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## Note

### Relocation, Regulation and Rigor: How Germany's New Integration Act Violates the Refugee Convention

Ashlynn Kendzior\*

Although many in the immigration field have turned their attention to the Trump Administration's restrictive immigration policies, Europe continues to grapple with the moral and legal issues surrounding the Syrian Refugee Crisis. Before there were questions about whether refugees would be welcome in Europe, Germany, ever the leader in European Union politics, took a bold stance towards accepting refugees.<sup>1</sup> Angela Merkel, the current Chancellor of Germany, proudly held her ground and declared that refugees would continue to be welcome in Germany, despite sharp criticisms from German nationals.<sup>2</sup> "*Wir schaffen das,*" she said, "We will cope."<sup>3</sup>

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1. Editorial, *The Guardian View on Europe's Refugee Crisis: a Little Leadership, at Last*, GUARDIAN (Sept. 1, 2015), <https://www.theguardian.com/commentisfree/2015/sep/01/guardian-view-on-europe-refugee-crisis-leadership-at-last-angela-merkel>.

2. Christian Schnee, *Is Angela Merkel's Exit Strategy Shaping German Refugee Policy?* GUARDIAN (Oct. 20, 2015), <https://www.theguardian.com/commentisfree/2015/oct/20/angela-merkel-exit-german-refugee-policy-syrian-migrants>.

3. Alberto Nardelli, *Angela Merkel's Stance on Refugees Means She Stands Alone Against Catastrophe*, THE GUARDIAN (Nov. 8, 2015), <https://www.theguardian.com/commentisfree/2015/nov/08/angela-merkel-refugee-crisis-europe>.

Now, there appear to be daily images of refugees drowning before reaching European soil, or suffering in the midst of the devastation of their home country.<sup>4</sup> The constant media coverage has put Syria and the resulting refugee crisis on the forefront of peoples' minds, and has demanded action from state leaders. Germany's open door policy towards refugees has been praised by many,<sup>5</sup> but has been called into question with the recent Integration Act ("Act").<sup>6</sup> The purpose of this Note is to understand the German Integration Act and compare it with the country's obligations under the 1951 Geneva Convention Relating to the Status of Refugees (Refugee Convention).

Part I briefly discusses the Syrian Civil War as it relates to the Syrian Refugee Crisis. The section primarily focuses on the German response to this crisis and the recently implemented Integration Act, as well as relevant provisions of the Refugee Convention. Part II analyzes the Integration Act with respect to Germany's obligations under the Refugee Convention. Finally, this Note draws conclusions about the implementation of the Integration Act, and ways in which it violates both specific provisions and the general spirit of the Refugee Convention.

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4. Lynzy Billing, *These Are the Most Powerful Photographs of the Syrian Refugee Crisis*, BUZZFEED (Dec. 11, 2015), [https://www.buzzfeed.com/lynzybilling/these-are-the-most-powerful-photographs-of-the-syrian-refuge?utm\\_term=.slkz7D81e#.mbdE3D0a5](https://www.buzzfeed.com/lynzybilling/these-are-the-most-powerful-photographs-of-the-syrian-refuge?utm_term=.slkz7D81e#.mbdE3D0a5); Josh Hafner, *Stunning Images Capture Harsh Reality of Refugee Crisis for Children*, USA TODAY (Sept. 1, 2016), <https://www.usatoday.com/story/news/world/2016/09/01/year-after-syrian-boy-drowned-images-capture-refugee-children-reality/89653638/>.

5. See Philip Oltermann & Patrick Wintour, *Barack Obama Hails Angela Merkel over Handling of Refugees*, GUARDIAN (Apr. 24, 2016), <https://www.theguardian.com/world/2016/apr/24/migration-crisis-obama-and-eu-leaders-to-discuss-naval-patrols-in-libya>.

6. The Integration Act is called the "Integrationsgesetz" in German. *The new Integration Act*, FEDERAL MINISTRY OF LABOUR AND SOCIAL AFFAIRS (July 7, 2016), <http://www.bmas.de/EN/Our-Topics/Fresh-start-in-germany/the-new-integration-act.html>.

## I. BACKGROUND

A. SYRIAN CIVIL WAR<sup>7</sup>

The Syrian Civil War began in the spring of 2011.<sup>8</sup> Violence erupted after teenagers were arrested and tortured for posting revolutionary signs at their school.<sup>9</sup> The movement was inspired by the Arab Spring, during which numerous countries throughout the Middle East protested against oppressive governments.<sup>10</sup> The pro-democracy protestors in Syria quickly demanded President Assad's resignation, but to no avail.<sup>11</sup> Violence escalated rapidly, and soon the entire state was consumed by civil war. One contributing factor to the ongoing hostilities is the fight of the Sunni majority against President Assad's Shia Alawite minority leadership.<sup>12</sup> This led to a further schism and has contributed to the lack of stability in Syria. The rise of the Islamic State of Iraq and Syria ("ISIS") as a non-state actor dominating the political sphere in Syria has further

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7. A complete discussion of the Syrian Civil War would fill several volumes. As such, this section provides only a brief overview of the ongoing hostilities in Syria as they relate to the Syrian Refugee Crisis. For additional information on the causes and circumstances surrounding the Syrian Civil War, see Tom Ruys, *The Syrian Civil War and the Achilles' Heel of the Law of Non-International Armed Conflict*, 50 STAN. J. INT'L L. 247, 252–55 (2014); Max Fisher, *Straightforward Answers to Basic Questions About Syria's War*, N.Y. TIMES (Sept. 18, 2016), <http://www.nytimes.com/2016/09/19/world/middle-east/syria-civil-war-bashar-al-assad-refugees-islamic-state.html>; *Syria: The Story of the Conflict*, BBC NEWS (Mar. 11, 2016), <http://www.bbc.com/news/world-middle-east-26116868>.

8. *Syria: The Story of the Conflict*, *supra* note 7.

9. *Id.*

10. Ruys, *supra* note 7, at 252.

11. *Id.*

12. *Id.* There are several religious and cultural differences between the Sunni and Alawite groups. Alawites identify themselves as Shiite Muslims, but that particular group "carried over older beliefs that predate Islam." Emily Alpert, *What does it mean to be Alawite, and why does it matter in Syria?*, L.A. TIMES (Feb. 7, 2012, 4:32 PM), [http://latimesblogs.latimes.com/world\\_now/2012/02/syrian-president-alawite-what-does-that-mean-and-why-does-it-matter.html](http://latimesblogs.latimes.com/world_now/2012/02/syrian-president-alawite-what-does-that-mean-and-why-does-it-matter.html). In addition, Alawites have seven pillars of faith instead of the tradition five in the Muslim faith. *Id.* Due to these and other differences, Alawites are often considered a cultural group, rather than just a religious sect. *Id.* Alawites have historically been persecuted, so Assad's power ensures their protection and survival. *Id.* For additional information on the dynamics between Sunnis and Shia Alawites, see generally Ayse Tekdal Fildis, *Roots of Alawite-Sunni Rivalry in Syria*, MIDDLE EAST POLY COUNCIL, <http://www.mepc.org/roots-alawite-sunni-rivalry-syria>.

complicated the conflict.<sup>13</sup> The conditions in Syria are dire. From indiscriminate bombings of civilians to a lack of access to food and clean water, those who have remained in Syria are suffering immensely.<sup>14</sup> As a result of these conditions, many have chosen to flee the country, settling in nearby Jordan, Lebanon, and Turkey.<sup>15</sup> Additional refugees, though considerably fewer than those fleeing to neighboring countries, have fled to Europe in the hopes of escaping their war torn homeland.<sup>16</sup>

#### B. THE GERMAN RESPONSE TO THE SYRIAN REFUGEE CRISIS AND THE INTEGRATION ACT

German involvement in the Syrian Refugee Crisis began with the open-door policy promoted by Chancellor Angela Merkel.<sup>17</sup> Chancellor Merkel has largely been praised for her decisions and has taken extensive measures to address the Syrian Refugee Crisis.<sup>18</sup> Most notably, Chancellor Merkel spearheaded Germany's suspension of the Dublin Regulation with respect to Syrian asylum-seekers.<sup>19</sup> The Dublin Regulation is a European Union (EU) law, which states that refugees must apply for asylum in the first EU country that they enter.<sup>20</sup> The purpose of the Dublin Regulation was to unify the EU's approach to Syrian refugees and discourage so-called "asylum shopping."<sup>21</sup>

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13. Ruys, *supra* note 7, at 252.

14. See Lizzie Dearden, *Syrian War: At Least 15 Civilians Killed as Barrel Bombs Hit Funeral for Children Killed in Air Strikes in Aleppo*, INDEP. (Aug. 27, 2016), <http://www.independent.co.uk/news/world/middle-east/syrian-war-news-latest-aleppo-civilians-killed-as-barrel-bombs-hit-funeral-for-children-killed-in-a7213061.html>; Omair Shaaban, *We Live in Aleppo. Here's How We Survive*, WASH. POST (Oct. 21, 2016), [https://www.washingtonpost.com/posteverything/wp/2016/10/21/how-to-survive-in-aleppo/?utm\\_term=.a941fead742c](https://www.washingtonpost.com/posteverything/wp/2016/10/21/how-to-survive-in-aleppo/?utm_term=.a941fead742c) (detailing a former university student's struggle to survive in war-torn Syria).

15. *Syrian Regional Refugee Response*, UNHCR, <http://data.unhcr.org/syrianrefugees/regional.php>.

16. See *Migrant Crisis: Migration to Europe Explained in Seven Charts*, BBC NEWS (Mar. 4, 2016) <http://www.bbc.com/news/world-europe-34131911>.

17. See *The Guardian View on Europe's Refugee Crisis: a Little Leadership, at Last*, *supra* note 1.

18. *Id.*

19. Adam Taylor, *Germany's Small but Important Change to the Way it Deals with Syrian Refugees*, WASH. POST (Aug. 26, 2015), <https://www.washingtonpost.com/news/worldviews/wp/2015/08/26/germanys-small-yet-important-change-to-the-way-it-deals-with-syrian-refugees/>.

20. Parliament & Council Regulation 604/2013, 2013 O.J. (L 180) (EU).

21. Taylor, *supra* note 19.

In reality, it caused the burden of the Syrian Refugee Crisis to fall disproportionately on Greece and Italy, the primary places of entrance into the EU for refugees.<sup>22</sup> In 2015, Chancellor Merkel suspended the application of the Dublin Regulation and allowed refugees to seek asylum in Germany.<sup>23</sup> This has encouraged countless additional refugees to travel to Germany in order to seek asylum. However, Germany was not prepared for such a rapid influx of refugees.<sup>24</sup>

In the second quarter of 2016, nearly eighty percent of first-time asylum applications from Syrian refugees in Europe were registered in Germany.<sup>25</sup> In order to cope with the ever-growing number of Syrian refugees entering the country, the German government passed the controversial Act. The Act entered into force on August 6, 2016 and was meant to serve as a response to the challenges that Germany faced as a result of the suspension of the Dublin Regulation and acceptance of refugees.<sup>26</sup> The purpose of the Act is to “provide for more integration classes, vocational training, employment and training opportunities, assignments of a place of residence to avoid concentration in select areas, and permanent settlement permits for refugees who show that they are willing to cooperate and take integration classes.”<sup>27</sup> The German government has consistently stated that the overall goal of the act is to “support and challenge” refugees.<sup>28</sup> The resulting system is designed to reward those who make efforts to integrate into German society, affording those individuals an easier path to becoming permanent residents.<sup>29</sup> Those who resist the efforts laid out in the new law or fail to adequately integrate themselves “will face a reduction in

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22. *Id.*

23. *The Guardian View on Europe’s Refugee Crisis: a Little Leadership, at Last*, *supra* note 1.

24. See Anton Troianovski, *Migrant Influx Ruffles Germans*, WALL ST. J. (OCT. 2, 2015).

25. *Asylum Quarterly Report*, EUROSTAT (Oct. 17, 2016, 2:54 PM), [http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum\\_quarterly\\_report](http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_quarterly_report).

26. See Jenny Gesley, *Germany: Act to Integrate Refugees Enters into Force*, LIBR. OF CONGRESS (Aug. 15, 2016), <http://www.loc.gov/law/foreign-news/article/germany-act-to-integrate-refugees-enters-into-force/>.

27. *Id.*

28. *Integration Act to Support and Challenge*, [GER.] FED. GOV’T (July 8, 2016), [https://www.bundesregierung.de/Content/EN/Artikel/2016/07\\_en/2016-05-25-integrationsgesetz-beschlossen\\_en.html](https://www.bundesregierung.de/Content/EN/Artikel/2016/07_en/2016-05-25-integrationsgesetz-beschlossen_en.html).

29. Gesley, *supra* note 26.

benefits.”<sup>30</sup> Below is a brief description of some of the requirements placed upon Syrian refugees by the Act.

### 1. Integration Courses<sup>31</sup>

The Act requires that all refugees in Germany complete what are broadly known as “Integration Courses.”<sup>32</sup> These courses are designed to educate Syrian refugees primarily about the German language, but also about German culture, history, and values.<sup>33</sup> A version of these courses was mandatory prior to the introduction of the Act, but the new law has imposed stricter requirements.<sup>34</sup> The government expanded the number of spaces in Integration Courses considerably in order to accommodate the vast amounts of Syrian refugees who wish to resettle in Germany permanently.<sup>35</sup> Furthermore, the Act authorizes refugees to apply for the Integration Course three weeks after arrival, whereas they previously had to wait three months to submit an application.<sup>36</sup> The course is divided into three sections: one 100-hour orientation course, followed by two 300-hour sections.<sup>37</sup> Each segment of 100 hours is referred to as a “module,” and refugees can repeat up to 300 hours of instruction in order to pass the final examination.<sup>38</sup> In other words, refugees are required to complete seven modules, or 700 hours total, at minimum.

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30. *Id.* “Benefits” refers to social welfare benefits from the state. *Integration Act to Support and Challenge*, *supra* note 28.

31. While the requirements of the Integration Act apply to all individuals seeking refugee status in Germany, the focus of this note is specifically on Syrian refugees. As such, the group as a whole will often be referred to as “Syrian refugees.” Please note that all of these requirements still apply to refugees from other states.

32. Gesley, *supra* note 26.

33. *Id.*

34. Jenny Gesley, *Germany: The Development of Migration and Citizenship Law in Postwar Germany*, LIBR. OF CONGRESS (Mar. 2017), <https://www.loc.gov/law/help/migration-citizenship/germany.php>.

35. *Id.*

36. *Id.*

37. *Instruction Sheet for Integration Course*, [GER.] FED. OFF. FOR MIGRATION AND REFUGEES, [http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Integrationskurse/Kursteilnehmer/Merkblaetter/630-036\\_merkblatt-auslaend\\_erbhoerde\\_englisch.pdf?\\_\\_blob=publicationFile](http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Integrationskurse/Kursteilnehmer/Merkblaetter/630-036_merkblatt-auslaend_erbhoerde_englisch.pdf?__blob=publicationFile) [hereinafter *Instruction Sheet for Integration Course*].

38. *Id.*

The first 100 hours of the Integration Course serve as an introduction to Germany.<sup>39</sup> This orientation module focuses on German culture, history, and values.<sup>40</sup> Courses are available at a number of private institutions, as this requirement applies to both refugees and migrants from non-EU states that wish to reside in Germany.<sup>41</sup> According to the German government, these courses are designed to prepare individuals for everyday life in Germany.<sup>42</sup> The courses cover a variety of topics, as previously mentioned, but the 100-hour orientation module focuses primarily on basic information needed to survive in Germany.<sup>43</sup> This module includes lectures on culture, recent German history and values, as well as how German people interact with one another and legal rights.<sup>44</sup> Some of the notable values highlighted in the courses are “freedom of worship, tolerance and equal rights.”<sup>45</sup> The orientation portion of the Integration Course is followed by a final exam to ensure that individuals comprehend the information presented to them.<sup>46</sup>

Upon passing the final examination for the orientation module, individuals proceed to the language portion of the Integration Course. As previously mentioned, the latter portion of the course is divided into two 300-hour sections, both of which focus on the German language.<sup>47</sup> The first 300-hour section is designed to introduce individuals to the language and focuses on basic language skills.<sup>48</sup> The final 300-hour portion of the course is an additional language-intensive program that aims to improve language skills.<sup>49</sup> These two sections combine to ensure that individuals have the basic language skills necessary to survive in Germany.<sup>50</sup> These modules include practical lessons, such as instructions on how to fill out job applications, how to

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39. *Id.*

40. Gesley, *supra* note 26.

41. See, e.g., *Integration Course*, GOETHE INST., <http://www.goethe.de/lrn/prj/wnd/idl/iku/enindex.htm>.

42. *Content and Scheduling*, [GER.] FED. OFF. FOR MIGRATION AND REFUGEES (Dec. 17, 2015), <http://www.bamf.de/EN/Willkommen/DeutschLernen/Integrationskurse/InhaltAblauf/inhaltablauf-node.html> [hereinafter *Content and Scheduling*].

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Instruction Sheet for Integration Course*, *supra* note 37.

48. *Id.*

49. *Id.*

50. *Id.*



prepare for work, and how to interact on the phone and with authorities.<sup>51</sup> There are also some course topics that are perhaps less intuitive, such as lessons on personal hygiene, the use of media, shopping, and how to raise children in Germany.<sup>52</sup> These mandatory courses can also be quite expensive, with programs costing around €1.95 per hour of instruction, or €1,365 for the total course.<sup>53</sup> Fee waivers or exemptions are possible, and are determined by the Federal Office for Migration and Refugees.<sup>54</sup>

After five years, when refugees are eligible to apply for a permanent residence permit, the individual must at least have basic German language skills under the Common European Framework of References for Languages.<sup>55</sup> However, refugees have the option to apply for a permanent residency permit sooner if they are proficient in the German language, thus incentivizing refugees to demonstrate their commitment to the language courses.<sup>56</sup> As with any material provision of the Act, if applicants fail to complete the requisite number of hours or demonstrate sufficient language skills, their benefits will be reduced.<sup>57</sup>

## 2. Vocational Training and Employment Opportunities

The Act provides a six-month grace period “for newly trained refugees to find adequate employment.”<sup>58</sup> This portion of the Act requires that refugees find a firm that will offer them work and essentially sponsor them during a three-year period.<sup>59</sup> During that time, the refugee will not be deported, so long as she maintains stable employment and fulfills all other requirements provided for in the Act.<sup>60</sup> If the firm offers the refugee permanent employment after the initial three-year period, the German government may grant the individual a two-year residence permit.<sup>61</sup>

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51. *Content and Scheduling*, *supra* note 42.

52. *Id.*

53. *Instruction Sheet for Integration Course*, *supra* note 37.

54. *Id.*

55. Gesley, *supra* note 26.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

The Act created the Refugee Integration Measures program in order to prepare the labor market for the influx of workers. This government program intends to create approximately 100,000 jobs for refugees who are awaiting the processing of their asylum applications.<sup>62</sup> The positions will reportedly all be low-wage, and refugees will earn around one euro per hour.<sup>63</sup> Again, if refugees refuse to participate in the program, their benefits will be reduced, and their likelihood of being granted permanent residency in Germany is diminished.<sup>64</sup>

Germany's existing labor laws have been relaxed by the Act in order to accommodate this new system. Prior to the implementation of the Act, the German Federal Employment Agency conducted a Market Priority Check before allowing a non-German national to work in the country.<sup>65</sup> Among other things, the agency analyzed whether the foreigner would have an adverse effect on the German job market.<sup>66</sup> This process has been suspended for both full-time and part-time positions in order to accommodate the influx of Syrian refugees who will be seeking employment in Germany.<sup>67</sup> However, the Market Priority Check is completed by individual German states, meaning that the suspension of such a system is also determined by the states, not the federal government.<sup>68</sup> If a particular state determines that the job market is not stable enough to support the suspension, then the Market Priority Check will remain in place.<sup>69</sup> In areas where the suspension takes place, German employers are encouraged to hire refugees, "even if better qualified German or EU citizens are available for the advertised position."<sup>70</sup> This mechanism is in place to ensure that refugees are able to secure employment and comply with this element of the Act.

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62. Gesley, *supra* note 26.

63. Soren Kern, *Germany's New "Integration Law,"* GATESTONE INST. (May 29, 2016, 6:00 AM), <https://www.gatestoneinstitute.org/8145/germany-integration-law>.

64. *Id.*

65. Gesley, *supra* note 26.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. Kern, *supra* note 63.

### 3. Assignment of Place of Residence

The Act also gives the German government the power to assign places of residence for “refugees who were granted asylum or who received subsidiary protection status.”<sup>71</sup> This aspect of the Act does not apply to those who are waiting for their asylum applications to be processed, or to those who do not formally apply for asylum.<sup>72</sup> In addition, there are exceptions for individuals who have already started vocational training, are studying at a university, or otherwise have a job that covers the cost of living.<sup>73</sup> This element of the Act was included to promote the overall goal of the Act itself: integration of refugees. According to lawmakers, a high-concentration of successful asylum applicants would prevent effective integration, as Syrians, rather than Germans, would surround the individuals.<sup>74</sup> In addition, the government fears that a concentration of Syrian refugees will lead to the creation of migrant ghettos, which the government seeks to prevent.<sup>75</sup> This will be achieved by either “allocating or banning [refugees] from certain areas.”<sup>76</sup> Regional governments are responsible for the implementation of this portion of the Act. The assignment of residence provision of the Act will remain in force for three years.<sup>77</sup>

### 4. Permanent Residence Permit

Successful asylum applicants who have abided by the conditions set forth above will be eligible to apply for a permanent residence permit after five years.<sup>78</sup> The government will grant these permits based on whether the asylum seeker has demonstrated a commitment to integration.<sup>79</sup> Officers will make judgments based on the satisfactory completion of the requisite Integration Courses, as well as language skills.<sup>80</sup>

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71. Gesley, *supra* note 26.

72. *Id.*

73. *Id.*

74. Kern, *supra* note 63.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

Applicants must have an A2 level of German or better in order to be considered for the permanent residence permit.<sup>81</sup> In addition to fulfilling these requirements, applicants must also be able to independently support themselves.<sup>82</sup> It is possible to participate in an expedited process after just three years if, in that period, the individual reaches a C1 level of German and fulfills all other requirements.<sup>83</sup> The focus here is primarily on language skills, which is perhaps the most tangible mode of examining refugees' commitment to integration. Ultimately, the purpose of the Act is to ensure complete and successful integration of Syrian refugees into German society and culture.

### C. THE REFUGEE CONVENTION

The 1951 Geneva Convention Relating to the Status of Refugees, commonly known as the "Refugee Convention," was signed on July 28, 1951.<sup>84</sup> Originally, the Refugee Convention applied only to individuals who had been displaced as a result of World War II and the Holocaust.<sup>85</sup> As such, the original text stated that the rights conferred by the convention apply exclusively to refugees who had been displaced prior to January 1, 1951.<sup>86</sup> Germany ratified the Refugee Convention on December 1, 1953.<sup>87</sup>

The Refugee Convention serves as the framework for asylum policies for state parties. Article 1 provides the standard definition for the term "refugee":

As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a

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81. Gesley, *supra* note 26.

82. *Id.*

83. *Id.*

84. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150 (entered into force Apr. 22, 1954) [hereinafter Refugee Convention].

85. *Id.* art. 1(A)(2) (defining a "refugee" as an individual who had been displaced prior to January 1, 1951).

86. Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967) [hereinafter Protocol].

87. *State Parties to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol*, UNHCR (Apr. 2015), <http://www.unhcr.org/en-us/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html> [hereinafter *State Parties to the Refugee Convention and Protocol*].

particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.<sup>88</sup>

The definition of “refugee” provided in the Refugee Convention remained as such for over a decade.<sup>89</sup>

In anticipation of future refugee crises, it was determined that the protections offered by the Refugee Convention should be expanded in order to serve refugees from all backgrounds. As a result, the Protocol Relating to the Status of Refugees (“Protocol”) was drafted in 1967.<sup>90</sup> The Protocol acknowledges that the benefits conferred upon refugees by the Refugee Convention apply to anyone who qualifies as a refugee under the treaty.<sup>91</sup> It effectively eliminates the time restriction, allowing for refugee status to be granted to anyone who has been displaced, so long as they can establish themselves as a refugee per the requirements of the treaty. This remains the preeminent definition of “refugee” today. Germany acceded to the optional Protocol on November 5, 1969.<sup>92</sup>

One of the reasons for the development of the Refugee Convention was a recognition that “the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation.”<sup>93</sup> This statement recognizes that the Refugee Convention was born out of concern that future refugee crises would have disparate impacts on particular states, and that international cooperation was required to effectively address these issues. Germany appears to have been operating within this spirit of the treaty, especially considering its decision to suspend the Dublin

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88. Refugee Convention, *supra* note 84, art. 1(A)(2).

89. Protocol, *supra* note 86 (modifying the definition of “refugee” for the first time in 1967, thirteen years after the Refugee Convention entered into force).

90. Protocol, *supra* note 86.

91. *Id.* art. 1(1).

92. *State Parties to the Refugee Convention and Protocol*, *supra* note 87.

93. Refugee Convention, *supra* note 84, pmbl.

Regulation and relieve some of the pressure that the Syrian Refugee Crisis has imposed upon border states.<sup>94</sup> However, the implementation of the Act has called into question Germany's commitment to both Syrian refugees and obligations under the Refugee Convention.

The Refugee Convention remains the preeminent source of law regarding the treatment of refugees.<sup>95</sup> Its far-reaching goals of providing protections for refugees and assisting governments in coping with an influx of refugees remain intact today.<sup>96</sup> Notably, however, the Refugee Convention does provide a distinction between economic migrants and refugees.<sup>97</sup> The protections set forth by the Refugee Convention apply to individuals who satisfy the requirements in Article 1 and who are considered "refugees."<sup>98</sup> The implications of this definition will be further discussed in Part II.E below. Economic migrants, or individuals who leave less-developed areas of the world in the hopes of finding improved economic conditions in another state, are not afforded such protections. However, the line between refugee and economic migrant is often blurred, presenting issues with the application of the Refugee Convention.<sup>99</sup> The Act follows the guidelines of the Refugee Convention in that it exclusively applies to refugees and individuals seeking asylum, and does not apply to those who are deemed to be economic migrants.<sup>100</sup> The Act also does not apply to individuals who remain in Germany without documentation and who are not formally seeking refugee status.<sup>101</sup> As such, the analysis of the Act in comparison to state obligations under the Refugee Convention will be restricted to refugees and not economic migrants.

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94. Taylor, *supra* note 19.

95. *The Syrian Refugee Crisis: Refugees, Conflict, and International Law*, 2016 DEMOCRATIC PROGRESS INST. 18, <http://www.democraticprogress.org/wp-content/uploads/2016/06/Refugees-and-Conflict.pdf>.

96. *Id.*

97. Refugee Convention, *supra* note 84, art. 1.

98. *Id.*

99. Eric Posner, *The Spectrum of Suffering*, SLATE (Sept. 8, 2015), [http://www.slate.com/articles/news\\_and\\_politics/view\\_from\\_chicago/2015/09/migrant\\_crisis\\_in\\_europe\\_the\\_refugee\\_convention\\_of\\_1951\\_and\\_why\\_the\\_eu\\_cannot.html](http://www.slate.com/articles/news_and_politics/view_from_chicago/2015/09/migrant_crisis_in_europe_the_refugee_convention_of_1951_and_why_the_eu_cannot.html).

100. Kern, *supra* note 63.

101. *Id.*

The Refugee Convention places obligations upon refugees as well as states. Article 2 of the Refugee Convention states general obligations of refugees, declaring, “[e]very refugee has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.”<sup>102</sup> This would necessarily require any refugee to abide by the Act, as well as any other applicable German law.

## II. ANALYSIS

The Act represents a clear violation of multiple provisions of the Refugee Convention. Although some aspects of the law are within the states’ discretionary power under the treaty, the Act as a whole is contrary to the spirit and purpose of the Refugee Convention. The treaty is meant to provide baseline protections for refugees, whereas the German Act creates unnecessary obstacles that prevent individuals from receiving those protections. The requirements of the Act undermine the protections guaranteed by the Refugee Convention and subsequent Protocol. The Act appears to promote complete assimilation into German society, rather than integration, and places a high burden on Syrian and other refugees.

### A. INTEGRATION COURSES

Integration Courses, particularly the first 100 hours of orientation, teach Syrian refugees about German culture, values, and history, and likely do not violate the state’s obligations under the Refugee Convention. Article 4 of the Refugee Convention protects the religious freedom of refugees.<sup>103</sup> The provision specifically requires “treatment *at least as favourable* as that accorded to their nationals with respect to freedom to practice their religion.”<sup>104</sup> One of the important elements of the German values portion of the Integration Course is an emphasis on the freedom of religion.<sup>105</sup> Since all refugees are required to take such courses, it is presumed that they will minimally be aware of their right to

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102. Refugee Convention, *supra* note 84, art. 2.

103. *Id.* art. 4.

104. *Id.* (emphasis added).

105. *Content and Scheduling*, *supra* note 42.

freely practice their faith in Germany. However, a lesson on freedom of religion is not necessarily indicative of an actual freedom to practice one's chosen religion.

On its face, the Integration Courses appear to be in compliance with the requirements of the Refugee Convention. However, there is a potential conflict with the portion of Integration Course focused on German values. As noted, the concept of freedom of religion and faith is taught in the course. However, the other lectures could have religious undertones, depending on how they are taught. The courses have lessons on how to raise children in Germany, as well as how to interact in social situations. Both of these scenarios, which touch upon just two of the variety of subjects covered during the 100-hour orientation module, have the potential to direct refugees to a more Western or Christian lifestyle. While there is no indication that this is the case for these courses, it is a potential risk posed by the imposition of German values and culture upon Syrian refugees. So long as the German values portion of the Integration Course does not pressure refugees to follow a particular faith, the orientation module should remain consistent with the obligations of the Refugee Convention. German officials are encouraged to monitor the implementation of Integration Courses in order to ensure that all classes remain in compliance with Article 4 of the Refugee Convention.<sup>106</sup>

The latter portion of the Integration Course is comprised of two language-intensive modules,<sup>107</sup> but the Refugee Convention does not have any specific provisions regarding language requirements. In fact, the body of the document only references language on two occasions: first, in Paragraph 1 of the Schedule, and second in the Annex labeled "Specimen Travel Document."<sup>108</sup> Paragraph 1 of the Schedule references the travel documents that are mandated by Article 28 of the Refugee Convention. Article 28 mandates that the host state must provide valid travel documents to "refugees lawfully staying in their territory" so that the refugees may be permitted to travel outside of the territory of the host country.<sup>109</sup> As specified in Paragraph 1 of the Schedule, these travel documents must be

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106. *Integration Act to Support and Challenge*, *supra* note 28.

107. *Instruction Sheet for Integration Course*, *supra* note 37.

108. Refugee Convention, *supra* note 84, Annex: Specimen Travel Document.

109. *Id.* art. 28.



printed in at least two languages.<sup>110</sup> Minimally, one of the two languages must be either English or French.<sup>111</sup>

The second mention of language requirements is located in the Annex labeled “Specimen Travel Document.” This portion recommends that all travel documents contain the phrase “Convention of 28 July 1951” printed on each page of the documents, “in the language of the issuing country.”<sup>112</sup> As demonstrated, mentions of language in the Refugee Convention are purely administrative and do not reflect any obligations upon refugees to speak a particular language. But, nor do the provisions in the treaty prohibit states from encouraging refugees to speak the native language of the host country. Since the treaty is silent on the language requirements for refugees, the language requirements imposed by the Act are within the zone of permissible restrictions under the Refugee Convention.

Although the Act’s mandatory German language courses fall within the scope of the Refugee Convention, it does bear mentioning that the requirements in the Act are quite strict and will likely have negative implications for those seeking a permanent residence permit. This is especially true regarding the cost of the Integration Course, which is approximately €1,365.<sup>113</sup> This does not include the cost of retaking courses, and an additional 300 hours of instruction at €1.95 per hour is not a negligible amount. The baseline cost also fails to accurately reflect the cost of specialized courses, which are designed “for women, parents, young people as well as for participants who cannot yet read or write properly.”<sup>114</sup> Each specialized course totals 1,000 hours, for a total cost of €1,950.<sup>115</sup> This requirement will be cost prohibitive for individuals who do not receive fee waivers.

As previously noted, refugees must ultimately be proficient in the German language in order to be eligible for a permanent residence permit in three years, with relaxed requirements for refugees applying for such a permit after five years.<sup>116</sup> It is likely that refugees will want to apply for permanent residence permits as soon as possible in order to gain status in Germany,

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110. *Id.* Schedule ¶ 1(2).

111. *Id.*

112. *Id.* Annex: Specimen Travel Document.

113. *Instruction Sheet for Integration Course, supra* note 37.

114. *Id.*

115. *Id.*

116. Gesley, *supra* note 26.

but the language requirement makes that improbable. The Act requires that refugees applying after three years must reach a C1 level of German.<sup>117</sup> The Common European Framework of Reference for Languages, referenced in the Act, lists a C1 level as “proficient.”<sup>118</sup> It is the second highest level of language skills according to this particular reference method, sitting just below C2 that is referred to as “mastery.”<sup>119</sup> The C1 level is characterized as follows:

Can understand a wide range of demanding, longer texts, and recognise implicit meaning. Can express him/herself fluently and spontaneously without much obvious searching for expressions. Can use language flexibly and effectively for social, academic and professional purposes. Can produce clear, well-structured, detailed text on complex subjects, showing controlled use of organisational patterns, connectors and cohesive devices.<sup>120</sup>

This particularly onerous requirement will likely preclude some refugees from obtaining permanent residence permits. Although this does not *per se* violate provisions of the Refugee Convention, it could be argued that it goes against the spirit and purpose of the treaty.<sup>121</sup> While the secondary requirement for basic use is significantly more attainable for refugees, it requires that the individual wait an additional two years before applying for a permanent residence permit.<sup>122</sup> Even so, it does provide a more realistic expectation for refugees to learn German and does not conflict with the state’s obligations under the Refugee Convention. While there are no *per se* violations of the Refugee Convention with respect to the Integration Courses, there are certainly elements that are problematic and could easily lead to violations if implemented improperly.

117. *Id.*

118. Council of Europe, *Common European Framework of Reference for Languages: Learning, Teaching, Assessment*, 24, [http://www.coe.int/t/dg4/linguistic/source/framework\\_en.pdf](http://www.coe.int/t/dg4/linguistic/source/framework_en.pdf).

119. *Id.* at 36.

120. *Id.* at 24.

121. Violations of the object or purpose of a treaty violates Article 31 of the Vienna Convention on the Law of Treaties. *See* Vienna Convention on the Law of Treaties, art. 31, May 23, 1969, 1155 U.N.T.S. 331.

122. Gesley, *supra* note 26.

B. VOCATIONAL TRAINING AND EMPLOYMENT  
OPPORTUNITIES

There are several provisions of the Act related to work and vocational training that appear to conflict with Germany's obligations under the Refugee Convention. With regards to wage-earning employment, Article 17 of the Refugee Convention mandates that refugees receive "the most favourable treatment accorded to nationals of a foreign country in the same circumstances."<sup>123</sup> The Act, in turn, imposes a period of sponsored vocational training upon refugees.<sup>124</sup> In addition, the government intends to create 100,000 low-wage jobs in the hopes of helping refugees fulfill this requirement.<sup>125</sup> However, German law does not impose such strict restrictions upon other non-EU citizens who are applying to work in Germany.<sup>126</sup> Although the Market Priority Check remains in place for non-EU migrant workers, the requirements to apply for a work visa are considerably different than those for refugees. For example, highly qualified or skilled workers are able to obtain a permanent residence permit almost immediately, whereas Syrian refugees must wait a minimum of three years.<sup>127</sup> The requirement of a three-year sponsored employment stands in sharp contrast to the treatment of similarly situated third-country nationals.

The process of obtaining a Working Schengen Visa is also substantially different than the process imposed upon refugees by the Act. In total, the process purports to take up to three months in order for an applicant to receive a Working Schengen Visa, but once obtained, the individual is permitted to apply for a permanent residence permit in the Schengen Area.<sup>128</sup> Third-country nationals who are non-EU citizens are allowed to select their own employment during this time period. While the individual must reside in Germany legally for five years before being granted a permanent residence permit, she would still

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123. Refugee Convention, *supra* note 84, art. 17.

124. *Integration Act to Support and Challenge*, *supra* note 28.

125. Kern, *supra* note 63.

126. *Immigration Act*, FED. FOREIGN OFF. (July 25, 2015), [http://www.auswaertiges-amt.de/sid\\_B32635F3AF656F63A759EEBC45987A6E/EN/EinreiseUndAufenthalt/Zuwanderungsrecht\\_node.html#doc480848bodyText3](http://www.auswaertiges-amt.de/sid_B32635F3AF656F63A759EEBC45987A6E/EN/EinreiseUndAufenthalt/Zuwanderungsrecht_node.html#doc480848bodyText3).

127. *Id.*

128. Working (Employment) Schengen Visa – Residence Permit, SCHENGEN VISA INFO, <http://www.schengenvisa.info/working-schengen-visa/>.

have significantly more freedom and opportunities to do so than a refugee.<sup>129</sup> Both third-country nationals and Syrian refugees face five-year residency requirements and financial stability requirements, but third-country nationals are more likely to be financially stable and fulfill these requirements. While there is no specific data on the average income of economic migrants, it has been demonstrated that economic migrants earn approximately twenty percent less than German natives.<sup>130</sup> The minimum wage for German nationals has also increased as of January 1, 2017, from €8.50 per hour to €8.84 per hour.<sup>131</sup> Even if third-country nationals earned twenty percent less than minimum wage, they would earn approximately €1,200 per month. In contrast, refugees working the low-paying jobs that the government provides will earn little over €170 per month. This factors in the €1 per hour (before taxes), and assumes that the refugee will work forty hours per week with no days off. In comparing these economic opportunities, Syrian refugees are significantly less likely to achieve financial stability than similarly situated third-country nationals in Germany, and even less so than German nationals. A third-country national would be in a markedly better situation at the end of the five-year residency requirement, and would therefore be more likely to be granted a permanent residence permit. These extremely low-paying jobs, while perhaps beneficial in terms of integrating Syrian refugees into the German society and workforce, will do little to help the refugees become financially independent. Therefore, this onerous requirement lessens refugees' chances of successfully obtaining a permanent residence permit at the end of the requisite five-year residence period.

In addition, self-employed individuals may qualify for such a permit "if there is particular economic or specific regional interest in the planned business project."<sup>132</sup> This is the standard for third-country nationals seeking a permanent residence

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129. *Living in Germany Permanently*, [GER.] FED. OFF. FOR MIGRATION & REFUGEES (Aug. 5, 2011), <http://www.bamf.de/EN/DasBAMF/Aufgaben/Daueraufenthalt/daueraufenthalt-node.html>.

130. Robert C. M. Beyer, *The Labor Market Performance of Immigrants in Germany* 4 (Int'l Monetary Fund, Working Paper No. 6, 2016), <https://www.imf.org/external/pubs/ft/wp/2016/wp1606.pdf/>. The Author uses the average income of economic migrants, rather than refugees, because there is currently no data on the average income of refugees in Germany.

131. *Germany Gross Minimum Wages*, TRADING ECONOMICS, <http://www.tradingeconomics.com/germany/minimum-wages>.

132. *Immigration Act*, *supra* note 126.

permit. Refugees are not accorded these same rights under the Act. Instead, refugees are directed towards sponsored employment, specifically to one of the 100,000 low-paying jobs that the government intends to create.<sup>133</sup> Self-employment does not appear to be an option for refugees if they wish to apply for a permanent residence permit. As the Refugee Convention requires that states provide the same or more favorable conditions for refugees with regards to self-employment, refugees should have the same opportunities as third-country nationals.<sup>134</sup> The Act provides an unjust restriction upon refugees' employment opportunities by not allowing for self-employment, which violates Article 17 of the Refugee Convention.

### C. ASSIGNMENT OF PLACE OF RESIDENCE

The Act also violates several provisions of the Refugee Convention with regards to the assignment of place of residence. First, Article 21 of the Refugee Convention requires that states afford refugees at least the same rights to housing as similarly situated aliens.<sup>135</sup> While refugees are subject to housing assignments, third-country nationals do not face similar restrictions. Instead, third-country nationals are only restricted insofar as the Market Priority Check impacts where they can work and, tangentially, where they choose to live.<sup>136</sup> Refugees must accept the government's assignment of a place of residence, unless they fall into one of the narrow categories of exceptions.<sup>137</sup> As such, there are impermissible restrictions upon refugees with respect to where they are allowed to live in Germany.

The Act also arguably restricts refugees' freedom of movement under the Refugee Convention. The treaty provides that "Each Contracting State shall accord to refugees lawfully in its territory *the right to choose their place of residence to move freely within its territory*, subject to any regulations applicable

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133. Kern, *supra* note 63.

134. Refugee Convention, *supra* note 84, art. 18.

135. *Id.* art. 21.

136. BUNDESAGENTUR FÜR ARBEIT, LEAFLET NO. 7, EMPLOYMENT OF FOREIGN WORKERS IN GERMANY 18 (revised July 2013), <https://www3.arbeitsagentur.de/web/wcm/idc/groups/public/documents/webdatei/mdaw/mtaw/~edisp/l6019022dstbai397239.pdf>.

137. See Gesley, *supra* note 26 ("The rule does not apply to refugees who start vocational training, university studies, or a job that covers the minimum costs of living expenses and lodging.").

to aliens generally in the same circumstances.”<sup>138</sup> The notion that refugees should have the same rights as third-country nationals is a common theme throughout the Refugee Convention. Aliens generally in the same circumstances are typically not required to have their place of residence selected by the federal or state governments. However, the government may impose restrictions upon third-country nationals, even those with long-term residence in the EU, due to public policy or public security concerns.<sup>139</sup> It would therefore be possible for Germany to rely upon Directive 2003/109, allowing for such restrictions, as a basis for restricting the rights of refugees while remaining in compliance with the Refugee Convention, since the same restrictions may also apply to third-country nationals.<sup>140</sup> However, it would be discriminatory for the German government to claim that every Syrian refugee constitutes a threat to public safety and/or security without citing concrete evidence as to the nature of the threat. As the government has not provided a sound legal basis for restricting the rights of Syrian refugees in comparison to those of third-country nationals as required by Article 26 of the Refugee Convention, the assignment of place of residence violates that provision of the treaty.

Finally, Article 31(2) provides additional protections with respect to the right of free movement of refugees. This article states:

The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.<sup>141</sup>

Although the German government argues that the assignment of places of residence are necessary to prevent the creation of ghettos, this is not “necessary” under the terms of the Refugee Convention.<sup>142</sup> The government provides no justification for the

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138. Refugee Convention, *supra* note 84, art. 26 (emphasis added).

139. Council Directive 2003/109, 2003 O.J. (L 16) 44 (EC).

140. *Id.*

141. Refugee Convention, *supra* note 84, art. 31(2).

142. Kern, *supra* note 63 (“The objective is to prevent refugees from settling

claim that groups of Syrian refugees in a given area would create refugee ghettos. It is possible Germany is fearful of the ghettos created by the flood of Turkish workers in the 1960s and hopes to prevent a similar situation from arising among Syrian refugees.<sup>143</sup> As one author noted, those same Turkish guest workers were able to thrive in Germany, and many of their descendants now serve the state in an official capacity.<sup>144</sup> There is no evidence to indicate that Syrian refugees would fail to integrate and thrive in German society. In fact, the experience of Turkish workers successfully integrating into German society suggests that Syrian refugees would be able to integrate without the harsh restrictions of the Act. The assignment of a place of residence represents an impermissible violation of the Refugee Convention, aimed at preserving German culture and preventing the creation of Syrian cultural centers. These goals are reflected in government officials' statements about the purpose of the Act—rapid integration of Syrian refugees.<sup>145</sup> Rapid integration in this context means stripping Syrian refugees of what makes them Syrian; their language, culture, and history are to be replaced by that of a foreign nation. The assignment of place of residence provided for in the Act is another means of ensuring that Syrian refugees assimilate to German culture, rather than preserving their own.

#### D. PERMANENT RESIDENCE PERMIT

Although the Refugee Convention does not specifically mention the requirements that refugees must meet in order to be considered for permanent residence permits, it does note the general applicability and goals of the treaty. Paragraph D “recommends that Governments continue to receive refugees in their territories and that they act in concert in a true spirit of international cooperation in order that these refugees may find

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in migrant ghettos.”).

143. Constanze Stelzenmller, *Germany's Grand Refugee Experiment*, WASH. POST (June 6, 2016), [https://www.washingtonpost.com/opinions/germanys-grand-refugee-experiment/2016/06/07/e89ce7d6-2cc5-11e6-9b37-42985f6a265c\\_story.html?utm\\_term=.214a97acf89c](https://www.washingtonpost.com/opinions/germanys-grand-refugee-experiment/2016/06/07/e89ce7d6-2cc5-11e6-9b37-42985f6a265c_story.html?utm_term=.214a97acf89c).

144. *Id.* (“There are now also government officials, legislators, filmmakers, writers, soccer stars and standup comedians with Turkish names.”).

145. *Germany Passes Historic Law on Refugee Integration*, LOC. (July 8, 2016), <https://www.thelocal.de/20160708/germany-passes-historic-law-on-refugee-integration>.

asylum and the *possibility of resettlement*.”<sup>146</sup> This paragraph encapsulates the spirit of the Refugee Convention and demonstrates parties’ commitment to aiding refugees. As such, it would be expected that countries would make it as easy as possible, within reason, to permanently resettle in a new country. While this is not a binding legal obligation, the German government, and all European governments, should act in accordance with the spirit of the Refugee Convention and create less extensive systems for refugees to gain status in their countries. As it stands, the Act creates excessive barriers to asylum, especially as it relates to employment opportunities and free movement, which violate the Refugee Convention.

#### E. ISSUES WITH THE APPLICATION OF THE REFUGEE CONVENTION TO THE SYRIAN REFUGEE CRISIS

According to Article 1 of the Refugee Convention, the individual seeking asylum must be specifically targeted by either their home government, or a group that the government cannot or will not control, as a result of one of the five categories enumerated in the article.<sup>147</sup> This language is key in the context of the Syrian Refugee Crisis, because the Refugee Convention does not state that widespread terror or violence is a basis for seeking asylum. Instead, the individual must be able to demonstrate that she is being specifically targeted by her government or a non-state actor for her “race, religion, nationality, membership of a particular social group or political opinion.”<sup>148</sup> For example, Christians in Somalia may claim refugee status in another state due to al-Shabab’s specific targeting of Christians.<sup>149</sup> The attacks by the Assad regime and ISIS do not have particular motives based on any of these five categories—the groups are indiscriminately attacking civilians who do not align with either side.<sup>150</sup>

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146. Refugee Convention, *supra* note 84, § D, at 11 (emphasis added).

147. *Id.* art. 1.

148. *Id.* art. 1(A)(2).

149. *Who Are Somalia’s al-Shabab?*, BBC NEWS (Dec. 22, 2017), <http://www.bbc.com/news/world-africa-15336689> (noting that a gunman killed 148 individuals in an attack targeting Christian students at a university in Somalia).

150. *E.g., Syria: Indiscriminate Attacks Ongoing Despite “Cessation of Hostilities,”* HUM. RTS. WATCH (Apr. 12, 2016), <https://www.hrw.org/news/2016/04/12/syria-indiscriminate-attacks-ongoing-despite-cessation-hostilities> (describing a series of indiscriminate attacks on civilians after the supposed



This is where application of the Refugee Convention gets complicated. It is unlikely that anyone from Syria would be able to prove that they were being singularly targeted as a result of one of the five stipulations mentioned in Article 1(A)(2). It is possible that Germany has determined that *lack* of membership of a particular social group is sufficient to qualify for refugee status, as anyone who does not identify as a member of the Assad regime or ISIS could be targeted by either group, but the German government has never expressed such a position.

Although not included in the text of the Refugee Convention, the United Nations High Commissioner for Refugees has explicitly stated that a refugee is someone who is fleeing persecution or armed conflict.<sup>151</sup> Syrian refugees fall into the second category, as they are fleeing the civil war that has destroyed so much of their homeland. It appears that Germany, and many other nations, have accepted this definition of “refugee” and have therefore correctly categorized those fleeing Syria as refugees, rather than economic or other migrants. Admittedly, there is a legal gray area regarding the application of the Refugee Convention to Syrian refugees, as rights are being derived from a treaty that does not explicitly recognize those fleeing from armed conflict as refugees. Nevertheless, the United Nations High Commissioner for Refugees has specifically determined that individuals fleeing the Syrian Civil War qualify as refugees.<sup>152</sup> As such, the protections of the Refugee Convention should apply to Syrian refugees. It would be against the spirit of the treaty itself to deny these international legal protections to the millions of displaced Syrians, both in Germany and throughout the world.

#### F. RECOMMENDATIONS

Although Germany has made exceptional efforts to address the Syrian Refugee Crisis and provide assistance to displaced individuals, the Act falls markedly short of both international expectations and the country’s obligations under the Refugee

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cessation of hostilities on February 26, 2016).

151. *UNHCR Viewpoint: ‘Refugee’ or ‘Migrant’ – Which is Right?*, UNHCR (July 11, 2016), <http://www.unhcr.org/en-us/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html>.

152. *Global Issues Overview - Refugees*, UNITED NATIONS, <http://www.un.org/en/sections/issues-depth/refugees/> (last visited February 12, 2018) (describing Syria as “the world’s biggest producer of refugees”).

Convention. Regarding, Integration Courses, elements of Western or Christian values should be removed from lesson plans; integration does not necessarily mean assimilation, and refugees should not be forced to abide by a moral code different from their own. Integration Courses themselves do contain useful modules, such as those regarding job applications, and can help refugees improve their German language skills. However, the current time commitment is unreasonable, and may delay participants' entry into the work force. As such, limited or part-time courses are recommended. Waivers for refugees are also strongly encouraged to ensure that minimal personal resources are dedicated to the mandatory participation in the program. Finally, the expedited process for permanent residence permits should be devoid of any language requirements, as this fails to take into account the learning abilities and other responsibilities of applicants. For example, a student whose primary responsibility is to learn German is likely to have a greater understanding of the language than a caregiver whose daily responsibilities include providing for others rather than studying, but this does not mean the caregiver is less deserving of a permanent residence permit. While the Integration Courses do not present *per se* violations of the Refugee Convention, implementing these recommendations will ensure that the legislation more closely mirrors the object and purpose of the treaty.

Vocational training and employment opportunities for refugees under the Integration Act should mirror those afforded to other non-EU citizens residing in Germany. Namely, highly skilled and qualified individuals should be eligible for permanent residence permits and should not be required to wait three years. In addition, jobs created by Germany specifically for refugees should pay a living wage, that is, should allow a person working full-time to achieve financial stability. It is encouraging, though, that the Market Priority Check was suspended with regards to refugees in order to allow them to work in locations that would otherwise be closed off to immigrants and refugees. Germany should continue the suspension of the Market Priority Check as a means of recognizing the labor and employment needs of refugees.

The assignment of place of residence requirement in the Integration Act should immediately be suspended. Third-country nationals do not face such placement requirements, nor should refugees. This requirement is a direct violation of the freedom of residence afforded to refugees by Article 26 of the

Refugee Convention and is of immediate concern. The so-called threat of ghettos does not constitute a national security concern; Germany is therefore not allowed to restrict the movement or residence of refugees. The Integration Act also runs counter to the overall spirit of the Refugee Convention, the purpose of which is to provide assistance for individuals displaced by horrific conditions in their countries of origin.<sup>153</sup> While Germany contends that the new law will ease the transition for refugees, it in fact presents multiple obstacles to resettlement. The current requirements to obtain a permanent residence permit are unreasonable and far too burdensome for refugees, effectively guaranteeing that they will not achieve such status in Germany. Reducing some of the barriers to applying for the permanent resident permit, as well as some of the conditions to reside in Germany before applying for such a permit, would better reflect Germany's commitment to refugees and the spirit of the Refugee Convention.

### III. CONCLUSION

There are no simple solutions to adequately address the Syrian Refugee Crisis. A refugee crisis of this magnitude is unlike any other that Europe has seen since the end of World War II. The Refugee Convention, passed in the wake of the aforementioned crisis, affords countless lifesaving protections to refugees who have been displaced. These protections are in danger as a result of the German Integration Act.

Although the Act is largely in compliance with the country's obligations under the Refugee Convention, there are certain provisions that either directly violate the treaty's provisions, or otherwise go against the spirit and purpose of the treaty. As a result of this legislation, Syrian refugees are forced to live in government-selected neighborhoods, work government-mandated jobs, and learn a foreign language and culture, all while attempting to cope with the trauma of being uprooted from their homeland as a result of a devastating civil war. The most vulnerable in the community deserve the basic protections provided for the Refugee Convention during this immensely difficult time.

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153. Refugee Convention, *supra* note 84, Introductory Note, at 2–5.

The Refugee Convention was specifically designed to address the issues that are being faced by the international community with respect to the Syrian Refugee Crisis. Germany is urged to repeal, or minimally revise, the Act so as to remain in compliance with the Refugee Convention. Specifically, the provisions on the assignment of place of residence and vocational limitations should be eliminated, and Integration Courses should be relaxed in order to reflect a more realistic expectation of what refugees are capable of digesting. Germany has long been the leader in Europe with respect to the acceptance of refugees, especially in the context of the Syrian Refugee Crisis. The Act undermines the country's open-door policy toward refugees. Germany should maintain its commitment to the acceptance of Syrian refugees by repealing the Act and placing fewer unnecessary restrictions on these refugees.