



The Right to Migrate as a Component of the Human Right to Peace

By

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Abstract

As the world stands today, we have a refugee and immigrant crisis of apocalyptic proportions. Men, women, and children are fleeing the only place they have ever known, the home of their ancestors, the place that most have called home from birth until the moment they have to flee to save their lives. Refugees worldwide flee war, persecution, and violence with just the clothes on their backs, their children in tow, and whatever little they are able to carry on a journey of thousands of miles, of inhospitable deserts, of treacherous roads or dangerous waters.

The world is inclined to forget and therefore, history repeats itself. Tyrants rise to power and the cycle of injustice and oppression begins, time after time. The geographical places change, the faces of the oppressors change, but the faces of the victims appear to be the same. What never appears to change are the fear, the suffering, the sadness in the eyes of men, women and children, who do not comprehend why they are in such a horrific situation, why they are unable to live in a peaceful place, why there is no safety, no food, no lifesaving medical care for them. The now powerful countries and populations, those who were once oppressed, either become the oppressors, collaborate with the oppressors or turn their backs to the victims of violence and oppression. The most powerful countries, in their quest for wealth and power, interfere in developing countries, and they arm and train individuals and groups that later become the aggressors and executioners of their own people. In countless cases, they sell arms to both sides of the conflict. From the Middle East, Africa, Central America, Mexico, just to name a few, civil wars, guerrillas, subversive, gang, and cartel violence break out, claiming tens of thousands of victims, forcing millions to take flight.

The danger and violence are of such proportion that for most their only option is to escape. As mothers mourn for their murdered husbands, they must put their grief aside, take their children and embark on a journey that will put them at risk of death. Knowing that they might die and knowing that their children might die along with them, many refugees get on flimsy rafts, they ride on top of cargo trains, walk without food or water for miles in the burning heat of a desert. Many of these refugees know that there is a high risk of getting robbed, kidnapped, raped, and beaten along the way. For many others the attacks come as a surprising, inhumane shock. Astonishingly, despite being aware of what awaits them in their journey, refugees still choose to leave because at least there is a possibility, however small, of survival at the end of that flight. Most leave because they know that if they stay, they will die.

Every person has a fundamental right to his or her dignity and worth as a human being, as the Preamble of the United Nations mandates. The right to peace should be acknowledged as a basic human right because without peace there can be no meaningful life. For every human person, safety and security in the place they reside is the basic foundation of life. Peace is as necessary for survival as food, oxygen, and water. The absence of peace represents danger, bullets, bombs, landmines, poisonous gas attacks, hunger, terror, torture, aggression, and for countless people, ultimate death. Therefore, peace shall be a basic human right. If peace is unattainable, then every human being shall have the right to flee any and all dangerous conditions that threaten his or her life.

In conclusion, when we, as humanity are unable to grant a group their basic human right to peace in their city, village, town or country, at the very least, we shall grant the people the right to migrate to a place where their basic human right to peace and life will not be violated.

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Chapter I: Introduction

1. Refugee and Immigrant's Lives Matter



Figure 1. Image from Human Rights Watch (2014).

With more than 65 million people forcibly displaced globally and boat crossings in the Mediterranean still regularly in the headlines, the terms “refugee” and “immigrant” are frequently used interchangeably in media and public discourse. There is a difference and it does matter. Immigrants include anyone crossing an international border for the purposes of moving temporarily or permanently to a new country. Refugees are persons fleeing armed conflict or persecution, and who are recognized as refugees by international law. Asylum-seekers are persons who are fleeing violence and who are requesting refugee status within a safe country, even though they have not received the official designation of refugee status. For refugees and asylum-seekers who are fleeing violence, their situations are often so perilous and intolerable that they cross national borders to seek safety in nearby countries, and thus become internationally recognized as “refugees” with access to assistance from States, the Office of the United Nations High Commissioner for Refugees (UNHCR), and other NGOs such as the International Organization for Migration (IOM). Refugees are so recognized precisely because it is too dangerous for them to return home, and they need sanctuary elsewhere. These are people for whom denial of asylum has potentially deadly consequences.

Refugees are defined by international law. The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol—as well as lesser-known legal agreements, such as the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa—

remain cornerstones of modern refugee protections. The 1951 Convention, written in the post-World War II context to address displaced persons throughout Europe, defines the criteria for classifying refugees, and outlines the basic rights which States should afford to refugees. The legal principles enshrined within this body of law have permeated into countless other international, regional, and national laws and practices. One of the most fundamental principles laid down in international law is that refugees should not be expelled nor returned to situations where their life and freedom would be under threat, a principle known as *non-refoulement*. But the protection of refugees has more aspects. These include safety from being returned to the dangers they have fled; access to fair and efficient asylum procedures; and measures to ensure that their basic human rights are respected to allow them to live in safety while the international community finds a longer-term solution.

States bear the primary responsibility for this protection. UNHCR therefore works closely with governments to advise and support them as they implement their responsibilities. States are an essential element of international refugee protections, because only states have sovereign jurisdiction over their borders and territories. The success of refugee law, therefore, depends upon how individual nation-states implement international law and apply it to actual migrants. It is tragic that despite the formal existence of international law relating to the rights of refugees, in practice many countries do not abide by specific legal protection afforded to refugees. Many countries erect additional barriers to access to asylum. For instance, the EU is attempting to screen asylum-seekers in transit from countries such as Libya, but many of the protections of the asylum process in Europe will not apply (Cernadas, 2009). In the United States, the Department of Homeland Security has created additional interviewing procedures, such as the credible fear interview, to reduce the likelihood that asylum-seekers will get a full asylum hearing (American Immigration Council, 2014). Such failure has claimed (and will continue to claim) lives as refugees continued to be denied access to safety and to a fair process in their applications for asylum.

Migrants chose to move not because of a direct threat of persecution or death, but mainly to improve their lives by finding employment, for purposes of education, reuniting with family members or other reasons that do not entail danger to life or freedom. Unlike refugees who cannot safely return home, immigrants face no such impediment to return. If they choose to return home, they will continue to receive the protection of their government. For individual governments, this distinction is important. Countries deal with migrants under their own immigration laws and processes. Countries deal with refugees through norms of

refugee protection and asylum that are defined in both national legislation and international law. Countries have specific responsibilities towards anyone seeking asylum on their territories or at their borders.

It is important to not to amalgamate indiscriminately the two terms as such could have a serious consequence for the lives and safety of refugees, making both terms indistinct could take away from the attention from the specific legal protections refugees require. It can undermine public support for refugees and the dilution of the institution of asylum for refugees in desperate need for such protection.¹

It is necessary; however, to treat all human beings with dignity and respect, whether they are refugees or immigrants. The rights of both refugees and immigrants must be respected. We must also recognize that in many instances people could be both. Poverty stricken countries undergo a phenomenon, where as a result of the extreme poverty, lack of opportunities and desperation, people turn to crime, many times in order to survive. Such is the case in Mexico, where poverty, lack of opportunities, and government corruption has led to a situation where drug cartels, gangs and other criminal enterprises perpetrate such horrific acts of violence that people are forced to flee, both to escape the dire economic conditions and to escape the violence created by these criminal enterprises in their countries.

2. Key Arguments of the Thesis

My purpose in writing this thesis is to explore the practical and legal possibilities of improving human rights law in a way that benefits asylum-seekers, increases the possibility for asylum-seekers to move freely, and address the problems with how asylum law functions in the world today. This view is informed by academic study and my professional experience as an immigration attorney. For that reason, I am less focused on the theoretical and philosophical conceptions around international law, and more interested in how academics and immigration attorneys can work together to create practical improvements to the system of global migration. I explore such questions as: Is there sufficient protection for people fleeing violence and do not qualify as refugee? Does current international human rights law advocate strongly enough for peace? How could we change the system of international human rights law to prioritize peace and non-violence over war?

In this thesis, I make three main arguments. First, I draw upon previous work by Carlos Villán Durán (Durán, 2011a, 2011b, 2014, 2015) and others that the international

¹ Edwards, A. (2016). UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right?

community should create a human right to peace. I further argue that the human right to peace should include a human right to migrate as a remedy to situations where peace is not possible either for a short time or permanently. I focus on this argument in Chapter 2. Second, I provide an example of why and how the human right to migrate should be implemented by examining the political crisis of migration in Central America. Since 2014 (and for years before that) migrants have fled violence and corruption in Honduras, El Salvador, and Guatemala and came to the United States as refugees to apply for asylum. Without access to true freedom of movement, however, many of them are not able to obtain asylum. In Chapter 3, I discuss this problem, and suggest possible solutions. In Chapter 4, I extend this argument to the immigration courts, where I represented immigrant and refugees in front of immigration judges. In that chapter, I explain the possible ways that a right to migrate could be used to improve the options available for migrants in court. In the final chapter, I review the strengths and weaknesses of the thesis, suggest possible applications in the European context, and suggest directions for future research.

In the following section, I situate myself as a scholar through my work as an immigration attorney and my identity as an immigrant to the United States.

3. Auto-ethnography of Refugee and Immigrant Rights

Although the research in this thesis is designed to advance the human rights of refugees and immigrants in the United States and around the world, it is important to justify the context of this research, as well. It is not enough to make a legal argument for the expansion of human rights, but research must also include the narratives of refugees, immigrants and researchers themselves, especially when those researchers share in the immigrant experience. Human rights are, after all, a human issue.

For this reason, I chose to include my own journey as an immigrant as part of my research data using a method known as auto-ethnography. Auto-ethnography is a research method that views the researcher's own experience as valuable material for information and interpretation. Auto-ethnography "a form of self-narrative that places the self within a social context" (Reed-Danahay, 1997)² in order to yield insights about the world that are not possible when researchers only take a so-called "objective" perspective. Auto-ethnography is especially important when trying to include the voices of marginalized people, such as women, immigrants, minorities, and other social groups. For instance, Shahram Khosravi

² Reed-Danahay, D. (1997). *Auto/ethnography: Rewriting the Self and the Social*. Oxford: Berg.

(2008)³, a professor of anthropology at Stockholm University, uses his experience of crossing dozens of borders in Asia and Europe to analyze the rituals of crossing borders. In the same way, I use this section to discuss my path to becoming an immigration attorney, because it demonstrates the relationship between human rights as a profession and the experience of human rights as an individual.

My involvement in immigration law goes far beyond my office or an immigration courtroom: immigrant justice is a part of my life. I made the decision to become an attorney early on in my life because I had a desire to protect people, particularly people who were not able to protect themselves. I also wanted to protect immigrants because I was an immigrant child when I came to the United States. When I became an attorney, I started volunteering at the Los Angeles County Bar Association Immigration Project, where I had the opportunity to assist indigent immigrants who desperately needed legal representation. Even though I worked hard and eventually built a successful law practice, I continued to volunteer with other entities to assist immigrants and victims of violence. These experiences remind me of the real reason I became an attorney, and they allow me to give back to immigrant community on a *pro bono* basis.

One of the experiences that impacted me the most is volunteering with the CARA Pro Bono project at the South Texas Family Residential Center (hereafter “Center”) in Dilley, Texas. Although the name “Family Residential Facility” makes the institution sound peaceful and family-friendly, it is not. The Center is the largest immigrant detention center in the United States, and one of the largest in the world. This facility opened in December 2014 with a capacity of 2,400 beds. This Center is intended to detain mainly women and children from Central America fleeing violence and who hope to obtain safety in the United States. The Center is known among immigration attorneys and human rights advocates as the “Baby Jail”. Volunteering at this detention Center brought home the brutal reality of the plight of refugees and immigrants in the United States, a country that claims to take pride in values of justice and fairness.

In response to Immigration and Customs enforcement’s (ICE) significant expansion of its family detention centers, the Catholic Legal Immigration Network, the American Immigration Council, the Refugee and Immigrant Center for Education and Legal Services and the American Immigration Lawyers Association, collectively known as CARA Family

³ Khosravi, S. (2008). The ‘Illegal’ Traveller: An Auto-ethnography of Borders. *Social Anthropology*, 15(3), 321-334.

Detention Pro Bono Project, joined forces to protect the rights of immigrants and refugees held in these detention centers. The South Texas Detention Residential Center is the center that I am most familiar with because I have been there and I have personally witnessed the unequal treatment immigrants experience at the hands of officers that work for Customs and Border Protection (CBP), Immigration and Customs enforcement's (ICE), and CoreCivic (formerly the Corrections Corporation of America, CCA), a company that provides private prison, jail and detention services to the government. While the CoreCivic claims that their mission is to provide an open, safe environment with residential housing, as well as educational opportunities for women and children who are awaiting their due process before immigration courts, this is not always the case. Immigrants and refugees are often detained, processed and held in conditions so inhumane that some detainees have committed suicide, died, or engaged in hunger strikes in an effort to change the existing conditions of the centers. Others have become so despondent that they have agreed to voluntary return to the violence of countries they escaped from. At the detention centers, there have been allegations of rape, neglect, brutality and abuse. Many of these people, who have returned to their countries of origin, have been murdered, just as they feared (Brodzinsky & Pilkington, 2015).

I spent the Christmas holiday season of the year 2015 volunteering at Dilley because during the holidays the CARA Family Detention Pro Bono Project struggles to have volunteer attorneys provide services to the women and children detained. I have extensively worked with victims of violence. I have volunteered at the Los Angeles County Bar Association Domestic Violence Project. I believed I was prepared to render legal assistance as a volunteer attorney to the women and children detained. I was not.

When I walked into the waiting area at the South Texas Family Residential Center for the first time my knees buckled and tears started rolling down my face. I saw dozens of children waiting with their mothers for me and the other volunteer attorneys to assist them. Some of the children were so young that their legs dangled from the chairs they were sitting on. I had to put my sadness and grief aside and shift into high gear, because these people needed help, not tears. Some days we arrived at 7:00 am and have a last meeting that ended at 9:00 pm. During those weeks, I heard stories of rape, incest, beatings, murders, and other cruelties that were inflicted upon these detained women and children. In the United States these immigrants and refugees are not welcomed or helped. They are incarcerated like criminals even though they have done nothing wrong, their only crime is fleeing for their lives.

The Center is a good example of what's wrong with how asylum law. The purpose of the work of the CARA project is to help detained asylum-seekers pass the credible fear interview and get released from detention. 'Credible fear' is a legal standard that is less strict than asylum, but which nonetheless creates an unnecessary barrier for asylum-seekers. During the credible fear interview, asylum officers ask migrants about their fear of returning. They intentionally look for reasons to issue a removal order rather than let them in. The CARA Pro Bono project provides direct legal assistance by preparing asylum applicants for their interviews, writing appeals, and providing informal emotional support through the process.

For instance, in order to prepare for a credible fear interview, I sat with a young indigenous mother while she related the brutal rapes she suffered in her village, commencing at the age of five, which she had not disclosed to anyone, not even her own mother. Some of the refugees were holding on to death certificates of their loved ones, some of whom had been murdered in their presence, some even in front of their children. A ten-year-old boy was begging not to be deported because he feared he would be murdered by Salvadoran gangs, just like other boys in his village were. He described how scared he was when he saw the body of a seven-year-old boy hanging from a bridge. The family of the dead boy was not able to pay the extortion money the gang demanded. The youngest victim that I heard of was a 7-month-old baby, who had been murdered with his entire family when the demands of the criminals who ruled the town were not met. Another victim, a very young girl, described how she had been systematically raped by the *coyote*, the human trafficker or smuggler hired to bring her to the United States, during her entire journey to the United States. She became so desperate, that she ran to immigration authorities and turned herself in. She was removed to her country of origin, where she was nearly killed by the people who had persecuted her before and she had to flee again. Her case was extremely difficult because her prior removal order was already registered in the immigration system.

Detaining asylum-seekers and adding barriers to apply for asylum are examples of what's wrong with how international asylum law is put into practice. I believe that we, the people of the United States, have a moral responsibility to end family detention and the inhumane detention of all immigrants and refugees. The continued detention of women and children reflects the position of the government of the United States in its very flawed deterrence policy, one that began in June of 2014, with the opening of a temporary family detention center in Artesia, New Mexico. The detention of mothers and their children is

inhumane and absolutely incompatible with the fairness and justice we claim to have as a core American value. While there are organizations like CARA Family Detention Pro Bono Project, who fight to provide competent, pro bono representation and to end the practice of family detention, the problem becomes worse with each day that passes. Despite of the efforts of these organizations, and even when federal orders and prior legal agreements are in place, the federal government of the United States has continued its inhumane detention of children and their mothers.

I went back to Dilley in July of 2016. I wanted to spend my birthday doing something that was meaningful to me. I drove with two colleagues for nearly 25 hours from Los Angeles, California to Dilley, Texas. During that stay at Dilley, I held back the tears as I listened to a teenager described the brutal sexual abuse she endured and how fearful she was of being returned to her country of origin, where she knew she could not escape her persecutor. I also held back my tears and anger as a mother described how she was abandoned with her toddler in the Texas desert by the human trafficker she hired to bring her to the United States. She was with another woman and the child of that woman. She fled her home country when she was told she had 24 hours to leave or she would be murdered. She tearfully described how the body of the other woman's child "shrunk" as she died in the burning desert heat. During several of these interviews I had to excuse myself and went to the bathroom to throw up or cry. Due to the work of CARA Pro Bono attorneys and volunteers, about 412 women and children were released at the end of my stay in Dilley in July 2016. This is evidence that legal services can make a difference for asylum-seekers. But it is not sufficient to address the larger legal problems. In fact, attorneys must do both: attorneys must work with individual cases of asylum-seekers, and also work to change national and international human rights laws.

These experiences have shaped my career as an immigration attorney. My purpose in life, and the purpose of this thesis, is to advocate to the right of people to live in peace. If such right cannot be attained, then I will fiercely advocate for the right of people to flee a country where there is violence, persecution, danger or oppression and for people to be received and welcomed in other countries so they can make a home and live in peace.

Chapter II: The Human Right to Peace and Global Migration



Figure 2. Image of Migrants from UNHCR (2017).

1. Introduction

In this chapter, I contextualize the recent successful proposals to create a human right to peace, and I advance the framework of the human right to peace as a fundamental human right. I extend this framework to the phenomenon of global human migration, especially refugees who are fleeing violence. In the absence of successful efforts to reduce violence, refugees should have a right to seek asylum as a way of coping with geopolitical violence that the international community has been unable or unwilling to resolve. I argue specifically that the right to migrate should be a component of the human right to peace, both as a fundamental value and as a remedy for the lack of action by the international community.

2. What's Wrong with Human Rights?

Although much international law has peace as a goal, current human rights standards have not adequately embraced the concept of peace as a human right. The Preamble of the Charter of the United Nations (1945)⁴ reads as follows:

We the Peoples of the United Nations, determined

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

⁴ United Nations. (1945). *U.N. Charter*. Retrieved from: <http://www.un.org/en/sections/un-charter/preamble/>.

- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom.

Yet as conflict and violence becomes more prevalent, the international community observes with sadness that the intent of the States expressed in the Preamble of the Charter of the United Nations has not been met. Systemic violence remains common for much of the developing world. Blood is shed every single day, from African villages, where rape and murder are an everyday occurrence, to the streets of Mexico and Central America, overwhelmed with cartels and gangs that extort and murder men, women, and children, often in collusion with the governments. Countless times the murderers, persecutors and oppressors are the people who are hired or elected to protect its fellow citizens or constituents. The international community has failed the people of the world in their natural right of having a life free of the scourge of war and the horrors that derive from it. In the face of such failure, we should, at a minimum, fight to preserve life by making the right to migrate to safety a basic human right.

Concerns about basic human rights have been at the forefront of U.S. politics for decades. The United States, which has not yet ratified the UN Convention relating to the Status of Refugees of 1951⁵, was one of the last developed countries to adopt comprehensive asylum policies. Yet in the months and years after adopting asylum policies, the United States sought to limit the ability of migrants who could be qualified as refugees to file for asylum by restricting their freedom of movement. For instance, in 1981, Haitian migrants, who were fleeing the violent backlash of President Jean-Bertrand Aristide in boats, were turned back to Haiti by the U.S. Coast Guard under the Haitian Migrant Interdiction Operation created by President Ronald Reagan (Amnesty International, 1992)⁶. This program of limiting Haitian refugees from applying for asylum relied on the fact that in order to file an asylum application, applicants must be present in United States territory. By limiting refugees' ability

⁵ In force since 22 April 1954, with 145 States Parties. United States is not Party to this Convention. See https://treaties.un.org/Pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en The Convention was supplemented by the New York Protocol relating to the Status of Refugees, in force since 4 October 1967, with 146 States Parties. It was acceded by the United States in 1968 with the following reservation: "The United States of America construes Article 29 of the Convention as applying only to refugees who are resident in the United States...". See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&clang=en#EndDec.

⁶ Amnesty International. (1992). *Haiti: The Human Rights Tragedy: Human Rights Violations Since the Coup*. Retrieved from: <https://www.amnesty.org/en/documents/amr36/003/1992/en/>.

to enter the United States, the US Coast Guard ensured that Haitian refugees would not be able to apply for asylum (Americas Watch, 1991)⁷.

As this example shows, pending the ratification by United States of the UN Convention Relating to the Status of Refugees, international human rights law alone has not been able to fully empower refugees to seek safety through the asylum system. The asylum system was designed for people like the Haitians in the 1980s during a turbulent political crisis, but the ability of the United States to restrict the freedom of movement of migrants effectively limited Haitian refugees' ability to seek find peace and security for them and their families and children. For this reason, it is important to urge the ratification by United States of the UN Convention Relating to the Status of Refugees to adequately protect refugees, and also to protect migrants around the world from violent circumstance.

Although the above criticisms of international human rights law help identify the problems, the international community also needs solutions. As a result of these problems with international human rights law, scholars in recent years have proposed an international human right to peace that expands the principle of peace into a full human right. In the next section, I discuss the history of the human right to peace, before going on to discuss the right to seek asylum and the right to migrate as essential components of the human right to peace.

3. What is the Human Right to Peace?

In response to the failure of international human rights law to adequately promote peace, the *Asociación Española para el Derecho Internacional de los Derechos Humanos*⁸ (AEDIDH), has, over the past decade, successfully lobbied for a more explicit legal framework for promoting peace as a human right (Villán Durán, 2014). The SSIHRL reminds us that the main purpose of the United Nations Organization is the maintenance of international peace and security. To achieve it, member states should develop friendly relationships, achieve the international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion and the Organization being a center for harmonizing the action of states in the attainment of these common goals.

⁷ Americas Watch. (1991). *Return To The Darkest Days: Human Rights In Haiti Since The Coup*. Retrieved from: <http://ufdc.ufl.edu//AA00000871/00001>. Last accessed on: August 16, 2017.

⁸Asociación Española para el Derecho Internacional de los Derechos Humanos (AEDIDH). [Spanish Society for International Human Rights Law, SSIHRL].

The intent of the United Nations in making peace an absolute priority and right for every nation is clear and irrefutable. Based on these principles, the SSIHRL reminds us of the obligations of the states in the resolution of their international disputes by peaceful means and their obligation to refrain from the threat or use of force. The argument of the SSIHRL is fully supported by the Charter of the United Nations – Chapter 1- Article 1 “The Purposes of the United Nations are: 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace”. Even if other treaties or agreements are in place, Article 103 of the Charter states that obligations to the United Nations prevail over all other treaty obligations.

Most developing countries support the notion of peace being declared a human right, as the majority of countries are in agreement with the exemplary work of the SSIHRL in having the United Nations declare peace as a fundamental human right. The powerful arguments made by the SSIHRL in having the right to peace as a human right are heavily supported by the major human rights instruments: The Statute of the International Court of Justice, the Constitution of the UNESCO, the 1978 UN Declaration on the Preparation of Societies for Life in Peace (United Nations, 1978)⁹, the 1984 Declaration on the Right of Peoples to Peace (Durán, 2015; United Nations, 1984)¹⁰. Despite these principles, violence throughout the world is rampant. In the year 2015, there were over 40 armed conflicts in the world, according to the SSIHRL (Durán, 2015)¹¹.

The absence of peace severely compromises other fundamental rights, such as the right to food, right to water and health, the right to a sustainable environment, right to a place to live. All forms of violence shall be eliminated, armed violence, structural violence and cultural violence should be eliminated in the furtherance of human rights, as demanded by the following documents drafted by the SSIHRL: The 2006 Luarca Declaration on the Human Right to Peace, the 2010 Bilbao Declaration on the Human Right to Peace, the 2010 Barcelona Declaration on the Human Right to Peace and the Santiago Declaration on the

⁹ United Nations (1978). *Declaration on the Preparation of Society for Life in Peace* (Resolution 33/73 approved by the General Assembly). Retrieved from: <http://www.un-documents.net/a33r73.htm>

¹⁰ Villán Durán, C (2015). *El Papel de la Sociedad Civil en la Codificación del DIDH: el Derecho Humano a la Paz*. United Nations (1978). *Declaration on the Preparation of Society for Life in Peace* (Resolution 33/73 approved by the General Assembly). Retrieved from: <http://www.un-documents.net/a33r73.htm>

¹¹ Villán Durán, C. (2014), *The Emerging Right to Peace: Its Legal Foundations*. Cambridge-Antwerp-Portland, Intersentia, 2014, 53 p.

Human Right to Peace, adopted on 10 December 2010 (Durán, 2015)¹². Armed violence alone generates 42.8 million refugees.¹³ Structural violence generates poverty and hunger.¹⁴ In the year 2014, according to the Food and Agriculture Organization of the United Nations, there are more than 800 million people suffering from hunger and 2,000 million lacking micronutrients, the majority in Southern countries, mainly women and children. 7, million children under the age of five die each year of poverty, exclusion and discrimination, according to the World Health Organization (Durán, 2015)¹⁵.

While people die from starvation, in the year 2015, the world expenditure on armament was \$1,676 billion (Stockholm International Peace Research Institute, 2016b)¹⁶. There appears to be a significant correlation between the developed powerful countries who oppose the right to peace and the right to migrate. They appear to be the same countries that benefit from conflict, for the most part through the sale of weapons. The United States, Russia, China, France and the United Kingdom (i.e., the five permanent members of the Security Council) are the leaders in weapons sales and distribution. The United States leads the way (Durán, 2015; Sheffield, 2016)¹⁷.

The United States was the only country to vote against the adoption of the UN Human Rights Council resolution 20/15 (2012), which reiterated its appreciation to civil society organizations for their contribution to the development of the right to peace, established an open-ended intergovernmental working group to draft the United Nations Declaration on the Right to Peace on the basis of the Declaration adopted by the HRC Advisory Committee in 2012 (which included 85% of the standards proposed by the CSO in the Santiago Declaration on the Human Right to Peace), and invited civil society and other international actors to participate in the working group, among other important clauses. The resolution was adopted with 34 votes in favor, 1 against and 12 abstentions. As stated, the United States, the leader in

¹² *Íbidem*, Villán Durán (2014)

¹³ Villán Durán (2014) and UNHCR <http://www.unhcr.org/576408cd7.pdf>

¹⁴ *Íbidem*, Villán Durán (2014); *L'Atlas du Monde Diplomatique*

¹⁵ *Íbidem*, Villán Durán (2014); World Health Organization

¹⁶ Stockholm International Peace Research Institute. (2016a). *SIPRI Military Expenditures Database*. Retrieved from: <https://www.sipri.org/databases/milex>. (2016b). *SIPRI Yearbook 2016: Armaments, Disarmament and National Security (Summary)*. Retrieved from: <https://www.sipri.org/sites/default/files/YB16-Summary-ENG.pdf>

¹⁷ Sheffield, H. (2016). Arms Trade: One Chart that Shows the Biggest Weapons Exporters in the Last Five Years. *Independent*. Retrieved from: <http://www.independent.co.uk/news/business/news/arms-trade-exporters-importers-weapons-transfers-sipri-a6891491.html>.

manufacturing, distribution, importation and sales of weapons was the only country who opposed (Durán, 2015; Stockholm International Peace Research Institute, 2016a)¹⁸.

The right to peace raises important questions and new problems. First, who would enforce a right to peace? Second, if all states adopted the right to peace as a fundamental human right, what would the response of the international community be if a State did not meet their obligations? Could the international community truly have the power to enforce the right to peace? What mechanisms are in place in the United Nations in furtherance of this?

The United Nations was established in 1945 with one central mission: the maintenance of international peace and security. The UN works toward this goal with the help of the Security Council. The Security Council has the primary responsibility, under the United Nations Charter, for the maintenance of international peace and security and it responds to crisis around the world, generally on a case by case basis. The Security Council establishes peacekeeping operations by adopting Security Council resolutions. The resolutions sets out that missions' mandate and size. The Security Council monitors the work of UN Peacekeeping operations on an ongoing basis, including through periodic reports from the Secretary-General and by holding dedicated Security Council sessions to discuss the work of specific operations. The Security Council can vote to extend, amend or end mission mandates as it seems appropriate.¹⁹ There are five permanent members who were the Second World War's principal victors, all of whom are now nuclear-armed states. The permanent members of the Security Council are China, France, Russia (formerly the Soviet Union), the United Kingdom and the United States. There are also 10 temporary members at any one time, elected by the General Assembly for two-year terms.

The challenges to the evolving purposes of the United Nations can be significant because the Security Council may not be truly representative. There are no African or Latin American states among the permanent members. Nor is India, despite its vast population and increasingly powerful economy. While the Security Council still produces large numbers of resolutions there are severe flaws in its functions. Only the five permanent members have the power of veto, which enables them to prevent the adoption of any substantive draft Council resolution, regardless of the necessity of said resolution or the level of international support for that resolution. This could constitute a severe paralysis on the ability to take resolutions

¹⁸ Stockholm International Peace Research Institute. (2016a). *SIPRI Military Expenditures Database*. Retrieved from: <https://www.sipri.org/databases/milex>.

¹⁹ UN Role of the Security Council. Retrieved from: <http://www.un.org/en/peacekeeping/operations/rolesc.shtml>

that could procure peace or necessary protections for other Member States, as many times the Security Council is paralyzed by disagreements and vetoes to the point that it can be argued that after more than seventy years, the Security Council could be becoming obsolete. One possible remedy to this could be the expansion of the Security Council and its permanent membership. Currently the Permanent Member States appear to be in opposition, especially the United States, Russia and China. A clear example of the dysfunction of the power to veto by these permanent members of the Security Council can be seen in Russia's use of its veto powers on 10 occasions over the past ten years, largely to avoid scrutiny over its actions in Ukraine – or to protect allies such as the Syrian regime, from UN pressure.²⁰ The power to veto by the permanent members of the Security Council can be a significant impediment to the goal of peace.

Other important protective mechanisms are in place. The United Nations Office on Genocide Prevention and the Responsibility to Protect establishes the responsibility to protect and to end the worst forms of violence and persecution. It seeks to narrow the gap between member states' pre-existing obligations under international humanitarian and human rights law and the reality faced by the populations at risk of genocide, war crimes, ethnic cleansing and crimes against humanity.

At the high-level UN World Summit meeting, member states committed to the principle of the responsibility to protect. In paragraphs 138 and 139 of the 2005 World Summit Outcome document (A/RES/60/1) Heads of State and Government affirmed their responsibility to protect their own populations from genocide, war crimes, ethnic cleansing and crimes against humanity and accepted a collective responsibility to encourage and help each other in upholding this commitment. They also declared their preparedness to take timely and decisive action, in accordance with the United Nations Charter and in cooperation with relevant regional organizations, when national authorities manifestly fail to protect their populations.

The Responsibility to Protect principle aims to reinforce sovereignty by trying to assist member states in meeting their existing responsibilities.²¹ Unfortunately, there have been significant setbacks to the advancement of the Right to Protect agenda. In January 2007, China and Russia vetoed a Resolution on the situation in Myanmar, arguing that it did not

²⁰ Borger, Inzaurre, Levett, Newwell, Sheehy and Maynard (2015) Vetoed! What's wrong with the UN security council – and how it could do better. Retrieved from: <https://www.theguardian.com/world/ng-interactive/2015/sep/23/un-security-council-failing-70-years>

²¹ United Nations Office on Genocide Prevention and the Responsibility to Protect (2005) Retrieved from: <http://www.un.org/en/genocideprevention/about-responsibility-to-protect.html>

pose a threat to international peace and security in the region, and that the internal affairs of the state did not have a place within the Security Council. Instead, they suggested that the situation in Myanmar should be taken up by the Human Rights Council. The referral of the situation in Myanmar to the Human Rights Council raised questions about the commitment of some Security Council members in addressing and resolving mass atrocity crimes within the Security Council.²² This is an example of the need for a change in the composition of the Security Council and its methods of work. At a minimum, Permanent Members should be mandated to waive their veto rights in cases of mass atrocities.

It is possible that the right to peace could become another mechanism for justifying military interventions, which would clearly contradict the purpose of the right in the first place. There have been interventions by powerful countries such as the United States under the claim of being “humanitarian interventions” in the past. Humanitarian intervention has been defined as a State’s use of military force for the ending of violation of human rights; it generally involves the threat and the use of military forces as a central feature. The United States has been involved in a number of interventions throughout its history. In the Fiscal Year of 2003 the U.S. Government spent more than two billion dollars assisting refugees and internally displaced people (IDPs), which represented at the time about a third of global spending on humanitarian assistance. The U.S. Department of State claims this is a symbol of the generosity of the American people and their desire to help alleviate the suffering of strangers.²³ Some of the interventions of the United States will be discussed and we will analyze whether or not such interventions are compatible with the UN Charter, whether such interventions furthered the best interests of the nations affected and whether the interventions promoted the protection of human rights.

Humanitarian intervention comes at a price and while it can mitigate the suffering of people, it will not necessarily get to the root of the problem, the real causes of violence. Additionally, armed intervention is rarely consensual, neutral or impartial. There are many instances in which the United States has launched humanitarian interventions. The intervention of the United States in Latin America served to overthrow left wing governments and propelled right-wing dictators. El Salvador is geographically one of the smallest countries in Latin America, but one where Washington’s footprint is large and the stain of the

²² International Coalition for the Responsibility to Protect. Retrieved from: <http://www.responsibilitytoprotect.org/index.php/about-rtop>

²³ Stewart Patrick (2004) The Role of the U.S. Government in Humanitarian Intervention *U.S. Department of State Archive*. Retrieved from: <https://2001-2009.state.gov/s/p/rem/31299.htm>

U.S. intervention perhaps the greatest. The United States played an active role in the 1980's, supporting a right-wing government against Marxist guerrillas. The United States sent military advisers to help the Salvadoran military fight its dirty war, as well as hundreds of millions of dollars in economic and military aid. This intervention not only caused a military based government to raise to power and commit atrocities against its own citizens, but it generated a social phenomenon that resulted in the formation of criminal organizations (called the Maras, or gangs) that to this day create unprecedented violence in Central America. In Argentina, in the name of fighting communism, the Argentine government hunted down, tortured, killed and disappeared suspected leftists—sometimes throwing their bodies out of helicopters into the sea.

In Argentina, the security forces killed some 30,000 civilians. In El Salvador, more than 75,000 lost their lives during the civil war, which lasted from 1980 until the 1992 peace agreement. The guerrillas committed atrocities, but the United Nations Truth Commission, established as part of the UN-led peace accord, found that more than 85 percent of the killings, kidnappings, and torture had been the work of government forces, which included paramilitaries, death squads, and army units trained by the United States. The United States went well beyond remaining largely silent in the face of human-rights abuses in El Salvador. The State Department and White House often sought to cover up the brutality, to protect the perpetrators of even the most heinous crimes.²⁴ How are these interventions “humanitarian” or conducive to peace or the protection of human rights?

In the case of Iraq, the United States-led coalition forces justified the invasion of Iraq on a variety of grounds, only one of which - a comparatively minor one - was humanitarian. The Security Council did not approve the invasion, and the Iraqi government, its existence on the line, violently opposed it. The war in Iraq massive, involving an extensive bombing campaign and some 150,000 ground troops. The size of the invasion, the central involvement of the world's super power, and the enormous controversy surrounding this war, was carried out against international law and the UN Charter. The prominence of this war gave it greater power to shape public perceptions of armed interventions said by their proponents to be justified on humanitarian grounds. The result of this is that a time of renewed interest in humanitarian intervention, the Iraq war and the efforts that were made by the United States to justify it under the guise of “humanitarian reasons” give true humanitarian intervention a bad

²⁴ Bonner, R. Time for a US Apology to El Salvador. *The Nation*. Retrieved from: <https://www.thenation.com/article/time-for-a-us-apology-to-el-salvador/>

name. If that promotes cynicism about the use of military force for humanitarian purposes, it could be devastating for people in true need of future rescue.²⁵

None of the interventions discussed above are compatible with purposes and principles of the United Nations Charter. The principles of the UN Charter include equality and self-determination of nations, respect of human rights and fundamental freedoms, the cooperation with the UN Security Council and the use of peaceful means to resolve conflicts. In the case of El Salvador and Argentina, the interventions of the United States were egregious because it provided the means, training and resources for an oppressive government to murder its own people. The intervention in Iraq was also a clear example of the disregard for the UN Charter principles because it defied the opposition of the UN's Security Council and the vehement opposition of Iraq, the country directly affected. The intervention impinged on the sovereignty of Iraq, the country affected, and caused around 5 million Iraqis to be displaced either inside or outside of Iraq. Eight years of military occupation followed by continuous intervention of Iraq's domestic affairs are not the end of the interference of the U.S. in Iraq. The U.S. continues to sell the Iraqi government billions of dollars-worth of weapons, and continues to provide training programs for Iraqis.²⁶ There is no advancement of human rights protection in such actions. The interventions of the United States, under the false front of being "humanitarian" or partially humanitarian interventions, or to fight international terrorism by Al Qaeda or Daesh Muslim fundamentalist groups, are in direct conflict with the principles of the UN Charter.

Second, given that peace is already a core concept of the United Nations and international human rights law, the right to peace could seem redundant. It is not. The right to peace is a human right. It needs to be zealously protected as such. As discussed above, there are several safeguards, mechanisms and protections in place. Nonetheless, the absence of peace continues to create brutal violence and millions of lives are lost or gravely affected.

Indeed, there are many practical matters left to be worked out in the right to peace. Nonetheless, the right to peace in international human rights law is designed to prepare for peace and human flourishing with same enthusiasm that some states pursue war and violence.

From the commencement of the United Nations founding Charter, the term "human rights" was mentioned at least seven times. It was clear that the promotion and the protection

²⁵ Human Rights Watch (2014): War in Iraq: Not a Humanitarian Intervention. Retrieved from: <https://www.hrw.org/news/2004/01/25/war-iraq-not-humanitarian-intervention>

²⁶ Moyers, B. (2014): An Iraqi Perspective: How America's Destruction of Iraqi Society Led to Today's Chaos. *Moyers & Company*. Retrieved from: <http://billmoyers.com/2014/06/20/an-iraqi-perspective-how-americas-destruction-of-iraqi-society-led-to-todays-chaos>

of human rights were a key purpose and guiding principle of the UN. In 1948, the Universal Declaration of Human Rights brought human rights into the realm of international law. Since 1948, the United Nations has diligently protected human rights through legal instruments and on-the-ground activities. The Universal Declaration of Human Rights, along with the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, are the three instruments that form what is called the International Bill of Human Rights. In addition, a series of international human rights treaties and other instruments adopted since 1945 have expanded the body of international human rights law.

The office of the UN High Commissioner for Human Rights (OHCHR) has taken the responsibility in the UN system for the promotion and the protection of human rights. The OHCHR supports the human rights components of peacekeeping missions in several countries, and has many country and regional offices and centers. In addition, the OHCHR regularly comments on human rights situations in the world and has the authority to investigate situations and issue reports on the situations it has investigated. Another important UN entity that is responsible for the protection of human rights is the UN Security Council, which at times deals with grave human rights violations, often in areas of conflict. The UN Charter gives the Security Council the authority to investigate and mediate, dispatch a mission, appoint special envoys, or request the Secretary-General to use his good offices. The Security Council may issue a cease fire directive, dispatch military observers or a peacekeeping force. If this is unsuccessful, the Security Council can opt for other enforcement measures, such as economic sanctions, travel bans, the severance of diplomatic relations, a blockade, or even collective military action.²⁷

In furtherance of the efforts of the United Nations in protecting human rights, the Human Rights Council Advisory Committee was established to function as a think-tank for the HR Council and work at its direction. The Advisory Committee provides expertise to the HR Council in the manner and form the HR Council requests, it mainly focuses on studies and research-based advise; it may also propose suggestions for further research proposals within the scope of the work set out by the HR Council, the Advisory Committee is generally implementation-oriented and the scope of its advise is usually limited to thematic issues

²⁷ United Nations. "Protect Human Rights". Retrieved from: <http://www.un.org/en/sections/what-we-do/protect-human-rights/>

pertaining to the mandate of the HR Council, namely the promotion and the protection of all human rights; however, the Advisory Committee does not adopt resolutions or decisions²⁸.

Despite the numerous challenges faced when protecting and advocating for the human right to peace, it is important to recognize the important advances, victories and progresses made and the exemplary work done in furtherance of the declaration on the right to peace and the protection of human rights.

At its 20th session, on July 5, 2012, the Human Rights Council decided by resolution 20/15 to establish an open-ended intergovernmental working group to progressively negotiate a draft the future United Nations declaration on the right to peace. Under the basis of the Declaration on the Right to Peace adopted in 2012 by the Advisory Committee, which included 85 percent of the standards proposed by civil society organizations in the Santiago Declaration of 2010.

In June 2013, when considering the Working Group's report on its first session, the HR Council adopted resolution 23/16 by which it requested the chairperson of the Working Group to prepare a new text. The second session of the open-ended working group took place June 30 to July 4, 2014. In September 2014, the Council adopted resolution 27/17 by which it decided to hold a third session of the working group in 2015, with the goal of finalizing the declaration on the right to peace.

The third session of the open-ended working group took place from April 20-24, 2015 in the Palais des Nations, Geneva, Switzerland. On October 2015, the Council adopted resolution 30/12 entitled "Promotion of the right to peace", by which it decided that the working group should hold its fourth session for five working days with the objective of finalizing the declaration. On July 1, 2016, the fourth session of the open-ended intergovernmental working group was cancelled pursuant to the adoption of resolution 32/28 which proposed to the General Assembly the approval of the "Declaration on the Right to Peace annexed to the resolution"²⁹.

On December 19, 2016, the plenary of the United Nations General Assembly (UNGA) ratified the Declaration on the Right to Peace by a majority of its Member States. The following 131 Member States voted in favor of the Declaration on the Right to Peace:

²⁸ United Nations Human Rights, Office of the High Commissioner. "Human Rights Council Advisory Committee". Retrieved from:
<http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/AboutAC.aspx>

²⁹ United Nations Human Rights Office of the High Commissioner. United Nations Human Rights Council. "Open-ended intergovernmental working group on a draft United Nations declaration on the right to peace. Retrieved from:
<http://www.ohchr.org/EN/HRBodies/HRC/RightPeace/Pages/WGDraftUNDeclarationontheRighttoPeace.aspx>

Afghanistan, Algeria, Angola, Antigua and Barbados, Argentina, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Cote d'Ivoire, Cuba, Democratic People's Republic of Korea, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran, Iraq, Jamaica, Jordan, Kazakhstan, Kenya, Kiribati, Kyrgyzstan, Kuwait, Lao People's Democratic Republic, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Sao Tome Principe, Saudi Arabia, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tajikistan, Thailand, Togo, Trinidad-Tobago, Tunisia, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia and Zimbabwe.

The following 34 Member States voted against the Declaration on the Right to Peace: Australia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Israel, Japan, Latvia, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Netherlands, New Zealand, Republic of Korea, Romania, Slovakia, Slovenia, Spain, Sweden, the Former Yugoslav Republic of Macedonia, United Kingdom and United States of America.

The Following 19 Member States abstained from vote: Albania, Andorra, Armenia, Cyprus, Fiji, Greece, Iceland, Italy, Liechtenstein, Norway, Palau, Republic of Moldova, Poland, Portugal, San Marino, Serbia, South Sudan, Switzerland and Turkey.³⁰

In short, to seek peace for all human beings as a basic human right is the right and moral thing to do, such is the sentiment of the international community, as it was expressed in the ratification of the Declaration on the Right to Peace by the majority of the Member States

³⁰ Guillermet-Fernandez, C. & Fernandez Puyana, D. (2017) The General Assembly adopts the Declaration on the Right to Peace: An opportunity to strengthen the linkage between Peace, Human Rights and Development in the New Millenium. *Eruditio e-Journal of the World Academy of Art & Science*. Retrieved from: <http://eruditio.worldacademy.org/volume-2/issue-3/article/general-assembly-adopts-declaration-right-peace>

of the United Nations. One must also recognize that while the adoption of the Declaration on the Right to Peace is indeed a victory, this victory does not come without challenges and flaws. The Declaration came after six years of preparatory, extenuating work, which began at the Human Rights Council in 2010, when civil society organizations, led by the SSIHRL, proposed the Santiago Declaration on the Human Right to Peace of December 10, 2010 as a model. The Santiago Declaration contains clauses that are crucial for the effective protection of the right to peace of individuals. The Declaration on the Right to Peace adopted by the Human Rights Council in Resolution 32/28, of July 1, 2016 did not include some of these crucial provisions, unlike the Declaration adopted by the Advisory Committee in 2012, which included 85% of the provisions set out in the Santiago Declaration of 2010.

Furthermore, 474 civil society organizations have rejected the declaration approved by the General Assembly in 2016 because it does not recognize either the human right to peace or its essential elements. In addition, it does not represent a consensus among the member states, as it was approved with 131 votes, with 34 votes against it, and 19 abstentions. The General Assembly was aware that there is room for the improvement of the Declaration and the promotion of peace shall be discussed again in 2018.

The SSIHRL as well as the International Observatory of the Human Right to Peace are making a call on all civil society organizations to support the Santiago Declaration as updated on 4 March 2016 and supported by 474 Civil Society Organizations, and to continue promoting the Declaration, which defends the interests of civil society, with the goal of persuading States to revise the approved Declaration on the Right to Peace in 2018.³¹

The main difference between the Santiago Declaration on the Human Right to Peace with the 2016 Declaration adopted by the General Assembly, consists of the recognition as right holders of the human right to peace individuals, groups, peoples, minorities and human kind (Article 1). Further, the Santiago Declaration addresses the constitutive elements of the human right to peace, as stipulated in the UN Charter and relevant human rights treaties (Article 2), stressing the States' obligations as the principal duty-bearers of the human right to peace (Article 3). The Santiago Declaration also recognizes the important right to disarmament as an essential component of the human right to peace and advocates for resources released from disarmament to be allocated to the promotion of human rights and the realization of the rights to development and to environment (Article. 4). The Declaration

³¹ Public Services International (2017). The United Nations General Assembly Approves Declaration on the Right to Peace. *Press Release from the Spanish Society for International Human Rights Law*. Retrieved from: <http://www.world-psi.org/en/united-nations-general-assembly-approves-declaration-right-peace>

of Santiago includes the right to education on peace and human rights within the framework of the Declaration and Program of Action on a Culture of Peace and Dialogue among Cultures, with the goal to eliminate cultural violence and discrimination against women (Article 5). The Santiago Declaration stresses the right to human security, including freedom from want (Article 6) and includes the right to resist and oppose oppression from colonialism, foreign occupation, domestic oppression, aggression, genocide, racism, apartheid, war crimes and crimes against humanity. The Santiago Declaration also states that the victims of human rights violations have a right to know the truth, to obtain redress, justice, reparation and to guarantees of non-recurrence. It advocates for the right of refugees to enjoy refugee status and for migrants to enjoy human rights without discrimination (Article 7). Finally, the Santiago Declaration invites the Human Rights Council to monitor progress in the implementation of the Declaration and provided in Article 9 the appointment of a special rapporteur on the human right to peace. These provisions are not contemplated nor addressed in the “Declaration on the Right to Peace” adopted by the General Assembly in December 2016.³²

Despite of the promising advance in the protection of the right of people to live in peace with the Declaration on the Right to Peace, it has its challenges and what is most important, we continue to see hundreds of thousands of people affected by the scourge of conflict, violence, and the violation of their now recognized right to peace. Therefore, until all the provisions contemplated and addressed by the Santiago Declaration can be adopted and implemented to prevent or ameliorate the devastation created by the lack of peace or if in practicality, the right of people to live in peace cannot be attained, in the alternative and at a bare minimum, the basic human right to migrate in the quest of peace should be vehemently protected by all means available.

4. The Right to Migrate as a Part of the Right to Peace

Human migration should be protected within the current framework of international law or at a minimum, by international traditional values. In the previous section, I explained the recent development of the human right to peace as an important legal framework in international human rights law. It is the responsibility of the international community to

³² Villán Durán, C. (2017), *The Elements of the Human Right to Peace*. Oral statement delivered by the President of SSIHRL at the *Expert Meeting on The Human Right to Peace* organized by the SSIHRL on the occasion of the Human Rights Council 35th Session. Geneva, 13 June 2017. Retrieved from: <http://aeditdh.org/wp-content/uploads/2017/06/CVD-Statement-13.06.17.pdf>

ensure that all human beings have the opportunity to live in peace. Where there is violence, it is the responsibility of the international community to reduce violence and to protect victims of violence. In this section, I argue that global migration should be included as a crucial component of the human right to peace.

Not only do refugees flee violence in their home, but attempts to reach safety lead to new experiences of violence. Thousands of people perish attempting to enter Europe (Durán, 2015, 30)³³ and instead of means of safe migration for the victims of violence there are walls and obstacles against encountered by millions of refugees and immigrants.

The United States has not ratified the two most important regulating Conventions that protect the rights of refugees and the rights of immigrants. The 1951 Convention Relating to the Status of Refugees, is the legal document that forms the basis of the definition of the term 'Refugee' and outlines the rights of the asylum seekers, as well as the legal obligations of States to protect them. The core principle in non-refoulement, affirms that a refugee should not be returned to a country where they face serious threats to their life or freedom. This principle is now considered a rule of customary international law. The Office of the United Nations High Commissioner for Refugees is the 'guardian' of the 1951 Convention and its 1967 Protocol.

According to the legislation, States are expected to cooperate with the UNHCR in ensuring the rights of refugees are respected and protected.³⁴ As of today, the United States has not ratified the 1951 Refugee Convention. This is both a serious and tragic matter. Historically, the United States has intervened in the politics of many nations throughout the world. It has provided oppressive governments and groups with military aid, training and resources. As in the cases of El Salvador, Argentina, Iraq and Afghanistan, just to name a few, it has contributed to the instability and conflict within those countries and been instrumental in the creation of refugee crises. Despite of its active participation in the creation of situations that have led to some of the most severe refugee catastrophes, the United States has not ratified the legal document that would protect the right of refugees.

In the same manner, the United States has benefited from the contributions of immigrants. From the farm workers who are willing to work under deplorable, unsafe conditions for wages that many times are a violation of local labor laws and regulations to the

³³ Villán Durán, C. (2015). El Papel de la Sociedad Civil en la Codificación del DIDH: el Derecho Humano a la Paz. AEDIDH, octubre de 2015

³⁴ UNHCR (1951) The 1951 Refugee Convention. Retrieved from: <http://www.unhcr.org/en-us/1951-refugee-convention.html>

immigrant entrepreneurship that fuels the economy of the United States, the valuable contribution of immigrants is undeniable. According to the Economic and Fiscal Consequences of Immigration released by the National Academy of Sciences (NAS), immigrants are essential to the economic growth in the United States. There are three main reasons why immigrants are important to the economic growth of the United States: labor force growth, entrepreneurship and human capital. Immigrations supplies workers, which increases gross domestic product and has helped the United States avoid the fate of stagnant economies of countries that have much less immigration, such an example is Japan. Japan has the world's oldest population, as well as a low birth rate and little immigration. That is not the case in the U.S. in large part because of the positive impact on immigration. In terms of entrepreneurship, the contribution of immigrants to human and physical capital formation, entrepreneurship and innovation are essential to long-run sustained economic growth. An example of how large the benefit of immigrant entrepreneurship is in the U.S., we need to note that a recent National Foundation for American Policy study of just 87 startup companies valued at \$1 billion or more found 44 (more than half) had at least one immigrant founder. Moreover, at \$168 billion, the collective value of just these 44 immigrant-founded companies was almost half the value of the stock markets of Russia and Mexico. Immigrant business owners make significant contributions to business income, generating \$67 billion of the \$577 billion in U.S. business income, as estimated from 2000 Census data, according to a report by the Small Business Administration. Immigrant business generate nearly one-quarter of all business income in California – nearly \$20 billion – and nearly one-fifth of the business income in New York, Florida and New Jersey. In terms of Human Capital, the contributions of immigrants to the U.S. economy is the infusion by high-skilled immigration of human capital. This has boosted the capacity of the United States for innovation and technological change, as reported the National Academy of Sciences. University of Colorado economist Keith Markus found that for every 100 international students who earn science or engineering PH.D.'s from American Universities, the nation gains an impressive 62 future patent applications. In addition, according to the National Academy of Sciences, innovation carried out by immigrants also has the potential to increase the productivity of natives, very likely also contributing to the raising of economic growth per capita. According to experts, the prospects for long run economic growth in the United States would be considerably dimmed without the contributions of high-skilled immigrants. An example of these contributions to the economy of the U.S. is immigrant Noubar Afeyan, CEO of Flagship Venture, founded or

cofounded 38 companies in the U.S. and has over 100 patents. Indian born immigrant Joyti Bansal is the sole founder of AppDynamics, a company employing more than 900 people and valued at 9.1 billion.³⁵

Despite the human and economic contributions of immigrants make to the economy of the United States, countless times immigrants are afforded little or no protection. The United States has not ratified the UN Convention that would offer protection to immigrants and their families: the United States has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly resolution 45/158 of December 18, 1990.³⁶ It is in the best interest not only of the immigrants seeking to live and work in the United States that they are welcomed and protected. It is also in the best interest of the United States to do so. As such, the U.S. should ratify both of the Conventions discussed above on refugee and migrants rights. In the same manner, other developed countries who currently hold immigrant unfriendly policies and laws should analyze the economic and human benefit of welcoming and protecting immigrants and follow suit.

An estimated 244 million people currently live outside their country of origin. Migrants, notably those who are in an irregular situation, tend to live and work in the shadows, afraid to complain, denied rights and freedoms, and disproportionately vulnerable to discrimination, exploitation and marginalization. Human rights violations against migrants, including denial of access to fundamental rights such as the right to education or the right to health, are often closely linked to discriminatory laws and practice, and to deep-seated attitudes of prejudice and xenophobia against migrants (UNHCR, 2017)³⁷.

The U.N. has expressed concern about the violation of the human rights of the most vulnerable of all immigrants, children. In a public statement, human rights expert

³⁵ Anderson, Stuart (2016). Why Immigrants Are Key to Economic Growth. *Forbes*. Retrieved from: <https://www.forbes.com/sites/stuartanderson/2016/10/02/3-reasons-why-immigrants-key-to-economic-growth/#42797a977dab>

³⁶ United Nations Human Rights (1990). "International Convention on the Protection of the Right of All Migrant workers and Members of Their Families". Adopted by General Assembly Resolution 45/158 of 18 December 1990. Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>
Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CMW.aspx>

³⁷ UNHCR. (2017). Migration and Human Rights. Retrieved from Website: <http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>.

mechanisms of the HR Council (2016)³⁸ expressed adamant opposition to any form of detainment for minor refugees and migrants.

The detention of children, even for short periods, can have severe physical and psychological consequences and adverse effects on their development. The Committee on the Rights of the Child – and other human rights mechanisms – have unequivocally declared that immigration detention can never be in the best interest of a child and that immigration detention of children, whether unaccompanied or together with their families, constitutes a violation of the rights of the child. Consequently, both unaccompanied children and families with children should always benefit from the many rights-based alternatives to detention which exist. We therefore call on Member States to ensure that prohibition of detention of migrant children, unaccompanied or with their families, is integrated and given full recognition with practical measures in the Global Compacts.

As a result of the tireless efforts of advocates of immigrant rights, an agreement was reached in the US to protect the rights of immigrant and refugee children within domestic law. What is now referred to as the Flores Agreement was reached.

The 1997 Flores Settlement Agreement (Flores) was the result of over a decade of litigation responding to the Immigration and Naturalization Service's (INS) detention policy towards an influx of unaccompanied migrant children in the 1980s. The agreement set national standards regarding the detention, release, and treatment of all children in INS custody. It requires that juveniles be held in the least restrictive setting appropriate to their age and special needs, generally, in a non-secure facility licensed to care for dependent, as opposed to delinquent, minors. It also requires that juveniles be released from custody without unnecessary delay to a parent, legal guardian, adult relative, individual specifically designated by the parent, licensed program, or, alternatively, an adult seeking custody deemed appropriate by the responsible government agency. While Flores initially applied to the INS, today the settlement extends to Department of Homeland Security (DHS) and Health and

³⁸ United Nations High Commission for Human Rights. (2016). Statement by the UN Human Rights Mechanisms on the Occasion of the UN High Level Summit on Large Movements of Refugees and Migrants. Retrieved from: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20516&LangID=E>

Human Services' Office of Refugee Resettlement (ORR) after the INS was dissolved (Lutheran Immigration and Refugee Services et al., 2014)³⁹.

While this agreement was a victory, very often we see egregious violations of the agreement by the unjustified prolonged delay of the child in detention. In the United States, children, some as young as six months old, are locked up in facilities that are kept at such low temperatures, that they are nicknamed *las hieleras* or 'the ice boxes' (Riva, 2017)⁴⁰. Many of these children travel alone. Some were given to smugglers by their family members. Some are being trafficked to be sexually exploited. Some will be condemned to a life of forced servitude. The children are detained after a long journey. These children have traveled by train to reach the U.S. border, but not the way most people travel by train. These children travel on top of a cargo train, with a ride so dangerous and inhumane that it's called "La Bestia" (the Beast). Many of these children fall from the train to their deaths, many lose limbs, there is no one there to help them or protect them. Some other children survive the ride on "the Beast", but lose limbs and become permanently disabled. On May 31, 2014, a three-year-old child fell from the train, he survived but lost his arm and his leg⁴¹. In another case, the last words of a young Honduran mother, Magda Francisca Melendez Chavez, were "take good care of my child", before she fell to her death and was cut in two by the train (Molina, 2016)⁴². She was almost a child herself. She was only 18.

³⁹ Lutheran Immigration and Refugee Services, Women's Refugee Commission, & Kids in Need of Defense. (2014). *Flores Settlement Agreement & DHS Custody*. Retrieved from: <https://lirs.org/wp-content/uploads/2014/12/Flores-Family-Detention-Backgrounder-LIRS-WRC-KIND-FINAL1.pdf>. Last accessed on: July 3, 2017.

⁴⁰ Riva, S. (2017). Across the Border and Into the Cold: *hieleras* and the Punishment of Asylum-seeking Central American Women in the United States. *Citizenship studies*, 21(3), 309-326.

⁴¹ Niño hondureño de 3 años cae bajo "La Bestia". (2014). *El Herald*. Retrieved from: <http://www.elheraldo.hn/pais/714708-214/ni%C3%B1o-hondure%C3%B1o-de-3-a%C3%B1os-cae-bajo-la-bestia>.

⁴² Molina, C. (2016). "Cuidame al niño", dijo Magda antes de caer bajo la "Bestia". *La Prensa*. Retrieved from: <http://www.laprensa.hn/sucesos/988403-410/cuidame-al-ni%C3%B1o-dijo-magda-antes-de-caer-bajo-la-bestia>.



Figure 3. Molina, C. (2016.) *Cuidame al niño*, dijo Magda antes de caer bajo la "Bestia". *La Prensa*.

Many of the children in detention are malnourished and on the verge of pneumonia, during their journey they have been exposed to the inclement elements, many times with no food or water. Many of them do not receive the medical care they need. Children show signs of stress and anxiety. Some of the children walk around the detention centers with glazed eyes and talking to themselves. The states, cities and counties where these detention centers are located are not fighting to end the detention of these children. On the contrary, they are doing everything possible to keep these children detained by circumventing their obligations under the Flores agreements. Some states have gone as far as trying to get licensed as daycare facilities as if the change of name from “detention center” to “daycare” without changing the conditions the children are kept in would make it apt for the prolonged detention of children. Many of these detention centers are for profit private institutions earning millions of dollars by keeping detainees for as long as possible. Many of those detainees are babies and children.

But the United States is not alone in the manner it treats the most vulnerable group of immigrants, children. On March 2, 2017, the European Commission adopted a Recommendation and Renewed Action Plan for European Union (EU) Member States to consider in their procedures to return men, women and children staying irregularly in the EU to their countries of origin or transit. The measure encourages Member States to undertake swift returns, which limit basic safeguards and rights that should be guaranteed to all migrants, including in cases involving children.

It is of great concern to UN agencies and child rights organizations that the Commission encourages Member States to undertake ‘swift returns’ of people –

including children – with reduced procedural safeguards and through the increased use of detention. This approach would put children’s lives at risk and would be in violation of the UN Convention on the Rights of the Child, which every EU Member State has ratified.

The return of children and families put them at risk of rejection by their families or local communities in their countries of origin, as well as human rights violations. They often face severe discrimination. They are vulnerable to exploitation, to being recruited by armed groups, or pushed into forced labor. Rather than address the harm to children already caused by the EU and Member States return policies, the Commission document recommends measures that would increase it. It encourages fewer safeguards, quicker and automatic return decisions, more forced removals, and more detention... (UNICEF USA, 2017)⁴³.

The tragedy is double. We, as a civilized international community, are failing to provide a world where people can remain safely in their home countries. Forced to migrate to save their lives, they are also forced to face insurmountable challenges in their journey and their entrance into what they hope will be their safe haven.

A particular concern is always those who are most vulnerable and fragile: children and what can be done to protect them. Historically, this has been a concern for the international community. The Declaration of the Rights of the Child, sometimes known as the Geneva Declaration of the Rights of the Child, is an international document promoting child’s rights. It was drafted by Eglantyne Jebb and adopted by the League of Nations in 1924. The Declaration was recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children. The Declaration of the Rights of the Child was adopted in an extended form by the United Nations by the General Assembly Resolution 1386(XIV) on November 20, 1959.

Under international law, the most important treaty for the protection of children is the United Nations Convention on the Rights of the Child (UNCRC), which is a human rights treaty which defines the health, civil, political, economic, social, and cultural rights of children. The States that ratify this convention are bound by international law and the

⁴³ UNICEF USA. (2017). *Joint Press Release: New European Union Returns Policies Put Children at Risk*. Retrieved from: <https://www.unicefusa.org/press/releases/joint-press-release-new-european-union-returns-policies-put-children-risk/31945>.

compliance is monitored by the United Nations Committee on the Rights of the Child composed of 18 experts from different countries around the world. It once a year submits a report to the General Assembly, which also hears a statement from the UNCRC Chair and the Assembly then proceeds to adopt resolutions on the rights of the child. The States that have ratified the Convention are required to report to, and appear before the United Nations Committee on the Rights of the Child periodically to be examined on the progress made relating to the domestic implementation of the Convention and the current status of child rights in their country. The United Nations General Assembly adopted the Convention and on November 20, 1990, which was the 30th anniversary of the United Nations Declaration of the Rights of the Child, opened for signatures.⁴⁴ The United States is not yet a State Party to this Convention.

Article 22 of the UN's Convention on the Rights of the Child is protective of the rights of refugee children. It mandates that the States shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures, whether the child is accompanied or unaccompanied by his or her parents or by any other person, receives appropriate protection and humanitarian assistance in the enjoyment of applicable rights that are set forth in the Convention and in other international human rights or humanitarian instruments to which that particular State is a part of. The Convention further mandates that the States provide, as they deem appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations cooperating with the UN to protect and help that child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with the family of that child. In cases where no parents or other members of the family can be found, the child shall be accorded the same protections as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.⁴⁵ The intent of the United Nations to protect and promote children's rights is clear in the language of the Convention. The document, binding to member States that have ratified the Convention, is a powerful tool to ensure the protection of every child's right to be healthy, to be educated, to be treated fairly, to be heard, and to have

⁴⁴ UNHRORC Convention on the Rights of the Child (1989)

Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

⁴⁵ UNHRORC Convention on the Rights of the Child (1989)

Retrieved from: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

a childhood that is protected from violence, abuse and exploitation. The problem arises when such a solid body of law is unenforceable, as in the case of countries that refuse to ratify the Convention. The United Nations Convention on the Rights of the Child is the most widely ratified human rights treaty in history.⁴⁶ Currently, 196 countries are a part of this Convention, including every member of the United Nations, except for the United States. In the United States, there are numerous laws that protect children against abuse, neglect, and exploitation. The U.S. Congress has implemented a number of laws that have had a significant impact on State child protection and child welfare. Federal and State agencies vigorously prosecute the perpetrators of child abuse, neglect, cruelty or mistreatment. Unfortunately, the protection does not always extend to refugee or immigrant children. In the year 2014, thousands of children, both accompanied and unaccompanied, fled Central American countries and arrived at the U.S. borders, mainly because of the immense increase of violence in their home countries. Honduras, Guatemala and El Salvador have experienced an exponential increase in violence and murder rates have skyrocketed, Honduras has become the murder capital of the world. The arriving children were hungry, thirsty, scared, vulnerable and exhausted. On July 9, 2014, a hearing on the crisis was held by the U.S. Senate Committee on Homeland Security Affairs. In response to the request from the President for additional funds, Congress proposed to modify or eliminate the rights granted by the 2008 reauthorization of the Victims of Trafficking and Violence Protection Act of 2000. Provision H.R. 7311 William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, signed by George Bush provided substantial rights and protection to unaccompanied children from countries which do not have common borders with the U.S., which helped to prevent the swift deportation of children. President Obama sought to revise or remove that protection. Under domestic law and existing policy, Customs and Border Protection, the Department of Homeland Security, U.S. immigration courts, the U.S. Department of Justice, the Office of Refugee Resettlement, the United States Department of Health and Human Services have responsibilities relating to these children. The Flores v. Meese settlement agreement, a United States District Court for the Central District of Columbia establishes a policy that is to be abided by regarding the federal detention of minors. We see gross violations of the Flores agreement as well as abuse and neglect against children in detention, including deprivation of adequate medical care, food and shelter. The types of abuse against refugee children that are

⁴⁶ UNICEF. A Summary of the United Nations Convention on the Rights of the Child.
Retrieved from: http://www.unescocentre.ulster.ac.uk/pdfs/pdfs_uncrc/uncrc_summary_version.pdf

seen in detention centers against children perpetrated by Border Patrol officers, by Immigration and Customs Enforcement agents and by employees of the for-profit facilities where some of these minors are detained would be criminally prosecuted if they occurred under any other circumstance outside of the detention centers. Some of these violations have been so egregious, that the health of hundreds of children has been compromised. An incident that I personally witnessed was the denial of medical care to a child who nearly went into convulsions as a result of an extremely high fever coupled with lack of necessary medical attention, which his mother had pleaded for during the course of several hours. Another incident witnessed by fellow immigration attorneys was the administration of vaccinations in adult doses to babies and young children who were detained in the Adelanto Detention Facility in Adelanto, San Bernardino County, California.

Despite the Recommendation and Renewed Action Plan for EU Member States to consider in their procedures to return men, women and children staying irregularly in the EU to their countries of origin or transit of March 2, 2017; historically, the European Union has been protective of refugee and immigrant children. The Charter of Fundamental Rights of the European Union guarantees the protection of rights of the child by EU institutions, as well as by EU countries when they implement the European Union law. Its primary goal is the protection and the promotion of the rights of the child. The intent of the EU is that the policies and actions that have an impact on children are designed, implemented and monitored in line with the best interests of the child. Specifically, the Treaty of Lisbon introduced an objective for the EU to promote the protection of the rights of children (Article 3 (3) Treaty of European Union). In addition, there are more articles that are protective of the welfare of children in the EU, such as Article 24 (on the rights of the child) and Article 31 (on the prohibition of child labor). The EU has directives in place to combat sexual abuse and sexual exploitation of children and child pornography, mechanisms in place for the protection of missing children, regulations for the protection of children in terms of the digital world, commissions that are regulatory of important rights of children, including protections for children with disabilities, violence against children. These protections do appear to extend to refugee and immigrant children. EU Directive 2008/115/EC of the European Parliament and of the Council dealing with standards and procedures in Member States for returning illegally staying third-country nationals, in its Article 5 addresses the non-refoulement, best interests of the child, family life and state of health when implementing directives related to removal. In Article 17, in reference to the detention of minors and families, it is mandated that minors

and families with minors shall only be detained as a measure of last resort and for the shortest period of time.⁴⁷ The EU pays particular attention to the needs of vulnerable groups, such as children, in its implementation of the Common European Asylum System. Further, in order to look at the specific vulnerabilities of children, not only those having a migrant's background, the Commission makes efforts to develop a comprehensive strategy to follow up on the Action Plan on Unaccompanied Minors (2011-2014) to cover missing and unaccompanied children. Further, funding is provided by the Asylum Migration and Integration Fund (AMIF). For the New programming period (2014-20), at least 20% of the European Social Fund (ESF) is allocated to social inclusion, which includes measures for the integration of migrants with a particular focus on those seeking asylum and refugees as well as on children.⁴⁸ These policies are conducive to the welcoming, assistance and protection of refugee and immigrant persons, especially children.

It is important to understand the mechanisms of the EU asylum system. The Common European Union Asylum System (CEAS) is a set of EU laws, completed in the year 2005. They are intended to ensure that all EU Member States protect the rights of asylum-seekers and refugees. The CEAS sets out minimum standards and procedures for processing and deciding asylum applications, and for the treatment of both asylum-seekers and those who are recognized as refugees. Implementation of CEAS varies throughout the European Union. Unfortunately, a number of EU states still do not operate a completely fair, effective systems of asylum decision-making and support⁴⁹. Nonetheless, it is still a more comprehensive and fair system compared to other systems.

The EU asylum system appears to be more functional than many other systems in the world and more protective of the human rights of refugee children; however, the system is not perfect and it has come under scrutiny by human rights advocates in the aftermath of the refugee crisis that started in 2013 and continues today. There was some mismanagement and politicization of the surge in boat migration in 2015, when over one million migrants and

⁴⁷ DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

Retrieved from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:PDF>
⁴⁸ EUROPEAN COMMISSION (2015) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions.*

Retrieved from: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf

⁴⁹ Open Societies Foundations. (2016). *Understanding Migration and Asylum in the European Union.* Retrieved from Website: <https://www.opensocietyfoundations.org/explainers/understanding-migration-and-asylum-european-union>

asylum-seekers traveled to the EU by sea, which led to a humanitarian and political crisis. Some individual EU members rolled back asylum rights at national level. Proposed changes to the EU directives governing procedures, qualifications for asylum, and reception conditions include some positive measures. The EU system could further the protections granted to refugee children by implementing the acceleration of the relocation of unaccompanied migrant children, by permitting that all beneficiaries of protection already in the EU can enjoy the right of family reunification without onerous conditions or waiting periods, by ensuring that all proposed reforms of the Common European Asylum System are subjected to rigorous examination, taking into account the recommendations of civil society organizations and international authorities such as UNHCR and UN experts.⁵⁰

In the United States, refugee and immigrant children continue to be treated like criminals. For many of these children, the decision to travel to the United States comes from desperation. A United Nations High Commissioner for Refugees report found that 58% of unaccompanied youth may qualify for international protection because of the violence of their home countries.⁵¹ Many of these children are kidnapped and trafficked on the way to the United States to seek asylum. It is tragic that the U.S. continues to consider some of these children as illegal immigrants rather than refugees. It is clear that the implementation of international human rights law in the United States regarding the treatment of refugee and immigrant children would be in the best interest of those most affected: children. The United States should ratify the Convention of the Rights of the Child as well as the International Convention on the Protection of the Rights of All Migrant Workers and their Families and change its domestic policies and law to promote sound, equitable, humane and lawful conditions for the human beings, including children, who reside or seek to reside in the United States, including refugees, asylum-seekers, migrants, and migrant workers.

5. Conclusion

In this Chapter, I provided an introduction to the human right to peace, and argued that migration is an essential way for human beings to create peace and security for themselves when both states and the international community fail to protect them. Over the past decade, African migrants have fled to Europe and Central American migrants have fled

⁵⁰ Human Rights Watch. (2016). *EU Policies Put Refugees at Risk*. Retrieved from Website: <https://www.hrw.org/news/2016/11/23/eu-policies-put-refugees-risk>

⁵¹ UNHCR Levine, J. (2017) A Welcome for Refugee in the U.S. Heartland. Retrieved from Web: <http://www.unhcr.org/en-us/news/stories/2017/8/598d788e4/welcome-refugees-heartland.html>

to the United States only to be met with restrictions to their ability to migrate. In the worst cases, these restrictions have meant that asylum-seekers die in the desert along the U.S.-Mexico border or in the Mediterranean Sea. The migrants that survive the journey, they are often arrested, put into detention centers, denied basic human rights to food and medical care, and deported—all without being able to apply for asylum.

This crisis of immigrant rights is made possible because the international asylum system is not fully respected in particular by States who have not ratified the UN Convention Relating to the Status of Refugees. In addition, developed countries who are not parties to the UN Refugee Convention and the UN Convention on the Rights of Migrants and their Family Members, like the United States, have circumvented even their own asylum laws by restricting the right to seek safe refugee. Therefore, the United States must ratify both Conventions and the international community should embrace the right to migrate as a fundamental component of the human right to peace. Nonetheless, creating a human right to migrate will not be easy, and must take into account the geopolitical circumstances of migrants that would utilize the law. In Chapter III, I focus on the migration crisis in Central America to provide a concrete example of the difference that the human right to migrate would make for migrants.

Chapter III: Human Rights Crisis in Central America



Figure 4. In Honduras, U.S. deportees seek to journey north again. (Carcamo, 2014)

1. Introduction

In Chapter II, I argued that migration should be a core component of the human right to peace. In the absence of meaningful avenues for creating peace, asylum seekers should have the right and the ability to seek protection through the asylum and refugee system. In this Chapter, I use the example of Central American refugees as a case study in how the right to migrate could work to improve the lives of migrants, and also discuss attempts by the U.S. Government to restrict migrants' rights.

The recent growth in global migration is driven by geopolitical violence, economic poverty, and government corruption. Although there are many possible case studies, I focus on the recent influx of Latino/a migrants from Central America to the United States as a case study on the relationship between migration and violence. In doing so, I show that migration is one way that human beings attempt to create security for themselves and their families when both individual countries and the international community fail to act. The story of Latin American migration to the United States is an important example of the relationship between violence, peace, and the right to migrate.

2. Juana's Story

In the United States, under domestic law, Customs and Border Patrol agents, are required to adhere to the policy of allowing people to approach its borders to seek asylum. Asylum is a protection granted to foreign nationals already in the United States or at the border who meet the international definition of a "refugee". The United Nations 1951 Convention and the 1967 Protocols define a refugee as a person who is unable or unwilling to return to his or her home country, and cannot obtain the protection in that country due to past persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or a political opinion. U.S. Congress incorporated this definition into the U.S. immigration law in the Refugee Act of 1980. People without legal documents for entry into the United States who are encountered at the border are subject to expedited removal, an accelerated process which authorizes agents to perform rapid deportations of certain individuals. If the person tells a CBP official that they fear persecution, torture, or returning to their country and wish to apply for asylum, they should be afforded a credible fear interview, conducted by an officer in the USCIS Asylum Division.⁵²

Customs and Border Protection (CBP) agents have recently stated that there are no changes in policies affecting asylum-seekers. The reality however indicates otherwise. There are hundreds of cases documented where asylum-seekers, generally from Central America and Mexico are systematically turned away at the border. Mothers fleeing violence are being told that if they enter the United States to seek asylum, they will lose custody and/or parental rights to their children (Partlow, 2017)⁵³. In order to understand the importance of the need for the International Human Rights Law (IHRL) to develop the human right to peace and the right to migrate, it is necessary to understand the stories of those facing violence and exploitation in developing countries.

Juana Rodriguez, an El Salvadorian national child, fled her home country after years of persecution, and filed for asylum in the United States⁵⁴. Her story captures the everyday lives of people seeking safety in the world today. Juana was abandoned by both her mother

⁵² American Immigration Council. (2016) *Asylum in the United States*.

Retrieved from Website: <https://www.americanimmigrationcouncil.org/research/asylum-united-states>

⁵³ Partlow, J. (2017). Rights Groups Sue U.S. Government, Alleging it is Turning Away Asylum Applicants at Mexico Border. *The Washington Post*. Retrieved from:

https://www.washingtonpost.com/world/the_americas/rights-groups-sue-us-government-alleging-it-is-turning-away-asylum-applicants/2017/07/12/35b95508-6650-11e7-94ab-5b1f0ff459df_story.html?utm_term=.c2e92d42b822.

⁵⁴ All names have been changed to protect the child's identity.

and father when she was a baby. She began a life of abuse, neglect, and servitude from the time she was seven years old. She lived with her grandparents and other family members. But even as a child, she was expected to clean the entire house, prepare meals, care for young children, even though she was a child herself. When Juana did not perform her tasks to the expectations of her family members, she was beaten. Juana was often prevented from attending school and completing her homework. In a statement included in her asylum application, Juana said:

During my childhood, I was always made to feel an unwanted human being, that not even my mother and father, the people who were supposed to love and take care of me, wanted to raise me, take care of me or protect me. I was always forced to work and earn my keep, even though I was just a child. I do not wish to ever be in that situation of constant abuse, neglect and being made feel like I am worthless and therefore it is okay to enslave me.⁵⁵

Juana also became a target of gang members in her hometown as she grew older. When she was able to attend school, Juana attended with her three cousins. All four girls were constantly harassed and threatened by gang members as they travelled to and from their school. Tragically, in 2013, at the age of 18, one of Juana's cousins was abducted and murdered by the gang members. Another of Juana's cousins was also approached by gang members, and ordered to sell drugs. When he refused, he was beaten until he agreed to sell the gang's drugs. He tried to flee the province, but even after he moved to new cities in El Salvador three times, he was not able to escape the gangs. Each time he moved, the gangs found him and threatened him again to join the gang or face deadly consequences. After his third attempt to escape, he was abducted by the gang members, who tortured and murdered him for refusing to join.

Juana's relatives filed police reports regarding both murders, but this only served to further the danger they were in. After the reports filed, the gang members brutally beat another family member on two occasions. He was left for dead after the second beating. Another female cousin of Juana was also raped by the gang members. Juana feared that, because of her relationship to her murdered cousins, she would also become a target of the gang. She also feared that her open membership in her church, which is well-known in her community to oppose the gangs, would make her a target for violence from the gangs.

⁵⁵ Declaration Under Oath of Child Juana Rodriguez (Real name was changed to protect child's identity).

After her cousin was raped, Juana tried to relocate within El Salvador. She was located again by the men who had threatened her in her village. Due to lack of options for her protection in El Salvador, she fled to the United States. Juana is one of the tens of thousands of children who travel without the company or protection of a parent or family member to the United States, with the hope to escape persecution, violence and murder. The only company she had was the human traffickers who were bringing her and other children to the United States. Finally, when she reached the U.S. border in August 2016, Juana presented herself to Border Patrol officers and asked for asylum in the United States.

If Juana's story stopped there, her journey to the United States would be only one part of a more hopeful story. But the reality for Juana is that she had to fight her entire way to the United States. Once she turned herself in to Border Patrol officers, she was placed in immigrant detention, and had to fight an uphill battle through the U.S. immigration system to even let her story be heard by an asylum officer or an immigration judge. Although international law requires States to give people a chance to apply for asylum, the United States' approach towards migrants like Juana is to deport first, ask questions later. Among the many migrants that come northward, Juana is fortunate because she was able to obtain an attorney, who helped her prepare an asylum application, and which always has a profound impact on the success of asylum applications (American Bar Association, 2010).⁵⁶ But thousands of asylum-seekers never have this opportunity: many asylum-seekers are detained in detention centers and never permitted to file a full asylum claim (American Immigration Lawyers Association, 2016)⁵⁷. As I argue, the US must ratify the UN Convention Relating to the Status of Refugees. In addition, the international community should develop the human right to peace and subsequently the right to migrate in IHRL. Once this could be achieved, the everyday risk to people like Juana could be reduced.

3. Anthony and Kenneth's Story

Anthony O. Castellanos, a 13-year-old, disappeared from his gang-ridden neighborhood on the eastern part of Honduras' most dangerous city. His little brother, Kenneth, hopped on his green bicycle and went to find his brother. He started his search at a

⁵⁶ American Bar Association. (2010). *Reforming the Immigration System: Proposals to Promote Independence, Fairness, Efficiency, and Professionalism in the Adjudication of Removal Cases*. Retrieved from: http://www.americanbar.org/content/dam/aba/publications/commission_on_immigration/coi_complete_full_report.authcheckdam.pdf.

⁵⁷ American Immigration Lawyers Association. (2016). *Due Process Denied: Central Americans Seeking Asylum and Legal Protection in the United States*. Retrieved from: <http://www.aila.org/infonet/report-due-process-denied>.

notorious gang hangout known as the 'crazy house', and never came back. Both brothers were found dead. Anthony and another boy had been shot in the head. Kenneth had been tortured and beaten. Kenneth was only seven years old. They were among seven children murdered in La Pradera neighborhood of San Pedro Sula only in April 2014.

These murders are a part of the surge in gang violence that is claiming younger victims. Honduran, Salvadoran, and Guatemalan children are increasingly on the frontlines of gang violence. Thirty-two children were murdered in Honduras in June 2014, bringing the number of children murdered since January 2014 to 409, according to data compiled by Covenant House, a youth shelter in Tegucigalpa, Honduras. Anthony and Kenneth's family report that the prosecutors refused to come to their house and asked them to meet at the prosecutor's office for fear of the gang that had murdered the children. In Anthony's case, he had been a look out for the gang and had decided to quit. It is documented that many children comply with the demands of the gang because a refusal would mean a certain death. In the case of Anthony, the police reported that after he decided to quit helping the gang in their criminal enterprise, an order came from prison to kill him. The murder was carried out by Hector A. Medina, a 47-year-old gang member of the 18 Street gang. Gangs continue to rob, traffic drugs, kidnap, extort and murder people. They recruit new members at local schools. Technicians at the morgue of San Pedro Sula discuss how they regularly receive corpses of children under 10, and sometimes as young as two years old. Near Santa Barbara, an 11-year-old boy had his throat slit because he did not pay an extortion fee.

Sometimes the children get killed because they happened to be in the car or in their home when the gang members came to kill their parents. Sometimes the children were the target. Children are being murdered for refusing to join gangs, over vendettas or because they are caught up in gang dispute. Another obscure factor emerging is that police officers are also murdering children in an effort to clean up the streets by any means possible.⁵⁸

These murders are a major factor driving the massive wave of migration of Central American children to the United States. An unprecedented number of unaccompanied minors have embarked in a journey that many times ends in exploitation, trafficking and death. Some make all the way to the border, only to be blocked from reaching the actual port of entry into the United States by Mexican authorities. Some are able to reach the point of entry, but are turned away by United States Customs and Border Protection officers. Minors from Central

⁵⁸ On line article: Fleeing Gangs Children Head to the U.S. New York Times, <https://www.nytimes.com/2014/07/10/world/americas/fleeing-gangs-children-head-to-us-border.html?mcubz=3>

Americans tend to come from regions that are so violent, that they perceive the risk of traveling alone to the United States preferable to remaining at home, waiting for a bullet or a machete attack from the local gang.

The sentiment of many Americans when it comes to helping these children is reflected in the comment of Gregg Griffith, a volunteer fireman and researcher at a chemical plant. A shelter for Central American children was opened near his house. "That is my tax money taking care of a foreign national or whatever you want to call them."⁵⁹ We want to call them victims. We want to call them human beings. We want to call them children who need to be protected.

4. Violence in Central America and the U.S. Response

Juana's story represents the profound crisis of systemic violence in El Salvador, particularly against young women (Arce, 2014)⁶⁰. Anthony and Kenneth's story represents the extreme violence Central American children face. As many human rights organizations have noted, the political instability in El Salvador and Central America is forcing many people to relocate within their countries of origin, and to flee to Mexico and the United States in search of freedom and security (United Nations High Commission for Refugees, 2015)⁶¹. This is precisely the geopolitical situation that the human right to peace and the right to migrate is designed to address. All ten countries with the highest child homicide rates worldwide are in Central America and the Caribbean, with Honduras topping the list, according to reports made by Save the Children, an international non-profit organization.

Latin America has been exploited by the United States and European powers for centuries creating poverty and inequality, corrupt governments, and systemic violence (Galeano, 1997)⁶². But in 2014, the area that has received much of the attention is the Northern Triangle countries of El Salvador, Guatemala, and Honduras. In that year, violence increased dramatically, as evidenced by the increase in homicide rates (see Figure below), and widespread corruption meant that victims of violence could not turn to the police or the

⁵⁹ Towns Fight to Avoid Taking In Immigrant Minors <http://comment-news.com/source/www.nytimes.com/2014/07/17/us/towns-fight-to-avoid-taking-in-migrant-minors.html/>

⁶⁰ Arce, A. (2014). In a Land of Brutal Violence, Salvador's Women and Girls Are Targeted for Rape and Murder. *U.S. News and World Report*. Retrieved from: <https://www.usnews.com/news/world/articles/2014/11/06/el-salvadors-gangs-target-women-and-girls>.

⁶¹ United Nations High Commission for Refugees. (2015). *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico*. Retrieved from: <http://www.unhcr.org/56fc31a37.pdf>.

⁶² Galeano, E. (1997). *Open Veins of Latin America: Five Centuries of the Pillage of a Continent*. New York, NY: Monthly Review Press.

court system for protection and prosecution. As a result, many men, women, and children decided to flee Central America and head north to the United States to seek asylum. Single women with children were particularly vulnerable because gangs viewed them as easy targets for exploitation through extortion schemes known as *renta*. Children are being recruited into gangs just in the same manner that children were recruited to be child soldiers in other parts of the world. In El Salvador six and seven-year-old children are part of a gang and carry machine guns that are nearly bigger than they are. Gangs often put pressure on mothers by threatening their children or their business. Thousands of unaccompanied children also embark in the journey north. Many of the children had already seen their parents go to the United States for work, and the threat of gang recruitment created a push factor for them to reunite with their parents. Many migrants crossed the border into Mexico, then take the train, *La Bestia* (Molina, 2016; Nazario, 2014)⁶³,

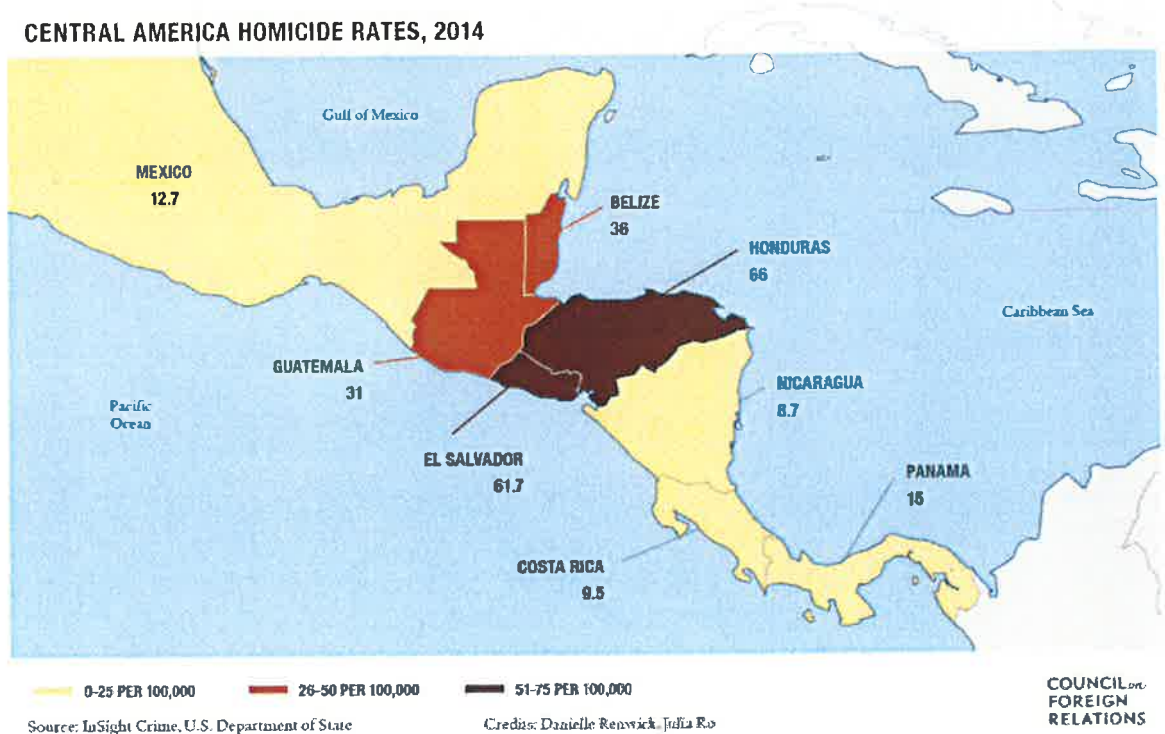


Figure 5. Central America Homicide Rates, 2014 (Council on Foreign Relations, 2016)⁶⁴.

The United States refuses to ratify treaties that carry a legal obligation to grant asylum or protection under the UN Convention Against Torture, or the UN Convention on the Rights of the Child, and the International Convention on the Elimination of Discriminations Against Women. It is a well-documented fact that the United States systematically denies asylum-

⁶³ Nazario, S. (2014). *Enrique's Journey*. New York: Random House.

⁶⁴ Council on Foreign Relations. (2016). *Central America's Violent Northern Triangle*. Retrieved from: <https://www.cfr.org/background/central-americas-violent-northern-triangle>.

seekers the opportunity to even be heard, and works in collusion with other governments to create obstacles for asylum-seekers. The United States has argued that the persons seeking asylum are in reality only escaping dire economic conditions but not fleeing violence. The United States, through Customs and Border Protection, has taken steps to prevent people from even approaching its borders to seek asylum in accordance with domestic law. The conduct has been so outrageous that anti-immigrant rights activists and advocates have filed a law suit. In one case, a woman who was fleeing was told, “You don’t have rights here” (Human Rights Watch, 2014, 28)⁶⁵.

The risks that people in danger face by not having the right to migrate extends after they enter the host country. By restricting people’s ability to apply for asylum by putting them in detention and subjecting them to brutal conditions while waiting for the opportunity to have a credible fear interview, people are put at additional risk of medical emergencies.

The case of Sara Beltran-Hernandez is instructive (Huang, 2017)⁶⁶. In 2015, Sara took her two children and fled the surge in violence in El Salvador to seek asylum in the United States. Although she made her way all the way through Mexico with her two children, she was stopped at the U.S.-Mexico border by U.S. immigration authorities, arrested, and put into a detention facility in December of 2015 where she remained for fifteen months even though she did not have a criminal record nor represent a threat to the United States. Sara’s case took a turn for the worst when she began experiencing dizzy spells and eventually fainted. The detention facility staff did not address her symptoms, and only gave her over-the-counter pain reliever. After a more serious episode, where Sara had a convulsion and began bleeding, she was finally taken to a hospital where she was diagnosed with a brain tumor. Yet, rather than undergo emergency surgery for her life-threatening condition, it took her immigration attorney and thousands of supporters from across the country demanding her release to convince Immigration and Customs Enforcement to release her on bond. Although Sara is now freed from detention, her case illustrates the kind of basic human rights violations that occur when States restrict people from migrating in search of personal security through the international asylum system.

⁶⁵ Human Rights Watch. (2014). “*You Don’t Have Rights Here*”: U.S. Border Screening and Returns of Central Americans to Risk of Serious Harm. Retrieved from:

https://www.hrw.org/sites/default/files/reports/us1014_web_0.pdf

⁶⁶ Huang, M. (2017). Sara Beltran-Hernandez’s Heartbreaking Immigration Detention Case Shows the Need for Reform. *Latina*. Retrieved from: <http://www.latina.com/lifestyle/our-issues/sara-beltran-hernandez-immigration-detention-case-reform>.

5. How to Create the Right to Migrate in the US?

It is clear in the foregoing analysis that migration plays a central role in Central American's ability to find peace. The United States, however, views migration not as a form of violence reduction, but as a threat to border security and cultural change. Concrete policies and practical solutions are crucial in alleviating the current immigrant and refugee crisis.

1. End detention of refugees.

In the United States, the Obama administration expanded in massive ways the systematic detention of asylum seeking mothers and children, most of whom were fleeing extreme violence in the Northern Triangle region of Central America. This practice is a due process and humanitarian disaster. The cost of this practice is \$343 per individual per day.⁶⁷ This practice should be suspended immediately and the resources should be allocated to the creation of a humane refugee and immigration system.

2. Use a humane refugee system to classify people before or during migration.

A system should be implemented and closely monitored for compliance where refugees, especially children, are afforded immediate classification as refugees and given necessary protections. In the United States, people, including unaccompanied children, have reported the collusion between Mexican immigration authorities and U.S. immigration authorities that effectively prevent them from even reaching the U.S. border to seek asylum. Such practice need to immediately stop. There are numerous reports of refugees providing truthful information related to their asylum claim which is not properly processed nor entered into their file, leading to their wrong categorization as "illegal immigrants" instead of refugees. Asylum claims should be processed fairly and expeditiously, and have procedures in place to ensure refugees can work legally as soon as reasonably possible, assist with the integration of refugee children in schools and educating government employees as well as communities to counter xenophobia and discrimination.

3. Create a comprehensive immigration reform system.

There are 11 million undocumented individuals in the United States. The vast majority of these individuals are hardworking people and have no criminal record. Many of

⁶⁷ American Immigration Lawyers Association. (2016). Feature Issue: Family Detention. Retrieved from Website: <http://www.aila.org/advo-media/issues/enforcement/detention>

them have children who are U.S. citizens and many of them are married to U.S. citizens. They are not able to regularize their legal situation because they fail to meet the current astringent laws of immigration.

4. Provide competent legal representation to refugees and immigrants.

According to the Transactional Records Access Clearinghouse (TRAC) at the Syracuse University, almost 50 percent of the unaccompanied children are unrepresented at immigration proceedings. Of all the deportation orders issued by immigration judges against children in 2014 and 2015, almost 90 percent of them had no legal representation. The number of deportation orders against children for failing to appear in court were even higher at almost 97 percent. The striking numbers show the necessity for refugees, especially children, to have free, competent, legal representation.

5. U.S. should ratify both the UN Conventions Relating to the Status of Refugees and on the Rights of Migrants and their Family Members.

The U.S. Government has failed in its humane obligation to provide asylum to people in danger if returned to their countries of origin on humanitarian basis. The U.S. is currently not obligated to grant the human rights protections afforded by international law codified in the UN Conventions. In the interest of the advancement of human rights, the U.S. must urgently ratify the 1951 UN Convention Relating to the Status of Refugees and integrate its protections into U.S. refugee and immigration laws.

6. The U.S. should join the ongoing international codification initiative of the human right to peace, proposed by thousands of civil society organizations worldwide, under the leadership of the SSIHRL.

The United States has made a significant contribution to a great amount of the violence around the world, either by active interference or by virtue of selling arms to both sides of the conflict. The sentiment in the world is loud and clear: peace shall be a codified and protected human right. It is only fair that the main contributor to the lack of peace ameliorates the devastation it has caused by joining the efforts presented by thousands of civil societies and the SSIHRL.

7. U.S. should be in favor of including the right to migrate as an essential component of the human right to peace.

The United States has been built on the backs on immigrants and for centuries has benefited from their immense contributions. Also, the United States has been a main contributor to the displacement of millions of people, many of whom lost their lives. In order to mitigate the irreparable harm caused and in the interest of the advancement of human rights, the U.S. should favor the right of people to migrate as an essential component of the human right to peace.

6. Conclusion

The just administration and processing of asylum applications would mean the opportunity for thousands of refugees to attain legal status in the United States. The immigration system of the United States has been broken for several decades, creating an immigration crisis, where undocumented individuals get exploited, discriminated and marginalized. There are an estimated 11 million undocumented individuals living in the United States. It is a fact that the economy of the U.S. is fueled by the low-paid labor of undocumented immigrants. In the same manner that the United States became one of the world's most powerful countries as a result of having free labor in the form of exploitation, the United States benefits from the labor of undocumented individuals who hold the jobs that no American wants to perform: crop harvesting in the burning sun, day labor, house cleaning, etc. many times way below minimum wages. If the United States provided asylum to the thousands of people who meet all asylum requirements under international law, the number of undocumented individuals living in the United States would drastically decrease. It is not a coincidence the U.S. immigration system is "broken". It appears to be carefully crafted so there is always an unlimited number of modern-day slaves to continue to fuel the economy of the United States.

Chapter IV:

The Harsh Reality of Immigration Courts in the United States

The primary mission of the Executive Office for Immigration Review (EOIR) is to adjudicate immigration cases by *fairly, expeditiously, and uniformly* [emphasis added] interpreting and administering the Nation's immigration laws." (Executive Office for Immigration Review, 2017)⁶⁸. The mission statement of the Executive Office for Immigration Review, better known as the "Immigration Courts" sounds beautiful. The reader of such statement would focus on the words "fairly" and "expeditious" and feel the immigration courts are a place of justice, fairness, compassion for the plight of immigrants. Sadly, that is hardly the case.

Immigration courts in the United States are an important part of the deportation machine of the immigration system of the United States. Statistics have always been dire: during the presidency of Barack Obama, more people were deported per year than in any other presidency. President Barack Obama has often been referred to by immigration groups as the "Deporter in Chief." Between 2009 and 2015 Obama's Administration has removed more than 2.5 million people through immigration orders, which doesn't include the number of people who 'self-deported' or were turned away and/or returned to their home country at the border by U.S. Customs and Border Protection (CBP) (Marshall, 2016)⁶⁹.

What occurs every day in nearly every immigration courtroom is a gross miscarriage of justice, an extension of the extremely unjust, dysfunctional, discriminatory, and complacent immigration system. Term after term the Congress of the United States has failed to act towards a comprehensive immigration reform. While millions of families are split apart by the grossly dysfunctional immigration system and thousands of refugees are sent back to a certain death, Congress continues to sit idle when it comes to immigration. This is shocking when we take into consideration that most members of Congress have an immigrant background or heritage. Some of the fiercest defenders of the implementation of even more cruel and inhumane immigration laws have parents or grandparents who immigrated to the United States. With the exception of Native American Indians, nearly every person in the United States has a significant immigrant background. Yet, as a nation, the United States

⁶⁸ Executive Office for Immigration Review. (2017). EOIR Homepage. Retrieved from U.S. Department of Justice Website: <https://www.justice.gov/eoir>.

⁶⁹ Marshall, S. (2016). Obama Has Deported More People Than Any Other President. *ABC News*. Retrieved from: <http://abcnews.go.com/Politics/obamas-deportation-policy-numbers/story?id=41715661>.

turns its back on immigrants and refugees, getting pulled in by an ideology of “us against them” and immigrants and refugees are used as escape goats for nearly every problem in the nation.

President Trump is particularly passionate in his persecution of immigrants and refugees. This is ironic since his grandfather was an immigrant from Germany. On October 19, 1885, a sixteen-year-old boy arrived carrying the hopes all immigrants and refugees carry: the hope for a better life. That boy was Friedrich Drumpf, one of the eleven million immigrants that arrived in the United States between 1820 and 1892. This immigrant was welcomed at Castle Garden, at the foot of Manhattan (Widmer, 2016)⁷⁰. This immigrant boy was allowed to stay, live and thrive. This boy was the grandfather of Donald Trump, the President of the United States, a ferocious attacker of immigrants and refugees. Again, an extremely ironic fact, since Trump is also married to an immigrant. His wife, Melania Trump, initially came to America on an H-1B visa, a type of visa that the Trump Administration is now working to restrict (Mahtani, 2017)⁷¹. Melania is believed to have worked in the United States in violation of the law. Melania is also believed to have lied under oath in her immigration documents. None of that seems to matter, not even to her anti-immigrant husband because she is ‘the right kind of immigrant’, a white, beautiful woman from Europe.

Under the Trump Administration, the treatment of immigrants in the United States is now harsher than ever. Even legal immigration is being inexplicably and unjustly decreased. The Reforming American Immigration Employment Act (RAISE) recently announced by the Trump administration seeks to reduce the number of low-skilled immigrants who are allotted green cards by 50%, and would replace the current employment-based system with a merit-based system grading potential immigrants according to specifics such as education, English-language ability, high-paying job offers and age.

Recent polls among Americans using the criteria used by the proposed merit-based system reveal that the majority of people participating in the poll would not meet the harsh requirements of the proposed merits-based system.

The Trump Administration terminated one of the very few benefits children fleeing violence had, a program that granted Central American minors entry and temporary legal residence in the United States if they met certain conditions. President Barack Obama’s

⁷⁰ Widmer, T. (2016). An Immigrant Named Trump. *The New Yorker*. Retrieved from: <http://www.newyorker.com/culture/culture-desk/an-immigrant-named-trump>.

⁷¹ Mahtani, M. (2017). Julia Ioffe: Melania Trump is the 'right kind of immigrant'. *CNN*. Retrieved from: <http://www.cnn.com/2017/08/06/politics/julia-ioffe-melania-trump-cnntv/index.html>.

Administration had established the “CAM parole”, where the children who failed to win refugee status could enter on a two year, renewable parole if they had a parent already legally present in the United States.

Trump’s Administration is not only shutting the door on thousands of children who would otherwise be able to reach safety in the United States, but is also preventing the 1,464 minors already in the United States under the CAM program from renewing their status and at risk for deportation.

The cruel and immoral anti-immigrant rhetoric of the current Administration seeks to drastically reduce the opportunity for refugees to seek safety and the opportunity to be safe and have a better life in the United States. The effect of this can be seen in the immigration courts throughout the country. Refugee men, women and children are stripped of the right to have due process and a fair trial by biased judges and by a system that is rigged and set in such a way that the average refugee does not stand a chance.

The Department of Justice’s Executive Office for Immigration Review (EOIR) is what is known as “Immigration Court”. EOIR administers the nation’s immigration court system. In essence, it decides whether foreign-born individuals, who are charged by the Department of Homeland Security (DHS) with violating immigration law, should be ordered removed from the United States or should be granted relief or protection from removal and be allowed to remain in the United States. The most common type of proceedings held are Removal Proceedings, which are initiated by DHS. The court then schedules a removal hearing before an immigration court. The DHS attorney represents the government and seeks to prove the individual should be removed from the United States.⁷² The government is represented at all times, while many times indigent individuals in removal proceedings lack the ability to obtain representation, especially children, particularly unaccompanied, indigent refugee children. Data shows that the majority of the children that appear without representation are ordered removed to the countries they fled and many of the children returned are indeed murdered upon return, as discussed above. Recently a government attorney made a snarky remark about one of those murders in court. The comment made by the attorney was “I guess the case of (name of the child withheld in the interest of the privacy of the family) was a legitimate asylum claim case, his brother is currently in deportation proceedings and as evidence he presented the death certificate of his brother, who was killed

⁷² Executive Office for Immigration Review. (2017). EOIR Homepage. Retrieved from U.S. Department of Justice Website: <https://www.justice.gov/eoir>

upon his deportation and arrival to El Salvador. These are not isolated incidents. We currently have abuses not only on the part of government officials and attorneys, some of whom have blatantly lied in open court and presented forged documents in order to secure a removal order. Recently, a former attorney for U.S. Immigration and Customs Enforcement (ICE) who used a falsified document in an immigration proceeding, was sentenced in federal court to 30 days in prison, 100 hours of community service, one year supervised release, and a 10-year ban on practicing law. Jonathan Love pleaded guilty to deprivation of constitutional rights under color of law.⁷³ In everyday practice of immigration law, immigration attorneys usually encounter systematic violations to the rights of immigrants by the attorneys representing the government in removal proceedings, not every act raises to the level of forgery, fraud and deceit, some are less severe, but nonetheless egregious and unjust. These acts undermine the justice and fairness of the immigration court system of the United States. We also have blatant bias and abuse of power from immigration judges. In immigration court advocates and attorneys for immigrants also face a grossly unfair predisposition of judges, some of whom deny nearly every case of asylum presented before them, regardless of the merit of the case. In the year 2010, Esperanza Immigrant Rights Project filed a formal complaint against Immigration Judge Lorraine Munoz for her repeated misconduct when handling juvenile immigrants who appear before her court. This particular judge has numerous complaints against her and to this day she continues to hear immigration cases, most of which she denies. Lack of accountability for Immigration Judges is a long-standing problem form immigration attorneys and advocates of immigration rights.

The United States is making an effort to justify its continued massive deportation under the “they are bad hombres” guise. Even in the deportation of criminals, the hand of the United States has been present in the creation of the problem from day one, and what is occurring in immigration courts throughout the United States is a clear example of this massive effort to deport individuals.

The United States has a long history of going into the world pursuing and creating isolationist foreign policies instead of helping underdeveloped countries fix dire situations that create massive flows of refugees, not even when the author of such situations has been the United States. An example of this is what occurred with the transnational MS-18 and

⁷³ U.S. Immigration and Customs Enforcement. (2016). Ex-ICE Attorney Sentenced to Prison for Falsifying Document in Immigration Court
Retrieved from Website: <https://www.ice.gov/news/releases/ex-ice-attorney-sentenced-prison-falsifying-document-immigration-case>

Mara Salvatrucha, gangs that originated in Los Angeles, California. The United States deported nearly 46,000 violent convicts to Central America. As a result, El Salvador, Guatemala, and Honduras received more than 90 percent of the deportations from the United States, the majority violent criminals, rapists and murderers. One can say, well these people are criminals and deserving of deportation, the United States has no obligation whatsoever to deal with criminals and made the right decision by deporting them to their country of origin.

However, it is important to analyze what caused the existence of these criminals. The full-fledged civil war of El Salvador lasted over 12 years, it was one of extreme violence between the military led government of El Salvador and the Farabundo Marti National Liberation Front (FMLN), mainly formed by left wing guerrilla groups. This brutal civil war included the systematic targeting and terrorizing of civilians by death squads, the recruitment of child soldiers and horrendous violation of human rights, carried out for the most part by the military. The United States contributed to the conflict by providing large amounts of military aid to the Government of El Salvador during the Administrations of Presidents Jimmy Carter and Ronald Reagan.

It is believed that 85% of all the killings of civilians were committed by the Salvadoran armed forces and death squads. The United States was a contributor by virtue of its role of providing military aid to the main oppressor of the conflict and hence responsible for the creation of conditions in El Salvador which forced thousands to flee the devastation caused by the civil war. The agony of those fleeing the death squads or the atrocities perpetrated on them by the military did not end when they arrived in the United States. These refugees, many of them children, found a system that would deprive them of the opportunity to seek refugee status, despite having solid claims for asylum. These children grew up marginalized, discriminated and lacked educational opportunities, for the most part, because they were undocumented. A phenomenon took place: these children that grew up in a system that actively impeded their integration started joining gangs as a way to fulfill a primal need that was not being met: the need to belong, the need to have a support system that provided some sort of safety and security. For these children and teens, the gangs became that safety and security they desperately need.

In the year 1990, the UN began peace negotiations, which were finalized in the year 1992, with the Chapultepec Peace Accord. Around the same time, the U.S. Congress and the State of California passed harsh anti-gang laws, which resulted in the massive deportations of these undocumented criminals, criminals that the U.S. system had helped create. The flawed

U.S. immigration system impeded these refugees, many of them were children from El Salvador fleeing the brutality of the civil war, the opportunity to obtain legal status in the United States. Without legal status, they were denied every possibility to have an education, employment and a chance at life in the United States. The vast majority of these deportees had come to the United States as young children, many of them were toddlers, even babies when they first arrived in the United States. They knew nothing about their countries of origin, now back in a country they barely knew, another phenomenon took place: these deportees began reproducing the gang activity and criminal enterprises that had constituted the only opportunity afforded to them in the United States: a life in the shadows, a life of crime.

Transnational gangs such as MS 13, 18th Street Gang and Mara Salvatrucha flourished in El Salvador. The criminal enterprise rapidly expanded into Guatemala and Honduras, the MS-13, 18th Street, and the Mara Salvatrucha gangs now have chapters in nearly every city, village, and town in Central America, attracting or forcing the local youth to join. Children as young as six or seven years old are murdered by these violent gangs when they refuse to join. Corruption and collusion with authorities have contributed to make Central American gangs even more powerful. The Governments of El Salvador, Guatemala and Honduras lack the ability to effectively protect their citizens. Currently, the violence and impunity with which the gangs operate are causing people who seek to live in peace to leave in mass, contributing to the horrific refugee crisis we are experiencing today.

As a result of the hundreds of thousands of people that were forced to leave their country in the triangle of Central America, the backlog of immigration courts in the United States keeps rising. As of the end of April 2017, the number of cases waiting for a decision reached an all-time high of 585,930. On average individuals have currently been waiting for over 670 days and might have to wait much longer before they have the opportunity to present their cases in front of an immigration judge. Nine immigration courts that currently account for a quarter of the backlog, which require some individuals to wait for more than four additional years from now before a hearing can be scheduled for them. In some courts, the numbers are even more somber: in San Francisco, with a backlog of nearly 42,000 cases, some people have to wait more than five additional years, in some cases as much as 1,908 days longer for their hearings, for an anticipated hearing date of July 21, 2022.

During the past 18 months, new judges have been hired; however, this has proven insufficient to handle the incoming caseload or reduce the insurmountable case backlog

(TRAC Reports Inc., 2017)⁷⁴. Even when people get a hearing, over two-thirds of the cases are what is called “Master Hearings” which are hearing in which the court presents the individual with the charges against him/ her. Unless people agree to their departure, that hearing is followed by subsequent hearings, and generally what is called a merits hearing, in which the merits of the case are presented before the immigration judge.

As we can see, the claim in the mission statement of the Executive Office for Immigration Review EOIR (Immigration Court) to expeditiously adjudicate immigration cases is a fallacy. This fallacy is tragic for immigrants and refugees that linger in a legal limbo while waiting for their immigration cases to be heard in immigration court. The tragedy exponentially increased in the cases where immigrants are in detention. Several people in detention have died or committed suicide while waiting for their cases to be heard. Investigations conducted by Human Rights Watch have revealed substandard of medical care and violations of applicable detention standards. Two independent medical experts consulted by Human Rights Watch concluded that these failures contributed to the deaths, while potentially putting many other detainees in danger as well. It has also been documented that there is misuse of isolation for people with mental disabilities (Human Rights Watch, 2016)⁷⁵.

The Executive Office for Immigration Review (EOIR) claims that its purpose is to fairly adjudicate immigration cases. Given how cases are being handled in Immigration courts throughout the United States, this assertion would be comical if it was not so tragic. Historically immigrants have faced great injustice in immigration courts; however, the injustices immigrants encounter have reached levels that challenge all notions of human decency.

A Department of Justice immigration judge recently made headlines for testifying that a 3- and a 4-year-old immigrant children could be taught immigration law and could competently represent themselves in court. He was testifying in a deposition for a federal lawsuit brought by the American Civil Liberties Union (ACLU) and other legal organizations to challenge the government’s failure to appoint counsel for children facing deportation

⁷⁴ TRAC Reports Inc. (2016). *Judge-by-Judge Asylum Decisions in Immigration Courts FY 2011-2016*. Retrieved from: <http://trac.syr.edu/immigration/reports/447/include/denialrates.html>.

⁷⁵ Human Rights Watch (2016). *US: Deaths in Immigration Detention*. Retrieved from: <https://www.hrw.org/news/2016/07/07/us-deaths-immigration-detention>.

(Villagra, 2016)⁷⁶. This was not just an immigration judge; this judge is the assistant chief immigration judge responsible for training other judges involving children.

If a court system can look at a child and decide to send him back to the violent country he escaped from, this system cannot claim to have a mission of “fairly adjudicating cases”. Children without lawyers are five times more likely to be ordered deported. Deportation hearings in which children must defend themselves is an aberration but they will continue to occur. The deportation of children to countries where they will meet a violent death will result.

That was the case for Jose Marvin Martinez, a 16-year-old who fled Honduras after his brother was shot and killed by gang members. Martinez was apprehended in Laredo, Texas in May 2013. He was sent back to Honduras in August 2014. Upon his arrival to Honduras, a gunman opened fire from a drive-by truck killing him. Gredis Alexander Hernandez fled Honduras with his sister after witnessing a murder. Upon his return to his hometown, Hernandez was shot in the head while he slept in his bed. He was only 14 years old (Brodzinsky & Pilkington, 2015)⁷⁷.

According to Hector Hernandez, who runs a morgue in the city of San Pedro Sula, Honduras, five to 10 of the 42 homicide victims younger than 18 who were taken to the morgue since February had previously been deported from the United States. Valdete Wileman, a nun who runs the Center for Returned Migrants in San Pedro Sula, said about 80% of the children who had been returned from the United States had been seeking to escape from the violence of gangs in Honduras (Carcamo, 2014)⁷⁸.

Denials of asylum by immigration judges continued to rise. The prejudice and bias become clear as the statistics from 2011 to 2016 speak for themselves: Immigration Judge Earle B. Wilson of Atlanta, rendered 903 decisions. He denied asylum to 97.7% of all the cases presented before him. Immigration Judge James P. Vandello of Aurora, Colorado heard 108 cases. He denied 96.3% of the cases he heard. Immigration Judge William J., Jr. Nickerson of Bloomington, Minnesota heard 253 cases. He denied 97.2% of those cases. Immigration Judge Lorraine J. Munoz of Los Angeles, California heard 759. She denied 97.1% of the cases she presided over. Immigration Judge Kenneth S. Hurewitz of Miami,

⁷⁶ Villagra, H. (2016). The injustice of deporting children without representation. *LA Times*. Retrieved from: <http://www.latimes.com/opinion/op-ed/la-oe-villagra-migrant-children-immigration-court-20160317-story.html>.

⁷⁷ Brodzinsky, S., & Pilkington, E. (2015). U.S. Government Deporting Central American Migrants to Their Deaths. *The Guardian*. Retrieved from: <https://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>.

⁷⁸ Carcamo, C. (2014). In Honduras, U.S. deportees seek to journey north again. *LA Times*. Retrieved from: <http://www.latimes.com/world/mexico-americas/la-fg-honduras-deported-youths-20140816-story.html>.

Florida heard 135 cases. He denied 97.8% of the cases he heard. Immigration Judge John Opaciuch of Miami, Florida heard 317 cases. He denied 97.5% of the cases he heard. Agnelis L. Reese of Oakdale, Louisiana heard 169 asylum cases. She denied every single case presented before her (TRAC Reports Inc., 2016)⁷⁹.

The U.S. Government is failing in its obligation to provide asylum to people in peril on humanitarian basis. In addition, the U.S. must urgently ratify the 1951 UN Convention Relating to the Status of Refugees and translate it into domestic law.

The victims of the increasingly unforgiving deportation process are those people, including children, that are being returned to extremely dangerous conditions in Central America, and other violence-ridden countries. The courts now more than ever express a disdain towards immigrants and refugees as a result of directives from the White House. As if the plight of immigrants was not unjust and heartbreaking, now the Trump Administration drafts a plan to raise the asylum bar to a level that will ensure very few people will qualify and speed deportations.

⁷⁹ TRAC Reports Inc. (2016). *Judge-by-Judge Asylum Decisions in Immigration Courts FY 2011-2016*. Retrieved from: <http://trac.syr.edu/immigration/reports/447/include/denialrates.html>.

Chapter V: Conclusions

“When a foreigner resides among you in your land, do not mistreat them. The foreigner residing among you must be treated as your native-born. Love them as yourself, for you were foreigners in Egypt. I am the Lord your God.” – Leviticus 19:33-34

Whose City on Hill?

United States of America claims to be a Christian nation. For instance, during a speech at Liberty University, a conservative school with strong ties to the Republican Party, President Trump claimed that “America is a nation of true believers” (Jenkins, 2017)⁸⁰. Yet contrary to the foundations of Christian theology, the United States routinely prevents foreigners—including men, women, children, and even infants— from reaching safety, and even deports them to their death. According to the Pew Research Center (Krogstad et al., 2017)⁸¹, there are at around 11 million undocumented individuals living in the United States. It is in the best moral and economic interest of the United States and other developed countries to offer immigrants and refugees the opportunity to enter, live in safety and contribute openly.

The estimated 11 million undocumented individuals living in the United States are a critical component of the U.S. economy, yet many of them work for minimum wage and long hours under deplorable conditions. They are so valuable to the economy that whenever there are massive immigration raids, agricultural and factory based business suffer and many times fail. Although they work in the shadows, undocumented individuals pay an estimated \$11.74 billion annually in state and local taxes, an amount that would increase significantly if these undocumented immigrants were given a pathway to citizenship, according to the Institute of Taxation and Economic Policy.

This refutes the longstanding argument of critics of illegal immigration, among them President Donald Trump, who claim undocumented persons are a drain on the nation’s economy.

The report also found that granting legal status to all undocumented individuals in the United States as part of a comprehensive immigration reform would increase their state and

⁸⁰ Jenkins, J. (2017). Trump Invokes Christian Nationalism at Liberty University. *Think Progress*. Retrieved from: <https://thinkprogress.org/trump-invokes-christian-nationalism-at-liberty-university-8f72c8f13b21/>. Last accessed on: August 28, 2017.

⁸¹ Krogstad, J. M., Passel, J., & Cohn, D. V. (2017). *5 Facts about Illegal Immigration in the U.S.* Retrieved from: <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>

local tax contributions by an estimated \$2.18 billion a year. A solution to the plight of millions of immigrants and refugees, especially those fleeing from brutally violent conditions, would be the opportunity to be welcomed, incorporated and given the opportunity to legally stay in a country where they can live in peace. According to studies and statistics, not only would it benefit the immigrant or the refugee, it also would greatly benefit the host country or countries.

The U.S. example can be contrasted to the example of countries in Europe. It is remarkable to see other European countries taking on great responsibility in contributing to the resolution of the refugee crisis that has devastated many parts of the world. The Spanish Government accepted large numbers of refugees as decided by the European Union, but it failed to meet its engagement. On August 28, 2015, Barcelona's mayor Ada Colau, in response to tragedies in the Mediterranean and Austria, called for a network of refugee cities throughout Spain. Several Spanish cities, like Madrid and Barcelona, offered to do their part to welcome as many refugees as possible and asked the Spanish Government to meet its engagement. Germany initiated their "Fluchtlinge Willkommen" or "Refugees Welcome" efforts promptly in response to the recent refugee crisis in Europe. A "Refugees Welcome" sign can be seen in Madrid's City Hall. Greece, Italy and France have also welcomed tens of thousands of refugees. These countries are leading by example, showing a sincere effort to face the humanitarian crisis with the humanity that it deserves. There are counter-examples, such as Hungary, who outright refused asylum requests by refugees seeking to enter their borders, even going as far as meeting them with riot gear, tear gas and water cannons. Other Governments have also refused to accept suggested refugee quotas, in defiance of European Union agreements. Despite this, many European countries embrace immigrants with much more enthusiasm than we do in the United States.

We, as an international community have failed to assist countries devastated by violence in Middle East and Africa, producing unprecedented mass exoduses of civilians trying to get refuge in European countries.

We should all fight until the human right to peace becomes an inviolable basic human right which can be effectively carried out. The regulations of the Human Rights Protections of international law contained in the UN Conventions as well as the right to peace and the right to migrate as proposed by SSIHRL discussed in detail above would afford people around the world the opportunity to be granted the protection they desperately need in order to survive.

If we are unable to provide all human beings all the guarantees and protections of the right to peace, we should have a system in place that affords all individuals displaced by violence the right to migrate to a safe and welcoming place as a component of the human right to peace.

In this investigative work, I started from the basis that immigrants should be respected and included in our modern legal systems because of their rights as human beings.

Although the international human rights system includes many important protections for immigrants and refugees through the visa and asylum systems, they are not developed enough to provide protection for the millions of people who are migrating in the world today. The international refugee regime is not compulsory to U.S. unless it ratifies the UN Convention Relating to the Status of Refugees.

Many legitimate refugees are arrested and detained in detention centers in the U.S and Europe, and many more die along their journey to safety. For this reason, I support the argument that all human beings have a human right to peace, and that this right to peace should be enshrined in law through appropriate international processes of codification.

However, I also go further, by arguing that the human right to peace should include a specific component that recognizes the right of all human beings to migrate. The right to migrate is fundamental to the historical legal of Christian theology: the stories of Adam, Moses, Ruth, Jesus, and Paul all represent the value of human mobility throughout the ancient world. That same ethic of migration and moral support that allegedly forms of the core of American's Christian heritage, should lead the United States to support the right to migrate.

Given the political structure in the U.S. and Europe, the possibility of an international right to migrate is still a long way off. What can attorneys do in the meantime? I believe that attorneys and human rights activists can begin to create precedent for a right to migrate now by preventing massive deportations, creating legal programs that release immigrants from detention, and by pressing local and national politicians to support policy changes, such as the DREAM ACT, that limit the harm that bad policies inflict upon immigrants.

Attorneys and scholars can also conduct important research on immigration law and policy to create a better-informed public, and develop new ways of thinking about law that focus on liberation and not oppression. Using these approaches, we can make progress on advancing human rights and the right to migrate as part of the human right to peace, even before the standards are adopted in international human rights law.

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