Protocol are applied, and the risks of flight from persecution, refugees face a complicated legal environment when seeking refugee status. This point is clear in the current situation regarding refugees fleeing Syria, the hardships they endure to escape their country, and the political and international difficulties they must navigate to gain refugee status and successfully resettle in a new country. Important to this situation is the role the United States has played historically in international refugee law, and how its role will likely change in the current refugee crisis under Donald Trump's new administration.

The most recent development for Syrian refugees attempting to enter the United States came on January 24, 2017, when Reuters reported that on Wednesday, January 25, Donald Trump would sign executive orders "restricting immigration from Syria and six other Middle Eastern or African countries, according to several congressional aides and immigration experts briefed on the matter. In addition to Syria, Trump's orders are expected to temporarily restrict access to the United States for most refugees (Reuters 2017)." In the aftermath of this announcement, and the issuing of this executive order, thousands of people with citizenship in the listed countries were detained at airports and denied access to the United States, including immigrants, refugees, and even US permanent residents.

The international law governing refugees – their status, identities, and acceptance and the host countries' responsibilities and rights – is often blurry, and debates about its details can itself be a cause of stress and fear for vulnerable migrants. Through a close reading of international refugee law, such as the 1951 Geneva Convention and the 1967 Protocol, and secondary literature, particularly essays by Guy Goodwin-Gill and Matthew Gibney in the *Oxford Handbook of Refugee and Forced Migration Studies*, this position paper explores the complexities of the Syrian refugee crises, and its relationship to United States policy regarding asylum seekers and refugees (Geneva Convention 1951, Protocol 1967, Goodwin-Gill 2014, Gibney 2014). This exploration necessarily invokes an overview of the United States' historical international role in assisting refugees, as well as its legal responsibilities in regards to the resettlement of refugees, as well as individual state rights in regards to federal refugee policies. Taken together, such an overview provides the reader with a sense of the obstacles and mitigating factors that Syrian refugees face when they attempt to file claims in the United States for refugee status, and it provides a lens through which to understand the intricacies of the Syrian refugee crisis in regards to the United States.

According to the Geneva Convention in 1951, a refugee is a person who flees their home country and is unable to or unwilling to return because of a "well-founded fear of being persecuted because of his or her race, religion, nationality, membership of a particular social group, or political opinion (Geneva Convention 1951)." Initially, the 1951 Convention applied specifically to Europe, and it was intended to address the massive displacement and to address the settlement and status issues of people in the aftermath of the Second World War. Later, the Convention was expanded by a 1967 Protocol that made it apply universally to refugees without geographic or temporal limits (Protocol 1967). It was not specified in either the Convention or the Protocol how countries would determine how many and how proportionally they accepted, protected, and resettled refugees, however, it was stated that refugee acceptance would need to be "in the spirit of international cooperation." The United States, party to the 1967 Protocol (but not the Convention), is part of the international community who are thus bound by international law to accept refugees in this "spirit of international cooperation". While this definition of international acceptance of refugees is not specific, it does provide a foundation upon which

states can work cooperatively together to accept refugees in a fair manner that does not put a burden over specific states due to location or wealth (Goodwin-Gil 2014).

US obligations towards refugees begin with the principle of *non-refoulement* which ensures that states don't send refugees back to their countries where their fundamental freedoms and lives would be at risk. However, this policy is based on where the refugee arrives first and, thus, location serves as a deciding factor. Some argue that the dependency on location for refugee status and *non-refoulement* is unfair as it privileges, for example, young men who can flee more easily in comparison to a family, the elderly, or children, or that it burdens nearby states disproportionately (Gibney 2014). Some legal scholars argue to change the location principle in *non-refoulement* by implementing, for example, an equal distribution of refugees across states (which risks commoditizing refugees) or having poor states gain financial reimbursement from wealthier states (which also risks wealthy states unfairly forced to pay their own refugee assistance needs) (Gibney 2014).

The United States is not the first country of entry for most refugees, for reasons of geographic proximity, visa restrictions, and the sheer cost of making the trek to U.S. soil. However, the United States serves as a major world power financially and politically, plays a substantial role in international intervention in some countries with fleeing refugees and is party to the "spirit of international cooperation" as detailed in the Convention and Protocol. In this manner, the position of this paper is that the United States should have a legal responsibility to accept and protect refugees proportional to its ability, and should accept refugees to alleviate the burden of immediately located countries to work collaboratively and in accordance to the Convention. It is unlikely that under Trump's administration's isolationist policies, and a growing widespread cultural fear of terror threats that some people link to refugees' origin, ethnicity, and religion from the Middle East, that refugees and the United States' legal obligations to them will grow. It seems likely that the Trump administration will invoke Article 9 of the 1951 Convention, for example, that provides provisional matters in which refugees can be denied on the basis of national security as he links refugees from the Middle East to terror attacks (Geneva Convention 1951).

Refugees who successfully arrive to the United States, despite the challenges associated with flight like violence, human trafficking, and attaining the means to arrive, are evaluated for refugee status based on the narratives they provide regarding their experiences in their home countries. Their narratives must support the definition of a refugee as one who is fleeing based on well-founded fears of persecution based on race, religion, social group nationality, and political opinion. Refugees face many obstacles when attempting to prove their narratives' veracity. For example, investigators ask refugees to provide details and reasons behind their flight, which causes many to relive horrific situations, psychological trauma, and violence.

Further, refugees are forced to strategically narrate their experiences in attempts to gain access to refugee status and to navigate the complicated social and cultural pressures surrounding their file claim. For example, a growing isolationist and fear-producing rhetoric of terror attacks is present in the United States and a main argument of opponents to the acceptance of Syrian refugees in the United States is that if they are allowed, terrorists will come, too, and commit atrocities. These cultural pressures influence the ways that refugees narrate their experiences and create a legal obstacle-course they have to strategically navigate. In particular cases, mitigating factors for refugees exist in that the cases can depend often on how convincingly a refugee can tell their story and/or how they appear (attractive, non-threatening, family-focused, for some examples). Certainly, these factors are not representative of the refugee experience, and are

biased against refugees who are not able to frame their narratives or present themselves in a favorable light whether on account of fear, inconsistency in sources when verified, or how they present themselves to the refugee determination authorities.

In response to federal policy regulating Syrian refugee acceptance under the Obama administration, state officials and legislatures have discussed how they planned to respond to an influx in Syrian refugees. In 2015, for example, when the Obama administration proposed that the United States would accept a larger number of refugees in the near future, over a dozen governors expressed opposition. Rick Scott of Florida, for example, expressed the opinion that while they could not outright oppose federal laws as it would be in violation of the constitution (1980 Refugee Act), they could implement state-level difficulties and barriers for refugees. For example, states have the right to restrict funding for refugee assistance or block refugees from receiving identification like driver's licenses (National Constitution Center 2015).

One barrier against the hardline approach of the current administration is US law, and federal judges are now in the process of questioning Trump's Executive Orders pertaining to immigration. For example, federal judges in New York, Virginia, and Massachusetts issued emergency stays on the executive orders to stop the removal of detained refugees. Judge Ann Donnelly (NY) stated that "here is imminent danger that, absent the stay of removal, there will be substantial and irreparable injury to refugees, visa-holders, and other individuals from nation's subject (Seipel 2017)." Sally Yates, the acting Attorney General, questioned the lawfulness of the Executive Order, ordered the Department of Justice to not defend the order, and was subsequently fired (Wilber 2017).

In conclusion, the legal environment of refugee law is ambiguous and unclear in many situations and leads to confusion on international legal obligations, refugee experiences, and states' rights in relation to refugee policies. Ultimately, this paper positions these issues at the center of a current national debate in which the Syrian refugee crisis is debated daily and changing under new administration. This paper argues that the United States indeed has legal obligations to refugees, such as adherence to policies from the 1951 Convention and 1967 Protocol like *non-refoulement* and to work "in the spirit of international cooperation." Further, this paper posits that the United States should accept and resettle refugees in a proportional manner to its ability in order to alleviate the suffering of refugees and the burdens of immediately located states. However, as the new administration promotes isolationist policies, individual states support opportunities to create difficulties for refugees, and refugees navigate obstacles in their file claims relating to their narratives, it is an unclear legal environment in which the Syrian refugee crisis is currently unfolding.

Works Cited

- Ainsley, Julia Edwards. "Trump Expected to Order Temporary Ban on Refugees," *Reuters*. Reuters News Agency, 24 January, 2017. Web. 24 January, 2017.
- Convention and Protocol relating to the Status of Refugees, Geneva: UNHCR, 2010.
- Cotter, Chris, director. *Refugee: The Eritran Exodus*. Tailor Made Media, 2015.
- Gibney, Matthew J. "Political Theory, Ethics, and Forced Migration." *The Oxford Handbook of Refugee and Forced Migration Studies*, edited by Elena Fiddian-Qasmiyeh, et al, Oxford University Press, 2014, pp. 48-60.
- Goodwin-Gill, Guy S. "The International Law of Refugee Protection." *The Oxford Handbook of Refugee and Forced Migration Studies*, edited by Elena Fiddian-Qasmiyeh, et al, Oxford University Press, 2014, pp. 36-48.

Jessica Fletcher, "Commentary", *AmeriQuests* 12.2 (2016-7)

Seipel, Brooke. "Judge Blocks Deportation of Detainees over Trump Refugee Order," *The Hill*. Capitol Hill Publishing Corp., 28 January, 2017. Web. 28 January 2017.

Wilber, Del Quentin. "Travel Order and Firing of Acting Attorney General Sally Yates Roils Justice Department," *Los Angeles Times*. The Tribune Company, 1, February, 2017. Web. 1 February 2017.

"The Constitutional Question over States and Syrian Refugees," Constitution Daily. *National Constitution Center*, 18 November, 2015. Web. 24 January, 2017.