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INTERNATIONAL MIGRATION AND ANTI-TERRORISM LAWS AND POLICIES: BALANCING SECURITY AND REFUGEE PROTECTION

Andrew I. Schoenholtz*
Jennifer Hojaiban¹**



GEORGETOWN UNIVERSITY

*Andrew Schoenholtz is the Deputy Director of Georgetown University's Institute for the Study of International Migration and a professor at Georgetown University Law Center.

**Jennifer Hojaiban is a Research Assistant and J.D. candidate at Georgetown University Law Center (GULC).

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In response to major terrorist attacks in the United States, Spain and the United Kingdom, states on both sides of the Atlantic have created laws and policies to bar admission of foreign terrorists. On both sides of the Atlantic, policymakers have defined 'terrorism' in such broad terms, however, that these bars pose a threat to the protection of refugees and bona fide asylum seekers. In the United States, new provisions barring foreigners who provided material support to terrorist organizations has prevented the admission of refugees and asylum seekers who are sometimes the very victims of these organizations. In Europe, concerns have been raised regarding related counter-terrorism exclusion laws and policies that affect access of refugees and asylum seekers to protection. This paper examines how policy makers have struggled with balancing security and humanitarian concerns in connection with this admissions issue.

U.S. Policy

Even before September 11, the United States adopted legislation designed to bar the admission of foreign terrorists. The U.S. Immigration and Nationality Act (INA) specifies that an alien who has engaged in a terrorist activity, or there are reasonable grounds to believe is engaged or likely to engage in such activity, is inadmissible to the United States. The law also applies to a person who, indicating an intention to cause death or serious bodily harm, incited terrorism. Terrorist activity is defined to include hijacking or sabotage of conveyances, violently attacking protected persons, assassinations, the use of biological, chemical or nuclear weapons or devices, and other similar activities. Engaging in such activities include planning, providing material support, soliciting funds and soliciting individuals to conduct such activities. The law also allows the removal of an alien who is a member of a foreign terrorist organization, as designated by the Secretary of State, which the alien knows or should have known, is a terrorist organization. The USA Patriot Act, passed after September 11, expanded the definition of terrorist activity to include persons who have used positions "of prominence within any country to endorse or espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities."

Material Support to Terrorists as a Bar to Admission

The provision in law that has been most problematic in terms of refugee protection is the bar to admission of those providing material support to terrorist organizations enacted in 1990.² The Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA Patriot Act) and the REAL ID Act of 2005 significantly expanded the scope of that bar.³ These acts broadened the definition of terrorism-related activity and terrorist organizations, and included as a bar providing material support for humanitarian

projects of groups that are named on the Secretary of State's list of designated terrorist organizations. These laws also allowed for the detention and deportation of non-citizens who provide lawful assistance to groups that are not officially designated as terrorist organizations. The burden is on the non-citizen to prove that he did not know and should not have known that his assistance would further terrorist activity. Finally, these post-9/11 changes relaxed the material support intent requirement⁴ and seriously limited the availability of a discretionary waiver.

Congress expanded the material support bar in order to ensure that non-citizens who finance and provide other assistance to terrorists do not enter or remain in the U.S. Yet the breadth of the language used to define material support and terrorism had an unexpected effect. When lawyers at the Department of Homeland Security (DHS) analyzed the legislation in order to develop implementing rules, they determined that the material support bar to admission applied to a much wider group of individuals, including refugees.

The first unintended victims of this new law were refugees about to be brought to the United States by the government. Pursuant to the Refugee Act of 1980, the U.S. selects refugees abroad who are of "special humanitarian concern" for resettlement. From among the many refugees in the world, the State Department's Bureau of Population, Refugees and Migration identifies specific individuals or groups in camps and elsewhere who are of particular interest to the U.S., and DHS interviews them to be sure that they meet the refugee definition, which is based on international law. Over 2.5 million refugees have been resettled in the U.S. since 1975.⁵

When DHS decided in October 2004 to apply the material support bar as defined in the USA Patriot Act, the State Department had already identified many refugees for resettlement, including Colombian refugees in Ecuador and elsewhere. Accordingly, DHS put on hold the resettlement of those Colombian refugees identified by the State Department who had been forced to provide money or goods to the FARC or other designated terrorist groups. When DHS placed all Colombian cases on hold, the United Nations High Commissioner for Refugees (UNHCR), the organization that refers many refugees for resettlement, determined that 70-80% of these refugees otherwise eligible would be subject to this new application of the material support bar. Due to the disruption the new U.S. policy caused to UNHCR's resettlement work, UNHCR stopped referring Colombian refugee cases to the U.S. Refugee Program. Essentially, the new DHS application of the material support bar virtually shut down the resettlement of Colombian refugees to the U.S. DHS also started applying the bar to other refugee groups, including Burmese, Congolese, Cubans, Ethiopians, Eritreans, Hmong, Indians, Liberians, Montagnards, Nepalese, Sierra Leoneans, Somalis, and Sri Lankans, and also put on hold asylum decisions regarding individuals from a number of countries.⁶

The material support bar, as expanded by the USA Patriot Act and the REAL ID Act and applied by DHS, uses events associated with the very basis of refugee claims—persecution by an armed group—to deny admission to refugees. Many victims of persecution provided support to armed groups under duress simply in order to stay alive or save another family member. The services rendered included very minimal ones, such as washing clothes for the rebels. A 2006 study by Georgetown University Law Center students based on direct interviews of Colombian refugees provided specific examples of duress in over fifty cases, including the forced digging of trenches for paramilitaries to bury civilians they killed.⁷

Other refugees supported rebel groups using armed force against repressive regimes. Even in the most egregious cases where the U.S. government considered the persecuting regime as oppressive and unfriendly, Justice Department appellate adjudicators held that the material support legislation did not allow them to waive the bar to admission. In a case involving an asylum seeker “who provided a relatively small amount of support to an organization that opposes one of the most repressive governments in the world, a government that is not recognized by the United States as legitimate and that has engaged in a brutal campaign against ethnic minorities,” the Board of Immigration Appeals found that “Congress intentionally drafted the terrorist bars to relief very broadly, to include even those people described as ‘freedom fighters,’ and it did not intend to give us discretion to create exceptions for members of organizations to which our Government might be sympathetic.”⁸

Executive Branch Use of the Discretionary Waiver to the Material Support Bar

Discretionary waivers are a common tool of governance in the immigration arena, like others. When it provides for such waivers, Congress generally gives a single Executive branch agency significant discretion to exercise such authority. In the case of the material support bar, however, Congress limited the authority to grant a discretionary waiver to the Secretaries of the Departments of Homeland Security and State, only after consultation with each other and the Attorney General.⁹ Essentially, this requires the heads of all three agencies to agree to any particular waiver.

Advocacy organizations concerned about the protection of refugees initiated a campaign shortly after DHS placed all Colombian refugee cases “on hold” in 2004, urging the Departments of Homeland Security and State, as well as the White House, to address the material support problem. The advocates confronted two major challenges in the Executive branch and later with Congress. First, while all government officials agreed that Congress did not intend the material support bar to prevent the admission of refugees to the U.S., those with the authority to address this problem were highly sensitive to the politics of anti-terrorist laws. In the 109th Congress

(2005-2006), advocates could not find adequate leadership and support to exempt refugees from the bar or carve out reasonable exceptions regarding such issues as intent and duress. DHS and the White House, still worried about the failures of the legal admission system to prevent the admission of the 9/11 terrorists, were reluctant to use the waiver in specific cases, let alone in any manner to cover refugees generally.

Second, DHS and the Justice Department wanted no legal precedent that might be abused by terrorists. They had asked Congress for very broad powers in the USA Patriot and REAL ID Acts, and Congress provided them with such in order to make sure that no security threat would be admitted into the U.S. and anyone who succeeded at that could be detained and removed. Given these concerns, both DHS and Justice opted for a very careful, case-by-case approach to the waiver. The State Department, responsible for the Refugee Admissions Program, advocated internally for a more generous approach to this special humanitarian group.

Only after very considerable advocacy and media campaigns on the unintended consequences of the bar did the Executive branch begin to use the waiver in discrete cases. Starting in May 2006 with the Secretary of State and February 2007 with the Secretary of Homeland Security, the responsible agencies issued waivers for eight particular refugee groups which, as the DHS Secretary stated, “have been unable to pursue the protections provided by our refugee and asylum laws because they have been uniquely victimized by terrorist groups.”¹⁰

How Many Refugees Are Affected By the Material Support Bar?

What started as a problem for Colombian refugees about to be resettled to the United States now affects refugees from an extensive set of countries at three different points of admission to the United States. One very large group consists of those in refugee camps or urban areas who need resettlement in a third country because they cannot return to their home country for reasons of persecution and are particularly vulnerable in their current situations. Refugees who are seeking asylum in the United States compose a second important group affected by the bar. Finally, refugees and asylees admitted to the U.S. who apply for adjustment of status to lawful permanent residence are subject to the material support bar.¹¹

Even after the initial waivers, over 14,000 refugee and asylee cases already in the pipeline continued to be on hold as of March 2007.¹² This number does not reflect, of course, the much larger pool of refugees who would otherwise be eligible for U.S. resettlement but who will not be referred to the program on account of the material support bar. Of those already found otherwise eligible, some 3,300 resettlement cases involving Burmese, Colombians, Cubans, Hmong and Montagnard refugees were in limbo. The cases of over 600 asylum seekers were also on hold.

Over 5,000 refugee and asylee adjustment of status cases remained on hold as well. In addition, over 5,000 family reunification cases affecting refugees and asylees were in limbo.

The effects of the bar on the U.S. Refugee Admissions Program have been significant. Refugee Council USA, a coalition of refugee advocacy organizations, claims that FY 2006 refugee admissions were reduced by some 13,000 refugees who would have otherwise been admitted.¹³ In other words, the U.S. government could not replace those barred refugees in a timely fashion. According to the State Department, more than 100,000 ethnic Karen refugees from Burma and now in Thai camps fled military attacks on their villages over the last decade, and a significant portion have material support problems due to their support of the Karen National Union (KNU). Founded in 1948, the KNU, according to State, “historically has functioned as the de facto civilian government of the Karen people in the areas it controlled, resisting the repression of and seeking autonomy from the Burmese regime.”¹⁴

In addition, the adjustment of status and family reunification cases encountered to date are likely to be just the tip of the iceberg, given the nature of the material support problem. Many refugees already admitted to the U.S. fled persecution by armed non-state actors considered terrorists under U.S. law. If they were forced to provide any type of support, however minimal, to these rebel groups, then the material support bar will apply to them unless waived. As of March 2007, DHS has yet to grant any waiver to the bar to any adjustment of status or asylum applicant.¹⁵

Will Congress Fix This Problem?

Both the Bush Administration and the advocacy organizations representing the interests of refugees view the current use of the waiver as inadequate in addressing this major unintended consequence of the material support bar and thus have advanced legislative proposals to correct this problem. The Bush Administration wants to expand its discretionary waiver authority and asserts that it is “deeply committed to ensuring that those who deserve humanitarian relief from our immigration system receive it, and that America continues to be a beacon of hope and protection for the persecuted.”¹⁶ In particular, the Administration wants legislation that will allow them to waive the bar for those who have provided support voluntarily to organizations that have fought against oppressive regimes.¹⁷

Advocates seek more substantial legislative change. They argue that the current waiver approach is problematic, involving a lengthy bureaucratic process, requiring inter-agency approval, and limited to one specific refugee group at a time.¹⁸ In particular, advocates believe Congress should provide an explicit duress exception to the bar. Legislation in the 110th Congress (2007-2008) introduced by Senators Patrick Leahy (D-VT) and Norm Coleman (R-MN) has such an involuntariness exception. In 2006, legislation introduced by Senators Patrick Leahy (D-VT) and

Norm Coleman (R-MN) in the senate and by Congressman Joseph Pitts (R-PA) in the House had such an involuntariness exception. In this way, pro-democracy movements in Burma and elsewhere will not be considered terrorists groups under the law and thus refugees who support them will not be barred from admission to the U.S. As of December 2007, Congress has yet to enact such fundamental changes to the material support bar law, despite significant efforts made by refugee advocacy organizations.

European Policies

Since 2001, policies adopted by European countries to bar admission of terrorists have also affected the admission of bona fide refugees and asylum seekers. European policymakers viewed asylum as a “liability in the fight against international terrorism,” and believed that “more safeguards were needed to prevent the use of international refugee protection as a safe haven by those who had committed terrorist acts elsewhere.”¹⁹

Within three months of the September 11th terrorist attacks, the European Commission approved a Working Paper which purportedly established a balance between improving internal security in Europe and protecting the rights of refugees and other values essential to European democracies.²⁰ The paper concluded that current European Commission legislation or proposals for asylum legislation contained sufficient provisions to allow for the exclusion of any third country national considered a threat to national security from the right to international protection or residency. In fact, the Commission endorsed UNHCR’s view that a careful application of the exclusion grounds in the Refugee Convention is what is needed rather than major changes to the refugee protection regime. The Commission also stated that one of its main premises was that “bona fide refugees and asylum seekers should not become victims of the recent events.”²¹

Yet major changes have since developed at the regional and national levels in Europe that adversely affect refugee protection. The concerns raised about these changes generally relate to a policy phenomenon similar to the material support bar problem in the United States. The definition of terrorism is very broad. In the context of exclusion or deportation, the post-September 11th laws and policies apply not only to security threats but to others associated with an expansive definition of “terrorism.” This paper will examine this development at the regional level and particularly in two national contexts, those of Germany and the United Kingdom.

Defining Terrorism

There is no international legal definition of terrorism or terrorist, nor is terrorism listed as a separate exclusion ground in the Refugee Convention. Article 1F of the 1951 Convention excludes from international protection individuals who have committed a crime against peace

or humanity, a war crime, a serious non-political crime, or an act contrary to the purposes and principles of the United Nations. The acts committed in London, Madrid, New York, and Washington are considered by experts to be crimes that are covered by the Convention exclusion grounds, and it is quite proper for authorities to assess acts committed by individuals in asylum cases to determine whether they rise to the level of the extraordinary crimes named in Article 1F. When we examine what acts are being defined as terrorist crimes, however, they include many lesser offenses than those contained in Article 1F.

Article 3 of the Council Framework Decision on combating terrorism, for example, defines “terrorist offences” to include extortion, theft, robbery, damage to public transport, and supporting a “terrorist group” if intentionally committed with the aim of intimidating or seriously altering or destroying the political, economic, or social structures of a country. These offenses do not constitute crimes against humanity or a war crime. The 1951 Convention looked back to the Holocaust and Nazi atrocities. While such “terrorist offences” can be legitimately applied in criminal cases, they do not amount to crimes that would deprive an individual of international protection. The same article defines “terrorist group” as “a structured organization established over a period of time, of more than two persons, acting in concert to commit terrorist offenses.”

The European Council on Refugees and Exiles (ECRE) raised the problem of a very broad definition of terrorism in response to the Commission Working Document and the Council Framework Decision. After praising the ways in which the Working Document supported refugee protection, ECRE raised “grave concern” over the application of the Refugee exclusion clause in the counter-terrorism context. Essentially, ECRE objected to any automatic application of the exclusion clauses based on a state’s definition of terrorism. Furthermore, ECRE argued that the concept of a “terrorist group” could not be meaningfully used in applying the exclusion clauses. ECRE tried to focus the attention of policymakers on the underlying offenses that an individual might have committed as the proper subject in the application of the exclusion clauses. What matters is the individual’s personal involvement in, and responsibility for, specific excludable crimes. In fact, ECRE believes that states should prosecute those excludable under Article 1F on criminal grounds.²²

The concern raised here reflects the same problem faced by the U.S. government and refugee protection advocates regarding the material support bar. The state desires as broad a legal mechanism as possible to ensure that it possesses all the authority possible to prevent terrorists from entering or residing in its territory. But will the states use this to deny admission or residence to bona fide refugees who have fled persecution by armed groups or who have supported armed groups fighting repressive regimes?

At the European Union level, policymakers have designed asylum policies since September 11 in ways that have given much greater powers to states to ensure that terrorists do not penetrate asylum systems. A brief examination of the Qualification Directive demonstrates this development.²³

The evolution of this directive, adopted in proposal form on September 12, 2001 (as planned well in advance) and revised until final adoption in April 2004, reflects important changes related to Europe's new focus on controlling the movement of suspected terrorists. Even the preamble incorporates these developments aimed particularly at ensuring that "terrorists" are excludable from refugee protection under international and national law. The preamble makes clear that various "terrorist" acts are "contrary to the purposes and principles of the United Nations, as referred to in Article 1(F)(c)" of the Refugee Convention. Cases involving asylum seekers or refugees who belong to or support an association which supports international terrorism are "covered" by "the notion of national security and public order."²⁴

Substantive changes to the Qualification Directive gave member states greater leeway in addressing asylum claims based on national security concerns. For example, the directive made the request for a residence permit an additional control point beyond refugee recognition. Previously, states were required to issue such permits to those recognized as refugees. The directive allowed for a separate determination that the individual did not pose a threat to national security or public order. In addition, Article 12 of the directive restrictively interprets the exclusion ground regarding the commission of a "serious non-political crime." The original draft directive required "personal and knowing conduct" of such a crime as the only possible basis for exclusion.²⁵ The drafters deleted that limitation.²⁶

The two states that have most changed their laws and policies to address concerns that terrorists might abuse the asylum system are Germany and the United Kingdom.²⁷ Both have established national measures to ensure that suspected terrorists can be excluded from Refugee Convention protection. Both have also developed additional broad measures to control the entry and stay of suspected terrorists.

The Anti-Terrorism Act 2002 adopted by the German Parliament established several major changes focused on asylum and immigration. The new law mandated that authorities deny visas or leave to remain if the asylum seeker or visa applicant (1) threatened certain constitutional values of the democracy or the internal security of Germany, (2) had resorted to violence in order to further political goals, or (3) participated in a group supporting international terrorism as long as facts proved such an action.²⁸ The main criticism of the law involved its vague language. The terms "terrorism" and "support" do not have precise definitions. As experts have pointed out, this leaves the German authorities a great deal of discretion to determine which organizations

are considered to be terrorist ones, a decision “especially critical for asylum-seekers, as they are frequently engaged in opposition movements against repressive governments. The issue leads back to the bon mot ‘one person’s terrorist is another person’s freedom fighter.’”²⁹

Following the terrorist attack in Madrid on March 11, 2004, the German Parliament adopted a new immigration law, the Residence Act 2004, which made it even easier for the government to deny entry or a permit to reside and to deport those who participate or support a group supporting international terrorism.³⁰ In addition, the 2004 law gave the highest authority of the Lander (the German “states” whose police generally carry out deportations) the power to order the removal of a non-citizen without a prior deportation order if, based on an assessment relying on facts, removal seems necessary to counter a special threat to the security of the country or a terrorist threat.³¹

United Kingdom policymakers provided for even greater powers to address their concerns that terrorists will abuse the asylum system.³² The Anti-Terrorism, Crime and Security Act adopted by Parliament in December 2001 gave the Home Secretary the authority to certify a non-citizen as a suspected “international terrorist,” if he believes the person’s presence in the UK to be a risk for national security and suspects him of being a terrorist. “International terrorists” include those who engage in the preparation of terrorist acts, are members of an international terrorist group, or have links with a person who is a member of such a group. The Secretary of State can refuse entry and deny any stay in the UK to such individuals.³³ For non-citizens within the UK who are classified as suspected terrorists, this law provides for deportation based only on the suspicion of terrorist activities and curtails any judicial review of the decision of the Special Immigration Appeals Commission, which hears the appeals of the Home Secretary’s decisions in these cases and is controversial due to its secrecy.³⁴

Following the four bomb attacks on London’s transport system on July 7, 2005 and another series of serious security incidents later that month, Prime Minister Blair announced a “comprehensive framework for action in dealing with the terrorist threat in Britain.”³⁵ The plan included deporting people to countries where torture or other ill-treatment are practiced through the use of “diplomatic assurances;” new grounds for deportation and exclusion; and the automatic refusal of asylum to persons deemed to be associated with terrorism.

As adopted in law, Section 55 of the Immigration, Asylum and Nationality Act 2006 allows the Secretary of State to issue a certificate that an appellant is not entitled to the protection of the Refugee Convention on national security grounds.³⁶ The concern raised by UNHCR as well as by human rights lawyers even before adoption was that the UK government will use this measure to broadly interpret the Refugee Convention’s exclusion clauses and deny international protection to persons who do not fall within the scope of these clauses. As UNHCR explained, the exclusion clauses contemplate acts of a very grave nature and impact on international peace and security.

UNHCR asserted that an automatic and non-restrictive application particularly of the exclusion clause regarding “acts contrary to the purposes and principles of the United Nations” to all acts designated as “terrorist” goes against the humanitarian object and purpose of the Convention.³⁷

A coalition of refugee and human rights organizations argued that this provision represented “a significant extension of the grounds for denying international protection to refugees” and created “a legal framework where engaging in a political opposition movement is potentially an act of terrorism and where any political refugee is at risk of being denied protection in the UK.”³⁸ These organizations believed that UK law now could be applied to exclude an individual seeking protection in the UK who had engaged in any kind of political opposition involving armed struggle or non-violent direct action. This coalition gave particular examples of asylum seekers who could be affected by this provision, since the terrorism definition in the UK applies to those engaged in serious violence against a person, serious damage to property and disruption to electronic systems: those who had engaged in armed struggle (this would have applied to the African National Congress in South Africa if it had been in force at that time); those who undertook action to damage property without endangering life (for example, the Bolivians protesting the World Trade Organization in 2001); and anyone who had tried to disrupt broadcast systems as an act of resistance against a totalitarian state.

As one refugee organization explains, many asylum seekers in the UK are themselves fleeing fundamentalism or state terror. The top five applicant nationalities in 2004/05 in the UK were Iran, China, Somalia, Iraq and Zimbabwe, all countries where war, ethnic cleansing and/or serious human rights abuses have taken place.³⁹ Just as in the case of those affected by the material support bar in the U.S., many such asylum seekers could be excluded from protection under UK anti-terrorism laws.

Recommendations

As this analysis shows, policy makers in Europe and the United States have not found a reasonable balance between security and refugee protection in developing measures that help control the movement of terrorists. While it is understandable that government officials are anxious about ensuring the security of their populations, they can and should focus on developing policies that will both control the movement of terrorists and protect refugees.

As argued by UNHCR, a careful application of the exclusion grounds in the Refugee Convention provides states with the measures they need to ensure that terrorists are excluded from refugee protection. Both UNHCR and refugee law experts agree that those who committed the terrorist acts in the U.S., Madrid and London are excludable under Article 1F. The problem is that States have defined terrorist activities so broadly that the victims of persecution and violence too often find it impossible to find protection from the perpetrators of these acts.

Policy makers on both sides of the Atlantic should revise the broad definitions of terrorism and terrorist groups. Here, of course, the lack of an international definition has left it to every state and regional government to devise an interpretation. The Council Framework Decision definition, as well as the German and British variations, is unnecessarily broad and/or vague. Policy makers can more precisely define the security threats of concern and ensure that those forced to support armed groups and those who voluntarily support or participate in rebellions against tyrannical governments are not excluded from refugee protection.

In the U.S., Congress should take the lead on resolving the material support bar problem. The Executive branch has not addressed many of the serious problems regarding the admission and deportation of large numbers of refugees, asylees and prospective immigrants. Congress unintentionally created this as a major issue, and as long as the lawmakers can show the public that the policies they establish can both control the movement of terrorists and uphold America's humanitarian tradition towards refugees, Congress can resolve the material support bar problems.

Congress should amend the material support bar to provide for duress and de minimis exceptions. This would ensure that those forced by armed groups to provide support (water, food, a night's lodging) and often persecuted by those groups can find refuge in the U.S. Congress should also make clear that the bar is not intended to prevent the admission of political refugees fighting against malevolent regimes. With these amendments, prosecutors and law enforcers will still retain very robust powers to control those who provide material support to terrorists who threaten U.S. security.

Finally, the UK should repeal the legislation that allows the Home Secretary to refuse entry or deny any stay to an individual merely suspected of being an international terrorist. "Suspicion" of someone who has links, for example, to an international terrorist group cannot even be considered a standard. Under the Refugee Convention itself, government officials must have at least "serious reasons for considering" that an individual has committed a particular offense or set of offenses covered by the exclusion clauses. Particularly when combined with the very broad definitions of terrorist and terrorist groups, this type of authority is unwarranted.

We know from history that asylum systems on both sides of the Atlantic can be abused. But the extreme counter-terrorist policies adopted by states in the refugee protection context have amounted to political overreactions that now need to be changed into measured ones. There is no need to let the war against terrorism result in injustices to those who have already been victimized by terrorists and other armed groups.

NOTES

- 1 Shana Tabak, also a Research Assistant and J.D. candidate at GULC, provided significant research help for this paper.
- 2 Immigration Act of 1990, P.L. 101-649, 1990, Title VI, Sec. 601; 8 U.S.C. Sec. 1182(a)(3)(B)(iv)(VI) (2007).
- 3 Uniting and Strengthening America By Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272, Sec. 411(a); REAL ID Act of 2005, P.L. 109-13, Div. B Secs. 103(a)-(c).
- 4 *See In re S-K-*, 23 I&N Dec. 936 (BIA 2006).
- 5 Ellen Sauerbrey, Assistant Secretary, Bureau of Population, Refugees and Migration, U.S. Dept. of State, “America’s Response to the Needs of Refugee and Migrant Families,” Jan. 12, 2007, Remarks at Georgetown University at <http://www.state.gov/g/prm/rls/79036.htm>. The U.S. began the resettlement program in 1975; Congress formalized it through the 1980 Refugee Act.
- 6 Refugee Council USA, “The Material Support Problem: Punishing Refugee Victims of Terror: March 8, 2007,” at <http://www.rcusa.org/uploads/pdfs/ms-backgrd-info3-8-07.pdf>.
- 7 GULC Human Rights Institute, “Unintended Consequences: Refugee Victims of the War on Terror,” May 2006, available at <http://www.law.georgetown.edu/news/releases/documents/UnintendedConsequences-RefugeeVictimsoftheWaronTerror.pdf>.
- 8 *In re S-K-*, *supra*, at 941, 950.
- 9 8 U.S.C. Sec. 1182(d)(3)(B)(i) (2007).
- 10 U.S. Dept. of Homeland Security, Press Release, “Statement by Homeland Security Secretary Michael Chertoff On the Intention to Use Discretionary Authority for Material Support to Terrorism,” Jan. 12, 2007, at <http://www.rcusa.org/uploads/pdfs/ms-refwaiv-dhspr01-12-07.pdf>.
- 11 These individuals may apply for permanent status one year after they are admitted as refugees or recognized as asylees.
- 12 Refugee Council USA, “Refugees, Asylum Seekers, and Status Adjustment Cases Currently On Hold,” March 8, 2007, at <http://www.rcusa.org/index.php?page=background-summaries>.
- 13 Refugee Council USA, “The Material Support Problem,” *supra* n. 5.
- 14 U.S. Dept. of State, Media Note, “The Department of State Decides Material Support Inapplicable to Second Group of Karen Refugees in Thailand,” Aug. 30, 2006, at <http://www.rcusa.org/uploads/pdfs/ms-thamhin-prdos8-30-06.pdf>.
- 15 Refugee Council USA, “Administration’s Actions to Address the Material Support Problem As of March 2007,” March 27, 2007, at <http://www.rcusa.org/uploads/pdfs/ms-backgrd-admisprog3-27-07.pdf>.
- 16 U.S. Dept. of Homeland Security, “Statement by Homeland Security Secretary Michael Chertoff,” *supra* n. 9.
- 17 Matthew M. Johnson, “U.S. Pushes Proposal to Admit Refugees Who Unwittingly May Be Tied to Terrorist Groups,” CQ.com, April 11, 2007, at <http://www.rcusa.org/uploads/pdfs/ms-artmedia-cq4-11-07.pdf>.
- 18 Refugee Council USA, “Current Law and Legislative History,” March 5, 2007, at <http://www.rcusa.org/uploads/pdfs/ms-legis-lawhist3-5-07.pdf>.
- 19 Nils Coleman, “From Gulf War to Gulf War—Years of Security Concern in Immigration and Asylum Policies at European Level,” in Anneliese Baldaccini and Elspeth Guild (eds.), *Terrorism and the Foreigner: A Decade of Tension around the Rule of Law in Europe*, Martinus Nijhoff Publishers, 2007, p. 57.

- 20 European Commission Working Document, "The relationship between safeguarding internal security and complying with international protection obligations and instruments," Brussels, 05.12.2001, COM (2001) 743 final, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/1754&format=HTML&aged=1&language=EN&guiLanguage=en>.
- 21 Id., Introduction.
- 22 European Council on Refugees and Exiles, "Comments from the European Council on Refugees and Exiles On the Commission Working Document, "The relationship between safeguarding internal security and complying with international protection obligations and instruments," May 2002, <http://www.ecre.org/files/security.pdf>; ECRE, "Position on Exclusion From Refugee Status," March 2004, 5-6, <http://www.ecre.org/files/exclusion.pdf>.
- 23 Nils Coleman provided this and a much more extensive analysis of the Qualifications Directive in the volume edited by Anneliese Baldaccini and Elspeth Guild, *Terrorism and the Foreigner*.
- 24 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ("Qualification Directive"), OJ 2004 L 304/12.
- 25 See Nils Coleman, *supra*, at 60-63.
- 26 Qualification Directive, Article 12(2)(b).
- 27 See Britta Walthelm, "Immigration and Asylum Policies in Great Britain and Germany After September 11: An Assessment of Policy Change in the course of Anti-Terrorism Legislation," 26 <http://www.socialsciences.manchester.ac.uk/disciplines/politics/researchgroups/epru/publishing/documents/EPRUDiss.pdf>.
- 28 Ulrike Davy, "Immigration, Asylum, and Terrorism: How Do They Inter-related in Germany?" in Anneliese Baldaccini and Elspeth Guild (eds.), *Terrorism and the Foreigner, supra*, at 206.
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