

EDUCATION FOR SYRIAN REFUGEES: THE FAILURE OF
SECOND-GENERATION HUMAN RIGHTS DURING
EXTRAORDINARY CRISES

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I. INTRODUCTION

In the early morning hours of August 21, 2013, rockets carrying chemical weapons struck outside the Syrian capital of Damascus, killing an estimated 1429 people, including 426 children.¹ The U.S. government concluded, with “high confidence,” that the Syrian government, which was known to have stockpiles of various chemical weapons, perpetrated the attack.² While the brutal nature of this attack may be surprising to most, it is just one example of many in which the Syrian government utilized force against its own population.³ The Syrian Civil War has been described as “the biggest humanitarian catastrophe of this century.”⁴ It began in March of 2011 “in the wake of the Arab Spring [and] has evolved into a brutal and bloody civil war between the Assad Regime and opposition forces.”⁵ While it was the August chemical weapon

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¹ Press Release, The White House, Government Assessment of the Syrian Government's Use of Chemical Weapons on August 21, 2013 (August 30, 2013), <http://www.whitehouse.gov/the-press-office/2013/08/30/government-assessment-syrian-government-s-use-chemical-weapon-s-august-21>.

² *Id.*

³ See *infra* Part II; see also Ben Hubbard & David D. Kirkpatrick, *Photo Archive Is Said to Show Widespread Torture in Syria*, N.Y. TIMES, Jan. 22, 2014, at A1 (describing direct evidence of Syria's systematic use of torture against its own citizens).

⁴ *Estonia to Support Syrian Refugees in Turkey and Iraq*, BALTIC NEWS SERVICE, Sept. 10, 2013, available at LEXIS in Baltic News Service File; see also Paul R. Williams et al., *Mass Atrocity Crimes: The Responsibility to Protect and the Syria Crisis*, 45 CASE W. RES. J. INT'L L. 473, 489 (2012) (“In March 2013, after twenty-four months of conflict, the scale of the Syria crisis rivals the worst humanitarian tragedies of the past two decades.”).

⁵ INT'L RESCUE COMM., COMM'N ON SYRIAN REFUGEES, SYRIA: A REGIONAL CRISIS 4 (2013) [hereinafter IRC COMM'N ON SYRIAN REFUGEES], available at <http://www.rescue.org/sites/default/files/resource-file/IRCReportMidEast20130114.pdf>.

attack that nearly entangled the United States in an armed conflict with Assad's forces,⁶ there are numerous concerns associated with this conflict that long precede the use of chemical weapons.⁷

One such concern involves the growing number of refugees that continue to flee from Syria.⁸ Between March 2011 and September 2013, two million refugees fled to neighboring countries, North Africa, and Europe, with 1.8 million leaving the war torn state between September 2012 and September 2013 alone.⁹ At the time of this writing, there are 2.8 million refugees.¹⁰ Of that population, it is estimated that thousands have no access to assistance from the international community because they are living outside of refugee camps.¹¹ Perhaps most startling is that an estimated fifty-two percent of these refugees are children under the age of eighteen.¹² By March of 2014, the number of Syrian child refugees surpassed 1.2 million.¹³ Not only are many of these children exposed to

⁶ See Michael N. Schmitt, *The Syrian Intervention: Assessing the Possible International Law Justifications*, 89 INT'L L. STUD. 744, 744–45 (2013); see also Michael R. Gordon & Mark Landler, *Kerry Cites Clear Evidence of Chemical Weapon Use*, N.Y. TIMES, Aug. 27, 2013, at A1 (describing Secretary of State Kerry's remarks regarding the chemical weapon attack as a strong indication that the White House was considering taking military action against the Assad Regime); Bassem Mroue & Albert Aji, *Syrian Government Warned the U.S. that Any Military Action Against Damascus Would Set the Middle East Ablaze*, USA TODAY (Aug. 25, 2013), <http://www.usatoday.com/story/news/world/2013/08/24/syria-rebels-chemical-weapons/2695243/> (describing a Syrian official's response to the possibility of the United States taking military action).

⁷ See *infra* Part II; see also Keith A. Petty, *Humanity and National Security: The Law of Mass Atrocity Response Operations*, 34 MICH. J. INT'L L. 745, 754 (2013) (estimating 100,000 civilian casualties in Syria as of the summer of 2013).

⁸ See *infra* Part III. While the Syrian Civil War is itself a dire situation, the resulting refugee crisis is equally concerning. As the New York Times described:

Nearly three years of bloody civil war in Syria have created what the United Nations, governments and international humanitarian organizations describe as the most challenging refugee crisis in a generation—bigger than the one unleashed by the Rwandan genocide and laden with the sectarianism of the Balkan wars. With no end in sight in the conflict and with large parts of Syria already destroyed, governments and organizations are quietly preparing for the refugee crisis to last years.

Norimitsu Onishi, *Syria Seen as Most Dire Refugee Crisis in a Generation*, N.Y. TIMES, Nov. 24, 2013, at 8.

⁹ Press Release, United Nations High Comm'r for Refugees, UNHCR: Two Million Syrians Are Refugees (Sept. 3, 2013), [http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=522484fc9&query=Two Million Syrians](http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=522484fc9&query=Two%20Million%20syrians).

¹⁰ Rana F. Sweis, *New Refugee Camp in Jordan Tries to Create a Community for Syrians*, N.Y. TIMES, May 31, 2014, at A5. As this note neared publication the total number of refugees spiked to well over three million. For the most recent totals see *Syria Regional Refugee Response*, UNHCR, <http://data.unhcr.org/syrianrefugees/regional.php> (last visited Feb. 8, 2015).

¹¹ See *infra* note 147 and accompanying text.

¹² Press Release, United Nations High Comm'r for Refugees, *supra* note 9.

¹³ Anne Barnard, *3 Years of Strife and Cruelty Put Syria in Free Fall*, N.Y. TIMES, Mar. 18, 2014, at A1.

traumatic violence and family upheaval during the course of their escape, but many have missed upwards of two years of school and are unable to reenroll in their host countries.¹⁴

This note will consider the international human right to education for child refugees in the context of the Syrian Refugee Crisis. There are numerous provisions in international law aimed at protecting children's right to education. Unfortunately, the flaws in these provisions are notable as political unrest may, at any time, deny an entire generation of children an education. Part II will discuss the genesis of the Syrian Refugee Crisis, briefly examining the origins of the civil war. Part III will discuss the refugee crisis that has emerged from that war in the context of the most effected host countries. In addition, particular attention will be directed at the actions taken by each host country to expand access to education for Syrian child refugees. Part IV will discuss the role of international law in protecting the right to education and how the right to education's status as a "second-generation human right" severely limits its applicability in the context of the Syrian crisis.¹⁵ Part V will address the current problems facing the international community with respect to obtaining sufficient humanitarian aid for those adversely affected by the Syrian Crisis. It will also consider why international law is unable to compel wealthy nations to contribute humanitarian aid, by examining the limitations of the novel concept of Responsibility to Protect. Through this discussion it will become evident that international law is currently unequipped to protect second-generation human rights in the context of extraordinary crises akin to the Syrian Refugee Crisis. In order for future displaced populations to fully realize their second-generation human rights, international law must respond to the deficiencies highlighted in this note.

II. THE SYRIAN CIVIL WAR

The Syrian Civil War began in March 2011 as a dispute between the government of Bashar al-Assad and Syrian citizens dissenting from his regime.¹⁶ When protesters and nonviolent demonstrators were "met with extreme violence and brutal repression by government forces," members of the military defected and other

¹⁴ IRC COMM'N ON SYRIAN REFUGEES, *supra* note 5, at 2.

¹⁵ For a discussion on second-generation human rights, see *infra* Part IV.

¹⁶ Ved P. Nanda, *The Future Under International Law of the Responsibility to Protect After Libya and Syria*, 21 MICH. ST. INT'L L. REV. 1, 14–15 (2013).

opposition forces obtained weapons from foreign countries, such as Saudi Arabia and Qatar.¹⁷ What began as a small movement escalated into an all-encompassing civil war during the latter half of 2012.¹⁸ The opposition forces were, and remain, determined to overthrow the Assad Regime, and several foreign powers have taken sides.¹⁹ Two superpowers that sided with the Assad Regime were Russia and China;²⁰ both permanent members of the United Nations (U.N.) Security Council²¹ who demonstrated their support, in part, by vetoing any attempts by the U.N. to impose sanctions on the Syrian government in response to its treatment of dissenting Syrian citizens.²² These vetoes were issued despite a 2012 report by the Independent Commission of Inquiry on the Syrian Arab Republic which stated that there were

reasonable grounds to believe that Government forces and the *Shabbiha* had committed the crimes against humanity of murder and of torture, war crimes and gross violations of international human rights law and international humanitarian law, including unlawful killing, torture, arbitrary arrest and detention, sexual violence, indiscriminate attack, pillaging and destruction of property.²³

The commission also “confirm[ed] its previous finding that violations were committed pursuant to State policy.”²⁴

The individual stories from inside Syria are equally disturbing. As one refugee described:

The war was outside my door. My children looked out the window every day and watched dead bodies thrown in the garbage pile across the street. One day, they saw their uncle shot to death outside our home. I told them not to look out the window anymore. It didn't help. When they raided the

¹⁷ *Id.*

¹⁸ See JEFF CRISP ET AL., UNITED NATIONS HIGH COMM'R FOR REFUGEES, POLICY DEV. & EVALUATION SERV., FROM SLOW BOIL TO BREAKING POINT: A REAL-TIME EVALUATION OF UNHCR'S RESPONSE TO THE SYRIAN REFUGEE EMERGENCY 1 (2013), available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendocPDFViewer.html?docid=52b83e539&query=slow%20boil>.

¹⁹ Nanda, *supra* note 16, at 14–15.

²⁰ *Id.* at 15.

²¹ *Current Members*, UNITED NATIONS SECURITY COUNCIL, <http://www.un.org/en/sc/members/> (last visited Feb. 8, 2015).

²² Nanda, *supra* note 16, at 15.

²³ Rep. of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, 21st Sess., Sept. 10–28, Nov. 5, 2014, 1, U.N. Doc. A/HRC/21/50 (Aug. 16, 2012).

²⁴ *Id.*

house next door, we could hear the rape of my neighbor, my friend. And then they arrested my brother and tortured him for days. He survived but they scarred his body and destroyed his genitals. We stayed at home, even when we were running out of food. We were too afraid to go out. But then they forced their way in, beat my husband and threatened to arrest him. From under a table, my children watched and screamed. We had to flee.²⁵

Thousands of Syrians face similar situations as many continue to lose their employment, homes, and personal belongings as a result of the conflict.²⁶ Entire regions of the country are without electricity, sanitation services, or even adequate food and clean water supplies.²⁷ Not only are children exposed to this death and destruction, but they are frequently the direct target of Syrian military aggression.²⁸ One doctor reported that “he recently treated a one-year-old boy stabbed in the neck and a nine-year-old girl who had been brutally raped.”²⁹ There are also reports of Syrian forces shooting at a school bus, resulting in the death of at least one ten-year-old child, and a video was posted to the Internet showing the “mutilated remains” of a thirteen-year-old.³⁰

This appalling government action is causing millions to flee from the grasp of the Assad Regime. Although this note will focus on those who have already left Syria, as of October 2014, there were some 6.5 million people displaced within the county.³¹ These

²⁵ IRC COMM'N ON SYRIAN REFUGEES, *supra* note 5, at 5.

²⁶ *Id.* at 6.

²⁷ *Id.*

²⁸ The first person shot to death by Syrian border patrol guards while fleeing to the Jordanian border was actually a six-year-old child. Jamal Halaby, *Syria Crisis: Bilal el-Lababidi, 6-Year-Old Fleeing into Jordan, Killed by Border Guards*, THE WORLD POST (July 27, 2012), http://www.huffingtonpost.com/2012/07/27/syria-crisis-bilal-el-lababidi_n_1711046.html (describing the shooting of the child as he ran ahead of his mother towards the border); see also *Doctor: Syria Snipers Targeting Pregnant Women and Children in "Death Game"*, CBS NEWS (Oct. 16, 2013), http://www.cbsnews.com/8301-202_162-57607825/doctor-syria-snipers-targeting-pregnant-women-and-children-in-death-game/ (describing the targeting of pregnant women and children by Syrian snipers). In January 2014, the U.N. Security Council released a report detailing the atrocities committed by the Syrian government against children, including the recruitment of child soldiers, the detention and torture of children, the killing of children, the use of sexual violence against children, the use of military force on schools and hospitals, and the abduction of children. See U.N. Secretary-General, *Report of the Secretary-General on Children and Armed Conflicts in the Syrian Arab Republic*, ¶¶ 11–54, U.N. Doc. S/2014/31 (Jan. 27, 2014).

²⁹ IRC COMM'N ON SYRIAN REFUGEES, *supra* note 5, at 7.

³⁰ Liam Stack, *Children Are Among Casualties of Syrian Military Raids After Demonstrations*, N.Y. TIMES, June 2, 2011, at A12.

³¹ SYRIAN REFUGEES, <http://syrianrefugees.eu/> (last visited Feb. 8, 2015).

internally displaced persons constantly move within the country seeking shelter from the violence, “[b]ut there are virtually no safe zones inside Syria anymore.”³² Between those forcibly displaced internally and externally, there are more than six million Syrians who have fled their homes as a result of the civil war; more than any other country in the world at the time of this writing.³³ Those who left the country are adversely impacting the countries surrounding Syria, several of which met with the U.N. in September 2013 “in a bid to accelerate international support.”³⁴ Such support is desperately needed considering that ninety-seven percent of those leaving Syria are migrating to neighboring countries, including Iraq, Jordan, Lebanon, Turkey, and Egypt.³⁵ Despite the fact that three of these host countries are not members of the 1951 Convention Relating to the Status of Refugees,³⁶ all were willing to accept the refugees early in the Syrian crisis, “granting access to territory, registration and public services” and creating a “positive protection environment.”³⁷

More recently, as the number of refugees has rapidly increased, it is increasingly difficult for these nations to provide such services, creating “tensions between refugees and local populations.”³⁸ In particular “infrastructure and services for health, education, shelter, water and sanitation have faced increased pressure; competition for jobs has increased and wages have fallen; and the cost of basic goods has risen.”³⁹ One area of special concern is education. At the time of this writing it is estimated that over half of Syrian children are out of school despite the efforts by several of Syria’s neighbors to provide some form of education to students displaced by the conflict.⁴⁰ There are a variety of reasons for this,

³² IRC COMM’N ON SYRIAN REFUGEES, *supra* note 5, at 6.

³³ Press Release, United Nations High Comm’r for Refugees, *supra* note 9.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Convention Relating to the Status of Refugees*, UNITED NATIONS TREATY COLLECTION, http://treaties.un.org/pages/ViewDetailsII.aspx?&src=UNTSO&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en (last visited Feb. 8, 2015) (listing the signatories to the treaty, which include Egypt and Turkey but not Iraq, Jordan or Lebanon). *See generally* Convention Relating to the Status of Refugees pmb., July 28, 1951, 189 U.N.T.S. 150 (“Expressing the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States . . .”).

³⁷ *See* CRISP ET AL., *supra* note 18, at 3; *see also infra* Part V.A (discussing the need for further humanitarian aid from other countries).

³⁸ *See* CRISP ET AL., *supra* note 18, at 3.

³⁹ *See id.*

⁴⁰ *Id.* at 5; *see also* IRC COMM’N ON SYRIAN REFUGEES, *supra* note 5, at 6 (discussing the

including inadequate facilities to accommodate the influx of students, costs associated with transportation, the reliance on child income to support the families, psychosocial issues, and language barriers.⁴¹ Despite the importance of education for refugees, as a group they are highly likely to face more educational obstacles.⁴² As more refugees flee their home country, their children are unable to continue schooling.⁴³ Often, once the families have relocated, there are language barriers, prejudice, and financial concerns that further impede access to education.⁴⁴ During the Syrian Refugee Crisis, similar patterns have emerged in each of the primary host countries.

III. THE HOST COUNTRIES' RESPONSE TO THE REFUGEE CRISIS

A. Iraq

Of the 2.8 million refugees that have fled Syria,⁴⁵ more than 225,000 have relocated to Northern Iraq,⁴⁶ including more than 189,000 since April 2012 alone.⁴⁷ Nonetheless, as of August 2013, Iraq had received only six percent of the funds distributed by the United Nations for Syrian refugees.⁴⁸ The effects of this minimal funding are likely exacerbated by the fact that, prior to 2014, Iraq had between 1.1 and 2.1 million internally displaced persons, the fifth highest total of any country.⁴⁹ This number is currently on the

“deep distress” expressed by Syrian refugees in relation to the loss of their education).

⁴¹ CRISP ET AL., *supra* note 18, at 5–6. The International Rescue Committee reported that schools in Jordan, Lebanon and Iraq have run out of space, and where schools are accessible, they are often too far away. IRC COMM'N ON SYRIAN REFUGEES, *supra* note 5, at 12. Furthermore, “[m]any teachers in host schools are ill-equipped to assist traumatized children—as are their parents. Many children exhibit violent and aggressive behavior. Others have stopped eating, talking and sleeping, according to an IRC counselor in Jordan.” *Id.*

⁴² Michele R. Pistone & John J. Hoeffner, *Unsettling Developments: Terrorism and the New Case for Enhancing Protection and Humanitarian Assistance for Refugees and Internally Displaced Persons, Including Victims of Natural Disasters*, 42 COLUM. HUM. RTS. L. REV. 613, 629–30 (2011).

⁴³ *See id.*

⁴⁴ *Id.*

⁴⁵ Sweis, *supra* note 10, at A5.

⁴⁶ Rachel Unkovic, *Humanitarian Crisis in Iraq Deepens, Over 2 Million People Displaced*, INT'L RESCUE COMMITTEE (July 17, 2014), <http://www.rescue.org/blog/violence-iraq-reaches-new-heights-number-those-fleeing-continues-escalate-0>.

⁴⁷ *See* INT'L RESCUE COMM., HIDDEN BUT HOPEFUL: LIFE BEYOND THE CAMP FOR SYRIAN REFUGEES IN NORTHERN IRAQ 3–4 (2013), available at <http://www.rescue.org/sites/default/files/resource-file/Policy%20Brief%20Syrian%20Refugees%20in%20Iraq.pdf>.

⁴⁸ *Id.* at 1.

⁴⁹ *Id.* at 3.

rise as more than one million Iraqis were uprooted during the first half of 2014 as a result of growing civil unrest within Iraq.⁵⁰ Additionally, there are over forty thousand Iranian, Turkish, and Palestinian refugees in Iraq, many of whom also seek asylum.⁵¹ The vast majority of refugees relocating from Syria—ninety-five percent—are Kurds, a group that historically faces extensive discrimination in the region.⁵² Although Northern Iraq is an area that “has long demonstrated a generosity and solidarity towards Syrian Kurds,” the sheer number of Syrians trying to enter the country is causing concerns.⁵³ In May 2013, the northern border with Syria was closed to refugees.⁵⁴ When it reopened three months later, 21,000 persons crossed into Iraq in the first four days alone.⁵⁵

It is estimated that one-third of the Syrian refugees in Iraq are school-aged, and as a result the influx of refugees in Northern Iraq has caused severe consequences in local schools.⁵⁶ The Kurdish regional government has attempted to address these concerns by making schools more accessible.⁵⁷ For example “[i]t has waived the school placement policy and allowed children without documentation to take equivalency tests in order to be placed in schools.”⁵⁸ The local government also spent “a significant amount of its own resources” to aid the children in refugee camps.⁵⁹ However, these efforts were unavailing for many child refugees, as many continue to be out of school.⁶⁰ Moreover, the infrastructure is insufficient, there are not enough teachers to accommodate the growing number of students, and, despite the common Kurdish roots shared by many of the children, there are language barriers.⁶¹ Another problem is the limited number of Arabic-language schools in Northern Iraq that follow the preferred curriculum for Kurdish

⁵⁰ See Unkovic, *supra* note 46; see also Michael Kimmelman, *Refugee Camp Evolves as a Do-It-Yourself City*, N.Y. TIMES, July 5, 2014, at A1 (discussing the exile of Iraqi families to countries like Jordan because their country is “coming undone”).

⁵¹ INT'L RESCUE COMM., *supra* note 47, at 3.

⁵² *Id.* at 4; see also VERA ECCARIUS-KELLY, THE MILITANT KURDS: A DUAL STRATEGY FOR FREEDOM 68 (2011) (describing the political marginalization of Kurds in Turkey).

⁵³ See INT'L RESCUE COMM., *supra* note 47, at 4.

⁵⁴ See *id.*; see also Matt Vasilogambros, *21,000 Syrians Flee into Iraq in Last 4 Days*, NAT'L J., Aug. 19, 2013, available at 2013 WLNR 20617648 (discussing the “staggering number” of Syrian refugees that have fled to northern Iraq).

⁵⁵ Vasilogambros, *supra* note 54.

⁵⁶ INT'L RESCUE COMM., *supra* note 47, at 8.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

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refugees.⁶²

B. Jordan

As of May 2014, Jordan reportedly hosts 600,000 refugees,⁶³ the equivalent of ten percent of its own population.⁶⁴ The timing of the influx of refugees could not be worse considering that the recent financial crisis already hurt the Jordanian economy, as evidenced by the numerous incomplete construction projects throughout the capital city of Amman.⁶⁵ Yet, notwithstanding the country's financial hardships, the government was generous to refugees early in the crisis, as it opened its border and allowed Syrians free medical care⁶⁶ and access to schools.⁶⁷ But now that the refugee population has increased exponentially, these measures are coming back to harm the economy, creating a healthcare and education crisis. "[M]aternity wards are overflowing, and there just isn't enough care to go around," particularly close to the Syrian border where there is a medication shortage and insufficient space in hospitals to accommodate the refugees.⁶⁸ There is a similar crisis facing the education system, which has tried to accommodate the growing number of refugees by dedicating entire afternoon sessions solely to Syrian refugee children.⁶⁹ In total, the Jordanian government estimates that there are eighty schools hosting some 85,000 Syrian students.⁷⁰ Teachers complain that the influx in students is leaving them with fewer supplies and less time to devote to Jordanian students.⁷¹ The situation is likely to get worse before it improves, as the cost of accommodating Syrian students exceeds eighty million dollars annually, while international efforts to raise

⁶² *Id.*

⁶³ Sweis, *supra* note 10, at A5.

⁶⁴ Elizabeth Dickinson, *Syrian Refugees Strain Jordan, as Donors Meet*, MONITOR GLOBAL OUTLOOK (Jan. 16, 2014), <http://www.monitorglobaloutlook.com/Insights/2014/01/syrian-refugees-strain-jordan-as-donors-meet>. This number remained consistent throughout the first half of 2014. Compare *id.*, with Sweis, *supra* note 10, at A5; see also Merissa Khurma, *Kufr Yuba Journal: A Jordanian Village, a School and the Syrian Refugee Crisis*, THE WORLD POST (Dec. 19, 2013), http://www.huffingtonpost.com/merissa-khurma/syrian-refugee-crisis_b_4446316.html (reporting that one northern Jordanian village, Kufr Yuba, was hosting forty percent of the 600,000 Syrian refugees in Jordan, as of mid-December 2013).

⁶⁵ Dickinson, *supra* note 64.

⁶⁶ *Id.*

⁶⁷ Khurma, *supra* note 64.

⁶⁸ Dickinson, *supra* note 64.

⁶⁹ Khurma, *supra* note 64.

⁷⁰ *Id.*

⁷¹ *Id.*

money fail to meet expectations.⁷²

C. Turkey

By November 2013, Turkey was hosting an estimated 600,000 refugees; 200,000 sheltered in twenty-one refugee camps and another 400,000 living in Turkish communities.⁷³ To assist, the Turkish government has already spent more than two billion dollars.⁷⁴ Appeals for international assistance have largely gone unanswered, as Turkey has received only thirty-seven percent of the assistance requested.⁷⁵ This will continue to create problems as U.N. and Turkish officials predict 1.5 million refugees by the end of 2014.⁷⁶ Nearly 800,000 of those refugees will be children, 500,000 of which will be school-aged.⁷⁷ This is a substantial dilemma for Turkish political leaders because the nation is running out of resources.⁷⁸ Turkey can continue to spend hundreds of millions of dollars on providing services for displaced Syrians, potentially drawing in more refugees in the process, or it could reduce services and risk international criticism.⁷⁹ Other nations are commending Turkey on its humanitarian efforts thus far, which have included the establishment of community centers offering classes in Turkish, English, computer skills, cooking, and other areas.⁸⁰ However, Turkish citizens are concerned about the influx of refugees, fearing the effect the displaced persons are having on the economy.⁸¹

With respect to educational services for refugee children, in 2012 and 2013, sixty percent of primary-school-aged children living in refugee camps were enrolled in school.⁸² School enrollment is

⁷² Khurma, *supra* note 64 (stating that only sixty-seven percent of the total funds requested to assist Syrian refugee children by the U.N. International Children's Emergency Fund for 2013 were raised).

⁷³ Onishi, *supra* note 8, at 8.

⁷⁴ *See id.* (describing the amount of money spent by the Turkish government in November 2013).

⁷⁵ *Syrian Refugees in Turkey to Reach 1.5 Million*, ASSOCIATED PRESS, Dec. 16, 2013, available at <http://www.apnewsarchive.com/2013/Syrian-refugees-in-Turkey-to-reach-1-5-million/id-92873ed213674b3eaa23f65054413a1b>.

⁷⁶ *Id.*

⁷⁷ Xanthe Ackerman, *Education for Syrian Refugees in Turkey—Beyond Camps*, BROOKINGS (Jan. 17, 2014), <http://www.brookings.edu/blogs/education-plus-development/posts/2014/01/17-turkey-syria-refugees-education-ackerman>.

⁷⁸ Onishi, *supra* note 8, at 8.

⁷⁹ *Id.*

⁸⁰ *See id.*

⁸¹ Ayla Albayrak, *Outlook Darkens for Syria Refugees in Turkey*, WALL ST. J., Dec. 27, 2014, at A5.

⁸² Ackerman, *supra* note 77 ("In camps, the government partners with [the U.N. High

significantly lower for those living outside of refugee camps, where only fourteen percent of primary-school-aged Syrian children attend school.⁸³ This is particularly troubling because there are far more children living outside of refugee camps than there are in refugee camps.⁸⁴ The sharp divide in access to education can be attributed to the lack of free schools that teach in Arabic.⁸⁵ Furthermore, where Arabic instruction is available, transportation is often unavailable.⁸⁶ One positive development is the opening of several new schools to accommodate the influx of Syrian children.⁸⁷ In several instances, these schools have relied on the charitable donations of community members and volunteer teachers, as public funding remains scarce.⁸⁸ Despite the lower level of enrollment among Syrian children, “[t]he Turkish response is reaching a greater proportion of children than the response in either Lebanon or in Jordan, the two other countries that shoulder the lion’s share of refugees from the Syrian war.”⁸⁹

D. Lebanon

By June 2013, 500,000 Syrians had relocated to Lebanon, with some two thousand entering the country each day.⁹⁰ In December 2013, there were 842,500 refugees registered in the country,⁹¹ and by April 2014, the number surpassed one million; half of which were under the age of eighteen.⁹² According to the U.N., the number of

Commissioner for Refugees (UNHCR)] and [the U.N. International Children’s Emergency Fund (UNICEF)] to provide educational services.”)

⁸³ *Id.*

⁸⁴ *Id.* (“In 2014, UNHCR expects 159,000 children to reside in camps, compared to 636,000 in host communities.”).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* (describing the Friendship I and II schools, and the schools operated by Kimse Yok Mu, a humanitarian non-profit organization); see also *Syrian Refugee Children in Turkey to Receive Education in Arabic*, WORLD BULL. (Oct. 3, 2013), <http://www.worldbulletin.net/?aType=haber&ArticleID=119712> (describing Kademoon Schools; fifty-five schools opened by the Turkish government for Syrian refugee children).

⁸⁸ Ackerman, *supra* note 77.

⁸⁹ *Id.*

⁹⁰ INT’L RESCUE COMM., REACHING THE BREAKING POINT: AN IRC BRIEFING NOTE ON SYRIAN REFUGEES IN LEBANON 1 (2013), available at <http://www.rescue.org/sites/default/files/resource-file/Lebanon%20Policy%20Paper,%20Final%20-%20June%202013.pdf>.

⁹¹ Ben Brumfield, *Record Sum Needed to Handle Burden on Lebanon From Syria’s Civil War*, CNN (Dec. 16, 2013), <http://www.cnn.com/2013/12/16/world/meast/syria-civil-war-lebanon/>.

⁹² Ben Hubbard, *Lebanon Hosts Over a Million Who Fled Syria, U.N. Reports*, N.Y. TIMES, Apr. 4, 2014, at A4. The true number of refugees is actually much higher, as many are unregistered. *Id.*

refugees in Lebanon will increase to 1.5 million during 2014.⁹³ In a nation of only 4.4 million people this means that Syrian refugees will constitute more than one-third of the country's total population.⁹⁴ In fact, that population has already inflated to more than five million since the Syrian Refugee Crisis began.⁹⁵ In response, the Lebanese government is adopting conflicting policies.⁹⁶ While it has allowed all refugees to enter, it refuses to establish a single refugee camp.⁹⁷ As a result, the refugees "try to blend into the local population, or they live in tents dotted around the Lebanese countryside."⁹⁸

Making matters worse, Lebanon was in poor economic condition prior to the influx of refugees.⁹⁹ Between 2010 and 2011, Lebanon's growth fell from eight percent to 1.5%, foreign direct investment decreased, and the trade deficit nearly doubled.¹⁰⁰ Since the Syrian crisis began, these problems have become more pronounced, as exports to Syria were effectively cut off and tourism in Lebanon decreased as a result of waning security.¹⁰¹ Moreover, the majority of Syrian refugees are relocating to northern Lebanon, which is the poorest region in the country.¹⁰² Many refugees have no access to public services because those without documentation or UNHCR registration are generally prohibited from accessing such services.¹⁰³ Even children are effected as "[w]ithout birth registration, [they] may not be able to access education, health care, and other essential services in Lebanon."¹⁰⁴ It is likely that the combination of these

⁹³ Brumfield, *supra* note 91.

⁹⁴ *See id.*

⁹⁵ Hayden Cooper, *Syrian Civil War Creating Refugee Crisis in Lebanon*, ABC NEWS (Dec. 23, 2013), <http://www.abc.net.au/news/2013-12-23/syrian-civil-war-creating-refugee-crisis-in-lebanon/5171920>.

⁹⁶ Norimitsu Onishi, *Lebanon Worries That Housing Will Make Syrian Refugees Stay*, N.Y. TIMES, Dec. 11, 2013, at A1.

⁹⁷ *Id.* The reason the government has feared supplying adequate housing to the Syrian refugees has both historical and religious roots. *Id.* Lebanon has a population of 500,000 Palestinians, who began as temporary refugees in 1948, but settled permanently in the country. *Id.* Moreover, the current influx of refugees is mostly Sunni Muslim and brings the total number of Sunnis high enough to rival the number of Christians, who were the dominant religious group prior to the crisis. *Id.*

⁹⁸ Cooper, *supra* note 95.

⁹⁹ AMAL MUDALLALI, THE SYRIAN REFUGEE CRISIS IS PUSHING LEBANON TO THE BRINK 2 (2013), available at http://www.wilsoncenter.org/sites/default/files/syrian_refugee_crisis_pushing_lebanon_to_brink.pdf.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² INT'L RESCUE COMM., *supra* note 90, at 3 ("North Lebanon, where 46% of poorest Lebanese in the country live, is absorbing the largest numbers of Syrian refugees.").

¹⁰³ *Id.*

¹⁰⁴ *Id.*

factors can explain why Lebanon is estimated to have the lowest school enrollment rate for Syrian refugee children among the primary host nations,¹⁰⁵ with estimated enrollment between only thirteen and twenty-five percent.¹⁰⁶

E. Egypt

The Syrian refugee situation in Egypt is complicated by the instability of the Egyptian government.¹⁰⁷ By September 2013, 300,000 refugees were in Egypt, where the administration of President Mohamed Morsi, an outspoken supporter of the rebellion against the Assad Regime, welcomed them.¹⁰⁸ “The M[o]rsi government provided the refugees . . . with free health care and education that put them on a par with Egyptians and gave them far more privileges than long-term refugees from war zones in Somalia and Sudan, among other African countries.”¹⁰⁹ However, after the overthrow of President Morsi, the number of new refugees flowing into the country diminished as supporters for the new Egyptian government accused Syrian refugees of supporting the Morsi administration.¹¹⁰ Many Egyptians who advocated the overthrow of Morsi also publically supported the Assad Regime, and, as a consequence, many Syrian refugees are uncomfortable remaining in Egypt.¹¹¹ Thousands have left, or are planning to leave, for either Europe, Lebanon, Turkey, or Jordan.¹¹² Others are being deported by the new Egyptian government.¹¹³ Most concerning, the government has detained more than 1500 refugees, including 250 children, some of whom are only several months old.¹¹⁴ These

¹⁰⁵ See Norimitsu Onishi, *For Most Young Refugees From Syria, School Is as Distant as Home*, N.Y. TIMES, Dec. 22, 2013, at 20.

¹⁰⁶ Compare *id.* (estimating school enrollment at thirteen percent), with Hubbard, *supra* note 92, at A4 (estimating school enrollment at twenty-five percent).

¹⁰⁷ See Sarah Mousa & Kareem Fahim, *In Egypt, a Welcome for Syrian Refugees Turns Bitter*, N.Y. TIMES, Sept. 8, 2013, at 10.

¹⁰⁸ *Id.*

¹⁰⁹ Maggie Fick, *Egyptian Welcome Mat Pulled Out From Under Syrian Refugees*, REUTERS, Sept. 12, 2013, available at <http://www.reuters.com/article/2013/09/12/us-syria-crisis-egypt-refugees-idUSBRE98B0OE20130912>.

¹¹⁰ Mousa & Fahim, *supra* note 107, at 10; see also David D. Kirkpatrick, *Egypt Army Ousts Morsi, Suspends Charter*, N.Y. TIMES, July 4, 2013, at A1 (“Egypt’s military officers removed the country’s first democratically elected president, Mohamed Morsi, on [July 3, 2013].”).

¹¹¹ Mousa & Fahim, *supra* note 107, at 10.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Egypt: Syria Refugees Detained, Coerced to Return*, HUM. RTS WATCH (Nov. 11, 2013), <http://www.hrw.org/news/2013/11/10/egypt-syria-refugees-detained-coerced-return>.

refugees were held for weeks or months and the government has threatened to hold undocumented Syrians indefinitely or until they leave the country.¹¹⁵ Even for Syrians living in Egypt legally, violence is a constant fear, as stories of attacks on Syrians become more prevalent.¹¹⁶

F. Conclusions Regarding the Syrian Refugee Education Crisis: “A Lost Generation”?

Several common themes emerge after exploring the problems facing each of the five primary refugee host countries. First, each has made some effort to accommodate child refugees.¹¹⁷ Second, the governments of each country are struggling to keep up with the needs of the refugees, and, in many cases, political unrest is a consequence of this lack of resources.¹¹⁸ Lastly, the refugee problem is not ending anytime soon.¹¹⁹ As of December 2013, UNICEF estimated that 865,000 of the 2.3 million Syrian refugees were children and that only about thirty percent were enrolled in school.¹²⁰ However, it is very likely that the real percentage is lower, as there are many unregistered child refugees who are almost certainly not in school.¹²¹ Even where children are attending school, many “are unable to cope with a new environment, a new curriculum and, in the case of Lebanon, a new language.”¹²² These problems are made worse by the fact that the children were, in many cases, out of school for multiple years before relocating to a new country and because many parents have spent all of their money trying to escape from their war-torn homeland.¹²³ The entire regional education system, which was “already overcrowded,” is now faced with the unthinkable task of accommodating thousands of Syrian children, in some cases resulting in schools doubling in size, essentially overnight.¹²⁴ As a consequence, it is becoming clear to experts that “a lost generation of Syrian children . . . could prove

¹¹⁵ *Id.*

¹¹⁶ *See* Mousa & Fahim, *supra* note 107, at 10.

¹¹⁷ *See supra* Part III.A–E. All of the host countries, with the exception of Egypt, continue to try to accommodate the educational needs of refugees. *See supra* Part III.A–E.

¹¹⁸ *See supra* Part III.A–E.

¹¹⁹ *See supra* Part III.A–E. With the exception of Egypt, most countries continue to see sharp increases in the numbers of refugees seeking assistance. *See supra* Part III.A–E.

¹²⁰ Onishi, *supra* note 105, at 20.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *See id.*

¹²⁴ *See id.*

one of the most damaging consequences of the war [in Syria].”¹²⁵

IV. THE RIGHT TO EDUCATION IN INTERNATIONAL LAW

A. *The Importance of Education for Displaced Populations*

It is widely recognized that the education of refugees is an important objective for enhancing international human rights. The UNHCR has stated that “[a]ccess to education is the basic right of any person, even—perhaps especially—in times of acute emergencies.”¹²⁶ Maximizing refugees’ skills through education gives them an opportunity to “rebuild their lives, to improve overall living standards and to promote long-term peace and economic development.”¹²⁷ Moreover, “[q]uality education that builds relevant skills and knowledge enables refugees to live healthy, productive lives and builds skills of self-reliance.”¹²⁸ For refugee children, a regular school day creates much needed structure, which helps generate a sense of normalcy otherwise absent following a dangerous trip to an unfamiliar country.¹²⁹ Education also permits refugees to compete for jobs in their new home, where legally permitted to do so.¹³⁰ “If equipped with relevant technical and language skills, they are more likely to find an occupation and less likely to be exploited or discriminated against.”¹³¹ Increased access to employment will allow for effective integration in the host country and will permit the refugee to make meaningful contributions to his/her home country when and if it is safe to return.¹³² Of equal importance are the opportunities for gender equality that arise from a more educated populace.¹³³ For these

¹²⁵ *Id.*

¹²⁶ *Educating Refugees Around the World*, UNITED NATIONS HIGH COMM’R FOR REFUGEES, [http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=3fcb52bf1&query=Access to education](http://www.unhcr.org/cgi-bin/texis/vtx/home/opensslPDFViewer.html?docid=3fcb52bf1&query=Access+to+education) (last visited Feb. 13, 2015).

¹²⁷ *Id.*

¹²⁸ UNITED NATIONS HIGH COMM’R FOR REFUGEES, 2012–2016 EDUCATION STRATEGY: SUMMARY 3 (2012), available at <http://www.unhcr.org/4af7e71d9.html>.

¹²⁹ *Educating Refugees Around the World*, *supra* note 126.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*; see also UNITED NATIONS HIGH COMM’R FOR REFUGEES, *supra* note 128, at 3 (“Educated refugees provide leadership in displacement situations and in rebuilding communities recovering from conflict. Education provides knowledge and skill development that strengthens the capacity of refugees to be agents of social transformation . . .”).

¹³³ UNITED NATIONS HIGH COMM’R FOR REFUGEES, *supra* note 128, at 3; see also *Educating Refugees around the World*, *supra* note 126 (describing the power of education in protecting and empowering women). More generally, education has been labeled an “enabling right” because of the direct correlation between access to education and quality of life. See Elana

reasons, international law formally recognizes the right of refugees to education.

B. International Treaties Recognizing the Right to Education

The right to education is expressly referred to in several international treaties, beginning with the Universal Declaration of Human Rights (UDHR).¹³⁴ The right to education can also be found in enforceable international agreements, the earliest example being the Convention Related to the Status of Refugees (the Refugee Convention).¹³⁵ While the Refugee Convention guarantees a refugee equal access to education as compared with signatory nations' native children,¹³⁶ more recent binding international agreements express a right to education that goes further than mere equal access. Specifically, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC) each recognize an enforceable right to education for all children.¹³⁷ The first articulation of this right comes from article

Baurer, Note, *Unknown and Unaddressed: The Educational Needs of Afghan Refugee Children in Urban Areas of Pakistan*, 26 GEO. IMMIGR. L.J. 571, 580 (2012).

¹³⁴ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), art. 26 (Dec. 10, 1948). It should be noted that the UDHR is not itself enforceable against signatories. Nonetheless, it clearly recognizes a universal right to education. According to article 26:

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Id.

¹³⁵ According to article 22 of the convention:

1. The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to refugees treatment as favourable as possible, and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

Convention Relating to the Status of Refugees, *supra* note 36, at art. 22.

¹³⁶ *Id.*

¹³⁷ International Covenant on Economic, Social and Cultural Rights arts. 13–14, Dec. 16, 1966, 993 U.N.T.S. 3; Convention on the Rights of the Child art. 28, Nov. 20, 1989, 1577 U.N.T.S. 3.

13 of ICESCR, which states:

The States Parties to the present Covenant recognize the right of *everyone* to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.¹³⁸

The convention mandates compulsory primary education, offered free of cost to *all* children, whereas secondary education must be “generally available and accessible to *all*.”¹³⁹ Additionally, article 14 imposes a two-year timeline for signatories without free primary education to develop a plan for implementing such a system.¹⁴⁰

Twenty-three years after ICESCR the U.N. adopted a second document recognizing a child’s right to education. Article 28 of CRC adopted similar language to ICESCR, stating in part:

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to *all*;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to *all* on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to *all* children;

(e) Take measures to encourage regular attendance at

¹³⁸ International Covenant on Economic, Social and Cultural Rights, *supra* note 137, 993 U.N.T.S. at 8 (emphasis added).

¹³⁹ *Id.* (emphasis added).

¹⁴⁰ *Id.* at 9.

schools and the reduction of drop-out rates.¹⁴¹

Under CRC, countries are also required to “promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods.”¹⁴² In doing so, signatories are directed to take “particular account” of “the needs of developing countries.”¹⁴³

These two treaties, taken with the Refugee Convention, make the right to public education unique as compared to other rights guaranteed to refugees.¹⁴⁴ While there is, at a minimum, a scholarly dispute over whether other social and economic rights apply to only legal refugees who have obtained asylum or all refugees regardless of legal status, the right to a public education applies equally to all refugees *regardless* of legal status.¹⁴⁵ The inclusive language of ICESCR and CRC is important in this regard; it emphasizes that “everyone” has a right to education and that free compulsory education must be provided to “all” children.¹⁴⁶ This is particularly salient in the Syrian Refugee Crisis because there are many persons who have not received asylum, due in part to the large number of persons fleeing Syria for neighboring countries and because thousands are living outside of refugee camps.¹⁴⁷ Yet, there are still serious questions as to how far nations must go in order to provide education to citizens and noncitizens. Moreover, there is no mechanism for mandating that other able nations assist in providing services to refugees.

¹⁴¹ Convention on the Rights of the Child, *supra* note 137, 1577 U.N.T.S. at 53 (emphasis added).

¹⁴² *Id.* at 54.

¹⁴³ *Id.*

¹⁴⁴ Aside from the right to public education these rights also include “economic and social rights, such as the rights to wage-earning employment [(art. 17)], housing [(art. 21)], . . . public relief [(art. 23)], and social security [(art. 24)].” Ryszard Cholewinski, *Economic and Social Rights of Refugees and Asylum Seekers in Europe*, 14 GEO. IMMIGR. L.J. 709, 710–11 (2000) (citing Convention Relating to the Status of Refugees, *supra* note 36, 189 U.N.T.S. 150 at 164, 166, 168–70).

¹⁴⁵ Cholewinski, *supra* note 144, at 711.

¹⁴⁶ *Id.* at 724; Convention on the Rights of the Child, *supra* note 137, 1577 U.N.T.S. at 53.

¹⁴⁷ During the summer of 2013, it was estimated that sixty percent of the refugees were living outside of refugee camps. See INT'L RESCUE COMM., *supra* note 47, at 1; see also CRISP ET AL., *supra* note 18, at 3 (noting that the majority of Syrian refugees reside outside of camps, many in urban settings). However, by the end of 2013 there were reports that eighty percent of the refugees were living outside of refugee camps. Norimitsu Onishi, *Beyond Camps, Aiding Syrians Is Even Harder*, N.Y. TIMES, Dec. 31, 2013, at A4 (“Of the 2.3 million people who have fled Syria’s civil war, only about 20 percent live in camps. The rest are what aid organizations call urban refugees, whether they are in cities, towns or villages.”).

C. The Generational Hierarchy of Human Rights: Where Does the Right to Education Fit?

The right to education is classified as a second-generation human right.¹⁴⁸ Other second-generation human rights include, “social, economic and cultural rights, such as the right to economic security . . . and the right to health care.”¹⁴⁹ Unlike first-generation human rights, which are often referred to as “negative rights” because they “restrict the state from interfering in the individual’s participation in political and civil society,” second-generation human rights “are considered positive rights because they give individuals the right to something, as opposed to the right against something.”¹⁵⁰ Positive rights “pose a significant conceptual challenge to the liberal construct, in which rights are deemed individual entitlements that are antagonistic to and supersede the common good, thus mandating a limited-government paradigm.”¹⁵¹ As a consequence, second-generation human rights are often deemed “lesser’ valued human rights” as compared with first-generation human rights,¹⁵² and violations are left unaddressed.

¹⁴⁸ Pamela Goldberg, *Women, Health and Human Rights*, 9 PACE INT’L L. REV. 271, 278 (1997); see also Nicolas A.J. Croquet, *The European Court of Human Rights’ Norm-Creation and Norm-Limiting Processes: Resolving a Normative Tension*, 17 COLUM. J. EUR. L. 307, 317 (2011) (describing how the European Convention on Human Rights contains only one second-generation human right, namely the right to education).

¹⁴⁹ Goldberg, *supra* note 148, at 278; see also Karolina Milewicz, *Emerging Patterns of Global Constitutionalization: Toward a Conceptual Framework*, 16 IND. J. GLOBAL LEGAL STUD. 413, 432 (2009) (“Social rights are rights to claim some limited goods, such as the right to work, education, health care, social security, and a minimum standard of living.”). Examples of first-generation human rights include the prohibitions on: “(a) genocide, (b) slavery or slave trade, (c) the murder or causing the disappearance of individuals, (d) torture or other cruel, inhuman, or degrading treatment or punishment, (e) prolonged arbitrary detention, (f) systematic racial discrimination, or (g) a consistent pattern of gross violations of internationally recognized human rights.” RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 702 (1987); see also Jeffrey F. Addicott, *Legal and Policy Implications for a New Era: The “War on Terror,”* 4 SCHOLAR 209, 211 n.14 (2002) (adopting the list from the *Restatement (Third) of the Foreign Relations Law of the United States* as a list of first-generation human rights that are enforceable against all nations).

¹⁵⁰ Megan Mooney, Note, *How the Organization of American States Took the Lead: The Development of Indigenous Peoples’ Rights in the Americas*, 31 AM. INDIAN L. REV. 553, 556–57 (2006/2007) (emphasis added).

¹⁵¹ Jeanne M. Woods, *Emerging Paradigms of Protection for “Second-Generation” Human Rights*, 6 LOY. J. PUB. INT. L. 103, 103 (2005).

¹⁵² Goldberg, *supra* note 148, at 278 (“Obligations to protect [second-generation human rights] are deemed to be progressive actions that must be taken over time, thus, making them ephemeral and more difficult to measure compliance. Enforcement of their violation is generally not pursued aggressively and is often left unaddressed by the international community.”); see also Woods, *supra* note 151, at 103–04 (describing how critics have characterized social rights as “mere moral aspirations” or as rights which are simply “nonjusticiable”).

Thus, even though the five primary host countries of the Syrian refugees have signed ICESCR and CRC, that does not automatically create an enforceable burden on those nations to provide education to refugee children.¹⁵³ The human right to education is merely an aspirational right.¹⁵⁴ Therefore, the fact that Iraq, Jordan, Lebanon, and Turkey have affirmatively attempted to provide educational opportunities, even where it is beyond their financial means, illustrates that the obligations under ICESCR and CRC are being satisfied.¹⁵⁵ A comparison with women's access to education in Pakistan will reinforce this point.

¹⁵³ Lebanon became party to CRC and ICESCR in 1991 and 1972 respectively. Egypt became party to CRC and ICESCR in 1990 and 1982 respectively. Iraq became party to CRC and ICESCR in 1994 and 1971 respectively. Jordan became party to CRC and ICESCR in 1991 and 1975 respectively. Finally, Turkey became party to CRC and ICESCR in 1995 and 2003 respectively. *Convention on the Rights of the Child*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en (last visited Feb. 8, 2015) (listing the participants in CRC and the date of ratification/accession for each nation); *International Covenant on Economic, Social and Cultural Rights*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty (last visited Feb. 8, 2015) (listing the participants in ICESCR and the date of ratification/accession for each nation). Only Turkey qualified their ratification of either treaty with a reservation directly concerning the right to education. *International Covenant on Economic, Social and Cultural Rights*, *supra*. That reservation states: "The Republic of Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article 13 of the Covenant on Economic, Social and Cultural Rights in accordance to the provisions under the Article 3, 14 and 42 of the Constitution of the Republic of Turkey." *Id.* Paragraphs (3) and (4) of article 13 concern the parents' or legal guardians' rights to place a child in the school of their choice, the parents' or legal guardian' rights to choose a school in conformity with their own moral and religious beliefs, and individuals' rights to establish schools. *International Covenant on Economic, Social and Cultural Rights*, *supra* note 137, at art. 13. Because this reservation does not directly concern Turkey's obligation to provide education to children within its borders, it is not relevant to the issues in this note.

¹⁵⁴ See Comm. on Economic, Social and Cultural Rights, Rep. on its 5th Sess., Nov. 26–Dec. 14, 1990, annex III, U.N. Doc. E/1991/23 (1991) (describing the obligations of state parties to article 2 of ICESCR). According to the U.N. Committee on Economic, Social, and Cultural Rights

[t]he principal obligation of result reflected in article 2 (1) is to take steps "with a view to achieving progressively the full realization of the rights recognized" in the Covenant. The term "progressive realization" is often used to describe the intent of this phrase. The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights. *Id.* The committee goes on to explain that this is "a necessary flexibility device, reflecting the realities of the real world and the difficulties involved for any country in ensuring full realization of economic, social and cultural rights." *Id.*

¹⁵⁵ See *supra* Part III.A–D. Egypt's recent actions raise issues of international law outside the scope of this note, and should be considered in a separate article.

D. Pakistan and Equal Access to Education for Women

The affirmative denial of educational opportunities to women in Pakistan illustrates why nations hosting Syrian refugees are satisfying their international law obligations to provide Syrian children with an education. Similar to how the international community reemphasized children's right to education with CRC, women's right to education, and particularly their right to be free of discrimination in education, is expressly protected in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).¹⁵⁶ Yet, in Pakistan, a nation that joined CEDAW in March of 1996,¹⁵⁷ access to education for women continues to be a substantial obstacle, in spite of CEDAW's "zero tolerance" approach to preventing discrimination against women.¹⁵⁸ Not only does oppressive discrimination against women persist, but there are "large gender gaps in school enrollment and illiteracy rates . . . and hundreds of villages still lack a girls' primary school."¹⁵⁹ When progress is made, there is a constant threat of violence from extremist groups.¹⁶⁰

The lack of progress evident in Pakistan is distinct from the access to education problem emerging in and around Syria. In Pakistan, the primary concern is rooted in culture—specifically Islamic Sharia law.¹⁶¹ The Pakistan Constitution includes a repugnancy clause which makes Sharia law the supreme law of the nation.¹⁶² Thus, any secular laws in conflict with Sharia are unenforceable.¹⁶³ In Pakistan, there is an accepted principle that

¹⁵⁶ Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13. CEDAW provides in relevant part: "States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education . . ." *Id.* at art. 10.

¹⁵⁷ *Convention on the Elimination of All Forms of Discrimination Against Women*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtid_sg_no=iv-8&chapter=4&lang=en (last visited Feb. 8, 2015). Pakistan has accepted this convention insofar as it is consistent with its own constitution. *Id.* However, the Pakistan Constitution names Islam as the official religion of the state, and has a repugnancy clause requiring that all laws passed by the state be consistent with the teachings of Islam. Jennifer T. Sudduth, *CEDAW's Flaws: A Critical Analysis of Why CEDAW Is Failing to Protect a Woman's Right to Education in Pakistan*, 38 J.L. & EDUC. 563, 569 (2009).

¹⁵⁸ Sudduth, *supra* note 157, at 563 ("Over a decade later, the realization has now set in that very little, if anything, changed for the benefit of women's education when Pakistan acceded to CEDAW.").

¹⁵⁹ *Id.* at 582.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 570.

¹⁶² *Id.* at 570–71.

¹⁶³ *Id.* at 571.

Sharia dictates the male guardianship of women, and while there are passages of the Koran that support the notion of equality between men and women, many fundamentalists reject these alternative interpretations and claim that “women’s education destroys ‘the traditional boundaries and definitions of sex roles’ in Muslim culture.”¹⁶⁴ In the nearly two decades since Pakistan’s ratification of CEDAW, the number of Islamic fundamentalists has increased in Pakistan, and with it, the number of adherents to this arcane view of women’s equality.¹⁶⁵

Pakistan’s failure to overcome fundamentalist views of gender roles is directly related to the government’s inability to address societal biases. Specifically, due to budget shortfalls and corruption, the education system continues to exacerbate norms of gender inequality and is ill equipped to reverse the traditional societal perception of women.¹⁶⁶ Despite the government’s inaction, the international response has been minimal.¹⁶⁷

Comparing Pakistan’s failure to offer equal education to women with the failures of Lebanon, Turkey, Iraq, Jordan, and Egypt to successfully accommodate all or most Syrian refugee children helps explain why intervention is unlikely in those Syrian refugee host nations. The fundamental question with regard to second-generation human rights is whether a nation is putting forth enough effort to promote the particular right in question. As evidenced in Part III, the primary refugee host nations around Syria are satisfying this standard.¹⁶⁸ This can be juxtaposed with Pakistan, where there is less evidence of the government promoting equal access to education for women. Therefore, the lack of international intervention in Pakistan demonstrates that international intervention in the countries surrounding Syria is fundamentally unrealistic. This is particularly true when, as is the case in the Syrian refugee host nations, the primary concern is a lack of resources. The Syrian Civil War is causing each refugee host nation to make the impossible choice between educating its own children and educating Syrian children.¹⁶⁹ For that reason the focus must be on obtaining adequate humanitarian aid.

¹⁶⁴ *Id.* at 571–74 (quoting L. Elizabeth Chamblee, Note, *Rhetoric or Rights?: When Culture and Religion Bar Girls’ Right to Education*, 44 VA. J. INT’L L. 1073, 1106 (2004)).

¹⁶⁵ Sudduth, *supra* note 157, at 587.

¹⁶⁶ *Id.* at 587–89.

¹⁶⁷ *See id.* at 584–86.

¹⁶⁸ *See supra* Part III.

¹⁶⁹ *See supra* notes Part III.A–E.

V. ASSISTING WITH THE SYRIAN REFUGEE CRISIS

A. *The Call for International Assistance*

The education crisis facing Syrian refugees is unique in that it is largely a product of nations permitting large numbers of refugees to cross into their territory without any means of supplying those persons with basic human rights.¹⁷⁰ In order to redress this crisis, the international community needs to provide more humanitarian aid than it is currently. In 2013, the United Nations tried to raise \$4.4 billion in humanitarian aid for those impacted by the Syrian conflict; the largest request for aid in the history of the organization.¹⁷¹ For 2014, one of UNICEF's primary objectives was to obtain added financial support for refugee host countries.¹⁷² According to its report:

Long-term solutions of the scale needed cannot be implemented at current levels of funding. International appeals for the Syria crisis this year are only 62 per cent funded, leaving a US\$ 2.6 billion gap. Only 67 per cent of UNICEF's 2013 appeal for education needs inside Syria and the sub-region have been met. International partners must support host governments' efforts to expand and improve learning spaces, recruit additional teachers and slash the costs of getting children into the classroom—including transport, school materials and funds for extra teaching shifts. Investment is also needed in education for children with disabilities, and vocational training for older children—all of which will help children from host communities as well as refugee children.¹⁷³

With its minimal funding, UNICEF registered 108,046 students in refugee camps and host communities through 2013.¹⁷⁴ It also helped train teachers from both the refugee-camp-based schools and

¹⁷⁰ See *supra* notes Part III.A–E.

¹⁷¹ Barnard, *supra* note 13, at A1.

¹⁷² UNITED NATIONS CHILDREN'S FUND, SYRIA CRISIS: EDUCATION INTERRUPTED 9 (2013), available at http://www.unicef.org/media/files/Education_Interrupted_Dec_2013.pdf.

¹⁷³ *Id.*

¹⁷⁴ UNITED NATIONS CHILDREN'S FUND, SYRIA CRISIS: BI-WEEKLY HUMANITARIAN SITUATION REPORT: 12 DECEMBER 2013–9 JANUARY 2014: SYRIA, JORDAN, LEBANON, IRAQ, TURKEY AND EGYPT 14 (2014), available at <http://reliefweb.int/sites/reliefweb.int/files/resources/UNICEF%20Syria%20Regional%20Crisis%20Humanitarian%20SitRep%20-%209Jan2014.pdf>.

double-shifted community schools.¹⁷⁵ During November and December of 2013, UNICEF conducted the first phase of a pedagogy training program, targeting 1869 teachers.¹⁷⁶ However, there is much more to do, and those advocating for Syrian refugees fear that the United States, the United Nations' primary donor, will quickly "lose interest" with Syria.¹⁷⁷ Moreover, there is a noticeable lack of private donations towards the Syrian Refugee Crisis, particularly when compared to other recent disasters.¹⁷⁸ One possible solution to this funding dilemma is recognition of more affirmative obligations on states to assist in humanitarian crises. Yet, as the next section will illustrate, compelling state action through international law is unlikely in this particular context.

B. A Responsibility to Provide Humanitarian Aid?

Considering the lack of humanitarian aid available to Syrian refugee host nations, the question becomes whether, in the absence of any violations of international law by those host nations, other mechanisms require third-party state actors to provide humanitarian aid. Currently, the answer is no. This section will demonstrate how one recent development in international law, the Responsibility to Protect (R2P), supports this conclusion. In part, R2P was developed following human rights violations in Rwanda and Srebrenica, with the support of U.N. Secretary-General Kofi Annan.¹⁷⁹ In response to these humanitarian crises, the emphasis was shifted from the "right to intervene," to the 'responsibility to protect,' which meant a focus on the point of view of those seeking or needing support instead of those who may be considering intervention."¹⁸⁰ However, the narrow nature of R2P means that it is ineffective in protecting the second-generation human rights of Syrian refugees.

The legal basis of R2P can be derived from a report by the International Committee on Intervention and State Sovereignty in 2001 and a report from the High-level Panel on Threats, Challenges and Change issued in 2004.¹⁸¹ Several U.N. documents have since

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Barnard, *supra* note 13, at A1.

¹⁷⁸ *Id.*

¹⁷⁹ Nanda, *supra* note 16, at 5. Secretary-General Annan headed the U.N. during these tragedies and was particularly invested in preventing similar events in the future. *Id.*

¹⁸⁰ *Id.* at 5–6.

¹⁸¹ Neomi Rao, *The Choice to Protect: Rethinking Responsibility For Humanitarian*

reaffirmed the doctrine of R2P, the most significant being a report issued by U.N. Secretary-General Ban Ki-moon in 2009.¹⁸² This report explained R2P in terms of “three conceptual pillars.”¹⁸³ First, there is an obligation on each state to protect its own people from selective violations of international law.¹⁸⁴ Second, where a state fails to meet this basic duty because it lacks the capacity to do so, third-party state actors have a responsibility to provide assistance in order to help the failing nation meet its obligations.¹⁸⁵ “Third, if a state ‘manifestly fails’ in its protection responsibilities, the international community should respond in a timely and decisive manner, by taking a range of peaceful, coercive, or forceful measures in accordance with the UN Charter.”¹⁸⁶ More than fifty states have adopted the “three pillar” approach,¹⁸⁷ however, in the context of providing support for Syrian refugees, R2P has minimal value.

The primary limitations on R2P in the context of compelling states to aid Syria refugee host nations in supplying second-generation human rights to Syrian children results from R2P being strictly limited to particular international violations. These violations include crimes against humanity, ethnic cleansing, genocide, and war crimes.¹⁸⁸ While those are precisely the crimes occurring in Syria,¹⁸⁹ the Syrian refugee host nations are actually fulfilling their international obligations to provide education to Syrian refugee children, and they have certainly not committed crimes against humanity, ethnic cleansing, genocide, and war crimes against their own people.¹⁹⁰ As a result, the first pillar of R2P is not at issue, and therefore, utilizing R2P as a justification to compel state aid to these nations under either the second or third pillar is unnecessary.

An equally problematic reality of R2P is that its doctrine remains widely disputed by major state actors.¹⁹¹ Both Canada and the

Intervention, 44 COLUM. HUM. RTS. L. REV. 697, 703 (2013).

¹⁸² See Williams et al., *supra* note 4, at 483–86.

¹⁸³ *Id.* at 485.

¹⁸⁴ U.N. Secretary-General, *Implementing the Responsibility to Protect*, ¶ 11(a), U.N. Doc. A/63/677 (Jan. 12, 2009).

¹⁸⁵ *Id.* ¶ 11(b).

¹⁸⁶ Williams et al., *supra* note 4, at 485–86 (citing U.N. Secretary-General, *supra* note 184, ¶ 11(c)).

¹⁸⁷ Williams et al., *supra* note 4, at 486.

¹⁸⁸ Nanda, *supra* note 16, at 27–28.

¹⁸⁹ See discussion *supra* Part II.

¹⁹⁰ See discussion *supra* Part III.

¹⁹¹ Rao, *supra* note 181, at 717–18.

United States recognize only a moral responsibility to protect, as opposed to a legal obligation, whereas China, India, and Russia are more skeptical of R2P's "meaning and application" and effectively reject its validity as a principle of international law.¹⁹² Commentators have described R2P as "a political mechanism and moral imperative" rather than a "legal obligation or right."¹⁹³ "In other words, the concept provides no independent legal basis for using force to intervene in another State; to the extent the responsibility involves the use of force, that force may only be authorized through the Security Council."¹⁹⁴ That is because the third pillar is expressly phrased in terms of compliance with the U.N. Charter.¹⁹⁵

This uncertainty with respect to the parameters of R2P has created issues in its application over the past decade. Despite the strong rhetoric from those who advocate for R2P, inconsistent state action with respect to recent violations of international human rights law demonstrate that R2P imposes no concrete responsibility on states to assist when other states fail to protect their own people.¹⁹⁶ Rather, R2P simply gives states the optional capacity to "define the scope and extent of . . . protection" necessary to remedy a perceived need for assistance.¹⁹⁷ Therefore, even where R2P is applicable, it creates no mandatory obligation that nations intervene under either the second or third pillar; rather, it merely gives nations an option to intervene.¹⁹⁸ This is reinforced by the fact that nations have not used R2P to intervene in the Syrian Civil War itself.¹⁹⁹

¹⁹² *Id.* at 718.

¹⁹³ Schmitt, *supra* note 6, at 753.

¹⁹⁴ *Id.*

¹⁹⁵ See Williams et al., *supra* note 4, at 486–87 (citing U.N. Secretary-General, *supra* note 184, ¶ 11(c)).

¹⁹⁶ Rao, *supra* note 181, at 750; see also Nanda, *supra* note 16, at 14–27 (describing the various actions taken by numerous international actors since the beginning of the Syrian Civil War).

¹⁹⁷ Rao, *supra* note 181, at 750.

¹⁹⁸ See *id.*

¹⁹⁹ However, this lack of intervention with the Syrian Civil War may be a product of the third pillar requiring U.N. Security Council approval and the inability to obtain that approval due to vetoes by both Russia and China. Syria has caused some scholars to argue that the third pillar of R2P should allow for intervention even when the U.N. Security Council fails to act, under specific limited conditions. Williams et al., *supra* note 4, at 490. It should also be noted that nations have implied that R2P can be invoked without U.N. Security Council approval. Gordon & Landler, *supra* note 6, at A1 (following the August 2013 chemical weapon attacks, the U.S. government appeared to be alluding to R2P as it strongly considered intervening with or without U.N. Security Council support). Aside from answering the question of why no states have intervened in Syria, some have suggested that this inaction is

The unfortunate limitations of R2P make it exceedingly unlikely that the concept could be expanded to incorporate a mandatory obligation on states to provide aid during humanitarian crises when the aid sought is for a second-generation right that the host country is satisfactorily providing under the mandates of international human rights law. The lack of international legal rationale supporting a requirement that states provide humanitarian aid to help effectuate second-generation human rights where refugee host nations are unable to provide those rights on their own poses a substantial problem for child refugees in and around Syria. In effect it leaves the educational fate of hundreds of thousands of refugees to the financially overburdened host nations, the seemingly indifferent West, or alternatively, to the resolution of the Syrian Civil War—a solution that appears to be out of reach at the moment.²⁰⁰

VI. CONCLUSION

This note has sought to expose the severe difficulties with international law's recognition of the right to education as applied to a severe international human rights crisis akin to Syria. While the current framework of second-generation human rights fails to offer adequate protections to the millions of displaced children in and around Syria, perhaps this situation will encourage international actors to recognize the importance of securing adequate humanitarian aid to ensure future access to second-generation human rights. While the immediate prospects of securing access to education in the Syrian context are dismal, this case study illustrates several positive effects of aspirational human rights. It is no small accomplishment that four of the five host countries have continually attempted to offer Syrian children educational opportunities, even at the expense of their own citizens. This demonstrates the influence of the right to education in the international community. It also further supports the theory that nations will adopt international law even where there is minimal enforcement of that law.²⁰¹ For these reasons, the international community would be well served to institute norms that ensure

testing the validity of R2P. Nanda, *supra* note 16, at 41–42.

²⁰⁰ See Barnard, *supra* note 13, at A1.

²⁰¹ Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2603 (1997) (book review) (“Like most laws, international rules are rarely enforced, but usually obeyed.”).

nations providing second-generation human rights in a time of crisis have adequate resources for effectuating those rights. As the law currently stands there are no satisfactory solutions for these situations.