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Indebted Asylum: Why the Travel Loan Requirement for Refugees is a Failure of the United States to Meet its Obligations Under the Convention on the Status of Refugees

Abstract

When resettling refugees in the United States, the government currently places the financial burden of the cost of air travel to the U.S. upon the refugees themselves in the form of a travel loan. These travel loans and accompanying debt have become a financial burden upon many low-income refugee families resettling inside the U.S. The burden of this debt is a violation of certain state obligations under the Convention on the Status of Refugees. Therefore the United States, having ratified the Convention on the Status of Refugees, is not meeting its obligations under the same for as long as it continues to force travel loan debt upon refugees. This article points out the ways in which this travel loan policy runs afoul of international law and argues that travel loans should be replaced with travel grants as a result

I. Introduction

Now that the number of people fleeing violence is larger than at any time since the Second World War,[1] the need to scrutinize issues affecting refugees is more urgent than ever.[2] Under both international[3] and U.S. law,[4] a refugee is any person who:

“. . . is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country 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.”[5]

Despite the great deal that has been written on the law of refugees,[6] some areas of refugee law, such as resettlement, have received little attention.[7] Given the many thoughtful and committed advocates that refugees have around the world,[8] this is certainly due to the complex and urgent nature of refugee crises[9] and not to any academic neglect of the many issues facing the women, men and children who flee their homes and lives to escape what are often the most terrifying prospects of violence, death or torture.[10] This article attempts to illuminate just one small corner of injustice in an otherwise complex and nuanced refugee experience.

This article asserts that the way in which we currently fund the cost of transportation for refugees from their refugee camp to their new country of asylum, through travel loans,[11] runs afoul of the paramount international human rights law regime that protects refugees, that is, the 1951 Convention on the Status of Refugees (hereinafter, the Refugee Convention).[12]

Part I shows why these travel loans are a problem for refugees. Part II provides a brief introduction to the scant scholarship around this issue and highlights the need for more. Part III explains why the Refugee Convention is binding upon the United States. Part IV briefly discusses how to interpret a country’s obligations under the Refugee Convention. Part V contains

the three part examination of how the travel loan requirement violates several provisions in the Refugee Convention and thus the obligations of the U.S. toward refugees. The piece concludes with a brief review of this argument and a call to reform refugee transportation policy.

II. The Travel Loan Requirement for Arriving Refugees and the Serious Economic Burden it Places Upon Refugees and their Families

A person can be legally declared a refugee either by the United Nations High Commission for Refugees (UNHCR) while living outside the United States[13] or by an immigration court or other adjudicating officer while residing in or upon entering the U.S (in the latter case the person is referred to as an *asylee*).[14] The discussion here concerns those people whom the UNHCR designates refugees while they are living outside the U.S. and who subsequently resettle in the U.S.

For these individuals, the journey from being granted refugee status to being resettled in a country like the U.S. is long and complicated.[15] This article concerns just one of the many steps on that journey–specifically the cost of travel from the refugee camp abroad to the United States.

After a person living outside the U.S. is granted refugee status by the UNHCR, and after the United States accepts them for resettlement, they must of course physically get to the United States from their home country.[16] Typically refugees, having escaped persecution or violence in their country of origin,[17] have left in haste[18] and have few or no resources after arriving and living in a refugee camp.[19] Making matters more desperate, many states hosting refugee camps do not allow refugees to work.[20] Adding that they are typically the citizens of poorer states,[21] it is generally difficult or impossible for refugees to afford the expense of transportation from their refugee camp to the country of resettlement.[22] If the refugee cannot afford it, then who pays for the cost of the plane ticket?

An intergovernmental establishment called the International Organization for Migration (IOM) (formerly the Intergovernmental Committee for Migration[23]), makes all of the travel arrangements and pays all of the cost of airline travel for the refugee.[24]The IOM funds provided to the refugee are in fact an interest-free loan made to that individual.[25]Refugees are required to sign a promissory note[26] in which they agree to repay this loan beginning six months after their arrival in the U.S.[27] and further agree to complete repayment within forty-two months thereafter.[28] It is IOM who administers the promissory note upon departure from the refugee's home country to the U.S.[29] The note is then sent to IOM headquarters in New York City.[30]

Resettled refugees repay their loan in monthly installments to the refugee resettlement office in their new community.[31] This local office is run by a non-profit organization that contracts with the Department of State (specifically, the Bureau of Population, Refugees and Migration (BPM)) to resettle refugees.[32] The term of art for these community-based resettlement organizations is "volag," short for voluntary organization.[33] Volags provide refugees with housing, furnishings, food and clothing "for at least 30 days," as well as referrals to "health, employment and other services as needed," and "case management tracking" for 90-180 days.[34] Volags are also

responsible for explaining the loan repayment procedures to refugees during orientation after arrival in the U.S.[35]

The volag keeps twenty five percent[36] of the loan repayment and passes on the rest to the Department of State (specifically to the BPM),[37]which then replenishes the funds of IOM.[38] Additional federal funds are forwarded to IOM to make up for the remaining twenty-five percent and any other unpaid arrears.[39] It is the BPM, in fact, that has the power to establish criteria related to the collection of travel loans.[40] The federal government is authorized[41] to then reimburse IOM by allocating funds to IOM that are used to assist in the movement of refugees via the travel-loan program.[42] In this way, IOM maintains a revolving travel-loan fund for refugee transportation to the U.S.[43]

The cost to refugees and their families to repay these loans can be significant. For large families travel expenses can exceed $10,000 or even $20,000.[44] While the minimum monthly repayment could be $35 a month,[45] that number can be higher.[46] Arriving with no assets or resources,[47] and coming from poorer countries,[48] it is not surprising that families may find in their arrears a substantial financial burden.[49] Despite the six month grace period, in some cases volags have begun billing for arrears after just three months.[50] The promissory note itself explains that default in payment of the loan allows BPM to “accelerate payment and demand immediate repayment of the entire unpaid indebtedness including charges,” such as “attorney’s fees.”[51] The cost of these loans, therefore, can potentially burden resettled families substantially.[52]

The burden of these loans has been harmful. As early as 1960, IOM itself concluded that some member governments perceived that “migrant repayments on passage loans may have a depressing effect on the movement of migrants and handicap and retard their assimilation in countries of destination.”[53] In one 2009 survey of 110 refugees in New Hampshire, ninety-five percent of participants said that travel loan repayments were a “major cause of their financial insolvency.”[54] At least some refugees in the U.S. report having to choose between loan repayments or paying rent.[55] Many communities and advocates have drawn attention to individual cases of refugees and their families that have been pushed into poverty as a direct result of having to repay these travel loans.[56] The press has likewise delivered anecdotal examples of refugee families from Pennsylvania to Idaho that have been resettled into poverty and kept there by their travel debt.[57] Critics of the loans note the financial assistance refugees receive is already insufficient even to cover living expenses like rent, let alone additional monthly travel loan payments.[58]

The promissory note itself states that the refugee’s repayment plan may be altered based on financial hardship. However, such relief appears purely discretionary because there are no qualifying criteria articulated.[59]Some advocates, such as the Idaho Legal Aid office, have successfully acquired loan deferments, or even debt cancellations, on the basis of bankruptcy, disability or death of their clients.[60] The existence of these claims, however, shows that the loan burdens have been significant enough that the refugees have had to seek out legal assistance. The claims also indicate that the process of applying for any discretionary relief is so burdensome and opaque to the average refugee that refugees require legal representation. The

necessity of legal representation itself raises questions of access to justice and the adequacy of this loan deferment and forgiveness process.

The effect of the loans is much the same in Canada, which also uses a loan system to fund travel. However, unlike travel loans to the U.S.,[61] the loans to Canada accrue interest.[62] One study conducted by the University of British Columbia noted that some refugee students at that institution have had to drop out of school to help repay travel loans,[63] and that travel debt is one of several economic factors contributing to a lack of affordable housing for African refugees in British Columbia.[64] The Canadian Council for Refugees, a 501(c)(3) advocacy group based out of Montreal has been at the forefront of a movement to end travel loans in Canada.[65] On their website, the organization notes, "[t]hese loans undermine refugees' ability to integrate and to contribute to their full potential in their new home. Refugee youth are forced to work long hours while going to school, or even postpone further education, because of the need to pay back the debt."[66]

IOM justifies the loan program by noting the loan program creates a sustainable revolving fund that allows IOM's limited resources to stretch far enough to make travel arrangements possible.[67] Some volags have also expressed support for the loan program on the grounds that it provides an opportunity for refugees to build good credit.[68] Travel loan opponents rebut, asserting that good credit tomorrow is little consolation for a family in poverty today,[69] and the inability to pay the loan results in poor credit anyway.[70] The promissory note itself states that the federal government may use "all legal means to collect amounts past due,"[71] including reporting the refugee to a "credit bureau organization."[72] Indeed, there have been stories of refugees who were reported to credit bureaus upon default.[73] As of 2012, forty-five percent of the travel loans dispensed since 2002 were not paid within forty-two months and about twenty five percent are delinquent by 180 days or more.[74] Even among volags there has been criticism.[75] Robert Carey, director of the volag International Rescue Committee, has noted in the press that "[i]t is wrong to expect refugees who are receiving public benefits who are in minimum wage jobs and are having difficulty supporting their families - to expect them to pay back a significant loan at that time."[76]

Historically that rate of loan repayment has been relatively poor since the program began in 1952.[77] A 2009 IOM financial report noted that on average, for loans outstanding for five years or more, about seventy one percent were repaid as of 2008, and about forty-four percent were repaid as of 1996.[78] It is worth noting that five years would be well beyond the forty-two month deadline for repayment of the entire loan.[79] A 1985 Government Accountability Office report found that only about twenty percent of the loans were repaid during the program's first thirty-three years of operation.[80] This poor record of repayment is telling of refugees and their families' ability to afford the repayments.

The economic burden of travel loans raises the question of whether or not the travel loan program as it exists today is cogent with the obligations of the United States to refugees under international law. Answering this question demands an examination of the relevant obligations of the U.S. under the primary international enforcement mechanism on the treatment of refugees around the world, the 1951 Convention on the Status of Refugees and its related 1967 Protocol.[81]

III. Areas of the Refugees Convention That Apply to the Post-Settlement Rights of Refugee are Little Explored

The 1951 Convention on the Status of Refugees[82] and its 1967 Protocol, which merely expanded the protection of the Refugee Convention to all people in all times,[83] does three principal things: First, it defines *who* is a refugee.[84] Second, it establishes the criteria by which a refugee is to be admitted to a host country, or in the converse, when they must not be sent back to the home country they fear returning to.[85] The latter is referred to as the right of non-"refoulement."[86] These first two categories of rights could accurately be referred to as the core rights to the convention.[87] A third category however, establishes what rights refugees have after they are admitted to the host country.[88] Our discussion here is limited to this third set of rules, which we will call "post-resettlement" rights, as they protect refugees after their resettlement in their new host country.

Typically, when the Refugee Convention has come before the regional human rights courts and the high courts' of states, it most often does so because one of the core rights of the Convention is at issue. For example, Article 1, the very seat of the Refugee Convention, provides the definition of refugee and goes on to explain the grounds on which such a person is and is not admissible for resettlement.[89] Several regional human rights courts and national appellate courts have applied one or more of the sub-provisions (A through E) of Article 1to domestic immigration policies.[90] Similarly, regional tribunals and several national courts have scrutinized Articles 32 and 33,[91] which express the refugee's rights of non-expulsion and non-refoulment, respectively.[92]

Generally, the literature has followed this trend, focusing on the rights of Articles 1, 32, and 33,[93] and has engaged in very little review of the post-resettlement rights of refugees. Post settlement rights include the socio-economic rights in the host country to food, shelter, housing, education, employment and social security and the obligation of the host country to provide for these.[94] Most of the discussion of refugees' socio-economic rights has centered around whether or not and under what circumstances deprivation of said rights can satisfy one of the five protected grounds in the definition of refugee.[95]As such, that discussion concerns only the definition of refugee under Article 1 of the Convention.[96] Thus most discussion of socio-economic rights is devoted to their place in the core, pre-resettlement rights of the Refugee Convention instead of in the post-resettlement context.

One of the most notable contributions to this analysis of *pre*-resettlement socio-economic rights under Article 1 is Michelle Foster's *International Refugee Law and Socio-economic rights: Refuge From Deprivation*.[97] Foster's analysis of the socio-economic rights of refugees has drawn attention from multiple scholars.[98] However, like Foster's work,[99] most of the literature on the socio-economic rights of refugees focuses on those articles in the Refugee Convention that control the pre-resettlement rights of admission, non-expulsion, non-refoulment and the bars to admission.[100]

Outside this otherwise vitally important discussion of refugee socio-economic rights, the number of scholars that have drawn attention to these post-resettlement rights of refugees is small. Babana Ugarkovic analyzed the law in the U.S. and the U.K. to "ascertain the extent of social

and economic rights afforded by each [host] country to asylum seekers and refugees."[101] Ugarkovic suggests that any failure of the federal government to provide any public benefits to asylum seekers in the U.S violates these treaty obligations, but does not mention the travel-loans.[102] Ryszard Cholewinski offers some interpretation of the post-resettlement socio-economic rights protected in the Refugee Convention, and these are discussed in greater detail below,[103] but his discussion is limited to Europe and does not address the travel loans.[104] Maya Raghu's discussion of these rights is similarly limited to the United Kingdom, and likewise does not discuss the travel loans.[105]

Others have engaged in similar examinations that are nonetheless off-point from our discussion here.[106] Professor Savitri Taylor, for example, provided a thorough analysis of the post-resettlement rights of refugees in Australia under the International Covenant on Economic, Social and Cultural Rights (ICESCR),[107] but did not examine their rights under the Refugee Convention or address the travel loan issue.[108] Nothing in professor Taylor's analysis of the ICESCR appears to lend analogy to an examination of travel loans under the Refugee Convention.[109]

Scholars who have addressed the travel loan repayment specifically are rare. Thomas E. Hanna, in his thorough discussion of how the U.S. can improve its refugee resettlement policies, discussed travel loans, but in the several pages of the discussion did not analyze the loans under international law.[110] Still, Hanna's discussion appears to remain the most thorough discussion on the topic of any legal scholar to date.[111]This is aside from the General Accounting Office (GAO) reports issued to the Secretary of the State Department, published in 1985 and 1987, which discuss the travel loan requirement in greater detail.[112] While this report notes that IOM has questioned the legal validity of the promissory notes under domestic law,[113] neither report raises questions as to the legality of the loans under international law or addresses U.S. obligations under the Refugee Convention.[114]Other authors have given only brief mention to the loan program without going further.[115]

To be clear, innumerable authors and tribunals of varying jurisdiction have given tremendous attention to the state's obligation to protect the socio-economic rights of people generally,[116] and as a result it is a well-studied area.[117] In fact, a "minimum core" of the rights articulated in the ICESCR, the primary regime of socio-economic rights, are considered customary international law binding upon all states.[118] These general economic and social rights of all people[119] stand in contrast, however, to the narrower mandate to protect the socio-economic rights of refugees, specifically under the Refugee Convention.[120] Narrower still is the analysis of those rights that protect Refugees in the post-resettlement context of the host country.[121]

This mandate to protect the post-resettlement socio-economic rights of refugees is of course binding upon those countries that have signed and ratified either the Refugee Convention or its later Protocol, and which have not made substantial reservations to its relevant provisions.[122] Thus to interpret the obligations of the United States under the Refugee Convention one must first explore the extent of its assent to that convention.

IV. The Refugee Convention is Binding Law Upon the United States

While the principle of non-refoulment, enshrined in Article 33 of the Refugee Convention,[123] is considered *jus cogens*, or binding upon all states regardless of whether they are parties to that Refugee Convention or not,[124] the same cannot be said for the rest of the instrument.[125] The post-resettlement, socio-economic rights-protecting articles of the Refugee Convention are binding upon a country like the United States only where that country has signed and ratified the Convention.

The United States signed the Protocol to the Refugee Convention on November 1st, 1968.[126]The U.S. Supreme Court has recognized repeatedly that "one of Congress' primary purposes in passing the Refugee Act [of 1980] was to implement the principles agreed to in the [the Refugee Convention and the Protocol],"[127] meaning that by ratifying the Protocol the U.S. undertook the obligations of the entire Refugee Convention referenced within the Protocol itself.[128]

The United States, before ratifying the Refugee Convention, made two reservations pertaining to post-resettlement socio-economic rights of refugees.[129] These reservations are discussed further below,[130] where it is argued that they do not excuse the U.S. from its obligations under the Refugee Convention in any way that would render the travel loans lawful.

V. Identifying the Obligations of the United States Under the Refugee Convention

The Vienna Convention on the Law of Treaties (VCLT) governs the interpretation of international treaties and conventions.[131] Article 31(1) of the VCLT states that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[132] Thus one examines the "object and purpose" of the Refugee Convention to interpret it, and where possible, the spirit of the provision or the meaning as intended by its drafters.[133] As Article 32 of the VCLT notes, the "*travaux preparatoires*" or the preparatory works, which log the negotiations behind the formation of a treaty, may be used to clarify the framers' intent behind the provisions.[134]

Authority for interpreting a treaty can also be located outside either its text or the intent of its drafters.[135]Art. 31(3)(c) of the VCLT allows for "scope of evolutionary interpretation by reference to developments in the law outside the immediate confines of a particular treaty."[136]Author Manasi Raveendran offers the definition of "particular social group" under Article 1 of the Refugee Convention as one example of how this "evolutionary interpretation" has permitted the expansion of a term, since new groups not originally conceived of by the Convention have been brought under this category.[137] Thus one can also look at the ways courts or other authoritative sources may be expanding the meaning of certain terms in the Refugee Convention.

Interpretation of the Refugee Convention, pursuant to the VCLT, like any international law regime, may call upon a number of outside sources,[138] often in some descending order of hierarchy. First, under Article 32 of the VCLT, the preparatory works should be considered.[139] The authority of resolutions of the UN Security Council is said to be the next highest level of authority.[140] Next, the Executive Committee of the UNHCR periodically adopts "conclusions" which provide the contracting parties of the Refugee Convention with guidance and

interpretation on the agreement.[141] One would then look to other international agreements, although some have argued that only those ratified by a "respectable super-majority" are appropriate guides, such as the Convention on the Elimination of All Forms of Racial Discrimination or the Convention on the Elimination of Discrimination Against Women.[142]

Sometimes however, international resolutions, treaties or customs are lacking, and when they are we can then look toward regional and national court decisions to interpret areas of international law.[143] Beyond these, the well of authority for interpreting international human rights regimes is seemingly bottomless and includes scholarship by noted authors on the subject[144] as well as "diplomatic correspondence, policy statements, press releases, the opinions of official legal advisors, official manuals on legal questions . . . manuals of military law, executive decisions and practices, order to naval forces, etc."[145]

With respect to the Refugee Convention, there do not appear to be any UN Resolutions that speak to any post-resettlement socio-economic rights area of the Convention.[146] Nor do any of the other international human rights law conventions speak to any of the provisions in enough detail that they would assist in the interpretation of those areas which are relevant here.[147] What we do have are detailed preparatory works discussing the plenipotentiaries of the Refugee Convention[148] and UNHCR executive conclusions.[149] As such, where these sources of authority are applicable to interpreting the relevant provisions, they are discussed below.[150] As noted above, few international law scholars have written on this subject, but those that have made relevant contributions are well cited and can aid in interpretation.

Finally, there are a number of decisions in the high (and lower) courts of individual nation states which we will look to for interpretation and guidance.[151] Extensive searching revealed no indication that the travel loan requirement, or in fact any of those provisions of the Refugee Convention discussed below, have ever come before a court in the United States. Typically, American courts consider only the core-rights articles, Articles 1, 32, and 33, of the agreement.[152] As such, where necessary, we are forced to seek interpretation outside the United States in the jurisprudence of other states.

It is important to note that the practice of looking to international law to interpret a federal treaty obligation is itself cogent with U.S. federal law.[153] When a domestic statute is ambiguous, the Supreme Court has instructed that it should be construed so as to comply with international law.[154] Thus where the obligations under the Refugee Convention leave room for ambiguity, one can construe them with regard to international law. In this case, international law includes, in addition to the executive conclusions of the UNHCR and proprietary works of the agreement itself, the decisions of courts in other nation states.

VI. Travel Loans Conflict with the Obligations of the United States Under the Post-Resettlement Provisions of the Refugee Convention

A number of areas of the Refugee Convention address post-resettlement socio-economic rights. Related to economic rights, but not on point here, are articles 17, 18 and 19 which accord resettled refugees equal access to wage employment, self-employed entrepreneurialism, and the "liberal professions," respectively.[155] Similar to these, articles 21 and 22(2) afford refugees

access to housing and post-elementary education, likewise equal to that as accorded non-citizens "in the same circumstances."[156] According to Article 6, this means the refugee must fulfill the same requirements which the similarly situated non-citizen must fulfill to enjoy the right.[157] Articles 22(1), 23 and 24 afford refugees access to elementary education, "public relief," labor rights, and social security equal to that of nationals.[158] Finally, Article 29 prohibits the imposition of duties, charges, and taxes upon refugees,[159] and Article 31 prohibits the imposition of penalties upon those refugees that enter a host country unlawfully.[160] The remaining areas of post-settlement rights fall outside the scope of socio-economic rights altogether.[161]

Before reaching the issue of travel-loan debt, it is worth noting that some have argued that the United States otherwise meets its obligation under the above post-resettlement socio-economic provisions spelled out in the Refugee Convention.[162] At the federal level, refugees and asylees are entitled to such benefits as Medicaid,[163] Temporary Assistance for Needy families (TANF),[164] special cash assistance for those too disabled to work,[165] and the Supplemental Nutritional Assistance Program (SNAP), colloquially known as food stamps.[166] Authors like Ugarkovic have argued that, with respect to refugees post-resettlement, these benefits are sufficient to satisfy the "core Refugee Convention requirement[s]."[167] The scope of this article, however, is too narrow to discuss whether or not these public benefits by themselves are sufficient to meet the obligations of the U.S. to ensure these post-resettlement rights–a question others authors have already addressed.[168] Here I mean only to argue that, even assuming *arguendo* that these public benefits would satisfy the core post-resettlement socio-economic requirements of the Refugee Convention, they would do so but for the travel loan requirement.

Obligations under articles 23, 24, 29 and 31 speak most directly to the failure to meet the obligations under the Refugee Convention to protect the socio-economic right of refugees in the asylum state. Each of these articles is discussed below in the order of most to least explicit applicability to the travel loan burden, which is incidentally the inverse order of how much attention each has received from courts around the world.

A. Travel Loans Constitute an Unlawful Duty, Charge or Tax Upon Refugees Prohibited under Articles 29 of the Refugee Convention

Article 29 would appear on its face to address the travel loan burden much more directly than either article 23, 24 or 31, and, as discussed below, has received the least attention of the four. This provision says that contracting host states "shall not impose upon refugees duties, charges or taxes, *of any description whatsoever*, other or higher than those which are or may be levied on their nationals in similar situations."[169] Article 29 was taken almost verbatim from Article 13 of the 1933 Convention relating to the international status of refugees,[170] an earlier and now defunct version of the 1951 Refugee Convention organized by the equally defunct League of Nations.[171] According to the commentary to the Preparatory Works of the Refugee Convention, this means that refugees are "not obliged to pay taxes or *other charges* levied on aliens only (emphasis added)."[172] As a charge imposed upon refugees only, the travel loan requirement would appear to violate Article 29 on its face.

The U.S. made a reservation to Article 29 when it signed the Refugee Convention, which stated that "[t]he United States of America construes Article 29 of the Convention as applying only to

refugees who are resident in the United States and reserves the right to tax refugees who are not residents of the United States in accordance with its general rules relating to non-resident aliens."[173] This reservation is not applicable here because the refugees who owe arrears on the travel loans are by definition residents of the U.S., making this reservation wholly inapplicable to the loan at issue here.

The preparatory works make reference to a case from the Supreme Administrative Court of Austria which applied Article 29.[174] In that case, the preparatory works explain, the court held that a refugee's wife and nine children could be considered deductible for income tax purposes, apparently to prevent a discriminatory application of the income tax law.[175]This case, however, appears only to reaffirm what Article 29 states on its face, that refugees may not be taxed differently from nationals.

One of the only courts to have ever applied Article 29 was an administrative city court of Athens, Greece. In Athens at the time, individuals who made their first purchase of a residence in that city enjoyed a tax exemption.[176]A refugee from Turkey living in Greece purchased an apartment in Athens.[177] The Turkish refugee requested that the relevant tax authority exempt her from the transfer tax on the apartment, it being her first purchase of a residence.[178] But the tax authority did not afford her the exemption because she was not a Greek national;[179] in response, she sued the tax authority.

Interpreting Article 29 of the Refugee Convention, to which Greece is a party,[180] the administrative court concluded that the tax authority was not permitted to tax the refugee where it did not also tax nationals, affirming that "the countries hosting refugees are obliged to offer them relief and support similar to that provided to their nationals, *and* not to burden with fiscal duties heavier than those imposed on their nationals [emphasis added]."[181]

The Athens court helps clarify the Refugee Convention by telling us that "taxes and other charges" in Article 29 includes "fiscal duties" and thus no fiscal duty which is not also imposed upon nationals is to be imposed upon refugees. Like the tax in the Greek case, the travel loans in the United States may be fiscal duties explicitly prohibited by Article 29 of the Refugee Convention. Nationals do not owe this debt to their government and it follows from the interpretation of this provision in the Greek case that refugees should not owe it either.

Outside of this single case from Greece, Article 29 has received extremely little attention. Professor Pierre-Michel Fontaine mentions the provision in passing within his 2007 article on the Refugee Convention's "evolution and relevance for today,"[182] but only to note that "no other refugee instrument covers such a broad range of legal protection issues or goes into such detail in doing so."[183] An extensive search of international case law revealed no other scholarship or discussion on this specific provision.

Interestingly, the second clause of Article 29 creates an exception to the first, but not with respect to travel loans. Section 2 adds that nothing in the first clause shall prevent "the application to refugees of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers."[184]According to the preparatory works of the Refugee Convention, section 2 of Article 29 was meant to accommodate what was

then known as the "Nansen stamp system,"[185] an early pre-UN visa system used for refugees[186] but paid for by the refugee.[187] Section 2 was meant to address the cost of these documents and not that cost of travel.[188] By contrast, nothing in the original drafting of this section appears to contemplate charging the refugee for the cost of travel to the receiving country at all.

Finally, negotiations during the crafting of Article 29 lend support for the notion that the travel loan debt goes beyond what the drafters of the Convention thought appropriate. During drafting there was consideration of inserting a third paragraph under article 29, which would have added an additional exception to section 1. This "paragraph 3" would have permitted states to impose upon refugees additional "fees of the same nature" as the Nansen stamp, and which, like the proceeds from the Nansen stamp, would be used for the benefit of refugees.[189]This language sounds very much like it would have accommodated the travel loan requirement, the funds from which contribute to the IOM revolving fund mentioned earlier.

Since the language sounds applicable to travel loans it is notable that paragraph 3 was ultimately voted down.[190] The Venezuelan representative felt that, despite providing relief for refugees, such a provision "nevertheless constituted an imposition on individual refugees."[191] The Belgian, Chinese, Turkish, and Venezuelan representatives spoke in favor of deleting paragraph 3.[192] In the end, paragraph 3's elimination was adopted by a vote of 15 to 3, with 4 abstentions.[193] Thus any duties imposed upon refugees beyond the cost of the Nansen Stamp appears to run contrary to what the drafters of Article 29 intended.

Article 29 therefore seems to preclude the "fiscal duty" of the travel loan debt upon refugees in addition to conflicting with the purpose and objective of the article which is to place no additional "impositions" upon refugees beyond the cost of necessary documents.

B. Travel Loan Debt Constitutes An Unequal Provision of Public Benefits to Refugees as Prohibited under Articles 23 and 24 of the Refugee Convention

Articles 23 and 24 are extremely similar in that they both effectively extend to resettled refugees equal opportunity to publicly funded government benefits. Article 23 mandates that states "shall accord refugees . . . the same treatment with respect to public relief and assistance as is accorded to their nationals."[194] Article 24(1)(b) requires states to accord to refugees, "the same treatment as is accorded to nationals in respect of . . . social security," which it defines as "legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, unemployment, family responsibilities and any other contingency . . . covered by a social security scheme."[195] Thus the two articles together require that refugees receive the same public benefits of both welfare and insurance as U.S. nationals enjoy.

The preparatory works of the Refugee Convention do not give a great deal of insight into the applicability of Article 23 and 24 to the travel loan requirement.[196] It is worth noting that article 23 was adopted by twenty two votes to zero, with one abstention,[197] demonstrating significant international support for the provision. The commentary in the preparatory works does note, however, that the concept of public relief and assistance "is to be interpreted widely."[198] Nonetheless, the prohibition against treating refugees differently from nationals with respect to public relief and social security on its face would not seem to implicate the travel

loan, which is the opposite of a public benefit. The available case law, however, may read a deeper meaning into Article 23 and 24 that might make them applicable to the travel loan.

One of the broadest and most in depth interpretations of article 23 can be found in the same Greek case concerning article 29 discussed above.[199] Interpreting article 23 of the Refugee Convention the administrative court concluded that the tax authority in Athens was not permitted to tax the refugee where it did not also tax nationals, affirming that “the countries hosting refugees are obliged to offer them relief and support similar to that provided to their nationals, *and* not to burden with fiscal duties heavier than those imposed on their nationals (emphasis added).”[200] The implication, by juxtaposing article 23 to 29 in this way, is that the tax was inappropriate, not just because it imposed a fiscal duty under 29, but because it treated the refugee differently than nationals with respect to benefits received from the state. The Athens Court appears to be equating a tax break as an affirmative public benefit, and thus the tax’s imposition as a violation of article 23. As such the Greek case finds that the demand upon refugees to pay money to the government which nationals do not also have to pay violates equal treatment under Article 23.

Arguably, the travel loan arrears constitute different treatment of refugees with respect to public benefits and are thus not unlike the tax imposed upon the refugee apartment-purchaser in the Greek case. Loan payments could, for example, be viewed as a mere reduction in those public assistance benefits otherwise available to refugees in the U.S. Article 23 protects refugees then, not just from being denied the same public benefits as nationals, but also from being burdened with duties to pay money to the government which are not also shared by nationals – inasmuch as this creates an inequality of benefits received by the state. The absence of the travel loan debt for nationals is like the tax exemption in Athens. As such, demanding that refugees pay money to the State Department that nationals do not also pay may constitute an inequality of those monies refugees receive from the state, which is prohibited under Article 23.

Decisions from the British and German courts, while not providing as much insight into Article 23 as the Greek case, nonetheless contribute to the understanding of the spirit of the provision. The preparatory works note, although without providing a citation, that an Administrative Court of Cologne, Germany held in a 1981 decision that Article 23 required social assistance not be refused to a refugee who was unable to find work.[201] The Cologne decision is helpful only in reaffirming the meaning of the provision evident on its face.

Article 23 has been considered by British courts in only a few decisions,[202] but in at least one such case the court provided more discussion of article 23 than the Cologne case. One of those decisions went before the House of Lords, which before 2009 was the highest court in the United Kingdom.[203] The 2008 decision of *R v. Asfaw* concerned an asylee from Ethiopia who had survived torture and rape in that country by way of escape to the U.K.[204] After entering the U.K. with a fraudulent Italian visa, she was seeking protection under Article 31[205]Article 31 instructs that the asylum state “shall not impose penalties” upon refugees who enter their territory unlawfully.[206] In order to interpret Article 31 of the Refugee Convention, which prohibits the imposition of penalties upon refugees who enter an asylum country unlawfully, the court looked to other articles in the Convention, such as article 23 and 24. In doing so, the court spoke to the purpose and spirit of those articles.

The *Asfaw* court found that the spirit behind Article 31 was the same as the spirit behind Articles 23 and 24—namely to encourage refugees to come forward and present themselves to the state conspicuously, "rather than eking out an existence in an unlawful twilight world on the fringes of society."[207] Therefore, the court goes on to explain, the spirit of the convention is to "treat refugees humanely, as people having a recognized place in the legitimate world," so as not to marginalize them.[208]

To this end, the Convention provides for the needs of refugees and provisions such as Articles 23 and 24 operate to keep refugees out in the open, where they can be counted and identified so that they can be provided for and not marginalized. Since the court in *Asfaw* is saying that articles 23 and 24 are meant to prevent refugees from sliding into "an unlawful twilight world" it follows that those policies that would frustrate that function run contrary to the spirit of the law.

The financially burdensome nature of the travel-loan arrears prevents articles 23 and 24 from performing their function as identified by *Asfaw*. Either the failure to pay the arrears pushes a refugee into the marginalization of poverty and debt, or the difficulty of living in the United States as an indebted refugee discourages the individual from entering the country lawfully and conspicuously. In either case the travel-loan arrears act in contravention to the spirit of article 23 and 24.

Other discussions of articles 23 have been relatively unenlightening. These decisions are taken up here only to underscore the lack of interpretation available. Noting the significant consequences of being recognized by the asylum state as a refugee, the Court of Appeal of England and Wales noted in *Hassan Adan and Others v. Secretary of State for the Home Department* that this recognition confers many benefits, such as article 23.[209] The court merely notes, before moving on to address the unrelated issues of the case, that under Article 23 refugees "may not . . . be deprived of benefits."[210] The Asylum and Immigration Tribunal of the United Kingdom considered in *Palestine v. Secretary of State for the Home Department* whether returning three Palestinian refugees to their refugee camp in Lebanon would violate the Refugee Convention.[211] While addressing that issue, the court made reference to article 23, but only to repeat the refrain of the provision to remind the parties that public benefits must be "equivalent to that provided by nationals."[212] Author Maya Raghu discusses a lower British court decision which held that the government could not prohibit welfare assistance to refugees under the Refugee Convention, but it is unclear whether or not that court applied Article 23 or 24 in the process.[213] Short of reaffirming the meaning which the provision carries on its face, neither of these cases adds any additional insight into the meaning of the articles themselves.

The High Court of New Zealand made reference to article 23 only once by virtue of listing the entire Refugee Convention in an Appendix.[214] It was likewise mentioned only once by the New Zealand Refugee Status Appeals Authority, along with many of the other socio-economic provisions of the Refugee Convention, to support the court's assertions that the Convention imposes upon the host state an obligation to accord refugees the "most favorable treatment accorded to nationals of a foreign country in the same circumstances."[215]As such only the Greek and *Asfaw* cases truly add to our understanding of the provision's mandate.

Article 24 appears to have been even less examined by the courts of the world than Article 23. The Court of Appeal of England and Wales addressed the provision once, but only to repeat what is evident on its face, that "when [refugee] status is recognized, refugees become entitled under Article 24 to benefit rights equivalent to nationals."[216] The Asylum and Immigration Tribunal of the United Kingdom, again only once, made reference to article 24, but merely to assert that refugees enjoy advantages which others subject to immigration control in the United Kingdom, do not.[217] Recall that Article 24 also appears in the High Court of New Zealand opinion discussed above, but only by virtue of the entire Refugee Convention having been produced in the opinion's Appendix.[218] This case law reveals little more than what is already evident on the face of the provision.

It seems reasonable to assume that any interpretation of article 23 can similarly be imputed onto article 24 given the identical language and subject matter present in both provisions. Both refer to the provision of public benefits and both require that public benefits (public relief and social security, respectively) be provided to the same extent "as it is accorded to nationals."[219] Thus, given the lack of Article 24-examination, it seems reasonable to assume that its protection extends at least as far as Article 23.

Finally, the United States made a second relevant reservation when it signed the Refugee Convention, and it is worth noting here to explain why it is inapplicable to the travel loans. The second reservation merely states that the U.S. recognizes its obligation to provide social security under Article 24 only inasmuch as permitted by the Social Security Act (SSA).[220] Since the SSA is well outside the scope of the travel loan requirement, this reservation is not applicable to the determination of the U.S. government's obligations relevant to the travel loans under Articles 23 and 24.

C. Travel Loans May Constitute an Unlawful Penalty Upon Refugees Under Article 31 of the Refugee Convention

Finally, there is Article 31(1), which instructs that the contracting state "shall not impose penalties," on refugees who enter their territory unlawfully.[221] At first blush, this provision would not appear to apply to refugees who have not entered the country unlawfully. Nonetheless, Article 31 may provide indirect insight into travel loan policy.

First, recall that under *R v. Asfaw*, a burden upon refugees that pushes them "into an unlawful twilight," runs contrary to the spirit of Article 31.[222] Inasmuch as the travel loan requirement violates the spirit of articles 23 and 24 when it marginalizes refugees, so it would go against the spirit of Article 31 for the same reason.

Second, it may be fair to conclude that whatever constitutes a prohibited penalty for refugees who enter the country unlawfully, should *a fortiori* constitute a prohibited penalty for a refugee who enters the country lawfully. It is reasonable then to look at the kinds of penalties courts have struck down as applied to refugees entering asylum countries unlawfully, and analogize the burden of those penalties to the burden of the travel loan.

The interpretation of Article 31 in this way is dependent upon the meaning of the word "penalties." The commentary in the preparatory works states that penalties "refer to

administrative or judicial conviction on account of illegal entry or presence, not to expulsion."[223] Administrative or judicial convictions would seem to refer solely to the decisions of a tribunal, and as such would seem to put travel loan requirements outside the scope of the word "penalties."

This commentary however is somewhat belied by the significant disagreement among drafters of the Refugee Convention as to what "penalties" meant. The U.K. delegation for example, thought the word "penalties" meant prolonged internment and legal proceedings,[224] whereas the French representative defined penalties as judicial penalties only.[225] Australia commended that the term penalties should be clarified, although it seems it never was in the final draft of the convention.[226]This disagreement is cause for some ambiguity in the term and indeed the word was left as the more vague "penalties," instead of the more specific "administrative and judicial convictions" probably because there was disagreement over its meaning. In the end Article 31 was adopted by 20 votes to zero with 2 abstentions, though it is pure speculation, one might suppose the vagueness of the term was built in to compel a majority vote.[227]

The case law on Article 31 is far more abundant than either 23, 24 or 29. Much of it would seem to support the notion that "penalties" means administrative and judicial convictions. The Supreme Court of New Zealand has taken up Article 31 on at least one occasion, concluding that the prosecution of a refugee for presenting at the border with a fraudulent passport constitutes an unlawful "penalty" of the kind referred to in 31(1).[228] The High Court of New Zealand has reaffirmed the Supreme Court's holding on this issue,[229] or else similarly noted that 31(1) protects against judicial prosecution for presenting at the border with fraudulent identification.[230] At least one High Court decision from Hong Kong appears to echo this interpretation.[231] One lower criminal court decision from Greece found it impermissible under 31 to penalize seventeen Iraqi nationals after they crossed the Greek border via Turkey surreptitiously and without documentation.[232] This case too failed to articulate the nature of the penalty beyond criminal prosecution.[233]

However detention itself, not necessarily as the product of an administrative or judicial conviction, has also been categorized as a "penalty" under 31. The European Court of Human Rights considered Article 31 in the 2008 decision of *Saadi v. United Kingdom*, where it was discussed in reference to the detention of refugees who are unlawfully entering or residing in the asylum country, implying that detention, beyond its use to determine the refugee's identity, was an unlawful penalty to be so imposed upon a refugee illegally entering or present.[234] The court in that case further noted that the UNHCR has likewise drawn attention to Article 31 with respect to the use of detention insisting that it is violated anytime detention is used beyond a "necessary and incidental interference with liberty."[235] The High court of New Zealand has also instructed that, while detention for the purposes of investigating the refugee's status is not a penalty that violates 31(1),[236] detention beyond that purpose certainly is.[237] The case law does appear, therefore, to have moved past the preparatory works commentary's definition of penalties as merely administrative and judicial convictions, such that today the definition seems to encompass detention alone as well.

Nonetheless, the idea that "penalties" applies to more than just administrative and judicial convictions, and even to more than detention, is not without its proponents. In 1981, the UNHCR

executive committee published a conclusion on the protection of asylum-seekers in situations of large scale influx, in which it noted that under Article 31 of the Refugee Convention, with respect to refugees who enter a country unlawfully, or who enter a country amidst a large-scale influx, “they should not be penalized or exposed to any unfavorable treatment solely on the ground that their presence in the country is considered unlawful,” and “they should receive all necessary assistance and be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities . . .”[238] Here, the committee seems to be saying that “penalties” does not just mean administrative and judicial convictions, but also “unfavorable treatment,” such as deprivation of necessities like food and shelter. The UNHCR’s implication is that “penalties” does not just mean legal penalties, but economic penalties as well. At least one scholar and once professor of law,[239] Ryszard Cholewinksi, has likewise argued that the denial of economic and social rights to asylum seekers constitutes a penalty under Article 31(1).[240] Cholewinski further contends that this argument applies to policies related to refugees, such as “carrier sanctions and visa requirements.”[241] Policies like travel loans are analogous to visa requirements in that, inasmuch as they are penalties, they attach to the refugee during their travel and arrival into the United States.

Other decisions on 31 are simply not helpful to interpret its mandate. The Supreme Court of Batswana, for example, reviewed Article 31 only to say that, under 31, unlawfully present refugees may suffer “certain restrictions” until their status is regularized or they are admitted to a different country.[242] Another lower criminal court decision from Greece cited to Article 31 only to support its conclusion that the article protects refugees even when they arrive via a third country where they are in danger or face persecution.[243] In one case from the High Court of Japan, the defendant, a refugee from “Indochina” argued that his punishment for overstaying his tourist visa violated 31, but the opinion provides no specifics as to what his punishment was.[244] The court found that the defendant was not a refugee under the Convention definition and thus does not appear to have reached the question of article 31(1) at all.[245]

The above discussed case law is relevant because the possibility that “penalties” can be read to mean more than just administrative or judicial convictions, such as detention or economic penalty, is supportive of the idea that it could capture the travel loan requirement as well. The economic burden of the loan certainly results in the kind of economic penalty the UNHCR executive committee warned host states away from. If it is impermissible to place economic burdens upon refugees who enter a country unlawfully, *a fortiori* it must also be impermissible to place economic burdens upon refugees who enter quite lawfully. Thus the travel loan debt may constitute an unlawful penalty under Article 31, for all refuges regardless of the lawfulness of their entry.

It still remains the case however, that no one has ever challenged the travel loan burden under any of the post-resettlement provisions of the Refugee Convention discussed in this section, and as such any argument in favor of that interpretation, such as the argument made under article 31 here, remains entirely theoretical.

VII. Conclusion

The travel loan requirement cannot be reconciled with the obligation of the U.S. government under the Refugee Convention to protect the socio-economic rights of refugees who resettle here. Case law indicates that the travel loan arrears constitute an unlawful fiscal duty upon refugees which is not also placed upon U.S. nationals and as such is in violation of Article 29 that prohibits the same. In burdening refugees with this extra cost the government fails to provide them with public benefits equal to those of nationals, in violation of articles 23 and 24 which demand equal treatment as nationals in the realm of public support. The loan requirement also seems to run contrary to the spirit of Articles 23, 24, and 31 which seek to keep refugees conspicuous and cared for in order to prevent marginalization. Finally, the travel loan may constitute an unlawful penalty upon refugees who enter the country lawfully under Article 31.

These arguments support the abolition of the refugee travel loan policy. Any abolition of the travel loan would require a travel grant to replace it, or the payment of travel for the refugee, either by the asylum country's government or by some intergovernmental entity such as IOM. Such reform is necessary for states that are party to the Refugee Convention to remain in compliance with its regime. Not all areas of the world utilize the loan scheme to transport refugees, but instead pay the cost "in total,"[246] making the idea of travel grants not unheard of in at least some parts of the world. Compensation of the refugee's travel expenses by means other than a loan would eliminate the inherent tension between the economic burden of the travel loan on families and the U.S. obligation under the Refugee Convention to relieve these families of penalties and unequal public benefits.

There is no indication that these arguments have ever come before any court in the United States. Yet in light of the fact that the Refugee Convention is law in the United States, the ways in which the travel loan policy may be unlawful should move advocates and adjudicators to support the abolition of this policy in the courts and with the legislature.

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[1]. Imogen Foulkes, *Global refugee figures highest since WW2, UN says*, BBC News (June 20, 2014), http://www.bbc.com/news/world-27921938; Eve Parish, *UNHCR: Refugee numbers reach highest ever recorded*, CNN (June 18, 2015, 11:44 AM), http://www.cnn.com/2015/06/18/world/unhcr-refugees-most-in-history/.

[2]. Somini Sengupta, *60 Million People Fleeing Chaotic Lands, U.N. Says*, The New York Times (June 18, 2015), http://www.nytimes.com/2015/06/18/world/60-million-people-fleeing-chaotic-lands-un-says.html?_r=0.

[3]. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 [hereinafter *Refugee Convention*]; *But See* OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted September 10, 1969,

entered into force June 20, 1974, 1001 U.N.T.S. 45 (providing a broader definition of "refugee" than the Refugee Convention in that it includes "every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality").

[4]. 8 U.S.C. § 1101(a)(42) (2014). This definition was pulled verbatim from Article 1(A)(2) of the 1951 Refugee Convention. *See Refugee Convention*, *supra* note 3, at 152.

[5]. 8 U.S.C. § 1101(a)(42).

[6]. *See, e.g.,* Vanessa Holzer, Refugees From Armed Conflict: The 1951 Refugee Convention and International Humanitarian Law (2015); James Hathaway and Michelle Foster, The Law of Refugee Status (2014); Karen Musalo, Refugee Law and Policy: A Comparative and International Approach (2011); Erika Feller and Volker Türk, United Nations High Commissioner for Refugees, Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (2003); Mary E. Crock and Ben Saul, Future Seekers: Refugees and the Law in Australia (2002); B.S. Chimni, International Refugee Law (2000); Lex Takkenberg, The Status of Palestinian Refugees in International Law (1998); Guy S. Goodwin-Gill, The Refugee in International Law (1996); James Hathaway, Law of Refugee Status (1991).

[7]. *See, e.g.*, Thomas E. Hanna, *No Refuge for Iraqi Refugees: How the United States Can Improve Its Refugee Resettlement Policies*, 42 Cal. W. Int'l L.J. 189 (2011); Daniel Masterson, *An American Dream: The Broken Iraqi Refugee Resettlement Program and How to Fix It*, 10 Kennedy Sch. Rev. 4 (2010); David Martin, *The United States Refugee Admissions Program: Reforms for a New Era of Refugee Resettlement* (2005); Tamar Mott, *African Refugee Resettlement in the United States* 138 (2009).

[8]. *See, e.g.*, UNHCR The UN Refugee Agency, www.unhcr.org (last visited Mar. 3, 2016); International Rescue Committee, www.rescue.org (last visited Mar. 3, 2016); U.S. Committee for Refugees and Immigrants, www.refugees.org (last visited Mar. 3, 2016); International Refugee Assistance Project, www.refugeerights.org (last visited Mar. 3, 2016).

[9]. *See*, *e.g.*, Mott, *supra* note 7, at 121-128 (describing life in refugee camps in west and east Africa, and the poverty and violence that characterizes them);Lucy Westcott, *Horrific Conditions Discovered in Greek Refugee Camps: Amnesty Report*, Newsweek (June 25, 2015) ("[M]igrants who have arrived on the islands this year have limited access to medical or humanitarian support and face crowded and squalid conditions in reception and detention centers."); U.N. High Comm'r for Refugees, Policy Dev. And Evaluation Services, U.N. Doc. PDES/2013/10 (July 2013), http://www.unhcr.org/52b83e539.html (describing problems of organized crime, recruitment of child soldiers, child labor and poor living conditions in refugee camps in Jordan, Lebanon and Iraq) (report by Jeff Crisp, Greg Garras, Jenny McAvoy, Ed Schenkenberg, Paul Spiegel, and Frances Voon).

[10]. *See, e.g.*, Mott, *supra* note 7, at 117-121 (describing the persecution, chaos, violence and torture that prompted interviewed west and east African refugees and their families to flee

their home countries);Lucy Rogers, David Gritten & Patrick Asare, *Syria: The Story of Conflic*t, The BBC (Mar. 12, 2015), http://www.bbc.com/news/world-middle-east-26116868 (describing how the brutal civil war in Syria has pushed over four million refugees into neighboring countries).

[11]. *See* 9 FAM Appendix. O, Exhibit II.

[12]. *Refugee Convention*, *supra* note 3..

[13]. U.N. High Comm'r on Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, HCR/IP/4/Eng/REV.1, (Jan. 1992) at ¶ 194, http://www1.umn.edu/humanrts/instree/refugeehandbook.pdf.

[14]. *See* 8 U.S.C. § 1158 (a)(1),(2) (effective Jun. 1, 2009).

[15]. *See* Martin*, supra* note 7; Mott, *supra* note 7.

[16]. Martin, *supra* note 7, at 67-76.

[17]. *See, e.g.,* Mott, *supra* note 7, at 117-121 (describing the persecution, chaos, violence and torture that prompted interviewed west and east African refugees and their families to flee their home countries); Rogers, Gritten & Asare, *supra* note10 (describing how the brutal civil war in Syria has pushed over four million refugees into neighboring countries).

[18]. Daniel F. Detzner, Aysem R. Senyurekli, & Zha Blong Xiong, *Escape from Harm's Way: The Experiences of Southeast Asian Elders and Their Families*, 9 Hmong Stud. J., 1-30, at 9-10 (2008) ("Across the sample, 62% of participants (n = 24) experienced forced migration under duress."); Joanne Bloch & Sue Heese, *I Am an African: Stories of Young Refugees in South Africa*, at 70 (2007) ("most [refugees] fled their homes in a hurry, without taking possessions. In some cases, the refugees have lost everything.").

[19]. Mott, *supra* note 7, at 121-128 (describing life in refugee camps in west and east Africa as communities suffering with extreme poverty and frequent violence); Rabih El Chammay, Wissam Kheir, & Hala Alaouie, The United Nations High Commissioner for Refugees, Assessment of Mental Health and Psychosocial Support Services for Syrian Refugees in Lebanon (2013) at 31 ("Basic needs [of Syrian refugees] are still unmet with refugees struggling to ensure adequate shelter, health services, food . . . and education and for their children. In fact, even refugees who succeeded at renting a shelter are not being able to pay the rent . . . Others are living in tented settlements").

[20]. Ulrike Krause, *Analysis of Empowerment of Refugee women in Camps and Settlements*, 4 J. of Internal Displacement 29-52, at 34 ("While being settled in camps, refugees face limitations and restrictions: refugees are often not allowed to work and move freely within the country of asylum"); Amy Alexander, *Without Refuge: Chin refugees in India and Malaysia*, 30 Forced Migration Rev. 36-37, at 37 (2008) ("Chin refugees are not allowed to work in

Malaysia and are relegated to the informal work sector."). Sarah Bidinger, *Syrian Refugees and the Right to Work: Developing Temporary Protection in Turkey*, 33 Boston U. Int'l L. J. 224-249 at 226 (noting that turkey does not afford refugees the right to work).

[21]. Mott, *supra* note 7, at 121-128; Chammay, Kheir & Alaouie, *supra* note 19.

[22]. Krause, *supra* note 18; Alexander, *supra* note 18; Bidinger, *supra* note 18.

[23]. United States General Accounting Office (GAO),loans to Refugees: Status of Efforts To Improve Refugees' Transportation Loan Repayments, 1 (1987) (hereinafter, 1987 GAO Report).

[24]. 9 *Foreign Affairs Manual* (FAM) 309.2(a) ("IOM . . . handles transportation arrangements and pre-embarkation inspections for all refugees traveling to the United States, and administers the refugee travel loan program."); 1987 GAO Report, *supra* note22*,* at 1 (ICM [the Intergovernmental Committee for Migration] makes all the transportation arrangements . . . ").

[25]. 9 FAM Exhibit II, Promissory Note at para. 2 (". . . I (we) agree to pay this amount without interest, in monthly installments . . ."); *But See* 9 FAM Exhibit II, Promissory Note at para 6 ("the United States Government may use all legal means to collect amounts past due and payable. I (we) also agree that in the case of an assignment to the United States Government, the United States Government *may charge interest* from the date of assignment at a rate established by United States Federal Law on the entire unpaid indebtedness.") (italics added); 1987 GAO Report, *supra* note23*,* at1 (ICM [the Intergovernmental Committee for Migration] . . . issues interest-free promissory notes to cover the refugee's costs . . .").

[26]. *See* 9 FAM Exhibit II, Promissory Note.

[27]. 9 FAM Exhibit II, Promissory Note at para. 2 (". . . I (we) agree to pay this amount without interest, in monthly installments on the first day of each month, with the first installment to be paid not later than six (6) months after my (our) arrival in the United States"); 9 FAM 710.5-1 ("Repayment of the loan begins six months after arrival in the United States").

[28]. 9 FAM Exhibit II, Promissory Note at para. 2 ("I (we) agree to repay this IOM loan through regular payments made to the designated agency within forty-two (42) months after my (our) arrival in the United States or within the time schedule agreed upon with IOM or the designated agency. . ."); *But See* 9 FAM 710.5-1 ("We expect the total amount to be repaid within three years [36 months]").

[29]. 9 FAM 309.2(a)(". . . IOM . . . administers the Department's travel loan program. . ."); *See Also* 9 FAM Exhibit II, Promissory Note at para 1 ("I, as an individual or as head of family, acknowledge that at my request the . . . International Organization for Migration (IOM) has paid with kinds originally made available by the United States Government for the expenses associated with my (our) transportation and related processing services from ________________to the United States.").

[30]. 9 FAM 710.5(a)("The original signed note should be sent to IOM at the following address: International Organization for Migration 122 East 42nd Street, Suite 1610, New York, NY 10168").

[31]. United States Government Accountability Office (GAO), International Affairs: Stricter Enforcement of Refugees' Transportation Loan Repayments Needed, 9 (1985) (hereinafter, 1985 GAO Report) ("voluntary agencies responsible for resettling refugees in the United States sign agreements with ICM [now IOM] and [The Department of] State, agreeing to collect refugees' outstanding transportation loans.").

[32]. 9 U.S.C. 1522 § 412(b)(1)(A)(ii) (1997)("the Director . . . is authorized, to make grants to, and contracts with, public or private nonprofit agencies for initial resettlement (including initial reception and placement with sponsors) of refugees in the United States"); 9 FAM 310.2 (a) ("The Bureau of Population, Refugees and Migration has cooperative agreements with domestic voluntary agencies (Volags) . . . to sponsor refugees coming to the United States . . .").

[33]. *See* U.S. Department of Health & Human Services, Office of Refugee Resettlement, (Jul. 17, 2012) http://www.acf.hhs.gov/programs/orr/resource/voluntary-agencies (listing all nine volags, namely Church World Service (CWS), Ethiopian Community Development Council (ECDC), Episcopal Migration Ministries (EMM), Hebrew Immigrant Aid Society (HIAS), International Rescue Committee (IRC), U.S. Committee for Refugees and Immigrants (IRSA), Lutheran Immigration and Refugee Service (LIRS), U. S. Conference of Catholic Bishops, Migration and Refugee Services (USCCB), World Relief Refugee Services (WRRS)).

[34]. 9 FAM 310.2(b)("For all arriving refugees . . . the [volag] must provide the following services . . . (4) Basic needs support (including housing, furnishings, food and clothing) for at least 30 days; (6) Referrals to health, employment, and other services as needed; and (7) Case management and tracking for 90-180 days."); *See Also* 45 C.F.R. §§ 400.154 (effective: Mar. 22, 2000) (providing "employability services," such as vocational training, English language classes, etc.)400.155 (providing social services such as healthcare, transportation, day care, etc.).

[35]. 9 FAM 710.5-1 ("Voluntary agency sponsors explain the repayment procedures to refugees during orientation after arrival in the United States.").

[36]. International Organization of Migration, Financial Report for the Year Ending 31 December 2008, 38 (Apr. 30, 2009) (hereinafter IOM Financial Report), *available at* http://www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/98/MC_2277.pdf .

[37]. 8 U.S.C. § 1522(b)(8)(B) (1997)("The Federal agency administering paragraph (1) [The Department of State] shall establish criteria for the performance of agencies under grants and contracts under the paragraph, and shall include criteria relating to an agency's . . . collection of travel loans made to refugees resettled by that agency for travel to the United States."); 9 FAM 310, N2 ("The Bureau of Population, Refugees and Migration (PRM) [a division of the

Department of State] has cooperative agreements with domestic voluntary agencies (Volags) . . . to sponsor refugees coming to the United States. . .").

[38]. 1987 GAO Report, *supra* note23*,* at 6 (The ICM [the Intergovernmental Committee for Migration] revolving fund is replenished primarily by (1) loan collections remitted to ICM by the voluntary agencies and (2) contributions from the State Department's annual appropriations.").

[39]. *Id*.

[40]. 8 U.S.C. § 1522(b)(8)(B) (1997).

[41]. 22 USC § 2601(a)(2002)(authorizing the U.S. government to establish this arrangement with IOM).

[42]. 22 U.S.C. § 2601(a)(2) and (b)(2)(2002);*See Also* 1987 GAO Report, *supra* note 23, at 6.

[43]. 1987 GAO Report, *supra* note23*,* at 6 (The ICM [the Intergovernmental Committee for Migration] revolving fund is replenished primarily by (1) loan collections remitted to ICM by the voluntary agencies and (2) contributions from the State Department's annual appropriations.").

[44]. Masterson, *supra* note 7, at para. 12.

[45]. Hanna, *supra* note 7, at 206 (**"**A minimum monthly payment of thirty-five dollars is required from each individual, and for large refugee families, this figure is routinely over one hundred dollars a month.").

[46]. *Id*.

[47]. *Id.*

[48]. Mott, *supra* note 7, at 121-128; Chammay, Kheir & Alaouie, *supra* note 19.

[49]. Michael Matza, *Refugees to America Often Owe Huge Travel Bills*, The Philadelphia Inquirer, March 19, 2012, *available at*http://articles.philly.com/2012-03-19/news/31211104_1_refugees-travel-money-families (hereinafter Matza, *Huge Travel Bills)*; Molly Messick, *Travel Loans Jeopardize Success For Idaho Refugees*, Nat'l Pub. Radio of Idaho, May 10, 2012, *available at*http://stateimpact.npr.org/idaho/2012/05/10/travel-loans-jeopardize-success-for-idaho-refugees/ *(*hereinafter Messick, *Idaho Refugees)*

[50]. Hanna, *supra* note 7, at 200, FN 78.

[51]. 9 FAM Exhibit II, Promissory Note at para. 4 (". . . if I (we) fail to make full payment within forty-six (46) months after arrival in the United States, or if any monthly

payment on this note remains unpaid and past due for four (4) months or more, and I (we) have not received a written extension or modification of the payment schedule in accordance with paragraph 3 above, I (we) agree that IOM may declare in writing that the loan is in default, accelerate payment and demand immediate repayment of the entire unpaid indebtedness including charges, if any, for my (our) failure to make the scheduled repayments. I (we) agree that I (we) may be required to pay all attorney's fees and other collection costs and charges associated with collecting on this loan.").

[52]. 1985 GAO Report, *supra* note30*,* at 14, (noting that, despite doubting the legal enforceability of the promissory notes, between the years 1962 and 1966 "court actions was taken against 211 cases").

[53]. *Id.* at 8.

[54]. Utiang P. Ugbe, The New Americans: Factors Affecting Economic Integration Among African Refugees in New Hampshire at 134 (May 2006) (unpublished Ph.D. dissertation, Southern New Hampshire University) (on file with author).

[55]. Messick, *Idaho Refugees, supra* note 49.

[56]. Matza, *Huge Travel Bills, supra* note 49*;*Messick, *Idaho Refugees, supra* note 49.

[57]. *Id.*

[58]. Hanna, *supra* note 7, at 205; Matza, *Huge Travel Bills, supra* note 49.

[59]. 9 FAM Appendix O, Exhibit II, Promissory Note, at ¶ 3 ("I (we) understand that it is my (our) responsibility to inform the designated agency in writing if, because of financial hardship, I am (we are) unable to comply with the payment schedule and terms established in this note. At its option and upon my (our) written request, IOM, through the designated agency, may extend and/or modify the payment schedule of this loan.").

[60]. Email correspondence with Zoe Ann Olsen, former staff attorney at the Legal Aid Society of Idaho, to author (Jun. 23, 2015, 5:02 P.M., EST) (on file with author); Messick, *supra* note 49; *see also Travel Loan Information*, Idaho Legal Aid Society, http://www.idaholegalaid.org/files/Travel_Loan_Brochure.pdf (last visited Jun. 20, 2015).

[61]. 9 FAM Appendix O, Exhibit II, Promissory Note at ¶ 2 ("I (we) agree to pay this amount without interest, in monthly installments . . ."); *but see* 9 FAM Appendix O, Exhibit II, Promissory Note at ¶ 6 ("the United States Government may use all legal means to collect amounts past due and payable. I (we) also agree that in the case of an assignment to the United States Government, the United States Government *may charge interest* from the date of assignment at a rate established by United States Federal Law on the entire unpaid indebtedness.") (emphasis added).

[62]. Canadian Council for Refugees (CCR), *End the burden of refugee transportation loans!* http://ccrweb.ca/en/transportation-loans (last visited Jun. 20, 2015) [hereinafter CCR website].

[63]. Robyn Pasterer, *Investigating Integration: The Geographies of the WUSC Student Refugee Program at the University of British Columbia*, 27 Refuge 59, 70 (2011) ("Students mentioned that there had been occasions where [Student Refugee Program] students at other universities had to drop out of school to pay off the transportation loan or support family members overseas.").

[64]. Jenny Francis, University of British Columbia Report, "You cannot settle like this": The housing situation of African refugees in Metro Vancouver at 20 (2009), *available at* http://mbc.metropolis.net/assets/uploads/files/wp/2009/WP09-02.pdf ("Institutional barriers [to affordable housing] . . . include discrimination in the private rental market, as well as obstacles presented by public institutions, such as the CIC [Citizenship and Immigration Canada] travel loan for Government Assisted Refugees . . ."); *id.* at 60 ("A major financial burden for GARs is the repayment of their transportation loan to CIC . . .").

[65]. CCR website, *supra* note 62.

[66]. *Id.*

[67]. Hanna, *supra* note 7, at 207 ("Another justification for the early repayment process is that the International Organization for Migration (IOM) has limited resources and depends on repayments to make travel possible for future

refugees."); 1985 GAO Report, *supra* note 31, at 8 ("ICM [Intergovernmental Committee on Migration] has justified the use of a loan program to pay refugees' transportation costs on the assumption that it would be mostly self-sustaining.").

[68]. *Id.* at 206 ("Some say that the monthly payment system is helpful because it allows refugees to begin building their creditworthiness with credit bureaus.").

[69]. *Id.*

[70]. *Id.*

[71]. 9 FAM Exhibit II, Promissory Note at ¶ 6 ("the United States Government may use all legal means to collect amounts past due and payable. . .").

[72]. 9 FAM Exhibit II, Promissory Note at ¶ 8 ("(we) understand that this fact and other relevant information may be reported to a consumer reporting agency, credit bureau organization.").

[73]. Hanna, *supra* note 7, at 200-201; Matza, *Huge Travel Bills*, *supra* note 49.

[74]. Matza, *Huge Travel Bills, supra* note 49*;* Thirty years ago the GAO noted that a paltry twenty percent of the money loaned to refugees for travel had been repaid. *See* 1985 GAO Report, *supra* note 31, at 2.

[75]. 1985 GAO Report*, supra* note 31, at 11 ("... many of the voluntary agencies were philosophically opposed to the program being run on a loan basis.")

[76]. Messick, *Idaho Refugees, supra* note 49.

[77]. 1987 GAO Report, *supra* note 23, at 6 ("Refugee transportation loans began in 1952 when the Mutual Security Act of 1951 (Public Law 165) . . . ").

[78]. IOM Financial Report, *supra* note 36, at 38.

[79]. 9 FAM Exhibit II, Promissory Note at para. 2 ("I (we) agree to repay this IOM loan through regular payments made to the designated agency within forty-two (42) months after my (our) arrival in the United States or within the time schedule agreed upon with IOM or the designated agency. . ."); *But See* 9 FAM 710.5-1 ("We expect the total amount to be repaid within three years [36 months]").

[80]. 1985 GAO Reports, *supra* note 31, at 2.

[81]. *See generally*, Refugee Convention, *supra* note 3.

[82]. *Id.*, *supra* note3.

[83]. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter *The Protocol*] (The 1951 Convention actually limited refugees to persons who fit the definition of refugee "[a]s a result of events occurring before 1 January 1951" and limited them geographically to Europe. *See* Refugee Convention, *supra* note 3, at art. 1(A) (2) and 1(B)(1). The 1967 Protocol had the effect merely of extending the Refugee Convention to all persons who fit the definition of refugee regardless of when they became refugees or their geographic location. Protocol, *supra* note 83, at art. I (3).

[84]. Refugee Convention, *supra* note 3, at art 1(A) (B).

[85]. *Id.* at art 1(C),(D),(E), (F) (identifying the conditions under which an individual seeking asylum is ineligible to receive that asylum and the conditions under which a refugee may be sent back to their home country. Articles 32, 33 define the right of non-refoulement, or the right not to not be returned to one's home country when one meets the definition of refugee).

[86]. *Id.* at art. 33.

[87]. *See Id.* at art. 1, 32, 33.

[88]. *Id.* at art. 17, 23, 31.

[89]. *Id.* at art. 1(A)(1) and (C).

[90]. *See, e.g.*, Cheryl Monica Joseph v. Canada, Case 11.092, Inter-Am. Comm'n H. R., Report No. 27/93, OEA/Ser.L/V/II/.85, doc. rev. 9 ¶ VI.2.8 (1993), *available at* http://cidh.org/annualrep/93eng/Canada.11092.htm;Paez v. Sweden, App. No. 29482/95, 18 Eur. H.R. Rep. i, 4 (1997), *available at* http://hudoc.echr.coe.int/eng#{%22fulltext%22:[%2229482%22],%22itemid%22:[%22001-58112%22]}; Case C-364/11, Kott v. Bevándorlásiés Állampolgársági Hivatal [Office of Immigration and Nationality, Hung.], 2012 E.C.R. I- ¶ ¶ 4-5, 13-14, 21, 26 (2012); I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 435 (1987); Németh v. Canada, 2010 SCC 56, [2010] 3 S.C.R. 281, 300, 307-8, 328-30, 333-34, 337-9, *available at* http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7899/index.do?r=AAAAAQARTsOpbWV0aCB2LiBDYW5hZGEB; Supreme Administrative Court Decision, KHO:2010:84, Dec. 30 2010 ¶ 2.2 (Fin.), *available at* http://www.finlex.fi/fi/oikeus/kho/vuosikirjat/2010/201003963, *translated in* http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=LEGAL&publisher=&type=&coi=IRQ&rid=&docid=4ea028162&skip=0; Phuong and Chinh, [1993], 2368 H.K.C. 1, 8, 19-20 (C.F.A.)(H.K.), *available at* http://www.refworld.org/docid/3ae6b68930.html; Areios Pagos [A.P.] [Supreme Court] 454/1993 (Greece), *available at* http://www.areiospagos.gr/en/INDEX.htm,

*translated in*http://www.refworld.org/docid/3f4f80a74.html;ChihoSaibansho [Osaka Dist. Ct.] Sept. 15 2003, no. 19, Heisei 14 (Gyo-U) 1, 3-4, 6, 16, 22-23, *translated at* http://www.unhcr.org/refworld/docid/4284b7544.html; Stefan v. Minister for Justice, [2001] I.R. 1, 3 (Ir.), *available at* http://www.refworld.org/docid/4ac34b1c2.html.

[91]. Refugee Convention, *supra* note 3, at art. 32, 33.

[92]. *See e.g.,* Doe v. Canada, Case P-554-04, Inter-Am. Comm'n H. R., Report No. 121/06, OEA/Ser.L/V/II. pet., ¶ ¶ 4, 27, 37, 46, 64-5 (2007) *available at* http://cidh.org/annualrep/2006eng/CANADA.554%2004eng.htm; Haitian Ctr for Human Rights v. U.S., Case 10.675, Inter-Am. Comm'n H. R., Report No. 51/96, OEA/Ser.L/V/II.95 ¶ ¶ 20, 31 (1997), *available at* http://www.cidh.oas.org/annualrep/96eng/USA10675.htm; Case-57/09 and C-101/09, Bundesrepublik Deutschland v. B and D [Ger. v. B and D], 2010 E.C.R. ¶ ¶ 5, 101 (2010) http://curia.europa.eu/juris/document/document.jsf?text=&docid=79167&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=201903;

I.N.S. v. Doherty, 502 U.S. 314 (1992); Suresh v. Canada, 2010 SCC 3, 5, 42-4, 47, [2010] 1 S.C.R. 3, *available at* https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1937/index.do; S v Mushwena and Others, SA 6/2004, 1, 117-21 (21 July 2004 Namibia), *available at* http://www.refworld.org/docid/4c987b422.html; *See generally,* Holzer, *supra* note 6; 1 Hathaway, *supra* note 6; Musalo, *supra* note 6; Feller, *supra* note 6; Crock, *supra* note 6; Chimni, *supra* note 6; Takkenberg, *supra* note 6; Goodwin-Gill, *supra* note 6.

[93]. *See, e.g.*,Vanessa Holzer, Refugees From Armed Conflict: The 1951 Refugee Convention and International Humanitarian Law (2015); James Hathaway and Michelle Foster,

The Law of Refugee Status (2014); Karen Musalo, Refugee Law and Policy: A Comparative and International Approach (2011); Erika Feller and Volker Türk, United Nations High Commissioner for Refugees, Refugee Protection in International Law: UNHCR's Global Consultations on International Protection (2003); Mary E. Crock and Ben Saul, Future Seekers: Refugees and the Law in Australia (2002); B.S. Chimni, International Refugee Law (2000); Lex Takkenberg, The Status of Palestinian Refugees in International Law (1998); Guy S. Goodwin-Gill, The Refugee in International Law (1996); James Hathaway, Law of Refugee Status (1991).

[94]. *See, e.g.*, Fatma E. Marouf, Review Essay, 103 Am. J. Intl L. 784, 785 (2009) (reviewing Michelle Foster, Socioeconomic Rights and Refugee Status: Deepening the Dialogue Between Human Rights and Refugee Law International Refugee Law and Socio-economic Rights: Refuge from Deprivation (2007)) ("While scholars initially described economic and social rights as "second generation" rights that require expenditure of resources, compared to superior "first generation" civil and political rights that simply imposed negative duties on states, our understanding of economic and social rights has rapidly changed.").

[95]. Marouf, *supra* note 94, at 786 (discussing the contribution that multiple authors have made to identifying socio-economic grounds for asylum claims); Jane McAdam, *Symposium – Climate Justice and International Environmental Law: Rethinking the North-South Divide Review Essay*, 10 Melb. J. Int'l L. 579, 591 (2009) (discussing Michelle Foster's analysis of economic persecution).

[96]. Marouf, *supra* note 94, at 785-6; Jane McAdam, *supra* note 95, *at* 579.

[97]. *See generally* Foster, International Refugee Law and Socio-Economic Rights: Refuge from Deprivation (2007); *See Also* Marouf, *supra* note 94. (discussing Foster's work); Jane McAdam, *supra* note 95, at 579-80 (discussing Foster's work).

[98]. Marouf, *supra* note 94, at 785-6; McAdam, *supra* note 95, at 579-80.

[99]. *See generally* Foster, supra note 66.

[100]. Marouf, *supra* note 94, at 786 (discussing the contribution that multiple authors have made to identifying socio-economic grounds for asylum claims);

[101]. Bobana Ugarkovic, *A Comparative Study of Social and Economic Rights of Asylum Seekers and Refugees in the United States and the United Kingdom*, 32 Ga. J. Int'l & Comp. L. 539, at 541 (2004).

[102]. *Id.* at 558.

[103]. Ryszard Cholewinski, *Economic and Social Rights of Refugees and Asylum Seekers in Europe*, 14 Geo. Immigr. L. J. 709, at 709 (2000).

[104]. *Id.* at 709-13 (2000) ("The purpose of this paper is to outline the economic and social rights of refugees and asylum seekers in Europe . . .").

[105]. *See generally* Maya Raghu, *UK High Court Rules that government cannot withhold welfare assistance from asylum applicants*, 11 Geo. Immigr. L.J. 259 (1996).

[106]. *See, e.g.,*Savitri Taylor, *Do On-Shore Asylum Seekers Have Economic and Social Rights? Dealing with the Moral Contradictions of Liberal Democracy*, 1 Melb. J. Int'l L. 70 (2000).

[107]. *Id.*

[108]. *Id.* at 84.

[109]. *Id.*

[110]. Hanna, *supra* note 7, at 200-205.

[111]. Other discussions do not involve legal analysis at all. *See, e.g.*, Laura Simich, Hayley Hamilton & B. Khamisa Baya, *Mental Distress, Economic Hardship and Expections of Life in Canada among Sudanese Newcomers*, 43 Transcultural Psychiatry 418-444 (2006).

[112]. *See generally* 1985 GAO Report, *supra* note 31; 1987 GAO Report, *supra* note 23.

[113]. 1985 GAO Report, *supra* note 31, at 13-14 ("ICM [now IOM] concluded that . . . compulsory repayment of the [promissory] notes by enforceable legal procedures was never envisaged . . . According to ICM officials, various legal opinions were informally sought in the early 1960's concerning the legal validity of the notes. Based on these, they concluded that: '. . . It was unlikely that promissory notes would be considered valid if brought to court (one of the reasons was the lack of notarization of signature in some countries) . . .'").

[114]. *See generally* 1985 GAO Report, *supra* note 31; 1987 GAO Report, *supra* note 23.

[115]. See, e.g., Andrew Haile, *The Scandal of Refugee Family Reunification*, 56 B. C. L. Rev. 273-312, at 283 (Jan. 30, 2015) ("The U.S. government fronts the cost of flights and issues a no-interest loan to be repaid by beneficiaries at a later date. . . . The entire process can be daunting for overseas spouses or children, who tend to have little formal education and money."); Lindsay M. Harris, *From Surviving to Thriving? An Investigation of Asylee Integration in the United States*, 40.2 N.Y. U. Rev. of L. and Soc. Change (forthcoming 2016) (mentioning the travel loan program only to note that asylees are not eligible for the same and to argue that asylees should have access to such travel loans).

[116]. *See, e.g.*, Marouf *supra* note 94, at 792-3 (noting that the constitutional courts of South Africa and Colombia, as well as the human rights organization Amnesty International, have given attention to the question of socio-economic rights generally); Malcolm Langford, Social Rights Jurisprudence: Emerging Trends in International and Comparative Law (2008) (discussing significant decisions on socio-economic rights from the high courts of more than thirteen different countries in addition to multiple regional courts).

[117]. *See, e.g*., Diane A. Dexdsierto, *ICESCR Minimum Core Obligations and Investment: Recasting the Non-Expropriation Compensation Model During Financial Crises*, 44 Geo. Wash. Int'l L. Rev. 473 (2012); Barbara Stark, *Economic Rights in the United States and International Human Rights Law: Toward an "Entirely New Strategy,"* 44 Hastings L.J. 79 (1992); David Bilchitz, Poverty and Fundamental Rights:, The Justification and Enforcement of Socio-economic Rights (2008); Kristin Henrard, The Interrelation between the Right to Identity of Minorities and their Socio-economic Participation (Studies in International Minority and Group Rights) (2013)

[118]. UN Committee on Economic, Social, and Cultural Rights, May 5, 2003-May 23, 2003, UN Doc. E/C.12/1/Add.90, at ¶ 31 (May 23, 2003) ("[the] basic economic, social and cultural rights, as part of the minimum standards of human rights, are guaranteed under customary international law").

[119]. *See generally* The International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3 [hereinafter ICESCR].

[120]. *See, e.g.,* Foster, *supra* note 97.

[121]. *See, e.g.,* Refugee Convention, *supra* note 3, at art. 21, 22, 23, 24, and 29.

[122]. *Id.* at art. 42(1).

[123]. Refugee Convention, *supra* note 3, at art. 33.

[124]. Cartagena Declaration on Refugees, O.A.S. Res., Nov. 19-22, 1984, O.A.S. Doc. OEA/Ser.L/V/II.66/doc.10, at 190-93, at art. 3(5) (Nov. 22, 1984).

[125]. Other than the principal of non-refoulment none of the other protections in the Refugee Convention are covered in the short list of *jus cogens* violations. *See* Ian Brownlie, Principles of Public International Law, 11 (7th ed., 2008).

[126]. Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967), *available at*http://www.refworld.org/docid/3ae6b3ae4.html; Protocol Relating to the Status of Refugees Declarations and Reservations at 5 (hereinafter, Protocol Declarations and Reservations) (noting U.S. accession on November 1st, 1968), *available at*

https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20V/V-5.en.pdf; *See Also* 9 U.S.C. § 1101(a)(42)(A) (2005).

[127]. *Negusie v. Holder* 555 U.S. 511, 520 (2008) (quoting *Aguirre-Aguirre*, 526 U. S. 415, 427 (1999), itself quoting *Cardoza-Fonseca*, 480 U. S. 421, 436–437 (1987)).

[128]. The Protocol itself says that those who ratify it, ratify the entire Refugee Convention as well. *See* Protocol, *supra* note 83, at art. 1(1).

[129]. *See* Protocol Declarations and Reservations, *supra* note 126, at 5.

[130]. *See infra* Part VI (A).

[131]. Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 31, 32. (hereinafter VCLT).

[132]. *Id.* at art. 31(a).

[133]. *Id.*

[134]. *Id.* at art. 32.

[135]. *Id.*

[136]. *Id.* at art. 31(3)(c).

[137]. Manasi Raveendran, *Plight of the Boat People: How to Determine State Obligations to Asylum Seekers*, 87 Notre Dame L. Rev. 1277, at 1301 (2012) ("In general, the 1951 Convention's meaning has evolved . . .the terms 'membership in a particular social group' and 'persecution' have expanded over time to include more groups that would not have originally received protection under the 1951 Convention")

[138]. VCLT, *supra* note 131, at 31(a).

[139]. *See* Office of the UNHCR Division of International Protection Services, A Thematic Compilation of Executive Committee Conclusions, (6th ed. 2011) *available at* http://www.unhcr.org/3d4ab3ff2.html (hereinafter Office of the UNHCR Division of International Protection Services).

[140]. Pierre-Michel Fontaine, *The 1951 Convention and the 1967 Protocol Relating to the Status of Refugees: Evolution and Relevance for Today*, 2 Intercultural Hum. Rts. L. Rev. 149, 181 (2007)("[T]he panoply of principles applicable to refugees and asylum-seekers include as well, in descending binding order, selected resolutions of the UN Security Council[,] . . . the Statute of the UNHCR, [and] the many resolutions on refugees adopted by the UN General Assembly . . . .").

[141]. *See* Office of the UNHCR Division of International Protection Services, *supra* note 139.

[142]. James C. Hathaway, *The Relationship Between Human Rights and Refugee Law: What Refugee Judges Can Contribute, in* The Realities of Refugee Determination on the Eve of a New Millennium: The Role of the Judiciary 80, 85 (Jordan, Nesbitt and Assocs. ed.,1999).

[143]. *See* U.N. Charter art. 38 ¶ 1; Brownlie, *supra* note 125, at 6; Oscar Schachter, International Law in Theory and Practice, 84 (1991) (discussing the legal effect of resolutions and sources of authority).

[144]. Brownlie, *supra* note 125, at 6; Schachter, *supra* note 143, at 95-96.

[145]. Brownlie, *supra* note 125, at 6; Schachter, *supra* note 143 at 95-96.

[146]. Thorough research returns only a few UN Resolutions that even mention the Refugee Convention, often for the purpose of endorsing it, noting the number of states that have thus far endorsed it, expressing support for particular provisions, or else encouraging the need to support refugees generally. *See, e.g.,* G.A. Res. 44/137, ¶ 2 (Dec. 15, 1989) (promoting the implementation of the Refugee Convention); G.A. Res. 52/132, ¶ 13 (Dec. 12, 1997) (encouraging States that have not already done so to consider acceding to the 1951 Convention and the Protocol); G.A. Res. 54/180, ¶ 13 (Dec. 17, 1999) (prompting state compliance with Article 35); G.A. Res. 65/194, ¶ 4 (Dec. 21, 2010) (noting 147 States were parties to one or to both instruments as of December of 2010); G.A. Res. 69/154, ¶ 14, (Jan. 22, 2015) (reaffirming the importance of "timely and adequate" material assistance to refugees).

[147]. The ICESCR for example, speaks to socio-economic rights generally, but not to the travel loan requirement or like burdens placed upon refugees. *See generally* ICESCR, *supra* note 119.

[148]. Paul Weis, The Refugee Convention, 1951, The Travaux Preparatoires analysed with a commentary by Dr. Paul Weis (1990),

http://www.unhcr.org/4ca34be29.pdf [hereinafter Preparatory Works].

[149]. *See generally* Office of the UNHCR Division of International Protection Services, *supra* note 139.

[150]. *See infra* Part V (A) and (B).

[151]. *Id.*

[152]. *See, e.g., Immigration and Naturalization Serv. v. Stevic*, 467 U.S. 407, 416-17 (1984) (taking into consideration Articles 1.2 and 33.1 of the U.N. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223); *Sale v. Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 156 (1993) (referring to Article 33 of the U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137).

[153]. *See Lawrence v. Texas*, 539 U.S. 558, 576-77 (2003) (relying on the decisions of the European Court of Human Rights and the actions taken by "other nations").

[154]. *Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804) (holding that a statute, when ambiguous, should be construed so as to comply with international law, stating "an act of

Congress ought never to be construed to violate the law of nations, if any other possible construction remains false").

[155]. Refugee Convention, *supra* note 3, at arts. 17-19.

[156]. *Id.* at art. 21, 22(2).

[157]. *Id.* at art. 6.

[158]. *Id*. at art 22(1), 23-24.

[159]. *Id.* at art. 29.

[160]. *Id.* at art. 31.

[161]. *Id.* at art. 3, art. 4 (spelling out the right to non-discrimination and freedom to practice their religion, respectively), art. 13 (affording refugees equal rights to acquire and hold title to all forms of property), art. 15 (ensures refugees the right of free association), art. 16 (ensures a refugee's equal access to the courts), art. 26 (protects the refugee's freedom of movement).

[162]. Ugarkovic, *supra* note 101, at 558.

[163]. 8 U.S.C. § 1612(b)(3)(C) (2008) (stating that qualified aliens are eligible for Medicaid); *see* 8 U.S.C. § 1641 (2008) (defining qualified aliens as, *inter alia*, a refugee or asylee, and exempting the same from a five year bar from federal benefits).

[164]. 8 U.S.C. § 1612(b)(3)(A) (stating that qualified aliens are eligible for temporary assistance for needy families).

[165]. 8 U.S.C. §1612(a)(3)(A) (stating that qualified aliens are eligible for disability benefits under the Social Security Act).

[166]. 8 U.S.C. § 1612(a)(3)(B) (stating that qualified aliens are eligible for food stamps).

[167]. Ugarkovic, *supra* note 101, at 558.

[168]. *Id.*

[169]. Refugee Convention, *supra* note 3, at art. 29 (emphasis added).

[170]. Preparatory Works, *supra* note 148, at 196.

[171]. Convention Relating to the International Status of Refugees, 28 October 1933, CLIX L.N.T.S. 3663, http://www.refworld.org/docid/3dd8cf374.html.

[172]. Preparatory Works, *supra* note 148, at 198.

[173]. Protocol Declarations and Reservations, *supra* note 126, at 5.

[174]. Preparatory Works, *supra* note 148, at 198.

[175]. *Id.*

[176]. Dioikitikó Protodikeío Athinón [Mon.Pr.] [Administrative Court of Athens] 12231/2003, p. 1 (Greece), http://www.unhcr.org/refworld/docid/41207d844.html [accessed 12 March 2013] (hereinafter Greece 12231/2003).

[177]. *Id.*at 1.

[178]. *Id.*

[179]. *Id.*

[180]. *Id.*

[181]. *Id.*

[182]. Fontaine, *supra* note 140, at 177.

[183]. *Id.* at 177.

[184]. Refugee Convention, *supra* note 3, at art. 29(2).

[185]. Preparatory Works, *supra* note 148, at 196

[186]. Fridtjof Nansen Biography, The Nobel Foundation,

http://www.nobelprize.org/nobel_prizes/peace/laureates/1922/nansen.html (last visited Jun. 23, 2015).

[187]. Preparatory Works, *supra* note 148 , at 196-7 (when the Refugee Convention was being drafted, a Nansen Stamp cost “5 gold francs”).

[188]. *Id.*

[189]. *Id.* at 197.

[190]. *Id.* at 198.

[191]. *Id.* at 197.

[192]. *Id.*

[193]. *Id.* at 198.

[194]. Refugee Convention, *supra* note 3, art. 23 at 24-25.

[195]. *Id.,* art. 24 at 25

[196]. Preparatory Works, *supra* note 148, at 123-4.

[197]. *Id.* at 124.

[198]. *Id.* at 125.

[199]. Greece 12231/2003at 1.

[200]. *Id.*

[201]. Preparatory Works, *supra* note 148, at 125.

[202]. *See, e.g.,R v. Asfaw*, [2008] U.K.H.L. 31 (appeal taken from Eng.), *available at* http://www.publications.parliament.uk/pa/ld200708/ldjudgmt/jd080521/asfaw.pdf; *Hassan Adan and Others v. Secretary of State for the Home Department*, [1997] 2 All E.R. 723, [1997] IWLR 1107 (Gr. Brit.), *available at* http://www.unhcr.org/refworld/docid/3ae6b70ac.html; *Palestine v. Secretary of State for the Home Department*, CG [2004] UKIAT OO293 (Gr. Brit.), *available at* http://www.unhcr.org/refworld/docid/42c93b2c4.html.

[203]. In 2009, the House of Lords was replaced by the Supreme Court of the United Kingdom as the court of last resort. *See* The Constitutional Reform Act of 2009, 2009 No. 1604 (C. 83).

[204]. *Asfaw*, at para. 2.

[205]. *Id.*

[206]. Refugee Convention, *supr*a note 3, at art. 31.

[207]. *Asfaw*, at para. 93.

[208]. *Id.* at para. 94.

[209]. See *Hassan Adan and Others*, at “Issue one.”

[210]. *Id.*

[211]. See *Palestine*, at para. 80.

[212]. *Id.* at para. 51.

[213]. See Raghu, *supra* note 105, at 263.

[214]. *Refugee Council New Zealand Inc, The Human Rights Foundation of Aotearoa New Zealand Inc and "D" v Attorney General (Supplementary Judgment*) [2002], NZAR 769 (N.Z.).

[215]. See Generally *Refugee Appeal No. 71684/99* [1999], INLR 165 (N.Z.).

[216]. *Queen on the Application of 'Q' & Others v. Secretary of State for the Home Department*, [2003] EWCA Civ 364, [2003] 2 All ER 905, at para. 6 (appeal taken from Eng. & Wales), *available at* http://www.unhcr.org/refworld/docid/42ef6da64.html.

[217]. *Laftaly v. Secretary of State for the Home Department*, [1993] Imm AR 284 (U.K.), *available at* http://www.refworld.org/docid/3ae6b6d38.html.

[218]. *Refugee Council New Zealand Inc, The Human Rights Foundation of Aotearoa New Zealand Inc and "D"* at "Appendix."

[219]. Refugee Convention, *supra* note 3, at art. 23, 24.

[220]. Protocol Declarations and Reservations, *supra* note 126, at 5.

[221]. Refugee Convention, *supra* note 3, at art. 31(1). *But See* Refugee Convention, *supra* note 2, at art. 31(2) (prohibiting restrictions on a refugee's movement, but only within a receiving country, making it less relevant here).

[222]. *Asfaw*, at para. 93.

[223]. Preparatory Works, *supra* note 148, at 219.

[224]. *Id*. at 213, 217.

[225]. *Id.* at 213.

[226]. *Id.* at 212.

[227]. *Id.* at 218.

[228]. *Zanzoul v R*, [2008] NZSC 44 at para. 1, 11 (SC) *available at*

http://www.refworld.org/docid/4986f6102.html.

[229]. *X (CA746/2009) v R*, [2010] NZCA 522 at para 21 (CA) a*vailable at*

http://www.unhcr.org/refworld/docid/4e09fe922.html.

[230]. *Ghuman v Registrar of the Auckland District Court* [2004] NZAR 440 [2003] 20 CRNZ 600 (HC) *available at* http://www.refworld.org/docid/40cec1694.html.

[231]. *RV v. Director of Immigration and another* [2008] HCAL 2/2008 at para. 97, 98 (H.K.) *available at*http://www.unhcr.org/refworld/docid/4f152e432.html.

[232]. Anṓtato Dikastī́rio (A.D.) [High Court of Mytilini] 585/1993 (Greece) *available at* http://www.refworld.org/docid/3f4f8a254.html.

[233]. *Id.*

[234]. *Saadi v. United Kingdom*, App. 13229/03, Eur. Ct. H. R. (2008) at para. 11 *available at* http://www.unhcr.org/refworld/docid/47a074302.html.

[235]. *Id.* at para. 21.

[236]. *Refugee Council New Zealand Inc, The Human Rights Foundation of Aotearoa New Zealand Inc and "D"* at para. 128.

[237]. *Id.* at para. 151.

[238]. Office of the UNHCR Division of International Protection Services, *supra* note 139.

[239]. Cholewinski, *supra* note 103, at 709, FN a1 ("The author is a Lecturer of Law in the Faculty of Law, University of Leicester, England").

[240]. *Id.* at 713 ("The denial of economic and social rights to asylum seekers on account of their unauthorized entry into the destination country is therefore arguably a form of penalty under Article 31.").

[241]. *Id.* ("This argument should also be viewed in the context of policies, such as carrier sanctions and visa requirements, applied in eastern European countries and elsewhere").

[242]. *Sefu and Others v. The Attorney General of Botswana*, High Court of Botswana (Jun. 10, 2005) (on file with author) *available at*: http://www.unhcr.org/refworld/docid/4c9880d52.html.

[243]. Poinikó dikastī́rio tī̱s Chíou [Criminal Court of Chios] 233/1993 (Greece) *available at* http://www.refworld.org/docid/3f4f896f4.html.

[244]. Kōtō Saibansho [High Ct. of Japan] Dec. 6, 1982, *Hanrei Jiho [Ryo Kan-ei]*, at para. 2, *available at* http://www.unhcr.org/refworld/docid/3ae6b6f118.html.

[245]. *Id.* at "summary of judgment."

[246]. United Nations High Commissioner for Refugees, UNHCR Resettlement Handbook: Division of International Protection at 380 (July 2011) (stating that "[t]ravel costs for most resettlement cases are met by the receiving country either in total or under a government loan scheme," implying that some countries pay for the travel outright instead of deploying travel loans).