

LEGAL HURDLES AND COMPREHENSIVE  
RESPONSES TO THE GLOBAL REFUGEE CRISIS:  
WOMEN REFUGEES AND UNACCOMPANIED  
CHILDREN<sup>1</sup>

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PANEL II: FLEEING VIOLENCE FROM THE MIDDLE EAST AND NORTH  
AFRICA

Panelists:

**Alice Farmer**—*Protection Officer, United Nations High Commissioner for Refugees*

**Zaid Hydari**—*Co-Founder and Executive Director, Refugee Solidarity Network*

**Edwin Rekosh**—*Lecturer in Law, Columbia School of Law*

**Thomas Streinz**—*Visiting Scholar, Jean Monnet Center at NYU School of Law*

EDWIN REKOSH: Thank you to the organizers of this conference and to the panelists. This event could not be a more timely topic after the Paris attacks. I am not sure whether you have been following the issue in Europe. There's been walls constructed in Hungary, refugees turned back, drowning in the Mediterranean. Now with the Paris attacks, the U.S. is responding in kind by closing the borders of the United States, to a degree at least, by increasing vetting procedures as the House just passed a new bill, today or yesterday. Today? And I just saw in my e-mail that thirty Governors have announced that they're going to turn back Syrian refugees from their states.

So this is a very timely topic, and to first provide us with an overview about the general situation of refugees in the world is Alice Farmer.

ALICE FARMER: Hi. My name is Alice Farmer and I work with the United

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<sup>1</sup> This is an edited version of a transcript of the audio recording from the annual symposium of the Cardozo Journal of Law & Gender, which was held on November 19, 2015 at Benjamin N. Cardozo School of Law.

Nations High Commissioner for Refugees (“UNHCR”). I just want to give a little perspective before we turn over to the more substantive presentations from my colleagues on the panel. Because I think we need to understand we have more refugees, more displaced people now than we have had any point since the end of World War II.

In 2015, we have fifty-nine and a half million displaced people globally, just fifty-one million last year and thirty-eight million in 2005. Those are some big numbers. Those big numbers create some big problems. Let me put those numbers in context a little bit. Every day throughout the world 42,000 people become refugees, become displaced, I’m sorry. Four years ago, that was only about 10,000 a day. Ten thousand is still a big number. Forty-two thousand people a day becoming refugees is a big problem.

We’re not finding solutions the way we used to. In 2005, we would look at about 1.1 million refugees went home that year, they were returned. In 2014, 120,000 went home. We’re not seeing solutions for the refugee crises and we’re seeing the numbers continue to escalate. That has obviously a great bearing at the moment on Europe. Again, there we see massive increases in the number of refugees and asylum seekers reaching Europe. In 2014, we looked at a quarter of a million people coming across the Mediterranean in a mixed migration flow of economic migrants and refugees. So a quarter of a million people in the entirety of 2014. In October 2015 alone, that same passage had 210,000 people, and the total so far for 2015 is 815,000 people. So it’s no wonder you’re seeing a European system that is struggling to cope.

Particularly, since the Paris attacks, we’ve seen some big changes happening across Europe. We started to see some changes particularly in the Balkans and parts of Eastern Europe in terms of the access they’re giving to people traveling through. But at the same time, there are still 5,000 people a day landing in Greece.

It’s worth noting, finally, that even after the Paris attacks, the French government has still stepped forward and increased the number of places it’s willing to offer for relocation of refugees. So with that as a background of the problems we’re looking at, we have massively bigger problems than we did ten years ago and way fewer solutions. I’m going to turn it over to the next panelist who will offer us some of the solutions.

EDWIN REKOSH: Thomas Streinz will now talk about the European framework for refugees.

THOMAS STREINZ: Thank you, and thanks for the introduction and the framing. I’m a visiting scholar at the Jean Monnet Center at NYU. I’m pretty sure I can’t offer you the solutions a lot of other people can’t come up with. What I’ll try to do is to explain to you very much in line with the theme of this symposium today what the legal hurdles in the E.U. are and why there are no comprehensive solutions.

Just to start off, because I think it’s very important that we’re all on the same

page. I'll give you a short intro into the E.U. and Council of Europe, and I apologize to the E.U. experts in the audience, but I think it's important to know what we are talking about and the framework different states operate in.

So this is the E.U., twenty-eight member states, a supranational organization, winner of the Nobel Peace prize in 2012, with an unprecedented degree of integration, but also a whole lot of problems. The member states of the E.U. have transferred certain powers to the European level and there are European institutions in place, which can enact laws, which are then directly applicable in all E.U. member states. There are good rules for the internal market. There's E.U. citizenship and there's also something that's called a Common European Asylum System, which is based on mutual trust and on respect for fundamental rights. But we will soon see that's not how it is on the ground and the system doesn't work the way it should.

I want to introduce you to the Court of Justice of the European Union in Luxembourg, a black box with two golden towers. It's very important to distinguish the E.U. from the Council of Europe. These two things are completely different. The Council of Europe is much more like a classic international organization and as you can see on the map, the scope is much wider because it has forty-seven members, including some states that are not E.U. members in central Europe, like Switzerland. But if you look closely, you can see that even Russia is a member of the Council of Europe and Turkey is, too. The only gray spot there in the middle is Belarus whose membership has been suspended.

As I said, it's much more like a classic international organization. It's very much in the business of treaty making and the most important treaty the Council of Europe has ever created is the European Convention on Human Rights ("ECHR"). There's a court to which everyone in Europe, including refugees, can apply to after exhausting remedies domestically. That is the European Board of Human Rights in Strasbourg. I'll show you later how these courts have had a limited yet lasting impact on the European asylum system.

So that was the E.U. and the Council of Europe. Now I will show you two more maps. One is a map of the Schengen area, an area within Europe where everyone can travel across borders without border controls. If you think about it in historic dimensions, that's a very big achievement because the Schengen area includes countries that used to be separated by the Iron Curtain during the Cold War. At the same time, the Schengen area is not a perfect E.U. construct because you can see the U.K. and Ireland do not take part. They have opted out. They don't want to be in the Schengen area and some of the new E.U. member states, those orange countries on the right, Croatia, Bulgaria, Romania, and Cyprus also are not members of the Schengen area.

Why am I telling you that? Because it has implications on refugees. It explains why refugees don't go through Bulgaria and Romania because they go straight through Balkans to reach Hungary. It also explains why in Calais at the

English Channel between France and the U.K. there's a huge refugee camp because a lot of refugees try to get to the U.K. and can't. So that is the reality of Schengen.

The final concept I want to introduce to you is the Dublin system, the infamous system under E.U. law that regulates which member state is responsible to deal with a certain asylum application. As you can see, it's another thing that really doesn't quite fit into the E.U. framework because the green countries are not E.U. member states, but they're members of the Schengen area, Iceland, Norway and Switzerland. Denmark, the red country on the map, has an opt out.

The Dublin System has been under attack for years from human rights advocates because they believe, and I think that's right, it's an unfair system. It's not good for certain member states and it's not good for refugees. The Dublin System has a set of criteria according to which it is determined which member state decides on a certain asylum claim.

The first criterion is if you're a minor, if you have children, you're alone and you want to get into the E.U. and ask for asylum, that's having the highest priority. The system tries to find relatives and tries to find family to which you can go to while your asylum claim is being assessed. The same applies if you have family that has a refugee status under international law, then the member states, where your family lives will handle the asylum claim.

But if you don't have that, then it's the country of entry, which will decide on your claim. If you think about it, just by means of basic geography, that puts a huge burden on the southern E.U. member states, like Spain, like Italy, like Greece, because most displaced persons will enter the E.U. through these countries.

This is a picture not of Guantanamo Bay, as one might think, if one sees the fences. It's a picture of a refugee detention camp in Greece, in the middle of Europe. Greece in particular, which has all kinds of problems, struggled with the refugee crisis. For a lawyer, it's not surprising that this caused litigation that eventually led to a decision by the European Court of Human Rights in Strasbourg. This Court decided that the Greek detention centers for refugees were a violation of article 3 of the ECHR and article 13 of the ECHR protecting against inhuman and degrading treatment, and ensuring a right to an effective remedy.

But the interesting things about this case was not that Greece was in violation of the ECHR, but that Belgium was too, because Belgium sent asylum seekers back to Greece. The case was about an Afghan, who had come to Greece, was briefly detained, left Greece, went to Belgium, was sent back and forth between Belgium and Greece. Belgium claimed he went through Greece. Greece didn't reply. Belgium said, okay, they said yes, and sent him back into this camp. The European Court of Human Rights found a violation of the ECHR. The other European Court that had to deal with this situation was of course the Court of Justice of the European Union, the E.U. Court. This court, too, poked some holes into the Dublin System by saying asylum seekers cannot be transferred back to the member states, which would be responsible under the Dublin System if there's a risk of suffering

inhuman and degrading treatment.

The interesting thing, though, is the E.U. is not a member of the European Convention on Human Rights. The E.U. was not on trial in Strasbourg; two of its member states were. They were a bit in trouble because E.U. law allowed them to send the refugee back, but the ECHR did not. The Luxembourg Court had the opportunity to strike down the Dublin System, as it basically has with the Safe Harbor Agreement, but it refrained from doing so. It let the framework stand even though it doesn't deliver the results we would like to see.

So now, we had the Dublin System and on top, some fundamental rights considerations. Greece basically dropped out of the Dublin System. With still a lot of refugees coming into Greece, they tried to move on, and that explains why Hungary was very much in focus of the news over the summer. A lot of people ended up in Hungary, and under E.U. law and the Dublin System Hungary was now in charge of dealing with these asylum seekers. The Hungarian government was not too friendly with them, saying we don't want them here and they don't deserve to be here. This is a picture of a standoff at the main train station in Budapest. Eventually, Germany said, we'll suspend the Dublin System. We'll no longer apply it. If you think about it from the E.U. law perspective, the response by the European Commission is very telling because it said, we support this decision. We support the non-application of E.U. law because we see it doesn't work.

The response in Germany was very mixed. You can see Angela Merkel taking selfies with the refugees in the beginning. That was when I was in Munich last summer. People seemed genuinely happy and tried to develop something like a *Willkommenskultur*, welcoming refugees. There were soccer supporters in stadiums chanting "refugees welcome."

But there's also another side in Germany. There were people protesting against Merkel and her policies. This picture from Dresden shows people who are afraid of refugees, 25,000 in front of the Semperoper, the opera house in Dresden, which in turn projected "refugees welcome" to its wall. This is just to show you the conflicting views in Germany, and if you look to other countries you'd see more examples. There's a lot of tension, and if we think about solutions, we have to take that into account.

Merkel herself has come under a lot of pressure in recent weeks within her own government and within her own party. She's seen here arguing with the Minister of the Interior of Germany. There's a debate going on right now whether Germany should go reinstate the Dublin System. Which legal status Syrian refugees in particular should have? Should they have full refugee status under international law or just the weaker subsidiary status that is afforded to people fleeing from a civil war? That has implications also for women and children. It is very hard to get figures that are trustworthy. There are a lot of men in Germany who went alone because the journey across the Mediterranean is so dangerous, and they would, of course, like to fetch their family and pull them legally to Germany.

That's much more difficult if you only have subsidiary status and not full refugee status.

Finally, let me talk about the E.U. policy response. For a E.U. lawyer like me, it's very sobering to see that there is no comprehensive European response. But I still think it would be wrong to blame that on the E.U. because there's no such thing as *the* E.U. There are different actors involved, different institutions, different member states, different parties. You can see that very clearly on this map. This is the response, the initial response, a proposal by the European Commission for a new system with relocation of refugees, and you can see some member states who opted out of this policy area (in orange), some in favor (in green), and some opposed (in red). Europe is divided on this issue. Finally, the Justice and Home Affairs Council could agree on a "solution." But even then, one had to use qualified majority voting and there were still countries opposed to the proposal.

The eventual "solution" that was found to relocate 120,000 refugees is obviously not enough, given the numbers that we have just heard. One hundred and twenty thousand refugees, that's not even what's coming in within two weeks in recent months.

What's the E.U. going to do? I don't know, but I could imagine that we will hear more talk about strengthening borders and reinstating internal border controls, as far as that's allowed within the Schengen agreement. The E.U. might actually reach out to Turkey to take care of the refugees against some sort of financial compensation. It seems like eventual E.U. membership for Turkey is very much on the table. With that, I would like to hand it over to Zaid. Thank you.

EDWIN REKOSH: Now we have Zaid Hydari who is the Executive Director of an organization called the Refugee Solidarity Network. Is the map still up on the screen? As you can see on the map, as we've been discussing, Europe is a very fuzzy concept, including legally, because we have institutions that create concentric rings of Europe, really. We have the European Union, we have the Council of Europe, which is a broader category, and we have countries like Turkey, which we don't know exactly where they are, Europe or not Europe. As you see there on the map, Turkey is sitting right in between Syria, a big source of refugees, and the European Union. That places Turkey in a very important location as a political and practical matter, as far as refugees are concerned. And to talk a little bit about the legal dimensions of that, will be Zaid Hydari.

ZAID HYDARI: Thank you, perfect set up. Yes, I run an organization called the Refugee Solidarity Network and we support work on the ground in Turkey. I spent four years there, from 2010 until 2014. So what I wanted to do right now is take a step back, give a little bit of information on the international legal framework, which Thomas mentioned a little bit, and then use Turkey as a case study to try and tie some things together, giving the perspective of a country that is a non-E.U. member state, is in a neighboring transit zone, and is an accession

candidate to give a different perspective to the E.U. situation.

On the international legal framework, I just wanted to say, and also Thomas just did mention that, he made this distinction between the full refugee status under international law versus the subsidiary status. What are we really talking about when we say that and we make that distinction? Going all the way back to the beginning where, you know, keep in mind we have the 1951 Refugee Convention, right, which is the kind of guiding principle and starting point when it comes to refugee law. What does the 1951 Refugee Convention say? The 1951 Refugee Convention doesn't say a whole lot. What it does say, it enshrines the principle of *non-refoulement*. So all signatory states are obliged to not send someone back to harm if they declare that their life is in danger.

But it also calls for minimum standards for treatment of refugees. Basically, that's just respect for basic rights; often times, at least equivalent to the freedoms enjoyed by other foreign national living legally in that state, and sometimes, very rarely, equivalent to citizens. Those basic rights are access to courts, primary education, the right to work, the right to documentation, the right to travel freely and have freedom of movement.

What the 1951 Convention does not say is how states are going to go about making the decision of who is and isn't a refugee. It doesn't talk about status determination. It leaves that up and open to signatory states to make that determination. Turkey is a party to the 1951 Refugee Convention. However, the 1951 Convention had what was a temporal and geographic limitation to it. It was restricted based on time and geography. And a 1967 protocol was an opportunity for states to maintain the obligations under the 1951 Convention, but broaden it to basically eliminate those restrictions or limitations. Turkey did not lift the geographic limitation.

What that means is that it's a signatory to the 1951 Convention. It abides by the 1951 Convention, but only for those individuals fleeing events in Europe. Now, that sounds a little odd because these days people usually don't have to flee events in Europe, but at the time the 1951 Convention was written, it was, of course, in response to what had happened in World War II. So originally, this was the point. Technically, under international law, states did have the option to maintain this geographic limitation, and Turkey did. We can talk maybe later about what the reasons are, but I think some of them are pretty obvious, which is that Turkey, with its geographic position, was a little bit worried about receiving a lot of applicants from areas to the east and southeast of it.

So you have Turkey as a signatory to the 1951 Convention, but maintaining a geographic limitation. What that means is that if you're seeking asylum in Turkey and you're coming from outside of Europe, you are not going to be afforded the full rights under the Convention. You're only going to be granted temporary access to Turkish territory. This is a pretty big deal because that means that you don't have a long-term integration prospect in Turkey. You'd be granted asylum,

temporary asylum, and your only two options for the future are, in terms of a durable solution, either being resettled to a third country by the UNHCR, who is the mediator of resettlement, and that happens very rarely, or you wait until the situation improves in your home country and you can go home voluntarily.

I set all that up because that's how the system was for a very long time in Turkey. But there's a regional dimension to this that, I think is particularly relevant for this panel, which is Turkey's membership in the Council of Europe and Turkey's formal status as a candidate country to become a member of the E.U. That is sort of, what shaped Turkey's reform in the last ten years. What was not its international obligations, but rather it was shaped by its regional membership and regional association.

As Thomas laid out, as a member of the Council of Europe, it's subject to the jurisdiction of the European Court of Human Rights. A couple of things happened. One, as far back as the year 2000, a number of cases started to be brought before the European Court of Human Rights on behalf of refugees who had sought asylum in Turkey. They laid out very basic arguments, which were basically violation of article 3 and violation of article 13 of the European Convention. They were easily won because there was no legal framework in Turkey to protect refugees. There simply wasn't legislation on the books. Going back there were a number of cases. There's Jabari and others versus Turkey, followed by, in 2009, probably the most landmark decision was Abdolkhani and Karimnia versus Turkey, which found violations of article 5, article 13 and article 3 of the European Convention and there's other cases as well. There was as recently as 2013 - - the case of thirteen Uzbeks.

So there's a series of judgments that were being brought against Turkey that related to its lack of having a legislative framework to govern asylum issues. That means that there were no laws on the books that cover what happens to somebody when they seek asylum, and are rejected and denied. What are the procedures after that? What are the procedures for removing somebody, an asylum seeker from the country? What procedures need to be followed legally to remove someone from the country back to the place that they allege they'll be harmed? There was no legislation governing that.

These were cases that, again, were continuously brought, and slammed the government. In addition to those, there were Rule 39 Interim Measures, which advocates were bringing to prevent deportations. These also were quite easy to get based on the same logic: there's just no legal framework. At the same time, Turkey became an E.U. accession candidate. As part of the long agenda of things that Turkey needed to reform in order to join the E.U., one of the things on the agenda was its migration and asylum system. So all of these things contributed to Turkey's drafting of brand new legislation, very comprehensive legislation, called the Law on Foreigners and International Protection, which was introduced to the Parliament in 2013, was voted on and adopted with a one-year implementation period to go

into effect in April 2014. This legislation is entirely European in nature.

It's, one could argue, E.U. legislation translated into Turkish. It has all the features of the E.U. asylum law, including all of the problematic features related to accelerated procedures, safe third countries of transit, and a number of other things. It basically put in place, for the first time ever, a comprehensive legal framework. What that means is, you can't go to the European Court of Human Rights and make the same arguments. You can certainly go to the European Court of Human Rights because now we're in a period where implementation is the issue, whether or not the government implements this new law. But the point is the arguments have to be different because you can no longer say that there's no legislation on the books, there's no framework because now there is and it's right down to a tee. I mean, if the government of Turkey wants to remove you as an asylum seeker, there are procedures that it can take. You have safeguards, and there are due process rights that you have with regard to filing an appeal, going to administrative court. There is an automatic suspensive effect on your deportation when you do make that appeal. There's all the things you need as a government to have in place to protect against these types of violations.

Maybe later in the discussion, I'll get into the actual implementation of the law. I mean, again, it just began in 2014, in the face of a major crisis in terms of the numbers. It's going to take some time for the Turkish government to be able to fully implement this new legislation. We can talk about that.

What I would rather close with is that despite the fact that the E.U. was the model and the sort of impetus for all of this change in Turkey. I want to tie it into what we've seen in the last few months, and what Thomas mentioned with regard to the EU, what's it going to do? It's going to strengthen its borders and reach out to Turkey. Well, it has reached out to Turkey. In classic fashion, this isn't the first time the E.U. has done this. The E.U. maintains standards for itself, very high standards, but it has a tendency to look to countries on the periphery of the E.U. and externalize its borders and, therefore, absolve itself of responsibility to live up to its own standards. We saw this in the 2000s with regards to Libya. It was no secret that the E.U. pumped a lot of money over to Gaddafi, and praised him for his enforcement of keeping people from moving out from Libya across the Mediterranean and into Europe, which quite frankly, is a very problematic move for a union that is ascribing to human rights standards, to basically pay off Gaddafi.

The same thing is being done now with regards to, this quote, unquote crisis: large numbers of arrivals. The E.U. is looking to kind of strike a deal with countries on the outside that border the E.U. It has kind of already externalized within the E.U. zone, as was mentioned with the Dublin System. But then going beyond that, it tries to externalize outside of the zone as well, by looking to partners and offering large sums of money in exchange for other people to do the dirty work. So that's what we've seen in the last few months. We've seen three billion Euros being offered to Turkey in exchange for supposed increased enforcement, a

very interesting offer, a lot of things to look at there. Whether that's the right thing to do, how will it play out, a lot of questions there. But I think that's how I'll leave it in terms of a non-E.U. state, like Turkey, and its experience dealing with issues we've discussed today.

EDWIN REKOSH: Okay good. So we have an overview of the issue now, and I would like to facilitate as much conversation about this as possible. It's always the most interesting way to explore an issue. But to kick us off, while you're thinking of your own questions, I'll pose the first one. As you've heard, as we've all heard and been reminded, as cross border human rights themes go, you really can't get a more European issue than refugees. The Refugee Convention itself was born in Europe, out of European experience. There has been migration to Europe for centuries, well before the Refugee Convention. It's a European issue. But this time seems somehow different. The responses to the refugee crisis are more severe than they've been before. So what's different, Alice?

ALICE FARMER: Thanks, Ed. I think what's different now is that we're basically in a perfect storm, and that's an odd phrase, because I think it's a very negative thing. I think there are four or five factors that are making this a particularly severe response on the European front, some of which we've already talked about and some of which I'll highlight quickly now.

Those four or five things, the first is the numbers, that we just haven't been seeing numbers like this since World War II. The second, Thomas pointed out, the problems of the Dublin System and the inherent tensions that are there. Scholars and advocates have been worried about that for a while, that it's not a sustainable legal framework within the European Union.

Then, I think where we are timing wise matters, right? So what we know is that mostly refugees who flee conflict on a big scale, like the Syrians, mostly they want to go home. What you'll often see is groups of displaced people who will settle, but go back very fast if the conflict abates. I used to work in Pakistan briefly, and the Pakistani Taliban was conducting raids throughout Swat Valley and parts of the Northwest Frontier. They displaced about two million people in the course of about three months. They were all home within about a year because the conflict shifted and came under control.

I think what you see in Syria is a loss of hope that that will happen. The people have now been outside of their homes for two years, three years, four years and are losing hope that they will ever be able to go home. So I think that's our third factor.

Our fourth factor is something I'm intimately familiar with at UNHCR, is that we are out of money. The organizations that are trying to help refugees directly proximate to the Syrian crisis, including in Turkey, we are out of money big time. The Syrian refugee crisis is funded at about 40% of the international requests. About 70% of Syrian refugees in Lebanon are below the poverty line. We're out of money to do anything about that.

Then the fifth thing that, I think is really problematic and is making this the perfect storm, is that about at the same time that Schengen came in, Europe, and U.S. and Australia, started imposing these things called carrier sanctions, which are quite innocuous, seeming laws that basically say it's the obligation of a carrier, typically an airline or a ferry company, to pay for the cost of taking people back if they're not able to get into a country. So why are there so many refugees risking their lives on smugglers' boats trying to get into Europe? It's because they simply, physically cannot get on a plane because we've outsourced the problem and made it the problem of the airline companies to check whether you have a visa. So an airline company can check whether you have a visa to get into Europe, but you can't go up to the desk of, I don't know, Turkish Airlines and say, hi, can I have asylum please? It doesn't work that way.

A lot of human rights advocates have thought that carrier sanctions are really problematic because you're effectively blocking off asylum for large groups of people. We've made it someone else's problem. I think those five things kind of come together to create this really dramatic situation right now in Europe, which has really fundamental implications for how refugee law works and fundamental implications for how E.U. law works.

EDWIN REKOSH: Do you want to add anything, Thomas?

THOMAS STREINZ: Just adding one thing, I completely agree with everything that was said. In the E.U., there is always a lot of debate about what the E.U. is, what role it should play, and we have one member state thinking about leaving the E.U., the United Kingdom. At the same time, we have the Greek financial crisis. It hit the E.U. in a time of crisis in general.

There are always different possibilities as to how to react to a crisis. But what we can see here, and as we can also say to a certain extent with regard to the Euro crisis, is no willingness by E.U. member states to give more power to the European level, even though the refugee crisis is a European crisis and the natural response would be a European response. You would have a European asylum agency that has the capacity to do something on the ground. Of course, that costs money, but it would be worth it in my opinion, instead of having this blame game with different countries in the E.U. (for example, Hungary accusing Germany for attracting refugees). Germany is to blame for the Dublin System, which very much favored Germany for obvious reasons, but not for upending this system by accepting refugees. It's this back and forth between E.U. member states that is blocking a European solution that would really be essential.

EDWIN REKOSH: Okay, thanks. Zaid, do you want to add anything?

ZAID HYDARI: I guess, I would just say that there is the effect that this sort of race to the bottom situation, that the effect that has on non-E.U. member states is, I think, many-fold because, as described by Alice, which I completely agree with, you've got this kind of perfect storm, specifically on the timing issue. You've got a population of people who do want to remain close to Syria. They really still do

want to go back home. Obviously, now that we're in year five, things are starting to change.

But still, actually a very significant portion of the population says that they just want to return home. It's pretty clear that what they're looking for is opportunity for the future. I mean, they've become hopeless in their current environments. Plus, ninety plus percent are housed in the neighboring countries of Turkey, Lebanon, Jordan, Iraq, and Egypt, and the reason that they're risking their lives to go onward is because they want the long-term options for their families.

If they were able to get those long-term options a little bit closer in the host countries, they may even stay in those host countries. But it's really hard to increase standards in neighboring host countries when you have a race to the bottom by the developed world. What you really have to have is burden sharing and responsibility sharing by the rest of the developed world, and then maybe you're going to get increased standards in the first countries of asylum. So you can't get one without the other, and trying to increase standards in non-E.U. member states and non-developed countries, it's becoming very, very difficult because it's not seen as sharing in the burden by the rest of the world.

EDWIN REKOSH: Okay. Thanks to the panelists. So with that, let me open it up to the floor and see what your questions or comments might be.

EDWIN REKOSH: I'll ask another question, but we really, we do want to hear from the audience. We want to know what's of interest to you. So I'm going to try to speak on behalf of the audience. I presume that the audience is comprised primarily of lawyers or would-be lawyers. Here's my question for the panelists. We are speaking of crisis. It's a crisis with many dimensions: political, historical, cultural, and . . . legal, too. My question is how can lawyers help?

ZAID HYDARI: Which lawyers? How can which lawyers help?

EDWIN REKOSH: Any lawyers, lawyers here, lawyers there, lawyers around the world. It's a cross-border issue, and lawyers are engaged in Europe and elsewhere on this. But can they do more? Or, to start with, let me ask, what are they already doing?

ZAID HYDARI: Let me just reflect on what our program is. RSN supports rights-based programming on the ground in Turkey. We support a project that provides legal assistance to refugees and asylum seekers. What we're in dire need of are more Turkish lawyers, private lawyers, basically participation from the legal field in this effort. I described to you an overhaul in the legal framework. That makes lawyers more important because there are all these procedures, and you can't enjoy your access to those things without legal assistance.

What we're actively doing right now is we're doing a lot of training for Turkish lawyers from across the country, and developing reference materials for them and trying to encourage a pro bono culture amongst the legal field in Turkey. The thing about the law is all of this is cross-border. But as we all know with legal jurisdictions, it becomes very localized because you can only be an expert in the

law of your little area, and you need to be licensed in your little area. So it does become difficult to promote cross-border legal participation, but I think that there's a lot of value in things like learning from how others organize themselves. How is our system set up here in the U.S. with regards to pro bono partnerships between law firms and non-profit organizations? The number of billable hours that firms give to their associates to do pro bono work and all the awards that we give for pro bono hours and participation. That stuff doesn't exist everywhere.

It's important to be promoting that in other locations, figuring out ways to continue to pull resources from the legal field and divert them towards this issue. I can say, for Turkey, what we're also actively promoting is increased funding for the state funded legal aid mechanism in Turkey, which we see as crossing over with a sort of development initiative because if you have more legal aid capacity, it's not just for the guest population. It also serves the local host population and that's the future of what we need to be discussing. It's not just about ways to assist all of the displaced, but how can we shore up the infrastructure of the host community so that these initiatives are both popular and provide something to everyone, not just one particular population?

I think that the legal dimension of development initiatives is not very well thought out and hasn't been discussed a lot. That's something I know we're trying to highlight. That could be an area where we all could do work together. I think it's a great question.

ALICE FARMER: I think that's a great question. What can we do? I think many of you, who have been through law school, have presumably debated whether or not to go into direct services, or into impact work. I'm pretty heavy on the impact side. That's always been what's pulled me in, and I think, well I'm not going to speak for the other panelists. They can give you their own preferences later. But on the direct services side within the U.S., there's a lot you can do for refugees. UNHCR, through our Washington, D.C. office, runs referrals out to pro bono services. We can link you up with law firms and non-profits that do pro bono of all different types in the asylum procedures. You can get involved in representing asylum seekers in front of immigration courts, which can be a phenomenal way to get court experience as a young attorney. It's a great thing to do.

I should mention that, particularly in the U.S. system, which can become quite complex and quite technical, that once an asylum seeker has representation, particularly for unaccompanied minors, the rates at which they're getting asylum is drastically higher than without an attorney. So if you're interested in doing any of that work, and you even can do it as a student before you've gotten your Bar admission, it's definitely an important thing to do. We partner with an organization called RIESEZ [phonetic], which will even send you down to Texas to volunteer for an entire week, or two weeks, or three weeks, and send you into one of the family detention centers where you can help people get going on that stuff.

Also on the direct assistant front in the U.S., you can help with resettlement. You can get to the U.S. as a refugee in two ways. You can either come here and claim asylum in front of our courts, or you can be resettled. Typically, UNHCR will then take candidates from camps in Turkey or Lebanon, or all sorts of places, and refer them to the U.S. for an extensive amount of security screening and processing before they're allowed to come into this country.

EDWIN REKOSH: They just increased it.

ALICE FARMER: Well, they're trying to.

EDWIN REKOSH: Right, the House has passed it. It still has to go to the Senate.

ALICE FARMER: But it is already incredibly strict. But I'm saying, once the resettled refugees get here, there are nine voluntary agencies that help them adapt to their communities. They need help figuring out how to get driver's licenses, figuring out how to register their kids for school, figuring out how to do all sorts of things. There are great organizations and great volunteer programs that can certainly use your help on that.

If you're really interested in taking on the impact stuff, then there could not be a better time to be writing to your Congressman than right now. What's going on in Washington at the moment is disheartening, and I think that as much as we can do at the moment to rise our voices to stop that would be great.

EDWIN REKOSH: Okay, Thomas?

THOMAS STREINZ: Just to add to that briefly. As I said, I'm from Germany and in Germany, there's not a long tradition of public interest work or legal clinics because we somehow believe doing law is always in the public interest, even by making a lot of money from it. But there has been an exception now, and that is refugee clinics. Suddenly, at law schools in Germany, these refugee clinics are founded. In Munich, where I'm from, the students demanded from the faculty to add a refugee clinic. They want to help. If you know the legal means, you can have an impact.

The other thing, just to echo what was just said, I think it's very important to speak up about this issue because there is so much fear and so much noise in the debate that it makes sense to have a voice of reason. I know that lawyers don't always have this—are not always seen as speaking with a voice of reason. But I think the refugee crisis and the legal framework in which it operates, both to the extent it exacerbates it and to the extent it might remedy it, is an important topic. We shouldn't just leave that to a few fear mongering types.

EDWIN REKOSH: I see a couple of hands. I'm going to add my two cents on this particular theme. I'm just coming back from PILnet's Annual European Pro Bono Forum, which was in Rome last week. The refugee crisis was the most prominent theme at the conference and the most talked about theme, and putting it into context in my view is mostly a problem of organizing. When I say context, I mean historical context. In this country, lawyers involvement through pro bono

work tackling issues of refugee, and refugee and asylum seekers was virtually non-existent, or at least it was not coordinated thirty or so years ago.

But I can tell you who was the person that changed that. It was Arthur Helton, who subsequently died in a bombing attack at the U.N. headquarters in Baghdad, who personally came up with the idea. He looked at law firms and observed that we have all these legal resources in all of the fifty states of the United States. He dared to imagine what would happen if some of those lawyers actually represented asylum-seekers at administrative hearings, as volunteers. Lawyers at the time had no better reputation than they do now—probably worse. But lo and behold, he set up a program at what was known at the time as Lawyers Committee for Human Rights, now Human Rights First, the first national pro bono network on any human rights theme in this country, and it focused on refugees. It's been very effective, and I'm sure Alice, you work a lot with the people in that network now.

Now in Europe, pro bono is on the rise and it is developing in Turkey, too. We've heard that is developing both among law firm lawyers and law students in Germany. But there's a problem and the problem is that it's largely uncoordinated.

There were over 700,000 migrants this year in Europe. Of those 700,000 migrants, 570,000 have applied for asylum. There are law firms that have well-established pro bono programs now in Europe for the last eight or nine years. That's what's been on the rise. They are, of course, taking the refugee issue seriously, but let's take one example of a very prominent law firm that does as much pro bono as any other: DLA Piper. That firm has a strategic priority on trying to help with the refugee issue. They're providing assistance to 150 asylum applications. That's a significant amount for any one law firm to take on. But that's 150 out of 570,000. Compared to the scale of the need, it's a drop in the bucket. So what's needed is a coordinated response because one or two law firms can't do it on their own.

I think I'll go in order, if that's okay.

AUDIENCE MEMBER: [inaudible question].

EDWIN REKOSH: So you're looking for some advice?

ALICE FARMER: I can take that on. I mean, I think, that's a reflection of one of the big parts of the problem we're looking at, right? We're talking about sixty million people displaced. Sixty million is the population of the United Kingdom. We're talking about 100,000 who are successfully resettled every year. The program you're referring to is through a resettlement program. That's a drop in the bucket. It's not a solution at all. Of those 100,000, about 70,000 come to the United States.

The program that the U.S. has been running requires a series of security checks for any refugee, and those security checks are enhanced for refugees from certain countries. That is already in existence prior to the conversations that have been occurring in Washington this week. One of the problems with those is you need a security check from multiple U.S. agencies, and those security checks have

time limits. So if you do not get them to line up between different agencies, one might expire and you need to have it renewed. It's an incredibly lengthy procedure.

I think that what I'm hearing about your client is something we hear from an awful lot of people in protracted displacement situation, which is the sense of hopelessness, a sense of depression, a sense of like how on earth do I build my life, how do I build a life for my children when I'm not even allowed to be in this country? Malaysia is not a signatory to the 1951 Refugee Convention. It has an automatic policy of detention for a lot of incoming refugees. It sounds like your client is out of detention at the moment. No, he's not detained, which is at least a tiny amount of good.

But the system we have for dealing with refugees was set up after World War II, and the Convention was written largely to respond to that crisis. It's not a bad Convention, it's just out of date. We're seeing problems that utterly overwhelm the solutions we have available. I think it's very problematic when we see, as we've discussed here, European countries, and the United States and Australia eroding the already problematic framework that we have.

EDWIN REKOSH: Okay, there was a hand back there.

AUDIENCE MEMBER: [inaudible question].

ZAID HYDARI: I just want to add that there's actually been some research that's being done by the World Bank and the IMF, not just on developed countries. But there are actually arguments that are being made that, the economies of Jordan, Lebanon, and Turkey are still actually growing despite them hosting such massive populations. The World Bank, Brookings, and the IMF are actually doing a lot of this sort of economic based research. It's all very counter intuitive to the general narrative that these people create a strain on economies. I'd be interested to hear what you have to say, Thomas, about developed economies. I just wanted to say that even in developing and middle-income countries, there's room for further research, a further understanding for what can be done. I think there is a nascent movement to look at this again through the development lens, and to see what can be done in terms of granting the right to work, and actually allowing people to be self-sufficient, and how that can potentially not drain economies but actually add to them.

THOMAS STREINZ: That is a very good question, and that's exactly what influenced the debate in Germany this summer that has been going back and forth. When the crisis hit and Merkel made this decision, there were people supporting her, journalists writing articles explaining the motivation behind it, and of course, also some people opposing that move. One narrative to support the decision to accept more refugees was just a "Germany wants to be a nice country" narrative, i.e., that it wants to show a friendly face. Merkel is on record as saying, if we don't show a friendly face, this is not my country. This is one of the perverse and wrong narratives of accepting refugees, the less you accept, the less are coming, the more you accept, the more are coming. That is translated by those who opposed that

move into a wrong narrative of being overrun by refugees.

Next to the friendly Germany narrative, there was this strong feeling that this is actually a good thing for German society, bringing in new people who will help this country. They want to have a good and happy life and we should be happy that they are in Germany, and at the next World Cup they will waive the German flag, which, of course, makes us sound like Americans, right? In Germany, the story is not as strong even though it should be, in my opinion.

It's really hard to get the economic factors into the heads of people. I think there are studies and they all show that taking in refugees has a positive net effect on the economy. Of course, there might be some losers, but overall the picture is very positive. I just want to show you one picture because it's interesting, especially from the German perspective. This is a campaign poster by the CSU from the first election in Bavaria after World War II. It's directed towards the Germans who were expelled from Eastern Europe, had to flee Eastern Europe, and settled in Bavaria. The CSU is the sister party of Merkel's CDU, and they form a unity party together (the union). The poster trended on Twitter because it says something like "expelled, displaced people we care about you. We can do it. Vote for CSU. We are the only party that is advocating for voting districts for refugees." Unfortunately, this very same party is now the party that is trying to drive Merkel into the opposite direction. But I had a great conversation with my grandmother this summer that was expelled from Eastern Europe, and she could relate to those people fleeing their country because they have no other choice.

So this is also a good example of what impact social media has in this debate. I think most of you are on social media, and I think it's important to influence the debate this way, too.

EDWIN REKOSH: Yes, or tweet about this panel. So I think there might be time for one last question. Okay. We'll squeeze out two, three maybe, but they have to be very quick, and I'll collect all of them at the same time. Yes.

AUDIENCE MEMBER: [inaudible question].

EDWIN REKOSH: Okay what's the role of civil society. Okay, next question. I'm just going to collect them.

AUDIENCE MEMBER: [inaudible question].

EDWIN REKOSH: Especially, when we have Governors saying, they're not welcome. So that's a good question. Okay, so what we'll do is we'll wrap up because we're at the end of our time, and I'll go along the panel, right to left. Please answer whichever questions you feel you have something to say on and wrap up at the same time.

Z Aid Hydari: Wow, that's a tall order.

EDWIN REKOSH: You don't have to answer all of them.

Z Aid Hydari: Right.

EDWIN REKOSH: Whichever you feel you have something to say on.

ZAID HYDARI: I'm going to let you give a plug for our partner organizations. There's a lot of organizations that do great work with regards to resettlement.

ALICE FARMER: I was going to give a plug for you guys.

ZAID HYDARI: My plug, shamelessly, was part of my closing remarks, so I'll leave it at this. There's mass hysteria happening over what was a commitment to resettle 10,000 refugees in the U.S. There are four million Syrians displaced that are largely residing in neighboring countries. There are sixty million displaced across the world. Ten thousand people is literally nothing. Again, I can't do the math on the spot either, but I'll tell you, it's a really, really low percentage, and the fact that there is mass hysteria over such small numbers, I guess, it's useless to say, but it's just really, really sad. But I think a lot about it, and the debate and the conversation gets caught up in the storm of the resettlement, which is just a tiny, tiny, tiny piece.

The conversation really needs to include overseas assistance. The money that we spend in first countries of asylum, where we can make the dollar that goes there much more impactful than the dollar that's spent on U.S. resettlement. By the way, U.S. resettlement is not exactly the perfect system either. There are a lot of inherent issues with resettlement. Quite frankly, resettlement is not really a good solution to refugee problems.

What I'm trying to say is that while at the same time we show responsibility-sharing and burden-sharing by participating in resettlement programs, what may very well be more important is overseas assistance to first countries of asylum. You can also show support for your elected officials because, after all, it is Congress that allocates budgets that fund the U.S. State Department's overseas accounts as well.

My organization hasn't created a full formal policy position on this yet, but in the face of all this hysteria, quite frankly, maybe there's still a way to save the Graham Leahy Bill that was up for debate. It was an emergency appropriations bill dedicating a lot of money for resettlement. It was on the books, or it was proposed way before Paris happened. But perhaps there's still a way to save the overseas account budget, or even increase it. I mean, if elected officials are going to go nuts over 10,000 people, well let's spend the money to help people overseas.

I think it's important to also keep that in mind that the vast majority of people in need are not even eligible, or ever going to be resettled. They're not going to get anywhere close to these types of places. They're going to remain in the region, and we have to find ways to continue to assist people there.

EDWIN REKOSH: Okay, Alice, I'm sure you want to take on the question on reformulation of a new convention on refugees.

ALICE FARMER: No, actually I've been kind of working around those issues for a number of years.

Here's the root problem. The entire international human rights law system is premised on the idea that individuals have rights and States have an obligation to

deliver those rights to individuals, right? I don't think I need to go more into explaining that to a room of lawyers. Here's where we totally screwed up the refugee system. We gave people the right to seek asylum in the international legal framework and we didn't assign any particular state the obligation to deliver that right. We have some things that nibble around the edges of it.

We have the idea that if a refugee, if someone comes to you, you cannot send them away. It's a violation of customary law to *refoule* people, to send them back to persecution, torture, or other harm. States that are a party to the refugee convention accrue certain other obligations, but there are an enormous number of states that are not a party to the convention, or a party only to parts of it, like Turkey. Turkey hasn't lifted the geographic restrictions, as I had said earlier.

So what do we do? The problem now is going back into that, means revisiting that very fundamental question. I think what a lot of refugee advocates fear is if we open that up again, we'll get something much worse than what we have. So it's the ongoing conversation. How on earth do we deal with a system that is ill-suited to what we're doing now? But on the other hand, if we were to negotiate it again, we're in a bad place.

I think it's worth remembering the Cold War, right? One of the big reasons that we have such a hard time articulating global policy solutions for refugees at the moment is that we are relying so heavily on arguments of basic morality. The idea is that it is the right thing to do, but an awful lot of international relation scholars will say, well, but states are realists. Countries will operate based on what's in their interests. During the Cold War, the refugee legal regime was very much buoyed. It was very much supported by the idea that when 200,000 people fled Hungary in 1956, we needed to figure out how to deal with that really fast. When people are fleeing Syria, we don't have the same political imperatives to figure out how to deal with it.

So one of the things that a lot of people are particularly looking at is the question of territorial asylum. Setting aside all of that big picture stuff I just talked about, let's say, how can we build international law so that it gives people access to countries to claim asylum? That little part, how do you even get onto someone else's territory to say, I'm a refugee. I need protection. That little question is maybe the part that we can figure out in the next few years.

EDWIN REKOSH: Okay. A small note of hope.

ALICE FARMER: To answer your question, if you go to USA for UNHCR their website is UNrefugees.org. They have a whole list of partners that we work very closely with. We have big operations in the Balkans, in Greece, in Syria, in Turkey, where we work through organizations like the International Rescue Committee, Norwegian Refugee Council, all sorts of people. There's a repository for funding there, and you can direct your donations.

EDWIN REKOSH: Okay, good.

THOMAS STREINZ: Thank you. I just wanted to add one more sentence to the

question of a new U.N. convention. I understand all the concerns that there are with creating a new legal instrument. But I think, sometimes maybe one needs to start small again before you can go big. The idea to have a global comprehensive regime is not sustainable at the moment. It's the same problem in the E.U. because one tries to find a E.U. response, but the countries are too different from each other. The same is true on the global scale to an even larger extent.

My suggestion would be to get countries together who really want to help refugees and assign refugees to those countries according to a certain quota to seek asylum. Remedy the problem that they can't get to these countries and let them just board a plane or ferry to go there immediately. Start from there and then build on this system. Ultimately, it's a collective action problem because countries are afraid that if they accept refugees, they will *all* come to them.

EDWIN REKOSH: Okay. So the opposite of global is local, and I want to make sure that the last question also gets answered. Alice, do you have something to say about cities?

ALICE FARMER: This actually flows nicely from Thomas' point. One of the neat quasi-solutions that we look at in the European refugee crisis, and in other places, is the idea of private sponsorship, or other channels, that help bring people in, family reunifications, private sponsorships, scholarship programs. There were a couple of examples of great city programs that fall in that area.

Utica, New York, about twenty-five years ago was like, our population is declining. We're a rust belt city. You know what, we're going to prioritize resettled refugees. There are a lot of refugees in Utica. It's kind of beautiful. You see these cool pictures of African women with blankets around their heads outside in the snow being like, what's going on here?

These kinds of opportunities do exist, and you can get some really strong leadership at the very local level through those kinds of efforts.

EDWIN REKOSH: Okay, another positive note. So with that, I thank you all for your attention.