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A DOUBLE STANDARD IN REFUGEE RESPONSE: CONTRASTING THE TREATMENT OF SYRIAN REFUGEES WITH UKRAINIAN REFUGEES

*by Deanna Alsbeti**

I. Introduction

The unrelenting proliferation of international crises marks the twenty-first century with mass global displacement. In 2011, the world witnessed the Arab Spring, a series of anti-government protests that led to the Syrian Civil War and injected more than 13.5 million displaced Syrians into the global system.¹ Today, twelve years later, the international system still struggles to accommodate and protect Syrians who cannot return to their homeland. In addition to the dire Syrian refugee crisis, and other refugee crises throughout the globe, the recent Russian invasion of Ukraine added approximately 7.5 million Ukrainian refugees to the world's already stressed humanitarian system.²

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1 Mark Tessler, *The Arab Spring and the Syrian Civil War: The Implications of the Arab Spring for Syria and the Broader Middle East*, 41 J. PALESTINE STUD. 21 (2012); *Refugee Statistics*, USA FOR UNHCR, <https://www.unrefugees.org/refugee-facts/statistics/>.

2 *Ukraine Refugee Situation*, UNHCR DATA (Oct. 26, 2022), <https://data.unhcr.org/en/situations/ukraine>.

This rise of displaced persons necessitates an adherence to international law, specifically Article 14 of the 1948 Declaration of Human Rights (the 1948 Declaration) and the 1951 Convention Relating to the Statute of Refugees (the 1951 Convention), to ensure a just, equitable, and uniform standard for all persons seeking asylum from oppression, war, and violence.³ Additionally, Article 18 of the European Union (EU) Charter of Fundamental Rights guarantees the right to asylum, which means that individuals who are fleeing persecution or other forms of serious harm in their home countries have the right to seek refuge and protection in another country.⁴ This right is enshrined in international law, including the Geneva Convention on the Status of Refugees and the EU Qualification Directive.⁵ Further, Article 18⁶ of the EU Charter reaffirms the EU's commitment to protecting and assisting refugees, by guaranteeing the right to asylum with due respect for the rules of the 1951 Convention⁷ and the 1967 Protocol Related to the Status of refugees (1967 Protocol).⁸ After the Ukrainian exodus, the EU adhered to this international law to protect millions fleeing Ukrainian refugees, however, this same legal protection was not provided to Syrian refugees. The EU's solidarity with displaced Ukrainians illustrates the deeply politicized, and often discriminatory, nature of providing refugee protection compared to Syrian refugees, which violates the 1951 Convention and the subsequent 1967 Protocol that broadened it.⁹

II. Background

In March 2011, the Syrian government violently extinguished public demonstrations that arose after a group of teenagers were arrested for spraying graffiti that reflected the Arab Spring's anti-government

3 *Universal Declaration of Human Rights*, GA Res 217A (III), UN-GAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71; *Convention Relating to the Status of Refugees*, 189 U.N.T.S. 137 (July 28, 1951) [hereinafter 1951 Convention].

4 Art. 18. Right to Asylum, European Union Charter of Fundamental Rights, 2000 O.J. (C 364) 1.

5 *Id.*

6 Charter of Fundamental Rights of the European Union art. 18, 2012 O.J. (C 326) 391.

7 1951 Convention, *supra* note 3.

8 Convention Relating to the Status of Refugees, Protocol, Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter 1967 Protocol].

9 *See id.*; 1951 Convention *supra* note 3.

sentiments.¹⁰ This triggered a nationwide outburst of demonstrations in Syria, causing government security forces to aggressively and violently suppress them.¹¹ The outburst quickly escalated the Syrian Civil War and the ensuing refugee crisis forced millions of Syrian families out of their homes.¹² Now, Syrian asylum seekers reside in more than 130 countries, with seventy percent of Syrian refugees living in poverty, unable to access education, job opportunities, and basic services to improve their situations.¹³

Comparably, in February 2022, Russia launched a military offensive against Ukraine, destroying public infrastructure; cutting access to adequate water, heat, and electricity, which mass displaced Ukrainian refugees into Europe.¹⁴ Over seven million people in Ukraine require humanitarian aid, and nearly two million people have been forced to flee their homes due to the conflict.¹⁵ Ukrainian refugees face similar challenges to their Syrian counterparts, with limited access to education and job opportunities, as well as language barriers and discrimination.¹⁶ However, unlike Syrian refugees, Ukrainian refugees have received more favorable treatment from European nations, in part due to their geographic proximity and cultural similarities. Despite these differences, both refugee groups face uncertain futures as they continue to seek safety and stability in new countries.¹⁷

In attempt to follow these legal obligations for the millions of Ukrainians fleeing the Russian invasion, the European bloc activated the 2001 Temporary Protection Directive (TPD) three days after the invasion began, granting residence, healthcare, and the right to work or study to Ukrainian refugees and their families

10 *Syria Refugee Crisis Explained*, UN REFUGEE (July 8, 2022), <https://www.unrefugees.org/news/syria-refugee-crisis-explained/>.

11 *Id.*

12 *Id.*

13 *Id.*

14 *The Ukraine-Russia Crisis: What is Happening?*, INT'L RESCUE COMM. (Sept. 21, 2022), <https://www.rescue.org/article/ukraine-russia-crisis-what-happening>.

15 *Ukraine*, UNHCR, <https://data.unhcr.org/en/situations/ukraine> (last visited Mar. 24, 2023).

16 Omer Karasapan, *Ukrainian Refugees: Challenges in a Welcoming Europe*, BROOKINGS (Oct. 14, 2022), <https://www.brookings.edu/blog/future-development/2022/10/14/ukrainian-refugees-challenges-in-a-welcoming-europe/>.

17 *Id.*

fleeing the country for up to three years.¹⁸ This was the first time the Council of Ministers for Justice and Home Affairs triggered the TPD since it was initially adopted after the Yugoslav Wars.¹⁹ However, Syrian refugees never benefited from such a law in the eleven years of the crisis.²⁰ European nations justified this lack of action, claiming that implementing TPD would create a “pull factor” for refugees seeking entry to the EU.²¹ In 2015, Elisabetta Gardini, a European Parliament member, posited to the Commission whether the Syrian refugee crisis met the legal conditions necessary to establish TPD, but this inquiry was rejected.²² The selective implementation of TPD highlights the special standard applied to Ukrainians and the subsequent legal neglect of Syrians.

The inequitable treatment of Syrian and Ukrainian refugees stems from the different diplomatic relations between the EU and countries that these refugees are coming from as well as an internalized othering of people from the Middle East.²³ Discrimination and prejudice, such as Islamophobia, influences the differential treatment of Syrian refugees compared to Ukrainian refugees in the EU.²⁴ Ukrainian refugees hold similar racial, religious, and cultural traits with

18 22 O.J. (L 71) 11, 21; Temporary Protection, EUROPEAN COMM'N MIGRATION & HOME AFFS., https://home-affairs.ec.europa.eu/policies/migration-and-asylum/common-european-asylum-system/temporary-protection_en (last visited May 15, 2023) [hereinafter Temporary Protection Guidance].

19 Temporary Protection Guidance, *supra* note 18.

20 Zachary Laub, *Syria's War and the Descent into Horror*, COUNCIL ON FOREIGN RELS. (Jan. 31, 2022), <https://www.cfr.org/article/syrias-civil-war>.

21 Meltem Ineli Ciger, *Has the Temporary Protection Directive Become Obsolete? An Examination of the Directive and Its Lack of Implementation in View of the Recent Asylum Crisis in the Mediterranean*, in SEEKING ASYLUM IN THE EUROPEAN UNION: SELECTED PROTECTION ISSUES RAISED BY THE SECOND PHASE OF THE COMMON EUROPEAN ASYLUM SYSTEM 225, 233(2015) (“Pull factors can be defined as factors that attract migrants . . . to a certain host country”).

22 Gupta, Mihika, *Trapped and Deterred: The European Response to Asylum Seekers*, YALEGLOBAL ONLINE (Apr. 7 2016), www.yaleglobal.yale.edu/content/trapped-and-deterred-european-response-asylum-seekers.

23 Addie Esposito, *The Limitations of Humanity: Differential Refugee Treatment in the EU*, 39 HARV. INT'L REV. (Sept. 14, 2022, 9:00 AM), <https://hir.harvard.edu/the-limitations-of-humanity-differential-refugee-treatment-in-the-eu/>.

24 *Id.*

European host nations, while Syrians represent a prejudiced threat to power dynamics and socio-political nativism.²⁵ Although the EU is obligated to provide protection and assistance to refugees, and to respect the rights and dignity of all people, regardless of their origin, the reality often falls short of these obligations, with many Syrian refugees facing discrimination, exclusion, and other forms of marginalization.²⁶ Despite these factors, the EU and its Member States have a responsibility under international law to ensure that refugees are treated fairly and humanely, thus a privileged treatment towards Ukrainian refugees not only violates legal structures, but unjustly disadvantages Syrian refugees.

III. Legal Analysis

During international crises, there is an international legal obligation for states to shelter and assist those fleeing wars and oppression. The European Convention on Human Rights outlines several requirements that are pertinent to the treatment of refugees. Member States are bound to Article 14 of the 1948 Declaration, which grants any person the “right to seek and enjoy asylum from persecution.”²⁷ Member States are also bound by the 1954 Convention, which defines a refugee as “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.”²⁸ Article 3 of the 1967 Protocol specifically prohibits the discrimination of refugees based on race, religion, or country of origin.²⁹ There is also an obligation to uphold the principle of non-refoulement, which prevents states from expelling or returning any refugee to the borders where their freedoms and safety were

threatened.³⁰

Despite these requirements, European nations have failed to provide equal protection to refugees from different countries.³¹ Syrian refugees have experienced discrimination and a more restrictive approach than their Ukrainian counterparts.³² Polish authorities violated the 1948 Declaration by unjustly subjecting Middle Eastern refugees to discriminatory and inhumane treatment.³³ In *M.K. and Others v. Poland*,³⁴ immigrants from the Middle East were placed in a detention center that stripped their right to be free from ill-treatment and their right to respect for their private and family life.³⁵ The European Court of Human Rights later declared it illegal to return persons seeking asylum in Polish territory back to Belarus.³⁶ The Deputy Interior Minister of Poland, Mariusz Kaminski, later blocked the provision of aid and protection for refugees from Afghanistan due to the fear that hosting them would “play into the hands of Belarusian propaganda.”³⁷ The Polish failure to provide Afghan asylum seekers humanitarian assistance coupled with the border zone restrictions for organizations seeking to provide humanitarian and legal aid staunchly violates Article 2 and Article 3 of the Refugee Convention.³⁸ This blatant discrimination of refugees made up the official narrative of European states in response to the Syrian refugee crisis.

25 *Id.*

26 *Id.*

27 G.A. Res. 217A, Universal Declaration of Human Rights (Dec. 12, 1948).

28 Convention Relating to the Status of Refugees, Apr. 22, 1954, 189 U.N.T.S. 137 [hereinafter 1954 Convention]. Notably, the 1967 Protocol allows for the universal application of the Convention by removing the temporal and geographical restrictions. The 1967 Protocol notoriously broadened the 1951 Convention, which initially limited the Refugee Convention to apply solely to refugees of European crises prior to January 1, 1951.

29 1967 Protocol, *supra* note 8 at art. 3.

30 1951 Convention, *supra* note 3 at art. 33.1.

31 James C. Hathaway, *The Refugee Convention at Fifty: A View from Forced Migration Studies*, 29 REFUGEE SURVEY Q. 3, 12 (2010).

32 *See infra* Background.

33 Monika Plątek, *Violations of the European Convention on Human Rights with Regard to Treatment of Refugees in Poland*, 39 REFUGEE SURV. Q. 322 (2019).

34 *M.K. and Others v. Poland*, App. No. 40503/17, 42902/17, 43643/17 (July 23, 2020). <https://hudoc.echr.coe.int/fre?i=002-12916>.

35 *Id.*

36 *Id.*

37 Magdalena Gwozdz-Palokat, *Afghan Refugees Remain in Limbo at EU Border*, DEUTSCHE WELLE (Sept. 3, 2021), <https://www.dw.com/en/polands-state-of-emergency-worsens-afghan-refugees-eu-border-plight/a-59078380>.

38 *M.K. and Others*, App. No. 40503/17, 42902/17, 43643/1710, at 10.

Furthermore, in the case of *D.A. and Others v. Poland*,³⁹ Syrian nationals suffered pushback at the Polish-Belarusian border and were repeatedly denied their right to protection under Articles 3 and 4 of the 1951 Convention, relating to the Status of Refugees and its 1967 Protocol,⁴⁰ when Polish authorities unlawfully aimed to reduce the number of asylum applications registered in Poland.⁴¹ The Court held that Article 3 of the Convention was violated due to the illegally denied access to the asylum process and “exposed . . . risk of inhuman and degrading treatment and torture in Syria.”⁴² The mistreatment of Syrian nationals in this case highlights the serious consequences of the Polish government’s efforts to restrict the number of asylum applications, which disregards their obligations under international law.

Since 2011, EU nations have illegally tightened migration and asylum policies, denying Syrian refugees their right to asylum under Article 14.⁴³ Greece notoriously violated Article 18 of the EU Charter by its systematic expulsions and violence against Syrian asylum seekers at its borders.⁴⁴ Syrian refugees are routinely intercepted by Greek border guards who illegally employ excessive use of force in the detainment, stripping, and expulsion of migrants.⁴⁵ In March 2020, the Greek government decided to halt asylum applications for individuals who “irregularly” crossed their borders and

39 *D.A. and Others v. Poland*, App. No. 51246/17 (July 8, 2021), <https://hudoc.echr.coe.int/fre?i=001-210855>.

40 *D.A. and Others v. Poland*, App. No. 51246/17 at ¶ 109; 1951 Convention, *supra* note 3 at art. 3-4.

41 *D.A. and Others v. Poland*, App. No. 51246/17 at ¶ 109; *see also* James C. Hathaway, *supra* note 31 (discussing how some countries have engaged in pushback tactics and other measures to avoid their obligations under the Convention, despite the fact that such actions are prohibited under international law).

42 *D.A. and Others v. Poland*, App. No. 51246/17 at ¶ 109.

43 Christina B. Katsourides, *EU Migration Policies and the Syrian Refugee Crisis: The Case of Greece*, 27 MEDITERRANEAN Q. 111, 122 (2016) (explaining that Article 14 of the Universal Declaration of Human Rights guarantees the right to seek and enjoy asylum from persecution).

44 *Greece: Rights Violations Against Asylum Seekers at Turkey-Greece Border Must Stop – UN Special Rapporteur*, UNHCR OFF. OF THE HIGH COMMISSIONER (Mar. 23, 2020), <https://www.ohchr.org/en/press-releases/2020/03/greece-rights-violations-against-asylum-seekers-turkey-greece-border-must?LangID=E&NewsID=25736>.

45 *Id.*

returned asylum seekers who arrived without formal registration.⁴⁶ This violates both the non-refoulement principle⁴⁷ as well as Article 3 due to the blatant discrimination based on Syrian nationality.⁴⁸

Further, Eastern European States “illegal pushback policies” further demonstrate a discriminatory and polarized political climate toward Syrian refugees.⁴⁹ In 2020, a *Guardian* report revealed the illegal tactics conducted by the European Border and Coast Guard Agency, including the use of intimidation, violence, and physical abuse of women and children.⁵⁰ The EU’s illegal mass expulsions has caused the forcible return of at least 40,000 asylum seekers and the death of more than 2,000 people during the pandemic alone.⁵¹ These pushbacks are violations of international and EU law due to the disproportionate and excessive use of force, along with the infringement of a just, equitable, and uniform standard for asylum seekers that is guaranteed under the 1951 Convention.⁵² The EU’s blatant and unlawful operations to stop Syrian asylum seekers from reaching safer EU shores unjustly excludes Syrians from their right to seek asylum, which is guaranteed under Article 18 of the EU Charter.⁵³ These actions not only violate the fundamental human rights of Syrian refugees, but also undermine the EU’s commitment to the principles of human dignity and equality, and threaten the stability and security of the region as a whole.⁵⁴

46 *Id.*

47 1951 Convention, *supra* note 3 at art. 33.1 (explaining how discriminatory treatment of refugees based on their country of origin violates the principle of non-refoulement).

48 *Id.* at art. 3.

49 Adnan Nasser & Alexander Langlois, *World Leaders are Forgetting About Syrian Refugees*, CARNEGIE ENDOWMENT FOR INT’L PEACE (May 5, 2022), <https://carnegieendowment.org/sada/87079> (identifying Poland, Hungary, and Romania as a few states that have enacted these policies).

50 Lorenzo Tondo, *Revealed: 2,000 Refugee Deaths Linked to Illegal EU Pushbacks*, THE GUARDIAN (May 5, 2021, 1:00 PM), <https://www.theguardian.com/global-development/2021/may/05/revealed-2000-refugee-deaths-linked-to-eu-pushbacks>.

51 *Id.*

52 Idil Atak, *The EU-Turkey Deal and the Contemporary Refugee Regime Complex*, 38 REFUGEE SURVEY Q. 207, 221 (2019).

53 2000 O.J. (C 364) 1.

54 Sarah Deardorff Miller, *Syrian Refugees, State Sovereignty, and the Future of the International Refugee Regime*, 16 GEORGETOWN J. INT’L AFFS. 85, 93 (2015).

The aforementioned circumstances demonstrate the uneven nature of the EU's response to refugee flows, and the ways in which certain groups may be favored over others based on political, cultural, and other factors. Favorable treatment of Ukrainian refugees as opposed to Syrian refugees is driven by a negative perception of Syrians due to oversimplified and prejudiced fears about terrorism, security, and cultural differences, as well as broader anti-immigrant sentiment for refugees from the Middle East.⁵⁵ For example, Poland displayed a warm welcome for Ukrainian refugees, taking immediate actions to integrate, protect, and assist Ukrainians.⁵⁶ The State even enacted legislation to grant Ukrainian citizens and their families equal access to the Polish labor markets and afforded them social benefits such as the right to education and healthcare.⁵⁷ The Polish Border Guard and other public services have expedited quick border crossings, arranged for free transportation, and facilitated humanitarian assistance and medical aid for Ukrainian refugees.⁵⁸ Although the promptness and efficiency of aid for Ukrainians should be applauded, the apparent and unlawful bigotry toward Syrian refugees that it revealed cannot be ignored.

IV. Conclusion

The international community is displaying a disappointing double standard by showing openness and generosity towards Ukrainians while failing to extend the same treatment to Syrians who were forced to flee their homeland due to the Syrian Civil War.⁵⁹ While each refugee crisis is distinct, there is a necessary uniformity with international law that must be upheld. Selectively applying international law to only certain refugees is unlawful and unjust. Thus, the more welcoming regional response to Ukrainian refugees violates the 1954 Convention and the 1948 Declaration

when it discriminates against other Syrian refugees who seek similar and equally deserving protection. The injustice of Syria's experience with seeking asylum and the unequal treatment of Ukrainian refugees should be a lesson in global humanitarian responses toward creating leveled legal responses to displacement.

The EU must take immediate steps to address this issue, by providing safe and legal pathways for Syrian refugees to reach Europe and access asylum, and by ensuring that all refugees are treated fairly and with dignity and respect, regardless of their nationality, religion, or other characteristics. International cooperation is crucial to provide resettlement, family reunification, and humanitarian visas. Those unfairly turned away must be allowed to reapply for asylum with support. Ultimately, member states must be held accountable for violations of international and EU law so that the EU can prioritize protecting vulnerable refugees, such as minors and survivors of torture and violence. Only by taking concrete steps, can the EU uphold its commitments to human rights and provide a safe haven for those in need.

⁵⁵ Carolyn Gallaher, *The Specter of the Syrian Refugee Crisis and the Fear of the "Other": Challenges for U.S. Leadership in a Time of Global Crisis*, 11 J. GLOBAL INITIATIVES 59, 65-67 (2016).

⁵⁶ UN Expert Praises Generosity Towards Ukrainian Refugees by Poland and Urges Belarus and Poland to End Pushbacks, OHCHR (July 28, 2022), <https://www.ohchr.org/en/press-releases/2022/07/un-expert-praises-generosity-towards-ukrainian-refugees-poland-and-urges>

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Tondo, *supra* note 50..