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Improving the Refugee Crisis in Syria: A Comparative Analysis of Regional Refugee Policies

TIMOTHY CALICA*

I. INTRODUCTION

President Bashar Asad and his regime began its rule over the Syrian Arab Republic in 2000.¹ Since then, massive amounts of human rights violations have precipitated, leading to much political conflict.² Protests against the regime of President Assad in Syria began in 2011,³ and these protests eventually led to a civil war in 2012.⁴ Government brutality and extremist violence have engulfed the country, forcing a massive amount of Syrians to leave the country and find refuge elsewhere.⁵ The ongoing violence and collapse of the economic infrastructure have displaced nearly eleven million Syrians,⁶ with over four million Syrians designated as refugees.⁷ Consequently, in 2015, more than 700,000 Syrian refugees and other migrants risked their lives to travel to Europe.⁸ These numbers are staggering. While the international community has established

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1. U.S. Dep't of State, H.R., Syria Human Rights Report (2014), <http://www.state.gov/documents/organization/236834.pdf> [hereinafter Syria Human Rights Report].

2. *Id.*

3. Shelly Culbertson, *Syrian Refugees: All You Need to Know*, NEWSWEEK (Sept. 17, 2015, 1:41 PM), <http://www.newsweek.com/syrian-refugees-all-you-need-know-373475>.

4. Syria Human Rights Report, *supra* note 1, at 1.

5. *Id.*

6. *Id.*

7. *Refugees of the Syrian Civil War*, WIKIPEDIA, https://en.wikipedia.org/wiki/Refugees_of_the_Syrian_Civil_War (last visited Nov. 20, 2015).

8. *What you need to know: Crisis in Syria, refugees, and the impact on children*, WORLD VISION, <http://www.worldvision.org/news-stories-videos/syria-war-refugee-crisis> (last visited Nov. 20, 2015).

treaties to help mitigate these types of situations, the inconsistent implementation of refugee policies regionally has directly affected the ability of individuals to seek the benefit of refuge.

The Convention Relating to the Status of Refugees, commonly known as the 1951 Refugee Convention, was pivotal in acknowledging that refugees were entitled protection,⁹ but the broad nature of the treaty limited its scope and effect. The basic role of international human rights treaties is to promote a minimum common denominator between the parties.¹⁰ States that are party to international treaties cannot recognize fewer rights than the minimal common denominator, but are free to recognize additional rights.¹¹ Thus, these treaties only contain protections that all States agree on. As a result, the wider the number of signatory States, the more watered down the agreement becomes. Finding a consensus on contentious issues is difficult and leads to standards that are often vague and conservative. Because of this, refugee rights are further discussed at the regional level to provide substance since fewer States are involved and more homogeneity exists. The basic rationale is that “[t]he UN human rights system provides the main architecture of the international human rights protection regime, and regional human rights protection mechanisms constitute one of its fundamental pillars by complementing and often improving it on a regional level.”¹²

The European and Latin American regions have starkly different refugee policies. While both regions adopted the Universal Declaration of Human Rights,¹³ recognize the universality of human rights, ratified the 1951 Refugee Convention,¹⁴ and acknowledge the special rights that should be provided to all refugees, they have taken different approaches towards implementation. Their policy choices reflect their respective stances on whether to provide more rights than those articulated in international treaties, or to provide only the bare minimum articulated in such treaties.

Europe has various instruments that address refugee rights. In addition to ratifying international treaties, the creation of the Council of

9. G.A. Res. 429 (V), Convention Relating to the Status of Refugees, art. 33 (Jul. 28, 1951) [hereinafter 1951 Refugee Convention].

10. CARL WELLMAN, *THE MORAL DIMENSIONS OF HUMAN RIGHTS* 183 (2011).

11. *Id.*

12. Directorate-General for External Policies of the Union, *The Role of Regional Human Rights Mechanisms* 26 (2010), [http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET\(2010\)410206_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/etudes/join/2010/410206/EXPO-DROI_ET(2010)410206_EN.pdf).

13. *See generally* G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

14. *See generally* 1951 Refugee Convention, *supra* note 9.

Europe and the European Union has allowed for further promulgation of these rights through the European Convention of Human Rights¹⁵ and the Charter of Fundamental Rights of the European Union.¹⁶ While these instruments have been pivotal in the advancement of rights, the implementation of these rights hinge on whether the State is willing to exercise responsibility over an entering refugee.

Europe has since enacted what have become known as the Dublin Regulations, which employs strict rules addressing State responsibility of refugees.¹⁷ The Dublin Regulations allow a State to determine whether it is responsible for caring for an entering refugee. In essence, if a refugee enters a State, and that State determines that another State is responsible for the care of that entering refugee, it has the ability to transfer that refugee to the other State. While States maintain their sovereignty and are allotted certain freedoms in how they handle refugees, strict adherence to the Dublin Regulations, especially during this time of the Syrian Refugee Crisis, has the potential of running afoul of various international laws. In particular, the Dublin Regulations run contrary to the principle of non-refoulement, which holds that a state shall not “expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”¹⁸ Indeed, the European Court of Human Rights has found violations of the European Convention of Human Rights in the cases *M.S.S. v. Belgium and Greece* and *Sharifi and Others v. Italy and Greece* because of States’ adherence to the Dublin Regulations.¹⁹ Additionally, the European Court of Justice has found violations of the Charter of Fundamental Rights of the European Union in the Joined Cases of C-411/10 and C-493/10 due to strict observation of the Dublin Regulations.²⁰

15. European Convention for the Protection of Human Rights and Fundamental Freedoms, *as amended* by Protocol 1, Sept. 3, 1953, E.T.S. 155 (EC), http://www.echr.coe.int/Documents/Convention_ENG.pdf [hereinafter European Convention of Human Rights].

16. Charter of Fundamental Rights of the European Union, 2000/C 364/01, (Dec. 18, 2000) (EC), http://www.europarl.europa.eu/charter/pdf/text_en.pdf [hereinafter Charter of Fundamental Rights].

17. See Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or stateless person (recast) 2013 O.J. (L 180), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF> [hereinafter Dublin Regulations].

18. 1951 Refugee Convention, *supra* note 9, art. 33(1).

19. *Factsheet: Dublin Cases*, EUROPEAN COURT OF HUMAN RIGHTS, http://www.echr.coe.int/Documents/FS_Dublin_ENG.pdf (last updated June 2016).

20. *Id.*

In contrast, Latin America has taken a different approach to avoid possible human rights violations. The Latin American States are members of the Organization of American States.²¹ Under this organization, human rights are promoted through the American Convention of Human Rights²² and the Protocol of San Salvador.²³ Unlike the European system that has constricted refugee rights by narrowing the scope of States' responsibilities, Latin American countries have broadened their scope. Latin America has adopted the Cartagena Declaration, an instrument that specifically addresses refugee rights.²⁴ This instrument takes a more liberal approach to implementing refugee policies by focusing on providing rights for a wider spectrum of individuals and safeguarding against refoulement through the practice of voluntary repatriation.²⁵ Continued efforts by specific States such as Ecuador, Mexico and Brazil further show the implementation of friendly refugee policies. Ecuador took a strong stand by overturning Executive Decree 1182,²⁶ legislation designed to hinder refugee progress, while Mexico and Brazil have executed plans of actions specifically tailored to provide more benefits to refugees.²⁷ Thus, while both regions recognize refugee rights, they differ in their application.

Part II of this Article will provide a general overview of international and regional instruments that address refugee rights. At the international level, it will discuss the Universal Declaration of Human Rights and the 1951 Refugee Convention. Then it will discuss the regional refugee rights recognized in both the European and Latin American regions. For Europe, it will focus on the European Convention

21. *Who We Are*, ORGANIZATION OF AMERICAN STATES, http://www.oas.org/en/about/who_we_are.asp.

22. *Id.*; see also American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention].

23. See generally Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights "Protocol of San Salvador," Nov. 17, 1988, O.A.S.T.S. No. 69, <http://www.oas.org/juridico/english/treaties/a-52.html> [hereinafter San Salvador Protocol].

24. See generally Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama, Nov. 22, 1984, https://www.oas.org/dil/1984_Cartagena_Declaration_on_Refugees.pdf [hereinafter Cartagena Declaration].

25. *Id.*

26. Daniela Ubidia & Estefania Polit, *Landmark Victory for Refugee Rights in Ecuador*, ASYLUM ACCESS, http://asylumaccess.org/landmark-victory-for-refugee-rights-in-ecuador_

27. See generally Mexico Declaration and Plan of Action to Strengthen the International Protection of Refugees in Latin America, Nov. 16, 2004, http://www.oas.org/dil/mexico_declaration_plan_of_action_16nov2004.pdf [hereinafter Mexico Declaration]; Brazil Declaration and Plan of Action, Dec. 3, 2014, <http://www.refworld.org/docid/5487065b4.html> [hereinafter Brazil Declaration].

of Human Rights, the European Social Charter, and the Charter of Fundamental Rights of the European Union. In regards to Latin America, it will discuss the American Declaration of Human Rights, the American Convention on Human Rights, the Protocol of San Salvador, and the Cartagena Declaration.

Part III of this Article will strictly focus on one of the general rights provided to refugees, the principle of non-refoulement. It will analyze regional refugee policies to determine whether the European and Latin American regions comply with non-refoulement. It will specifically scrutinize the European Union's adoption of the Dublin Regulations to illustrate how strict adherence to the Dublin Regulations may violate refugee law through case studies. Then, it will analyze how these cases relate to the current Syrian Refugee Crisis.

This Section will also address Latin America's Cartagena Declaration and how it addresses non-refoulement through a more liberal approach favoring refugees. It will then specifically discuss actions taken by Ecuador, Mexico and Brazil, and where their respective approaches fall along the refugee law spectrum.

Part IV will focus on how a synthesis of Latin American refugee policies can provide a realistic solution to the Syrian Refugee Crisis. Voluntary repatriation is an important facet of Latin American refugee law, and its integration into European standards could help lessen the potential violations that could occur. Additionally, this Section will discuss the power that each European State could potentially wield in trying to resolve the refugee crisis. Specifically, the Dublin Regulations allow States to exercise their sovereignty when handling refugee matters and gives them the power to voluntarily accept responsibility to care for a refugee. Thus, if each State were to effectively utilize this power, the struggles that Syrian refugees have to endure could be mitigated.

II. THE RIGHTS OF REFUGEES ARE RECOGNIZED IN A MYRIAD OF INTERNATIONAL AAN REGIONAL LAWS

A. *The Universal Declaration of Human Rights*

The Universal Declaration of Human Rights ("UDHR") lays the foundation for international human rights.²⁸ The UDHR is made up of thirty articles addressing key "civil, political, economic, social, and

28. See generally Universal Declaration of Human Rights, *supra* note 13.

cultural rights.”²⁹ Initially adopted in 1948, the Declaration has now been adopted by 192 individual nations.³⁰ With its core principles focusing on universality, interdependence and indivisibility, and equality and non-discrimination, its reach extends to a wide range of individuals, including women, children, migrants, minorities and indigenous people.³¹ The UDHR specifically addresses refugees in Article 14 stating, “Everyone has the right to seek and to enjoy in other countries asylum from persecution.”³² The UDHR has been pivotal in influence, as it has “formed the backbone of about 30 subsequent international and regional treaties,” many of which also directly address refugee rights.³³

B. *The 1951 Refugee Convention*

The adoption of the UDHR influenced the creation of a variety of international treaties that have provided more specific human rights.³⁴ Among those created is the Convention Relating to the Status of Refugees.³⁵ These refugee laws were a byproduct of the circumstances of the time.³⁶

Refugee law first entered the scene due to the “displacement of the victims of the First World War.”³⁷ Eventually, the General Assembly of the United Nations, under Article 22 of the Charter of the United Nations, organized the Office of the United Nations High Commissioner for Refugees (“UNHCR”).³⁸ The UNHCR’s task was to oversee the “international protection to refugees and, by assisting Governments, to seek permanent solutions for the problem of refugees.”³⁹ This also included the responsibility of “promoting the conclusion and ratification of international conventions for the protection of refugees.”⁴⁰ Following

29. George J. Andreopoulos, *Universal Declaration of Human Rights*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/Universal-Declaration-of-Human-Rights> (last updated Sept. 1, 2009).

30. *Global Issue: Human Rights*, UNITED NATIONS, <http://www.un.org/en/sections/issues-depth/human-rights/index.html> (last visited Nov. 20, 2015).

31. *Id.*

32. Universal Declaration of Human Rights, *supra* note 13, art. 14.

33. Francesca Klug, *The Universal Declaration of Human Rights: 60 years on*, PUB. L. 205, 207 (2009).

34. *Id.*

35. 1951 Refugee Convention, *supra* note 9, at 2.

36. See James Kingston, *Refugee Convention 1951*, 44 INT’L & COMP. L.Q. 738 (1995).

37. *Id.*

38. Guy S. Goodwin-Gill, *Audiovisual Library of International Law: Convention Relating to the Status of Refugees and Protocol Relating to the Status of Refugees*, UNITED NATIONS, <http://legal.un.org/avl/ha/prsr/prsr.html>.

39. *Id.*

40. *Id.*

the conclusion of the Second World War, this convention was finally organized.⁴¹ Its completion was pivotal for refugees, as it provided far reaching rights for them:

[T]he Convention provides a universal code for the treatment of refugees uprooted from their countries as a result of persecution, violent conflict, serious human rights violations or other forms of serious harm. The preamble to the 1951 Convention underscores one of its main purposes, which is to assure refugees the widest possible exercise of their fundamental rights and freedoms. Core principles of the 1951 Convention include those of non-discrimination, *non-refoulement*, nonpenalization for illegal entry or stay, and the acquisition and enjoyment of rights over time.⁴²

The three main types of provisions in the Convention accomplish the following: (1) provides the definition of who counts as a refugee, along with who no longer can be considered a refugee, (2) defines a refugee's legal status and the rights and duties of that refugee in the respective country of refuge, and (3) addresses the administrative duties associated with the instrument's implementation.⁴³ At the international level, there have clearly been efforts to provide protections to refugees.

C. Refugee Rights in Europe

Europe is slightly more complex because it has different systems that address regional protection of human rights. One of these systems is the Council of Europe. The Council of Europe was established in 1949 and currently has forty-seven members.⁴⁴ With the regional organization's goal being to promote democracy and human rights, the Convention for the Protection of Human Rights and Fundamental Freedoms was developed in 1950 in order "to provide an express regional recognition of most of the rights set out in the UDHR and to provide international mechanisms to police their implementation."⁴⁵ Also known as the European Convention of Human Rights ("ECHR"), the rights included in this convention mirror many of the fundamental rights found

41. Kingston, *supra* note 36, at 738.

42. UNHCR, HANDBOOK AND GUIDELINES ON PROCEDURES AND CRITERIA FOR DETERMINING REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES 1 (2011), <http://www.unhcr.org/publ/PUBL/3d58e13b4.pdf>.

43. *Id.* at 6.

44. Matthew J. Gabel, *Council of Europe*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/Council-of-Europe> (last visited Nov. 20, 2015).

45. NUALA MOLE, ASYLUM AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS 6 (2006), [http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-09\(2000\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-09(2000).pdf).

under the International Covenant on Civil and Political Rights (“ICCPR”).⁴⁶ Later in 1961, the Council of Europe created the European Social Charter (“ESC”), mirroring many of the fundamental rights found in the International Covenant of Economic, Social, and Cultural Rights (“ICESCR”).⁴⁷

In regards to the ECHR, the instrument does not make any direct reference to asylum seekers. However, many of the protections listed have been extended to many refugees.⁴⁸ Article 3 is most often called upon to protect asylum seekers and refugees, which holds that “[n]o one shall be subjected to torture or inhuman or degrading treatment or punishment.”⁴⁹ This article thus makes states responsible for the well-being of individuals from other countries.⁵⁰ The other articles that may also be invoked to ensure refugee protection include Article 4 (prohibition of forced or compulsory labour), Article 5 (deprivation of liberty), Article 6 (right to a fair and impartial hearing “within a reasonable time”), Article 8 (respect for private and family life), Article 9 (right to freedom of thought, conscience and religion), Article 10 (right to freedom of expression), Article 13 (right to the grant of an effective remedy before a national authority) and Article 16 (no restrictions on political activity of aliens) can offer substantial protection.⁵¹

With the ESC, it does contain a variety of social rights, but its application is restricted to a narrow group of persons.⁵² However, in its most recent revision in 1996, the ESC expanded upon what is known as the “Scope of the ESC.” This scope directly addresses which type of people are entitled protection under the convention. In pertinent part, the Appendix of the ESC states:

46. Erik Denters & Wino J.M. van Veen, *Voluntary Organizations in Europe: The European Convention on Human Rights*, 1 INT’L J. NOT-FOR-PROFIT L. (1998), http://www.icnl.org/research/journal/vol1iss2/art_3.htm; see generally International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171.

47. Compare European Social Charter (Revised), May 3, 1996, 36 I.L.M. 31 (1997), E.T.S. No. 163, <https://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/ESCRBooklet/English.pdf>, with International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3.

48. *Study Guide: The Rights of Refugees*, UNIVERSITY OF MINNESOTA HUMAN RIGHTS LIBRARY (2003), <http://www1.umn.edu/humanrts/edumat/studyguides/refugees.htm> (last visited Nov. 20, 2015).

49. European Convention of Human Rights, *supra* note 15, art. 3.

50. *Study Guide: The Rights of Refugees*, *supra* note 48.

51. *Id.*

52. UNHCR & Council of Europe, *Round Table on the Social Rights of Refugees, Asylum-Seekers and Internally Displaced Persons: A Comparative Perspective*, REFWORLD.ORG (Dec 7, 2009), <http://www.refworld.org/pdfid/4d3d59c32.pdf>.

Each Party will grant to refugees as defined in the Convention relating to the Status of Refugees, signed in Geneva on 28 July 1951 and in the Protocol of 31 January 1967, and lawfully staying in its territory, treatment as favourable as possible, and in any case not less favourable than under the obligations accepted by the Party under the said convention and under any other existing international instruments applicable to those refugees.⁵³

Thus, the ESC contains explicit language governing the protection of refugees by making direct reference to the term “refugee” unlike that of the ECHR. Furthermore, rights to refugees under the ESC have been expanded through case law under Article 12(4)(a), regarding the system of social security, and Article 13(1), regarding the right to social and medical assistance.⁵⁴ Clearly, the Council of Europe is a regional system that has afforded some rights to refugees.

Another European regional system that helps protect human rights is the European Union. Organized in 1993, this geo-political entity consisting of twenty-eight countries was “designed to enhance European political and economic integration by creating a single currency (the euro), a unified foreign and security policy, and common citizenship rights and by advancing cooperation in the areas of immigration, *asylum*, and judicial affairs.”⁵⁵ These goals were advanced through the creation of the Charter of Fundamental Rights of the European Union. This Charter entered into force in 2009 and was seen as an effort to synthesize all the fundamental rights that already seemed to be established into one document so as to provide clarity among EU members.⁵⁶

The Charter recognizes the rights and freedoms included in the ECHR, and also sets out a variety of different individual rights and freedoms.⁵⁷ Among these are rights granted to refugees. Specifically, the Charter recognizes asylum in Article 18:

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.⁵⁸

53. European Social Charter, *supra* note 47, Appendix ¶ 2.

54. UNHCR & Council of Europe, *supra* note 52.

55. Matthew J. Gabel, *European Union*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/topic/European-Union> (last visited Nov. 20, 2015) (emphasis added).

56. *EU Charter of Fundamental Rights*, EUROPEAN COMMISSION, http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm (last visited Nov. 20, 2015).

57. *See generally* Charter of Fundamental Rights, *supra* note 16.

58. *Id.* art. 18.

Because the Charter is one of the more recently ratified instruments, it seems to have had the benefit of hindsight in regards to its creation. Thus, it took the initiative to recognize many of the already existing fundamental rights, including refugee rights, and made efforts to explicitly recognize such rights as shown in Article 18. The various instruments in the European region make it abundantly clear that they have made efforts to recognize refugee rights.

D. Refugee Rights in Latin America

In comparison to the rest of the world, the Americas have set the pace when it comes to the proliferation of human rights. Many of their instruments and institutions predate those that were created at the international level.⁵⁹ The American Declaration of Human Rights and the Organization of American States were both created in 1948.⁶⁰ Following this, the American Convention on Human Rights⁶¹ and the San Salvador Protocol⁶² were created to further codify these rights, with the former focusing on political right rights and the latter focusing on social and economic rights.

Unlike the European approach that seems to be more conservative when recognizing refugee rights, the American Convention on Human Rights is much more explicit in acknowledging refugees. For example, Article 22(7) states “[e]very person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions, in the event he is being pursued for political offenses or related common crimes.”⁶³ While this is just a general recognition of the rights of refugees, the American Convention takes another step and addresses further rights by referencing the principle of non-refoulement in Article 22(8):

In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.⁶⁴

The codification of these articles seems to indicate a dedication to incorporating more than just the “lowest common denominator” as

59. See *Our History*, ORGANIZATION OF AMERICAN STATES, http://www.oas.org/en/about/our_history.asp (last visited Nov. 20, 2015).

60. *Id.*

61. See generally American Convention, *supra* note 22.

62. See generally San Salvador Protocol, *supra* note 23.

63. American Convention, *supra* note 22, art. 22(7).

64. *Id.* art. 22(8).

recognized by international declarations.⁶⁵ This is most poignantly displayed with its establishment of the Cartagena Declaration on Refugees.

Established in 1984, the Cartagena Declaration's goal was "to strengthen programs that facilitate integration, protection, self-sufficiency, education, and health of refugees."⁶⁶ Most notably, the Declaration expanded on the definition of refugee, allowing its policies to cover a broader spectrum of people.⁶⁷ The Cartagena Declaration's definition of refugee encompasses all that is included in the 1951 Refugee Convention and further includes "persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order."⁶⁸

Clearly, Latin America recognizes refugee rights just like its counterpart in Europe, but Latin America is much more explicit and direct in doing so. Europe's conservative recognition of refugee rights in their respective instruments reflects an attitude of unaccountability. Consequently, most European refugee rights have been developed through strict language interpretation and case adjudications. With Latin America, the vivid details within the instruments themselves display a desire to provide more rights and a willingness to accept accountability. Indeed, a detailed analysis will show how the regional implementations of refugee rights differ.

III. THE PRINCIPLE OF NON-REFOULEMENT

A. *The 1951 Refugee Convention Emphasizes the Principle of Non-Refoulement in Article 33*

One of the most fundamental refugee rights is the principle of non-refoulement. Article 33 of the 1951 Refugee Convention states, "[n]o Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."⁶⁹ This

65. WELLMAN, *supra* note 10, at 183.

66. Elena Tiralongo, *Latin America Unified in Addressing Refugee Crisis*, TRUTHOUT (Oct. 18, 2015), <http://www.truth-out.org/news/item/33278-latin-america-unified-in-addressing-refugee-crisis>.

67. See Cartagena Declaration, *supra* note 24, § III(3).

68. *Id.*

69. 1951 Refugee Convention, *supra* note 9, art. 33.

principle is a cornerstone of refugee rights, and has been codified in other human right treaties such as Article 3 of the Convention Against Torture,⁷⁰ as well as the aforementioned Article 22(8) of the American Convention.⁷¹ Interestingly, the European systems do not directly address non-refoulement in any of its instruments, but this does not detract from their responsibility to follow this principle as they are parties to the 1951 Refugee Convention. Additionally, “it is clear that the norm prohibiting *refoulement* is part of customary international law, thus binding on all States whether or not they are party to the 1951 Convention.”⁷²

B. The European Union’s Dublin Regulations Leaves Open the Possibility of Violating Refugee Laws and the Principle of Non-refoulement

Despite the overarching consensus that exists regarding non-refoulement, the reverence for state sovereignty often detracts from the potential cooperative efforts needed to properly exercise non-refoulement. In addressing the juxtaposition that exists between the rights of state sovereignty and the rights of refugees, the European Union adopted Regulation No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.⁷³ Known as the Dublin Regulations, this was deemed an effort to create a Common European Asylum System with the goal of “mak[ing] it possible to determine rapidly the Member State responsible, so as to guarantee effective access to the procedures for granting international protection and not to compromise the objective of the rapid processing of applications for international protection.”⁷⁴ Member State responsibility of asylum application examination is “determined on the basis of the situation obtaining when the applicant first lodged his or her application for

70. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

71. *Asylum and the Rights of Refugees*, INTERNATIONAL JUSTICE RESOURCE CENTER, <http://www.ijrcenter.org/refugee-law/> (last visited Nov. 20, 2015); American Convention, *supra* note 22, art. 22(8).

72. Jean Allain, *The jus cogens Nature of non-refoulement*, 13 INT’L J. REFUGEE L. 533, 538 (2001), https://www.researchgate.net/profile/Jean_Allain/publication/31412200_The_jus_cogens_Nature_of_non-refoulement/links/56d083c108ae4d8d64a39018.pdf (last visited Nov. 20, 2015).

73. Dublin Regulations, *supra* note 17.

74. *Id.* ¶ 5.

international protection with a Member State”⁷⁵ and “it shall take into consideration any available evidence regarding the presence, on the territory of a Member State, of family members, relatives or any other family relations of the applicant.”⁷⁶ In the event that the above criteria are inapplicable and no Member States can be found responsible, “the first Member State in which the application for international protection was lodged shall be responsible for examining it.”⁷⁷ The Dublin Regulation goes on in further detail about responsibility in Article 21(1) and states:

Where a Member State with which an application for international protection has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any event within three months of the date on which the application was lodged . . . request that other Member State to take charge of the applicant.⁷⁸

Issues arise in these types of situations. When a Member State feels that another Member State should be responsible for the asylum applicant, they have the ability to make “take back requests” to that State, and, after following the procedural requirements for making such a request, transfer that particular applicant to the other Member State.⁷⁹ This situation often causes a strain between Members. With the current refugee crisis, many refugees are flooding the external border states of the EU, and these states simply do not have the available resources to register and maintain them all.⁸⁰ Thus, many external border states resort to letting asylum seekers continue without registering them.⁸¹ As a result, disagreements arise about who is responsible for these individuals, often leading to administration difficulties and inhumane transfers of applicants. This was what led to previous violations of the principle of non-refoulement.

The European Court of Human Rights (“ECtHR”), a creation of the Council of Europe via the ECHR, found a violation of the European Convention of Human Rights due to strict adherence to the Dublin Regulations in the case of *M.S.S. v. Belgium and Greece*.⁸² In this case,

75. *Id.* art. 7(2).

76. *Id.* art. 7(3).

77. *Id.* art. 3(2).

78. *Id.* art. 21(1).

79. *See id.* §§ III, VI.

80. Adrian Lancashire, *Refugee crush overwhelms EU Dublin Rule*, EURONEWS (last updated Oct. 09, 2015, 6:08 PM), <http://www.euronews.com/2015/09/10/refugee-crush-overwhelms-eu-dublin-rule/>

81. *Id.*

82. *Factsheet: Dublin Cases*, *supra* note 19, at 2.

an Afghan national entered the EU via Greece before reaching Belgium.⁸³ While in Greece, the Afghan national was fingerprinted and detained for a week.⁸⁴ Upon release, he was ordered to leave the country without ever having filed an asylum application.⁸⁵ Eventually, the Afghan national arrived in Belgium where he applied for asylum.⁸⁶ In Belgium, he was fingerprinted and it was learned that this applicant had his fingerprints previously registered in Greece, which led Belgian authorities to ask Greece to assume responsibility for the individual.⁸⁷ Despite receiving notice from the UNCHR that Greece was having asylum deficiencies,⁸⁸ Belgian authorities removed the applicant from their country and sent him to Greece under the impression that Greece would willingly accept responsibility.⁸⁹ This was also done notwithstanding the applicant's fear that Greece would not properly examine his asylum application and fear of the appalling detention conditions present in Greece.⁹⁰ The applicant was detained immediately upon his arrival "in a building next to the airport, where he was locked up in a small space with twenty other detainees, had access to the toilets only at the discretion of the guards, was not allowed out into the open air, was given very little to eat and had to sleep on a dirty mattress or on the bare floor."⁹¹

In the subsequent suit that followed, the ECtHR found that expulsion of an individual by a State to another State who may have asylum deficiencies can be a violation of Article 3 of the ECHR, which prohibits degrading treatments.⁹² Additionally, the court found that a disregard of an individual's complaints regarding asylum conditions prior to expulsion can amount to a violation of Article 13 of the ECHR, which is the right to an effective remedy.⁹³ Thus, the court found this adherence to the Dublin Regulation was in violation of the ECHR.

Similarly, the European Court of Justice, the highest court in the European Union, also found a violation of human rights resulting from obedience to the Dublin Regulations. These particular cases involved

83. *Id.*

84. *M.S.S. v. Belgium & Greece*, App. No. 30696/09, Eur. Ct. H.R. (2011), <http://hudoc.echr.coe.int/eng?i=001-103050>.

85. *Id.* ¶ 10.

86. *Id.* ¶ 11.

87. *Id.* ¶¶ 12, 14.

88. *Id.* ¶ 16.

89. *Id.* ¶ 24.

90. *M.S.S. v. Belgium & Greece*, App. No. 30696/09, Eur. Ct. H.R., ¶¶ 21, 27 (2011).

91. *Id.* ¶ 34.

92. *See generally id.* ¶¶ 249–64.

93. *See generally id.* ¶¶ 385–97.

asylum seekers from Afghanistan, Iran, and Algeria.⁹⁴ In Case C-411/10, an Afghan national applied for asylum in the United Kingdom,⁹⁵ and in Case C-493/10, five individuals from Afghanistan, Iran, and Algeria applied for asylum in Ireland.⁹⁶ Upon submission of their respective applications, the system revealed that they had already entered the European Union through Greece, but none of them had claimed asylum there.⁹⁷ They resisted transfer to Greece, stating that the procedures for asylum in Greece were inadequate.⁹⁸

In Joined Cases C-411/10 and C-493/10, the court held that the transfer of an asylum applicant to the Member State responsible is not allowed when: (1) the transferring Member State has substantial grounds for believing that there are systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in the other Member State; and (2) such a transfer has a chance in resulting in inhuman or degrading treatment.⁹⁹ This would thus be a violation of Article 4 of the Charter of Fundamental Rights, which simply states, “[n]o one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹⁰⁰ Thus, while individuals may be transferred on a voluntary basis,¹⁰¹ the Court held that these compelled transfers could lead to Charter violations.¹⁰²

Despite these adjudications detailing possible violations of human rights, the clear focal point of Europe’s regional instruments seems to lean more toward respecting sovereignty. The Dublin Regulations are very detailed, and appear to favor promoting sovereignty rights over fundamental rights. This contrasts Europe’s instruments that are supposed to be geared toward addressing fundamental rights. These instruments lack detail, which results in essentially limiting the responsibilities these states have toward refugees.

94. See Joined Cases C-411/10 & C-493/10, *N.S. v. Sec. of State for the Home Dept. and M.E. & Others v. Refugee Applications Comm’r & Minister for Justice, Equality, & Law Reform*, 2011 E.C.R., <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62010CJ0411>.

95. *Id.*

96. *Id.*

97. *Id.* ¶¶ 34, 51.

98. *Id.* ¶¶ 44, 52.

99. *Id.* ¶ 106.

100. Charter of Fundamental Rights, *supra* note 16, art. 4.

101. Dublin Regulations, *supra* note 17, ¶ 24.

102. Joined Cases C-411/10 & C-493/10, *supra* note 94, ¶ 106.

C. Latin America's Liberal Approach to Refugee Rights

The countries in Latin America have taken a much more welcoming approach in implementing refugee laws, which has led to better compliance with international laws. In addition to a broader refugee definition, the Cartagena Declaration also sets out to “ensure that any repatriation of refugees is voluntary, and is declared to be so on an individual basis.”¹⁰³ Thus, the declaration attempts to limit government control and only allows for refugee movement via one’s own accord so as to ensure that these actions are “carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin.”¹⁰⁴

Even when there have been issues that seem to impinge on refugee rights, Latin America has been successful at addressing these issues head-on. For example, Ecuador previously passed Executive Decree 1182, effectively limiting many refugee rights.¹⁰⁵ This decree tightened the asylum process by altering the definition of a refugee, limiting asylum applications to individuals who had entered into the country in the previous fifteen days, and making the procedural requirements more difficult by approving the addition of an eligibility interview.¹⁰⁶ Opposition ensued following the passage of this decree, which subsequently led to Asylum Access Ecuador challenging this decree in Constitutional Court.¹⁰⁷ Among the things argued were:

(1) Whether the Executive Decree reverted back to the original definition of refugee and took away the expansive definition provided for in the Cartagena Declaration, which was in violation of an international instrument that Ecuador had incorporated into its legal framework;¹⁰⁸

103. Cartagena Declaration, *supra* note 24, § II(f).

104. *Id.* § III(12).

105. See generally Presidential Decree 1182, Reglamento para la aplicación en el Ecuador del derecho de refugio establecido en el art. 41 de la Constitución de la Republica, las normas contenidas en la Convención de las Naciones Unidas de 1951 sobre el Estatuto de los Refugiados y en su Protocolo de 1967, May 30, 2012, <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2012/8604.pdf?view=1>.

106. United States Department of State, *Ecuador Human Rights Report*, COUNTRY REP. ON HUM. RTS. PRAC. FOR 2013 1, 18 (2013), <http://www.state.gov/documents/organization/220651.pdf>.

107. Ubidia & Polit, *supra* note 26.

108. *Ecuador: Amicus Brief Challenges Refugee Decree*, HUMAN RIGHTS WATCH, (June 16, 2014 10:39AM), <https://www.hrw.org/news/2014/06/16/ecuador-amicus-brief-challenges-refugee-decree>.

(2) Whether the Executive Decree's requirement to file for asylum within 15 days of arrival in Ecuador was found in violation of due process and in violation of international non-refoulement principles;¹⁰⁹ and

(3) Whether the Decree violated non-refoulement principles because it held that even if an individual had submitted extraordinary appeal of revisions, the applicant could be deported, even if a final decision regarding refugee condition had not been established.¹¹⁰

This proved to be an enormous victory for refugees as Executive Decree 1182 was repealed, with the Court holding it as a direct violation of non-refoulement principles.¹¹¹ The repeal goes to show the propensity that Latin America has toward providing refugees' rights rather than depriving them of rights.

Liberal refugee policies are further displayed in the plans of action that countries have initiated. The Mexico Declaration and Plan of Action was instituted in 2004 to improve the asylum system and create new legislation to protect refugee status in Chile, Costa Rica, Ecuador, El Salvador, Mexico, Panama, and Uruguay.¹¹² The plan was initiated in order to motivate these respective countries to "redouble their efforts to provide protection, assistance and find adequate solutions for refugees in the region, within a spirit of international solidarity and responsibility sharing with the support of the international community."¹¹³

While the plan does acknowledge the difficulties with asylum, its approach to these issues is different from the Dublin Regulations'. Even though the "true magnitude of the refugee problem is not known," the plan acknowledges that there are certain countries that experience a higher volume of refugees.¹¹⁴ In particular, it states that there are "a large number of Columbian citizens living in border areas between Columbia and its neighbors Ecuador, Panama, and Velenzuela."¹¹⁵ However, unlike the Dublin Regulations that further exacerbates this issue by allowing border states to bear the brunt of the problem, Latin America has proposed a Solidarity Resettlement Programme. This programme:

Opens the possibility for any Latin American country, at the opportune time, to participate and to receive refugees who are in other Latin American countries. The announcement of this programme was well received by the countries of the region who currently host an important

109. *Id.*

110. *Id.*

111. Ubidia & Polit, *supra* note 26.

112. *See generally* Mexico Declaration, *supra* note 27.

113. *Id.* at "Declaration".

114. *Id.* ch. 3.

115. *Id.*

number of refugees, as a tool to help to mitigate the effects of the humanitarian situation these countries face.¹¹⁶

Thus, unlike Europe whose Dublin Regulations seems to be based on a burden sharing mechanism, the plan of action here was “not [to] be viewed as ‘burden sharing’ but, instead, as a duty deriving from international solidarity.”¹¹⁷

Similarly, the Brazil Declaration and Plan of Action was established to reiterate that “international cooperation and solidarity are fundamental for responding to humanitarian challenges.”¹¹⁸ This Declaration emphasizes respect to non-refoulement and an appropriate balance between security concerns and fundamental rights, and even goes so far as to provide specific acknowledgement of its desire to share responsibility by stating that one of its goals is to, “[s]upport the Republic of Ecuador as the country currently hosting the largest number of refugees in Latin American and the Caribbean.”¹¹⁹ Here lies the stark difference between Europe and Latin America. Europe’s focus on sovereignty effectively eliminates the possibility of true cooperation. In Europe, the balance between state security and fundamental rights seems to be more heavily skewed to the former. Latin America, on the other hand, seems to champion fundamental rights and always seems to look for ways to advance these rights through the creation of broad new policies and instruments.

IV. REALISTIC SOLUTIONS TO THE SYRIAN REFUGEE CRISIS

It is clear that Europe seems to be much more restrictive with refugee rights when compared to Latin America. This restrictive nature is not conducive to the current Syrian Refugee Crisis, as their policies have a better chance of exacerbating the problem. However, there are realistic solutions that Europe can initiate that could help mitigate the issues.

116. *Id.*

117. *Id.*

118. Brazil Declaration, *supra* note 27, at 1.

119. *Id.* at 13.

A. *The Discretionary Clauses in the Dublin Regulations*

The State Sovereignty Clause in the Dublin Regulations allows for States to consider claims that otherwise would not be their responsibility.¹²⁰ Article 17(1) of the Dublin Regulations states:

By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.¹²¹

With the Syrian Refugee Crisis in full swing, Germany was effectively able to exercise its sovereignty and set aside many of the provisions listed in Article 3 of the Dublin Regulations. With Germany being more of an inland state during this Syrian Refugee Crisis, the Dublin Regulations could essentially preclude Germany from accepting refugee applications as Germany could easily deem any applicants transferrable to respective border states. However, in conjunction with Article 17 of the Dublin Regulations, Germany opened their doors “by declaring all Syrian asylum-seekers welcome to remain in Germany – no matter which EU country they had first entered.”¹²² Essentially suspending their responsibilities found in Article 3 of the Dublin Regulations, Germany became a safe haven for a multitude of refugees as they revoked expulsion orders and no longer required new refugee arrivals to fill out a questionnaire in order to determine which European country they first entered in.¹²³ While eventually the influx became an issue, Germany’s actions showed the type of discretion that is available. Thus, if the rest of Europe followed this example, it would allow these refugees to find asylum in a variety of states and prevent the collapse of the asylum structures in border states. Article 17 of the Dublin Regulations also allows for states to derogate from responsibility based on humanitarian and compassionate grounds. Article 17 states in pertinent part:

120. Steven Peers, *The Refugee Crisis: What should the EU do next?*, EU LAW ANALYSIS (Sept. 28, 2015), <http://eulawanalysis.blogspot.com/2015/09/the-refugee-crisis-what-should-eu-do.html>.

121. Dublin Regulations, *supra* note 17, art. 17(1).

122. Allan Hall & John Lichfield, *Germany opens its gates: Berlin says all Syrian asylum-seekers are welcome to remain, as Britain is urged to make a 'similar statement,'* THE INDEPENDENT (Aug. 24, 2015), <http://www.independent.co.uk/news/world/europe/germany-opens-its-gates-berlin-says-all-syrian-asylum-seekers-are-welcome-to-remain-as-britain-is-10470062.html>.

123. *Id.*

The Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations . . .¹²⁴

Furthermore, the preamble to the Dublin Regulations states:

Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to bring together family members, relatives or any other family relations and examine an application for international protection lodged with it or with another Member State, even if such examination is not its responsibility under the binding criteria laid down in this Regulation.¹²⁵

The language provided is clear evidence of the discretion that states have in assessing asylum applications. Case C-245/11 of the Court of Justice of the European Union shows the discretion allowed when assessing cases under the lens of humanitarian reasons. In this case, an applicant lodged an asylum application in Poland.¹²⁶ Following this, she moved to Austria and applied for asylum there as her adult son, daughter-in-law, and grandchildren were already residing there as refugees.¹²⁷ While the Court found that the daughter-in-law was dependent upon this applicant for support because she was seriously ill and had a newborn baby, the Court still requested that Poland take back responsibility for the applicant due to the Dublin Regulations.¹²⁸ However, on appeal the Court resolved that Austria should assume responsibility despite the fact that the applicant first applied for asylum in Poland.¹²⁹ The Court further held that even though the term daughter-in-law did not meet the traditional definition of family members when dealing with family reunification purposes, this still involved humanitarian purposes as it satisfied the requirements: (1) that the family ties existed in the country of origin; (2) that the asylum seeker or the person with whom he has

124. Dublin Regulations, *supra* note 17, art. 17(1).

125. *Id.* ¶ 17.

126. Case C-245/11, *K v. Bundesasylamt*, 2012 E.C.R. 685 ¶ 13, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=129325&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1416450>.

127. *Id.* ¶ 14.

128. *Id.* ¶¶ 16–17.

129. *Id.* ¶ 54.

family ties actually requires assistance; and (3) that the person who must provide the other person with assistance is in a position to do so.¹³⁰

It is clear that states have a lot of freedom when applying these discretionary clauses within the Dublin Regulations. Europe has a clear respect for sovereignty, and often places it above fundamental rights. So while these discretionary clauses can act as release valves in extreme situations and appear to bolster support for fundamental rights, the fact that they can only be activated by the choice of a Member State still shows its reverence for sovereignty. Essentially, these discretionary clauses are useless unless the States alter their perspectives and begin to utilize them.

B. A Thorough Implementation of Voluntary Repatriation Practice

One of the more fundamental actions that should be taken is to reassess the balance between sovereignty and fundamental human rights. As noted previously, the European instruments addressing human rights make no specific reference to voluntary repatriation.

In assessing what exactly voluntary repatriation is, it is important to understand what exactly “voluntary” entails. Voluntariness must be viewed in relation to the conditions in the country of origin as well as the situation in the country of asylum.¹³¹

Voluntariness means not only the absence of measures which push the refugee to repatriate, but also means that he or she should not be prevented from returning, for example by dissemination of wrong information or false promises of continued assistance. In certain situations economic interests in the country of asylum may lead to interest groups trying to prevent refugees from repatriating.¹³²

The best way to promote voluntariness is by *providing guaranteed rights* to the refugees and allowing them to settle.¹³³ Once this occurs, their decision of repatriation is more likely to be voluntary.¹³⁴ An open dialogue is necessary to help refugees make an informed decision.¹³⁵ This includes dialogue with the refugees as a collective, and dialogue with the country of origin.¹³⁶ Providing information campaigns to the refugees will allow them to fully understand the conditions of their country of origin,

130. *Id.* ¶¶ 40–42.

131. UNHCR, HANDBOOK FOR VOLUNTARY REPATRIATION: INTERNATIONAL PROTECTION 10 (1996), <http://www.unhcr.org/3bfe68d32.html>.

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.* at 31–33.

136. *Id.*

and then make informed decisions as to their return.¹³⁷ Essentially, applying voluntary repatriation into the European system would require these respective states to provide enough guaranteed rights to these refugees so that they do not feel any pressure to leave. This extra responsibility would then help lead to more cooperative efforts among States, which would then provide an easy transition into creating effective resettlement programs.

C. Encouraging Resettlement Programs

One of the suggestions in the Brazil Declaration and Plan of Action in instituting resettlement programs is to identify current priority situations, and then “[d]emonstrate solidarity with international humanitarian crises through either the use of humanitarian visas or resettlement quotas.”¹³⁸ Interestingly enough, the EU did exactly this. In response to the refugee Crisis, EU ministers pushed through a controversial plan with its goal to relocate 120,000 migrants across the European continent.¹³⁹ However, it was met with much opposition, as it was passed on a majority vote rather than a unanimous decision.¹⁴⁰ Hungary, Slovakia, Poland, and the Czech Republic refused to accept this resettlement quota plan and argued that “the numbers of refugees should be controlled by each individual EU member state.”¹⁴¹

While attempts were made to try and institute a program wherein refugees would be able to exercise their rights, the focus on sovereignty effectively dampened these efforts. It is understandable that security issues and resource availability is a contributing factor to feelings of opposition, but such an attitude ignores the reality of the situation. These border states also have finite resources. Without proper quota distribution, multitudes of refugees will flood the border states of the EU, and the sheer numbers will dismantle the efficacy of the asylum procedures in those states. Thus, an effective solution would be to establish a fund used to assist in refugee efforts. The Brazil Plan suggests “explor[ing] the possibility of establishing a voluntary Cooperation Fund to strengthen the ‘Solidarity Resettlement’ programme with contributions

137. *Id.*

138. Brazil Declaration, *supra* note 27, at 11–14.

139. *Migrant Crisis: EU Ministers approve dispute quota plan*, BBC NEWS (Sept. 22, 2015), <http://www.bbc.com/news/world-europe-34329825>.

140. *Id.*

141. *Four EU states refuse migrant quotas amid ‘biggest challenge’ in Union’s history*, DEUTSCHE WELLE (Nov. 09, 2015), <http://www.dw.com/en/four-eu-states-refuse-migrant-quotas-amid-biggest-challenge-in-unions-history/a-18708760>.

from the international community.”¹⁴² Taking such a step would eliminate the fear of resource depletion. Cooperation is a must in order to mitigate the crisis. Much like the Brazil Plan throws its support to Ecuador, since it is the country with the largest refugee population,¹⁴³ the states in Europe must do the same and support the EU border states.

V. CONCLUSION

Although the European systems have instruments in place that provide refugee rights and have an extensive regulation detailing the responsibilities states have with regard to asylum applications, it continues to fall short of meeting international human rights standards because of its reverence for sovereignty. This is particularly troubling in the current Syrian Refugee Crisis as the desire to maintain control of one’s borders seems to take precedent over human life.

Amid this time of crisis, Europe should take the immediate initiative to implement the discretionary clauses found within the Dublin Regulations. This would help mitigate the immediate consequences that are resulting from the sudden influx of refugees. After this, Europe should take a good look at the refugee policies within the system in Latin America. Europe should begin by incorporating the principle of voluntary repatriation in European instruments. By taking such a step, Europe would then be pushed to provide the rights necessary for the refugees to feel welcome in the host country. With those obligations in mind, the EU would begin to more fully cooperate with its neighboring states and organize a resettlement program where the responsibility of caring for asylum applicants is equally shared and not disproportionately placed on border states. While these moves do sound drastic in a sense, it would provide for a sustainable solution for the refugee problems that arise in the area.

142. Brazil Declaration, *supra* note 27, at 13.

143. *Id.*