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## The Record High of Forcibly Displaced Persons, International Law, and the Comparative Case of Ukraine and Afghanistan: The Response to a War We Started Versus a War We Opposed

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THE RECORD HIGH OF FORCIBLY DISPLACED PERSONS,  
INTERNATIONAL LAW, AND THE COMPARATIVE CASE OF  
UKRAINE AND AFGHANISTAN: THE RESPONSE TO A WAR WE  
STARTED VERSUS A WAR WE OPPOSED

Erin Vance\*

**Abstract**

This Comment addresses the rules and customs of international law that govern forcibly displaced persons, and how such laws have created wide gaps that have allowed the issues and challenges surrounding forced migration to not only persist, but also become increasingly worse. Specifically, Article 14 of the Universal Declaration of Human Rights provides, “everyone has the right to seek and to enjoy in other countries asylum from persecution,” but places no accompanying obligation upon States to grant asylum and refugee status to these forcibly displaced persons. Rather, States are given significant discretion when interpreting and defining responsibilities under Article 14. The gap between the right to seek asylum, guaranteed by Article 14, and the discretionary obligation of States leaves forcibly displaced persons asserting the right upon a State that has no obligation to them. In this view, the right of asylum belongs to the State rather than the forcibly displaced person. Additionally, the 1951 Convention Relating to the Status of Refugees requires three elements to be met for a forcibly displaced person to be considered a refugee, which leaves many forcibly displaced persons outside the scope of the definition despite finding themselves in refugee-like circumstances. The limited scope of the 1951 Convention Relating to the Status of Refugees is illustrated by the fact that it does not provide for forced displacement caused by armed conflict, severe economic insecurity, environmental degradation, and other failures of governance. Lastly, there is no single body of a comprehensive international legal framework that governs forced displacement, but rather it is scattered across various instruments of international law. The lack of a single governing framework makes regulating and enforcing forcibly displaced persons’ rights difficult.

The current international legal regime that governs forcibly displaced persons lacks sufficient safeguards for the fundamental right to seek asylum and fails to encompass many individuals in refugee-like situations under its limited scope. To achieve a more equitable and remedial legal regime, the definition of a refugee needs to be re-defined to cancel out the failure of the current definition’s limited scope. Further, the obligation upon States needs to be clearly defined rather than merely discretionary, with consequences when those obligations are not fulfilled.

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### I. Introduction

Human populations have been forcibly displaced throughout history, but now more than ever, forced human displacement is a staggering concern internationally. In May 2023, the United Nations Refugee Agency announced the number of forcibly displaced persons worldwide had surpassed 110 million individuals.<sup>1</sup> This statistic represented the highest annual increase of forced displacement, where 108.4 million individuals were reported to be forcibly displaced at the end of 2022.<sup>2</sup>

Statistics indicate that most forced movements occur within the Third World itself. The term “Third World” encompasses countries that are predominantly located in the Global South and considered to be developing countries that have

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<sup>1</sup> U.N High Commissioner for Refugees, *Refugee Statistics*, <https://www.unrefugees.org/refugee-facts/statistics/#:~:text=By%20the%20end%20of%202022,62.5%20million%20internally%20displaced%20people> (last visited Nov. 17, 2023).

<sup>2</sup> *Id.*

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fragile economic systems.<sup>3</sup> The term also expresses opposition to the current system of international law, which developed around European culture that continues to benefit the Global North at the expense of the Global South.<sup>4</sup> For example, in 2017, 68% of refugees worldwide came from Afghanistan, Myanmar, Somalia, South Sudan, and Syria, which are all countries located in the Global South.<sup>5</sup> Not only does most of the movement of forcibly displaced persons come from the Third World, but other Third World countries also host many of these forcibly displaced persons due to the fact they are geographically situated as countries neighboring the forcibly displaced persons' countries of origin.<sup>6</sup>

Article 14 of the Universal Declaration of Human Rights provides, "everyone has the right to seek and to enjoy in other countries asylum from persecution."<sup>7</sup> However, this right places no accompanying obligation upon States to grant asylum and refugee status to these forcibly displaced persons. Further, many forcibly displaced persons are fleeing their home in their native countries due to refugee-like circumstances, but their subjective circumstances do not fall under the scope of the 1951 Convention Relating to the Status of Refugees. The international law that governs forcibly displaced persons has gaps that create global issues and challenges, which has allowed the issue of forcibly displaced persons to worsen at an increasingly concerning rate.

This Comment addresses the rules and customs of international law that govern forcibly displaced persons, and how such laws have created wide gaps that have allowed the issues and challenges to not only persist, but also become increasingly worse. Following an explanation of what a forcibly displaced person is and the causes of forced migration, the cases of Ukraine and Afghanistan will be introduced, accompanied with a discussion on how the armed conflicts within those States are affecting their populations. Then, a historical overview of the international law and its rules and customs on forcibly displaced persons will be discussed, with a subsequent analysis of the policies, principles and laws that have created the frustrating gaps in the international rules and customs governing forcibly displaced persons. Within this analysis, the discussion will return to the cases of Ukraine and Afghanistan, focusing on the United States' response to the emergencies occurring in the two countries, and the implications that may be influencing the different response. Such implications could involve racial bias, the perceptions of the Global North compared to the Global South, and relationships to terrorism. Finally, this comment will propose how the international law should be reformed to create a broader definition of a refugee under the Convention, how an obligation upon states should be enforced to make the rights

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<sup>3</sup> Samuel Berhanu Woldemariam et al., *Forced Human Displacement, The Third World and International Law: A Twail Perspective*, 20 MELBOURNE J. INT'L L. 251, 256.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*, at 253.

<sup>6</sup> U.N. High Commissioner for Refugees, *Global Trends: Forced Displacement In 2021*, <https://www.unhcr.org/sites/default/files/legacy-pdf/62a9d1494.pdf> (last visited Nov. 17 2023).

<sup>7</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

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to forcibly displaced persons more effective and dependable, and how to make a more cohesive and burden sharing Convention.

### II. Background

This section provides an overview of what a forcibly displaced person means, and what that phrase encompasses. Next, it describes the definition of a refugee and the different meanings that lay behind that term. This section will provide the causes of forced migration, or in other words, how and why people find themselves in the position of being forcibly displaced from where they call home. Finally, this section will discuss the countries of Ukraine and Afghanistan, which are the comparative countries of topic in this comment, and the conflict within those countries which have resulted in their natives being forcibly displaced.

#### A. What Is A Forcibly Displaced Person?

The phrase ‘forcibly displaced person’ is not all encompassing phrase. Rather, the phrase can be divided into separate groups, where the first group is referred to as internally forcibly displaced persons and the second group is referred to as externally forcibly displaced persons.<sup>8</sup>

The Guiding Principles on Internal Displacement, a document that was introduced to the United Nations in 1998, provides the humanitarian and human rights standards applicable to internally forcibly displaced persons and the definition for such term.<sup>9</sup> The document provides that,

“Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their home or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”<sup>10</sup>

Thus, these persons have been forced from the place they call home but, unlike refugees, they continue to remain within the borders of their native countries.

The externally forcibly displaced persons are those who, unlike internally forcibly displaced persons, leave their native country and seek refuge in another State where they may have a claim to refugee status under international law.<sup>11</sup> These forcibly displaced persons are also referred to as cross-border migrants.<sup>12</sup> In this comment, the focus will primarily be on externally forcibly displaced persons in the context of Ukraine and Afghanistan.

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<sup>8</sup> Cristiano d’Orsi & Gino J. Naldi, *Climate-Induced Displacement In The Sahel: A Question of Classification*, 103 INT’L REV. RED CROSS, 1029, 1029 (2021).

<sup>9</sup> Francis M. Deng (Representative of the Secretary-General), *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2 (1998).

<sup>10</sup> *Id.* at 5; Jessica Wyndam, *A Developing Trend: Laws and Policies on Internal Displacement*, 14 HUM. RTS. BRIEF 7, 9 (2006).

<sup>11</sup> d’Orsi & Naldi, *supra* note 8, at 1030.

<sup>12</sup> *Id.*

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### B. Causes of Forced Migration

There are several causes to forced migration, which is a general term that refers to the movements of refugees, asylum seekers, and internally displaced persons. Some of the common causes are conflict-induced displacement, development-induced displacement, and disaster-displacement.<sup>13</sup> Conflict-induced displacement occurs when people are forced to flee their homes as a result of armed conflict, including civil war, generalized violence, and persecution on the grounds of nationality, race, religion, political opinion or social group.<sup>14</sup> Development-induced displacement occurs when people are compelled to move as a result of policies and projects implemented to advance development efforts.<sup>15</sup> Disaster induced displacement occurs when people are displaced as a result of natural disasters, environmental change, and human-made disasters.<sup>16</sup>

Research identifies that the most prominent causes of forced migrations are armed conflicts, political instability, persecution, and economic underdevelopment.<sup>17</sup> This comment will be focusing on forced displacement caused by armed conflict within Ukraine and Afghanistan.

### C. The Conflict in Ukraine

Following the order of their country's leader, Vladimir V. Putin, Russian troops invaded the country of Ukraine on February 24, 2022.<sup>18</sup> Since the initial invasion, the conflict has since become the largest ground mobilization Europe has seen since World War II in 1945.<sup>19</sup> The invasion was spurred by several factors, such as the threat Russia felt from Ukraine potentially becoming a member of NATO, the threat of a democratic State so close to Russian borders, and the Russian belief that Ukraine is culturally and historically part of Russia.<sup>20</sup>

During the siege, Russian commanders have intensely attacked civilians and infrastructure, leaving several cities in Ukraine in ruins.<sup>21</sup> The critical industrial infrastructure that Russia has damaged or destroyed across Ukraine has caused total outages of electricity, heating and water in some areas, while other services,

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<sup>13</sup> Development and Peace – Caritas Canada, *Addressing the Root Causes of Forced Migration: Recommendations for Canada*, Oct. 2018, at 1.

<sup>14</sup> Sherill Hayes et al., *Conflict Induced Migration and The Refugee Crisis: Global and Local Perspectives from Peacebuilding and Development*, 11 J. OF PEACEBUILDING & DEV. 2, 7 (2016).

<sup>15</sup> Hong Zhu & Yihan Wang, *Agency and Mobility In The Context Of Development Induced Migration: The Case of Three Gorges Out Migrants*, 47 J. ETHNIC MIGRATION STUD. 2745, 2746 (2020).

<sup>16</sup> U.N. High Commissioner for Refugees, *Climate Change and Disaster Displacement*, <https://www.unhcr.org/climate-change-and-disasters.html> (last visited Dec. 18, 2022).

<sup>17</sup> ALEXANDER BETTS, *FORCED MIGRATION AND GLOBAL POLITICS 1* (Wiley-Blackwell, 1st ed. 2009).

<sup>18</sup> Dan Bilefsky et al., *Can The West Stop an Invasion by Russia Into Ukraine?*, N.Y. TIMES, Jan. 10, 2022, at A8; Dan Bifsky et al., *A Year of War in Ukraine: The Roots of the Crisis*, N.Y. TIMES, <https://www.nytimes.com/article/russia-ukraine-nato-europe.html> (last visited Nov. 17, 2023).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

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such as medical care, internet access, and public transportation are disrupted.<sup>22</sup> For example, a theatre in Mariupol provided shelter to hundreds of people, including children, when a Russian strike destroyed the shelter on March 16, 2022.<sup>23</sup> Further, a geolocated image confirmed that “children” was written out in large lettering on either side of the theatre before bombing.<sup>24</sup> At that time, hundreds of thousands of people had been entrapped in the coastal city as Russian forces had encircled the area for weeks. Further, the people entrapped in the city were surviving without electricity, heat, or water.<sup>25</sup> Mariupol local officials instructed citizens to leave their deceased family members in the streets because it was too dangerous to hold funerals while city was under siege.<sup>26</sup>

The Russian invasion into Ukraine has had a devastating humanitarian toll and claimed thousands of Ukrainian citizens’ lives. In the months following the Russian invasion, Ukraine initiated a proceeding in the International Court of Justice, where the Court noted that “the civilian population affected by the present conflict is extremely vulnerable” and that Russia’s conduct has resulted in numerous “civilian deaths and injuries.”<sup>27</sup> The invasion has forced more than seven million of these vulnerable people to flee Ukraine, resulting in the fastest growing refugee crisis since World War II according to the United Nations.<sup>28</sup>

### D. The Conflict in Afghanistan

Following the terrorist attacks on the United States on September 11, 2001, President Bush signed into law a joint resolution that “authorized the use of force against those responsible for attacking the United States;” the United States later used the resolution as the “legal rationale” for the its military action in Afghanistan.<sup>29</sup> On October 7, 2001, the United States military began a bombing campaign against Taliban and al-Qa’ida forces in Afghanistan, based on the belief that was where the terrorist groups were hiding Osama bin Laden, the mastermind behind the 9/11 attacks.<sup>30</sup> This campaign officially launched Operation Enduring Freedom, and marked the beginning of a two decade long war.<sup>31</sup>

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<sup>22</sup> U.N. High Commissioner for Refugees, *Ukraine Situation*, <https://reporting.unhcr.org/ukraine-situation> (last visited Nov. 2, 2022).

<sup>23</sup> Tara John et al., *Russia Bombs Theater Where Hundreds Sought Shelter and ‘Children’ Was Written on the Grounds*, CNN, <https://www.cnn.com/2022/03/16/europe/ukraine-mariupol-bombing-theater-intl/index.html> (last visited Nov. 16, 2023).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Russian Strike Hits Theater in Mariupol Sheltering “Hundreds” of Residents, Ukraine Foreign Minister Says*, CBS News, <https://www.cbsnews.com/news/russia-strike-theater-mariupol-residents-ukraine-foreign-minister-says/> (last visited Nov. 16, 2023).

<sup>27</sup> *Allegations of Genocide Under the Convention on the Prevention of Punishment of the Crime of Genocide*, (Ukr. v. Russ.), Provisional Measures, 2022 I.C.J. ¶ 30, 75 (Mar. 16).

<sup>28</sup> *Ukraine Situation*, *supra* note 22.

<sup>29</sup> Council on Foreign Relations, *Timeline: The U.S. War In Afghanistan*, <https://www.cfr.org/timeline/us-war-afghanistan> (last visited Dec. 2, 2022).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

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In 2001, the largest outflow of forcibly displaced persons came from Afghanistan.<sup>32</sup> Approximately 200,000 Afghans fled their country due to armed conflict,<sup>33</sup> and 700,000 Afghans were internally displaced.<sup>34</sup>

### E. The Definition Of A Refugee

The established definition of a ‘refugee’ in international law can be found in the 1951 Convention Relating to the Status of Refugees (Refugee Convention). The Refugee Convention defines a refugee as someone who leaves or is unable to return to his or her country of nationality as a result of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”<sup>35</sup>

There are three essential elements to satisfying the test for obtaining refugee status. First, the individual must have a well-founded fear of persecution.<sup>36</sup> Second, the individual must be outside of one’s country of origin or habitual residence.<sup>37</sup> Lastly, the individual must have the inability or unwillingness to rely on the protection of their country of origin or habitual residence, or the inability or unwillingness to return there due to a fear of persecution.<sup>38</sup>

From analyzing the definition of a refugee and its three elements, it is clear that the Refugee Convention does not encompass the scope of all forcibly displaced persons. The traditional categories of refugees provided by the Refugee Convention fail to cover the increasing number of persons who are in refugee-like situations. For example, the Refugee Convention does not provide for forced displacement causes such as armed conflict, severe economic insecurity, environmental degradation, and other failures of governance.<sup>39</sup> Thus, the current regime of international law on forcibly displaced persons fails to provide protection for and cover the needs of many forcibly displaced persons.

### F. The Definition Of An Asylum Seeker

An asylum seeker is an individual who “flee[s] their country to seek protection in another country.”<sup>40</sup> In order to receive such protection in another country,

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<sup>32</sup> Fernando del Mundo, *2001 Global Refugee Statistics*, UNHCR (June 18, 2002), <https://www.unhcr.org/en-us/news/latest/2002/6/3d0f6dcb5/2001-global-refugee-statistics.html> (last visited Nov. 16, 2023).

<sup>33</sup> *Id.*

<sup>34</sup> Hiram A. Ruiz, *Afghanistan: Conflict And Displacement 1978 To 2001*, 13 FORCED MIGRATION REV. 8, 8 (2002), <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/september-11th-has-any-thing-changed/ruiz.pdf> (last visited Nov. 18, 2023).

<sup>35</sup> Convention Relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S 137.

<sup>36</sup> RAFIQU L ISLAM & JAHID HOSSAIN BHUIYAN, AN INTRODUCTION TO INTERNATIONAL REFUGEE LAW 19-20 (2013).

<sup>37</sup> United Nations High Commissioner for Refugees, *What Is A Refugee?*, [www.unhcr.org/what-is-a-refugee.html](http://www.unhcr.org/what-is-a-refugee.html) (last visited Nov. 2, 2022).

<sup>38</sup> *Id.*

<sup>39</sup> Arthur C. Helton & Eliana Jacobs, *What Is Forced Migration?*, 13 GEO. IMMIGR. L.J. 521, 521-22, 531 (1999).

<sup>40</sup> *What Is A Refugee?*, *supra* note 37.



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the asylum seeker must demonstrate that the “fear of persecution in [their] home country is well-founded.”<sup>41</sup> Thus, an asylum seeker is an individual that has left their home country, but, unlike a refugee, has not yet been given citizenship rights of the country that they have landed in.

Article 14 of the Universal Declaration of Human Rights provides, “everyone has the right to seek and to enjoy in other countries asylum from persecution.”<sup>42</sup> However, language actually guaranteeing the right to be granted asylum was rejected by many States.<sup>43</sup> While Article 14 provides the right of asylum to individuals, the application of that right is not concrete because States are given significant discretion when interpreting and defining responsibilities under Article 14.<sup>44</sup> For this reason, many individuals that cross international borders find themselves in a state of limbo for years, unable to return to the place they call home while simultaneously being prevented from fully integrating into the society of their hosting State due to their status as an asylum seeker.<sup>45</sup>

### III. Discussion

#### A. The Current State Of International Law On Forcibly Displaced Persons

Human populations have been forcibly displaced throughout the history of our world. However, a multilateral effort to address this international issue was not made until the aftermath of the Second World War, when millions of persons in the Global West, specifically Europe, were forced to flee their homes during the wake of the war.<sup>46</sup> This multilateral effort was forged by the United Nations High Commissioner for Refugees (UNHCR), which was created in 1950.<sup>47</sup> After the creation of the UNHCR, multilateral initiatives were culminated, which remain the prominent legal and institutional frameworks dealing with the forcibly displaced today. Specifically, the Convention Relating to the Status of Refugees<sup>48</sup> (Refugee Convention) was adopted, and later, the 1967 Protocol Relating to the Status of Refugees<sup>49</sup> (Protocol). Since the adoption of the Protocol, the

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<sup>41</sup> *Id.*

<sup>42</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights, U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

<sup>43</sup> Yvonne S. Brakel et al., *50 Years Was Too Long To Wait: The Syrian Refugee Crisis Has Highlighted The Need For A Second Optional Protocol To The 1951 Convention Relating To The Status of Refugees*, 40 U. ARK. LITTLE ROCK L. REV. 51, 56 (2017).

<sup>44</sup> *Id.*

<sup>45</sup> Elisa Massimino & Alexandra Schmitt, *A Rights-Centered Paradigm for Protecting the Forcibly Displaced*, AM. PROGRESS, Dec. 7, 2020, at 7.

<sup>46</sup> U.N. High Commissioner for Refugees, *History of the UNHCR*, <https://www.unhcr.org/en-us/history-of-unhcr.html>; James C. Hathaway, *The Evolution of Refugee Status in International Law: 1920-1950*, 33(2) INT'L & COMP L. Q. 348, 351 (1984).

<sup>47</sup> *History of the UNHCR*, *supra* note 46.

<sup>48</sup> U.N. Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons Convened, *Convention Relating to the Status of Refugees*, 189 U.N.T.S 137 (April 22, 1954) [hereinafter Refugee Convention].

<sup>49</sup> G.A. Res. 2198 (XXI), Protocol Relating to the Status of Refugees (Jan. 31, 1967).

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international legal framework governing forced displacement has changed very little, and this existing international legal regime is inadequate as mass displacement of a recurring nature continually takes place.

### *i. The Refugee Convention and Protocol*

The Refugee Convention came to force on July 28, 1951, and was the first document to specify the rights afforded to refugees and the corresponding duties of High Contracting Parties.<sup>50</sup> It was created in response to the massive increase of European refugees following the World War II, and aimed to make “a comprehensive codification of rights afforded to refugees at an international level.”<sup>51</sup> Specifically, the International Refugee Organization (IRO), a resettlement agency created by the United Nations in 1946, raised the need for the creation of this legal document.<sup>52</sup> The IRO believed that the surge of forced displacement following the Second World War showed that more legal guidance was necessary to inform future international refugee efforts, and so the IRO requested the creation of a comprehensive study of the history of refugee policy.<sup>53</sup> This study was called the ‘Study of Statelessness,’ and resulted in the IRO’s recommendation of “the creation of a new independent agency dedicated to protecting stateless persons when national agencies could not.”<sup>54</sup> This recommendation began the negotiations of the Refugee Convention, a “universal document” that would outline the “rights of refugees and the responsibilities of high contracting [states] to support [those] rights.”<sup>55</sup>

The Refugee Convention established the still internationally recognized definition of a “refugee.” Article 1(A)(2) of the Refugee Convention states that a refugee is a person “owing to 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 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 its.”<sup>56</sup>

As previously stated, it is clear the Refugee Convention’s definition of a refugee does not encompass the scope of all forcibly displaced persons and fails to cover the increasing number of persons who are in refugee-like situations. For example, the Refugee Convention does not provide for forced displacement

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<sup>50</sup> Refugee Convention, *supra* note 48.

<sup>51</sup> U.N. Conference of Plenipotentiaries, *Convention Relating to the Status of Refugees*, 189 U.N.T.S. 150 (July 7, 1951); Brakel, *supra* note 43, at 53.

<sup>52</sup> Brakel, *supra* note 43, at 56.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 56-57.

<sup>55</sup> *Id.* at 57.

<sup>56</sup> Refugee Convention, *supra* note 48, at art. 1A(2).

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causes such as “armed conflict, persecution, severe economic insecurity, environmental degradation, or other grave failures of governance.”<sup>57</sup>

Further, the Refugee Convention created a cornerstone protection by establishing the principle of “non-refoulement” within Article 33.<sup>58</sup> This principle protects asylum seekers or refugees from being returned to a country “where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>59</sup> This right affords asylum seekers or refugees to have no fear of being returned to their home country once they are admitted to a State. The only exceptions to the non-refoulement principle are if a person is deemed to be a danger to the security of the country, or if the person has been convicted of a serious crime and is considered a danger to the community in which they reside.<sup>60</sup>

Additionally, Article 35 of the Refugee Convention calls upon States to undertake to cooperate with the UNHCR in the exercise of its functions.<sup>61</sup> However, what this cooperation should consist of is not addressed, described, or defined anywhere in the Refugee Convention. Thus, the drafters left it to the Contracting States to decide which refugees and the amount of refugees they would allow to resettle in their countries. This lack of any specific obligation or duty upon Contracting States has led to inconsistent national refugee laws and policies globally, and as a result, has created an unequal burden sharing system. Thus, while the world’s displaced population has been provided recognized legal rights within the Refugee Convention, the actual application of these protections has been of poor quality.

The Refugee Convention was promulgated in the wake of World War II and had both “temporal and geographical restrictions.”<sup>62</sup> Under the temporal restriction, individuals in refugee-like circumstances could only be granted refugee status if their situations were a “result of events occurring before 1 January 1951” and under the geographical restriction, only if such events occurred “in Europe or elsewhere.”<sup>63</sup> However, as world and the events causing refugee-like situations changed after World War II, the Convention’s definition of a refugee needed to evolve.<sup>64</sup> Thus, the Optional Protocol to the Refugee Convention was promulgated in 1967 and as a result, all individuals in refugee-like circumstances “were granted equal status” under the Convention’s definition of a refugee, where no weight was given to temporal or geographic considerations.<sup>65</sup> In other words, the two restrictions that acted as gatekeepers were effectively removed by the addition of the Optional Protocol.

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<sup>57</sup> Helton, *supra* note 39, at 521.

<sup>58</sup> Refugee Convention, *supra* note 48, at art. 33.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Refugee Convention, *supra* note 48, at art. 35.

<sup>62</sup> Brakel, *supra* note 43, at 57.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

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The Refugee Convention and the Optional Protocol remain the sole international legal framework governing the protection and assistance of forcibly displaced persons. However, this ‘comprehensive’ document fails to address the concerns of many forcibly displaced persons. The Refugee Convention does not require Contracting States to grant asylum, nor does it specify how states are to share the burden of refugee resettlement. As Guy Goodwin-Gill, a renowned international legal scholar, noted,

“The 1951 Convention does not deal with the questions of admission, and neither does it oblige a State of refuge to accord asylum as such, or provide for the sharing of responsibilities...the Convention does not address questions of causes of flight, or make provisions for prevention; its scope does not include internally displaced persons, and it is not concerned with the better management of international migration.”<sup>66</sup>

### ii. *Substantive International Human Rights Law and Criminal Law*

Notwithstanding the Refugee Convention and its Protocol, international rules regulating the forcibly displaced can be found in international human rights law and criminal law, such as the Universal Declaration of Human Rights (UDHR)<sup>67</sup>, the 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV)<sup>68</sup>, the 1977 Additional Protocol II to the Geneva Conventions (Additional Protocol II)<sup>69</sup>, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture).<sup>70</sup>

The Universal Declaration of Human Rights (UDHR) was drafted by representatives of 8 nations and was adopted by the UN General Assembly in 1948.<sup>71</sup> The document highlights and represents the basic, fundamental human rights that should be afforded to individuals globally.<sup>72</sup> Specifically, Article 14 of the UDHR provides that, “everyone has the right to seek and enjoy in other countries asylum from persecution.”<sup>73</sup> However, alternative language guaranteeing

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<sup>66</sup> Guy S. Goodwin-Gill, ‘*The International Law of Refugee Protection*’, in *THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES* 36, 45 (Elena Fiddian-Oasmiyeh et al. eds., 2014).

<sup>67</sup> UDHR, *supra* note 42.

<sup>68</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *opened for signature* Aug. 12, 1949, 75 U.N.T.S. 287 (entered into force Oct. 21, 1950).

<sup>69</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, *opened for signature* June 8, 1977, 1125 U.N.T.S. 609 (entered into force Dec. 7, 1978).

<sup>70</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987).

<sup>71</sup> *Universal Declaration of Human Rights (1948), Drafting History*, United Nations Dag Hammarskjöld Library, <https://research.un.org/en/undhr/draftingcommittee#:~:text=In%20February%201947%2C%20in%20accordance,International%20Bill%20of%20Human%20Rights> (last visited Nov. 17, 2023); UDHR, *supra* note 42.

<sup>72</sup> *Universal Declaration of Human Rights*, United Nations, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Nov. 17, 2023).

<sup>73</sup> *What is a refugee?*, *supra* note 37; UDHR, *supra* note 42, at art. 14(1).

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this right to be granted asylum was rejected by many participating States because they viewed such a guarantee as an infringement upon sovereignty.<sup>74</sup> Thus, while the UDHR provides basic rights to individuals, States are given significant discretion when interpreting and defining their responsibility toward refugees and asylum seekers.

The Geneva Convention IV and the Additional Protocol II prohibit the act of forcibly displacing civilians during armed conflict.<sup>75</sup> Specifically, the Geneva Convention IV prohibits the “deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupation or not...regardless of their motive.”<sup>76</sup> The Additional Protocol II prohibits parties to a conflict from ordering the displacement of civilians or compelling civilians to leave their territory.<sup>77</sup>

The Convention Against Torture provides a specific protection from refoulement, which complements the similar rule of “non-refoulement” that exists in the Refugee Convention.<sup>78</sup> Specifically, the Convention Against Torture provides that States shall not “expel, return (refoule) or extradite” a person to another state where the person may be subject to torture.<sup>79</sup> Refugee scholars have highlighted this rule as providing one of the strongest legal bases for complementary protection to forcibly displaced persons.<sup>80</sup>

### B. Issues and Challenges In International Law On Forcibly Displaced Persons

#### *i. Policy and Principles*

One of the biggest challenges between forced displacement and international law is territorial sovereignty. As previously stated, when the UDHR first recognized the fundamental right to seek asylum, many participating States rejected additional language guaranteeing this right because they viewed this type of guarantee as an infringement upon sovereignty.<sup>81</sup> Territorial sovereignty is a cornerstone principle of international legal order.<sup>82</sup> It secures to States the sovereign power to govern affairs that take place within their territory and entitles them to seek cooperation with other States in respect of matters that transcend national

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<sup>74</sup> Woldemariam, *supra* note 71, at 259.

<sup>75</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 49, 147, Aug. 12, 1949; Protocols Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, art. 17, Dec. 7, 1978.

<sup>76</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War, *supra* note 75.

<sup>77</sup> Protocols Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, *supra* note 75.

<sup>78</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46 (Dec. 10, 1984), 1465 U.N.T.S. 85; *see also* Refugee Convention, art. 33, *supra* note 35, at 9.

<sup>79</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *supra* note 78.

<sup>80</sup> Woldemariam, *supra* note 71, at 257.

<sup>81</sup> *Id.* at 258.

<sup>82</sup> *Id.*

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boundaries.<sup>83</sup> Forced human displacement involves the compelled movement of people to cross national boundaries due to circumstances that threaten their lives and safety.<sup>84</sup> This transboundary movement puts people in a position to pursue the right to seek asylum, with a State that, by virtue of its territorial sovereignty, has no obligation to grant asylum.<sup>85</sup> Thus, when considering traditional territorial sovereignty, the right of asylum does not belong to the forcibly displaced person, but rather the State.

### ii. Law

Additionally, the fact that there is no single body of a comprehensive international legal framework that governs forced displacement makes regulating such movement, and enforcing displaced persons afforded rights, difficult. The current legal framework addressing the forcibly displaced is found scattered across various instruments of international law, which were previously discussed. Further, the current legal framework is reactive in nature, rather than preventative. It only comes into play after displacement has occurred, and its rules are only triggered after forcibly displaced persons have crossed national boundaries.

As previously stated, a refugee is defined as someone who leaves or is unable to return to his or her country of nationality as a result of a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”<sup>86</sup> However, this definition is limited and does not afford individuals in refugee-like situations the same opportunities and rights as individuals who fit within this dated and limited definition. For example, individuals who are forced to leave their homes due to environmental disasters, armed conflict, or severe economic insecurity do not fit the current definition of a refugee and therefore are not afforded that status while trying to seek a home elsewhere and subsequently face multiple challenges.<sup>87</sup> In other words, the traditional definition of ‘refugee’ that is provided in the Refugee Convention is too narrow and fails to cover the larger number of persons who find themselves in refugee-like situations, most notably those individuals that are referred to as forced migrants.

### C. The Focus on Immediate Causes of Forced Displacement Rather than the Root Causes

There are several underlying factors that continue to cause forced migration, such as recurring conflicts, political and economic instability, persecution, and

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 259.

<sup>85</sup> *Id.*

<sup>86</sup> Convention Relating to the Status of Refugees, *supra* note 35.

<sup>87</sup> Arthur C. Helton, *Forced International Migration: A Need for New Approaches by the International Community*, 18 *FORDHAM INT’L L.J.* 1623 (1995).

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natural disasters.<sup>88</sup> International law and policy focuses predominantly on the immediate causes of and responses to forced migration, while there remains little, if any, international law or policy addressing the underlying factors that result in the causes of this international humanitarian issue.<sup>89</sup> That is, international law and policy addressing forced migration tends to be reactive rather than proactive.

The reactive international legal framework on forced migration often does not result in the forcibly displaced resettling in a foreign country, but rather results in being held for offshore processing and detention.<sup>90</sup> The focus on immediate causes has allowed increased securitization and border protection that attempts to stop refugees from ever reaching a place of asylum to resettle in.<sup>91</sup> This deterrence-focused program to forced migration has been enabled by the fragmented and unresponsive nature of the current international legal framework, which could be prevented by a comprehensive framework that does not put sovereignty on a pedestal.<sup>92</sup>

### D. Overview Of The United States' Process Of Accepting Forcibly Displaced Persons

In 1968, the United States joined the international refugee regime by ratifying the Protocol to the Refugee Convention.<sup>93</sup> The Immigration and Nationality Act (INA) authorized and governed refugee admissions and resettlement, which was later amended by the Refugee Act of 1980 (Act).<sup>94</sup> The Act aimed to create a more uniform procedure for refugee admissions, and to promote refugee self-sufficiency through federal assistance for refugees.<sup>95</sup>

Under the INA, a “refugee” is described as a person who is outside his or her country and who is unable or unwilling to return because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>96</sup> The INA’s definition of a refugee is modeled after the definition provided in the Refugee Convention. All refugees that are resettled in the United States had first contact with the UNHCR.<sup>97</sup> The UNHCR processes and assesses each individual refugee claim,

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<sup>88</sup> Woldermariam, *supra* note 71, at 255.

<sup>89</sup> *Id.* at 255.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 259.

<sup>93</sup> Joan Fitzpatrick, *The International Dimension of U.S. Refugee Law*, 15 BERKELEY J. OF INT’L L. 1, 1 (1997).

<sup>94</sup> Immigration and Nationality Act of 1952, 8 U.S.C §1101; Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102.

<sup>95</sup> Anastasia Brown & Todd Scribner, *Unfulfilled Promises, Future Possibilities: The Refugee Resettlement System in the United States*, 2 J. MIGRATION HUM. SEC. 101, 102 (2014).

<sup>96</sup> 8 U.S.C. § 1101(42).

<sup>97</sup> Brakel, *supra* note 43, at 72.

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and based on such assessment, the UNHCR will refer the individual cases to the United States for resettlement.<sup>98</sup>

Under the INA, the President of the United States, has the power to determine the number of refugees to be admitted to the country each fiscal year.<sup>99</sup> This determination, which is made after consulting with Congress, is based on the consideration of humanitarian concerns as well as various national security concerns.<sup>100</sup> Further, the President also has the power to expand admission when an emergency refugee situation arises that was not foreseen at the time the determination for the number of admittees was made.<sup>101</sup> In contrast to the expansion power, the President has the power to suspend or place restrictions on entry of immigrants into the country, if failing to do so would be adverse to national interests.<sup>102</sup>

In the aftermath of September 11th, 2001, the United States' refugee framework was overhauled to ensure national security, even though none of the attackers had entered the country under the status of a refugee.<sup>103</sup> Specifically, refugee admissions were completely suspended until a review of refugee related security procedures had taken place, and until the implementation of enhanced security measures were completed.<sup>104</sup> As a result, refugee admissions into the United States fell from 70,000 in 2001 to 27,1331 in 2002.<sup>105</sup> The number of admissions didn't return to near 70,000 until 2013.<sup>106</sup>

In 2015, the Syrian Refugee crisis began, and "under significant pressure from the international community...President Barack Obama vowed to take in at least 10,000 Syrian refugees over the next year."<sup>107</sup> In Presidential Declarations, President Obama increased the refugee ceiling in 2016 to 85,000 and to 110,000 in 2017.<sup>108</sup> However, when President Trump took office in January 2017, he issued a Presidential Order calling for a 90-day travel ban for persons coming from Iraq, Syria, Iran, Somalia, Sudan, Yemen, and Libya.<sup>109</sup> In addition to the travel ban, a 120-day suspension was put on all acceptances of refugees, regardless of national origin.<sup>110</sup> Further, the ceiling number of refugee acceptances for 2017 was reduced from 110,000 to 50,000.<sup>111</sup> The travel ban was issued in the wake

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<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*; 8 U.S.C. § 1157(a)(3).

<sup>101</sup> *Id.*; 8 U.S.C. § 1157(b).

<sup>102</sup> 8 U.S.C. § 1182(f).

<sup>103</sup> Michelle Mittelstadt et al., *Through the Prism of National Security: Major Immigration Policy and Program Change in the Decade Since 9/11*, MIGRATION POL'Y INST. Aug. 2011, at 1,17.

<sup>104</sup> Andorra Bruno, *Refugee Admissions and Resettlement Policy 2*, LIBR. CONGRESS CONG. RSCH. SERV. December 18, 2018.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Brakel et al., *supra* note 43, at 73.

<sup>108</sup> *Id.* at 73-74.

<sup>109</sup> *Id.* at 74.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*



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of violent attacks carried out by members of the Islamic State in Paris and Brussels.<sup>112</sup> Despite the travel ban focusing on Islamic countries, President Trump assured the public that the ban was not a Muslim ban, but, rather, was intended to keep terrorists out of the United States.<sup>113</sup>

The United States has reacted differently when it comes to emergencies occurring in the Global West. As previously stated, Putin's Russian troops invaded the country of Ukraine on February 24, 2022.<sup>114</sup> Following the invasion, Ukraine filed allegations of violations of the 1948 Convention on the Prevention of Punishment of the Crime of Genocide (Genocide Convention) against Russia in the International Court of Justice (ICJ).<sup>115</sup> The ICJ found that "it is doubtful that the Genocide Convention, in light of its object and purpose, authorizes a Contracting Party's unilateral use of force in the territory of another State..."<sup>116</sup> The ICJ further noted that Ukraine's civilian population was "extremely vulnerable" and that many civilian deaths and injuries had taken place because of the conflict.<sup>117</sup> Following the ICJ's holding, the United States State Department called the ICJ's ruling "significant," and called on Russia "to comply with the order, immediately cease its military operations in Ukraine, and establish unhindered humanitarian access in Ukraine."<sup>118</sup>

Further, a prosecutor of the International Criminal Court (ICC) opened an investigation into events involving the conflict in Ukraine.<sup>119</sup> However, the ICC investigation poses challenges to United States policy, because the country has long objected to the ICC exercising jurisdiction over the nationals of states that are not party to the Rome Statute.<sup>120</sup> During the Trump administration, sanctions were imposed on the ICC to prevent an ICC investigation into the conduct of United States personnel in Afghanistan.<sup>121</sup> These sanctions were only lifted last year by the Biden administration.<sup>122</sup> Contrary to past policy practices, the United States Senate adopted a resolution with bipartisan support on March 15, 2022, which encouraged States to petition the ICC to investigate war crimes committed

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<sup>112</sup> *Id.* at 52.

<sup>113</sup> *Id.* at 51.

<sup>114</sup> Aleksander Vasovic & Natalia Zinets, *Missiles Rain Down Around Ukraine*, REUTERS, <https://www.reuters.com/world/europe/putin-orders-military-operations-ukraine-demands-kyiv-forces-surrender-2022-02-24/> (last visited Nov. 18, 2023).

<sup>115</sup> *International Institutions Mobilize to Impose Accountability on Russia and Individual Perpetrators of War Crimes and Other Abuses*, 116 AM. J. INT'L L. 631, 632 (2022) [hereinafter *International Mobilization*].

<sup>116</sup> *Allegations of Genocide Under the Convention on the Prevention of Punishment of the Crime of Genocide (Ukr. v. Russ.)*, Provisional Measures, 2022 I.C.J. ¶ 59 (Mar.16).

<sup>117</sup> *Id.* at ¶ 75.

<sup>118</sup> Press Release, U.S. Dep't of State, *Welcoming the International Court of Justice's Order Directing the Russian Federation to Immediately Suspend Military Operations in Ukraine* (Mar.16, 2022), <https://www.state.gov/welcoming-the-international-court-of-justices-order-directing-the-russian-federation-to-immediately-suspend-military-operations-in-ukraine/>.

<sup>119</sup> *International Mobilization*, *supra* note 115, at 631-32.

<sup>120</sup> Kristen E. Eichensehr, *Contemporary Practice of the United States*, 115 AM. J. INT'L L. 138, 729 (2021).

<sup>121</sup> *International Mobilization*, *supra* note 115, at 636.

<sup>122</sup> *Id.*

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by Russian troops.<sup>123</sup> Further, Antony Blinken, the United States Secretary of State, announced on March 23, 2022, that:

“Based on information currently available, the U.S. government assesses that members of Russia’s forces have committed war crimes in Ukraine...a court of law with jurisdiction over the crime is ultimately responsible for determining criminal guilt...U.S. government will continue to track reports of war crimes and will share information...with allies...We are committed to pursuing accountability using every tool available, including criminal prosecutions.”<sup>124</sup>

The history of United States’ refugee policy since the aftermath of the September 11th terrorist attacks prioritizes national security, border protection, and principles of sovereignty, rather than prioritizing the safety of these forcibly displaced persons fleeing their homes. Indeed, the only reason that the Obama administration raised the ceiling number of refugee acceptances was because of the increased pressure that was placed on the United States by the international community, who was taking on an unequal share of their burden. Further, as evidenced by the Trump administration’s travel ban and suspension of refugee acceptances in 2017, considerations of race and national origin come into play when making international policy decisions.

### IV. Analysis

In analyzing the United States’ response to refugee situations, it is clear there has been a different response when it comes to situations occurring in the Global North and the Global South. When it comes to refugees fleeing situations in the Global South, the United States response is underwhelming. Such a response is credited to high prioritization of national security concerns in the wake of 9/11, the fact that the United States is not a country of first asylum, and the principle of sovereignty. On the other hand, the United States has had different responses when it comes to persons facing refugee-like situations in areas of the Global North, such as the current case of Ukraine. The contrasting response to the Global North could be because of the fact the United States doesn’t attach national security concerns with the Global North in the way it does with the Global South.

As previously mentioned, the Refugee Convention provides individual refugees with the right to seek asylum in another country but the principle of state sovereignty places limits on States’ obligations to fulfill those rights because nowhere in the Refugee Convention are States’ obligations clearly defined.<sup>125</sup> Thus, the respect for state sovereignty places limits on the amount of burden sharing States are required to provide. For example, Article 35 of the Refugee Convention calls upon States to cooperate with the United Nations High Commissioner for Refugees (UNHCR) in the exercise of its functions and implementation of the Refugee Conventions.<sup>126</sup> However, the protection and consideration

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<sup>123</sup> S. Res. 546, 117th Cong. (2022).

<sup>124</sup> Press Release, U.S. Dep’t of State Press Release, War Crimes by Russia’s Forces in Ukraine (Mar. 23, 2022), <https://www.state.gov/war-crimes-by-russias-forces-in-ukraine/>.

<sup>125</sup> Woldemariam, *supra* note 71, at 259.

<sup>126</sup> Refugee Convention, *supra* note 48, at Art. 35.

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given to state sovereignty when failing to define States' obligations in the Refugee Convention has created an inconsistent patchwork of national refugee laws and policies across the world that has led to inequitable burden sharing distribution among States and in turn has led to poor protections and rights guarantees to the forcibly displaced.<sup>127</sup> For example, the lack of specifically defined obligations and responsibilities within the Refugee Convention has led to the United States creating its own distinct immigration and refugee law that allows it to have different responses to the refugee crisis in the Global North and Global South.<sup>128</sup> Because it is not required to meet a specific burden sharing quota, the United States can enact travel bans and annual refugee ceiling limits which leave countries of first asylum with a vast surplus of their fair share of the burden.

The unequal burden sharing system results in countries of first asylum being overrun by a new population they cannot fully support, financially and humanitarily.<sup>129</sup> Often in this situation, the countries of first asylum are forced to set up refugee camps between their border and the refugee's country, thus creating a middle ground where refugees can find themselves stuck for indefinite periods of time while they await resettlement plans.<sup>130</sup> These refugee camps have less than favorable conditions and are often overcrowded, lack running water, electricity and other living necessities.<sup>131</sup> Such conditions create drastic health concerns and safety concerns, leaving the refugees trapped in an environment that is arguably no better than their homeland they previously escaped.<sup>132</sup> As scholars have noted, the "protection of state sovereignty has created an inconsistent patchwork of national refugee laws and policies across the [world that] has led to an inequitable distribution of the burden" among states and in turn, poor protection and guarantees to the forcibly displaced.<sup>133</sup>

The existing international refugee regime firmly establishes the principle of non-refoulement, but it fails to place specific obligations upon states governing the grant of asylum or sharing the burden of refugee resettlement.<sup>134</sup> As a result, individual States are left free to pursue their own short term national interests rather than equitable international humanitarian goals.

### V. Proposal

Currently, the traditional categories of a refugee are too narrow and fail to encompass a large number of persons in refugee-like situations. To achieve a more equitable and remedial refugee legal regime, there are several key factors that need to be scrutinized and amended. First, the definition of a refugee needs

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<sup>127</sup> Woldemariam, *supra* note 3, at 259.

<sup>128</sup> Helton, *supra* note 90, at 143.

<sup>129</sup> Brakel, *supra* note 43, at 76.

<sup>130</sup> *Id.* at 66.

<sup>131</sup> *Id.* at 77.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* at 59.

<sup>134</sup> Refugee Convention, *supra* note 48, at Art. 33.

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to be re-defined. Second, an additional Protocol needs to be made where the obligation and expectation of each country is clearly defined in order to create a more equitable burden sharing system. Lastly, there must be consequences or sanctions that countries must face when they fail to reasonably meet their obligations or refuse to meet their obligations through tools such as travel bans.

The Refugee Convention is limited in that its definition of a refugee only includes those individuals who are unable to remain in or return to their native country due to the fear of being persecuted based on their race, religion, nationality or political beliefs.<sup>135</sup> This definition clearly leaves out a large number of the population of persons who find themselves leaving their native country with little to no option. This population most notably includes the population of forcibly displaced persons who have been induced to leave their home due to armed conflict. While such individuals may not be in fear of danger due to their race, religious beliefs or nationality, they are in fact leaving their native homes not because they desire to, but because they believe they have no other choice if they want to survive. This specific population of individuals indeed deserves to be included in the definition of a refugee and shows that the scope of forced displacement calls for the need to formulate new international refugee policy. Generally, the definition of a refugee within the international legal regime needs to be expanded to any individual who feels they have no choice other than the one to flee their home and seek sanctuary in another country in order to survive, whether the threat in their home be based on reasons of armed conflict, fear of persecution, environmental reasons, or severe economic degradation.

Not only does the definition of a refugee need to be expanded, but the expectations and obligations of the countries that are party to the Refugee Convention need to be clearly and explicitly defined. This amendment would require States to let go of territorial sovereignty in order to equitably and holistically serve international order. If States are not required to meet certain numerical quotas annually, then countries of first asylum will continue to share more of the burden, and refugees will find themselves in countries that do not have the capacity to support them or, even worse, stuck in a refugee camp.

Thus, as a proposed solution, each country that is party to the Refugee Convention shall be required to fulfill a numerical quota annually based on the size of their country, the country's GDP, and the country's past burden sharing practices. In analyzing each country's past burden sharing practices, the number of refugees that have been welcomed into each country will be critical. For example, a country that has utilized immigration controls and travel bans, such as the United States, will have to share a larger portion of the burden and accept a larger number of refugees when the new policies are set in place, while a country of first asylum, such as Greece, will have a lower numerical quota in order to meet their obligation due to having a larger share of the burden in the past. The effort of this policy is to equalize the past inequitable burden sharing system in order for each country to feel that their past efforts have been recognized and to feel legitimized in the procedures going forward.

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<sup>135</sup> Refugee Convention, *supra* note 48, at Art 1.

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Additionally, in order to ensure that individuals who are being forced to flee their home are re-settled accordingly based on resources available internationally, there must be a system in place at the beginning of each fiscal year that assesses the burden that each country can carry economically, which will ensure the humanitarian assistance and aid that should be afforded to refugees, and the situation each refugee is in and the urgency of their situation. In assessing each refugee's situation, the country that the individual is fleeing from should not be a critical factor, but rather the critical factor assessed should be based on the degree of danger that is posed to their survival. In keeping the refugees' home country anonymous throughout the resettlement process, the chances of racial bias affecting their resettlement would be decreased and make the resettlement process more equitable for each refugee. For example, anonymity would protect refugees coming from the Global South while national security is a top priority in many countries across the world and would prevent countries that foster sovereignty and national security for utilizing immigration tools, racial travel bans, and refugee acceptance ceilings based on a specific country.

Furthermore, in order to deter country's from failing to meet their obligations through the utilization of immigration controls, travel bans, and their own refugee acceptance ceilings, a system of consequences should be set in place. Without such a system of consequences, countries will have no incentive to fulfill their obligations to the international refugee burden sharing system, which would lead the international order back to an inequitable burden sharing system. In the case that a country refused to meet its obligation, the country would be required to pay a fine that would go towards a country that would then be forced to take on the unmet obligation of the neglecting country. Such a consequential system not only creates an incentive to meet burden obligations, but also creates a sense of credibility between the countries involved.

### **VI. Conclusion**

While the definition of refugee should be greatly expanded to encompass individuals that are forced to flee their homes in refugee-like situations, the burden sharing system and the resettlement process also needs to be reformed. The current burden sharing system is inequitable and leaves countries of first asylum being overwhelmed with the influx of new populations, a clearly and specifically defined obligation of each country party to the Refugee Convention along with a consequential system could greatly improve the burden sharing system and create a better outcome for resettled refugees in that they would find themselves resettled in a country that could actually support them economically and humanitarily. Additionally, the resettlement process should be amended to afford anonymity for background information and provide more credence to the actual situation the refugee is in. Such a process would decrease the threat of racial bias during the resettlement process and the period of time spent resettling the individual. The following amendments would improve the obstacles that are currently faced in the dated international refugee legal regime.