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## SYRIAN REFUGEES AND THE RIGHT TO WORK: DEVELOPING TEMPORARY PROTECTION IN TURKEY

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## ABSTRACT

*At least 1.3 million Syrians have fled to Turkey since 2011, yet Turkish refugee camps have space for only 220,000 refugees. The remaining refugees, whose numbers exceed one million, legally reside in Turkey through a temporary protection scheme, but do not receive meaningful government assistance and are struggling to survive.*

*This note begins by explaining Syrians' unique legal status in Turkey, and examines the foundations underlying this status. This note explicates Turkey's existing legal provisions, which include provisions allowing "international protection" recipients and foreigners to work. This note argues that together, these laws create a framework that could easily be applied to Syrians to provide a right to employment that is limited to the duration of the conflict and easily regulated by the government.*

*Next, this note argues that Turkey has a humanitarian obligation to provide Syrians with the right to work, to the extent possible, based upon Turkey's recognition of work as a human right. The note concludes by addressing the economic and political concerns associated with granting Syrian refugees the right to work.*

## INTRODUCTION

In March 2011, pro-democracy Syrians, inspired by recent reforms in Egypt and Tunisia, launched large-scale peaceful protests against the authoritarian regime of President Bashar al-Assad.<sup>1</sup> Despite the peaceful nature of the protests, the Syrian government quickly responded with violence.<sup>2</sup> In spite of widespread international protests discouraging

<sup>1</sup> See G. G. Putra & Y. N. Santoso, *The Refugees of Syria: Between Politics and Violation of Human Rights*, JURIS GENTIUM L.R. 1, 2 (2012) ("The wave of Arab unrest that began with the Tunisian revolution reached Syria on March 15, 2011."); see also *Syrian Civil War*, ENCYCLOPÆDIA BRITANNICA (Apr. 11, 2014), <http://www.britannica.com/EBchecked/topic/1781371/Syrian-Civil-War>.

<sup>2</sup> See, e.g., *Syria Urged to End Deadly Repression*, AL JAZEERA, Apr. 23, 2011, <http://www.aljazeera.com/news/middleeast/2011/04/2011422234932186305.html>; Keith D. Watenpugh & Adrienne L. Fricke, *Uncounted and Unacknowledged: Syria's Refugee Students and Academics in Jordan* 18 (May 2013), <http://www.iie.org/en/Research-and->

violence, as well as European Union sanctions against Syria,<sup>3</sup> the situation escalated into reciprocal violence, then full civil war.<sup>4</sup> Syrians began pouring into Egypt, Lebanon, Jordan, Northern Iraq, and Turkey.<sup>5</sup>

As of September 2014, at least 2.8 million Syrians have fled to neighboring countries, and the United Nation High Commissioner for Refugees (“UNHCR”) estimates that approximately 1.35 million Syrians are living in Turkey.<sup>6</sup> Turkey has built camps for 220,000 refugees, and is providing for the basic needs of refugees living within the camps; however, the camps are reaching capacity, and Turkey is running out of space to create more.<sup>7</sup> In April 2014, Turkey implemented a temporary protection scheme granting Syrians formal legal status in the country and officially allowing refugees to live outside the camps,<sup>8</sup> but has not made plans to provide any services to these individuals.<sup>9</sup> Turkey has spent at least 2.5

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Publications/Publications-and-Reports/II-Bookstore/Unaccounted-And-Unacknowledged-Syrias-Refugee-University-Students-And-Academics-In-Jordan (explaining that students who believed “their calls for modest reform and broader democratization would be welcomed by the younger al-Assad and lead to the kinds of transitions they had witnessed in Tunis and Cairo” were instead “harassed by secret police,” and in some cases, “jailed and . . . killed while in custody”).

<sup>3</sup> See Council Decision 273/CFSP, 2011 O.J. (L 121) 11.

<sup>4</sup> See Anthony Shadid, *Syria’s Protesters, Long Mostly Peaceful, Starting to Resort to Violence*, N.Y. TIMES, Sept. 16, 2011, [http://www.nytimes.com/2011/09/17/world/middleeast/at-least-six-protesters-killed-in-syria.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2011/09/17/world/middleeast/at-least-six-protesters-killed-in-syria.html?pagewanted=all&_r=0); see also ENCYCLOPEDIA BRITANNICA, *supra* note 1.

<sup>5</sup> This is neither Turkey’s first, nor only refugee crisis. See Ercüment Tezcan, *Legal Status of the Thousands Fleeing from Syria*, 5 USAK Y.B. INT’L POL. & L. 283, 283 (2012) (explaining that since the early 1990s, “there have been significant mass influxes of people into Turkey,” including Bulgarians, Bosnians, Kosovars, and Iraqi Kurds).

<sup>6</sup> U.N. High Comm’r for Refugees, *2014 Syria Regional Response Plan: Strategic Overview, Mid-Year Update*, at 4 (2014), available at <http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-midyear-full-report.pdf>; U.N. High Comm’r for Refugees, *Turkey Syrian Refugee Daily Strep* (Sept. 5, 2014), <http://data.unhcr.org/syrianrefugees/download.php?id=6962>.

<sup>7</sup> See Iermal Kirişci & Raj Salooja, *Northern Exodus: How Turkey Can Integrate Syrian Refugees*, BROOKINGS INST. (Apr. 15, 2014), <http://www.brookings.edu/research/articles/2014/04/15-turkey-integrate-syrian-refugees-kirisci>.

<sup>8</sup> See Law on Foreigners and International Protection, Law No. 6458 of April 4, 2013, art. 92 (Turk.) [hereinafter “LFIP”]. Prior to April 2014, Syrians were informally allowed in Turkey by means of a government directive on temporary protection. The government has not issued an official English translation of this directive, but the Turkish language copy is on file with the author.

<sup>9</sup> Hosting refugees in communities rather than camps is likely a better option for refugees. See Debora MacKenzie, *Lasting Costs of Syrian War*, 219 NEW SCI. 8 (2013) (quoting Dan McNorton of UNHCR on the agency’s “preference . . . for settling [refugees] in the host community, rather than camps,” and noting that there is much debate about

billion USD on the refugee camps alone,<sup>10</sup> and is unlikely to shift course and provide non-camp refugees with food or housing services; however, refugees living outside the camps are without resources to support themselves.<sup>11</sup>

The situation is already one of the largest refugee crises of its kind, and its scope only continues to increase.<sup>12</sup> Turkey needs a creative way to help Syrians meet basic human needs and access shelter, food, clothing, and education without further burdening the country.<sup>13</sup> This note will argue that Turkey should develop its temporary protection framework to provide Syrians with the right to work legally. Such action will allow Syrians to sustain themselves, relieve the pressure on the Turkish government, and support Syrians' ability to rebuild their country when the conflict ends.

## I. SYRIANS' LEGAL STATUS IN TURKEY

### A. The 1951 Convention

Turkey is a party to the 1951 Convention and Protocol Relating to the Status of Refugees ("1951 Convention").<sup>14</sup> The 1951 Convention has been

whether host countries should "build camps, or let people find shelter in towns," especially considering that "[m]ovements of people on this scale have long-term impacts on a region").

<sup>10</sup> See Kirişci & Salooja, *supra* note 7. Turkey has expended vast resources to ensure that Syrians within the refugee camps have access to education, healthcare, food, and other services. See Mac McClelland, *How to Build a Perfect Refugee Camp*, N.Y. TIMES, Feb. 13, 2014, <http://www.nytimes.com/2014/02/16/magazine/how-to-build-a-perfect-refugee-camp.html?module=Search&mabReward=relbias%3Ar%2C%7B%22%22%3A%22RI%3A12%2%2C%221%22%3A%22RI%3A9%22%7D>.

<sup>11</sup> See generally U.N. High Comm'r for Refugees, UNHCR Country Operations Profile – Turkey, <http://www.unhcr.org/pages/49e48e0fa7f.html> (last visited Oct. 4, 2014).

<sup>12</sup> See AHMET İÇDUYGU, ZEYNEP GÜLRU GÖKER, LAMI BERTAN TOKUZLU & SEÇİL PAÇACI ELİTOK, *MIGRATION PROFILE: TURKEY 1, 4* (2013), available at [http://www.migrationpolicycentre.eu/docs/migration\\_profiles/Turkey.pdf](http://www.migrationpolicycentre.eu/docs/migration_profiles/Turkey.pdf) ("From [the] late 1990s to the early 2000s, Turkey received approximately 5000-6000 asylum applications a year. The number reached 16,000 in 2011, leading UNHCR to announce Turkey as among the top five asylum-receiving countries in the world. Mass migration from Syria triggered by the uprisings and the civil war, started in spring 2011, has made Turkey the third largest receiver of Syrian refugees after Lebanon and Jordan."); see also Associated Press, *UN: Syrians Supplanting Afghans as World's Biggest Refugee Group*, HAARETZ (Feb. 26, 2014), <http://www.haaretz.com/news/middle-east/1.576439>; U.N. High Comm'r for Refugees, *Needs Soar as Number of Syrian Refugees Tops 3 Million* (Aug. 29, 2014), <http://www.unhcr.org/53ff76c99.html> ("[T]he Syrian refugee crisis 'has become the biggest humanitarian emergency of our era. . . .").

<sup>13</sup> See MacKenzie, *supra* note 9, at 8 (noting that scholars are asking how they can "provide so many people with the food, water and medicine they need").

<sup>14</sup> Convention Relating to the Status of Refugees, Aug. 24, 1951, 189 U.N.T.S. 137

signed and ratified by 144 nations, and is the preeminent treaty governing the manner in which host countries receive and treat refugees.<sup>15</sup> The 1951 Convention defines a refugee as an individual who is unable to return to his or her country of prior residence due to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.”<sup>16</sup> The 1951 Convention particularly guarantees that lawful refugees will be afforded treatment comparable at least to that of “aliens generally”<sup>17</sup> with regards to religious freedom, free association, access to education, and other basic social and political rights.<sup>18</sup> The 1951 Convention particularly requires states to “accord to refugees . . . the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.”<sup>19</sup>

Turkey raised a geographical limitation when it signed and ratified the 1951 Convention and chose only to provide refugee status to individuals fleeing events in Europe.<sup>20</sup> While this limitation was once common, Turkey is now one of only four countries to maintain this reservation,<sup>21</sup> and “defines only persons of European origin as refugees.”<sup>22</sup> In Turkey, “persons of non-European origin” have only “a right to temporary asylum before being resettled in a third country.”<sup>23</sup> In other words, non-European individuals fleeing to Turkey will not be granted refugee status; instead, they may receive “‘asylum seeker’ status and temporary residence permits.”<sup>24</sup> Turkey classifies these individuals as “conditional refugees,” and allows them to “reside temporarily in Turkey until they are resettled to

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[hereinafter 1951 Convention].

<sup>15</sup> See U.N. High Comm’r for Refugees, Treaty Status: Convention Relating to the Status of Refugees (Sept. 13, 2014), <https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20V/V-2.en.pdf> [hereinafter UNHCR, Treaty Status].

<sup>16</sup> 1951 Convention, *supra* note 14, art. 1(A)(2).

<sup>17</sup> Morten Kjaerum, *Temporary Protection in Europe in the 1990s*, 6 INT’L J. REFUGEE L. 444, 451 (1994); see also 1951 Convention, *supra* note 14, art. 7(1).

<sup>18</sup> 1951 Convention, *supra* note 14, arts. 4, 15, 22.

<sup>19</sup> *Id.* art. 17.

<sup>20</sup> See Reservations and Declarations on the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 (“[T]he Government of Turkey . . . applies the Convention only to persons who have become refugees as a result of events occurring in Europe.”).

<sup>21</sup> The only other countries who continue to maintain this limitation are Monaco, the Congo, and Madagascar. See UNHCR, Treaty Status, *supra* note 15, at 3.

<sup>22</sup> Tezcan, *supra* note 5, at 284.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

third countries in cooperation with UNHCR.”<sup>25</sup> While conditional refugees are legally permitted to work in Turkey while awaiting resettlement, Turkey has decided not to classify Syrians as conditional refugees, instead offering them temporary protection.<sup>26</sup>

## *B. Temporary Protection*

### 1. Origins of Temporary Protection

The idea of temporary protection is not a new concept; rather, it is a framework created by UNHCR and grounded in prior international responses to humanitarian crises involving the mass influx<sup>27</sup> of refugees into a host country.<sup>28</sup> Temporary protection provides a structured means “for concerted action by the international community . . . to extend

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<sup>25</sup> *Id.* at 285. Also, see LFIP, art. 62(1), which defines a “conditional refugee” as a person who as a result of events occurring outside European countries and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside of the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country. . . . A conditional refugee shall be allowed to reside in Turkey until he or she is resettled to a third country.

<sup>26</sup> See Rebecca Kilberg, *Turkey’s Evolving Migration Identity*, MIGRATION POLICY INST. (July 24, 2014), <http://www.migrationpolicy.org/article/turkeys-evolving-migration-identity>.

<sup>27</sup> See Alice Edwards, *Temporary Protection, Derogation and the 1951 Refugee Convention*, 13 MELB. J. INT’L L. 595, 603 (2012).

“[M]ass influx” . . . is generally understood to entail “considerable numbers of persons arriving over an international border; a rapid rate of arrival; inadequate absorption or response capacity in host states, particularly during the emergency phase; and individual asylum procedures, where they exist, are unable to deal with the assessment of such large numbers.”

*Id.* (quoting Exec. Comm. of the High Comm’r’s Programme, *Conclusion on International Cooperation and Burden and Responsibility Sharing in Mass Influx Situations: No 100 (LV)*, 55th sess. (2004)). This accurately describes the situation in Turkey.

<sup>28</sup> See G.S. GOODWIN-GILL, 3 *THE REFUGEE IN INTERNATIONAL LAW* 289 (2007) (explaining that in the 1980s, scholars began tracing “the development of a customary norm of ‘temporary refuge,’ which prohibited States from forcibly repatriating foreigners who had fled generalized violence and other threats caused by internal armed conflict within their own State, until the violence ceased and the home State could assure the security and protection of its nationals”); see also Deborah Perluss & Joan F. Hartman, *Temporary Refuge: Emergence of a Customary Norm*, 26 VA. J. INT’L L. 551, 580 (1985–1986) (describing temporary protection as “the practical solution to situations of mass influx of civilians fleeing internal armed conflict”); Kjaerum, *supra* note 17, at 444 (“Over the years temporary protection has been seen as one of the means available to a country facing a mass influx of refugees.”).

international protection to persons who clearly need[] it.”<sup>29</sup> This system allows host states to respond quickly to humanitarian crises while avoiding the obligation to grant refugee status to a large influx of individuals, particularly where the 1951 Convention does not apply.<sup>30</sup> A temporary protection scheme provides the “added benefit of ‘unclogging’ regular, individualized, asylum application procedures,” because temporary protection is granted “to entire groups on a prima facie basis,” rather than after a time and resource-intensive individualized determination procedure.<sup>31</sup> Additionally, temporary protection allows host states to meet their “obligation to provide humanitarian necessities and amenities in accordance with the temporary nature of the stay of the refugees” who ultimately “wish to return to their homes” when the displacing conflict reaches an end.<sup>32</sup>

Since the 1990s, temporary protection has been theorized in a variety of ways.<sup>33</sup> In its most basic form, temporary protection is a mere grant of humanitarian protection “by States geographically close to the country of origin.”<sup>34</sup> In a more complex formulation, temporary protection “build[s] on the existing framework of the [1951] Convention and Protocol” to provide temporary protection recipients with rights similar to those experienced by refugees, without requiring host countries to undertake the lengthy process of refugee status determination procedures and third country resettlement.<sup>35</sup>

This note will not argue that Turkey should reconsider its geographic reservation and classify Syrians as refugees, and accepts that the situation in Turkey is a classic example of a situation where temporary protection is the appropriate host country response.<sup>36</sup> In allowing Syrians to remain in

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<sup>29</sup> U.N. High Comm’r for Refugees, *Note on International Protection*, ¶ 41, U.N. Doc. A/AC.96/380 (Sept. 7, 1994).

<sup>30</sup> *See id.* ¶ 38; *see also* Edwards, *supra* note 27, at 599-600 (explaining that temporary protection is an appropriate response “where it is difficult to distinguish between asylum seekers and others moving in mixed flows, as well as to broader categories of persons who fall outside the 1951 Refugee Convention definition of a ‘refugee’”).

<sup>31</sup> Joanne Thorburn, *Transcending Boundaries: Temporary Protection and Burden-sharing in Europe*, 7 INT’L J. REFUGEE L. 459, 461 (1995).

<sup>32</sup> *See id.* at 474 (internal citations omitted).

<sup>33</sup> *See* INGRID BOCCARDI, EUROPE AND REFUGEES: TOWARDS AN EU ASYLUM POLICY 114 (2002) (describing the discussions, resolutions, and interpretations that have occurred among nations attempting to define temporary protection, and noting that these discussions have not led to any formalized decisions about temporary protection’s shape).

<sup>34</sup> Thorburn, *supra* note 31, at 461.

<sup>35</sup> *Id.* at 478.

<sup>36</sup> It is important to note that “[t]emporary protection schemes are frequently justified by states as extra-treaty measures and falling therefore within their sovereign discretion.” Edwards, *supra* note 27, at 597. While this “sovereign discretion” *could* absolve Turkey

Turkey under a temporary protective status, Turkey adheres to the principle of *non-refoulement*<sup>37</sup> while remaining consistent with its reservations to the 1951 Convention.

## 2. Temporary Protection in Turkey

Consistent with its reservation to the 1951 Convention, Syrians may only reside informally in Turkey; as explained in the previous section, Turkey does not consider Syrians to be “conditional refugees,” nor does it register Syrians as refugees to facilitate third-country resettlement, as it has with other groups of refugees fleeing countries outside Europe.<sup>38</sup> In April 2014, Syrians’ status in Turkey was formalized by the new Turkish law on Foreigners and International Protection (“LFIP”), which allows individuals fleeing a country *en masse* to be legally present in Turkey.<sup>39</sup> The LFIP specifically provides temporary protection “to foreigners who, having been forced to leave their country . . . have arrived at or crossed the borders of Turkey in masses seeking emergency and temporary protection.”<sup>40</sup> The LFIP tasks a new agency, the Directorate General for Migration Management, with issuing regulations regarding the “rights and obligations” of persons receiving temporary protection.<sup>41</sup> This agency is still developing; while it has appointed officials and spoken to groups of Syrian refugees, it has yet to issue any significant regulations defining the contours of temporary protection.<sup>42</sup> Uniform, concrete policies regarding Syrians in Turkey remain elusive.<sup>43</sup> In the meantime, local governorates still effectively hold “extensive authority” to make decisions in light of this

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from many of its liabilities to Syrian refugees, this same “sovereign discretion” gives Turkey the freedom to develop its laws and allow Syrians to work in Turkey for the remainder of the Syrian conflict.

<sup>37</sup> The international norm of *non-refoulement* prohibits states from “expel[ling] or return[ing] . . . a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” 1951 Convention, *supra* note 14, art. 33(1). *Non-refoulement* is a *jus cogens* norm, and states are bound to comply even if they choose not to allow asylum-seekers to apply for refugee status. See Jean Allain, *The Jus Cogens Nature of Non-Refoulement*, 13 INT’L J. REFUGEE L. 533, 538-41 (2001).

<sup>38</sup> See Kirişçi & Salooja, *supra* note 7.

<sup>39</sup> LFIP, art. 2(1).

<sup>40</sup> *Id.* art. 91(1).

<sup>41</sup> *Id.* art. 91(2).

<sup>42</sup> For information on the structure and activity of Turkey’s Directorate General for Migration Management, see generally *Directorate General for Migration Management*, GOV’T OF TURK., [www.goc.gov.tr](http://www.goc.gov.tr) (last visited Oct. 4, 2014).

<sup>43</sup> See İÇDUYGU ET AL., *supra* note 12, at 15 (criticizing that in light of the massive refugee crisis and lack of regulations, “one single article [regarding temporary protection] that lacks protection standards and procedures is less than satisfactory”).



“mass influx.”<sup>44</sup> Fortunately, this legal and regulatory gap means that ample space exists to improve the temporary protection system in Turkey and provide Syrians with the right to work for the duration of the Syrian conflict.

## II. TURKEY’S DOMESTIC LEGAL FRAMEWORK

### A. Law on Foreigners and International Protection

The LFIP massively reformed Turkey’s migration policy.<sup>45</sup> The law incorporates many European Union (“EU”) migration policies, including the idea of temporary protection, and was motivated, in part, by a desire to conform to EU norms.<sup>46</sup> While the new law provides a very basic framework for “emergency and temporary protection,”<sup>47</sup> it focuses on regular migration procedures. This focus on regular migration is significant: Turkey has taken so few steps to outline the rights and obligations associated with temporary protection that there is room to define those rights and obligations. As mentioned previously, the LFIP established a Directorate General for Migration Management with wide authority to promulgate rules, define concepts, establish migration procedures, and otherwise develop the necessary legal mechanisms to reform Turkey’s temporary protection regime.<sup>48</sup> Accordingly, a close reading of the LFIP is significant to determine the rights and obligations Turkey could provide through temporary protection.

Under the LFIP, foreigners may temporarily enter Turkey with a visa;<sup>49</sup> those who plan to stay longer than ninety days must apply for a residence permit with the Turkish consulate in their country of origin.<sup>50</sup> Individuals in exceptional circumstances may apply “[f]or humanitarian residence permits” in Turkey rather than in their home country.<sup>51</sup> An individual with

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<sup>44</sup> Tezcan, *supra* note 5, at 285.

<sup>45</sup> See İÇDUYGU ET AL., *supra* note 12, at 1 (“The factual transition in migration is accompanied by discursive and policy developments that take place on a terrain wrought with tension between nationalist legacies, that is, the politics of the past and current worldviews based on globalism, transnationalism, and EU-zation.”).

<sup>46</sup> See generally *id.* Turkey has been attempting to gain EU membership for many years.

<sup>47</sup> LFIP, art. 2(1).

<sup>48</sup> See generally *id.*

<sup>49</sup> *Id.* art. 11.

<sup>50</sup> *Id.* art. 19(1).

<sup>51</sup> *Id.* art. 22(1)(d); see also *id.* art. 46(1)(e) (“[H]umanitarian residence permits may be issued and extended by governorates . . . [t]he foreigner is required to be allowed to enter into or stay in Turkey due to emergency reasons . . . but who does not have the possibility of acquiring other types of residence permits due to the existence of circumstances that obstruct

“[a] valid work permit”<sup>52</sup> may use this in lieu of a residence permit. The LFIP also allows for individuals to apply for “international protection.”<sup>53</sup> This status is available to individuals who meet the 1951 Convention’s refugee definition, as well as to individuals from outside Europe who would be considered refugees but for Turkey’s geographic limitation to the 1951 Convention.<sup>54</sup>

When assessing an application for international protection, the Turkish government primarily considers whether “the applicant has arrived from a safe third country.”<sup>55</sup> Much like the 1951 Convention, Turkey defines a safe third country as one where “the lives and freedoms of persons are not in danger on the basis of race, religion, nationality, membership to a particular social group or political opinion;” a safe third country must also “implement the principle of *non-refoulement*” and prevent the individual from “being subject to serious harm.”<sup>56</sup> Generally, an individual arriving from a home country or third country that is not safe will be eligible for international protection in Turkey, and may reside in the country as a recipient of international protection until he or she “can avail himself or herself of the protection of the country of his or her nationality, because the circumstances in connection with which he or she has been granted a status have ceased to exist.”<sup>57</sup>

Refugees and applicants for international protection may apply for a “work permit six months after [submitting their] application for international protection.”<sup>58</sup> Once an individual receiving international protection has a work permit, he or she is permitted to work for any employer with the condition that access to the “labour market may be temporarily restricted” within market sectors, geographic areas, or professions “when it is required by the conditions of the labour market.”<sup>59</sup> Refugees and international protection recipients may work freely in Turkey, despite market restrictions, after “residing in Turkey for 3 years.”<sup>60</sup> If the

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the issuing of a residence permit.”).

<sup>52</sup> *Id.* art. 27(1). The law also allows that “a Letter of Confirmation for Exemption from [a] Work Permit . . . shall also substitute for a residence permit in Turkey.” *Id.*

<sup>53</sup> *Id.* art. 2(1).

<sup>54</sup> *See generally id.* arts. 61-64. Article 62(1) of the LFIP tracks the language of the 1951 Convention, providing international protection to those individuals who, “owing to well-founded fear of being persecuted for reasons of religion, nationality, membership of a particular social group or political opinion” cannot return home. *Id.* art. 62(1).

<sup>55</sup> *Id.* art. 74(1).

<sup>56</sup> *Id.* art. 74(2)(a)-(c).

<sup>57</sup> *Id.* art. 85(1)(d).

<sup>58</sup> *Id.* art. 89(4)(a).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

Turkish government had not decided to implement a temporary protection regime for Syrians, it is very likely that Syrians would have been eligible to receive international protection in Turkey. There is a strong likelihood that Syrians would be “subject to serious harm” if they were returned from Turkey to Syria, and Syrians are generally fleeing from Syria itself, rather than migrating from safe third countries. Accordingly, if the Turkish government had not determined that Syrians should receive temporary protection, they would have been able to work in Turkey lawfully, subject to market regulations based upon the availability of work in Turkey’s general economy.

### *B. Law on Work Permits of Foreigners*

Since 2003, the Law on Work Permits of Foreigners (“LWPF”) has regulated work permits for regular migrants into Turkey.<sup>61</sup> Foreigners in Turkey must pay a fee<sup>62</sup> to “acquire a work permit before starting work in Turkey.”<sup>63</sup> Such work permits are initially issued for one year, “taking into account the conditions prevailing in the business world, developments in the labor environment, [and] variations in . . . economic conditions.”<sup>64</sup>

After a foreigner’s year-long work permit expires, this permit “may be extended for three years for the same occupation.”<sup>65</sup> After the extended work permit expires, “the work permit may be extended [again] for three years for the same occupation,” and then again “for six years for the same occupation.”<sup>66</sup> This six-year extension is generally longer than necessary; once a foreigner has lived and worked in Turkey for eight uninterrupted years, he or she “may be issued [unrestricted] work permits with indefinite duration.”<sup>67</sup>

### *C. Applying the Law on Foreigners and International Protection and the Law on Work Permits and Foreigners to Temporary Protection*

If Turkey develops a more sophisticated temporary protection scheme for Syrians, it will be able to rely upon the framework that already exists in the

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<sup>61</sup> See Law on Work Permits of Foreigners, Law No. 4817 of March 6, 2003 (Turk.) [hereinafter LWPF].

<sup>62</sup> The law states that a one-year work permit costs “TRL 50.000.000,” *Id.* art. 34(1)(a), and a three-year work permit costs triple that amount. *Id.* art. (1)(b). However, these numbers are misleading, as the LWPF has not been amended to account for the 2005 change to the new *lira*; a work permit would cost approximately 50 TRL under the new currency.

<sup>63</sup> *Id.* art. 4.

<sup>64</sup> *Id.* art. 5.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* art. 6.

LFIP and LWPF. The LFIP allows international protection applicants to receive work permits in Turkey, but does not independently articulate a sophisticated employment scheme; the LWPF could fill this gap. It is important to note that the 1951 Convention requires states to “accord to refugees the same treatment as is accorded to aliens generally.”<sup>68</sup> If the 1951 Convention was binding on Turkey with regard to Syrian refugees, Turkey *would* be obligated to apply the LWPF to Syrians.

If the Turkish government develops temporary protection, it would be able to grant work permits to Syrians using the limitations set out in the LWPF to restrict certain sectors of the market pursuant to market conditions.<sup>69</sup> This would allow Turkey to maintain control over the labor market while providing Syrians with the ability to work legally. However, Turkey should be careful not to invoke the non-compete clause in the LWPF overly frequently, as “the freedom of any person to work using all his or her talents and human capital” is a freedom that is “likely to maximize the wealth of the nation if everyone can use their skills and knowledge.”<sup>70</sup> Work permits for Syrians could be further limited using provisions from the LFIP which require that an international recipient’s work permit expire when he or she is able to return home, or is resettled to a third country. Using this provision, Syrians’ work permits would expire when the Syrian conflict ends, eliminating the perceived threat that Syrians will not return home if they are granted work permits.<sup>71</sup>

Pursuant to this framework, Syrians living in areas within Turkey where jobs are relatively available, particularly in northern cities like Istanbul and Ankara, would have the legal ability to work in Turkey for the duration of the crisis in Syria. This system could have the added benefit of giving the Turkish government control over the location of Syrians within Turkey. Under the current temporary protection regime, Syrians live wherever they please within the country, a matter of concern for the government.<sup>72</sup> To some degree, Turkey has no choice but to provide this freedom, because

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<sup>68</sup> 1951 Convention, *supra* note 14, art. 7(1).

<sup>69</sup> See LFIP, art. 89(4).

<sup>70</sup> HUGH COLLINS, *EMPLOYMENT LAW* 153-54 (2d ed. 2010). While Turkey may “seek to interfere with th[e] freedom [for Syrians to work alongside Turks] in order to protect what they regard as their legitimate business interests,” Turkey should be careful not to overregulate this freedom, as this freedom could positively effect the economy. *Id.* at 154.

<sup>71</sup> While Turkey could also stipulate that Syrians’ work permits would expire in the event of third-country resettlement, that option is not currently presented because Syrians are largely ineligible for third-country resettlement from Turkey at this time.

<sup>72</sup> See *Turkish Deputy Prime Minister Concerned over Growing Syrian Refugee Population*, HURRIYET DAILY NEWS, Aug. 1, 2014, <http://www.hurriyetdailynews.com/turkish-deputy-pm-concerned-over-growing-syrian-refugee-population.aspx?pageID=238&nID=69872&NewsCatID=341>.

Syrians require freedom to travel where they may find aid from NGOs and private individuals. If Turkey granted work permits using the frameworks existing in the LWPF, Turkey could control the issuance of permits based upon need for specific occupations and the general economic health of specific regions. Additionally, the power to control the geographic area where work permits are issued gives Turkey the freedom to spread Syrians throughout the country, and shift Syrians away from overcrowded areas where resentment towards Syrians is escalating into violence.<sup>73</sup>

Additionally, developing temporary protection to allow Syrians the same access to work permits as other foreigners would not create any additional obligations for the Turkish government. The government is free to limit possible competition against Turks for their jobs, and is not obligating itself to *provide* jobs for the Syrians.

#### *D. Effects of the Inability to Work under the Temporary Protection Regime*

Analysts have observed that “the use of illegal migrant labour is rapidly increasing in Turkey,” particularly in “[d]omestic work” and “construction and agriculture.”<sup>74</sup> Employers seem undeterred by the heavy fines they may face for employing individuals without work permits.<sup>75</sup> It seems extraordinarily likely that the rise in illegal labor in Turkey is tied to the length of the conflict in Syria, the increasing wait to be admitted to the refugee camps, and the rising desperation of Syrians, who have exhausted their savings, are increasingly unable to meet their families’ basic needs, and may not be receiving any assistance from NGOs or the Turkish government.<sup>76</sup> This raises humanitarian issues with regards to human trafficking and exploitation of workers who are willing to work below the minimum wage.<sup>77</sup> This has also substantially increased competition within the unskilled labor pool, driving out Turkish workers who were working for

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<sup>73</sup> See Professor Lenore Martin, Address at The Syrian Refugee Crisis and the Contiguous States (Jan. 31, 2014) (transcript on file with author); see also Louise Klann, ed., *The Syrian Refugee Crisis and the Contiguous States: Workshop Report*, BOSTON UNIV. INST. FOR IRAQI STUDIES (Jan. 31, 2014), <http://www.bu.edu/iis/files/2014/05/8a-15May-January-31-Workshop-Final-.pdf>.

<sup>74</sup> İÇDUYGU ET AL., *supra* note 12, at 2.

<sup>75</sup> LWPF, art. 21.

<sup>76</sup> See, e.g., Arslan Ayan, *Syrian Refugees on Brink of Starvation despite Charity Help*, TODAY’S ZAMAN, Aug. 2, 2014, [http://www.todayszaman.com/anasayfa\\_syrian-refugees-on-brink-of-starvation-despite-charity-help\\_354350.html](http://www.todayszaman.com/anasayfa_syrian-refugees-on-brink-of-starvation-despite-charity-help_354350.html).

<sup>77</sup> See Thomas Seibert, *Syrian Refugees Face Backlash in Turkey*, NATIONAL, Aug. 3, 2014, <http://www.thenational.ae/world/turkey/syrian-refugees-face-backlash-in-turkey>; see also Menekse Tokyay, *Rights Advocates Stand by Syrian Refugees in Turkey*, SES TÜRKİYE (Aug. 13, 2014), [http://turkey.setimes.com/en\\_GB/articles/ses/articles/features/departments/world/2014/08/13/feature-01](http://turkey.setimes.com/en_GB/articles/ses/articles/features/departments/world/2014/08/13/feature-01).

minimum wage and replacing them with refugees who are willing to work for less than minimum wage.<sup>78</sup>

These problems could be alleviated to some degree if temporary protection is developed to incorporate the legal frameworks set out in the LWPF and the laws regarding international protection. Syrians are arriving in Turkey with a wide array of skills and needs; if permitted to work legally, they would spread their skills across the market, removing the extreme competition for low-wage jobs. Additionally, giving Syrians the right to work may stimulate the Turkish economy; Syrians with money would be able to enter the market as consumers, and not merely as aid recipients.

### III. INTERNATIONAL LEGAL FRAMEWORKS

While human rights-based approaches are generally controversial, making a rights-based argument in favor of amending Turkey's laws in this context is especially difficult. Turkey's only real international obligation to Syrians is to respect the principle of *non-refoulement*, and Turkey is generally meeting this obligation. Nonetheless, a human-rights based approach would benefit both Syrians and Turkey. Syrians have few political rights in Turkey, and are in an extraordinarily vulnerable position due to their lack of political power. Accordingly, Turkey has an independent responsibility to amend its legal framework based upon human rights principles to allow Syrians to live dignified lives while awaiting return to their country.<sup>79</sup>

In the course of these arguments, it is important to keep in mind that protecting human rights is closely intertwined with human dignity.<sup>80</sup> This must be recognized when addressing a large-scale issue such as the Syrian

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<sup>78</sup> Hurşit Güneş, *Offering Syrians Work Permits Increase Locals' Anger Toward Refugees*, TODAY'S ZAMAN, Aug. 12, 2014, [http://www.todayszaman.com/interviews\\_offering-syrians-work-permits-increase-locals-anger-toward-refugees\\_355286.html](http://www.todayszaman.com/interviews_offering-syrians-work-permits-increase-locals-anger-toward-refugees_355286.html).

<sup>79</sup> See, e.g., Philip Alston, *Economic and Social Rights*, 26 STUD. TRANSNAT'L LEGAL POL'Y 137, 142 (1994) (arguing that an entire group of individuals cannot be deprived of rights merely because the group is comprised of non-citizens and does not have access to political power). "The proposition that economic, social and cultural rights are to be accepted and promoted as rights cannot reasonably be contested, even if some of its proponents tend to express their views in inflexible or uncompromising terms." *Id.*; see also Itamar Mann, Note, *Dialectic of Transnationalism: Unauthorized Migration and Human Rights, 1993-2013*, 54 HARV. INT'L L.J. 315, 325 (2013) ("[T]he command of such rights is never thought to depend upon citizenship or physical location, let alone other more invidious distinctions between human beings.").

<sup>80</sup> See Mann, *supra* note 79, at 324 ("In the legal consciousness that does hold that human rights rules are morally binding, they flow from a demand to protect human dignity.").

refugee crisis. In such a situation, charity—such as the provision of food, shelter, water, and healthcare in refugee camps—is certainly a first and generous approach to the problem. However, as the conflict in Syria enters its fourth year, “[m]ere charity is not enough from a human rights perspective,” and assistance policies should be “anchored in a system of rights and corresponding obligations established by international law.”<sup>81</sup> This will effectively address concerns about “human dignity and freedom.”<sup>82</sup>

Arguably, providing “subsistence alone,” as Turkey has done thus far, “offers too minimal a conception of economic and social rights.”<sup>83</sup> The idea of subsistence “generally gives too little attention to people’s ability to be active participants and contributors. It covers the requirements of having a life, but neglects the conditions of being able to lead one’s life.”<sup>84</sup> Providing Syrian refugees with a framework that allows them to work legally addresses this idea, and provides dignity by “evok[ing] the individual’s claim to be treated with respect and to have one’s intrinsic worth recognized.”<sup>85</sup>

Turkey has signed and ratified various human rights treaties; this note will argue that in recognizing these rights, Turkey has an obligation to provide a legal *means* to realize these rights. This avoids the controversial question about who “should be responsible for such protections—or pay their costs.”<sup>86</sup> By amending its labor and temporary protection laws,

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<sup>81</sup> OFFICE OF THE U.N. HIGH COMMISSIONER FOR HUMAN RIGHTS, FREQUENTLY ASKED QUESTIONS ON A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION 15 (2006).

<sup>82</sup> Sakiko Fukuda-Parr, *Human Rights and Human Development, in 2 ARGUMENTS FOR A BETTER WORLD: ESSAYS IN HONOR OF AMARTYA SEN* 76, 80 (Kaushik Basu & Ravi Kanbur eds., 2009). Fakuda-Parr’s work rests on a slightly different foundation than my own: one of his central arguments is that education is a necessary tool in enabling people to utilize institutions, such as the judiciary, to activate their human rights. While this is not applicable to the argument in this note, Fakuda-Parr’s views on human rights are valuable and worth inclusion. *See, e.g., id.* (“International human rights norms and standards should be applied in the development process, and governments are accountable for their obligations arising from their commitment to international laws to which they are signatories.”).

<sup>83</sup> James W. Nickel, *Poverty and Rights*, 55 PHIL. Q. 385, 386-87 (2005).

<sup>84</sup> *Id.* at 387 (“[E]conomic and social rights, like other human rights, are concerned with the conditions of having a minimally good life.”).

<sup>85</sup> KATHERINE G. YOUNG, CONSTITUTING ECONOMIC AND SOCIAL RIGHTS 42 (2012) (continuing that this recognition of intrinsic self-worth “has origins in Christian natural law, Kantian philosophy, and more existential theories of personal autonomy and self-determination”).

<sup>86</sup> Mann, *supra* note 79, at 325. While Mann and others argue that “some rights are defined in positive law precisely by the idea that one must not take into account the social costs of protecting them,” *id.*, I do not think that this argument would succeed in this context.

Turkey does not guarantee that Syrians will be provided with jobs, nor does it force any employer to hire Syrians. Merely guaranteeing Syrians the legal ability to participate in the labor market provides Syrians the potential to give substance to these rights, limiting the likelihood that they will lose crucial aspects of their dignity simply because they made the difficult choice to flee home.

#### *A. Applicable International Instruments*

Turkey recognizes the Universal Declaration on Human Rights (“UDHR”), which strove to create a world in which “human beings shall enjoy freedom of speech and belief and freedom from fear and want.”<sup>87</sup> Turkey also ratified the International Covenant on Economic, Social and Cultural Rights (“ICESCR”)<sup>88</sup> without reservation in any relevant part,<sup>89</sup> agreeing to national obligations that are necessary for persons to realize the goals of the UDHR.<sup>90</sup> Both the UDHR and the ICESCR “recognize ‘that the[] rights’” they promulgate “‘derive from the inherent dignity of the human person.’”<sup>91</sup> The following section introduces the relevant portions of the UDHR and the ICESCR, and explores the nature of the right to work within the broader framework of human rights norms.

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Providing citizens with the *right* to work (and incurring the positive obligation to provide jobs and wages when this right is not realized in the open market) is costly and may not be sustainable in Turkey. In grappling with the question of rights provision, I believe a policy of legal means (rather than legal rights) realizes a more possible solution to “the most perplexing aspects of human rights law . . . the attempt to define [moments when one has no choice but to act according to absolute imperatives] by legal rules and doctrine.” *Id.*

<sup>87</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 71 (Dec. 10, 1948) [hereinafter UDHR]. For Turkey’s public recognition of the UDHR, see Ministry of Foreign Affairs, *Universal Declaration of Human Rights*, REPUBLIC OF TURK. MINISTRY OF FOREIGN AFFAIRS, <http://www.mfa.gov.tr/universal-declaration-of-human-rights.en.mfa> (last visited Oct. 5, 2014); *see also* Kjaerum, *supra* note 17, at 451.

<sup>88</sup> International Covenant on Economic, Social and Cultural Rights, Aug. 15, 2000, 993 U.N.T.S. 3 [hereinafter ICESCR].

<sup>89</sup> *See* Reservations and Declarations on the International Covenant on Economic, Social and Cultural Rights, Aug. 15, 2000, 993 U.N.T.S. 3; *see also* *International Covenant on Economic, Social and Cultural Rights*, REPUBLIC OF TURK. MINISTRY OF FOREIGN AFFAIRS, <http://www.mfa.gov.tr/international-covenant-on-economic-social-and-cultural-rights.en.mfa> (last visited Oct. 5, 2014).

<sup>90</sup> *See* Kjaerum, *supra* note 17, at 451 (explaining that the ICESCR is necessary to give effect to the UDHR, whose goals “‘can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights’”).

<sup>91</sup> *Id.*



### 1. The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was written in the aftermath of World War II, born from a desire to prevent a terrible recurrence of world war.<sup>92</sup> The UDHR recognizes four freedoms: “freedom of speech and belief and freedom from fear and want,” which were first publically expressed by President Franklin Delano Roosevelt in his 1941 State of the Union Address.<sup>93</sup> In his State of the Union Address, President Roosevelt explained that the freedom from want meant “economic understandings” that “secure to every nation a healthy peacetime life for its inhabitants.”<sup>94</sup> The UDHR recognizes that the four freedoms are rooted in the “inherent dignity and . . . equal and inalienable rights of all members of the human family,” and contemplates an international obligation to protect these rights.<sup>95</sup> The UDHR delineates certain dignities associated with the four freedoms; this list includes the ability to obtain “a standard of living adequate of the health and well-being of [one]self and of [one’s] family, including food, clothing, housing and medical care.”<sup>96</sup> Amending Turkey’s temporary protection framework to provide the right to work would give Syrians in Turkey the opportunity to realize this fundamental dignity.

### 2. The International Covenant on Economic, Social and Cultural Rights

The United Nations adopted the International Covenant on Economic, Social and Cultural Rights in 1966, effectively “updat[ing] and extend[ing] the [UDHR] and commit[ting] the rights to treaty form.”<sup>97</sup> While there is much international debate as to how best to realize the rights contained in the ICESCR, the treaty is recognized as a crucial commitment by “the international community as a whole . . . to the realization of those rights.”<sup>98</sup>

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<sup>92</sup> See, e.g., RALPH G. STEINHARDT, PAUL L. HOFFMAN & CHRISTOPHER N. CAMPONOVO, INTERNATIONAL HUMAN RIGHTS LAWYERING: CASES AND MATERIALS 264 (2009) (“The widespread devastation and abuses of World War II . . . led the international community—the survivors—to recognize a two-way connection between international peace and security on one hand and respect for human rights on the other.”).

<sup>93</sup> UDHR, *supra* note 87; see also Franklin Delano Roosevelt, Annual Message to Congress (State of the Union Address) (Jan. 6, 1941), available at <http://www.gutenberg.org/cache/epub/5038/pg5038.html> (“In the future days which we seek to make secure, we look forward to a world founded upon four essential human freedoms.”).

<sup>94</sup> Roosevelt, *supra* note 93.

<sup>95</sup> UDHR, *supra* note 87.

<sup>96</sup> *Id.* art. 25(1).

<sup>97</sup> YOUNG, *supra* note 85, at 18.

<sup>98</sup> Alston, *supra* note 79, at 153-54 (explaining that, while “there is . . . enormous room for debate as to the best policies for achieving the desired objectives . . . the objectives themselves are not open to refutation on economic rationalist or other grounds”). Philip Alston discusses economic and social rights within an American context, particularly

Many countries have not ratified the ICESCR, and Turkey's recognition of the rights set out in the treaty is significant. This note focuses on a single right in the ICESCR: "the right" of everyone "to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts" is a human right.<sup>99</sup> The ICESCR safeguards the individual's ability "[t]o provide for oneself and one's family financially through employment," and recognizes that this right "meets a crucial human need for the preservation of human dignity."<sup>100</sup> This right gives meaning to the UDHR's declaration that human beings have the right to freedom from want. Providing Syrians with the ability to work could allow Syrians to realize other rights and dignities set out in the UDHR and explained in the ICESCR, such as the right to adequate housing, food, and healthcare.<sup>101</sup>

### 3. Recognition of the Right to Work in the European Union

In developing its domestic legislation, Turkey should also look to significant European Union instruments, such as the European Social Charter, the Conventions from the International Labor Organization, and the Charter of Fundamental Rights of the European Union, all of which recognize the right to work. These instruments "set an agenda for employment law," and "strengthen . . . calls for legislation or alternative regulatory techniques."<sup>102</sup> Turkey would do well to be part of the movement "to ossify" these rights "into new binding legislation."<sup>103</sup> Such action to remove barriers to economic opportunity would dramatically change the human rights situation in Turkey, and allow Syrians to transition from passive aid recipients and desperate aid-seekers towards self-

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exploring the United States' aversion to ratifying the ICESCR. Such an action would represent a commitment to economic and social rights. Although Alston's article is written in an American context; his arguments are nevertheless applicable to Turkey, where Syrians cannot access the rights provided in the ICESCR.

<sup>99</sup> ICESCR, *supra* note 88, art. 6. Article 7 further elaborates upon this right:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind . . . (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment.

<sup>100</sup> Kjaerum, *supra* note 17, at 453 (explaining that "[i]t is through work that a human being . . . defines and develops his or her specific personality, gains an insight into the mechanisms of society and thus also learns how to participate fully in the life of the nation").

<sup>101</sup> See ICESCR, *supra* note 88, arts. 11-12.

<sup>102</sup> See COLLINS, *supra* note 70, at 236, 239. ("[T]hese declarations of social rights can have a significant impact on employment law.").

<sup>103</sup> *Id.*

sufficiency.

### *B. Enforceability and Turkey's Protective Role*

Despite Turkey's recognition of the right to work, refugees have no means to enforce or realize this right.<sup>104</sup> The UDHR is not binding, and the ICESCR does not provide for an individual cause of action.<sup>105</sup> Even Turkish citizens have no independent legal recourse if Turkey violates their economic and social rights; compliance monitoring occurs only through state reporting mechanisms.<sup>106</sup> Even if a state were to raise a claim against Turkey, the ICESCR's language is not as forceful as the text of other human rights treaties, and provides Turkey with excuses for noncompliance.<sup>107</sup> The ICESCR's permissive language sets the goal of "achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."<sup>108</sup> The concept of "progressive realization" is not further defined by a specific time frame within which a signatory state must fully realize the rights in the ICESCR.<sup>109</sup> Additionally,

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<sup>104</sup> See *id.* at 235 ("[D]eclarations of social rights are not directly legally enforceable by individuals."). If Turkey does not provide refugees with a right to work, Syrian refugees have little recourse to any system of enforcement. Syrians do not have a legal cause of action in Turkey, or any real access to the judiciary. See also Fukuda-Parr, *supra* note 82, at 88 ("One critique of [a human rights-based approach to development] is that the legal instruments are ineffective, and thus irrelevant, in developing country contexts."). This situation is particularly complicated in situations like that of Syrians in Turkey, where neither domestic nor international law creates a binding and enforceable legal obligation.

<sup>105</sup> See ICESCR, *supra* note 88, arts. 16-25, which describe the ICESCR's general reporting mechanisms.

<sup>106</sup> The Optional Protocol to the ICESCR allows for an inter-state complaint mechanism. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights art. 10, G.A. Res. 63/117, U.N. Doc. A/RES/63/117 (Dec. 10, 2008). However, Turkey is not a party to the Optional Protocol. See U.N. Treaty Collection, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Oct. 4, 2014), [https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-3-a&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-3-a&chapter=4&lang=en).

<sup>107</sup> See YOUNG, *supra* note 85, at 104 (expressing concern that nations who have ratified the ICESCR are not *obligated* to provide the rights contained in the ICESCR). Language such as "reasonable limitation . . . allows the state to justify a departure from particular constitutional rights" and allows "rights [to] be limited, by law, where their limitation is defended on reasonable and justifiable grounds." *Id.*

<sup>108</sup> ICESCR, *supra* note 88, art. 2(1); see YOUNG, *supra* note 85, at 101 (noting concern that "[p]rogressive realization . . . introduces a relative standard for the discharging of duties owed by the state").

<sup>109</sup> See YOUNG, *supra* note 85, at 107 (noting an additional complication particularly applicable to Syria, that "[w]hen severe military, economic, or political disturbances occur" countries "may provide for the suspension of, or derogation from, particular rights in order to

the ICESCR allows “[d]eveloping countries, with due regard to human rights and their national economy,” to “determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.”<sup>110</sup> Turkey is by no means a developing nation; nevertheless, it could argue that it has already expended such resources to build refugee camps, provide food, clothing, medical care, and shelter, and otherwise meet its humanitarian obligations to Syrian refugees that it has no further obligation to provide Syrians with economic and social rights. Accordingly, Turkey’s international treaty obligations do not create significant pressure to develop temporary protection to provide Syrians with the right to work. Nevertheless, Turkey should look to the rights that it has recognized through the UDHR and the ICESCR to drive the development of its employment and migration law and regulation.<sup>111</sup>

#### IV. ECONOMIC AND POLITICAL CONCERNS

Legislative reform in Turkey cannot be considered solely in the vacuum of rights. The criticism that rights activists pursue a single, specific right “without regard to its consequences”<sup>112</sup> was considered heavily in the process of writing this note. Giving Syrians the legal right to work could impact Turkey’s economy, regional stability, and Turkey’s efforts to accede to the European Union. These concerns will each be addressed in turn.

##### A. *Economic Concerns*

###### 1. Economic Policy Informed by Rights

Amartya Sen, a Nobel Prize winner in economics, has written extensively about the idea of “development as freedom,” and “calls . . . for an expansive view of the idea of development as human freedom rather than simply economic growth.”<sup>113</sup> This sort of economic and political development “requires the removal of major sources of unfreedom: [including] poor economic opportunities [and] systematic social deprivation.”<sup>114</sup> Sen recognizes that in this schema, “employment is sought for various

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reestablish stability”).

<sup>110</sup> ICESCR, *supra* note 88, art. 2(3).

<sup>111</sup> See COLLINS, *supra* note 70, at 236.

<sup>112</sup> See, e.g., MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* (1991).

<sup>113</sup> Aksha Jalal, *Freedom and Equality: From Iqbal’s Philosophy to Sen’s Ethical Concerns*, in 2 *ARGUMENTS FOR A BETTER WORLD: ESSAYS IN HONOR OF AMARTYA SEN* 452, 454 (Kaushik Basu & Ravi Kanbur eds., 2009).

<sup>114</sup> AMARTYA SEN, *DEVELOPMENT AS FREEDOM* 3 (1999).

reasons—not just to receive an income.”<sup>115</sup> Rather, work is an avenue to “fulfillment,” which “is needed for all people to have minimally good lives.”<sup>116</sup> Accordingly, Turkey should consider potential economic impacts associated with expanding the right to work as broadly as possible. This approach could account for the notion that healthy economic policies may be measurable by “expan[sion of] the real freedoms that people enjoy” rather than “narrower views of development, such as . . . the gross national product, or . . . the rise in personal incomes.”<sup>117</sup>

Providing Syrians with the legal right to work will promote human dignity by giving Syrians an avenue for acceptance and recognition in their host communities.<sup>118</sup> Syrians have come to Turkey with tremendous skills and capabilities; providing them with the right to work may combat Turkish resentment by “increasing acceptance of the refugees who . . . bring some benefits with them,”<sup>119</sup> resulting in “social inclusion and personal fulfillment.”<sup>120</sup> Contributions to host communities and subsequent community acceptance can also address other fundamental issues that refugees face.<sup>121</sup> In addition to physical needs, “the ongoing poverty and humiliation hurt [Syrians] emotionally.”<sup>122</sup> This poverty and humiliation can be combatted through the provision of a legal means of sustenance, such that Syrians and Turks can work together through the crisis.

## 2. Legal Opportunities, Contrasted with Legal Rights

This note does not argue that Turkey should grant Syrians (or its own citizens) a legal *right* to employment.<sup>123</sup> This would place an unnecessarily

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<sup>115</sup> *Id.* at 130. Amartya Sen recognizes that work provides more to workers than the mere ability to provide for oneself and one’s family. Sen addresses this value through a discussion of unemployment insurance, arguing that such insurance does *not* disincentivise work and lead to reduced employment, because people work for reasons beyond meeting material needs. *See id.*

<sup>116</sup> Nickel, *supra* note 83, at 388.

<sup>117</sup> SEN, *supra* note 114, at 3.

<sup>118</sup> *See id.* at 21 (“Among its manifold effects, unemployment contributes to the ‘social exclusion’ of some groups, and it leads to losses of self-reliance, self-confidence and psychological and physical health.”).

<sup>119</sup> Thorburn, *supra* note 31, at 468.

<sup>120</sup> COLLINS, *supra* note 70, at 253.

<sup>121</sup> *See* MacKenzie, *supra* note 9, at 9.

<sup>122</sup> *Id.* (quoting Richard Mollica, Director of the Program in Refugee Trauma at Harvard Medical School).

<sup>123</sup> Italy made the right to work a constitutional right, and the efforts have been largely unenforceable in light of the economic crisis in the European Union. *See, e.g.*, Arts. 4, 36, 37 Costituzione [Cost.] (It.); *see also* Alston, *supra* note 79, at 143 (arguing that allowing citizens to achieve dignity through work “was best achieved by [a system that] unleash[es] the talents of individuals, rather than through a commitment on the part of the State to

large burden on Turkey, as its obligation to care for refugees would only be substituted for another obligation.<sup>124</sup> As economists better suited to addressing this task have pointed out, “[i]n a market economy . . . a government . . . cannot guarantee a job for everyone. Nevertheless, a government can outlaw unjustifiable discrimination and it can assist job seekers to find work.”<sup>125</sup> From a human rights perspective, a “minimalist approach” allowing Turkish employers to hire Syrians, where the jobs exist, sufficiently protects Syrians’ economic and social rights.<sup>126</sup> Because amending Turkey’s legislation or developing regulations to allow Syrians to legally work does not obligate Turkey to *provide* work to Syrians, the “negative” effects associated with providing this right would be quite limited. This is particularly true considering that the government could reserve the right to monitor and regulate the competition Syrians may create in the labor market.

### 3. Reducing the Continuing Costs of Aid

Syrians have faced rising resentment from the Turkish people as Turkish tax dollars continue to fund aid. Although “Turkey is better financially equipped than Jordan and Lebanon to house and feed” Syrian refugees, the current level of aid provision simply “cannot be sustained indefinitely.”<sup>127</sup> Syrians living in camps are dependent upon the Turkish government for daily provision of aid and shelter.<sup>128</sup> They pose a daily financial burden on the Turkish government without offsetting those costs.<sup>129</sup> While economic and social rights are often neglected *because* “an economic calculus . . . culminate[s] in various economically compelling reasons as to why such rights [as the right to work] simply *cannot* be recognized,”<sup>130</sup> it is likely that granting Syrians the right to work would reduce the costs of aid provision.

Allowing Syrians legal access to the labor market should slowly lift an economic burden off the Turkish government, which has already borne a

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promote the realization of any such ‘rights’”).

<sup>124</sup> For a very thoughtful discussion on the effectiveness of constituting social and economic rights, see GLENDON, *supra* note 112.

<sup>125</sup> COLLINS, *supra* note 70, at 253-54.

<sup>126</sup> YOUNG, *supra* note 85, at 66 (quoting HENRY SHUE, *BASIC RIGHTS: SUBSISTENCE, AFFLUENCE AND U.S. FOREIGN POLICY* xi (2d ed. 1996)) (“A minimalist focus applied to [economic and social] rights asks: what is ‘the least that every person can demand and the least that every person, every government, and every corporation must be made to do,’ given present-day constraints?”).

<sup>127</sup> Briefing Paper, Christopher Phillips, *Into the Quagmire: Turkey’s Frustrated Syria Policy* 9 (Dec. 1, 2012), <http://www.chathamhouse.org/publications/papers/view/188137>.

<sup>128</sup> See McClelland, *supra* note 10.

<sup>129</sup> See *id.*

<sup>130</sup> Alston, *supra* note 79, at 153.

massive burden in providing for refugees' needs for food, shelter, and healthcare.<sup>131</sup> In other scenarios, creating "[a] viable system of economic and social rights" ultimately allows "most people to provide for themselves and their families through work."<sup>132</sup> Once individuals have the necessary opportunities to work, Syrians may be able to support themselves rather than relying on the Turkish government, and Turkey should not have "to supply the requisite [aid] in more than a small fraction of cases."<sup>133</sup>

#### 4. Effects of Expanding the Labor Market

The economics of allowing Syrians to work legally within Turkey must be considered. It is possible that an immediate influx of "thousands of refugees" could cause "disruption of the local labour market," creating "a destabilizing effect."<sup>134</sup> However, it is equally possible that allowing Syrians to work and have an income will create an opportunity for market expansion, strengthening the economy rather than weakening it. Economists have already noticed that in communities where "refugees [are] given money to buy food . . . , rather than being fed in camps, [refugees] have put \$120 million into host economies" in a single year.<sup>135</sup>

This legal addition to the labor market may also help reduce the number of Syrians who are working illegally. Turkish citizens who have traditionally worked minimum wage jobs have suffered greatly as a result of the influx of Syrian workers willing to work for far below the minimum wage.<sup>136</sup> Amending Turkey's temporary protection framework to allow Syrians to work legally would allow Syrians to integrate more evenly across market sectors, eliminate Turkish employers' current motivation to undercut wages, and would significantly reduce competition for low-wage jobs.<sup>137</sup>

<sup>131</sup> See Kirişci & Salooja, *supra* note 7.

<sup>132</sup> Nickel, *supra* note 83, at 398.

<sup>133</sup> *Id.*

<sup>134</sup> Kjaerum, *supra* note 17, at 453; see also MacKenzie, *supra* note 9, at 9 ("Competition for housing and jobs is driving prices up and wages down, causing hostility among locals already suffering from lost trade with Syria's collapsed economy.").

<sup>135</sup> MacKenzie, *supra* note 9, at 9 (referencing a program whereby "families get \$45 a month in 'e-food vouchers'—pre-paid debit cards they can use to buy the food they want, when they want it, in local shops").

<sup>136</sup> See Seibert, *supra* note 77.

<sup>137</sup> See YOUNG, *supra* note 85, at 44. Young affirms the notion that a more comprehensive approach to economic and social rights will provide dignity:

"[P]eople who are denied access to the basic social and economic rights are denied the opportunity to live their lives with a semblance of human dignity," and . . . "a social failure to value human dignity is at stake when individuals and groups experience deprivations of subsistence needs." Such a value goes beyond mere survival needs, by

### 5. Increasing the Potential for International Aid

Additionally, it is possible that Turkey could receive increased international aid to assist in job creation. The international community has, to date, been reluctant to provide monetary aid to Turkey.<sup>138</sup> However, migration and refugee experts have suggested that international aid may become more available if openly directed at public works-style job creation.<sup>139</sup> While this is an argument that warrants additional, independent research, it is important to note that creative options are available to address this issue. It is also possible that UNHCR could become involved in efforts to direct international aid toward job creation. Since its inception, UNHCR has changed its approaches to refugee situations to adapt to its ability to secure funding and to meet the needs of the refugee populations involved.<sup>140</sup> UNHCR might be able to help facilitate the provision of work opportunities if the government independently acted to legalize this right.

### B. Regional Stability

Providing Syrians with the right to work has the added benefit of contributing to long-term regional stability. Eventually, the war in Syria will end, and Syrians will begin to return to their home country.<sup>141</sup> When

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attending to the effect on dignity of various redistributive interventions or omissions.

*Id.* (quoting Sandra Liebenberg, *The Value of Human Dignity in Interpreting Socio-Economic Right*, 21 S. AFR. J. HUM. RTS. I. 18 (2005); Pierre de Vos, *Substantive Equality after Grootboom: The Emergence of Social and Economic Context as a Guiding Value in Equality Jurisprudence*, ACTA JURIDICA 52, 64 (2001)).

<sup>138</sup> See, e.g., Ragıp Soylu, *Turkey Seeks More Assistance for Syrian Refugees*, DAILY SABAH, May 22, 2014, <http://www.dailysabah.com/politics/2014/05/22/turkey-seeks-more-assistance-for-refugees>.

<sup>139</sup> See Philippe Fargues, Address at Harvard University's Center for Middle Eastern Studies, *The Syrian Refugee Crisis: How Best Can the World Respond?* (Feb. 28, 2014).

<sup>140</sup> ALEXANDER BETTS, GIL LOESCHER & JAMES MILNER, UNHCR: THE POLITICS AND PRACTICE OF REFUGEE PROTECTION 26-27 (2012). Since the 1950s, UNHCR's focus has shifted from providing emergency assistance and resettlement to Algerian refugees in the late 1950s and early 1960s to large-scale provision of humanitarian assistance by the mid-1970s, *id.* at 33; the establishment of refugee camps in the 1980s, *id.* at 39; repatriation in the 1990s, *id.* at 50-52; and to large-scale aid: "UNHCR expanded from an organization focused exclusively on protection and solutions for refugees into the UN's foremost humanitarian agency, thereby gaining a higher profile in international politics and securing more generous funding from Western powers for its operations." *Id.* at 58-59.

<sup>141</sup> Syrians generally want to return to Syria at the end of the conflict. See, e.g., Keith D. Watenpaugh, Adrienne L. Fricke & James R. King, *The War Follows Them: Syrian University Students and Scholars in Lebanon* 12 (June 2014), <http://www.iiie.org/Research-and-Publications/Publications-and-Reports/IIIE-Bookstore/The-War-Follows-Them-Syrian-University-Students-And-Scholars-In-Lebanon> ("[A] number of Syrian students we spoke with articulated a strong desire to return to Syria and help rebuild.").



Syrians return home, they will find “a country in need of reconstruction after a devastating war” with “an urgent need for knowledge and skills.”<sup>142</sup> Turkey’s current protection scheme for Syrians should ideally provide Syrians with the means “to rebuild their homes and lives and economy” when they return.<sup>143</sup> In other refugee situations, “[a] major contribution to the reconstruction and development of the country [was] educat[ing] and train[ing] refugees during their time of exile in various skills according to their future needs and the resources available in the country of asylum.”<sup>144</sup> Here, allowing Syrians to cultivate the skills they had developed before fleeing Syria would provide this opportunity in a cost-effective and efficient manner. Allowing Syrians to work would prevent them from losing their professional skills, enabling them to repair Syria when the war ends.<sup>145</sup> Maintaining Syrians’ skills will also prevent Syrians from becoming a further target for terrorist organizations like ISIS, which prey upon vulnerable and desperate populations.<sup>146</sup>

### C. EU Accession

While Turkey’s application for EU membership was rejected by the Luxembourg Exclusion in 1999, Turkey has continued to reform its laws in efforts to become an EU member state.<sup>147</sup> Turkey’s new Law on Foreigners and International Protection, discussed in Part II, reflects both Turkey’s effort to mirror EU policies and its willingness to make dramatic changes within its national policies to work towards EU accession.<sup>148</sup> It is therefore necessary to consider whether legislative reform will cause Turkey to become an unduly attractive nation for Syrian refugees. If Turkey’s policies towards refugees are *too* generous, Turkey runs the risk of becoming a “magnet” nation for refugees. This could stand in the way of Turkey’s accession to the EU, which has notably *not* established an open-

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<sup>142</sup> Kjaerum, *supra* note 17, at 455; *see also* Watenpugh & Fricke, *supra* note 2, at 1, 5 (“Syria faces the loss of a generation of university students” who will be extraordinarily important “to the rebuilding of Syrian society”). While providing the right to work does not necessarily provide students with new skills, it at least helps prevent Syrians from losing old skills.

<sup>143</sup> Thorburn, *supra* note 31, at 472.

<sup>144</sup> Kjaerum, *supra* note 17, at 455.

<sup>145</sup> Putra & Santoso, *supra* note 1, at 6. (“[E]nsuring domestic instability is hampered to all measures” when individuals are unable to work, and look instead to terrorist cells and other subversive organizations for assistance).

<sup>146</sup> *See id.*

<sup>147</sup> *See* Patrick R. Hugg, *The Republic of Turkey in Europe: Reconsidering the Luxembourg Exclusion*, 23 *FORDHAM INT’L L.J.* 606, 705 (2000).

<sup>148</sup> *See* İÇDUYGU ET AL., *supra* note 12, at 16 (“Turkey’s migration policy has changed considerably since the early 2000s in attempts to satisfy EU membership criteria.”).

border policy in the wake of any recent refugee crisis; if anything, the EU has made it more difficult for refugees to enter the EU.<sup>149</sup> Additionally, the European Union's recent Dublin III Convention establishes a framework for burden-sharing among EU member states, preventing nations of initial entry from hosting a large number of refugees without the help of other EU member states.<sup>150</sup> Under these frameworks, an increase in the number of refugees in Turkey would lead to an increased obligation on other EU member states to assist Turkey and host a portion of its refugees.<sup>151</sup>

While this concern is worth articulating, reforming the law governing temporary protective status for Syrians is unlikely to have a negative effect on Turkey's chances of becoming an EU member state. First, the EU arguably recognizes the right to work more strongly than any other collection of states in the world: The Council of Europe's 1950 Convention on Human Rights and 1961 Social Charter "proclaims . . . a right to work, a right to just conditions of work, a right to safe and healthy working conditions, [and] a right to fair remuneration."<sup>152</sup> Likewise, the right to work "can also be discovered in international Conventions of the [International Labor Organization] and the Charter of Fundamental Rights of the European Union 2000."<sup>153</sup> Additionally, allowing Syrians the right to work within Turkey does not create an obligation for Turkey to provide the same protection to refugee populations in subsequent crises. Rather, amending domestic legislation in this particular instance is a tailored response to the needs of refugees in this particular refugee crisis, protecting dignity while allowing Syrians to maintain the skills that they will need to rebuild their country. Finally, because Turkey is able to narrowly tailor this right, the right may be temporary. Turkey may structure its regulations in such a way that Syrians' legal right to work will expire once the crisis in Syria ends. This creates an incentive for Syrians to return to Syria at the end of the crisis, and prevents this action from having long-term effects on Turkey's ability to accede to the EU.<sup>154</sup>

#### CONCLUSION

The crisis in Syria does not show any indication of ending soon, and

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<sup>149</sup> See, e.g., Fargues, *supra* note 139.

<sup>150</sup> See Council Regulation 604/2013, 2013 O.J. (L 180) 31.

<sup>151</sup> See *id.*

<sup>152</sup> COLLINS, *supra* note 70, at 235.

<sup>153</sup> *Id.*

<sup>154</sup> It is important to remember that the focus of temporary protection schemes is the "speedy return as soon as the cause of flight has dissipated." Edwards, *supra* note 27, at 612. This means that Turkey can tailor its temporary protection scheme to prevent Syrians from "outstaying their welcome" in Turkey. *Id.*

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Turkey must develop creative means to address the livelihood issues that Syrian refugees face while waiting to return home. The most positive and efficient method to address these issues involves promulgating regulations within Turkey's temporary protection scheme to give Syrian refugees the legal right to work. The legal frameworks for regulating foreign workers already exist within Turkey's laws on Foreigners and International Protection and Work Permits of Foreigners. Turkey has already recognized the right to work as a human right worth protecting, as evidenced by its commitment to the UDHR and its ratification of the ICESCR. Finally, amending temporary protection to provide Syrians with the right to work may bring economic benefits alongside the potential to increase regional security once the conflict in Syria comes to a close. This "strategy . . . is philosophically coherent, morally defensible, politically saleable, and responsive to the needs . . . of" the Syrian people in Turkey.<sup>155</sup>

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<sup>155</sup> Alston, *supra* note 79, at 144.