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Must Israel Accept Syrian Refugees?

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Introduction

Israel stands alone as the only country bordering Syria that has not accepted a single Syrian refugee, at least for now. This is remarkable, and an apparent failure of international burden sharing. As of March 31, Jordan hosted approximately 585,000 Syrian refugees.¹ Turkey had received more than 640,000.² Lebanon hosted nearly 1 million.³ Since the beginning of the Syrian Civil War, Israel has provided medical care to several hundred Syrians, but it does not let them stay.⁴ No doubt, Israel has avoided this burden in part because its border (technically a cease-fire line) with Syria is one of the most fortified and tense in the world.⁵ But that has not prevented refugee flows in other conflicts, such as when Iraqis fled to Iran in the midst of the Iran-Iraq War.⁶

For Israel, the figure of zero Syrian refugees is a deliberate policy. In January 2014, a seventeen-year-old Syrian girl formally applied for asylum and was refused.⁷

* The author taught in the Refugee Rights Clinic at Tel Aviv University from 2004–2006. Thanks are due to Tally Kritzman-Amir for her helpful comments and suggestions.

1. U.N. High Commissioner for Refugees, Syrian Refugees in the Region (Mar. 31, 2014), <http://data.unhcr.org/syrianrefugees/download.php?id=5161>.

2. *Id.*

3. *Id.* Iraq, the other country to border Syria, has taken nearly 220,000 refugees. *Id.*

4. Media reports of the number of Syrians admitted to Israel for medical care have ranged from 200 to 700, as of March 20, 2014. *See, e.g.,* Benjamin Weinthal & Yonah Jeremy Bob, *Israel Returns Syrian Girl Who Sought Asylum*, JERUSALEM POST, Jan. 29, 2014, <http://www.jpost.com/Middle-East/Israel-returns-Syrian-girl-who-sought-asylum-339680>; Phil Sands & Suha Maayeh, *Revealed: How Syrian Rebels Seek Medical Help from an Unlikely Source in Israel*, NATIONAL, Feb. 13, 2014, <http://www.thenational.ae/world/revealed-how-syrian-rebels-see-medical-help-from-an-unlikely-source-in-israel>.

5. *See, e.g.,* Edmund Sanders, *At Border, Israelis Watch Syria's Civil War through a Fortified Fence*, L.A. TIMES, Oct. 11, 2013, <http://www.latimes.com/world/la-fg-israel-syria-20131011-story.html>.

6. *E.g.,* Bahram Rajace, *The Politics of Refugee Policy in Post-Revolutionary Iran*, 54 MIDDLE E. J. 44, 45 (2000).

7. *See* Weinthal & Bob, *supra* note 4.

She appealed to Israel's High Court of Justice, but the case was resolved confidentially, with a court-imposed gag order.⁸ Media reports indicated that she was forced to leave Israel, but it is not clear whether that meant return to Syria or to a third country.⁹

Long before Syrians took to the streets against Bashar al-Asaad, Israel's policy was to refuse asylum to "subjects of enemy or hostile states."¹⁰ Even if Israel never receives the kind of refugee influx seen by Syria's other neighbors, this policy deserves new legal scrutiny. Although the general Israeli policy is to seek resettlement to other countries for "enemy national" refugees,¹¹ it is highly unlikely that resettlement would be available if a significant number of Syrians were to arrive. Each year, the U.N. Refugee Agency, U.N. High Commissioner for Refugees, is typically able to resettle fewer than 100,000 refugees of all nationalities globally.¹² In mid-July, the UN counted the total number of Syrian refugees worldwide at 2,867,672.¹³

Perhaps knowing this reality, it is not clear that Israeli authorities always wait for the hope of eventual resettlement before preventing Syrians from finding refuge. Some are permitted no further than a field hospital in the Golan Heights.¹⁴ But even those who are admitted to hospitals in Israel are not given free access to UNHCR officials, which would be a way for them to begin formal applications for asylum.¹⁵ When their medical treatment is complete, the Israeli military takes them back to Syria.¹⁶

8. *Id.*

9. *Id.* Israel's policy with regard to "enemy national" refugees is to seek resettlement in third countries. See MINISTRY OF INTERIOR, Population Immigration & Border Authority, Procedure for Handling Political Asylum Seekers in Israel, para. 10, Jan. 2, 2011, available at <http://piba.gov.il/Regulations/Procedure%20for%20Handling%20Political%20Asylum%20Seekers%20in%20Israel-en.pdf>.

10. MINISTRY OF INTERIOR, *supra* note 10, para. 10. The full text of paragraph 10 reads:

The State of Israel reserves the right not to absorb into Israel and not to grant permits to stay in Israel to subjects of enemy or hostile states – as determined from time to time by the authorized authorities, and so long as they have that status, and the question of their release on bond will be considered on a case by case basis, according to the circumstances and to security considerations.

Israel appreciates the UN Refugee Agency's notice according to which until a comprehensive political settlement is reached in our region it will make every effort to find refugees asylums in other countries. An essentially identical policy appeared in the Ministry's 2002 Regulations.

See Regulation Regarding the Treatment of Asylum Seekers in Israel, para. 6, reprinted in ANAT BENDOR & RAMI ADUT, ISRAEL—A SAFE HAVEN?: PROBLEMS IN THE TREATMENT OFFERED BY THE STATE OF ISRAEL TO REFUGEES AND ASYLUM SEEKERS 70 annex A (2003), available at <http://www.tau.ac.il/law/clinics/english/Safe%20heaven.pdf>.

11. Ministry of Interior, *supra* note 10, para. 10.

12. See, e.g., *Resettlement*, U.N. HIGH COMMISSIONER FOR REFUGEES, <http://www.unhcr.org/pages/4a16b1676.html> (last visited July 10, 2014).

13. *Syria Regional Refugee Response*, U.N. HIGH COMMISSIONER FOR REFUGEES, <http://data.unhcr.org/syrianrefugees/regional.php> (last visited July 10, 2014).

14. Eli Ashkenazi, *Some 700 Syrians Treated in Israeli Hospitals Since Early 2013*, HAARETZ (Jan. 30, 2014), <http://www.haaretz.com/news/national/.premium-1.571622>.

15. *Id.*

16. Isabel Kershner, *Across Forbidden Border, Doctors in Israel Quietly Tend to Syria's Wounded*, N.Y. TIMES (Aug. 5, 2013), http://www.nytimes.com/2013/08/06/world/middleeast/across-forbidden-border-doctors-in-israel-quietly-tend-to-syrias-wounded.html?pagewanted=all&_r=0.

This appears consistent with Israel's reaction to a 2004 case involving another young Syrian woman, where the Ministry of Defense acknowledged that it had forced a woman back to Syria without an opportunity to apply for asylum.¹⁷ The facts of that case provide a useful case from which to test whether Israel could legally return Syrian refugees simply because they are Syrian.

I. The Syrian Girl of 2004

Israel has legitimate security concerns along the Syrian border, a region that has been the site of tension, periodic violence, and several outright wars since Israel's birth in 1948. Israel has occupied the Golan Heights since the 1967 war.¹⁸ To cite just the most recent example of violence along the ceasefire line, in mid-March, a bomb in the Golan wounded several Israeli soldiers, after which Israel retaliated with artillery and air strikes against Syrian army bases.¹⁹ It can probably be safely assumed for purposes of this Comment that anti-Israel sentiment runs deep in Syria. More concretely, the Asaad regime has been a noted supporter of Hamas and Hezbollah.²⁰ It is precisely because of this very real concern that the unnamed Syrian Girl who crossed into the Golan Heights in 2004 poses an important factual scenario – though with potentially tragic consequences.

In November 2004, the Refugee Rights Clinic at Tel Aviv University (where the author was an instructor at the time) received unconfirmed reports that the Israeli Defense Force (IDF) was holding a young Syrian woman who may have fled from her village. She had not had any contact with UNHCR's office in Jerusalem, which at the time was the first step in applying for asylum. Anat Ben-Dor, one of the clinic's lawyers, wrote to the Ministry of Defense to inquire, and received back a four-line reply. The Ministry stated that there had been a teenage girl who crossed over from Syria, that she had indicated that she was running from her family and specifically from violence from her father, that Israeli authorities determined she was not associated with "foreign intelligence," and that they had already proceeded to return her to the Syrian side. We have no way of knowing what happened to the girl after that.

Israel is a party to the 1951 Convention Relating to the Status of Refugees (Refugee Convention).²¹ The Israeli High Court had recognized the principle of non-refoulement in *Al-Tai et al. v Interior Minister*, recognizing that to expel someone to a place where her life or freedom would be in jeopardy would violate the Refugee Convention, general principles of law, and Israel's own Basic Law.²² Given

17. See *infra* Part I.

18. E.g., Philip Baumgarten, Comment, *Israel's Transboundary Water Disputes*, 30 J. LAND RESOURCES & ENVTL. L. 179, 179–80 (2010).

19. See Jeffrey Heller, *Israel Bombs Syrian Posts over Golan Attack on Its Troops*, REUTERS, Mar. 19, 2014, <http://www.reuters.com/article/2014/03/19/us-israel-syria-idUSBREA2106320140319>.

20. See Holly Fletcher, *State Sponsor: Syria*, COUNCIL ON FOREIGN REL. (Feb. 1, 2008), <http://www.cfr.org/syria/state-sponsor-syria/p9368>.

21. Convention Relating to the Status of Refugees, art. 1.A(2), July 28, 1951, 189 U.N.T.S. 150 [hereinafter Refugee Convention].

22. HCJ 4702/94 Al-Tai et al. v Interior Minister, 49(3) PD 843, 848 [1995] ("A person is not to be expelled from Israel to place in which he faces danger to his life or liberty. Any governmental authority –

this framework, the brief note from the Israeli Ministry of Defense about the Syrian teenager contained three legally significant facts. First, she was returned without being able to apply for asylum. Second, she expressed a fear of family violence that may have indicated a valid refugee claim. Third, the Israeli authorities appear to have concluded that she was not individually a danger to the State of Israel.

II. The Principle of Non-refoulement

As a starting point, this factual scenario would appear to indicate a grave violation of the principle of non-refoulement.

The Refugee Convention's article 33 provides: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."²³ A threat of gender-based persecution can fit this standard.²⁴ In a case that at least superficially appears analogous to that of the Syrian girl, the U.S. Board of Immigration Appeals accepted an asylum claim from a young Moroccan woman who "was a victim of her father's escalating physical and emotional abuse."²⁵

Of course, in principle there would need to be a far more involved examination of the facts of the case before concluding that the girl was indeed in danger for reasons relevant to the Refugee Convention. But since Israel made this impossible by immediately expelling her, her refugee status should be presumed for the purposes of assessing the expulsion. Refugee status determination recognizes the pre-existing fact that a refugee meets the Convention criteria, but it does not make someone a refugee.²⁶ The only way to protect a refugee's most urgent right to avoid return to persecution is to presume that non-refoulement applies until her status can be assessed definitively.²⁷

In this case, the Israeli defense authorities appear to have questioned the girl and to have determined that she was not dangerous on an individual basis. This is highly significant because Article 33 has one important exception that is relevant

including the authority of expulsion in accordance with the Entry to Israel Law – must be exercised on the basis of the recognition of "the value of the human being, the sanctity of human life, and the principle that all persons are free" (Article 1 of the Basic Law: Human Dignity and Liberty). This is the great principle of non-refoulement, according to which a person is not to be expelled to a place in which his life or liberty will be in danger. This principle is formalized in Article 33 of the Refugees Convention. It forms part of the domestic legislation of many countries that adopt the provisions of the convention but regulate the matter separately. It is a general principle that is not restricted solely to 'refugees.' It applies in Israel to any governmental authority relating to the expulsion of a person from Israel.").

23. Refugee Convention, *supra* note 22, art. 33.1.

24. U.N. High Commissioner for Refugees, Guidelines on International Protection: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or Its 1967 Protocol Relating to the Status of Refugees, paras. 3, 12, U.N. Doc. HCR/GIP/02/01 (May 7, 2002) ("Gender-related claims have typically encompassed, although are by no means limited to, acts of sexual violence, family/domestic violence, coerced family planning, female genital mutilation, punishment for transgression of social mores, and discrimination against homosexuals. . . . Severe punishment for women who, by breaching a law, transgress social mores in a society could, therefore, amount to persecution. ").

25. S-A-, 22 I. & N. Dec. 1328, 1329 (B.I.A. 2000).

26. *See, e.g.*, JAMES C. HATHAWAY, THE RIGHTS OF REFUGEES UNDER INTERNATIONAL LAW 303–04 (2005).

27. *E.g., id.* at 158–60.

here: "The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is" ²⁸ This exception permits states to engage in refoulement if the individual in question would pose a danger, but the exception must be based on individual factors rather than group association alone. ²⁹ States are permitted some margin of appreciation to determine what constitutes a threat to national security. ³⁰ But the assessment must be individualized to avoid an end-run around the principle of non-refoulement by which states could exclude refugees en masse. ³¹

If this analysis of the 2004 case holds, the consequences in the context of the Syrian Civil War in 2014, when many more Syrians would presumably be able to articulate a valid refugee claim, are clear. Although Israel can exclude those individuals who may reasonably be regarded as posing a security threat, it must be willing to consider the refugee claims of others. Those who fall under the Refugee Convention must be able to enjoy their rights under that Convention in Israel, unless Israel succeeds in finding a third country that will do so. And, in any case, peremptory non-admission or automatic expulsion is impermissible. ³²

III. The Argument Israel Probably Won't Make: Is the Golan Syria?

The situation of a Syrian citizen fleeing into the Israeli-occupied Golan Heights raises a puzzling question for the law of refugee status: Has she even left her country of nationality? The answer might be no, at least so long as she does not enter Israel proper. The Golan Heights was occupied by Israel during the June 1967 war, and it remains Syrian territory today, with Israel as the occupying power. ³³

This issue, at least hypothetically, raises an interpretive problem regarding the two most critical articles of the Refugee Convention. Article 1 contains the international definition of a refugee and requires that a person "is outside the country of his nationality." ³⁴ Thus, it would seem that if the Golan Heights is Syria, a Syrian in the Golan is not a refugee under this definition. Yet Article 33, which I have quoted above, uses a more flexible terminology than the concept of sovereign borders. It prohibits return to "frontiers of territories," ³⁵ a concept broad enough to

28. Refugee Convention, *supra* note 22, art. 33.2.

29. *E.g.*, HATHAWAY, *supra* note 27, at 347–48; Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, in REFUGEE PROTECTION IN INTERNATIONAL LAW 89, 136–37 (Erika Feller et al. eds., 2003).

30. *See, e.g.*, Lauterpacht & Bethlehem, *supra* note 30, at 135. Hathaway suggests that the drafters of the Refugee Convention may have had in mind communists when they wrote Article 33.2. HATHAWAY, *supra* note 27, at 345–46.

31. *See, e.g.*, Lauterpacht & Bethlehem, *supra* note 30, at 137.

32. *E.g.*, HATHAWAY, *supra* note 27, at 315–16.

33. *See* Victor Kattan, *The Legality of the West Bank Wall: Israel's High Court of Justice v. The International Court of Justice*, 40 VAND. J. TRANSNAT'L L. 1425, 1437–38 (2007) (explaining why under norms of international law established both before and after 1967, territory cannot be acquired by war, even in a war of self-defense).

34. Refugee Convention, *supra* note 22, art. 1.A(2).

35. *Id.* art. 33.1.

include a cease-fire or armistice line between occupied Syrian territory and the rest of Syria. Moreover, as James C. Hathaway has established in his detailed treatise on the Refugee Convention, the principle of non-refoulement applies to refugees who are within a state's jurisdiction, but does not require that they arrive on a state's territory.³⁶ Thus, Israel is bound by Article 33 when it asserts authority as an occupying power, even if a refugee there is not on Israeli territory according to international law. And yet, by its text, Article 33 applies only to "a refugee," as defined by Article 1.³⁷ But this would seem to potentially deprive Syrians of the chance to find protection in an adjacent territory, which would seem to be in opposition to the Refugee Convention's purpose to protect refugees fleeing from persecutory governments.

This peculiar result may call for the invocation of the Vienna Convention on the Law of Treaties rule regarding supplemental means of interpretation when the ordinary meaning of a text "[l]eads to a result which is manifestly absurd or unreasonable."³⁸ These supplemental means include the circumstances of a treaty's conclusion.³⁹ An analogous situation to the Golan would have been familiar to the states that drafted the Refugee Convention in 1951 and its 1967 protocol.⁴⁰ Germany was under military occupation by the Allied powers until 1955.⁴¹ But the Western powers did not recognize East Germany as a sovereign state until the 1970s, arguing that all of Germany should remain unified.⁴² During this period, an East German who fled to West Germany would have escaped the Iron Curtain, and yet it could be argued that she never left her "country." To interpret Article 1 so as to exclude such a person from refugee protection would be an absurd result, given that this is precisely the kind of person that Western states wanted to welcome as refugees.

To prevent this unreasonable outcome, the physical boundaries of the "country" in Article 1 can be read to be consistent with the "frontiers of territories" in Article 33. Given the structure of the Refugee Convention, whereby Article 1 defines the beneficiaries of Article 33, it makes sense to have a uniform understanding of central concepts between them. As a leading study of non-refoulement explains, "[I]t must be noted that the word used is 'territories' as opposed to 'countries' or 'States.' The implication of this is that the legal status of the place to which the individual may be sent is not material."⁴³ So long as the frontier has international significance, including the line between occupied and non-occupied territory, it constitutes a border sufficient to meet the criteria for refugee status in the Refugee Convention and for the principle of non-refoulement to apply.

36. HATHAWAY, *supra* note 27, at 156.

37. See Refugee Convention, *supra* note 22, arts. 1, 33.

38. Vienna Convention on the Law of Treaties art. 32(b), May 23, 1967, 1155 U.N.T.S. 331.

39. *Id.* art. 32.

40. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. Before the 1967 Protocol, the Refugee Convention applied only to people who fled their countries before 1951. See *id.* art. 1.2. The Protocol removed this temporal limitation. *Id.*

41. Maryellen Fullerton, *Hijacking Trials Overseas: The Need for an Article III Court*, 28 WM. & MARY L. REV. 1, 27-28 (1986).

42. E.g., Paige L. Margules, Note, *International Art Theft and the Illegal Import and Export of Cultural Property: A Study of Relevant Values, Legislation, and Solutions*, 15 SUFFOLK TRANSNAT'L L.J. 609, 633 n.151 (1992).

43. Lauterpacht & Bethlehem, *supra* note 30, at 122.

So long as a Syrian refugee remains in the occupied Golan and does not cross into Israel, there may be a further question of whether the other rights in the Refugee Convention apply, such as the right to work, freedom of movement, and access to housing. These other rights depend on actually being present on a state's territory.⁴⁴ But I will not belabor the point further here. This may all be an hypothetical problem, at least in terms of how the question of Syrian refugees would likely be litigated in Israeli courts. Israel is probably unlikely to raise this point because, under its domestic law, Israel annexed the Golan in 1981, an act which the UN Security Council condemned as a violation of international law.⁴⁵ In order to claim that a Syrian in the Golan has not left Syria, Israel would have to concede that its annexation was illegal and invalid. Israel's own High Court has given force to Israel's annexation of East Jerusalem,⁴⁶ and so seems unlikely to question the validity of the annexation of the Golan.

IV. The Argument Israel Will Make: An Exception for Enemy Nationals?

Since the inception of its asylum system more than a decade ago, Israel has based its refusal to grant asylum to Syrians and others on the premise that they are citizens of an enemy state.⁴⁷ This line of argument pulls in a doctrine of international law dating back to World War I (if not earlier), and touches an area where the Refugee Convention overlaps with the Fourth Geneva Convention.⁴⁸ But while there are some interesting turns and nuances, the enemy nationals doctrine is of little help to the Israeli position.

The history of the enemy nationals doctrine and its role in Israeli legal history have been explored elsewhere.⁴⁹ In short form, in an international armed conflict, a state is permitted to take some extreme measures to control the potential risks posed by enemy nationals, including internment.⁵⁰ But the Fourth Geneva Convention requires the state to individually review the internment twice annually to reconsider whether internment remains necessary.⁵¹ This requirement of an individual assessment even for enemy nationals in time of war is consistent with the Refugee Convention allowing only an individuated exception to *non-refoulement*.

The most important point, however, is that the Fourth Geneva Convention makes clear that refugees cannot be treated as enemy nationals. Its Article 44 provides: "[T]he Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality de jure of an enemy State, refugees who do not, in fact,

44. See HATHAWAY, *supra* note 27, at 163–64.

45. S.C. Res. 497, para. 1, U.N. Doc. S/RES/497 (Dec. 17, 1981).

46. See Kattan, *supra* note 34, at 1436–37.

47. See Ministry of Interior, *supra* note 10, para. 10.

48. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention].

49. See, e.g., Michael Kagan, *Destructive Ambiguity: Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East*, 38 COLUM. HUM. RTS. L. REV. 263 (2007).

50. Fourth Geneva Convention, *supra* note 49, arts. 36–43.

51. *Id.* art. 43.

enjoy the protection of any government.”⁵² Israel is a party to the Fourth Geneva Convention, and entered no reservation to this article.⁵³

However, Israel did enter a reservation to the Refugee Convention’s analogue to Article 44. The Refugee Convention’s Article 8 prohibits imposing on refugees “exceptional measures which may be taken against the person, property or interests of nationals of a foreign State.”⁵⁴ The drafting history indicates that the intent of this article was to embrace the principles of the Fourth Geneva Convention and to broaden it to also include situations of international tension that stop short of armed conflict.⁵⁵ It remains somewhat unclear what measures Article 8 was meant to prohibit that were not already barred by the Fourth Geneva Convention. There is thus some ambiguity about what Israel might be able to do thanks to its reservation. For present purposes, it is enough to note two salient points.

First, whatever “exceptional measures” might be envisioned by Article 8, this is not an exception from the principle of non-refoulement in Article 33, nor a limitation on the refugee definition in Article 1. Thus, at most, Israel’s reservation would affect the rights that refugees should enjoy inside Israel, but would not permit their exclusion or deportation.⁵⁶ Although the text of Article 8 encompasses a wide range of possible measures a state may take against foreign nationals, these measures may have to be evaluated according to the principle of proportionality against the state’s interest in a particular situation.⁵⁷ In a case that falls short of armed conflict or genuine public emergency threatening the life of the nation, it is far from clear that a state would have a weighty enough interest at stake to justify internment, an extreme measure that the Fourth Geneva Convention circumscribes even in the case of war.⁵⁸ Since Israel’s Article 8 reservation only has legal relevance in non-armed conflict cases, it may only permit economic sanctions against refugees in Israel.

Second, there is little doubt that the relationship between Israel and Syria is one of armed conflict that is governed by the Fourth Geneva Convention. In addition to the fact that the two sides have engaged in periodic and recent exchanges of fire, this convention would apply to the 1967 war during which Israel acquired control of the Golan Heights and governs Israel’s occupation since.⁵⁹ The greatest benefit of the

52. *Id.* art. 44.

53. See Avi Perry, Note, *Solving Israel’s African Refugee Crisis*, 51 VA. J. INT’L L. 157, 166 (2010); cf. Kagan, *supra* note 48, at 281.

54. Refugee Convention, *supra* note 22, art. 8.

55. ATLE GRAHL-MADSEN, COMMENTARY ON THE REFUGEE CONVENTION 1951, ARTICLES 2–11, 13–37, at art. 8 comments (1)–(2) (1997), available at <http://www.refworld.org/docid/4785ee9d2.html>.

56. Israel’s reservation to this article creates an anomaly whereby it could take harsh measures against refugees from a hostile state in time of peaceful international dispute, but not in time of armed conflict. Although Article 8’s text permits a wide range of actions against people and property, it might reasonably be interpreted to include an implicit proportionality test. This would make it much harder to justify internment or physical restraints outside the context of armed conflict. In times of peaceful international tension, economic sanctions may be more relevant.

57. See, e.g., IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW, 551–52 (6th ed. 2003) (discussing the prominent role of proportionality in adjudicating whether individual human rights may be compromised in different circumstances).

58. See International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 1916 U.S.T. 521, 999 U.N.T.S. 171 (“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”).

59. Fourth Geneva Convention, *supra* note 49, arts. 2, 6.

enemy nationals doctrine for Israel may be the Fourth Geneva Convention's article 45, which permits the transfer of protected persons to a third country so long as their rights under the Convention would be respected there.⁶⁰ This supports Israel's pursuit of resettlement for refugees from enemy states. But it does not exempt Israel from responsibility for their protection. If no third state materializes, Israel's obligations remain.

Conclusion

The answer to the question of whether Israel must accept Syrian refugees is yes. Israel has latitude to screen out individuals who reasonably may be considered to pose a security threat. Israel may also take specific measures against individuals who may pose a security threat while their cases are being examined.⁶¹ But it cannot legally bar Syrians *per se* from seeking asylum.

Israel is currently hosting more than 50,000 asylum-seekers, mainly from Sudan and Eritrea,⁶² and has struggled to establish a system for receiving asylum-seekers that complies with international law.⁶³ As of February 2014, Israel has granted asylum to just two Eritreans despite hosting around 36,000, while applying intense pressure on them to leave voluntarily.⁶⁴

Israel makes systematic use of detention to deter asylum-seekers from coming, with legislation (currently being challenged in the High Court) calling for one year detention for unauthorized arrivals ("infiltrators"), to be followed for many asylum-seekers by mandatory residence at an "open camp" in the desert.⁶⁵ Israeli leaders have made clear their hostility to asylum-seekers, suggesting that they pose a mortal threat to the Jewish nature of the state. In 2012, Israeli Prime Minister Benjamin Netanyahu said, "[I]f we don't stop the problem, 60,000 infiltrators are liable to become 600,000, and cause the negation of the State of Israel as a Jewish and democratic state."⁶⁶ Israel's Interior Minister at the time was even less reserved, according to quotes in the press: "We don't need to import more problems from Africa. . . . Most of those people arriving here are Muslims who think the country doesn't belong to us, the white man."⁶⁷

60. *Id.* art. 45.

61. Refugee Convention, *supra* note 22, art. 9.

62. *E.g.*, *Refugees and Asylum-Seekers in Israel: Ineffective Protection*, AMNESTY INT'L, <http://www.amnesty.org.il/?CategoryID=319&ArticleID=347> (last visited July 9, 2014); *Refugees and Asylum Seekers En*, HOTLINE FOR REFUGEES & MIGRANTS, <http://hotline.org.il/en/refugees-and-asylum-seekers-en/> (last visited July 9, 2014) [hereinafter Hotline].

63. *See generally* Tally Kritzman-Amir & Yonatan Berman, *Responsibility Sharing and the Rights of Refugees: The Case of Israel*, 41 GEO. WASH. INT'L L. REV. 619 (2011).

64. Ilan Lior, *For One Eritrean Asylum Seeker in Israel, Hope for a New Life*, HAARETZ, Feb. 2, 2014, <http://www.haaretz.com/news/national/.premium-1.571871>. The United States accepted more than 90 percent of Eritrean asylum applications in 2011. U.N. HIGH COMMISSIONER FOR REFUGEES, UNHCR STATISTICAL YEARBOOK 2011, 102 (2013).

65. *See* Hotline, *supra* note 63 (internal quotation marks omitted).

66. Talila Neshet, *Netanyahu: Israel Could Be Overrun by African Infiltrators*, HAARETZ (May 21, 2012), <http://www.haaretz.com/news/diplomacy-defense/netanyahu-israel-could-be-overrun-by-african-infiltrators-1.431589>.

67. Allyn Fisher-Ilan, *Israel to Jail Illegal Migrants for up to Three Years*, REUTERS, (June 3, 2012),

When political hostility to refugees grows this intense, it is important to turn to law to hold a state to its obligations. In Israel, this responsibility will fall to the High Court. In January, the first Syrian test case ended with a confidential resolution. It would be surprising if more test cases do not come.