ISSN 2348-3156 (Print)
International Journal of Social Science and Humanities Research ISSN 2348-3164 (online)
Vol. 5, Issue 2, pp: (362-380), Month: April - June 2017, Available at: www.researchpublish.com

Refugee Resettlement: A Comparative Study of Canada and the United States

Ibrahim Abdou Chekaraou

Ph.D. Candidate, International Law, Faculty of Law, Zhongnan University of Economics and Law, Wuhan, China

Abstract: **This paper offers a comprehensive picture and examination of resettlement in Canada and United States. Broadly speaking, resettlement is a mechanism which provides protection to refugees whose life, liberty, safety, health or other human rights are at risk in the country where they sought refuge Canada and United States are the two leading resettlement countries in the world. Canadian and United States resettlement model are the basis for an analysis of the intersection of rights, responsibility, and obligation in the absence of a legal scheme for refugee resettlement. The voluntary nature of resettlement is in contrast to the legal obligation of non-refoulement that States take on with the promise not to send back refugees who reach their territory and claim asylum. A comparative review of the programs in Canada and the United States is undertaken to point out and contrast respective differences, weaknesses, and strengths. This analysis shows how different are these two models.**

Keywords: **Refugee; International Law; Human Rights; Humanitarian Law; Resettlement; Non-Refoulement.**

I. INTRODUCTION

According to the United Nations High Commissioner for Refugees (UNHCR), as of the end of 2016 there were over 65 million refugees, asylum seekers, and internally displaced person—the highest number than at any time on record. Over 21 million are refugees, more than half under the age of eighteen, and 1.19 million in need of resettlement in 2017 [1].

Refugee resettlement is, according to the UNHCR, one of three durable solutions for refugees who fled their home country. Resettled refugees may also be referred to as quota or contingent refugees, as countries only take a certain number of refugees each year." Resettlement involves the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status. The status provided ensures protection against refoulement and provides a resettled refugee and his/her family or dependants with access to rights similar to those enjoyed by nationals. Resettlement also carries with it the opportunity to eventually become a naturalized citizen of the resettlement country".

In June 2015 the UN refugee agency reported that wars and persecutions are the main reasons behind the refugee crises all over the world. A decade earlier, six people were forced to leave their homes every 60 seconds, but this average has increased four times because of the wars that drive 24 people from their homes each minute in 2015 [2]. Since most refugees are unable to return to their country of origin, another durable solution to their situation is resettlement in a third country, an option provided to a small number of recognized refugees. The idea behind this solution is that an expanded option for organized resettlement would reduce the need for refugees to irregularly undertake secondary movements [3].

Although resettlement is provided as a durable solution in the UNHCR statute, less than one percent of the 15 million refugees UNHCR knows of are submitted for resettlement. Only a small number of States are taking part in the resettlement program on a voluntary basis, around 25 developed countries [4].

The Syrian crisis marked a major shift in the focus of resettlement, which continues to resonate. By 2014, Syrians were the largest group referred for resettlement and by 2015 an average two out of every five submissions were Syrians

compared to one out of five in 2014. Other top countries of origin in 2015 included Democratic Republic of the Congo (20,527), Iraq (11,161), Somalia (10,193) and Myanmar (9,738). These four countries and Syria, with 53,305, made up almost 80 per cent of submissions that year [5].

Resettlement remains an effective measure for people in need such as survivors of violence or torture, who last year accounted for 24 per cent of submissions –a quadrupling since 2005 –, and women and girls at risk of abuse (about 12 per cent) [6].

The United States in 2015 accepted 82,491 resettlement submissions from UNHCR in 2015 (62 per cent of all submissions), followed by Canada (22,886), Australia (9,321), Norway (3,806) and the United Kingdom (3,622) [7].

This paper focuses only on Canada and United States Resettlement. A comparative review of their programs is undertaken to point out and contrast respective differences, weaknesses, and strengths. This analysis shows how different are these two models. Canadian and United States resettlement model are the basis for an analysis of the intersection of rights, responsibility, and obligation in the absence of a legal scheme for refugee resettlement.

II. DEFINITIONS OF TERMS RELATED TO RESETTLEMENT

In order to understand the entire Resettlement process between the two States, I begin with the explanation of certain important concepts define by Scholars and Experts in Refugee Law. The 1951 Convention relating to the Status of Refugees (the 1951 Refugee Convention) is the key international legal document defining who is a refugee, their rights and the legal obligations of countries that are signatories to the 1951 Refugee Convention [8].

Article 1A(2) of the 1951 Refugee Convention defines a '*refugee*' as:

a person who is outside his country of nationality or habitual residence has a well-founded fear of persecution because of his race, religion, nationality, membership in a particular social group or political opinion, and is unable or unwilling to avail himself of the protection of that country, or to return there, for fear of persecution [9].

A Convention 'refugee' is different from an asylum seeker because the former has had their asylum claims assessed and been found to satisfy the above definition. This assessment can be done by a country that has acceded to the 1951 Refugee Convention or by the United Nations High Commissioner for Refugees (UNHCR). There is no such thing as a 'genuine refugee'. A refugee by technical definition is simply someone who has been recognized as satisfying the above Convention definition. Further, a person is a refugee within the meaning of the 1951 Convention as soon as they satisfy the above definition. This might actually occur before their refugee status is formally determined by a country or the UNHCR. Refugee status is therefore declaratory in nature—in that, a refugee does not become a refugee because they have been recognized to be one but rather, they are recognized because they are a refugee [10].

What is resettlement? 'Resettlement' is the term used to describe 'the transfer of refugees from the country in which they have sought refuge to another State that has agreed to admit them' [11]. Broadly speaking, resettlement is a mechanism, which provides protection to refugees whose life, liberty, safety, health or other human rights are at risk in the country where they sought refuge. For example, a refugee and his family in China facing imminent return to the country from which they fled (North Korea) may urgently require resettlement to a resettlement country (such as USA, Canada or New Zealand) to avoid being forcibly returned to persecution. Similarly, a vulnerable young boy who fled persecution in Ethiopia to a Tunisian refugee camp after his families were killed may require resettlement to another country (such as Denmark or Norway), which has special programs set up to assist unaccompanied minors. Resettlement is one of three durable solutions UNHCR is mandated to implement in cooperation with countries that have signed the 1951 Refugee Convention. The other two durable solutions to the plight of refugees are local integration (in the country of refuge) and voluntary repatriation (return to one's home country). UNHCR will only consider resettlement if the other two options are not available.

What is Burden-Sharing or '*Responsibility-sharing'*? The term 'burden-sharing' is often used to reflect the way the debate about the perceived and real inequalities in the distribution of costs that accrue when dealing with displaced persons and refugees has been conducted. While governments refer to asylum seekers mainly as a cost category and therefore discuss "burden"-sharing, non-governmental organizations (NGOs) tend to focus on the need to protect and prefer the term "responsibility"-sharing. NGOs such as ECRE have repeatedly called for more positive political leadership against the widespread misperception that refugees and asylum seekers necessarily place "burdens" upon their host societies [12].

Publications since the mid 1990 prefer to refer to "responsibility"-sharing instead of "burden"-sharing. The argument is based on Article 14 (1) of the Universal Declaration of Human Rights, which states "Everyone has the right to seek and to enjoy in other countries asylum from persecution." This is also endorsed by the UNHCR.

The concept is closely related to international cooperation and solidarity, and has been widely discussed by a number of scholars in addition to forming a continuous debate among States on how to address and resolve refugee situations, especially considering the uneven burden that is placed upon countries. The international refugee regime is dependent on cooperation between States, as displacement challenges are transnational and cannot be addressed by individual States alone [13]. The burden-sharing principle mentioned in the preamble of the 1951 Refugee Convention [14], and Chimni argues that it is part of customary international law and thus legally binding [15]. Burden-sharing can take various forms, among them the provision of material, technical or financial assistance, in addition to resettlement of asylum-seekers and refugees. It may also include other provisions of durable solutions like temporary protection, local integration and voluntary repatriation [16]. It can also mean sending troops to assist in stabilizing countries in conflict, humanitarian assistance as well as funds for State building [17].

As said, a comparative review of the programs in Canada and the United States is undertaken to point out and contrast respective differences, weaknesses, and strengths. This analysis shows how differing models affect and influence the law.

III. UNDERSTANDING THE RELATION BETWEEN RESETTLEMENT AND NON-REFOULEMENT

By international agreement, many countries have recognized that if refugees arrive on their territory they will not be sent back. This is the principle of non-refoulement set out in Article 33 of the 1951 Convention relating to the Status of Refugees (1951 Convention) [18]. Other countries have not become a party to the 1951 Convention or simply have an overwhelming and unmanageable number of refugees entering their States. As a result, some States far from the refugee flows have agreed to voluntarily bring refugees to their territories who have fled elsewhere but who have not received adequate protection. This is the act of resettlement. Resettlement is defined by the UNHCR as "the selection and transfer of refugees from a State in which they have sought protection to a third State which has agreed to admit them – as refugees – with permanent residence status" [19]. The decision to resettle a refugee is only made in the absence of other options – local integration or voluntary repatriation. As said, Resettlement is regarded by UNHCR as serving two further functions, working not only as a solution but also as a tool of protection and expression of international burden sharing [20]. Possibly as a result of its multiple purposes, and definitely as a result of its voluntary nature, resettlement's usage has been ad hoc, intermittent, and sometimes manipulative, all with incredibly low numbers. The concept of non-refoulement can be found in other international and regional documents [21], and some assert that it has reached the status of customary international law binding even those States that are not a party to the 1951 Convention [22]. In non-Convention States or in States where refugee recognition processes are not in place, UNHCR is often permitted to grant mandate refugee status under the Statute of the UNHCR [23]. Despite UNHCR's grant of refugee status, the refugee will not necessarily be permitted to remain in the State. The consequence is a massive refugee population in limbo, having fled one State but not finding the solution in another. From the State perspective, however, resettlement has tended to be fit into a legal framework. Resettlement resembles immigration in the application and selection of individuals from abroad for citizenship in the new State. To facilitate this process, a domestic legal framework is placed on the voluntary act of protection and international burden-sharing. Resettlement requires a government to decide on its approach to the selection and integration of refugees and how to fund the program. The law is thus both present and absent in refugee resettlement. The two States have traditionally been the leaders in resettlement after the United States, and they receive a very important percentage of UNHCR's resettlement referrals [24]. Resettlement will never be the "solution" to the refugee problem. It is, in fact, the smallest piece of the puzzle. This is as it should be. The relocation of people from their homes, their families, their regions, their languages or their cultures is by no means ideal. Nor would it be fair to assume that individuals, even those who have suffered tremendously in their countries of origin, do not ultimately desire to return home. There are many who argue that resettlement is a costly solution that acts as a "pull factor" inducing migration and creating greater problems in host countries, permits countries of origin to rid themselves of unwanted ethnic minorities, and hampers peace and stabilization possibilities through the permanent departure of citizens [25]. To understand resettlement in the context of the refugee regime in the twenty-first century requires the insertion of the two justifications that encapsulate discussions: human rights and burden sharing. Resettlement, as a voluntary burden sharing, is a response

to the inability of the law to accomplish absolute protection. Resettlement historically preceded asylum as a protection mechanism, the legalization of asylum through the obligation of non-refoulement did not render resettlement unnecessary.

Law is being evermore abandoned in the arguments for resettlement. From a practical perspective, advocating for increased law in resettlement does not necessarily make sense. States currently often turn to resettlement as a mechanism to avoid their legal obligations to refugees. In this way, resettlement works with non-refoulement in an almost complementary manner despite what the dissertation will show as disturbingly opposing rhetoric. In the absence of law, and increasingly in the face of the evasion of the law, incentives are sought to promote burden-sharing. The rationale for an incentive based approach is supported by the failure of arguments for the creation of a binding burden-sharing obligation on States [26]. Resettlement, while part of the voluntary aspect of protection, has seen the resurgence at the outset of the twenty-first century because of the inherent control and order of the process that permits it to be regulated by the State and put within a legal framework. There is predictability and planning involved in resettlement that permits a legal framing of the non-legal. This is countered by the reality that access to asylum, triggering non-refoulement, often requires illegal entrance into the Asylum State.

This paper is primarily a comparative law piece looking at the Australia examining the specific use of resettlement in this State in comparison to Canada. Konrad Zweigert and Hein Kötz define comparative law as simply "the comparison of the different legal systems of the world"[27]. They go on to clarify such comparison must be specific and not merely descriptive [28].

IV. UNDERSTANDING THE CANADIAN RESETTLEMENT

As a State party to the United Nations 1951 Convention Relating to the Status of Refugees, Canada participates in efforts to address refugee situations worldwide. The Canadian Refugee and Humanitarian Resettlement Program operates for those seeking protection from outside Canada. Working closely with international partners, including the UNHCR and the International Organization for Migration (IOM), Canada selects refugees in accordance with the Immigration and Refugee Protection Act (IRPA) and regulations. Refugees are processed under the Convention Refugee Abroad Class or the Source Country Class when no other durable solution is available within a reasonable period of time.

In response to international concern over Canada's immigration system, Canada enacted IRPA in 2002. IRPA changed the focus of refugee selection, placing greater emphasis on the need for protection and less on the ability of a refugee to become established in Canada. Resettled refugees are also exempt from inadmissibility to Canada for financial reasons, or for excessive demand on health or social services. The number of refugees to be brought to Canada annually under the Government-Assisted Refugee (GAR) Program is set by the Minister of Citizenship, Immigration, and Multiculturalism. To assist GARs with their integration into Canadian society, Citizenship and Immigration Canada (CIC) initially provided financial support and immediate essential services through the Adjustment Assistance Program, which was later (1998) redesigned into the Resettlement Assistance Program (RAP).

The RAP provides immediate and essential services and income support to recently arrived eligible refugees (primarily GARs). Resettlement services are generally received within the first four to six weeks of GARs' arrival in Canada. Income support is provided for up to one year or until the GAR becomes self-sufficient, whichever comes first. For high-needs GARs, income support may be extended for up to 24 months. CIC administers the income support portion of RAP. Approximately three-quarters of Resettlement Assistance Program funds go directly to GARs in the form of income support payments, with the remaining resources used to cover costs associated with RAP services.

Canada is a leading resettlement State and its resettlement approach is diverse and nuanced. A unique aspect of Canada's resettlement program is the division between government assisted and privately sponsored refugees. Canada also previously resettled certain individuals in refugee like situations directly from their home countries and has recently begun group resettlement.

A. Canada's Humanitarian Commitment:

The Immigration Act, 1976 [29] was the first Canadian legislation to place government refugee policy in statutory form by recognizing refugees as an immigrant class [30], and setting out a process for refugee admissions. Canada had evolved from refugee policy to refugee law. The Immigration Act, 1976 incorporated the 1951 Convention's refugee definition and the principle of non-refoulement [31]. From its first appearance, Canada's refugee legislation stated as an objective

"to fulfill Canada's international legal obligations with respect to refugees and to uphold its humanitarian tradition with respect to the displaced and the persecuted" [32]. The legislation later noted in terms of selection that:

Any Convention refugee and any person who is a member of a class designated by the Governor in Council as a class, the admission of members of which would be in accordance with Canada's humanitarian tradition with respect to the displaced and the persecuted, may be granted admission subject to such regulations as may be established with respect thereto and notwithstanding any other regulations made under this Act [33].

From a global burden-sharing perspective, Canada was accepting a significant number of resettled refugees. For their contribution to the refugee cause, in 1986 UNHCR awarded the Canadian people the Nansen Medal, named in honour of Fridtjof Nansen.

B. Canada's Resettlement Scheme:

Resettled refugees come to Canada in the following ways: through the federal Government-Assisted Refugee (GAR) Program (which includes the Joint Assistance Sponsorship Program); with the assistance of civil society groups through the Private Sponsorship of Refugees (PSR) Program; or through the Blended Visa Office–Referred Program, which combines government and private support.

The Government-Assisted Refugee (GAR) Program makes up the majority of resettled refugees with the Private Sponsorship of Refugees (PSR) Program. Every year the government announces a numeric range for resettlement and aims to resettle within that range. Resettling refugees from overseas is based on multi-year commitments for certain populations, including Syrians. The annual resettlement target is established by the Minister of Citizenship and Immigration following consultations with Citizenship and Immigration Canada, provincial governments, Canadian non-governmental organizations and UNHCR. The annual resettlement target is then allocated among visa offices on the basis of estimated resettlement need, although additional places can be requested. The first paragraph of the Preamble to the Multilateral Framework of Understandings of Resettlement (MFU) resulting from UNHCR's Convention Plus initiative recognizes the "need to expand resettlement opportunities." The MFU later states "[e]xpanding resettlement opportunities is an ambition of this framework." As co-chair of the resettlement strand of Convention Plus, Canada led the authorship of the MFU. Canada's annual resettlement numbers, however, have remained essentially static and minuscule in comparison to the overall issuance of yearly permanent resident visas for the past decade. Whether the numbers are understood as moderate or minute, within a voluntary burden sharing scheme, the active resettlement of thousands of refugees per year nonetheless places Canada near the top of a small group of only 26 countries worldwide in 2012 [34] willing to offer refugee protection through resettlement in addition to the promise of non-refoulement in the 1951 Convention. IRPA, like its predecessor act, also takes Canada beyond the obligations of international law by enabling claims for refugee protection to be made outside of Canada [35].

The legislation further expands beyond the "Convention refugee" definition which imports the international refugee definition from the 1951 Convention directly into the Canadian legislation [36] to include those who do not meet this narrow definition but are a "person in need of protection" due to torture or cruel and unusual treatment [37]. While no international legal obligation exists for countries to resettle refugees, in creating a legislative scheme for resettlement, Canada has triggered certain legal rights, although not a right to resettlement, and obligations, which are subject to judicial review before a Canadian court. Asylum and resettlement need to be seen as fundamentally part and parcel of the same international refugee protection regime…[38]. Whereas a State's asylum system originates in the international law of non-refoulement and is replicated and implemented within the State's own legal system, resettlement originates only from an international sense of responsibility for burden-sharing, tied as it may be to foreign policy and international relations. There is no international legal framework to set State standards. There is, as a result, an absolute discretion on the part of the State to resettle refugees or not. If refugees are resettled, it is the State's discretion to decide who to resettle, from where, and how.

The discretionary basis of resettlement means that it is approached by a State differently than its legal obligations to refugees. In Canada, this can be seen through Canada's active use of resettlement long before it ultimately agreed to sign the 1951 Convention in 1969 and absent any refugee legislation. Resettlement puts into focus the fundamental tension in the concept of refugee protection. The 1997 legislative review clumped together human rights and compassion as the basis of Canada's protection program [39].

Resettlement is a small piece of the protection regime. Refugees cannot simply opt to wait for resettlement rather than boarding a boat or a plane or crossing a border to claim asylum. While the government's refugee program is influenced by international relations, burden-sharing, and its in-country image, the next chapter looks at Canada's private sponsorship program, which is propelled by the interests of individual Canadians. A very different set of challenges pull at this program and influence the perception and protection of refugees.

C. Private Sponsorship:

In addition to government directed resettlement of refugees is the potential to involve private citizens in a resettlement partnership. In Canada, this is enabled through private sponsorship where sponsors provide the financial support to bring over additional resettlement refugees. Private sponsorship both adds to Canada's resettlement capacity and creates a division in resettlement between refugees entering through the government program and those brought to Canada by citizens. The interests and motivations of private citizens to involve themselves in refugee resettlement fundamentally influence the concept and breadth of resettlement. Canada's private sponsorship program is unique in the world. It enables groups of individuals, five or more, and private organizations (religious, ethnic, community) to sponsor refugees for resettlement. Sponsorship entails that the group takes on the responsibility of providing assistance, accommodation, and support for up to one year. In exceptional circumstances of trauma, torture or women and children at risk, the assistance can be extended for up to three years.

Over 400,000 refugees have been privately sponsored into Canada [40]. Canadian private citizens have resettled more refugees than most governments, ranking fourth behind the U.S., Canada, and Australia [41]. While the Canadian government covers the administrative costs of the program, it is private individuals who provide the financial support attached to settling the refugee in Canada. As a general guidance, CIC suggests the level of support should equate to the prevailing rates for social assistance in the settlement community [42]. The sponsor is essentially taking on the State's responsibility for social welfare. In 2006, the CCR assessed the annual financial costs of private sponsorship at $79 million with an additional volunteer contribution of over 1,600 hours per refugee family. The program gives individual Canadians a voice and policy power, demonstrates their generosity and increases Canada's annual resettlement numbers by over one third.

Private sponsorship has been a part of Canadian refugee policy since Canada first formally recognized refugees as a separate immigration class in its 1976 Immigration Act.[43]. Included with this legislated recognition were innovative and rather incidental8 provisions for the private sponsorship of refugees. Private resettlement could be done by a "group of five" or through organizations holding "master agreements" with the government [44]. The current sponsorship scheme permits three types of sponsorship groups: "Groups of Five"; "Community Sponsors"; and "Constituent Groups" (CG) who are members of an organization that is a "Sponsorship Agreement Holder" (SAH).

In addition to the Private Sponsorship program, a Joint Assistance Sponsorship (JAS) program is also in operation [45]. With the JAS program, private sponsors provide supplemental, non-financial, support to vulnerable refugees with special needs. These refugees also receive government support through the Resettlement Assistance Program [46]. Private and government support continues for 24 months and the private sponsorship can be extended for an additional year in exceptional circumstances [47]. In statistical counts, JAS cases are considered as Government Assisted Refugees [48], and are identified and referred by the visa officers rather than originating through the sponsorship organizations. The sponsorship obligations are for 12 months or until the refugees become self-sufficient if this occurs before the 12 months timeframe concludes. In exceptional circumstances, the sponsorship can be extended to 36 months. During the sponsorship period, privately sponsored refugees are not entitled to government assistance, either through the federal or provincial government.

The objective of private sponsorship is to complement the government-assisted program [49]. In its Guide to the Private Sponsorship of Refugees, CIC begins by situating private sponsorship in this complementary role. The GAR program is set out along Canada's continuing myth as "[i]n keeping with [Canada's] humanitarian tradition and international obligations." Through private sponsorship, the guide continues, "Canadian citizens and permanent residents are able to provide additional opportunities for refugees" [50]. Private sponsorship has been legislated in Canada since refugees were first recognized in the 1976 Immigration Act. As was the case with government resettlement, the law was a formalization of a process that was already taking place in an ad hoc manner. The law provides predictability and structure but sponsorship is not dependent on the law.

The intersection of politics and law in resettlement that private sponsorship brings particularly to the fore. Legislation can remain unchanged while the policies that underlie the legislation can drastically differ. The Indochinese resettlement over changing governments encapsulates this reality.

D. Source Country Resettlement:

The Source Country Class was defined in the Immigration and Refugee Protection Regulations [51]. The Source country resettlement could be achieved through the government GAR program, through private sponsorship or the individual could come as a self-supporting refugee [52]. The class applied to individuals who had not crossed an international border and remained in their home country of nationality or permanent residence. The Schedule of the Immigration and Refugee Protection Regulations listed the eligible countries for source country resettlement. Applicants had to be "residing in their country of nationality or habitual residence" and that country is a country on the list when a visa for Canada was issued [53]. The Schedule was generally reviewed annually and could be amended by CIC. As source country resettlement dwindled and ultimately came to an end, group resettlement has been gaining momentum and support. Advocacy for the resettlement of refugee groups in Canada dates back to the consultations that preceded the 1976 Immigration Act. Both the Source Country Class and group resettlement are intentional maneuvers away from the law. They move beyond the refugee definition and Canada's protection commitments and therefore distance the program from law. A politically discretionary settlement program is thus established with the label of refugee and humanitarian protection. Essentially the law itself, through its expanded classes, is able to create enhanced discretion. A Resettlement Program is often guided by decision-making with little to do with protection and it increasingly turns to private sponsors to carry the responsibility. Despite its issues and the foundational shifts afoot, Canada remains one of the three leading resettlement countries in the world, while other countries slowly take on small numbers of resettlement refugees.

The Government of Canada resettled more than 25,000 Syrian refugees between November 4, 2015 and February 29, 2016. The commitment to resettling Syrian refugees to Canada continues in 2017. The Canadian government has set aside $245-million [54] for the resettlement of an additional 10,000 government-assisted Syrian refugees over the next five years, according to the federal budget.

In addition to the 25,000 refugees from Syria, the government committed to resettling in Canada by the end of Feb. 2017, to triple the number of privately sponsored refugees to 18,000 spaces. In previous years that number was set at about 6,000. In total, Canada welcomed about 55,800 refugees in 2016. The increases in the refugee stream will include more Syrian refugees who've fled their war-torn country in the worst humanitarian crisis since the Second World War [55]. Also, every year, Canada welcomed higher numbers of refugees from other parts of the world with refugee populations such as the Democratic Republic of Congo, Colombia, and Eritrea," according to the department of Immigration, Refugees and Citizenship.

V. UNDERSTANDING THE UNITED STATES RESETTLEMENT

In the United States, the major difference between refugees and asylees is the location of the person at the time of application. Refugees are usually outside of the United States when they are screened for resettlement, whereas asylum seekers submit their applications while they are physically present in the United States or at a U.S. port of entry. Refugees and asylees also differ in the admissions process and the agency responsible for reviewing their application [56].

The United States offers humanitarian protection to refugees through two channels: refugee resettlement and asylum status. Using the most recent data available, including 2015 refugee arrival figures from the State Department, the Department of Homeland Security's *2013 Yearbook of Immigration Statistics*, and administrative data from U.S. Citizenship and Immigration Services (USCIS) and the Department of Justice's Executive Office for Immigration Review, this Spotlight examines characteristics of the U.S. refugee and asylee population including the admissions ceiling, top countries of origin, and U.S. States with the highest resettlement. It also explores the number of refugees and asylees who have become lawful permanent residents (LPRs), followed by an explanation of the admissions process.

U.S. resettlement policy has been generous but not humanitarian, while asylum policy has been humanitarian but not generous [57]. The U.S. is the global leader in resettlement. While the U.S. resettlement numbers are the largest in the world and on a yearly basis amount to more resettled refugees than admitted in the rest of the world combined, on a per capita basis Canada and the U.S. admit similar numbers [58]. Refugee issues in the U.S. are governed by the Immigration

and Nationality Act, 1954 (INA) and the Refugee Act, 1980 [59]. The Refugee Act defines a refugee for the purposes of the INA s.101 (a)(42)(A) as:

[A]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, 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 or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

As is the case in Canada, the provision essentially repeats the phrasing of Article 1A of the 1951 Convention. The U.S. never signed the 1951 Convention but did sign the subsequent 1967 Protocol [60]. Like Canada, the U.S. operates both an in-country refugee processing program and an "Overseas Refugee Program"; which constitutes its resettlement program. While Canada conceives of refugees as coming either by way of resettlement or through an in-Canada claim, the U.S. makes a semantic distinction between resettlement refugees coming from overseas and asylum seekers who claim protection in the U.S [61]. This distinction serves to highlight the separation of the programs and may prevent the type of conceptual conflation increasingly evident in Canada. Similar to the ranges set out in Canada, the American allocation represents a ceiling and not a mandatory quota. The Refugee Act, 1980 authorized permanent funding for resettlement [62].

Resettlement to the U.S. can be divided into refugees that are referred for resettlement and those within designated classes. Designated groups are those that have been determined by the U.S. government to be of particular focus for resettlement; referrals from UNHCR or other referrals agencies are not required. Refugees from non-designated groups require a referral from UNHCR, a U.S. Embassy or NGO to be considered for resettlement at a designated U.S. processing post [63]. Three priority categories are established that individuals must fall within to be considered for resettlement. Priority one is the individual referrals, priority two is the designated groups of concern identified by the Department of State and defined by nationality or other characteristics, and priority three is family reunification. If an individual falls within one of these categories, he or she may be approved for an interview with a representative of the Department of Homeland Security who will make the resettlement decision [64]. The majority of admissions tend to fall under the second priority, which is less labor, intensive than individual referrals but not as narrowly contained as the family reunification [65].

Prior to the Refugee Act, 1980 a statutory requirement limited refugees to individuals fleeing the Middle East or communist countries [66]. As Ricardo Inzunza argues, "Until 1980, refugees were defined more by where they came from than by the circumstances and persecution which might have precipitated their flight" [67]. Stimulated by the Indochinese crisis and the America sense of obligation to refugees created by the war in Vietnam resettlement became the response.

The Refugee Act, 1980 balanced the desire for a more coherent, efficient and rational approach to refugee issues while maintaining the flexibility to respond to emergency situations [68]. While the neutral language of the 1980 definition was intended to remove the geographical and ideological preferences, the preferences have now been embedded in the designation of groups under the second priority [69]. There remains significant discretion in the designation and selection of resettlement refugees [70]. More overtly than is the case in Canada, American resettlement selection aligns with foreign policy preferences.

In 1975 the U.S. government created an ad hoc Indochinese Refugee Task Force to address through resettlement the displacement caused by the Vietnam War [71]. In the 2011 Report to Congress on Refugee Admissions, this dual focus was noted with attention directed at both "a broader representation of the world's refugee population" and "the most desperate populations" [72].

The resettlement of the Somali Bantu and the Sudanese Lost Boys are pointed to as early examples of the American move from foreign policy objectives to humanitarian selections [73]. These groups however also encapsulate the public notion of a refugee "worthy" of resettlement [74]. The report, like most Canadian discourse on resettlement, makes no mention of international responsibility or burden-sharing as the underlying basis for resettlement. A 2010 report by a team from Columbia University's School of International and Public Affairs (SIPA Report) at the request of the International Rescue Committee notes that the president of one voluntary agency facilitating resettlement questioned the practicality of focusing on diverse and vulnerable refugees [75]. Others have noted the global reach complicates receptiveness to

refugees by both legislators and the public as the conflicts are less widely known or understood [76]. While Canada has recently moved to the resettlement of the "new and few" [77], the cultural diversity of incoming refugees itself seems to present as much more of a challenge in American literature on resettlement than appears to be the case in Canadian articulations of settlement issues [78]. The number of persons who may be admitted as refugees each year is established by the president in consultation with Congress. At the beginning of each fiscal year, the president sets the number of refugees to be accepted from five global regions, as well as an "unallocated reserve" if a country goes to war or more refugees need to be admitted regionally. In the case of an unforeseen emergency, the total and regional allocations may be adjusted.

A. Private Sponsorship:

The U.S. resettlement program is used to give a strong level of management, or the appearance thereof, to the arrival and situation of refugees in the United States. While the U.S. does not offer the option of privately sponsoring refugees to its citizens, resettlement in the U.S. is dependent on private support. The American public-private partnership is designed around a very different model from Canada. Private voluntary agencies (Volags) have assisted in refugee integration in the U.S. since the end of the Second World War. As was the case in Canada, religious groups such as the Church World Service and the Catholic Relief Services lobbied both the President and the Intergovernmental Committee for Refugees to resettle refugees from Europe predating the 1951 Convention [79]. While religious groups initially operated out of their own budgets, the influx of Cuban refugees in the 1960s and early 1970s caused the government to begin contracting with voluntary agencies for their services [80]. There were several Volags in the U.S. that have cooperative agreements with the Department of State to provide reception and placement services to refugees: Church World Service, Domestic & Foreign Missionary Society, Ethiopian Community Development Council, Hebrew Immigrant Aid Society, International Rescue Committee, Kurdish Human Rights Watch, Lutheran Immigration & Refugee Service, U.S. Committee for Refugees and Immigrants, U.S. Conference of Catholic Bishops, and World Relief. Each Volag holds a standard cooperative agreement with the Department of State that outlines the agency's responsibilities including airport pick-up, establishing the refugee family in an apartment equipped with furnishings, appliances, clothing and food, assisting in the application for a Social Security card, school registration, grocery shopping and arranging medical appointments and necessary social and language services. Family or friends of the refugee may apply to work with the Volag on the refugee's settlement. In the absence of pre-existing networks, the Volag will arrange for individuals or a religious group to sponsor the settlement or otherwise do so itself [81].

The Volags oversee hundreds of affiliate organizations spread across the country to which individual refugees are assigned [82]. The program diverges here from the Canadian model as the Department of State supplies the Volags with a lump-sum payment now amounting to $1,800.00 per refugee for the initial settlement expenses [83]. Counter to what is occurring in Canada, with the government placing increasing reliance on private sponsorship to fund refugee resettlement, the moves in the U.S. signify a move away from private sector financial responsibility for resettlement. Faith-based agencies still dominate U.S. resettlement. In 2010, 70% of resettlement in the U.S. was handled by faith-based organizations [84].

The recognition here is that there are two layers of private assistance operating in U.S. resettlement. Despite the Volag structure, the same organizations that tend to direct private sponsorship in Canada, smaller religious and community groups, ultimately and voluntarily take on much of the settlement services in the U.S. These groups, however, lack the Canadian private sector's selection influence that is instead controlled by the Volags. Moreover, absent the private sponsorship scheme, agencies active in resettlement in the U.S. must contend against public perceptions that it is a government program and not a community based effort [85].

B. Source Country Resettlement:

The United States is the world's top resettlement country for refugees. For people living in repressive, autocratic, or conflict-embroiled nations, or those who are members of vulnerable social groups in countries around the world, migration is often a means of survival and—for those most at risk—resettlement is key to safety. In fiscal year (FY) 2015, the United States resettled 69,933 refugees and in FY 2013 (the most recent data available) granted asylum status to 25,199 people. In response to this humanitarian crisis, the Obama administration proposed to significantly increase the number of refugees the United States accepts each year—from 70,000 in FY 2015 to 85,000 in FY 2016 and 110,000 in FY 2017—and scale up the number of Syrian refugees admitted to at least 10,000 for the fiscal year 2016.

As reviewed above, resettlement to the U.S. is organized along defined priority categories. Within the first priority of individual referrals, referrals may be made for persons still in their country of origin. Priority Two designations have always included individuals still in their country of origin. The idea of resettlement from source countries was debated between the House and the Senate preceding the enactment of the Refugee Act, 1980. The Senate bill defined a refugee to include internally displaced persons whereas the eventually accepted House bill provided the more limited option of presidential designations in particular situations [86]. Under INA s.101(a)(42)(B) the President may specify certain countries where the country of origin resettlement is considered:

(B) in such special circumstances as the President after appropriate consultation (as defined in section 207(e) of this Act) may specify, any person who is within the country of such person's nationality or, in the case of a person having no nationality, within a country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Current country of origin resettlement is considered for individuals from Cuba, Eurasia and the Baltics, Iraq, and other exceptional circumstances identified by a U.S. Embassy in any location. In addition, direct Priority One referrals from a U.S. Ambassador in any part of the world will be considered [87]. Resettlement from the former Soviet Union is also authorized through the Lautenberg Amendment [88], and applies to Jews, Evangelical Christians, and Ukrainian Catholic and Orthodox religious activists. The Cuban program applies to human rights activists, members of persecuted religious minorities, former political prisoners, forced labor conscripts (1965-68), persons deprived of their professional credentials or subjected to other disproportionately harsh or discriminatory treatment resulting from their perceived or actual political or religious beliefs or activities, and persons who have experienced or fear harm because of their relationship – family or social – to someone who falls under one of the preceding categories. A variety of Priority two designations include Iraqis employed by the US government, media or NGOs [89]. Intended as an extraordinary remedy [90], in-country processing became increasingly popular in the U.S. in the 1980s with both the Vietnamese and those from the Soviet Union [91].

The acceptance of Ugandan Asians expelled by Idi Amin in 1972 and the rescue of political prisoners from Chile after the overthrow of President Allende in 1973, for example, were enabled through the "parole authority" in the INA [92]. The evacuation of Vietnamese in 1975 could be regarded as resettlement although presented as a rescue operation rather than refugee protection [93]. The first use of the Refugee Act, in-country processing provisions were triggered by the Cuban crisis that occurred that very same year. An Executive Order signed by President Carter on April 14, 1980 permitted 3,500 Cubans within the Peruvian Embassy in Havana to enter the U.S. for special humanitarian reasons [94]. Evaluating the entire program, while Canadian source country resettlement, did suggest a strategic regional burden-sharing benefit and selection of desirable resettlement refugees, the American counterpart has been more clearly dictated by foreign policy concerns.

The U.S. administration's proposal to significantly increase the number of worldwide refugees the United States accepts annually up to 100,000 in FY 2017 would mark the largest yearly increases in refugee admissions since 1990. The proposed 85,000 worldwide ceiling for FY 2016 would include 10,000 Syrians and is further broken down into regional caps: 34,000 resettlement places for refugees from the Near East and South Asia (up 1,000 from 2015); 13,000 from East Asia (no change); 25,000 from Africa (up 12,000); 3,000 from Latin America and the Caribbean (down 1,000); and 4,000 from Europe and Central Asia (up 3,000).

The unallocated reserve also increased from 2,000 in 2015 to 6,000 in 2016. In FY 2015, 69,933 individuals arrived in the United States as refugees, according to data from the State Department's Worldwide Refugee Admissions Processing System (WRAPS). This is very close to the number of refugees resettled in 2013 (69,926) and 2014 (69,987), but 20 percent higher than the 2012 total (58,238). In FY 2015, 40 percent of refugee arrivals, or 28,066 individuals, were principal applicants [95].

VI. COMPARATIVE COUNTERPOINTS BETWEEN THE TWO COUNTRIES

Canada and the U.S. are States formed by immigration, relatively removed from refugee flows, and all three shifted from ad hoc responses to specific crises to formal resettlement policies mainly in response to the refugee flows out of Indochina in the 1970s. This latter point may have much to do with the resettlement mentality that each State consequently assumed. The American role in the Vietnam War created a direct sense of responsibility for the refugee outflows it produced.

The U.S. Government thus took on this responsibility as well as linking resettlement to a sense of foreign policy. Canadian government response resulted from the compelling reality of the crisis and the push for compassion by the Canadian people who ultimately took on much of the responsibility.

The U.S. has remained the most unapologetically foreign policy oriented. Canada, in contrast, has always defined its resettlement efforts through the same humanitarian lens it applies to in-Canada protection. What can be seen from this is a desire in Canada to profile and celebrate its resettlement activities while they are pursued more as a matter of fact in the U.S. Canada is also clearly more creative in its resettlement activities than the U.S. While some aspects of the Canadian program appear in the U.S. as well, they merge and blur with the general programs and are not highlighted as distinct programs. U.S. embraces a degree of source country resettlement. The use of source country resettlement in the U.S. meanwhile, has been highly criticized and regarded with suspicion. One possibility is that the flexibility and efficiency of the American model, lacking in the rigidity of the Canadian scheme, is what prevented similar concerns of political abuse in Canada. Again, the U.S. seems burdened by the same considerations as Canada in terms of connecting its resettlement to refugee protection. The U.S. program, while criticized for obstructing protection, nonetheless enables the government to offer protection as it sees fit without the hurdles the Canadian government faced.

Private Sponsorship is a unique aspect of the Canadian program. And yet, private influence and support can be found in the American program. While the unique origins of private sponsorship in Canada are understandable, it is surprising that U.S. has since embraced sponsorship. From a government perspective, it offers increased resettlement numbers with the limited additional expense. In contrast, the American Volag system gives these agencies enormous influence on resettlement selection although the State finances the resettlement. In the American system, the smaller church and community organizations do much of the settlement work that falls on private sponsors in Canada but wields much less selection influence. There is, moreover, a sense in the U.S. through the legal contracts between the government and the Volags that the Volags are performing a service for the government, whereas, in Canada, private sponsorship is often portrayed as something the government permits private citizens to do, almost as a favor.

Private sponsors have a vested interest in not just the settlement but also the selection of refugees for resettlement in Canada in a way that does not come across in the U.S. The interest of private sponsors is often familial and clearly humanitarian and in many ways obliges the Canadian government to continue with a humanitarian rhetoric. As a result, Canadian resettlement is more inward looking, tied into the legal obligations Canada owes to in-Canada asylum seekers and lacks the overt foreign policy and international burden-sharing considerations that guide resettlement in the other states.

Burden sharing is at the rhetorical forefront of refugee discourse in the U.S in a way that it is not in Canada. The semantic distinction makes clear the divide between the protection obligations to asylum seekers in contrast to the burden-sharing context of resettlement. Resettlement in U.S does not appear to blur into the discourse on the State's legal commitment to refugees as it does in Canada. In the U.S., statements have indicated a move toward a more global program focused on desperate populations and increased African resettlement. In Canada IRPA shifted to more need-based resettlement and the government has suggested that the resettlement program must move closer to the original intentions of refugee protection for those meeting the Convention refugee definition.

While in many ways these are positive returns to the legal refugee definition and containment of refugee protection as precisely that, refugee protection, there is the risk that these shifts also work against the law of asylum. By ensuring that resettlement refugees do indeed fit the "genuine" image the public holds of the desperate, needy, camp-based refugee, these governments solidify the misleading dichotomy between on-shore asylum seekers and offshore resettlement refugees. In doing so, the law of asylum, that asylum seekers are entitled to enter without legal authorization to make an asylum claim, is further diminished. At the same time, the U.S. is focused on Convention refugees in its actual resettlement scheme. In the U.S., the designated classes do not rely on a UNHCR referral.

Resettlement thus bears less of a resemblance to refugee protection and the legal refugee definition. It also, ironically, builds up the resettlement numbers with what would otherwise be considered family reunification. But in many ways, the schemes are more legal in their regulated structures of visa subclasses, priorities, and designations. The regimes themselves are more legally entrenched. This entrenchment adds to the impression that resettlement refugees are taking the legal route to entry into the State.

In the U.S. the law appears as a tool to contour and control resettlement. The Refugee Act, 1980 was itself an attempt to neutralize the law. Preferences, however, remain embedded in the U.S. system and demonstrate the inability to legislate political neutrality in a system that necessitates discretionary selection. The introduction of recent bills on refugee protection and resettlement reform again show the hope and potential that law can bolster resettlement. Ultimately, in examining where the law is in American resettlement, it is clear that its presence and relevance is not unique to Canada. It is inevitable given resettlement's placement as a complement to the grant of asylum that law will play a shadowed role and must be considered. Law's presence need not be problematic. It has the potential to bolster resettlement as the new bill attempts in the U.S. However, the law can also take resettlement outside of and beyond asylum, tie it to asylum, and effect asylum while still remaining voluntary and vulnerable, subject to cancellation on a whim, and of negligible relevance in judicial decisions. The need is to see the law clearly and understand its influence.

In 2013–2015, nationals of Burma (also known as Myanmar), Iraq, and Somalia were the top three countries of origin for refugees in 2015, representing 57 percent (39,920 individuals) of resettlements rounding out the top ten countries were: the Democratic Republic of Congo (DRC), Bhutan, Iran, Syria, Eritrea, Sudan, and Cuba. There has been a significant decline in the number of refugees from Iraq, Bhutan, and Cuba in recent years. Iraq was the top refugee origin country in 2013 and 2014, accounting for 28 percent of refugees resettled; the share of Iraqis dropped to 18 percent in 2015. Bhutanese are down to 8 percent of refugee arrivals in 2015, compared to 13 percent in 2013 and 12 percent in 2014. From 2014 to 2015, the number of Cuban refugees decreased from 6 percent to 2 percent. Meanwhile, refugees from Burma, DRC, and Iran witnessed moderate increases. Burma, the top origin country in 2015, was the second-largest refugee origin country in 2013 and 2014. The number of refugees from DRC increased from 4 percent in 2013 to 11 percent in 2015 [96].

VII. CONCLUDING REMARKS

This paper concluded with a wariness of changes and vulnerability in the Canadian system, particularly given the increased infusion of discretion into the decision-making. The review of how similar yet distinct programs operate in the U.S. confirms the challenge of discretion in resettlement selection. The hesitations and criticisms in the U.S. are entirely separate from the concerns that plagued Canada's source country resettlement. Programs similar in concept may differ vastly in operation and particularly with resettlement, in its contrast to asylum, the danger is this use may be manipulative and damaging to the asylum.

Of the two States, Canada has tied its resettlement most closely to its domestic refugee protection. Having always considered the two programs to intertwine, the current blurring rhetoric to confuse the law succeeds more easily. The converse though is that advocates are better situated to argue for continued complementarity. Resettlement in Canada is not about foreign policy or international burden sharing. Particularly given the ever-growing support of and dependence on private sponsors, resettlement is about refugee protection.

However, there is a potential danger in the convergence of resettlement policy between the two states. While refugee protections originally arose out of international solidarity in the 1950s, U.S. may also align to move away from protection. This is a realization of the global dimensions of the law [97]. In the past, Canada set the bar in refugee protection and advocates in other States often turned to Canadian models to argue for emulation. The converse risk is that as States limit the ambit of their protections, their actions find support and gain momentum through the actions of other States. Convolution is already occurring. The Canada-U.S. Safe Third Country Agreement which came into force in December 2004 requires asylum seekers to make their refugee claims in the first country of arrival [98]. The Agreement has been described as contributing to the "erosion of the idea that people who seek asylum may actually be refugees" [99].

Canada and the U.S. as well as other States are learning from each other. How they position themselves and interpret their responsibilities and obligations effects how other States see them and how they, in turn, choose to address similar issues. While the origins of each State's policies may differ – foreign-policy, control, or humanitarianism – each State is now operating with an underlying fear of the foreigner and desire to regain greater control of its borders. The "tyranny of geography" [100] also, means that no State wants to be the State with the softest policies drawing asylum seekers to its shores. Canada's Minister of Citizenship and Immigration has made clear that Canada is not "the world's doormat" [101]. Rather than partaking on a race to the bottom to curtail unwanted immigration and slow asylum flows, Canada should reclaim its resettlement program as a positive complement to the asylum. Understanding law's role in this program, and

its positive potential rather than its use as collusion is key to this recovery.

The paper has shown law's presence, influence, and power. The task now is to take the inevitable intersections of law, the categorizations of legality and illegality, and, seeing them clearly, use them to regain complementarity between asylum and resettlement.

END NOTES

[1]. Refugee Council USA, REFUGEE RESETTLEMENT IN THE UNITED STATED (2007) <https://static1.squarespace.com/static/577d437bf5e231586a7055a9/t/5881079b20099ec2c4c010c9/1484851100541/Refugee+Resettlement+Backgrounder+-+January+2017.pdf > (Last visited April 25, 2017).

[2]. Refugees, United Nations High Commissioner for. "Global forced displacement hits record high. http://www.unhcr.org/news/latest/2016/6/5763b65a4/global-forced-displacement-hits-record-high.html(last visited March 5, 2017).

[3]. Stephen H. Legomsky, *Secondary refugee movements and the return of asylum seekers to third*

countries: the meaning of effective protection, 15 INT'L J. REFUGEE L. 567– 677, 600– 601 (2003).

[4]. United Nations Global Issues - Refugees, UNITED NATIONS, http://www.un.org/en/globalissues/ briefingpapers/refugees/ overviewofforceddisplacement.html (last visited March 5, 2017).

[5]. UNHCR report sees 2017 resettlement needs at 1.19 million (13 June 2016) <http://www.unhcr.org/news/latest/2016/6/575e79424/unhcr-report-sees-2017-resettlement-needs-119-million.html > (last visited April 25, 2017

[6]. Ibid.

[7]. Ibid.

[8]. Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 as amended by the Protocol relating to the Status of Refugees (adopted 31 January 1967, entered into force 4 October 1967) 606 UNTS 267.

[9]. Article 1A(2) of the 1951 Refugee Convention.

[10]. 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, December 2011.

[11]. UNHCR, UNHCR Master Glossary of Terms, UNHCR website, June 2006.

[12]. EU Policy on Minimum Guarantees for Asylum Procedures: NGO's Shared Concerns, 1995. "Safe Third Countries": Myths and Realities, 1995. Position on Sharing the Responsibility: Protecting Refugees and Displaced Persons in the context of Large Scale Arrivals, 1996. Protection Beyond Europe, 2009.

[13]. INTERNATIONAL COOPERATION TO SHARE BURDEN AND RESPONSIBILITIES: EXPERT MEETING IN AMMAN, JORDAN, 27 AND 28 JUNE 2011, 1– 2 (2011) <http://www.unhcr.org/4df871e69.html> (last visited March 8, 2017). In addition, regional instruments governing refugee protection, among them the OAU Convention, the Cartagena Declaration on Refugees, and European Union Instruments also refer to the need for international cooperation in this regard.

[14]. Convention relating to the Status of Refugees, *Supra* note 3, Preamble.

[15]. B. S. Chimni, Asylum, *in INTERNATIONAL REFUGEE LAW: A READER*, 146 (B. S. Chimni ed., 2012).

[16]. UNHCR, EXPERT MEETING ON INTERNATIONAL COOPERATION TO SHARE BURDENS AND RESPONSIBILITIES 7 (2011) <http://www.refworld.org/docid/4e9fed232.html> (last visited March 9, 2016).

[17]. Geoff Gilbert, *Rights Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order*, 10 INT'L J. REFUGEE L. 349– 388, 363 (1998).

[18]. Convention relating to the Status of Refugees, 1951, 189 UNTS 150 (entered into force April 22, 1954).

[19]. UNHCR, Resettlement Handbook (November 2004) at 1/2.

[20]. "Global Consultations on International Protection, Strengthening and Expanding Resettlement Today: Challenges and Opportunities" 4th Mtg., EC/GC/02/7 (April 25, 2002) at para 5.

[21]. Asian-African Legal Consultative Organization, *Bangkok Principles on the Status and Treatment of Refugees* (Dec. 31, 1966) at Article III (3):

No-one seeking asylum in accordance with these Principles should, except for overriding reasons of national security or safeguarding the population, be subjected to measures such as rejection at the frontier, return or expulsion which would result in compelling him to return to or remain in a territory if there is a well-founded fear of persecution endangering his life, physical integrity or liberty in that territory.

Declaration on Territorial Asylum, (December 14, 1967) A/RES/2312(XXII) at Article 3(1):

No person referred to in Article 1, paragraph 1, shall be subjected to measures such as rejection at the frontier or, if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any State where he may be subjected to persecution. Resolution on Asylum to Persons in Danger of Persecution, adopted by the Committee of Ministers of the Council of Europe (June 29, 1967), 2:

They should in the same spirit ensure that no one shall be subjected to refusal of admission at the frontier, rejection, expulsion or any other measure which would have the result of compelling him to return to or remain in a territory where he would be in danger of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion. Organization of African Unity, Convention Governing the Specific Aspects of Refugee Problems in Africa (September 10, 1969) 1001 UNTS 45 at Article III(3):

No person may be subjected by a member State to measures such as rejection at the frontier, return or expulsion, which should compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article 1, paragraphs 1 and 2. Organization of American States, American Convention on Human Rights, "Pact of San Jose" Costa Rica, (Nov. 22, 1969) at 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. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (December 10, 1984) 1465 UNTS 85 at Article 3(1):

No State Party shall expel, return ("refoule") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

[22]. *See* UNHCR, Note on Non-Refoulement (Submitted by the High Commissioner), Aug. 23, 1977, EC/SCP/2 <http://www.unhcr.org/refworld/docid/3ae68ccd10.html> (last visited Jan 10. 2017). Guy Goodwin-Gill & Jane McAdam, *The Refugee in International Law* (Oxford: Oxford University Press, 3rd ed., 2007) at 352–353. *But see also* James Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005) at 363–364 for a response.

[23]. UN General Assembly, Statute of the United Nations High Commissioner for Refugees, UNGA A/RES/428(V) December 14, 1950. According to reporting from 2008, UNHCR conducted refugee status determinations in 75 countries, making decisions for 48,745 people. Over 90% of this work came from 15 operations: Algeria, Cameroon, China (Hong Kong), Egypt, India, Kenya, Libya, Malaysia, Morocco, Pakistan, Somalia, Syria, Thailand, Turkey, Yemen. UNHCR, "The Refugee Status Determination Project" (2008). Six of these 15 countries are not state parties to the 1951 Convention or the 1967 Protocol: India, Libya, Malaysia, Pakistan, Syria, and Thailand. UNHCR "States Parties" *supra* note 4. In 2009 UNHCR received 114,000 asylum applications in over 50 countries, amounting to 12 percent of the total claims (900,000) worldwide. Erika Feller, Assistant High Commissioner-Protection "Rule of Law 60 Years On" Statement at Sixty-first Session of the Executive Committee of the High Commissioner's Programme Agenda item 5(a) (Oct. 6, 2010) at 4.

[24]. UNHCR, "UNHCR Projected Global Resettlement Needs 2013" 18th Annual Tripartite Consultations on Resettlement, Geneva (July 9–11, 2012) at 61 <http://www.unhcr.org/5006aff49.html> (last visited March. 8, 2017).

[25]. *See* Michael Casasola, "Current Trends and New Challenges for Canada's Resettlement Program" (2001) 19 Refuge 76 at 77; Gil Loescher, *Beyond Charity: International Cooperation and the Global Refugee Crisis* (New York; Oxford: Oxford University Press, 1993) at 16, 22, 59 for discussions of pull-factor arguments.

[26]. *See ibid.* ; Anker, et al., "Crisis and Cure" *supra* note 163; Schuck, "Refugee Burden-Sharing" *supra* note 157.

[27]. Konrad Zweigert & Hein Kötz, *Introduction to Comparative Law* (Oxford: Claredon Press, 3rd ed., 1987) at 2.

[28]. *Ibid*. at 6.

[29]. Immigration Act, 1976, S.C. 1976-77, c.52. The Immigration Act, 1976 passed in 1976 and came into effect in 1978. While the Act was brought into the Revised Statutes of Canada in 1985 (Immigration Act, R.S.C. 1985, c.I 2) all references in this chapter are to the original 1976 Act.

[30]. Convention refugees were defined in subsection 2(1).

[31]. Immigration Act, 1976, *supra* note 36 at s.47(3): Where an adjudicator determines that a Convention refugee is a Convention refugee described in subsection 4(2), he shall, notwithstanding any other provision of this Act or the regulations, allow that person to remain in Canada

[32]. *Ibid*. at paragraph 3(g).

[33]. *Ibid.* at subsection 6(2).

[34]. UNHCR, "Frequently Asked Questions About Resettlement" <http://www.unhcr.org/4ac0873d6.html> (last visited March 20, 2017).

[35]. Immigration and Refugee Protection Act, s*upra* note 63 at subsection 99(1)-(2).

[36]. Immigration and Refugee Protection Act, *ibid.* at s.96 states:

A Convention refugee is a person who, by reason of a well-founded fear of persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion,

(a) is outside each of their countries of nationality and is unable or, by reason of that fear, unwilling to avail himself of the protection of each of those countries; or

(b) not having a country of nationality, is outside the country of their former habitual residence and is unable or, by reason of that fear, unwilling to return to that country.

[37]. Immigration and Refugee Protection Act, *ibid.* at subsection 97(1) states:

A person in need of protection is a person in Canada whose removal to their country or countries of nationality or, if they do not have a country of nationality, their country of former habitual residence would subject them personally

(a) to a danger, believed on substantial grounds to exist, of torture within the meaning of Article 1 of the Convention Against Torture; or

(b) to a risk to their life or to a risk of cruel and unusual treatment or punishment if

(i) the person is unable or, because of that risk, unwilling to avail himself of the protection of that country,

(ii) the risk would be faced by the person in every part of that country and is not faced generally by other individuals in or from that country,

(iii) the risk is not inherent or incidental to lawful sanctions unless imposed in disregard of accepted international standards, and

(iv) the risk is not caused by the inability of that country to provide adequate health or medical care.

Note that the definition of a "person in need of protection" only applies to a "person in Canada" and is not considered in resettlement applications.

[38]. John Fredrikson, "Reinvigorating Resettlement: Changing Realities Demand Changed Approaches" (2002) 13 F.M.R.28 at 29.

[39]. Davis, et al., "Not Just Numbers" *supra* note 9 at 13.

[40]. Citizenship and Immigration Canada, "Canada's Resettlement Programs" News Release (March 18, 2011).

[41]. Barbara Treviranus & Michael Casasola, "Canada's Private Sponsorship of Refugees Program: A Practitioners Perspective of Its Past and Future" (2003) 4 J. INT'L. MIGR. & INTEG. 177 at 180.

[42]. Citizenship and Immigration Canada, *Guide to the Private Sponsorship of Refugees Program*, (Minister of Public Works and Government Services Canada, 2003 <http://www.cic.gc.ca/english/resources/publications/ref-sponsor/index.asp> (last visited March 20, 2017).

[43]. Immigration Act, S.C. 1976-77, c.52.

[44]. Treviranus & Casasola, "Canada's Private Sponsorship of Refugees Program" *supra* note 3 at 184.

[45]. Immigration and Refugee Protection Regulations, SOR/2002-227 [IRPR] s.157:

(1) If an officer determines that special needs exist in respect of a member of a class prescribed by Division 1, the Department shall endeavor to identify a sponsor in order to make the financial assistance of the Government of Canada available for the purpose of sponsorship. A sponsor identified by the Department is exempt from the financial requirements of paragraph 154(1)(a).

(2) In this section, "special needs" means that a person has greater need of settlement assistance than other applicants for protection abroad owing to personal circumstances, including

(a) a large number of family members;

(b) trauma resulting from violence or torture;

(c) medical disabilities; and

(d) the effects of systemic discrimination

[46]. Citizenship and Immigration Canada, Guide to the Private Sponsorship, s*upra* note 4 at 19.

[47]. *Ibid.*

[48]. Treviranus & Casasola, "Canada's Private Sponsorship" *supra* note 3 at 182.

[49]. Employment and Immigration Canada, "Private Sponsorship of Refugee Program" (1992) 12 Refuge 2 at 8.

[50]. Citizenship and Immigration Canada, Guide to the Private Sponsorship, *supra* note 4.

[51]. Immigration and Refugee Protection Regulations, *supra* note 13, s.148:

(1) A foreign national is a member of the source country class if they have been determined by an officer to be in need of resettlement because

(a) they are residing in their country of nationality or habitual residence and that country is a source country within the meaning of subsection (2) at the time their permanent resident visa application is made as well as at the time a visa is issued; and

(b) they

(i) are being seriously and personally affected by civil war or armed conflict in that country,

(ii) have been or are being detained or imprisoned with or without charges, or subjected to some other form of penal control, as a direct result of an act committed outside Canada that would, in Canada, be a legitimate expression of freedom of thought or a legitimate exercise of civil rights pertaining to dissent or trade union activity, or

(iii) by reason of a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group, are unable or, by reason of such fear, unwilling to avail himself of the protection of any of their countries of nationality or habitual residence.

(2) A source country is a country

(a) where persons are in refugee-like situations as a result of civil war or armed conflict or because their fundamental human rights are not respected;

(b) where an officer works or makes routine working visits and is able to process visa applications without endangering their own safety, the safety of applicants or the safety of Canadian embassy staff;

(c) where circumstances warrant humanitarian intervention by the Department in order to implement the overall humanitarian strategies of the Government of Canada, that intervention being in keeping with the work of the United Nations High Commissioner for Refugees; and

(d) that is set out in Schedule 2. [Repealed, SOR/2011–222, s. 6].

[52]. A self-supporting refugee is a refugee who has enough money for basic necessities. Self-supporting refugees still require a referral or private sponsorship undertaking. They are eligible for government language and orientation programs but do not receive the financial assistance provided to GARs. Citizenship and Immigration Canada, "Guide 6000 - Convention Refugees Abroad and Humanitarian-Protected Persons Abroad" (2012) <http://www.cic.gc.ca/english/information/applications/guides/E16000TOC.asp> (last visited March10, 2017).

[53]. Immigration and Refugee Protection Regulations, *supra* note 13, s.148 (1)(a) [Repealed, SOR/2011-222, s. 6].

[54]. Michelle Zilio, — *The Globe and Mail* <http://www.theglobeandmail.com/news/politics/liberals-to-spend-245-million-to-resettle-government-assisted-syrian-refugees/article29351512/> (last visited March 21, 2017).

[55]. Canada's immigration levels will increase in 2016 — with the biggest rise in family reunification and refugee categories <https://www.thestar.com/news/canada/2016/03/08/canada-will-welcome-up-to-305000-newcomers-this-year-mccallum-says.html> (last visited March 21, 2017).

[56]. Zong and Jeanne Batalova**,** *Refugees and Asylees in the United States* <http://www.migrationpolicy.org/article/refugees-and-asylees-united-states> (last visited March 22, 2017)**.**

[57]. Matthew J. Gibney, T*he Ethics and Politics of Asylum: Liberal Democracy and the Response to Refugees* (Cambridge: Cambridge University Press, 2004) at 156.

[58]. UNHCR Regional Office Washington, "UNHCR Global Resettlement Statistical Report 2010" (Washington DC, 2011) at 16. Looking at resettled refugees per capita, in 2010 the U.S. resettled 5,874; Canada resettled 5,054 and Australia resettled 3,817.

[59]. Refugee Act of 1980, Public Law No. 96-212, 94 Stat. 102 (8 U.S.C. §§ 1157-1159) (1980) [Refugee Act, 1980]; Immigration and Nationality Act of 1952, Public Law No. 82-414, 66 Stat.163 (8 U.S.C. §§ 1101- 1157) (1952) [INA].

[60]. Protocol relating to the Status of Refugees, 1967, 606 UNTS 267 (entered into force Oct. 4, 1967). The U.S. signed on 1 November 1968. UNHCR, "States Parties to the Convention and to the Protocol". <http://www.unhcr.org/pages/49da0e466.html> (last visited March 22, 2017).

[61]. Erin Patrick, "The U.S. Refugee Resettlement Program" Migration Information Source (Migration Policy Institute: 2004).

[62]. Edward M. Kennedy, "Refugee Act of 1980" (1981) 15 INT'L. MIGR. REV 141 at 142-143.Interestingly, the Refugee Act, 1980 originally foresaw only 50,000 resettlement refugees entering the U.S. each year. Ricardo Inzunza, "The Refugee Act of 1980 Ten Years After - Still the Way to Go" (1990) 2 INT'L. J. OF REF. LAW. 413 at 415

[63]. UNHCR Washington, "U.S. Resettlement Overview" *supra* note 17.

[64]. Paul Kenny & Kate Lockwood-Kenny, "A Mixed Blessing: Karen Resettlement to the United States" (2011) 24 J.R.S. 217 at 225.

[65]. Boas, "The New Face of America's Refugees" *supra* note 14 at 446.

[66]. Under the INA, 1965, the "Seventh Preference" dictated that 6% of immigration was for "conditional entrants" defined as refugees fleeing persecution with a "communist-dominated country" or "any country within the general area of the Middle East." 8 U.S.C. § 1153(a) (7) added to the INA, *supra* note 9, by the Act of Oct. 3, 1965 (79 Stat. 911).

[67]. Inzunza, "The Refugee Act of 1980 Ten Years After" *supra* note 17 at 516.

[68]. Kennedy, "Refugee Act of 1980" *supra* note 17 at 146.

[69]. Karen Musalo, et al., *Refugee Law and Policy: A Comparative and International Approach* (Durham, N.C.: Carolina Academic Press, 3rd ed., 2007) at 75.

[70]. David Steinbock, "The Qualities of Mercy: Maximizing the Impact of U.S. Refugee Resettlement" (2003).

[71]. Audrey Singer & Jill H. Wilson, "From 'There' to 'Here': Refugee Resettlement in Metropolitan America" (2006) *The Brookings Institution Living Cities Census Series* at 3.

[72]. U.S. Department of State; U.S. Department of Homeland Security; U.S. Department of Health and Human Services, "Proposed Refugee Admissions for fiscal year 2011: Report to Congress" (2011) at ii-iii.

[73]. Boas, "The New Face of America's Refugees" *supra* note 14 at 447–448. Boas, however, provides a more detailed analysis of the multiple factors that arguably led to increased African resettlement.

[74] . *Ibid.* at 451.

[75]. Brick, et al., "Refugee Resettlement in the United States" *supra* note 16 at 7.

[76]. Donald Kerwin, "The Faltering US Refugee Protection System: Legal and Policy Responses to Refugees, Asylum-Seekers, and Others in Need of Protection" (2012) 31 REF.SURV. QUART. J. at 9.

[77]. Jennifer Hyndman & James McLean, "Settling Like a State: Acehnese Refugees in Vancouver" (2006) 19:3 J. REF. STUDIES 345 at 351; Lisa Ruth Brunner & Chris Friesen, "Changing Faces, Changing Neighborhoods: Government-Assisted Refugee Resettlement Patterns in Metro Vancouver 2005-2009" (2011) 8 Our Diverse Cities 93 at 94.

[78]. Compare American discussions such as D.W. *Haines, Safe Haven*?: *A History of Refugees in America* (Kumarian Press, 2010) at 8; Kerwin, "The Faltering US Refugee Protection System*" supra* note 43; and Brick, et al., "Refugee Resettlement in the United States" *supra* note 16, to Canadian examinations including Hyndman & McLean, "Settling Like a State" *supra* note 44; N.K. Lamba & H. Krahn, "Social Capital and Refugee Resettlement: The Social Networks of Refugees in Canada" (2003) 4:3 J.INT'L MIGR. & INTEG. 335; Kathy Sherrell, et al., "Sharing the Wealth, Spreading The "Burden"? The Settlement of Kosovar Refugees in Smaller British Columbia Cities" (2005) 37 Canadian Ethnic Studies 76; Kathy Sherrell, et al., "From 'One Nation, One People' to 'Operation Swaagatem': *Bhutanese Refugees in Coquitlam,* BC" Metropolis British Columbia Working Paper (Nov. 11, 2011) <http://mbc.metropolis.net/wp_2011.html> (last visited March 24, 2017); Debra Pressé & Jessie Thomson, "The Resettlement Challenge: Integration of Refugees from Protracted Refugee Situations" (2007) 24 *Refuge* 48-53; and Brunner & Friesen, "Changing Faces" *ibid.*

[79]. Jessica Eby, et al., "The Faith Community's Role in Refugee Resettlement in the United States" (2011) 24 J. REF. STUDIES 586 at 589.

[80]. W. Courtland Robinson, *Terms of Refuge: The Indochinese Exodus and the International Response* (London, New York: Zed Books Ltd., 1998) at 130. Catholic Relief Services and the Church World Service were created much earlier, in 1943 and 1946 respectively, with an early focus on refugee resettlement Eby, et al., "The Faith Community's Role" *ibid.* at 588.

[81]. UNHCR Washington, "US Resettlement Overview" *supra* note 17 at 10.

[82]. Kenny & Lockwood-Kenny, "A Mixed Blessing" *supra* note 21 at 225.

[83]. Bureau of Population, "Refugee Resettlement in the United States" *supra* note 101.

[84]. Eby, et al., "The Faith Community's Role" *supra* note 96 at 591.

[85]. Eby, et al., "The Faith Community's Role" *supra* note 96 at 603.

[86]. Kennedy, "Refugee Act of 1980" *supra* note 18 at 149.

[87]. Department of State, "Proposed Refugee Admissions for fiscal year 2010" *supra* note 101 at 5.; The White House, "Presidential Memorandum" *ibid.*

[88]. Public Law No. 101-167, § 599D, 103 Stat. 1261 (1989), as amended (Lautenberg Amendment). The Lautenberg Amendment made to the 1990 Foreign Operations Appropriations Bill, established a presumption of refugee eligibility for certain categories of persons from the former Soviet Union and Southeast Asia.

[89]. Department of State, "Proposed Refugee Admissions for the fiscal year 2010" *supra* note 101 at 10.

[90]. Inzunza, "The Refugee Act of 1980" *supra* note 18 at 422.

[91]. Haines, Safe Haven*? supra* note 45 at 21.

[92]. Section 212(d)(5) INA, 1952, *supra* note 9 enabled the Attorney General the discretion to temporarily permit aliens to enter the U.S. for emergency or public interest reasons.

[93]. Loescher & Scanlan, Calculated Kindness, *supra* note 98 at 109, 113.

[94]. Ira J. Kurzban, "A Critical Analysis of Refugee Law" (1981-1982) 36 MIAMI L. REV. 865 at 865–866; Kennedy, "Refugee Act of 1980" s*upra* note 17 at 153.

[95]. Note: Data from the Department of State (DOS) Worldwide Refugee Admissions Processing System (WRAPS) on refugee arrivals differ slightly from the Department of Homeland Security's Yearbook of Immigration Statistics due to a different data counting approach. *See* Figure 2. U.S. Refugee Arrivals by Region of Nationality, FY 2003-15. Source: MPI analysis of WRAPS data from the DOS Bureau of Population, Refugees, and Migration.

[96]. *Id.*

[97]. Howard Erlanger, et al., "New Legal Realism Symposium: Is It Time for a New Legal Realism?: Foreword: Is It Time for a New Legal Realism?" (2005) WISCONSIN. L. REV.335 at 343.

[98]. Canada-U.S. Safe Third Country Agreement (Dec. 5, 2002) Asylum seekers arriving in the U.S., as the majority inevitably do as a result of the greater number of American embassies worldwide and international flight routing through the United States, are be denied entry into Canada. The clear objective of the agreement, instigated by Canada, is to decrease the number of asylum seekers able to gain access to the refugee determination process within Canada.

[99]. Audrey Macklin, "Disappearing Refugees: Reflections of the Canada-U.S. Safe Third Country Agreement" (2005) 36 COLUMBIA H.RIGHTS L.REV. 365 at 365. The designation of the U.S. as a safe third country was challenged at the Federal Court by the Canadian Council for Refugees, Amnesty International, the Canadian Council of Churches and a Colombian asylum seeker in the U.S. The challenge was successful at the Federal Court with Justice Phelan ruling the designation would be quashed. This ruling was overturned on appeal at the Federal Court of Appeal and leave to the Supreme Court of Canada was denied. *Canadian Council for Refugees v. Canada*, 2007 F.C. 1262, [2008] 3 F.C.R. 606 (F.C.); rev'd 2008 F.C.A 299, [2009] 3 F.C.R. 136.

[100]. Gibney, The Ethics and Politics of Asylum, *supra* note 6 at 195.

[101]. Jason Kenney quoted in Steven Chase, "Ottawa Helps Block Another Batch of Smuggled Sri Lankans" *The Globe and Mail* (June 14, 2012).