Foreword

Welcome to the Autumn 2015 edition of the Stanford International Policy Review (Volume 2, Issue 2). Published out of The Ford Dorsey Program in International Policy Studies (IPS) at Stanford University, the Stanford International Policy Review (SIPR) is a biannual publication with a wide range of subjects pertaining to international policy debates. We welcome topics in political economy, security, energy, public health, democracy, and development policy. Our authors provide insights, commentary, and practical solutions to pressing global challenges from diverse academic backgrounds.

The theme of this edition is “The Levant in 2015: Security and Humanitarian Dimensions.” As the nature of armed conflict within and around Syria continues to change, addressing its humanitarian implications — and particularly the fate of refugees — has challenged policymakers in neighboring countries and well outside the region. Many of the pieces in this edition are focused on such dimensions.

The editorial board hopes you will enjoy the contributions, from examining the European refugee system to challenging contemporary distinctions of social class in Colombia. If you want to engage further with the authors or have questions and comments for the editorial board, please email us at stanfordipr@stanford.edu

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Proceed with Caution

Balancing the moral imperative of accepting refugees with undeniable practical concerns

By Yasuhito Uto

As the Syrian Civil War approaches its sixth year, countries outside the region are under ongoing pressure to accept more refugees and help mitigate the enormous humanitarian cost of this ongoing conflict. In response to the Syrian Civil War and other armed conflicts in the region, German Chancellor Angela Merkel demonstrated bold leadership in welcoming an estimated 1 million refugees to Germany from the Middle East in 2015.1 Chancellor Merkel’s initiative has galvanized leaders in other European countries and around the world to reexamine their own refugee policies. Unfortunately, there is a risk that important practical considerations will be overlooked in this global haste to do the right thing.

The refugee policy of a given state is arguably one of its most contentious portfolios. Given the humanitarian plight of refugees fleeing not only the Syrian Civil War but also other armed conflicts in the world, to refuse them would be inhumane. That said, every state that is committed to accepting and integrating refugees successfully must do so with limited resources in terms of money, time, and personnel. Balancing good intentions with these practical constraints is not always easy for public officials. While accepting refugees might be a moral imperative on humanitarian grounds, it is important that legitimate concerns about national security, economic welfare, and cultural integration in host countries not be overlooked.2

To begin with, public policies should ensure that incoming refugees will not compromise national security. The November 2015 terrorist attacks in Paris prompted a global panic that terrorists would be mistakenly allowed into host countries as refugees. While this panic may be overblown, countries cannot sacrifice sometimes time-consuming security screenings in their haste to welcome refugees. These screenings could unquestionably be made more efficient, but it is critical that they remain equally effective as Germany and other countries welcome more and more refugees.

The economic implications of welcoming refugees must also be considered by refugee policies. Accepting and integrating asylum seekers requires substantial upfront expenses for bureaucracy, housing, and social services such as health care. Refugee inflows change local economies—an increase in the local labor supply for both skilled and unskilled workers will change and can cause displacement in local labor markets. Of course, welcoming refugees may bring economic opportunities in the long run—but it is the job of public officials to prepare accordingly for the pains of adjustment in the short-term.

Finally, it is important to consider the cultural implications of welcoming large numbers of refugees and craft policies to reduce the possibility of cultural tensions or confrontation. Relative to diverse metropolitan areas, residents in small towns may resist change in the social fabric around them. It is the responsibility of policy-makers to lay appropriate groundwork at the community level—particularly among civil society organizations—to encourage social cohesion and integration.

In 2015, Germany and other countries responded to the moral imperative of accepting refugees from the Middle East and especially Syria. However, the success of their efforts depends on appropriate planning and delegation of resources well in advance of the refugees’ arrival. Each state must work to ensure that its national security, economic welfare, and social cohesion is not compromised in their haste to welcome refugees. This balance will look slightly different for each state as it responds to the flexibility of its own electorate. This challenge is also not specific to the Syrian Civil War, but will emerge from other armed conflicts too, now and in the future. While refugees—both current and future—should be welcomed, important practical concerns cannot be sacrificed in the process.

Joining Forces with a Rogue State
The Advantages and Disadvantages of US-Iranian Cooperation against ISIS

By Anna Blue

On March 10, the Iraqi Security Forces (ISF) began the final push to retake the city of Tikrit from the Islamic State, or ISIS. The Iraqi Army, considered by the United States to be underprepared and inadequately trained, put ISIS on the defensive as the Iraqi Army pushed to little more than a mile from the center of the city. If the success of the offensive took the US by surprise, then Washington was even more shaken by the organization fighting alongside the ISF: Iran’s Revolutionary Guard. Iran’s recent involvement in Iraq has raised red flags for many officials in the Pentagon and the White House who do not want to lose influence in Baghdad to a longtime enemy such as Iran. On the other hand, given that ISIS has proven difficult to defeat unilaterally, some brave policy experts have suggested that Iran is the lesser of two evils and that the US should consider cooperating with Tehran. There would be considerable costs and benefits of US cooperation with Iran; ultimately, however, forging a new partnership with Iran would pose too great a risk to US relations with the Middle East.

When the Sunni militants of ISIS first stormed Mosul, Iraq in June 2014, Shi’a Iran understood the grave threat to their own national security. ISIS considers Shiites infidels and aims to control an Islamic caliphate that stretches across the Middle East, including all of Iran’s current territory. The United States also recognizes the danger that ISIS poses; ISIS is threatening a Middle East that is already tumultuous and the group is attracting numerous foreign fighters that could return to their home countries to carry out acts of terrorism. Therefore, ISIS presents an urgent national security concern for both Iran and the US.

Since Iran and the US share a common enemy, supporters of US-Iranian relations would contend that there are potential gains from the two countries working together. President Obama has routinely stated that he will not re-deploy American troops in a combat role in Iraq. Yet, the Pentagon acknowledges that American surgical air strikes are insufficient to crush ISIS, which is operating underground in densely populated urban areas. The Iranians are willing to step in to provide arms, top military experts (such as Major General Qassim Sulaimani), and most importantly, ground forces. Indeed, the combination of American bombing and Iranian ground forces proved effective in breaking the ISIS siege of Amerli and freeing parts of Tikrit, creating hope for future positive collaborative efforts. Furthermore, Iran’s experienced leadership has united the Kurdish Peshmerga and the ISF, two traditionally antagonistic armies. The support of the Peshmerga is an important element that will secure the Northern border of Iraq and ensure that the Iraqi government is not distracted by Kurdish agitation for autonomy. Moreover, many of the Shiite militias ravaging Iraq only respond to Iranian leadership, so cooperation with Iran is essential to reigning in the abuses of some militias. It is important to consider long-term stability in Iraq. Cooperation between the US and Iran to train the ISF will offer more resources, preparing the ISF faster to take on ISIS on their own. Symbolic support from Iran and the US together, two of Iraq’s primary patrons, will better sustain a unity government in Iraq.

The historical relationship between Iran and Iraq points to another key reason that some have advocated for US cooperation with their long-time adversary. Iran is one of Iraq’s strongest allies, with a robust economic and religious connection, so Iran will inevitably take action in Iraq. Iran is willing to share risks with the Iraqi population, a strategy that will appeal to Baghdad’s government. If the US works together with Iran, Iraqi Prime Minister al-Abadi will not be forced to cater to the disparate interests of two different allies or choose a preferred ally. Finally, open communication between Iran and the US could foster a positive relationship that would bring Iran back into the good graces of the international community.
Despite these advantages to US cooperation with Iran, the benefits of this alliance do not outweigh the costs, especially considering the lack of trust between the US and Iran. Although the US-Iranian relationship has taken positive steps recently, especially after the nuclear deal, the history between the two countries is too tense to overcome with a partnership against ISIS. The Iranian and American relationship has been marred by a trade embargo, unilateral sanctions, and Iran’s strict anti-Western attitude since the 1979 Iranian Revolution. Iran’s regime is legitimized by its opposition to the United States; any collaboration would severely undercut the authority of the Ayatollah and President Rouhani among Iran’s leading clerics. The countries lack the good faith to conduct a coherent and coordinated military campaign together. The possibility of cooperation also begs important logistical questions, such as: What happens if the countries disagree on strategy? Who does Iraq listen to? Which country will make tactical decisions? In the worst case scenario, Iraq could evolve into a proxy war that pits the two countries against each other and ignores ISIS, allowing the terrorist organization to re-group or escape. What’s more, any teamwork between Iran and the US, two outside countries infringing on the sovereignty of another, could be construed by ISIS as imperialistic or power hungry.

Additionally, US support of Iran would leak into ongoing nuclear negotiations between the two countries, encouraging a currently relatively flexible Iranian delegation to fight harder on forcing concessions from the P5 + 1 (the members of the United Nations Security Council plus Germany). Concessions at the negotiations table could range from changes in the uranium enrichment cap to the allowance of enrichment for medical isotope purposes. Further, evidence of support of tyrannical Iran, a theocracy that sponsors state terrorism, would undermine the US commitment to free and democratic ideals. The Obama administration must be careful to avoid further polarizing domestic politics. Most Republicans are completely opposed to cooperation with Iran against ISIS; congressional opposition to funding or approving cooperation gives Obama very little flexibility. The presence of Admiral General Suleimani, who once directed a deadly campaign against American troops in Iraq, on the front lines is a huge sticking point for the American public and Congress. In addition to damaging White House relations with Congress and the American public, cooperation with Iran would destabilize and undermine fragile relations with the Middle East as discussed in the next section.

ISIS’ unique character poses an exceptional problem that challenges traditional American warfare and calls for an innovative solution.

The move towards cooperation with Iran will alienate traditional US allies and further divide the Iraqi population, possibly to the point of a sectarian civil war. Currently, Iranian Quds forces and Iran-sponsored Shiite militias make up more than two-thirds of the 30,000 forces that are trying to re-conquer Tikrit. Sunni powers, such as Saudi Arabia and the United Arab Emirates, are concerned that Iran is trying to increase its regional hegemony and “win” Iraq. If Iran can help Iraq defeat ISIS, especially by lending military aid when the United States would not, then Baghdad will be indebted to Tehran and willing to lend an open ear to Iranian influence. The Saudis’ newly crowned King Salman is already skeptical of the Obama administration’s nuclear negotiations with Iran and collaboration in Iraq could encourage the Saudis to increase oil prices to extreme rates as punishment, hurting the American economy. Turkey and Iran generally have good relations, but US endorsement of Iran’s partnership with the Kurdish rebels in Iraq would lead to a further cooling of already shaky relations with President Erdogan. US collaboration with Shiite Iran would also push the fearful Sunni populations in northern Iraq into ISIS’ open arms. A US-Iranian partnership could come across as sanctioning the violence perpetrated by Iran-sponsored Shiite militias against innocent Sunnis, strengthening ISIS’ appeal to Sunnis and reinforcing ISIS anti-Amer-
ican propaganda. The recent destruction of Saddam Hussein’s tomb, a consecrated site for many Sunnis, in the takeover of Tikrit is evidence of Iran’s disregard for the significance of the Sunni population in counterinsurgency warfare. It is increasingly clear that the United States’ delicate reputation in the Middle East cannot afford the consequences of partnering with Iran in the fight against ISIS.

In conclusion, cooperation with Iran in the fight against ISIS endangers US influence and stability in the Middle East. While it is true that Iran holds sway in Iraq, the country is too unpredictable to count as a reliable ally. Although Iran and the United States share a common enemy right now, it is highly likely that their mutual interests will diverge in the near future, leaving Washington without a back-up plan. ISIS is continuing to expand throughout Syria and Iraq at a rapid pace that has caught the urgent attention of the international community. ISIS’ unique character, which mixes terrorism, insurgency, and statehood, poses an exceptional problem that challenges traditional American warfare and calls for an innovative solution. There are viable alternatives to partnering with Iran, including an allied coalition of Middle East forces or an American troop surge. There is no perfect response to the evolving ISIS threat, but after the impact that the invasion in 2003 had on Iraq, the United States cannot turn its back on the country.

8. Ibid.
17. Ibid.
18. Ibid.
Recalibrating India’s Afghanistan Policy
The Case for Strategic Restraint

By Karthik Sivaram

India’s top priority is a stable Afghanistan that does not export terror. In this pursuit, New Delhi should support the Afghan government’s reconciliation process with the Taliban, even if that means ceding ground to Pakistan and China.

Even the fiercest critic of the current Indian government will have to concede that there has been a paradigm shift in India’s approach to foreign policy in the past year. The personal interest taken by Prime Minister Narendra Modi has injected a new energy into New Delhi’s relationships with other nations. From the landmark border agreement with Bangladesh to a more substantial partnership with the United States of America, Mr. Modi’s penchant for statesmanship has not been seen in a Prime Minister since Jawaharlal Nehru.

However the true test of Modi’s mettle will be New Delhi’s response to the challenge of Afghanistan. With the inevitable end of American presence, the stability of the past 10 years that has allowed India to engage prodigiously with Afghanistan is coming to an end. Further unlike Hamid Karzai, who was a dear and earnest friend of India, the newly elected president of Afghanistan Ashraf Ghani is far less enthusiastic about maintaining and building upon Kabul’s intimate relationship with New Delhi. Hence it comes as no surprise that Ghani chose to visit Rawalpindi (not Islamabad) and Beijing before his visit to New Delhi after assuming office. However, it must be acknowledged that this shift comes more from compulsion than choice. It is a product of the changing realities of the region.
In the past decade, the most formidable military force in history has tried and failed to vanquish the Taliban or stabilize Afghanistan. With America’s ever-reducing appetite to militarily prop-up the weak Afghanistan government, the stage is set for a prolonged civil war, at best, or a violent return to the Taliban regime, at worst. Washington has only recently realized its grave error in failing to nurture robust Afghan institutions that can hold the country together without American military presence. The Afghan army is so weak that it is not uncommon for its soldiers to desert while fighting the far more motivated Taliban. The fall of Kunduz, a strategically important northern city, to the Taliban in late September this year is illustrative of the same. This was the first take over of a major city by the Taliban since they lost power 14 years ago. Although the Afghan forces recaptured the city, it was achieved only with the help of American air support and ground forces. Thus, the only manner in which Ghani’s new regime can survive is by seeking a political settlement with the Taliban.

Even war weary Washington has had to acquiesce to this previously unacceptable proposition. Obama, on Ghani’s request, has agreed to delay the pace of America’s withdrawal and to lead from behind while focusing emphatically on building Afghan Army capacity, so that they may lead the charge against the Taliban. The explicit purpose of this policy is to force the Taliban to the negotiating table. There are three necessary, although not sufficient, conditions that the US will insist upon for a political settlement with the Taliban: the Taliban must lay down its arms, it must accept the constitution of Afghanistan, and, most importantly, sever all ties with Al Qaeda and Jihad. The latter is without doubt the most crucial strategic objective that it seeks to achieve.

For a while now the Taliban, too, has shown interest in talks. As early as June 2013 it opened an official political office in Qatar. In May this year, Taliban leaders met with Afghan officials and both sides expressed genuine interest to begin talks. The war has without doubt taken a toll on the Taliban. It has next to limited influence in large parts of Afghanistan; its presence is mostly limited to the south, close to the Pakistani border, where the war continues, and safe havens in Pakistan that are being bombarded by US drones. To its credit, the Taliban has publicly expressed that it has no desire to wage international Jihad. As long as foreign forces completely withdraw from Afghanistan, it has promised to neither attack other countries nor support terrorist organizations that seek to do so. However, it has promised to officially renounce the Al Qaeda only after an agreement has been reached. It fully understands that this will be a crucial gambit in securing for itself a favorable position in the future political reconfiguration of the Afghan state. There are plenty of reasons to believe that talks will not succeed, not the least being the insincerity of the Taliban as a whole. Indeed, it is futile to think of the Taliban as a single entity; it is torn across factional lines, many of which cannot fathom the idea of giving up on the war. Nonetheless, there is one reason to believe this may be the most opportune moment yet for a negotiated settlement – Pakistan’s newfound enthusiasm for the same.

A comprehensive understanding of the Afghanistan problem is impossible without fully appreciating the role of Pakistan. Ever since its birth in 1947, Pakistan has viewed Afghanistan as critical to its strategic interests in the region and has, therefore, diligently meddled with its politics. Indeed, it was America’s crucial ally in the fight against the communist regime in Afghanistan throughout the 1980s. The Mujahedeen used to rout the Soviets were created by Pakistan and financed by the US; today we know of these Mujahedeen as the primogenitors of the Taliban. A quarter of a century later, America once again looked to Pakistan when it decided to invade Afghanistan after the Taliban regime refused to handover Osama Bin Laden after 9/11. American presence in Afghanistan has been completely dependent on the logistical support provided by supply routes through Pakistan. Since 2002 Pakistan, especially the army, has received almost $30 billion in military and economic aid from America. To put it simply, Pakistani Generals have reaped great profits out of America’s prolonged war in Afghanistan and see its continuation in their interests. Here in lies the most tragic miscalculation of Washington’s Af-Pak strategy; they’ve been blind to the cynical duplicity of the Pakistani Army.

The true test of Modi’s mettle will be New Delhi’s response to the challenge of Afghanistan.

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were responsible for cultivating jihadists, allow it to completely sever ties with the jihadists, as they were crucial to their India strategy. Thus, the army continued to provide safe havens to the Taliban within Pakistan, while they simultaneously claimed to be helping American forces eviscerate them from Afghanistan.

Washington realized the extent of their folly when it was discovered that Osama Bin Laden was housed, ostensibly by the ISI, mere kilometers from a major military academy in Pakistan. Such is the Army's obsession with India that it is beholden to jihadists even at the cost of severe damage to Pakistan; in the past few years it has, perhaps, been the worst affected by terrorism. These attacks have specifically targeted the Army for its part in the war against the Taliban. The most gruesome of these was the killing of 132 school children at the Army Public School in Peshawar, last December. The very next day, the Pakistani Army Chief, Raheel Sharif, rushed to Kabul to seek action against Taliban leaders suspected to be hiding at the border. It would seem that the fallout from this tragedy is such that it has at least decreased the Army's enthusiasm for supporting jihadist groups, if not categorically shift it.

Raheel Sharif's sudden visit to Kabul this February, suggests that the prospect of talks succeeding has never been better. Sharif told the then freshly sworn-in president Ghani that the Taliban was willing to begin official talks with the Afghanistan Government and that the Pakistani Army had categorically told the Taliban that it was unacceptable to carry on with the
terms of its relationship with the newly wrought Afghan state, it would be a mark of New Delhi’s hubris and myopia to see this as a zero-sum game. However, if for a moment, it were to set aside the apparent loss of prestige, it would become clear that its interests converge with Rawalpindi and Beijing in the two crucial areas that really matter.

First, New Delhi’s foremost security interest in Afghanistan is to stop it from becoming a source of terrorism. Since India doesn’t share a border with Afghanistan, other than to finger Pakistan from time to time, it has no other pressing security concern in Afghanistan. Therefore, as long as Rawalpindi and Beijing can provide reliable guarantees that Afghanistan will not be used to spread terror in India, New Delhi should have no qualms in having next to zero security presence in Afghanistan.

Second, India’s major interest in Afghanistan is decidedly economic. Afghanistan is rich in natural resources that an industrializing India craves. The still-to-mature Afghan market will provide consumers for Indian goods and services. For any of these to fructify, a stable Afghanistan is a must. It would be futile to think of China’s influence with the new Afghan government as harmful to Indian interests; in fact, their interests converge in the form of a stable Afghanistan, where the pie is big enough for both. Moreover, India has one crucial advantage over the Chinese (and for that matter also over Pakistanis) that no amount of influence or patronage can buy; the tremendous “soft power” that India wields in Afghanistan.

All of this poses a particularly difficult challenge for India’s Afghanistan policy. India has over the years spent close to $2 billion on Afghanistan, in aid and investment, to cultivate influence and goodwill. It is now faced with the distasteful prospect of ceding this ground to two of its rivals – Pakistan and China. However, New Delhi must acknowledge that a stable Afghanistan is no longer a haven for jihadists is its top priority. A negotiated settlement with the Taliban offers the best and, perhaps, the only chance for the same. In order for talks to succeed, New Delhi must allow its influence with the Afghan government to dwindle to the extent that the manically insecure Pakistani Army feels at ease. While it may seem that if talks succeed India could be reduced to playing second fiddle to Pakistan and China in
It is said that until a few years ago, it was impossible to telephone an Afghan at 8:30 pm in the evening. Indeed, religious functions and marriages would be interrupted at 8:30 pm, as the entire population gathered around a television to watch the latest tryst between Tulsi and her family on the Indian soap – *Kyunki Saas Bhi Kabhi Bahu Thi*. As a testament to the popularity of the show, the Mullahs duly demanded that it be banned lest it corrupt the pious temper of Afghan society. Nonetheless, the popularity of Indian cultural productions remains as high as ever. It is impossible to walk through the streets of Kabul and not notice dozens of Bollywood posters and even more hawkers peddling pirated copies of Bollywood movies. India is very popular among the Afghans; in a 2010 Gallup poll, 75% of Afghans said that they preferred India’s leadership to that of America and China. Thus, the links between Afghanistan and India are far too deep and profound for it to be severed by a less friendly Afghan government. New Delhi should take heart from this fact and fully lend its support to Kabul’s efforts towards a deal with the Taliban by practicing strategic restraint. First, New Delhi must accept that in order for the talks to be successful, they must be mediated by Pakistan and China; it must try its best to not interfere with the process and desist from any reactionary statements and actions even on provocation. Second, it should reassure Kabul that New Delhi is “ever-ready”, within its limitations, to provide help and support on Kabul’s terms.

In this manner, the Modi government can show that its foreign policy arsenal isn’t limited to vainglorious chest thumping, but instead has a mature appreciation for strategic thinking. Without a doubt, India’s long-term interests lie in a stable Afghanistan that is no longer a source for terror, even if that means an Afghan government dearer to Pakistan and China in the short term.
The Institutionalization of Social Class in Colombia

By Emma Kelsey

In the rest of the world there are social classes, but not strata. The strata in Colombia are very stigmatizing. It’s normal to hear that this or that person is of this or that stratum, as if this were normal. It rationalizes a system of castes, six immutable castes.

Roberto Lippi, UN Habitat

Rigid class distinctions have deep-rooted origins in Colombian society. A legacy of the Spanish colonial encomienda system, social class distinctions are interwoven with a history of racial and wealth inequalities resulting from extractive institutions that took advantage of the labor and assets of indigenous and African-descendant populations for the benefit of Spanish-descended elites. In this highly stratified system, peninsulares, or those born in Spain, occupied the top of the pyramid, followed by criollos, born in the Americas but of Spanish descent, mestizos, of mixed Spanish and Indian descent, those of Indian descent, and finally those of black African descent or mixed African and Indian descent, the zambos. This hierarchy has had lasting effects, with power and wealth generally distributed along the same lines today.

Partially a result of these 16th century economic institutions, Colombia remains one of the most unequal countries in the world. Inequality, also driven by poor educational quality, high unemployment, internal conflict, and a large informal sector, impedes economic growth, drives conflict and social tension, and undermines the legitimacy of policies and institutions. Historic policies have reinforced existing wealth divisions; a regressive income tax system favors wealthy citizens with a lower effective tax rate. Recently, the government of Colombia has acknowledged the importance of reducing poverty and inequality, though policy itself has been slower to change.

Like many countries in the region suffering from high inequality, Colombia has faced challenges in public service provision to a diverse set of citizens, particularly in cities, where wealth inequalities are especially high. In order to deliver public utility services to Colombian citizens at affordable rates, the Colombian government developed a mechanism to classify the population according to socioeconomic status. Most Latin American countries utilize such targeting mechanisms to subsidize public utility services, ensuring that all citizens have access, which generates positive externalities. Such targeting mechanisms may include cross subsidy schemes, consumption-based subsidies, and cash transfers, among others.

The targeting mechanism employed in Colombia is a numbering system that categorizes citizens into six distinct strata based upon the neighborhood they reside in. From 1, the lowest class, to 6, the highest, these designations were put in place in 1994 with a redistributive aim so that wealthier citizens would subsidize services for the poorest citizens. These laws mandate payment for public utilities according to the neighborhood’s stratum, with one to three being subsidized, four paying the marginal cost of services, and five and six subsidizing the lower strata. Since then, the strata have also been used to determine how much citizens pay in university fees, healthcare, and other services.

Nonetheless, while the classification system does make it easier for those located in lower strata to afford services, rather than redistributing wealth or ensuring adequate services for the poor, the system reinforces inequality and stigmatization of the poor and impedes social mobility. The deficiencies of the strata system are evidenced by a failure to accurately target needy
households, distortion of housing prices, and neglect of many households that should qualify for subsidized utilities.

The most problematic aspect of the classification system, perhaps, is not its failure to subsidize public services according to need, but rather its reinforcement of social stigma and inequality.

First, access to subsidies has little to do with income and is instead based on neighborhood location, neighborhood infrastructure, and type of building. In Bogotá, for example, lower strata tend to be concentrated in poorer neighborhoods to the south of the city, and higher strata in the north; however, strata do not directly correspond to income. Moreover, the broad income distribution of households in stratum three means that poorer and richer households within this distribution are not being targeted appropriately. People who need subsidized services may reside in higher strata neighborhoods, or there may be high-income people in lower strata.

Second, the largest effect of Bogotá’s subsidy system has been to distort housing prices, such that low-income households are forced to pay higher rent than they would otherwise. Rather than providing subsidies to the poor population of Bogotá, the subsidies are transferred to the prices of the houses that generate the subsidies. The Colombian government distributes roughly 0.7% of GDP in an attempt to subsidize public utility services for the poor, yet its ultimate effect is the distortion of housing prices.

Third, the subsidy system does not guarantee access to public services for lower income households. In Bogotá, in the poorest strata of 1 and 2, over 9,000 families in legal and illegal neighborhoods lack access to clean water. Certain neighborhoods remain disconnected from the city’s water supply, and many residents of these areas are unaware of the laws that should guarantee them access to such utilities at subsidized rates. Related is the problem of internal displacement in Colombia. As citizens, many farmers in rural areas, are forced off their land by internal war, they relocate to major cities such as Bogotá, where an estimated 60 families arrive daily, landing in informal neighborhoods on the outskirts of cities. These neighborhoods, some considered illegal, remain disconnected from city infrastructure, and the displaced, certainly some of the neediest residents of Bogotá, are denied access to services that they should be eligible for at a discounted rate. On the fringes of a relatively wealthy city, citizens in informal neighborhoods are forced to carry water from other neighborhoods for use in their homes.

In Bogotá today, 75% of people live in strata 1 through 3, and a total of about 9% of the population live in the highest strata of 5 and 6. The most problematic aspect of the classification system, perhaps, is not its failure to subsidize public services according to need, but rather its reinforcement of social stigma and inequality. Attempts to reduce segregation in Bogotá by introducing low-income housing in wealthier neighborhoods have been suspended since services in higher strata would be too expensive for low-income residents to afford. In this instance, the strata and subsidy system bolsters existing socioeconomic class divisions rather than reducing them. The strata system stigmatizes lower classes and increases segregation, social exclusion and fear within Colombian society. Not only neighborhoods, but also people themselves are labeled with their strata, with people referring to others by their strata numbers.

Rigid socio-economic class divisions have existed in Colombian society for centuries, but current policies, including the strata subsidy system, perpetuate social stratification. UN Habitat and the Bogotá government have discussed overhauling the system, basing subsidies on need and income rather than by neighborhood. One proposal recommended that additional
criteria be introduced to evaluate households within stratum three to determine their eligibility for subsidies. Better targeting may be a partial solution to the problem introduced by the strata system. However, targeting mechanisms such as the strata system have proven to be difficult to implement successfully. A more effective solution may involve wider-reaching reforms to overhaul Colombia’s regressive tax system. While the Colombian government has acknowledged the need to address poverty and inequality, its policies to date fail to incorporate the reforms needed to foster real change.

Colombia must focus on adopting policies that reduce the economic burden on the poor, as well as addressing the long-standing social tensions that divide its society. Overcoming rigid social stratification in Colombia will be a difficult task, but eliminating the official classification of neighborhoods and people by strata is a necessary starting point.

6. Ibid.
9. Ibid.
10. Ibid.
11. Ibid.
13. Ibid.

Civil War in Syria

The Legal Perspective with Allen Weiner

By Andreas Pavlou and Henry Ulmer

Prior to joining Stanford, Allen Weiner led a distinguished career with the US Department of State. He is the three-time recipient of the State Department Superior Honor Award following more than a decade of representing the US in the field of international litigation and negotiation. Weiner is the Director of the Stanford Program in International and Comparative Law and the Co-Director of the Stanford Center for International Conflict and Negotiation and is currently senior lecturer in law. His research encompasses a wide range of international legal elements such as conflict resolution, political transitions, and constitution-building.

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three autonomous enclaves in the north, culminating in the recapture of Kobane in January 2015.

What differentiates the Syrian conflict from other upheavals in the Arab Spring has been the extensive level of foreign intervention. Whether through financial, material, or military involvement, the actions of outside actors have only compounded the sectarian infighting within Syria. The United States, together with the UK, France, and several Gulf State allies, has begun bombing ISIL targets since August 8, 2014. Russia, on the other hand, has claimed to mainly target extremist groups, but has primarily targeted elements of the moderate opposition against Assad, since its campaign began on September 30, 2015. Iran has provided billions of dollars worth of credit, training, and intelligence in order to prop up Assad, while also contributing paramilitary forces to fight. In addition, Lebanon’s Hezbollah has assisted Assad’s forces in the southwest. Meanwhile, Turkey has used this chaos to target both ISIL and Kurdish forces fighting in the north.

The Legality of Intervention

Professor Weiner’s expertise in the intersection of international law and asymmetric armed conflict provides welcome insight into the labyrinthine dynamics of foreign intervention. What further complicates the chaotic nature of the multiple foreign interventions in Syria, says Weiner, is their heterogeneous legal standing. Iraq, as a sovereign nation, has the right to defend itself against insurgent groups spilling over the border from Syria. It “can also invite the assistance of outside states to help,” explains Weiner, “there’s very little doubt from an international law standpoint about the legality of the use of force against ISIL targets in Iraq—provided that that’s done with the consent of the Iraqi government.” In December 2015, Iraq discovered the presence of Turkish troops training Kurdish fighters north of Mosul. Following a brief diplomatic quarrel, the Iraqi government exercised its sovereignty and expelled the Turkish troops from Mosul.

The Syrian government similarly invoked the assistance of foreign powers, albeit only a select few. Although it has invited the aid of Russian, Iranian, and Hezbollah involvement, the Syrian government vehemently rejected the uncoordinated intervention of the US and its allies. During the first round of Syrian peace talks held in Vienna on October 30, Syrian foreign minister Walid al-Moallem denounced any intervention committed without the express consent of the Syrian government as an infringement of the UN Charter. Russian Foreign Minister Lavrov echoed his colleague’s disapproval. He argued that actions such as the American deployment of 50 special forces in northern Syria “need to be conducted in agreement with the government or with the UN Security Council.”

Unlike the requested Russian military strikes in Syria, or the authorized American strikes in Iraq, Weiner explains that the American case in Syria is more complicated, “because Syria has not consented to the use of force and here we deal with a basic tension that exists in international law.” The US intervention in Iraq has clear legal justification due to Iraq’s invocation of the authority to engage in self-defense against ISIL and its request for the US and the international community to assist it in doing so. However, the situation in Syria is murkier and the legal framework much more ambiguous. While the international air campaign against ISIL in Iraq is permissible given the consent of the Iraqi government, the campaign against ISIL in Syria is dubious as it lacks the approval of the Assad government. Notwithstanding the questionable status of the Syrian government, Professor Weiner notes that it still has the right to not have force used against it or in its territory unless responsibility for that non-state group can be attributed to it. Now, despite allegations of cooperation between Assad’s government and ISIL, the attribution of responsibility for ISIL to Assad would be excessive.
However, the United States has asserted that when the state hosting the non-state actor on its territory is unwilling or unable to take action against it, the defending state has the right to use force on the harboring state’s territory; this is the position that has been used to justify the American use of force against al-Qaeda affiliated groups in Somalia and Libya. Nothing, however, is so clear-cut, as Syria has invited the US to share intelligence and cooperate militarily against ISIL, but the US refuses to accept the Syrian overtures to avoid legitimizing the atrocity-sponsoring regime.

**Domestic Legal Responses**

Professor Weiner warns against the rather tenuous legal justification the US has invoked in the case of Syria, also emphasizing that something as important as war “ought to have a sound legal foundation.” However, the strained utilization of the Authorization for the Use of Military Force (AUMF), passed in the wake of the 9/11 attacks, has set a precarious precedent for US intervention abroad. While originally designed to authorize operations against those that committed or abetted the 9/11 attacks, it has been expanded to justify CIA drone strikes against Pakistani militants, extremist Yemeni-American preacher Anwar Al-Awlaki, and now the military bombing campaign in Syria. Despite the dubious application of the AUMF to these operations, which extended beyond the scope of retribution for 9/11, the original AUMF continues to form the basis of US counterterror operations.

This has effectively granted the US the legal authority to intervene against so-called terrorist groups without consulting its citizenry. Weiner urges that the process of declaring war should be a transparent one. Citizens must tackle difficult questions involving the reasons and costs of war prior to delving into a conflict, “Otherwise you run the classic risk of mission creep and war creep.” He believes citizens should ask what the goal of a war is, ask how much they are willing to pay for it, and what other costs they are prepared to bear. Going to war, he says, should be a solemn undertaking.

Following the November terrorist attacks in Paris, French President Hollande stated that France is in a state of war with ISIL, largely echoing the bellicose rhetoric of former President Bush. In the case of the US, Weiner says, heads of state have explicitly used the word “war” in order to give prominence to their cause. During the Johnson administration, the US had “a war on poverty,” whereas when Nixon was president we had a “war on crime” and a “war on drugs.” But these were metaphorical wars, ways of saying “boy we really all need to pull together really hard to try to address...”
Another difficulty inherent in the political transition process is the creation of a constitution that satisfies all the elements embroiled in the conflict while also avoiding the constitutionalization of sectarian interests. Although provisions guaranteeing a certain amount of political power for sectarian elements may be one way to assure support for the constitution, it would also ossify the constitution and leave the country vulnerable to future conflict and long-term political instability, according to Weiner. Instead, he emphasizes the need for a minimalist constitution that “leaves a lot open,” which would catalyze the organic development of politics along non-sectarian metrics; for instance, urban Sunnis and urban Alawites could form a coalition independent of their religious identity. Nonetheless, Weiner did emphasize the need for basic and non-sectarian constitutional safeguards against majoritarian domination and for the protection of civil liberties, which would encourage support for the constitution.

How the transition will unfold remains uncertain. The nebulous roadmap agreement put forth at the Vienna Talks still leaves major questions, such as Assad’s role in the transition, unclear. Having international powers such as Iran and Saudi Arabia sit at the same table has proven to be a difficult task in itself, much less reaching compromise on such key issues. Some states including Saudi Arabia have remained intransigent in their demand that Assad may play no role in the Syrian transition. Foreign minister al-Jubeir noted that “Bashar Assad has two solutions: leave through negotiations...or he will have to leave through fighting because the Syrian people refuse that this regime and person stays in power.” Iran’s Ayatollah Khamenei on the other hand has denounced foreign efforts to “dominate Syria” and insists upon upholding the status quo.

Meanwhile the US and Russia, both concerned by the rise of radical terrorism originating in the Levant, have begun consolidating their positions. Russia has expressed long-standing strategic support for Assad, in order to maintain influence in the Middle East and to attain Mediterranean naval bases. Nevertheless, Russia is beginning to come to terms with the political untenability of his continued rule. At first the US insisted on Assad’s immediate departure as a prerequisite to political transition, but now has signaled that it is more open to Assad having a role in the negotiations.

**Political Transition and Constitution Building**

Beyond resolving the current military conflict in Syria, the looming question of political transition has become the central concern among the international community. The divergent objectives of the groups in Syria, coupled with the discrepant strategic interests of international actors, would further exacerbate any nascent political transition. In the short term, Weiner envisions a ceasefire and recognition of the different de facto spheres of influence that have been carved out by the different groups. These groups, such as the Kurds in the northeast and the Alawites along the Mediterranean, naturally desire a permanent hold upon the territories they have gained. Any such scenario in the long run would be destabilizing and “a very difficult pill for the international community to swallow,” as it would implicitly endorse the fragmentation of other weak states. Instead, the international community seeks to bring stability to the region through a unified state. Weiner acknowledges though that it is difficult “to imagine putting together a government that can rule Syria.” He argues that in the long run, the only realistic solution will be the establishment of a weak central state that allows significant regional autonomy. However, such an agreement would be anathema to the Assad regime, complicating its implementation.

This common problem which is a grave threat.” Unlike these rhetorical American wars on social ills, Hollande has backed his rhetoric with both airstrikes and concrete legal measures.

On November 15th, he declared a state of emergency for the first time since the early 1960’s. The state of emergency grants French police broad powers including the right to break up any public gathering and conduct warrantless raids. In addition, Hollande has worked to make constitutional changes that would strip dual citizens of French citizenship if they were in any way associated with terrorist activities. Even so, Weiner argues that the unusual legal means taken in France still do not constitute war as “you can’t shoot people in a state of emergency. The right to life is still protected.” Despite that safeguard, guarantees against arbitrary arrest are suspended.
On December 18th, the multilateral International Syria Support Group (ISSG) sought to cement the roadmap agreement agreed upon in November. In concrete terms, the ISSG envisions a cease-fire by January, the establishment of a transitional government in six months, and constitutional elections in eighteen months. However, many obstacles remain, namely the question of Assad. UN Secretary-General Ban Ki-moon has deemed the disagreements regarding Assad’s role as “unacceptable.” Instead he argues that it should be the Syrian people who decide the fate of their country.

Despite increasing international resolve to address the Syrian conflict, its seething complexity has interfered with attempts to provide a framework for its resolution. Instituting a more stable and long-term minimalist constitution would require consensus among the international powers as well as a willingness to cooperate among the different combatants; two conditions inconceivable in the near future. Hence, in an effort to induce these actors to cooperate, it is likely that a more maximalist constitution will be drafted, despite its negative impact on the emergence of organic politics outside sectarian bounds. As Weiner observes “we sometimes don’t think too many steps ahead.” In choosing political expediency over long-term stability, he continues, “we often leave the ingredients for long-term political instability and renewed violence.” Given the ongoing humanitarian consequences and the specter of ISIL’s globalization, it seems as though efforts will be focused on an interim solution, in order to stifle the conditions that enabled ISIL’s expansion. However, any such myopic solution will plant the seeds for future civil discontent and conflict. It is therefore imperative that the international community does not undermine the sustainability of a future state for the sake of political expedience.

References


The International Response to the Syrian Refugee Crisis
A Conversation with Beth Van Schaack

By Yao Yang and Chung-Yan Leung

A specialist in international humanitarian and human rights law, Professor Van Schaack is the Leah Kaplan Visiting Professor in Human Rights at Stanford Law School. In 2012, Professor Van Schaack was appointed Deputy to US Ambassador-At-Large for War Crimes Issues in the US State Department’s Office of Global Criminal Justice. In December 2015, Professor Van Schaack sat down with our editorial team to discuss the Syrian refugee crisis and how the world will hold the perpetrators of violence in Syria to account.

Multiple armed conflicts across the Middle East and related human rights abuses have triggered a large-scale refugee crisis in Europe since 2010. EU member countries in particular are struggling to cope with a dramatic influx in migrants, sparking disagreement between EU member countries over how best to resettle refugees. According to the International Organization for Migration (IOM), more than 920,000 migrants are estimated to have arrived in Europe by sea alone in 2015.¹

The ongoing armed conflict in Syria continues to be by far the biggest driver of refugee migration from the Middle East, fueled by the country’s vicious civil war which began more than four years ago. The violence caused by the Syrian civil war, coupled with sectarian violence and violence against women and children, have produced a surge in asylum applications from Syrians in Europe in 2015.

Given their particularly strong human rights mandate, Van Schaack believes that the European Union and Council of Europe have failed to step up collectively in response to the Syrian refugee crisis. Until recently, the European Union left border states, such as Greece and Italy, to address increasing flows of refugees on their own. Likewise, the European political bodies stood by as countries such as Hungary behaved more aggressively towards migrants. While German Chancellor Angela Merkel has set a more welcoming example in the last year, Van Schaack notes that the EU missed an early opportunity to put more effective systems in place for processing incoming asylum applicants. If systems had been put in place earlier, particularly in Italy and Greece, she believes the EU would not be facing such an acute crisis today.

The EU is hardly the only multilateral institution challenged by the dramatic exodus from Syria and the region at large. Van Schaack notes that the Office of the UN High Commissioner for Refugees (UNHCR) is also in need of more efficient systems to process asylum seekers and provide for the basic needs of refugees. To facilitate more efficient resettlement from Syria to Europe and elsewhere, and to ensure that valid asylum claims are promptly recognized, the UNHCR needs a more efficient database of information per applicant to process applications more quickly.

That said, there is also more that UN member countries can do to support the successful resettlement of asylum applicants. While the process of providing food, shelter, and other necessities to refugees is in and of itself a laborious process, Van Schaack argues that the UNHCR has not received sufficient funding from the international community to address the scale of the challenge at hand. She also notes that once refugees are resettled in individual countries, host governments could dedicate more
resources to supporting their integration. For example, jobs and skills training— including language learning—are particularly important sources of support for incoming refugees.

In the United States, the Obama administration is planning to take in at least 10,000 displaced Syrians in the next year, though Van Schaack suggests that the US could take more. However, more than half of US governors have tried to refuse Syrian refugees. Van Schaack notes that these pledges are not only unlawful, but that they are informed by mistaken ideas that refugees coming from Syria are a threat to public security.

“‘We’ve seen that in Europe, and even in small villages in Germany— they have found that refugees have been a net positive for them.’”

Fear of mistakenly admitting terrorists amongst asylum seekers has been particularly rampant since the November 2015 terrorist attacks that killed 130 people in Paris, France. In this environment, public officials in many countries—including the United States—are facing more intense pressure in balancing national security concerns with their refugee resettlement obligations. Van Schaack argues that concerns over terrorist attacks made by refugees are overblown, emphasizing that the UNHCR and country-level evaluations of asylum applications are tightly regulated and designed to screen for potential security threats. She notes as well that evaluating an asylum application usually involves more checks and balances than an average tourist or student visa.

Van Schaack also believes that fraudulent refugee efforts are going to be “very, very rare” given the difficulties inherent in seeking asylum. The decision to leave Syria and apply for asylum in Europe would not be taken lightly by refugees: “People do not easily leave their homes and pack up their children to take journeys over land where they can be arrested [or] killed,” she says. In addition to these risks, there is also a very real financial cost to seeking asylum, given that most families will pay to be smuggled beyond Syria’s borders.

While every country must protect its national security, Van Schaack notes that the international community has affirmative obligations to give people safe haven to which they are entitled under the 1951 Convention relating to the Status of Refugees.

US Governors committed to refusing Syrian refugees have also propagated the claim that accepting them means a net drain on public resources. However, Van Schaack believes integrating refugees could pay positive dividends in the long run: “Some of the more recent research shows that yes, in the short term, there are resource outlays to accommodate refugees... but in the long term, refugees end up re-contributing to the society way more than the expenses spent on them in the early days.” She continues, “‘We’ve seen that in Europe, and even in small villages in Germany— they have found that refugees have been a net positive for them.’”

While addressing the current refugee crisis may take precedence in the current climate, a number of international advocates are also considering options for legal action in response to the human rights abuses and international crimes that prompted so many Syrians to flee.

Most importantly, the United Nations Human Rights Council (HRC) established a commission of inquiry (COI) on Syria shortly after the unrest began in 2011. The President of the Human Rights Council appointed Paulo Sérgio Pinheiro (Brazil), Karen Koning AbuZayd (United States) and Yakin Erturk (Turkey) to serve as Commissioners. Following the extension of the Commission’s mandate in September 2012, two new Commissioners were appointed: Carla del Ponte (Switzerland) and Viint Muntarbhorn (Thailand). Del Ponte was an important choice: she is the former Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia, where she prosecuted war crimes, crimes against humanity and genocide committed during the dissolution of the former Yugoslavia. These experts have been evaluating the situation in Syria since 2012.

Efforts by the UNHRC and other organizations to document human rights abuses in Syria are challenged by the reality of ongoing armed conflict and violence in the country. That said, Professor Van Schaack commends the Belgium-based Commission for International Justice and Accountability for their efforts (Van Schaack serves on their advisory board). This organization is made up of former war crime prosecutors and investigators from international tribunals working with Syrian counterparts.
any real or tangible way: “Russia has blocked a number of resolutions that would have put stronger sanctions on the country, including a referral to the International Criminal Court.” She believes that in this way the UN system has failed in its promise after the Second World War to deal with threats to international peace and security: “[The UN] has not been able to do its job because Syria has its protector in the form of Russia.”

Absent a Security Council referral, the ICC largely lacks jurisdiction to investigate human rights violations in Syria unless Syria itself agrees to its involvement. (The ICC does have jurisdiction over crimes committed by nationals of ICC members, such as British subjects who have joined armed groups). Given that the current regime has no interest in welcoming action before the ICC, Van Schaack notes that any ICC jurisdiction would require the invitation of a new Syrian regime. A new regime could, however, make such jurisdiction retroactive.

While the need for humanitarian support and international justice in Syria is clear, ideas to support refugees and also hold perpetrators of violence to account have been hampered by political gridlock. In the short-term, refugees fleeing Syria are one of the few domains where international observers, stakeholders, and advocates can take decisive action. As such, Professor Van Schaack is calling for each country to fulfil its international obligations under the Refugee Convention and give refugees new homes.

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Lives of the Nepalese

A Photo Essay by Bredt Bredthauer

The following photos were taken between September 22 and October 1, 2015 during the border blockade between India and Nepal. They show the effects of the border issues when combined with the post-earthquake reconstruction and subsequent decline in tourism. Many Nepalese citizens are adversely affected by these problems, especially from an economic perspective.
Even in Nepal, technology is becoming more prevalent, as shown by these two men on duty in Durbar Square.

Rolling through the streets on skateboards and bicycles, many children still remain joyful and optimistic despite the challenges of life after the earthquake.
Above: Surrounded by unsold wares, street merchants feel the negative effects of the economic downturn and border blockade.

Opposite: Rickshaws fill the streets as drivers idly wait for tourists to return.
People use public spaces like Durbar Square to meet and socialize, even amidst the numerous buildings reduced to rubble by the earthquake.

Above: Sitting atop a handmade scaffold, two men take a break from restoring one of the buildings damaged by the earthquake that occurred on 25 April 2015.

Opposite: Many Nepalese men travel from the surrounding countryside to find work in the city, most of it involving labor completed primarily by hand.
Located along the Bisnumati River, this impromptu camp displays one aspect of life in Kathmandu.

Above: Fresh fruit and juice vendors line the streets of Thamel – one of the most important centers of the tourist industry in Kathmandu.

Opposite: A man takes a smoke break during reconstruction of a demolished building. Pulleys like this one are being used across the city to rebuild the capital.
Leveraging Information and Communications Technology to Combat Corruption in Indonesia

By Nadia Anggraini

Information and Communication Technology (ICT) has been overwhelmingly embraced as a promising new tool in the fight against corruption. Among other functions, ICT enables process automation that reduces control rights among corrupt agents, creates transparency that reduces opportunities for discretionary actions, and enhances monitoring and reporting capabilities that in turn improves oversight of principals over their agents. As one of the more corrupt countries in the world, ranked 107th out of 175 countries on Transparency International’s 2014 Corruption Perceptions Index, there is significant opportunity for Indonesia to step up its efforts to combat corruption. Like many other countries, Indonesia has begun incorporating ICT interventions in its anti-corruption efforts. This paper focuses on examining ICT interventions in combating corruption in public procurement and welfare transfer programs in Indonesia.

Information and Communication Technologies (ICT) have increasingly been embraced, both by governments as well as by civil society, as a tool for combating corruption. ICT interventions have the potential to inhibit corruption by stymying opportunities for discretion, improving accountability and transparency, and increasing monitoring, among other possibilities. For example, Janaagraha Center for Citizenship’s ipaidabribe.com website, which allows citizens in India to report on incidences of corruption they experienced, received almost 22,500 reports between 2010 and 2012, some of which were investigated further by the media and subsequently led to arrests and convictions.1

Heald categorized two primary modes through which ICT can be used for anti-corruption efforts: by creating “upward transparency” as well as “downward transparency”.2 In the former, the central government gains greater ability to observe, control, and act upon the behaviors of its subordinates and citizens. ICTs for upward transparency can reduce corruption by restructuring and systematizing business processes, significantly cutting down layers of bureaucracy, and creating mechanisms for individuals and businesses to report incidences of corruption directly to authorities.3 On the other hand, ICTs for downward transparency allow citizens to better monitor the conduct of their government by providing those outside of government greater access to information.

Indonesia is one of the more corrupt countries in the world, ranked 107th out of 175 countries in Transparency International’s Corruption Perceptions Index (CPI).4 The country has seen slow albeit generally steady improvements in its CPI scores over the past ten years, edging up from a score of 2.2 in 2005 to 3.4 in 2014 (Chart 1). On the other hand, the country missed its goal of achieving a CPI score of 5.0 by 2014, a target set by the Ministry of National Development Planning in its 2012-2025 National Strategy for Corruption Prevention and Eradication.5

Chart 1: Indonesia Corruption Perception Index Scores

Source: Transparency International
Note: Score of 0 = highly corrupt; Score of 10 = highly clean
The country has implemented several initiatives for combating corruption. Most notably, the government’s Corruption Eradication Commission (KPK) has been lauded as a relatively successful anti-corruption agency. In a country where crony capitalism is rampant and individuals with connections to top officials are typically able to act with impunity seemingly without consequence, the KPK between 2008 and 2013 managed to convict 72 members of parliament, a close family member of then-president Susilo Bambang Yudhoyono, the chief justice of the constitutional court, and the commander of the national police’s traffic division, among others. Additionally, the government has over the years introduced a number of legislations to stymie corruption, including Law No. 23 of 2003 that criminalizes money laundering and Law No. 13 of 2006 that provides protection for public and private employees who report cases of corruption. However, the successes of these laws in reducing corruption appears to be mixed – for example, according to the US Bureau of Democracy, Human Rights and Labor’s 2013 Country Report on Human Rights Practices, Indonesia’s whistleblowing law tends to be applied inconsistently, and whistleblowers sometimes suffer retaliation and threats.

A number of the anti-corruption initiatives in Indonesia involve the use of ICT, and this paper posits that there is room for improvement in the implementation of these initiatives, as well as further opportunities to combine the use of ICT and non-ICT interventions to generate more effective outcomes.

Public procurement is widely seen to be “one of the most corruption-ridden sectors in Indonesia.” In a 2010 Indonesia Procurement Watch survey of 792 firms, 97.3 percent of respondents indicated that they believed it was not possible to win a contract tender without resorting to bribery, and more than 95 percent indicated that the typical value of a bribe was over 10 percent of the contract value. Given that public procurement represents a sizable portion of the national budget – $265B or 31 percent of the country’s budget in 2007 – corruption in procurement has a significant impact on the country’s fiscal position.

Rampant corruption is also evident in Indonesia’s welfare programs, such as in the Raskin subsidized rice program and the Bantuan Operasional Sekolah (BOS) program intended to assist low-income students, resulting in disproportionate welfare losses to Indonesia’s poorest citizens. In his 2005 study, Olken found that at least 18 percent of the subsidized rice set aside for distribution to poor households under Indonesia’s Raskin program never reached their intended beneficiaries. This created a sizable dent to the public budget as well, given that Raskin was the largest targeted transfer program in Indonesia, with an annual budget of approximately $1.5B. Similarly, the Indonesian Corruption Watch in 2010 uncovered proof of embezzlement of BOS funds in six schools in Jakarta, amounting to $630,000 intended to offset school-related expenses for poor students. Suryadarma’s empirical analysis found that corruption diminishes the impact of public spending on educational outcomes in Indonesia – in less corrupt regimes, higher public spending is typically correlated with higher student enrolment, but this effect was not present in Indonesia.

ICT and Corruption in Public Procurement

Corruption in public procurement typically arises when officials are allowed high levels of discretion throughout the bidding process with limited audit requirements. For example, government officials may not make documentation required to prepare for a bid available to non-favored firms, or even misinform these firms about the proper submission process. Further, procurement processes with non-standard bidding documents can create space for manipulation and opacity around the contract award process. Given that public contracts frequently involve large sums of money, further incentive is created for bureaucrats to extract rents given the potential returns.

The use of ICT in public procurement, also known as e-procurement, has the potential to drastically reduce the cost of information while at the same time facilitate information accessibility in a number of ways, including through the standardization and automation of processes. Creating an electronic platform for basic steps in the bidding process, such as distribution and submission of forms, can reduce opportunities for
public officials to request bribes or manipulate the process. For example, prior to the implementation of e-procurement in Georgia, bidders had to make on average five physical visits to various agencies throughout the procurement process, each of which involved opportunities for rent extraction. With the implementation of e-procurement, only the successful bidder has to make one physical visit to sign the contract, while all other parts of the process can be completed online.\textsuperscript{5}

ICT can help to reduce corruption in public procurement by increasing access to information. As discussed above, a common corrupt practice in the procurement sector is the withholding or misinforming of bid-related information for non-favored firms. With e-procurement systems, key documentation and information can be freely made available online, both during the course of the bidding process and also after the award of contracts. Bertot, Jaeger & Grimes\textsuperscript{8} estimated that the Chilean e-procurement system, which allows the public to compare bid costs with actual services purchased by the government, has created annual savings of $1.5 billion by reducing price fixing by colluding officials and contractors.

Using ICT in the procurement process can also increase competition and reduce collusion in the bidding process. Increased transparency can lead to a higher number of companies (and a higher number of honest companies) participating in public procurement. Podkolzina, Pivavorova, & Balsevich showed that e-procurement implementation led to an increase in the average number of bidders in Japanese public procurement from 8.2 to 13.7.\textsuperscript{19}

Finally, ICT can also improve contract management and auditing capabilities. Opportunities for corruption can arise after bidding and during the implementation phase of a contract, including changes to contract specifications by public officials to benefit the bidding firm, or limited supervision that allows subpar performance to go unnoticed. E-contract management systems can enable oversight agencies to better track contractor performance and identify public officials in charge of approvals throughout the duration of the contract.

Following a presidential decree on the acceleration of corruption eradication in 2004, the Indonesian government created an e-procurement unit (LPSE) to oversee the implementation of e-procurement systems across national and local-level governments. The central ministry in Jakarta rolled out a “semi-electronic procurement” (SEP) system in 2004, which was subsequently adopted by 33 provinces across the country over the next 5 years (Figure 1). However, the SEP did not represent a complete transition of procurement from manual to automated processes. While firms are able to register expressions of interest, download bidding and technical specification documents, and submit pre-qualification materials online under the SEP, final bids still had to be submitted manually.\textsuperscript{14} It was only in 2010 that a secure online bid submission system began to be rolled out.\textsuperscript{20} It is worth noting that the Indonesian government opted to launch a decentralized e-procurement model, with national and local-level government offices responsible for operating their own e-procurement units. A centralized aggregation system, INAPROC, acts as a single interface for firms interested in responding to bids offered by different ministries. However, this decentralized approach led to the creation of a plethora of independent e-procurement units on the back-end. As of 2013, there are an estimated 1,176 e-procurement units throughout Indonesia serving 33 provinces and 7,32 agencies, creating challenges for the LPSE in the management of these entities, as well as in ensuring the standardized implementation of policies and processes.\textsuperscript{21}
Further, while the government launched a central National Procurement Agency (LKPP) in 2010 to formulate and implement policies related to public procurement, this entity in reality has had limited authority in ensuring compliance among ministries and government agencies. This is evidenced by the fact that while most government agencies had implemented e-procurement systems in their areas of jurisdiction, the value of contracts tendered through e-procurement remains small as a proportion of total contracts tendered (Table 1).

Lack of transparency and accountability, unequal power dynamics, and limited verification capabilities are all channels for corruption to occur in government transfer programs. In the study of the Raskin program described above, subsidized rice intended for households was distributed through village heads, with "virtually no monitoring by the central government." The lack of accountability and verification, combined with a lack of transparency from the fact that "villagers had no source of information regarding their village's rice allocation other than the village head" created a situation ripe for rent extraction. Similarly, Reinikka and Svensson found that primary schools in Uganda during their study period received, on average, only 13 percent of total government grants allocated. However, the amount of grant funding received varied considerably across schools, based on the degree of bargaining power schools had against local officials.

Various forms of ICT intervention have been utilized to reduce corruption in welfare programs, given that the automation of processes reduces the discretion of public officials. Governments have increasingly experimented with the implementation of electronic identification cards linked with bank accounts as a means of improving the performance of welfare programs. A recent study of the impact of a biometric Smartcard program in India found that the program led to an estimated reduction in leakage of welfare payments amounting to $3.3M per year. The central government was better able to identify and

### ICT and Corruption in Welfare Programs

Lack of transparency and accountability, unequal power dynamics, and limited verification capabilities are all channels for corruption to occur in government transfer programs. In the study of the Raskin program described above, subsidized rice intended for households was distributed through village heads, with "virtually no monitoring by the central government." The lack of accountability and verification, combined with a lack of transparency from the fact that "villagers had no source of information regarding their village’s rice allocation other than the village head" created a situation ripe for rent extraction. Similarly, Reinikka and Svensson found that primary schools in Uganda during their study period received, on average, only 13 percent of total government grants allocated. However, the amount of grant funding received varied considerably across schools, based on the degree of bargaining power schools had against local officials.

Table 1: Central Government Budget Procurement via e-Procurement

<table>
<thead>
<tr>
<th>Year</th>
<th>E-procurement (USD)</th>
<th>Total Budget (USD)</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>35</td>
<td>128,800</td>
<td>0.26</td>
</tr>
<tr>
<td>2009</td>
<td>1,502</td>
<td>156,600</td>
<td>9.59</td>
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<tr>
<td>2010</td>
<td>7,296</td>
<td>207,600</td>
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<tr>
<td>2011</td>
<td>23,498</td>
<td>373,700</td>
<td>6.28</td>
</tr>
<tr>
<td>2012</td>
<td>56,242</td>
<td>306,607</td>
<td>18.34</td>
</tr>
<tr>
<td>2013</td>
<td>31,831</td>
<td>399,107</td>
<td>7.94</td>
</tr>
<tr>
<td>Total</td>
<td>120,404</td>
<td>1,572,414</td>
<td>7.66</td>
</tr>
</tbody>
</table>

Source: Transparency International
The Indonesian government has embraced the adoption of electronic ID cards as well as the use of digital payment mechanisms for welfare transfers. In 2011, the government launched an ambitious plan to introduce biometric ID cards (e-KTP) for all citizens above the age of 17—approximately 172 million people. Stated goals for the e-KTP program include improving effectiveness of targeting of welfare programs and reducing leakage rates. As such, in 2013 the National Team for the Acceleration of Poverty Reduction (TNP2K), the central government body overseeing national welfare programs, began incorporating the use of e-KTP data in its programs. Additionally, TNP2K in 2014 began piloting transfer of funds under the Family Welfare Deposit (KKS) Program through digital financial services, where qualifying households are sent SIM cards containing e-money, which they can exchange for cash at various designated agents.

While an estimated 165 million citizens have received their e-KTPs to date, the government put brakes on the project on several occasions in 2014, ironically due to suspicions about possible corruption. Fake e-KTPs manufactured in China and France were discovered to be circulating in the country, and card production was subsequently halted while investigations were conducted. Additionally, two senior officials involved with the e-KTP project are, at time of writing, in court for allegations of corruption during the e-KTP tendering process.

There has been limited empirical research assessing the effectiveness of ICT-assisted welfare transfer program in Indonesia given its recent introduction. However, there appears to be promising strategies for reducing corruption embedded in the implementation of TNP2K’s programs. For example, households are able to exchange their e-money SIM cards at a wide range of agent locations (e.g. local shops), creating economic competition rather than concentrating power at the hands of a local bureaucrat such as the village head, which should theoretically drive down bribe levels. Additionally, TNP2K introduced web and mobile-based mechanisms for citizens to report cases of unfair or incorrect receipt of subsidized rice through the Raskin program, increasing the central government’s capacity for oversight of local officials (Figure 2).

The Indonesian government must prioritize the creation of a comprehensive national procurement law that standardizes procurement activities.
Government ministries across Indonesia should also introduce e-contract management systems to ensure end-to-end accountability in the procurement process. Currently, e-procurement efforts in Indonesia have focused on the pre-bidding and bidding phases of the procurement process. However, it is important to increase oversight during the contract fulfillment phase as well, in order to prevent bureaucrats from merely shifting their methods of rent seeking instead of eliminating these behaviors completely. As discussed above, e-contract management systems that outline and track contract terms, work schedules, and performance criteria can reduce opportunities for public officials to exert discretion in allowing for substandard project delivery among their favored firms.26

Finally, the Indonesian government should work to foster the role of Civil Society Organizations (CSOs) to act as watchdogs, particularly over delivery of public goods. Incentives for individual citizens to conduct monitoring and enforce accountability for delivery of public goods, such as procurement projects or school-based operational assistance grants, are relatively limited. As such, CSOs can play a large role in shedding light to corrupt practices in these areas. In the public procurement space, the 2011 Freedom to Information Act, combined with digitization of information related to bids and tenders through e-procurement, provide a robust base of data upon which CSOs can monitor and unearth corrupt practices. However, in order to support this, the government needs to clarify its procurement legislation to explicitly allow CSOs to monitor public procurement processes.29

On the other hand, given vested interests of welfare recipient beneficiaries to minimize capture in the service delivery process, public officials should focus their efforts on increasing information transparency directly to citizens. This can be done best through a combination of ICT and non-
Indonesia’s public officials should proactively identify and address potential inequities that can be perpetrated through technology-based interventions. The most vulnerable populations in society – the poor, old, and disabled – are likely to have disproportionately low digital literacy and access to technologies. Further, poor households are more likely to live in areas with limited broadband or even power access, thereby limiting their ability to adopt technology. While grassroots-level ICT interventions, such as SMS-based complaint, whistleblowing, or information transfer mechanisms can be potent tools for empowering the citizenry, they cannot fully replace traditional mechanisms such as radio or in-person community meetings that are more accessible to these vulnerable populations. Special effort can also be undertaken to train less digitally literate individuals on how to use these technologies.

The Indonesian government should also strengthen data security measures to reduce risks associated with electronic fraud. One of the key strengths of electronic identification and disbursement mechanisms is the speed at which authentication and fund delivery can now occur. Unfortunately, should these electronic systems not be designed in a sufficiently rigorous manner, opportunity for fraud can be ripe, as seen from the case of fake e-KTPs. In these situations, these ICT tools, instead of reducing opportunities for corruption, “may simply result in paying the wrong people more quickly.”\textsuperscript{31} Biometrics fraud is a relatively new field, with associated fraud prevention tools and strategies beginning to emerge.\textsuperscript{32} The Indonesian government should track these developments on an ongoing basis and introduce improved security features where possible.

Ultimately, genuine political will at the highest level, as well as concerted coordination across agencies, are necessary ingredients for pushing through comprehensive and sustainable reforms. Effective implementation of reforms can be hindered by multiple roadblocks, be it political tussles between agencies in the drafting of a national procurement law (as in the e-procurement case), or allegations of corruption within implementing agents of these same reform measures (as in the e-KTP case). The successes of Singapore and Hong Kong offer examples of the importance of political will in the eradication of corruption, and technology can only

**Policy Recommendations**

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Ultimately, genuine political will at the highest level, as well as concerted coordination across agencies, are necessary ingredients for pushing through comprehensive and sustainable reforms. Effective implementation of reforms can be hindered by multiple roadblocks, be it political tussles between agencies in the drafting of a national procurement law (as in the e-procurement case), or allegations of corruption within implementing agents of these same reform measures (as in the e-KTP case). The successes of Singapore and Hong Kong offer examples of the importance of political will in the eradication of corruption, and technology can only
serve as a tool to amplify reform measures. As Schapper puts it, “technology alone can be expected to stand in for such problems [weak law enforcement, political fallout], and can also be used corruptly.”

Jointly, CSOs and citizens have the ability to bring forth corruption-related challenges to the forefront of the national agenda, and maintain pressure on the government to prioritize anti-corruption reforms. In Peru, popular uprising provoked by media broadcasts of corruption at the highest political level was sufficient to bring Prime Minister Fujimori and secret police chief Montesinos to heel. Likewise, in Brazil, a grassroots initiative called the Movement for Fighting Electoral Corruption was able to galvanize the passing of the Clean Record law that makes individuals who have been convicted of corruption to be ineligible to run for public office for at least eight years. Civil society has a critical role to play in keeping their governments accountable.

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Protecting Against the Asia Infrastructure Investment Bank

By Kate Gasparro

The growing infrastructure needs of Asia’s emerging market countries highlight the importance and timeliness of the Asian Infrastructure Investment Bank (AIIB). Despite healthy contributions from the Asian Development Bank and World Bank in 2014 (approximately $44.2 USD billion), there is an estimated need of $8.22 USD trillion to address infrastructure development in Asia and keep pace with rapid urbanization over the next decade. As these needs become more urgent and critical to Asia’s economic growth, there will be pressure on the AIIB to act quickly and invest in water, transportation, energy, and social infrastructure. Therefore, the AIIB safeguards and policies to back-up its plan to be a “lean, clean, and green” institution carry weight and implications for the future of development. In anticipation of the release of AIIB’s social safeguards, the following policy recommendations should be considered to mitigate development-induced displacement.

Partnership and Oversight for Successful Safeguard Implementation

Social safeguard processes require comprehensive cooperation between host countries, local NGOs, impacted communities, and the developer. Even though the financing organization has the power to ensure successful safeguard implementation, this is only possible if the host country and powerful stakeholders have similar goals and organizational infrastructure in place to handle social risk, specifically development-induced displacement. One of the most difficult parts of addressing concerns of development-induced displacement is ensuring the host government has adequate capacity to organize and facilitate resettlement. Therefore, it is within the best interest of the AIIB to set standards for the host country’s organizational infrastructure. This will alleviate the responsibilities of the AIIB to create organizations and processes for addressing potential social risks affiliated with a project. In addition to ensuring strong partnerships with host countries and communities, the AIIB should consider operational capacity to implement and review safeguards throughout a project’s development. This would hold host countries accountable for their involvement and partnership during the process. An inspection panel of shareholders and third party entities would be charged with reviewing projects and responding to high level concerns from affected communities. As part of this operational support, the AIIB should also provide a project representative to provide direct project oversight and work hand-in-hand with communities to ensure due process of social safeguards.

Development-induced displacement can spark community resistance, potentially compromising the project’s success, specifically during the construction phase (once a large portion of the development funds have been spent on project planning and design). For example, the Pak Mun Dam in northeast Thailand was built to generate electricity. During the construction phase, fisheries on the Mun River saw a sharp decline in fish catches and local villagers began to protest, threatening the future of the project. The Thai government began negotiations with the fishermen and agreed to a compensation rate.

Community Engagement to Minimize Political Risk

Development-induced displacement can spark community resistance, potentially compromising the project’s success, specifically during the construction phase (once a large portion of the development funds have been spent on project planning and design). For example, the Pak Mun Dam in northeast Thailand was built to generate electricity. During the construction phase, fisheries on the Mun River saw a sharp decline in fish catches and local villagers began to protest, threatening the future of the project. The Thai government began negotiations with the fishermen and agreed to a compensation rate.

To mitigate conflict during construction, the developers should have utilized community participation strategies to address these concerns during the project planning phase. Affected communities retain a large amount of local knowledge that can provide insights and context for identifying potential risks and future issues associated with project development.
social safeguards, such as the Equator Principles, prioritize policies that make an effort to avoid or minimize development-induced displacement by generating alternative project options through community engagement planning processes. These options include design and construction strategies that will reduce impact to these communities, thereby reducing the potential for project failure. To mitigate similar issues of community unrest, the AIIB should provide tailored platforms and processes for community participation and engagement.

Project Synergy to Maximize Potential for Growth

There is further potential for the AIIB to address development-induced displacement by planning synergistic projects. Other development banks have realized the capacity for building infrastructure to accommodate affected persons and mitigate some of the economic and social risks associated with development-induced displacement. These projects have extended beyond intended infrastructure projects to support displaced families. A case in Mumbai, India highlighted the potential to use this type of social safeguard to minimize social risk. In 1998, demolition squads evicted over 160,000 people in Mumbai without resettlement assistance.

Two years later, the government was able to move 5,000 of the evictees to a site outside of Delhi. The new community was promised social infrastructure, such as schools and health clinics, but these services were never built. In the case of future projects, development banks have an opportunity to finance synergistic infrastructure systems that address development objectives and displaced communities’ needs, ensuring evictees are provided just compensation for their displacement. In operating these services, the development bank can receive positive financial returns on their investments through revenue collected via increasing property taxes and service fees resulting from a growing new economic hub. Therefore, the AIIB social safeguards should provide processes for identifying synergistic projects.

Development-induced displacement can spark community resistance, potentially compromising the project’s success

Several countries have hesitated to join the ranks of the AIIB’s shareholders because of the delicacy of development-induced displacement. Other countries, who have ratified the AIIB’s articles of agreement, have also stated they would withdraw from the agreement if strong safeguards (that protect the rights of affected persons) are not implemented. Therefore, it is in the AIIB’s best interest to create strong social safeguards, incorporate similar policies as outlined in this memo, and involve experts prior to publishing the safeguards. The AIIB has claimed to complete projects faster and more efficiently because of reduced bureaucratic processes, as compared to other development banks. Attracting other investors during the project planning process will provide more resources to achieve the AIIB’s vision while also better serving communities affected by AIIB’s development projects and reducing risks that could halt or delay infrastructure development.

Furthermore, successful approval of social safeguards is sure to assuage international concerns that the AIIB will replicate China’s development policies and neglect due process to minimize development-induced displacement. The Three Gorges Project in China will be the largest dam-related displacement in history. China’s past and current processes have...
shown a lack of adequate compensation for displacement ($5 billion when estimates have been calculated to be $23.6 billion), limited or nonexistent engagement with affected communities, and restricted transparency of planning and development processes. If similar events occur in relation to AIIB’s work, host countries may take fault with the AIIB and potentially disrupt future development projects. In implementing social safeguards that acknowledge the rights and processes surrounding affected persons, the AIIB will attract NGO and international cooperation and may entice additional development dollars to leverage their political and economic goals within the region.

The Future of Development-Induced Displacement and the AIIB’s Role

As needs for infrastructure development become more urgent, development banks will struggle with social safeguard oversight and implementation to minimize development-induced displacement. Around the world, infrastructure development has been a driving force for internal displacement rivaling displacement due to environmental disasters or regional conflict. Development-induced displacement has negatively impacted communities and has the potential to ruin localized economies and lead to health and social capital issues. There is great potential for the AIIB to be a leader in international development and set new standards for social safeguards, protecting human rights associated with development-induced displacement. With the AIIB’s competitive power among development banks, strong social safeguard policies will be essential for assuaging international concern, creating more successful projects for communities and nations, reducing political risk, and setting an example for other development banks.

Challenges and Gaps in the European Refugee System

By David Lansky

The refugee influx in Europe since 2011 has caused the largest immigration crisis since the end of the Second World War. Not only do many countries in the Middle East suffer from unstable regimes, but it seems that European countries are also in an existential dilemma, maneuvering unsteadily from one crisis to another. Europe is the place where banking was born and the continent is now in a currency and debt crisis. Ancient Greece was the birthplace of philosophy and democracy, but its government nearly crumbled under an enormous economic downturn. With this recent refugee crisis, European countries must confront their own instability and the Middle East’s.

Today, Europe is the most dangerous destination for irregular migration in the world according to the International Migration Organization, and the Mediterranean border is the world’s most dangerous border to cross. However, millions from a variety of countries have left their homes despite these dangers. The United Nations High Commissioner for Refugees (UNHCR) estimates that 43% of all refugees arriving in Europe in 2014 originated from Syria, 15% from Afghanistan, 6% from Eritrea, and 4% from Iraq. Syria is currently the largest source of refugees in the world due to the hardships caused by the civil war since 2011. 3.88 million refugees escaped Syria in 2014. It is the largest driver of human displacement in the world in the same year at 42,500 people becoming refugees every day on average.

These developments are gnawing at Europe’s capability to cope. EU Member States received 626,000 asylum applications in 2014. The numbers increased in 2015, as 395,000 were received in the first half of this year alone. However, not all countries are burdened equally. More than one in three EU asylum applications have been submitted in Germany, while the highest applicant-to-population-ratio has been in Hungary. Most escapees see Europe as the safest and most accessible destination. When they arrive, they mostly try to file their papers and start the application process as quickly as possible. Currently, there are over 600,000 persons with pending applications in the EU. As their applications are being processed, many have to wait in overloaded refugee camps.

Most applicants do not possess working permits, but data shows that asylum-seekers in Europe are a potential workforce that could relieve the continent’s economic hardship. 39.1% of male and 41% of female applicants are between the ages of eighteen and thirty-four. A large influx of young people into a demographically aging continent needs to be understood as an opportunity, not as a threat. The absorption of refugees can be an important tool to strengthen Europe’s workforce. A report by the research service of the European Parliament suggests that a well-managed refuge...
influx can lead to a positive impact on GDP growth. In this light, there are clear benefits to integrating refugees quickly, fairly and efficiently. Beyond the economic benefit of course is the inherent moral responsibility all persons have to help in such situations of hardship. However, no matter the motivation, this can only be achieved through a strong, coherent and critically implemented legal protection system. It may stem from international law or regional EU law. At the moment, neither the international refugee protection system nor the European refugee protection system does this sufficiently.

**International Law**

Article 14 of the Universal Declaration of Human Rights states: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” These principles are fleshed out in the UN Convention relating to the Status of Refugees of 1951 and the respective Protocol of 1967. The Convention of 1951 was a product of post-WWII Europe. The drafters limited its scope geographically and chronologically to alleviate refugee crises caused by the Second World War. The Protocol of 1967 consecutively extended the 1951 Convention’s scope, stripping it from its previous historically rationalized limitations. Both documents, the Convention of 1951 and its Protocol, can be ratified separately and indeed some countries have chosen to ratify just one instead of both. 148 countries have ratified one or both, including all EU member states.

Despite being cornerstones of international refugee law, these documents do have notable shortcomings. One example is that the rights of the Refugee Convention unfold gradually as the bond between the hosting country and the refugee becomes stronger. For instance, a set of rights already apply when the person is physically present but other rights only apply when the person has filed his or her papers (is “lawfully present”). Another example is the right to waged employment (Refugee Convention Article 17) that only unfolds when an asylum-seeker has settled in the country for three to six months. This “assimilative path” accommodates the drafters’ skepticism towards recognizing a wide set of rights from the start while still accepting basic rights. The historical reason for this gradual increase is that the drafters were facing large, unforeseen refugee inflows before 1951 and were reluctant to grant refugees a wide set of rights instantly. There is no reason for states to gradually grant more rights as the “bond” between the state and the asylum-seeker becomes stronger.

Another shortcoming of the 1951 Convention is the vague definition of a “refugee”, defined as someone who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, and who is outside his or her country of nationality or habitual residence and is unable or unwilling to return to it” (Article 1A(2) of the Geneva Convention). Under this definition, it is unclear what “well-founded” or “persecution” mean, and what if reasons other than those mentioned arise? Different countries interpret these terms in different ways. Enforcement of the rights mentioned above is done by national courts and the ICJ while UNHCR supports national institutions, but nations are often unable or unwilling to implement the provisions and decisions taken. A further problem in the Convention is that it does not prescribe a particular procedure for the determination of whether a person is a refugee or not.

**European Law**

The international refugee law system described above sets the stage for investigating its implementation through regional legal systems such as that of the European Union. With regard to the gaps outlined, the expectations of a regional refugee system should therefore be to set clear standards of who a refugee is and decide on fair and coherent procedures for all its states. However, the EU has not fully met these expectations.

The European Court of Human Rights (ECtHR) was active long before the EU began its efforts in refugee law. The ECtHR governs the European Convention of Human Rights, a document ratified by 47 states including all EU members. The ECtHR has developed a guarantee of non-refoulement (non-rendering of a victim of persecution to his or her persecutor) via its jurisprudence. For instance, the ECtHR ruled in Chahal v UK that the deportation order of a Sikh refugee infringed Article 3 of the European Convention of Human Rights. Mr Chahal was arrested (but not convicted) for conspiracy to kill the then Indian Prime Minister. He claimed that
deportation to India would result in a real risk of torture, inhuman or degrading treatment which would violate the right to asylum (derived vaguely from Article 3 ECHR). The Court ruled in Mr Chalal’s favor, holding that Article 3 contained a guarantee that is absolute. The UK could thus not rely on its national security interest to justify the deportation of the applicant.

The accomplishments of the ECtHR over the years are significant. That said, judicial oversight as a policy tool does have its limitations. The ECtHR is not elected democratically and cannot make laws. The ECtHR needs a case before it to make a decision and therefore cannot proactively create policies as it deems necessary. Moreover, the ECtHR has not (yet) enforced equal acceptance standards across the EU, which is one of the biggest tasks today. For instance, Afghan asylum seekers in 2011 had a three percent chance of becoming recognized refugees in the Netherlands and a thirty-three percent chance to become recognized in Austria. A recent report by the European Council on Refugees and Exiles (ECRE) confirms this trend. In 2014, positive decision rates for Eritrean nationals varied from twenty-six in France to one hundred percent in Sweden, while rates for Iraqi nationals ranged from fourteen percent in Greece to ninety-four percent in France. Even Syrians, whose refugee status is less controversial internationally, have different acceptance rates across Europe. Naturally, it is usually the most burdened countries that have the lowest acceptance rates.

These challenges can be met by the European Union. As opposed to the ECtHR, the Union has more legitimacy given the legislative power of the European Parliament and role of the European Commission. It must be the EU that solves the European refugee crisis, not just a regional court or international law. The Common European Asylum System (CEAS) is the European Union’s effort to implement more comprehensive refugee legislation. The CEAS was intended to harmonize different acceptance standards across EU member states and avoid asylum-seekers strategically picking specific borders and countries (“asylum-shopping”). A cornerstone of CEAS is the Qualification Directive, which aims to ensure that Member States apply common criteria for the identification of persons in need of international protection. The application of these common criteria are meant to be ensured via a subsidiary protection system that becomes active if an asylum-seeker falls through the “cracks” of national legislation. The standards of the directive are designed to ensure that these cracks are in line with a common European understanding of refugee protection. However, this directive is not implemented across Europe due to a lack of political will.

The first step towards harmonizing acceptance standards for refugees is to agree on a common refugee relocation scheme. National parties are cornered by domestic political pressures and member states often simply agree on the lowest common denominator of a solution, which in the case of European politics is either a watered down version or simply agreeing on nothing. The way to circumvent watered-down policy is to consolidate those states that can agree on strong policy.

The most promising attempt to do this thus far is Germany’s. Member States such as Hungary and Slovakia have been consistently opposed to the proportional relocation of refugees. Hungary is struggling with strong right-wing and anti-refugee tendencies among its electorate, and Slovakia is threatening to bring mandatory refugee relocation legislation before the European Court of Justice. Germany, in contrast, has started engaging in talks with other Member States willing to agree on a common refugee policy, thus starting at a smaller scale. The EU-Turkey summit in November 2015 served as an opportunity for German Chancellor Merkel to hold talks with member states willing to participate on the side of the summit. Merkel united leaders of Austria, Belgium, Finland, Greece, Luxembourg, the Netherlands and Sweden two hours before other EU leaders arrived for the actual event. The aim seems to be to resettle 400,000 refugees that are currently on the Turkish–EU borders on a ‘voluntary’ basis. The European Commission has been asked to propose a resettlement scheme before the next summit. This group has been referred to as the “coalition of the willing” by diplomats.

A way to address the refugee crisis sooner might also be an EU Ad-Hoc Asylum Court. This could serve as an appellate body with suspensive powers to have the power to suspend a first instance court decision until the appellate body has decided – if a first instance court in a Member State has not decided in favor of the asylum-seeker. By rerouting the second instance towards the ad-hoc court, it would quickly ensure harmonized interpreta-
tion of the Refugee Convention of 1951 and all legislation (it would be symbolic if the court were situated in Greece, showing a stronger inclusion of Greece in the European Union).

Exploring international and European refugee law, its gaps in protection, and the lack of implementation in the EU – chiefly, the harmonization of acceptance rates and the reallocation of asylum-seekers – begs the question: what are the implications if this crisis is not resolved? The mismanagement of Europe’s asylum system fosters public skepticism towards migrants and this in turn drives people towards right-wing parties such as the French Front National, the Hungarian Fidesz and the Austrian Freedom Party. This development does not promise a prosperous future for refugee rights in Europe and should serve as vigorous motivation to develop a European solution quickly. It remains to be seen how successful the international and national refugee systems may be in this respect.

6. Ibid.
7. Ibid.