matter how slow this reform process is and regardless of how ugly FIFA turns out to be. And FIFA will continue to operate with no accountability to anyone for anything.

VI. EPILOGUE

On February 26, 2016, Gianni Infantino, 45, General Secretary of UEFA since 2009 was elected President of FIFA. A number of “reforms” were also adopted. The next few years will make clear whether a totally corrupt organization can be reformed from within.

Any bets?

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SAVING LIVES AND BUILDING SOCIETY: THE EUROPEAN MIGRATION AGENDA

Dr. Catherine Tinker*

I. INTRODUCTION

The European Union is attempting to manage an extraordinary flow of migrants and refugees into Europe, exceeding 1,000,000 in 2015 alone, the


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2. Convention Relating to the Status of Refugees, Jul. 28, 1951, 189 U.N.T.S. 137. (A "refugee" under the classic international law definition is a person who is outside his/her state of "nationality or habitual residence" and applies for and is granted asylum in another state on the grounds that he or she is unable or unwilling to return due to a "well-founded fear of persecution" based on "race, religion, nationality, membership in a particular social group or political opinion"); and G.A. Res. 2198 (XXI), Protocol Relating to the Status of Refugees (Oct. 4, 1967); see also U.N.H.C.R., CONVENTION AND PROTOCOL RELATING TO THE STATUS OF REFUGEES, (Oct. 4, 1967).
largest number of displaced persons (both externally and internally) since World War II. Two or three years ago, migration into Europe was perceived—if considered at all—to be a problem of a few Southern European states, principally Italy, Greece, Spain, Malta and Cyprus. Those states were facing boatloads of migrants and refugees attempting to cross the Mediterranean and land on their shores, with the intention, mostly thwarted, to pass on to Northern European states to seek a new life. Burden-sharing among the European Union as a whole was not in evidence, and once ashore, most migrants and those planning to apply for refugee status in Europe were stuck in whatever state where they first arrived.

Two developments changed this picture: first, in 2013, the conscience of the world was shocked when several hundred migrants drowned near Lampedusa, Italy, on a single ill-equipped and overloaded ship. Second, starting in 2014 and multiplying in 2015, ever greater numbers of persons swept across borders, many through the Balkan route, by the thousands daily, overwhelming any border controls or efforts to make them wait in the first country of entry into the European Union. Untold thousands have continued to drown trying to cross the Mediterranean Sea—some within sight of Greek islands like Lesbos on rubber rafts, plywood or any repurposed object to escape wars, gender—and religious—based violence, and extreme weather conditions, all resulting in lack of water, food and security in their home states. By the end of 2015, migration into Europe was widely understood to be an European Union-wide problem, indeed a global problem—for states, for European communities, for the people desperate enough to risk their lives and the lives of their children to reach Europe, seeking refuge and safety.

One of the most important principles under existing European Union law is the free movement of persons within the “Schengen Area.” However, under subsequent regulations, known as the “Dublin Regulations,” arriving migrants claiming to be refugees entitled to protection must file their applications for asylum in the state of arrival within the European Union and remain in that state until a final determination is made. Only if granted refugee status will a migrant be entitled to benefits, including the freedom to move within the borders of the Schengen Area and the right to legally work. Each member state of the European Union applies its own guidelines and policies for evaluating and deciding a person’s status as a “refugee” based on the classic definition in the 1951 Refugee Convention:


10. European Union: Council of the European Union, Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person [29 June 2013, OJ L 180/31-180/59; 29.6.2013, (EU) No. 604/2013, http://www.ashylumlawdatabase.eu/content/en-dublin-iii-regulation-council-regulation-ec-6042013-26-june-2013-recast-dublin-ii [hereinafter The Dublin III Regulations] (The Dublin III Regulations establish the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national or stateless person). The application of these regulations and the changes proposed in the European Migration Agenda to create a European Union-wide system of processing asylum applications and making decisions on refugee status, as well as the consequences of a denial, are discussed below.

largest number of displaced persons (both externally and internally) since World War II.\(^2\) Two or three years ago, migration into Europe was perceived—if considered at all—to be a problem of a few Southern European states, principally Italy, Greece, Spain, Malta and Cyprus.\(^3\) Those states were facing boatloads of migrants and refugees attempting to cross the Mediterranean and land on their shores, with the intention, mostly thwarted, to pass on to Northern European states to seek a new life.\(^4\) Burden-sharing among the European Union as a whole was not in evidence, and once ashore, most migrants and those planning to apply for refugee status in Europe were stuck in whatever state where they first arrived.

Two developments changed this picture: first, in 2013, the conscience of the world was shocked when several hundred migrants drowned near Lampedusa, Italy, on a single ill-equipped and overloaded ship.\(^5\) Second, starting in 2014 and multiplying in 2015, ever greater numbers of persons swept across borders, many through the Balkan route, by the thousands daily, overwhelming any border controls or efforts to make them wait in the first country of entry into the European Union.\(^6\) Untold thousands have continued to drown trying to cross the Mediterranean Sea—some within sight of Greek islands like Lesbos on rubber rafts, plywood or any repurposed object to escape wars, gender—and religious—based violence, and extreme weather conditions, all resulting in lack of water, food and security in their home states. By the end of 2015, migration into Europe was widely understood to be an European Union—wide problem, indeed a global problem—for states, for European communities, for the people desperate enough to risk their lives and the lives of their children to reach Europe, seeking refuge and safety.\(^7\)

One of the most important principles under existing European Union law is the free movement of persons within the “Schengen Area.”\(^8\) However, under subsequent regulations, known as the “Dublin Regulations,”\(^9\) arriving migrants claiming to be refugees entitled to protection must file their applications for asylum in the state of arrival within the European Union and remain in that state until a final determination is made. Only if granted refugee status will a migrant be entitled to benefits, including the freedom to move within the borders of the Schengen Area and the right to legally work. Each member state of the European Union applies its own guidelines and policies for evaluating and deciding a person’s status as a “refugee” based on the classic definition in the 1951 Refugee Convention.\(^10\) a well-founded fear


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of persecution based on his/her race, nationality, religion, membership in a particular social group, or political opinion. Migrants naturally seek to reach European states with more lenient applications of the standard before filing asylum applications to maximize their chances of success, creating further pressure to move northwards after arrival within the European Union. The Office of the United Nations High Commissioner for Refugees ("UNHCR") has noted that despite the

long tradition of [European states] providing a safe haven to the persecuted, according to Eurostat figures, protection rates (refugee status and subsidiary protection) for the same groups of asylum-seekers vary considerably from one Member State of the European Union to another... [and] material conditions also vary widely. Whether and what kind of reception assistance is made available to asylum-seekers differs from country to country. In some European Union Member States, access to basic material support is so limited that many asylum-seekers end up sleeping in the streets.12

An attorney with the European Parliament’s Liaison Office to the United States Congress in Washington, D.C., has noted that “in order to deal with issues that have long been seen as internal affairs at the heart of their sovereignty, European Union Member States have agreed to develop a strong and multi-dimensional European Union response” and that

the actual concept of an European Union migration policy is a fairly recent thing. Issues related to asylum, immigration and visa policy were integrated into the European Union law (which back

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12. UNHCR, The Road to a Common EU Asylum System, (Sept. 2010), http://www.unhcr.org/cgi-bin/lexis/vts/home/opendocPDFViewer.html?docid=46609fbd6&q=the road to a common European Union asylum system (last visited Feb. 15, 2016); (according to the sheer numbers of new arrivals in Europe, especially in the last two years, has strained limited resources in many southern European states and meant that the conditions described in 2010 are still true in 2015 in many places); see also SAMANTHA VELLUTI, REFORMING THE COMMON EUROPEAN ASYLUM SYSTEM—LEGISLATIVE DEVELOPMENTS AND JUDICIAL ACTIVISM OF THE EUROPEAN COURTS (2013).
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13. Urszula Mojkowska, Remarks at European Affairs Committee of the New York City Bar Association with the European Union Studies Center of the CUNY Graduate Center panel discussion (Oct. 15, 2014); and written communication from Urszula Mojkowska to the author on November 6, 2015, with notes for a panel presentation on European Union law on migration and refugees in Europe, copy in the files of the author, quoted with permission for purposes of this publication.

14. European Agenda on Migration, supra note 1, at 1.

15. Id. at 4.

16. Id. at 3.
Europe. An extremely limited number of asylum applicants in limbo in Italy and Greece are being resettled to Northern European states, where their asylum applications will be processed and determined.

A. Issues

Issues remain about the ability of the European Union to institute prompt and standardized screening practices, to apply European Union-wide principles to asylum determinations, and to resettle significant numbers of migrants and refugees from one Member State to another. This challenges the basic concepts of the European Union itself and its constitutive principles of solidarity, subsidiarity and the free movement of people within the European Union. As a UNHCR report concluded in 2010, "[s]ystems that can swiftly and efficiently identify those in need of protection are more cost-effective in the long run." This report was prior to the current influx of Syrians, Iraqis, Afghans, Somalis and others seeking protection in Europe in vast numbers in the last several years from wars in these and other regions. How European Union and other states respond to the sheer numbers of people on the move, seeking entry by whatever means possible into the European Union, may determine the future of the European Union project itself.

European Union law and international humanitarian and refuge law's failure to adequately manage the extraordinary flow of migrants and refugees into Europe in the last half of 2015 raises questions about the relevance and adequacy of the current legal and policy framework. The European Migration Agenda of 2015 and successive policy formulations and legislation will need to address questions such as:

1. Is the Dublin Regulation still in effect as thousands of people each week in 2015 have immediately moved beyond the states they first entered the European Union to other states where they apply for political asylum as refugees? And will the planned review of the Dublin Regulation in 2016 lead to its repeal or significant revision based on current realities?

2. Is the sheer force of numbers pouring into Europe breaking down the basic principles of the European Union itself, including the free movement of peoples in the Schengen Accords and the principles of solidarity?

3. What effect does the 1951 Refugee Convention have on the situation in Europe today, and what is the role of the United Nations High Commissioner for Refugees in processing asylum applications and determining who has a likely success of recognition as a refugee?

4. What can be done to protect the human rights of those seeking refuge in Europe?

The "European Migration Agenda" attempts to formulate a policy agenda with both short, medium and long term provisions and financing for management of, inter alia, the reception and processing of refugees in Europe by states within the limitations of existing European Union law and international refugee law.

According to the European Commission's Directorate for Home Affairs and Security,

Migration management is a shared responsibility, not only among European Union Member States, but also vis-à-vis non-European Union countries of transit and origin of migrants. By combining both internal and external policies, the Agenda provides a new, comprehensive approach grounded in mutual trust and solidarity among European Union Member States and institutions.

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20. European Migration Agenda on Migration, supra note 1.

21. Id. at 6-7. Issues of legal entry into the European Union through regularized immigration system, such as business or student visas for those intending to stay, on the one hand; and the rise in organized crime involved in human smuggling and other criminal activity and issues of border management on the other hand, are addressed in the European Migration Agenda as well as issues of asylum and refugee status. Provisions applicable to these issues arise from ones discussed herein include: “reducing the incentives for irregular migration and addressing the root causes behind irregular migration in non-European Union countries, dismantling smuggling and trafficking networks and defining actions for the better application of return policies”; “saving lives and securing the external borders by better management of the external border . . . and improving the efficiency of border crossing”; and “developing a new policy on legal migration in view of the future demographic challenges the European Union is facing to attract workers that the European Union economy needs, particularly by facilitating entry and the recognition of qualifications.”

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A. Issues

Issues remain about the ability of the European Union to institute prompt and standardized screening practices, to apply European Union-wide principles to asylum determinations, and to resettle significant numbers of migrants and refugees from one Member State to another. This challenges the basic concepts of the European Union itself and its constitutive principles of solidarity, subsidiarity and the free movement of people within the European Union. As a UNHCR report concluded in 2010, "[s]ystems that can swiftly and efficiently identify those who are in need of protection are more cost-effective in the long run." This report was prior to the current influx of Syrians, Iraqis, Afghans, Somalis and others seeking protection in Europe in vast numbers in the last several years from wars in these and other regions. How European Union and other states respond to the sheer numbers of people on the move, seeking entry by whatever means possible into the European Union, may determine the future of the European Union project itself.

European Union law and international humanitarian and refugee law's failure to adequately manage the extraordinary flow of migrants and refugees into Europe in the last half of 2015 raises questions about the relevance and adequacy of the current legal and policy framework. The European Migration Agenda of 2015 and successive policy formulations and legislation will need to address questions such as:

1. Is the Dublin Regulation\(^\text{19}\) still in effect as thousands of people each week in 2015 have immediately moved beyond the states where they first entered the European Union to other states where they apply for political asylum as refugees? And will the planned review of the Dublin Regulation in 2016 lead to its repeal or significant revision based on current realities?

2. Is the sheer force of numbers pouring into Europe breaking down the basic principles of the European Union itself, including the free movement of peoples in the Schengen Accords and the principles of solidarity?

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The "European Migration Agenda"\(^\text{20}\) attempts to formulate a policy agenda with both short, medium and long term provisions and financing for management of, inter alia, the reception and processing of refugees in Europe by states\(^\text{21}\) within the limitations of existing European Union law and international refugee law.

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Migration management is a shared responsibility, not only among European Union Member States, but also vis-à-vis non-European Union countries of transit and origin of migrants. By combining both internal and external policies, the Agenda provides for a new, comprehensive approach grounded in mutual trust and solidarity among European Union Member States and institutions.\(^\text{22}\)

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“Migration management” has been defined by the International Organization on Migration ("IOM"), an inter-governmental organization, as a term used to encompass numerous governmental functions within a national system for the orderly and humane management for cross-border migration, particularly managing the entry and presence of foreigners within the borders of the State and the protection of refugees and others in need of protection. It refers to a planned approach to the development of policy, legislative and administrative responses to key migration issues.23

Key features of the European Migration Agenda which attempt to advance “migration management” are set out in four levels of action “for an European Union migration policy which is fair, robust and realistic. When implemented, they will provide the European Union with a migration policy which respects the right to seek asylum, responds to the humanitarian challenge, provides a clear European Framework for a common migration policy, and stands the test of time.”24 An annex to the Agenda gives a number of migrants each Member State is asked to accept for resettlement and relocation.25

B. The Dublin Regulation

The most recent “Dublin regulation” (OJ (L 180) of June 29, 2013) requires the European Union Member State where individuals first enter the European Union seeking asylum to process their applications; further, asylum applicants cannot move elsewhere within the European Union until a determination is made on their status as refugees, with some recent exceptions for family reunification requests in the case of unaccompanied children who have relatives elsewhere in the European Union.26 The preference of migrants themselves who are seeking recognition as refugees for the state where they wish to apply has not been recognized as dispositive. The European Commission has a legislative proposal being considered by the Parliament on:

a permanent European Union system of relocation in emergency situations to be inserted into the Dublin Regulation . . . which foresees triggering the emergency response mechanism under

23. Key Migration Terms, supra note 2.
24. European Agenda on Migration, supra note 1, at 7.
25. Id. at 19–22.
26. Id. at 13.

27. Mojewska, supra note 13.
28. European Agenda on Migration, supra note 1, at 13.
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Article 78(3) of the Treaty [TFEU], which enables a distribution mechanism for persons in need of international protection within the European Union . . . when a mass influx emerges . . . The European Parliament has repeatedly called for amending the existing Dublin Regulation in order to include a permanent, binding system of distribution of asylum seekers among the twenty-eight Member States, using a fair, compulsory allocation key, while taking into account the prospects of integration and the needs and specific circumstances of asylum seekers themselves.27

If the Parliament is considering some recognition of the rights of asylum seekers to choose the state where they wish to apply for refugee status, existing law firmly requires applications in the first state of entry, as discussed.

Regulation (EU) No 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person (OJ L 180, 29.6.2013, p. 31). The United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation. Denmark participates in the Dublin system through a separate international agreement it has concluded with the European Union in 2006. The criteria for establishing responsibility run, in hierarchical order, from family considerations, to recent possession of visa or residence permit in a Member State, to whether the applicant has entered European Union irregularly, or regularly.28

The application of the Dublin regulations has resulted in some individuals having been housed for several years in detention centers or camps in states such as Italy, Greece, and now Bulgaria, for example, absent prompt processing of their applications or hope of a decision which would allow a refugee to live, work and travel anywhere within the European Union. The Dublin regulations may have been suspended de facto due to events in Europe in summer and fall, 2015, as unprecedented numbers of refugees and migrants at risk crossed primarily through Turkey and the Balkans and Eastern Europe towards the borders of the European Union, and certain states allowed them to transit en route to their preferred state of asylum application, generally Austria, Germany, Sweden or Norway, which opened their borders at least temporarily to increasing numbers of people seeking refuge.29

27. Mojewska, supra note 13.
28. European Agenda on Migration, supra note 1, at 13.
29. Id. at 13–14.
In part to address the inequity between member states of the European Union and to protect the rights of asylum applicants under the principle of solidarity, the European Agenda on Migration attempts to create a fair system of burden-sharing within the European Union for receiving numbers of refugees. Funds are available through the European Union Asylum Migration and Integration Fund and “countries particularly affected by an influx of migrants and asylum seekers may also request assistance as appropriate from the European Union civil protection mechanism.”

C. Return

The European Migration Agenda also recognizes that return will be necessary in some cases for individuals currently inside the European Union. Not every person is eligible to remain within the European Union, including those who are determined to be ineligible for refugee status. Even persons who otherwise meet the definition of a “refugee” in the 1951 Convention discussed above may be excluded by a state from international protection as “undeserving” under certain conditions such as “serious criminal acts” according to the 1951 Refugee Convention. In addition, third countries need to “fulfil their international obligation to take back their own nationals residing irregularly in Europe” and Member States have to apply the Return Directive.

The Commission will give priority to monitoring implementation of the Directive, with a more swift return system going hand-in-hand with the respect of the procedures and standards that allow Europe to ensure a humane and dignified treatment of returnees and a proportionate use of coercive measures, in line with fundamental rights and the principle of non-refoulement. The implementation of the European Union rules on the return of irregular migrants is now being assessed thoroughly in the framework of the Schengen Evaluation Mechanism, and a ‘Return Handbook’ will support Member States with common guidelines, best practice and recommendations.

33. Directive 2008/115, 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, 2008 OJ (L. 348) 98-107; (the United Kingdom and Ireland did not “opt-in” to this Directive and are therefore not bound by it and not subject to its application) European Agenda on Migration, supra note 1, at 10 n.22.

34. European Agenda on Migration, supra note 1, at 9–10.

35. For an analysis of case law and the reliance on the European Charter of Fundamental Rights regarding the application of the Returns Directive see Diego Acosta Arceazo, The Charter, Detention and possible regularization of migrants in an irregular situation under the Returns Directive: Mahdi, Case C-146/14 PPU, Mahdi, Judgment of the Court of Justice (Third Chamber), 52 COMMON Mkt. L. REV. 1361, 1361-1378 (2015) (according to which “Directive 2008/115 lays down procedures for returning migrants who find themselves in an irregular situation. This legislation, better known as the Returns Directive, is possibly the most controversial one in the area of migration policy.”)

36. Humanitarian alternatives based on principles of customary law or jus cogens principles of international law, such as non-refoulement, or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 14 U.N.T.S. 85, may be available to protect those denied refugee status from return to a country of origin or former residence under certain circumstances, including the particularly vulnerable status of an individual, such as a child, or threat of gender-based violence; see Tinker v. Sartoretto, supra note 11 (according to which “the principle of non-refoulement has partially mitigated state sovereignty and has granted protection to individuals who do not possess refugee status: Non-refoulement has acquired a jus cogens nature, especially when it comes to protection and prevention of torture, by virtue of Art. 3 of the Convention Against Torture,”) accord Jean Allain, The jus cogens Nature of Non-Refoulement, 13 INT’L J. OF REFUGEE L. 533, 533–48 (2003); see also Conrado Trindade, A. A., International Law for Humankind: Towards a New jus Gentium-General Course on Public International Law - Part II, 317 Recueil des Cours de l’Academie de Droit International de la Haye (2005). In such circumstances, so-called “subsidary protections” which grant temporary authorization to remain in the receiving state with limited rights, often for a period of three to five years renewable if the conditions are on-going, may be available. See Directive 2011/95, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, 2011 OJ (L. 337) 9 (according to which it creates a subsidiary protection system); see Jane McAdam, The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime, 17(3) INT’L J. OF REFUGEE L. 461, 466-469 (2005); see also Charter of Fundamental Rights of the European Union, Dec. 18, 2000, OJ (C 364) 1, art. 19(2) and Eur. Conv. on H. R., Art. 3, 13. The principle of non-refoulement was cited in a decision of the European Court of Human Rights preventing the return of an applicant for asylum to Greece, the state where he first entered the European Union, where detention conditions were not adequate to protect his rights; see 2 M.S.S. v. Belgium and Greece, App. No. 30696/09, 55 Eur. Ct. H.R. 2, (Jan. 21, 2011).
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30. Id. at 6.
31. Id. at 12. (according to which “Strengthening the Common European Asylum System also means a more effective approach to abuses. Too many requests are unfounded: in 2014, 55% of the asylum requests resulted in a negative decision and for some nationalities almost all asylum requests were rejected, hampering the capacity of Member States to provide swift protection to those in need.”)
33. Directive 2008/115, 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, 2008 O.J. (L. 348) 98-107; (the United Kingdom and Ireland did not “opt-in” to this Directive and are therefore not bound by it and not subject to its application). European Agenda on Migration, supra note 1, at 10 n.22.
34. European Agenda on Migration, supra note 1, at 9-10.

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Thus, the European Migration Agenda does recognize the right of Member States to exclude some people seeking international protection. At the same time, it also recognizes the obligations of the European Union and its Member States to uphold international human rights and humanitarian law. Consistent with international protection for individuals who may face torture if returned to their country of origin but who cannot establish the specific individualized fear of persecution required under the 1951 Refugee Convention, under limited circumstances subsidiary protection may be available on a temporary basis to some individuals.

35. For an analysis of case law and the reliance on the European Charter of Fundamental Rights regarding the application of the Returns Directive see Diego Acosta Arangure, The Charter, detention and possible regularization of migrants in an irregular situation under the Returns Directive: Mabhi, Case C-446/14 PPU, Mabhi, Judgment of the Court of Justice (Third Chamber), 52 Common Mkt. L. Rev. 1361, 1361-1378 (2015) (according to which “Directive 2008/115 lays down procedures for returning migrants who find themselves in an irregular situation. This legislation, better known as the Returns Directive, is possibly the most controversial one in the area of migration policy.”)
36. Humanitarian alternatives based on principles of customary law or jus cogens principles of international law, such as non-refoulement, or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 14 U.N.T.S. 85, may be available to protect those denied refugee status from return to a country of origin or former residence under certain circumstances, including the particularly vulnerable status of an individual, such as a child, or threat of gender-based violence; see Tinker v. Sartoreto, supra note 11 (according to which “the principle of non-refoulement has partially mitigated state sovereignty and it has granted protection to individuals who do not possess refugee status. Non-refoulement has acquired a jus cogens nature, especially when it comes to protection and prevention of torture, by virtue of Art. 3 of the Convention Against Torture.”) accord Jean Allain, The justification of Non-Refoulement, 13 Int’l J. Of Refugee L. 533, 533-88 (2001); see also Cançado Trindade, A. A., International Law for Human Rights: Towards a New Just Gentium-General Course on Public International Law - Part II, 317 Recueil des Cours de l’Academie de Droit International de la Haye (2005). In such circumstances, so-called “subsidiary protections” which grant temporary authorization to remain in the receiving state with limited rights, often for a period of three to five years renewable if the conditions are ongoing, may be available. See Directive 2011/95, on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, 2011 OJ (L. 337) 9 (according to which it creates a subsidiary protection system); see Jane McAdam, The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime, 17(5) Int’l J. Of Refugee L. 461, 466-469 (2005); see also Charter of Fundamental Rights of the European Union, Dec. 18, 2000, OJ (C 364) 1, art. 19(2) and Eur. Conv. on H. R., Art. 3, 1. The principle of non-refoulement was cited in a decision of the European Court of Human Rights preventing the return of an applicant for asylum to Greece, the state where he first entered the European Union, where detention conditions were not adequate to protect his rights; see 2 M.S.S. v. Belgium and Greece, App. No. 30696/09, 51 Eur. Ct. H.R. 2, (Jan. 21, 2011).
D. The Four Pillars of the Agenda

"Strengthening the common asylum policy" as one of the "four pillars" of the Agenda is based on the recognition that:

with the increases in the flows of asylum seekers, the European Union’s asylum policies need to be based on solidarity towards those needing international protection as well as among the European Union Member States, whose full application of the common rules must be ensured through systematic monitoring.\(^{37}\)

The "four pillars" of the Agenda to manage migration better in the medium-term are:

1. Reducing the incentives for irregular migration;
2. Managing the border better to save lives and secure external borders;
3. Completing the Common European Asylum System to fulfill Europe’s duty to protect; and
4. Implementing a new policy on legal migration.\(^{38}\)

In addition, the Agenda identifies three other long-term steps to consider:

1. The completion of the Common European Asylum System;
2. A shared management of the European border; and
3. A new model of legal migration.\(^{39}\)

With the assistance of the United Nations High Commissioner for Refugees, the effort to monitor provision of international legal protection for persons of interest is being coordinated with the European Union. Additional cooperation is needed from third states, civil society, donor states and individuals, and intergovernmental organizations to address the challenges posed.

III. A RESPONSE IN SUPPORT OF THE AGENDA

A series of public panels was presented by the New York City Bar Association\(^{40}\) through its European Affairs Committee\(^{41}\) in 2014 and 2015, and a letter of support for the European Migration Agenda was sent to the European Union and United Nations officials in July, 2015.\(^{42}\) The European Affairs Committee considered existing European Union and humanitarian law and its adequacy to provide for the effective reception, processing and

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37. European Agenda on Migration, supra note 1, at 12. (The full text of the Agenda elaborates on the measures needed, at 12–14, including Commission guidance on "improved standards on reception conditions and asylum procedures" for member states; "fingerprinting of migrants in full respect of fundamental rights, backed up by practical cooperation and exchange of best practices;" the use of the European Asylum Support Office (EASO) as a "clearing house of national Country of Origin Information"; training and a "new network of reception authorities" as a "foundation for pooling reception places in times of emergency," all of which may contribute to more uniform decisions on asylum applications.)

38. Id. at 6–13.

39. Id. at 14–17.

40. See About the New York City Bar Association, N.Y. CITY BAR, http://www.nycbar.org/about-us/overview-about-us (last visited Feb. 15, 2016) (The Association of the Bar of the City of New York (City Bar), founded in 1870, is a voluntary association of some 24,000 lawyers and law students. Its current president is Debra Raskin, who began her two-year term in May, 2014. The New York City Bar has a longstanding commitment to international law, human rights worldwide, and fair and humane policies on equity and justice in issues such as migration law and policy.)

41. See European Affairs Committee, N.Y. CITY BAR, http://www.nycbar.org/european-affairs (last visited Feb. 15, 2016). The European Affairs Committee focuses on policies and laws within and affecting Europe institutional and legal aspects of the European Union; and European Union policies on issues of the United Nations. Members are lawyers from major law firms in the city, governmental and non-governmental organizations, in-house counsel, solo practitioners, law professors and students. The European Affairs Committee invites guest speakers who are heads of governments, diplomats, lawyers from the European Commission and Parliament, United Nations Secretariat legal staff, judges and lawyers in international and European Union tribunals and courts, and attorneys from non-governmental organizations. In January, 2015, the European Affairs Committee presented a continuing legal education program entitled "European Union Law for NYC Practitioners: Focus on Employment and Environmental Law" at the NYC Bar Association. The European Affairs Committee of the NYCLA has been studying the issue of migration into Europe and refugees for several years, offering public panels at the bar association and at CUNY Graduate Center featuring diplomats, academics and lawyers examining the issues from different perspectives. The co-organizer of events in 2014 and 2015 with Dr. Tinker was Dr. Patricia Nobbe, Associate Director of the European Union Studies Center at CUNY Graduate Center. The European Union Studies Center (EUSC), founded in 1993, is located at the Graduate Center, the main doctoral-granting institution for the City University of New York. The EUSC’s mission is to bring together scholars, practitioners and interested lay people for study and exchange around the idea of the European Union and its challenges. The website of the EUSC at <euromatters.org> posts videos of the events on migration organized with the NYC Bar Association’s European Affairs Committee on October 15, 2014, and October 6, 2015; see European Union Studies Center, THE GRADUATE CENTER, CUNY, http://www.gc.cuny.edu/Page-Elements/Academics-Research-Centers-Initiatives/Centers-and-Institutes/European-Union-Studies-Center (last visited Feb. 20, 2016).

42. Letter from Debra L. Raskin, President, New York City Bar, to H.E. Donald Tusk, President, European Council (July 22, 2015), http://www2.nycbar.org/pdf/report/uploads/7_20072947-SupportforEuropeanCommissionProposalsforCommonEuropeanMigrationAgenda.pdf. The author wishes to thank the co-chairs of the subcommittee on migration of the European Affairs Committee, Colleen Hobson, associate at Davis Polk & Wardwell LLP and Mary Pennisi, associate at Morgan Lewis & Bockius LLP, and other members of the European Affairs Committee who contributed to research and drafting the letter in support of the European Migration Agenda dated July 22, 2015.
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integration of millions of people entering Europe outside legal channels. Based on the comments of experts on these panels, it is clear that the situation requires a coordinated response from around the globe from many states, international organizations, civil society and other stakeholders to address the root causes and drivers of migration.

For the immediate future, however, the European Union is faced with a great challenge to absorb a million new arrivals through "irregular channels" in 2015 alone, in addition to those already arrived and those still to come, determine who is eligible to remain in Europe as a "refugee" (with rights and benefits) or who will be denied refugee status (with return to the state of nationality or origin, absent other humanitarian grounds to remain in Europe).\(^{43}\)

While attempting to regularize procedures under European Union regulations and directives as well as national laws and policies in Member States of the European Union, the increased numbers of migrants and refugees are straining capacities in locations throughout Europe to provide basic necessities for the new arrivals, programs to aid their integration into the European societies where many will make their new home, and the ability to continue regular processes of governance in communities throughout Europe facing new challenges. Demands for legal and humanitarian responses to the refugee crisis, heightened by the continuing armed conflict in Syria, Iraq, Afghanistan and elsewhere and by the lack of food and water security in many areas, suggest that it is time to review what European Union and international legal instruments currently provide. In coming years, the European Union will be further challenged to realize the promise of community and fundamental rights for those already there, while integrating newer arrivals into a unified common European society.

How the values and principles of the European Union match the concepts of international humanitarian and refugee law, and how European Union institutions and legislation could encourage prompt determinations of refugee status and develop better, more uniform means of reception and integration into society for refugees, are still questions to be explored. The European Affairs Committee and the New York City Bar Association determined to support a uniform and generous European Union policy and procedures to extend protection to vulnerable people eligible for refugee status or subsidiary protection in Europe. Support for efforts to find global solutions to the problems that have uprooted so many from their homes, recognizing that the many complexities and unique circumstances allow for no simple solutions, led the committee to note that:

\(^{43}\) Allain, supra note 36.

The following summarizes the lines of inquiry explored and the changing questions in response to developments over the critical years of 2014 and 2015 in this area.

Panelists at a public program at the NYC Bar Association sponsored by the European Affairs Committee and nine other international law committees of the NYC Bar Association with the European Union Studies Center at CUNY Graduate Center on October 15, 2014,\(^{45}\) outlined the current legal and public policy responses on a European Union and state level and their effectiveness in addressing the humanitarian crisis. The experiences of both Italy as a receiving state and the Seychelles as a future sending state of refugees into Europe were explored by their diplomatic representatives from the United Nations. Panelists discussed which steps should be taken to improve policy capacities, including gauging the potential of international cooperation, inter-European challenges and the potential for a European Union common policy on migration.\(^{46}\)

Several questions raised on October 15, 2014\(^{47}\) are still unresolved, including:

\(^{44}\) Raskin, supra note 42.

\(^{45}\) The Future of Migration into Europe, N.Y. CITY BAR, https://services.nycbar.org/iMIS/Events/Event_Dispaly.aspx?EventKey=EUR101514 (Oct 15, 2014) (Panelists on October 15, 2014 were: H.E. Inigo Lambertini, Deputy Permanent Representative of Italy to the United Nations; H.E. Ronald Janeau of the Seychelles, Ambassador for Climate Change and Small Island Developing States Issues; former Permanent Representative of the Seychelles to the United Nations; Professor Martin Schain, NYU Department of Politics, Editor of Comparative European Politics; Urszula Majkowski, attorney, European Parliament, Washington, D.C. liaison office to the United States Congress; Professors Fabio Costa Montesini and Laura Sartoretto, attorneys, UFRGS Law School, Porto Alegre, Brazil, co-directors of treaty revision project on international refugee law with the Office of the United Nations High Commissioner of Refugees and regional law reform program. Moderator was Dr. Catherine Tinker, European Affairs Committee chair, NYC Bar Association.)

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46. Id.

47. Id.
1. What are current responses to migration into Europe under international human rights law, European Union law and policy, and European states' law and policy? What is the role of regional and international cooperation?
2. What challenges do different migrant groups into the European Union face? What rights do migrants into Europe have, and what laws may need to be changed?
3. What are the political realities? What is the theory, versus the practice?
4. Who holds responsibility: governments, regional organizations, civil society?
5. What future responses to migration and large-scale dislocation are needed?²⁸

A year later, another panel on October 6, 2015, entitled “Europe’s Failures, Europe’s Chance: Urgent Solutions for Refugees” discussed migration into Europe with additional questions concerning the role of the United Nations High Commissioner for Refugees in screening applicants for asylum in Europe in the initial stage, assisting European states to identify those persons with a likely claim for refugee status when reviewed and granted by states. Panelists also contributed reflections from the Italian perspective as refugees and migrants are now spreading across the continent, and academic reflections on incentivizing northern European states to accept more refugees regardless of the Dublin regulations.²⁹

Additional questions were presented to this panel, including:

1. How has the flow of migrants and refugees changed in 2014-2015?
2. What has been proposed and accomplished regarding “burden-sharing” within the European Union and what more needs to be done?
3. What steps have been taken to screen applicants for asylum or to process influxes of people surging across borders prior to

²⁸ Id.
²⁹ The Future of Migration into Europe—Europe’s Failures and Europe’s Chance: Urgent Solutions for Refugees, N.Y.C. CITY BAR, https://services.ybar.org/MIS/Events/Event_Display.aspx?EventKey=EUR1000615&WebsiteKey=771612D-524c-4fbc-a5f7-0d16cc7b3114 (Oct. 6, 2015) (Panelists on October 6, 2015 were: Professor Peter Schuck, Yale Law School; I.E. Inigo Lambertini, Deputy Permanent Representative of Italy to the United Nations; and Ninette Kelley, Director of the New York Office, United Nations High Commissioner of Refugees; moderator was Professor Tania Domi, Columbia University, with introductory remarks by John Torpey, Director of the Ralph Bunche Institute on the United Nations at the Graduate Center of the City University of New York (CUNY). The event was organized and co-sponsored by the European Affairs Committee of the NYC Bar Association with Dr. Patrizia Nobbe of the European Union Studies Center of the Graduate Center of CUNY.)

²⁵ Id.
²⁵² AM. BRANCH INT’L. LAW ASSN’N & INT’L. LAW STUDENTS ASSN’N, INTERNATIONAL LAW WEEKEND NOV. 5-7, 2015, 11 (2015). (Panel consisting of: Dr. Lucio Guisetti, the director of the section of the European Legal Service which includes migration and refugees; Dr. Stephen Marquardt of the External Action Service of the European Union Directorate of Foreign and Defense Policy; and United Nations Assistant Secretary-General Ivan Simonovic, Director of the NY Office of the United Nations High Commissioner for Human Rights. The moderator was Dr. Catherine Tinker, chair of the European Affairs Committee of the NYC Bar Association, with the participation of Colleen Hobson, co-chair of the European Affairs Committee’s Subcommittee on Migration. The panel discussed measures contained in the new European Union “European Migration Agenda” and related provisional measures. Adopted in response to the worsening humanitarian crisis, these policies respond to ever-greater numbers of people fleeing war, violence, effects of climate change and other dangers and attempting to enter the European Union across the Mediterranean Sea or the Balkan route. Once inside the European Union, many of these “irregular” migrants face new forms of exploitation by smugglers and organized crime. Indeterminate delays in processing asylum applications, and even detention with uncertainties due to variations in legal and policy standards in Member State laws related to migrants and refugees.)

or immediately upon entry into the European Union? Are standard border control practices of fingerprinting, performing identity or criminal history checks, or verifying countries of origin of individuals possible given the sheer numbers and desperate plight of those now crossing into the European Union?

4. Have these realities overcome European Union law like the Dublin regulations, necessitating repeal or major revision of the rules restricting free movement of persons within the “Schengen Area” of the European Union? In other words, has the situation changed the rules as Member States of the European Union accept refugees passing through other European Union Member States prior to any processing or determination of their claims for asylum?

5. What is the international community doing, and is it sufficient?

6. What effect does the 1951 Refugee Convention have on the situation in Europe today, and what is the role of the United Nations High Commissioner for Refugees in processing asylum applications and determining who has a likely success of recognition as a refugee?³¹
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A third panel organized by the European Affairs Committee of the NYC Bar Association on November 6, 2015 featured European Union officials responsible for determining future action and implementation of rules on refugees and migrants, as well as a representative of the United Nations High Commissioner for Human Rights. Experts on the European Union, European Union law, and international human rights and humanitarian law discussed measures contained in the new European Union “European Migration

51. Id.

52. AM. BRANCH INT'L. LAW ASS'N & INT'L. LAW STUDENTS ASS'N, INTERNATIONAL LAW WEEKEND NOV. 5-7, 2015, 11 (2015). (Panel consisting of: Dr. Lucia Giusetti, the director of the section of the European Legal Service which includes migration and refugees; Dr. Stephan Marquardt of the External Action Service of the European Union Directorate of Foreign and Defense Policy; and United Nations Assistant Secretary-General Ivan Simonovic, Director of the NY Office of the United Nations High Commissioner for Human Rights. The moderator was Dr. Catherine Tinker, chair of the European Affairs Committee of the NYC Bar Association, with the participation of Colleen Hobson, co-chair of the European Affairs Committee’s Subcommittee on Migration. The panel discussed measures contained in the new European Union “European Migration Agenda” and related provisional measures. Adopted in response to the worsening humanitarian crisis, these policies respond to ever-greater numbers of people fleeing war, violence, effects of climate change and other dangers and attempting to enter the European Union across the Mediterranean Sea or the Balkan route. Once inside the European Union, many of these “irregular” migrants face new forms of exploitation by smugglers and organized crime, indeterminate delays in processing asylum applications, and even detention with uncertainties due to variations in legal and policy standards in Member State laws related to migrants and refugees.)
Agenda" and related provisional measures for where Europe—and the rest of the globe—is headed.\textsuperscript{53}

This panel addressed more detailed questions of European law and policy, including:

1. What efforts have been made by the European Commission in the implementation of the European Migration Agenda of May 2015, and is it working? What else remains to be done?
2. How are member states of the European Union responding to the calls for resettlement quotas and funding to third states to try to keep people from entering the European Union and address root causes in countries of origin?
3. Is the sheer force of numbers pouring into Europe breaking down the basic principles of the European Union itself, including the free movement of peoples in the Schengen Accords and the principles of solidarity?
4. What is the big picture and the consequences and effects on the basic human rights of the persons fleeing persecution and violence?\textsuperscript{54}

The questions raised in all three panels are highly relevant, remain unresolved, and may encourage further discussion and consideration of the issues. The challenges are no longer limited to one receiving state in Southern Europe or one sending state in the Middle East or one transit state in North Africa or the Balkans or Eastern Europe. Events in 2015 have shown how quickly situations develop, how closely the world is linked today and how much coordinated effort is needed on a regional and international basis, reasons why answers to the questions posed continue to change in response to new events. Coordination and cooperation is needed to explore and support local communities’ actions and attitudes to find solutions to the reception of vast numbers of people becoming part of the new norm in Europe, reflecting changes in all parts of the globe.

IV. CONCLUSION

Donald Tusk, President of the European Council, chairing an emergency session of the Council in Brussels on September 23, 2015, warned that “The greatest tide of refugees and migrants is yet to come,”\textsuperscript{55} predicting that instead of thousands there will be millions of refugees and migrants entering Europe in the coming years and that a strategy needs to be devised, including closing the borders of the European Union. By November of 2015, he added: “We need to correct our policy of open doors and windows.”\textsuperscript{56}

To address the anticipated continuation of huge numbers of migrants and refugees entering Europe for years to come, a number of steps need to be considered respecting international refugee and humanitarian law, with new policy choices to be made within the European Union and its Member States and new legislation. These include choices on how best to:

1. Develop adequate and prompt screening procedures for migrants to be uniformly applied along all borders of the European Union or at centralized screening locations, once it is determined whether the borders of the European Union itself and of its Member States are going to be open or closed.
2. Decide what criteria will be applied to applicants for asylum and develop uniform standards to be applied throughout the European Union, with the European Assistance and Support Office (“EASO”) reporting on human rights conditions and other factors in the countries of origin of asylum applicants as a factual basis to assist states in determining the validity of claims of well-founded fear of persecution or generalized violence.
3. Consider broadening the classic definition of “refugee” from the 1951 Refugee Convention and its protocol currently applied by the European Union and its Member States to include generalized violence, conflict and other drivers of contemporary displacement, along the lines of the expanded definition of “refugee” already adopted in Africa and Latin America.
4. Close detention centers or significantly improve conditions for those awaiting determination on existing claims for refugee status and those whose applications have not been completed yet, or provide more secure environments for vulnerable populations such as women, children and the elderly, to guarantee greater respect for the aspirations and human rights of the occupants and create conditions conducive to security and future integration.
5. Increase efforts to assist individual states throughout Europe in developing their own policies and programs for education, job training, culture and language classes for migrants and refugees, and other measures leading toward integration into

\textsuperscript{53} Id.
\textsuperscript{54} Id.
Agenda" and related provisional measures for where Europe—and the rest of the globe—is headed. This panel addressed more detailed questions of European law and policy, including:

1. What efforts have been made by the European Commission in the implementation of the European Migration Agenda of May 2015, and is it working? What else remains to be done?
2. How are member states of the European Union responding to the calls for resettlement quotas and funding to third states to try to keep people from entering the European Union and address root causes in countries of origin?
3. Is the sheer force of numbers pouring into Europe breaking down the basic principles of the European Union itself, including the free movement of peoples in the Schengen Accords and the principles of solidarity?
4. What is the big picture and the consequences and effects on the basic human rights of the persons fleeing persecution and violence?54

The questions raised in all three panels are highly relevant, remain unresolved, and may encourage further discussion and consideration of the issues. The challenges are no longer limited to one receiving state in Southern Europe or one sending state in the Middle East or one transit state in North Africa or the Balkans or Eastern Europe. Events in 2015 have shown how quickly situations develop, how closely the world is linked today and how much coordinated effort is needed on a regional and international basis, reasons why answers to the questions posed continue to change in response to new events. Coordination and cooperation is needed to explore and support local communities' actions and attitudes to find solutions to the reception of vast numbers of people becoming part of the new norm in Europe, reflecting changes in all parts of the globe.

IV. CONCLUSION

Donald Tusk, President of the European Council, chairing an emergency session of the Council in Brussels on September 23, 2015, warned that "The greatest tide of refugees and migrants is yet to come,"55 predicting that instead of thousands there will be millions of refugees and migrants entering Europe in the coming years and that a strategy needs to be devised, including closing the borders of the European Union. By November of 2015, he added: "We need to correct our policy of open doors and windows."56

To address the anticipated continuation of huge numbers of migrants and refugees entering Europe for years to come, a number of steps need to be considered respecting international refugee and humanitarian law, with new policy choices to be made within the European Union and its Member States and new legislation. These include choices on how best to:

1. Develop adequate and prompt screening procedures for migrants to be uniformly applied along all borders of the European Union or at centralized screening locations, once it is determined whether the borders of the European Union itself and of its Member States are going to be open or closed.
2. Decide what criteria will be applied to applicants for asylum and develop uniform standards to be applied throughout the European Union, with the European Assistance and Support Office ("EASO") reporting on human rights conditions and other factors in the countries of origin of asylum applicants as a factual basis to assist states in determining the validity of claims of well-founded fear of persecution or generalized violence.
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5. Increase efforts to assist individual states throughout Europe in developing their own policies and programs for education, job training, culture and language classes for migrants and refugees, and other measures leading toward integration into

53. Id.
54. Id.
society, as well as programs to aid local communities in building an inclusive society in Europe.

Decisions on these questions are crucial in the long process of saving lives and building society. Steps such as these, inherent in the European Migration Agenda and other proposals still to come, will ease the transition for those from other languages, cultures and traditions and create better understanding in host states of the value of contributions from new arrivals—and those already in Europe for some time whose status might become regularized—in reinvigorating the European economy and society. Indeed, "migration is both an opportunity and a challenge for the European Union."57

The European Migration Agenda is a step towards the realization of a common migration policy agenda for the European Union which, together with the common asylum policy, will serve as the basis of a coordinated response by the European Union and its Member States to the influx of people into Europe.58

As noted in the European Migration Agenda,

A clear and well implemented framework for legal pathways to entrance in the European Union (both through an efficient asylum and visa system) will reduce push factors towards irregular stay and entry, contributing to enhance security of European borders as well as safety of migratory flows.

The European Union must continue to offer protection to those in need. It must also recognize that the skills needed for a vibrant economy cannot always immediately be found inside the European Union labour market or will take time to develop. Migrants who have been legally admitted by Member States should not be faced with reluctance and obstruction—they should be given every assistance to integrate in their new communities. This should be seen as central to the values Europeans should be proud of and should project to partners worldwide.

But by the same token, the European Union needs to draw the consequences when migrants do not meet the criteria to stay. Unsuccessful asylum claimants who try to avoid return, visa over stayers, and migrants living in a permanent state of irregularity constitute a serious problem. This corrodes confidence in the system. It offers strong arguments for those looking to criticize or stigmatize migration. It makes it harder to integrate those migrants staying in the European Union as of right.59

Europe, despite the many challenges faced by the economic struggles of recent years and the need for decent jobs for all in the region, is still a beacon to the rest of the world for its history, tradition, and principles embodied in the basic documents and legislation of the European Union. As European society opens up to new populations, the need for integration and inclusion will increase, bringing further enrichment to European culture and institutions. At the same time, legitimate concerns for internal security and control of external borders must be respected, and those who do not qualify as "refugees" or who are ineligible for subsidiary protection must expect to be returned to their countries of origin.

The New York City Bar Association in its letter in support of the European Migration Agenda concluded that:

Longer-term changes in the system for receiving and processing asylum applicants in a more humane, consistent and transparent manner are necessary. A better structure for dealing with those seeking refuge inside the European Union who are in clear need of protection, and assisting in their integration into European society, is essential. Furthermore, the Committee [on European Affairs] is of the opinion that the Agenda's focus on European Union-wide standards and procedures, rather than the current differentiated approaches in Member States, is both consistent with fundamental rights in the European Union and necessary to address a problem that cannot be solved at the Member State level. Such a solution is consistent with the principles of solidarity, subsidiarity, proportionality, and fair sharing of responsibility… reforms [in the Agenda] should extend basic human rights protections to those arriving within the European Union awaiting a decision on their applications for asylum and have as a goal strengthening common bonds within the European Union while respecting concerns for security and the rule of law in the area of migration.60

No effort by Europe alone can resolve the many challenges facing every continent as people are threatened by armed conflict, terrorism, extreme weather events, dramatic and widespread food and water insecurity, and other conditions driving people to seek refuge far from their homes. The European Agenda on Migration is one step toward implementation of European Union-wide policies. More questions remain than answers. The challenge to the European Union is to pursue solutions.

57. IOM, supra note 22; see generally INTERNATIONAL ORGANIZATION FOR MIGRATION, www.iom.int (last visited Feb. 15, 2016) (IOM has articulated the benefits migrants bring to their new states, including entrepreneurship and needed changes in demographics for ageing populations.)


59. European Agenda on Migration, supra note 1, at 6–7.

60. Raskin, supra note 42.
society, as well as programs to aid local communities in building an inclusive society in Europe.

Decisions on these questions are crucial in the long process of saving lives and building society. Steps such as these, inherent in the European Migration Agenda and other proposals still to come, will ease the transition for those from other languages, cultures and traditions and create better understanding in host states of the value of contributions from new arrivals—and those already in Europe for some time whose status might become regularized—in reinvigorating the European economy and society. Indeed, “migration is both an opportunity and a challenge for the European Union.”

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Europe, despite the many challenges faced by the economic struggles of recent years and the need for decent jobs for all in the region, is still a beacon to the rest of the world for its history, tradition, and principles embodied in the basic documents and legislation of the European Union. As European society opens up to new populations, the need for integration and inclusion will increase, bringing further enrichment to European culture and institutions. At the same time, legitimate concerns for internal security and control of external borders must be respected, and those who do not qualify as “refugees” or who are ineligible for subsidiary protection must expect to be returned to their countries of origin.

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59. European Agenda on Migration, supra note 1, at 6–7.

60. Raskin, supra note 42.
Finally, in the words of the European Migration Agenda itself, “All actors: Member States, European Union institutions, International Organizations, civil society, local authorities and third countries need to work together to make a common European migration policy a reality.”

LOSS AND DAMAGE AND THE 21ST CONFERENCE OF THE PARTIES TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

Dr. Wil Burns*

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I. OVERVIEW

The early focus of the Parties to the United Nations Framework Convention on Climate Change ("UNFCCC")1 was on programs and policies to reduce greenhouse gas emissions and emissions from land-use and forestry,2 commonly referred to as mitigation. By the middle of the decade of 2000-2010, it also became increasingly obvious that the feeble efforts by the world community to reduce emissions necessitated a substantive commitment to adaptation, defined by the UNFCCC as efforts to moderate potential damages from climate change, or to leverage potential benefits.3 However, during the last decade there was also increasing recognition that even full-throated support of mitigation and adaptation programs are likely to prove insufficient to avert serious adverse impacts in many of the

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61. European Agenda on Migration, supra note 1.