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# Special humanitarian intakes: Enhancing protection through targeted refugee resettlement

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## Executive summary

Between 2015 and 2017, Australia provided 12,000 resettlement places for refugees fleeing conflict in Syria and Iraq. This special humanitarian intake was an ad hoc, one-off response to international and domestic pressure on the Australian government and reflects similar pledges made by other States to admit Syrian refugees. While Australia's Syria–Iraq special intake provided invaluable protection for refugees fleeing one of the world's major humanitarian crises, it raises a number of questions regarding fairness, transparency and efficiency in its implementation.

In the context of growing numbers of displaced people worldwide, the Syrian crisis will not be the last situation involving widespread displacement and requiring international cooperation to ensure the protection of refugees. Indeed, the current predicament of large numbers of refugees in places such as Kenya, Bangladesh and the Central Mediterranean also requires stronger responses and support from the international community.

This Policy Brief critically analyses special humanitarian intakes from an international and comparative perspective. It examines the normative frameworks applicable to special humanitarian intakes, both in Australia and elsewhere, including international refugee and human rights law, the United Nations High Commissioner for Refugees (UNHCR) global resettlement program, and Australian domestic law. It considers how the Syria–Iraq special intake compares to other similar, one-off arrangements for the relocation and/or resettlement of refugees, such as the Comprehensive Plan of Action for Indo-Chinese refugees in the 1970s and 1980s, the humanitarian evacuation of Kosovar refugees in 1999, and the use of individual emergency and urgent resettlement quotas by States such as Sweden and Canada.

## Key findings and recommendations

This Policy Brief recommends that future special humanitarian intakes ought to be guided by overarching principles of refugee protection as follows:

1. The decision to implement a special humanitarian intake should be based on principles of *international solidarity and responsibility-sharing*, such that a special humanitarian intake should be offered in situations where the scale of displacement from a large-scale emergency exceeds the capacity of the State/s of first asylum to cope and thereby risks negatively affecting the protection space in that State.
2. Once a decision has been taken to implement a special humanitarian intake, selection of individuals for resettlement from within the target population should focus on identifying refugees *with the greatest protection needs*.

Based on these overarching principles, the Policy Brief makes a number of specific recommendations for future special humanitarian intakes. These are:

- Special humanitarian intakes should provide a pathway to permanent, durable solutions for the refugees concerned;
- Special humanitarian intakes must be undertaken in consultation and cooperation with UNHCR;
- Decisions to implement special humanitarian intakes should be based on principles of international solidarity and responsibility-sharing;
- Selection of refugees for resettlement within a special humanitarian intake should focus on identifying refugees with the greatest protection needs;
- Planning for special humanitarian intakes – for example, via a designated annual quota – should be considered as a means of ensuring more efficient processing and resource allocation;
- Complementary admission pathways, such as for students, skilled workers or family reunion, should be implemented separately to special humanitarian intakes;
- Where possible, expedited resettlement processing procedures, such as have been employed elsewhere, should be used to increase the speed and efficiency of processing within special humanitarian intakes; and
- Decisions regarding special humanitarian intakes must be made in a principled and transparent manner, making clear the basis for the decision to undertake a special humanitarian intake and the way in which individual refugees are selected for resettlement within it.

# 1 Introduction

In September 2015, the Australian government announced that it would provide 12,000 places for the resettlement in Australia of refugees fleeing conflict in Syria and Iraq.<sup>1</sup> These 12,000 places would be in addition to the annual quota for Australia's Refugee and Humanitarian Program (13,750 places in 2015–2016) and would include refugees referred for resettlement by UNHCR, as well as individuals with family already in Australia.<sup>2</sup> The announcement was made amid a series of global conferences aimed at addressing the plight of large numbers of Syrian refugees, as a result of which several other countries made similar pledges.<sup>3</sup> The Australian government announced that priority for the 12,000 places would be given to Syrians and Iraqis located in Lebanon, Jordan and Turkey and 'assessed as being most vulnerable – persecuted minorities, women, children and families with the least prospect of ever returning safely to their homes'.<sup>4</sup> All would be required to meet Australia's general requirements for refugee and humanitarian visas, including health, security and character checks. By March 2017, the Australian government reported that all 12,000 places had been filled.<sup>5</sup>

Australia's 2015–2017 special humanitarian intake of refugees from Syria and Iraq (described here as the Syria–Iraq special intake) occurred in the context of growing numbers of displaced people worldwide. At the end of 2017, UNHCR reported a total of 25.4 million refugees<sup>6</sup> – the highest number since the Second World War.<sup>7</sup> While some refugees remain displaced for only short periods of time, two-thirds are in protracted situations, meaning that they have been in exile for five years or more.<sup>8</sup> Thus, while the emergency phase of their displacement has passed, they remain without a durable solution: it is still unsafe for them to return home, they are precluded from integrating fully into the host country offering them (temporary) refuge, and they have not been offered resettlement in another country.

Against this background, the need for strengthened commitments by States, individually and collectively, has been repeatedly emphasised at the international level. The 2016 New York Declaration for Refugees and Migrants (New York Declaration)<sup>9</sup> and the 2018 Global Compact on Refugees (Refugee Compact)<sup>10</sup> were prompted by the 'urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world's refugees'.<sup>11</sup> The Refugee Compact urges States to adopt flexible resettlement programs in accordance with UNHCR-identified priorities and to 'ensure resettlement processing is predictable, efficient and effective'.<sup>12</sup>

The Syria–Iraq special intake was not the first time the Australian government had implemented special measures for admitting particular groups of refugees fleeing humanitarian crises. Between 1989 and 1996, Australia resettled over 19,000 refugees under the Comprehensive Plan of Action (CPA), a multilateral arrangement for the resettlement of refugees fleeing conflict in Vietnam, Cambodia and Laos. In 1999, the Australian government brought 4000 Albanian Kosovars to Australia on 'Safe Haven' visas, a temporary scheme designed to facilitate the evacuation of refugees to Australia for a period of three months.<sup>13</sup> In the same year, a similar program was implemented for around

1450 East Timorese evacuated from a besieged United Nations (UN) compound in the capital, Dili.

Similar measures have been undertaken by other States as well, including as part of the CPA and with respect to the humanitarian evacuation of Kosovars. Commencing in 2013, numerous States have offered one-off special humanitarian intakes for refugees fleeing Syria – a 2016 meeting of States in Geneva yielded pledges for a total of 185,000 resettlement places for Syrian refugees.<sup>14</sup> Other similar measures are discussed in Section 4 below.

## **1.1 Looking to the future: the aims of this policy brief**

Refugee resettlement measures such as those mentioned above are historically rare. However, in the context of growing numbers of displaced people worldwide, the Syrian crisis will not be the last situation involving widespread displacement and requiring international cooperation in the protection of refugees. Indeed, in late 2017, UNHCR issued another appeal to the international community, requesting 40,000 additional resettlement places for refugees travelling through the Central Mediterranean.<sup>15</sup> There are also numerous other refugee populations worldwide in desperate need of long-term solutions. Kenya, for example, is home to more than a quarter of a million Somali refugees, many of whom have been in the country for decades.<sup>16</sup> The number of Rohingya refugees currently in Bangladesh is close to one million.<sup>17</sup>

At the end of this year, the UN General Assembly will endorse the final draft of the Refugee Compact, which aims to ‘operationalize the principles of burden- and responsibility-sharing to better protect and assist refugees and support host countries and communities’.<sup>18</sup> Though the Refugee Compact is non-binding, countries such as Australia will be expected to report on their progress towards these objectives as part of regular high-level review meetings, the first of which will be held in 2019.<sup>19</sup> In this context, Australia’s Syria–Iraq special intake invites further examination to determine the extent to which it could provide the basis for future, similar intakes of specific groups of refugees in need.

This policy brief examines special humanitarian intakes from an international and comparative perspective to determine how they could, and should, be approached in the future. While the focus of this brief is on Australia, the recommendations it provides are applicable to any State considering or implementing special measures for the admission of particular groups of refugees. Following this Introduction, Section 2 sets out a conceptual framework for understanding the role of special humanitarian intakes in addressing global displacement, including the rationale and aims of special intakes, and the issues and challenges they raise. Section 3 then provides an overview of the normative frameworks relevant to special humanitarian intakes. This includes international refugee and human rights law, as well as domestic law and policy frameworks in Australia and the important role that the UN High Commissioner for Refugees (UNHCR) plays in managing global resettlement programs. Section 4 investigates how special measures for admitting refugees – including special humanitarian intakes, humanitarian evacuations and individual cases of

urgent or emergency resettlement – have been implemented in several ‘case study’ States, with the aim of identifying models of good practice and lessons learned. Finally, Section 5 makes recommendations about how special intakes could, and should, be managed in the future.

## **2 Conceptual framework**

### **2.1 Responsibility-sharing, durable solutions and protection for the most vulnerable**

Special humanitarian intakes, such as Australia’s Syria–Iraq special intake, have the potential to address some of the key challenges relating to the protection of refugees and forced migrants worldwide. The first is the need for responsibility-sharing among States in the protection of refugees. Special humanitarian intakes provide a means of relieving the pressure on ‘frontline States’ – that is, States receiving large numbers of refugees as a result of humanitarian crises, which bear a disproportionate burden of providing immediate protection and assistance. According to UNHCR’s Assistant High Commissioner for Protection, ‘[s]haring responsibility [for refugees] can help alleviate tensions between states and mitigate against potential negative consequences for refugees. It can also ensure that states are able to respond to refugees more effectively.’<sup>20</sup>

The second issue is the need for durable solutions for refugees and other forced migrants. While returning to their country of origin is the preferred solution of many, if not most, refugees, the reality is that many refugees cannot return home safely within the foreseeable future, or ever. For these refugees, alternative long-term solutions remain scarce. Integration in the country of first asylum may sometimes be possible, but not always. Where it is available, permanent resettlement from the country of first asylum to another ‘resettlement’ country is a solution that enables refugees to obtain long-term security and rebuild their lives.

Although refugee resettlement is a means of securing long-term durable solutions for refugees, in situations of large-scale displacement, it can also be the most effective means of achieving *immediate* protection for some of the most vulnerable refugees. When the capacity of frontline States to respond to newly-arrived refugees is overwhelmed by the sheer number of people arriving, the most vulnerable may not be able to get even their most basic needs met. In these circumstances, resettlement can provide immediate protection for such refugees, and increase the capacity of frontline States to respond more effectively to everyone else.

These key challenges in refugee protection are related and, to some extent, overlap. For example, the promotion of international solidarity and responsibility-sharing is one of the key purposes of resettlement as a durable solution.<sup>21</sup> They also reflect some of the well-recognised current priorities for the international refugee regime as a whole. Indeed, two of the core objectives set out in the Refugee Compact are: a) to ease pressure on host communities, and b) to expand access to third-country solutions for refugees.<sup>22</sup> Together,



the notions of responsibility-sharing, durable solutions and protection for the most vulnerable reflect the overarching aims of special humanitarian intakes and a framework for assessing the effectiveness of such intakes in practice.

## **2.2 Key questions and concerns regarding special humanitarian intakes**

Australia's Syria–Iraq special intake occurred in the context of similar special humanitarian intakes by other States. This practical response by many States to the conflict in Syria was widely welcomed by the international community, UNHCR and civil society groups, including in Australia.<sup>23</sup>

The goodwill of many national governments towards Syrian refugees sits in contrast with the distinct lack of support that States have shown for other groups of refugees, however. The lack of resettlement places for African refugees, for example, has been widely lamented by UNHCR and civil society.<sup>24</sup> In 2017, UNHCR issued an urgent appeal for resettlement places for 1300 refugees evacuated from Libya to Niger, based on the 'extreme vulnerabilities' of the refugees concerned,<sup>25</sup> but international action has been slow – in June 2018, only Norway, Italy and Canada had offered places in response.<sup>26</sup> In the Asia-Pacific region, the plight of Rohingya refugees in Bangladesh has also been the subject of advocacy by civil society, but solutions have so far not been forthcoming. This raises questions regarding principles of equity and non-discrimination in the provision of refugee resettlement, and why one group of refugees may be granted special measures while others are not.

The Syria–Iraq special intake raises inevitable questions about the potential for States such as Australia to implement similar special humanitarian intakes in the future. For instance:

- What is the rationale for special humanitarian intakes, such as the Syria–Iraq special intake, and what is their relationship with States' regular refugee resettlement programs?
- What are the relevant international law frameworks and what obligations do they impose on States implementing special humanitarian intakes?
- What principles and priorities should guide decision-making about special humanitarian intakes?
- What is the role of UNHCR in relation to special humanitarian intakes – both in terms of a government's decision to offer such an intake and its implementation?
- How should special humanitarian intakes be implemented within domestic law and policy frameworks?
- Should States such as Australia plan for future special humanitarian intakes – for example via a dedicated annual quota for use in response to large-scale movements triggered by humanitarian crises?
- How can special humanitarian intakes be implemented most effectively?

### **3 Normative frameworks applicable to special humanitarian intakes**

#### **3.1 International refugee and human rights law**

The core international law instrument governing refugee protection is the 1951 Convention relating to the Status of Refugees (Refugee Convention),<sup>27</sup> read in conjunction with the 1967 Protocol relating to the Status of Refugees (Protocol).<sup>28</sup> Australia is a party to the Refugee Convention and its Protocol and is bound to comply with their terms.<sup>29</sup> The Refugee Convention defines a refugee<sup>30</sup> and obliges Contracting States to provide refugees within their territory or control with a range of fundamental protections and rights, including protection against *refoulement* – that is, against forcible removal to any place where the refugee is at risk of persecution or other serious harm.<sup>31</sup> In some regions of the world, the Refugee Convention has been supplemented by additional agreements, which extend the scope of refugee protection and/or facilitate regional inter-State cooperation on refugee protection issues.<sup>32</sup> This is not the case in the Asia-Pacific region, however, which is notable for its very weak protection frameworks.<sup>33</sup>

Two pressing issues that are not addressed directly by the Refugee Convention are among those identified above – that is, responsibility-sharing between States and durable solutions for refugees. Although the Refugee Convention endorses the principles of international solidarity and cooperation,<sup>34</sup> it does not provide specific mechanisms for responsibility-sharing or other forms of cooperation between States. It also does not provide longer-term solutions for refugees who cannot return home. Indeed, the ‘urgent need for more equitable sharing of the burden and responsibility for hosting and supporting the world’s refugees’ was the driving force behind the 2016 New York Declaration and the 2018 Refugee Compact.<sup>35</sup>

International refugee law forms part of a broader body of international human rights law, which reinforces and supplements refugee protection in two specific ways. The first is by providing the legal basis for ‘complementary protection’ (also called ‘subsidiary protection’) – that is, protection against forcible return (*refoulement*) for individuals who are not refugees, but who would still be at risk of certain human rights abuses (such as torture) if removed to a particular country or region.<sup>36</sup> The second is by recognising that everyone has human rights, irrespective of their status as refugees. Many of these rights – such as freedom of movement, non-discrimination, family unity and equality before the law – are particularly important to those who have been displaced.<sup>37</sup> International human rights law imposes obligations on States to protect and ensure such rights for all people within their territory or control, including those resettled under special humanitarian intakes.

## 3.2 UNHCR's resettlement program

As noted above, the Refugee Convention does not include specific provisions for responsibility-sharing between States or durable solutions for refugees. One of the key international mechanisms that aims to address this gap is UNHCR's resettlement program. Refugee resettlement describes a process whereby 'refugees are selected and transferred from the country of refuge to a third State which has agreed to admit them as refugees with permanent residence status.'<sup>38</sup> In 2017, UNHCR resettled just over 100,000 refugees,<sup>39</sup> with the largest resettled populations including refugees from Syria, Democratic Republic of Congo, Myanmar, Bhutan and Iraq.<sup>40</sup> Though the use of resettlement is not mentioned in the Refugee Convention itself, the international community has repeatedly emphasised its importance as an 'instrument of protection'<sup>41</sup> and as 'a tangible mechanism for burden- and responsibility-sharing'.<sup>42</sup>

To be eligible for resettlement by UNHCR, an individual must be determined by UNHCR to be a refugee and fall within one of UNHCR's resettlement submission categories. These categories include: refugees with specific legal and/or physical protection needs (including being at risk of *refoulement*); survivors of torture and/or violence; refugees with medical needs; women and girls at risk; refugees seeking family reunification; children and adolescents at risk; and refugees lacking a foreseeable alternative durable solution.<sup>43</sup> While UNHCR refers refugees for resettlement to States with resettlement programs, States themselves retain control over whether or not to accept the individual referred, based on their own admission categories and criteria.<sup>44</sup> These criteria may closely align with those of UNHCR, but can also include inadmissibility on medical, security or character grounds. In 2017, around 87 per cent of the refugees referred for resettlement by UNHCR were accepted by the relevant State.<sup>45</sup> Resettlement generally takes place on an individual basis, but UNHCR states that the resettlement of large groups of refugees may be warranted in some situations<sup>46</sup> – a recommendations supported by others as well.<sup>47</sup>

The defining feature of resettlement today is the significant, and growing, gap between the number of people worldwide in need of resettlement, and the number of places available.<sup>48</sup> The 100,000 refugees resettled by UNHCR in 2017 constituted less than 10 per cent of the refugees it had identified as most in need of resettlement, and less than one per cent of all refugees living in protracted situations.<sup>49</sup> In 2019, UNHCR predicts a similar shortfall in the number of resettlement places required.<sup>50</sup> In light of the gap between resettlement needs and available resettlement places, UNHCR has urged resettlement States to provide multi-year commitments for resettlement<sup>51</sup> and – as set out in the Refugee Compact – to dedicate at least 10 per cent of resettlement places to emergency and urgent cases.<sup>52</sup> UNHCR and others have also called on States to expand on their traditional resettlement mechanisms by providing alternative admission pathways for refugees, such as private sponsorship programs, or by making it easier for refugees to apply for skilled or family reunion visas.<sup>53</sup>

### **3.2.1 Prioritising refugees for resettlement**

Identifying who, among such a large number of refugees, should be given the opportunity to resettle elsewhere is a difficult task. In this context, UNHCR provides guidance to States on particular priority areas and situations as part of its annual report on projected global resettlement needs.<sup>54</sup> In its most recent report, for example, UNHCR identifies three priority areas for resettlement in 2019: countries rolling out the Comprehensive Refugee Response Framework (CRRF) under the Refugee Compact; the Central Mediterranean Situation; and the Syrian situation.<sup>55</sup> In addition to identifying specific priority areas, UNHCR has articulated two more general, overarching principles for prioritising specific groups of refugees within resettlement programs. These are as follows:

1. To use resettlement as a way ‘to demonstrate international solidarity and responsibility-sharing with host States’.<sup>56</sup> That is, resettlement States do, and should, use resettlement as a way of easing pressure on countries that host the bulk of the world’s refugees.<sup>57</sup>
2. To prioritise resettlement for those ‘who are most vulnerable, including where the protection risks are greatest’.<sup>58</sup>

These two principles are reflected in the specific strategies and mechanisms for resettling or relocating particular groups of refugees outlined below.

### **3.2.2 Strategies and mechanisms for resettling or relocating particular groups of refugees**

In addition to calling on States to increase the places offered for refugee resettlement, UNHCR has developed some strategies and mechanisms for addressing the needs of particular individuals or groups of refugees and for ensuring that resettlement is used in the most effective way possible.

### **3.2.3 Strategic use of resettlement**

The ‘strategic use of resettlement’ is an approach to resettlement developed by UNHCR which is based on the idea that, ‘[w]hen used strategically, resettlement can bring about positive results that go well beyond those that are usually viewed as a direct resettlement outcome’<sup>59</sup> – for example, to ease protracted refugee situations or to encourage States receiving an influx of refugees to keep their borders open.<sup>60</sup> According to UNHCR, in situations of emergency or mass influx, ‘the use of resettlement has convinced countries of first asylum to keep open their borders, thereby avoiding massive loss of life.’<sup>61</sup>

The strategic use of resettlement can serve to enhance its role in addressing one of the key issues identified above – that is, the need for international solidarity and responsibility-sharing. For while the strategic use of resettlement can be promoted by individual States, ‘coordination with other resettlement countries and UNHCR is likely to maximize derivative

benefits.<sup>62</sup> To date, UNHCR has not articulated any clear criteria or a specific framework for determining how resettlement can be used most strategically.<sup>63</sup> Moreover, some commentators have cautioned that assessment of the practice to date is mixed, with 'positive opinions being based more on hope and belief than actual evidence'.<sup>64</sup> The approach is nonetheless evident in UNHCR's having issued, on occasion, appeals for resettlement places for specific groups of refugees. The Syrian crisis is a recent and large-scale example of such an appeal. This and other examples are described in Section 4 below.

### **Individual urgent or emergency resettlement**

UNHCR also works with States to provide a specific mechanism for expedited resettlement of refugees with the most imminent legal and/or physical protection needs, including the need for life-saving medical treatment, and women and girls at risk of sexual and gender-based violence.<sup>65</sup> This is coordinated by the Processing Unit of the Resettlement Service at UNHCR Headquarters in Geneva. It involves the referral of individual refugees to prospective resettlement States on an 'urgent' or 'emergency' basis. Urgent cases involve refugees requiring removal within weeks, while emergency cases require evacuation within 72 hours.<sup>66</sup> Emergency or urgent resettlement cases often rely on dossier submission, in which a prospective resettlement State assesses a case based on documents submitted to it by UNHCR rather than conducting its own 'selection mission' to the country of first asylum (known as mission-based selection).<sup>67</sup> Dossier submission can be cost-effective, quicker and, in some cases, safer for officials from the resettlement State, who can avoid travelling to a potentially dangerous location.<sup>68</sup>

UNHCR advocates for resettlement States to provide 'unallocated quotas that can be used in a flexible way for urgent and emergency cases across the globe'.<sup>69</sup> Some resettlement States do provide such quotas within their planned annual resettlement programs, either as a capped number or an uncapped (but small) proportion of the total number of refugees accepted for resettlement.<sup>70</sup> UNHCR has also established dedicated Emergency Transit Facilities to facilitate the evacuation of refugees in need of urgent resettlement.<sup>71</sup> In 2017, UNHCR referred around 5500 refugees for urgent or emergency resettlement (including a small number to Australia), amounting to 10 per cent of all resettlement referrals that year.<sup>72</sup>

### **Humanitarian evacuations**

Finally, refugee resettlement, whether group-based or individual, should be distinguished from humanitarian evacuation programs, whereby refugees and others at risk in humanitarian crises are transferred to either a different location within their country of origin or to another country. In 1999, for example, UNHCR and the International Organization for Migration (IOM) transferred more than 90,000 Kosovar refugees from neighbouring Macedonia to third States.<sup>73</sup> There are no clear criteria for determining when an evacuation is necessary and appropriate – while the risk faced by the affected population is the key consideration, decision-making regarding potential evacuations must also take into account the possible security, ethical, political and logistical implications.<sup>74</sup>

Unlike refugee resettlement, which provides a pathway to permanent protection in the resettlement State, humanitarian evacuation is usually temporary, with relocation States providing only time-limited stay. As such, it is viewed by UNHCR as a measure ‘of last resort’.<sup>75</sup> The humanitarian evacuation of Kosovar refugees, discussed in Section 4 below, demonstrates how the time-limited nature of humanitarian evacuations can become complicated when conditions within the country of origin do not improve and remain an obstacle to repatriation. Nevertheless, independent evaluation of the Kosovar evacuation concluded that it ‘contributed positively’ to the protection of refugees who remained within neighbouring States, by encouraging countries of first asylum to keep their borders open.<sup>76</sup>

### **3.3 Australian domestic law**

In Australia, entry for all non-citizens is governed by the *Migration Act 1958* (Cth) (*Migration Act*) and *Migration Regulations 1994* (Cth) (*Migration Regulations*), which stipulate various categories of entrants (including visitors, students, workers, etc) and the visa requirements for each. Australia’s Refugee and Humanitarian Program provides the framework for refugees and other forced migrants seeking protection. Within this framework, there are two main avenues for refugee protection. The first is ‘onshore protection’: individuals who arrive in Australia on a valid visa may apply for a Protection Visa (Class XA) based on their satisfaction of the refugee or complementary protection criteria set out in the *Migration Act*.<sup>77</sup>

The second avenue for protection in Australia is ‘offshore protection’, which provides the pathway for refugee resettlement to Australia from elsewhere. Offshore *protection* should be distinguished from offshore *processing*, which involves the transfer of people seeking asylum in Australia to other countries for determination of their refugee claims.<sup>78</sup> Australia’s offshore protection program comprises two main sub-categories. The first is the ‘Refugee’ category, which provides resettlement for refugees.<sup>79</sup> This includes several further sub-categories, such as for women at risk<sup>80</sup> and individual emergency resettlement cases.<sup>81</sup> The second is the ‘Special Humanitarian’ category, which provides entry for individuals (who may or may not be refugees) who are ‘subject to substantial discrimination in [their] home country amounting to a gross violation of [their] human rights’ and proposed for the visa by someone (usually a family member) already in Australia.<sup>82</sup>

While the ‘Refugee’ category was generally meant to be reserved for refugees referred to Australia by UNHCR within its global resettlement program described above, in practice, this has not been the case. For instance, between 2015 and 2016 (during the period of the Syria–Iraq special intake), around a third of entrants in this category were not referred by UNHCR.<sup>83</sup> Rather, they were selected by representatives of the Australian government in the region.

By contrast, entry under the Special Humanitarian category does not involve UNHCR at all. Rather, people seeking entry under this scheme must be proposed by someone already in Australia – usually a family member. People seeking admission under the Special Humanitarian category are processed by Australian government staff in their region. In effect, therefore, the majority of resettlement to Australia takes place outside UNHCR’s

formal resettlement program. This has led to criticism of Australia's resettlement program by civil society groups and others who argue that it undermines the principle that Australia should resettle the most vulnerable refugees, who are best identified by UNHCR.<sup>84</sup>

Eligibility for both the Refugee and Special Humanitarian categories of Australia's offshore protection program are set out in the *Migration Act* and *Migration Regulations*. However, this domestic legal framework is silent on the number of people who may be resettled to Australia. Decisions regarding annual intakes or 'quotas', and how these ought to be determined and composed, are at the discretion of the relevant Minister. The Minister is empowered by section 39A of the *Migration Act* to determine the minimum number (quota) of visas to be granted as part of Australia's overall humanitarian program in a given financial year.<sup>85</sup> The Department has generally consulted with the public and relevant stakeholders prior to determining this number; however, there are no legally prescribed procedures or criteria for the Minister's determination.

### **3.3.1 Australia's Syria–Iraq special intake**

The 12,000 places offered in the Syria–Iraq special intake were additional to the annual quota set for Australia's humanitarian program, which was 13,750 in 2015, the year that the special intake was announced.<sup>86</sup> The decision to create a special intake was the result of mounting political pressure on the government to do more in response to the Syrian crisis. The places were announced at a press conference by the Prime Minister<sup>87</sup> and in a media release by the Foreign Minister.<sup>88</sup>

When the Australian government announced the Syria–Iraq special intake, it indicated that the 12,000 places would go to individuals from both of Australia's offshore protection categories – that is, to refugees referred for resettlement by UNHCR as well as to individuals with other protection needs who already had family in Australia.<sup>89</sup> The media release declared that Australian government officials would 'work with the UNHCR to resettle the refugees as soon as possible' and stated:

Our focus will be on those *most in need* – the women, children and families of persecuted minorities who have sought refuge from the conflict in Jordan, Lebanon and Turkey.<sup>90</sup>

The announcement also reflected, to an extent, the two core principles for prioritising resettlement advocated by UNHCR – that is, protection of those most in need, and principles of international solidarity and responsibility-sharing. Although responsibility-sharing was not explicitly cited as a basis for the Syria–Iraq special intake, it is significant that the intake was intended to focus on refugees residing in Jordan, Lebanon and Turkey – the three countries most affected by the influx of Syrian refugees.<sup>91</sup>

However, the implementation of Australia's Syria–Iraq special intake did not necessarily reflect the principles articulated in its announcement. Only 4,558 (approximately 38 per cent) of the 12,000 Syrians and Iraqis resettled under the special intake were resettled under the Refugee category of Australia's offshore program.<sup>92</sup> Most (but not all) of these

people were referred by UNHCR.<sup>93</sup> The remainder (approximately 62 per cent) were selected for resettlement by Australian government officials under the Special Humanitarian category of Australia's offshore resettlement program.<sup>94</sup> While this is an important means of achieving family reunification, it does not give due regard to UNHCR's important role in managing resettlement needs and programs worldwide. Australia was also accused of favouring refugees with particular religions (namely, Christians) within the Syria–Iraq special intake.<sup>95</sup> These factors led community groups to express their concern that Australia's resettlement approach does not provide resettlement for the most vulnerable refugees.<sup>96</sup>

## **4 Case studies on the use of special humanitarian intakes elsewhere**

As noted at the outset, Australia is not the only country to have implemented special measures for the admission of particular groups of refugees fleeing humanitarian crises. Many other States have also offered dedicated resettlement programs for Syrian and Iraqi refugees and/or participated in cooperative efforts to address the needs of Indochinese and Kosovar refugees. Some of these programs and efforts are described in more detail here, in order to evaluate the success of different approaches and to identify lessons learned elsewhere that could be drawn upon for future special humanitarian intakes in Australia.

### **4.1 The Comprehensive Plan of Action (CPA) for Indochinese refugees**

During the late 1970s and into the 1980s, more than one million Vietnamese fled their country, crossing land borders into Thailand or attempting hazardous boat journeys to neighbouring States. Their displacement, alongside that of many thousands of refugees from Laos, led the international community to negotiate a responsibility-sharing initiative in 1989 known as the CPA, in which frontline States agreed to provide asylum to those arriving in their territory on the condition that they would then be resettled to third countries.<sup>97</sup> The CPA remains a prominent example of the way that resettlement can be used strategically to enhance the protection space within refugees' region of origin and demonstrate international responsibility-sharing on the part of resettlement States.

The CPA was negotiated ten years after a UN-led conference in Geneva at which resettlement States had originally pledged to resettle greater numbers of Indochinese refugees in return for States in the South-East Asian region upholding the principle of first asylum by allowing refugees to enter on at least a temporary basis.<sup>98</sup> By the late 1980s, however, resettlement commitments had waned and a range of internal and external factors had led to a renewed increase in irregular departures from Vietnam. The CPA aimed to resolve such displacement by repatriation or resettlement. Unlike those earlier resettlement commitments, it instituted case-by-case determinations of the protection needs of people who arrived in countries of first asylum after various cut-off dates from 14 March 1989.<sup>99</sup>



Experts consider that the CPA stands as a ‘qualified success’<sup>100</sup> – an example of multilateral cooperation that preserved the principle of first asylum and renewed third-country resettlement commitments, while also contributing to a long-term goal of directing asylum seekers away from irregular journeys and towards more orderly and regular means of travel. Between 1989 and the mid-1990s, more than 73,000 Vietnamese and 24,000 Laotians were returned to their respective countries of origin, while at least 80,000 Vietnamese and Laotians were granted protection and resettlement.<sup>101</sup> The CPA attracted some criticism from scholars and practitioners, however, who warned that because of shortcomings in the implementation of refugee status determination procedures in the respective countries of first asylum, there was a risk that Vietnamese who needed protection would not be properly identified and would be returned to Vietnam.<sup>102</sup>

## **4.2 The European Union (EU) special intake from Iraq**

The EU’s special intake of refugees from Iraq in the late 2000s is as an example of resettlement that responded to needs identified by UNHCR. It was undertaken as a strategic means of enhancing the protection space in countries of first asylum and a demonstration of international responsibility-sharing. UNHCR had declared in March 2007 that people fleeing from parts of Central and Southern Iraq were to be considered as refugees on a prima facie basis – that is, without individual status determination.<sup>103</sup> The agency was responding to a deteriorating security environment in Iraq and a shrinking protection space in countries of first asylum, and it secured ad hoc commitments from a number of EU member States for the resettlement of specific cohorts of refugees from Iraq. In November 2008, however, as the European Commission sought to develop an EU-wide resettlement plan, a delegation from ten member States conducted a study mission to refugee camps in Syria and Jordan, organised by the European Commission in cooperation with UNHCR.<sup>104</sup> The subsequent report echoed UNHCR’s assessment of protection needs and noted the strategic value of resettlement as a means of improving the ‘fragile’ protection space in the region.<sup>105</sup>

The Council of the European Union soon adopted conclusions concerning the resettlement needs of refugees from Iraq, calling on member States to resettle 10,000 Iraqi refugees in close cooperation with ‘UNHCR and the other competent organisations present in the region’.<sup>106</sup> States could access financial support for their resettlement contribution through what was then known as the European Refugee Fund (now the Asylum Migration and Integration Fund), although reports later suggested that most States funded their resettlement contributions from existing national resources.<sup>107</sup>

This joint EU call to resettle Iraqi refugees was unprecedented.<sup>108</sup> In the following 12 months, more than 5000 refugees from Iraq were resettled in the EU, many in countries that did not have a permanent resettlement program; Germany, for example, provided an ad hoc quota for the admission of 2,500 refugees.<sup>109</sup> Of the 8,400 refugees from Iraq resettled in the EU between 2007 and 2009 (some pledges having been made prior to the Council conclusion), around 20 per cent were selected via dossier submission.<sup>110</sup> The resettled refugees also included more than 1,200 Palestinians who had been living in Iraq before

2003, 81 of whom were accommodated at the Emergency Transit Facility in Timisoara, Romania, before being resettled in the United Kingdom.<sup>111</sup>

According to a study by the International Catholic Migration Commission (ICMC) and the International Rescue Committee (IRC), the joint EU call lacked a clear timeframe, reporting mechanisms or coordination.<sup>112</sup> And while the majority of the twelve countries that participated did so in accordance with ‘UNHCR resettlement criteria and prioritisation of caseloads’, some governments reportedly added additional criteria based on concerns about the ability of refugees to integrate into a new society. This was despite the fact that UNHCR urges States not to use this or ‘other discriminatory selection criteria’ such as health, age, family size, ethnicity or religion when resettling refugees.<sup>113</sup> The ICMC and IRC recommended that UNHCR criteria and prioritisation be paramount in future resettlement efforts, to ensure that ‘protection needs and vulnerability should be the first criteria for selection, instead of integration potential’.<sup>114</sup> A study of resettlement outcomes by the European Parliament subsequently reiterated UNHCR’s views on this matter, emphasising that resettlement should focus on the integration capacity of the host community rather than on applicants for resettlement. The European Parliament reported that ‘there is no evidence suggesting that those with the most work experience and education are also most likely to integrate’, whereas ‘there is much evidence to show that refugees who may have been the most vulnerable and disadvantaged can integrate given the right support’.<sup>115</sup>

### **4.3 Humanitarian Evacuation Program for Kosovar refugees**

Following NATO-led airstrikes against the then Federal Republic of Yugoslavia in March 1999, more than 850,000 Kosovar Albanians fled into neighbouring States, including the former Yugoslav Republic of Macedonia (FYR Macedonia). With support from the United States, the FYR Macedonia government (a NATO ally in the Kosovo conflict) called on other States to share responsibility for hosting the refugees or risk it closing its borders.<sup>116</sup> In order to maintain the protection space within that country, UNHCR worked with IOM to evacuate well over 90,000 refugees from FYR Macedonia to third countries in a matter of weeks.<sup>117</sup>

While UNHCR initially maintained a preference for evacuation into the region of origin rather than farther afield, the plight of the Kosovar refugees received ‘intense international interest’, and the evacuation became ‘a high-visibility event’ for many States.<sup>118</sup> As UNHCR later reported, these factors meant that the agency was ‘faced with the unusual situation of some donors competing to take in refugees’.<sup>119</sup> According to an independent evaluation of the program, the evacuation of refugees was at times beset by a lack of coordination between States and UNHCR, with governments in some cases applying their own selection criteria, impeding UNHCR’s ability to coordinate evacuation or provide consistent information to refugees and other stakeholders, and creating a situation in which UNHCR had to re-emphasise that priority be given to the most vulnerable cases.<sup>120</sup> The independent evaluation cited reports that the expedited transfer to Western States had led to instances of fraud or ‘forum-shopping’ among eligible refugees.<sup>121</sup> The differentiated treatment afforded to this particular group of Kosovar refugees reportedly created resentment within

the broader cohort and among people displaced by other conflicts, and was ‘difficult to defend’ in light of the principle of non-discrimination.<sup>122</sup>

Most donor States accepted the Kosovar refugees on a temporary basis (including Australia). According to the independent evaluation, some refugees were transferred to an ‘unclear administrative status’, with those refugees who did want to return home creating a ‘bureaucratic headache’ for authorities in those donor States and further underscoring the problems inherent in a differentiated treatment of one group of refugees over another.<sup>123</sup> Notably, the Australian government steadfastly refused to allow Kosovars to stay beyond their temporary three-month admission, meaning that ‘many went home without a choice’ and many left ‘without a home to go back to’.<sup>124</sup> Those who resisted repatriation were declared unlawful non-citizens by the Minister for Immigration and were subject to immigration detention.<sup>125</sup>

Australia’s program for Kosovar refugees was widely criticised for lacking a legislative basis or grounding in established procedures (which made it costly)<sup>126</sup> and for the lack of safeguards provided to refugees, who were prevented from applying for permanent protection in Australia or from challenging the government’s handling of their cases in Australian courts.<sup>127</sup> The Australian government insisted on repatriating the Kosovars despite UNHCR’s recommendation that they not be returned into a situation of internal displacement.<sup>128</sup> A program offered by Australia for East Timorese refugees around the same time attracted similar criticism, with refugees evacuated from East Timor sent back with little support and before conditions had sufficiently improved.<sup>129</sup>

In comparison, of the 7,000 Kosovars transferred to Canada and the 20,000 transferred to the United States, many chose not to return home and were allowed to remain permanently. The independent evaluation of the evacuation expressed concern that these measures were used by Canada and the United States to replace existing resettlement quotas, undermining their capacity to provide resettlement to other groups in need<sup>130</sup> – an observation that underscores the importance of future special intakes being *additional to* pre-planned annual resettlement quotas.

In conclusion, the humanitarian evacuation represented a large-scale transfer of refugees to third countries that was premised on improving the protection space within countries of first asylum. Despite the shortcomings noted above, experts concluded that it enabled an evacuation of an unprecedented speed and scale that enhanced the protection space within the country of first asylum.<sup>131</sup>

#### **4.4 Sweden: emergency resettlement and unallocated quotas**

Sweden is a prominent contributor to emergency resettlement, and a leading example of a State that offers resettlement places in accordance with UNHCR resettlement priorities.<sup>132</sup> Operating one of the oldest and largest per capita resettlement programs in Europe,<sup>133</sup> the main objective of Sweden’s program is to resettle refugees and others at risk.<sup>134</sup> The Swedish *Aliens Act 2005* reflects that the country is a party to the Refugee Convention and

its Protocol, and provides for refugee protection in accordance with these instruments as well as to people 'otherwise in need of protection' under international human rights law.<sup>135</sup>

Resettlement in Sweden is administered by the Swedish Migration Agency. To be eligible people must have first been identified as refugees by UNHCR. In recent years the intake has consisted of a roughly even proportion of both mission-based selection and dossier submission.<sup>136</sup> There is no mandatory medical check for refugees before they arrive in Sweden.<sup>137</sup> In 2018, resettlement places were set at 5,000, an increase from 3,400 the previous year and a fulfilment of Sweden's pledge at the Leaders' Summit for Refugees that was held in New York in September 2016.<sup>138</sup>

Sweden is one of the only European countries to offer a set quota for emergency cases, providing 350 places a year since at least 2011.<sup>139</sup> In 2018, within the increased resettlement total, Sweden agreed to provide 900 places for emergency and urgent submissions made by UNHCR Headquarters or UNHCR Regional Operations in Nairobi, Pretoria and Amman.<sup>140</sup> The Swedish Migration Agency provides a decision on emergency cases within one week, and on urgent cases within two weeks.<sup>141</sup>

Sweden sets geographical priorities for most resettlement places, but since 2011 has also included within its annual program an unallocated quota of 250 'pool' places for refugees from any part of the world.<sup>142</sup> This, too, aligns with UNHCR's interest in encouraging States to provide a proportion of flexible, unallocated places within their resettlement programs. By offering a proportion of its annual intake as an unallocated quota, Sweden can flexibly respond to specific resettlement needs that are identified by UNHCR over the course of that year.

#### **4.5 Canada: emergency resettlement and special intakes**

Canada has a long history of refugee resettlement, and formally established its modern-day program in 1978. Today, the program provides a number of pathways through which refugees can access resettlement, including a small quota for emergency resettlement as well as a private sponsorship scheme, which greatly expanded Canada's capacity to admit Vietnamese and, most recently, Syrian refugees (discussed below).

Canada is a party to the Refugee Convention and its Protocol, and provides protection to others at risk in accordance with international human rights law.<sup>143</sup> The Canadian resettlement program emphasises protection needs, family reunion, rapid resettlement of urgent and vulnerable cases, and group processing where efficient and 'where common group resettlement needs are present'.<sup>144</sup> Resettlement is administered by the federal government agency Immigration, Refugees and Citizenship Canada. Canada's annual resettlement quota is geographically allocated across four regions of the world, alongside a small unallocated quota. Selection is primarily mission-based, but dossier submission is accepted on a case-by-case basis.

Canada offers three resettlement streams: ‘Government-Assisted Refugees’ (GARs), ‘Privately Sponsored Refugees’ (PSRs) and ‘Blended Visa Office-Referred Refugees’ (BVORs). The first stream encompasses UNHCR-referred cases to whom the Canadian government provides one year of income support. Within the GAR stream, Canada provides for up to 100 ‘urgent’ and ‘vulnerable’ cases (‘emergency’ and ‘urgent’ cases in UNHCR terminology, respectively) each year under the Urgent Protection Program (UPP). Canadian immigration authorities provide a decision on each case within 24 hours, and aim to process the application within 7 days. In this expedited process, submissions are ‘sent directly from UNHCR sub-offices to Canadian migration offices’, copying in Immigration, Refugees and Citizenship Canada.<sup>145</sup> In some cases, it is possible for authorities to issue a ‘Temporary Resident Permit’ document that allows refugees to travel to Canada and complete medical and background checks after arrival.<sup>146</sup> Unlike standard refugee resettlement cases, a requirement to demonstrate capacity to become self-sufficient in Canada within 3–5 years of resettlement ‘may not be applied or may be applied flexibly’ to urgent or vulnerable cases.<sup>147</sup>

The second stream, PSR, builds on public support for refugee resettlement by enabling private individuals, groups and organisations to sponsor the resettlement of refugees or others in refugee-like situations (the latter termed ‘Humanitarian-Protected Persons Abroad Class (HPC)'). Sponsors are required to provide financial, social and emotional support to new arrivals for one year.<sup>148</sup> Established in the late 1970s, the private sponsorship program was quickly expanded in response to strong public interest in the resettlement of Indochinese refugees, and has received favourable support ever since. Indeed, the Canadian government struggled to keep pace with public demand during the Syrian special intake.

The third stream, the BVOR, was established in 2013 and represents a combination of the GAR and PSR models, allowing UNHCR-referred cases to be matched with a private sponsor and the costs of resettlement shared between that sponsor and the Canadian government.

These three streams were employed in Canada’s special intake of Syrian refugees. Following UNHCR’s initial call for the resettlement of Syrians in October 2013, the Canadian government pledged small numbers of GAR and PSR places;<sup>149</sup> a change of government in mid-October 2015 led to a larger and expedited commitment for the resettlement of 25,000 Syrian refugees as GARs. Ultimately, under ‘Operation Syrian Refugees’, those 25,000 refugees were admitted by 29 February 2016, and a further 15,000 were admitted by the end of January 2017, with the majority arriving under the GAR stream, around one-third as PSRs, and a smaller proportion under the BVOR stream.<sup>150</sup>

To expedite the processing of Syrian refugees, Canada established ‘stand-alone Operation Centres’ in Amman, Beirut and Ankara in which Canadian authorities worked alongside UNHCR and non-governmental partners. For each refugee, interviews and other checks were conducted in a single day at one of these centres; individuals were screened for communicable diseases; and on-site Canada Border Services Agency officials conducted ‘strategic and random’ checks for fraud, and checked biometrics and other data against

national security databases.<sup>151</sup> According to an evaluation by Immigration, Refugees and Citizenship Canada, this streamlined process ‘was one of the key adaptations that allowed the government to process more than 25,000 Syrian refugees in the compressed time period’.<sup>152</sup>

Under ‘Operation Syrian Refugees’, Immigration, Refugees and Citizenship Canada sought a whole-of-government approach to Syrian resettlement, to emphasise ‘timely, consistent and transparent communication’ for all stakeholders on the status of incoming refugees.<sup>153</sup> In December 2016, however, an inquiry by the Canadian parliament found that following a ‘surge’ in the government’s efforts to process refugees over late 2015 and early 2016, a subsequent reduction of resources and a ‘slowdown’ in processing had led to long and unexpected delays for sponsors. This was particularly acute for those involved in the PSR stream, leading to discouragement and complications for both sponsors and eligible Syrian refugees.<sup>154</sup>

## **5 Analysis and recommendations**

Special humanitarian intakes in situations of large-scale displacement can make a valuable contribution to refugee protection and can address some of the key challenges facing the international protection regime. By relieving pressure on States hosting large numbers of refugees, and by providing protection and durable solutions to some of the most vulnerable, special measures for the admission and resettlement of refugees can increase the overall protection space and have benefits that extend beyond those experienced by the individuals who are resettled. In order to best achieve these outcomes, however, it is essential that special humanitarian intakes be conducted in a principled and transparent manner and in close cooperation with other stakeholders – in particular, with UNHCR.

### **5.1 Key recommendations for future special humanitarian intakes**

#### **5.1.1 Principles for prioritising specific groups of refugees**

The special treatment of one group of refugees when so many others are in need of protection and durable solutions could be viewed as unfair, or even discriminatory. Decisions regarding special humanitarian intakes should be based on clear criteria for the prioritisation of particular refugee populations that are applied consistently across groups of refugees similarly situated. This reflects the principle of non-discrimination and ensures that decisions regarding such intakes are not driven purely by politics or the perceived desirability of a particular group of refugees.

Decisions relating to future special humanitarian intakes should be guided by the two key principles for prioritising refugees for resettlement identified by UNHCR and discussed above in Section 3.2. These principles should be applied in a two-step process, as follows:

1. The decision to implement a special humanitarian intake should be based on principles of *international solidarity and responsibility-sharing*, such that a special

humanitarian intake should be offered in situations where the scale of displacement from a large-scale emergency exceeds the capacity of the State/s of first asylum to cope and thereby risks negatively affecting the protection space in that State.

2. Once a decision has been taken to implement a special humanitarian intake, selection of individuals for resettlement from within the target population should focus on identifying refugees *with the greatest protection needs*.

### **5.1.2 Durability of solutions**

The success of the Syria–Iraq Special Intake sits in stark contrast to Australia’s temporary relocation of Kosovars and East Timorese in the late 1990s, which was criticised for a lack of legal safeguards and the return of refugees against their will and without sufficient improvement in conditions in the country of origin. Indeed, UNHCR has cautioned that humanitarian evacuation programs such as these ‘do not constitute a permanent solution under any scenario’.<sup>155</sup> Future special humanitarian intakes should draw on the lessons from these examples to ensure that they provide permanent, durable solutions for the refugees concerned.

### **5.1.3 Cooperation with UNHCR**

UNHCR manages refugee resettlement needs globally. While it faces inevitable challenges in trying to balance the needs of refugees with the interests of States,<sup>156</sup> the agency is nevertheless usually best placed to identify where the need for resettlement is greatest. This is not only a matter of measuring numbers and vulnerability, but also of assessing the utility of resettlement within a more comprehensive approach to finding solutions for refugee situations, which includes considering other durable solutions such as return and/or local integration. When necessary, UNHCR is able to call on States to provide resettlement commitments for specific situations via appeals and special conferences, as it did recently for Syrian refugees and refugees travelling along the Central Mediterranean route.

In most of the cases in which Australia has implemented some form of special measure for the admission of a particular population – the Syria–Iraq special intake, the temporary protection of Kosovars and resettlement under the CPA – these measures have been implemented in response to requests or initiatives led by UNHCR. This is appropriate, and reflects the obligation of states parties to the Refugee Convention to cooperate with UNHCR in the exercise of its functions. It also reflects developments elsewhere. For instance, the European Commission’s proposal for an European Union Resettlement Framework, issued in 2016 as a means of responding to the movement of asylum seekers into the region and broadening the EU’s contribution to global resettlement efforts,<sup>157</sup> urges increased cooperation and coordination between member States, UNHCR and non-governmental organisations.<sup>158</sup> In some situations, having government officials from the resettlement State present in countries or regions facing humanitarian crises may help to expedite

resettlement processing. However, resettlement State processing must be undertaken in coordination with, and not undermine, UNHCR processing.

#### **5.1.4 Planning for special humanitarian intakes**

A lack of planning has sometimes compromised the effectiveness and increased the costs of special measures for the admission of refugees, as was the case with Australia's temporary admission of Kosovars and East Timorese. As noted above, UNHCR has urged resettlement States to provide multi-year resettlement commitments that include flexibility and contingency planning – for example, by establishing unallocated resettlement quotas for use in emergencies.<sup>159</sup> To date, such quotas have generally been for individual refugees requiring urgent or emergency resettlement. However, they could also provide a template for the resettlement of specific groups of refugees in situations of large-scale displacement or mass influx. States should consider establishing a specific and unallocated 'special humanitarian intake quota' to be used for future special humanitarian intakes. This would provide both predictability and flexibility to respond to situations such as the Syrian crisis, without the need for ad hoc measures. It would also facilitate planning and resource allocation within relevant governmental departments, settlement services and UNHCR.

In Australia, a 'special humanitarian intake quota' could be implemented via the existing mechanism for setting Australia's Humanitarian and Refugee Program.<sup>160</sup> However, the special humanitarian intake quota should be *additional to* the general intake. The number of people resettled under the Syria–Iraq Special Intake (12,000 people over approximately two years) provides a useful starting point for determining the minimum number of people that could be resettled under a special humanitarian intake quota, however, the government should also consider its capacity to increase this number. A special humanitarian intake quota should also include clear criteria for its use, reflecting the key principles for prioritising the resettlement of particular refugees, discussed above.

#### **5.1.5 Complementary pathways**

Special humanitarian intakes are not the only means of providing protection and durable solutions to large groups of refugees in need. Indeed, as noted above, UNHCR and others have urged States to expand on traditional resettlement programs to provide other avenues to safety and durable solutions for refugees. Canada's use of private sponsorship, for example, has built on public support to increase opportunities for refugee resettlement in the country, including for specific groups of refugees. In Australia, the referral of refugees for resettlement by families already in the country serves the dual purpose of providing a durable solution to refugees and others at risk of human rights abuses, and promoting family reunification for displaced people. Advocates and commentators have suggested that preferential treatment for refugees within regular migration pathways, such as student visas and skilled migration programs, could also increase the scope for refugees to find a durable solution.



Complementary pathways such as these have clear benefits, where they increase the overall number of refugees who are able to access protection and durable solutions outside countries of first asylum. However, the availability of these pathways to particular individuals or groups of refugees often depends on factors – including family connections, professional skills and popular appeal – that may have no bearing at all on the principles of responsibility-sharing and protection needs. Moreover, the blurring of lines between special humanitarian intakes and other key means of protection – including onshore protection for refugees who arrive seeking protection, humanitarian evacuations and temporary protection mechanisms – can undermine the principle of asylum more generally. Thus, complementary admissions pathways should be implemented separately to, and should not impact on decisions regarding, special humanitarian intakes.

### **5.1.6 Use of streamlined and/or expedited procedures**

Streamlined processing can expedite resettlement, thereby rapidly increasing the protection space in countries of first asylum. As demonstrated in Canada's large-scale special intake of Syrian refugees, this was a 'key adaptation' that allowed Canadian authorities to process more than 25,000 government-assisted refugees in just over four months.<sup>161</sup> The existing 24/7 capacity, expertise and sophistication of Canadian border security operations helped to underpin a 'multilayered' screening process and smooth transfer through ports of departure and entry.<sup>162</sup> An audit by the Canada Border Services Agency noted that the workload and timeframe had required increased staffing levels to ensure that security checks were achieved in accordance with best practice and alongside normal workloads.<sup>163</sup> Similarly, in the case of Sweden's emergency quota, the rapid turn-around between referral and transfer is made easier by the fact that medical screening is not mandatory before arrival in Sweden.

While speed is important in processing, so, too, is consistency, as marked changes in processing procedures can cause delays and discouragement for individual applicants and their families. In March 2016, six months after the Australian Prime Minister announced that the Syria–Iraq Special Intake would 'move quickly', only 26 refugees had actually arrived in the country and Iraqi communities in Australia expressed frustration and fear at the uncertainty of the process.<sup>164</sup> As noted in Section 4 above, delays were also a concern for private sponsors involved in Canada's Syrian special intake, underscoring the importance of clear and timely communication to all stakeholders.

### **5.1.7 Transparency**

According to UNHCR, the '*universal imperative* requires that the identification of resettlement needs must be transparent, consistent and coordinated with the protection and durable solutions strategies to ensure equitable resettlement delivery'.<sup>165</sup> At the 2003 High Commissioner's Forum, States undertook to 'maintain transparency in order to achieve the internationally agreed objectives of the resettlement process'.<sup>166</sup> Maintaining a principled, proactive and transparent approach to resettlement is not only necessary to ensure its immediate benefits, but is also important in ensuring ongoing commitments by States.<sup>167</sup>

When States decide to implement special humanitarian intakes, the basis for the decision and the way in which individual refugees are identified for resettlement should be clear. While international solidarity and responsibility-sharing are most relevant to the decision to offer a special humanitarian intake in the first place, the provision of protection and durable solutions to those most in need should guide the identification of individuals resettled within that scheme. Again, UNHCR is best placed to identify how a special humanitarian intake can most readily achieve this goal. While the reunification of refugee families, for instance, is extremely important, and should continue, this should be undertaken separately to special humanitarian intakes, which should aim to maximise the protection available to the most vulnerable refugees within the target population.

## **6 Conclusion**

The current conflict in Syria will not be the last time the international community is faced with large-scale displacement requiring an immediate and coordinated response. Indeed, the predicament of refugees in places such as Kenya, Bangladesh and the Central Mediterranean also requires stronger responses and support from the international community. When the need for special humanitarian intakes arises in the future, the recommendations in this Policy Brief could greatly enhance the contribution of such intakes to addressing some of the key challenges in the international protection regime, including responsibility-sharing, durable solutions and protection of the most vulnerable refugees.

In 2019, as part of the implementation of the Refugee Compact, the first Global Refugee Forum will take place. States, including Australia, will be required to report on their progress towards objectives such as easing pressure on refugee host communities and increasing and expanding access to third-country solutions for refugees.<sup>168</sup> The adoption of some or all of the recommendations above would provide tangible evidence of progress towards these objectives and would demonstrate commitment to using special humanitarian intakes for the benefit of the international refugee protection regime as a whole.

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<sup>1</sup> Minister for Foreign Affairs, 'The Syrian and Iraqi humanitarian crisis' (Media release, 9 September 2015) <[https://foreignminister.gov.au/releases/Pages/2015/jb\\_mr\\_150909a.aspx](https://foreignminister.gov.au/releases/Pages/2015/jb_mr_150909a.aspx)>.

<sup>2</sup> Department of Immigration and Border Protection, 'Fact Sheet: Australia's response to the Syrian and Iraqi humanitarian crisis' (2 March 2016) <[https://nsp.ssi.org.au/images/Resources/Other/Fact\\_sheet-update-DIBP-March-2016.pdf](https://nsp.ssi.org.au/images/Resources/Other/Fact_sheet-update-DIBP-March-2016.pdf)>.

<sup>3</sup> See, eg, UNHCR, 'Governments pledge to take in around 100,000 Syrian refugees' (Press release, 9 December 2014); UNHCR, 'UNHCR welcomes new support for refugees at Leaders' Summit' (Press release, 20 September 2016).

<sup>4</sup> Minister for Home Affairs, '12,000 Visas issued to Syrian and Iraqi refugees' (Media release, 22 March 2017) <<https://minister.homeaffairs.gov.au/peterdutton/Pages/12000-visa-issued-to-syrian-and-iraqi-refugees.aspx>>.

<sup>5</sup> Ibid.

<sup>6</sup> UNHCR, *Global Trends: Forced Displacement in 2017* (2018) 2 (*Global Trends 2017*).

<sup>7</sup> In 2017, UNHCR reported 68.5 million forcibly displaced persons worldwide, an increase of 2.9 million from the year before and 'yet again... a record high'. Ibid.

<sup>8</sup> Ibid 22.

<sup>9</sup> *New York Declaration for Refugees and Migrants*, UN GAOR, 71<sup>st</sup> sess, Agenda Items 13 and 117, UN Doc A/RES/71/1 (3 October 2016) (*New York Declaration*).

<sup>10</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees: Part II: Global compact on refugees*, UN GAOR, 73<sup>rd</sup> sess, Supp No 12, UN Doc A/73/12 (13 September 2018) (*Refugee Compact*).

<sup>11</sup> Ibid 1 [1].

<sup>12</sup> Ibid 18 [92].

<sup>13</sup> *Migration Legislation Amendment (Temporary Safe Haven Visas) Act 1999* (Cth). Australia has resettled large numbers of refugees from other countries as well, however this was not under specific admissions procedures or quota mechanisms.

<sup>14</sup> UNHCR, 'Geneva conference on Syrian refugees ends with new pledges of places, recognition of challenges ahead' (Press release, 30 March 2016) <<http://www.unhcr.org/en-au/news/press/2016/3/56fc0cf06/geneva-conference-syrian-refugees-ends-new-pledges-places-recognition-challenges.html>>.

<sup>15</sup> UNHCR, 'Central Mediterranean situation: UNHCR calls for an additional 40,000 resettlement places' (Press Release, 11 September 2017) <<http://www.unhcr.org/en-au/news/press/2017/9/59b6a5134/central-mediterranean-situation-unhcr-calls-additional-40000-resettlement.html>>.

<sup>16</sup> As at 31 October 2018, UNHCR reports that Kenya is hosting 255,980 Somali refugees. UNHCR, *Operational Portal: Refugee Situations, Horn of Africa Somalia Situation*, <<https://data2.unhcr.org/en/situations/horn>>.

<sup>17</sup> Estimates of the exact number of Rohingya in Bangladesh differ, but are mostly between 900,000 and just over a million. See, eg, Sorin Furcoi, 'One year on: Rohingya refugees in Bangladesh', *Al Jazeera* (online), 24 August 2018 <<https://www.aljazeera.com/indepth/inpictures/year-rohingya-refugees-bangladesh-180823074512290.html>>.

<sup>18</sup> *Refugee Compact*, above n 10, 1 [5].

<sup>19</sup> See Ibid 20 section IV.

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<sup>20</sup> Volker Türk, 'Prospects for Responsibility Sharing in the Refugee Context' (2016) 4(3) *Journal on Migration and Human Security* 45, 48.

<sup>21</sup> See UNHCR Executive Committee Conclusion No 67 (XLII), 'Resettlement as an Instrument of Protection' (1991).

<sup>22</sup> *Refugee Compact*, above n 10, 2 [7].

<sup>23</sup> See eg Ben Doherty and Shalailah Medhora, 'UN welcomes Australia taking 12,000 refugees but says world must do more', *The Guardian* (online), 9 September 2015 <<https://www.theguardian.com/australia-news/2015/sep/09/un-welcomes-australia-taking-12000-refugees-but-says-world-must-do-more>>.

<sup>24</sup> See Annual Tripartite Consultations on Resettlement 2018 NGO Statement (2018), Appendix B of Refugee Council of Australia (RCOA), *Report of 2018 Annual Tripartite Consultation on Resettlement* (2018).

<sup>25</sup> UNHCR, 'Resettlement Flash Appeal: Vulnerable Persons of Concern Evacuated from Libya' (8 December 2017) <<http://www.unhcr.org/5a2e550a4>>.

<sup>26</sup> The slow response contributed to Niger's reluctance to continue the program. See RCOA, *Report of 2018 Annual Tripartite Consultation on Resettlement*, above n 24, 2.

<sup>27</sup> *Convention relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 137 (entered into force 22 April 1954) (Refugee Convention) .

<sup>28</sup> *Protocol relating to the Status of Refugees*, adopted 31 January 1978, 606 UNTS 267 (entered into force 4 October 1967) (Protocol). The Protocol removed the temporal and geographical limitations of the Refugee Convention, thereby making the Refugee Convention universally applicable.

<sup>29</sup> Australia ratified the Refugee Convention in 1954, its signature bringing the Convention into force. It ratified the Protocol in 1973.

<sup>30</sup> A refugee is any person who, 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a 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'. Refugee Convention art 1A(2).

<sup>31</sup> Refugee Convention art 33. Under international human rights law, the scope of *non-refoulement* has been extended to also protect against removal persons fleeing other forms of serious harm, including torture or cruel, inhuman or degrading treatment. See *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987) art 3; *International Covenant on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 6, 7.

<sup>32</sup> See generally, Kate Jastram, 'Regional refugee protection in comparative perspective: Lessons learned from the Asia-Pacific, the Americas, Africa, and Europe' (Policy Brief 2, Kaldor Centre for International Refugee Law, 2015).

<sup>33</sup> Regional frameworks are not totally lacking. There are, eg, the Asia Pacific Refugee Rights Network's Vision for Regional Protection, the 'regional cooperation framework' and Bali Declaration of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, and the *New York Declaration*. However, it is not immediately clear whether these frameworks have provided any meaningful progress toward protection and cooperation in the region. See generally Madeline Gleeson, 'Regional Cooperation on Refugee Protection: The Unanswered Questions' (4 October 2017) Kaldor Centre for International Refugee Law <<http://www.kaldorcentre.unsw.edu.au/publication/regional-cooperation-refugee-protection-unanswered-questions>>.

<sup>34</sup> The Refugee Convention recognises that the international nature of the refugee problem means that solutions 'cannot... be achieved without international co-operation' (preambular paragraph 4) and its provisions oblige Member States to cooperate with UNHCR (art 35).

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<sup>35</sup> See *Refugee Compact*, above n 10, 1 [1].

<sup>36</sup> See generally Jane McAdam, *Complementary Protection in International Refugee Law* (Oxford University Press, 2007).

<sup>37</sup> See generally Emanuela-Chiara Gillard, 'Humanitarian Law, Human Rights and Refugee Law – Three Pillars' (23 April 2005) International Committee of the Red Cross <<https://www.icrc.org/eng/resources/documents/statement/6t7g86.htm>>.

<sup>38</sup> UNHCR, *UNHCR Resettlement Handbook* (revised 2011) 28 (*Resettlement Handbook*).

<sup>39</sup> *Global Trends 2017*, above n 6, 8.

<sup>40</sup> UNHCR, *UNHCR Projected Global Resettlement Needs 2019* (2018) 72 (*Projected Global Resettlement Needs 2019*). The key states of resettlement were the United States, Canada, United Kingdom, Australia and Sweden.

<sup>41</sup> UNHCR Executive Committee Conclusion No 67 (XLII), 'Resettlement as an Instrument of Protection' (1991).

<sup>42</sup> *Refugee Compact*, above n 10, 18 [90]. See also *New York Declaration*, above n 9, 3–4 [16].

<sup>43</sup> *Resettlement Handbook*, above n 38, 9, 37. Exceptions may be made for non-refugee stateless persons and non-refugee dependant family members of refugees.

<sup>44</sup> *Ibid* 36.

<sup>45</sup> In 2017, UNHCR made 75,200 submissions for resettlement while around 65,100 refugees departed for resettlement. *Projected Global Resettlement Needs 2019*, above n 40, 12.

<sup>46</sup> '[R]esettlement of an entire refugee population in a country may also be warranted based on international protection grounds if, for example, refugee status is not acknowledged in the country of asylum and refugees face the risk of deportation and *refoulement*'. *Resettlement Handbook*, above n 38, 38.

<sup>47</sup> See, eg, Bob Douglas et al, *Beyond the boats: building an asylum and refugee policy for the long term: Report following high-level roundtable* (Australia 21 in collaboration with the Centre for Policy Development and the Andrew & Renata Kaldor Centre for International Refugee Law at UNSW, 2014) recommendation 9.1.1.

<sup>48</sup> This gap has fluctuated in recent years, owing largely to dramatic changes in the United States' resettlement policy. See generally, Sarah Pierce, Jessica Bolter, and Andrew Selee, *U.S. Immigration Policy under Trump: Deep Changes and Lasting Impacts* (Migration Policy Institute, July 2018) 6.

<sup>49</sup> UNHCR estimated that 1.2 million refugees were in need of resettlement in 2017: *Global Trends 2017*, above n 6, 29.

<sup>50</sup> UNHCR predicts that, in 2019, around 1.4 million refugees worldwide will be in need of resettlement. Based on available places, however, UNHCR anticipates that it will be able to resettle only around 100,000 of these refugees. See *Projected Global Resettlement Needs 2019*, above n 40, 9, 12.

<sup>51</sup> *Resettlement Handbook*, above n 38, 40.

<sup>52</sup> *Refugee Compact*, above n 10, 18 [92].

<sup>53</sup> Indeed, this was the impetus for some of the high-level meetings and conferences on Syrian refugees held in 2016. See Elizabeth Ferris, 'In search of commitments: The 2016 refugee summits' (Policy Brief 3, Kaldor Centre for International Refugee Law, 2016) esp 7–8.

<sup>54</sup> See, eg, *Projected Global Resettlement Needs 2019*, above n 40.

<sup>55</sup> *Ibid* 11.

<sup>56</sup> *Projected Global Resettlement Needs 2019*, above n 40, 11.

<sup>57</sup> *Resettlement Handbook*, above n 38, 4.

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<sup>58</sup> *Projected Global Resettlement Needs 2019*, above n 40, 9.

<sup>59</sup> *Ibid* 39.

<sup>60</sup> *Ibid* 41.

<sup>61</sup> *Ibid* 4.

<sup>62</sup> *Ibid* 40.

<sup>63</sup> UNHCR's Executive Committee has noted that '[a]s states develop a better and more shared concept of the strategic use of resettlement, further work on the selection criteria to be applied in different situations would be useful'. Executive Committee of the High Commissioner's Programme, 'The Strategic Use of Resettlement: A Discussion Paper Prepared by the Working Group on Resettlement', EC/53/SC/CRP.10/Add.1 (3 June 2003) 9 [37]. A 2010 position paper by the agency sets out a number of considerations to be taken into account to ensure that implementation of the strategic use of resettlement is effective, but these considerations do not constitute criteria for when it ought to be used. See UNHCR, 'UNHCR Position Paper on the Strategic Use of Resettlement', Annual Tripartite Consultations on Resettlement (6–8 July 2010) <<http://www.refworld.org/pdfid/4c0d10ac2.pdf>>.

<sup>64</sup> Joanne van Selm, 'Refugee Resettlement' in Elena Fiddian-Qasmiyeh et al (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press, 2014) 513.

<sup>65</sup> *Projected Global Resettlement Needs 2019*, above n 40, 16.

<sup>66</sup> *Ibid* 13.

<sup>67</sup> Video conferencing can also be used by States in place of selection missions. See further: UNHCR, 'Operational Guidance Note on Conducting Resettlement Interviews through Video Conferencing' (February 2013).

<sup>68</sup> See generally, Salomé Phillmann and Nathalie Stiennon, *10000 Refugees from Iraq: a Report on Joint Resettlement in the European Union* (International Catholic Migration Commission and International Rescue Committee, May 2010) 18; UNHCR, 'Background paper from UNHCR: EU resettlement', European Commission consultation meeting on the EU resettlement scheme (12 December 2008) 4. As UNHCR explains, '[s]election on a dossier basis is a recurrent practice where resettlement consideration under emergency / urgent priority is required, where the number of resettlement cases in a country of asylum does not justify sending a selection mission, or where access to concerned refugee populations is a challenge due to security, administrative or logistical reasons.' UNHCR, 'Operational Guidance Note on Conducting Resettlement Interviews through Video Conferencing', above n 68, 2.

<sup>69</sup> *Projected Global Resettlement Needs 2019*, above n 40, 11.

<sup>70</sup> See below, section 4.

<sup>71</sup> In the mid-2000s UNHCR proposed the establishment of temporary transit centres to which UNHCR and the International Organization for Migration (IOM) could swiftly evacuate refugees from transit countries to a place of safety, before their eventual onward journey to a country of resettlement. Dedicated Emergency Transit Facilities (ETF) were ultimately established in Romania, the Philippines and Slovakia in 2008, 2009 and 2010 respectively. The facilities built on a history of ad hoc emergency evacuations and other situations in which UNHCR 'was required to provide urgent or emergency protection to refugees in need of resettlement at short notice'. The Romanian and Slovakian centres have been used as part of the evacuation of refugees from Iraq in 2009, and from Libya in 2017, among other instances, and a number of European States, the United Kingdom and the United States have since resettled refugees from these facilities. See further: UNHCR, 'Guidance Note on Emergency Transit Facilities', Resettlement Service, Division of International Protection (4 May 2011) 1.

<sup>72</sup> *Projected Global Resettlement Needs 2019*, above n 40, 75. The main countries of referral for emergency and urgent cases were the United States, Canada, Sweden and Norway. The acceptance rate for these submissions was only 65%. *Projected Global Resettlement Needs 2019*, above n 40, 16.

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<sup>73</sup> See further below, section 4.

<sup>74</sup> UNHCR, 'Internal Note: Humanitarian Evacuations in Violence and Armed Conflict', Internal Displacement Section, Division of International Protection (17 June 2016) 9, 16.

<sup>75</sup> Indeed, humanitarian evacuations are primarily governed not by international refugee law, but by international humanitarian law (IHL): Ibid 5, 1–15. See also Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons* (2010) 433–40 Part V.12.

<sup>76</sup> Astri Suhrke et al, *The Kosovo Refugee Crisis: An independent evaluation of UNHCR's emergency preparedness and response* (UNHCR Evaluation and Policy Analysis Unit, February 2000) 94–5.

<sup>77</sup> These criteria are set out in *Migration Act 1958* (Cth) s 36.

<sup>78</sup> See generally 'Offshore Processing: an overview' (Factsheet, Kaldor Centre for International Refugee Law, 2017) <[http://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet\\_Offshore\\_processing\\_summary.pdf](http://www.kaldorcentre.unsw.edu.au/sites/default/files/Factsheet_Offshore_processing_summary.pdf)>.

<sup>79</sup> Department of Home Affairs, 'Refugee and humanitarian program: about the program' (10 November 2018) <<https://immi.homeaffairs.gov.au/what-we-do/refugee-and-humanitarian-program/about-the-program/resettle-in-australia>>.

<sup>80</sup> Visa sub-class 204 (Woman at Risk).

<sup>81</sup> Visa subclass 203 (Emergency Rescue).

<sup>82</sup> See Department of Home Affairs, 'Refugee and humanitarian program: about the program', above n 79.

<sup>83</sup> RCOA, 'Less than one third of refugees in Australia's humanitarian program are resettled from UNHCR' (14 July 2017) <<https://www.refugeecouncil.org.au/getfacts/seekingsafety/refugee-humanitarian-program/less-one-third-refugees-australias-humanitarian-program-resettled-unhcr/>>.

<sup>84</sup> Ibid.

<sup>85</sup> *Migration Act 1958* (Cth) s 39A(3) provides: 'The Minister may, by legislative instrument, determine a minimum total number of Protection (Class XA) visas and Refugee and Humanitarian (Class XB) visas for a financial year specified in the determination.' See, eg, *Migration Act 1958: Determination of Protection (Class XA) and Refugee Humanitarian (Class XB) Visas 2014* (issued by Scott Morrison, then Minister for Immigration and Border Protection, 22 December 2014) which sets the quotas for 2015–2016 (13,750 visas), 2016–2017 (13,750 visas), 2017–2018 (16,250 visas) and 2018–2019 (18,750 visas).

<sup>86</sup> It is worth noting that the annual quota determined by the Minister under section 39A of the *Migration Act 1958* (Cth) is a *minimum* number only, and therefore does not preclude the award of humanitarian visas over and above the number specific in the quota, even though in practice this does not usually happen.

<sup>87</sup> See Latika Bourke, 'Abbott government agrees to resettle 12,000 Syrian refugees in Australia', *Sydney Morning Herald* (online), 9 September 2015 <<https://www.smh.com.au/politics/federal/abbott-government-agrees-to-resettle-12000-syrian-refugees-in-australia-20150909-gjibqz.html>>.

<sup>88</sup> Minister for Foreign Affairs, 'The Syrian and Iraqi humanitarian crisis', above n 1. Research for this policy brief did not identify a specific legal instrument or source for the government's decision, however. In particular, the Minister did not issue a further legislative instrument with respect to the special intake.

<sup>89</sup> Department of Immigration and Border Protection, 'Fact Sheet: Australia's response to the Syrian and Iraqi humanitarian crisis', above n 2.

<sup>90</sup> Minister for Foreign Affairs, 'The Syrian and Iraqi humanitarian crisis' above n 1 (emphasis added).

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<sup>91</sup> Together these three States host more than 90% of Syrian refugees in the region. See UNHCR, 'Syria Regional Refugee Response', *Operational Portal: Refugee Situations*, Syrian Regional Refugee Response <<https://data2.unhcr.org/en/situations/syria>>.

<sup>92</sup> Department of Home Affairs, 'Syria & Iraq Additional 12,000 Grants' (27 March 2017)

<<https://www.homeaffairs.gov.au/ReportsandPublications/Documents/statistics/syria-and-iraq-additional-12000-at-glance.pdf#search=syria%20intake>>. These figures were confirmed in statistics obtained from Department of Social Services. Email from Strategic Planning & Reporting Section, Settlement Policy Branch, Department of Social Services to Tamara Wood, 9 October 2018.

<sup>93</sup> Within the Syria–Iraq special intake, 89% of refugees resettled under the Refugee visa were referred by UNHCR. Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Supplementary budget estimates*, 23 October 2017 (Immigration and Border Protection).

<sup>94</sup> See above n 92.

<sup>95</sup> Critics have cited the fact that a high proportion of Christians were resettled from Syria and Iraq, disproportionate to the representation of Christians among displaced populations in both countries. See A Odysseus Patrick, 'Australia's Immoral Preference for Christian Refugees', *New York Times* (online), 3 May 2017 <<https://www.nytimes.com/2017/05/03/opinion/australias-immoral-preference-for-christian-refugees.html>>; RCOA, Submission No 190 to Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into the Status of the Human Right to Freedom of Religion or Belief* (undated) 3 [1.2.2].

<sup>96</sup> RCOA, 'Less than one third of refugees in Australia's humanitarian program are resettled from UNHCR', above n 83.

<sup>97</sup> The CPA was not applied to Cambodian refugees, who also constituted a significant displaced population within the region at that time. As Mathew and Harley have noted, the foundations of the CPA were established ten years earlier, at a July 1979 UN-led conference on Indochinese refugees. See further: Penelope Mathew and Tristan Harley, *Refugees, Regionalism and Responsibility* (Edward Elgar Publishing, 2016) 143.

<sup>98</sup> W Courtland Robinson, 'The Comprehensive Plan of Action for Indochinese Refugees, 1989–1997: Sharing the Burden and Passing the Buck' (2004) 17(3) *Journal of Refugee Studies* 319, 320.

<sup>99</sup> See further: Alexander Betts, 'Comprehensive Plans of Action: insights from CIREFCA and the Indochinese CPA' (New Issues in Refugee Research Working Paper No 34, UNHCR Evaluation and Policy Analysis Unit, 2006) 34.

<sup>100</sup> Robinson, above n 98, 321–6.

<sup>101</sup> Mathew and Harley, above n 97, 155. Some of the camps within the region were not cleared or closed until well into the 1990s, or, in the case of a camp in Hong Kong, until 2000 – see further: Arthur C Helton, *The Price of Indifference: Refugees and humanitarian action in the new century* (Oxford University Press, 2002) 253.

<sup>102</sup> Arthur C Helton, 'What is Refugee Protection? A Question Revisited', in Niklaus Steiner, Mark Gibney and Gil Loescher (eds), *Problems of Protection: The UNHCR, Refugees and Human Rights* (Routledge, 2003) 19, 23, 26.

<sup>103</sup> UNHCR, 'Resettlement of Iraqi refugees' (12 March 2007) 2.

<sup>104</sup> Council of the European Union, *Report on the EU Fact finding mission to Jordan and Syria on resettlement of refugees from Iraq* (20 November 2008) 1.

<sup>105</sup> *Ibid.*

<sup>106</sup> Council of the European Union, *Council Conclusions on the Reception of Iraqi Refugees* (27–28 November 2008) [5]; Council of the European Union, *Report on the EU Fact finding mission to Jordan and Syria on resettlement of refugees from Iraq*, above n 104.



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- <sup>107</sup> Phillmann and Stiennon, above n 68, 20.
- <sup>108</sup> Ibid 5.
- <sup>109</sup> Ibid 17.
- <sup>110</sup> Ibid 18; Aspasia Papadopoulou et al, *Comparative Study on the Best Practices for the Integration of Resettled Refugees in the EU Member States: Study*, European Parliament, Directorate-General for Internal Policies, Policy Department: Citizens Rights and Constitutional Affairs (2013) 14–15.
- <sup>111</sup> Phillmann and Stiennon, above n 68, 6, 12, 18; Papadopoulou et al, above n 110, 15.
- <sup>112</sup> Phillmann and Stiennon, above n 68, 16.
- <sup>113</sup> Ibid 40. See also: UNHCR, *Frequently Asked Questions About Resettlement* (February 2017) 9.
- <sup>114</sup> Phillmann and Stiennon, above n 68, 40.
- <sup>115</sup> Papadopoulou et al, above n 110, 41.
- <sup>116</sup> See further Suhrke et al, above n 76, 91-2.
- <sup>117</sup> UNHCR, *Report of the United Nations High Commissioner for Refugees, 1999*, UN GAOR, 55<sup>th</sup> sess, Supp No 12, UN doc A/55/12 (2000) 16 [88], 16–17 [90]. UNHCR, *Global Report 1999*, 345.
- <sup>118</sup> Executive Committee of the High Commissioner’s Programme, Standing Committee, 17<sup>th</sup> Meeting, UN doc EC/50/SC/CRP.12 (9 February 2000); Suhrke et al, above n 76, viii-x.
- <sup>119</sup> Executive Committee of the High Commissioner’s Programme, above n 121.
- <sup>120</sup> Suhrke et al, above n 76, 93-4.
- <sup>121</sup> Ibid 94.
- <sup>122</sup> Ibid.
- <sup>123</sup> Ibid 93-4.
- <sup>124</sup> Robert Carr, *Generosity and Refugees: the Kosovars in Exile* (Brill, 2018) 224.
- <sup>125</sup> Ibid.
- <sup>126</sup> Peter Mares, ‘Safe havens: two cautionary tales’ on *Inside Story* (9 September 2015) <<https://insidestory.org.au/safe-havens-two-cautionary- Tales/>>.
- <sup>127</sup> See Robert Carr, ‘The Safe Haven Visa Policy: A Compassionate Intervention with Cruel Intentions’ on *Australian Policy and History* (13 November 2017) <<http://aph.org.au/the-safe-haven-visa-policy-a-compassionate-intervention-with-cruel-intentions/>>.
- <sup>128</sup> See further Savitri Taylor, ‘Protection or Prevention? A close look at the Temporary Safe Haven visa class’ (2000) 23(3) *UNSW Law Journal* 75, 96.
- <sup>129</sup> See Mares, above n 126; Michael Head, ‘The Kosovar and Timorese “Safe Haven” Refugees’ (1999) 24(6) *Alternative Law Journal* 279, 280.
- <sup>130</sup> Suhrke et al, above n 76, 93.
- <sup>131</sup> Ibid 102.
- <sup>132</sup> Hanne Beirens and Susan Fratzke, *Taking Stock of Refugee Resettlement: policy objectives, practical trade-offs, and the evidence base* (Migration Policy Institute Europe, May 2017) 18 n 69; Joanne van Selm et al, *Study on The Feasibility of setting up resettlement schemes in EU Member States or at EU Level, against the background of the Common European Asylum system and the goal of a Common Asylum Procedure* (Migration Policy Institute, 2003) 40 (*Feasibility Study*).
- <sup>133</sup> European Migration Network, *Resettlement and Humanitarian Admission Programmes in Europe – what works?*, European Commission, Directorate-General for Migration and Home Affairs (9 November 2016) 13–14.

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- <sup>134</sup> van Selm et al, *Feasibility Study*, above n 132, 40.
- <sup>135</sup> Utlänningslag [Aliens Act] (Svensk Författningssamling (SFS) No 2005:716), ch 4 ss 1–2 (Aliens Act (Sweden)). See further Susan Fratzke, ‘Sweden’, in *Forced Migration in the OIC Member Countries: Policy Framework Adopted by Host Countries* (Standing Committee for Economic and Commercial Cooperation of the Organisation of Islamic Cooperation Coordination Office, 2016) 153–5.
- <sup>136</sup> European Migration Network, above n 133, 6, n 7.
- <sup>137</sup> Government of Sweden, ‘Sweden Country Chapter’ in *Resettlement Handbook*, above n 38 (Sweden Country Chapter) 3.
- <sup>138</sup> ‘Summary Overview Document: Leaders’ Summit on Refugees’ <[https://refugeesmigrants.un.org/sites/default/files/public\\_summary\\_document\\_refugee\\_summit\\_final\\_11-11-2016.pdf](https://refugeesmigrants.un.org/sites/default/files/public_summary_document_refugee_summit_final_11-11-2016.pdf)>.
- <sup>139</sup> European Migration Network, above n 133, 57–8.
- <sup>140</sup> *Sweden Country Chapter*, above n 137, 5.
- <sup>141</sup> Aliens Act (Sweden), ch 5, s 1.
- <sup>142</sup> European Migration Network, above n 133, 5.
- <sup>143</sup> *Immigration and Refugee Protection Act 2001* (Canada), ss 96–97.
- <sup>144</sup> Government of Canada, ‘Canada Country Chapter’ in *Resettlement Handbook*, above n 38, 3.
- <sup>145</sup> Ibid 8.
- <sup>146</sup> Ibid 9.
- <sup>147</sup> Ibid 4.
- <sup>148</sup> See further: RCOA, ‘Discussion Paper: Canada’s Private Sponsorship of Refugees: potential lessons for Australia’ (August 2017).
- <sup>149</sup> See further: Shauna Labman, ‘Private Sponsorship: Complementary or Conflicting Interests?’ (2017) 32(2) *Refugee* 67, 73.
- <sup>150</sup> Shauna Labman and Madison Pearlman, ‘Blending, Bargaining, and Burden-Sharing: Canada’s Resettlement Programs (2018) 19(2) *Journal of International Migration and Integration* 439, 442.
- <sup>151</sup> Immigration, Refugees and Citizenship Canada, Research and Evaluation Branch, ‘Operation Syrian Refugees: an overview of Canada’s resettlement initiative and early outcomes’ (Draft, March 2018) 4 <<https://www.uts.edu.au/sites/default/files/article/downloads/Umit%20Kiziltan.Canada.Operation%20Syrian%20Refugees.pdf>>
- <sup>152</sup> Ibid 7.
- <sup>153</sup> Immigration, Refugees and Citizenship Canada, ‘Syrian Refugees Horizontal Initiative’ (9 November 2017) <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/departmental-performance-reports/2017/syrian-refugees-initiative.html>>.
- <sup>154</sup> Parliament of Canada, Standing Senate Committee on Human Rights, *Finding Refuge in Canada: a Syrian resettlement story* (December 2016) 20–22.
- <sup>155</sup> UNHCR, ‘Internal Note: Humanitarian Evacuations in Violence and Armed Conflict’, above n 74, 5.
- <sup>156</sup> See Annelisa Lindsay, ‘Surge and selection: power in the refugee resettlement regime’ (2017) 54 *Forced Migration Review* 11.
- <sup>157</sup> Hanne Beirens and Aliyyah Ahad, *Scaling up Refugee Resettlement in Europe: The Role of Institutional Peer Support* (Migration Policy Institute Europe, April 2018) 3; van Selm et al, *Feasibility Study*, above n 132, 37–9.

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<sup>158</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, 'Policy Plan on Asylum: An Integrated Approach to Protection across the EU', COM(2008) 360 final (17 June 2008) 10 [5.2.2].

<sup>159</sup> UNHCR Executive Committee Conclusion No 67 (XLII), 'Resettlement as an Instrument of Protection' (1991) para (b); *Projected Global Resettlement Needs 2019*, above n 40, 11.

<sup>160</sup> That is, under section 39A of the *Migration Act 1958* (Cth). See section 3.3 above.

<sup>161</sup> Immigration, Refugees and Citizenship Canada, 'Operation Syrian Refugees: an overview of Canada's resettlement initiative and early outcomes', above n 151.

<sup>162</sup> Immigration, Refugees and Citizenship Canada, 'Syrian Refugees Horizontal Initiative', above n 153.

<sup>163</sup> Canada Border Services Agency, 'Audit of Operation Syrian Refugee – CBSA Security Screening' (April 2017) <<https://www.cbsa-asfc.gc.ca/agency-agence/reports-rapports/ae-ve/2017/osr-ors-eng.html>>.

<sup>164</sup> Mohammed Taha and Michael Edwards, 'Government putting Iraqi and Syrian Christians' lives at risk by delay, refugee group says', *The World Today*, ABC Radio, 22 March 2016 <<https://www.abc.net.au/news/2016-03-23/govt-putting-iraqi-and-syrian-christians-lives-at-risk-by-delay/7270560>>.

<sup>165</sup> *Resettlement Handbook*, above n 38, 37 (emphasis in original).

<sup>166</sup> 'Convention Plus: Framework of understandings on resettlement', Forum CG/RES/03 (3 November 2003) 2, General Principle and Joint Undertaking No 2.

<sup>167</sup> See generally 'Multilateral Framework of Understandings on Resettlement', FORUM/2004/6 (16 September 2004) 5, section F. For example, the large scale and 'migrant' like resettlement of Indochinese refugees in the 1970s and 1980s has been criticised for sullyng the reputation of resettlement and leading some States to close their resettlement programs. See van Selm, 'Refugee Resettlement', above n 64, 513; Shamsul Bari, 'Refugee Status Determination under the Comprehensive Plan of Action (CPA): A Personal Assessment' (1992) 4(4) *International Journal of Refugee Law* 487, 489–90.

<sup>168</sup> *Refugee Compact*, above n 10, 2 [7].

