

**Voluntary repatriation in the 21st Century: A Legal and Practical Review for the
Voluntary Return of Refugees under International Law**

By

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A thesis submitted for the degree of Doctor of Philosophy

School of Law

University of Essex

Date of submission for examination (September 2025)

COVID-19 Impact Statement

The beginning of my PhD journey coincided with the emergence of the COVID-19 pandemic, making me stranded in Turkey for a year, far from my accustomed study environment and grappling with the burdens of a chronic illness. After I came back to the UK, I got infected with COVID-19, and because of the vulnerability of my immune system, which put me under the highest risk of my life, the process of getting well and recovering took more time than usual.

Due to the COVID-19 pandemic, I had to face the negative temporal, physical, and psychological consequences of a weak first year across all periods of my PhD. The University of Essex, recognising that the Covid-19 pandemic negatively affected my thesis work, has extended the standard thesis completion period by three terms. Additionally, in line with the university's Covid-19 pandemic policy, the university will cover my tuition fees for extended terms.

Abstract

According to the United Nations High Commissioner for Refugees (UNHCR), voluntary repatriation has been the most desirable and ideal solution among the traditional durable solutions for refugees, alongside local integration and resettlement. Although the current forced displacement rate is the highest ever, primarily due to contemporary armed conflicts, most of the refugees fleeing from conflicts lack any timely and durable solution. This fact stresses the urgent need to reassess the effectiveness of existing durable solutions. Accordingly, this thesis investigates, from the standpoint of international law, how voluntary repatriation can be a durable and sustainable solution method.

The term ‘refugees’ refers to forcibly displaced individuals legally deemed non-returnable to their countries of origin due to well-founded fear of persecution. Consequently, the repatriation of a refugee must be fundamentally predicated on the principle of voluntariness. Nevertheless, there is no dedicated international convention on voluntary repatriation. Thus far, the right to return, the principle of non-refoulement, and UNHCR's mandate have shaped the operation of voluntary repatriation. The thesis proposes that voluntary repatriation should be included as a component of the international protection regime for refugees. Moreover, refugee returns within the humanitarian, development, and peace nexus could help ensure the durability and sustainability of voluntary returns.

Correspondingly, the thesis explores the historical development of voluntary repatriation and the roles of the UNHCR, the legal framework of voluntary repatriation and obstacles posed by 21st century refugee conditions. Two case studies, Somalia and Afghanistan, are analysed to illustrate these dynamics and the potential of the Global Compact on Refugees for effective voluntary repatriation is discussed. Hence, the findings and recommendations from this research will inform a guideline with a legal perspective on effective voluntary repatriation and novelly contribute to the literature on voluntary repatriation in international law.

To Mehmet Konukçu

Acknowledgements

First and foremost, I am deeply thankful to my supervisor, Prof Geoff Gilbert, for walking alongside me through the peaks and valleys of this doctoral journey. His outstanding supervision has truly gone above and beyond, profoundly impacting my extraordinary PhD journey and life. This thesis would not have existed without his guidance and steadfast support. Your expertise and dedication have truly inspired me to strive for excellence. I would like to express my sincere gratitude to my secondary supervisor, Dr Marija Jovanovic, for unwavering guidance and insightful feedback between 2022 and 2024.

In addition, I would like to thank the Turkish Ministry of Education and the University of Essex Law School, without whose funding this project would not have been possible.

Special thanks to Mehmet Konukçu, who has meant more than just a literature teacher to me, for his crucial role in making academia my dream job, mentoring numerous social science projects and academic discussions that have supported my intellectual growth since I was in high school. I am also incredibly grateful to Dr Meltem Ineli-Ciger, who was my biggest advantage at the beginning of my academic career, helping me determine my field of research with her constant support.

Words cannot capture the depth of my gratitude to my beautiful family. I thank my parents, Emine Gündoğdu and Güray Gündoğdu, my sister Yağmur Çakmakçı, brother-in-law Hasan Çakmakçı, and my nephew Aras Bulut Çakmakçı for their unconditional love and encouragement in helping me achieve my dreams. I appreciate all for always being with me. I would also like to specifically thank my dear friends, Ömer Şahin and Esra Şahin, who have always motivated me, giving me the strength and will to keep going despite all the difficulties.

Finally, my deepest gratitude is to my beloved partner, Mohammed Tariq Nadaf, for his love and support, which have been my anchor through every challenge. Thank you for being my greatest fortune, my love.

Table of Contents

COVID-19 Impact Statement	ii
Abstract	iii
Acknowledgments	v
Table of Contents	vi
List of Abbreviations	ix
INTRODUCTION	1
Chapter 1. Historical Overview: Conceptual Development of Voluntary Repatriation	19
Introduction	19
1.1. Refugee and Repatriation until the 1920s	22
1.2. Refugee and Repatriation in the League of Nations System	28
1.3. Refugee and Repatriation in the United Nations System	33
1.3.1. The International Refugee Organisation (IRO)	33
1.3.2. The United Nations High Commissioner for Refugees (UNHCR)	36
1.3.2.1. UNHCR's Foundation and Organisational Structure	36
1.3.2.2. UNHCR's Concepts of Voluntary Repatriation in Practice	40
1.3.2.2.1. Voluntary Repatriation during the Cold War	40
1.3.2.2.2. Voluntary Repatriation Post-Cold War	45
1.3.2.3. UNHCR's Roles and Limitations in Voluntary Repatriation	53
1.3.2.3.1. Assessing conditions and promoting voluntary repatriation	55
1.3.2.3.2. Conducting negotiations and tripartite agreement	58
1.3.2.3.3. Ensuring voluntariness: providing information and counselling	61
1.3.2.3.4. Assisting the repatriation process in safety and monitoring	66
1.3.2.3.5. Supporting reintegration of returnees	68
Conclusion	72

Chapter 2. International Legal Framework of Voluntary Repatriation	76
Introduction	76
2.1. Voluntary Repatriation and International Refugee Law	80
2.1.1. Voluntary Repatriation within the 1951 Convention	82
2.1.1.1. The Principle of Non-refoulement under Article 33 1951 Convention	85
2.1.1.2. Cessation of Refugee Status under Article 1C.5 1951 Convention	88
2.1.2. UNHCR's International Law of Voluntary Repatriation Role	91
2.2. Voluntary Repatriation within International Human Rights Law	103
2.3. Voluntary Repatriation within International Humanitarian Law	108
Conclusion	113
Chapter 3. 21 st Century Refugee Phenomenon and Solutions	117
Introduction	117
3.1. Armed Conflicts and Prolonged Asylum	121
3.2. The Urgent Need for International Solidarity	1277
3.2.1. Resettlement and Third States' Approach	129
3.2.2. Local Integration and Host States' Approach	134
3.2.3. Repatriation: Not Voluntary But Necessary	140
Conclusion	145
Chapter 4. Voluntary Repatriation in Practice	148
Introduction	230
4.1. The Voluntary repatriation Case of Somalia	2331
4.1.1. Law and Practice	151
4.1.1.1. 1992-1994 Cross-Border Operation from Kenya	151

4.1.1.2. 2013 Tripartite Agreement on Voluntary repatriation (Somalia-Kenya-UNHCR)	160
4.1.2. Global Responsibility Sharing vis-à-vis Somalia	170
4.2. The Voluntary repatriation Case of Afghanistan	177
4.2.1. Law and Practice	177
4.2.1.1. Voluntary repatriation and New Refugees in the 1990s	179
4.2.1.2. Voluntary repatriation and New Refugees in the 2000s	196
4.2.2. Global Responsibility Sharing vis-à-vis Afghanistan	210
4.3. A Review of the Voluntary repatriation: Afghanistan and Somalia	216
Conclusion	226
Chapter 5. The Global Compact on Refugees (GCR) and Voluntary Repatriation	230
Introduction	230
5.1. Evaluating Voluntary Repatriation through the Lens of the GCR	233
5.2. From Soft Law to Practice: The Legal Nature of the GCR	177
5.3. Reframing Voluntary Repatriation under GCR: Prospects and Pitfalls	258
Conclusion	226
CONCLUSION	270
Bibliography	282

List of Abbreviations

1950 Statute	Statute of the United Nations High Commissioner for Refugees
1951 Convention	1951 Convention relating to the Status of Refugees and its 1967 Protocol
1969 Convention	Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa
3RP	Regional Refugee and Resilience Plan
4Rs	Repatriation, Reintegration, Rehabilitation and Reconstruction
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACJHR	African Court of Justice and Human Rights
ACOHR	Arab Charter on Human Rights
AI	Amnesty International
AIG	Afghan Interim Government
ARC	Action for the Rights of Children
Art	Article
ATMIS	African Union Transition Mission in Somalia
AVR	Assisted Voluntary Repatriation
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CESCR	Committee on Economic, Social and Cultural Rights
CPA	Comprehensive Plan of Action
CRC	Convention on the Rights of the Child
CRRF	The Comprehensive Refugee Response Framework

DAC	Development Assistance Committee
DRC	Democratic Republic of Congo
EC	Council of the European Union
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECJ	Court of Justice of the European Union
ECOSOC	United Nations Economic and Social Council
ECtHR	European Court of Human Rights
EU	European Union
ExCom	Executive Committee of the High Commissioner's Programme
FATA	Federally Administered Tribal Areas
FGR	Facilitating Group Return
GCM	Global Compact on Safe, Orderly and Regular Migration
GCR	Global Compact on Refugees
GoK	Government of Kenya
GoP	Government of Pakistan
GRF	Global Refugee Forum
HDPN	Humanitarian, Development, and Peace Nexus
HRC	Human Rights Committee
HRP	Humanitarian Response Plan Afghanistan
ICARA	International Conferences on Assistance to Refugees in Africa
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICG	International Crisis Group
ICJ	International Court of Justice

ICRC	International Committee of the Red Cross
IDPs	Internally Displaced People
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IIFA	International Islamic Fiqh Academy
ILC	International Law Commission
IOM	International Organisation for Migration
IRL	International Refugee Law
IRO	International Refugee Organization
KOICA	Korea International Cooperation Agency
LNHCR	League of Nations High Commissioner for Refugees
NATO	North Atlantic Treaty Organization
NGO	Non-governmental Organisation
No	Number
OAU	Organisation of African Unity
ODA	Official Development Assistance
OECD	Organisation for Economic Co-operation and Development
OIC	Organisation of Islamic Cooperation
Para	Paragraph
PARR	Priority Areas of Return and Reintegration ()
RIS	Return Intention Survey
RRP	Regional Refugee Response Plan
SAR	Operations Of Search And Rescue
SDG	The Sustainable Development Goals
SHAEF	Supreme Headquarters of the Allied Expeditionary Force

SMU	Salam Mobile Units
TA	Tripartite Agreement
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN HRC	United Nations Human Rights Committee
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNOCHA	United Nations Coordinator for Economic and Humanitarian Assistance to Afghanistan
UNOSOM	UN Operation in Somalia
UNRRA	United Nations Relief and Rehabilitation Administration
UNSC	United Nations Security Council
US	United States
USSR	Union of Soviet Socialist Republics
WFP	World Food Program
WTO	World Trade Organisation

INTRODUCTION

This thesis critically examines voluntary repatriation as a solution for refugees from the perspective of international law and practice. It investigates the legal, institutional, and practical dimensions that influence the durability and sustainability of voluntary return in the context of large-scale refugee movements, particularly driven by contemporary armed conflicts. There is a significant normative and operational gap in the international legal framework governing voluntary repatriation, despite the United Nations High Commissioner for Refugees (UNHCR) recognising it as an ideal solution. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol (1951 Convention) implicitly refers to voluntary repatriation in its preamble,¹ and similarly, human rights conventions under the right to return.²

There is no dedicated international convention on voluntary repatriation that explicitly defines it and clarifies its scope with respect to refugees' rights and states' obligations. In this regard, the general understanding of the term voluntary repatriation briefly indicates that "the assisted or independent departure to the country of return based on the will of the returnee and his/her informed decision to return" [...] "carried out in conformity with obligations deriving from applicable international instruments."³ Although the Statute of the United Nations High Commissioner for Refugees (1950 Statute) and some regional refugee law instruments⁴ have

¹ *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137, (1951 Convention), Preamble.

² *Universal Declaration of Human Rights* (adopted 10 December 1948) UNGA Res 217 A(III), (UDHR), art 13(2); *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), art 12(4); *Convention on the Rights of the Child* (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC), art 10; *European Convention for the Protection of Human Rights and Fundamental Freedoms* (as amended by Protocols 11 and 14, adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 221, ETS 5 (ECHR), Protocol 4, art 3(2); *American Convention on Human Rights* (adopted 22 November 1969, entered into force 18 July 1978) 36 OAS TS 1; 1144 UNTS 123 (ACHR), art 22(5); *African Charter on Human and Peoples' Rights* (adopted 27 June 1981, entered into force 21 October 1986) (1982) 21 ILM 58 (ACHPR), art 12(2); *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85, (CAT).

³ European Commission, Press Release PRES/05/247 (11 October 2005)

<https://ec.europa.eu/commission/presscorner/detail/en/pres_05_247> accessed 1 May 2020, 16.

⁴ *Statute of the United Nations High Commissioner for Refugees* (adopted 14 December 1950) UNGA Res 428(V) (1950 Statute), paras 1 and 8; *Organisation of African Unity Convention Governing the Specific Aspects*

made positive contributions to the legal development of voluntary repatriation. However, their impact remains limited to their respective regions, and, with the exception of the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention), they lack legally binding force under international law.⁵

The thesis argues that voluntary repatriation of refugees is an essential part of the international protection regime and requires legally specific regulations and a comprehensive system based on the HDPN, implemented through effective global cooperation with UNHCR. Refugees are legally considered unable to return to their home countries because of a legitimate fear of persecution.⁶ Therefore, the idea of voluntariness must be the foundation for a refugee's return to the country of origin. Otherwise, the international protection regime is founded on the principle of non-refoulement⁷, which prohibits forcing refugees to return to a country where they face a risk of persecution, would be rendered ineffective. Therefore, this thesis focuses on the voluntary repatriation of refugees fleeing armed conflicts to their countries of origin under international law, as it is a critical and urgent priority within the contemporary international refugee protection regime.

In the 21st century, the refugee phenomenon has become a more complex, massive and difficult to resolve issue, while there is a sharp increase in refugees needing durable solutions.

of Refugee Problems in Africa (adopted 10 September 1969, entered into force 20 June 1974) 1001 UNTS 45 (1969 OAU Convention) art V.

⁵ 1969 OAU Convention (n 4); Cartagena Declaration on Refugees (adopted 22 November 1984) Annual Report of the Inter-American Commission on Human Rights, OAS Doc OEA/Ser.L/V/II.66/doc.10, rev 1, (Cartagena Declaration).

⁶ 1951 Convention (n 1) art 1(A)(2): "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; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

⁷ *Ibid* art 33(1): "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

Today, more than 1 in every 67 people is forcibly displaced worldwide.⁸ Furthermore, most of them are in limbo, as they have neither the right to remain permanently in another state nor the ability to return to their country of origin due to safety concerns.⁹ Voluntary repatriation has been one of the traditional durable solutions for people who have been forcibly displaced to end their refugee situation, such as resettlement and local integration.¹⁰ Additionally, complementary pathways for admission to third countries, developed by the Global Compact on Refugees (GCR) in 2018, seek to expand resettlement and ease the burden on host states.¹¹ However, the United Nations (UN) has explicitly assigned hierarchical priority to voluntary repatriation as the most ideal and desirable solution since the 1980s.¹² States' resistance to implementing the other two solutions¹³ and the assumption that refugees are willing to return to their home country are the main reasons behind this ordering.¹⁴ UNHCR describes voluntary repatriation as the durable solution of choice for the largest number of refugees, based on an assumption that "millions of refugees dream of going home".¹⁵

Therefore, voluntary repatriation remains the only potential solution capable of addressing the durable solution needs of the largest number of refugees. The priority given by the UN, the reluctance of states to pursue alternative solutions, and the general assumption about refugees'

⁸ UNHCR, *Global Trends: Forced Displacement in 2024* (12 June 2025) (12 June 2025) <https://www.unhcr.org/refugee-statistics> accessed 1 July 2025, 6.

⁹ UNHCR, 'Protracted Refugee Situations Explained' (UNHCR, 28 January 2020) <https://www.unrefugees.org/news/protracted-refugee-situations-explained/> accessed 1 May 2020; UNHCR Executive Committee, *Protracted Refugee Situations* UN Doc EC/54/SC/CRP.14 (10 June 2004) para 3.

¹⁰ Guy S Goodwin-Gill, Jane McAdam and Emma Dunlop, *The Refugee in International Law* (4th edn, OUP 2021) 537–70.

¹¹ Global Compact on Refugees, UNGA Res 73/151, UN Doc A/RES/73/151 (17 December 2018), (GCR), paras 94–96.

¹² UNGA Res 38/121, UN Doc A/RES/38/121 (16 December 1983); UNGA Res 39/169, UN Doc A/RES/39/169 (17 December 1984); UNGA Res 50/152, UN Doc A/RES/50/152 (9 February 1996); UNGA Res 51/75, UN Doc A/RES/51/75 (12 December 1996); UNGA Res 52/103, UN Doc A/RES/52/103 (12 December 1997).

¹³ Elizabeth Ferris and Donald Kerwin, 'Durable Displacement and the Protracted Search for Solutions: Promising Programs and Strategies' (2023) 11 *Journal on Migration and Human Security* 3; BS Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' (2004) 23 *New Issues in Refugee Research*.

¹⁴ Marjoleine Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (Brill | Nijhoff 1997).

¹⁵ UNHCR, 'Voluntary Repatriation' (UNHCR) <https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/voluntary-repatriation> accessed 1 May 2020.

desire to return are insufficient to ensure the implementation of voluntary repatriation in accordance with international law. However, this overview increases the pressure on the premature and (in)voluntary return, having a high risk for returnees to face persecution and most probably causing a new refugee cycle. Therefore, the voluntary repatriation process must be diligently and in a timely manner governed and consistent with international law on voluntary repatriation.

In 2023, only 1.1 million of 43.6 million global refugees voluntarily returned to their country of origin.¹⁶ Although the voluntary repatriation rate was the same amount, with 1 million in 2005, it was the solution for 15% of the world's refugee population, which is 8.4 million, roughly two decades ago.¹⁷ While the number of refugees has increased dramatically, by fivefold, the number of voluntary returnees has remained nearly the same for roughly twenty years. Furthermore, UNHCR questions the safety and dignity of voluntary repatriation of refugees in 2023 to conflict-ridden countries like South Sudan and Ukraine and indicates that these mostly spontaneous returns may not be sustainable.¹⁸ The dominant reason for the global dramatic refugee issue is contemporary conflicts that are generally civil wars, causing mass influx situations inside and outside of the country, and the displacement becomes protracted.¹⁹ UNHCR defines a protracted refugee situation as “those where more than 25,000 refugees from the same country of origin have been in exile in a given low- or middle-income host country for at least five consecutive years.”²⁰ However, the average duration of protracted refugee

¹⁶ UNHCR, *Global Trends: Forced Displacement in 2023* (June 2024) <<https://www.unhcr.org/global-trends-report-2023>> accessed 1 July 2024.

¹⁷ UNHCR, *2005 Global Refugee Trends: Statistical overview of populations of refugees, asylum-seekers, internally displaced persons, stateless persons, and other persons of concern to UNHCR* (2005) (UN Digital Library) <https://digitallibrary.un.org/record/3966508/files/4486ceb12.pdf> accessed 1 July 2024.

¹⁸ UNHCR, *Global Trends 2023* (June 2024) (n 16) 41.

¹⁹ D. J. Cantor, J. F. Durieux, ‘Refuge from Inhumanity? Canvassing Issues in D. J. Cantor, J. F. Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Martinus Nijhoff Publishers 2014) 3-4.

²⁰ UNHCR, *Global Trends 2023* (June 2024) (n 16) 21; ExCom Conclusion No 109 (LXI), ‘Conclusion on Protracted Refugee Situations’ (2009) preamble.

situations is currently nearly 20 years.²¹ Therefore, being a refugee or being recognised as a holder of temporary protection status can last for generations. On the one hand, responding to the protection needs of large numbers of refugees places a social, financial, and security burden on neighbouring host states due to inadequate international burden- and responsibility-sharing. On the other hand, the large number of refugees has largely depended on UNHCR's humanitarian assistance and has had limited basic rights in host states for a significant period of their lives, given that the average duration of conflicts in the 21st century is 10 years.²²

Hence, the necessity for an effective voluntary repatriation option is more extreme than at any point in history for refugees in limbo, overburdened host states and the limited donor states of UNHCR. The thesis acknowledges the efficiency of voluntary repatriation, subject to two criteria: the first is its durability, which requires addressing the root causes of refugee movements to promote voluntary repatriation. Sustainability is the second criterion, including peacekeeping and providing safety, with an extended meaning that encompasses social, legal, and financial safety for returnees, depending on the strengthening of governmental institutions, and supporting the state's reintegration capacity via ongoing humanitarian and development assistance after return to make voluntary repatriation durable for returnees.

Despite its significance, voluntary repatriation has received comparatively limited scholarly attention within international law academia compared to other prominent facets of refugee studies, such as protection, exclusion, and cessation clauses. One of the main reasons is that the issue is conceptually more a matter of international relations and politics. UNHCR has established voluntary repatriation standards to advance its mission to find permanent solutions and to support both governmental and private efforts to promote voluntary

²¹James Milner, 'Protracted Refugee Situations' in Elena Fiddian-Qasmiyeh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 151, 153.

²²Geoff Gilbert and Anna Magdalena Rüsçh, 'Rule of Law and United Nations Interoperability' (2018) 30 *International Journal of Refugee Law* 31, 5.

repatriation.²³ Therefore, most of the legal studies on the voluntary repatriation of refugees were produced when UNHCR started regularisation through Executive Committee (ExCom) Conclusions and Handbooks; these have mostly not covered recent improvements. Chimni, Takahashi, Hathaway, and Chetail made significant contributions, focusing on the legal meaning of voluntary repatriation from the perspectives of the right to return, the principle of non-refoulement, and UNHCR policies in the 1990s and early 2000s.²⁴ A general discourse among the articles in the 1990s is that UNHCR's primary mission of protection has been violated due to its policies promoting premature repatriation, and that the assumption that voluntary return is refugees' preferred solution is questionable.²⁵

Zieck has made significant contributions to the development of legal literature on voluntary repatriation, including a comprehensive book on voluntary repatriation, UNHCR's role, and related policies, with specific case studies in 1992.²⁶ Furthermore, she published valuable articles examining the limits and progress of voluntary repatriation as a durable solution from a UNHCR-centric perspective in 2004²⁷, arguing the priority of local integration and resettlement solutions due to the unfeasibility of voluntary repatriation in 2014²⁸, and most recently in 2021, focusing on the reimagination need of voluntary repatriation via objection to the right to return of refugees owing to the practical and legal dilemma of application of

²³ 1950 Statute (n 3), paras 1 and 8.

²⁴ Chimni (n 13); BS Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (1993) 5 *International Journal of Refugee Law* 442; Saul Takahashi, 'The UNHCR Handbook on Voluntary Repatriation: The Emphasis of Return over Protection' (1997) 9 *International Journal of Refugee Law* 593; JC Hathaway, 'The Meaning of Repatriation' (1997) 9 *International Journal of Refugee Law* 551; Vincent Chetail, 'Introduction: Voluntary Repatriation in Public International Law: Concepts and Contents' (2004) 23 *Refugee Survey Quarterly* 1.

²⁵ Ibid.

²⁶ Zieck (n 14).

²⁷ Marjoleine Zieck, 'Voluntary Repatriation: Paradigm, Pitfalls, Progress' (2004) 23 *Refugee Survey Quarterly* 33.

²⁸ Marjoleine Zieck, 'The Limitations of Voluntary Repatriation and Resettlement of Refugees' in Vincent Chetail and Céline Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014) 562.

voluntary repatriation and cessation clause.²⁹ Another significant contribution was Bradley's book, published in 2013. Although it included the international law aspect of voluntary repatriation, it specifically focuses on the responsibility of states and the redress mechanism for returnees.³⁰

Finally, a recent contribution to the legal framework of voluntary repatriation was written by Gilbert in 2018, which related regulations in international law as a comment for the first draft of GCR.³¹ The GCR, based on a global burden- and responsibility-sharing statement, aims to "support conditions in the country of origin for return in safety and dignity."³² In 2018, it was created as a result of the New York Declaration in 2016, agreed by 193 states, which noted that a considerable number of the world's refugees lack durable and timely solutions.³³ This development signifies a rethinking of voluntary repatriation from an international law perspective and within scholarly discussions, particularly at a time when the need for effective voluntary repatriation is at its peak, as explained above.

Nevertheless, there is a shortage of contemporary, comprehensive, and comparative research conducted from a legal standpoint and a refugee-centric approach. For instance, in 2015, Koser and Kuschminder produced one of the most comprehensive and comparative reports about sustainable voluntary repatriation.³⁴ However, their report's focus is not grounded in international law, and it does not address refugees.³⁵ Although one of the most contemporary and comprehensive research studies on the voluntary repatriation of refugees is Long's 2013

²⁹ Zieck M, 'Reimagining Voluntary Repatriation' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021).

³⁰ Megan Bradley, *Refugee repatriation: justice, responsibility and redress* (CUP 2013) 89.

³¹ Geoff Gilbert, 'The International Law of Voluntary Repatriation' (UNHCR, 19 April 2018) <https://www.unhcr.org/events/conferences/5ae079557/comment-draft-1-gcr-international-law-voluntary-repatriation.html> accessed 1 July 2021.

³² GCR (n 11).

³³ New York Declaration for Refugees and Migrants, UNGA Res 71/1, UN Doc A/RES/71/1 (3 October 2016), (New York Declaration).

³⁴ Khalid Koser and Katie Kuschminder, *Comparative Research on the Assisted Voluntary Return and Reintegration of Migrants* (IOM 2015).

³⁵ *Ibid.*

book, its standpoint is grounded in political philosophy, historical development, and the ethics of repatriation.³⁶

Given the significance and urgency of the subject, alongside the relative scarcity of scholarly literature on voluntary repatriation within international law, the primary objective of this thesis is to make an original and meaningful contribution by proposing a comprehensive blueprint for effective voluntary repatriation grounded in both legal principles and practical realities as of 2025 and beyond. The specific objectives of this thesis are multifaceted and can be summarised as follows:

- To historically comprehend the concept of voluntary repatriation and examine the role of the UNHCR in shaping its development.
- To clarify the comprehensive legal framework governing voluntary repatriation under international law.
- To identify and analyse the key elements and components that contribute to the durability and sustainability of voluntary repatriation.
- To introduce the contemporary obstacles posed by the refugee phenomenon in the 21st century and their effects on achieving effective voluntary repatriation.
- To conduct an in-depth and comparative analysis of voluntary repatriation in two case studies, Somalia and Afghanistan, to derive practical insights.
- To critically assess the opportunities and limitations presented by the GCR to improve voluntary repatriation in practice and the legal framework.
- Ultimately, to propose a guideline to the international community aimed at improving legal conceptualisation and implementation of voluntary repatriation for more effective and rights-based practices.

³⁶ Katy Long, *The Point of No Return: Refugees, Rights, and Repatriation* (Oxford University Press, 2013).

1. Research Questions and Structure

Corresponding to the objectives above, the main research question of the thesis is:

How durable and sustainable voluntary repatriation can be realised in the 21st century for most refugee communities under international law.

To comprehensively respond to the main question, the thesis seeks to answer five sub-research questions:

1. What is the concept of voluntary repatriation and the role of the UNHCR in developing and implementing voluntary repatriation?
2. What is the legal framework, the principal elements and components of voluntary repatriation?
3. What are the key factors preventing effective voluntary repatriation in the 21st century?
4. What lessons can be drawn from past and present voluntary repatriation practices to establish durable and sustainable voluntary repatriation, and whether a change of paradigm regarding voluntary repatriation is ultimately needed in international refugee law and practice?
5. To what extent does the GCR provide a viable framework to address these challenges?

To address the outlined questions, the thesis is structured into five chapters.

Chapter 1 begins with an overview of the historical and conceptual development of voluntary repatriation and the statutory foundations of UNHCR's roles regarding voluntary repatriation. On the one hand, examining UNHCR policies and tasks regarding the repatriation of refugees with a historical division provides a comprehensive understanding of the thesis's main theme. On the other hand, it offers the opportunity to investigate UNHCR's primary assumption: whether voluntary repatriation has been the most desirable and ideal solution for refugees throughout history. Unlike the protection regime and international conventions,

voluntary repatriation is mainly shaped by UNHCR's policies and practices, as regulated by ExCom conclusions, as well as by state practice and the autonomy of refugees.

Although the generic concept of voluntary repatriation, whether structured directly or indirectly, is found in various legal instruments across branches of public international law, the legal aspect of voluntary repatriation appears fragmented and ambiguous. Chapter 2 holistically clarifies the legal framework for voluntary repatriation from a refugee-centric approach in international refugee law (IRL), international human rights law (IHRL) and international humanitarian law (IHL). The refugee-centric approach adopted in this thesis is not presented as an independent legal obligation imposed on states or organisations; rather, it is justified as an analytical method for interpreting voluntary repatriation consistently with the protective object and purpose of refugee law, the principle of non-refoulement, and the requirement that return be genuinely voluntary, safe and dignified. This approach is necessary because the 1951 Refugee Convention does not expressly regulate voluntary repatriation as a durable solution, and return should be assessed not solely by states' interests in return management but also by refugees' rights and protection needs. IHRL and IHL therefore complement refugee law by reinforcing the right to return and non-refoulement, and by helping to assess whether return is genuinely voluntary, safe, dignified and sustainable. Therefore, the discussion in Chapter 2 highlights the strengths and weaknesses of the legal instruments of the branches mentioned. It indicates that the non-binding nature of the principal elements and components of voluntary repatriation in UNHCR handbooks poses the main challenge to effective application.

Chapter 3 identifies changes concerning displacement and refugee phenomena in the 21st century and their implications for voluntary return. Contemporary armed conflicts, protracted refugee situations in host states, and unfair and inadequate responsibility sharing in refugee contexts hinder the durability and sustainability of voluntary repatriation. Chapter 3 argues that voluntary repatriation urgently needs a legal and comprehensive system based on

the humanitarian, development, and peace nexus (HDPN), enabling it to be durable and sustainable for most refugee communities. Moreover, global cooperation, particularly through the UNHCR, before, during, and after repatriation, is an indispensable part of the proposed system, contrary to the traditional understanding of the country of origin's responsibility for voluntary repatriation. Although the theory of HDPN is not a new approach³⁷, it is yet unclear and underdeveloped how this theory incorporates all aspects of the legal framework for voluntary repatriation; namely, before return addressing root causes, keeping peace, ensuring voluntariness, while and after return providing safety and dignity and after return supporting reintegration, reconstruction and rehabilitation to achieve a durable solution.

Therefore, Chapter 4 examines the state practices of Somalia and Afghanistan regarding voluntary repatriation, with reference to the requirements applicable during the pre-return, return, and post-return phases. UNHCR's assistance and supervision in Kenya and Pakistan, examined as host states for complex refugee and repatriation management processes, offer a practical opportunity to analyse the outcomes of previous chapters. Although there are currently 29 active refugee-producing issues affecting numerous states worldwide³⁸ Somalia and Afghanistan were chosen as case studies to critically analyse the practical application and legal dimensions of voluntary repatriation.³⁹

Somalia and Afghanistan are two of the most critical examples for the thesis for a number of interlinked reasons. First, both directly provide the characteristics the thesis focuses on. Both countries have prolonged armed conflicts in the shape of civil wars, creating large numbers of protracted refugee situations in hosting states, making them representative of contexts where voluntary repatriation is both highly desirable and deeply problematic.

³⁷ Merve Erdilmen, *Durable Solutions and the Humanitarian-Development Nexus: A Literature Review* (LERRN 2019) <https://carleton.ca/lerrn/wp-content/uploads/Durable-Solutions-and-the-Humanitarian-Development-Nexus.pdf> accessed 1 July 2024.

³⁸ UNHCR, 'Situations' (Operational Data Portal) <https://data.unhcr.org/en/situations> accessed 2 August 2025.

³⁹ See Chapter 4.

Second, UNHCR and the UN Security Council have more than three decades of management experience regarding protracted refugee situations driven by ongoing armed conflicts in Somalia and Afghanistan. Thus, Somalia and Afghanistan provide suitable contexts for exploring legal and practical developments and drawbacks of voluntary repatriation since the early 1990s. On the one hand, UNHCR's effective voluntary repatriation initiatives have often faced significant obstacles related to security, reintegration capacity, and sustainability. On the other hand, they are substantial examples that reveal multidimensional challenges in addressing root causes for durable voluntary repatriation in relation to the UN Security Council's peace practices.

Third, Somalia and Afghanistan are sufficiently different to permit a comparative analysis of how international legal standards on voluntary repatriation are applied or, at times, compromised in distinct geopolitical and socio-legal contexts. Furthermore, the case studies of Somalia and Afghanistan offer critical lessons that extend beyond their national contexts and are applicable to a wide range of refugee situations worldwide. These cases demonstrate the difficulties of operationalising voluntary repatriation in contexts of unstable security, weak governmental institutions, and inadequate reintegration conditions, such as South Sudan, Myanmar, Syria, the Democratic Republic of the Congo (DRC), and Iraq, where repatriation remains meaningless without comprehensive legal, humanitarian, and developmental strategies.

A review is developed on the key findings and lessons drawn from the analysis at the end of Chapter 4. This review covers a comparative analysis of two case studies and the legal and policy recommendations for durable and sustainable voluntary repatriation. Legal remedies for the weaknesses and blind spots of the legal framework, as clarified in Chapters 2 and 4, are based on the principle of non-refoulement and on the development of customary law through soft law. It demonstrates the need for a legally binding international legal framework for

voluntary repatriation based on HDPN. This approach integrates the peace nexus to address root causes, the humanitarian nexus for returnee assistance and reintegration in the country of origin, and the development nexus for the reconstruction of origin states and the extended safety of returnees. However, in practice, Chapter 4 demonstrates that the humanitarian, development, and peace cooperation of the international community is far from sufficient to ensure effective voluntary repatriation for both states.

Chapter 5 thus explores whether the GCR, one of the most recent international instruments aimed at the safe and dignified return of refugees through international burden- and responsibility-sharing, can resolve the problems covered in earlier chapters. Moreover, it provides a new way to rethink voluntary repatriation under GCR, which implicitly refers to the HDPN to prevent and address the root causes in the country of origin.⁴⁰ Although the non-legal character of the GCR is identified as a principal pitfall, its practical and legal implementation by states, through an extended multi-stakeholder approach and new platforms, to provide international contributions to the needs of voluntary repatriation presents an operational prospect for effective voluntary repatriation. Therefore, policy suggestions pertain to incorporating the HDPN into all facets of voluntary return, utilising innovative platforms and multi-stakeholder engagement from the GCR under this chapter.

Consequently, the thesis offers guidance to the international community through an in-depth, timely, and necessary investigation into voluntary repatriation to establish an effective, durable system of solutions in line with international law

2. Methodology

To address the issues above and achieve the main research goal, this thesis employs a mixed-methods approach, combining doctrinal research and secondary quantitative research

⁴⁰ See Chapter 5; James C Simeon, 'The Forcibly Displaced, the Triple Nexus, and the Sustainable Peace Challenge' (Refugee Law Initiative Blog, 6 September 2022) <https://rli.blogs.sas.ac.uk/2022/09/06/the-forcibly-displaced-the-triple-nexus-and-the-sustainable-peace-challenge/> accessed 17 September 2024.

with analytical methods. It uses legal rule analysis to develop legal "doctrines".⁴¹ The doctrinal research method is chosen for this research because legal reasoning is essential to proposing and implementing durable and sustainable voluntary repatriation within international legal frameworks. Therefore, the methodology of this thesis was developed through a desk review of multiple primary and secondary doctrinal research sources and does not include any empirical research methods.

Voluntary repatriation lacks a specific, legally binding international agreement, including rules governing it. The principle of non-refoulement and the right to return are intertwined with voluntary return at the treaty level under IHRL, IHL, and IRL. The thesis adopts a comprehensive approach while investigating all three branches of international law. Therefore, Chapter 2 of the thesis investigates related treaties concerning the principle of non-refoulement and the right to return. Examined international treaties with black letter method are 1951 Convention, the International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), Convention on the Rights of the Child (CRC) and Fourth Geneva Convention, while regional treaties are the European Convention on Human Rights (ECHR), the 1969 OAU Convention and Cartagena Declaration on Refugees (Cartagena Declaration).⁴² Additionally, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is briefly referenced where pertinent.⁴³

Mostly, the legal basis of the research is confined to UNHCR institutional law and other soft-law materials, which provide a solid basis for justifying the upgrading proposals within the existing legal framework. Accordingly, the thesis is based on United Nations General Assembly Resolutions (UNGA Resolutions), the Universal Declaration of Human Rights (UDHR),

⁴¹ Paul Chynoweth, 'Legal Research' <https://www.studocu.com/row/document/uganda-christian-university/bachelor-of-law/legal-research-chynoweth-salford-uni/23887990> accessed 1 May 2020.

⁴² See Chapter 2.

⁴³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, (ICESCR).

Statute of the United Nations High Commissioner for Refugees (1950 Statute), ExCom conclusions, UNHCR Handbook on Voluntary Repatriation (1996 Handbook), UNHCR Handbook for Repatriation and Reintegration Activities (2004 Handbook) and Action for the Rights of Children (ARC)⁴⁴ and the lastly GCR⁴⁵ which pave the way to clarify the principal elements and components of the voluntary repatriation. In addition to the primary resources mentioned above, Chapter 4 specifically examines the tripartite agreements, the national laws of the relevant states, and international and domestic judicial decisions, while investigating case studies.

Standards regulated by soft law need clarification and adjustment to legally recommend remedies for blind and weak spots to establish an effective voluntary repatriation system. Given the scarcity of legal literature on voluntary repatriation, as noted at the beginning, the thesis has benefited from numerous secondary sources in international relations, history, and sociology, as well as international law. However, the main secondary sources of the thesis include academic legal literature, various reports, UNHCR data and statistics, and NGO reports. Moreover, the thesis frequently relies on UNHCR's pre-existing numerical data to identify patterns and changes in voluntary repatriation outcomes. Secondary quantitative research method⁴⁶ is implemented analytically to deliver evidence-based insights that improve repatriation strategies and align them with international legal standards.

Deductive, inductive, and analogy methods are employed to critically evaluate legal literature and case studies. Findings generated through these methods are utilised in analytical research to compare and synthesise two case studies, with recommendations not only for Somalia and Afghanistan but also for other states with similar features. On the one hand, the thesis provides generalised and flexible recommendations for the voluntary repatriation of large

⁴⁴ See Chapter 2.

⁴⁵ See Chapter 5.

⁴⁶Melissa P Johnston, 'Secondary Data Analysis: A Method of Which the Time Has Come' (2014) 3 *Qualitative and Quantitative Methods in Libraries* 619.

refugee movements resulting from armed conflict, applicable to other state practices that produce refugees due to armed conflict. On the other hand, every voluntary repatriation operation has its own DNA due to country-specific features, and some recommendations are offered not only for Somalia and Afghanistan but also for other states with the same features mentioned above.

3. Limitations

This thesis, while aiming to contribute to the academic literature regarding voluntary repatriation under international law, is subject to the following limitations:

- **Methodological Limitation:**

As mentioned above, the thesis adopts a doctrinal legal research method, focusing on the analysis of international legal instruments, UNHCR guidelines, and state practices under academic literature. It does not include empirical fieldwork such as interviews, which limits the exploration of lived experiences, voluntariness, and reintegration conditions on the ground. This limitation was necessary to preserve the research's legal focus and feasibility within time and resource constraints. Future interdisciplinary studies could complement this analysis by incorporating empirical data to provide a more comprehensive understanding of return dynamics.

- **Legal Resource Limitation:**

There is no determined treaty regulating voluntary repatriation, and the mentioned treaties and other soft law instruments above constitute legal resource limitations. International and regional treaties under IRL, IHRL, and IHL are included only to the extent that they relate to voluntary repatriation. This thesis is based on a selective body of international legal sources relevant to the voluntary repatriation of refugees, with a specific focus on GCR. While the

Global Compact for Safe, Orderly and Regular Migration (GCM) also addresses cross-border movement, it has been intentionally excluded from the scope of this research. This decision is grounded in the legal distinction between refugees and migrants under international law. The legal architecture of refugee protection is shaped by different normative instruments and principles of non-refoulement, as well as by institutional actors, notably the UNHCR, which are not paralleled in the GCM framework. In contrast, the GCR is explicitly designed to support and enhance the international refugee protection regime, including the framework for voluntary repatriation. As such, this thesis prioritises analysis of the GCR as the most relevant soft-law instrument addressing durable and sustainable solutions for refugees, including return in safety and dignity.

- **Thematic Limitation:**

The research is focused on refugees displaced by armed conflict, thereby excluding other significant root causes of forced displacement, such as generalised human rights violence and climate-related disasters. This thematic delimitation was necessary to maintain analytical depth and legal coherence, particularly given that different causes of displacement engage distinct legal frameworks, such as international environmental law or disaster response regimes, which fall outside the scope of traditional refugee law.

- **Focus Limitation:**

The thesis focuses solely on assisted voluntary repatriation (AVR), primarily coordinated by UNHCR or in cooperation with host and origin states. It does not address spontaneous returns, informal repatriation efforts, or state-led returns outside UNHCR supervision. This focus is justified by the need to evaluate return processes in a legally structured and internationally monitored context, which offers clearer benchmarks for assessing compliance with international law.

Moreover, this thesis excludes Internally Displaced Persons (IDPs) to maintain legal and

analytical clarity. While both refugees and IDPs are forcibly displaced, refugees are protected under international refugee law, having crossed international borders, whereas IDPs remain within their own countries and fall under domestic legal frameworks and non-binding guidelines such as the UN Guiding Principles on Internal Displacement. Including IDPs would require engagement with different legal regimes and institutional mandates, which is beyond the scope of this research, which focuses on refugees and voluntary repatriation under international law.

- **Case Study Limitation:**

This thesis is limited to an in-depth analysis of Somalia and Afghanistan as case studies for assisted voluntary repatriation. These two countries were selected due to their long histories of armed conflict, large-scale refugee movements, and significance in UNHCR repatriation operations. Both cases offer valuable insights into the legal, political, and operational complexities of voluntary repatriation in conflict-affected contexts. However, this narrow focus inevitably does not capture the full diversity of global repatriation contexts. The exclusion of other regional cases was driven by practical constraints related to time, word count, and the need for depth of focus. The review drawn from Somalia and Afghanistan in Chapter 4 provides a foundation for comparative reflection and offers legal principles that may be adaptable to other displacement situations.

Chapter 1. A Historical Overview: Conceptual Development of Voluntary Repatriation

Introduction

Voluntary repatriation is a global and complex subject area with a long history in the refugee context. ‘repatriation’⁴⁷ was experienced as a natural extension that ended the refugee situation over the years. Even though the status of the people was not legally defined as a refugee, historically, forced displacement due to different variations of persecution and fleeing to other states' territory for protection had existed since the ancient Goths⁴⁸ reception by Rome in 376.⁴⁹ Between the two world wars and after the Second World War, international organisations, in a global effort, were established to assist in protecting refugees and encouraging their repatriation, recognising that large-scale refugee movements were straining the capacity of host states.⁵⁰ Historically, voluntary repatriation was built on mandatory repatriation practices by sovereign states, reluctant to protect large scale refugees in their territory by assuming repatriation was the voluntary natural choice of forcefully displaced people, that was not proven.⁵¹ The rise of ‘voluntary repatriation’ as the most ideal and desirable concept of durable solutions was inevitably linked to international legal developments in the refugee regime, including the 1951 Convention and subsequent instruments that shaped the understanding and treatment of refugees. ‘Voluntary’ became a permanent adjective to describe the return of refugees due to refugees' specific autonomy, indicating that they are not returnable.⁵²

However, voluntary repatriation was clarified neither under the 1951 Convention, the

⁴⁷ Oxford Learner’s Dictionaries, ‘Repatriation’

<https://www.oxfordlearnersdictionaries.com/definition/english/repatriation> accessed 1 July 2023.

⁴⁸ Owen Jarus, ‘Who Were the Ancient Goths, Visigoths and Ostrogoths?’ *Live Science* (8 August 2022)

<https://www.livescience.com/45948-ancient-goths.html> accessed 1 July 2023.

⁴⁹ James C Hathaway, ‘The Evolution of Refugee Status in International Law: 1920–1950’ (1984) 33 *International and Comparative Law Quarterly* 348.

⁵⁰ Elena Fiddian-Qasimiyeh and others, ‘Introduction: Refugee and Forced Migration Studies in Transition’ in Elena Fiddian-Qasimiyeh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 2, 28.

⁵¹ Marjoleine Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (n 14).

⁵² *Ibid.*

Constitution of international refugee law, nor any legally binding global instrument. The application of voluntary repatriation was left to UNHCR policies and state practices. Thus, the concept of voluntary repatriation is ambiguous and complex because it has been shaped by changing state policies over the years, rather than by a set of obligations and rights that provide legal clarity. Therefore, Chapter 1 demonstrates the construction of voluntary repatriation as a solution for refugees, in line with the historical development of the notion of refugees from a legal perspective. This Chapter is valuable for comprehending the concept of voluntary repatriation in practice and legal theory rather than a historical narrative. History provides an opportunity to map how the refugee problem has been framed and how this influences the theorisation and practice of repatriation, thereby creating norms. Chapter 1 explores the foundations of voluntary repatriation and provides a reference point for the following chapters.

Moreover, this research's central question is based on re-establishing effective Voluntary repatriation as a response to the global refugee concern of the 21st century, described as "an age of unprecedented mass displacement"⁵³ and in need of an urgent, sustainable, lawful solution. Given how repatriation has emerged as a solution in the refugee context, for instance, how actors overcame the previous refugee crisis, under which conditions voluntary repatriation solved the refugee issue and when it did not work as a solution; and which kind of legal developments support voluntary repatriation under international law are vital points learned from history to strengthen the foundation of the research. Therefore, setting a future projection based on past experiences is critical for the soundness of suggestions indicating what voluntary repatriation should be at the end of the thesis.

Refugee studies are classified as a new, multidisciplinary field, and history within

⁵³ UNHCR, 'Worldwide Displacement Hits All-Time High as War and Persecution Increase' (UNHCR, 18 June 2015) <https://www.unhcr.org/uk/news/latest/2015/6/558193896/worldwide-displacement-hits-all-time-high-war-persecution-increase.html> accessed 9 August 2020.

refugee studies has received less research.⁵⁴ Studying the law of voluntary repatriation needs a holistic approach, including disciplines supporting the legislation process of voluntary repatriation, such as history. Nevertheless, finding a study that includes the history of refugees' repatriation is more complex. The few existing studies on repatriation generally preferred to start from recent histories, such as Zieck's comprehensive book in 1997⁵⁵ and Chimni's research in 2004⁵⁶ or did not primarily focus on the law of voluntary repatriation even though it includes detailed historical progress on voluntary repatriation, as in Long's valuable contribution in 2013.⁵⁷ Hence, this Chapter is vital for filling the gap in repatriation history from a legal perspective in academic literature.

In this regard, Chapter 1 includes three chronological subsections with periods forming the preparation phase for the later ones and simultaneously developing modern international refugee law. It will be helpful to examine the idea of return, encountered in every period when refugees exist, in the same historical development. Subsection 1 explores repatriation till the 1920s as a natural result of the refugee situation and shows that repatriation was not the voluntary, natural choice of refugees when a refugee was not even defined as a refugee. Subsection 2 clarifies the first international bureaucracy term on the refugee issue, including internationally organised repatriation practices and mandatory approaches regarding the repatriation of refugees after the First World War. Subsection 3 focuses on the emergence of voluntary repatriation and policies of the UNHCR and state practices shaping the concept of voluntary repatriation over 70 years. As a result, the thesis argues that a sovereignty-centred conceptualisation of voluntary repatriation, in which state interests in migration control, security and return management dominate refugee rights and protection needs, constitutes a

⁵⁴ Philip Marfleet, 'Refugees and History: Why We Must Address the Past' (2007) 26 *Refugee Survey Quarterly* 136.

⁵⁵ Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (n 14).

⁵⁶ Chimni, 'From Resettlement to Involuntary repatriation' (n 13).

⁵⁷ Long (n 36).

fundamental obstacle to effective and sustainable voluntary repatriation, thereby providing a starting point for the thesis.

1.1. Return of Refugees until the 1920s

This section is crucial to understanding how repatriation evolved as a natural consequence of the emergence of refugees in the early period. While most academic studies in the field focus on repatriation, particularly since the First World War, this thesis also includes examples of repatriation in pre-existing refugee problems. These examples, whether they support or refute the repatriation ideas of the aftermath, contribute significantly to the history of refugees' repatriation. Understanding how repatriation was experienced as a natural result of the refugee situation, and how it provided a permanent solution for refugees when there was no constructed concept of Voluntary repatriation by states and no pushback motivation in host states, is of paramount importance. In other words, especially when living in the host country is not an issue for refugees or the state, it is crucial to comprehend the circumstances under which refugees desire to return. The early examples in this section are invaluable for objectively discussing the assumption that made (voluntary) repatriation the most desirable solution for refugees in the following sections.

According to Carlin, the refugee situation naturally includes two solutions as options: "either to wait for and contribute to a reversal of the situation inevitably at home, which would enable them to return to their preferred former existence, or to cut their links and find a new and better life elsewhere".⁵⁸ Historically, forced displacement due to different variations of persecution and fleeing to other states has existed since the ancient Goths' (Germanic tribes) reception by Rome in 376.⁵⁹ Refugee itself was not an international issue that needed a solution such as repatriation. Initially, a rare and small number of examples of forced displacement did

⁵⁸ James L Carlin, 'Significant Refugee Crises Since World War II and the Response of the International Community' (1982) 3 *Michigan Journal of International Law* 3, 24.

⁵⁹ Hathaway (n 49).

not create concern among states because many displaced people preferred to live in newly discovered places such as America.⁶⁰

Before the modern state system, migration movements, including refugee situations, were generally recognised as a component of the human experience.⁶¹ Therefore, providing protection in another state was not an issue for states and refugees. Additionally, states sometimes played a significant role in supporting the admission of refugees in their territories due to the refugees' potential contribution to the state. For instance, Sultan II. Bayezid dispatched his navy to Spain in August 1492 to invite the exiled Jews, who suffered persecution due to their religion, to the Ottoman Empire. He allowed them to settle and acquire citizenship because of their potential to address qualified labour shortages, including technological knowledge in areas such as firearms, printing, and medicine. Over time, they became part of society, and some were appointed to important government positions.⁶²

After 1648, the modern state system was shaped by the Treaty of Westphalia.⁶³ The Treaty of Westphalia affirmed the equal sovereignty of the states over the territory of the Country, as clarified by its borders.⁶⁴ Although the emergence of boundaries is mutually related to all forms of migration control today, the transboundary approach in Europe⁶⁵ continued throughout the

⁶⁰ *Ibid.*

⁶¹ Philip Marfleet, 'Explorations in a Foreign Land: States, Refugees, and the Problem of History' (2013) 32 *Refugee Survey Quarterly* 14.

⁶² Yusuf Besalel, 'İspanya'dan Osmanlı'ya Yahudilerin İmparatorluktaki İşgücüne Katkıları' *Şalom Gazetesi* (2013) <https://www.salom.com.tr/arsiv/haber/88676/ispanyadan-osmanliya-yahudilerin-impatorluktaki-iscucune-katkilari> accessed 24 June 2023; Tom Pessah, 'When the Sultan Took in Jewish Refugees' +972 *Magazine* (2018) <https://www.972mag.com/when-the-sultan-took-in-jewish-refugees/> accessed 24 June 2023.

⁶³ Michael Vaughan, 'After Westphalia, Whither the Nation State, Its People and Its Governmental Institutions?' 5: "The Peace of Westphalia ended the Thirty Years War, a complex struggle that began in 1618 as a religious conflict within the Holy Roman Empire between the ruling Catholic Hapsburg dynasty and their Protestant subjects in Bohemia."

⁶⁴ Daud Hassan, 'The Rise of the Territorial State and the Treaty of Westphalia' 12:

"The Westphalia settlement emphasised the separation and equality of states rather than the unity of Christendom. It rejected any idea that the Pope or Emperor had any universal authority. 13 The Westphalia settlement established the anti-hegemonic concepts of territorial sovereignty and sovereign equality".136.

⁶⁵ Since the mentioned historical developments take place in the European region, the situation in Europe has been handled primarily.

17th and 18th centuries.⁶⁶ This situation can be explained by the fact that the national difference consciousness had not yet formed.⁶⁷ Thus, refugees had been seen as an ad hoc and national issue even if it was not explicitly identified.⁶⁸

The first actual recognised refugees in the modern state system were Huguenots in the 1680s.⁶⁹ Huguenots, who were a minority Protestant group in France, faced religious and political persecution due to the French Catholic government's violence and fled to different states in Europe, like the Netherlands, Switzerland, England, Germany, Denmark, North America and South Africa.⁷⁰ Thus, Huguenots are a significant example of representing the refugee notion in the early modern system phase. Considering Carlin's two natural options for refugees at the beginning of the section, Huguenots found a new and better life in host states by settling and forming new communities, much like Jews fleeing the Ottoman Empire in 1492.⁷¹ According to Hintermaier, the ancient language of religious affinities and compassion in host states shaped the Huguenots' refugee process.⁷² Therefore, the approach towards refugees in host states, depending on the conditions of the term, plays a crucial role in clarifying future options for refugees from the early modern state system.

In the same term, in 1683, John Locke fled to the Netherlands, fearing that the English authorities would detain him for sedition and treason.⁷³ After six years of exile, Locke returned to England in 1689 with the completion of the Glorious Revolution, which provided conditions

⁶⁶ Andreas Osiander, 'Sovereignty, International Relations, and the Westphalian Myth' (2001) 55 *International Organisation* 251, 280.

⁶⁷ *Ibid*: "As late as the dawn of the nineteenth century, the German philosopher Johann Gottlieb Fichte could write that 'the peoples of modern Christian Europe may be regarded as a single nation'."

⁶⁸ Laura Barnett, 'Global Governance and the Evolution of the International Refugee Regime' (2002) 14 *International Journal of Refugee Law* 238, 1.

⁶⁹ John M Hintermaier, 'The First Modern Refugees? Charity, Entitlement, and Persuasion in the Huguenot Immigration of the 1680s' (2000) 32 *Albion: A Quarterly Journal Concerned with British Studies* 429.

⁷⁰ *Ibid*; Barnett (n 68). 1.

⁷¹ Jessica Brain, 'The Huguenots: England's First Refugees' (Historic UK) <https://www.historic-uk.com/HistoryUK/HistoryofEngland/The-Huguenots/> accessed 26 July 2022.

⁷² *Ibid*: "As well as establishing communities in Wales and Ireland, a large proportion of them settled in England where they were largely welcomed, as the British were not a Catholic nation, and they were keen to welcome a skilled workforce."; Hintermaier (n 69).449.

⁷³ George H Smith, 'John Locke: In Search of the Radical Locke' *Libertarianism.org* (4 December 2015) <https://www.libertarianism.org/columns/john-locke-search-radical-locke> accessed 26 July 2022.

to live in his Country of origin without any risk of arrest.⁷⁴ As seen in historically significant refugee examples from the 17th century, the conditions in the country of origin can enable repatriation to John Locke in safety and dignity, whereas the welcoming approach of host states can allow Huguenots and Jews to settle and be part of the host state. Historically, these examples demonstrate solutions that developed naturally as part of the refugee process, in line with conditions in the origin and host states, when there was no definition or international concern for refugees.

Refugees continued to be seen as a national and situation-specific issue until the 19th century, and there was no distinction between refugees and immigrants.⁷⁵ In 1789, France Revolution occurred, with the public rising against the absolute monarchy and the feudal system, resulting in the redesigning of the political system and increasing ideas regarding modern nations, representative democracy and basic property rights after that⁷⁶ There were two crucial refugee movements resulting from the French Revolution.

Firstly, numerous aristocrats were forced to leave the country, known as émigrés,⁷⁷ due to fear of death.⁷⁸ They were marked as the first political refugees in history by various sources, owing to their position within the absolute monarchy and the feudal system.⁷⁹ They were the cause of the definition and application of refugees, firstly as the term "all such as leave their country in times of distress..." despite not being widely accepted.⁸⁰ Governments of states that sought protection were willing to admit émigrés because of their wealth and ability to support

⁷⁴ *Ibid*; “‘In Search of Truth Alone’: John Locke’s Exile in Holland’ 37 https://etd.ohiolink.edu/apexprod/rws_etd/send_file/send?accession=walshhonor1240525958&disposition=inlin e accessed 1 June 2023.

⁷⁵ Barnett (n 68).

⁷⁶ History.com Editors, ‘French Revolution’ (HISTORY) <https://www.history.com/topics/france/french-revolution> accessed 26 July 2022.

⁷⁷ Alpha History, ‘The Émigrés’ (French Revolution, 4 August 2020) <https://alphahistory.com/frenchrevolution/emigres/> accessed 26 July 2022.

⁷⁸ ‘Émigré’ *Encyclopaedia Britannica* <https://www.britannica.com/topic/emigre> accessed 26 July 2022.

⁷⁹ Friedemann Pestel, ‘French Revolution and Migration after 1789’ (European History Online) <http://iegego.eu/en/threads/europe-on-the-road/political-migration-exile/friedemann-pestel-french-revolution-and-migration-after-1789> accessed 26 July 2022.

⁸⁰ Barnett (n 68) 2.

their societies financially.⁸¹ Hence, their exiles were not seen as a threat to governments, and émigrés did not face serious problems living in host states.⁸² After the proclamation of amnesty for many émigrés in 1802, they were historically distinguished from Huguenots⁸³ in that they were largely returned.⁸⁴ The desire to end the revolution and reclaim their wealth in France was the primary motivation for the émigrés' return.⁸⁵

Secondly, ideas that emerged from the French Revolution, such as modern nations, representative democracy, and fundamental property rights, spread across Europe despite the revolution's failure.⁸⁶ Notably, the nation-state idea centralised nations as the primary sovereign authority for establishing and governing a state, rather than a king or monarch. It created a transformative force for political systems not only in this term but also in the following centuries.⁸⁷ Therefore, political opponents against the monarchy became refugees and sought protection outside of Europe, and refugees were still framed as a state-centric issue.⁸⁸ However, the policies of sovereign territorial states started to change after the 1848 Revolution.⁸⁹ Moreover, revolutionary refugees became an international matter between states, as refugees became a threat to monarchic governments.⁹⁰ While some states, such as Austria, possessed strong ties to the French royal family and adopted restrictive policies against revolutionary refugees out of fear of anarchy and violation, England and Switzerland adopted an acceptance

⁸¹ *Ibid.*

⁸² 'Émigré | French History | Britannica' (n 77); Barnett (n 68).

⁸³ Ruth Levush, 'Report on Right of Huguenots to French Citizenship' *In Custodia Legis: Law Librarians of Congress* (11 December 2019) <https://blogs.loc.gov/law/2019/12/report-on-right-of-huguenots-to-french-citizenship/> accessed 26 July 2022: "What is less commonly known, however, is that in 1790, the revolutionary government adopted a law welcoming the descendants of exiled Huguenots back to France."

⁸⁴ Kirsty Carpenter, *Refugees of the French Revolution: Émigrés in London, 1789–1802* (Palgrave Macmillan 1999) xxiii.

⁸⁵ History (n 76).

⁸⁶ 'Émigré | French History | Britannica' (n 77).

⁸⁷ Eric D Weitz, 'Nationalism' in Peter Hayes and John K Roth (eds), *The Oxford Handbook of Holocaust Studies* (OUP 2010) 56; Declaration of the Rights of Man and of the Citizen (adopted 26 August 1789), art 3: "The principle of all sovereignty resides essentially in the nation."

⁸⁸ Barnett (n 68). 3.

⁸⁹ 'Revolutions of 1848' *Encyclopaedia Britannica* <https://www.britannica.com/event/Revolutions-of-1848> accessed 27 July 2022.

⁹⁰ Emma Haddad, 'Refugee' in Martin Griffiths (ed), *Encyclopedia of International Relations and Global Politics* (Routledge 2005) 719.

policy.⁹¹

On the one hand, the difficulty of tracking the refugees entering their Country by crossing the borders from neighbouring states due to the lack of organisation of the conditions brought the refugee a global problem for the first time in history.⁹² This situation fostered respect for states' territorial sovereignty, although it also led to the deterioration of relations between states.⁹³ On the other hand, the admission of revolutionary refugees in some states brought together asylum and the principle of non-extradition of political offenders to protect against despotic regimes.⁹⁴ These sound practices of states could be seen as the first attempts to establish a 'principle of non-refoulment' that places responsibility on the state to protect and not return refugees to places where they could face persecution, as a customary international law basis for international refugee law.⁹⁵ Therefore, events starting from the mid-19th century not only made refugees an international concern but also laid the foundations of the principle of non-refoulment, which is also the source of modern refugee law and repatriation.

In the early period, when states had no definition or concern for refugees, solutions to this undesirable situation were often implemented as a natural extension of it. On the one hand, repatriation naturally occurred under three conditions: 1. absence of state intervention about repatriation, 2. apparent disappearance of the security risk and regaining their previous existence in the country of origin, and 3. free will of the refugees to end their exile in the host states, as seen in *Emigres* and *John Locke* cases. On the other hand, resettlement and local integration were provided to Jews and Huguenots by host states, and even when the risk disappeared for them, they did not prefer to repatriate to their Country of origin. In short, in the

⁹¹ Barnett (n 68). 2.

⁹² *Ibid* 3.

⁹³ *Ibid*.

⁹⁴ Guy S Goodwin-Gill, 'International Refugee Law: Yesterday, Today, but Tomorrow?' (Blackstone Chambers) <https://www.blackstonechambers.com/news/paper-international-refugee-law-yesterday-today-tomorrow/> accessed 27 July 2022, 242-43.

⁹⁵ *Ibid*.

early period, it is crucial to recognise that the policies of host and home states regarding refugees' human rights shaped refugees' desire to return. Therefore, regardless of the conditions in the Country of origin and in asylum, the assumption that repatriation was the natural, voluntary choice for refugees has no historical basis.

However, due to the historical turning points explained above, starting with Westphalia, which sharpened state sovereignty and spurred the rise of nationalism against monarchies, states began to treat refugees as an international problem and to develop policies in this regard. This process has opened the door to today's nation-state system, based on citizenship, in which states feel the need to develop international regimes to protect refugees in their territories, as described below.

1.2. Return of Refugees in the League of Nations System

The inter-war period covered by this title represents the first progress in international protection for refugees and the construction of voluntary repatriation as a durable and ideal solution for refugees. The post-First World War period was chaotic, during which different nations within empires ruled by a single monarch sought either to join the state, including the same nation, or to establish a new state.⁹⁶ As a result of this period, the Russian Empire in 1917, the German and the Austro-Hungarian Empires in 1918, and the Ottoman Empire in 1922 collapsed, and independent nation-states⁹⁷ were established.⁹⁸ Nationalism that stemmed from the French Revolution was a critical factor in shaping the modern state system in the post-war period.⁹⁹ Therefore, ongoing conflicts led to refugee flows into nation-states after the war.

⁹⁶ Conway W Henderson, *Understanding International Law* (Wiley-Blackwell 2009) 47.

⁹⁷ Marfleet (n 61).16: "Post-war nation-state system established on national identity ties each member of the community having common characteristics with a political program to build a state. In this new system, state authority, internally and internationally, represents its nation and is responsible for its security and prosperity and has sovereignty in state territory. Therefore, nation-states had an exclusionary approach to others not from that nation but lived within those borders due to the system's features."; David Warren, 'The Nature of the Nation-State System' (1980) 61 *International Law Studies* 153.

⁹⁸ Digital History, 'Overview of World War I' <https://www.digitalhistory.uh.edu/era.cfm?eraid=12&smtid=1> accessed 31 July 2022.

⁹⁹ John Breuilly, *Nationalism and the State* (Manchester University Press 1993).

The modern state system that emerged with the Treaty of Westphalia in 1648 evolved from imperial territorial sovereignty to nation-state sovereignty. It was the transitional period from when providing protection to refugees was a national concern to when it became a global problem governed by an international system. This transformation in the notion of refugee affected the process of repatriation. Instead of being a natural extension, the states were now attempting to develop repatriation as a concept to address the global refugee problem. The new nation-states system excluded the protection of non-citizens, and the protection that repatriation presented was seen as 'an incident of nationality'¹⁰⁰, explained below. According to Keely, since the 20th century, the production of refugees has been driven by the establishment of nation-states, which adopt a system and threatening approach toward people not belonging to the dominant nation.¹⁰¹ Therefore, a minority problem led to forced displacement in nation-states after the end of the empires' post-war period.¹⁰²

On the one hand, during World War I, millions of civilians and soldiers died, while at least 10 million people were internally or internationally displaced.¹⁰³ On the other hand, the different nations under empires governed by a single monarchy wanted either to join the state, including their own nation, or to establish a new state themselves.¹⁰⁴ As a result of this period, the Russian Empire in 1917, the German and the Austro-Hungarian Empires in 1918, and the Ottoman Empire in 1922 collapsed, and independent nation-states were established.¹⁰⁵ Thus, what started as a war among imperial states escalated into a comprehensive conflict among people, often laden with racial connotations.¹⁰⁶ Mandatory repatriation programmes for

¹⁰⁰ Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14). 1.

¹⁰¹ Keely (n 98). 1058.

¹⁰² *Ibid* p 1056.

¹⁰³ Peter Gatrell, 'Refugees' (International Encyclopedia of the First World War) <https://encyclopedia.1914-1918-online.net/article/refugees> accessed 31 July 2022.

¹⁰⁴ Conway W Henderson, *Understanding International Law* (Wiley-Blackwell 2009) 47.

¹⁰⁵ Digital History, 'Overview of World War I' <https://www.digitalhistory.uh.edu/era.cfm?eraid=12&smtid=1> accessed 31 July 2022.

¹⁰⁶ Weitz (n 87). 64.

minorities to their nation-states, named 'compulsory population exchange', were¹⁰⁷ used as a necessary social engineering method by states to build homogeneous populations favoured for nation-state building.¹⁰⁸ For instance, the Convention of Lausanne in January 1923, signed by Turkey and Greece after the Turkish-Greek war, agreed to a 'compulsory population exchange'¹⁰⁹. Even though Turkish Greeks protested this forced repatriation due to their nationality and the fact that they had no prior home, Winston Churchill cited the Lausanne Conference as justification for continuing transfers.¹¹⁰

According to Long, these population exchanges demonstrated that the international liberal community at the time sought to make the single nation-state the predominant political model, in the hope that this would ensure peace in Europe.¹¹¹ Therefore, states demonstrated inconvertibility to resettle or reintegrate war refugees into their territory and repatriation of refugees became a priority for states. According to Long, presenting voluntary repatriation as the most desirable solution is intended to support the formation of a nation-state after the 1920s.¹¹² When compared to the previous term, where the number of refugees increased seriously, which made the states fragile in terms of financial, social and security hesitations to provide protection after a world war tragedy and its ongoing effects, a global inter-state bureaucracy was developed to protect and to develop permanent solutions for refugees who were an international issue and the first time there could be non-state protection for all individuals under the League of Nations System.¹¹³

To address the growing refugee crisis, the League of Nations High Commissioner for Refugees (LNHCR) was established, signalling the start of international intervention in the

¹⁰⁷ Long (n 36). 47.

¹⁰⁸ David K Androff, *Refugee Solutions in the Age of Global Crisis: Human Rights, Integration, and Sustainable Development* (OUP 2022) 53.

¹⁰⁹ Long (n 36). 47.

¹¹⁰ *Ibid* 48.

¹¹¹ *Ibid* 45.

¹¹² *Ibid*.

¹¹³ Malcolm N Shaw, *International Law* (6th edn, CUP 2008) 31: "After World War I, the League of Nations was established with the 1919 Peace Treaty to maintain peace as an international institution."

field.¹¹⁴ The notion of refugees that was experienced by the 1920s gained an international identity limited firstly to only Russian Refugees under international institutions, and repatriation was discussed as a solution for refugees, depending on some criteria which will be provided by the support of states.¹¹⁵ Therefore, the beginning of the 20th century is also considered the birth phase of international refugee law.¹¹⁶ The Conference also laid the groundwork for what would later be known as non-refoulement, emphasising that no Russian refugee should be forced to return while also underscoring the need to obtain information about individuals who may, in fact, wish to return.¹¹⁷ The League of Nation's first High Commissioner for Russian Refugees Fridtjof Nansen remarked that 'it is obvious that in the long run there can be no final and satisfactory solution of the problems created by the presence in Europe of 1.5 million refugees except by repatriation to their native lands' highlighting economic collapse, a famine, and the 1917 Russian Revolution resulted in over a million Russian refugees fleeing their country.¹¹⁸

When repatriation was discussed in the context of host states' effects between 1921 and 1924, an emerging theory of repatriation was shaped by discourses on security, voluntariness, protection, and reconstruction, resulting in an organised return of about 6,000 people from Bulgaria to Russia in 1922–3 under the League of Nations¹¹⁹. The impact of this early operation influenced the debate that resurfaced in the 1940s and 1950s and served as the foundation for modern refugee policy¹²⁰. Therefore, it could be said that restoring citizenship rights, which came with legal assurances of security and state protection, was viewed as the purpose of

¹¹⁴ Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36) 45.

¹¹⁵ *Ibid.*

¹¹⁶ Bardo Fassbender and Anne Peters (eds), *The Oxford Handbook of the History of International Law* (OUP 2012) 330.

¹¹⁷ Guy S Goodwin-Gill, 'International Refugee Law in the Early Years' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021) 30.

¹¹⁸ Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36) 45-49.

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

repatriation¹²¹. It was evident in the agreement in Berlin in July 1922 regarding the Bulgarian repatriation initiative, which restricted repatriation to three regions, as the League of Nations considered them physically secure and politically safe under Russian control.¹²²

However, concerns were raised within repatriation about the adequacy of guarantees of personal freedom. Additionally, small, accredited delegates were allowed to monitor the State's behaviour towards returnees. However, the Soviet Government had lost interest in conducting this regulated return by 1923. Moreover, the politics of state sovereignty (Soviet state-building) were what ended the period of Russian repatriation. Furthermore, the focus shifted from repatriation towards resettlement. Although the scope of protection of the commissioner was later extended to Armenian refugees in 1926 Arrangements¹²³ and "Turkish, Assyrian, Assyro-Chaldean and assimilated refugees" in 1928 Arrangements¹²⁴, and later to refugees coming from Germany in 1936 Arrangement¹²⁵ Decisions in arrangements are advisory for states.¹²⁶ The Convention relating to the International Status of Refugees was adopted on 18 October 1933 with only the ratification of eight states.¹²⁷

Therefore, the High Commissioner's efficiency in states' behaviour was very limited. However, the international basis of the League of Nations' duration is crucial to the non-refoulement principle in the context of refugees, and the desire to ensure its return in line with conditions such as voluntariness, security, reconstruction, and protection had a guiding effect in the next period.

¹²¹ Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36) 50.

¹²² *Ibid*, 51.

¹²³ Arrangement relating to the Legal Status of Russian and Armenian Refugees (adopted 30 June 1928) 89 LNTS 53.

¹²⁴ Arrangement concerning the Extension to Other Categories of Refugees of Certain Measures Taken in Favour of Russian and Armenian Refugees (adopted 30 June 1928) 89 LNTS 63.

¹²⁵ Provisional Arrangement concerning the Status of Refugees from Germany (adopted 4 July 1936, entered into force 4 August 1936) 171 LNTS 75.

¹²⁶ Goodwin-Gill (n 117).

¹²⁷ Convention relating to the International Status of Refugees (adopted 28 October 1933, entered into force 13 June 1935) 159 LNTS 199, (1933 Convention).

1.3. Return of Refugees in the United Nations System

1.3.1. International Refugee Organisation (IRO)

The concept of Voluntary repatriation has its origins in the years following the Second World War. After the Second World War tragedy ended, the League of Nations disbanded, and the conflict caused millions of people to be uprooted, including soldiers and individuals who did not want to or could not return home due to boundary changes.¹²⁸ However, almost everyone displaced, including any Jews who had survived, was presumed to want to return to their homes.¹²⁹ The Allied Forces were in charge of planning the return of all refugees and displaced people.¹³⁰ In November 1943, the Supreme Headquarters of the Allied Expeditionary Force (SHAEF), led by Great Britain, the United States, and the Soviet Union, established the United Nations Relief and Rehabilitation Administration (UNRRA), whose responsibility was the repatriation of displaced people under military control.¹³¹ By June 1947, almost 8 million people had been repatriated on the assumption that repatriation was the natural, voluntary choice of displaced people under UNRRA's control.¹³²

Therefore, the practices established after the First World War continued into the Second World War in the form of return programs, contingent on mandatory bilateral agreements that were imposed against the will of the forcibly displaced people. The fundamental rights of displaced people were not formally respected. However, the mandatory repatriation policy of UNRRA resulted in extreme manifestations and suicide of people forced to return.¹³³ Therefore, after the Second World War, mandatory repatriation examples faced the resistance of

¹²⁸ Barnett, (n 69). 5.

¹²⁹ Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14). 42.

¹³⁰ Zieck, 'Reimagining Voluntary repatriation' (n 29). 1074.

¹³¹ It represents 44 United Nations before the actual establishment of the United Nations, see in Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14). 42; Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36). 62.

¹³² Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36) 62; Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (n 14) 42.

¹³³ Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36) 14; Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (n 14) 45-47.

individuals, refuting the assumption that everyone is willing to return.

At the recently formed United Nations (UN), return became a contentious topic.¹³⁴ The General Assembly adopted resolution 8(I) on January 29, 1946, which stated that 'no refugees or displaced persons who have finally and definitely, in complete freedom, and after receiving the full knowledge of the facts (...) expressed valid objections to returning to their countries of origin (...) shall be compelled to return to their country of origin.'¹³⁵ In other words, it made repatriation voluntary by legitimising the refusal to return.¹³⁶ This is a crucial legal improvement that limits states' ability to conduct repatriation in ways that conflict with the adopted rights of individuals outlined in resolution 8(I). Moreover, it draws a conceptual framework to follow in the repatriation case. According to Long, it was expressed as a direct response to mandatory repatriations.¹³⁷ It marked the first explicit formulation of voluntary repatriation as a safeguard against forcible return.¹³⁸ At the same time, it is proof of the improvement of the principle of non-refoulement, which became the essence of international refugee law after the first attempts at non-refoulement during the League of Nations system.

The International Refugee Organisation (IRO), the predecessor of the UNHCR, was established in 1948 as a temporary, intergovernmental United Nations (UN) organisation to respond to the refugee problem after the Second World War.¹³⁹ IRO was tasked with assisting and encouraging the early return of displaced people in accordance with the standards outlined in resolution 8(I).¹⁴⁰ It is stated that refugees and other displaced people would fall under its jurisdiction either if they could be repatriated and its assistance would be needed to arrange their repatriation, or if they had valid objections to returning.¹⁴¹ Valid objections included (fear

¹³⁴ Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (n 14) 47-49.

¹³⁵ UNGA Res 8(I), UN Doc A/RES/8(I) (29 January 1946) para (c)(ii).

¹³⁶ Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14) 64.

¹³⁷ Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36).

¹³⁸ *Ibid* 14.

¹³⁹ Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (n 14) 5.

¹⁴⁰ Constitution of the International Refugee Organisation (adopted 15 December 1946, entered into force 20 August 1948) 18 UNTS 3, (IRO Constitution), art 2(1)(a); repeated in Annex I, art 1 sub (b).

¹⁴¹ *Ibid*, Part I, section C, art 1(1).

of) persecution because of race, religion, nationality or political opinions, provided these opinions are not in conflict with the principles of the United Nations, compelling family reasons arising out of previous persecution, or compelling reasons of infirmity or illness.¹⁴² Those who had valid objections to returning were not expected to do so; instead, they were expected to either settle in the country of asylum or resettle in another country.¹⁴³

Therefore, IRO conceptualised voluntary repatriation by clarifying the valid grounds for objection. Voluntariness indicated the ability to present enumerated objections to return. Thus, the repatriation concept, governed by the IRO, introduced an exception to the rule of return, making individuals unreturnable people with valid objections to return. However, voluntary repatriation was the principal task of the IRO. Due to the demands of the former Soviet Union and Eastern Bloc, only 5% of the total registered number of displaced people, with 72,834 refugees repatriated during IRO's history.¹⁴⁴ According to the IRO's system, resettlement or local settlement in another country is encouraged by unreturnable people.

IRO was dominated by Western Europe and the US, with opposition from the Soviet Union and its allies under Cold War political conditions. Resettlement, the IRO's alternative task, was applied as the preferred solution in line with the dominant policy of Western powers.¹⁴⁵ However, repatriation under IRO can be described as the first formation of voluntary repatriation as a solution concept. Although the applicability of the new shape of repatriation is limited, the more nuanced notion of voluntary repatriation was adopted in place of the principle of repatriation, allowing refugees and displaced people to choose not to return as long as they have legitimate concerns.¹⁴⁶ Therefore, since the beginning of the conceptualisation history of repatriation, individuals' rights and humanitarian concerns have played a role in shaping

¹⁴² Ibid, Part I, section C, art 1(1) sub (a).

¹⁴³ Ibid, art 2(1) sub (b).

¹⁴⁴ Chimni, 'From Resettlement to Involuntary repatriation' (n 13) 57; John George Stoessinger, *The Refugee and the World Community* (University of Minnesota Press 1956) 111.

¹⁴⁵ Chimni, 'From Resettlement to Involuntary repatriation' (n 13) 57.

¹⁴⁶ Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14) 51.

repatriation. The assumption that displaced people would automatically return home after hostilities ended was legally rejected by the recognition of an individual right to refuse repatriation on legitimate grounds of protection.

1.3.2. United Nations High Commissioner for Refugees (UNHCR)

1.3.2.1. UNHCR's Foundation and Organisational Structure¹⁴⁷

The Second World War's refugee crisis was acknowledged by the international community as a permanent one until 1950 because there were still 1.25 million refugees in Europe, many years after the war had ended.¹⁴⁸ The UN Economic and Social Council adopted a resolution in 1949 asking the Secretary-General to create a strategy for a new institution and make a proposal for "the nature and extent of the legal functions to be performed, taking into consideration the experience of the League of Nations, the Intergovernmental Committee on Refugees and the IRO".¹⁴⁹ In establishing recommendations for the duties, structure, and funding arrangements of the new refugee organisation, the UN Secretary-General dutifully considered the experience and mandates of the preceding organisations in his 1949 Report.¹⁵⁰ It is important for the new repatriation concept to exclude the UNRRA from adopting mandatory return policies and from taking a disrespectful approach to the fundamental rights of refugees among institutions that will benefit from its experience. Lewis argues that a possible reason for this exclusion was that assisting and facilitating the return of refugees was among UNHCR's founding aims.¹⁵¹ Thus, UNHCR was founded on the institutional experiences indicated in the aforementioned subsections during the Cold War.

On the one hand, following the General Assembly's ratification of the UNHCR Statute in December 1950, the UNHCR was established with a core mandate to protect "refugees" and

¹⁴⁷ The organisational structure will be explained briefly.

¹⁴⁸ Barnett (n 69) 6.

¹⁴⁹ ECOSOC Res 248(IX) A (6 August 1949).

¹⁵⁰ Corinne Lewis, *UNHCR and International Refugee Law: From Treaties to Innovation* (Routledge 2012) 49.

¹⁵¹ *Ibid* 49.

began operating as a subsidiary organ of the UN General Assembly in January 1951.¹⁵² In the immediate aftermath of the Second World War, UNHCR's primary responsibility was to assist millions of uprooted people, mainly in Europe, and to seek durable solutions for them.¹⁵³ For this mission, the agency was allocated three years.¹⁵⁴ The Communist bloc's belief that UNHCR was only a tool of the West was strengthened in 1956 when it was called upon to respond to the refugee crisis brought on by the uprising and Soviet invasion of Hungary.¹⁵⁵ However, the mandate was repeatedly extended as new refugee crises emerged worldwide until the UN General Assembly finally declared the High Commissioner's mandate permanent "until the refugee problem is solved" in 2003.¹⁵⁶

On the other hand, the 1951 Convention was accepted by states. Unlike during the League of Nations period, refugees gained universal recognition for the first time without being attributed to a specific nation, and states assumed protection obligations under the 1951 Convention. A refugee is defined as "any person who, owing to a 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, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return."¹⁵⁷ However, at the beginning, the notion of refugees covered only those whose flight was prompted by a pre-1951 event within Europe;

¹⁵² 1950 Statute (n 4).

¹⁵² Ibid, annex, para 8; UNHCR, *Protecting Refugees & the Role of UNHCR* (UNHCR) 14 <https://www.unhcr.org/media/32587> accessed 31 May 2023.

¹⁵³ UNHCR, *Protecting Refugees & the Role of UNHCR* (n 152) 14.

¹⁵⁴ UNHCR, 'History of UNHCR' (UNHCR) <https://www.unhcr.org/history-unhcr> accessed 31 May 2023.

¹⁵⁵ Jeff Crisp, 'UNHCR at 70: An Uncertain Future for the International Refugee Regime' (2020) 26 *Global Governance* 359, 361.

¹⁵⁶ UNHCR, *Protecting Refugees & the Role of UNHCR* (n 152) 14; UNHCR, 'Governance and Organisation: How the UNHCR Is Run and Structured' (UNHCR Central Europe) <https://www.unhcr.org/ceu/147-en/about-us/governance-and-organization-html.html> accessed 16 January 2023.

¹⁵⁷ 1951 Convention (n 1), art 1A(2).

the 1967 Protocol removed time and place restrictions on the refugee definition.¹⁵⁸ Therefore, UNHCR, for instance, was more actively involved in Third World refugee problems in the 1960s and 1970s.¹⁵⁹ Although the 1967 Protocol, ratified by most states, made the notion of refugee status universal, the individualisation of enumerated reasons for refugee status restricted the application of protection and UNHCR assistance in mass-flux situations after armed conflicts and natural disasters, which are the primary and common reasons for forced displacement. Therefore, the 1951 Convention refugee term has become highly personalised, while twentieth-century practices towards displaced people first focused on groupings during the Inter-War era.¹⁶⁰ The expansion of the definition of refugee under UNHCR's application is discussed in detail in Chapter 2. However, the refugee crisis outside of Europe, like in Somalia, Afghanistan, Liberia, Rwanda, Angola, Iraq, Mozambique, Cambodia and Guatemala that occurred between 1975 and 1995, provides an excellent example of how the definition of a refugee has extended, as well as the difficulties associated with consistently applying it to a large number of asylum seekers.¹⁶¹

Moreover, the 1951 Convention does not contain a definition of voluntary repatriation or the conditions for its implementation. Due to the circumstances of the time and to be acceptable to more states, the 1951 Convention, which Bertrand referred to as the "child of the Cold War,"¹⁶² did not address issues such as voluntary repatriation, which creates additional

¹⁵⁸ Cathryn Costello, Michelle Foster and Jane McAdam, 'The Architecture of the UN Refugee Convention and Protocol' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021) 172–73; H el ene Lambert, 'Temporary Refuge from War: Customary International Law and the Syrian Conflict' (2017) 66 *International and Comparative Law Quarterly* 723, 740

¹⁵⁹ Gil Loescher, Alexander Betts and James Milner, *UNHCR: The Politics and Practice of Refugee Protection* (2nd edn, Routledge 2012) 3.

¹⁶⁰ Geoff Gilbert, 'An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict' (1998) <https://www1.essex.ac.uk/rightsinacutecrisis/report/gilbert.htm#1-2> accessed 16 January 2023.

¹⁶¹ Goodwin-Gill, McAdam and Dunlop (n 10) 26.

¹⁶² Pierre Bertrand, 'An Operational Approach to International Refugee Protection' (1993) 26 *Cornell International Law Journal* 495.

obligations on states.¹⁶³ The lack of a legal concept regarding how voluntary repatriation must be in the 1951 Convention creates an ambiguity, unlike the definition of refugee and protection responsibilities on states. The UNHCR was assigned for voluntary repatriation. Therefore, the development grounds of the concept of voluntary repatriation, which developed by the 1950s with the notion of refugee, have changed at the institutional level. This was developed by the UNHCR and was mainly created outside of the parameters of the 1951 Convention.¹⁶⁴ Some scholars, such as Chetail and Chimni, argue that the concept of voluntary repatriation is ambiguous because the term "voluntary repatriation" refers to an institutional policy rather than an inter-state law.¹⁶⁵ Therefore, the UNHCR has been the leading actor in developing the concept of voluntary repatriation internationally with its policies for over 70 years.

The UN General Assembly and the UN Economic and Social Council (ECOSOC) are responsible for governing the UNHCR.¹⁶⁶ According to Article 3 of the UNHCR, the High Commissioner "shall follow policy directives given to him by the General Assembly or the Economic and Social Council."¹⁶⁷ Additionally, the Executive Committee (ExCom),¹⁶⁸ which currently consists of 107 members, advises the High Commissioner, and its decisions are crucial developments in UNHCR's voluntary repatriation policy and in soft law.¹⁶⁹ UNHCR's voluntary repatriation operations in the field are highly complex and conducted from regional, branch, sub-office, and field offices.¹⁷⁰ Today, UNHCR works in 137 countries in partnership with a

¹⁶³ Hélène Lambert, 'International Refugee Law' (1 April 2010) <https://papers.ssrn.com/abstract=1596065> accessed 25 June 2023, xv.

¹⁶⁴ *Ibid* 11.

¹⁶⁵ Chetail (n 24) 11.

¹⁶⁶ Barnett (n 69); 1950 Statute (n 4), Introductory Note.

¹⁶⁷ 1950 Statute (n 4), Introductory Note.

¹⁶⁸ UNHCR, 'Executive Committee' (UNHCR) <https://www.unhcr.org/executive-committee> accessed 26 May 2026: A United Nations General Assembly resolution: UNGA Res 1166(XII), UN Doc A/RES/1166(XII) (26 November 1957) had requested that ECOSOC establish an Executive Committee (ExCom) consisting of representatives from UN Member States or members of any of the specialised agencies. It specified that these representatives should "be elected by the Council on the widest possible geographical basis from those States with a demonstrated interest in, and devotion to, the solution of the refugee problem." (1950 Statute (n 4), Introductory Note.)

¹⁶⁹ See Chapter 2.

¹⁷⁰ UNHCR, 'Governance and Organisation: How the UNHCR Is Run and Structured' (n 156).

variety of stakeholders, despite its Western-centred foundation.¹⁷¹ Therefore, UNHCR plays an active role in shaping the concept of voluntary repatriation through the policies developed by the organs mentioned above in various parts of the world, through its offices.

1.3.2.2. UNHCR's Operations of Voluntary Repatriation in Practice

To comprehend the UNHCR's voluntary repatriation concept, it is crucial to understand its broader mission and the development of the organisation's policies over time. The UNHCR is the primary international agency responsible for protecting refugees and advancing durable solutions, including local integration, resettlement, and voluntary repatriation. However, UNHCR's application of protection and durable solutions highly affected the ideologically divided atmosphere of the Cold War.¹⁷² Therefore, the concept of voluntary repatriation has been shaped by UNHCR's evolving policies over the years, as outlined below. Moreover, voluntary repatriation has been one of the refugee issues primarily affected by changes at UNHCR.

1.3.2.2.1. Voluntary repatriation during the Cold War

Just as it was stated for the 1951 Convention, UNHCR also existed as a figure of the Cold War period. The majority of refugees and displaced people had already settled in their new countries, and those still crossing borders were typically welcomed by European countries, if only for propaganda purposes between the West and East.¹⁷³ Initially, the UNHCR continued the IRO's practices prioritising resettlement.¹⁷⁴ While some scholars attribute this situation to the labour need of the West for economic development after war¹⁷⁵; others explain this situation as avoiding violation of the non-refoulement principle of the 1951 Convention by forced

¹⁷¹ 'History of UNHCR' (n 154).

¹⁷² Martin Griffiths (ed), *Encyclopedia of International Relations and Global Politics* (Routledge 2005) 53.

¹⁷³ Lambert, 'International Refugee Law' (m 163) XV; Gil Loescher, 'The UNHCR and World Politics: State Interests vs Institutional Autonomy' (2001) 35 *International Migration Review* 33.

¹⁷⁴ Chimni, 'From Resettlement to Involuntary Repatriation' (n 13).

¹⁷⁵ *Ibid.*

repatriations as a response to UNRRA's expectations.¹⁷⁶

Therefore, respect for the voluntary character of return was supported by host states predominantly in the light of their political interest during the Cold War. Chimni argues that humanitarian considerations do not influence the refugee policies of the powerful states in the formation of the international refugee regime.¹⁷⁷ Hence, the changed policies of the UNHCR analysed below support this argument. Due to its formation explained above, UNHCR existed on a political ground under the domination of Western powers.¹⁷⁸ Initially, states opposed UNHCR acting as an operational agency due to the political importance of refugees in the Cold War.¹⁷⁹ Therefore, UNHCR's involvement was largely limited to enabling voluntary repatriation by supplying travel documents and transportation.¹⁸⁰ At the border of the country of origin, interest in the returnee practically ceased for UNHCR and host states.¹⁸¹

However, UNHCR's ideal option in terms of protection and durable solution has been voluntary repatriation since the beginning.¹⁸² According to Lambert, the definition of a refugee from the 1951 Convention, which is used in the majority of nation-states, is predicated on the existence of a tie between the citizen and the state.¹⁸³ On this understanding, refugee status is not intended to be permanent: where the state of origin is again able and willing to provide effective protection, the legal basis for refugee status may cease, and return may become a legal requirement due to the elimination of international protection grounds.¹⁸⁴ This approach reflects earlier assumptions, rooted in the interwar period, that displacement would be temporary and that repatriation would follow once protection by the home state was restored.¹⁸⁵ From the late

¹⁷⁶ Androff (n 108) 50.

¹⁷⁷ Chimni, 'From Resettlement to Involuntary repatriation' (n 13). 58.

¹⁷⁸ Loescher (n 173) 35.

¹⁷⁹ *Ibid.*

¹⁸⁰ John McCallin, 'Voluntary Repatriation' (1989) 12 *In Defense of the Alien* 104, 105
<http://www.jstor.org/stable/23143057> accessed 31 May 2023, 105.

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ Androff (n 108) vii.

¹⁸⁴ Hathaway, 'The Meaning of repatriation' (n 24).

¹⁸⁵ See Section 2 of Chapter 1.

1970s, however, voluntary repatriation also became more politically attractive to developed states, as increasing refugee movements from the Global South made resettlement and local integration less acceptable to them.¹⁸⁶

Since the beginning of the 1980s, the significance of voluntary repatriation as a preferred solution has been emphasised numerous times in a variety of UNGA Resolutions, and voluntary repatriation has hierarchical priority,¹⁸⁷ due to the blocking of other solutions. Additionally, the General Assembly has taken decisions expanding the duties of the UNHCR regarding large scale repatriations, such as assistance to countries of origin to facilitate the sustainable reintegration of returnees and ensure protection continues via monitoring of returnees' safety and well-being.¹⁸⁸ This approach of the General Assembly changed the position of the UNHCR from passive facilitation of voluntary repatriation to proactive establishment of conditions favourable to refugees' voluntary repatriation.¹⁸⁹ On the expansion of UNHCR's function on voluntary repatriation, ExCom approved its first conclusions on voluntary repatriation in 1980 and 1985, which sets the principles of voluntary character and provide a basement to improve a legal framework of voluntary repatriation analysed under Chapter 2.¹⁹⁰

The UNHCR's involvement in this situation essentially entails two things in practice: first, ensuring that returnees are not subjected to harassment or sanctions that are inconsistent with any amnesties or assurances of their safety provided by their country of origin; and second, depending on the circumstances, assisting in maintaining and consolidating that person's return

¹⁸⁶ Michael Barnett, 'UNHCR and Involuntary Repatriation: Environmental Developments, the Repatriation Culture, and the Rohingya Refugees' <https://ciaotest.cc.columbia.edu/isa/bam01/> accessed 24 June 2023, 1.

¹⁸⁷ UNGA Res 38/121, UN Doc A/RES/38/121 (16 December 1983). Chimni, 'From Resettlement to Involuntary repatriation' (n 13); Chetail (n 24). 12.

¹⁸⁸ Chetail (n 24).

¹⁸⁹ *Ibid* 12.

¹⁹⁰ UNHCR Executive Committee, *Conclusion No 18 (XXXI): Voluntary Repatriation* (16 October 1980). UNHCR Executive Committee, *Conclusion No 40 (XXXVI): Voluntary Repatriation* (18 October 1985).

through the provision of financial aid.¹⁹¹ The UNHCR was to be given access to returnees in order to ensure that they were not abused and to ensure that they received the help they needed to ensure their successful reintegration and independence.¹⁹² According to Mccallin, a Representative of the UNHCR, real progress and gain here lie in the growing international recognition that UNHCR has the right to promote repatriation and monitor the welfare of returnees in the country of origin.¹⁹³ Additionally, the tripartite agreements have now become a central part of the concept when considering a return over time, as the experience of voluntary repatriation has deepened.¹⁹⁴ In the case of Ethiopian exiles in Djibouti between 1977 and 1983, a tripartite agreement was implemented, an early example of UNHCR's developing role in tripartite repatriation arrangements, while also exposing the tension between state-led repatriation planning and the requirement of genuine refugee voluntariness.¹⁹⁵

However, in this case mentioned as a positive example in the development of the repatriation concept by the UNHCR official, the most important element that was overlooked was the voluntary participation of refugees in the repatriation. Crisp argues that the UNHCR and the governments of Ethiopia and Djibouti encouraged repatriation despite the refugees' reluctance.¹⁹⁶ The fact that repatriation was carried out in such a short time as 15 days also raises doubts in terms of meeting the voluntariness criteria in 15 days.¹⁹⁷ A clear indication of both states' involvement in the repatriation process was provided by Djibouti's precarious political and economic condition as well as the Ethiopian government's need to garner financial support.¹⁹⁸ However, it is unclear whether the return was also voluntarily preferred by the refugees. Although the UNHCR got the guarantee for the safety of returnees in countries of

¹⁹¹ Mccallin (n 180) 104.

¹⁹² *Ibid* 105.

¹⁹³ *Ibid*.

¹⁹⁴ *Ibid*.

¹⁹⁵ *Ibid*.

¹⁹⁶ Jeff Crisp, 'The Politics of Repatriation: Ethiopian Refugees in Djibouti, 1977–83' (1984) 11(30) *Review of African Political Economy* 73, 76.

¹⁹⁷ *Ibid* 78-79.

¹⁹⁸ *Ibid* 75.

origin, half of the returnees fled again to other nations due to their fear of persecution and strong recollections of the economic suffering.¹⁹⁹

Therefore, the preferred solution terminology indicates the political interest of states with (voluntary) repatriation rather than the refugees' voluntary wish. Before the 1990s, the common conclusion made on behalf of refugees by UNHCR was that because of the limited opportunities provided to refugees in host countries, very few refugees gave up hope of returning home one day.²⁰⁰ The idea behind encouraging repatriation is turning back the assumption that returning home was the voluntary natural choice of refugees by the decreasing effects of the Cold War.²⁰¹ Moreover, it demonstrates that UNHCR's policies regarding the application of durable solutions are directly affected by states' preferences ideologically. Therefore, UNHCR, due to its establishment and structure, has shown an attitude far from being "of an entirely non-political character; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees."²⁰²

Moreover, returning home analogy established on the right to return is highlighted as 'most of refugees' dream' by the UNHCR and international community.²⁰³ In previous sections examples belongs to early term and interwar period prove that meaning of home can be changeable in the exile depending on the conditions in host and origin country, refugees' experience and duration.²⁰⁴ Chimni points out, "exile affects individuals and groups in a profound way so that the meaning of word is transformed. 'Home is where you make it.'"²⁰⁵ According to refugees, the home, which has a socio-psychological and legal meaning, might include that people feel belonging to community, their own language is spoken, they have

¹⁹⁹ John R Rogge and Joshua Akol, 'Repatriation: Its Role in Resolving Africa's Refugee Dilemma' (1989) 23(2) *International Migration Review* 184, 186-200.

²⁰⁰ McCallin (n 180) 105.

²⁰¹ Subsection 2 of Chapter 1.

²⁰² 1950 Statute (n 4).

²⁰³ UNHCR, 'Voluntary Repatriation' (UNHCR) <https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/voluntary-repatriation> accessed 12 January 2023.

²⁰⁴ See subsection 1 and subsection 2.

²⁰⁵ Chimni, 'From Resettlement to Involuntary repatriation' (n 13) 59.

access to their basic rights and freedoms, they have physical property in the real sense, and they have opportunities for their future. Considering the prolonged refugees due to ongoing conflicts, which will be explained in detail under Chapter 3, Long argues that the experiences of refugees make repatriation to the country of origin called "home" before a flight, both socially and frequently undesirable.²⁰⁶

Thus, it might be concluded that although repatriation is a preferred course of action for many refugees, it does not always meet their demands, particularly the right to return home through voluntary repatriation, as referred to by the UNHCR and the international community. Nevertheless, assuming that refugees desire to return because they have a legal right to do so leaves unresolved whether they actually wish to return. As Chimni argues, simply, believing that repatriation is the solution that refugees want the most could result in the legitimisation of some form of compulsion.²⁰⁷ Therefore, the assumption in the interwar period, which again became the focus of the voluntary repatriation solution, paved the way for the realisation of some return operations, whose legality was controversial, for the next period.

1.3.2.2.2. Voluntary Repatriation Post-Cold War

Voluntary repatriation as a durable solution was profoundly affected by the end of the Cold War, which diminished refugees' political importance to host states.²⁰⁸ Moreover, the Cold War did not end with permanent peace, and new conflicts have given rise to oriented ethnicity, such as in Iraq, Liberia, Rwanda, Sierra Leone, Somalia, Timor-Leste, and the former Yugoslavia.²⁰⁹ The preferred solution process from resettlement to voluntary repatriation, which had already started in the 1980s, gained momentum, and the UNHCR declared the 1990s

²⁰⁶ Katy Long, *Home Alone? A Review of the Relationship between Repatriation, Mobility and Durable Solutions for Refugees* (UNHCR 2010) 5 <http://www.unhcr.org/4b97afc49.html> accessed 1 July 2024, 5.

²⁰⁷ BS Chimni, 'Perspectives on Voluntary Repatriation: A Critical Note' (1991) 3(3) *International Journal of Refugee Law* 541, 543.

²⁰⁸ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (n 24) 442-460.

²⁰⁹ Androff (n 108) 56.

the decade of repatriation.²¹⁰ Only 1.2 million refugees were repatriated in the five years from 1985 to 1990, while over 9 million were repatriated in the next five, from 1991 to 1996.²¹¹ However, since the General Assembly started asking the UNHCR to perform duties related to extensive large scale repatriation operations at the beginning of the 1980s, voluntary repatriation has evolved into the UNHCR's primary solution, despite the fact that the UNHCR Statute does not establish any specific hierarchy among the three solutions.²¹² Voluntary repatriation was empowered legally and politically, when it is durable, it is the ideal solution to refugee problems mentioned in detail in Chapter 2.²¹³ Although there have been more repatriation exercises, there have also been more claims that UNHCR is bending the rules for voluntary repatriation and is even complicit in involuntary repatriation.²¹⁴

This result was related to the United Nations' more interventionist stance during the 1990s.²¹⁵ Since it was widely acknowledged that situations where large scale forced displacement following grave human rights abuses and violations of humanitarian law pose a threat to international peace and security under Chapter VII of the UN Charter.²¹⁶ Depending on this situation, the Security Council has taken enforcement measures to stop these violations of international law, including sanctions and authorisations for the use of force by states and regional organisations, mandates for aggressive peace operations to safeguard humanitarian

²¹⁰ Chimni, 'From Resettlement to Involuntary Repatriation' (n 13). 56.

²¹¹ Androff (n 108) 56.

²¹² UNGA Res 38/121, UN Doc A/RES/38/121 (16 December 1983), preamble, underlining that voluntary repatriation is "the most desirable and durable solution to problems of refugees".

²¹³ UNGA Res 39/169, UN Doc A/RES/39/169 (17 December 1984): "Reiterates that voluntary repatriation, when it is durable, is the ideal solution to refugee problems, calls upon countries of origin, countries of asylum, the Office of the High Commissioner and the international community as a whole to do everything possible to enable refugees to exercise freely their right to return home in safety and dignity, ensuring that international protection continues to be extended until that time, and assisting, where needed, the return and reintegration of repatriating refugees, and further calls upon the High Commissioner, in cooperation with States concerned, to promote, facilitate and coordinate the voluntary repatriation of refugees, including the monitoring of their safety and well-being on return."

²¹⁴ Barnett (n 186) 1.

²¹⁵ Gilbert, 'An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict' (n 160).

²¹⁶ Christiane Ahlborn, 'Introduction' in *The Development of International Refugee Protection through the Practice of the UN Security Council* (Graduate Institute Publications 2011).

activities in countries of origin, and intricate peace-building missions with broad administrative authority to make sure that refugees can safely exercise their right to return.²¹⁷ Additionally, the Council has consistently pushed for the right of refugees to return in order to restore international peace and security as a prerequisite for the repatriation of refugees and internally displaced people, as demonstrated by the situations of Cambodia, Bosnia-Herzegovina, and Sudan.²¹⁸

The General Assembly has thus established a new interface between international refugee protection and the Security Council's primary duty: the restoration of international peace and security, by further extending UNHCR's mandate to assist countries of origin in the integration of returning refugees.²¹⁹ Accordingly, the Security Council and the Secretary-General can request the UNHCR to act, despite the fact that there is no role detrimental to operational orientation for both of them in the statute.²²⁰ However, it might create a risk of weakening UNHCR's non-political mission.²²¹ In practice, the extended operational mission of the UNHCR in the country of origin caused it to be described as 'UN's humanitarian arm'.²²² At the same time, this situation supports the extension of people under the protection of the UNHCR. In contrast to refugees, internally displaced people (IDPs) have not crossed an international border, and as a result, UNHCR has assumed ever-greater responsibility for their protection in the late 1990s and early 21st century.²²³

Thus, in the 1990s, UNHCR began to take on a larger role in conducting repatriation operations and offering humanitarian aid.²²⁴ Firstly, the Security Council has encouraged

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.* 38.

²²⁰ Gilbert, 'An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict' (n 160).

²²¹ Geoff Gilbert, 'Rights, Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order' (1998) 10 *International Journal of Refugee Law* 349, 356.

²²² Anne Hammerstad, 'Whose Security? UNHCR, Refugee Protection and State Security after the Cold War' (2000) 31 *Security Dialogue* 391, 391.

²²³ Loescher, Betts and Milner (n 159) 3.

²²⁴ *Ibid.*

UNHCR's involvement in active conflict zones, making the refugee agency highly dependent on protecting these peace operations to the detriment of its humanitarian and non-political mandate.²²⁵ By legitimising peace operations to protect safe areas in Iraq, Bosnia, and Rwanda, the Council has prevented internally displaced persons who are outside the scope of this research, from leaving their country of nationality and seeking asylum abroad between the late 1990s and early 21st century.²²⁶ Secondly and most importantly, Post Cold War duration Security Council played an important role the application of repatriation. The Cold War did not lead to lasting peace, with new conflicts emerging in Iraq, Liberia, Rwanda, Sierra Leone, Somalia, Timor-Leste, and the former Yugoslavia.²²⁷ Despite increased voluntary repatriation, the number of refugees grew. Reintegration proved to be difficult for returnees as they rebuilt their lives, which limited the long-term effectiveness of voluntary repatriation.²²⁸

On the one hand, the elimination of causes, such as conflicts that cause refugees, is a precondition for voluntary repatriation. After that, voluntary repatriation indicates the re-provision of national protection for returnees and their country of origin with reintegration within communities and country of origin by accessing basic rights and services.²²⁹ Therefore, 1996 Handbook of the UNHCR highlights the fundamental change of circumstances in the country of origin to encourage voluntary repatriation.²³⁰ UNHCR does not have ability to solve the root causes and reactivate national protection for refugees due to its limited mission with

²²⁵ Christiane Ahlborn, 'Normative Competencies within the UN System: The Evolution of the Institutional Framework', *The Development of International Refugee Protection through the Practice of the UN Security Council* (Graduate Institute Publications 2011) <<http://books.openedition.org/iheid/169>>. accessed 16 March 2022.

²²⁶ Loesche, Betts and Milner (n 159) 3.

²²⁷ Griffiths (n 172) 56.

²²⁸ *Ibid.*

²²⁹ UNHCR, *Handbook for Repatriation and Reintegration Activities* (UNHCR 2004) <https://www.refworld.org/policy/opguidance/unhcr/2004/en/17995> accessed 16 March 2022, (hereafter *Repatriation and Reintegration Handbook*).

²³⁰ UNHCR, *Handbook: Voluntary Repatriation: International Protection* (UNHCR 1996) 14 <https://www.unhcr.org/uk/media/handbook-voluntary-repatriation-international-protection> accessed 20 March 2022, (hereafter *Voluntary Repatriation Handbook*).

providing protection and encouraging durable solution to refugees.²³¹ Only states and under the condition of threat to international peace and security, UN Security Council can eliminate these reasons and build a peaceful and secure environment for return. As a result, the UNHCR has been able to promote voluntary return with the assistance of the Security Council in maintaining peace and security. In addition, the fact that the Security Council also provides the safety of the humanitarian staff working actively in the field has been important for the UNHCR to provide more effective services such as relief support and reintegration of returnees to their country of origin.²³² Moreover, the UNHCR language adopted by resolutions, including the Security Council's peacekeeping, political and peace-building missions, supported fulfilling the legal meaning of voluntary repatriation. Resolutions were highlighting "the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons"²³³ in line with the UNHCR.

On the other hand, the Security Council's proactive participation in maintaining peace and security in the country of origin has played a key role in promoting repatriation, terminating refugee status, and facilitating their safe return.²³⁴ Increased restrictions of host states on other solutions created pressure on the UNHCR for repatriation as quickly as possible.²³⁵ However, this situation negatively affected the refugee protection standards and the sustainability of voluntary repatriation as a solution. According to Barnett, the UNHCR established a "repatriation culture," distinguished by organisational language, bureaucratic organisation, and official and informal standards that make repatriation more desirable, proper, and legal under increasingly permissive conditions.²³⁶ The result of this culture was an increase in the risk that

²³¹ Gilbert, 'An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict' (n 160).

²³² Ahlborn, 'Normative Strengthening of International Refugee Protection' (n 225).

²³³ UN Doc S/RES/1770 (10 August 2007) preamble; UNSC Res 1674, UN Doc S/RES/1674 (28 April 2006) para 16.

²³⁴ Chimni, 'From Resettlement to Involuntary repatriation' (n 13). 6.

²³⁵ Loescher (n 173) 17.

²³⁶ Michael Barnett, 'UNHCR and the Ethics of Repatriation' in *The International Humanitarian Order* (Routledge 2009) 34.

the UNHCR would support a repatriation exercise that may uncomfortably descend into involuntary repatriation and refoulement.²³⁷ On the refugee side, their eventual repatriation is stuck between a safe return and the voluntary repatriation programme of the UNHCR. However, the missing point in this dilemma is how much the refugees' willingness to return is sufficient.

Meanwhile, the UNHCR created the 1996 Handbook, which is a significant step in providing guidance for the application of voluntary repatriation. The first and most important criteria is also expressly mentioned as "repatriation should be voluntary"²³⁸ and voluntariness is solely associated with the "absence of any physical, psychological, or material pressure."²³⁹ Additionally, the UNHCR can promote voluntary repatriation when fundamental changes in circumstances in the country of origin makes possible return in safety and with dignity for the large majority of refugees after a careful assessment of the situation.²⁴⁰ Although it is an essential part of voluntary repatriation, there is no clarity about assessment criteria. As impressed by Zieck, repatriation is a naturally problematic zone for refugees because the concept of refugee indicates a non-returnable person.²⁴¹ Therefore, the decision regarding being returnable based on an assessment of the conditions in the country of origin by the UNHCR or host states implies the existence of ceased circumstances for refugee status. According to the cessation clause, international protection is no longer justified on account of significant change within the fundamental circumstances under which a person has been recognised as a refugee for the nationals of that state.²⁴² Therefore, refugees cannot be compelled to return to their place of origin until the requirements for losing their status as refugees are met.²⁴³

In other words, when the conditions of the country of origin are assessed as returnable

²³⁷ *Ibid.*

²³⁸ UNHCR, *Voluntary Repatriation Handbook* (n 230) 6.

²³⁹ *Ibid* 10.

²⁴⁰ *Ibid* 14.

²⁴¹ Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14).

²⁴² 1951 Convention (n 1).

²⁴³ UNHCR Executive Committee, *Conclusion No 65 (XLII): General Conclusion on International Protection* (11 October 1991).

to promote voluntary repatriation, it indirectly creates basis for the forced return of refugees according to cessation clauses of the 1951 Convention or vice versa. Despite the improvement of the rights of refugees regarding repatriation, as mentioned in the ExCom Conclusions and the UNHCR Handbook, the conditions of the 1990s explained above leave application of voluntary repatriation under pressure. “Finding the proper balance between international responsibilities towards refugees and legitimate state interests”²⁴⁴ was an important challenge for the UNHCR under this pressure. Voluntary repatriation of Rwandan refugees in 1996 is a significant example to demonstrate this effect on the UNHCR and refugees. Roughly 800,000 people died in Rwanda's civil war and genocide²⁴⁵ in 1994, and hundreds of thousands were internally and internationally displaced.²⁴⁶ It is controversial whether Rwanda was secure by the end of 1996, when there were massive returnees from camps in Burundi, the former Zaire, and Tanzania. Additionally, the Amnesty International has accused the UNHCR of failing to pay attention to the human rights situation in Rwanda at that time.²⁴⁷ For instance, the Tanzanian government closed the camps by blocking the UNHCR's protection activities due to security hesitation and forced Rwandan refugees to return.²⁴⁸ The government forced almost one million refugees under inhuman treatment in Tanzania to leave by the end of 1996 with the UNHCR's approval.²⁴⁹ Most of the refugees (voluntarily) decided to return under physical, psychological, or material pressure in host states, contrary to the 1996 Handbook.

The Amnesty International (AI) evaluated this repatriation as a violation of non-

²⁴⁴ Guy S Goodwin-Gill, ‘Closing Address: Principles and Protection: Making it Work in the Modern World’ in *UNHCR and International Refugee Protection* (Refugee Studies Programme Working Paper No 2, University of Oxford, June 1999) 6.

²⁴⁵ See for detailed information John Eriksson and others, *The International Response to Conflict and Genocide: Lessons from the Rwanda Experience: Synthesis Report* (Joint Evaluation of Emergency Assistance to Rwanda, March 1996).

²⁴⁶ James Milner, ‘Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security’ 4.

²⁴⁷ Gilbert, ‘Rights Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order’ (n 221) 361; Amnesty International, Rwanda: Human Rights Overlooked in Mass Repatriation (AI Index AFR 47/02/97, 14 January 1997) 17.

²⁴⁸ Milner (n 246) 6.

²⁴⁹ Gilbert, ‘Rights Legitimate Expectations, Needs and Responsibilities: UNHCR and the New World Order’ (n 221) 381.

refoulement by the Tanzanian Government with the consent of the UNHCR and accused the UNHCR of failing to pay attention to the human rights situation via assessing the conditions in Rwanda at that time.²⁵⁰ Returnees faced killing, detention without charge or trial and arbitrary arrest, disappearance, and prison conditions amounting to cruel, inhuman or degrading treatment²⁵¹ and sexual violence.²⁵² Therefore, the return that should be a solution for the refugees who survived the genocide has thrown them into various traps. 27th years after the genocide, Rwandan refugees living in camps resist return. However, UNHCR invoked the Cessation Clause on 30th June 2013, which declared Rwanda safe for its citizens living as refugees who fled the country between 1959 and December 1998 across the world to return.²⁵³

In addition to this traumatic example, refugees experienced involuntary repatriations due to the security concerns of nation-states during the 1990s, such as Kosovar Albanians in Macedonia²⁵⁴, Rohingya in 1978 and 1993, that of Cambodian refugees in 1981, Vietnamese refugees from Hong Kong 1989 to 1991, and 1994-95 repatriation of the Rohingya refugees from Bangladesh to Burma.²⁵⁵ To make it clear what is being done, UNHCR chose to call this kind of return an "imposed return." which means organising a return when the security environment in the nation of asylum becomes riskier than the one existing in the country of origin was classified as "an evacuation to save lives."²⁵⁶ However, in practice, the UNHCR struggled to strike a balance between the interest of refugees, host states and country of origin. The primary focus of the UNHCR changed from the protection of refugees in the 1951 Convention to the repatriation and reintegration of large-scale asylum seekers as quickly as

²⁵⁰ Amnesty International (n 247) 15-16.

²⁵¹ *Ibid.*

²⁵² Human Rights Watch/Africa, 'Rwanda' (Human Rights Watch, 1996)
<https://www.hrw.org/reports/1996/Rwanda.htm> accessed 25 March 2024.

²⁵³ Cyril Zenda, 'Rwandan Refugees in Zimbabwe Resist Repatriation 27 Years after Genocide' (FairPlanet)
<https://www.fairplanet.org/story/rwandan-refugees-in-zimbabwe-resist-repatriation-27-years-after-genocide/>
 accessed 25 March 2024.

²⁵⁴ Milner (n 246) 2.

²⁵⁵ Barnett (n 68) 13.

²⁵⁶ Zieck, 'Reimagining Voluntary repatriation' (n 29). 1072.

possible. Therefore, it has been rightly criticised by many academics that the UNHCR, whose main task is to protect refugees, promotes repatriation without a considerable assessment of conditions in the country of origin, which may lead to the violation of the principle of non-refoulement.²⁵⁷

The major reasons for the failure of this balance to be achieved were the fact that the UNHCR was largely dependent on the states while carrying out its functions, and that the states did not grant refugees a permanent solution other than their return as a result of their own sovereign rights, and the pressure created on the UNHCR regarding the return. Therefore, the formation of the concept of return in the UNHCR period has been a situation where the human rights of refugees in voluntary return were left in the air against the sovereignty rights of states in a seesaw. Although legal standards for the voluntary repatriation of refugees have been positively developed in the UNHCR period, ensuring this situation in practice has been doomed to the extent permitted by the sovereign rights of the states.

1.3.2.3. UNHCR's Roles and Limitations in Voluntary repatriation²⁵⁸

Initially, the UNHCR was established to collaborate with states to guarantee refugees' access to protection. Furthermore, the mandate was to ensure that refugees would be provided with long-term solutions and reintegrated into their home nation or permanently integrated into a new one.²⁵⁹ The 1951 Convention relating to the Status of Refugees, which defines who is eligible for refugee status and outlines the rights that all refugees have, is the primary document governing the system. The 1951 Convention also states unequivocally that UNHCR is in charge of supervising its execution.²⁶⁰ The UNHCR has consistently broadened the scope of its activities in voluntary repatriation as one of its primary mandate issues since the end of the Cold

²⁵⁷ Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14) 438-39; Takahashi (n 24). 594, 602; Gilbert, 'An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict' (n 160)379-80; Chimni, 'From Resettlement to Involuntary Repatriation' (n 13).

²⁵⁸ UNHCR's International Law of Voluntary Repatriation Role is evaluated in detail under Chapter 2.

²⁵⁹ Betts, Loescher and Milner (n 159). 2.

²⁶⁰ Ibid; 1951 Convention (n 1), art 35.

War, as mentioned above.

The UNHCR statute sets out two main functions: providing international protection to refugees and seeking permanent solutions. According to para 1 of the 1950 Statute, "... seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organisations to facilitate the voluntary repatriation of such refugees or their assimilation within new national communities." is regulated as one of the tasks.²⁶¹ Thus, facilitating the return of refugees upon their request is one of the UNHCR's roles despite the risky circumstances of the country of origin for returnees.²⁶² Facilitation refers generally to spontaneous repatriation and requires passive involvement of the UNHCR such as material and logistical assistance and monitoring process.²⁶³ Therefore, the role of the UNHCR's role is limited to simply facilitating of return decision of refugees in this kind of situation in which the UNHCR is not actively encouraging voluntary repatriation due to unsafe conditions in the country of origin is not the subject of this research.

Moreover, the 1950 Statute also calls on the UNHCR to assist "governmental and private efforts to promote voluntary repatriation or assimilation within new national communities." under paragraph 8 (c).²⁶⁴ Unlike Facilitation, voluntary repatriation is a result of promotion based on the encouragement of outside actors.²⁶⁵ Therefore, to promote repatriation, the UNHCR has an active role in organising voluntary repatriation of refugees via assisting key players as discussed below in detail. With UNHCR's domain expanded over time, today, UNHCR has become the leading actor playing a constitutional role before, during and after

²⁶¹ 1950 Statute (n 4) para 1.

²⁶² Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27) 36.

²⁶³ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (n 24).

²⁶⁴ 1950 Statute (n 4) para 8.

²⁶⁵ Goodwin-Gill, McAdam and Dunlop (n 10); UNHCR, *Voluntary Repatriation Handbook* (n 230) 3.1.; Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (n 24) 448.

large-scale voluntary repatriation operations.²⁶⁶ However, The UNHCR faces challenges in its voluntary repatriation efforts due to external and internal shortcomings.²⁶⁷ Recognizing and addressing these issues is crucial for enhancing the effectiveness of repatriation efforts and providing durable solutions for refugees worldwide. Thus, the following subtitles exploring the roles of the UNHCR in promoting voluntary repatriation also focus on internal and external limitations that reduce the effectiveness of voluntary repatriation programmes run by the UNHCR.

1.3.2.3.1. Assessing conditions and promoting voluntary repatriation

According to the 1996 UNHCR handbook, "The fact that the voluntary repatriation of refugees can take place at a lower threshold of change in the country of origin than cessation is based on two elements. One is that a "fundamental change of circumstances" implies the consolidation, over time, of a process of stabilization."²⁶⁸ Before promoting voluntary repatriation, the UNHCR assesses the situation in the country of origin, considering significant changes in the country of origin such as elements including security, political stability, human rights, and access to essential services.²⁶⁹ Therefore, the UNHCR plays an active role in encouraging the voluntary repatriation of refugees when the conditions of the country of origin significantly change to permit a safe and dignified return according to its assessment.

This assessment should be objective about the conditions of the country of origin.²⁷⁰ The degree to which the UNHCR's obligation to provide international protection permeates the area of ceasing to be a refugee and voluntary repatriation is one of the outstanding theoretical paradoxes of its institutional responsibilities.²⁷¹ The refugee's interests and the defence of their

²⁶⁶ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (n 24) 453; UNHCR, *Voluntary Repatriation Handbook* (n 230).

²⁶⁷ Crisp, 'UNHCR at 70: An Uncertain Future for the International Refugee Regime (n 155) 359.

²⁶⁸ UNHCR, *Voluntary Repatriation Handbook* (n 230) 2.2.

²⁶⁹ *Ibid* 3, 1.

²⁷⁰ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (n 24).

²⁷¹ Goodwin-Gill, McAdam and Dunlop (n 10) 549.

security, rights, and welfare must be the main factors to consider while promoting repatriation,²⁷² because a refugee is an unrepatriable person as a requirement of the non-refoulement principle²⁷³ Which will be explored in Chapter 2 in detail. Therefore, the assessment level of a lower threshold of change in the country of origin than cessation needs to be evaluated very diligently, considering the protection needs of refugees. However, the UNHCR is not limited to encouraging return only when it deems it warranted; instead, it is increasingly taking the form of a proactive strategy that is started well in advance of that.²⁷⁴ Therefore, in practice level of changes in the country of origin has been rated very low by the UNHCR, mostly before the risk of facing violation in the country of origin did not end such as voluntary repatriation programmes in Afghanistan, Somalia, Rwanda, and Bosnia.²⁷⁵

UNHCR faces numerous challenges, leading to the promotion of these premature returns, resulting in widespread human rights violations. Following the Cold War, on the one hand, there were more civil wars, which led to a rise in the number of refugees and asylum seekers due to dissolved national and international borders and expanded global inequality.²⁷⁶ On the other hand, Western powers lost the geopolitical and ideological justification for protecting refugees because industrialized states had to deal with challenges to social cohesion, welfare, and security in destination countries with increased public and political opposition to immigration in the 1990s.²⁷⁷ Finally, there was even less tolerance for non-Western, Muslim, and/or immigrant populations after the events of September 11, 2001, which connected migration to problems of security, conflict, and terrorism and this anti-immigrant attitude was further accentuated as Europe entered an economic recession in the late 2000s.²⁷⁸ Therefore,

²⁷² *Ibid* 551.

²⁷³ Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27) 36.

²⁷⁴ *Ibid*.

²⁷⁵ Takahashi (n 24); Chimni, 'From Resettlement to Involuntary Repatriation' (n 13).

²⁷⁶ Hein de Haas, Stephen Castles and Mark J Miller, *The Age of Migration: International Population Movements in the Modern World* (6th edn, Red Globe Press 2020) 324.

²⁷⁷ Marieke van Houte and Tine Davids, 'Moving Back or Moving Forward? Return Migration, Development and Peace-Building' (2014) 16(2) *New Diversities* 71.

²⁷⁸ Castles, De Haas and Miller (n 276) 324.

the UNHCR is left with very limited funds to support refugees in developing host states which are pushing refugees' return with their policies.

Moreover, the return has been seen as a process of restoring pre-conflict social order, contributing to development and peacebuilding, and promoting normalcy by the international community.²⁷⁹ Moreover, 'When migrants return to their country of origin, they will contribute to development and peacebuilding' including refugees, failed asylum seekers, and undocumented migrants became the national policy of Europe including some of the developed donor states in the 2010s.²⁸⁰ This policy has a reducing effect on the threshold of change in the country of origin to promote voluntary repatriation because it argues that peace and development would be possible if returnees were not motivated to return with the support of the international community. The comprehensive research of Van Houten and Davids based on the relationship between returnees and development and peacebuilding in their country of origin demonstrates that returnees do not automatically lead to development or peacebuilding in their home countries, as it is not a straightforward transition back to normalcy and returnees who only voluntarily return might affect positively change in the home country.²⁸¹ Therefore

²⁷⁹ Richard Black and Khalid Koser, *The End of the Refugee Cycle?: Refugee repatriation and Reconstruction* (Berghahn Books 1999); Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27) 37.

²⁸⁰ Houte and Davids (n 277).

²⁸¹ *Ibid* 72 :“This article explores return migration within the migration-development-peace-building nexus. We explore (1) the heterogeneity of the post-return experience, (2) the complex meanings and motivations of return migration, and based on that, (3) interrogate the expectations of the characteristics of migrants, on which the link between return migration, development and 1 Notably Belgium, France, the Netherlands and Spain. See ICMPD and ECDPM (2013) for a systematic analysis of 11 European countries' Migration and Development policies and how they often include Assisted Voluntary Return programs. 2 Notably Belgium, France, Germany and the Netherlands (ICMPD and ECDPM 2013). peacebuilding is based. Based on these findings, we (4) explore return migrants' potential to be agents of change. This exploration centres on the question of under which circumstances migrants returning from industrialized countries are willing and able to contribute to change about development and peace-building in the (post-) conflict country of origin. We explore these questions by focusing on the life courses of return migrants while building on two methodologically complementary research phases. The first phase is a comparative study of 178 returnees from industrialized countries to six countries across the world (Sierra Leone, Togo, Armenia, Bosnia and Herzegovina, Afghanistan and Vietnam) conducted in 2007-08. In each country, data was gathered through a structured survey, semi-structured interviews with returnees and key informants, and participatory observation. The study shows remarkable trends as well as context-specific differences. The second phase builds on the first with an in-depth case study from 2012 among 35 Afghan return migrants who returned to their countries of origin. They mainly returned from Western Europe, and particularly from the Netherlands, the United Kingdom, Germany and Scandinavia. The autobiographical narrative was the core of the data collected, which helped to obtain a holistic understanding of the role of migration in

building another assumption on the existing one which refugees are automatically volunteered to return without any findings, can only help promote involuntary repatriations in practice before fundamental changes in the country of origin.

Overall, providing a balance between the striking interests of refugees, donor states, host states and country of origin has been the main issue for the UNHCR in voluntary repatriation operations.²⁸² UNHCR is playing the role of an agency that works to protect individuals from state-perpetrated violations of their human rights as an unpolitical institution²⁸³ while also being mandated, administered, and funded by states.²⁸⁴ Thus, inducing states to fulfil their duties regarding refugees, like providing protection, sharing burdens, and ensuring voluntary repatriation standards looks the most rigid barrier in front of the UNHCR.

1.3.2.3.2. Conducting negotiations and a tripartite agreement

The UNHCR's proactive strategy mentioned above starts with mostly improving negotiations about voluntary repatriation between affected states, as soon as signs emerge that a voluntary return is durable.²⁸⁵ Indicators for voluntary repatriation exemplified by the UNHCR like "a ceasefire agreement, a peace accord and/or an advanced stage of peace negotiations; a Security Council mandate; a peace process facilitated by a third party (two member states, a regional body or a combination that includes the UN)."²⁸⁶ Thus, UNHCR has to initiate tripartite dialogues between the country of origin and host states, despite the warnings that UNHCR should avoid getting involved in political matters.²⁸⁷ UNHCR is a humanitarian institution of the UN, and only states can address causes in the country of origin that have resulted in forced displacement, provide refugee grants to asylum seekers and improve

individuals.' life courses. In addition, group discussions and key informants helped to understand the complexities of return migration (Van Houte 2014)."

²⁸² Betts, Loescher and Milner (n 159) 2.

²⁸³ 1950 Statute (n 4), para 2: "The work of the High Commissioner shall be entirely non-political; it shall be humanitarian and social and shall relate, as a rule, to groups and categories of refugees."

²⁸⁴ Crisp (n 155) 359.

²⁸⁵ UNHCR, *Repatriation and Reintegration Handbook* (n 229) One-11.

²⁸⁶ *Ibid.*

²⁸⁷ Goodwin-Gill, McAdam and Dunlop (n 10) 550.

conditions for voluntary repatriation.²⁸⁸

Although the will to create the conditions for voluntary repatriation belongs to the states, article 35 of the 1951 Convention states that “The contracting states undertake to cooperate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall, in particular, facilitate its duty of supervising the application of the provisions of this Convention.”²⁸⁹ Moreover, state parties of the UN are obligated to cooperate with all organs of the UN including the UNHCR.²⁹⁰, regardless of being contracting states of the 1951 Convention. Therefore, state parties of the UN must cooperate with UNHCR regarding settled standards to organise voluntary repatriation from host states to the country of origin. Thus, it is an opportunity for the UNHCR to expand the application of voluntary repatriation standards.

However, in practice, especially in countries of origin under conflict, UNHCR may struggle to find a state authority to cooperate with regarding repatriation. For instance, the Taliban government in Afghanistan, which is not recognised by the UN, prevented UNHCR and UN human rights activities after the takeover of Kabul.²⁹¹ Creating a zone for communication about the future of Afghan refugees is still not possible in a peaceful environment. To give another example, the government of Venezuela suspended operations of the local UN human rights office which supports the UNHCR on 15 February 2024²⁹², although political unrest, economic instability, and the continuous humanitarian catastrophe have caused over 6.1 million Venezuelan refugees and migrants to flee their country.²⁹³ Thus, the

²⁸⁸ Gilbert, ‘An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict’ (n 160).

²⁸⁹ 1951 Convention (n 1), art 35.

²⁹⁰ 1950 Statute (n 4), para 3.

²⁹¹ Amnesty International, ‘Refugees from Afghanistan: The World’s Largest Single Refugee Group’ (ReliefWeb, 16 November 1999) <https://reliefweb.int/report/afghanistan/refugees-afghanistan-worlds-largest-single-refugee-group-0> accessed 16 March 2024.

²⁹² AP, ‘Venezuela Closes UN Human Rights Office Citing “Colonialist Attitude”’ *The Guardian* (15 February 2024) <https://www.theguardian.com/world/2024/feb/15/venezuela-closes-un-human-rights-office> accessed 16 March 2024.

²⁹³ Ibid.

unwillingness of the mentioned country of origin to cooperate with the UNHCR to create standards for voluntary repatriation restricted the UNHCR. All parties should be involved in the matter and consent to organise repatriation.²⁹⁴

UNHCR has facilitated voluntary repatriation operations in accordance with legal tripartite agreements between host governments and the country of origin and the UNHCR.²⁹⁵ The UNHCR maintains a balance between the competing interests of the refugee population, the host states, and the country of origin while building this special agreement.²⁹⁶ Although these agreements have specific contents of the cases, they generally regulate the responsibilities of parties such as guarantees requirements of voluntary repatriation such as addressing the concerns of refugees about their country of origin, providing safe and dignified repatriation without any harassment, the responsibility of the country of origin for ensuring returnees have amnesty, access to land for settlement and facilitating the recovery, allowance of the UNHCR monitoring and reintegration efforts.²⁹⁷ Therefore, initially, promoting the process of voluntary repatriation starts at the state level generally without consultation of refugees.²⁹⁸

Although the 1996 Handbook regulates keeping the refugee community informed about the progress of repatriation negotiations,²⁹⁹ it is not enough to involve refugees in the process before starting. Engaging refugees in the negotiations can make tripartite agreements more sustainable and applicable according to voluntariness principles of refugee repatriation, as the final decision to return belongs to refugees and their contribution at the beginning of repatriation initiatives is essential to building a voluntariness mechanism. The exclusion of refugees from the voluntary return process has been cited as one of the main barriers to making repatriation

²⁹⁴ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (n 24) 447.

²⁹⁵ UNHCR, *Repatriation and Reintegration Handbook*, (n 229) ONE-11.

²⁹⁶ Gilbert, 'An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict' (n 160).

²⁹⁷ Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27).

²⁹⁸ Barbara E Harrell-Bond, 'Repatriation: Under What Conditions Is It the Most Desirable Solution for Refugees? An Agenda for Research' (1989) 32(1) *African Studies Review* 41, 56.

²⁹⁹ UNHCR, *Repatriation and Reintegration Handbook* (n 230) 3.6. and 4.3.

succeed in many cases, such as in Afghanistan and Somalia.³⁰⁰ In any case, tripartite agreements are based on the voluntary nature of return, and it is highlighted in the agreements.³⁰¹

1.3.2.3.3. Ensuring voluntariness: providing information and counselling:

The UNHCR 1996 Handbook defines “voluntariness” as implying an absence of any physical, psychological, or material pressure³⁰² And “voluntary nature of the refugee's decision to repatriate constitutes the core element in promoting and facilitating repatriation.”³⁰³ However, it is controversial to what extent the voluntariness principle has been met in the mass exodus return programs of the UNHCR experienced since the post-Cold War period. According to Zieck’s observation, in the 1990s “voluntary repatriation” served as a means of ending refugee status, as opposed to the past when it primarily functioned as a means of refusing repatriation as an eligibility qualification to safeguard individuals deemed to have legitimate reasons not to return.³⁰⁴ Considering the examined examples above³⁰⁵, application of the voluntariness criteria does not allow the formation of the free choice for refugees regarding return, because of the policies and other push factors such as security problems and material needs in the country of origin. Unfortunately, the UNHCR's authority to intervene in host states' practices against refugees within their own countries is limited, as an admission of refugees from the borders of host states, their status and rights in host states are evaluated within the sovereignty of the states.³⁰⁶

The role of the UNHCR is to provide objective, accurate and recent information about the circumstances in their country of origin to internationally protected refugees to decide about

³⁰⁰ Rupert Colville, ‘Afghan Refugees: Is International Support Draining Away after Two Decades in Exile?’ (1998) 17 *Refuge: Canada’s Journal on Refugees* 6 <http://www.jstor.org/stable/45411401> accessed 30 April 2024.; John S Collins, ‘An Analysis of the Voluntariness of Refugee Repatriation in Africa’ <http://hdl.handle.net/1993/19100> accessed 22 March 2024.

³⁰¹ UNHCR, *Repatriation and Reintegration Handbook* (n 230).

³⁰² *Ibid.*

³⁰³ *Ibid* 2.2.

³⁰⁴ Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14).

³⁰⁵ See the titles “Voluntary repatriation during Cold War” and “Voluntary repatriation Post-Cold War”.

³⁰⁶ Karen Jacobsen, ‘Factors Influencing the Policy Responses of Host Governments to Mass Refugee Influxes’ (1996) 30 *International Migration Review* 655, 663.

return.³⁰⁷ Information might include safety and security in the country of origin and accessing basic rights such as health care, housing, education, and livelihood opportunities. On a positive note, UNHCR organises "go-and-see" visits to allow refugees to evaluate the conditions of their country of origin themselves when the conditions permit.³⁰⁸ On a negative note, provided information can lack objectivity by country of origin and the UNHCR can highlight positive points regarding return which is manipulating refugees in practice as detected many times by humanitarian NGOs such as Human Rights Watch and Amnesty International.³⁰⁹ The main reason behind this is the restricted position of the UNHCR between the demands of host states and donor states and the protection needs of refugees as mentioned above.

Sometimes the efforts of the UNHCR are not enough to protect refugees in host states. In some cases, UNHCR promoted voluntary repatriation because the conditions of the host states are worse than the country of origin for refugees due to security reasons, material needs and governmental policies.³¹⁰ repatriation of Rwandan Hutus from Tanzania³¹¹ and Zaire, and Muslim Rohingyas from Bangladesh³¹² Examples of this attitude of the UNHCR resulted in another humanitarian crisis breaching the non-refoulement principles. Therefore, rather than voluntary, repatriation looks like a chosen solution for refugees in these practices due to the restrictions of the UNHCR in providing security and material needs, due to insufficient support from host and donor states. UNHCR does not have its own police or army to provide security for refugees; it must be provided effectively by host states or the UN Security Council.

³⁰⁷ UNHCR, *Repatriation and Reintegration Handbook* (n 230) 3.6.

³⁰⁸ UNHCR, 'Returnees' (UNHCR UK) <https://www.unhcr.org/uk/about-unhcr/who-we-protect/returnees> accessed 1 May 2023.

³⁰⁹ Human Rights Watch/Africa, 'Rwanda' (Human Rights Watch, 1996) <https://www.hrw.org/reports/1996/Rwanda.htm> accessed 24 June 2023.

Human Rights Watch, *Somalia Faces the Future: Human Rights in a Fragmented Society* (Human Rights Watch, 7 April 1995) <https://www.hrw.org/reports/1995/somalia/> accessed 4 April 2024.

³¹⁰ Loescher (n 173) 47.

³¹¹ Amnesty International, *Rwanda: Human Rights Overlooked in Mass Repatriation* (AI Index AFR 47/02/97, 14 January 1997); Loescher (n 173) 44-48.

³¹² Loescher (n 173); Barnett, 'UNHCR and Involuntary repatriation: Environmental Developments, the repatriation Culture, and the Rohingya Refugees' (n 186).

Moreover, UNHCR's humanitarian assistance efforts to protect refugees in host states depend on the budget provided by donor states. In such cases, where neither can be provided effectively, return remains the only option for refugees rather than a voluntary one.

In most cases of voluntary repatriation promoted by the UNHCR, refugees themselves came to the point that return is the least bad option or the only option due to push factors in host states. Considering the long-lasting wars and protracted refugee crisis in the 21st century, developing neighbouring host states have faced huge burdens and responsibilities of protecting large numbers of refugees in their territories including legal, financial, environmental and security concerns.³¹³ Mostly developing host states have depended on international assistance to address the burden and responsibilities coming with refugees.³¹⁴ However, it is not possible to ensure a regular flow of assistance during long years of immigration due to the changing policies of donor states. Therefore, host states generally apply oppressive policies about refugees to push them to return home, when international assistance and burden and responsibility sharing are not enough to bear the cost of refugees and/or there is a national security issue regarding refugees for host states.

On the one hand, the UNHCR has struggled with the material assistance of refugees in camps due to the shortcomings of the budget since the end of the Cold War, as explained above. Host states left alone to deal with refugee issues, which allows the conditions in the country of asylum to be unbearable for refugees, making it difficult to provide repatriation quickly. Generally, most states tend to close camps or relocate camps to naturally risky places such as the Cox Bazaar refugee camp under flood risk in Bangladesh.³¹⁵ and Bulengo camp founded on

³¹³ Loescher (n 173) 46.; Ninette Kelley and Jean-François Durieux, 'UNHCR and Current Challenges in International Refugee Protection' (2004) 22 *Refuge: Canada's Journal on Refugees* 6, 13.

³¹⁴ Jacobsen (n 306) 663.

³¹⁵ Barnett, 'UNHCR and Involuntary repatriation: Environmental Developments, the repatriation Culture, and the Rohingya Refugees' (n 186).

broken volcanic rocks in the Democratic Republic of Congo.³¹⁶ Moreover, governments do not effectively prevent security threats, discrimination and ill-treatment against refugees, like the sexual abuse of female Somalian refugees in the Dadaab camp in the Democratic Republic of Congo.³¹⁷ Furthermore, most mass refugee populations in the country of origin are generally evaluated as temporary situations by host states and mostly refugee statutes having basic rights such as work, health, education, and housing are not granted.³¹⁸ According to the domestic law of the host states, temporary protection or asylum seeker statutes which include limited access to some rights are determined for a huge amount of people.³¹⁹ Therefore, under the threat of closing camps where refugees have limited international assistance, asylum states make bad life conditions for refugees worse by not giving any sustainable life options outside of the camps.

As explained above, with the start of tripartite negotiations and the signing of a special agreement with a security guarantee provided by the country of origin, refugees are faced with threats that their international protection status in the country will end due to the safety provided in the country of origin for them. However, experiences have shown that government amnesty or security guarantees of third parties might not provide absolute protection in an environment where widespread violence continues, such as repatriation to Rwanda, Bosnia, Somalia,³²⁰ Kosovo³²¹ and Afghanistan³²². Thus, refugees generally decide to return to a position that renders them helpless to the international community and host states. Unlike the 1996 Refugee Handbook, return cannot be the preferred solution of refugees if they have a chance to make a

³¹⁶ Olivia Giovetti, '10 Problems Faced by Refugees around the World' (Concern Worldwide, 14 September 2024) <https://www.concern.net/news/refugee-problems-faced-around-the-world> accessed 6 April 2023.

³¹⁷ Human Rights Watch, *Somalia Faces the Future: Human Rights in a Fragmented Society* (Human Rights Watch, 7 April 1995) <https://www.hrw.org/reports/1995/somalia/> accessed 4 April 2024.

³¹⁸ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary repatriation' (n 24).

³¹⁹ Androff (n 108).

³²⁰ Kurt Mills, 'United Nations Intervention in Refugee Crises after the Cold War'.

³²¹ Gary Wilson, 'The United Nations Security Council and Refugee Flows as "Threats to the Peace"' in *An Introduction to International Refugee Law* (Brill Nijhoff 2013) 267, 267-289.

³²² Agata Bialczyk, "'Voluntary Repatriation' and the Case of Afghanistan: A Critical Examination' (2008) 46 *RSC Working Paper Series* <https://www.rsc.ox.ac.uk/publications/2018voluntary-repatriation2019-and-the-case-of-afghanistan-a-critical-examination> accessed 9 June 2022.

free choice. Return is a result of the lack of options that refugees are left with in many cases mentioned above. Therefore, in practice, refugees could not decide voluntarily to repatriate owing to well-informed free choice, unlike the regulations of the UNHCR Handbooks and ExCom Conclusions. The main reason that prevents states from fulfilling their duties such as not creating push factors preventing the voluntariness principle is that these standards regulated by ExCom conclusions and UNHCR Handbooks lack a legal binding force on states.³²³ The legal limitations of UNHCR will not be further expanded here as they will be explored in detail in the following chapter.

For the UNHCR, repatriation can be established voluntarily for individuals or small groups of refugees by personally communicating with them and signing a repatriation form after providing counselling services.³²⁴ However, in the case of mass exodus repatriation movements, it might be challenging or impossible to prove that each individual's repatriation was voluntary in practice.³²⁵ Considering UNHCR's limited staff in the country of origin despite millions of refugees, providing effective counselling services individually during the repatriation organisations is not realistic. Therefore, focusing on who represents the decision-making mechanism in the household, clan, and tribe is important to evaluate the voluntary repatriation decision of refugees. However, in application, there are some risks like women may be forced to return regardless of how they feel about the situation if men are the only ones who can make decisions.³²⁶ Therefore, analysing groups and risks by the UNHCR in these cases is very essential to establish a voluntary basement to return even in mass exodus repatriations.

Generally, mass exodus voluntary repatriation is not encouraged by the UNHCR,

³²³ Chetail (n 24).; André de Lima Madureira and Liliana Lyra Jubilut, 'Durable Solutions: 5 Implementation Challenges and Possible Pathways for Improvement' (Refugee Research Online) <https://refugeereseearchonline.org/durable-solutions-5-implementation-challenges-and-possible-pathways-for-improvement/> accessed 11 June 2022.

³²⁴ Mathew, Daniel. "Voluntary Repatriation and State Sovereignty: Seeking an Acceptable Balance." ISIL YB Int'l Human. & Refugee L. 8 (2008): 144.

³²⁵ *Ibid.*

³²⁶ Laura Hammond, "'Voluntary' Repatriation and Reintegration' in Elena Fiddian-Qasmiyeh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 502.

because refugees are willing to enjoy their right to return. Voluntary repatriation is promoted, as refugees will not have the right to remain in the host country when the cessation clause is applied by the host states. Loescher explains difficulties when refugees refuse to return, such as becoming stateless, a lack of legal documentation permitting them to live, reach health services, work, study, and travel in host states.³²⁷ Moreover, they can become more vulnerable, such as the risk of becoming criminal due to illegal stay, punishment and deportation. In other words, the role of the UNHCR here is to offer assistance and protection to refugees by encouraging voluntary repatriation of refugees before status loss; as assistance and protection cannot be continued after status loss.³²⁸ Therefore, humanitarian assistance and protection provided by the UNHCR play an important role in deciding voluntarily to return in the case that a cessation clause can be applicable.

1.3.2.3.4. Assisting the repatriation process in safety and monitoring:

As explained in the previous title, voluntary repatriation is promoted by the UNHCR to a post-conflict environment that is not perfect for establishing a sustainable life for returnees. Furthermore, repatriation might be carried out by UNHCR to the suggested safe zones even in circumstances where violence might persist in some parts of the country. Therefore, UNHCR has the responsibility to provide material assistance to returnees, getting formal guarantees from the country of origin for the safety of repatriating refugees and establishing a presence in the areas of return to monitor conditions of returnees in the country of origin.³²⁹ To provide the safety and dignity of voluntary repatriation which is a cross-border operation, collaboration of the UNHCR branches in the host state and country of origin and cooperation of the NGOs and state authorities with the UNHCR branches are essential.³³⁰ Nevertheless, in some cases, the existence of the UNHCR in the country of origin is restricted by governments such as

³²⁷ *Ibid* 503.

³²⁸ Zieck, 'Reimagining Voluntary repatriation' (n 29) 1078.

³²⁹ UNHCR, *Repatriation and Reintegration Handbook* (n 230) 3.1.

³³⁰ *Ibid* 3.4.

Venezuela or prevented by armed groups taking over authority in the country like Taliban governance in Afghanistan.

In some scenarios, the country is fragmented by numerous armed groups, and UNHCR needs to negotiate with them to ensure the safety of returnees. Otherwise, returnees and UNHCR staff can face security problems, such as in Somalia.³³¹ The way that returnees need to take might involve destroyed infrastructure and include some security risks, such as mining due to conflict-torn conditions. Therefore, the UN need to support the repatriation efforts of the UNHCR with related organisations like mining cleaning by UNOSAM in Afghanistan.³³² In many cases, providing repatriation assistance, including mostly cash grants and material stuff to facilitate returnees to establish a new life in their country of origin could be misused by refugees or some interest groups. Some refugees start a cycle of movement between host and origin states, for instance, some Somali refugees return to get benefits from return assistance and then come back to the host state to resume access to humanitarian assistance in refugee camps.³³³

Only the return process itself needs a reasonable financial budget to realise the physical transportation of refugees including documentation of returnees' travel, health screening for vulnerable and disabled individuals, providing basic supplies for returnees, logistics of the transportation and setting up transit or reception centres for those travelling long distances, to ensure adequate care during and after the operation, land detection and providing basic services including construction of buildings of water points, health and education before transportation.³³⁴ Although UNHCR's budget is substantially larger in nominal terms than it

³³¹ Androff (n 108); Human Rights Watch (HRW) (n 314).

³³² Barnett R Rubin, 'Afghanistan: The Forgotten Crisis' (1996) 15 *Refugee Survey Quarterly* 1.

³³³ Farah Manji, *A Full Circle: Refugee Returns between Kenya and Somalia* (ReDSS 2020) <https://www.regionaldss.org/e-library/a-full-circle-refugee-returns-between-kenya-and-somalia/> accessed 2 May 2025.

³³⁴ Hammond (n 326) 504.

was in the 1990s.³³⁵ It states that UNHCR's annual budget rose to more than US\$1 billion in the early 1990s and reached a peak of US\$10.929 billion in 2023.³³⁶ However, it is generally not enough to effectively reach all requirements on time for a sustainable repatriation.³³⁷ For example, UNHCR needed to suspend organised repatriation programmes of Afghan refugees in Pakistan due to a lack of enough budget for repatriation.³³⁸ Therefore, UNHCR needs more financial support and solidarity from states outside the host and origin to facilitate the repatriation of refugees more effectively.

1.3.2.3.5. Supporting the reintegration of returnees

Since the 1980s, the UNHCR's responsibilities concerning mass repatriations have been expanded by supporting the country of origin to effectively reintegrate returnees and ensuring their safety and well-being through ongoing protection monitoring,³³⁹ In addition, the UNHCR prioritises the application of voluntary repatriation as the preferred solution.³⁴⁰ Social, financial and legal reintegration of returnees to their country of origin is essential to make voluntary repatriation durable for returnees and increase the sustainability of ongoing voluntary repatriation programmes. Over time, the responsibilities of the UNHCR have been transformed to providing physical, legal and material safety and reconciliation of returnees in the country of origin to enable reintegration.³⁴¹ According to the expanded domain of the UNHCR, returnees' protection and assistance needs can continue after return regardless of spontaneous or organised return.³⁴²

³³⁵ Barnett, 'UNHCR and Involuntary repatriation: Environmental Developments, the repatriation Culture, and the Rohingya Refugees' (n 186).

³³⁶ UNHCR, 'Figures at a Glance' (UNHCR) <https://www.unhcr.org/ph/who-we-are/figures-glance-0> accessed 2 May 2026.

³³⁷ *ibid.*

³³⁸ Colville (n 300).

³³⁹ UNGA Res 39/169, UN Doc A/RES/39/169 (17 December 1984).

UNHCR Executive Committee, *Conclusion No 18 (XXXI): Voluntary Repatriation* (16 October 1980).

UNHCR Executive Committee, *Conclusion No 40 (XXXVI): Voluntary Repatriation* (18 October 1985).

³⁴⁰ Michael Barnett, 'Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow' (2001) 35 *International Migration Review* 244, 260.

³⁴¹ UNHCR, *Repatriation and Reintegration Handbook* (n 230) 1.1.

³⁴² UNHCR, 'Protecting Refugees & the Role of UNHCR' (n 152) 6; UNHCR, *Voluntary Repatriation Handbook* (n 230) 3.3.

UNHCR regulated the 2004 Handbook for Repatriation and Reintegration Activities to make voluntary repatriation a sustainable and durable solution for refugees.³⁴³ Accordingly, the 4Rs program is introduced as reintegration, rehabilitation and reconstruction following repatriation to provide sustainability after the voluntary return.³⁴⁴ More recently, the voluntary repatriation of refugees was regulated in line with the 4Rs program outlined in the 2004 Handbook under the GCR, as adopted in 2018.³⁴⁵ Therefore, long-term and comprehensive support is required beyond the early stage of humanitarian assistance after return, including water, shelter, food, and health services. However, the international community has not been particularly generous in financing even early recovery measures to provide a life in dignity for returnees.³⁴⁶ According to the 2004 Handbook, these supports can include from re-establishment of infrastructure, employment prospects and fundamental services to psychosocial and advocacy assistance.³⁴⁷ Reconstruction after refugee return involves not only building factories, roads and houses but also rebuilding communities, restoring social, economic, and psychological relations, and utilising development assistance more effectively.³⁴⁸ These supports, requiring broad time, reasonable money and sustainability, indicate a post-war state-building process that covers rebuilding institutions, the rule of law and citizenship ties with returnees. The UNHCR facilitates returnee involvement in peace- and reconciliation-related activities and encourages the involvement of returnees in national development plans in the home states.³⁴⁹ Therefore, voluntary repatriations during conflict or post-conflict scenarios, have been evaluated as part of the state-building process as well, such

³⁴³ UNHCR, *Repatriation and Reintegration Handbook* (n 230).

³⁴⁴ *Ibid.*

³⁴⁵ GCR (n 11) paras 87-89.

³⁴⁶ Judy Cheng-Hopkins, 'Operational Challenges for UNHCR' (2007) 26(4) *Refugee Survey Quarterly* 52, 54.

³⁴⁷ UNHCR, *Repatriation and Reintegration Handbook* (n 230) FIVE-40.

³⁴⁸ Cheng-Hopkins (n 346) 55.

³⁴⁹ UNHCR, 'Returnees' (n 308).

as in Bosnia, Kosova, Somaliland, Namibia, Mozambique and Afghanistan in the 1990s.³⁵⁰

Nevertheless, post-conflict states are fragile due to war-torn institutions such as police, hospitals, and schools and generally have volatility about security.³⁵¹ Therefore, voluntary repatriation and international protection of returnees must go hand in hand until full integration is achieved.³⁵² In the absence of enough support in the above-mentioned spectrum to establish a sustainable environment for returnees, returnees might be forced to be displaced again due to instability in the country.³⁵³ Unfortunately, the past voluntary repatriation programmes are replete with return scenarios that produce refugees again as mentioned above. The main reason for this is that sufficient international solidarity has not been established to support the country of origin for sustainable voluntary repatriation.³⁵⁴ Although the UNHCR plays more operational role in the country of origin to protect returnees and support reintegration projects with an annually expanding budget in the country of origin³⁵⁵, the efforts of UNHCR are not enough to achieve the 4Rs programme goals itself.

90% of the UNHCR's global workforce, works in the field to provide food, shelter, water, sanitation, health care, social services, and security in addition to the core responsibilities of the organization, which are refugee protection and solutions.³⁵⁶ In addition to the increasing expense, number, and scope of its activities, UNHCR has expanded more covertly, providing services to populations outside of those classified as refugees under the 1951 Convention such as returnees, internally displaced people and people in refugee-like situations.³⁵⁷ Thus there is

³⁵⁰ Barry N Stein and Frederick C Cuny, *Repatriation under Conflict in Central America* (Hemispheric Migration Project, Center for Immigration Policy and Refugee Assistance, Georgetown University and Intertect Institute 1991).

Richard Black and Saskia Gent, 'Sustainable Return in Post-Conflict Contexts' (2006) 44(3) *International Migration* 15, 15-38.

³⁵¹ Loescher (n 173); Black and Gent (n 350).

³⁵² Barnett, "Humanitarianism with a Sovereign Face: UNHCR in the Global Undertow" (n 340) 261.

³⁵³ Kelley and Durieux (n 313) 14.

³⁵⁴ *Ibid.*

³⁵⁵ Gallagher (n 270) 14.

³⁵⁶ Crisp, 'UNHCR at 70: An Uncertain Future for the International Refugee Regime (n 155). 360.

³⁵⁷ *Ibid* 361.

a tremendous amount of demand in need of UNHCR's assistance, despite its limited staff and budget. Moreover, some goals set by the 4Rs programmes fall out of UNHCR's organisational authority. For example, taking security measures to protect returnees and the UNHCR staff in volatile scenarios.

Therefore, the UNHCR 2004 Handbook, ExCom Conclusions and UN General Assembly Resolutions highlight the importance of global collaboration to achieve sustainable and durable repatriation efforts of the UNHCR via other state actors besides host and origin states, relevant United Nations agencies, international and intergovernmental organisations, regional organisations, as appropriate, non-governmental organisations and development actors.³⁵⁸ Notwithstanding, sufficient international solidarity has not been established to support the country of origin so far. Although the UNHCR was born as a result of the recognition that the refugee issue was fundamentally in need of global coordination and collaboration, it could not force states to collaborate with the UNHCR for the voluntary repatriation of refugees, as mentioned above.

Over the last half-decade, UNHCR has worked hard to strengthen the solidarity system in refugee issues, most notably by creating a GCR and hosting a Global Refugee Forum, both of which have been state and other stakeholder supported in considerable measure.³⁵⁹ Now, UNHCR has a solidarity system named GCR which is a significant opportunity to get the required support for sustainable and durable voluntary repatriation via bringing together states and multi-stakeholders in various platforms of the GCR.³⁶⁰ However, while the GCR has made

³⁵⁸ Zieck, 'Reimagining Voluntary repatriation' (n 29); UNGA Res 72/150, UN Doc A/RES/72/150 (19 December 2017); UNHCR Executive Committee, *Conclusion No 40 (XXXVI): Voluntary Repatriation* (18 October 1985); UNHCR Executive Committee, *Conclusion No 90 (LII): General Conclusion on International Protection* (5 October 2001); UNHCR Executive Committee, *Conclusion No 101 (LV): Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees* (8 October 2004); UNHCR Executive Committee, *Conclusion No 112 (LXVII): International Cooperation from a Protection and Solutions Perspective* (6 October 2016); UNHCR Executive Committee, *Conclusion No 102 (LVI): General Conclusion on International Protection* (7 October 2005).

³⁵⁹ Crisp, 'UNHCR at 70: An Uncertain Future for the International Refugee Regime' (n 155) 359.

³⁶⁰ Volker Türk, 'The Promise and Potential of the Global Compact on Refugees' (2018) 30 *International Journal of Refugee Law* 575.

significant gains in responsibility and burden sharing for refugees, it has not been able to effectively provide sufficient and ongoing support that would make voluntary repatriation sustainable and durable for refugees. This issue will be analysed in detail under Chapter 5. Therefore, providing international solidarity to support UNHCR's efforts for effective voluntary repatriation is still one of the important obstacles for the UNHCR.

Conclusion

The concept of voluntary repatriation as the most desirable and ideal durable solution for the refugee crisis represents a significant change in historical norms shaped by states. repatriation to the country of origin is experienced as an external part of being a refugee, which is as old as human history. Seeking protection in different states naturally includes two solutions: establishing a new life in a different place or repatriation to a previous country after the reasons that created refugees end. When the refugee did not become an international issue in the early period, solutions were organically chosen by refugees depending on the conditions in the host and home countries, shaping refugees' preferences among solutions.

However, especially after the First World War, refugees lost the protection of their country of origin, numbering in the millions, which became an international major problem for the nation-states because the formation of the nation-state itself was a position that created refugees, via excluding all non-citizens. In the new world order built on the sovereign equality of nation-states, mandatory repatriations were applied by states as a necessary method for building nation-states by assuming repatriation was the voluntary natural choice of forcefully displaced people. However, there is no evidence that proves the accuracy of this assumption, neither in the early term examples nor in the examples that were experienced in that period. Meanwhile, to protect refugees and provide durable solutions to them, first international bureaucracy was established, named The League of Nations High Commissioner for Russian Refugees, whose effect extended over time. The positive contribution of the High

Commissioner Nansen was his protection and repatriation policy, based on the principle that no one should be forced to return to their home country, although the term "non-refoulement" did not exist at the time. Moreover, Nansen's policies created their own concept of sustainable repatriation, including conditions such as voluntariness, reconstruction, rehabilitation, and political security. Despite the positive contributions of the commissioner, whose decisions have an advisory effect on the states, in legal theory, Russian refugees were repatriated in 1923 by the states deciding that the return was the best for them.

Although the system established by the League of Nations did not create any accountability system for states to follow the high commissioner's decisions and finalise by the Second World War, it achieved significant progress in internationalisation and institutionalisation of the obligations of the international community to protect refugees and seek a permanent solution for them: aftermath, repatriation, and protection of refugees organised by international institutions. For example, almost 8 million people had been forcefully repatriated by a similar assumption adopted in the previous period under UNRRA, whose responsibility was the repatriation of displaced people under military control after the Second World War. However, due to the effect of the resistance of refugees against forced repatriation, creating refoulement and a Cold War political atmosphere, the IRO created a concept for repatriation by clarifying valid objection reasons for repatriation. Moreover, the notion of voluntariness was adopted in place of the principle for the repatriation of refugees. However, since refugees are a matter of political interest to the international community, resettlement and reintegration as the preferred solution has a significant impact on this development in favour of refugees in the concept of voluntary repatriation.

As a result of the refugees losing their political importance and the continuation of refugee influxes, states have been reluctant to implement resettlement and reintegration and have supported voluntary repatriation as a preferred solution. Since the early 1980s, UNHCR

has increasingly emphasised repatriation as its preferred and ideal durable solution for refugees. Instead of humanitarian concerns shaping the refugee policies of states, states have designed the refugee regime in line with their own interests. Additionally, voluntary repatriation, which has a priority among solutions, lacks specific binding obligations on states in the legal zone. Therefore, the concept of voluntary repatriation has been shaped by states' practices, and UNHCR's changing policies are determined by the General Assembly Resolutions and ExCom Conclusions formed by the states. While UNHCR has theorised policies regarding the practice of returns, such as the 1996 Handbook and the 2004 Handbook, the standards are not easy to apply in practice against states having full sovereignty in their own territory.

According to UNHCR's theory developed over the years, 'Voluntary repatriation' indicates a refugee's willingness to return to their country of origin without any pressure. Additionally, UNHCR can promote voluntary repatriation after careful assessment regarding fundamental changes in the country of origin, to ensure voluntary repatriation is undertaken in safety and dignity. However, it has not been possible for UNHCR to implement these in the post-Cold War period, as host states see refugees as a severe burden and security problem. Especially, the UN Security Council's interventionist encouragement of repatriation and UNHCR's enlargement of the mandate have caused it to be exposed as quickly as possible under pressure from states in its voluntary return programs. In practice, this situation caused the refugees to be deported safely after their status was terminated according to the cessation clause in the 1951 Convention, again as an indicator of their sovereignty rights, or they agreed to the UNHCR's voluntary return program as better than the worst case.

Moreover, especially after 1996, the UNHCR reacted as its core function is the repatriation of refugees rather than protecting them from the effects of post-Cold War pressure. Even though voluntariness is a crucial part of the protection of refugees from refoulement, which is banned by the 1951 Convention, repatriation programmes with the consent of the

UNHCR resulted in grave violations of the non-refoulement principle, such as Rwandan refugees' repatriation from Tanzania. There are various involuntary repatriation examples called later imposed returns, which involve repatriation of refugees from host countries' insecure environments to secured places in the country of origin, even if there is no peace agreement. However, the UNHCR failed to manage the balance between the rights of refugees, host states and country of origin against refugees' rights. This situation could not be acceptable on behalf of the UNHCR, whose primary function is the protection of refugees from involuntary repatriation.

Nevertheless, there is a reality far beyond the legal and functional capacity of the UNHCR. UNHCR was largely dependent on the states while carrying out its functions regarding protection and repatriation. States did not grant refugees a permanent solution other than their return as a result of their own sovereign rights, which created pressure on the UNHCR regarding encouraging repatriation and under this pressure, ensuring the real wishes of returnees and suitable conditions in the country of origin for repatriation in safety and dignity are controversial. The historical development of the voluntary repatriation concept is mostly shaped by sovereignty rights and the political interests of states rather than the human rights of refugees.

Moreover, international institutions tasked with protecting and seeking permanent solutions for refugees could not have the capacity to create accountability in the states. Although the name of return has changed from compulsory repatriation to voluntary repatriation, due to legal development in international refugee law, it is very difficult to achieve this in practice and to draw the scope of voluntarism in a way that convinces states. Therefore, Chapter 1 demonstrates that the conceptualisation process of voluntary repatriation is problematic in achieving a real and sustainable solution with repatriation for refugees. International law is an efficient tool that can play a role in improving the balance between the

rights of refugees and the sovereign rights of states in the application of voluntary repatriation in practice.

Chapter 2. International Legal Framework of Voluntary Repatriation

Introduction

The notion of 'refugee' is globally defined as a temporary legal status given to a person who is unable or unwilling to return to their country due to the risk of persecution and needs protection until a durable solution is provided.³⁶¹ The UN has formally given hierarchical priority to the concept of voluntary repatriation as the most ideal and desirable solution since the 1980s, due to the reluctance of the states to apply local integration and resettlement.³⁶² However, even today, the legal meaning of voluntary repatriation is still vague.³⁶³ As established in Chapter 1, the conceptual development of voluntary repatriation has often been shaped by a sovereignty-centred legal framework, rather than by a refugee-centred protection approach, making it problematic where state interests in return have outweighed voluntariness, non-refoulement and sustainable reintegration.³⁶⁴ The evolution of the refugee notion led to the repatriation of refugees from mandatory repatriations to requiring 'voluntariness' criteria after the Second World War³⁶⁵. Nevertheless, the conditions of voluntary repatriation, including obligations and rights, are not regulated in a specific treaty nor in the 1951 Convention, which is the constitution of international refugee law.³⁶⁶ This situation creates a legal gap for binding states regarding the voluntary character of repatriation.

³⁶¹ 1951 Convention (n 1), 1(a)2 "any person who, owing to a 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, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or, owing to such fear, is unwilling to return to it."

³⁶² UNGA Res 38/121, UN Doc A/RES/38/121 (16 December 1983); UNGA Res 39/169, UN Doc A/RES/39/169 (17 December 1984); UNGA Res 50/152, UN Doc A/RES/50/152 (9 February 1996); UNGA Res 51/75, UN Doc A/RES/51/75 (12 December 1996); UNGA Res 52/103, UN Doc A/RES/52/103 (12 December 1997).

³⁶³ Takahashi (n 24); Chetail (n 24); Chimni, 'From Resettlement to Involuntary repatriation' (n 13).

³⁶⁴ See Chapter 1, Subsections 2 and 3.

³⁶⁵ *Ibid.*

³⁶⁶ 1951 Convention (n 1).

In this regard, Chapter 2 addresses the question, 'What is the legal framework providing international standards for the concept of voluntary repatriation?'. On the one hand, the voluntariness requirement of repatriation finds a legal basis under the principle of non-refoulement, which is "an inherent safeguard against forced return".³⁶⁷ On the other hand, involuntary repatriation before the end of persecution risk in the country of origin can create a threat to returnees' life and freedom.³⁶⁸ This directly violates the principle of non-refoulement, a cornerstone of the international legal system enacted to protect refugees rather than providing a solution.³⁶⁹ In this regard, it is fundamental to deal with the conditions of voluntary repatriation, the obligations of states and the rights of refugees with a legal basis to reach a sustainable and durable solution for repatriation.

The fact that states are not granted a set of explicit obligations does not mean that there is no international legal standard governing voluntary repatriation of refugees. Firstly, voluntary repatriation is a 'generic concept' that directly or indirectly falls within various legal instruments belonging to different branches of public international law, including International Refugee Law (IRL), International Human Rights Law (IHRL) and International Humanitarian Law (IHL).³⁷⁰ Secondly, voluntary repatriation has been directly established on a wealth of soft law instruments, predominantly including The UN General Assembly (UNGA) Resolutions and the UNHCR Executive Committee (ExCom) Conclusions. These soft laws have provided normative standards for the application of voluntary repatriation by the UNHCR, which is internationally responsible for promoting and facilitating voluntary repatriation at the institutional level.³⁷¹

Therefore, Chapter 2 demonstrates that the legal aspects of voluntary repatriation, with

³⁶⁷ Goodwin-Gill, McAdam and Dunlop (n 10).

³⁶⁸ *Ibid.*

³⁶⁹ *Ibid*; Takahashi (n 24).

³⁷⁰ Chetail (n 24) 12.

³⁷¹ Gilbert, 'The International Law of Voluntary Repatriation' (n 31).

their strengths and weaknesses under the above-mentioned branches of public international law, create an international legal framework for voluntary repatriation. Although each branch contributes important principles in its own scope, such as non-refoulement, the right to return, civilian protection, voluntariness, safety, and dignity, none provides a comprehensive and binding framework for voluntary repatriation as a durable solution. This plurality of legal sources therefore creates fragmentation and ambiguity, particularly regarding the scope, content, and enforceability of the obligations governing safe, dignified, and sustainable return. Moreover, the application of voluntary repatriation by states is not straightforward because UNHCR manages it with mostly legally non-binding instruments. Therefore, this thesis shows that voluntary repatriation provides the legal foundation to create obligations on states in international law. However, the complex and partly weak legal framework of voluntary repatriation constitutes the main difficulty for the accountability of states and for the effective application of voluntary repatriation.

From this perspective, the legal framework discussed in Chapter 2 provides the main route for the formation of the further chapters. Chapter 3 then investigates challenges in accordance with the 21st century factors of refugeehood, preventing the effective and timely application of voluntary repatriation as the most ideal and desirable solution. It also clarifies elements that need to be addressed legally, which are not discussed at length in Chapter 2. Chapter 5 focuses on whether the GCR, including repatriation within its objectives, can be a legal improvement for voluntary repatriation based on Chapter 2.

Academic investigations for the legal framework of voluntary repatriation are still in a relatively early stage of development, compared to other issues in IRL.³⁷² Academic researchers engaged with the legal aspects of voluntary repatriation with individual IHRL, IHL and IRL perspectives. Zieck's comprehensive book in 1997 and Chimni's research in 1993 focus mainly

³⁷² Takahashi (n 24); Chetail (n 24).

on a single aspect, such as the role of UNHCR in the legal framework. Chetail, in 2004, adopted general international law perspectives, but not refugee-centric. Whereas Gilbert, who recently, in 2018, took a refugee-centric approach, briefly including related branches in international law. However, the above investigations do not take a holistic approach, including all branches: IHRL, IHL and IRL with a refugee-centric stance. Additionally, they are not even up to date in line with recent UNHCR developments. Thus, the international legal framework clarified in Chapter 2 contributes to the literature by providing up-to-date analyses of all relevant legal sources, using a holistic, refugee-centric approach to establish a legal basis for voluntary repatriation.

In this regard, the legality of voluntary repatriation of refugees is based on 'the principle of non-refoulement' commonly under IHRL, IHL and IRL. Moreover, rules referring to the principle of non-refoulement inside the legal elements of IHRL and IHL, including specific international treaties, complementarily provide legal enforcement for voluntary repatriation with their own accountability mechanisms.³⁷³ Additionally, ExCom Conclusions might help shape *opinio juris* or political will for states to address the issue of voluntary repatriation.³⁷⁴ In practice, the repeated application of Conclusions by the UNHCR with affected states can indicate a custom underpinning the legality of voluntary repatriation.³⁷⁵ Hence, legal and non-legal elements surrounding the principle of non-refoulement provide a legal foundation for voluntary repatriation.

Therefore, this chapter is crucial for revealing the legal framework of voluntary repatriation, including its strengths and weaknesses in international law. This is the area considered to address the main research question: how sustainable and effective voluntary repatriation can be re-established and implemented in accordance with the 21st Century factors

³⁷³ Goodwin-Gill, McAdam and Dunlop (n 10) 256; Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law, Volume I: Rules* (CUP 2005) 466.

³⁷⁴ Goodwin-Gill, McAdam and Dunlop (n 10).

³⁷⁵ Gilbert, 'The International Law of Voluntary repatriation' (n 31).

of refugeehood under international law. Chapter 2 discusses the legal basis and instruments to re-establish voluntary repatriation and demonstrates legal shortcomings preventing effective and sustainable voluntary repatriation. The analysis in the conclusion of Chapter 2 plays a role as a source to establish principal elements of voluntary repatriation at the end of Part 1 and to provide guidance for effective and sustainable voluntary repatriation in international law. Therefore, this chapter constitutes a step that will lead to the goal that is intended to be achieved overall by the thesis.

Chapter 2 is divided into three subsections according to the branches of international law, including voluntary repatriation, which are IRL, IHRL and IHL, respectively. Each subtitle focuses on explaining what the legal framework of voluntary repatriation with a refugee-centric stance is in the specific branch of law, considering all legal resources in this field. At the end of the chapter, a conclusion, including a critical and in-depth analysis of the legal framework of voluntary repatriation, is provided.

2.1. Voluntary repatriation and International Refugee Law

Unlike the ordinary aliens' repatriation, the voluntary character constitutes the essence of repatriation for refugees because refugees' autonomy is based on protection from persecution in the country of origin and the need for voluntariness as a basis for repatriation is suitable for protection purposes for refugees in international refugee law. However, in terms of international refugee law, where the principle of voluntary repatriation is expected to be the norm, the development of voluntary repatriation is insufficient. As mentioned in the previous chapter, the conceptual development of voluntary repatriation as an ideal and desirable durable solution is inevitably related to the systemic development of the refugee notion. Although the notion of refugee reached an internationally determined status, including rights and obligations with the 1951 Convention, the legal development of voluntary repatriation is very slow, and is still in a relatively incipient state in international refugee law. The main reason for this is that there is

no globally binding instrument, including rights and obligations regarding voluntary repatriation, in international refugee law. The 1951 Convention does not directly address voluntary repatriation, with the exception of a reference to the right to return in the preamble, which is not binding, and related clauses, including the principle of non-refoulement and cessation.³⁷⁶

Some regional instruments have contributed to the development of voluntary repatriation, but their legal status, scope and practical effects differ considerably. On the one hand, the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention) and the 1984 Cartagena Declaration on Refugees (1984 Cartagena Declaration) adopt a broadly protection-oriented approach and have helped reinforce the voluntary and humanitarian character of repatriation within African and Latin American contexts.³⁷⁷ However, while the OAU Convention is legally binding on its parties, the Cartagena Declaration is formally non-binding, and the practical effectiveness of both frameworks may be limited by state capacity, political instability and implementation gaps.³⁷⁸ On the other hand, in Europe, the EU Return Directive operates within a more institutionalised and enforceable regional legal order, but its emphasis on return management and migration control may weaken the voluntary character of repatriation when compared with a refugee-protection approach.³⁷⁹ Accordingly, these regional developments have contributed to the evolution of voluntary repatriation, but they remain uneven: some strengthen protection in principle, while others risk subordinating voluntariness to state interests in return and border control, and all are geographically limited.

Thus, a comprehensive and effective legal instrument is needed to regulate voluntary

³⁷⁶ 1951 Convention (n 1), art 33.

³⁷⁷ 1969 OAU Convention (n 4); Cartagena Declaration (n 5).

³⁷⁸ *ibid.*

³⁷⁹ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals [2008] OJ L348/98;

repatriation under international law. Nevertheless, the UNHCR has been tasked to seek permanent solutions and promote voluntary repatriation for refugees, rather than adopting a treaty or including voluntary repatriation inside the 1951 Convention.³⁸⁰ While this institutional supervision by UNHCR regarding voluntary repatriation set significant legal development of voluntary repatriation on the wealth of soft law instruments, it creates an accountability problem due to the absence of direct obligations on states. Therefore, under this sub-title, while clarifying the legal aspect of voluntary repatriation in the context of international refugee law, they will be investigated in order to understand how voluntary repatriation was (not) addressed in the 1951 Convention, and how UNHCR regulates voluntary repatriation in light of significant soft law instruments.

2.1.1. Voluntary repatriation within the 1951 Convention

The 1951 Convention is the core treaty establishing international refugee law, considerably regulating refugee status, and outlining a number of obligations and rights. The 1951 Convention was drafted between 1948 and 1951 by a combination of United Nations organs, ad hoc committees, and a conference of plenipotentiaries.³⁸¹ and it entered into force in 1954.³⁸² After the amendment of the 1967 Protocol relating to the Status of Refugees to remove the geographical and time limits that were part of the 1951 Convention³⁸³, refugee status reached a universal definition by the 1951 Convention and its 1967 Protocol that explain the rights of refugees and the responsibility of states. Today, 149 states are parties to the 1951 Refugee Convention and/or the 1967 Protocol³⁸⁴ and it has become one of the most litigated

³⁸⁰ 1950 Statute (n 4).

³⁸¹ James C Hathaway, 'The Architecture of the UN Refugee Convention and Protocol' in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021) 172.

³⁸² Guy S Goodwin-Gill, 'The International Law of Refugee Protection' in Elena Fiddian-Qasimiyeh, Gil Loescher, Katy Long and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 37.

³⁸³ 1950 Statute (n 4): "These limits initially restricted the Convention to persons who became refugees due to events occurring in Europe before 1 January 1951."

³⁸⁴ 1951 Convention (n 1).

international treaties.³⁸⁵

However, the 1951 Convention's primary concern is the protection of refugees in host countries³⁸⁶ and it does not give any obligation to states regarding solutions. Only the naturalisation and assimilation of refugees (local integration to host states) is included, which shall be facilitated by states under Article 34, but this provision does not include any obligation.³⁸⁷ It demonstrates that there is a clear tendency towards the integration (and eventual assimilation) of the refugee in the host state, even though it does not specifically address any solutions. In terms of other traditional durable solutions in the 1951 Convention, on the one hand, resettlement is implied by\z referencing international cooperation to ease heavy burdens on certain countries under the preamble part of the Convention.³⁸⁸

On the other hand, for voluntary repatriation, the 1951 Convention contented with indirectly referring to 'right to return' in the 1948 Universal Declaration of Human Rights (UDHR) in its preamble, which is not internationally binding. The first two paragraphs of the preamble declare that the refugees benefit from the widest possible exercise without discrimination of the fundamental rights and freedoms under the UDHR.³⁸⁹ The 'right to return' aspect of international human rights law that voluntary repatriation is built on is covered by Article 13.2 of the UDHR. In addition to this implicit/compelling deduction regarding the right to return and voluntary repatriation link in the preamble, there are only negative references to return in the main text of the 1951 Convention.

³⁸⁵ Goodwin-Gill, McAdam and Dunlop (n 10).Preface.

³⁸⁶ Geoff Gilbert, 'Comment on Draft 1 GCR: The International Law of Voluntary Repatriation' (UNHCR) <https://excom.unhcr.org/events/conferences/5ae079557/comment-draft-1-gcr-international-law-voluntary-repatriation.html> accessed 5 May 2023.

³⁸⁷ 1951 Convention (n 1), art 33-35; 1950 Statue (n 4) para 9.

³⁸⁸ 1951 Convention (n 1), preamble: "Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot therefore be achieved without international cooperation."

³⁸⁹ Ibid: "Considering that the Charter of the United Nations and the Universal Declaration of Human Rights, approved on 10 December 1948 by the General Assembly, have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination, considering that the United Nations has, on various occasions, manifested its profound concern for refugees and endeavoured to assure refugees the widest possible exercise of these fundamental rights and freedoms."

Except in exceptional circumstances, article 32 forbids state parties from expelling refugees who are lawfully residing on their territory, and article 33 establishes the concept of non-refoulement and the obligation not to return someone to a place with persecution risk in the Convention. Moreover, Article 1C clarifies the circumstances of cessation of refugee status resulting in most probably a return to the country of origin. Therefore, the 1951 Convention does not include particular provisions establishing rights and obligations in respect to the voluntary character of repatriation. In other words, the 1951 Convention did not mandate the use of voluntariness criteria to repatriate refugees.

Excluding voluntary repatriation, which is described as the most ideal and desirable solution and mostly emphasised by the General Assembly in the 1951 Convention, the treaty forming the basis of international refugee law looks like a legal gap. It can be understandable considering the effects of the Cold War at the time of preparation for the 1951 Convention. As mentioned in Chapter 1, resettlement was applied as the preferred solution in line with the dominant policy of Western powers after the Second World War.³⁹⁰ Moreover, the preparation of the 1951 Convention was 'Eurocentric', and its protection was limited to refugees whose flight was prompted by a pre-1951 event within Europe.³⁹¹ As mentioned by Goodwin-Gill, the 1951 Convention "was drafted at a time when voluntary repatriation was effectively obsolete".³⁹² Moreover, Hathaway explains the meaning of the refugee status in terms of drafters of the 1951 Convention, as including rights and dignity based on protection that continues until the condition of the country of origin is convenient to return without the risk of persecution.³⁹³ Therefore, voluntary repatriation was seen as a natural extension of the refugee situation or, inevitably, the result of temporary protection provided to refugees rather than an

³⁹⁰ Chimni, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' (n 13) 57.

³⁹¹ Hathaway, 'The Architecture of the UN Refugee Convention and Protocol' (n 381) 172.

³⁹² Guy S Goodwin-Gill, 'Editorial' (1995) 7(1) *International Journal of Refugee Law* 1, 8.

³⁹³ Hathaway, 'The meaning of repatriation, *International Journal of Refugee*' (n 24)

internationally structured legal concept.

However, since the 1980s, UNGA has emphasised voluntary repatriation by giving formal priority among durable solutions because of the general reluctance to apply for resettlement and reintegration by states. Feitsma explains that the changed policy regarding refugees over the past 40 years has become a permanent problem for the world, and host countries facing ongoing asylum needs that are more than their capacity limits, their local integration and resettlement policies tend to promote voluntary repatriation as a durable solution when persecution risk is not available.³⁹⁴ Therefore, there is a need to regulate voluntary repatriation conditions legally. In that regard, Chimni suggested the preparation of a new global convention to deal with the refugee problem, including voluntary repatriation.³⁹⁵ or inclusion of voluntary repatriation to 1951 Convention.³⁹⁶ According to Hathaway, suggesting the inclusion of voluntary repatriation under 1951 convention is only 'wishful legal thinking'. Thus, today, after more than 70 years of preparation of the 1951 Convention, voluntary repatriation does still not directly constitute a legal obligation on states, despite the dire need for a sustainable and effective voluntary repatriation solution in the deadlock conditions of solutions that refugees are in the 21st century, which is explained in detail under Chapter 3.

Although the legal development of voluntary repatriation seems to be outside of the 1951 Convention, there are two critical provisions, the principle of non-refoulement having a supportive link with the voluntary character of repatriation and the cessation clause limiting the voluntary repatriation within the scope of the 1951 Convention, which are examined below.

2.1.1.1. The Principle of Non-refoulement under Article 33 of the 1951 Convention

Briefly, the principle of non-refoulement means that a refugee should not be forced to return to a country where they face persecution or other ill-treatment.³⁹⁷ Thus, the principle of

³⁹⁴ John Feitsma, 'Repatriation Law and Refugees' (1989) 7 *Netherlands Quarterly of Human Rights* 294, 296.

³⁹⁵ Chimni, 'Perspectives on Voluntary Repatriation: A Critical Note' (n 207) 545.

³⁹⁶ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation', (n 24) 442, 454.

³⁹⁷ Guy S Goodwin-Gill, 'International Refugee Law: Yesterday, Today, but Tomorrow?' (n 94) 201.

non-refoulement is one of the main bases of establishing international refugee law and is addressed under Article 33 of the 1951 Convention.³⁹⁸ Moreover, the principle of non-refoulement creates a general protection mechanism for anyone, regardless of status, to prevent return where they face persecution, as a customary international law principle. Therefore, the principle of non-refoulement has become a significant part of international human rights law, included in numerous treaties, as explained in the following section and customary international law.³⁹⁹ Although the relationship between the principle of non-refoulement and voluntary repatriation is examined in detail within the scope of the 1951 convention, since this research focuses on the return of refugees, it is useful to underline that the principle of non-refoulement creates a responsibility for the states that are not a party to the 1951 Convention, because of its customary international law character.⁴⁰⁰ Therefore, international customary law provides the legal framework by this principle for the voluntary repatriation aspect of refugee law.

Non-refoulement, whether in accordance with the 1951 Convention or customary law principle, can be understood as a safeguard mechanism for refugees against forced return. Non-refoulement and voluntary repatriation support each other despite the scope and meaning differences.⁴⁰¹ It is regulated under Article 33 of 1951 Convention as follows:

“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

³⁹⁸ UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol* (26 January 2007) para 2.

³⁹⁹ Goodwin-Gill, McAdam and Dunlop, *The Refugee in International Law* (n 10) 40.

⁴⁰⁰ Sir Elihu Lauterpacht and Daniel Bethlehem, ‘The Scope and Content of the Principle of Non-Refoulement: Opinion’ in Erika Feller, Volker Türk and Frances Nicholson (eds), *Refugee Protection in International Law: UNHCR’s Global Consultations on International Protection* (CUP 2003) 140; Gilbert, ‘The International Law of Voluntary Repatriation’ (n 31); BS Chimni, ‘Customary International Law: A Third World Perspective’ (2018) 112 *American Journal of International Law* 1: In addition, though, customary international law on voluntary repatriation has developed. As always, customary international law requires state practice and *opinio juris*.⁸ For a Third World perspective, which might be more appropriate given that 84 per cent of refugees are in lower-middle-income countries.

⁴⁰¹ Chetail (n 24); Gilbert, ‘The International Law of Voluntary repatriation’ (n 31) 19.

It is crucial to demonstrate why voluntary repatriation and non-refoulement must coexist and how non-refoulement provides the voluntary character of repatriation on a legal basis. Considering the historical conceptual development of voluntary repatriation after the Second World War, under Chapter 1, the voluntary principle is included in the constitution of the IRO due to the protection of refugees against forced return.⁴⁰² Thus, the requirement of voluntariness for repatriation found a legal basis in the principle of non-refoulement, as the forced return of someone who faces persecution without their voluntary consent can breach this obligatory principle.⁴⁰³

On the one hand, the principle of non-refoulement creates a negative obligation for states not to force refugees to return against their will to a place where they face a risk of persecution. Thus, it supports the voluntary character of repatriation by preventing forced return.⁴⁰⁴ High Commissioner emphasises this link as follows:

“The essential need for repatriation to be voluntary is, indeed, the counterpart of the fundamental and generally accepted principle non-refoulement, according to which no person may be returned against his will to a territory where he has reason to fear persecution”.⁴⁰⁵

On the other hand, voluntariness is an essential need for the repatriation of refugees who fled from persecution, and it supports the prohibition of forced return by non-refoulement in line with the protection need for the autonomy of refugees.

The UNHCR Handbook on Voluntary repatriation (1996 UNHCR Handbook) similarly states: “The principle of voluntariness is the cornerstone of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951

⁴⁰² Zieck, ‘Reimagining Voluntary repatriation’ (n 29).

⁴⁰³ Peter van Krieken, ‘Repatriation of Refugees under International Law’ (1982) 13 *Netherlands Yearbook of International Law* 93, 103, 113.

⁴⁰⁴ Chetail (n 24). 19.

⁴⁰⁵ UNHCR Executive Committee, *Note on Voluntary Repatriation* UN Doc EC/SCP/13 (1980) 3. UNHCR, *Note on International Protection* UN Doc A/AC.96/815 (31 August 1993) para 58. UNHCR, *Report of the UNHCR Working Group on International Protection* (6 July 1992) 83.

Refugee Convention, it follows directly from the principle of non-refoulement: the involuntary return of refugees would in practice amount to refoulement”.⁴⁰⁶

Therefore, the principle of non-refoulement and voluntary repatriation coexist as key features of international refugee law. The principle of non-refoulement provides a strong legal basis for voluntary repatriation by reinforcing the voluntary nature of repatriation within itself as a negative obligatory rule in international refugee law.

2.1.1.2. Cessation of Refugee Status under Article 1C.5 1951 Convention

The 1951 Convention does identify the circumstances under which refugee status may be terminated under Article 1C. First, an individual refugee may choose to voluntarily terminate their status as a refugee under the 1951 Convention by taking proactive steps to regain their original nationality or acquire a new one, reclaiming the protection of their home country, or resettling in the country where they fled. These circumstances explained under 1C (1)-(4):

“This Convention shall cease to apply to any person falling under the terms of section A if: (“Convention relating to the Status of Refugees | OHCHR”)

- (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
- (2) Having lost his nationality, he has voluntarily re-acquired it; or
- (3) He has acquired a new nationality and enjoys the protection of the country of his new nationality; or
- (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution”.⁴⁰⁷

In all the conditions mentioned above, it can be said that articles 1C (1)-(4) comply with the criteria of voluntariness since there is a return depending on the termination of refugee status as a result of the refugee's own voluntary decision. Generally, academics in this field agree that

⁴⁰⁶ UNHCR, *Voluntary Repatriation Handbook* (n 230) 2.3.

⁴⁰⁷ 1951 Convention (n 1), art 1C (1)-(4).

all of these circumstances largely correspond with voluntary repatriation.⁴⁰⁸

Second, the 1951 Convention gives authority to host states to terminate refugee status and mandate repatriation. Article 1C (5) and (6) provide for cessation under the host state's control as:

"(5) He can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality ...

(6) Being a person who has no nationality, he is, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, able to return to the country of his former habitual residence."⁴⁰⁹

Although the voluntariness requirement for repatriation of refugees is not addressed by the 1951 Convention, directly giving a right to states to terminate refugee status can lead to limiting the application of voluntary repatriation for refugees and provide a way for breach of non-refoulement with early repatriation decisions of host states before the end of the persecution risk. According to Takahashi, in international refugee law, the relationship between the principles of voluntariness and cessation is a vaguely defined "grey zone" that creates a conundrum over repatriation.⁴¹⁰

Refugee status refers to a situation, specific to a temporary protection situation, and protection is only to be provided while the circumstances creating persecution remain.⁴¹¹ These two articles are based on cases where the causes of persecution are no longer available due to fundamental changes in circumstances in the country of origin.⁴¹² Since there is no longer a need for refugee status and there is no debatable requirement for voluntariness, cessation under

⁴⁰⁸ Chetail (n 24). 20.

⁴⁰⁹ 1951 Convention (n 1), art 1C (5) and (6).

⁴¹⁰ Takahashi (n 24). 601.

⁴¹¹ Mathew (n 324) 158.

⁴¹² Chetail (n 24). 20.

Article 1C.5 of the 1951 Convention shouldn't serve as proof in regard to voluntary repatriation.⁴¹³

However, the important thing here is how to apply the requirements that are for the fundamental 'change of the circumstances', eliminating the risk of persecution by host states. These requirements are clarified by UNHCR's Ceased Circumstances Guidelines and ExCom Conclusions.⁴¹⁴ However, the application of cessation, according to the states' fair assessment of the conditions of the country of origin, can remove the need for voluntary consent of refugees because when the cessation clause is applied, a refugee becomes an ordinary alien and can be deported to their country of origin without any voluntary requirements. It can cause premature repatriation, resulting in the suffering of returnees in the country of origin, as experienced in Rwanda.⁴¹⁵ Chimni argues that the current understanding of voluntary repatriation in international law provides a space for states wishing to prematurely withdraw refugee status and indirectly force refugees to early voluntary repatriation that might be equal to refoulement.⁴¹⁶

Requirements for a fundamental change of circumstances in the country of origin have considerably increased by the UNHCR and ExCom Conclusions.⁴¹⁷ At that point, the supervisory role of UNHCR is very significant to provide timely voluntary repatriation for refugees, because according to article 35 of the 1951 Convention, ". . . The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees . . . in the exercise of its functions."⁴¹⁸ Therefore, UNHCR's evaluation regarding the conditions of the country of origin can play a key role in avoiding involuntary repatriation and reaching

⁴¹³ Gilbert, 'The International Law of Voluntary repatriation' (n 31).

⁴¹⁴ James C Hathaway, 'The Right of States to Repatriate Former Refugees' (2005) 20 *Ohio State Journal on Dispute Resolution* 175, 184–91.

⁴¹⁵ Eriksson and others (n 245).

⁴¹⁶ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (n 24) 454.

⁴¹⁷ Zieck, 'Reimagining Voluntary repatriation' (n 29). 1079.

⁴¹⁸ 1951 Convention (n 1), art 35.

timely voluntary repatriation. UNHCR's role in this process is supervisory and necessarily dependent on host-state cooperation.⁴¹⁹ Thus, Article 35 serves as UNHCR's legal justification for requiring that states acknowledge its responsibility for protection, give it information, and follow its policy statements.⁴²⁰ Therefore, making decisions about whether repatriation is sustainable and appropriate should involve the UNHCR heavily.

However, in practice, as a response to the large-scale refugee movement situations under a temporary protection regime, a safe return clause was introduced as a result of the cessation clause of the 1951 Convention.⁴²¹ The term "safe return" refers to the interim period between a refugee's voluntary return and the termination of their status as refugees or when they face deportation because they have no legal basis for international protection.⁴²² The Executive Committee linked temporary shelter to "safe return when conditions allowed" in 1994, implying that the states acknowledged the intermediate category that required protection for the large-scale refugee movement.⁴²³ In particular, it appears that international law does not legally oblige the governments that are advocating for or proposing to implement return to take action on the evaluation of safety, including the fundamentals like a functioning police and judicial system and the absence of conflict.⁴²⁴ Voluntary repatriation has been understood as 'necessarily voluntary return to the state of origin' today.⁴²⁵

2.1.2. UNHCR's International Law of Voluntary repatriation Role

Contrary to the 1951 Convention, The Statute of the Office of the United Nations High Commissioner for Refugees (1950 Statute) directly includes voluntary repatriation under two key articles:

⁴¹⁹ Marissa E Cwik, 'Forced to Flee and Forced to Repatriate? How the Cessation Clause of Article 1C(5) and (6) of the 1951 Refugee Convention Operates in International Law and Practice' (2011) 44 *Vanderbilt Journal of Transnational Law* 711, 711–16.

⁴²⁰ *Ibid.*

⁴²¹ Chimni, 'The Meaning of Words and the Role of UNHCR in Voluntary Repatriation' (n 24) 454.

⁴²² Goodwin-Gill, McAdam and Dunlop (n 10) 497.

⁴²³ *Ibid.*

⁴²⁴ *Ibid.*

⁴²⁵ Hathaway, 'The meaning of repatriation, International Journal of Refugee' (n 24) 533.

“Chapter I GENERAL PROVISIONS

...of seeking permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organisations to facilitate the voluntary repatriation of such refugees or their assimilation within new national communities.”⁴²⁶

"Chapter II: FUNCTIONS OF THE HIGH COMMISSIONER

8(c) Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;”⁴²⁷

In addition to the UNHCR's primary function, which is providing protection for refugees, the UNHCR is tasked with promoting and facilitating voluntary repatriation. The 1950 Statute gives a foundation to voluntary repatriation under a legal basis. It is obvious that the UNHCR, which is a subsidiary organ of the General Assembly,⁴²⁸ determined as the main actor in promoting voluntary repatriation in cooperation with governments. UNGA Resolutions⁴²⁹ and the ExCom⁴³⁰ Conclusions putting legal standards on voluntary repatriation has played a significant role in the improvement of the policy of the UNHCR regarding voluntary repatriation via regulating voluntary repatriation. Based on these soft law instruments mentioned, the UNHCR has shaped voluntary repatriation in practice for over 70 years. In the absence of any binding explicit legal provisions governing voluntary repatriation, the role of the UNHCR is crucial to set a legal framework for the application of voluntary repatriation. Therefore, it is essential to clarify the normative scope of voluntary repatriation as a result of

⁴²⁶ 1950 Statute (n 4).

⁴²⁷ *Ibid.*

⁴²⁸ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI, (UN Charter), art 22.

⁴²⁹ 1950 Statute (n 4) para 3: "The High Commissioner shall follow policy directives given to him by the General Assembly or the Economic and Social Council."

⁴³⁰ Corinne Lewis, *UNHCR and International Refugee Law: From Treaties to Innovation* (Routledge 2012) 49: "ExCom, created in 1958 by the United Nations Economic and Social Council, at the request of the General Assembly, in order to provide advice to UNHCR, is presently comprised of 79 States. States that are not ExCom members also may attend ExCom meetings. UNHCR, pursuant to its Statute, can request ExCom's advice with respect to its functions."

applications of the UNHCR shaped by the mentioned legal instruments.

Considering the primary task of the UNHCR is the protection of refugees, the UNHCR cannot encourage voluntary repatriation unless the particular conditions are provided after the fundamental change of circumstances in the country of origin that shows repatriation will be sustainable, durable, and dignified.⁴³¹ Thus, respecting the principle of first protection responsibility indicates that before encouraging refugees to return home, the UNHCR should make sure that the conditions in the refugee's country of origin are, in fact, sufficiently safe to avoid a breach of its primary liability.⁴³² Therefore, in view of the coexistence between voluntary repatriation and the principle of non-refoulement explained above, the protection task of UNHCR is also closely linked with promoting and facilitating voluntary repatriation as another task.

Even though the 1950 Statute does not include any priority among solutions, since the beginning of the 1980s, the significance of voluntary repatriation has been emphasised numerous times in a variety of UNGA Resolutions, and voluntary repatriation has a hierarchical priority,⁴³³ due to the blocking of other solutions related to the burden and responsibility sharing problem. Additionally, The General Assembly has taken decisions expanding the duties of the UNHCR regarding large-scale repatriations, such as assistance to countries of origin to facilitate the sustainable reintegration of returnees and ensure protection continues via monitoring of returnees' safety and well-being.⁴³⁴ This approach of the General Assembly changed the

⁴³¹ Gilbert, 'The International Law of Voluntary repatriation' (n 31).

⁴³² Takahashi (n 24). 594.

⁴³³ UN Doc. A/Res./38/121 (1983). UN Doc. A/RES/39/169(1994); UN Doc. A/res.50/152(1995), UN Doc. A/res/51/75(1996), UN Doc. A/Res./52/103(1997), **Chimni**, 'From Resettlement to Involuntary Repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' (n 13), Chetail (n 24) 12.

⁴³⁴ UN Doc. A/Res./39/169 (1994): "Reiterates that voluntary repatriation, when it is durable, is the ideal solution to refugee problems, calls upon countries of origin, countries of asylum, the Office of the High Commissioner and the international community as a whole to do everything possible to enable refugees to exercise freely their right to return home in safety and dignity, ensuring that international protection continues to be extended until that time, and assisting, where needed, the return and reintegration of repatriating refugees, and further calls upon the High Commissioner, in cooperation with States concerned, to promote, facilitate and coordinate the voluntary repatriation of refugees, including the monitoring of their safety and well-being on return"

"39. *Strongly reaffirms* the fundamental importance and *the purely humanitarian and non-political character of*

position of the UNHCR from passive facilitation of voluntary repatriation to proactive establishment of conditions favourable to refugees' voluntary repatriation.⁴³⁵

How UNHCR will fulfil this expanded mission and the conditions for sustainable and durable voluntary repatriation have been determined by the Executive Committee of the High Commissioner. On the expansion of UNHCR's function on voluntary return, ExCom approved its first conclusion in 1980, which sets the principles of voluntary repatriation and provides a basis to improve the framework of voluntary repatriation by other conclusions and UNHCR handbooks.⁴³⁶ Thus, ExCom Conclusion No 18 marked an important stage in the development of UNHCR's role in voluntary repatriation. It confirmed that repatriation must remain essentially voluntary and that appropriate arrangements should be made to verify its voluntary nature, particularly in large-scale movements.⁴³⁷ It also recognised the importance of providing refugees with accurate information about conditions in the country of origin, securing guarantees from the state of origin, associating UNHCR with repatriation arrangements where necessary, enabling UNHCR to monitor the situation of returnees, and establishing projects for returnees' reintegration with UNHCR's cooperation.⁴³⁸ In this way, the Conclusion helped transform voluntary repatriation from a simple act of physical return into a protection-oriented process involving information, consent, safety guarantees, monitoring and reintegration support.

However, this conclusion is not enough to clarify many important key points about

the function of the Office of the High Commissioner of providing international protection to refugees and seeking durable solutions to refugee situations, and recalls that those solutions include voluntary repatriation and, where appropriate and durable, local integration and resettlement in a third country, while reaffirming that voluntary repatriation, supported, as necessary, by rehabilitation and development assistance to facilitate sustainable reintegration, remains the preferred solution;" UNGA res. 72/150, 19 December 2017. See also UN Doc. A/Res./50/152 (1995); UN Doc. A/Res./51/75 (1996); UN Doc. A/Res./52/103 (1997); UN Doc. A/Res./53/125 (1998); UN Doc. A/Res./54/146 (1999); UN Doc. A/Res./55/74 (2000); UN Doc. A/Res./56/135 (2001); and UN Doc. A/Res./57/183 (2002).

⁴³⁵ Chetail (n 24). 12.

⁴³⁶ ExCom Conclusions No 18 (XXXI) 'Voluntary repatriation' (1980).

⁴³⁷ *ibid.*

⁴³⁸ *ibid.*

voluntary repatriation. For example, the change in the country of origin's conditions is not addressed expressly, and the voluntariness character of repatriation is not clear. The importance of its 1980 conclusion on voluntary repatriation as embodying fundamental principles of international law and practice is reiterated in the subsequent Conclusion No. 40, which is addressed in greater detail in 1985.⁴³⁹ 11 years after this ExCom Conclusion, the UNHCR handbook on voluntary repatriation made some points clearer and following ExCom Conclusions and other UNHCR documents support clarity in ambiguous points. However, considering the time that has passed in between, it is hard to disagree with the criticism of Takahashi that the theoretical development of voluntary repatriation is too slow.⁴⁴⁰ Despite this lagging behind, the instruments already mentioned and the UNHCR's execution of them with affected states have created some standards for voluntary repatriation so far.

According to the 1996 Handbook, voluntariness is a decision taking issue making repatriation far 'more likely to be lasting and sustainable', indicating 'an absence of measures which push the refugee to repatriate,' and must be viewed in relation to both the conditions in the country of origin (calling for an informed decision) and the situation in the country of asylum (permitting a free choice).⁴⁴¹ Firstly, the UNHCR's assessment regarding the condition of host states is as much important as the conditions of the country of origin to clarify whether the decision taken by refugees is based on their own voluntary decision or some pushing measures taken by the host country. Secondly, the information provided to refugees about the conditions of the country of origin includes objective reality. ExCom Conclusion No: 101 "encourages the country of origin, host countries and UNHCR in cooperation with other relevant actors to provide refugees with complete, objective and accurate information, including on physical, material and legal safety issues, prior to their voluntary repatriation to and

⁴³⁹ ExCom Conclusions No 40 (XXXVI) 'Voluntary repatriation' (1985).

⁴⁴⁰ Takahashi (n 24). 599.

⁴⁴¹ UNHCR, *Voluntary Repatriation Handbook* (n 230) 2.3.

reintegration in the country of origin"⁴⁴² However, refugees' personal assessment regarding return clarifies the final voluntary repatriation decision.⁴⁴³ Conclusion No. 40 highlights the individual character of repatriation based on the freely expressed wish of a refugee under absolute safety conditions to preferably where they originally lived in his/her country of origin.⁴⁴⁴ Thus, the standard here is that voluntary repatriation is based on the voluntary, free and informed choice of the refugee.

Nevertheless, being voluntary to return strongly depends on the returnable conditions of the country of origin. Thus, one of the most important standards requires an assessment of the conditions of the country of origin to promote voluntary repatriation. According to the 1996 UNHCR handbook, "Promotion of repatriation can take place when a careful assessment of the situation shows that the conditions of 'safety and dignity' can be met: in other words, when it appears that, objectively, it is safe for most refugees to return and that returns have good prospects of being durable."⁴⁴⁵ "The fact that the voluntary repatriation of refugees can take place at a lower threshold of change in the country of origin than cessation."⁴⁴⁶ Voluntary repatriation requires that return be genuinely voluntary, informed, safe and dignified, but it does not require the same fundamental and durable change in the country of origin required for cessation of refugee status. This is because cessation removes refugee protection as a legal status, whereas voluntary repatriation is based on the individual refugee's choice to return.

However, the 1996 UNHCR Handbook did not clarify how a lower threshold than cessation, which implies there is no need to provide international protection, can be measured. To do this assessment, UNHCR needs only two requirements: "fundamental change of circumstances" implies the consolidation, over time, of a process of stabilisation, and

⁴⁴² ExCom Conclusions No.: 101 (LV) Legal 'Safety Issues in The Context of Voluntary repatriation of Refugees' (2004) (r).

⁴⁴³ Takahashi (n 24).

⁴⁴⁴ ExCom Conclusions No 40 (XXXVI) 'Voluntary repatriation' (1985) b.

⁴⁴⁵ UNHCR, *Voluntary Repatriation Handbook* (n 230) 14.

⁴⁴⁶ *Ibid* 2.2.

voluntariness.⁴⁴⁷ At first glance, the end of the causes producing the refugee flow and the provision of a durable, peaceful environment seem sufficient to promote voluntary repatriation. Hathaway argues that providing durable protection by the country of origin is enough to promote voluntary repatriation.⁴⁴⁸ However, protection understanding looks limited with the restoration of national protection between returnees and the country of origin via the existing rule of law, providing legal safety. There are some essential preconditions to be met for UNHCR to promote voluntary repatriation movements:

“• There must be an overall, general improvement in the situation in the country of origin so that return in safety and with dignity becomes possible for the large majority of refugees.

- All parties must be committed to fully respecting their voluntary character.
- The country of origin must have provided a formal guarantee or adequate assurances for the safety of repatriating refugees, as appropriate.
- UNHCR must have free and unhindered access to refugees and returnees.”⁴⁴⁹

Therefore, the handbook sets out some important standards to promote voluntary repatriation for refugees. However, overemphasised precondition, which is returning in safety and dignity, is not clear in the 1996 UNHCR Handbook. The UNHCR frequently promotes this idea of "safety and dignity,"⁴⁵⁰ but closer inspection reveals that this appears to refer to the conditions of the repatriation process itself rather than the human rights situation after the return.⁴⁵¹

According to UNHCR Handbook:

“Return in safety

The return takes place under conditions of legal safety (such as amnesties or public assurances of personal safety, integrity, non-discrimination, and freedom from fear of persecution or

⁴⁴⁷ UNHCR, *Voluntary Repatriation Handbook* (n 230) 2.3.

⁴⁴⁸ Hathaway, ‘The Meaning of repatriation’ (n 24).

⁴⁴⁹ UNHCR, *Voluntary Repatriation Handbook* (n 230) 14.

⁴⁵⁰ Ibid.

⁴⁵¹ Takahashi (n 24). 605.

punishment upon return), physical security (including protection from armed attacks, and mine-free routes and if not mine-free then at least demarcated settlement sites), and material security (access to land or means of livelihood).

Return with dignity

The concept of dignity is less self-evident than that of safety. The dictionary definition of "dignity" contains elements of "serious, composed, worthy of honour and respect." In practice, elements must include that refugees are not manhandled; that they can return unconditionally and that if they are returning spontaneously, they can do so at their own pace; that they are not arbitrarily separated from family members; and that they are treated with respect and full acceptance by their national authorities, including the full restoration of their rights."⁴⁵²

However, UNHCR's background Note on Voluntary repatriation adopted a new approach in 2002 about safety by emphasising safety in the country of origin. UNHCR Handbook for repatriation and Reintegration Activities 2004 defines "core components of voluntary repatriation are physical, legal and material safety and reconciliation."⁴⁵³ and clarifies them under accessing equally basic human rights in the country of origin. These rights are

⁴⁵² UNHCR, *Voluntary Repatriation Handbook* (n 230) Cap 2.4.

⁴⁵³ UNHCR, *Repatriation and Reintegration Handbook* (n 229) 1.1.

Physical safety

- _ Ebb of violence and intimidation;
- _ Steps taken towards re-establishment of police, judiciary and human rights agencies;
- _ Absence of mines and unexploded ordinances; and
- _ Improved overall security.

Legal safety

- _ Removal of legal and administrative barriers to return;
- _ Legislation related to enabling legal framework to ensure, *inter alia*, citizenship, amnesty, property, registration, documentation, and return; and
- _ Existence of mechanisms to redress human rights abuses, including independent judiciary.

Material safety

- _ Access to means of survival and basic services in early stages of return (shelter, water, health and education) and access to employment opportunities;
- _ Non-discriminatory access to services (health services, education, etc.);
- _ development of absorption capacity in areas of return; and
- _ Promotion of economic self-reliance and income-generating activities.

Reconciliation

- _ Promotion of equity between displaced persons and local residents; and
- _ Structures and mechanisms to promote confidence building and co-existence."

included in a wide range from the rule of law to the observance of fundamental economic and social rights, such as the rights to food, clothing, and housing, the rights to physical and mental health, and the rights to education are also necessary for voluntary repatriation to be a durable solution because it enables returnees to actually re-establish themselves in their country of origin.⁴⁵⁴ Reaffirmation of the basic right of returnees in the country of origin for voluntary repatriation, that is limitedly started by Conclusion No. 40⁴⁵⁵ in 1985, became a set of core components for voluntary repatriation, gradually over 19 years.

Therefore, understanding the overemphasis on the "return in safety and dignity" precondition to promote voluntary repatriation, which involves providing basic rights of returnees, is a significant standard to assess the conditions of the country of origin. As Takashi argues, for refugees to be encouraged to return home, there must have been a significant and long-lasting change in the human rights conditions of the country where they were forced to flee; any other condition would invariably go against the fundamentals of refugee protection.⁴⁵⁶ Improving the approach to protection-oriented prioritisation of the human rights of returnees in the country of origin before promoting voluntary repatriation is more consistent with UNHCR's functions: protection and the promotion of sustainable and durable voluntary repatriation. However, there is no clarity on the assessment criteria of human rights standards in the country of origin under the safety and dignity precondition to promote voluntary repatriation.

Providing appropriate conditions for repatriation is the main responsibility of the country of origin. Additionally, Conclusion No. 101 clarifies some significant duties for the country of origin to facilitate the reach of rights for returnees.⁴⁵⁷ Especially in post-conflict

⁴⁵⁴Marjoleine Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27).53.

⁴⁵⁵ UNHCR Executive Committee, *Conclusion No 40 (XXXVI): Voluntary Repatriation* (18 October 1985) para (b): "The basic rights of persons to return voluntarily to the country of origin is reaffirmed, and it is urged that international co-operation be aimed at achieving this solution and should be further developed

⁴⁵⁶ Takahashi (n 24).

⁴⁵⁷ UNHCR Executive Committee, *Conclusion No 101 (LV): Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees* (8 October 2004) para (o).

situations, providing the rights determined by UNHCR is not straightforward in the country of origin. repatriation could not be durable and sustainable without successful reintegration, called "the anchor of repatriation" by UNHCR.⁴⁵⁸ Moreover, the UNHCR clarify the main elements under the 4Rs Program as reintegration, rehabilitation and reconstruction following repatriation to provide sustainability after the voluntary return. These fairly high standards for voluntary repatriation were approved by the General Assembly;

“42. Encourages further efforts by the Office of the High Commissioner, in cooperation with countries hosting refugees and countries of origin, including their respective local communities, relevant United Nations agencies, international and intergovernmental organisations, regional organisations, as appropriate, non-governmental organisations and development actors, to actively promote durable solutions, particularly in protracted refugee

"Situations, with a focus on sustainable, timely, voluntary, safe and dignified return, which" (“The International Law of Voluntary repatriation - UNHCR”) encompasses repatriation, reintegration, rehabilitation, and reconstruction activities, and encourages states and other relevant actors to continue to support these efforts through, inter alia, the allocation of funds”;

...

“44. Recognises, in the context of voluntary repatriation, the importance of resolute efforts in the country of origin, including rehabilitation and development assistance, to foster the voluntary, safe, and dignified return and sustainable reintegration of refugees and to ensure the restoration of national protection;”⁴⁵⁹

The General Assembly extends not only the responsibilities of the country of origin but also of host states as well by including them in approving these high standards. Since Conclusion No. 40 in 1980, ExCom Conclusions and UNGA Resolutions highlighted the

⁴⁵⁸ James C Hathaway and R Alexander Neve, ‘Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection’ (1997) 10 *Harvard Human Rights Journal* 115, 186.

⁴⁵⁹ UNGA Res 72/150, UN Doc A/RES/72/150 (19 December 2017).

international cooperation for addressing root causes and the realisation of achieving repatriation, reintegration, rehabilitation, and reconstruction to provide an effective solution for refugees as well.⁴⁶⁰ However, legislation regarding cooperation is not covered under this title because the role of the international community in line with the UNHCR's law regarding voluntary repatriation is analysed in detail under Chapter 5, focusing on the Global Compact on Refugees as part of the legal framework of voluntary repatriation.

Voluntary repatriation organisations have carried out repatriations according to formal tripartite repatriation agreements between the country of origin and host states, and the UNHCR, in such situations, have a long history.⁴⁶¹ These particular agreements highlight the primarily voluntary character of repatriation, modalities of repatriation regarding safety and dignity and delegate the details of the responsibilities of each party.⁴⁶² The UNHCR, which is guaranteed unhindered access to refugees and returnees, plays a critical role in monitoring the exercise of the repatriation under legal, physical and material security of returnees till responsibilities are completed.⁴⁶³ Therefore, the normative standards outlined above, which have been established so far within the UNHCR's system in order to promote voluntary repatriation, find implementation opportunities by the affected states by giving them obligations regarding standards. Thus, UNHCR has progressively developed an authoritative soft-law and operational framework on voluntary repatriation, grounded in its Statute and elaborated through ExCom Conclusions, handbooks and guidance.⁴⁶⁴ This framework has shaped the core standards of voluntary repatriation over the years, including voluntariness, informed decision-

⁴⁶⁰ ExCom Conclusions No 40 (XXXVI) 'Voluntary repatriation' (1985), ExCom Conclusions No.: 90 (LII) 'General' (2001), ExCom Conclusions No.: 101 (LV) Legal 'Safety Issues in The Context Of Voluntary repatriation of Refugees' (2004) ExCom Conclusion No. 112 (LXVII) 'International Cooperation from A Protection and Solutions Perspective' (2016), ExCom Conclusions No. 102 (LVI) 'General' (2005), <https://ExCom.unhcr.org/en-my/578371524.pdf>, accessed 22 December 2023, 23.

⁴⁶¹ 1950 Statute (n 4), para 8(b).

⁴⁶² Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27). 38.

⁴⁶³ UNHCR, *Voluntary Repatriation Handbook* (n 230) Cap 3.1.

⁴⁶⁴ 1950 Statute (n 4) paras 8 (c), 9; ExCom Conclusion No 18; Conclusion No 40; UNHCR, *Voluntary Repatriation Handbook* (n 230).

making, safety, dignity, monitoring and reintegration.⁴⁶⁵

Absolutely, the application of these standards is more effectively applied in the repatriation organisations under the mandate of the UNHCR with tripartite agreements, because the non-binding power of UNGA Resolutions and ExCom Conclusions that specifically address voluntary repatriation are acknowledged as quite constrained in international law, and do not directly put any obligations on states.⁴⁶⁶ Therefore, there is an accountability problem in applying these standards as provided by the UNHCR. However, Article 35 of the 1951 Convention stated that the contracting states should co-operate with the office of the UNHCR in exercising its functions.⁴⁶⁷ Thus, all parties to the 1951 Convention should have a positive attitude toward the UNHCR's participation in repatriation-related concerns and programmes. Although they could not directly create responsibility on states as a legal resource, they are putting specific normative standards on voluntary repatriation via the application by UNHCR with affected states. Therefore, a legal framework has emerged that has been developing within the UNHCR over the years and surrounding the voluntary return, which is still at the very beginning of its development.

Moreover, Gilbert emphasises that UNHCR's voluntary repatriation standards, although formally soft law, have helped shape the legal understanding of voluntary repatriation by influencing state practice and expectations.⁴⁶⁸ Over time, repeated reliance on UNHCR standards, such as voluntariness, safety, dignity, informed choice, monitoring and reintegration, may contribute to the emergence or clarification of customary norms.⁴⁶⁹ Article 38 of the Statute of the ICJ defines custom as "evidence of a general practice accepted as law."⁴⁷⁰ Customary

⁴⁶⁵ Ibid.

⁴⁶⁶ van Krieken (n 403) 93-123, 106.

⁴⁶⁷ 1951 Convention (n 1), art 35.

⁴⁶⁸ Gilbert, 'The International Law of Voluntary Repatriation' (n 31).

⁴⁶⁹ Ibid.

⁴⁷⁰ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 33 UNTS 993, art 38(1)(b).

law formation needs repetitions of the normative standards regarding voluntary repatriation established in UNGA Resolutions and ExCom Conclusions by states can show a customary quality.⁴⁷¹

The fact that there are 101 members of UNHCR's Executive Committee, that they make decisions by consensus, and that they include not only states that have ratified the 1951 Convention, which would be expected to act in part due to obligations under the treaties, but also other states that are most affected by refugee movements. ExCom Conclusions do not independently create binding law, but certain conclusions indicate legal obligations because they restate or consolidate standards already grounded in treaty law, customary international law or consistent state practice.⁴⁷² Examples include ExCom Conclusion No 6 on non-refoulement⁴⁷³, ExCom Conclusion No 22 on protection in situations of large-scale influx⁴⁷⁴, and ExCom Conclusions No 18 and No 101 on voluntary repatriation, which reaffirm voluntariness, informed choice, safety guarantees, monitoring and non-penalisation of returnees.⁴⁷⁵

2.2. Voluntary repatriation within International Human Rights Law

The human rights dimension of voluntary repatriation is mainly established on the right to return. Although human rights resources do not expressly identify voluntary repatriation as such, wider acceptability within the parameters of international human rights law has helped the contemporary preference for the voluntary repatriation of refugees. Thus, a broader understanding of the right to return to one's country of origin underpins voluntary repatriation

⁴⁷¹ Gilbert, 'The International Law of Voluntary repatriation' (n 31).

⁴⁷² Guy S Goodwin-Gill, 'The Office of the United Nations High Commissioner for Refugees and the Sources of International Refugee Law' (2020) 69(1) *International and Comparative Law Quarterly* 1; International Law Commission, *Draft Conclusions on Identification of Customary International Law, with Commentaries*, UN Doc A/73/10 (2018), conclusions 6, 10.

⁴⁷³ UNHCR Executive Committee, *Conclusion No 6 (XXVIII): Non-Refoulement* (12 October 1977).

⁴⁷⁴ UNHCR Executive Committee, *Conclusion No 22 (XXXII): Protection of Asylum-Seekers in Situations of Large-Scale Influx* (21 October 1981).

⁴⁷⁵ UNHCR Executive Committee, *Conclusion No 18 (XXXI): Voluntary Repatriation* (16 October 1980); UNHCR Executive Committee, *Conclusion No 101 (LV): Conclusion on Legal Safety Issues in the Context of Voluntary Repatriation of Refugees* (8 October 2004).

and gives it a normative form in human rights treaties. The UNHCR Handbook on Voluntary repatriation approved that: 'In international human rights law, the basic principle underlying voluntary repatriation is the right to return to one's own country.'⁴⁷⁶ As referred to in the preamble part of the 1951 Convention, UDHR is the leading international human rights law source regulating the right to return under Article 13(2) as follows: "Everyone has the right to leave any country, including his own, and to return to his country."⁴⁷⁷ This provision implies that the country of origin has a responsibility to readmit its citizens, and the country of asylum should not prevent refugees who voluntarily want to return to the country of origin. Despite the non-legally binding character of the Declaration, its code standards have continued to serve as a benchmark for all subsequent universal and regional human rights documents.

At the beginning of these is the International Covenant on Civil and Political Rights (ICCPR), which constitutes the binding codification of the UDHR and is currently ratified by 117 states, giving it a strong and comprehensive legal foundation.⁴⁷⁸ Right to return under UDHR is widely incorporated in Articles 12.2 and 12.4 of ICCPR, respectively, as "Everyone shall be free to leave any country, including his own,"⁴⁷⁹ and "No one shall be arbitrarily deprived of the right to enter his own country"⁴⁸⁰. However, voluntary repatriation needs to be investigated in ICCPR with a holistic refugee-centric approach beyond the only right to return because the 1951 Convention refers to voluntary repatriation with two significant negative provisions, including the principle of non-refoulement and cessation, shaping the legal framework of voluntary repatriation in international refugee law. Considering the guaranteed range of rights for all persons, including refugees in ICCPR, analysing related other provisions with the right to return can provide more specific legal bases for the voluntary repatriation of

⁴⁷⁶ UNHCR, *Voluntary Repatriation Handbook* (n 230) 7.

⁴⁷⁷ UDHR (n 2), art 13(2).

⁴⁷⁸ ICCPR (n 2), Preamble.

⁴⁷⁹ *ibid*, art 12.2.

⁴⁸⁰ *ibid*, art 12.4.

refugees.

Being a refugee means being unwilling to return to the country of origin owing to a well-founded fear of being persecuted.⁴⁸¹ Using the voluntary right to return to the country of origin mostly depends on the conditions of the country of origin, primarily addressing root causes that threaten his life or freedom.⁴⁸² According to Article 6 of ICCPR, which firmly regulates the right to life, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."⁴⁸³ As mentioned under the IRL title, the principle of non-refoulement and voluntary repatriation are coexisting partners, and non-refoulement obligates states not to force refugees to return where the refugee's life or freedom would be threatened. In this context, repatriating a refugee against his will is an apparent breach of Article 6 (1) of ICCPR. Especially, repatriation under continuing armed conflict or violence in the country of origin opens a gate for returned refugees to exposure to violence and being a victim of war crimes. In light of this, article 6(3) of ICCPR states, "When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorise any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide."⁴⁸⁴ This article is very crucial in indicating the responsibility of host states under the principle of non-refoulement.⁴⁸⁵ Returning someone where she can face persecution threatening her life is a violation not only of article 6 of ICCPR but also of the principle of non-refoulement.

Moreover, ICCPR regulated article 7 as: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without

⁴⁸¹ 1951 Convention (n 1), art 1A2.

⁴⁸² Ibid, art 33.

⁴⁸³ ICCPR (n 2), art 6 (1).

⁴⁸⁴ Ibid, art 6.

⁴⁸⁵ Eriksson and others (n 245).

his free consent to medical or scientific experimentation.” Even though Article 7 of the ICCPR does not explicitly address non-refoulement or extradition, the Human Rights Committee (HRC), which is the body responsible for enforcing the ICCPR⁴⁸⁶, stated in its General Comment no. 20 from 1992 that “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁴⁸⁷ After twelve years, HRC expanded on this idea and approved General Comment No. 31, which stated, “The article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.”⁴⁸⁸ Therefore, the structure and content in Article 7 have been modified by HRC to be consistent with the non-refoulement concept in IRL. According to Goodwin-Gill and McAdam, “the HRC has tacitly accepted that removing an individual to face a real risk of violation of any ICCPR right could constitute refoulement.”⁴⁸⁹

Additionally, ICCPR Article 13 regulated the Position of Aliens Under the Covenant as “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the

⁴⁸⁶ Santhosh Persaud, *Protecting Refugees and Asylum Seekers under the International Covenant on Civil and Political Rights* (UNHCR 2006).

⁴⁸⁷ UNHCR, *UNHCR Statement on Subsidiary Protection under the EC Qualification Directive for People Threatened by Indiscriminate Violence* (January 2008) para 9.

⁴⁸⁸ Human Rights Committee, *General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* UN Doc CCPR/C/21/Rev.1/Add.13 (26 May 2004) para 12.

⁴⁸⁹ Goodwin-Gill, McAdam and Dunlop (n 10) 308.

purpose before, the competent authority or a person or persons especially designated by the competent authority.”⁴⁹⁰ Therefore, when the cessation clause is applied to a refugee, this article directly gives the refugee the ability to appeal an expulsion decision and have it reviewed.⁴⁹¹ It is a very significant right to prevent the application of early return before the persecution risk ends and limitation of voluntary repatriation by the application of Article 1C5 of the 1951 Convention. Application of the cessation clause under the 1951 Convention only terminates the refugee status of the person, including the voluntariness of the need for return. However, the former refugee can apply the component authority to refute involuntary return based on reasons creating asylum.

As a result of this detailed, holistic refugee-centric analysis of voluntary repatriation in ICCPR, it is obvious that ICCPR underpins the framework of voluntary repatriation in the 1951 Convention. Moreover, unlike the 1951 Convention, ICCPR has its own enforcement body, the HRC and includes procedural rights in addition to substantive grounds for the application of voluntary repatriation, such as Article 13 mentioned above. According to McAdam, "Although universal human rights instruments, such as: the CAT and ICCPR guarantee a comprehensive set of rights to all persons within a state's jurisdiction, they are strong on principle but weak on delivery. Unless special measures are taken to ensure that such provisions are translated into national law, then certain benefits may be inaccessible."⁴⁹² Although the HRC's views are not formally binding in the same way as judgments of an international court, they carry significant legal authority as interpretations of the ICCPR by the body entrusted with monitoring its implementation.⁴⁹³ States parties to the Optional Protocol are therefore expected to consider

⁴⁹⁰ ICCPR (n 2), art 13.

⁴⁹¹ Human Rights Committee, *General Comment No 15: The Position of Aliens under the Covenant* UN Doc HRI/GEN/1/Rev.9 (Vol I) (11 April 1986) paras 7, 10.

⁴⁹² Jane McAdam, 'The Legal Status of Persons to Whom the Refugee Convention Does Not Apply' in Jane McAdam (ed), *Complementary Protection in International Refugee Law* (OUP 2007) 202.

⁴⁹³ Human Rights Committee, *General Comment No 33: Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights* UN Doc CCPR/C/GC/33 (25 June 2009) paras 13–14.

them in good faith and to use available domestic means to give them effect, although actual compliance remains uneven.⁴⁹⁴

In addition to the ICCPR mentioned provisions underpinning the legal framework of voluntary repatriation, it similarly includes numerous international human rights treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) with its Committee⁴⁹⁵, the Convention on the Rights of the Child (CRC) with its Committee⁴⁹⁶ and the European Convention on Human Rights (ECHR) as interpreted and enforced by the European Court of Human Rights (ECtHR)⁴⁹⁷. Therefore, these instruments of the IHRL play a complementary role in reinforcing the legal framework of voluntary repatriation, which is not directly addressed by the 1951 Convention.

2.3. Voluntary repatriation within International Humanitarian Law

International humanitarian law, one of the oldest branches of public international law regarding the “law of war” or the “law of armed conflict”, includes standards for voluntary repatriation. These standards stem from the 1949 Fourth Convention Relative to the Protection of Civilians in Times of War (Fourth Geneva Convention), a legally binding international treaty ratified by 192 states and customary humanitarian international law.⁴⁹⁸ Although voluntary repatriation is regulated for two categories of protected persons, prisoners of war and civilians, this title mainly focuses on the civilian category due to the primary stance on the voluntary repatriation of refugees in this thesis.

Armed conflict is one of the prominent reasons causing forced displacement, resulting

⁴⁹⁴ Ibid para 20; International Law Association, *Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies* (Report of the Seventy-First Conference, Berlin, 2004) 621.

⁴⁹⁵ CAT (n 2).

⁴⁹⁶ CRC (n 2).

⁴⁹⁷ ECHR (n 2); Case law of the ECtHR includes various examples to support the voluntary character of repatriation related to the protection of the principle of non-refoulement. See *Soering v United Kingdom* (1989) 11 EHRR 439; *NA v United Kingdom* App no 25904/07 (ECtHR, 17 July 2008); *Sufi and Elmi v United Kingdom* App nos 8319/07 and 11449/07 (ECtHR, 28 June 2011); *Sharifi and Others v Italy and Greece* App no 16643/09 (ECtHR, 21 October 2014).

⁴⁹⁸ Chetail (n 24). 3.

in a large-scale refugee movement seeking asylum out of the country of origin.⁴⁹⁹ Protracted humanitarian crises are one of the primary causes of the vast majority of refugees worldwide.⁵⁰⁰ This research evaluates increasing long-lasting civil wars resulting in prolonged asylum needs in host states as a challenge to sustainable and durable voluntary repatriation under Chapter 3. International refugee law is divided on whether a large number of people fleeing armed conflict (war refugees) should be directly protected by refugee status under the 1951 Convention's significantly individualised determination requiring a "particular applicant for refugee status can show a fear of persecution for one of the five enumerated grounds,"⁵⁰¹ and its derogation, excluding armed conflicts as a reason.⁵⁰² However, UNHCR's 2016 Guidelines on claims related to situations of armed conflict and violence clarify that the 1951 Convention may apply to civilians fleeing armed conflict where there is a nexus between the feared harm and a Convention ground, and that serious human rights violations or serious breaches of international humanitarian law may amount to persecution.⁵⁰³ This discussion is beyond this title. Thus, the provisions of the Fourth Geneva Convention and customary IHL regarding the voluntary aspect

⁴⁹⁹ Geoff Gilbert, 'Root Causes and International Law: Refugee Flows in the 1990s' (1993) 11 *Netherlands Quarterly of Human Rights* 413, 417–18.

⁵⁰⁰ Mélanie Jacques, 'The Prohibition of Forced Displacement in International Armed Conflicts' in *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law* (CUP 2012) 19.; UNHCR, *Global Trends: Forced Displacement in 2021* (UNHCR 2022) <https://www.unhcr.org/uk/publications/brochures/62a9d1494/global-trends-report-2021.html> accessed 15 March 2024.

⁵⁰¹ Determination of refugee in 1951 Convention (n 1): "owing to a 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; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it". 1A2 of 1951 Convention; Gilbert, 'An Introduction to the Law Relating to the Protection of Displaced Persons in Situations of Armed Conflict' (n 160); Jean-François Durieux and Jane McAdam, 'Non-Refoulement through Time: The Case for a Derogation Clause to the Refugee Convention in Mass Influx Emergencies' (2004) 16 *International Journal of Refugee Law* 4.

⁵⁰² *Ibid*; UN High Commissioner for Refugees (UNHCR), 'Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees' (*Refworld*, 2011) <<https://www.refworld.org/docid/4f33c8d92.html>>. accessed 25 March 2024. 33. "Persons compelled to leave their country of origin as a result of international or national armed conflicts are not normally considered refugees. ... However, foreign invasion or occupation of all or part of a country can result in persecution. ... Thus, every case has to be judged on its merits"

⁵⁰³ UNHCR, *Guidelines on International Protection No 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the Regional Refugee Definitions* UN Doc HCR/GIP/16/12 (2 December 2016) paras 1-2, 11-12.

of refugee repatriation make a significant contribution to strengthening the international legal framework for voluntary repatriation, unlike the 1951 Convention.⁵⁰⁴

Although customary international humanitarian law forbids attacks against civilians who are not actively engaged in hostilities under Article 51(2) of Additional Protocol I 1977, and Article 17(2) of Protocol II certainly bans forcing civilians to leave their own territory for a reason connected with the conflict, in conflicts, civilians frequently face attacks and are forced to leave their own territory.⁵⁰⁵ In both international and non-international armed conflict, civilians can find themselves in a country that can be the party of the armed conflict or a neighbouring state where they do not directly have protection due to their nationality and right to refuse removal to the conflict place, which is most likely their country of origin.⁵⁰⁶ Rules relating to the removal of civilians to a conflict not only consist of common ground regarding protection between International Refugee Law and International Humanitarian Law, but also provide a legal basis for the law of voluntary repatriation.

In this regard, the Fourth Geneva Convention includes provisions related to the implicit or explicit voluntary repatriation of civilians in wartime. Convention has removal concern regarding protected persons determined as "...who, at a given moment and in any manner whatsoever, find themselves in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals"⁵⁰⁷ Specifically, removal provisions of the Convention are based on three kinds of civilians, including the population of

⁵⁰⁴ 1951 Convention (n 1), art 49.

⁵⁰⁵ Vanessa Holzer, 'Persecution and the Nexus to a Refugee Convention Ground in Non-International Armed Conflict: Insights from Customary International Humanitarian Law' in David James Cantor and Jean-François Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Brill Nijhoff 2014).; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3, art 51(2).

Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609, art 17.

⁵⁰⁶ David James Cantor, 'Laws of Unintended Consequence? Nationality, Allegiance and the Removal of Refugees during Wartime' in David James Cantor and Jean-François Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Brill Nijhoff 2014)

⁵⁰⁷ Fourth Geneva Convention (n 2), art 4(1).

occupied territory, aliens within the territory of a party to the conflict, and civilian internees, rather than people forcefully internationally displaced due to war. Therefore, provisions under the Fourth Geneva Convention create a general benefit on the set of voluntariness needed for removing a person who is not a national to a place having armed conflict or persecution risk.

Under this context, firstly, the Fourth Geneva Convention regulated voluntary departure based on the right to return and right to leave under article 35: “All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so unless their departure is contrary to the national interests of the State”.⁵⁰⁸ Secondly, it prohibits forceful transfers of individuals or mass groups of people in occupied territory and prioritises their motive implying voluntariness to transfer with article 49 para 1: “Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive”.⁵⁰⁹ Lastly and most importantly, Article 45 provides a supportive provision for non-refoulement via regulating non-repatriated persons. According to para 1 and 2, Article 45 sets a limit for being non-repatriable at the time of war as follows:

“Protected persons shall not be transferred to a Power which is not a party to the Convention, this provision shall in no way constitute an obstacle to the repatriation of protected persons or their return to their country of residence after the cessation of hostilities.”⁵¹⁰

However, Article 45, para 5 sets a certain standard beyond wartime that makes the person unrepatriable. According to this provision: "In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs".⁵¹¹ This is the fundamental guarantee, meaning the

⁵⁰⁸ Ibid, art 35.

⁵⁰⁹ Ibid, art 49.

⁵¹⁰ Ibid, art 45, para 2.

⁵¹¹ Ibid.

principle of non-refoulement, that allows no exception provided by IHL.⁵¹² The 1951 Refugee Convention further affirms the humanitarian concept of nonrefoulement two years later, setting it up to become the cornerstone of international refugee law. Although being a guide in such a provision, which forms the basis of the protection mechanism of the IRL, demonstrates a complementary aspect of both branches of public international law, the Fourth Geneva Convention did not directly include war refugees.

Mainly, the repatriation of internationally displaced people due to war to the country of origin is covered by customary IHL. According to the International Committee of the Red Cross (ICRC)⁵¹³ and Article 49(2) of the Fourth Geneva Convention: “Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.”⁵¹⁴ For voluntary repatriation, this customary rule is crucial, as it lends legal weight to the return. It demonstrates that repatriation can be defined as a right of displaced people and a related obligation on nations and parties to war, in addition to being a humanitarian policy or a political desire. Moreover, this custom can be applicable to both international and non-international armed conflicts. Therefore, it can be relevant for internationally displaced people due to the persecution created by international or non-international armed conflicts. This custom is very valuable to support the legal framework of voluntary repatriation, especially for war refugees. It generally refers to the right to return as a

⁵¹² Chetail (n 24). 9.

⁵¹³ Doctors Without Borders, ‘Customary International Law’ *The Practical Guide to Humanitarian Law* <https://guide-humanitarian-law.org/content/article/3/customary-international-law/> accessed 26 March 2024: “The International Law Commission recognised in 1980 that the Geneva Conventions reflected the general principles that are the basis of humanitarian law. The Secretary-General of the UN reiterated this in his report on the establishment of the International Criminal Tribunal for the Former Yugoslavia (S/25704 of 3 May 1993). The Security Council approved this report in its Resolution 827 (5 May 1993). In 2005, the International Committee of the Red Cross (ICRC) published a study on the rules of customary international humanitarian law. This study spells out a comprehensive list of 161 rules of customary humanitarian law. This work has been done through an extensive review of State practices in this field. It was permitted to identify the rules accepted as binding by States in both international and non-international armed conflicts. This work shows a large convergence between rules applicable in international and non-international armed conflicts. It simplifies and facilitates the implementation of IHL and creates greater legal security as to the applicability of humanitarian law in a given context, since the authority and value of those 161 rules stand above the signature or ratification process by States.”

⁵¹⁴ Fourth Geneva Convention (n 2), art 49(2). Henckaerts and others (n 373) 466.

human right principle under UDHR and ICCPR.⁵¹⁵ It also includes "take measures to facilitate the voluntary and safe return and reintegration of displaced persons as provided for in the Convention Governing Refugee Problems in Africa and the Guiding Principles on Internal Displacement".⁵¹⁶

However, it includes some ambiguity related to the UNHCR's regulations regarding voluntary repatriation. Such as, according to this custom, whether a refugee can be repatriable as soon as the conflict ends or requires any human rights conditions indicated in UNHCR's standards in safety and meaning of the right to voluntary return can be set as a principle of voluntariness for repatriation of refugees as customary international law related to this custom. Thus, customary IHL needs to be analysed from a broader perspective in the chapter Customary International Legal framework of Voluntary repatriation, focusing on whether the principle of voluntary repatriation can be a customary international law.

Conclusion

The legal development of voluntary repatriation has an insufficiently complex appearance in international refugee law, although voluntary repatriation has been highlighted as the most desirable and ideal solution for refugees since the beginning of the conceptual development of voluntary repatriation. Voluntary repatriation lacks a specific treaty clarifying the obligation of states and the right of refugees. Moreover, it is a common interacting ground for IRL, IHRL and IHL.

The 1951 Convention, the core treaty establishing international refugee law, does not directly address voluntary repatriation. It only gives implicit reference to the 'right to return' inside the preamble, which is not legally binding. Despite the direct existence gap in the 1951 Convention, there are two critical provisions: the principle of non-refoulement, having a

⁵¹⁵ Henckaerts and others (n 373) 468-469.

⁵¹⁶ *Ibid* 470.

supportive link with the voluntary character of repatriation and the cessation clause limiting the voluntary repatriation within the practice. However, Article 33 of the 1951 Convention regulating the principle of non-refoulement consists of a strong legal basis for voluntary repatriation in the 1951 Convention because it provides a legal basis for voluntary repatriation by reinforcing the voluntary nature of repatriation within itself, prohibiting forced return against a refugee's will to where persecution risk is ongoing.

In international refugee law, unlike the 1951 Convention, the 1950 Statute gives a foundation to voluntary repatriation via its task of promoting and facilitating voluntary repatriation. Specific standards on how to implement voluntary repatriation have been put forward by UNHCR, which also has an important role in the development of refugee law. The standards of voluntary repatriation are with UNGA Resolutions and ExCom Conclusions, which directly determine the policy of UNHCR, and since 1980, when it was given hierarchical formal priority to voluntary repatriation, the normative appearance of voluntary repatriation has undergone a lot of transformation and development over time with UNGA Resolutions and the ExCom Conclusions. UNHCR's application, shaped with mainly these two soft law instruments, creates fairly high legal standards giving rights to refugees and obligations to mainly affected states for voluntary repatriation, such as; repatriation based on the voluntary, free and informed choice of the refugee; expansion of repatriation in safety and dignity covering physical, legal and material safety and reconciliation in the country of origin; assessment of the UNHCR necessary to promote voluntary repatriation, taking as a criterion the fact that there are fundamental changes the human rights conditions in the country of origin for returnees; cooperating with the country of origin, host states and even the entire international community for the sustainable and durable solution of voluntary repatriation for refugees, especially the elimination of the factors that cause refugees and supporting the conditions of the country of origin for repatriation, reintegration, rehabilitation and reconstruction.

Applicability of these wide ranges of standards via giving obligations mainly to affected states (Host states and country of origin) with tripartite agreements under the mandate of the UNHCR is a positive note on normative standards produced by the UNHCR. However, the effective application of these standards is problematic in practice, especially due to the non-legally binding character of the instrument producing these standards and the lack of enforcement power of the UNHCR over states. Although a legal framework has emerged that has been developing within the UNHCR over the years, the lack of accountability of states regarding normative standards due to the soft law character is a weak basis for the legal framework provided by the UNHCR. However, as a strong point, customary IHL regarding the return of displaced persons, implying voluntariness and referring to the reintegration of returnees, providing basic human rights, can play a supportive role in the application of UNHCR's criteria.

In addition to the IRL, voluntary repatriation found a legal framework under IHRL and IHL. Absolutely, its application under IHRL and IHL is based on the aspects of these specific branches of public international law. Although legal pluralism, including repatriation according to specific aspects of branches, creates a fragmented nature and ambiguity for the legal framework of voluntary repatriation of refugees, as a result of analysing these branches with a holistic refugee-centric approach, Chapter 2 establishes the common legal grounds for revealing the legal framework of voluntary repatriation. All three branches of public international law are based on voluntary repatriation on the 'right to return' and 'principle of non-refoulement' puts an obligation on states to make the application of repatriation of refugees to be voluntary. A refugee is a forcibly displaced person who naturally cannot return or/and is unwilling to return to the country of origin due to a well-founded fear of being persecuted. On the side of the right to return, states have an obligation to respect the voluntary decision to return to the country of origin regardless of the country-of-origin conditions. In this regard, the country of origin is

obligated to accept refugees, and host states are obligated not to prevent refugees from leaving. On the side of the principle of non-refoulement, states are responsible for not forcing refugees to return where they face a well-founded fear of persecution. This principle also recognises the voluntary character of refugees' return. And they are repeated with all the branches of international law related to return. Thus, the common legal framework of a refugee's return refers to the right to return, and the principle of non-refoulement provides a law regarding the character of repatriation that requires voluntariness.

IHRL and IHL enforcement of the law has more accountability mechanisms compared to the 1951 Convention. Thus, these branches provide complementary support to the improvement of voluntary repatriation. In short, Chapter 2 demonstrates that voluntary repatriation has a legal framework with weaknesses and strengths that is the beginning of legal development with the complementary role of international human rights law and international humanitarian law, even though it is not included specifically under a treaty.

Chapter 3. 21st Century Refugee Phenomenon and Solutions

Introduction

While Chapter 2 outlined the legal framework governing voluntary repatriation within public international law, it also exposed its significant normative and practical deficiencies. Although voluntary repatriation has a core relationship with non-refoulement, as codified in IRL, IHL, and IHRL, states are not bound by explicit, enforceable obligations to facilitate repatriation. Instead, the principles guiding voluntary repatriation derive primarily from soft law instruments developed by the UNHCR, which lack binding legal force despite being normatively influential. This weak and fragmented legal architecture complicates both state accountability and the effective operationalisation of voluntary repatriation.⁵¹⁷ Nevertheless, since the 1980s, the international community has idealised voluntary repatriation as the preferred durable solution to refugee displacement, placing it above local integration and resettlement.⁵¹⁸ However, this rhetorical prioritisation remains largely symbolic and aspirational in the absence of legally binding commitments or robust practical mechanisms to ensure safe, dignified, and sustainable returns.⁵¹⁹ The disconnect between the normative ideal and the legal reality calls into question the sustainability of voluntary repatriation as a durable solution under current conditions.

Building on this, Chapter 3 investigates the obstacles to implementing voluntary repatriation in the context of a drastically transformed refugee phenomenon in the 21st century. This complexity is surrounded by the convergence of humanitarian, legal, political, and socio-economic challenges that undermine traditional solution models. Based on these problems, the application of voluntary repatriation as a sustainable and durable solution is more challenging than ever. In 2022, 108.4 million people were forcibly displaced from their own countries and

⁵¹⁷ See Chapter 2 for detailed information.

⁵¹⁸ Guy S Goodwin-Gill, 'The Lawyer and the Refugee' (Kaldor Centre, 29 February 2020) <https://www.kaldorcentre.unsw.edu.au/publication/lawyer-and-refugee> accessed 29 March 2024.

⁵¹⁹ See Chapter 1 for specific examples.

needed international protection under the governance of the UNHCR. However, roughly two decades ago, the total number of people that UNHCR was concerned about decreased from 20.8 million at the end of 2002 to 17.1 million by the end of 2003 (-18%).⁵²⁰

On the one hand, this dramatic increase in displacement is largely attributable to the prolonged and evolving nature of armed conflicts, which, unlike traditional interstate wars, are increasingly internal, involve non-state actors, and often last for more than 10 years.⁵²¹ Even when active hostilities cease, the restoration of peace, rule of law, and governance structure, which are key prerequisites for a sustainable return, remains elusive. According to UNHCR, the average duration of displacement lasts more than 20 years,⁵²² illustrating a systemic inability to address root causes within a meaningful timeframe. Consequently, voluntary repatriation is frequently delayed, rendered non-durable, or becomes a nominal choice driven by coercion or deprivation in host countries, rather than genuine voluntariness.⁵²³ Even if voluntary repatriation could be applicable, the refugee system in the 21st century could not ignore the prolonged asylum situations that naturally cause problems and might make voluntary repatriation out of choice.⁵²⁴ For instance, Dadaab, in north-eastern Kenya, is the site of the largest refugee camp in the world.⁵²⁵ Five camps now housing more than 350,000 refugees and asylum seekers, including third-generation refugees born in the camp, were launched 22 years ago with the capacity to accommodate up to 90,000 people fleeing the Somalian civil war, which is analysed under Chapter 4.⁵²⁶ Such long-term encampment illustrates the failure of current legal and policy frameworks to convert temporary refuge into durable solutions or to

⁵²⁰ UNHCR, *2003 Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum Seekers and Other Persons of Concern to UNHCR* (UNHCR 2004) 2
<https://www.unhcr.org/uk/statistics/unherstats/40d015fb4/2003-global-refugee-trends-overview-refugee-populations-new-arrivals-durable.html> accessed 29 March 2024, 2.

⁵²¹ Gilbert and Rüsç (n 22). 5.

⁵²² UNHCR, *Global Trends: Forced Displacement in 2015* (UNHCR 2016)
<https://www.refworld.org/docid/57678f3d4.html> accessed 29 March 2024.

⁵²³ See Chapter 2.

⁵²⁴ Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (n 14).

⁵²⁵ UNHCR, *Protecting Refugees & the Role of UNHCR* (n 152) 28.

⁵²⁶ *Ibid.*

support safe, rights-based returns.

On the other hand, the global asymmetry in burden and responsibility sharing further exacerbates the challenges of voluntary repatriation. According to UNHCR's 2022 report, 76% of all refugees and others in need of international protection were hosted by low- and middle-income states.⁵²⁷ States facing unexpected and undesirable high-rate asylum applications have gradually limited their resettlement and reintegration policies to the detriment of refugees by prioritising their national interests. While this imbalance makes resettlement and reintegration non-durable, ineffective burden and responsibility sharing creates pressure on over-burdened host states, in some cases, to apply (in)voluntary repatriation before the conditions of the home country are suitable enough for a return. In 2022, only 339,300 refugees made voluntary returns to their 38 countries of origin,⁵²⁸ a reduction of 90,000 or 21% from the year before.⁵²⁹ Returnees were notably from South Sudan and Syria, which are still refugee-producing states due to unstable conditions, and these repatriations were facilitated by the UNHCR.⁵³⁰ Therefore, the sustainability of the currently limited repatriations is in doubt, whether repatriations occurred through pressure on overburdened host states or by voluntary decisions of refugees. Moreover, UNHCR's limitations and externalisation of the refugees from their own solution play a key role in this kind of suspicious scenario.⁵³¹

The fact that refugees lack a timely, sustainable, and durable solution, together with the changing conditions in the 21st century, makes them permanent asylum seekers in need of international protection in the host states. Accordingly, drastically changed conditions in the refugee context are demanding to reshape voluntary repatriation as a durable and sustainable solution within the international legal framework, not only for refugees but also for host states.

⁵²⁷ *Ibid.*

⁵²⁸ UNHCR, *Global Appeal 2022 Update* (UNHCR 2022) 38.

⁵²⁹ See UNHCR, *Global Trends: Forced Displacement in 2021* (UNHCR 2022) para 9.

⁵³⁰ UNHCR, *Global Appeal 2022 Update* (UNHCR 2022) 38-39.

⁵³¹ See Chapter 1.

Chapter 3 contends that the traditional framework of voluntary repatriation is inadequate to address the realities of the 21st century refugee phenomenon due to prolonged conflicts, protracted displacement, and unequal global burden and responsibility sharing. Therefore, voluntary repatriation must be reconceptualised within a stronger legal and cooperative international framework that ensures sustainability, genuine voluntariness, and long-term reintegration.

In line with its argument, Chapter 3 seeks to critically assess the obstacles to effective voluntary repatriation within the current global refugee regime. It builds a bridge between the normative analysis in Chapter 2 and the legal policy discussions in Chapter 5, which evaluates the GCR as a potential response to these challenges. Moreover, Chapter 4 applies this analysis to specific case studies, providing empirical insight into the efficacy of current mechanisms. While previous academic work has explored challenges of voluntary repatriation through the lens of UNHCR policy, this chapter offers a distinct contribution by addressing the legal and political challenges posed by the transformed nature of forced displacement in the 21st century. It does so through a repatriation-centric approach, critically evaluating both legal gaps and structural obstacles that hinder sustainable return.

Chapter 3 is structured into two subsections: firstly, it addresses how contemporary armed conflict and protracted asylum hinder repatriation; secondly, it analyses the urgent need for equitable burden and responsibility sharing and legal solidarity. It concludes with a recommendation regarding the need for a comprehensive legal approach that creates a solidarity obligation on the international community to address the root causes in the country of origin and to provide reintegration support for returnees to help them establish a sustainable future. The solidarity obligation proposed here should be understood as both a moral and an emerging legal-political obligation, rather than as an already fully enforceable rule of positive international law. Its legal basis lies in existing principles of international cooperation, non-

refoulement,⁵³² international burden- and responsibility-sharing and the GCR's call for support to countries of origin and conditions for return in safety and dignity.⁵³³ However, from a realistic perspective, morality based on the legal basis above may not be sufficient for states' further commitments. Therefore, the suggested solidarity framework for voluntary repatriation is based on the deadlock in the current refugee regime: neighbouring states bear disproportionate hosting responsibilities, while Global North states increasingly bear financial and political costs through humanitarian funding, development assistance, and irregular secondary movement. In this context, states may accept more structured commitments on reintegration and root-cause responses when framed as mutually beneficial measures to reduce protracted displacement, prevent renewed refugee flows, support host states, and make return sustainable.

3.1. Armed Conflicts and Prolonged Asylum

As mentioned in Chapters 1 and 2, the first precondition for repatriation is the elimination of the root causes that create the conditions that produce refugees. Otherwise, promoting voluntary repatriation to places where the conditions creating asylum did not change fundamentally could breach the principle of non-refoulement.⁵³⁴ Although promoting voluntary repatriation to a country where the conditions that originally justified asylum have not materially changed would not automatically breach non-refoulement in every case, active promotion of return in circumstances where the original risk remains raises serious concerns about voluntariness. UNHCR distinguishes between promoting repatriation where conditions are conducive to return and merely facilitating spontaneous return where refugees independently choose to return despite imperfect conditions; in the latter situation, voluntariness must be based on free and informed choice and must not be produced by pressure,

⁵³² See Chapter 2.

⁵³³ See Chapter 5.

⁵³⁴ Takahashi (n 24).

misinformation or deteriorating conditions in the host state.⁵³⁵ While this situation could create the responsibility of the states for violating the principle of non-refoulement through direct or indirect behaviours, it might lead to serious violations of the human rights of returnees, perhaps to seek asylum again, and even to cost their lives, as in 1996 in Rwanda.⁵³⁶ However, it is extremely problematic to end the armed conflicts that caused large-scale internal and internationally forced displacement. Thus, this section reveals that armed conflicts and the associated prolonged asylum are among the main challenges that prevent voluntary repatriation, given the changed conditions of the refugee phenomenon in the 21st century.

The 21st century is described as 'an age of unprecedented mass displacement', particularly due to increasing armed conflicts and violations of basic human rights in several states.⁵³⁷ Inter-state wars have mostly been replaced with civil wars,⁵³⁸ including rebel groups instead of international actors, in the post-Cold War period.⁵³⁹ However, the large number of asylum seekers in neighbouring states increased the risk of inter-state war.⁵⁴⁰ As illustrated with cases in Chapter 1, the UN Security Council played an interventionist role to eliminate root causes creating refugees, and various (in)voluntary repatriations were made with the extended support of the UNHCR.⁵⁴¹ Although the voluntary return programmes are controversial, it is

⁵³⁵ UNHCR, *Voluntary Repatriation Handbook* (n 230) chs 2-3; ExCom Conclusion No 101; Jeff Crisp, 'Repatriation Principles under Pressure' (2019) 62 *Forced Migration Review* 19.

⁵³⁶ See Chapter 1-Section 1.3.2.2.2.

⁵³⁷ UNHCR, *Global Trends: Forced Displacement in 2019* (UNHCR 2020) <https://www.unhcr.org/globaltrends2019/> accessed 11 April 2024.

⁵³⁸ James Cockayne, Christoph Mikulaschek and Chris Perry, *The United Nations Security Council and Civil War: First Insights from a New Dataset* (International Peace Institute, September 2010) https://www.ipinst.org/wp-content/uploads/publications/ipi_rpt_unsc_and_civil_war_epub.pdf accessed 12 April 2024: "A civil war consists of one or several simultaneous disputes over generally incompatible positions that (1) concern government and/or territory in a state; (2) are causally linked to the use of armed force, resulting in at least 500 battle-related deaths during any given year during the conflict; and (3) involve two or more parties, of which the primary warring parties are the government of the state where armed force is used and one or several nonstate opposition organisations."

⁵³⁹ Paul Lowry, 'Flight from the Fight? Civil War and Its Effects on Refugees' (2015) *Student Publications* 1 https://cupola.gettysburg.edu/student_scholarship/381 accessed 12 April 2024, 1.

⁵⁴⁰ Idean Salehyan and Kristian Skrede Gleditsch, 'Refugees and the Spread of Civil War' (2006) 60 *International Organization* 335, 360; Idean Salehyan, 'The Externalities of Civil Strife: Refugees as a Source of International Conflict' (2008) 52 *American Journal of Political Science* 787.

⁵⁴¹ See Chapter 1, Section 1.3.2.2.2.

clear that the Security Council played a positive role in eliminating the root causes and building peace as a first step for voluntary repatriation in the 1990s and the early 2000s.

Since the second decade of the 2000s, with the changing political climate and nature of civil wars in the world, the UN Security Council could not take an effective role in providing peace in civil wars compared to the 1990s, though the concept of civil wars extended to terrorist organisations, and they became more destructive⁵⁴², threatening, and displaced more civilians.⁵⁴³ For instance, due to the effect of the Arab Spring conflicts that started in 2011, the world refugee number almost doubled in 2018.⁵⁴⁴ Internationally displaced people due to civil war only in Syria reached 6.8 million in 2021, which is more than the population of some countries.⁵⁴⁵ Political instability and conflicts remain in many states affected by the Arab Spring. The Council can act when its interests are aligned, as is the case in Africa, whereas the Council is hampered and may become sidelined when its interests conflict, as most recently in Syria with the veto of Russia and China.⁵⁴⁶ According to UNHCR, the UN Security Council struggles with peace-making, peacekeeping, and peacebuilding in countries with ongoing civil wars today.⁵⁴⁷

Considering the active refugee-producing conflict zones in the world, most of which are between state and non-state armed groups, instead of among states,⁵⁴⁸ civil war tends to be

⁵⁴² Yoram Dinstein, *Israel Yearbook on Human Rights, Volume 6 (1976)* (Brill | Nijhoff 2021).

⁵⁴³ Sebastian von Einsiedel and others, *Civil War Trends and the Changing Nature of Armed Conflict* (United Nations University Centre for Policy Research 2017) <http://collections.unu.edu/view/UNU:6156#viewMetadata> accessed 22 April 2024

⁵⁴⁴ UNHCR, *Global Trends: Forced Displacement in 2018* (UNHCR 2019) <https://www.unhcr.org/globaltrends2018/> accessed 27 April 2024.

⁵⁴⁵ UNHCR, *Global Trends: Forced Displacement in 2021* (UNHCR 2022) <https://www.unhcr.org/media/global-trends-report-2021> accessed 2 April 2024.

⁵⁴⁶ Foreign and Commonwealth Office, *The Security Council in the Twenty-First Century: Continuity and Change* (GOV.UK) <https://www.gov.uk/government/publications/the-security-council-in-the-twenty-first-century-continuity-and-change> accessed 27 April 2024.

⁵⁴⁷ Filippo Grandi, 'Statement by the UN High Commissioner for Refugees Filippo Grandi to the Security Council' (UNHCR, 28 April 2025) <https://www.unhcr.org/news/speeches-and-statements/statement-un-high-commissioner-refugees-filippo-grandi-security> accessed 1 April 2026.; UNHCR, *Global Trends: Forced Displacement in 2024* (UNHCR 2025) 6.

⁵⁴⁸ See the map at Council on Foreign Relations, 'Global Conflict Tracker' <https://www.cfr.org/global-conflict-tracker> accessed 28 April 2024.

longer than international war.⁵⁴⁹ Moreover, the legal personality problem of non-state armed groups exacerbates difficulties in measures that can be taken under international law.⁵⁵⁰ On the one hand, the absence of a political will to ensure lasting peace has created permanent instability in places where organisational intervention cannot be made from the outside due to the principle of non-interference⁵⁵¹ in the internal affairs of states and where the Security Council is ineffective despite the overall threat to international peace and security. On the other hand, the changed nature of civil wars, which are more internationalised⁵⁵² and can create their own economy for rebel and terrorist groups, making them longer and deadlier.⁵⁵³ Therefore, keeping peace and stability is more difficult for the international community in new civil wars, even if UN peace operations happen in the states.⁵⁵⁴ Most cases can transform into repeating crises producing refugees, such as in Afghanistan and the Democratic Republic of Congo (DRC).⁵⁵⁵

Hence, establishing peace and stability and creating the ideal circumstances in the country of origin for the repatriation of refugees takes considerable time in the 21st century. Today, armed conflicts last for more than 10 years,⁵⁵⁶ whereas the average displacement duration lasts for more than 20 years.⁵⁵⁷ Prolonged asylum⁵⁵⁸ in host states has become one of

⁵⁴⁹ Paul Collier and others, *Breaking the Conflict Trap: Civil War and Development Policy* (World Bank and OUP 2003) 93.

⁵⁵⁰ Gus Waschefort, 'Pseudo Legal Personality of Non-State Armed Groups in International Law, *The South African Yearbook of International Law*.

⁵⁵¹ Schindler (n 534).

⁵⁵² David E Cunningham, 'Blocking Resolution: How External States Can Prolong Civil Wars' (2010) 47 *Journal of Peace Research* 115. Internationalised civil war means internal conflicts in which other states intervene militarily on one or both sides.

⁵⁵³ James D Fearon, 'Why Do Some Civil Wars Last so Much Longer than Others?' (2004) 41 *Journal of Peace Research* 275. "Research has shown that civil wars in which a major rebel group has access to funds from contraband tend to last significantly longer than others."

⁵⁵⁴ von Einsiedel and others (n 527). 4, "The role that the exploitation of "conflict resources" (such as diamonds, minerals, timber, coltan, poppy or coca) has played in fuelling and prolonging civil wars has grown through the 1990s as evidenced in Angola, Sierra Leone, Liberia, the DRC, the CAR, Afghanistan, and Colombia. The phenomenon now goes well beyond conflict resources, and the opportunities for making money from trafficking and other illicit activities have significantly broadened, as can be seen in Syria, Libya and the Sahel."

⁵⁵⁵ *Ibid* 6.

⁵⁵⁶ Gilbert and Rüscher (n 22). 5, 33.

⁵⁵⁷ UNHCR, *Global Trends: Forced Displacement in 2015* (UNHCR 2016) <https://www.refworld.org/docid/57678f3d4.html> accessed 16 June 2024.

⁵⁵⁸ Gil Loescher and James Milner, 'Protracted Refugee Situations: Domestic and International Security Implications' (Refugee Studies Centre) <https://www.rsc.ox.ac.uk/publications/protracted-refugee-situations-domestic-and-international-security-implications> accessed 16 June 2024; UNHCR, 'Global Trends Report 2022'

the most complex realities of the 21st century as a result of prevailing conflicts. According to UNHCR's 2022 report, 67% of displacements were in protracted situations.⁵⁵⁹ Asylum seekers generally wait in the host states or refugee camps under unclear conditions for many decades. For instance, today, third generation Somalian refugees live in Dadaab Camp, established 22 years ago in north-eastern Kenya.⁵⁶⁰ Moreover, Rwandan refugees are resisting returning from camps to Rwanda after 27 years, although UNHCR invoked the Cessation Clause on the 30th of June 2013, which declared Rwanda safe for its citizens living as refugees who fled the country between 1959 and December 1998 across the world to return.⁵⁶¹

Hence, prolonged asylum creates a meaningful and natural challenge for the application of voluntary repatriation. According to Zieck, voluntary repatriation loses its practical prominence in this century because, for those who remained refugees in the host country for generations, the concept of bond with their country of origin naturally weakened over decades and, naturally, home becomes the place where they were born and lived for decades.⁵⁶² Although the UNHCR keeps voluntary repatriation as the most ideal and desirable solution for prolonged asylum situations⁵⁶³, in practice, it is becoming clear that refugees who have been granted long-term asylum place little significance on merely returning home as a way to end their lengthy exile.⁵⁶⁴ Thus, Fabos and Brun argue that return should be evaluated according to new conditions outside the nation state framework, taking into account the fact that the concept

(UNHCR) <<https://www.unhcr.org/global-trends-report-2022>>. accessed 16 June 2024, 22: "Protracted situations are defined as those where more than 25,000 refugees from the same country of origin have been in exile in a given low- or middle-income host country for at least five consecutive years. 61 This definition should be seen as a reflection of the situation as a whole and does not refer to the circumstances of individual refugees."

⁵⁵⁹ UNHCR, 'Global Trends Report 2022' (n 558). 22.

⁵⁶⁰ UNHCR, *Protecting Refugees & the Role of UNHCR* (n 152) 28.

⁵⁶¹ Zenda, (n 253).

⁵⁶² Zieck, 'The Limitations of Voluntary Repatriation and Resettlement of Refugees' (n 28), 562-563.

⁵⁶³ UNHCR, *Protecting Refugee Situations: A Discussion Paper Prepared for the High Commissioner's Dialogue on Protection Challenges, Geneva, December 2008* (UNHCR 2008) <https://www.unhcr.org/uk/media/protracted-refugee-situations-discussion-paper-prepared-high-commissioners-dialogue> accessed 18 June 2024.

⁵⁶⁴ Naohiko Omata, 'The Complexity of Refugees' Return Decision-Making in a Protracted Exile: Beyond the Home-Coming Model and Durable Solutions' (2013) 39 *Journal of Ethnic and Migration Studies* 1281, 1295.

of home has changed with prolonged asylum.⁵⁶⁵

For example, displaced refugees seek asylum in host states for roughly 12 years due to the ongoing armed conflict in Syria.⁵⁶⁶ If a baby of a war refugee who did not change place for any reason was born in 2011 and becomes 12 years old, and also has already become a foreigner in the country of origin. When the war in Syria is over, which is unknowable, and Syria becomes a safe country to return to, voluntary repatriation is not a preferable choice for this child. Zieck argues that voluntary repatriation could not be seen as a practical and desirable solution for prolonged refugees and their third and fourth generations born and growing up in host states.⁵⁶⁷ Therefore, if voluntary repatriation were a sustainable, durable, and desirable solution for this child, the refugee system in the 21st century could not ignore these prolonged asylum situations that naturally cause a problem and might make voluntary repatriation out of choice. Gradually decreasing voluntary repatriation data is very important as proof for this argument.⁵⁶⁸ According to UNHCR data, after 2011, a steady increase has been observed in the number of internally and internationally displaced people in line with the increasing civil wars and widespread human rights violations around the world; whereas voluntary repatriation rates, which have already decreased compared to the 1990s, continue to decrease further.⁵⁶⁹

However, this prolonged displacement of large numbers due to prevailing conflicts complicates not only the voluntary repatriation but also the application of the other two solutions, resettlement and local integration, mentioned in the following title. Moreover, this

⁵⁶⁵ Anita Fabos and Cathrine Brun, 'Protracted Refugee Displacement in the Middle East: Making Home in Limbo?' (Middle East Institute, 2016) <https://www.mei.edu/publications/protracted-refugee-displacement-middle-east-making-home-limbo> accessed 26 June 2024.

⁵⁶⁶ Omata (n 564).; UNHCR, *Global Trends: Forced Displacement in 2015* (UNHCR 2016) <https://www.refworld.org/docid/57678f3d4.html> accessed 16 June 2024.

⁵⁶⁷ Zieck, 'The Limitations of Voluntary Repatriation and Resettlement of Refugees' (n 28)., 562-563.

⁵⁶⁸ UNHCR, 'Global Trends Report 2022' (n 558) 22.; UNHCR, *2003 Global Refugee Trends: Overview of Refugee Populations, New Arrivals, Durable Solutions, Asylum Seekers and Other Persons of Concern to UNHCR* (UNHCR 2004).

⁵⁶⁹ UNHCR, 'Figures at a Glance' (UNHCR, 14 June 2023) <https://www.unhcr.org/about-unhcr/who-we-are/figures-glance> accessed 16 June 2024.

situation is severely forcing the capacity of the UNHCR and host states to provide protection.⁵⁷⁰ Therefore, considering the scale and dimensions of the problem, overcoming the prolonged asylum situations requires urgent and international solidarity with fair burden and responsibility sharing in the international community.

3.2. The Urgent Need for International Solidarity

From the earliest times when refugees became an international problem for sovereign states,⁵⁷¹ the need for international solidarity to provide protection and durable solutions for refugees has never been more urgent,⁵⁷² comprehensive and vital in connection with the challenge examined above. However, the international community is far behind the expected solidarity for refugees in the 21st century. In this unmet expectation of solidarity, the role of the highest and most aggressively growing forced displacement rate ever could not be denied. Nevertheless, the response of the international community to share this responsibility to provide satisfying protection and a sustainable solution creates another essential challenge for the application of voluntary repatriation, which is described as the most desirable and ideal one by states.

Today, the number of people forcibly displaced from their home countries in need of international protection and durable solutions has more than quadrupled over the past decade to reach 108.4 million.⁵⁷³ 76 per cent of these were hosted by low and middle income countries.⁵⁷⁴ After the war in Ukraine, although there has been an increase in the number of refugees hosted by high income countries⁵⁷⁵, this does not improve the scenario so far against low and middle income countries. For example, after the Syrian crisis, Turkey and Lebanon

⁵⁷⁰ Loescher, Betts and Milner (n 159).

⁵⁷¹ See Chapter 1, Section 1.2.

⁵⁷² Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' (2016) 28 *International Journal of Refugee Law* 656, 656–57.

⁵⁷³ UNHCR, 'Global Trends Report 2022' (n 558) 22.

⁵⁷⁴ *Ibid.*

⁵⁷⁵ *Ibid.*

have hosted ten times and a hundred times as many Syrians per inhabitant as the EU.⁵⁷⁶ Some host states that are generally in the proximity of states of origin creating refugees, such as Turkey, Jordan, Lebanon and Bangladesh, have called on the international community to collaborate against such a disproportionate burden on their states.⁵⁷⁷ Moreover, the 1951 Convention states that: "The grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot, therefore, be achieved without international cooperation."⁵⁷⁸ However, the emphasis on solidarity, which was non-binding in the preamble of the 1951 Convention, did not create an obligation on states that, unfortunately, could not go beyond the due diligence of necessity.

The fact that, in the 21st century, achieving effective international cooperation has been getting worse because of power asymmetries, geography, policy, and increasing mobility due to globalisation. States have gradually and drastically tightened their migration policies to the detriment of refugees, prioritising their national interests. Increasing xenophobia, financial and security hesitations play a vital role in this restriction because prolonged admission of large numbers of asylum seekers to a country can have serious and wide-ranging effects for states. More recent literature confirms that refugee movements may affect host countries across political, security, economic, developmental, social and environmental dimensions.⁵⁷⁹ Contemporary evidence presents these effects as highly context-dependent rather than uniformly negative.⁵⁸⁰ The World Bank notes that migration and refugee movements can contribute to prosperity when managed well, while empirical studies show that impacts on host

⁵⁷⁶ Eleni Karageorgiou, 'Solidarity with/out Borders' (Refugee Law Initiative Blog, 13 June 2019) <https://rli.blogs.sas.ac.uk/2019/06/13/solidarity-with-out-borders/> accessed 10 August 2019.

⁵⁷⁷ Turk (n 360).

⁵⁷⁸ 1951 Convention (n 1), Preamble.

⁵⁷⁹ Paolo Verme, 'Theory and Evidence on the Impact of Refugees on Host Communities' (World Bank Blogs, 28 March 2023) <https://blogs.worldbank.org/en/dev4peace/theory-and-evidence-impact-refugees-host-communities> accessed 1 May 2026.

⁵⁸⁰ OECD and European Commission, *Indicators of Immigrant Integration 2023: Settling In* (OECD Publishing 2023).

communities are mixed and unevenly distributed: some local groups may benefit economically, whereas vulnerable workers and already stretched public services may experience additional pressure.⁵⁸¹ Although the burden approach has been positively changed in recent years⁵⁸², the complexity and uncertainty of forced migration's effects on states prevent effective protection responses and durable solutions.⁵⁸³

States that are closer to a refugee situation have less possibility to prevent refugees from crossing their borders, whether they like it or not. As mentioned in Chapter 2, states are obligated to protect against refoulement under the 1951 Convention and customary international law.⁵⁸⁴ And these states are generally middle- and low-income states. However, states that are far away, and at the same time most of them have developed, have a plausibility to preclude refugees from reaching their borders through various legal and political methods.⁵⁸⁵ While this approach plays a restrictive role in resettlement and reintegration, which are traditional durable solutions, it creates application pressure on (in)voluntary repatriation. This will be explained below under three headings in the form of interlocking rings.

3.2.1. Resettlement and Third States' Approach

Resettlement indicates that it "enables refugees to relocate to another country which has agreed to admit them with a legal status ensuring international protection and ultimately permanent residence."⁵⁸⁶ Moreover, it is described as "a tangible mechanism for burden- and responsibility-sharing and a demonstration of solidarity, allowing states to help share each other's burdens and reduce the impact of large refugee situations on host countries"⁵⁸⁷ However,

⁵⁸¹ World Bank, *World Development Report 2023: Migrants, Refugees, and Societies* (World Bank 2023).

⁵⁸² Ibid.

⁵⁸³ Susan F Martin, 'Forced Migration and Professionalism' (2001) 35 *International Migration Review* 226, 226–27.

⁵⁸⁴ See Chapter 2.

⁵⁸⁵ Sarah Deardorff Miller, 'High Hopes: The Global Compact for Refugees and Improving Responsibility Sharing' (Refugee Law Initiative Blog, 27 February 2019) <https://rli.blogs.sas.ac.uk/2019/02/27/high-hopes-the-global-compact-for-refugees-and-improving-responsibility-sharing/> accessed 9 August 2019.

⁵⁸⁶ UNHCR, 'Resettlement' (*UNHCR*) <<https://www.unhcr.org/what-we-do/build-better-futures/long-term-solutions/resettlement>> accessed 10 July 2023.

⁵⁸⁷ GCR (n 11), para 90.

there is no formalised international legal framework defining state obligations with regard to resettlement.⁵⁸⁸ The only obligation regarding resettlement under the 1951 Convention is to allow refugees to transfer assets to countries of resettlement.⁵⁸⁹ However, this provision could not be interpreted as an obligation on states to offer resettlement.⁵⁹⁰ This indicates that sovereign states preserve the competence to decide whether to offer resettlement, who and how many people to resettle, and what status they will have when resettled.⁵⁹¹

Thus, the effective applicability of resettlement as a solution and burden and responsibility sharing tool depends on states' policies as a result of their sovereign rights. States have demonstrated their competence in reducing resettlement options for refugees since the post-Cold War period.⁵⁹² According to Chimni, the resettlement tendency of the states was already restricted by the Excom Conclusions in the 1980s, and resettlement became a less preferred solution for the UNHCR.⁵⁹³ In other words, due to states' international and national policy preferences in the 1990s, the reluctance for resettlement was institutionalised by prioritising voluntary repatriation.⁵⁹⁴ Therefore, the restrictions on resettlement solutions, which have already lost preferability for the developed states, continue despite the increasingly urgent need today.

In the 21st century, relatively few refugees are relocated each year, in large part due to reduced government quotas.⁵⁹⁵ The majority of the resettlement needs have been provided by

⁵⁸⁸ *Ibid* 174, 176.

⁵⁸⁹ 1951 Convention (n 1), art 30 “1. A Contracting State shall, in conformity with its laws and regulations, permit refugees to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement. 2. A Contracting State shall give sympathetic consideration to the application of refugees for permission to transfer assets wherever they may be, and which are necessary for their resettlement in another country to which they have been admitted.”

⁵⁹⁰ Hathaway JC, *The Rights of Refugees under International Law* (2nd edn, CUP 2021), 1195-1206.

⁵⁹¹ Meltem Ineli-Ciger, ‘Is Resettlement Still a Durable Solution? An Analysis in Light of the Proposal for a Regulation Establishing a Union Resettlement Framework’ (2022) 24 *European Journal of Migration and Law* 27-28.

⁵⁹² See Chapter 1, Section 1.3.2.2.

⁵⁹³ Chimni, ‘From Resettlement to Involuntary Repatriation’ (n 13).

⁵⁹⁴ *Ibid* 93.

⁵⁹⁵ Benedicta Solf and Katherine Rehberg, ‘The Resettlement Gap: A Record Number of Global Refugees, but Few Are Resettled’ (*migrationpolicy.org*, 20 October 2021) <<https://www.migrationpolicy.org/article/refugee-resettlement-gap>>. accessed 16 June 2024.

"traditional" resettlement states such as Australia, the US and Canada.⁵⁹⁶ Even while the number of persons arriving for resettlement increased in 2022, they still only made up 7% of the expected 1.5 million people who needed relocation globally.⁵⁹⁷ Therefore, resettlement quotas of countries are proportionally decreasing inversely with the increasing rate of refugees in the world. Moreover, it shows that the resettlement gap cannot be closed by raising quotas and government promises alone, without creating any obligation on states.⁵⁹⁸

Moreover, this restrictive approach of the states causes not only insufficient figures for resettlement places but also policies that make it controversial to reach a durable solution by resettlement. Traditionally, resettled refugees are given permanent residency with the possibility of obtaining citizenship later.⁵⁹⁹ According to Long, the goal of durable solutions is to provide refugees access to efficient citizenship, whether that citizenship is in their country of origin or in a third state.⁶⁰⁰ However, states providing resettlement to refugees raised various categories restricting access to permanent residency and citizenship, such as subsidiary protection proposals for resettlement in the EU and 'humanitarian parole' for Afghans in the U.S.⁶⁰¹

Furthermore, third countries, which may be resettlement countries or indirectly asylum countries, actively prevent people from requesting asylum.⁶⁰² The issue of irregular

⁵⁹⁶ UNHCR, 'Frequently Asked Questions about Resettlement' (2013) <<https://www.refworld.org/pdfid/4ac0d7e52.pdf>> accessed 11 July 2023. p.6-7,

⁵⁹⁷ UNHCR, 'Global Trends Report 2022' (n 558). 39-40.

⁵⁹⁸ Solf and Rehberg, (n 595).

⁵⁹⁹ Ineli-Ciger, (n 591) 27.

⁶⁰⁰ Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36). 232.

⁶⁰¹ Ineli-Ciger (n 591). 51-54.

⁶⁰² Victoria Rietig, 'Why the Resettlement of Refugees Is Unpopular But Necessary | DGAP' (2021) <<https://dgap.org/en/research/publications/why-resettlement-refugees-unpopular-necessary>>. accessed 16 June 2024.

migration,⁶⁰³ which can also include refugees, victims of trafficking⁶⁰⁴, or unaccompanied migrant children⁶⁰⁵, is becoming increasingly severe in today's transnational environment, as populations can be mobilising on a global scale via illegal ways such as smuggling.⁶⁰⁶ The most crucial factor that distinguishes refugees from other irregular migrants is that states are internationally responsible for protecting refugees and not forcing their return where they face persecution.⁶⁰⁷ Therefore, in order to prevent a refugee flow from their borders, far-off states improve some controversial externalisation policies in the context of the human rights of refugees, such as building barriers to entry, involving fences, readmission agreements and visa requirements, strict interdiction policies and other restrictions, each of which can be a thesis topic in its own.

For instance, the EU readmission cooperation with third countries, such as the EU-Turkey deal and the EU-Libya agreement. According to these collaborations, neighbours of irregular migration routes in the Mediterranean, such as Italy-Libya and Greece-Turkey, are obliged to prevent irregular migrants, mostly asylum seekers, from reaching the heartland of Europe, even though they constitute human rights violations for refugees. According to Karageorgiou, the EU instrumentalises peripheral EU countries and third countries to share refugee protection responsibility. Moreover, EU politicians agreed that border control

⁶⁰³ Irregular migration – Movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, transit or destination.

Note: Although a universally accepted definition of irregular migration does not exist, the term is generally used to identify persons moving outside regular migration channels. The fact that they migrate irregularly does not relieve States from the obligation to protect their rights.

⁶⁰⁴ See Marija Jovanovic (ed), *State Responsibility for 'Modern Slavery' in Human Rights Law: A Right Not to Be Trafficked* (Oxford University Press 2023); Ryszard W Piotrowicz, 'The Smuggling of Migrants and the Trafficking in Persons' in Vincent Chetail and Céline Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014) 132-47.

⁶⁰⁵ See Idil Atak and others, "'Migrants in Vulnerable Situations'" and the Global Compact for Safe Orderly and Regular Migration' (15 February 2018) <<https://papers.ssrn.com/abstract=3124392>>. accessed 26 June 2024.

⁶⁰⁶ Smuggling means "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;" Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 28 January 2004) 2241 UNTS 507, art 3(a).

⁶⁰⁷ 1951 Convention (n 1), art 33.

cooperation is effective in combating human smugglers and traffickers who exploit human rights.⁶⁰⁸ However, any attempt to stop human smuggling faces a further challenge because there is no safe or legal alternative available to refugees who are forced to migrate illegally in order to escape a well-founded fear of persecution.⁶⁰⁹ Therefore, it is another research topic how to apply the right-based risk analysis for the return of illegal migrants, including most probably refugees.⁶¹⁰

While ECtHR evaluated operations of search and rescue (SAR) services of coastal states as a violation of Article 3 prohibition on inhuman and degrading treatment⁶¹¹ In some cases, the court decided on the responsibility of states due to a violation of the principle of non-refoulement.⁶¹² According to the missing migrants project of IOM, 27.633 migrants, including people seeking asylum, have been recorded as missing since 2014 in the Mediterranean Sea.⁶¹³ The latest tragedy resulted in the sinking of a fishing vessel carrying an estimated 400-750 irregular migrants from Libya to Italy on 15.06.2023.⁶¹⁴

⁶⁰⁸ Amnesty International European Institutions Office, 'EU-Libya: EU's Migration Cooperation with Libya Is "Morally Bankrupt" and Amounts to Complicity in Violations' (7 July 2025) <https://www.amnesty.eu/news/eu-libya-eus-migration-cooperation-with-libya-is-morally-bankrupt-and-amounts-to-complicity-in-violations/> accessed 3 August 2025.

⁶⁰⁹ John Morrison, *FMO Research Guide: Human Smuggling and Trafficking* (Refugee Research Network) 3 <http://www.twolittlegirls.org/ufiles/Human%20trafficking%20and%20smuggling.pdf> accessed 26 June 2024, 3.

⁶¹⁰ Ryszard Piotrowicz and Conny Rijken, 'Article 16: Repatriation and Return of Victims' in Anne T Gallagher and others (eds), *The International Law of Human Trafficking* / or relevant edited commentary title, if different (Edward Elgar 2020) <https://www.elgaronline.com/edcollchap-0a/edcoll/9781788111553/9781788111553.00028.xml> accessed 4 June 2025.

⁶¹¹ *Safi and Others v Greece App no 5418/15 (ECtHR, 7 July 2022).*; Sofia Galani, 'Human Rights Obligations in Maritime Search and Rescue' (2025) 74(1) *International and Comparative Law Quarterly* 33.;

Fenella Billing, 'The ECtHR on Disembarkation of Rescued Refugees and Migrants at Greek Hotspots' *EJIL: Talk!* (25 October 2019) <https://www.ejiltalk.org/the-ecthr-on-disembarkation-of-rescued-refugees-and-migrants-at-greek-hotspots/> accessed 29 June 2024.

⁶¹² *Hirsi Jamaa and Others v Italy App no 27765/09 (ECtHR, 23 February 2012):*

"Hirsi Jamaa and others v. In Italy, the ECtHR, in its assessment of the situation of refugees being pushed back from Italy to Libya, notes that the prohibition of refoulement is not limited to the territory of a state, but also applies to actions that take place outside its territory, including activities that take place on the high seas."; Fenella Billing, 'The ECtHR on Disembarkation of Rescued Refugees and Migrants at Greek Hotspots' *EJIL: Talk!* (25 October 2019) <https://www.ejiltalk.org/the-ecthr-on-disembarkation-of-rescued-refugees-and-migrants-at-greek-hotspots/> accessed 29 June 2024.

⁶¹³ International Organization for Migration, 'Mediterranean' (Missing Migrants Project) <https://missingmigrants.iom.int/region/mediterranean> accessed 30 June 2024.

⁶¹⁴ Helena Smith, 'At Least 78 People Drown as Refugee Boat Sinks off Greece' *The Guardian* (15 June 2023) <https://www.theguardian.com/world/2023/jun/14/scores-drown-refugee-boat-sinks-off-greece> accessed 16 June 2023.

Another externalisation policy from the US has been refusing to admit asylum seekers at its southern border, forcing them to stay in Mexico or go back to Central America.⁶¹⁵ Washington has used all of its diplomatic and economic powers, including the threat of trade penalties and the loss of aid from its southern neighbours, to carry out this externalisation policy.⁶¹⁶ According to Crisp, closing borders has actually prompted refugees to embark on perilous treks with the assistance of people smugglers, traffickers, and dishonest government officials.⁶¹⁷ Therefore, seeking asylum in a third country turns into another conflict for refugees under the shadow of international crimes in the current conjuncture of the world.

In fact, on the one hand, prohibiting refugees from entering the territory of a state that could offer international protection poses issues with regard to the right to asylum, the principle of non-refoulement, and related rights, such as the right to leave a country, right to life and socio-economic rights, which are very limited in most of the developing host states.⁶¹⁸ On the other hand, the ongoing restrictive resettlement policy of states and increasing externalisation methods to prevent people from seeking asylum in third countries leave developing neighbour host states physically alone with a large number of prolonged asylum seekers.

3.2.2. Local Integration and Host States' Approach

Local integration implies the belief that “in cases where repatriation is not an option, finding a home in the country of asylum and integrating into the local community could offer a durable solution to their plight and the chance to build a new life.”⁶¹⁹ Contrary to resettlement and repatriation, local integration is included in the main text of the 1951 Convention as “The Contracting States shall, as far as possible, facilitate the assimilation and naturalisation of

⁶¹⁵ Annick Pijnenburg, ‘Externalisation and the Socio-Economic Rights of Refugees: What Are the Obligations of Destination States?’ (Refugee Law Initiative Blog, 27 September 2022) <https://rli.blogs.sas.ac.uk/2022/09/27/externalisation-and-the-socio-economic-rights-of-refugees-what-are-the-obligations-of-destination-states/> accessed 12 June 2023.

⁶¹⁶ Jeff Crisp, ‘What Is Externalization and Why Is It a Threat to Refugees?’ (Chatham House, 14 October 2020) <https://www.chathamhouse.org/2020/10/what-externalization-and-why-it-threat-refugees> accessed 11 June 2023.

⁶¹⁷ *Ibid.*

⁶¹⁸ Pijnenburg, (n 615).

⁶¹⁹ UNHCR, ‘Local Integration’ (*UNHCR*) <<https://www.unhcr.org/local-integration>>. accessed 14 June 2023.

refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.”⁶²⁰ However, it does not give any obligation to states regarding solutions, considering the 1951 Convention's primary concern is the protection of refugees in host countries.⁶²¹ It demonstrates the clear tendency towards the integration (and eventual assimilation) of the refugee in the host state, even though it does not specifically address any solutions.

Therefore, similar to offering resettlement, applying local integration depends on the sovereign decision of host states.⁶²² States are only responsible for principles of human rights law, ratified treaties such as the 1951 Convention and other international refugee law instruments.⁶²³ Although local integration is directly linked with the permanent settlement, and is eventually granted nationality in their current country of asylum⁶²⁴, it includes complicated and gradual processes with legal, economic, social and cultural dimensions.⁶²⁵ Considering the sharply increasing asylum needs worldwide for a long time due to the ongoing armed conflicts and unfair burden and responsibility sharing for the protection of refugees mentioned above, this situation creates an unexpected and undesirable burden that can likely create financial, social and safety problems in the neighbouring states to the country of origin, which are hosting 70% of the world's refugees.⁶²⁶

According to the 2022 UNHCR Global Trends, 76% of world refugees were hosted by low- and middle-income countries in the proximity of their country of origin, whereas 20% of

⁶²⁰ 1951 Convention (n 1), art 34.

⁶²¹ Gilbert, ‘Comment on Draft 1 GCR: The International Law of Voluntary Repatriation’ (n 386).

⁶²² Lucy Hovil and Nicholas Maple, ‘Local Integration: A Durable Solution in Need of Restoration?’ (2022) 41 *Refugee Survey Quarterly* 238, 251.

⁶²³ Goodwin-Gill, McAdam and Dunlop (n 10).

⁶²⁴ Louay Constant and others, *In Search of a Durable Solution: Examining the Factors Influencing Post-Conflict Refugee Returns* (RAND Corporation, RR-A1327-1, 2021) https://www.rand.org/pubs/research_reports/RRA1327-1.html accessed 8 July 2022.

⁶²⁵ Jeff Crisp, *The Local Integration and Local Settlement of Refugees: A Conceptual and Historical Analysis* (UNHCR 2004) 1 <https://www.refworld.org/docid/4ff2ab4a2.html> accessed 11 July 2023, 1.

⁶²⁶ UNHCR, ‘Global Trends Report 2022’ (n 558). 2.

the total have enjoyed asylum in the least developed countries.⁶²⁷ At the end of 2022, an estimated 23.3 million refugees and other people in need of international protection were in a protracted situation.⁶²⁸ Now, host states' demography has been reshaped with prolonged asylum. For other examples, 1 in 6 of the island of Aruba's population consists of forcibly displaced people, generally from Venezuela; 1 in 15 of Jordan's population belongs to forcibly displaced people who are primarily Syrians and Palestinian refugees.⁶²⁹ This injustice in international responsibility-sharing negatively affects the reintegration of prolonged asylum seekers.

On the one hand, host states already have limited resources for their citizens and have been avoiding legal reintegration policies for high numbers of asylum seekers in their territories. According to Long, developing states are reluctant to accept local integration of refugees as a formal solution because they believe that granting citizenship to even long-term refugees would give them the right to make new demands on scarce state resources, potentially igniting new conflicts with existing citizen groups.⁶³⁰ Arendt argues that refugee status gives only “the right to have rights”⁶³¹ in another country. In actual fact, even access to fundamental rights is not straightforward for refugees in host states. Even the protection of refugees, regulated by human rights principles and international conventions, is extremely problematic in host states over this prolonged duration. Thus, let alone local integration, granting of fundamental rights for reasonable international protection is limited by the capacity, will and policy of the host states. Although de facto reintegration can be inevitable for prolonged asylum for 10-20 years, providing formal rights and citizenship as an appearance of de jure reintegration is not

⁶²⁷ *Ibid* 22.

⁶²⁸ *Ibid*.

⁶²⁹ *Ibid* 2.

⁶³⁰ Katy Long, 'Rethinking "Durable" Solutions' in Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long and Nando Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 481.

⁶³¹ Hannah Arendt, *The Origins of Totalitarianism* (2nd edn, Harcourt 1967).

granted.⁶³² Therefore, even if refugees stay in the host states long-term, accessing fundamental rights can still be problematic.

Increasing in number, reaching approximately 5.9 million Palestinian refugees⁶³³, “become the World’s permanent refugees” since 1948.⁶³⁴ Refugee status across generations creates an obstacle for these people to reach their rights. Living in host states for more than 60 years does not solve the Palestinians' problem of getting requests in host States, even if local integration is naturally achieved.⁶³⁵ Even though in the past, UNRWA supported Palestinian refugees' life and ratified the Casablanca Protocol, including full residency rights, the right to movement and the privilege to work equally with citizens, host states de facto continue adopting restrictive policies highlighting the Palestinian identity and refugee status of these people rather than adopting resettlement or naturalisation policies.⁶³⁶ Therefore, return is always preferable for Palestinian refugees in neighbouring countries, although it looks like another complex area needs to be solved.⁶³⁷ Meanwhile, despite the prolonged refugee situation, the naturalisation problem is not the only problem for Palestinian refugees in poor-income host states, but also for various prolonged refugees coming from different countries and staying in developing or developed countries.

Furthermore, whether children of refugees born in host states can be granted citizenship due to their birth in host states is an ongoing discussion in European host states such as the

⁶³² Lucy Hovil, ‘Local Integration’ in Elena Fiddian-Qasmiyeh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP 2014) 489–90.

⁶³³ UNHCR, ‘Figures at a Glance’ (*UNHCR*, 14 June 2023) <<https://www.unhcr.org/about-unhcr/who-we-are/figures-glance>>. accessed 29 July 2023. <https://www.unhcr.org/africa/about-unhcr/who-we-are/figures-glance>, accessed 30 July 2023.

⁶³⁴ Morrison (n 592).

⁶³⁵ Susan M Akram, ‘Palestinian Refugees and Their Legal Status: Rights, Politics, and Implications for a Just Solution’ (2002) 31(3) *Journal of Palestine Studies* 36.-51.

⁶³⁶ Human Rights Watch, ‘Treatment and Rights in Arab Host States’ <https://www.hrw.org/legacy/campaigns/israel/return/arab-rtr.htm> accessed 6 February 2024.

⁶³⁷ Jasmin Lilian Diab, ‘Refugee Ever After: Why Are We Letting Palestinians Become the World’s Permanent Refugees?’ (Refugee Law Initiative Blog, 20 July 2021) <https://rli.blogs.sas.ac.uk/2021/07/20/refugee-ever-after-why-are-we-letting-palestinians-become-the-worlds-permanent-refugees/> accessed 9 February 2024.

Netherlands, Greece, and Italy.⁶³⁸ Although the application of human rights developed in these countries has taken migration, including refugees, their attitude regarding local integration has remained restricted over the years.⁶³⁹ Even if refugees have stayed in a host country across generations and kids born in host states are automatically located in social integration, these kids cannot reach equal rights just like citizens due to their historical refugee background. Therefore, this situation demonstrates that host states are reluctant to legally naturalise refugees regardless of the economic and democratic conditions of host states.

On the other hand, avoiding legal reintegration policies for large-scale asylum seekers in host states causes policies against human dignity and safety. For example, Turkey continues to keep the geographical reservation for asylum requests outside of Europe, and Syrian or Afghan refugees remain for more than ten years, ineligible for different types of status and limited access to fundamental rights such as the right to work.⁶⁴⁰ The fact that refugees are forced to work for cheaper wages in order to be self-sufficient causes a social conflict in developing countries. Syrians claim they are exploited by employers, while workers in Lebanon and Jordan claim Syrians have lower wages.⁶⁴¹ For instance, the massive number of Syrian refugees still strive to live below the extreme poverty line in Lebanon, facing a big economic crisis and have had, rather than reached, other fundamental human rights such as the right to work, health, and education.⁶⁴² Another stunning example is the Rohingya refugees living in

⁶³⁸ Migration Policy Centre, 'How Status Matters? Economic Integration and Citizenship Inclusion' (European University Institute, 2022) <https://www.eui.eu/events?id=549170> accessed 10 February 2024.

Victoria Donnalaja, 'Italians Support Citizenship for Migrants' Children (Ius Soli), Conditionally' (Global Governance Programme, 28 July 2022) <https://globalgovernanceprogramme.eui.eu/italians-support-citizenship-for-migrants-children-ius-soli-conditionally/> accessed 6 February 2024.

⁶³⁹ *Ibid.*

⁶⁴⁰ Izza Leghtas, *Insecure Future: Deportations and Lack of Legal Work for Refugees in Turkey* (Refugees International 2019) <https://www.refugeesinternational.org/reports-briefs/insecure-future-deportations-and-lack-of-legal-work-for-refugees-in-turkey/> accessed 19 February 2024.

⁶⁴¹ UNHCR, *Vulnerability Assessment Framework: Socio-Economic Survey of Refugees in Host Communities in Jordan* (UNHCR, June 2024); World Bank, *Lebanon Poverty and Equity Assessment 2024: Weathering a Protracted Crisis* (World Bank 2024); ILO, 'ILO Response to Syrian Refugee Crisis in Jordan and Lebanon' (ILO, 2023).

⁶⁴² UN News, 'Conditions of Syrian Refugees in Lebanon Worsen Considerably, UN Reports' (23 December 2015) <https://news.un.org/en/story/2015/12/518882> accessed 19 October 2024.

Bangladesh. Thousands of Rohingya refugees have been relocated from Cox's Bazaar Camp to Bhasan Char in the Bay of Bengal since February 2020⁶⁴³, even though the warning of human rights groups regarding the inconvenient and naturally risky conditions for human life on the islands⁶⁴⁴ and press statements of the UN, including apparent hesitation about the voluntary movement of refugees and accessing rights and services on the island, in addition to the freedom of movement.⁶⁴⁵

Considering the meaning of durable solution indicates that ‘refugees can live in safety and with dignity, not subject to arbitrary expulsion, discrimination, or alienation.’⁶⁴⁶ local integration can be described as "forgotten"⁶⁴⁷ and legally “forbidden”⁶⁴⁸ solution for refugees in host states. Given that, the interrelated reluctance of resettlement and local integration based on the burden and responsibility sharing problem puts refugees in a deadlock under the deprivation of human rights during the prolonged refugee period. Khan and Ziegler explain that the socio-political reality is that many refugees are caught in a cycle of extended relocation with no "durable" solution in sight and no way to effectively integrate into their host nations on a legal, economic, or social level.⁶⁴⁹

The UNHCR Executive Committee issued a Conclusion on Local Integration in 2005 but used the occasion to repeat the hierarchy of solutions since 1980s, as it did so by affirming: “ that voluntary repatriation, local integration and resettlement are the traditional durable

⁶⁴³ Hanh Nguyen and Themba Lewis, ‘Bhasan Char and Refugee “Warehousing”’ *The Diplomat* (2022) <https://thediplomat.com/2022/02/bhasan-char-and-refugee-warehousing/> accessed 19 October 2024.

⁶⁴⁴ Ruma Paul and Poppy McPherson, ‘Bangladesh, against Objections, Set to Move Rohingya Refugees to Remote Island’ *Reuters* (2 December 2020) <https://www.reuters.com/article/bangladesh-rohingya-idUSKBN28C2DS> accessed 20 October 2024.

⁶⁴⁵ Louise Donovan, ‘United Nations Statement on the Relocation of Rohingya Refugees to Bhasan Char’ (United Nations Bangladesh, 2020) <https://bangladesh.un.org/en/103285-press-statement> accessed 21 October 2024.

⁶⁴⁶ Goodwin-Gill, McAdam and Dunlop (n 10).

⁶⁴⁷ Karen Jacobsen, ‘The Forgotten Solution: Local Integration for Refugees in Developing Countries, Karen Jacobsen’ (*UNHCR*, 2001) <<https://www.unhcr.org/media/forgotten-solution-local-integration-refugees-developing-countries-karen-jacobsen>>. accessed 21 October 2024.

⁶⁴⁸ Hovil (n 632) 488.

⁶⁴⁹ Fatima Khan and Reuven Ziegler, ‘Refugee Naturalization and Integration’ in Cathryn Costello, Michelle Foster and Jane McAdam (eds), *The Oxford Handbook of International Refugee Law* (OUP 2021) 1062.

solutions, and that all remain sustainable and important responses to refugee situations; reiterat[ed] that voluntary repatriation, in safety and dignity, where and when durable, remains the most preferred solution in the majority of refugee situations; [and noted] that a combination of solutions, taking into account the specific circumstances of each refugee situation, can help achieve lasting solutions.”⁶⁵⁰ This conclusion is very crucial to demonstrate the attitude of nation states toward solutions for refugees in the 21st century.

Most importantly, this situation can open up the space for the practice of early repatriation to reduce the physical burden on host states and the need for burden and responsibility sharing for third states.⁶⁵¹ Therefore, the inability of resettlement and reintegration to be implemented enough to provide a durable solution and unfair burden and responsibility sharing for the protection of refugees has brought (in)voluntary repatriation from a desirable to a necessary solution for refugees and host states.

3.2.3. Repatriation: Not Voluntary But Necessary

The general understanding of voluntary repatriation of refugees is "the assisted or independent departure to the country of return based on the will of the returnee and his/her informed decision to return...carried out in conformity with obligations deriving from applicable international instruments."⁶⁵² As already clarified in detail under Chapter 2, the legal framework of voluntary repatriation has been shaped by the UNHCR's standards, which have a soft law character.⁶⁵³ Accordingly, in the 1951 Convention, there is an essential link between voluntariness in refugee repatriation and refugee protection, because forced repatriation of refugees would result in refoulement, which is forbidden under IRL, IHL and IHRL.⁶⁵⁴

⁶⁵⁰ Executive Committee Conclusion No. 104 on Local Integration (2005).

⁶⁵¹ Chimni, 'From Resettlement to Involuntary repatriation' (n 13).

⁶⁵² Council of the European Union, 12 October 2005, 2683rd Council Meeting, conclusions on justice and home affairs, Luxembourg,

<<http://www.europarl.europa.eu/oeil/resume.jsp?id=5247082&eventId=915645&backToCaller=NO&language=en>>, accessed 19 October 2024, paras 1-3.

⁶⁵³ See Chapter 2.

⁶⁵⁴ *Ibid.*

Therefore, the fact that refugees volunteer for return shows that they consent to enjoy the right of return. This consent is mandatory for states to avoid the responsibility of nonrefoulement.⁶⁵⁵ Otherwise, the return of refugees would be unlawful. Moreover, voluntariness is declared by the UNHCR as a sustainability criterion for refugees' return.⁶⁵⁶

Although the UNHCR Handbook determines 'the absence of any physical, psychological or material pressure. . . which pushes the refugee to repatriate',⁶⁵⁷ in practice, voluntariness of refugees for large-scale repatriations has been the controversial missing piece of the jigsaw puzzle since the 1980s.⁶⁵⁸ However, the complex conditions of the 21st century analysed above negatively affect the legality and sustainability of voluntary repatriation more than ever due to permanent refugee situations and unfair responsibility and burden sharing, so much so that this situation has become a legal threat to the existence of the international refugee protection system, whose legal history dates back nearly a century, rather than the practical applicability of voluntary repatriation.

Voluntary repatriation, by its nature, is eventually more problematic to implement than other solutions due to the international protection needs of refugees,⁶⁵⁹ however internationally, it has kept its priority as an ideal solution for states for more than forty years.⁶⁶⁰ However, the fact that returns are preferred as a durable solution by the states prioritising their interests⁶⁶¹ does not make it a desirable, sustainable, and most importantly, lawful solution for refugees. As analysed in detail above, new conflicts and instability concepts of the 21st century tend to

⁶⁵⁵ Takahashi (n 24).

⁶⁵⁶ *Ibid.*

⁶⁵⁷ UNHCR, *Voluntary Repatriation Handbook* (n 230).

⁶⁵⁸ Chimni, 'From Resettlement to Involuntary repatriation' (n 13); Zieck, 'The Limitations of Voluntary repatriation and Resettlement of Refugees' (n 28); Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36).; Mostafa S. Selim, Treading a Fine Line: "Voluntary repatriation "between being a Durable Solution for Refugees in Theory and a Way to Circumvent Non-refoulement in Practice, *International Journal of Doctrine, Judiciary and Legislation*, Volume 2, Issue 2, 2021, Pages (557 - 573); Gerver, Mollie (2016) Refugee repatriation and the problem of consent. *British Journal of Political Science*. ISSN 1469-2112; Long, 'Rethinking "Durable" Solutions' (n 630)

⁶⁵⁹ Zieck, *UNHCR and Voluntary repatriation of Refugees: A Legal Analysis* (n 14).

⁶⁶⁰ Goodwin-Gill, McAdam and Dunlop (n 10).

⁶⁶¹ Long, 'Rethinking "Durable" Solutions' (n 630).

last decades and being a refugee became a permanent status in practice.⁶⁶² On the prolonged refugee side, generation by generation, it makes the repatriation option as a durable solution not possible nor desirable.⁶⁶³ 'Home' changes the de facto meaning in the developing host country. In contrast, they lack adequate protection, including fundamental human rights, due to the inapplicability of resettlement and local integration, due to the sovereign rights of states.

On the developing host states' side, which is reluctant to de jure local integration, is at the end of its patience under the unfair responsibility-sharing conditions to make repatriation voluntary for refugees despite international law. As the ongoing root causes in the country of origin do not allow repatriation to be durable for refugees, the voluntary repatriation rate has been reduced. In 2022, only 339,300 of 35.3 million refugees made voluntary returns to their 38 countries of origin,⁶⁶⁴ a reduction of 90,000 or 21% from the year before.⁶⁶⁵ Returnees were notably from South Sudan and Syria, which are still refugee-producing states due to unstable conditions. These repatriations were facilitated by the UNHCR.⁶⁶⁶ Therefore, the sustainability and legality of the currently limited repatriations are in doubt, whether repatriations happened by pushing overburdened host states or by voluntary decisions of refugees. According to Tong and others, given the enormous barriers to local integration in asylum-seeking nations, voluntariness from the perspective of refugees appears to be nothing more than a collection of unsatisfactory possibilities in a setting of limited choice.⁶⁶⁷

Therefore, refugees necessarily choose less harmful options between two bad scenarios, between the host and origin countries, under pressure from the host state. According to the 1951 Convention, repatriation of refugees is necessary when the cessation clause is applicable,

⁶⁶² Zieck, 'Reimagining Voluntary Repatriation' (n 29); Feitsma (n 394) 296.

⁶⁶³ Zieck, 'The Limitations of Voluntary repatriation and Resettlement of Refugees' (n 28).

⁶⁶⁴ UNHCR, 'Global Trends Report 2022' (n 558). 38.

⁶⁶⁵ UNHCR, 'Global Trends Report 2021' (n 529). Para 9.

⁶⁶⁶ UNHCR, 'Global Trends Report 2022' (n 558). 38-39.

⁶⁶⁷ Katie Tong and others, 'ES/2022/04 Evaluation of UNHCR's repatriation Programmes and Activities 2015–2021' (UNHCR, May 2022) <<https://www.unhcr.org/media/es-2022-04-evaluation-unhcrs-repatriation-programmes-and-activities-2015-2021>> , accessed 19 October 2024.

depending on a significant change in the country of origin due to the end of temporary status.⁶⁶⁸ However, today, there are situations where repatriation is compulsory and illegally enforceable by host states that are unable in practice to cope with the overburdened responsibility, making repatriation of refugees necessary for them. According to one of the latest evaluations of repatriation programmes between 2015 and 2021, many refugees found it more challenging to see return as a sustainable or desirable option due to the lengthening of crises and the rapidly rising migratory flows in the second half of the previous decade, which has put a strain on host countries around the world and frequently led to increased pressure on refugees to return home.⁶⁶⁹

Lebanese President Aoun's statements exemplify the reason for hesitation: 'Lebanon will continue to work to ensure the return of Syrian refugees to safe areas in Syria, and we will not wait for a political solution to the Syrian crisis as it may take long.'⁶⁷⁰ This statement dramatically demonstrates the tendency of a host state where displaced people make up one-seventh of the country's population, to apply involuntary repatriation due to unfair burden and responsibility sharing. Therefore, the sustainability and legality of the currently limited repatriations are questionable, whether repatriations happened via pushing overburdened host states or voluntary decisions of refugees to unstable States that continue to create refugees. Moreover, host states can legally make a consent illusion to eliminate responsibility for refoulement in practice. Namely, on 21 June 2022, the European Court of Human Rights (ECtHR) held that there was a violation of Article 3 by Türkiye, which hosted nearly 3.6 million refugees, the largest population worldwide, despite the voluntary return form signed by the

⁶⁶⁸ 1951 Convention, art 1C(5); Hathaway, 'The Meaning of repatriation' (n 24).

⁶⁶⁹ Tong (n 667).

⁶⁷⁰ 'Lebanese President Pledges Safe Return of Syrian Refugees' Arab News (26 February 2019). Similarly, the Russian ambassador in Lebanon stated that repatriation 'should be implemented regardless of political differences and without linking it directly to a political settlement'; Samar Kadi, 'Syrian Refugees' repatriation a Slow, Long-Term Process' MEO (29 December 2018). A variant of this theme simply denies that the refugees concerned need international protection; Patrick Wintour, 'Thousands of Syrian Refugees Could Be Sent Back, Says Lebanese Minister' The Guardian (15 June 2019).

applicant; they argued that they were obliged to sign under inhuman detention conditions.⁶⁷¹

However, voluntariness is the most important condition for sustainable repatriation according to the UNHCR.⁶⁷² Black and Gent argue that establishing the conditions for raising voluntariness is practically tricky, especially in post-conflict situations.⁶⁷³ Therefore, UNHCR clarifies the main elements under the 4Rs Program as reintegration, rehabilitation and reconstruction following repatriation to provide sustainability after the voluntary return.⁶⁷⁴ Moreover, UNHCR calls for high-level global cooperation in every phase of voluntary repatriation to achieve sustainable voluntary repatriation before, during and after the return.⁶⁷⁵ Nevertheless, as discussed in Chapter 1, the UNHCR cannot play an influential role in providing states' cooperation due to its internal and external limitations in practice.⁶⁷⁶

This kind of involuntary repatriation, as a safe return example, before the country-of-origin conditions are suitable for return, includes a risk of producing a refugee cycle in the same geography, which makes refugees permanent and repatriation temporary. Crossing borders in safety and dignity itself is not a solution to end the refugee cycle without providing a stable life, including access to meaningful rights in the country of origin.⁶⁷⁷ For instance, Afghanistan, which is the case for voluntary repatriation, is still one of the major countries producing

⁶⁷¹ *Akkad v Türkiye* App no 1557/19 (ECtHR, 21 June 2022): "The case concerns a Syrian national who had been living in Türkiye since 2014 under a temporary protection status. In 2018, when trying to enter Greece, he was apprehended by the Turkish authorities and deported to Syria two days later without being able to take any action against this return decision. The applicant claimed that, during the bus journey of approximately twenty hours, he and the twelve other Syrians were handcuffed in pairs. According to his account of the events, immediately after crossing the border, he was apprehended by two armed militants of the Al-Nusra organisation, blindfolded, interrogated and beaten. According to the applicant, at the Turkish border with Syria, he was obliged to sign some documentation without being aware of its content, which later transpired that one of these documents was a voluntary return form." ECtHR *Akkad v. Türkiye*: Court finds a violation of Articles 3, 5 and 13 of the Convention for expulsion to Syria <https://elenaforum.org/ecthr-akkad-v-turkey-court-finds-a-violation-of-articles-3-5-and-13-of-the-convention-for-expulsion-to-syria/> (21 June 2022)

⁶⁷² UNHCR, *Voluntary Repatriation Handbook* (n 230); Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27).

⁶⁷³ Richard and Gent, (n 350) 15-38.

⁶⁷⁴ UNHCR, *Repatriation and Reintegration Handbook* (n 229).

⁶⁷⁵ *Ibid.*

⁶⁷⁶ Zieck, 'Reimagining Voluntary repatriation' (n 29)

⁶⁷⁷ Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36). Kosher and Black, (n 279) 13.

refugees due to the country's instability.⁶⁷⁸ Today's pushback attempts by host states show that voluntary repatriation is still seen as a matter of international policy rather than international law concerning refugees.⁶⁷⁹

Ironically, 21st century conditions demonstrate that voluntary repatriation, which had to take place against its nature owing to the effect of unfair burden and responsibility sharing, needs international cooperation to be sustainable and permanent. Lacking international solidarity under these urgent and complex conditions keeps voluntary repatriation a legal dream to provide durable solutions for refugees. There is an urgent need to rethink voluntary repatriation under both moral and legal grounds, given the complex nature of the 21st century. The example of Denmark shows exactly why this is necessary: even states with humanitarian reputations may adopt restrictive return policies when left to self-interest alone, like the forced return attempt of Denmark for Syrian refugees.⁶⁸⁰ A solidarity obligation would therefore seek to discipline self-interest by linking return to conditions of safety, dignity and sustainability. Therefore, this situation creates a need to rethink voluntary repatriation on moral and legal grounds of international solidarity, given the complex nature of the 21st century.

Conclusion

⁶⁷⁸ Long, *The Point of No Return: Refugees, Rights, and Repatriation* (n 36) 1.

⁶⁷⁹ *ibid.*

⁶⁸⁰ Human Rights Watch, 'Syrian Refugees in Denmark at Risk of Forced Return' (13 March 2023) <https://www.hrw.org/news/2023/03/13/syrian-refugees-denmark-risk-forced-return> accessed 2 May 2026.; Amnesty International, 'Denmark: Don't Send Refugees Back to Syria' <https://www.amnesty.org/en/petition/denmark-syria-refugees-return/> accessed 2 May 2026. Syrian Refugees in Denmark at Risk of Forced Return | Human Rights Watch; Danish Refugee Council, 'New EU Rules on Return' <https://asyl.drc.ngo/en/policy-and-recommendations/advocacy/european-asylum-and-migration-policy/new-eu-rules-on-return/> accessed 2 May 2026.

Although voluntary repatriation is the cornerstone of the international protection system for refugees, its legal framework⁶⁸¹ is a soft law character that does not impose responsibility on the states, and UNHCR's institutional inadequacies⁶⁸² in implementing significant standards to achieve effective voluntary repatriation as a durable solution constitute the main challenge of voluntary repatriation. However, the conditions of the 21st century, which are becoming more chaotic for refugees every day, have made voluntary repatriation more problematic to enforce by law. This situation is based on two complex factors when compared to previous periods of voluntary repatriation.⁶⁸³

First, voluntary repatriation is not durable according to IRL because political and legal peace is not achievable in the 21st century due to complex ongoing armed conflicts and political instability. This situation generally causes an increasingly large-scale wave of forced migration and long-term asylum-seeking in neighbouring developing countries. Second, reluctance to share responsibility internationally in the refugee context, and the face of rapidly increasing immigration waves, creates an overburden on host states to develop a permanent solution in prolonged refugee situations and to provide adequate protection. Overall, these complicated conditions of the 21st century create pressure on the necessary repatriation of refugees, even when the conditions are insufficient to return due to the legal inapplicability of resettlement to a third country and local integration in host states.

However, only crossing the borders with safety and dignity without a sustainable environment and voluntariness does not go beyond creating another refugee cycle in the future. Moreover, providing sustainability criteria in the country of origin, which makes voluntariness possible and repatriation permanent, needs global cooperation. Therefore, the absence of international solidarity makes repatriation temporary and refugee permanent. In other words,

⁶⁸¹ See Chapter 2.

⁶⁸² See Chapter 1.

⁶⁸³ See Chapter 1.

the conditions of the 21st century make repatriation ineffective and shake the foundation of crucial codes of the international protection system.

Under the 21st century refugee phenomena, effective voluntary repatriation is not only a solution for refugees but also for states, which struggle to prevent refugees from reaching their borders and are reluctant to integrate them after they arrive. Therefore, according to the international law of refugee repatriation, where the sovereign rights of states precede the human rights of refugees, it is an essential period in which states must accept the obligation that they are obliged to cooperate to ensure the effective voluntary return of refugees. Effective international burden and responsibility sharing should be necessary for the international community, whose preference is voluntary repatriation as the ideal solution since 1980, to make repatriation voluntary for refugees to reach a sustainable solution by utilising the law.

Therefore, this chapter argues that voluntary repatriation legally needs a system that will enable international solidarity, from the resolution of root causes to the provision of reintegration in the changed nature of the refugeehood of the 21st century. Otherwise, the international community would sharply continue to face chronic refugee cycles; refugees would permanently continue to suffer from a lack of access to fundamental human rights for their whole lives. Last and most importantly, it looks like the only chance for international refugee law to overcome anxiety about the codes of the global protection system.

Chapter 4. Voluntary Repatriation in Practice

Introduction

Voluntary repatriation, which, if successfully implemented, has the potential to provide sustainable and durable solutions for the great majority of forcibly displaced people worldwide, has remained the most desirable durable solution in the international community over the years.⁶⁸⁴ However, it is not a well-functioning solution as one would expect, despite the GCR, which is a significant step towards strengthening global solidarity and aiming for the effective, voluntary repatriation of refugees.⁶⁸⁵ For instance, only 404,000 of 36.4 million refugees voluntarily returned in the first half of 2023.⁶⁸⁶ It is not a big surprise that the voluntary repatriation rate is so low, considering the 21st century's escalating and ongoing armed conflicts and human rights violations, which often result in large-scale refugee movements and prolonged situations in the world.⁶⁸⁷

Chapter 4 illustrates the issues of voluntary repatriation that need to be addressed, utilising case studies of Somalia and Afghanistan. It offers a valuable opportunity to assess the practical implications of the discussions in the previous chapters. For example, the questions of whether the legal standards set out in Chapter 2 can be implemented in practice, to what extent, and how it is possible to overcome in practice the challenges of the 21st century, as examined under Chapter 3, and how effective the GCR analysed in Chapter 5 is to support voluntary repatriation will be discussed through these examples. Hence, a critical investigation of case studies will shed light on the shortcomings of the legal framework, the successes and failures of current policies, and the effectiveness of global initiatives for voluntary repatriation.

Within the broader context of the thesis, Chapter 4 critically examines voluntary repatriation under international law, offering valuable insights for policymakers, practitioners,

⁶⁸⁴ See Chapter 1 and Chapter 2; Chetail (n 24).

⁶⁸⁵ See Chapter 3 and Chapter 5; Türk and Garlick, (n 572) 667.

⁶⁸⁶ UNHCR, "Mid-Year Trends 2023" (UNHCR) <https://www.unhcr.org/mid-year-trends-report-2023> p. 25.

⁶⁸⁷ *Ibid.*

and scholars grappling with refugee crises worldwide. Thus, Chapter 4 uses Afghanistan and Somalia not merely as factual case studies, but as analytical tests of the legal framework developed in the preceding chapters. The cases examine how the principles of voluntariness, safety, dignity, non-refoulement, informed consent, UNHCR supervision, responsibility-sharing, and sustainable reintegration operate in practice in countries of origin that remain affected by conflict, weak governance, insecurity, and limited institutional capacity. In this sense, the value of the case studies lies in showing the gap between the formal legal and policy standards of voluntary repatriation and the practical conditions under which return is promoted, facilitated or politically encouraged.

Accordingly, Chapter 4 claims that even if the country of origin is safe for return, ensuring the sustainability and durability of repatriation requires comprehensive international cooperation on many issues, from maintaining peace to reintegrating returnees into their home country. Otherwise, voluntary repatriation is a temporary solution until another refugee crisis breaks out in the country. In that light, the examination and analysis of the case studies build on the Humanitarian-Development-Peace Nexus (HDPN),⁶⁸⁸ which is compulsory for sustainable, durable voluntary repatriation, and the needs cannot be achieved without one another. Although Chapter 4 generally focuses on the country of origin due to the nature of repatriation, voluntary repatriation involves various actors, including the UNHCR and host states. Grounded in the HDPN strategy, Chapter 4 examines case studies within an extended framework that encompasses all aspects of the nexus and the perspectives of actors within the GCR's multistakeholder approach.⁶⁸⁹

Furthermore, these case studies are among the most complex examples of voluntary repatriation due to recurring conflicts and human rights violations that have persisted for

⁶⁸⁸ UNHCR, "HDP Nexus pledging guidance 2023" (November 2023) <https://globalcompactrefugees.org/media/hdp-nexus-pledging-guidance-2023>, accessed 19 October 2024.

⁶⁸⁹ *Ibid.*

roughly four decades, resulting in a refugee cycle following repatriation and the creation of new refugees.⁶⁹⁰ Meanwhile, they are sufficiently distinct examples, given the reasons for asylum, the political conditions of the countries, and country-specific problems, such as environmental challenges in Somalia and problematic protections for women's rights in Afghanistan.⁶⁹¹ Thus, these cases provide functional working areas to comprehensively and comparably analyse voluntary repatriation, bringing together various aspects, from natural disasters to civil wars, including clans and terrorist groups, resulting in prolonged asylum.

Although there is comprehensive and comparative research that has made significant contributions to improving voluntary repatriation, these studies are either outdated or don't take a primarily legal perspective on refugee repatriation.⁶⁹² Therefore, by examining these cases, this chapter aims to offer valuable insights from practice on numerous challenges, standards, and outcomes for sustainable and durable voluntary repatriation, and to glean lessons that can improve the policy, practice, and law of repatriation for other states facing similar challenges of voluntary return.

Chapter 4 is divided into three subsections. The first two subsections examine the case studies of Afghanistan and Somalia, with each case study analysing the legal framework, state practice and role of international responsibility-sharing in voluntary repatriation. After identifying the key findings from each case, the third subsection provides a comprehensive, comparative synthesis of the two examples to assess how voluntary repatriation operates in practice and to draw lessons for other displacement contexts. On this basis, the chapter clarifies the principal elements required for an effective voluntary repatriation regime under international law in the 21st century.

⁶⁹⁰ Kosher and Black, (n 279) 13.

⁶⁹¹ Natasha Yacoub, "Voluntary" repatriation A Thinly Veiled Durable Solution for Refugee Women", (March 2023) <https://voelkerrechtsblog.org/voluntary-repatriation-a-thinely-veiled-durable-solution-for-refugee-women/>, accessed 19 October 2024.

⁶⁹² Kosher and Kuschminder, (n 34).

4.1. The Voluntary Repatriation Case of Somalia

4.1.1. Law and Practice

Somalia has consistently ranked among the leading countries worldwide in terms of refugee production since the 1990s, primarily due to ongoing conflicts, domestic unrest, and environmental challenges.⁶⁹³ Voluntary repatriation has emerged as the primary strategy to address the refugee crisis between Somalia and its neighbouring host states, with Kenya serving as a host-country example in this section.⁶⁹⁴ Moreover, UNHCR is still implementing an assisted voluntary repatriation program in Somalia in 2024.⁶⁹⁵ However, voluntary repatriation has proven to be neither a sustainable nor durable solution over the past few decades for Somali refugees. Therefore, Somalia is a typical example of prolonged conflicts and protracted refugee situations in host states, and is introduced as one of the main challenges of the 21st-century refugee phenomenon in Chapter 3, despite numerous voluntary repatriation programmes since the 1990s. The turbulent past of Somalia, marked by civil wars, state collapse, and humanitarian crises, is intertwined with the history of voluntary repatriation. Thus, discussing together the rules governing voluntary repatriation in the region and what is happening in practice is crucial to demonstrate both positive improvements and setbacks.

4.1.1.1. 1992-1994 Cross-Border Operation from Kenya

It is important to note that Somalia and Kenya ratified the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (1951 Convention), which forms the cornerstone of international refugee law, in 1978 and 1966, respectively.⁶⁹⁶ Thus, both states are obliged not to pull or push individuals to return to a place where they may face persecution, which runs

⁶⁹³ UNHCR, 'Mid-Year Trends 2023' (*UNHCR*) <<https://www.unhcr.org/mid-year-trends-report-2023>>.

⁶⁹⁴ Manji (n 333).

⁶⁹⁵ UNHCR, 'Voluntary Return and Reintegration' (*UNHCR Somalia*) <<https://help.unhcr.org/somalia/en/voluntary-return/https%3A%2F%2Fhelp.unhcr.org%2Fsomalia%2Fen%2Fvoluntary-return%2F>>.

<https://help.unhcr.org/somalia/en/voluntary-return/>, accessed 19 October 2024.

⁶⁹⁶ 1951 Convention (n 1).

counter to the voluntary nature of repatriation and constitutes a violation of Article 33 of the 1951 Convention or customary international law.⁶⁹⁷ As discussed in detail in Chapter 2, the principle of non-refoulement is a fundamental rule for protecting the voluntary character of repatriation in all branches of international law.⁶⁹⁸ Thus, both countries have a responsibility to abide by the voluntariness principle for the repatriation of refugees. Furthermore, the 1951 Convention was supplemented by the 1969 OAU Convention, which explicitly advocated for a regional preference for voluntary repatriation over forcible return.⁶⁹⁹ This convention stands as the sole internationally legally binding agreement that explicitly addresses the requirements, methods of implementation, and rights of voluntary repatriation.⁷⁰⁰

According to Article V, paragraph 1 of the 1969 OAU Convention, "The essentially voluntary character of repatriation shall be respected in all cases, and no refugee shall be repatriated against his will."⁷⁰¹ Cessation of refugee status is the only exception to the principle of voluntary repatriation.⁷⁰² Thus, voluntariness is the compulsory criterion for the return of refugees to the region. Subsequent paragraphs delineate the responsibilities of governments in the repatriation process. According to Article V, the country of asylum is obliged to "make adequate arrangements for the safe return," which includes furnishing refugees with information on conditions in their country of origin.⁷⁰³ Meanwhile, the country of origin is tasked with facilitating the returnees' settlement and granting them "the full rights and privileges of nationals of the country," without penalising them for seeking refuge.⁷⁰⁴ While the applicability of the 1969 OAU Convention is confined to Africa, it marks a significant milestone in the codification of voluntary repatriation. Although both countries are state parties

⁶⁹⁷ Gilbert, 'The International Law of Voluntary repatriation' (n 31).

⁶⁹⁸ See chapter 2.

⁶⁹⁹ Chetail (n 24) 22.

⁷⁰⁰ UNHCR, 'Voluntary repatriation - Training Module RP1' (*Refworld*)

<<https://www.refworld.org/reference/manuals/unhcr/1993/en/17414>> accessed 1 April 2024.

⁷⁰¹ 1969 OAU Convention, (n 4)

⁷⁰² Hathaway, 'The Right of States to Repatriate Former Refugees' (n 414). 184

⁷⁰³ 1969 OAU Convention, (n 4).

⁷⁰⁴ *Ibid.*

to the African Union (AU), which is the successor to the OAU, it's noteworthy that Somalia has not ratified the 1969 OAU Convention, unlike Kenya.⁷⁰⁵ Hence, Kenya endorsed the sticking principle of voluntariness for repatriation by providing good information about the country of origin to refugees.

Additionally, another significant regional convention, namely The African [Banjul] Charter on Human and Peoples' Rights (ACHPR), entering into force in 1986, declares in Article 12(2) that: "Every individual shall have the right to leave any country, including his own, and to return to his country."⁷⁰⁶ Somalia and Kenya are signatories to the ACHPR. Accordingly, they are obliged to provide the right to seek asylum and the right to return as well, thereby reinforcing the provisions of the ICCPR.⁷⁰⁷ Moreover, the Charter has an enforcement mechanism, which is the African Court of Justice and Human Rights (ACJHR). Kenya accepted the jurisdiction of the ACJHR in 2015, unlike Somalia.⁷⁰⁸ As the resettlement policy, which was widely implemented during the Cold War, was replaced by the repatriation policy,⁷⁰⁹ The Executive Committee published conclusions prioritising voluntary repatriation and expanding the role of UNHCR in the scope of voluntary repatriation in the 1980s.⁷¹⁰ Therefore, the 1990s are described as the year of repatriation, owing to the United Nations Security Council's interventionist approach regarding refugee-producing states.⁷¹¹ The idea that the repatriation of refugees to their country of origin "must be carried out under conditions of safety and dignity" was introduced to the discourse by a 1992 UNHCR Discussion Note on Protection Aspects of

⁷⁰⁵ *Ibid.*

⁷⁰⁶ ACHR (n 2).

⁷⁰⁷ See Chapter 2.

⁷⁰⁸ 'Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights | African Union' <<https://au.int/en/treaties/protocol-amendments-protocol-statute-african-court-justice-and-human-rights>>. <https://www.african-court.org/wpafc/faqs/#1587292537940-70e4d439-4ea3>, accessed 19 October 2024.

⁷⁰⁹ Chimni, 'From Resettlement to Involuntary repatriation' (n 13).

⁷¹⁰ ExCom Conclusions No 18 (XXXI) 'Voluntary repatriation' (1980); ExCom Conclusions No 40 (XXXVI) 'Voluntary repatriation' (1985).

⁷¹¹ See Chapter 1, Chimni, 'From Resettlement to Involuntary Repatriation' (n 13).

Voluntary Repatriation.⁷¹²

In this context of international law, Somalia is a case demonstrating the application of voluntary repatriation as the preferred solution of the international community since the post-Cold War period. The government of Somalia was faced with the fact that the civil war, which started in the north of the country in 1982, spread throughout the country and led to the collapse of the state in the 1990s.⁷¹³ The civil war that resulted in different armed forces dominating various pieces of territory against the government gave rise to the internal displacement of 400,000 people and the cross-border flight of large numbers of Somalis to Ethiopia, Djibouti, and Kenya.⁷¹⁴ Apart from civil war, the public of Somalia experienced famine due to repeated drought in the late 1980s and early 1990s.⁷¹⁵ By 1993, the internal conflict that turned into inter-clan rivalry had dragged the situation into an inextricably chaotic situation, and there was almost no place in the entire country that was not affected by the war.⁷¹⁶ People leaving the country settled in the refugee camps of Dadaab and Kakuma on the Kenya border⁷¹⁷, in Ethiopia, and Djibouti. Somalis in Somalia tried to survive against starvation if they were alive.⁷¹⁸

The UN Security Council unanimously voted Resolution 794 on December 3, 1992, deciding that the state of affairs in Somalia constituted a "threat to international peace and security" and approving action under UN Charter Chapter VII.⁷¹⁹ In 1992, the Security Council established UN Operation in Somalia (UNOSOM), a peace-keeping mission primarily aimed

⁷¹² UNHCR, 'Discussion Note on Protection Aspects of Voluntary Repatriation' (*UNHCR UK*, 1 April 1992) <<https://www.unhcr.org/uk/publications/discussion-note-protection-aspects-voluntary-repatriation>>. accessed 19 October 2024.

⁷¹³ Collins (n 300) 89-91.

⁷¹⁵ *Ibid.*

⁷¹⁶ *Ibid.*

⁷¹⁷ Manji (n 333).

⁷¹⁸ Theodoros S Dagne, *Somalia: War and Famine* (CRS Issue Brief IB92112, Congressional Research Service, updated 6 November 1992): "Estimated 300,000 Somalis died of starvation during the year of civil war."

⁷¹⁹ United Nations Peacekeeping, 'United Nations Operation in Somalia I (UNOSOM I): Background' <https://peacekeeping.un.org/mission/past/unosom1backgr2.html#one> accessed 19 October 2024.

at providing emergency assistance to civilian populations, for the first time in UN history, the plan included designated corridors and zones of peace to facilitate humanitarian aid delivery.⁷²⁰ The presence of the UN peacebuilding operation in Somalia, recognised by host states and the UNHCR, was considered safe enough to promote repatriation in line with the (in)voluntary repatriation trend of post-Cold War discourse. Crisp explains the reason behind the idea of safe return, which the host states in developing regions oppose due to indefinite refugee presence. In contrast, donor countries in developed regions aim to end protracted refugee situations and expensive assistance programs, thereby preventing resettlement demand.⁷²¹ UNOSOM is tasked with "(h) assisting in the repatriation of refugees and displaced persons within Somalia," by cooperating with the UNHCR and NGOs.⁷²²

On the one hand, the UNHCR plays a preventative protection role for internally displaced people (IDP) in safe zones protected by UNOSOM forces, which are close to the border of camps where refugees are settled.⁷²³ On the other hand, voluntary repatriation of refugees was promoted by host states and UNHCR for refugees.⁷²⁴ Safe zones and opening a safe corridor generally refer to areas that have been specially designated to provide the displaced civilian population in an ongoing armed conflict with enhanced physical and humanitarian security.⁷²⁵ If safe zones offer genuine and effective protection to internally displaced persons within the country of origin, international efforts to support their continued stay there may be lawful. However, such efforts must not be used to prevent individuals from exercising their right to leave the country or to seek asylum elsewhere. Moreover, regardless of sustainability checks, using the presence of a safe zone as a primary indicator for promoting

⁷²⁰ Trevor Findlay, *The Use of Force in UN Peace Operations* (SIPRI/OUP 2002). 143

⁷²¹ Crisp, 'Repatriation Principles under Pressure' (n 535) 5.

⁷²² United Nations Peacekeeping, 'United Nations Operation in Somalia II (UNOSOM II): Background' <https://peacekeeping.un.org/en/mission/past/unosom2backgr2.html> accessed 15 November 2024.

⁷²³ Jennifer Hyndman, 'Managing and Containing Displacement after the Cold War: UNHCR and Somali Refugees in Kenya' (1997) 16 *Refuge: Canada's Journal on Refugees* 6.

⁷²⁴ *Ibid.*

⁷²⁵ Brid Ní Ghráinne, 'Safe Zones and the Internal Protection Alternative' (2020) 69 *International and Comparative Law Quarterly* 335.

repatriation poses serious risks, including the violation of the principle of non-refoulement and the prevention of the right to asylum for individuals, as seen in the case of Somalia.

Due to the impact of UNOSOM, Kenya implemented a cross-border voluntary repatriation program for Somali refugees from 1992 to 1994, with a declaration that Somali refugees would be forcibly returned home in 1993 to clear out the camps.⁷²⁶ Additionally, the hostile approach of the Kenyan government to Somali refugees in camps became a significant push factor for the return of refugees. In Kenya, obtaining refugee status involves a lengthy and complex process.⁷²⁷ The majority of refugees residing in Kenya were categorised as "asylum seekers," with no legal safeguards and stayed in isolated camps under poor conditions, including NGOs such as CARE Kenya and limited UNHCR's assistance for basic food, shelter, and medical services.⁷²⁸ Moreover, refugees in camps were not protected against attacks, harassment and sexual abuse.⁷²⁹ However, in mid-1992, UNOSOM's humanitarian aid reached south-western Somalia through Kenya with the propaganda of Operation Restore Hope⁷³⁰ in Somalia and this situation affected the decision of refugees regarding voluntary return as a pulling factor.⁷³¹

As a result of pull and push factors regarding repatriation, most Somali refugees in camps preferred the return option as they believed it was less worse than staying in the camps without having clear information about conditions in the country of origin.⁷³² Voluntariness of repatriation in this case is under doubt due to the Kenyan government's pushing applications

⁷²⁶ Hyndman (n 723).

⁷²⁷ Collins (n 300). 97.

⁷²⁸ *Ibid*; Hyndman (n 723).

⁷²⁹ Collins (n 300). 93.

⁷³⁰ Dagne (n 718) "The United Task Force (UNITAF), also known as Operation Restore Hope, UNITAF was a multinational force led by the United States and authorized by the United Nations Security Council to intervene in Somalia with the primary objective of providing humanitarian assistance, restoring stability, and facilitating the delivery of relief aid to famine-stricken areas".

⁷³¹ Collins (n 300).

⁷³² *Ibid*, 96-97 "The UNHCR decided that a minimalist approach would be the best, so the refugees were provided with only the most basic relief assistance (Gallagher and Martin 1992, p. 23). The hope was that refugees would respond to the lack of services in Mandera camp and would return home swiftly. This they did, as reported in UNHCR's Information Bulletin (1994a, p. 2); Mandera camp was closed by early 1994 because all the refugees returned to Somalia 'voluntarily'."

towards Somali refugees. Mentioned conditions in camps and the hostile approach of the government of Kenya (GoK) constitute a violation of the right to asylum and Article 5 of the 1969 OAU Convention as a host state. Although expulsion of refugees from a state of asylum is forbidden by Article 12(4),⁷³³ cross-border operations under the threat of forced repatriation were evaluated as an expulsion by many scholars.⁷³⁴ Unfortunately, UNOSOM could not protect returnees and internally displaced people in the safe zone, because it mainly failed to prevent the armed attacks.⁷³⁵ Therefore, refugees who returned from Kenya faced persecution⁷³⁶ in the country of origin under the questionable mandate of UNOSOM. Kenya, which is a signatory state to the 1951 Convention and the 1969 OAU Convention, violated the principle of non-refoulement by promoting repatriation with a threat of forced return, as explained above. However, no formal accountability measures or legal consequences were taken against Kenya for violating the principle of non-refoulement, which is protected by many sources of international law.⁷³⁷ Although the protection promise of UNOSOM with UNHCR for returnees is another main reason triggering the return decision of refugees, resulting in refoulement, the accountability of international organisations under international law creates problematic applications in theory and practice, and generally, it is not possible, which is the subject of another research.⁷³⁸ Therefore, the first attempt at a voluntary repatriation programme, from 1992 to 1994, for Somali refugees resulted in refoulement, and the actors involved did not face any sanctions under international law.

Country dynamics that were unforeseen by UNOSOM predominantly led to the

⁷³³ 1969 OAU Convention (n 4).

⁷³⁴ Collins (n 300).

⁷³⁵ Mélanie Jacques, *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law*, Cambridge University Press, Cambridge, 2012, pp. 232–44.

⁷³⁶ The ICC Statute defines persecution as "the intentional and severe deprivation of fundamental rights contrary to international law because of the identity of the group or collectivity" Art. 7.2. g of the ICC Statute

⁷³⁷ Hyndman (n 723). See Chapter 2.

⁷³⁸ Jan Klabbers, 'Part VIII Accountability for Displacement and Refugee Rights Violations, Ch.64 The Accountability of International Organizations in Refugee and Migration Law' (*Oxford Public International Law*) <<https://opil.ouplaw.com/display/10.1093/law/9780198848639.001.0001/law-9780198848639-chapter-65>> accessed 3 April 2024.

unsuccessful provision of a safe zone on the Kenya border, thereby hindering sustainable and durable voluntary repatriation from Kenya. There was no central governing authority cooperating with UNOSOM, as it lacked consent from the fragmented military groups.⁷³⁹ Therefore, Kenya faced roughly 150.000 Somali refugees again by the end of 1996 due to the ongoing civil war.⁷⁴⁰ The only two entities with substantial functioning capacity of UNOSOM are Puntland and Somaliland⁷⁴¹, where voluntary repatriation of refugees from Ethiopia and Djibouti looks relatively more successful than repatriation from Kenya.⁷⁴² The main reason for success was cooperation with UNOSOM by the dominant groups.⁷⁴³ Therefore, when the root cause of repatriation is civil war, dealing with military groups actively playing a role in the place where it is planned as a safe zone should be the key factor before promoting refugees' repatriation.

Establishing safe zones in a country at war, overseen by an international authority such as the UN, is necessary to provide immediate humanitarian aid and security for affected civilians during ongoing armed conflicts. However, establishing a sustainable, lawful, and adequately managed safe zone within the territory of a country that typically lacks effective state governance poses significant challenges under international refugee law and international human rights law. According to Gilbert and Rüsçh, in reality, safe zones do not provide proper protection as per international refugee law, state practice is too erratic, and the idea of imposing safe zones is discouraging internally displaced people from seeking asylum internationally, despite the potential of safe zone with more protection from attacks, humanitarian and medical aid easier to access, and even make possibilities for work, education, and other pursuits in

⁷³⁹ Ken Menkhaus, 'State Collapse in Somalia: Second Thoughts' (2003) 30 *Review of African Political Economy* 407.

⁷⁴⁰ Hyndman (n 723).

⁷⁴¹ Menkhaus (n 739).

⁷⁴² Androff (n 108) 66-67.

⁷⁴³ *Ibid.*

theory.⁷⁴⁴ Moreover, UN intervention and the creation of safe zones in the country of origin were used as repatriation propaganda for refugees in host states and premature repatriation programmes were applied by the UNHCR, resulting with genocide in Rwanda and Bosnia as an example of violation of the non-refoulement principle.⁷⁴⁵

Although the UNHCR already adopted in 1992 that “Conditions must be propitious for return... premature return cannot be considered a solution if it results in renewed persecution of new departures”⁷⁴⁶, application of voluntary repatriation has been realised in a way that is exactly premature return against the protection responsibility of the UNHCR in many cases of the 1990s, such as in Somalia. Thus, the criticism that encouraging voluntary repatriation without making sure whether the conditions of the country of origin are sufficiently secure for returnees is an obvious breach of its main liability for protection.⁷⁴⁷ Therefore, this situation creates an ambiguity about the role of the UNHCR in providing protection for refugees and seeking a sustainable and durable solution. After 11 years of repatriation experiences, UNHCR clarified its standards for voluntary repatriation in the 1996 Handbook. Accordingly, some of the significant standards are the assessment of the UNHCR regarding fundamental changes of circumstances of the country of origin's conditions with the process of stabilisation to encourage repatriation, voluntariness as a result of free and informed choice of the refugee, repatriation in safety and dignity, and tripartite agreements with the negotiation of host and origin states under the mandate of the UNHCR.⁷⁴⁸ Reintegration in the EXCOM conclusions was an integral part of making voluntary repatriation sustainable and durable, and this concept was expanded with the addition of rehabilitation and reconstruction, and a protection-oriented approach to return became standard with the UNHCR's 2004 Handbook.

⁷⁴⁴ Gilbert and Rüscher, (n 22) 3.

⁷⁴⁵ See Chapter 1; Loescher, Betts and Milner (n 159) 3.

⁷⁴⁶ *ibid.*

⁷⁴⁷ Takahashi (n 24).

⁷⁴⁸ UNHCR, *Voluntary Repatriation Handbook* (n 230).

4.1.1.2. 2013 Tripartite Agreement on Voluntary Repatriation (Somalia-Kenya-UNHCR)

During the same period, the GoK had to face the consequences of a premature (in)voluntary repatriation operation, which resulted in another large-scale refugee demand at its border. The Rising political and financial interests of some actors, such as warlords, businessmen, clans, and gangs in prolonged conflict, with no functional authority, lawlessness, and criminality, not only allow a secure place for repatriation but also create a continuous root cause to seek asylum post-UNOSOM duration.⁷⁴⁹ In 1995, Human Rights Watch recorded through interviews that Somalis were most vulnerable to forced displacement, rape, intentional and arbitrary killings, and other forms of abuse during this period.⁷⁵⁰ Ten years of attempts at state-building and reconciliation in Somalia have failed⁷⁵¹, which presents a challenge and an enigma for voluntary repatriation and prolonged refugee life in camps. In 2000, 137,200 Somali refugees were still in Kenya, primarily in Dadaab camps, and no significant return movement occurred.⁷⁵² In 2004 and 2005, there was an unsuccessful attempt to develop a Comprehensive Action Plan for Somali refugees, in light of the dynamics outlined in the 2004 Voluntary repatriation Handbook.⁷⁵³ In addition to the unstable conditions of the country of origin, the main reason was that the UN's efforts to include European donors were unsuccessful.⁷⁵⁴ It demonstrates the difficulty of achieving the goals outlined in the 2004 Handbook without the financial and physical support of the international community.

The unstable security environment in southern and central Somalia, brought on by the actions of extremist terrorist organisations like Al-Shabaab⁷⁵⁵, which is linked with Al-

⁷⁴⁹ Menkhaus (n 739).

⁷⁵⁰ Human Rights Watch (HRW) (n 314).

⁷⁵¹ Menkhaus (n 739) 405.

⁷⁵² 'Durable Solutions: Perspectives of Somali Refugees Living in Kenyan and Ethiopian Camps and Selected Communities of Return – ReDSS' (n 698).

⁷⁵³ Loescher, Betts and Milner (n 159).

⁷⁵⁴ Androff (n 108) 67.

⁷⁵⁵ Al-Shabaab aims to overthrow the Government of Somalia, remove foreign forces from the states, and create a "Greater Somalia" that unites all ethnic Somalis living in East Africa under strict Islamic law. 'Conflict With Al-Shabaab in Somalia' (*Global Conflict Tracker*) <<https://cfr.org/global-conflict-tracker/conflict/al-shabab-somalia>>. accessed 18 November 2024.

Qaeda⁷⁵⁶, has humanitarian space, access, and operations.⁷⁵⁷ In 2007, the AU Mission in Somalia (AMISOM) was led to support Somalia's ability to address security issues while still restating the necessity of "fighting terrorist threats by all means".⁷⁵⁸ However, an enormous humanitarian crisis and hundreds of thousands of displaced people resulted from fighting between radicalised Islamic Courts Union (ICU) breakaway groups, such as Al-Shabab, and clan militia, as well as the Ethiopian and Transitional Federal Government (TFG) military.⁷⁵⁹ Therefore, between 2007 and 2010, more than 150,000 refugees arrived at the Dadaab camp in Kenya, and four additional camps for refugees were established in Ethiopia to house the newly arrived individuals.⁷⁶⁰ Kenya dispatched hundreds of troops to Somalia in October 2011, citing Al-Shabab's danger to regional stability.⁷⁶¹ Under the direction of the African Union, Kenyan forces continued to operate there to establish a more stable border area to facilitate potential voluntary repatriation.⁷⁶² The 2011 drought, which resulted in widespread relocation, including across borders into neighbouring Kenya and Ethiopia, made the situation worse.⁷⁶³ On a positive note, for the first time since 1967, Hassan Sheikh Mohamud was elected president of Somalia in September 2012.⁷⁶⁴ After twenty years, the first Parliament met and drafted a new constitution.⁷⁶⁵ Power is transferred from the Transitional Federal Government to the newly formed Federal Government of Somalia (FGS).⁷⁶⁶

Meanwhile, laws and institutions in Kenya to govern refugee issues have developed

⁷⁵⁶ See for more information about Al-Sabaab Claire Klobucista, Jonathan Masters, and Mohammed Aly Sergie, 'Al-Shabaab' (*Council on Foreign Relations*, 2022) <<https://www.cfr.org/backgrounder/al-shabaab>>. accessed 20 November 2024.

⁷⁵⁷ UNHCR, 'Voluntary repatriation of Somali Refugees from Kenya: Operations Plan July 2015-December 2019' (*UNHCR UK*) <<https://www.unhcr.org/uk/media/voluntary-repatriation-somali-refugees-kenya-operations-plan-july-2015-december-2019>> 5. accessed 25 November 2024.

⁷⁵⁸ Androff (n 108) 67.

⁷⁵⁹ 'Durable Solutions: Perspectives of Somali Refugees Living in Kenyan and Ethiopian Camps and Selected Communities of Return – ReDSS' (n 18) 17.

⁷⁶⁰ *Ibid.*

⁷⁶¹ *Ibid* p 25.

⁷⁶² *Ibid.*

⁷⁶³ UNHCR (n 62) 5.

⁷⁶⁴ Androff (n 108) 77.

⁷⁶⁵ *Ibid.*

⁷⁶⁶ Manji (n 333)4.

since the 1990s. Kenya codified its domestic refugee law by the 2006 Refugee Act, transferred responsibility for refugee management from UNHCR to the GoK, and established the Department of Refugee Affairs, which was replaced by the Kenyan Refugee Affairs Secretariat in 2013⁷⁶⁷ Any international convention or treaty will become a part of Kenyan law, according to Article 2(6) of the 2010 Kenyan Constitution⁷⁶⁸, meaning that the contents of international refugee and human rights conventions mentioned under the previous title become part of national law. Moreover, with cooperation from UNHCR, a new Refugees Bill (2011) that would abolish the 2006 Refugee Act is presently being examined to make sure it is compliant with Kenya's regional and international obligations. Although legally Kenya conforms to follow international norms, becoming national rule, in practice, the Refugee Affairs Secretariat office is underfunded and understaffed as the administrative body of the GoK for refugees.⁷⁶⁹ Androff explains that the reason behind this reality is that refugees are seen as a temporary problem by the GoK as a result of interviews with staff.⁷⁷⁰ While this ignoring approach of the Gok does not change the fact that it is one of the host states that hosts the most refugees in the region, it also completely blocks the way for Somali refugees who have been living in Kenyan camps for about 30 years to find a permanent solution within Kenya, such as local integration.

In the past period, registered refugees and asylum-seekers in Kenya reached 630,926 and 535,318 of them are Somali refugees and asylum-seekers who predominantly live in camps Kakuma and Dadaab, which have been extended since their establishment in 1991.⁷⁷¹ Since then, there has been little to no movement of return and very few refugees have been resettled.⁷⁷² According to the UNHCR 2012 Report, almost 10,000 children presently residing in Dadaab

⁷⁶⁷ Androff (n 108).

⁷⁶⁸ 'Durable Solutions: Perspectives of Somali Refugees Living in Kenyan and Ethiopian Camps and Selected Communities of Return – ReDSS' (n 32) 25.

⁷⁶⁹ *Ibid.*

⁷⁷⁰ Androff (n 108).

⁷⁷¹ 'Population of Concern to UNHCR in Kenya - 31 August 2012' (*UNHCR Operational Data Portal (ODP)*) <<https://data.unhcr.org/en/documents/details/31654>>. accessed 16 November 2024.

⁷⁷² 'Durable Solutions: Perspectives of Somali Refugees Living in Kenyan and Ethiopian Camps and Selected Communities of Return – ReDSS' (n 698).

camps were the offspring of camp-born parents.⁷⁷³ Therefore, camps became a new home for prolonged refugees who have lived there for three generations. Somali refugees' situation in Kenyan camps is a significant illustration of refugees in deadlock without any durable and sustainable solution and protection, as mentioned in the 21st century refugee phenomena under Chapter 3. The GoK did not adopt a local integration policy since the beginning of the Somalia crisis due to national interests.⁷⁷⁴ Encampment of refugees, which was initially planned as a temporary protection method in an environment where no traditional durable solution could be applied, has become a permanent situation over the years. Camps are funded by the international community to provide the basic needs of refugees and are managed and coordinated by the GoK's Department of Refugee Services (DRS), which is responsible for technical support from UNHCR.⁷⁷⁵ The Somali refugees' rights to work and mobility are restricted, and they are not protected by the state as "non-citizens"⁷⁷⁶, which is a violation of international and national law of Kenya, as mentioned above. Therefore, there is no option but to be dependent on life in the camp for them, despite the camp's problems. However, on a positive note, the development of the refugee camps in Kenya is a relatively positive example of international burden sharing and cooperation, because Kenya provided physical space for the camps housing the refugees, while the international community supplied humanitarian aid, such as food, clothing, medical treatment, and education.⁷⁷⁷

After the establishment of state authority in Somalia, in November 2013, a Tripartite Agreement (TA) on voluntary repatriation was signed between the governments of Kenya and Somalia and the UN Refugee Agency (UNHCR) at the call of the GoK.⁷⁷⁸ Therefore, after the

⁷⁷³ *Ibid.*

⁷⁷⁴ Collins (n 300).

⁷⁷⁵ UNHCR, 'Dadaab Refugee Complex' (*UNHCR Kenya*) <<https://www.unhcr.org/ke/dadaab-refugee-complex>>. accessed 15 November 2024.

⁷⁷⁶ 'Educating for Return: Somali Refugees in Dadaab | Forced Migration Review' <<https://www.fmreview.org/return/leomoi-abikar-kim>>. accessed 15 November 2024.

⁷⁷⁷ Androff (n 108) 70.

⁷⁷⁸ 'Tripartite Agreement Between the Government of the Republic of Kenya, the Government of the Federal Republic of Somalia and the United Nations High Commissioner for Refugees Governing the Voluntary

1992-94 cross-border operations, refugees in Kenya faced the second-time risk of involuntary repatriation, which is not a sustainable or durable solution, because of the unstable conditions of the country of origin, although TA establishes a legal framework for the dignified and safe return of Somali refugees from Kenya and their reintegration into Somalia. There were numerous reasons underpinning the realisation of the second premature voluntary repatriation programme for the parties, which explains why voluntary repatriation is the most desirable solution for the international community as well. UNHCR's approach is that voluntary repatriation is the ideal solution because the UNHCR is frequently overburdened with managing the millions of refugees worldwide and prefers to concentrate on emergency refugee situations.⁷⁷⁹ This reason is related to the limited capacity of the UNHCR to address the unprecedented increase in the number of people in need of international protection every day, as mentioned in Chapter 1. For the government of Somalia, the return of its residents to their home countries enhances the legitimacy of the new Somali government both domestically and internationally.⁷⁸⁰ Nonetheless, as it methodically strengthens state capability, Somalia has insisted on gradual returns with no time limits.⁷⁸¹ Moreover, repatriation signifies a progressive cessation of assistance for other donor states.⁷⁸²

For GoK, repatriation of the Somali refugees means getting rid of the biggest amount of refugee burden in the country and all the problems regarding camps, preventing complete de facto integration and reducing Somali ethnic hesitation in the state as the government policy. GoK explained its reasons for encouraging voluntary repatriation under two headings. Firstly, GoK argues that Somali refugees in Dadaab pose a security threat to the country, possibly

repatriation of Somali Refugees Living in Kenya, 2013' (*Refworld*)

<<https://www.refworld.org/legal/agreements/unhcr/2013/en/91563>>. accessed 15 November 2024.

⁷⁷⁹ Peter Kirui and Suzanne Francis, 'Rethinking Somali Refugee Solutions in Kenya | Forced Migration Review' (2019) <<https://www.fmreview.org/return/kirui-francis>>. accessed 15 November 2024.

⁷⁸⁰ *Ibid.*

⁷⁸¹ *Ibid.*

⁷⁸² Jeff Crisp and Katy Long, 'Safe and Voluntary Refugee repatriation: From Principle to Practice' (2016) 4 *Journal on Migration and Human Security* 141. 142.

training the terrorist group Al-Shabaab and launching attacks on Kenyan soil.⁷⁸³ However, this claim lacks substance and is challenged by human rights organisations like Amnesty International.⁷⁸⁴ Secondly, GoK asserts that returning to Somalia is now safe after the establishment of the new government.⁷⁸⁵ Although raising the FGS gives hope regarding political stability, it was hard to argue that conditions of the country of origin fundamentally changed, and it is safe for returnees concerning the extended meaning of safety, including legal, financial, health, and social aspects, as standardised by the 2004 Voluntary repatriation Handbook.⁷⁸⁶ According to World Bank Group analysis in 2014, cyclonic droughts, conflicts, and weak social protection mechanisms cause international displacement and internally force communities to move to urban centres where basic support is available.⁷⁸⁷ However, central and local authorities lack resources and policies to assist even IDPs.⁷⁸⁸ Long-lasting political unrest in Somalia has undermined social protection in many areas of the country and left a governance vacuum.⁷⁸⁹

Moreover, the GoK threatened to close Dadaab camps as an acceleration policy of the repatriation, as in the 1992-94 cross-border operation.⁷⁹⁰ Furthermore, in 2017, the Kenyan High Court ruled that the return of Somali refugees, with deadlines set for the closure of the camps, was problematic and contrary to the principle of non-refoulement, as outlined in Article 33 of the 1951 Convention and Article 11 of the OAU Convention.⁷⁹¹ According to the court application of the exceptions to the principle of non-refoulement, which is regulated under

⁷⁸³ Kirui and Francis (n 767).

⁷⁸⁴ www.amnesty.org/download/Documents/4000/afr520032014en.pdf , accessed 15 November 2024.

⁷⁸⁵ Kirui and Francis (n 767).

⁷⁸⁶ UNHCR, *Repatriation and Reintegration Handbook* (n 229).

⁷⁸⁷ World Bank Group, 'Analysis of Displacement in Somalia' (2014)

<<https://openknowledge.worldbank.org/entities/publication/c2765d82-b97b-566c-958e-c56a299c2996>>. accessed 15 November 2024.

⁷⁸⁸ *Ibid.*

⁷⁸⁹ Abdinur Mohamed Mohamud, 'Forced Migration and Forced Return to Somalia: A Critical Review of the Literature' (2020) 20 *Bildhaan: An International Journal of Somali Studies*

<<https://digitalcommons.maclester.edu/bildhaan/vol20/iss1/12>> 127. accessed 15 November 2024.

⁷⁹⁰ Kirui and Francis (n 767).

⁷⁹¹ 'Kenya National Commission on Human Rights & Another v Attorney General & 3 Others' (*Refworld*) <<https://www.refworld.org/jurisprudence/caselaw/kenhc/2017/en/115436>> 5. accessed 15 November 2024.

article 33(2) 'should be applied with the greatest caution'.⁷⁹² “[G]iven the seriousness of an expulsion for the refugee, such a decision should involve a careful examination of the question of proportionality between the danger to the security of the community or the gravity of the crime, and the persecution feared”⁷⁹³, and “any mitigating factors and the possibilities of rehabilitation and reintegration within society’ should be taken into account.”⁷⁹⁴ Therefore, even if there was a relationship between Al-Shabab and Somali refugees in camps, taking measures such as return could not be a proportional measure considering the conditions in Somalia. According to a 2014 return intention survey (RIS) conducted by the UNHCR and IOM, 2.6% of the refugees residing in Dadaab planned to return to Somalia during the 24 months that followed the RIS.⁷⁹⁵ Those who arrived in Kenya during the earlier period (1991–2001) have a significantly lower intention of returning than those who entered during the later years (2002–2007 and 2008–2013).⁷⁹⁶ Deciding on the closure of camps makes repatriation only a formal option to follow for refugees who live in camps.

Thus, The Kenya–Somalia repatriation process illustrates that the existence of binding legal obligations does not necessarily guarantee effective enforcement or compliance in practice. Although Kenya is a party to the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which establishes legally binding obligations concerning refugee protection and voluntary repatriation, the legal framework alone proved insufficient to constrain state behaviour. As Noted above, the High Court of Kenya declared the government's decision to close the Dadaab refugee camps and repatriate Somali refugees unlawful. However, neither domestic nor regional legal mechanisms were capable of imposing meaningful sanctions on Kenya for pursuing policies that arguably pressured refugees

⁷⁹² *Ibid* p 12.

⁷⁹³ *Ibid*.

⁷⁹⁴ *Ibid*.

⁷⁹⁵ Marion Noack, *Protracted Displacement in the Horn of Africa: Internal Report*, vol. Feb. 2020 (Bonn International Center for Conversion (BICC) 2020).

⁷⁹⁶ *Ibid*.

to return.

This demonstrates a broader limitation identified in Chapter 2: refugee law relies heavily on state consent and cooperation, while enforcement mechanisms remain relatively weak. Consequently, the practical operation of voluntary repatriation often depends less on the formal binding nature of legal instruments than on political will, international cooperation, and institutional support. The Kenyan experience, therefore, highlights the distinction between legal obligation and implementation capacity, illustrating why the normative framework governing voluntary repatriation requires complementary political, developmental, and institutional mechanisms to achieve effective protection and sustainable return outcomes.

Therefore, the lawfulness of the second voluntary repatriation program initiated by TA in 2013 is controversial because the standards, which include fundamental changes in the country of origin, voluntariness, safety, and dignity, were not met. Scholars and human rights organisations agree that the TA procedure did not satisfy international requirements for voluntary repatriation.⁷⁹⁷ A voluntary repatriation program (VRP) for Somalis living in Kenya was launched in December 2014, and over 85,000 Somalis who were in Kenya were assisted by UNHCR for repatriation to Somalia, in addition to spontaneous returns, between 2014 and 2020.⁷⁹⁸ However, researchers verify that a considerable proportion of Somali refugees who return to their home country often return to Kenya, despite the reintegration support of the VRP.⁷⁹⁹ Therefore, voluntary repatriation became a temporary process that is part of a circular movement between Somalia and Kenya, rather than a sustainable and durable solution.

Although the support package and financial assistance of returnees by the UNHCR play a pull factor role, they did not prevent a breach of the non-refoulement principle in many places

⁷⁹⁷ Crisp and Long (n 770); Kirui and Francis (n 767); Androff (n 108); Norwegian Refugee Council, 'Dadaab's Broken Promise' (NRC) <<https://www.nrc.no/resources/reports/dadaabs-broken-promise/>> accessed 9 April 2024; 'Educating for Return: Somali Refugees in Dadaab | Forced Migration Review' (n 764).

⁷⁹⁸ Manji (n 333) 7.

⁷⁹⁹ *Ibid.*

with security problems.⁸⁰⁰ Moreover, desperate conditions in the homeland, owing to permanent conflicts continuing for more than 30 years, are significant push factors, such as human rights abuses, lack of rule of law, poverty, unemployment, and lack of basic social services in the return camps in Kenya.⁸⁰¹ However, refugees returning to camps faced another vulnerable condition, because they lost refugee status via VRP.⁸⁰² If they come back to Kenya, it's as undocumented people, and they can't get free schooling or welfare benefits anymore.⁸⁰³ Thus, the policy followed by GoK means a breach of the right to asylum and creates an undocumented refugee problem in camps. As argued under Chapter 2, the protection responsibility does not end for returned refugees till a durable and sustainable solution is fulfilled.⁸⁰⁴

A noteworthy summary of the turbulent VRPs between 2014 and 2024 is the several waves of displacement and repatriation between Somalia and Kenya with the mentioned angles above.⁸⁰⁵ Today, Somalia continues to be characterised by high levels of internal and external population displacement⁸⁰⁶, poverty⁸⁰⁷, conflicts⁸⁰⁸, and climate-related disasters⁸⁰⁹. In the first

⁸⁰⁰ Norwegian Refugee Council (n 785).

⁸⁰¹ Noack (n 783).

⁸⁰² Manji (n 333) 8.

⁸⁰³ *Ibid.*

⁸⁰⁴ Gilbert, 'The International Law of Voluntary repatriation' (n 31).

⁸⁰⁵ Please see the research of Manji (n 333) and Androff (n 108) for more detailed information.

⁸⁰⁶ In mid-2023, nearly 4.8 million Somalis remained displaced, almost all in Somalia and neighbouring countries. 'Mid-Year Trends 2023' (n 681).

⁸⁰⁷ See Somalia: Acute Food Insecurity Situation for August - September 2023 and Projection for October - December 2023.

⁸⁰⁸ On March 14, 2024, Beletweyne district experienced intense clashes between the forces of the State Administration and militias mobilised to seize control from the administration. According to reports from the Protection and Return Monitoring Network (PRMN), a total of 110 households, comprising approximately 660 individuals, were displaced. 'UNHCR Somalia Protection and Return Monitoring Flash Alert #02 | March 2024 - Somalia | ReliefWeb' (21 March 2024) <<https://reliefweb.int/report/somalia/unhcr-somalia-protection-and-return-monitoring-flash-alert-02-march-2024>>, accessed 25 November 2024.

⁸⁰⁹ Somalia has been caught in cyclical climate disasters of recurrent droughts and floods. Following the longest drought in the last 40 years, another climate shock has hit numerous parts of the country, especially in the Southwest, as well as in Galmudug, Puntland, Hirshabelle, and Jubaland states, and the Banadir region. According to the Somali Disaster Management Agency (SoDMA), flooding during the October to December rainy season affected more than 2.4 million individuals, displacing more than a million people. 'East and Horn of Africa and Great Lakes: Operational Update' (*Global Focus*) <<https://reporting.unhcr.org/east-and-horn-of-africa-and-great-lakes-operational-update>> accessed 24 March 2024; 'UNHCR EHAGL Operational Update October – December 2023' (*UNHCR Operational Data Portal (ODP)*) <<https://data.unhcr.org/en/documents/details/106870>> a. accessed 15 November 2024.

half of 2023, a combination of drought, floods, and conflict caused 892,600 people to be internally displaced within the country, while 53,800 more came into Kenya in search of assistance at the Dadaab refugee camps.⁸¹⁰ According to data from 31 January 2024, 309,843 registered Somali refugees and asylum seekers live in the Dadaab refugee complex⁸¹¹, which is the second largest and longest-standing protracted refugee settlement in the world after Kutupalong refugee camp, hosting predominantly Rohingya refugees in Bangladesh.⁸¹²

Somalia-Kenya's voluntary repatriation process represents the not voluntary but necessary implementation of repatriation solutions in the 21st century because the local integration and resettlement solutions were already out of effective application.⁸¹³ It is one of the proof cases among numerous ones that voluntary repatriation is not simply the return of refugees. Moreover, it demonstrates the importance of the timing of voluntary repatriation as a solution for returnees. As Takashi argues for refugees to be encouraged to return home, there must have been a significant and long-lasting change in the human rights conditions of the country where they were forced to flee; any other condition would invariably go against the fundamentals of refugee protection.⁸¹⁴ As seen in more than 30 years of experience regarding voluntary repatriation on the Somalia-Kenya border, under the scenario of insisting on quick voluntary repatriation after an improvement in supporting country of origin conditions, neither return could be a durable solution, nor could the refugees be protected. For another example, just four months after fleeing atrocities in their homeland and during a period when widespread displacement was still occurring, Bangladesh, Myanmar, and significant UNHCR donors like the European Union started looking into the possibilities for repatriating 700,000 Rohingya

⁸¹⁰ 'Mid-Year Trends 2023' (n 681).

⁸¹¹ kenya-statistics-package-31-january-2024.pdf <https://www.unhcr.org/ke/wp-content/uploads/sites/2/2024/02/kenya-statistics-package-31-january-2024.pdf>, accessed 15 November 2024.

⁸¹² 'Inside the World's Five Largest Refugee Camps' <<https://www.unrefugees.org/news/inside-the-worlds-five-largest-refugee-camps/>>. accessed 15 November 2024.

⁸¹³ See Chapter 3: "Only 1% of Somali refugees have access to resettlement to a third country in 2019." Kirui and Francis (n 767).

⁸¹⁴ Takahashi (n 24).

refugees in November 2017.⁸¹⁵

UNHCR clarifies the main elements under the 4Rs Program, such as reintegration, rehabilitation, and reconstruction following repatriation, to provide sustainability after voluntary return, via calling on the international community to cooperate with the country of origin. As seen in the timing of repatriation programs, there is no waiting to see stabilisation in the country of origin. Post-conflict scenarios, the country of origin needs social, legal, and financial reconstruction to provide a sustainable environment of life for IDPs and returnees. However, cooperation between the country of origin is exhausted by conflicts, and host states, which consist of generally developing neighbouring states, are not enough to provide an environment which is convenient for sustainable and durable return. Therefore, the role of global burden and responsibility sharing is very crucial for every angle of voluntary repatriation programs.

4.1.2. Global Responsibility Sharing vis-à-vis Somalia

Global responsibility sharing for Somalia is far from sufficient to provide effective voluntary repatriation, as evidenced by unsuccessful repatriation programs that have become another refugee circle. However, it is far more comprehensive than the 1990s approach, prioritising physical safety using the development of a protective voluntary repatriation approach of the UNHCR and the Global Compact on Refugees (GCR). As explored above, Somalia is a case study including various complexities that need to be solved to provide durable solutions for IDPs and refugees. Related to displacement, Somalia, one of the world's poorest nations, faces significant poverty, natural disasters, absence of basic social services and infrastructure or at best limited availability.⁸¹⁶ Protracted armed conflicts become a permanent

⁸¹⁵ Crisp, 'Repatriation Principles under Pressure' (n 535).

⁸¹⁶ Norwegian Refugee Council (n 785).

reality of the state.⁸¹⁷ In many locations, the security situation is unstable, and Al-Shabaab continues to control many rural areas.⁸¹⁸ FDS's political struggle to govern the entire state and establish a rule of law remains a significant shortcoming.⁸¹⁹

Therefore, making voluntary repatriation effective and sustainable in a country such as Somalia requires total cooperation with all the relevant actors in the world, and for every problem mentioned above. The Humanitarian-Development-Peace Nexus (HDPN) approach was adopted by the GCR as a policy to maximise achievement toward the GCR's objectives, including voluntary repatriation of refugees.⁸²⁰ It would be a significant attempt to apply voluntary repatriation in line with its legal framework if it became successful. Moreover, the positive and negative applications regarding supporting voluntary repatriation to make a durable solution for Somalia can be integrated into many states struggling with similar problems, such as South Sudan, Sudan, Ethiopia, the Democratic Republic of Congo, the Central African Republic, Yemen, Myanmar, Libya, Syria, and Afghanistan⁸²¹ for different angles, ranging from natural disasters to find address to civil war and prolonged asylum. Therefore, the lessons and suggestions from the analysis will be explored in the final subsection of the chapter, which discusses how the findings from Somalia can be applied to current and future case studies. Briefly, humanitarian, development, and peace actions are crucial in crisis contexts, ensuring coherence, complementarity, and collaboration.⁸²² They save lives, address structural challenges, and sustain peace.⁸²³ Addressing long-term conflict drivers and

⁸¹⁷ Alexander Betts, Louise Bloom and Naohiko Omata, 'Humanitarian Innovation and Refugee Protection' (2012) 85 RSC Working Paper Series <<https://www.rsc.ox.ac.uk/publications/humanitarian-innovation-and-refugee-protection>>. accessed 15 November 2024.

⁸¹⁸ 'Conflict With Al-Shabaab in Somalia' (n 743).

⁸¹⁹ Claire Klobucista, Jonathan Masters, and Mohammed Aly Sergie (n 744).

⁸²⁰ UNHCR, "HDP Nexus pledging guidance 2023" (November 2023)

<https://globalcompactrefugees.org/media/hdp-nexus-pledging-guidance-2023>, accessed 15 November 2024.

⁸²¹ Council on Foreign Relations, 'Global Conflict Tracker' (n 548).

⁸²² IASC, 'IASC Issue Paper - Exploring Peace within the Humanitarian-Development- Peace Nexus, October 2020 - World | ReliefWeb' (20 November 2020) <<https://reliefweb.int/report/world/iasc-issue-paper-exploring-peace-within-humanitarian-development-peace-nexus-october>>. accessed 23 December 2024.

⁸²³ *Ibid.*

underlying causes requires addressing these interconnected aspects.⁸²⁴ Humanitarian assistance, development cooperation, and peacebuilding are interlinked angles which are all required simultaneously to decrease requirements, risk, and vulnerability in the case country.⁸²⁵ Within the framework of global responsibility sharing in Somalia, HDPN occurs in each of the aspects as outlined below.

The UN Security Council highlights the importance of sustaining peace as much as preventing violence.⁸²⁶ To provide sustainable repatriation to countries which were exposed to long-term conflicts, stopping violence is not purely enough to promote voluntary repatriation; there is a need to establish state organs to provide sustained peace. Otherwise, the refugee circle problem in Somalia will never be resolved. Given that, on 1 April 2022, the African Union's new transitional mission in Somalia received unanimous support from the UN Security Council.⁸²⁷ It has also been given permission to act against Al-Shabaab, linked with al-Qaeda, and other armed groups affiliated with ISIS, and to gradually transfer security responsibilities to the Somalian government.⁸²⁸ After the stronger existence of the African Union Transition Mission in Somalia (ATMIS) in Somalia with various support for the Somalia Security forces, such as training, mentoring, and equipment, on 15 May 2022, national elections were

⁸²⁴ *Ibid.*

⁸²⁵ No single agreed-upon definition of the HDPN currently exists, but common tenets include a broad scope and a long-term frame of reference. For example, the OECD-DAC's definition of the purpose is: "...to reduce overall vulnerability and the number of unmet needs, strengthen risk management capacities and address root causes of conflict." (OECD DAC 2019), "Humanitarian assistance, development cooperation and peacebuilding are not serial processes: they are all needed at the same time to reduce needs, risk and vulnerability. Collaboration can be achieved by working towards collective outcomes, over multiple years, based on the comparative advantage of a diverse range of actors. Collective outcomes have emerged as a strategic tool for humanitarians, development, and peace actors to agree on a concrete and measurable result that they will jointly achieve in a country, with the overall aim of reducing people's needs, risks, and vulnerability. This has also been recognised by OECD DAC members when they put out their recommendations." (IASC 2020).

⁸²⁶ A/RES/70/262 and S/RES/2282.

⁸²⁷ Al Jazeera, 'UN Authorises New AU Mission in Somalia to Dislodge Armed Groups' (*Al Jazeera*) <<https://www.aljazeera.com/news/2022/4/1/un-authorises-new-au-mission-in-somalia-to-dislodge-armed-groups>>. accessed 23 December 2024.

⁸²⁸ Atmis, <https://atmis-au.org/>, accessed 23 December 2024.

concluded, which were postponed many times due to security issues.⁸²⁹ It looks like one important barrier to focusing on the problems of Somalia was this election. New president Hassan Sheikh Mohamud "emphasized national reconciliation, improving relations between the central Government and federal member states, addressing the security threat from Al-Shabaab, finishing the constitutional review and judicial reforms, completing election-related laws, ensuring compliance with international financial institutions' requirements for debt relief and giving urgent attention to the dire drought conditions."⁸³⁰

ATMIS's role is important to pacify terrorist organisations and initiate the process of nationalisation through democratic means. Considering this important one step forward is better than back or stay for the realisation of effective voluntary repatriation, the international community need to focus on mechanisms such as ATMIS for other states suffering from terrorist groups, such as Afghanistan, Syria and Yemen. The involvement of terrorist groups in civil wars is one of the most important reasons that make the 21st-century wars more complex, prolonged and lawless.⁸³¹ Terrorist groups with the capacity to commit all kinds of war crimes and international connections have non-state armed groups (NSAGs) statutes and occasionally committed to norms preventing displacement and/or have exercised protection functions during displacement and repatriation⁸³², as Al-Shabaab's example in Somalia.⁸³³ However, obligations are very limited in international law to hold these kinds of groups accountable, to prevent and to punish.⁸³⁴ Therefore, there is a global need to do some legal reforms and take measures regarding this kind of group, which is the subject of root causes in the country of origin.

⁸²⁹ United Nations, 'Peaceful Transfer of Power in Somalia Offers Long-Awaited Opportunity to Advance Urgent National Priorities, Special Representative Tells Security Council | Meetings Coverage and Press Releases' <<https://press.un.org/en/2022/sc14900.doc.htm>>. accessed 23 December 2024.

⁸³⁰ *Ibid.*

⁸³¹ See Chapter 3.

⁸³² Ben Saul, 'Part VIII Accountability for Displacement and Refugee Rights Violations, Ch.63 The Responsibility of Armed Groups Concerning Displacement' (*Oxford Public International Law*) <<https://opil.ouplaw.com/display/10.1093/law/9780198848639.001.0001/law-9780198848639-chapter-64>>. accessed 23 December 2024.

⁸³³ *Ibid.*

⁸³⁴ *Ibid.*

In just 130 days of 2023, a deadly combination of fighting, extreme drought, and destructive floods has internally displaced over a million people from their homes in Somalia.⁸³⁵ Therefore, due to natural disasters and ongoing armed conflicts, most people living in Somalia depend on humanitarian assistance to stay alive, regardless of their displacement status. However, this situation negatively affects the reintegration process of returnees and the protection of refugees and IDPs in Somalia. The main reason for the circular movement to the Dadaab camp is that returnees face challenges in accessing protection and humanitarian assistance.⁸³⁶ Ironically, while Somalia is, on the one hand, a country that produces refugees, on the other hand, it is a country that hosts refugees, mostly coming from Ethiopia, Yemen, and Syria.⁸³⁷ Therefore, UNHCR and related stakeholders in Somalia support refugee returnees, IDPs and refugees by providing humanitarian assistance under the GCR framework.⁸³⁸ This means that UNHCR collaborates with 28 partners (government, NGOs, and private sector) to offer protection, assistance, and expand sustainable solutions for refugees, asylum seekers, returnees, and stateless persons.⁸³⁹

Compared to only UNHCR and some local NGOs in the 1990s, this progress in providing coordination between various stakeholders is very important. To give some examples, in 2018, UNICEF and the World Food Program provided cash-based assistance to 4,189 Somali households returning from Dadaab, partnering with local governments and NGOs

⁸³⁵ NRC, 'Somalia: Over 1 Million People Internally Displaced in Somalia in Record Time' (*NRC*) <<https://www.nrc.no/news/2023/may/somalia-1-million-displaced/>> accessed 11 April 2024.

⁸³⁶ Manji (n 333).

⁸³⁷ 'East and Horn of Africa and Great Lakes: Operational Update' (n 797).

⁸³⁸ <https://globalcompactrefugees.org/gcr-action/countries/somalia>, accessed 23 December 2024. "Partners involved: National Commission for Refugees and IDPs (NCRI), Ministry of Interior and Federal Affairs, Ministry of Planning, Investment and Economic Development, Ministry of Humanitarian Affairs and Disaster Management, Ministry of Foreign Affairs, Inter-Ministerial Durable Solutions Secretariat State Governments of Puntland, Somaliland, Jubaland, Southwest, Galmuduug, Hirshabelle and Benadir Regional Administration. UNHCR, UNICEF, UNDP, UN-HABITAT, ILO, WFP, IOM, UN Resident Coordinator's Office, international NGOs: NRC, DRC, ARC, Mercy Corps, Save the Children, GRT National NGOs: GCEBD, KAAALO, PSA, Somalia NGO Consortium, SWDC, DAN".

⁸³⁹ OCHA, 'Somalia 2024 Humanitarian Needs and Response Plan (HNRP) | OCHA' (30 January 2024) <<https://www.unocha.org/publications/report/somalia/somalia-2024-humanitarian-needs-and-response-plan-hnrp>>70. accessed 23 December 2024.

to support social integration programs.⁸⁴⁰ The Danish Refugee Council and the Norwegian Refugee Council cooperate with the UNHCR to provide humanitarian assistance, such as protection, livelihood assistance, shelter, food security, information, counselling and legal assistance, security and water, sanitation and hygiene promotion.⁸⁴¹ The government's "Baxnaano" social protection program reached 200,000 households by November 2023, with World Bank financial assistance and WFP implementation support, including returnee refugees, refugees and IDPs, with others in need.⁸⁴² However, the 2024 Humanitarian Needs and Response Plan in Somalia requires \$1.6 billion to meet the needs of 5.2 million most vulnerable people, a 40% reduction from the \$2.6 billion required in 2023, which was only 43 percent funded.⁸⁴³ To enhance aid to Somalia and diversify donors, advocacy is required. The Somalia Humanitarian Fund has set aside \$25.7 million for El Niño flood response and \$56.6 million for life-saving initiatives with 73 partners in underserved areas in 2023, in addition to the Central Emergency Response Fund's (10 million) grant.⁸⁴⁴ Funds are used for humanitarian assistance such as Health, Nutrition, Protection, Shelter, and Food Security, with the cooperation of the refugee response of the UNHCR.⁸⁴⁵

9000 former Somali refugees, mostly from Yemen and Kenya, have returned to Somalia since January 2020, through the Assisted Spontaneous Returns Program in Yemen and the VRP in Kenya.⁸⁴⁶ UNHCR has provided reintegration support packages, including financial aid, business grants, vocational training, legal support, education, and healthcare, to refugees returning to their home countries for reintegration to 4,000 individuals.⁸⁴⁷ There is a funding

⁸⁴⁰ Androff (n 108) 86.

⁸⁴¹ NRC, 'NRC Somalia | Fact Sheet' (NRC) <<https://www.nrc.no/resources/fact-sheets/nrc-somalia--fact-sheet/>> accessed 11 April 2024.

⁸⁴² OCHA, 'Somalia 2024 Humanitarian Needs and Response Plan (HNRP) | OCHA' (n 827).

⁸⁴³ OCHA, 'Somalia Monthly Humanitarian Update, January 2024 | OCHA' (29 January 2024) <<https://www.unocha.org/publications/report/somalia/somalia-monthly-humanitarian-update-january-2024>>. accessed 23 December 2024.

⁸⁴⁴ *Ibid.*

⁸⁴⁵ OCHA, 'Somalia 2024 Humanitarian Needs and Response Plan (HNRP) | OCHA' (n 827).

⁸⁴⁶ 'UNHCR EHAGL Operational Update October – December 2023' (n 797).

⁸⁴⁷ *Ibid.*

problem for voluntary repatriation programs of the UNHCR, such as underfunded VRPs from Kenya to Somalia.⁸⁴⁸ According to the 31 March 2024 Funding update of the UNHCR, only 10% of the required funds for Somalia have been completed.⁸⁴⁹ Even though serious financial aid has been provided, especially from developed countries such as Sweden (90.6 million) and Norway (58.9 million), without any restrictions, it is not enough to achieve the National Development Plan 2020-2024 (NDP).⁸⁵⁰ NDP is very crucial to the reintegration of returnees via reconstruction institutions of states, providing services such as legal support, work, housing, healthcare, and education. When the natural and social order is available for Somalis, including IDPs and Returnees, achieving reintegration and reconciliation, which makes voluntary repatriation sustainable and durable, would be easier.⁸⁵¹

Although Somalia was one of the top OECD Official Development Assistance (ODA) recipient countries of origin with 79.5 USD in 2020-2021, it was not among the top countries of return.⁸⁵² Ongoing conflict and natural disasters. However, shortcomings of effective global responsibility sharing contributions regarding development play an important role in this result as well. For example, Microfinance Kaah International Microfinance Services (KIMS) announced its contribution in the 2019 Global Refugee Forum (GRF) as “contributing toward stability in Somalia through the provision of high-quality microfinance services. Working with UNHCR and ARC, KIMS delivered Somalia’s first economic reintegration scheme for returnees and host communities in Kismayo. This provided MSME financing alongside loans and labour market skills training offered to refugees in business cooperatives, creating a positive impact for 4,440 people.”⁸⁵³ However, this pledge is only one of the total 8 contributions for

⁸⁴⁸ Androff (n 108).

⁸⁴⁹ <https://reporting.unhcr.org/operational/operations/somalia>, accessed 23 December 2024.

⁸⁵⁰ ‘Somalia National Development Plan 2020 to 2024 (NDP-9) | Arab National Development Planning Portal’ <<https://andp.unescwa.org/plans/1245>>. accessed 28 December 2024.

⁸⁵¹ UNHCR, *Repatriation and Reintegration Handbook* (n 229) 4Rs approach.

⁸⁵² ‘Indicator Report 2023’ (UNHCR UK) <<https://www.unhcr.org/uk/indicator-report-2023>>. accessed 28 December 2024.

⁸⁵³ ‘Pledges & Contributions’ (*The Global Compact on Refugees* | UNHCR) <<https://globalcompactrefugees.org/pledges-contributions>>. accessed 28 December 2024.

Somalia. Although it is obvious that there is still a long way to go, the GCR has shown that it is more than just a declaration; it is an active entity that enables multiple stakeholders to come together and cooperate in countries experiencing refugee crises.

4.2. The Voluntary repatriation Case of Afghanistan

4.2.1. Law and Practice

Afghanistan, which is an unstable country, has been the origin of refugees for five decades due mainly to ongoing armed conflicts in addition to deteriorating human rights (particularly for women and girls), economic instability, acute food insecurity, and severe climate shocks and natural disasters.⁸⁵⁴ In 2023, Afghans accounted for one in six of all refugees under UNHCR's mission, making them the largest group of refugees worldwide.⁸⁵⁵ Therefore, Afghan refugees occupy the top of the list as the largest group in the protracted refugee situation, which needs the international community's urgent attention and response to provide a durable solution. However, most of the Afghans have been waiting under unclear conditions in host states for decades, considering only 57,000 of 6.4 million Afghan refugees returned considerably from Pakistan due to the deportation policy of the Government of Pakistan (GoP) in 2023.⁸⁵⁶ Although voluntary repatriation has been promoted as the most desirable and ideal solution for Afghans since the 1990s⁸⁵⁷, it looks far beyond being a sustainable and durable solution for the past 50 years due to ongoing chaotic conditions in Afghanistan.

Therefore, Afghanistan's refugee crisis provides a key illustration for the application of the voluntary repatriation concept.⁸⁵⁸ On the one hand, Afghanistan is a notable example of

⁸⁵⁴ UNHCR, 'Afghanistan Situation: Update on Afghan Returns' (*Global Focus*) <<https://reporting.unhcr.org/afghanistan-situation-update-afghan-returns>> UNHCR, 'Global Trends Report 2023' (*UNHCR*) <<https://www.unhcr.org/global-trends-report-2023>> 19. accessed 28 December 2024.

⁸⁵⁵ 'Mid-Year Trends 2023' (*UNHCR*) <<https://www.unhcr.org/mid-year-trends-report-2023>> 9. accessed 28 December 2024.

⁸⁵⁶ UNHCR, 'Global Trends Report 2023' (n 1) 41.

⁸⁵⁷ Bialczyk (n 322).

⁸⁵⁸ See Chapter 1.

how voluntary repatriation has evolved both legally and practically in affected states, considering the length of the asylum. The countries that received the most Afghan refugees are neighbours Pakistan, which is focused as the host country example, Iran, Uzbekistan, Tajikistan and Turkmenistan.⁸⁵⁹ Moreover, the Afghan refugee crisis has taught the UNHCR and the international community a lot about how (not) to be sustainable and voluntary repatriation. On the other hand, owing to the recurrent root causes for forced displacement, Afghanistan has turned into a refugee cycle spot, meaning re-displacements following returns. According to UNHCR's latest report in 2023, the possibility of implementing a sustainable voluntary repatriation to Afghanistan is very limited, because millions of people in Afghanistan are still internally displaced, and about half of the country's more than 40 million citizens suffer from acute food insecurity.⁸⁶⁰

The Afghanistan case illustrates the fragility of voluntary repatriation when return is encouraged in a context of ongoing insecurity, weak state protection, and limited reintegration capacity. It demonstrates that the formal existence of repatriation agreements, UNHCR involvement, and return-assistance programmes does not guarantee that return is genuinely voluntary, safe, or sustainable, as noted under the limitations of UNHCR in Chapter 1. Afghanistan, therefore, shows how voluntary repatriation can become legally problematic when pressures in host states, limited asylum space and inadequate reintegration support combine to make return appear voluntary in form but uncertain in substance.

Hence, voluntary repatriation in the case of Afghanistan, having 50 years of history and an unclear future, is extremely complicated with changing actors accompanying a constantly existing conflict and repeated returns and asylum. Accordingly, it would be reasonable to divide the voluntary repatriation initiatives undertaken by Pakistan based on the three key cases that led to the major refugee waves. First, voluntary repatriation initiatives after the withdrawal

⁸⁵⁹ UNHCR, 'Afghanistan Situation' (n 842).

⁸⁶⁰ UNHCR, 'Global Trends Report 2023' (n 1) 9.

of the Soviet Union (USSR) in December 1990s, second, voluntary repatriation operations after the US invasion in October 2001 and third, the current situation of voluntary repatriation following the Taliban takeover in August 2021.

4.2.1.1. Voluntary repatriation and New Refugees in the 1990s

Primarily, it should be indicated that, in contrast to the previous case study that concentrated on Somalia and Kenya, Afghanistan and Pakistan were not parties to the 1951 Convention despite the signatory of Afghanistan in 2005.⁸⁶¹ Moreover, there is no regional human rights agreement or organisation that united the two states in the 1990s⁸⁶² apart from the Organisation of Islamic Cooperation (OIC), which was founded in 1969 on a religious theme and is the second biggest international organisation with memberships of 52 member states, after the UN.⁸⁶³ The OIC aims to cooperate among member states, including mostly the Islamic population, on a wide range of objectives and principles, including promoting and protecting human rights and fundamental freedoms, contributing to international peace and safety and solidarity for humanitarian emergencies via preserving Islamic values.⁸⁶⁴ Hence, the OIC confirmed a path that complies with the UN Charter and UDHR.⁸⁶⁵ In the 1990 Cairo Declaration on Human Rights in Islam (CDHRI), a list of rights based on Islamic law was provided to demonstrate adherence to the UN Charter. Although there are numerous academic discussions about the universality and compatibility of the CDHRI⁸⁶⁶ with UDHR, this is the

⁸⁶¹ 1951 Convention (n 1).

⁸⁶² Pakistan adopted some of the main human rights treaties, such as CAT and CCPR in 2010.

⁸⁶³ Tajwar Ali and Haseena Sultan, 'Emerging Role of the Organization of Islamic Cooperation in the Global Governance since 1969' (2023) 10 Cogent Arts & Humanities 2202052.

⁸⁶⁴ 'Charter of the Organization of Islamic Cooperation' <https://www.oic-oci.org/page/?p_id=53&p_ref=27&lan=en>. Art. 1 and 2 of Chapter 1.; UDHR (n 2)

⁸⁶⁵ 'Charter' (n 9) Para. 7 of Art. 1 "To reaffirm its support for the rights of peoples as stipulated in the UN Charter and international law", Para. 14 of Art. 1 " To promote and to protect human rights and fundamental freedoms, including the rights of women, children, youth, elderly and people with special needs as well as the preservation of Islamic family values;" and Para 1 of Art. 2 "All Member States commit themselves to the purposes and principles of the United Nations Charter."

⁸⁶⁶ Turan Kayaoglu, 'The Organization of Islamic Cooperation's Declaration on Human Rights: Promises and Pitfalls' (*Brookings*) <<https://www.brookings.edu/articles/the-organization-of-islamic-cooperations-declaration-on-human-rights-promises-and-pitfalls/>>; Dania Akkad, 'Human Rights: The Universal Declaration vs The Cairo Declaration' (*Middle East Centre*, 10 December 2012) <<https://blogs.lse.ac.uk/mec/2012/12/10/1569/>>. accessed 28 December 2024.

topic of another research. According to CDHRI, the right of refugees to return to their country cannot be restricted, and the universally recognised human rights and fundamental freedoms of refugees and migrants should be protected.⁸⁶⁷ Furthermore, states are tasked with “to ensure everyone's safety from bodily harm, following its legal system and international obligations”.⁸⁶⁸ Even though including the mentioned statements in the declaration is important for the applicability of the concept of voluntary return in the state parties, they fall short of obligating states to apply repatriation of refugees in line with the voluntariness principles. It is not only vague about the voluntariness requirements for refugee returns, but it also omits any expression of the non-refoulement concept, differing from the ICCPR, CAT, ECHR, OAU Convention, and the Cartagena Declaration on Refugees. Moreover, CDHRI is not a legally binding instrument, and OIC did not play an effective role in the Afghan refugee problem in the 1990s.⁸⁶⁹

Additionally, Pakistan lacks a national refugee legal framework, and refugees are treated under the Foreigners Act of 1946.⁸⁷⁰ However, it does not mean that the repatriation of refugees can be non-voluntary from non-signatory states, such as Pakistan, of the 1951 Convention and major human rights treaties like the ICCPR and CAT. The principle of non-refoulement is binding for all states as customary international law, regardless of any treaty body.⁸⁷¹ Therefore, Pakistan and Afghanistan must consider the voluntary character of refugees' returns according to international law. Moreover, Islamic law, which is the basis of both states' domestic legal regime, protection of refugees from refoulement is differently regulated. Accordingly, 'amān', a legal term in Islamic law, refers to the provision of refuge or protection

⁸⁶⁷ 'Cairo Declaration on Human Rights in Islam' (*Refworld*) <<https://www.refworld.org/legal/resolution/oic/1990/en/13797>> Art.11 and 12.

⁸⁶⁸ *Ibid*, Art 4.

⁸⁶⁹ Ali and Sultan (n 861).

⁸⁷⁰ UNHCR, 'Asylum System in Pakistan' (*UNHCR Pakistan*) <<https://www.unhcr.org/pk/protection/asylum-system-in-pakistan>>. accessed 28 December 2024.

⁸⁷¹ See Chapter 2.

to individuals who have fled their homes due to threats to their lives and freedom.⁸⁷² In this regard, it is not acceptable to force someone to return where their life and well-being are in danger under Islamic law as well. Additionally, Afghanistan and Pakistan are obligated to cooperate with all organs of the UN, including the UNHCR, as the state parties of the UN.⁸⁷³ As previously stated, it is a requirement to be a party to the OIC as well. Despite not being a party to the 1951 Convention, Pakistan is a member of the ExCom, which was established by The United Nations's Economic and Social Council (ECOSOC) to govern the UNHCR.⁸⁷⁴ As explained in detail under Chapter 2, many issues related to UNHCR's field of activity are regulated by ExCom Conclusions and reports, including voluntary repatriation. Therefore, UNHCR can apply the international refugee regime established by the 1951 Convention in non-signatory states through this cooperation, because the mission of UNHCR allows it to supervise refugees in both signatory and non-signatory states, provided that the host state gives its consent.⁸⁷⁵

Considering the drawing refugee regime above, the UNHCR has played an active role in Pakistan since the GoP asked for assistance in managing the flood of Afghan refugees in 1979.⁸⁷⁶ To illustrate how voluntary repatriation, which is part of the modern refugee regime, is applied in Pakistan via the UNHCR, is symbolic to understanding how voluntary repatriation can apply to the other forty-three non-signatory states of the 1951 Convention, which are members of the UN. Millions of people fled Afghanistan because of the Union of Soviet

⁸⁷² Ahmed Al-Dawoody and Tilman Rodenhäuser, 'The Principle of non-refoulement under Islamic Law and International Law: Complementing International Legal Protection in Muslim Contexts' (*Humanitarian Law & Policy Blog*, 20 June 2021) <<https://blogs.icrc.org/law-and-policy/2021/06/20/non-refoulement-islamic-law>> Muddathir 'Abd al-Rahim, 'Asylum: A Moral and Legal Right in Islam' (2008) 27 *Refugee Survey Quarterly* 15; Khadija Elmadmad, 'Asylum in Islam and Modern Refugee Law' (2008) 27 *Refugee Survey Quarterly* 51.

⁸⁷³ United Nations, 'United Nations Charter (Full Text)' (*United Nations*) <<https://www.un.org/en/about-us/un-charter/full-text>> 3. accessed 28 December 2024.

⁸⁷⁴ United Nations High Commissioner for Refugees, 'ExCom Membership by Date of Admission of Members' (*UNHCR*) <<https://www.unhcr.org/excom/announce/40112e984/excom-membership-date-admission-members.html>>. accessed 28 December 2024.

⁸⁷⁵ 1950 Statute (n 4).; Maja Janmyr, 'The 1951 Refugee Convention and Non-Signatory States: Charting a Research Agenda' (2021) 33 *International Journal of Refugee Law* 188.

⁸⁷⁶ Marjoleine Zieck, 'In the Aftermath of Voluntary repatriation: The Fate of Afghan Refugees in Pakistan' [2007] *European Journal of Dental Education - EUR J DENT EDUC* 6.

Socialist Republics (USSR) invasion in 1979. Monsutti and Balci highlight that this conflict has been one of the hazardous humanitarian crises since the establishment of the UN.⁸⁷⁷ The OIC ministers, prompted by Pakistan's president, demanded immediate withdrawal of Soviet troops from Afghanistan, suspending Afghanistan's membership until they left, and boycotting the Moscow Olympics in 1980 unless all Soviet troops were removed.⁸⁷⁸ It is evident, though, that the OIC's initiatives are by no means deterrent.

In the 1980s, because of the USSR's invasion of Afghanistan, approximately 6 million Afghans were internationally displaced and sought asylum predominantly in neighbouring Pakistan and Iran.⁸⁷⁹ Pakistan and Iran initially welcomed Afghan refugees due to religious sympathy, as the USSR was a non-Islamic power.⁸⁸⁰ Afghan refugees were primarily in camps near Afghanistan's border in the Northwest Frontier Province (NWFP) in Pakistan, which were called Afghan refugee villages (ARVs) as well.⁸⁸¹ They are mostly Pashtuns from Eastern and Southern Afghanistan, near the border with Pakistan, sharing their language, cultural references, and value system.⁸⁸² Socio-cultural similarities between the government's welcome strategy and the international community's support for refugees in Pakistan are very crucial for adequate international protection and the development of a timely voluntary repatriation plan, as mentioned in previous chapters. Herein, Afghan refugees received international assistance from the international community, NGOs, and UNHCR, while Afghan refugees were allowed to freely move around the country for employment.⁸⁸³ NGOs were supporting UNHCR by

⁸⁷⁷ Alessandro Monsutti and Bayram Balci, 'Forced Migration in Broader Central Asia' in Elena Fiddian-Qasmiyeh and others (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) <<https://doi.org/10.1093/oxfordhb/9780199652433.013.0031>> 601. accessed 28 December 2024.

⁸⁷⁸ Ali and Sultan (n 863) 10.

⁸⁷⁹ Barry N Stein, 'Durable Solutions for Developing Country Refugees' (1986) 20 *The International Migration Review* 264; Harild William Niels V, Christensen, Asger, Zetter, Roger, 'Sustainable Refugee Return : Triggers, Constraints, and Lessons on Addressing the Development Challenges of Forced Displacement' (*World Bank*, August 2015) <<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/542611468188337350/Sustainable-refugee-return-triggers-constraints-and-lessons-on-addressing-the-development-challenges-of-forced-displacement>> 55. accessed 26 May 2023.

⁸⁸⁰ Bialczyk (n 322).

⁸⁸¹ Monsutti and Balci (n 877) 602.

⁸⁸² *Ibid.*

⁸⁸³ Bialczyk (n 322) 13.

providing education, healthcare, sanitation, water supply, vocational training, and income generation schemes. UNHCR spent nearly \$1 billion on refugees between 1979 and 1997, with an additional \$800 million in support of the World Food Program (WFP).⁸⁸⁴ Unofficial help also flooded refugee camps, some of which were used as training grounds for mujahedin⁸⁸⁵ throughout the Cold War with the support of the US.⁸⁸⁶ According to Colville, in the 1980s, significant aid and funding for mujahedin groups in Pakistan fought against the Afghan communist and Soviet forces as part of the battle of the Cold War, creating a vast humanitarian-military bazaar in western parts of the country.⁸⁸⁷ An important partner of the United States, Pakistan trained mujahedin and took in the largest number of refugees.⁸⁸⁸ Afghanistan was portrayed as a Communist victim in the 1980s, and the UNHCR was seen by the US and Western bloc as an important partner in anti-Soviet propaganda.⁸⁸⁹ Therefore, a significant amount of international aid for Afghan refugees in Pakistan is mostly related to international relations, political will, and geostrategic interests in Afghanistan, in addition to humanitarian concerns and legal requirements. For instance, Iran could receive only US\$150 million in international aid due to problematic relations with Western donor states and wealthy Arab countries, despite the reasonable number of Afghan refugees in Iran.⁸⁹⁰ This situation can explain why the Afghan refugee problem in Pakistan has been embraced to such an extent by

⁸⁸⁴ *Ibid*; Colville (n 300).

⁸⁸⁵ "Plural of mujahid, "one who engages in jihad". The term does not have a necessary connection with war. In literal terms, it means "one who struggles on behalf of Islam." In recent years, however, it has been adopted by those who consider themselves engaged in the armed defence of Muslim lands. The struggle has many dimensions. Some see themselves fighting foreign domination; others are fighting against injustice, especially unjust state oppression. The term became known in the West in the early 1980s as the Afghan mujahedin battled against the Soviet invasion and occupation of Afghanistan. Muslim volunteers from many countries, calling themselves mujahedin, also fought in conflicts such as those in Albania, Kashmir, Kosovo, Bosnia, and Chechnya. Today, in post-Taliban Afghanistan, the term is still proudly used by veterans of the wars against both the Soviets and the Taliban (also mujahedin, but whom most Afghans consider the agents of a foreign power)." 'Mujāhidīn' (*Oxford Reference*)

<<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100214876>>. accessed 26 May 2023.

⁸⁸⁶ Bialczyk (n 322).

⁸⁸⁷ Colville (n 300).

⁸⁸⁸ Monsutti and Balci (n 877) 601.

⁸⁸⁹ *Ibid*.

⁸⁹⁰ Colville (n 300).

the Western Bloc and the UNHCR, unlike Iran, which has many similarities with the Afghan refugee issue.

Following nearly six years of indirect negotiations, four documents of the Geneva Accords were signed on 14 April 1988, which regulated a political settlement in Afghanistan.⁸⁹¹ One of them named, the Bilateral Agreement Between the Republic of Afghanistan and the Islamic Republic of Pakistan on the Voluntary Return of Refugees (1988 Bilateral Agreement), builds an international legal way for the application of voluntary repatriation under the consent and obligations of host and origin states.⁸⁹² Refugees who refuse to return to their country of origin are not covered under the 1988 Bilateral Agreement, as the Pakistani government did not want to provide refugees with a choice, despite the concerns of the UNHCR about whether this would mean support continuing till the voluntary repatriation program ends.⁸⁹³ The Pakistani government has suggested maintaining close cooperation with the UNHCR by establishing practices to address this problem.⁸⁹⁴ This situation shows how important it is that the UNHCR and international community uphold international law despite host states' desire to expedite and mass-exit refugees, leaving them with no choice but to return. As prolonged refugees could not

⁸⁹¹Javier Pérez de Cuéllar, 'Texts of: Bilateral Agreement between Afghanistan and Pakistan on Principles of Mutual Relations, in Particular on Non-Interference and Non-Intervention, Declaration on International Guarantees, Bilateral Agreement between Afghanistan and Pakistan on Voluntary Return of Refugees, Agreement on Interrelationships for Settlement of Situation Relating to Afghanistan' <<https://digitallibrary.un.org/record/4007766>> accessed 3 September 2025. 1. Bilateral Agreement between Afghanistan and Pakistan on the Principles of Mutual Relations, in particular on non-interference and non-intervention—signed by Pakistan and Afghanistan. Forma. 2. Declaration on International Guarantees: an undertaking by the Soviet Union and the United States to respect the independence, sovereignty, territorial integrity and non-alignment of Afghanistan and Pakistan; to refrain from any form of interference and intervention in the internal affairs of Afghanistan and Pakistan and to respect the latter countries' commitments contained in Instrument I—signed by the Soviet Union and the United States. 3. Bilateral Agreement between Afghanistan and Pakistan on the Voluntary Return of Refugees, with the assistance of the United Nations High Commissioner for Refugees—signed by Pakistan and Afghanistan. 4. Agreement on the interrelationships for the Settlement of the Situation Relating to Afghanistan. Besides setting out the interrelationships between the different instruments, this document provides for the phased withdrawal of foreign troops, starting from 15 May. One-half of the troops are to be withdrawn by 15 August 1988; the entire process of withdrawal is to be completed within 9 months. 'Geneva Agreements on Afghanistan - Derecho Internacional Público - dipublico.org' (8 October 2010) <<https://www.dipublico.org/100569/geneva-agreements-on-afghanistan/>>. accessed 26 May 2023.

⁸⁹² Agha Shahi, 'The Geneva Accords' (2008) 61 *Pakistan Horizon* 143.

⁸⁹³ Marjoleine Zieck, 'The Legal Status of Afghan Refugees in Pakistan, a Story of Eight Agreements and Two Suppressed Premises' (2008) 20 *International Journal of Refugee Law* 257-258.

⁸⁹⁴ *Ibid.*

return immediately to their post-conflict country of origin due to many reasons, which are analysed below, despite agreements between governments on voluntary repatriation.

After roughly ten years in exile, many refugees started spontaneously returning home following the Soviet Union's withdrawal in 1989, at a slow, gradual, but continuous⁸⁹⁵, although refugees have reasonable hesitation about the current conditions of the country of origin.⁸⁹⁶ Despite the USSR's military withdrawal, there was still a pro-Soviet Najibullah government in Kabul and the civil war against the Najibullah government was continued by mujahedin and other military groups.⁸⁹⁷ Therefore, the spontaneous return of refugees was slow, contrary to international expectations, between 1989 and 1992.⁸⁹⁸ It took more than two to three years because it included many phases: first, male members of a family temporarily returned to Afghanistan to check the environment and work for a permanent return, such as harvesting their fields, then returning to rebuild their shelter, and finally, the spontaneous return of the whole family from Pakistan occurred.⁸⁹⁹ Although a slow normalisation was seen in the rural areas under the control of the Mujahideen, where most refugees returned, there was no existence of any state authority and institutions such as schools, hospitals and police.⁹⁰⁰ The United Nations Coordinator for Economic and Humanitarian Assistance to Afghanistan (UNOCHA) was implementing reconstruction and demining activities in Afghanistan, utilising its Salam Mobile Units (SMU) and operating cross-line between mujaheddin and government territories in the absence of the government.⁹⁰¹ Activities of the UNOCHA included sun pest control, food programs, and fertiliser distribution, restoring communication between Afghans.⁹⁰²

⁸⁹⁵ Gower Rizvi, 'The Afghan Refugees: Hostages in the Struggle for Power' (1990) 3 *Journal of Refugee Studies* 244.

⁸⁹⁶ Monsutti and Balci (n 877).

⁸⁹⁷ Rizvi (n 895) 244.

⁸⁹⁸ *Ibid* 245.

⁸⁹⁹ 'Voluntary repatriation - Training Module RP1' (*Refworld*, 1993)

<<https://www.refworld.org/reference/manuals/unhcr/1993/en/17414>>. accessed 26 May 2023.

⁹⁰⁰ Rizvi (n 895) 247.

⁹⁰¹ *Ibid*.

⁹⁰² *Ibid*.

UNOCHA's operations in Afghanistan are crucial in facilitating returns, even though the organisation's presence alone is far from sufficient. As argued in this research, to accomplish sustainable and durable voluntary repatriation for post-conflict scenarios, humanitarian assistance should apply to peace and development in the country of origin, which will be analysed in the case of Afghanistan under the last subsection.

In March 1990, UNOCHA and the GoP formulated a pilot scheme to facilitate the spontaneous movement of Afghans' voluntary repatriation.⁹⁰³ The UNHCR carried out this pilot project between July 15 and October 15, 1990.⁹⁰⁴ The scheme provided cash grants of 3,000 rupees for each registered family returning for transportation and initial resettlement, as well as a 300-kg wheat ration for a month's food allowance.⁹⁰⁵ However, the pilot application was not as effective as UNHCR had hoped.⁹⁰⁶ The Afghan refugee return process is complex and influenced by various factors, including security, political settlement, and the development situation within Afghanistan, making it a gradual process over several years. Hence, expecting a quick mass return by offering some additional economic incentives would not be reasonable, despite the significance of this scheme. Moreover, there were various preventive factors for quick and mass voluntary repatriation to the country of origin. First, the Najibullah government continued to be strong in Afghanistan, although the Afghan Interim Government (AIG) was set up with Pakistan's and other states' assistance and remains politically disjointed and unable to free itself from outside influence.⁹⁰⁷ It has been observed that in the following period, AIG marginalised itself and used the refugees as a bargaining chip against the Kabul regime for its political survival and implemented policies to prevent their return.⁹⁰⁸ Therefore, there was an international gap that allowed the repatriation of refugees to be used as a political bargaining

⁹⁰³ *Ibid* 259.

⁹⁰⁴ 'Voluntary repatriation - Training Module RP1' (n 689).

⁹⁰⁵ Rizvi (n 895).

⁹⁰⁶ *Ibid* 259.

⁹⁰⁷ *Ibid* 244.

⁹⁰⁸ *Ibid* 261.

instrument for domestic interests.

Second, interest groups named "card-holders" used their political connections with mujaheddin leaders to collect rations on behalf of the returnees, which created a black market of relief goods.⁹⁰⁹ The UNHCR has been criticised for neglecting refugees once they leave camps, rather than providing cash and food.⁹¹⁰ However, in the case of Afghanistan, UNHCR had unrestricted access to refugees in Pakistan, whereas in Afghanistan, access was severely limited until 1992 as a result of political and security issues.⁹¹¹ Therefore, this situation creates a general assumption among refugees that returnees are neglected by the international community compared to the continued facilities of NGOs in refugee camps.⁹¹² Additionally, the role of UNHCR in this pilot spontaneous voluntary repatriation scheme is very crucial to establishing its organised voluntary repatriation programme in the future. Moreover, many refugees in Pakistan were unregistered and did not qualify under the encashment scheme when they preferred to return spontaneously.⁹¹³ IOM supplied transportation for undocumented individuals returning to isolated regions within Afghanistan.⁹¹⁴ The cooperation between the UNHCR and IOM was significant in assisting returnees in safety regardless of their documentation.

Third, the timing of the pilot project for voluntary repatriation is not convenient for Afghanistan's geographical conditions, because 15 July is too late for Afghans to prepare land for harvest before winter sets in.⁹¹⁵ Fourth, refugees and different Afghan tribes, which could be a major contributing factor to the remarkably subpar response to the voluntary repatriation scheme, were not included in the planning part of the pilot project.⁹¹⁶ According to Rizvi, it

⁹⁰⁹ *Ibid* 254.

⁹¹⁰ *Ibid* 255.

⁹¹¹ 'Voluntary repatriation - Training Module RP1' (n 689).

⁹¹² Rizvi (n 895) 255.

⁹¹³ *Ibid*.

⁹¹⁴ 'Voluntary repatriation - Training Module RP1' (n 689).

⁹¹⁵ Rizvi (n 895) 260.

⁹¹⁶ *Ibid* 259.

was caused because of the common thinking about Afghan refugees as economic migrants unlikely to return.⁹¹⁷ However, the return decision of Afghan refugees is based on clan-based choices, occasionally involving pressure, being made by tribal elders in Pakistan and breaking this code for economic considerations goes against tribal cohesion.⁹¹⁸ The lack of prior consultation with Afghan groups prevented them from understanding what the plan was, and also prepared the ground for the policies of vested interests in the region to deter returns.⁹¹⁹ Therefore, it has become necessary to analyse refugee profiles taking into account the geographical conditions that will directly affect the life of rural returnees and the decision-making mechanisms for return, which cannot be individual, such as depending on tribal decisions for Afghan refugees in Pakistan.

Fifth, over 50% of male refugees have become integrated into the local economy, making it difficult for them to return to a war-torn economy with scarce jobs.⁹²⁰ Moreover, second-generation refugees born in Pakistan grew up in camps in the worst-case scenario, having basic amenities like schools, health units, and limited drinking water in refugee villages provided by the UNHCR.⁹²¹ Insufficient reconstruction and development initiatives for Afghanistan, continuing conflicts and political instability discouraged many refugees from returning home. Especially for prolonged refugee profiles who became unofficially adapted to the host state, existing life conditions in the country of origin should be positively changed for return, to maintain life standards in host states, including shelter, health facilities, food, and education, regardless of good or bad.

Although the pilot project carried out during this duration did not meet expectations, many lessons should be drawn about how to effectively plan and execute voluntary repatriation

⁹¹⁷ *Ibid.*

⁹¹⁸ 'Voluntary repatriation - Training Module RP1' (n 689).

⁹¹⁹ Rizvi (n 895) 260.

⁹²⁰ *Ibid.*

⁹²¹ *Ibid.*

programs in the future. According to unofficial resources, there is a high likelihood that a third of refugee families might have left camps slowly and gradually between 1989 and 1992, despite challenges and discouragements.⁹²² The UNHCR positively contributes to spontaneous voluntary repatriations through pilot projects. According to UNHCR, the Afghan repatriation monitoring teams in Pakistan have demonstrated the invaluable role of competent and trustworthy refugee staff in providing valuable information about their home conditions.⁹²³ Moreover, regular monitoring of exit corridors in Pakistan decreased the harassment of Afghan returnees at border crossings.⁹²⁴ Most Afghans returned to villages ruled by Mujahedin or other National Liberation Movements (NLMs). Although monitoring returnees was not possible in Afghanistan, UNHCR took measures such as identifying "zones of tranquillity" and ad hoc arrangements with local commanders, which were short-lived due to ongoing conflicts.⁹²⁵ The fact that Pakistan has demonstrated fulfilling the requirements of being a part of the UN by giving full support to UNHCR's fields of activity within its territory, and has set a positive example in terms of the implementation of international law for refugees and voluntary repatriation as a non-signatory to the 1951 Convention. As explained in detail in Chapter 2, although countries are not obligated by binding agreements regarding voluntary repatriation standards, they can contribute to the development of the principle of voluntariness for the return of refugees as a customary practice by applying their criteria. In the following period, it has been an important fieldwork in terms of establishing the voluntary repatriation norms outlined in the 1996 UNHCR handbook.

After the Mujahedin's takeover of Kabul in 1992, voluntary return in the masses began.⁹²⁶ On 17 August 1993, a tripartite agreement between Pakistan, Afghanistan and the

⁹²² *Ibid* 257.

⁹²³ 'Voluntary repatriation - Training Module RP1' (n 689).

⁹²⁴ *Ibid*.

⁹²⁵ *Ibid*.

⁹²⁶ Monsutti and Balci (n 877).

UNHCR regarding assisting Afghan refugees' safe, orderly, and voluntary repatriation from Pakistan as well as their effective reintegration back into Afghanistan was signed and has been applied for roughly 10 years.⁹²⁷ As a practical counterpart to the hierarchical prioritisation of voluntary repatriation among all traditional solutions after the Cold War in the 1990s⁹²⁸, the agreement did not include any provision regarding what would be done for those who did not or could not return voluntarily.⁹²⁹ Voluntary repatriation was presented as the most preferred solution for refugees within a humanitarian framework that supported the right of return, as outlined in the agreement.⁹³⁰ Following the tripartite repatriation agreement, Pakistan signed the 1993 Cooperation Agreement with UNHCR on 18 September 1993.⁹³¹ The Afghan refugee crisis led to UNHCR's operational presence in Pakistan since 1979, evolving into a transformative and altering phase for Pakistan's refugee law. The 1993 Cooperation Agreement has become a fundamental component of Pakistan's refugee policy, encompassing targeted initiatives such as the solutions strategy for Afghan refugees and other legal issues related to refugees, including administrative controls and regulations regarding immigration and visas.⁹³² Since the 1993 Cooperation Agreement, Pakistan has accepted the UNHCR's decisions and applications on behalf of Pakistan, which are primarily based on the 1951 Refugee Convention and the ExCom Conclusions.⁹³³ Therefore, the case of Pakistan illustrates how the 1951

⁹²⁷ Zieck (n 37) 258.

⁹²⁸ See Chapter 1.

⁹²⁹ Zieck (n 37) 258.

⁹³⁰ Marieke van Houte "Back to Afghanistan: Expectations and Challenges between Development and Reintegration" in Friedrich Altenburg and others, *Migration & Integration 8 - Dialog Zwischen Politik, Wissenschaft Und Praxis* (Edition Donau-Universität Krems 2019) 143.

⁹³¹ UNHCR, 'Asylum System in Pakistan' (*UNHCR Pakistan*) <<https://www.unhcr.org/pk/protection/asylum-system-in-pakistan>>. accessed 26 May 2023.

⁹³² Dallal Stevens, 'The Right to Asylum in International Law and Islamic Law: Some Reflections' (*Refugee Law Initiative Blog*, 14 December 2022) <<https://rli.blogs.sas.ac.uk/2022/12/14/the-right-to-asylum-in-international-law-and-islamic-law-some-reflections/>>. accessed 26 May 2023.

⁹³³ Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis* (n 14) 7-9.; "Cooperation between the Government and UNHCR in the field of international protection of, and humanitarian assistance to, refugees and other persons of concern to UNHCR shall be carried out based on the Statute of UNHCR and, of other relevant decisions and resolutions relating to UNHCR adopted by United Nations organs". Art 3 of the Cooperation Agreement between the Government of the Islamic Republic of Pakistan and the United Nations High Commissioner for Refugees of 18 September 1993

Convention and the international refugee regime influence states that have not ratified a given treaty.⁹³⁴

On a positive note, the government in Afghanistan has changed, and an international refugee law regime has been established in Pakistan to monitor and organise voluntary repatriation. On a negative note, each period has its refugees because of the failure to ensure political stability and end violence within the country. The interim government after the Najibullah regime could not be successful.⁹³⁵ The collapse of state administration in Afghanistan led to the rise of new political elites competing for jihad leadership and external resources.⁹³⁶ While traditional Afghan society's landlords and bureaucrats lose power, war creates its elites.⁹³⁷ The country is divided into regions controlled by various despotic and mostly radical military groups⁹³⁸. The rule of law and governance in Afghanistan has collapsed, with no respect for human rights or humanitarian law, and no institutions to protect them, leading to widespread insecurity and a lack of international standards.⁹³⁹ The breakdown of the jihadi leadership paved the way for the Taliban, which is an Islamic political and military organisation, active in Afghanistan and Pakistan⁹⁴⁰, to emerge in late 1994.⁹⁴¹ Taliban quickly took control of nine of Afghanistan's thirty provinces⁹⁴², and its presence in the area was initially tolerated by many Afghans, as its controlled provinces had become more stable and peaceful in the aftermath of the conflict.⁹⁴³ However, ongoing internal conflicts discouraged the refugees

⁹³⁴ See for more details Maja Janmyr, 'Non-Signatory States and the International Refugee Regime' (*Forced Migration Review*) <<https://www.fmreview.org/janmyr/>>; 'The BEYOND Project' (*MAJA JANMYR*) <<https://www.janmyr.org/beyond/>>. accessed 28 May 2023.

⁹³⁵ Amnesty International, 'Afghanistan: International Responsibility for Human Rights Disaster' (*Refworld*) <<https://www.refworld.org/reference/countryrep/amnesty/1995/en/57236>>. accessed 29 May 2023.

⁹³⁶ Rubin (n 337).

⁹³⁷ *Ibid.*

⁹³⁸ *Ibid* p 15.

⁹³⁹ Amnesty International, 'Afghanistan' (n 923).

⁹⁴⁰ Cambridge Dictionary, 'The Taliban' (21 August 2024) <<https://dictionary.cambridge.org/dictionary/english/taliban>>. accessed 30 May 2023.

⁹⁴¹ Rubin (n 337).

⁹⁴² Amnesty International, 'Afghanistan' (n 923).

⁹⁴³ Hiram A Ruiz, 'Afghanistan: Conflict and Displacement 1978 to 2001 | Forced Migration Review' <<https://www.fmreview.org/september-11th-has-anything-changed/ruiz>> 9. accessed 26 May 2023.

from returning.⁹⁴⁴

Moreover, new conflicts led to the emergence of new categories of refugees, including Kabulis, educated women, professionals such as medical professionals and teachers, and a large number of minorities like Shia Hazaras fearing discrimination by the Pashtun-led Taliban.⁹⁴⁵ Colville argues that these refugees, who represent the brain-drain of the country as well, might worsen the country's long-term future, although the number of refugees is predominantly less than the vast majority of rural migrants who fled during the 1980s.⁹⁴⁶ On the contrary, following the increasing control of the Taliban in the rural areas, repatriation from Pakistan was boosted.⁹⁴⁷ Despite the Taliban's control of the country of origin, many of the refugees in Pakistan still wanted to go back, because many of the issues affecting a large portion of the outside world do not necessarily directly affect people who wish to return.⁹⁴⁸ This situation explains why voluntary repatriation decisions should be evaluated individually. However, how many refugees' voluntary repatriation was evaluated individually under the 1993 tripartite agreement is unknown.

Late in 1996, the Taliban took control of Kabul⁹⁴⁹ and announced an amnesty for Afghan refugees returning to Afghanistan, ensuring no harassment, intimidation, discrimination, or persecution based on race, religion, nationality, or gender in July 1997.⁹⁵⁰ According to UNHCR records, 84,000 refugees out of a total of 87,000 persons voluntarily repatriated from Pakistan in 1997.⁹⁵¹ The refugees who are attempting to return come from rural areas in southern and eastern Afghanistan, where things have been quieter than in the cities,

⁹⁴⁴ Colville (n 300). 7.

⁹⁴⁵ Ruiz (n 88) 9.

⁹⁴⁶ Colville (n 300). 7.

⁹⁴⁷ *Ibid.*

⁹⁴⁸ *Ibid.*

⁹⁴⁹ Ruiz (n 88) 9.

⁹⁵⁰ Amnesty International, 'Refugees from Afghanistan: The World's Largest Single Refugee Group' (*Refworld*, November 1999) <<https://www.refworld.org/reference/countryrep/amnesty/1999/en/23920>> 4. accessed 16 May 2023.

⁹⁵¹ 'UNHCR Global Appeal 1999 - Afghanistan' (*UNHCR UK*) <<https://www.unhcr.org/uk/publications/unhcr-global-appeal-1999-afghanistan>>. accessed 6 May 2024.

and the controversial social programs of the Taliban are not as strictly implemented.⁹⁵² Despite the amnesty announcement, the Taliban's interpretation of Islamic law has restricted fundamental rights and freedoms in Afghanistan, including women's freedom of movement, expression, and association, employment, and limited schooling for girls.⁹⁵³ Therefore, return is far from being desirable for women and educated professionals, Hazaras and people from north and west Afghanistan to their hometowns under the Taliban's control and rules.⁹⁵⁴ Based on their understanding of the circumstances in their native region, Afghan refugees made their decisions.⁹⁵⁵ They prioritise local situations, especially security, but they also take into account broader political, military, social, and economic factors.⁹⁵⁶

For instance, the UNHCR created a group-based assistance scheme for voluntary repatriation to Afghanistan in 1997⁹⁵⁷, which had difficulty meeting the criteria that refugees prioritise for return, despite their wish to do so.⁹⁵⁸ Even if refugees want to return to remote rural areas, which the Taliban government is less inclined to support, groups emphasise the value of education and ask for help from international organisations to open schools for both boys and girls and healthcare services.⁹⁵⁹ Prolonged life in camps having many facilities will be mentioned below for refugees, triggering them to avoid returning to post-war conditions, having no institutions, employment opportunities, and broken infrastructure. Therefore, it is important that to promote voluntary repatriation, UNHCR should evaluate the changes in the conditions of the country of origin. However, as analysed under Chapter 2, the 1996 Handbook regulated standards of voluntary repatriation were too late to govern applied voluntary

⁹⁵² Colville (n 300). 10.

⁹⁵³ Amnesty International (n 95) 4.

⁹⁵⁴ Colville (n 300). 10.

⁹⁵⁵ *Ibid.*

⁹⁵⁶ *Ibid.*

⁹⁵⁷ 'UNHCR Global Appeal 1999 - Afghanistan' (n 939). '1998 Consolidated Appeal for Afghanistan | OCHA' (31 January 1998) <<https://www.unocha.org/publications/report/afghanistan/1998-consolidated-appeal-afghanistan>>. accessed 16 May 2023.

⁹⁵⁸ Colville (n 300).10.

⁹⁵⁹ *Ibid.*

repatriation programmes. According to the 1996 Handbook, the role-changing conditions of the country of origin, which enable it to meet basic human rights, are essential to promote voluntary repatriation.⁹⁶⁰ However, 1,274,000 refugees were assisted to return by the UNHCR in 1992; the number reached approximately more than 2 million in 1998.⁹⁶¹ The vast majority of returnees are self-sufficient, though frequently in extremely poor condition, with many relying on daily labour for low earnings to survive if they are still alive.⁹⁶² As mentioned above, armed conflicts were ongoing when the UNHCR promoted voluntary repatriation. The pressure of host and donor states on the UNHCR plays an important role in encouraging voluntary repatriation for Afghan refugees, as deeply criticised under Chapter 1.

On the one hand, the conditions of the camps had become more difficult for refugees due to decreasing international funds because the collapse of communism and the Soviet Union's loss of superpower status had led to Afghanistan's withdrawal from international consciousness for the US and Western states by the end of the Cold War.⁹⁶³ Furthermore, Afghanistan was dethroned from the list of priorities for other supporter states such as the US, Saudi Arabia, and Kuwait due to erupted Gulf crisis in the 1990s.⁹⁶⁴ Although the ongoing violence and drought in Afghanistan forced people to move to Pakistan and Iran throughout the 1990s, funders pushed the WFP and UNHCR to reduce their assistance to camp-based refugees in Pakistan.⁹⁶⁵ Due to declining international aid and Afghan refugees' outflow, host countries like Pakistan and Iran have become hostile towards refugees, leading to 'asylum fatigue'.⁹⁶⁶ With limited international assistance, they were seeking to relieve the burden of Afghan refugees by returning them to Afghanistan.⁹⁶⁷ The practice of resettling Afghan refugees in

⁹⁶⁰ UNHCR, *Voluntary Repatriation Handbook* (n 230).

⁹⁶¹ Colville (n 300). 9.

⁹⁶² *Ibid.*, Amnesty International (n 95).

⁹⁶³ Rizvi (n 895) 261.

⁹⁶⁴ *Ibid.*

⁹⁶⁵ Bialczyk (n 322) 14.

⁹⁶⁶ *Ibid.*

⁹⁶⁷ *Ibid.*

Pakistan has cooled due to the ongoing civil war and reduced international aid, leading to a debate on repopulating the repatriation of refugees by the permanent solution to the conflict in Afghanistan.⁹⁶⁸ Unfortunately, this attitude does nothing more than make the refugees who are encouraged to return victims of the ongoing conflicts or a party to it. Therefore, apart from the host and donor states' wishes, following the 1996 handbook standards should be fundamental for the UNHCR, despite all the difficulties.⁹⁶⁹

On the other hand, in August 1998, UNHCR announced the halting of the group repatriation scheme and basic assistance package for returning Afghan refugees due to a lack of funding, and eight groups were informed that they couldn't return before 1999.⁹⁷⁰ Colville claims that this situation demonstrates the bankruptcy of UNHCR's repatriation programme.⁹⁷¹ The Fund crisis had led to a situation where those who want to leave cannot do so, and those who wish to stay cannot remain in conditions that comply with human rights. In the case of Afghanistan, the absence of international solidarity made refugees' repatriation necessary, not voluntary, as analysed in Chapter 3. Considering the numerous international efforts for refugees in Pakistan, which were mentioned at the beginning, mismanagement of support for refugees might be another factor for these necessary repatriations. Colville claims that the differences in methods used for aid provided by many aid organisations and NGOs, the failure of UNHCR to organise it, and the fact that the potential of Afghan refugees to benefit the host states have been ignored for decades have also played a key role in this situation.⁹⁷² There were still more than two million Afghan refugees in Iran and Pakistan, making Afghans the largest refugee population in the world,⁹⁷³ even though a total of 4,064,000 refugees, 2,724,000 refugees from

⁹⁶⁸ Colville (n 300).; Ruiz (n 931).

⁹⁶⁹ See Chapter 1: Limitations of the UNHCR.

⁹⁷⁰ Colville (n 300).; '1998 Consolidated Appeal for Afghanistan | OCHA' (n 945).

⁹⁷¹ *Ibid.*

⁹⁷² *Ibid.*

⁹⁷³ Amnesty International (n 95) 1.

Pakistan and 1,340,000 from Iran, had voluntarily repatriated by October 1998.⁹⁷⁴

4.2.1.2. Voluntary repatriation and New Refugees in the 2000s

Suspensions of UNHCR's repatriation programmes due to lack of funds and increasing global tension between the international community and the Taliban created unclarity for the refugees wishing to repatriate. Moreover, internal conflict between the Taliban and Northern Alliance, consisting of warlords, was continuing predominantly in northern Afghanistan and creating refugees.⁹⁷⁵ International reports indicated that the Taliban militia killed civilians on a large scale, both randomly and purposefully, applying torture and massacre against minorities and restricting predominantly fundamental rights of women, such as the right to work, the right to education, freedom of movement without men and the compulsory clothing rule for women, known as the full-length burqa.⁹⁷⁶ Furthermore, the UN Security Council reaffirmed that the Taliban was supporting terrorist groups in training, equipment, protection and finance, production and trafficking of drugs in Afghanistan.⁹⁷⁷ In 1999, the UN Security Council declared the Taliban and Al-Qaeda Sanctions Committee, which linked both as terrorist groups and placed sanctions on the groups' ability to receive funds, travel, and weapons.⁹⁷⁸

Following UN sanctions in 1999, UN organisations and NGOs endeavoured to aid IDPs and returnees; nevertheless, they encountered hindrances due to extensive warfare and the Taliban's mistrust, which intensified.⁹⁷⁹ Moreover, due to a severe drought that occurred in 2000, a significant portion of the Afghan population became heavily dependent on food supplies

⁹⁷⁴ Colville (n 300): visit for detailed information about returnees every year, "Afghan Refugee Statistics." Update produced periodically by UNHCR Islamabad, October 1998.

⁹⁷⁵ *Ibid.*

⁹⁷⁶ Amnesty International, 'Refugees from Afghanistan' (n 938) 199.

⁹⁷⁷ 'Security Council Resolution 1193 - UNSCR' <<http://unscr.com/en/resolutions/1193>>. accessed 26 May 2023.

⁹⁷⁸ 'S/RES/1267(1999)'

<[https://www.undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F1267\(1999\)&Language=E&DeviceType=Desktop&LangRequested=False](https://www.undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F1267(1999)&Language=E&DeviceType=Desktop&LangRequested=False)>. accessed 5 June 2023.

⁹⁷⁹ Ruiz (n 88) 13.

provided by humanitarian organisations, even for basic sustenance.⁹⁸⁰ According to an evaluation conducted by the UNOCHA, sanctions have a detrimental effect on aid reaching humanitarian organisations operating in Afghanistan.⁹⁸¹ Tensions arose between the Taliban and NGOs and UN organisations in December 2000 as a result of additional sanctions the UN Security Council placed on the Taliban.⁹⁸² UN organisations had temporarily removed their employees from Afghanistan.⁹⁸³ The UNHCR's withdrawal from the region has put a strain on the already difficult lives of returnees and IDPs living under international humanitarian assistance. As explained in previous chapters, the continuation of international humanitarian assistance for returnees and the fulfilment of UNHCR's monitoring and reintegration duties in the region are very important for the sustainability of the repatriation solution. Many scholars argue that the imposition of additional sanctions provides the basis for the Taliban to reinforce their anti-human rights applications.⁹⁸⁴ In difficult situations, such as the Taliban example, seeking interim softer solutions that would facilitate UNHCR and its personnel's access to the region should be prioritised to protect IDPs and returnees in the region.

The Afghan refugee crisis, which had continued since the Soviet invasion of the region and became more complex as mentioned above, with the Taliban taking over, had been exacerbated by the US invasion that caused mass displacement again.⁹⁸⁵ On 7 October 2001, a US-led military operation against terrorism started in Afghanistan under the control of the Taliban, which was hosted by Osama bin Laden and the Al-Qaeda network, which were

⁹⁸⁰ Oxfam, 'The Cost of War: Afghan Experiences of Conflict, 1978-2009 - Afghanistan | ReliefWeb' (18 November 2009) <<https://reliefweb.int/report/afghanistan/cost-war-afghan-experiences-conflict-1978-2009>> 11. accessed 5 June 2023.

⁹⁸¹ Ruiz (n 931).

⁹⁸² 'S/RES/1333 (2000) | Security Council' <<https://main.un.org/securitycouncil/en/s/res/1333-%282000%29>>. accessed 5 June 2023.

⁹⁸³ Ruiz (n 88)10.

⁹⁸⁴ *Ibid* 10.

⁹⁸⁵ Susanne Schmeidl, '(Human) Security Dilemmas: Long-Term Implications of the Afghan Refugee Crisis' (2002) 23 *Third World Quarterly* 7 13-14.

perpetrators of the 9/11 attack.⁹⁸⁶ As a result of the US invasion, the Taliban regime was rapidly overthrown, and the number of IDPs and refugees sharply increased.⁹⁸⁷ However, the policy of neighbouring states, initially Pakistan and Iran, was very strict in accepting a large number of refugees into their territory before 2001. The termination of food aid to camp residents led to the exodus of refugees to Pakistani cities, causing social and economic issues such as crime, drug addiction, trafficking, illegal trade, job loss, and increased real estate prices.⁹⁸⁸ On the one hand, a prolonged and large number of Afghan refugees had become a serious problem between the public and the government in Pakistan. Harassment against refugees in social life, forcing Afghan refugees who live in cities to move to camps and deportations had intensely raised.⁹⁸⁹ On the other hand, the new GOP closed its border with Afghanistan in November 2000 to prevent security problems and increase the number of refugees⁹⁹⁰, as a reaction to the international community that left Pakistan alone with over 2 million refugee populations by the end of the Cold War.⁹⁹¹ The GOP justified its closed-door policy by referring to Article 3 of the 1967 UN Declaration on Territorial Asylum, which considers national security as the basis for denying entry to refugees.⁹⁹² The policies and practices of Pakistan and Iran towards Afghan refugees had played a significant influence on the process of making "voluntary" decisions regarding the repatriation of individuals to Afghanistan.⁹⁹³ Pakistani police have repeatedly harassed and imprisoned Afghan refugees due to their lack of legal status, with 7,633 forced

⁹⁸⁶ Ahmad Shah Azami, 'The Post-9/11 US-Led State-Building in Afghanistan' (2020) 6 *Central European Journal of Politics* 1. "On Tuesday, 11 September 2001, suicide attackers seized US passenger jets and crashed them into two New York skyscrapers, killing thousands of people. The attack remains one of the most traumatic events of the century, not only for Americans but also for the world." 'September 11 Attacks: What Happened on 9/11?' *BBC News* (3 August 2021) <<https://www.bbc.com/news/world-us-canada-57698668>>. accessed 5 June 2023.

⁹⁸⁷ David Vine and others, 'Creating Refugees: Displacement Caused by the United States' Post-9/11 Wars' (2020) 6 *Costs of War Project* 8-9.

⁹⁸⁸ Ruiz (n 88) 10.

⁹⁸⁹ Amnesty International, 'Refugees from Afghanistan' (n 938) 199.

⁹⁹⁰ Sanam Noor, 'Afghan Refugees After 9/11' (2006) 59 *Pakistan Horizon* 59 64-65.

⁹⁹¹ Ruiz (n 88) 10.

⁹⁹² Noor (n 990) 65.

⁹⁹³ Bialczyk (n 322) 21.

returns between 2000 and 2001, continuing even after the US-led bombing campaign.⁹⁹⁴

It demonstrates that host states, which have hosted large numbers of refugees for many decades and have not received sufficient support in terms of international burden and responsibility sharing, could take measures that are contrary to international law and human rights law for their domestic interests. When a large number of refugees wave erupted in 2001, Pakistan kept officially closing its border, similar to other host states, despite UNHCR and donor governments' promises to assist refugees, as Pakistan feared losing international interest and struggling to cope with more.⁹⁹⁵ Later, only people carrying legitimate documentation, which is very hard under war conditions, were permitted entry.⁹⁹⁶ As a result, thousands of Afghan asylum seekers were left in hazardous circumstances within their own country.⁹⁹⁷ As analysed in Chapter 2, the failure of Pakistan and other host states to open their borders to Afghans who want to exercise their right to asylum during wartime and their abandonment of the deadly conditions of war constitute a violation of the non-refoulement principle. Moreover, UNHCR has regulated non-admission at the border in circumstances such as Afghanistan, as evidence of a breach of Article 33 of the 1951 Convention.⁹⁹⁸ Although it can be claimed that Pakistan is not a state party to the 1951 Convention⁹⁹⁹ and UNHCR's advisory opinions are not legally binding for states, the principle of nonrefoulement is a customary international law that creates an obligation for all states. Moreover, Pakistan signed a bilateral agreement regarding cooperation with the UNHCR in 1993, in addition to the cooperation requirement for all member states of the UN with the UNHCR.¹⁰⁰⁰ Therefore, all the host states with Pakistan

⁹⁹⁴ *Ibid* 22; HUMAN RIGHTS WATCH (2002) 'Afghanistan, Iran, and Pakistan, Closed Door Policy: Afghan Refugees in Pakistan and Iran' 14(2G).

⁹⁹⁵ *Ibid*; Noor (n 990) 65.

⁹⁹⁶ Noor (n 990) 65.

⁹⁹⁷ Ruiz (n 931).

⁹⁹⁸ UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol' (*Refworld*)

<<https://www.refworld.org/policy/legalguidance/unhcr/2007/en/40854>> para 7. accessed 5 June 2023.

⁹⁹⁹ Noor (n 990) 64.

¹⁰⁰⁰ United Nations (n 861).

applying a non-admission policy during the wartime period breached the principle of non-refoulement according to international law. However, the responsibility should not only belong to host states that have already hosted numerous Afghan refugees for more than two decades. Responsibility for the humanitarian tragedy must also be extended to the international community, which has not sufficiently shared the protection responsibility of refugees for years, as analysed under Chapter 5.¹⁰⁰¹

As a result of international community pressure, Pakistan and UNHCR officials have decided to accommodate new refugees in new camps in border areas, with assurances of aid, resumption of assistance programs, and facilitation of return programmes as soon as possible.¹⁰⁰² Even after the Taliban were overthrown in December 2001, the GoP has persisted in taking a tough stance toward Afghan refugees and has pushed for their immediate return,¹⁰⁰³ due to a lack of trust in the international community's support for the protection of Afghan refugees.¹⁰⁰⁴ Therefore, host states' increased expectations from the voluntary repatriation programme of the UNHCR created a push factor, despite the common reluctance of refugees to return. On the country of origin side, on 5 December 2001 Bonn Agreement or 'Agreement on Provisional Arrangements in Afghanistan Pending the Reestablishment of Permanent Government Institutions', was signed by the Northern Alliance and the group of the deposed king, created a multinational peacekeeping force to keep Kabul secure and appointed Hamid Karzai as the head of the interim administration after the fall of Taliban in 2001.¹⁰⁰⁵ It established a framework for free and fair elections to achieve a fully representative government, including a Transitional Administration and a new Constitution.¹⁰⁰⁶ The Bonn Agreement

¹⁰⁰¹ See Chapter 5.

¹⁰⁰² Noor (n 990) 66.

¹⁰⁰³ Elca Stigter, 'Afghan Migratory Strategies – an Assessment of repatriation and Sustainable Return in Response to the Convention Plus' (2006) 25 Refugee Survey Quarterly 109 113.

¹⁰⁰⁴ Noor (n 990) 59.

¹⁰⁰⁵ 'Timeline: The U.S. War in Afghanistan' <<https://www.cfr.org/timeline/us-war-afghanistan>>. accessed 10 June 2023.

¹⁰⁰⁶ Katharina Lumpp and others, 'Voluntary repatriation to Afghanistan Key Features' (2004) 23 Refugee Survey Quarterly 149 152.

addresses how refugees will participate in the transitional process, which allows them to vote in host states, including Pakistan and Iran, but it does not specifically address their repatriation.¹⁰⁰⁷ The democratic, active, and symbolic role of refugees in the country's reconstruction process is very crucial in terms of establishing a connection between refugees and their origin states, which could create a basis for shaping their return decisions. Once the Ministry for repatriation and Refugees (MORR) was established, along with the Afghan Interim Administration, the UNHCR started initiatives on a new tripartite repatriation framework in the region.¹⁰⁰⁸

Moreover, on 22 December 2001, Presidential Decree No. 297 on Dignified Return established a crucial foundation for the operations of the MORR and its departments, in collaboration with the UNHCR and other national and international actors throughout all the provinces of the country.¹⁰⁰⁹ The decree increased confidence in return through its repatriation strategy, which is "rooted in respect for four fundamental principles: voluntariness based on informed choice, safety, gender equality, and graduality."¹⁰¹⁰ The Karzai government needed refugee repatriation to justify its authority in Afghanistan; therefore, it insisted on a powerful message in the decree: "warmly welcomes Afghan nationals who were compelled to leave the country and assures them of non-discrimination, freedom from persecution and protection by the state."¹⁰¹¹ Furthermore, at the beginning of 2002, the donor states, which consisted of the US and its partners, pledged to provide US\$4.5 billion in aid to Afghanistan over five years to

¹⁰⁰⁷ *Ibid.*

¹⁰⁰⁸ *Ibid* 154.

¹⁰⁰⁹ Zieck, 'The Legal Status of Afghan Refugees in Pakistan, a Story of Eight Agreements and Two Suppressed Premises' (n 40) 22 and 50. "Article 8. UNHCR and other relevant international agencies will be allowed to monitor the treatment of returnees to ensure these meets recognized humanitarian law and human rights standards, and to ensure that commitments contained in this decree are implemented." Decree of The President of The Afghan Interim Administration [Ref No. (297) Date: 13, 03, 1380 On Dignified Return of Refugees].

¹⁰¹⁰ Alpaslan Özerdem and Abdul Hai Sofizada, 'Sustainable Reintegration to Returning Refugees in Post-Taliban Afghanistan: Land-Related Challenges: Analysis' (2006) 6 Conflict, Security & Development 75 82.

¹⁰¹¹ Lumpum and others (n 1006) 157.

promote the reconstruction of Afghanistan.¹⁰¹² According to the US and its partners, voluntary repatriation of refugees to Afghanistan is a key component of the "war on terror" and a key indicator of its success.¹⁰¹³ Furthermore, UN Security Council Resolution 1386 established the International Security Assistance Force (ISAF) "to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the Afghan Interim Authority as well as the personnel of the United Nations can operate in a secure environment."¹⁰¹⁴ Therefore, initiatives of the Karzai government, with the support of the US and its partners, create a pulling factor to promote voluntary repatriation to Afghanistan, as noted by the UNHCR. Regarding the effects of pull and push factors on the UNHCR to encourage voluntary repatriation in Afghanistan, UNHCR advocates for voluntary repatriation as the most preferred solution for millions of refugees.¹⁰¹⁵ In 2002, a large-scale repatriation occurred, with approximately 1.6 million Afghans leaving Pakistan and returning to their homeland despite the concerns of the refugees.¹⁰¹⁶

When the largest-scale voluntary return program in 2002 was examined, it did not meet the standards of voluntary repatriation set by the 1996 Handbook. Accordingly, repatriation of refugees is based on the voluntary, free and informed choice of the refugee in safety and dignity; and the UNHCR promotes voluntary repatriation after a fair assessment regarding fundamental changes in the conditions of the country of origin.¹⁰¹⁷ Firstly, mentioning general fundamental changes in the conditions of the country of origin was not convenient, because the Transitional Administration, led by Hamid Karzai, faced challenges in effectively governing, restoring security, and introducing the rule of law, as the government struggled to build a power base

¹⁰¹² Bialczyk (n 322) 14.

¹⁰¹³ Ibid 15.

¹⁰¹⁴ 'Security Council Resolution 1193 - UNSCR' (n 965).

¹⁰¹⁵ Bialczyk (n 322).

¹⁰¹⁶ Noor (n 990).

¹⁰¹⁷ UNHCR, *Voluntary Repatriation Handbook* (n 230) 2.3.

beyond Kabul.¹⁰¹⁸ According to the report of Amnesty International, Afghanistan's reconstruction, rehabilitation, and peace-building efforts have been unsuccessful, with security deteriorating due to factional fighting, targeting aid personnel, crime, and banditry.¹⁰¹⁹ Therefore, the UNHCR acted against its protection responsibility by promoting voluntary repatriation before the fundamental changes occurred in the country of origin, especially for the returnees' security. Moreover, based on the general assumption that repatriation is the most desirable solution for refugees, to promote repatriation cannot be valid for refugees' own decision¹⁰²⁰, because this assumption is related mostly to states' interest in governing repatriation, explained below and under this Chapter.

Furthermore, the case of Afghanistan is not a suitable case to establish generalised assumptions about refugees. Forced displacements in Afghanistan continued for such a long time, and ongoing conflicts with different actors, that differences emerged between the profiles of the refugees remaining in the host states. Noor categorises these profiles belonging to the Afghan population in host states into three categories: first, long-stay refugees since 1989 or before 2001, new refugees after 2001, and economic migrants.¹⁰²¹ Moreover, before the Taliban, the main reason for displacement was Russia's invasion-based conflicts, whereas after the Taliban, in addition to generalised violence, reasons were individualised by gender, society, and political opinion. After the 2000s, these reasons evolved from ongoing conflicts and droughts to the US-led war. Therefore, promoting voluntary repatriation for everyone in a large number of Afghan refugee groups to a country which lacks sustainable peace and conditions to reach fundamental rights not only risks the lives of returnees but also opens a gate for recycling repatriations between host and origin states, as mentioned in the previous section explaining

¹⁰¹⁸ Bialczyk (n 322) 14-15.

¹⁰¹⁹ Amnesty International, 'Afghanistan: Out of Sight, out of Mind: The Fate of the Afghan Returnees' (*Refworld*) <<https://www.refworld.org/reference/countryrep/amnesty/2003/en/32268>>. accessed 10 June 2024.

¹⁰²⁰ Nassim Majidi, 'From Forced Migration to Forced Returns in Afghanistan: Policy and Program Implications'.

¹⁰²¹ Noor (n 990) 61.

the 1990s. Individual assessment for the return decision of refugees can play an effective role, as the expectation of Afghans living in camps since 1989 or their second-generation people who don't know anywhere else as a home apart from this village, is different from that of Afghan refugees who are female or from an ethnic minority group, such as Hazara.

Secondly, getting true information about their conditions in their country of origin is essential to establish refugees' free and voluntary decision regarding return. In 2002, UNHCR and its partners conducted a mass information campaign using the BBC, Afghan radio and TV, local newspapers, UNHCR website, registration and verification centres in Pakistan and Iran, and other media to spread the word about the situation in Afghanistan and the repatriation process.¹⁰²² According to an examination of the purpose and substance of the UNHCR information campaign, many Afghan refugees did not have access to correct information when they decided to return "voluntarily."¹⁰²³ The international campaign gave refugees hope for the future when they return, rather than realistic information and updates about security concerns, and dreadful socioeconomic and political conditions.¹⁰²⁴ States' attitudes toward spreading wrong information or avoiding giving updates can be understandable depending on their interests in refugee repatriation. However, the UNHCR is an organisation having a humanitarian and non-political character, tasked primarily to protect refugees, before encouraging repatriation for them to seek sustainable and durable solutions.¹⁰²⁵ Thus, UNHCR's stance here is that it prioritises the interests of states over the benefits of refugees, against its statute. As explained in Chapter 1, the limitations of the UNHCR, such as its reliance on donor states, trigger this kind of deviation in practice. According to Amnesty International, "Returnees feel deceived by reports, coming from host countries and UNHCR, that they could return to

¹⁰²² Bialczyk (n 322) 17.

¹⁰²³ *Ibid* 17-20.

¹⁰²⁴ *Ibid* 19.

¹⁰²⁵ 1950 Statute (n 4).

Afghanistan in safety and dignity."¹⁰²⁶

Thirdly, According to the 1996 Handbook, voluntariness is a decision taking issue making repatriation far 'more likely to be lasting and sustainable', indicating 'an absence of measures which push the refugee to repatriate,' and must be viewed about both the conditions in the country of origin (calling for an informed decision) and the situation in the country of asylum (permitting a free choice)'.¹⁰²⁷ Nevertheless, in the case of Afghanistan, voluntariness could not be a free choice for refugees. Closing refugee camps is the effective pushing measure of the GoP to reduce the number of Afghans living in its country since 2002. The Pakistani government decided in 2002 to close some parts of the NWFP camps and to give the people living there eviction orders.¹⁰²⁸ Due to this development, thousands of refugees were obliged to either return to Afghanistan or relocate to Pakistan's cities.¹⁰²⁹ However, in urban areas, a common hostile approach against refugees and pushing them to camps has prevented them from establishing a life as mentioned above. Hence, most of the refugees preferred to return to their country of origin and could not make a free and informed decision according to the criteria specified in the 1996 UNHCR Handbook, and the return decision was based on mostly desperation rather than voluntariness. As argued by Zieck, voluntary repatriation is frequently employed in practice when there is no other choice for refugees except to return.¹⁰³⁰

Nevertheless, the repatriation of the refugees from Pakistan in 2002, as analysed above in three legal stages of the 1996 Handbook, remained a premature return operation, because most of the returnees returned to Pakistan.¹⁰³¹ According to Noor, the mass voluntary repatriation programme in 2002 made matters worse because the returnees had to deal with

¹⁰²⁶ Amnesty International, 'Afghanistan' (n 1007). Amnesty International 2003.

¹⁰²⁷ UNHCR, *Voluntary Repatriation Handbook* (n 230) 2.3.

¹⁰²⁸ Amnesty International, 'Afghanistan' (n 1007).

¹⁰²⁹ Bialczyk (n 322) 22.

¹⁰³⁰ Marjoleine Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27) 33-48.

¹⁰³¹ Noor (n 990) 67.

harsh circumstances in Afghanistan due to the country's lawlessness and devastation.¹⁰³² Therefore, the UNHCR has also been aware that getting 1.6 million refugees safely to the other side of the border without police, hospitals, schools, job opportunities, the rule of law, and enough accommodation is not a durable solution. Additionally, the influx of a sizable number of displaced individuals put pressure on relief organisations operating in Afghanistan.¹⁰³³ Some limited areas were occupied by the UNHCR to establish a life for returnees, and most refugees have not been able to recover their property, hindering their reintegration into their original areas.¹⁰³⁴ Therefore, upon returning to Afghanistan, many refugees have been driven into an internal displacement situation, which begins a new cycle of displacement rather than ending the previous one.¹⁰³⁵ According to Özerdem and Sofizada, land-related insecurities, including illegal land occupation, disputes, evictions, poppy cultivation, mines, and the existence of warlords and militia commanders, played a significant role in not achieving sustainable voluntary repatriation and triggering a return to host states.¹⁰³⁶

In 2003, realising that expeditious repatriation was not a workable solution, the UNHCR refocused its efforts on guaranteeing the sustainability of return.¹⁰³⁷ On 17 March 2003, Pakistan, Afghanistan, and the UNHCR signed a tripartite agreement for the repatriation of Afghan citizens living in Pakistan.¹⁰³⁸ However, in 2003, the repatriation of Afghan refugees started slowing down, because Afghan refugees in Pakistan were unwilling to return due to ongoing security risks and negative repatriation experiences in 2002.¹⁰³⁹ The UNHCR responded to this by initiating the Facilitating Group Return (FGR) program, which allowed refugees to observe that conditions had significantly improved.¹⁰⁴⁰ Developing this kind of

¹⁰³² *ibid.*

¹⁰³³ *ibid.*

¹⁰³⁴ Özerdem and Sofizada (n 1010).

¹⁰³⁵ Bialczyk (n 322).

¹⁰³⁶ Özerdem and Sofizada (n 1010).

¹⁰³⁷ Noor (n 990).

¹⁰³⁸ Zieck, 'In the Aftermath of Voluntary repatriation' (n 865).

¹⁰³⁹ *Ibid*; Katharina Lumpf and others, (n 1006)150.

¹⁰⁴⁰ *Ibid* 69-70.

interim phase for issues such as barriers to repatriation, while considering the needs of refugees, demonstrates that UNHCR has learned from its experiences and improved the voluntary repatriation concept. By adaptation of the 2004 UNHCR Handbook, the framework of voluntary repatriation is extended with its components as reintegration, rehabilitation, and reconstruction following repatriation, thereby providing a sustainable approach to voluntary repatriation.¹⁰⁴¹ To achieve sustainable and durable solutions for Afghan refugees, the Solutions Strategy for Afghan Refugees to Support Voluntary repatriation, Sustainable Reintegration and Assistance to Host Countries (SSAR) was drafted in 2012 by Afghanistan, Iran and Pakistan, with the support of UNHCR,¹⁰⁴² which will be analysed in the following section.

However, there have been no large numbers of refugee repatriations since the premature repatriation initiative in 2002, which was one of the largest repatriation procedures in UNHCR history. As the voluntary repatriation examples from Pakistan to Afghanistan have been analysed so far, repatriations are based on a lack of options apart from voluntary return, because of the push factors like closing camps and restrictive applications against the human rights of refugees in Pakistan. For instance, in 2004, only 15,200 Afghans were repatriated with UNHCR assistance after Pakistan closed a dozen camps in the Federally Administered Tribal Areas (FATA).¹⁰⁴³ In May 2007, after the closing decision of the Jungle Pir Alizai camp, where mostly prolonged refugees have lived since 1979, a clash erupted between residents and Pakistani officials, demolishing homes in the camp, and refugees were forced to return or relocate.¹⁰⁴⁴ According to the Committee of the Red Cross Report based on interviews with internally and externally displaced Afghans in 2009, thousands of people were repeatedly displaced, fleeing to safer locations, only to be re-displaced months later or upon returning home, forcing them to

¹⁰⁴¹ UNHCR, *Repatriation and Reintegration Handbook* (n 229).

¹⁰⁴² 'SSAR Support Platform | Solutions Strategy for Afghan Refugees' <<https://ssar-platform.org/>>. accessed 10 June 2024.

¹⁰⁴³ Noor (n 990) 69.

¹⁰⁴⁴ Bialczyk (n 322) 25.

flee again.¹⁰⁴⁵ Therefore, the number of returnees lacks the importance of being recorded as a solution provided for the case of Afghanistan, as repatriation likely could not be a permanent solution for Afghan returnees. In the 2010s, voluntary repatriation data regarding Afghans was reduced because of the instability and increasing security concerns.¹⁰⁴⁶

Although significant progress has been made in reconstructing the country since the 2000s after the fall of the Taliban, including the establishment of a recognized government, the drafting of a new constitution in 2004, the holding of successful democratic elections in 2005 after three decades, the improvement of relations with UN organs such as the UNHCR, and official developments on women's rights, none of these have been sufficient to provide a widespread security environment throughout the country.¹⁰⁴⁷ Therefore, Afghanistan has been one of the top-rated refugee states for five decades. Challenges, including insufficient international investment in post-war reconstruction, insufficient capacity building in government departments, reforms in the justice sector, and crackdowns on drug production and trade, have remained.¹⁰⁴⁸ Most importantly, security has been a major challenge, with factionalism and a resurgence of the Taliban.¹⁰⁴⁹ In 2011, the withdrawal plan of the US and NATO, assuming control of ISAF by 2014, caused a more vulnerable environment in Afghanistan, although the ability of the Afghan government to secure the country is still seriously questioned.¹⁰⁵⁰ On 29 February 2020, an agreement between U.S. envoy Khalilzad and the Taliban, Baradar, set the stage for a major withdrawal of American forces from Afghanistan and contained assurances from the Taliban that the country would not be exploited for terrorist purposes.¹⁰⁵¹ Before the last American soldier left the country, on 15 August 2021,

¹⁰⁴⁵ Oxfam (n 968).

¹⁰⁴⁶ UNHCR, 'UNHCR Global Trends 2011' (*UNHCR UK*) <<https://www.unhcr.org/uk/media/unhcr-global-trends-2011>>. UNHCR, 'Global Trends - Forced Displacement in 2018 - UNHCR' (*UNHCR Global Trends 2018*) <<https://www.unhcr.org/globaltrends2018/>>. accessed 10 June 2024.

¹⁰⁴⁷ Özerdem and Sofizada (n 1010). 75-80.

¹⁰⁴⁸ *Ibid* 80.

¹⁰⁴⁹ *Ibid*.

¹⁰⁵⁰ Monsutti and Balci (n 877). See 'Timeline: The U.S. War in Afghanistan' (n 152) for more information.

¹⁰⁵¹ 'Timeline: The U.S. War in Afghanistan' (n 993).

the Taliban retook Kabul after 25 years.¹⁰⁵²

The Taliban soon returned to attacking Afghan security forces and civilians to gain a considerable amount of territory associated with the Afghan government.¹⁰⁵³ In addition to the generalised violent atmosphere in the country, the Taliban gradually restored its extremely brutal interpretation of Islamic law throughout the country, which included flogging, amputations, public executions and severe limitations on women's freedoms of speech, movement, education, work and clothing, despite the early pledges to respect human rights.¹⁰⁵⁴ In August 2023, the United Nations reported that since August 2021, there have been at least 800 cases of extrajudicial killings, arbitrary arrests and detentions, over 144 cases of torture and other cruel treatment, 218 extrajudicial deaths, and 14 cases of former government employees and security personnel being forcibly disappeared by Taliban forces.¹⁰⁵⁵ Moreover, armed attacks on civilians resulting in numerous deaths and injuries have been the ongoing reality of Afghanistan.¹⁰⁵⁶ On the one hand, the humanitarian crisis created by the Taliban regime, with economic vulnerability and natural disasters, has caused a large amount of displacement since 2021, making Afghanistan the first country of origin creating the largest number of refugees worldwide.¹⁰⁵⁷ On the other hand, the Taliban regime, against international legal standards, has become the biggest challenge to applying sustainable and durable voluntary repatriation.¹⁰⁵⁸

However, Pakistan's Apex Committee approved a repatriation plan for over a million foreigners, mainly Afghans, who do not have valid documents, with an ultimatum to leave Pakistan, hosting currently 3.1 million Afghans, by November 2023, despite a non-return

¹⁰⁵² *Ibid.*

¹⁰⁵³ Council on Foreign Relations, 'Global Conflict Tracker' (n 548).

¹⁰⁵⁴ *Ibid.*

¹⁰⁵⁵ Human Rights Watch, 'Afghanistan: Events of 2023', *World Report 2024* (2024)

<<https://www.hrw.org/world-report/2024/country-chapters/afghanistan>>. accessed 10 June 2024.

¹⁰⁵⁶ *Ibid.*

¹⁰⁵⁷ UNHCR, 'Global Trends Report 2023' (n 842).

¹⁰⁵⁸ UNHCR, 'Afghanistan Situation' (*Global Focus*)

<<https://reporting.unhcr.org/operational/situations/afghanistan-situation>>. accessed 18 June 2024.

advisory for Afghanistan of the UNHCR since August 2021.¹⁰⁵⁹ Moreover, GoP announced that Pakistan-issued Afghan Citizen Card holders will be expelled from Pakistan after the Eid Al-Fitr festival in 2024 under Phase 2, while UNHCR-issued Proof of Registration cardholders will be forced and unlawfully deported under Phase 3.¹⁰⁶⁰ Deportation of Afghans regardless of the given statutes, likely constitutes refoulement under the current humanitarian crisis atmosphere in Afghanistan. Therefore, the GoP should avoid applying the deportation plan, in line with customary international law and obligations arising from the UN Charter, CAT, and ICCPR. The international community effectively share the Afghan refugee burden among host states to avoid the forced return of Afghan refugees. Therefore, the international community needs to cooperate more than ever to protect Afghan IDPs and refugees and to provide them with durable solutions, with the Taliban, if possible or despite the Taliban. It is the international community's huge dilemma that needs to be managed in line with the UN standards.

4.2.2. Global Responsibility Sharing vis-à-vis Afghanistan

Since the beginning of the Afghan refugee crisis, other traditional solutions, such as resettlement and local integration, have generally been ignored by the international community and host states due to prioritising voluntary repatriation, as analysed above. However, making voluntary repatriation sustainable for Afghan refugees is neither desirable nor practical because of the de facto Taliban regime against the human rights standards of the UN in Afghanistan. Effective application of the Global Compact on Refugees (GCR) for the Afghanistan case is very crucial not only to avoid more forced displacements but also to prevent forced return attempts of host states, exemplified by Pakistan as mentioned above. Therefore, to avoid forced repatriation of Afghan refugees due to host states' policies against refugees, the international

¹⁰⁵⁹ UNHCR, 'Operational Data Portal Afghanistan Situation' <<https://data.unhcr.org/en/situations/afghanistan>>. accessed 18 June 2024.

¹⁰⁶⁰ Amnesty International, 'Pakistan: Government Must Stop Ignoring Global Calls to Halt Unlawful Deportation of Afghan Refugees' (*Amnesty International*, 4 April 2024) <<https://www.amnesty.org/en/latest/news/2024/04/pakistan-government-must-halt-deportation-of-afghan-refugees/>>. accessed 18 June 2024.

community needs to cooperate with the host states to ease their burden and responsibilities due to hosting millions of Afghans for decades.¹⁰⁶¹ There have been a total of 14 directly related pledges in support of a host country policy for Afghan refugees by multi-stakeholders of the UNHCR in Global Refugee Forums (GRF).¹⁰⁶² For instance, the pledge of the government of Japan regarding education, health, skill training, livelihood improvement and agriculture assistance in Afghanistan, Iran and Pakistan for both IDP/refugees and the people from host states utilising the SSAR.¹⁰⁶³ SSAR, which was established in 2012, became a very useful mechanism for contributions regarding the Afghan refugee crisis under the GCR framework.¹⁰⁶⁴

Moreover, the UNHCR has been playing a pivotal role in the Afghan refugee crisis, assisting protection in host states, in all management-related matters, including settlement in the host states, resettlement in third countries, voluntary repatriation to the country of origin, and rehabilitation and reintegration of the Afghan returnees for more than five decades.¹⁰⁶⁵ The UNHCR recognised the need to develop a new paradigm for the Afghan refugee problem, addressing the issue of movement, meaning the deadlock of the repatriation cycle, rather than merely the root causes-based problem.¹⁰⁶⁶ This awareness of the UNHCR is that there is an obvious need for a new solution paradigm to support three durable solutions.¹⁰⁶⁷ Owing to OECD-UNHCR cooperation on third-country solutions for refugees, Afghans were leading the way in granting family reunification, work and student permits by the destination OECD

¹⁰⁶¹ United Nations High Commissioner for Refugees, 'Official Version – Draft 3 of the Global Compact on Refugees (4 June 2018)' (*UNHCR*) <<https://www.unhcr.org/events/conferences/5b1579427/official-version-draft-3-global-compact-refugees-4-june-2018.html>>. accessed 18 June 2024.

¹⁰⁶² UNHCR 'Pledges & Contributions' (*The Global Compact on Refugees | UNHCR*) <<https://globalcompactrefugees.org/pledges-contributions>>. accessed 24 June 2024.

¹⁰⁶³ UNHCR 'Multistakeholder Pledge: Accelerate and Better Leverage Humanitarian-Development-Peace Nexus Approaches in Forced Displacement Settings' (*The Global Compact on Refugees | UNHCR*) <<https://globalcompactrefugees.org/multistakeholder-pledge-accelerate-and-better-leverage-humanitarian-development-peace-nexus>>. accessed 24 June 2024.

¹⁰⁶⁴ 'SSAR Support Platform | Solutions Strategy for Afghan Refugees' (n 1030).

¹⁰⁶⁵ Noor (n 990) 76.

¹⁰⁶⁶ Monsutti and Balci (n 877).

¹⁰⁶⁷ Jeff Crisp, 'Beyond the Nexus: UNHCR's Evolving Perspective on Refugee Protection and International Migration'.

countries and Brazil between 2010 and 2019, with 114,000 issued permits for Afghans.¹⁰⁶⁸ Expanding access to third-country solutions is among the objectives of the GCR drafted in 2018.¹⁰⁶⁹ Afghans obtained the greatest number of sponsorship permits, with 8,300 in 2022; the Taliban's takeover is probably the main reason for the dramatic rise in permits from 2,000 in 2021.¹⁰⁷⁰ The numbers represent benefits from a third-country solution, which is not enough and looks symbolic, considering the more than 6 million internationally displaced refugees. However, the UNHCR has opened an alternative way for thousands of Afghan refugees with their affected families and communities by employing a complementary pathway, which can be improved.

Unlike the passive approach regarding the refugee issue in the 1990s mentioned above, OIC has played a more active role in the protection and seeking solutions for refugees in the 2000s, thanks to the multistakeholder approach of the GCR.¹⁰⁷¹ For instance, in December 2021, OIC member states established a humanitarian trust fund for Afghanistan under the auspices of the Islamic Development Bank to alleviate food insecurity in Afghanistan in collaboration with the UNHCR and other international actors.¹⁰⁷² After the Taliban's bans regarding fundamental rights of women like education and work, OIC and the International

¹⁰⁶⁸ 'Safe Pathways for Refugees II - OECD-UNHCR Study on Third-Country Solutions for Refugees: Admissions for Family Reunification, Education, and Employment Purposes between 2010 and 2019 - World | ReliefWeb' (5 May 2021) <<https://reliefweb.int/report/world/safe-pathways-refugees-ii-oecd-unhcr-study-third-country-solutions-refugees-admissions>> 17 and 25.

¹⁰⁶⁹ Refugees, 'Official Version – Draft 3 of the Global Compact on Refugees (4 June 2018)' (n 11).

¹⁰⁷⁰ 'OECD-UNHCR: Safe Pathways for Refugees IV' (*The Global Compact on Refugees* | UNHCR) <<https://globalcompactrefugees.org/about-gcr/resources/reports/oecd-unhcr-safe-pathways-refugees-iv>>13. accessed 24 June 2024.

¹⁰⁷¹ Organization of Islamic Cooperation, 'OIC General Secretariat and UNHCR Organize a Humanitarian Event on Global Refugee Forum and Training on "Emergency Preparedness and Response"' [2023] OIC General Secretariat and UNHCR Organize a Humanitarian Event on Global Refugee Forum and Training on "Emergency Preparedness and Response" <https://www.oic-oci.org/topic/ampg.asp?t_id=39863&t_ref=26730&lan=en>; Organization of Islamic Cooperation, 'OIC Participates in "Regional Perspective on Refugee Crisis" Symposium in New York' [2023] OIC Participates in "Regional Perspective on Refugee Crisis" Symposium in New York <https://www.oic-oci.org/topic/ampg.asp?t_id=39601&t_ref=26643&lan=en> 'OIC Ministerial Conference on Problems of Refugees in the Muslim World - Draft Working Document No. 1 - OIC Press Release' (*Question of Palestine*) <<https://www.un.org/unispal/document/auto-insert-196508/>>. accessed 24 June 2024.

¹⁰⁷² Anadolu Ajansi, 'OIC to Set up Humanitarian Trust Fund for Afghanistan' <<https://www.aa.com.tr/en/asia-pacific/oic-to-set-up-humanitarian-trust-fund-for-afghanistan/2451845>> accessed 24 June 2024.

Islamic Fiqh Academy (IIFA), a prominent Islamic organisation, have both stated that the prohibitions are against the goals of Islamic law and the consensus of the umma¹⁰⁷³ in the emergency meeting on 1 November 2023.¹⁰⁷⁴ The approach of the OIC here is very valuable to push the Taliban towards the UN human rights standards. Moreover, OIC can play a key role in international negotiations for the benefit of IDPs and refugees between authorities like the UN Security Council and the de facto government of the Taliban, which is not recognised by the UN.

The UN Security Council has taken measures against the Taliban regime and provided military and humanitarian support to replace the Taliban regime since 1996, as mentioned above. However, the Taliban takeover of the country following the ISAF and US troops' withdrawal demonstrates the failure to provide enough and organised international support for the reconstruction of the Afghan government as a state authority with all its institutions.¹⁰⁷⁵ Re-activation of the ISAF for Afghanistan by the UN Security Council cannot address the root causes, which are the Taliban regime itself, due to the reluctance of the international community to cooperate militarily with Afghanistan. In 2011, the Bonn Conference, focusing on the roadmap of cooperation beyond the international troop withdrawal in 2014, was not successful, because key player states like the US, Pakistan and Iran were reluctant to cooperate for the future of Afghanistan due to international affairs, interests and the cost of the war lasting decades.¹⁰⁷⁶ However, the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) was extended in March 2023, which is a positive note for IDPs, returnees and

¹⁰⁷³ “Umma: The whole community of Muslims bound together by ties of religion. The word is Arabic and means literally, ‘people, community’.” ‘Umma’ (*Oxford Reference*) <<https://www.oxfordreference.com/display/10.1093/oi/authority.20110803110601567>>. accessed 28 June 2024.

¹⁰⁷⁴ Radio Free Europe, ‘OIC Islamic Grouping “Emergency Meeting” Eyes Afghan Rights Situation, New Taliban Bans On Women (Radio Free Europe)’ <[https://sca.techmis.com/epub/2023/Jan/11/todaysbrief/index.html#page/epub_sca/SCA%20Morning%20Press%20Clips%20\(1-11-23\).1.04.html](https://sca.techmis.com/epub/2023/Jan/11/todaysbrief/index.html#page/epub_sca/SCA%20Morning%20Press%20Clips%20(1-11-23).1.04.html)>. accessed 14 June 2024.

¹⁰⁷⁵ ‘Timeline: The U.S. War in Afghanistan’ (n 993).

¹⁰⁷⁶ ‘Afghanistan: Post-Taliban Governance, Security, and U.S. Policy’ (*Refworld*) <<https://www.refworld.org/reference/countryrep/uscrs/2015/en/108828>43-44>>. accessed 24 June 2024.

Afghans struggling in the country's scarcity conditions.¹⁰⁷⁷ Moreover, the UN Security Council emphasised the need to support the Afghan people in addressing their immediate humanitarian needs and basic human needs, reducing life-saving support over time, and encouraging the international community to coordinate international engagement through resolutions 2615 (2021), 2664 (2022) and 2721 (2023).¹⁰⁷⁸ UNHCR has actively governed voluntary repatriation demands in collaboration with international cooperation under the Regional Refugee Response Plan (RRP) and Afghanistan's Humanitarian Response Plan (HRP), following the directions of the Afghanistan Priority Areas of Return and Reintegration (PARR).¹⁰⁷⁹

It is very challenging to run the Humanitarian-Development-Peace Nexus (HDPN), which is essential for a durable and sustainable voluntary repatriation, with a Taliban government that disregards UN standards. The Taliban's harassment of aid agencies from working in Afghanistan and forbidding women from UN work has led to a loss of donors, and the UN had to decrease funding requests by one billion dollars for Afghanistan, potentially affecting nine million Afghans' access to food aid.¹⁰⁸⁰ However, supporting HDPN for Afghanistan is essential so that returnees can stay in their own country permanently, and existing people do not need to seek asylum anymore. Only 51% of UNHCR's financial requirements (\$215.9 million) were funded by August 2024, predominantly by the US and the EU.¹⁰⁸¹ With limited funding and in an environment marked by active conflict, it is extremely challenging to meet the needs of food aid, safe drinking water, healthcare, and education; address acute water, sanitation, and hygiene (WASH) issues; and provide safe spaces, legal

¹⁰⁷⁷ Human Rights Watch (n 1043).

¹⁰⁷⁸ UNHCR, 'Afghanistan Priority Areas of Return and Reintegration (PARR) Factsheet for PD #13 Kabul, Central Region 2024' (*UNHCR Operational Data Portal (ODP)*) <<https://data.unhcr.org/en/documents/details/110904>>. accessed 24 June 2024.

¹⁰⁷⁹ *Ibid.*

¹⁰⁸⁰ UNHCR, 'Instability in Afghanistan' (n 1041).

¹⁰⁸¹ UNHCR, 'Afghanistan Funding Update - 2024' (*Global Focus*) <<https://reporting.unhcr.org/afghanistan-funding-update>>. accessed 24 June 2025.

support, psychosocial services, and long-term resilience initiatives.¹⁰⁸² Although humanitarian assistance can be applicable, achieving development and peace targets is blocked by the Taliban's de facto regime applications.

The Afghanistan case study demonstrates the practical limits of UNHCR's role in voluntary repatriation. Although UNHCR can facilitate return, monitor conditions, provide information to refugees, and support reintegration, it cannot by itself create the political stability, security guarantees, livelihood opportunities, or institutional capacity required for return to become genuinely sustainable. Afghanistan shows that where conflict persists, governance remains fragile, and development assistance is inconsistent, voluntary repatriation risks becoming a short-term movement of people rather than a durable solution. This highlights an important limitation in the voluntary repatriation framework: protection principles such as voluntariness, safety and dignity depend on conditions that extend beyond UNHCR's mandate and operational control. The Afghan experience therefore demonstrates that effective voluntary repatriation requires broader responsibility-sharing, long-term development investment, peacebuilding, rule-of-law reform, and coordinated support from states, international organisations and development actors. In this sense, Afghanistan confirms the central argument that voluntary repatriation cannot be treated merely as a refugee law mechanism; it must be embedded within a wider humanitarian-development-peace approach if return is to be lawful, meaningful and sustainable.

Therefore, providing effective international cooperation for Afghanistan under the control of the Taliban constitutes a complex case in terms of creating a permanent solution within the country. However, the Taliban arose when the international community ignored international responsibility sharing to provide sustainable voluntary repatriation for Afghan

¹⁰⁸² OCHA, 'Afghanistan Humanitarian Needs and Response Plan 2024 (December 2023) [EN/Dari/PS] | OCHA' (23 December 2023) <<https://www.unocha.org/publications/report/afghanistan/afghanistan-humanitarian-needs-and-response-plan-2024-december-2023-endarips>>. accessed 4 July 2024.

refugees in the 1990s, as analysed above. The case of Afghanistan also teaches the international community that neglected crises of this nature can lead to international political, economic, and social difficulties in addition to humanitarian ones.¹⁰⁸³ Hence, international cooperation on the Afghan refugee crisis is necessary to prevent worse scenarios and heal the current one.

4.3. A Review of the Voluntary repatriation: Afghanistan and Somalia

As discussed in Chapter 2, the UNHCR's role in enforcing ExCom Conclusions is crucial in establishing the legal parameters for voluntary repatriation.¹⁰⁸⁴ Accordingly, UNHCR has set some standards to make voluntary repatriation a durable and sustainable solution, as outlined in the 1996 Handbook and the 2004 Handbook, which will be analysed below. This analysis was conducted for situations where the voluntary return of refugees is promoted by the UNHCR, excluding cases where the UNHCR facilitates refugees' individual voluntary return decisions to their country of origin, based on their requests, and exercises their right to return despite ongoing root causes.¹⁰⁸⁵

Using the voluntary right to return to the country of origin mostly depends on the conditions in the country of origin, based on primarily addressing root causes creating refugees' lives or freedom to be threatened.¹⁰⁸⁶ According to the 1996 UNHCR handbook, the main standards to promote voluntary repatriation for mass exodus are regulated as "One is that a "fundamental change of circumstances" implies the consolidation, over time, of a process of stabilisation. The other is that the voluntary nature of the refugee's decision to repatriate constitutes the core element in promoting and facilitating repatriation."¹⁰⁸⁷ UNHCR's assessment regarding a lower threshold of change in the country of origin than cessation plays a key role in applying timely voluntary repatriation. Reducing the lower threshold to the point

¹⁰⁸³ Noor (n 990).77-78.

¹⁰⁸⁴ See Chapter 2.

¹⁰⁸⁵ 1951 Convention (n 1), art 33.

¹⁰⁸⁶ *ibid.*

¹⁰⁸⁷ UNHCR, *Voluntary Repatriation Handbook* (n 230) 2.2.

where improvements in root causes begin has led to early calls for voluntary repatriation. In conflict scenarios, beginning to address root causes is not enough to promote a voluntary repatriation programme, because peace cannot be stable only with a ceasefire, a change of government, UN sanction of military or humanitarian intervention, or weakening of the armed group fuelling the crisis. Takahashi asserts that for refugees to return home, a significant and lasting change in the country's human rights conditions is necessary, as any other condition would contradict refugee protection.¹⁰⁸⁸ Otherwise, premature voluntary return encouragement by the UNHCR could not only lead to refoulement but also initiate new refugee cycles.¹⁰⁸⁹

Early promotion of voluntary repatriation to Somalia and Afghanistan exemplifies these inevitable results, despite the differences in the scenarios. Both countries experienced a mass exodus of returns in the 1990s, which was declared the decade of repatriation by the UNHCR.¹⁰⁹⁰ The concept of the 1990s regarding voluntary repatriation prioritises voluntary repatriation as an ideal solution for refugees when it is durable because, by the end of the Cold War, refugees lost political importance for host and donor states.¹⁰⁹¹ An illustration of this stance in the cases of Somalia and Afghanistan was the (in)voluntary repatriation of millions. However, the condition of the country of origin was not fundamentally changed to make voluntary repatriation durable when voluntary repatriation was encouraged by the UNHCR and host states for both countries. On the Somalia side, after the fall of the state due to ongoing civil wars, the announcement of the UNOSOM peace keeping operation for the establishment of a safe zone in Somalia was deemed sufficient to encourage the voluntary return of refugees by the UNHCR and the host state Kenya.¹⁰⁹² Although a significant number of refugees were

¹⁰⁸⁸ Takahashi (n 24).

¹⁰⁸⁹ Richard Black and Khalid Koser, *The End of the Refugee Cycle? Refugee repatriation and Reconstruction* (Berghahn Books 1999).

¹⁰⁹⁰ Chimni, 'From Resettlement to Involuntary repatriation: Towards a Critical History of Durable Solutions to Refugee Problems' (n 13) 56.

¹⁰⁹¹ *Ibid* UN Doc. A/Res./39/169 (1994) and see 1.3.2.2.2. The Concept of the 1990s is discussed in Chapter 1 for more details.

¹⁰⁹² Hyndman (n 723).

repatriated in 1992-94 cross-border operations to Somalia, many returnees faced persecution and fled back to Kenya due to the failed protection of UNOSOM in the safe zone.¹⁰⁹³ On the Afghanistan side, spontaneous returns were supported with a pilot project of the UNHCR and Pakistan, after the withdrawal of the Soviet Union in 1989, which transformed large-scale repatriations supported by the 1993 tripartite agreement, after the change of post-Russian government in 1992.¹⁰⁹⁴ A large number of refugees were repatriated by the encouragement based on government change, whereas many of them preferred to stay in camps due to ongoing conflicts and instability in the country, and a new refugee wave started towards Pakistan after the Taliban takeover of Kabul in 1996.¹⁰⁹⁵

Therefore, neither the presence of the UNOSOM peacekeeping force in Somalia nor the change of government after the Soviet withdrawal from Afghanistan is meant to address the root causes of the refugee situation. At best, it should be evaluated as the beginning of the fundamental changes needed to provide stabilisation, at least for security and fundamental human rights. These early signs of addressing root causes in the country of origin are like a yellow light that can turn red or green at any time in conflict scenarios. Thus, the UNHCR needs a certain amount of time to fairly evaluate the conditions in the country of origin before encouraging refugees to voluntarily repatriate. However, state actors want to activate voluntary repatriation for refugees as soon as durable to uphold the legitimacy of the new government in the country of origin, terminate the protracted refugee burden and responsibility in host states, and reduce the assistance costs of donor states.¹⁰⁹⁶ This situation places pressure on UNHCR to fulfil its protection obligations to refugees.¹⁰⁹⁷ This is causing a new surge of refugees with

¹⁰⁹³ *Ibid.*

¹⁰⁹⁴ Colville (n 300).

¹⁰⁹⁵ Amnesty International, 'Refugees from Afghanistan: The World's Largest Single Refugee Group - Afghanistan | ReliefWeb' (16 November 1999) <<https://reliefweb.int/report/afghanistan/refugees-afghanistan-worlds-largest-single-refugee-group-0>>. accessed 4 July 2024.

¹⁰⁹⁶ Crisp, *No Solution in Sight: The Problem of Protracted Refugee Situations in Africa* (n 709).

¹⁰⁹⁷ Goodwin-Gill Guy S., June 1999, Closing Address Principles and Protection: Making it Work in the Modern World, in UNHCR and International Refugee Protection, Refugee Studies Programme Working Paper No. 2, University of Oxford, 6.

premature return programs.

The absence of binding international legal obligations on voluntary repatriation and effective enforcement mechanisms for governments and the UNHCR is a primary factor contributing to their intolerance regarding the repatriation of refugees.¹⁰⁹⁸ The principle of non-refoulement, which is the binding rule, requires a fundamental change of conditions creating persecution and voluntariness of refugees to return,¹⁰⁹⁹ could not stand strong enough to prevent states' wishes for early repatriation in practice. The absence of an effective enforcement mechanism outside the European Court of Human Rights opens the way for overburdened host states to bend this obligation, as analysed under Chapter 2. Therefore, host states intend to start a voluntary return mechanism with the proactive involvement of the UNHCR to build negotiations between host and origin states.¹¹⁰⁰ With the effect of pressure created by donor states, host states, and the country of origin, the UNHCR generally starts promoting voluntary repatriation before addressing root causes, as seen in the examined case studies.

As explored in Chapter 3, the duration of addressing root causes in the 21st century is more complex than ever. The centre of the refugee crisis has primarily moved to non-Western and/or Muslim developing states, and most crises have been caused by civil conflicts, with the average duration of wars being longer than international conflicts since the end of the Cold War.¹¹⁰¹ Therefore, developing host states get less help from developed donor states to manage the protection of refugees in their territories, such as Pakistan and Kenya, while developed states have reduced their resettlement quotas to share responsibility for the refugee crisis.¹¹⁰² Enduring the burden and responsibilities of the prolonged refugee crisis, fuelled by decades-

¹⁰⁹⁸ See Chapter 2.

¹⁰⁹⁹ Goodwin-Gill, McAdam and Dunlop (n 10); Zieck, 'Reimagining Voluntary repatriation' (n 29).

¹¹⁰⁰ Zieck, 'Voluntary repatriation: Paradigm, Pitfalls, Progress' (n 27).

¹¹⁰¹ See Chapter 3, "When UNHCR was established, the refugee situation had arisen from an international war, whereas almost all recent refugee situations have arisen due to civil wars. Historically, on average, international wars have lasted only six months. In contrast, the average civil war has been much longer, with estimates ranging from seven to fifteen years." Alexander Betts and Paul Collier, 'Refuge: Rethinking Refugee Policy in a Changing World' (OUP 2017) 77.

¹¹⁰² See Chapter 3.

long civil conflicts in the country of origin, leads host states and donor states to prompt refugees to return at the slightest improvement in the country of origin, as the only applicable solution for these states. However, providing peace and stability in most of the country is not straightforward and generally takes years for complex civil conflicts, which is a growing problem of the 21st century that will be explained in the following paragraphs.

Long-lasting civil conflicts not only create social, financial and security burdens and responsibilities for the protection of large numbers of protracted refugees in neighbouring states but also have some global effects, such as international terrorism, AIDS, hard drug cultivation and trafficking,¹¹⁰³ And smuggling and human trafficking. Since the end of the Cold War, the UN Security Council has expanded the scope of its rights of intervention to cover a wider range of situations under Chapter VII of the UN Charter.¹¹⁰⁴ For instance, the obstruction of humanitarian assistance in Bosnia-Herzegovina¹¹⁰⁵, the human rights violations of the civilian population and war crimes in the former Yugoslavia¹¹⁰⁶ and Rwanda¹¹⁰⁷, violent overthrow of democracy in Haiti¹¹⁰⁸, flow of refugees from Iraq¹¹⁰⁹ and Haiti¹¹¹⁰, suppression of acts of international terrorism in Libya¹¹¹¹, drug trafficking, and environmental hazards in Iraq¹¹¹² and Cambodia.¹¹¹³ Thus, forced displacement of population has also been assessed by the UN Security Council as posing a threat to global peace and security, or as contributing to one.¹¹¹⁴ Although the effectiveness of the operations of the UN Security Council is debatable and the topic of other research, the post-Cold War era is crucial for obtaining a peace response from the

¹¹⁰³ Paul Collier and others, (n 549) 41.

¹¹⁰⁴ Lois E Fielding, 'Taking a Closer Look at Threats to Peace: The Power of the Security Council to Address Humanitarian Crises' (1995) 73 U. Det. Mercy L. Rev. 551.

¹¹⁰⁵ U.N. Doc. S/RES/770 (1992); U.N. Doc. S/RES/787 (1992).

¹¹⁰⁶ U.N. Doc. S/RES/808 (1993).

¹¹⁰⁷ U.N. Doc. S/RES/955 (1994); U.N. Doc. S/RES/827 (1993).

¹¹⁰⁸ U.N. Doc. S/RES/940 (1994).

¹¹⁰⁹ U.N. Doc. S/RES/688 (1991).

¹¹¹⁰ U.N. Doc. S/RES/841 (1993).

¹¹¹¹ U.N. Doc. S/RES/731 (1992).

¹¹¹² U.N. Doc. S/RES/687 (1991).

¹¹¹³ U.N. Doc. S/RES/792 (1992).

¹¹¹⁴ Goodwin-Gill, McAdam and Dunlop (n 10) 5.

international community against the civil wars that led to many people being forcibly displaced both inside and outside of their country.

In this sense, both in Somalia and Afghanistan, the UN Security Council has taken some kind of action to support peace, reconstruction of the state, and humanitarian assistance, which are essential components of the fundamental changes in the country of origin to promote voluntary repatriation, as mentioned above. Moreover, the fact that the UN Security Council can intervene in war zones for security or humanitarian reasons is an indication that the international community has taken a step towards solving the root causes of forced displacement. However, it does not mean that the existence of the military forces of the UN is enough to provide peace in conflict zones. The reasons why an end cannot be put to the causes creating refugees are diverse within the dynamics of any armed conflict; however, this research concentrates here on the fundamental ones that are relevant to many armed conflict zones, by focusing on Somalia and Afghanistan.

The UN Security Council cannot make uniform decisions for every situation that produces refugees due to the consensus-based voting system of the UN Security Council, which consists of 5 members.¹¹¹⁵ The aforementioned resolutions of the Security Council empowered it to intervene during times of crisis to preserve peace and save lives, as long as the US, UK, and France exhibited political will and China and Russia did not protest.¹¹¹⁶ Therefore, the UN Security Council becomes limited and often dysfunctional in its ability to establish peace in many situations where the interests of the five major countries conflict.¹¹¹⁷, such as in Ukraine and Syria today. Furthermore, the UN's lack of a standing army makes it dependent in many ways on the support of member states that will contribute to the formation of the army when it

¹¹¹⁵ Mills (n 320).

¹¹¹⁶ Richard B Lillich, 'The Role of the UN Security Council in Protecting Human Rights in Crisis Situations: UN Humanitarian Intervention in the Post-Cold War World' (1995) 3 *Tul. J. Int'l & Comp. L.* 14-15.

¹¹¹⁷ Christiane Ahlborn, 'The Normative Erosion of International Refugee Protection through UN Security Council Practice' (2011) 24 *Leiden Journal of International Law* 1009.

decides to impose military or humanitarian sanctions. Therefore, how continuously the states that support the army can provide this assistance is directly proportional to how much the crisis harms the interests of the many countries which are powerful enough to provide support.

During the same period, in the early 1990s, when a decision of the UN Security Council was made to intervene in Somalia, which was suffering from a civil war, this situation progressed more slowly for Afghanistan. Furthermore, while the aid given to Somalia and the solution to the refugee crisis resulted in the repulsion of UNOSOM by the warring factions, causing serious victimisation for many people, including returnees, this was not as serious a case for Iraqi refugees who were settled in a safe zone near the border of Turkey.¹¹¹⁸ When the Gulf crisis erupted in Iraq, many of the donor states for Afghan refugee camps in Pakistan reduced their support, and led UNHCR to promote voluntary repatriation to Afghanistan, which was an ongoing civil war. However, internationally ignoring civil conflicts provides a haven outside the control of state authority for international terrorist organisations.¹¹¹⁹ Due to the unresolved civil wars and absence of state authority since the 1990s, Al-Shabaab in Somalia and the Taliban in Afghanistan, both of which are linked with Al-Qaeda, have become a threat not only to the whole country but also to international peace, affecting other states. Therefore, the peace-making, building, and keeping decisions that could not be taken by the Security Council in a timely or effective manner give rise to an increase in root causes chronically. Al-Shabaab has continued to force people into internal and international displacement from Somalia for more than twenty years, despite ineffective measures by the UN Security Council.¹¹²⁰ The Taliban takeover of the governance of Afghanistan again after the withdrawal of the U.S. forces supporting the interim government.¹¹²¹ At this point, it seems that both

¹¹¹⁸ Mills (n 320).

¹¹¹⁹ Collier and others, (n 549) 3.

¹¹²⁰ 'Conflict With Al-Shabaab in Somalia' (*Global Conflict Tracker*) <<https://cfr.org/global-conflict-tracker/conflict/al-shabab-somalia>>. accessed 4 July 2024.

¹¹²¹ 'Timeline: The U.S. War in Afghanistan' (n 993).

countries have been pushed towards a process of deadlock to address root causes.

Today, the UN Security Council is far less likely to make peace-making or building decisions due to the internationally striking interests of the permanent member states than it was in the 1990s. Therefore, as explained in Chapter 1, in practice, UNHCR promotes voluntary repatriation based on the guarantees provided by the country of origin and to protect refugees from the consequences of the illegal application of the cessation clause and push-back policies that breach the fundamental human rights of refugees by host states.¹¹²² Both Pakistan and Kenya follow similar pushing policies like closing refugee camps, harassment and ill-treatment of refugees by officers, depriving them of basic human rights like work, health, shelter, and education, and rejecting legal localisation for protracted refugees staying in host states for more than twenty years, as discussed in detail above. The consent of refugees regarding repatriation is not based on their free choice and should not be influenced by pull and push factors, as outlined in the 1996 Handbook.¹¹²³

Therefore, refugees often prefer to return to their country of origin because they do not have any other option for their future. Both Afghanistan and Somalia experienced mass exodus repatriation programmes as a result of a tripartite agreement in the 2000s. However, both tripartite agreements lack fundamental changes that provide physical, social, and financial safety for returnees in the country of origin, unlike the handbook regulations.¹¹²⁴ Moreover, they do not include details regarding the reintegration process or opportunities for returnees in the country of origin, which would provide voluntariness for the repatriation of refugees, unlike the legal requirement for voluntariness in the repatriation of refugees.¹¹²⁵ Uncertainty over how to interpret the lower threshold for fundamental changes has led to the erosion of the concept

¹¹²² Loescher (n 173); Zieck, 'Reimagining Voluntary repatriation' (n 29).

¹¹²³ UNHCR, *Voluntary Repatriation Handbook* (n 230).

¹¹²⁴ *Ibid*; UNHCR, *Repatriation and Reintegration Handbook* (n 229).

¹¹²⁵ 1951 Convention (n 1), art 33.

of voluntary return for mass exodus, as similarly warned by Takahashi in 1997.¹¹²⁶ In practice, refugees are part of organised voluntary repatriation programmes to avoid being more vulnerable in their country of origin and to benefit from the humanitarian assistance and protection provided by the UNHCR in their country of origin.¹¹²⁷ In other words, they prefer to return because they do not have the right to remain in line with international human rights standards, or they reject returning.

On the one hand, it is not realistic to provide individual counselling services to ensure that the decision of repatriation is based on a well-informed, free choice of refugees in mass exodus scenarios due to the limited capacity of the UNHCR and a large number of refugees fleeing due to the same reason.¹¹²⁸ Considering the standards established by the UNHCR in its 1996 Handbook, in practice, waiting for stability of fundamental changes in the country of origin and voluntariness based on well-informed, free choice of refugees cannot be applicable in both cases, Somalia and Afghanistan, as well as many others. On the other hand, after returning, staying in the country of origin for a long time might not be possible because of the unstable security, scarcity of food, water, shelter and jobs, absence of self-reliance, rule of law, and effective state institutions like hospitals, police, schools, courts, environmental disasters and gender or ethnic-based harassments like in Somalia and Afghanistan. It demonstrates that the realisation of the humanitarian, development, and peace nexus is essential to make repatriation voluntary, durable, and sustainable for most of the refugees. The purpose and existence of refugee law become questionable in cases where a return is not durable, as seen in the Afghanistan and Somalia case studies. The lack of sustainable and sufficient resources to effectively ensure reintegration, reconstruction and rehabilitation after return gives rise to recycling refugee issues from both Somalia and Afghanistan.

¹¹²⁶ Takahashi (n 24).

¹¹²⁷ Hammond (n 326).

¹¹²⁸ Mathew (n 324) 144.

As discussed in Chapter 5 regarding the return stance, the GCR was developed to overcome the problem of international solidarity in the refugee crisis through the HDPN approach.¹¹²⁹ Moreover, the GCR aims to ensure the voluntary repatriation of refugees by activating effective international responsibility and burden sharing through an innovative approach, including multiple actors and platforms.¹¹³⁰ However, the soft legal nature of the GCR, which did not obligate states to contribute, was cited by many scholars as the reason for its failure to achieve its objectives.¹¹³¹ Although the non-legally binding character of the GCR has a restrictive effect on pledges, it provides a valuable step to close global cooperation with the UNHCR to achieve the 4Rs programmes of sustainable repatriation. The important point is how to benefit from this useful step for an effective voluntary repatriation solution in the country of origin. Developing some themes on inapplicable voluntary repatriation for mass exodus in practice can ease the focus point of pledges.

In the scenarios, seeking asylum becomes another form of violence for refugees due to the policy of host governments, as mentioned above, creating a safe zone for returnees within the country of origin before the promotion of the repatriation for mass exodus can be a theme which is open to development in GRF and support platforms, considering the learnings from the mistakes made in the 1990s. These zones are not intended to prevent those who wish to seek asylum abroad; they should be established as a safe shelter to which refugees who are currently prevented from seeking asylum by the host state can return and be effectively protected. It can be established as a temporary, limited environment near the border to allow for the gradual relocation of refugees and camps in host states, along with all their facilities and capacities for assistance, before promoting voluntary relocation. It can provide adequate protection for

¹¹²⁹ Türk and Garlick, (n 572)

¹¹³⁰ Gilbert, 'Comment on Draft 1 GCR: The International Law of Voluntary Repatriation' (n 386).

¹¹³¹ James C Hathaway, 'The Global Cop-Out on Refugees' (2019) 30 *International Journal of Refugee Law* 591; BS Chimni, 'Global Compact on Refugees: One Step Forward, Two Steps Back' (2019) 30 *International Journal of Refugee Law* 630; Pijnenburg, (n 615).

returnees in their state while easing pressure on host states. On the one hand, funds for assisting refugees in host states can be transferable to the country of origin to establish a sustainable environment, including schools, health centres, and working initiatives.¹¹³² On the other hand, returnees in safe zones can play an effective role in building state authority and peace in their country of origin, owing to the self-reliance of facilities in safe zones over time. Therefore, a safe zone established for making repatriation durable for returnees can contribute to the sustainability of the country of origin.

There are numerous challenges associated with establishing and maintaining safe zones during conflict or post-conflict situations, as mentioned above. The GCR is therefore a useful tool to take measures with the support of multi-stakeholders from the ministerial level of states in GRF, as well as regional and local actors through supporting platforms. Effective use of the GCR platforms can enable contributions regarding issues of voluntary repatriation by relevant actors within the HDPN. Moreover, effectively providing reintegration, reconstruction, and rehabilitation of refugees in their country of origin, through global cooperation, legally strengthens the soft standards of return and prepares the groundwork for customary international law.

Conclusion

Analysing the state practices of Afghanistan and Somalia is intended to draw lessons for the reform of the voluntary repatriation regime, demonstrating that repatriation cannot be assessed solely by the number of returnees, but must be evaluated by whether return is genuinely voluntary, legally safe, practically sustainable and supported by conditions of security, reintegration, reconstruction and long-term peace in the country of origin. As explored

¹¹³² Geoff Gilbert and Anna Magdalena Rüsçh, *Creating Safe Zones and Safe Corridors in Conflict Situations: Providing Protection at Home or Preventing the Search for Asylum?* Policy Brief 5, The Andrew & Renata Kaldor Centre for International Refugee Law, June 2017, <https://www.kaldorcentre.unsw.edu.au/sites/kaldorcentre.unsw.edu.au/files/Policy_brief_Creating_safe_zones_and_safe_corridors.pdf> 3, accessed 4 July 2024.

above, there are many similarities and contrasts between the Somalia and Afghanistan cases about the use of voluntary repatriation as a potential durable solution to their humanitarian crisis. However, complex humanitarian crises, such as those in Somalia and Afghanistan, are of a magnitude that cannot be handled solely through a voluntary return program created in collaboration with the country of origin, host states, and the UNHCR. These crises are linked to numerous causes that prevent refugees from voluntarily returning to their own country and prevent returnees from staying there. These causes can only be resolved with the support of the United Nations as a whole, through cooperation among all its organs, member states, and relevant stakeholders. Therefore, establishing a sustainable and effective voluntary repatriation solution for most refugees requires integrating the humanitarian-development-peace nexus (HDPN) into the stages of the voluntary repatriation process.

Comparing and combining the findings of case studies considering the HDPN, for all standards and components established by the UNHCR, offers a valuable foundation for reintroducing voluntary repatriation as a sustainable and effective solution for the refugee crisis. On the one hand, applying voluntary repatriation according to the standards set by UNHCR handbooks to a mass exodus looks practically very challenging. All over, the soft law nature of standards, harsh pushing policies of host states, pressure on the UNHCR regarding promoting voluntary repatriation, short interpretation of the lower threshold of the changes in the country of origin by the UNHCR, misinterpretation of the cessation clause by host states, and enjoying strong sovereign rights of states in their territory against refugees are killing the voluntariness principle in practice. On the other hand, all the reasons above left repatriation as the only choice for refugees. Therefore, there is a need to improve repatriation as a sustainable and durable solution for refugees.

Taken together, this research suggests that raising themes on voluntary repatriation through the use of the GCR's facilities enables multi-stakeholders of the UNHCR to contribute

issues related to repatriation on platforms such as GRF and supporting platforms. Establishing safe zones in the country of origin for returnees can be a significant remedy for the deadlock position of voluntary repatriation, especially in cases of mass exodus. As voluntary repatriation is recognised as the preferred durable solution, but remains practically unavailable because the country of origin continues to suffer from insecurity, weak governance, lack of services, conflict or risk of persecution. In such circumstances, refugees may remain in prolonged displacement because return is unsafe, while local integration and resettlement are also limited. On the one hand, it can ease pressure on host states. On the other hand, the country of origin becomes the only focus point for support by the international community under HDPN. Moreover, a sustainable life, which includes material, legal, and financial safety of returnees in safe zones, can reactivate the voluntariness of refugees to return under very tough conditions in host states. Unfortunately, a state in conflict or post-conflict is far from creating ideal conditions for returnees due to the war-torn institutional, social, material, and financial conditions in the country of origin.

The comparison between Somalia and Afghanistan demonstrates that voluntary repatriation operates very differently depending on the political, security and developmental conditions in the country of origin. In both cases, return was promoted as a durable solution and was supported by UNHCR, host states and international actors. However, both examples show that formal voluntariness is not enough to make repatriation genuinely safe or sustainable. In Afghanistan, large-scale returns were often encouraged despite ongoing conflict, weak governance, limited livelihood opportunities, and fragile reintegration capacity. Similarly, in Somalia, repatriation from Kenya took place against a background of insecurity, limited state capacity and uneven conditions of return. These cases, therefore, show that voluntary repatriation cannot be assessed solely by asking whether refugees agreed to return; it must also be assessed by examining whether return occurs in safety and dignity and whether returnees

can rebuild their lives upon arrival.

Considering the principal elements and components of voluntary repatriation clarified in Chapter 2, the synthesis of the two case studies is that voluntary repatriation remains legally and practically limited when it is treated as a narrow refugee law mechanism. Afghanistan and Somalia both reveal a gap between the normative framework of voluntary repatriation and the realities of implementation in protracted displacement situations. UNHCR can facilitate, monitor and support return, but it cannot alone create peace, security, employment, infrastructure or effective state institutions. Therefore, these case studies add value by showing that successful voluntary repatriation requires a broader humanitarian-development-peace approach, genuine responsibility-sharing, long-term reintegration support, and stronger cooperation among countries of asylum, countries of origin, UNHCR, development actors, and donors. Thus, Somalia and Afghanistan confirm the central argument that voluntary repatriation can function as a durable solution only when legal principles are supported by political stability, development resources, and peacebuilding conditions.

Therefore, the establishment of a safe zone through cooperation with the country of origin not only provides adequate protection but also creates a significant link between the government and returnees, enabling them to work together to build a state and promote peace. Effective humanitarian assistance, development initiatives, and a peaceful environment that have started in the safe zone have the potential to spread throughout the country by helping returnees achieve self-reliance and self-confidence, thereby improving conditions and raising state authority through workable institutions with international support. Furthermore, a safe zone is a convenient field to improve measures for the present effective version to prevent obstacles by drawing lessons from the past.

To sum up, the repatriation of mass exoduses in Somalia and Afghanistan cases demonstrates that voluntary repatriation has become dysfunctional, but it remains the only

sustainable option for mass exodus scenarios. Therefore, a theme similar to a safe zone within the HDPN, as suggested in this research, can provide a sustainable and effective environment for building sustainable and durable repatriations for most refugee issues today.

Chapter 5. The Global Compact on Refugees (GCR) and Voluntary Repatriation

Introduction

Voluntary repatriation has historically been regarded as the most desirable and ideal solution among the traditional durable solutions in international refugee law, alongside local integration in the host state and resettlement to a third country.¹¹³³ However, previous chapters demonstrate that the idealisation and desirability of voluntary repatriation do not make it effectively applicable today. As highlighted in Chapter 2, there is a legal gap regarding voluntary repatriation under international refugee law. Apart from the principle of non-refoulement and related fundamental human rights such as the right to life, the right to asylum, and the right to return, the legal framework of voluntary repatriation relies on soft-law principles from UNHCR, which, while normatively important, are not sufficiently legally enforceable. Hard law would not automatically make voluntary repatriation fully enforceable, since international law often suffers from weak implementation even where obligations are formally binding. However, converting key voluntary repatriation standards into binding legal obligations would still strengthen normative clarity, institutional accountability and the legal basis for challenging premature, coerced or unsustainable returns. Moreover, the limitations of the UNHCR as an international institution prevent it from overcoming this problem at the institutional level.¹¹³⁴

Additionally, Chapter 3 demonstrates that prolonged armed conflicts and insufficient international solidarity leave refugees in prolonged limbo, frequently without sustainable

¹¹³³ Goodwin-Gill, 'The Lawyer and the Refugee' (n 518); See Chapter 1.

¹¹³⁴ See Chapter 1.

options for either repatriation or alternative durable solutions. Therefore, promoting premature voluntary repatriation might be the only option for host states facing economic, political, and social pressures. As argued in the previous chapter, this dual deadlock threatens not only the credibility of voluntary repatriation as a legal and practical option but also the foundation of the international refugee protection regime. Neither repatriation of refugees to their country of origin can become durable, nor is international protection for refugees in host states sufficient today.

Recognising the current deadlock in the international refugee protection system, the international community adopted the New York Declaration for Refugees and Migrants (New York Declaration) in 2016, which acknowledged the urgent need for more equitable and predictable mechanisms to respond to global displacement.¹¹³⁵ International responsibility and burden sharing were discussed as essential instruments to be addressed in the challenges of world refugees. The outcome was the adoption of the GCR in 2018, endorsed by the vast majority of UN member states. The GCR sets out four primary objectives: '(i) Ease the pressures on host countries; (ii) Enhance refugee self-reliance; (iii) Expand access to third-country solutions; and (iv) Support conditions in countries of origin for return in safety and dignity'.¹¹³⁶ As a non-binding international framework, the GCR is an innovative attempt to reinvigorate international cooperation and enhance the prospects for durable solutions, including voluntary repatriation.

Therefore, this chapter explores whether the GCR has the potential to meaningfully improve the prospects for voluntary repatriation under international law. Specifically, it investigates whether the GCR addresses the legal, institutional, and political barriers of the 21st century refugee phenomenon, previously identified and whether it offers concrete mechanisms

¹¹³⁵ United Nations General Assembly (UNGA), New York Declaration (n 33) para. 3, Annexe I para 9 and so on.

¹¹³⁶ GCR (n 11), para 7.

to support durability and sustainability and to ensure returns are truly voluntary, safe, and dignified. On the one hand, findings will demonstrate to what extent the GCR meet the need for a comprehensive legal approach, establishing a solidarity obligation for effective voluntary repatriation, which is underlined as essential in Chapter 3. On the other hand, Chapter 4 provides a critical foundation for Chapter 5, which analyses case studies to assess the GCR's effectiveness in practice. Furthermore, critical evaluation of the GCR to provide effective voluntary repatriation with an international law perspective also serves as a bridge to the thesis's main research question: how durable and sustainable voluntary repatriation can be realised in the 21st century for most refugee communities under international law?

Despite its significance, academic research focusing specifically on voluntary repatriation within the GCR framework remains limited. Although voluntary repatriation is briefly referenced in many studies dealing with the GCR¹¹³⁷ and GCR's evaluation for some voluntary repatriation examples,¹¹³⁸ few engage in a detailed critical analysis. Notably, Perry and Schwartz provide a focused examination of voluntary repatriation under the GCR in 2019.¹¹³⁹ Including existing limited resources, this chapter of the thesis investigates the GCR with an emphasis on voluntary repatriation. Hence, it offers an in-depth analysis of the GCR's potential to enhance voluntary repatriation, contributing substantively to the literature.

Accordingly, this chapter proceeds in three parts. First, it introduces the GCR, considering its provisions and the new scope for international burden- and responsibility-sharing relevant to voluntary repatriation. Second, it assesses the legal nature of the GCR, particularly in light of its non-binding nature and evaluates its implications for accountability

¹¹³⁷ Gillian D Triggs, Patrick C J Wall, 'The Makings of a Success': The Global Compact on Refugees and the Inaugural Global Refugee Forum, *International Journal of Refugee Law*, Volume 32, Issue 2, June 2020, 283–339.

¹¹³⁸ Constant, Louay, Shelly Culbertson, Jonathan S. Blake, Mary Kate Adgie, and Hardika Dayalani, *In Search of a Durable Solution: Examining the Factors Influencing Postconflict Refugee Returns*, RAND Corporation, RR-A1327-1, 2021. https://www.rand.org/pubs/research_reports/RRA1327-1.html, accessed 4 July 2024.

¹¹³⁹ Jocelyn Perry and Stephanie Schwartz, 'The Global Compact on Refugees Misses the Mark on Refugee Return' (21 February 2019) <<https://rli.blogs.sas.ac.uk/2019/02/21/the-global-compact-on-refugees-misses-the-mark-on-refugee-return/>> accessed 23 August 2020.

and state compliance under both hard and soft law regimes. Third, the chapter analyses the practical and legal opportunities and challenges the GCR presents for improving voluntary repatriation, identifying both potential progress and critical gaps. A concluding section critically summarises the findings and reflects on the GCR's overall potential to advance voluntary repatriation within international refugee law.

5.1. Evaluating Voluntary Repatriation through the Lens of the GCR

The GCR is one of the latest resources in international refugee law, focusing on the main challenges of international refugee issues, aiming for effective voluntary repatriation, and is agreed upon by most world states. Moreover, international burden- and responsibility-sharing is the cornerstone of the GCR, which is essential for sustainable voluntary repatriation as mentioned under Chapter 3. Therefore, this section introduces GCR with the lens of voluntary repatriation. It seeks a response to two critical questions, respectively: First, to what extent GCR legally improve the legal framework of voluntary repatriation, and second, how the new scope created by the GCR works for the durability and sustainability of voluntary repatriation.

To engage with the first question above, the GCR explicitly aligns itself with the principles of the Humanitarian–Development–Peace Nexus (HDPN), reflecting a significant shift in the international approach to refugee responses.¹¹⁴⁰ Traditionally, refugee protection regimes and repatriation have been compartmentalised across distinct humanitarian, development, and peacebuilding layers, often resulting in fragmented, short-term interventions, as mentioned under Chapter 1 in practice.¹¹⁴¹ The GCR challenges this paradigm by advocating for a more integrated, multi-stakeholder approach, consistent with the HDPN, to enhance the sustainability and effectiveness of responses to forced displacement. Therefore, this paradigm change of the GCR in international refugee law is a compulsory need for the durability and

¹¹⁴⁰ GCR (n 11), para 8.

¹¹⁴¹ See Chapter 1.

sustainability of voluntary repatriation as defended under Chapter 2.¹¹⁴² At its core, the GCR seeks to promote complementarity between humanitarian relief, development planning, and peacebuilding efforts, as mentioned under para 8 and 9 regarding prevention and addressing root causes in the country of origin. This integrated vision is most evident in its emphasis on early engagement of development actors, the inclusion of returnees in national systems, and the creation of conditions favourable to voluntary repatriation and post-conflict recovery. Therefore, this attitude of GCR supports the main argument of the thesis, which is the need to implement a comprehensive legal approach based on HDPN for durable and sustainable voluntary repatriation.

However, the GCR does not seek to address the root causes, which are necessary to create secure environments in countries of origin for return, instead appropriately delegates that responsibility to UN agencies tasked with peacebuilding and international security.¹¹⁴³ In GCR, “all states and relevant stakeholders are called on to tackle the root causes of large refugee situations, including through heightened international efforts to prevent and resolve conflict; to uphold the Charter of the United Nations, international law, including international humanitarian law, as well as the rule of law at the national and international levels.”¹¹⁴⁴ It is a general cooperation call with the UN Security Council that constitutes the sole internationally recognised legal mechanism to establish the necessary conditions for voluntary repatriation, rather than a specific and concrete roadmap for addressing root causes. Therefore, actions that can be taken by all states and relevant stakeholders to address root causes are not clear, considering the inefficiency of the UN Security Council in preventing or resolving conflicts. As demonstrated by voluntary repatriation cases from the 1990s, detailed in Chapter 1, and further examined in relation to Somalia and Afghanistan in the subsequent chapter, the UNSC

¹¹⁴² See Chapter 2.

¹¹⁴³ Perry and Schwartz (n 1139).

¹¹⁴⁴ GCR (n 11), para 9.

operates within a contested framework characterised by structural inequities in representation, the exercise of veto power, challenges in accountability, and patterns of inconsistent engagement, all of which restrict its capacity.¹¹⁴⁵ Moreover, as noted in Chapter 3, one of the main obstacles to contemporary armed conflicts is that they usually consist of complex and prolonged civil wars, which complicate and restrict the UN Security Council from taking action.¹¹⁴⁶ Although an evaluation of the UN Security Council's capacity to ensure international peace in the 21st century falls outside this thesis's scope, it is worth briefly referencing above to demonstrate the limitations and ambiguity of the GCR in addressing the root causes for voluntary repatriation.

When assessed from an international law perspective, the GCR's approach to voluntary repatriation is grounded in the existing international refugee law framework, including treaty law, particularly the 1951 Refugee Convention, customary international law, especially the principle of non-refoulement, and relevant soft-law instruments, such as UNGA Resolutions and UNHCR EXCOM Conclusions.¹¹⁴⁷ Additionally, it follows the prioritised hierarchy of the UNHCR for durable solutions and introduces voluntary repatriation as a preferred solution for the majority of refugee situations.¹¹⁴⁸ Prioritising and generalising repatriation as the desirable solution for refugees might remind us of past forced repatriation examples in Chapter 1.¹¹⁴⁹ GCR explains its holistic approach as "It is grounded in the international refugee protection regime, centred on the cardinal principle of non-refoulement, and at the core of which is the 1951 Convention and its 1967 Protocol."¹¹⁵⁰ Therefore, all of the international law on which the GCR is built, especially the principle of non-refoulement, prevents states from

¹¹⁴⁵ See for more information, Sebastian Von Einsiedel, David M Malone and Bruno Stagno Ugarte, *The UN Security Council in the 21st Century* (Lynne Rienner Boulder, CO 2015).

¹¹⁴⁶ See Chapter 3.

¹¹⁴⁷ GCR (n 11), para 5.

¹¹⁴⁸ *Ibid*, para 87.

¹¹⁴⁹ See Chapter 1.

¹¹⁵⁰ *Ibid*.

implementing arbitrary mandatory return policies in the framework of the GCR. Thus, the GCR not only secures legal and political achievements regarding the strong content of voluntary repatriation but also reinforces this content within it. The GCR has two components, consisting of its second and third parts, respectively: The Comprehensive Refugee Response Framework (CRRF) and the Programme of Action, which strives to reinforce the CRRF and ease its implementation.¹¹⁵¹

In the New York Declaration, UNHCR was tasked to implement the CRRF for the purpose of providing more sustainable and predictable support for host states and refugees.¹¹⁵² The CRRF focuses on the problems of large-scale displacements and other complex situations that are not solved by the existing refugee system.¹¹⁵³ The CRRF was specially designed based on past good practices and tested approaches to establish fairer responsibility-sharing by means of different and special contributions of states and international and non-governmental actors.¹¹⁵⁴ The process of establishing the GCR was based on experiences that drew upon the implementation of the CRRF in 15 states and regional refugee situations.¹¹⁵⁵ The CRRF focuses on the right place where it is required: support for refugees and host states, financial inclusion, and providing enabling environments, self-reliance and engagement with development actors.¹¹⁵⁶ It includes fairer responsibility-sharing for states that host numerous refugees during a generally prolonged situation, in addition to having a serious basis of policy, law and effective practice that has been improved since the earliest days of the UN.¹¹⁵⁷

The GCR formalises the voluntary repatriation on the related three criteria: "the

¹¹⁵¹ United Nations High Commissioner for Refugees, 'Comprehensive Refugee Response Framework' (UNHCR) <<https://www.unhcr.org/comprehensive-refugee-response-framework-crrf.html>> accessed 6 July 2019; Rebecca Dowd and Jane McAdam, 'International Cooperation and Responsibility-Sharing To Protect Refugees: What, Why And How?' (2017) 66 *International and Comparative Law Quarterly* p 864-867.

¹¹⁵² CRRF (62); Türk (n 340) 577; Dowd and McAdam (n 37) 889.

¹¹⁵³ Türk and Garlick (n 23) 674.

¹¹⁵⁴ *Ibid.*

¹¹⁵⁵ Türk (n 360) 577.

¹¹⁵⁶ Betts A, 'The Global Compact on Refugees: Towards a Theory of Change?' (2019) 30 *International Journal of Refugee Law* 623, 625.

¹¹⁵⁷ Türk (n 360) 577; Türk and Garlick, (n 572) 674.

overriding priorities are to promote the enabling conditions for voluntary repatriation in full respect for the principle of nonrefoulement, to ensure the exercise of a free and informed choice and to mobilise support to underpin safe and dignified repatriation."¹¹⁵⁸ Accordingly, state parties committed to supporting conditions of the country of origin to address root causes owing to the responsibility of international cooperation, not forcing refugees to return against their will where they can face persecution as part of the respecting principle of non-refoulement, guarantee for the fulfilment of the safe and dignified voluntary repatriation as a result of a free and informed choice in line with the ExCom Conclusions and 1996 UNHCR's handbooks.¹¹⁵⁹ Moreover, CRRF builds a sustainable voluntary repatriation framework with a protective way for refugees in line with the 4Rs approach of the 2004 UNHCR handbook.¹¹⁶⁰ "To ensure sustainable return and reintegration, States, United Nations organisations and relevant partners would:

- (a) Recognise that the voluntary nature of repatriation is necessary as long as refugees continue to require international protection, that is, as long as they cannot regain fully the protection of their own country;
- (b) Plan for and support measures to encourage voluntary and informed repatriation, reintegration, and reconciliation;
- (c) Support countries of origin/nationality, where appropriate, including through funding for rehabilitation, reconstruction, and development, and with the necessary legal safeguards to enable refugees to access legal, physical, and other support mechanisms needed for the restoration of national protection and their reintegration;
- (d) Support efforts to foster reconciliation and dialogue, particularly with refugee communities and with the equal participation of women and youth, and to ensure respect for the rule of law

¹¹⁵⁸GCR (n 11), para 87.

¹¹⁵⁹ UNHCR, *Voluntary Repatriation Handbook* (n 230); A/RES/72/150, para 39; ExCom Conclusions No.: 90 (LII) (2001), (j); 101 (LV) (2004); 40 (XXXVI) (1985); 112 (LXVII) (2016).

¹¹⁶⁰ CRRF 11-12; see Chapter 2.

at the national and local levels;

(e) Facilitate the participation of refugees, including women, in peace and reconciliation processes, and ensure that the outcomes of such processes duly support their return in safety and dignity;

(f) Ensure that national development planning incorporates the specific needs of returnees and promotes sustainable and inclusive reintegration, as a measure to prevent future displacement.”¹¹⁶¹

Thus, GCR supports the legal content for voluntary repatriation, bringing together all international regulations serving for sustainable and durable voluntary repatriation with the help of international burden- and responsibility-sharing. Although the GCR has not dedicated resources for voluntary repatriation, it is a significant global step to avoid a fragmented legal impression of voluntary repatriation, which is analysed under Chapter 2.¹¹⁶² Furthermore, it demonstrates consistency with crucial legal standards and components of voluntary repatriation improved by the UNHCR in the framework of international protection. It is evident that the fourth purpose of the GCR directly refers to the voluntary, safe and dignified repatriation of refugees via addressing root causes.¹¹⁶³ The GCR mainly aims to “(i) Ease the pressures on host countries; (ii) Enhance refugee self-reliance; (iii) Expand access to third-country solutions; and (iv) Support conditions in countries of origin for return in safety and dignity. The GCR seeks to achieve these four interlinked and interdependent objectives through the mobilisation of political will, a broadened base of support and arrangements that facilitate more equitable, sustained and predictable contributions among states and other relevant stakeholders.”¹¹⁶⁴

Therefore, the response of the second question: how the scope created by the GCR

¹¹⁶¹ CRRF 12.

¹¹⁶² See Chapter 2.

¹¹⁶³ GCR (n 11), para 7,8, and 9.

¹¹⁶⁴ Geoff Gilbert, ‘Indicators for the Global Compact on Refugees’ (2019) 30 *International Journal of Refugee Law* 635, 637; GCR (n 11), para 7.

works for the durability and sustainability of voluntary repatriation, is instrumentalization of the international burden- and responsibility-sharing principle to effectively address objectives of the GCR. In this way, strengthening the idea of "burden- and responsibility-sharing," which is discussed as one of the main obstacles of this thesis under Chapter 3, serves the foundation of the GCR. The concept of "burden- and responsibility-sharing" is the key factor for various problems of the refugee system, from temporary protracted protection to providing durable solutions. Therefore, as many scholars have argued, a more equitable and predictable burden- and responsibility-sharing by the international community goes hand in hand with a better refugee protection regime.¹¹⁶⁵ If the GCR is conceptualised as an innovative umbrella addressing some challenges of the refugee phenomenon in the 21st century, then international burden- and responsibility-sharing constitute the central framework—the main shaft—supporting this mechanism, while the GCR's stated objectives represent the canopy that this framework upholds. Considering this analogy, voluntary repatriation can be explained as part of the canopy for the GCR umbrella, standing on the effective international burden- and responsibility-sharing. As noted in the previous chapter, durable voluntary repatriation needs international effective cooperation, from addressing root causes to activating reintegration, rehabilitation, and reconstruction following the repatriation to provide sustainability after the voluntary return.¹¹⁶⁶ Moreover, Chapter 2 demonstrates that states tend to avoid close cooperation with the UNHCR for providing extended components of voluntary repatriation 4Rs, although it is necessary according to Article 35 of the 1951 Convention.¹¹⁶⁷ The principle of international burden- and responsibility-sharing has not been included in the main part of the 1951 Convention, nor has voluntary repatriation. Therefore, it is problematic how the new scope for international burden- and responsibility-sharing created by the GCR will effectively work

¹¹⁶⁵ Gilbert, 'Indicators for the Global Compact on Refugees' (n 1164) 635-636.

¹¹⁶⁶ UNHCR, *Repatriation and Reintegration Handbook* (n 229).

¹¹⁶⁷ 1951 Convention (n 1), Art 35.

for the durability and sustainability of voluntary repatriation.

International burden and responsibility sharing have been a captivating enigma since refugees have become a global issue.¹¹⁶⁸ International burden and responsibility sharing is the cornerstone of the GCR, which is essential for successful voluntary repatriation. However, international responsibility and burden sharing always remain blurry grey areas of international refugee law. Actually, during the preliminary stage of the 1951 Convention, the UN Secretary-General suggested the insertion of an article that would obligate states to reduce the burden of host states by accepting a certain number of refugees in their territory.¹¹⁶⁹ Nonetheless, this suggestion was not implemented in the final version of the 1951 Convention since, generally, states were unwilling to take on this binding task of sharing the burden of hosting refugees.¹¹⁷⁰ Rather than a binding article about responsibility-sharing, a provision about international cooperation was placed in the Preamble of the 1951 Convention, which states that: "The grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot, therefore, be achieved without international co-operation."¹¹⁷¹

The 1951 Convention accepted that asylum may place an extremely heavy burden on particular states, and thus, real global protection cannot be obtained without international cooperation.¹¹⁷² However, as noted above, this provision does not create an obligation on states to share the burden of host states, and it does not clarify which conditions are required for

¹¹⁶⁸ See Chapter 1.

¹¹⁶⁹ United Nations High Commissioner for Refugees, 'Refworld | Ad Hoc Committee on Statelessness and Related Problems, Status of Refugees and Stateless Persons - Memorandum by the Secretary-General' (*Refworld*) <<https://www.refworld.org/docid/3ae68c280.html>> accessed 7 July 2019;

¹¹⁷⁰ Guy S Goodwin-Gill, 'Paper - International Refugee Law - Yesterday, Today, but Tomorrow?' (*Blackstone Chambers*) <<https://www.blackstonechambers.com/news/paper-international-refugee-law-yesterday-today-tomorrow/>> accessed 10 August 2019. 38.

¹¹⁷¹ United Nations High Commissioner for Refugees, 'Convention and Protocol Relating to the Status of Refugees' (*UNHCR*) <<https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html>> accessed 21 August 2020.

¹¹⁷² James C Hathaway, 'The Global Cop-Out on Refugees' (2019) 30 *International Journal of Refugee Law* 591.

responsibility-sharing.¹¹⁷³ Thus, this provision does not go beyond advice.¹¹⁷⁴ The 1951 Convention, based on international solidarity, does not include parameters for predictable and equitable burden- and responsibility-sharing.¹¹⁷⁵ One of the major failures of the current refugee system is the unsuccessful explicit determination as to which states should be responsible for detecting claims to protection and which states should provide contributions to ease the burden on first asylum countries, providing protection and solutions for refugees and how they should do this.¹¹⁷⁶

This situation in international refugee law demonstrates an important gap that causes the unbalanced distribution of the burden and responsibility regarding refugees among states.¹¹⁷⁷ Unfortunately, due to the absence of global standards or international rules concerning international responsibility-sharing, until now, in the circumstances of a refugee crisis, situation-specific and generally temporary applications of responsibility-sharing have been produced by the international community. For instance, after Hungary's 1956 rebellion, 180,000 people sought asylum in Austria and 20,000 in Yugoslavia. UNGA called for UNHCR to provide urgent assistance. A committee was formed, including UNHCR, the Austrian government, and other organisations such as the US Escapee Program. Over 100,000 refugees were resettled to third countries, and nearly 18,200 returned to their country of origin, Hungary.¹¹⁷⁸

As another example, the Comprehensive Plan of Action (CPA) was created in 1989 to

¹¹⁷³Volker Türk and Rebecca Dowd, 'Protection Gaps' [2014] The Oxford Handbook of Refugee and Forced Migration Studies

<<https://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199652433.001.0001/oxfordhb-9780199652433-e-024>> accessed 6 July 2019 284-285.

¹¹⁷⁴*Ibid.*

¹¹⁷⁵*Ibid.*

¹¹⁷⁶ Goodwin-Gill (n 13) 14; Hathaway (n 16).

¹¹⁷⁷ Meltem Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (2019) 38 Refugee Survey Quarterly 115, 121

¹¹⁷⁸ Alexander Betts, 'The Global Compact on Refugees: Towards a Theory of Change?' (2019) 30 International Journal of Refugee Law 623 666; T Einarsen, 'Mass Flight: The Case for International Asylum' (1995) 7 IJRL 551; G Loescher, 'The International Refugee Regime: Stretched to the Limit?' (1994) 47 Journal of International Affairs 351.

address the refugee crisis in Southeast Asia.¹¹⁷⁹ It involved countries of origin, first asylum countries, donors, and resettlement countries as part of a framework for international cooperation.¹¹⁸⁰ The CPA provided asylum for hundreds of thousands of refugees from Vietnam, Cambodia, and Laos. The CPA demonstrated the effectiveness of an ad hoc responsibility-sharing plan in responding to prolonged refugee situations.¹¹⁸¹ Around 700,000 refugees were resettled during the CPA, demonstrating the continuous and comprehensive response to refugee protection worldwide.¹¹⁸² However, successful examples remain extremely limited when compared to unsuccessful examples, such as International Conferences on Assistance to Refugees in Africa (ICARA I and II)¹¹⁸³, the Syria Regional Refugee and Resilience Plan (3RP)¹¹⁸⁴, or examples where no international initiative has been undertaken.

Nevertheless, as stated in Chapter 3, the complex refugee phenomenon in the 21st century makes the international solidarity problem not only more urgent but also more complicated. Turk and Garlick claim that to ensure the best outcomes for refugees and host states, the necessity for effective, fair, predictable, swift, and broad international responsibility sharing is more extreme than at any point in recent history to provide durable and sustainable solutions.¹¹⁸⁵ Since the refugee became an international issue,¹¹⁸⁶ the sharp increase in the number of refugees due to armed conflicts in the second decade of the 21st century has been highlighted as a serious global issue by the UNHCR.¹¹⁸⁷ Therefore, internationally, a

¹¹⁷⁹ Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' (2016) 28 *International Journal of Refugee Law* 656 667.

¹¹⁸⁰ Ineli-Ciger 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177).

¹¹⁸¹ Meltem Ineli-Ciger, "Why Do States Share the Burden During Refugee Emergencies?", *Suleyman Demirel University Faculty of Law Review*, 5(2), 2015, 69 88.

¹¹⁸² Türk and Garlick (n 572) 668.

¹¹⁸³ Betts (n 1156).

¹¹⁸⁴ Türk and Garlick (n 572) 668.

¹¹⁸⁵ *Ibid.*

¹¹⁸⁶ See Chapter 1.

¹¹⁸⁷ Penelope Mathew (2021) Killing asylum softly or leaving no one behind? The New York declaration and global compacts in a divided world, *Globalizations*, DOI: 10.1080/14747731.2021.1974207; UNHCR. (2016). *Global trends: Forced displacement in 2015*. UN High Commissioner for Refugees (UNHCR) 5.

framework is required to ensure the pledges and obligations of states regarding particularly large-scale displacements are predictable and fair.¹¹⁸⁸ In light of this, it is proclaimed that the GCR can be a milestone in the international refugee system because it is the first agreement with 181 states of such importance since the adoption of the 1951 Convention.¹¹⁸⁹

Therefore, the GCR was raised as a new instrument in international refugee law that intends to ensure a predictable, fair and effective burden and responsibility sharing system as a response to the needs of refugee phenomena in the 21st century.¹¹⁹⁰ The GCR's guiding principle is to "operationalise the principles of burden- and responsibility-sharing to better protect and assist refugees and support host countries and communities"¹¹⁹¹ for reaching its objectives. Concordantly, the GCR offers an innovative pathway to enhance global solidarity alongside a holistic approach to content. Contemporarily, the GCR provides new platforms and actors to improve international burden and responsibility sharing. On the one hand, the GCR expands the scope of the international community that is called to attend international burden and responsibility sharing with a multi-stakeholder and partnership approach¹¹⁹², including but not limited to: "international organisations within and outside the United Nations system, including those forming part of the International Red Cross and Red Crescent Movement; other humanitarian and development actors; international and regional financial institutions; regional organisations; local authorities; civil society, including faith-based organisations; academics and other experts; the private sector; media; host community members and refugees themselves."¹¹⁹³ To achieve international burden and responsibility sharing, depending not only on sovereign states and their own political priorities, but also on a large scale of stakeholders'

¹¹⁸⁸ *Ibid* 673.

¹¹⁸⁹ Türk (n 360).

¹¹⁹⁰ See chapter 3.

¹¹⁹¹ GCR (n 11), para 5.

¹¹⁹² *Ibid*, paras 33-34; Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177) 127; Türk and Garlick (n 572) 676.

¹¹⁹³ GCR (n 11), para 3.

contributions, is a significant step for the improvement of voluntary repatriation from beginning to end. The inclusion of various stakeholders alongside states is interpreted as positive and innovative development for international burden and responsibility sharing by many scholars as well.¹¹⁹⁴

On the one hand, the GCR expands the scope of the international community that is called to attend international burden- and responsibility-sharing with a multi-stakeholder and partnership approach¹¹⁹⁵, including but not limited to: "international organisations within and outside the United Nations system, including those forming part of the International Red Cross and Red Crescent Movement; other humanitarian and development actors; international and regional financial institutions; regional organisations; local authorities; civil society, including faith-based organisations; academics and other experts; the private sector; media; host community members and refugees themselves."¹¹⁹⁶ Considering the specific roles of the actors mentioned above across all phases: repatriation, rehabilitation, reconstruction, and reintegration from start to finish, expanding the range of actors to achieve the goals through diverse contributions is a significant step toward improving voluntary repatriation.¹¹⁹⁷ The inclusion of various stakeholders alongside states is interpreted by many scholars as a positive and innovative development in international burden- and responsibility-sharing.¹¹⁹⁸

On the other hand, the GCR creates new platforms and strategies to clarify where the mentioned actors can provide their contribution to international burden and responsibility sharing. The GCR adopted a responsibility-sharing strategy that will take place in two ways: at the international level and at the regional or national level.¹¹⁹⁹ The GCR expects that, as a first

¹¹⁹⁴ Dowd and McAdam (n 1151) 220.

¹¹⁹⁵ GCR (n 11), paras 33-34; Türk and Garlick (n 572) 676.

¹¹⁹⁶ GCR (n 11), para 3.

¹¹⁹⁷ Türk (n 360) 580-581.

¹¹⁹⁸ Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177) ; Dowd and McAdam (n 1151) 220.

¹¹⁹⁹ Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177) 122.

step, there will be a global mechanism for activating international cooperation.¹²⁰⁰ A Global Refugee Forum will be organised at the ministerial level every four years unless otherwise decided by the UNGA as a convenient place to achieve its aims.¹²⁰¹ The GCR also includes regulations to develop the international response to specific refugee situations through the support of government-led arrangements.¹²⁰² These arrangements will consist of solidarity conferences, support platforms and regional and sub-regional approaches.¹²⁰³ They will be based on states and other stakeholders tasked with activating support for host states and exploring durable solutions.¹²⁰⁴ These arrangements will encourage context-specific, sustainable, and predictable support for host states, durable solutions, and refugees.¹²⁰⁵

In this regard, to improve the international burden- and responsibility-sharing and accomplish these crucial goals above, including voluntary repatriation, facilities offered by the GCR are important. Voluntary repatriation could find a new platform to improve legally and practically through the contributions of the extended international community, with multi-stakeholders. Conversely, Perry and Schwartz strictly criticised that the GCR opens a space for mass involuntary repatriation to states of origin and asylum, pushing refugees for return before root causes are addressed, misusing these platforms because mainly this compact is for easing pressure on states, not for refugees.¹²⁰⁶ Although the emergence of the GCR is based on easing unfair pressure on host states, as mentioned above, achieving better burden- and responsibility-sharing serves as better protection, assistance and solutions for refugees. This research has two counterarguments regarding this kind of approach.

Firstly, from the perspective of voluntary repatriation, it can be seen as a shortcoming

¹²⁰⁰ Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177) 122; GCR (n 11), paras 17-19.

¹²⁰¹ Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177) 122; GCR (n 11), para 17.

¹²⁰² Türk (n 360) 579.

¹²⁰³ *Ibid.*

¹²⁰⁴ *Ibid.*

¹²⁰⁵ *Ibid.*

¹²⁰⁶ Perry and Schwartz (n 1139).

of the GCR that it focuses directly on international burden- and responsibility-sharing to ease pressure on host states, rather than prioritising refugees' rights to voluntary return: ensuring voluntariness under objective information and without pressure, safe and dignified conditions before, during and after return and a protection mechanism for non-refoulement.¹²⁰⁷ However, as stated by Gilbert, the GCR could not be conceived without taking into account previous obligations of states created by numerous binding agreements such as the 1951 Convention, ICESCR and ICCPR.¹²⁰⁸ As mentioned above, the holistic legal content of the GCR ensures all rights-based achievements for refugees and the obligations of states. Therefore, GCR should not be a way for states to hinder their protection responsibilities for refugees, considering the principle of non-refoulement referenced in the GCR. Moreover, the GCR clearly includes refugees in the process through states' facilitation and a clear intention regarding achieving results that will transform not only host communities but also the lives of refugees.¹²⁰⁹

Secondly, as clarified in the previous chapter, it is clear that a large number of refugees and a prolonged refugee situation in limited developing states put pressure on the capacities of host states and trigger their push factors for involuntary repatriations when international burden and responsibility sharing cannot be achieved.¹²¹⁰ In this way, the GCR can reduce pressure on the involuntary repatriation option by supporting host countries so that they keep the security and serenity of refugees in host countries, for instance, assisting refugees to access health, education and employment facilities for the self-reliance of refugees.¹²¹¹ The GCR not only encourages traditional solutions, such as voluntary repatriation, resettlement, and local integration, but it also foresaw a mix of solutions, including other local solutions and

¹²⁰⁷ *Ibid.*

¹²⁰⁸ Gilbert, 'Indicators for the Global Compact on Refugees' (n 1164) 636-637.

¹²⁰⁹ GCR (n 11), para 106 and 107.

¹²¹⁰ Türk and Garlick (n 572) 657.

¹²¹¹ Auswärtiges Amt, 'Federal Foreign Office - More Equitable Burden-Sharing in Refugee Issues: UN General Assembly Adopts Refugee Compact' (*German Federal Foreign Office*) <<https://www.auswaertiges-amt.de/en/aussenpolitik/themen/migration/global-compact-on-refugees/2172140>> accessed 9 August .

complementary pathways for admission to third countries, which may provide additional opportunities, considering that addressing root causes takes time.¹²¹² Extending the solutions' perspective with other local solutions¹²¹³ and third-country admission¹²¹⁴ provides alternatives for refugees and states to avoid compulsory repatriations when the conditions are not met.

Moreover, the GCR takes one step forward and guides the international community by specifying the kind of support that can be provided under the title of "Areas in need of support" in the mentioned platforms above.¹²¹⁵ Voluntary repatriation is one of these areas.¹²¹⁶ Accordingly, the international community will provide resources and expertise to the country of origin upon their request to address root causes, remove obstacles, and enable voluntary repatriation.¹²¹⁷ However, countries of origin that are currently producing refugees due to especially civil wars can be reluctant to provide this request.¹²¹⁸ Therefore, a solidarity plan for addressing root causes, which is the key step for voluntary repatriation, cannot be applicable. According to sovereign equality of states in international law, states need the country of origin's request to act in the country of origin¹²¹⁹, because these efforts include coordinating humanitarian, peacebuilding, and development interventions in the country of origin.¹²²⁰

Additionally, as per para 89 of the GCR, "In addition, States and relevant stakeholders will contribute resources and expertise to support countries of origin upon their request with respect to social, political, economic and legal capacity to receive and reintegrate returnees, notably women, youth, children, older persons and persons with disabilities. This may include support for development, livelihood, and economic opportunities, as well as measures to address housing, land, and property issues. Contributions will be provided for direct repatriation

¹²¹² GCR (n 11), para 85.

¹²¹³ *Ibid*, para 100.

¹²¹⁴ *Ibid*, para 94.

¹²¹⁵ *Ibid*, para 49-100.

¹²¹⁶ *Ibid*, para 87-89.

¹²¹⁷ *Ibid*, para 88.

¹²¹⁸ Perry and Schwartz (n 1139).

¹²¹⁹ GCR (n 11), para 88.

¹²²⁰ *Ibid*.

support to returnees in the form of cash and other assistance, where appropriate.¹²²¹ Depending on the context, concerned countries may seek technical guidance on measures to avoid further forced displacement on return (internal or cross-border), and to take into account the situation of internally displaced and non-displaced resident populations.¹²²² Relevant stakeholders will work with authorities, as appropriate, to support information sharing on protection risks in areas of return and the establishment of systems for analysis of such risks.”¹²²³ The language of the paragraph is aware of the changeable context of voluntary repatriation scenarios. It foresees flexible ways of support according to the context of repatriation. Most of the support methods mentioned above stem from ExCom Conclusions.

Therefore, the instruments and regulations under the scope of the GCR have strengthened the legal framework of voluntary repatriation in content. It highlights the voluntariness of repatriation and sets parameters for sustainable repatriation in line with the 4Rs approach of the UNHCR. Thus, the GCR innovatively provides freedom and flexibility for determining tailored support following the voluntary repatriation scenario in various platforms with extended multiple actors. In this way, it aims to actively share the international burden and responsibility for every phase of voluntary repatriation.

5.2. From Soft Law to Practice: The Legal Nature of the GCR

As mentioned above, the GCR has valuable content that can strengthen the legal framework for voluntary repatriation through effective burden- and responsibility-sharing. Turk and Garlick argue that, because of its structure, the GCR will intensify efforts to provide timely solutions for refugees.¹²²⁴ However, although the regulations seem very meaningful, they only have real meaning as a result if implemented. Therefore, under this title, the enforceability of the GCR will be discussed.

¹²²¹ *Ibid.*

¹²²² *Ibid.*

¹²²³ GCR (n 11), para 89.

¹²²⁴ Türk and Garlick (n 572) 677.

International law emerges from the actions of the states that make up the international community and mainly regulates the international rights and obligations of sovereign states.¹²²⁵ Legitimizing the states' actions as part of hard or soft law gives a legal nature to regulations. Regulations under hard law are legally binding, restrict the sovereignty of states, create obligations on states and strengthen the credibility of the commitments, whereas when legal alterations are compromised on one or more of the dimensions of obligation, precision, or delegation, the domain of "soft law" emerges to distinguish regulations from purely political arrangements where legality is absent mainly.¹²²⁶

However, establishing the GCR was not a negotiation of a new treaty or protocol; on the contrary, it was a repetitive and organic process, such as improving the New York Declaration and the Sustainable Development Goals (SDG).¹²²⁷ Thus, GCR is not legally binding and wholly based on states' voluntary contributions and does not include any obligations or legally binding provisions for states. Paragraph 4 of the GCR explains its legal nature: "The global compact is not legally binding. Yet it represents the political will and ambition of the international community as a whole for strengthened cooperation and solidarity with refugees and affected host countries. It will be operationalised through voluntary contributions to achieve collective outcomes and progress towards its objectives, as set out in para 7 below. These contributions will be determined by each state and relevant stakeholder, taking into account their national realities, capacities and levels of development, and respecting national policies and priorities." It shows that the GCR was produced as part of soft law. Additionally, the GCR completely lacks comprehensive and clear obligations in order to provide effective implementation of the GCR.¹²²⁸

¹²²⁵ Christopher Greenwood, *Sources of International Law: An Introduction* 1.

¹²²⁶ Abbott, Kenneth W., and Duncan Snidal. "Hard and Soft Law in International Governance." *International Organization*, vol. 54, no. 3, 2000, pp. 421–56. JSTOR, <http://www.jstor.org/stable/2601340>. accessed 11 May 2020.

¹²²⁷ Türk (n 360) 581.

¹²²⁸ Gilbert, 'Indicators for the Global Compact on Refugees' (n 1164) 637.

193 states adopted the New York Declaration and declared their pledge to fairer responsibility sharing concerning protection and durable solutions for refugees.¹²²⁹ Therefore, the GCR raises high hopes regarding filling the legal gaps in the 1951 Convention, such as improvement of international burden- and responsibility-sharing and durable solutions. Several authors claim that the idealist version of filling the legal gap in international law, such as in this situation concerning voluntary repatriation and international responsibility sharing, is ratifying a legally binding protocol as part of hard law.¹²³⁰ Ineli-Ciger points out that the most noticeable advantage of regulation under a treaty or a protocol is that the treaty would produce obvious, legal, and enforceable obligations for states.¹²³¹ This is because states have to discharge their obligations in good faith through a legally binding instrument.¹²³²

At first glance, the legal nature of the GCR creates a disappointment for the improvement of voluntary repatriation and international burden- and responsibility-sharing, because, as pointed out in Chapter 2, the legal framework of the voluntary repatriation, which is dominated by soft law instruments, emerged as one of the main difficulties in front of effective application.¹²³³ Although the basis of the GCR includes political intention and efforts of the international community for cooperation to achieve its objectives, including voluntary repatriation, the GCR does not establish new legal obligations for states.

Therefore, the non-binding and unclear character of the GCR has drawn criticism, given the missed opportunity to achieve effective voluntary repatriation through a more predictable, equal, sustainable, and quick burden- and responsibility-sharing system. Perry and Schwartz stated that GCR missed an opportunity to expand the UNHCR's ability to hold states to account

¹²²⁹ Betts (n 1156) 624.

¹²³⁰ Goodwin-Gill, McAdam and Dunlop (n 10) 673.

¹²³¹ Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177)

¹²³² Daniel Moeckli and others, *International Human Rights Law* (Third, Oxford University Press 2018) 89.

¹²³³ See Chapter 2.

when states' interests do not align with those of refugees regarding voluntary repatriation.¹²³⁴ However, it would be unrealistic to argue that the GCR could have expanded UNHCR's coercive power to hold states legally accountable, since states were unlikely to accept such a limitation on sovereignty in a non-binding compact. The more defensible criticism is that the GCR missed an opportunity to strengthen soft accountability by introducing clearer benchmarks, systematic reporting, independent review, and transparent follow-up of responsibility-sharing commitments.¹²³⁵ The 2023 GCR Indicator Report demonstrates the potential and limitations of the GCR's soft-accountability model. It enhances transparency by establishing indicators for tracking responsibility-sharing, whereas it fails to create an enforceable legal framework, revealing that responsibility-sharing remains inequitable.¹²³⁶ As analysed above for Somalia and Afghanistan, contributions through the GCR framework have been far beyond sufficient for effective voluntary repatriation.¹²³⁷ The report's worth is primarily in monitoring and political accountability rather than legal enforcement.

Hence, due to the GCR's legal nature, many academics interpreted it as an instrument born dysfunctional from the beginning, given its aims to eliminate deficiencies in the refugee system, such as voluntary repatriation and international solidarity.¹²³⁸ According to Hathaway, UNHCR offers a partial compact to manage undefined 'large' refugee movements rather than proposing a binding protocol to address the effective shortages in the current refugee protection system.¹²³⁹ Similarly, Pijnenburg points out that the GCR therefore appears to be a humanitarian or developmental instrument rather than a legal human rights instrument.¹²⁴⁰ Nevertheless, it is not true that the GCR is entirely grounded in states' political will, nor that it has no legal or

¹²³⁴ Perry and Schwartz (n 1139).

¹²³⁵ Gillian D Triggs, 'The Makings of a Success: The Global Compact on Refugees and the Inaugural Global Refugee Forum' (2020) 32(2) *International Journal of Refugee Law* 283.

¹²³⁶ UNHCR, 'Indicator Report 2023' (UNHCR) <https://www.unhcr.org/what-we-do/data-and-publications/data-and-statistics/indicator-report-2023> accessed 1 May 2026.

¹²³⁷ See Chapter 4

¹²³⁸ Hathaway (n 16); Karageorgiou (n 576).

¹²³⁹ Hathaway (n 16).

¹²⁴⁰ Pijnenburg, (n 615).

practical equivalent.

Firstly, although the GCR itself is expressly non-binding, paragraph 5 confirms that its implementation is guided by existing international refugee law, international human rights law, international humanitarian law, and related regional instruments bearing on the purposes and principles of the UN Charter, and is non-political in nature.¹²⁴¹ According to Article 1.3 of the UN Charter, "To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."¹²⁴² Moreover, the preamble of the 1951 Convention states that "... Considering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation,.."¹²⁴³ Thus, GCR was established on a legal basis requiring international cooperation for the protection of refugees, rather than only the political will of states. In this regard, the GCR frames international system of responsibility-sharing consisting of "voluntary but mutually reinforcing reinforcing and dedicated contributions",¹²⁴⁴ grounded in the UN Charter, international law, human rights and the rule of law, and directed not only towards refugee protection but also towards addressing the root causes of displacement through conflict prevention, peacebuilding, sustainable development and support for countries of origin, with a perspective supporting the HDP nexus.¹²⁴⁵ Thus, legally, the GCR has a normative character grounded in the holistic nature of international law. reflects the rule-of-law commitments of all states, emphasising the need for international cooperation under the Charter and the 1951

¹²⁴¹ GCR (n 11), para 5.

¹²⁴² *UN Charter art 1(3)*.

¹²⁴³ 1951 Convention (n 1), Preamble para 4.

¹²⁴⁴ Geoff Gilbert, 'Not Bound but Committed: Operationalising the Global Compact on Refugees' (2019) 30 *International Migration* 32.

¹²⁴⁵ GCR (n 11), para 9.

Convention for the fair sharing of burdens and responsibilities.¹²⁴⁶

Secondly, the GCR causes political commitments from the international community that can be implemented in practice, despite lacking a mechanism for legal enforcement.¹²⁴⁷ These political commitments can include financial, technical, and material support; education; healthcare; livelihoods; self-reliance; reintegration assistance; documentation; housing, land and property rights; peacebuilding; and development support in countries of origin. GCR creates new platforms, such as GRF and Support Platforms, to operationalise international cooperation through pledges from states and multi-stakeholders to achieve its purposes.¹²⁴⁸ For instance, political commitments for Afghanistan have translated into practical results through the operations of the SSAR Support Platform, with contributions from states and multi-stakeholders to Priority Areas of Return and Reintegration (PARRs), cooperating with UN Agencies, NGOs, and local society.¹²⁴⁹ Another example is the financial integrity contribution of KIMS, a private financial services provider, which announced its contribution to the 2019 Global Refugee Forum (GRF) for Somalia as “Contributing toward stability in Somalia through the provision of high-quality microfinance services to refugee entrepreneurs.”¹²⁵⁰ Thus, it is worth noting that the GCR's soft-law nature did not prevent states and other stakeholders from fulfilling their commitments as demonstrated above.

The GCR powerfully reiterates the ongoing pledges of states and other stakeholders for effective cooperation to achieve its objectives through the provided platforms, such as the GRF and Support platforms.¹²⁵¹ Ineli-Ciger contends that proposed platforms such as the GRF can

¹²⁴⁶ Gilbert 'Not Bound but Committed: Operationalising the Global Compact on Refugees' (n1244) 31.

¹²⁴⁷ *Ibid* 29.

¹²⁴⁸ Türk and Garlick (n 572) 674.

¹²⁴⁹ See Chapter 4, UNHCR, *ReSolve: for Resilience and Solutions — 2023 Multi-Stakeholder Pledge for the Afghanistan Situation* (14 August 2023) <https://data.unhcr.org/en/documents/details/102779> accessed 2 May 2026 p. 3: “Platform’s Core Group consists of Denmark, the European Union, Germany, Italy, Japan, the Republic of Korea, the Netherlands, Qatar, Switzerland, the Republic of Türkiye, the United Kingdom, the United States of America, as well as the Asian Development Bank, the World Bank, and the United Nations Development Programme.”

¹²⁵⁰ See Chapter 4; UNHCR Somalia, *Interim Livelihoods Strategy 2021–2022* (UNHCR, April 2021) 15–16.

¹²⁵¹ Türk and Garlick (n 572) 674.

provide suitable venues for various stakeholders to meet and discuss solutions to a specific large-scale refugee movement and/or a prolonged refugee situation, and to clarify their own contributions for sharing responsibility.¹²⁵² According to GCR, "Success under the global compact will be assessed in terms of progress towards the achievement of its four objectives. Indicators in this regard will be developed for each objective ahead of the first Global Refugee Forum in 2019."¹²⁵³ Gilbert claims that the international community must now utilise indicators to evaluate the GCR's implementation if it is to be more than just another international agreement urging improved practices in the future.¹²⁵⁴ Two forums have been held so far, the second of which is very recent. There are numerous, very high-range responsibility-sharing pledges already registered over the past five years, although they are highlighted as not enough.¹²⁵⁵ Contributions for voluntary repatriation will be analysed in the previous chapter for Somalia and Afghanistan, as far beyond to be sufficient for sustainable and durable voluntary repatriation.¹²⁵⁶ However, it is too early to judge the GCR's success in achieving effective burden- and responsibility-sharing that enables sustainable voluntary repatriation.

Some scholars, such as Abbott and Snidal, Chinkin, and Shelton, argue that soft law may respond effectively to international problems by facilitating cooperation where binding obligations are politically difficult, shaping state expectations, influencing behaviour, and contributing to the gradual development of international legal norms.¹²⁵⁷ Compared to hard law, it is also frequently more flexible, ambitious, and less expensive due to its shorter processing

¹²⁵² Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177)

¹²⁵³ GCR (n 11), para 7.

¹²⁵⁴ Gilbert, 'Indicators for the Global Compact on Refugees' (n 1164) 637.

¹²⁵⁵ Ibid; <https://globalcompactrefugees.org/pledges-contributions/matching-pledges#:~:text=By%20allocating%20more%20than%20USD5,return%20in%20safety%20and%20dignity>, accessed 15 May 2022.

¹²⁵⁶ See Chapter 4.

¹²⁵⁷ Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54 *International Organization* 421; Christine M Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 *International and Comparative Law Quarterly* 850; Dinah Shelton, 'Soft Law' in David Armstrong (ed), *Routledge Handbook of International Law* (Routledge 2009); Dinah Shelton (ed), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* (OUP 2000).

times.¹²⁵⁸ Furthermore, soft law norms can provide an effective and flexible way to address the common problems for states.¹²⁵⁹ In this sense, soft law can operate as a bridge between political commitment and legal obligation. It may guide state behaviour before a binding rule exists, provide language for later treaty-making, and contribute to the emergence of customary norms where states consistently follow the standard because they regard it as legally required.¹²⁶⁰ There are many examples in international law that emerged as soft law but then practically became a treaty. The most common example of this is the Universal Declaration of Human Rights, which shaped two of the most ratified treaties in international law, ICCPR and ICESCR, that are part of the national legislation of party states.

Additionally, soft law norms can be adopted internally as legally binding models in the domestic law of states.¹²⁶¹ To give a current example, the Sustainable Development Goals (SDG) 2030 Agenda is fighting against extreme poverty, but it also brings new regulations in the form of environmental sustainability and more equal development.¹²⁶² Even though the SDG 2030 Agenda is not legally binding, states are striving to practically achieve these goals and arrange their own national norms accordingly.¹²⁶³ SDG has a relationship and similarities with GCR and GCM. The implementation of the GCM and GCR by states and stakeholders directly contributes to the attainment of the SDGs.¹²⁶⁴ Together, the GCR and GCM ensure that

¹²⁵⁸Giulia Bosi, 'Overcoming the "Soft vs Hard Law" Debate in the Development of New Global Health Instruments' (Opinio Juris, 30 November 2021) <https://opiniojuris.org/2021/11/30/overcoming-the-soft-vs-hard-law-debate-in-the-development-of-new-global-health-instruments/> accessed 15 May 2022.

¹²⁵⁹ Shelton (n 94) 1.

¹²⁶⁰ M Olivier, 'The relevance of 'soft law' as a source of international human rights Author (The Comparative and International Law Journal of Southern Africa, NOVEMBER 2002) <https://heinonline.org/HOL/Page?handle=hein.journals/ciminsfri35&div=26&g_sent=1&casa_token=1WRT_5dw7qAAAAA:6pjj_w3KwJs7oRJjNW91dXIpb5n68XVz_pcXxlgeccparJsrV5wwqdOGr5bEtRIGo3RfvTa6&collection=journals> accessed 18 November 2020.

¹²⁶¹ *Ibid.*

¹²⁶² Jessica Espey, Karolina Wałęcik and Martina Kühner, 'Follow-up and Review of the SDGs: Fulfilling Our Commitments' (2015) <http://unsdsn.org/wp-content/uploads/2015/12/151130-SDSN-Follow-up-and-Review-Paper-FINAL-WEB.pdf>, accessed 18 November 2020.

¹²⁶³ *Ibid.*

¹²⁶⁴ GFMD Mayors Mechanism, LOCALISING THE GLOBAL COMPACTS First Report on Local Action for Migrants and Refugees, (2022) <https://migrationnetwork.un.org/resources/localizing-global-compact-first-report-local-action-migrants-and-refugees-2022>, accessed 12.12.2022.

migrants and refugees are not left behind by supporting SDG targets across all 17 Goals.¹²⁶⁵ Therefore, they can play a facilitator role for each other's implementations by the states. Moreover, SDG's monitoring mechanism, including civil society and development actors, is similar to GCR's innovative approach to having new platforms and multi-stakeholders.¹²⁶⁶ Thus, SDG's success in effective application can give inspiration to GCR's future applications.

For instance, the EU Pact on Migration and Asylum (EU Pact), finalised on 23.09.2020, includes meaningful effects of the GCR. Gilbert states that although the EU keeps a restricted approach to asylum that consists of the protection aspects of the refugee crisis, the positive legal and political effects of the GCR on the EU, which is the world's largest provider of development assistance, could likely increase cooperation for solving the refugee crisis in the world and provide a voluntary repatriation option with safety and dignity.¹²⁶⁷ Furthermore, working with international partners broadly falls within the scope of the EU Pact.¹²⁶⁸ Moreover, improvements of the regional and global relationships with countries of origin and transit states, supporting host states, development of an effective and well-assisted return policy by focusing on the support for economic opportunity to international partners, the root causes and a strong reintegration process¹²⁶⁹ fall within the EU Pact in line with the GCR's approach. Besides, the EU leaves the door open to providing development initiatives to third states as part of the future voluntary return and reintegration strategy.¹²⁷⁰ In fact, the GCR's normative approach to voluntary repatriation and fairer international responsibility-sharing corresponds, in part and in

¹²⁶⁵ Winkler, Inga T., and Margaret L. Satterthwaite. "Leaving no one behind? Persistent inequalities in the SDGs." *The Sustainable Development Goals and Human Rights*. Routledge, 2018. 51-75.

¹²⁶⁶ *Ibid.*

¹²⁶⁷ Geoff Gilbert, 'The New EU Pact on Migration and Asylum and the Global Compact on Refugees and Solutions' (2020) < https://www.asileproject.eu/df_new-eu-pact-and-solutions-gilbert/ > accessed 12 December 2020.

¹²⁶⁸ European Commission, 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum' COM (2020) 609 final <https://op.europa.eu/en/publication-detail/-/publication/85ff8b4f-ff13-11ea-b44f-01aa75ed71a1/language-en> accessed 11 November 2020.p 17.

¹²⁶⁹ *Ibid* p 8.

¹²⁷⁰ *Ibid* p 22.

a very significant way, to the EU context. Therefore, it demonstrates that although the GCR is not legally binding, it can have legal consequences under international, regional, and national law and affect states' national, regional, and international policies and implications.

Finally, states demonstrate a common reluctance to adopt binding instruments in international refugee law¹²⁷¹ to avoid the sovereignty restriction challenges of hard law. According to Einarsen and Engedahl, regarding an international, legally binding document for fairer responsibility sharing, if only some states ratify it and others do not, it could undermine the purpose of providing fairer international cooperation.¹²⁷² In that regard, soft law norms can provide an effective and flexible way to address common problems.¹²⁷³ Although the GCR is non-binding, its political significance is demonstrated by the fact that the resolution affirming it was voted on twice in the UN General Assembly process: in the Third Committee in November 2018 and in the plenary in December 2018.¹²⁷⁴ The final plenary vote on 17 December 2018 adopted Resolution 73/151 by 181 votes in favour, 2 against (the United States and Hungary), and 3 abstentions (Eritrea, Liberia and Libya), indicating that states treated the Compact as a normatively significant instrument rather than a merely technical UNHCR document.¹²⁷⁵ Therefore, the abstentions and negative votes by states demonstrate states' concern about the potential of the GCR to affect states' behaviour in taking action on responsibility sharing via the GRF's pledge and follow-up system.¹²⁷⁶

It is evident that the GCR can be a very significant step for addressing the shortcomings of the international refugee law system, which was established in 1951, after roughly 70 years. Thus, it is claimed that if the GCR can be applied effectively, it has the potential for achieving

¹²⁷¹ A. Betts, C. Costello and N. Zaun, "A Fair Share Refugees and Responsibility-Sharing," DELMI Report, 10, 2017, 19, available at: <http://delmi.se/upl/files/146497.pdf>, accessed 10 August 2019.

¹²⁷² Einarsen & Engedahl, "The Universal Asylum System and the 2016 New York Declaration", 37, 43.

¹²⁷³ Shelton (n94) 21.

¹²⁷⁴ Türk (n 360) 580.

¹²⁷⁵ *ibid*, GCR (n 11).

¹²⁷⁶ Türk (n 360) 580.

its purposes. Before assessing the GCR's potential for voluntary repatriation, it would be appropriate to evaluate the advantages and disadvantages in terms of voluntary repatriation, considering the scope and legal nature of the GCR.

5.3. Reframing Voluntary Repatriation under GCR: Prospects and Pitfalls

A comprehensive analysis is needed to determine whether the GCR can effectively address the demands of voluntary repatriation in the 21st century by producing sufficient responses. The GCR creates a paradox which lies in the tension between its normative ambition and its non-binding legal character. While it promotes international cooperation, fair, predictable, sustainable and effective responsibility-sharing and support for conditions conducive to voluntary repatriation, it does not impose enforceable obligations or provide precise criteria for determining what constitutes a fair and adequate contribution by each state. Namely, it does not specify how much each state should contribute based on GDP, population, refugee-hosting capacity, geographical proximity, or prior responsibility. For the development of international law on voluntary repatriation, it is more critical to focus on how states and other stakeholders apply GCR's content than on what the GCR includes regarding voluntary repatriation.

The GCR, which was born as a response to the deadlock position of the refugee system in the 21st century, is a new legal resource committed by 182 states of the world and prioritises voluntary repatriation in its objectives.¹²⁷⁷ As a content, nothing is a new regulation explained above for voluntary repatriation. The GCR strengthens the legal framework of voluntary repatriation by repeating the existing legal framework of voluntary repatriation, as explained in detail under Chapter 2. Most importantly, GCR has a statement to achieve sustainable voluntary repatriation through globally effective burden and responsibility sharing, which is already one of the main obstacles for sustainable voluntary repatriation, as explained under Chapter 3.

¹²⁷⁷ GCR (n 11), para 7.

Moreover, the GCR also prioritised, whenever possible, development assistance in favour of countries of origin to enable conditions for voluntary repatriation to fund and effectively and efficiently use resources as a result of global solidarity.¹²⁷⁸ Unlike previous soft law instruments that determined the content of voluntary repatriation,¹²⁷⁹ it outlined the wish of global cooperation by identifying its actors, creating platforms for contributions, and exemplifying contributions beyond. Therefore, it prepared a mechanism that can be operational for every phase of voluntary repatriation, including repatriation, reintegration, rehabilitation, and reconstruction.

Additionally, the GCR places emphasis on prevention and the addressing of root causes, but it does not go beyond the usual reiterations in international law. It does not persuade states and non-state armed groups to cease their human rights violations, resulting in forced displacement in contemporary civil wars.¹²⁸⁰ Although the principal actors of international law are states having rights, obligations, and liability, scholars such as Andrew Clapham and Daragh Murray argue that this traditional position is insufficient in contemporary civil wars, where armed non-state groups may exercise coercive authority over civilians, control territory, operate detention facilities, regulate daily life and directly cause displacement.¹²⁸¹ Clapham highlights the accountability gap created when armed groups commit abuses such as killings, detention, torture, forced recruitment or displacement,¹²⁸² while Murray grounds the attribution of human-rights obligations in the group's de facto control over territory or population and its capacity to perform public functions.¹²⁸³ Therefore, there is a need to include non-state armed groups and to focus on addressing root causes in the country of origin. However, GCR offers no suggestions

¹²⁷⁸ GCR (n 11), para 3.1.

¹²⁷⁹ See Chapter 2.

¹²⁸⁰ Perry and Schwartz (n 1139).

¹²⁸¹ Andrew Clapham, *Human Rights Obligations of Non-State Actors* (OUP 2006); Daragh Murray, *Human Rights Obligations of Non-State Armed Groups* (Hart 2016).

¹²⁸² Clapham (n 1271).

¹²⁸³ Murray (n 1271).

on complex political situations in countries of origin in the 21st century. It reiterates the country of origin's foremost liability: addressing root causes and enabling voluntary repatriation.¹²⁸⁴

Accordingly, Perry and Schwartz criticised this situation, stating that these complicated political issues cannot be resolved by a non-binding compact, nor can it persuade states and non-state actors to cease violating human rights.¹²⁸⁵ Considering complex civil wars and generalised violence, human rights violations are the main reasons for most large-scale and prolonged displacements, as analysed in Chapter 3. These reasons are also the main issues in humanitarian and human rights law. Producing a key regulation on this kind of complicated issue and then expecting states to act under a refugee law compact doesn't seem realistic either. However, the GCR can create space to address root causes on a case-by-case basis on its platforms. Thus, in 2023, GRF has a pledge title regarding Peacebuilding and Conflict Prevention for GCR's fourth objective.¹²⁸⁶ Therefore, the inclusion of the UN Security Council, along with related UN departments and states for active cases, could provide an opportunity to take action against conflicts, and results could be monitored through GRFs.¹²⁸⁷ Keeping international attention on conflict zones alive every 4 years via GRFs at the UN Security Council could also mobilise pledges from relevant stakeholders to address root causes.

Moreover, the GCR adopts an innovative approach by including multi-stakeholders to provide effective burden and responsibility sharing, expanding the mobilisation areas of the GCR; and establishes new platforms to ease decision-making by providing internationally more effective, predictable, and fairer responsibility sharing to realise voluntary repatriation.¹²⁸⁸ Nevertheless, the innovative approach of the GCR, criticised by many scholars and Amnesty International, takes risks by increasing already existing initiatives and building extra layers of

¹²⁸⁴ GCR (n 11), paras 8 and 87.

¹²⁸⁵ Perry and Schwartz (n 1139).

¹²⁸⁶ <https://globalcompactrefugees.org/multistakeholder-pledge-peacebuilding-and-conflict-prevention#dashboard>, accessed 18 November 2022.

¹²⁸⁷ GCR (n 11), paras 106 and 107.

¹²⁸⁸ Türk (n 360).

bureaucracy to provide a fairer responsibility sharing system.¹²⁸⁹ Ineli-Ciger contends that proposed platforms such as the GRF can provide suitable places for stakeholders to meet and discuss solutions to a specific large-scale refugee movement and/or a prolonged refugee situation and clarify their responsibility-sharing contributions.¹²⁹⁰ Encouraging collective decision-making mechanisms is evaluated as an excellent opportunity to think collectively and comprehensively regarding responsibility sharing, especially in a large movement of refugees situation.¹²⁹¹

In 2019, GRF, which is the first, received a total of 3044 pledges, 1065 of which are in the process of being implemented now.¹²⁹² Additionally, in 2019, the GRF finalised 1399 pledges, including 9 that concerned voluntary repatriation in line with the innovative and inclusive approach of the GCR.¹²⁹³ For a positive instance, Burundi promised, following the 2019 Global Refugee Forum, to repatriate its refugees from Tanzania, and the Republic of Korea, through the Korea International Cooperation Agency (KOICA), recently volunteered to support this pledge.¹²⁹⁴ Both countries are working together to implement Goal 4 (voluntary repatriation) of the GCR, which supports the creation of conditions in countries of origin for repatriation in safety and dignity, by providing more than USD5 million to help Burundi fulfil its goal.¹²⁹⁵ By providing agricultural and artisanal livelihoods, as well as access to education, the innovative collaboration is meeting the requirements of local development and longer-term reintegration for Burundians returning home.¹²⁹⁶ Although some challenges, such as being a first experience and the COVID-19 pandemic conditions, were faced, various kinds of pledges

¹²⁸⁹ Hathaway (n 16).

¹²⁹⁰ Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177) 100,127.

¹²⁹¹ Turk (n 360)

¹²⁹² *Ibid.*

¹²⁹³ *Ibid.*

¹²⁹⁴ UNHCR, UNHCR Burundi Operations Overview (2023) <<https://globalcompactrefugees.org/pledges-contributions/matching-pledges>> accessed 12 December 2023.

¹²⁹⁵ *Ibid.*

¹²⁹⁶ *Ibid.*

from states and other stakeholders were provided, which made good progress.¹²⁹⁷ However, 4 years later, there is still so much to be done, bearing in mind that in 2023, there are 26 countries producing refugees due to armed conflicts and generalised human rights violence.¹²⁹⁸

The world has different problems and various opportunities in the refugee context in the 21st century compared to previous periods.¹²⁹⁹ For example, innovative actors can play a crucial role in responsibility sharing, such as the World Bank's funding of the Colombian Voluntary Repatriation Programme, whereas in the past, responsibility sharing was limited to intergovernmental practices. A multi-stakeholder approach makes it possible to draw attention to the importance of the refugee problem across various platforms, and it can foster goodwill and a desire to assist with challenges in refugee protection worldwide.¹³⁰⁰ In accordance with Türk and Garlick, the GCR, because of its multi-stakeholder structure, will intensify efforts to provide timely solutions for refugees.¹³⁰¹ Incorporating various stakeholders alongside the state on fairer responsibility-sharing platforms is interpreted positively and demonstrates that the GCR conforms with the conditions of the 21st century. Multi-stakeholders include refugees as well.¹³⁰² It is evaluated as meaning that refugees are a component of a solution under a multi-stakeholder approach, not just a problem, for the international community.¹³⁰³ It is a meaningful step taken for the sustainability of voluntary repatriation. However, there is significant ambiguity regarding the role and wishes of refugees in this innovative approach, especially for prolonged refugee situations.¹³⁰⁴ Their positions and effect on the platforms need to be more

¹²⁹⁷ Trigg and Wall (n 8).

¹²⁹⁸ <https://www.iiss.org/en/publications/armed-conflict-survey/2023/editors-introduction/#:~:text=global%20energy%20security.-,Sub%2DSaharan%20Africa,Central%20African%20Republic%20and%20Mozambique>, accessed 18 November 2023.

¹²⁹⁹ Betts (n 1156).

¹³⁰⁰ Türk and Garlick (n 572) 676.

¹³⁰¹ *Ibid* 677.

¹³⁰² E Feller, 'International Refugee Protection 50 Years On: The Protection Challenges of the Past, Present and Future' (2001) 83 IRRC 581, 599.

¹³⁰³ *Ibid*.

¹³⁰⁴ Perry and Schwartz (n 1139).

for a subject of voluntary repatriation.

The GCR also includes regulations to develop the international response to specific refugee situations through the support of government-led arrangements.¹³⁰⁵ These arrangements include solidarity conferences, support platforms, and regional and sub-regional approaches.¹³⁰⁶ They will be based on states and other stakeholders tasked to activate support for host states and explore durable solutions.¹³⁰⁷ Thus, the support platforms include large-scale content such as financial, material, and technical assistance, resettlement to third countries, and facilitating coherent humanitarian and development responses in addition to specific support for voluntary repatriation in large-scale and prolonged situations.¹³⁰⁸ These arrangements will encourage context-specific, sustainable, and predictable support for the host state and refugees.¹³⁰⁹

As seen in previous paragraphs, parts of the GCR's mechanism, including actors, platforms and contribution examples, appear convenient for sharing the burden and responsibility regarding protection and solutions for refugees. Nevertheless, no guideline or method explains how the international community achieves fairer, predictable and sustainable burden and responsibility sharing to reach effective voluntary repatriation, which is shown as a significant deficiency in addition to the soft law nature of the GCR.¹³¹⁰ That means contributions of states will be determined by the initiative of states or stakeholders according to their national realities and capacities for development.¹³¹¹ Thus, there is no clarity on how the international community ensures the specified points encouraged by GCR to provide sustainable and durable voluntary repatriation via supporting the country of origin, namely housing and property issues; analysing risk; and promoting development, livelihood, and

¹³⁰⁵ Türk (n 360) 579.

¹³⁰⁶ *Ibid.*

¹³⁰⁷ *Ibid.*

¹³⁰⁸ UNHCR (n24) 1 para 23-24.

¹³⁰⁹ Türk (n 360).

¹³¹⁰ Perry and Schwartz (n 1139).

¹³¹¹ Pijnenburg, (n 615).

economic opportunities in communities receiving returnees.¹³¹² For example, the host countries' responsibility and the not-affected countries' responsibility will be identical or different? Only providing money will be enough for the reintegration, rehabilitation, and reconstruction phases. Most importantly, what kind of responsibilities can the state and other stakeholders take when the country of origin doesn't request any help to address root causes? Therefore, the unclear appearance of how states' responsibility-sharing should be measured fairly to achieve the objectives of the GCR is the most complicated challenge of the GCR.¹³¹³

There are various proposals for responsibility sharing in international law, such as common and differentiated responsibility¹³¹⁴ pre-determined resettlement quotas depending on gross national product (GNP) and population size¹³¹⁵ or landmass and the population density of states,¹³¹⁶ and building a market of responsibility based on the idea of selling refugee protection responsibility to other states.¹³¹⁷ Expanding proposals is possible. Still, it is generally focused on protecting refugees outside their country of origin. However, voluntary repatriation's responsibility-sharing mechanism needs more complex proposals, from addressing root causes to reintegration and rehabilitation of the returnees in their country of origin, which has not been developed yet. However, some proposals can be convertible for voluntary repatriation. When the proposals can effectively apply for protection, it will reduce pressure on involuntary reactions as mentioned above. In response to this essential challenge, Ineli-Ciger suggests a

¹³¹² Perry and Schwartz (n 1139).

¹³¹³ Dowd and McAdam (n 1151) 864-867.

¹³¹⁴ James C Hathaway and R Alexander Neve, 'Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection' 98

<https://heinonline.org/HOL/Page?handle=hein.journals/hhrj10&div=8&g_sent=1&casa_token=mHfUrKbguYkAAAAA:PkZsvRa6hMC_RMWPnTbioIVQs7vvVSXRA6EzH-GWG39fMFPN8NFwvVBvtFOLtllOxSfMy0&collection=journals> accessed 10 August 2019 144-5, 210-11.

¹³¹⁵ A Grahl-Madsen, 'Refugees and Refugee Law in a World of Transition' [1982] Michigan Yearbook of International Legal Studies 65, 74, cited in Hathaway and Neve (n 27) 203.

¹³¹⁶ BS Chimni, 'The Operational Mechanism: International Burden Sharing, in Reconciling Refugee Law as Human Rights Protection' (Background Paper for the Meeting of the Legal Working Group) 86, 104-7 (April 1993) (unpublished manuscript), cited in Hathaway and Neve (n 27) 204.

¹³¹⁷ PH Schuck, 'Refugee Burden-Sharing: A Modest Proposal' (1997) 22 YaleJIntL 277.

new annex to the GCR that combines the different proposals offered by states.¹³¹⁸ Nevertheless, it would not likely be straightforward due to the reluctance of states to clarify future commitments today. Dowd and McAdam argue that any improvement of responsibility sharing in the refugee context depends on the political, economic and social interests of states.¹³¹⁹ According to the existing international refugee system, state practices comprehend the principle of responsibility-sharing as a voluntary action, not an obligation.¹³²⁰

Therefore, the sustainability and effectiveness of states' contributions regarding effective voluntary repatriation are unclear. Even though, as explained in the previous paragraphs, the GCR includes many innovative and necessary things regarding responsibility sharing and voluntary repatriation in light of the needs of international law and the requirements of the 21st century, it has been unsuccessful in terms of covering any obvious and tangible mechanisms or measures that provide enough of a contribution to the states that host or support numerous refugees or provide at least a road map for the accomplishment of fair responsibility sharing.¹³²¹ Nonetheless, using a legally non-binding instrument to satisfy a legal gap as well as practical needs in responsibility sharing demands obvious and strict measures regarding how to fairly distribute responsibility for refugee protection among states.¹³²² Thus, regretfully, the GCR does not create any obligation on states and relevant stakeholders and does not reference the current legal and applicable obligations of states and relevant stakeholders concerning refugees.¹³²³ These factors limit the probable power of the GCR, ironically.

On the one hand, the GCR is a missed opportunity to include a legally binding character

¹³¹⁸ Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177) 137.

¹³¹⁹ Dowd and McAdam, 'International Cooperation and Responsibility Sharing to Combat Climate Change: Lessons for International Refugee Law', 217.

¹³²⁰ T Kritzman-Amir and Y Berman, 'Responsibility Sharing and the Rights of Refugees: The Case of Israel' (2010) 41(3) *GeoWashIntlLRev* 619, 633.

¹³²¹ *Ibid* 131.

¹³²² Ineli-Ciger, 'The Global Compact on Refugees and Burden Sharing: Will the Compact Address the Normative Gap Concerning Burden Sharing?' (n 1177) 130.

¹³²³ Pijnenburg, (n 615).

or provide a pathway for international burden and responsibility sharing in response to the needs of the 21st century in the refugee context. On the other hand, voluntary repatriation finds a new innovative platform to improve the burden and responsibility-sharing practices of states and other stakeholders. In this context, it is part of the longer historical duration, with all its drawbacks. Still, however, with all its potential and demands.¹³²⁴ Therefore, as stated by Gilbert, it is crucial to develop indicators for the GCR's future success. Turk defines the GCR as a means of constituting a space to work together towards more robust mechanisms for fairer responsibility-sharing.¹³²⁵

It is a new instrument in international refugee law to make a particular decision. The practical implications of operationalising a non-binding document, which nevertheless reflects States' political commitment to provide concrete contributions to burden and responsibility sharing by the international community as a whole, will take time to resolve. If it fails to produce effective burden and responsibility sharing, as Hathaway's argument states, this process would be no more than an additional discussion of responsibility sharing.¹³²⁶ If the GCR's voluntary and multi-stakeholder mechanisms gradually produce more predictable, equitable, and measurable burden- and responsibility-sharing, they may create the political and normative foundation for a future legal process to address the long-standing gap in international refugee law concerning responsibility-sharing and durable solutions, including voluntary repatriation.

Conclusion

In the ever-evolving landscape of the refugee context, the effectiveness of responsibility sharing remains a subject of constant exploration and debate. In the 21st century, owing to the remarkably increasing armed conflicts and violation of fundamental human rights in numerous states, large-scale and prolonged displacement forms enormous pressure on host states because

¹³²⁴ *Ibid*

¹³²⁵ *Ibid.*

¹³²⁶ Hathaway (n 17).

unbalanced sharing of responsibilities puts refugees and host states in a deadlock for adequate protection and solution.¹³²⁷ Moreover, voluntary repatriation became a from 'desirable' to 'necessary' solution for refugees in the 21st century because resettlement and reintegration options cannot apply as a durable solution due to the reluctance of the international community for responsibility sharing. However, the non-binding legal framework of voluntary repatriation also does not allow practical applicability in responding to the needs of the 21st century. Therefore, the GCR is created on the principle of burden and responsibility sharing, considering the deadlock position of the world as mentioned above and in detail under Chapter 3.¹³²⁸

The GCR was accepted by most states in 2018 to provide more effective, predictable, and fairer international responsibility sharing to realise its objectives, including voluntary repatriation in line with the needs of the refugee crisis in the 21st century. Türk proclaims that the GCR is a milestone in the international refugee protection system and that it is the first agreement of such importance since the adoption of the 1951 Convention.¹³²⁹ Hence, the GCR, having a global burden and responsibility sharing statement, determines voluntary repatriation as one of its prioritised purposes.¹³³⁰ Effective burden and responsibility sharing is used as a guiding principle¹³³¹ for every phase of the repatriation for achieving sustainable voluntary repatriation. Betts summarises the fundamental things done for international responsibility sharing by the GCR under three points. First, it determines the actors on an innovative scale that it would like to support responsibility sharing; second, it clarifies the areas that actors can contribute to; and third, it establishes new platforms to enforce this contribution, such as the GRF, Support Platforms and solidarity conferences.¹³³² Therefore, it provides a smooth

¹³²⁷ Sarah Deardorff Miller, 'High Hopes: The Global Compact for Refugees and Improving Responsibility Sharing' (Refugee Law Initiative Blog, 27 February 2019) <<https://rli.blogs.sas.ac.uk/2019/02/27/high-hopes-the-global-compact-for-refugees-and-improving-responsibility-sharing/>> accessed 9 August 2020.

¹³²⁸ See Chapter 3.

¹³²⁹ Türk (n 360) 581.

¹³³⁰ GCR (n 11), para 7.

¹³³¹ GCR (n 11), para 5.

¹³³² Betts (n 1156) 625.

transition between the ideas and tangible mechanisms.¹³³³

The GCR holistically sticks to a legal framework of voluntary repatriation till now; it has not added any new regulations. Repetitions of the whole international law of voluntary repatriation, which, by a new instrument, reaffirmed by 181 states, empowered the legal framework of voluntary repatriation.¹³³⁴ Therefore, the GCR can strategically open a new innovative space for the improvement of voluntary repatriation, depending on the practical implementation of burden and responsibility sharing. However, it is not legally binding and entirely depends on the states' voluntary contributions. Therefore, due to its soft law character, the GCR is exposed to numerous criticisms, arguing that the GCR does not have enough legal capacity to realise sustainable voluntary repatriation through an effective, predictable, and fairer international burden and responsibility sharing.¹³³⁵ Nevertheless, GCR has a normative character and causes commitments of the state parties, despite its non-legally binding nature.

Even though the legal nature of regulation is a soft law, it can still be implemented effectively. Both voluntary repatriation and international responsibility sharing are 70 years old legal shortcomings of the international refugee system. The most significant advantage of the legally binding instruments is that they cause changes in the state's domestic law accordingly, and they create credibility for the pledges. However, soft law instruments can be applied effectively and become a treaty, custom, or domestic legislation based on the state's practices. Even though the GCR is not legally binding, it provides some significant practical consequences for improving voluntary repatriation due to the 2019 and 2023 GRFs. For instance, the Korea International Cooperation Agency provided sponsorship and collaboration to repatriate refugees from Korea and Tanzania to Burundi. Another example is the EU Pact on Migration and Asylum (EU Pact), finalised on 23.09.2020, which includes meaningful effects of the GCR.

¹³³³ *Ibid.*

¹³³⁴ See Chapter 2.

¹³³⁵ Hathaway (n 16); Perry and Schwartz (n 1139).

The normative approach of the GCR regarding voluntary repatriation and international fairer responsibility-sharing partly but very significantly corresponds to the EU context.

Therefore, depending on the application of the GCR, the international community could substantially improve voluntary repatriation in international law and practical responsibility sharing in the refugee context. The practical impact of the GCR on the international community gives rise to expectations regarding future applications for voluntary repatriation.

However, the GCR doesn't have any pathway to direct states and other stakeholders on how to share responsibility and measures for voluntary repatriation. Considering the non-legally binding nature of the GCR, actors can behave according to their interests, but the sustainability and effectiveness of the contributions can be doubtful. The GCR can be considered a lost chance to incorporate a legally binding nature or provide a road map for international burden and responsibility sharing. Although strong normative voluntary repatriation content and innovative approaches regarding actors and platforms create its mechanism, the GCR lacks any direction regarding how actors can share the burden and responsibility for sustainable voluntary repatriation. Thus, the legal nature and the gap in directions regarding effective burden and responsibility sharing create barriers to its effective application for voluntary repatriation.

To conclude, the GCR provides a partially sufficient but supportive instrument for improving voluntary repatriation. However, international communities' practical response to the GCR would demonstrate this instrument's efficiency in improving sustainable voluntary repatriation in international law. Therefore, the following chapter analyses two case studies, Somalia and Afghanistan, to assess the practical response of the GCR.

CONCLUSION

Voluntary repatriation remains a central yet highly complex durable solution for refugees in the 21st century. At the end of 2024, refugees under UNHCR's mandate reached 31 million. Only 1.6 million of them voluntarily returned to their country of origin.¹³³⁶ Although the number of returnees increased in 2024,¹³³⁷ voluntary repatriation is not a feasible option for the majority of refugees due to instability in their country of origin. The 21st century has experienced protracted refugee situations in host states without a timely and durable solution for decades. The present thesis, thus, aimed to address how durable and sustainable voluntary repatriation can be realised in the 21st century for most refugee communities under international law. The current international law governing voluntary repatriation is insufficient to guarantee significant rights for refugees and obligations for states within an accountable framework reflecting the challenges of 21st refugee phenomena. Considering the normative and operational gaps, this thesis argues that the voluntary repatriation of refugees is an essential part of the international protection regime and requires legally specific regulations and a comprehensive system based on the HDPN, achieved through practical global cooperation with UNHCR.

This concluding chapter begins by revisiting the research questions and reflecting on the analysis and synthesis of research findings to justify the principal argument of the thesis. Original contributions to pertinent literature are indicated with legal, practical and theoretical impacts. Eventually, it provides a brief overview of the limitations and makes recommendations for future research.

1. Reflections

While voluntary repatriation is theoretically recognised as a preferred and ideal durable

¹³³⁶ UNHCR, *Global Trends 2024* (12 June 2025) (n 8) 14.

¹³³⁷ *Ibid* 7.

solution, its practical implementation is both inadequate and ineffective. According to this thesis, the voluntary repatriation of refugees fundamentally has institutional¹³³⁸, legal¹³³⁹, and practical¹³⁴⁰ obstacles that make it a durable and sustainable solution for most refugee communities. It sought to clarify these obstacles under three core research questions.

Firstly, the thesis set out to investigate the conceptual development of voluntary repatriation with a historical perspective. This investigation demonstrated that voluntary repatriation of refugees is founded on mandatory repatriations implemented by sovereign states and international institutions since World War I, when the refugees became an international issue. There were two significant outcomes for the development of voluntary repatriation. First, a global inter-state bureaucracy was developed to protect and provide durable solutions for refugees by means of international institutions. Second, voluntariness became the principal condition for the return of refugees due to the rise of the principle of non-refoulement under the international protection regime. However, changing political interests of sovereign states shaped the concept of voluntary repatriation via international institutions, rather than the human rights of refugees. For instance, (in)voluntary return was a forced solution for refugees by assuming repatriation was the natural voluntary choice of refugees after WWI via LNHCR. In contrast, return was effectively refused by refugees, which justified the principle of voluntariness, as resettlement was the preferred solution of sovereign states during the Cold War through the IRO. Post-Cold War, UNHCR has implemented voluntary repatriation as a hierarchically prioritised solution with numerous problematic and premature applications for human rights of returnees, due to the reluctance of states to provide local integration and resettlement in their territory.

¹³³⁸ See Chapter 1.

¹³³⁹ See Chapter 2.

¹³⁴⁰ See Chapter 3.

Therefore, the thesis demonstrated that the conceptualisation of voluntary repatriation is inherently challenging to establish an effective voluntary repatriation mechanism. The main reason was identified as promoting and facilitating voluntary repatriation, which has been left to the institutional capacity of the UNHCR, which operates mainly through cooperative engagement with sovereign states. Its capacity to prevent premature or forced returns is limited when host states unilaterally terminate refugee status or close camps, forcing refugees to choose between return and losing international protection entirely. Thus, UNHCR usually struggled to provide a balance between the sovereign rights of states and the human rights of refugees. Historical examples, including the forced returns under UNRRA after World War II, the 1990s premature, imposed and (in)voluntary repatriation organisations like Rwanda, and more recent repatriation operations in Afghanistan and Somalia, demonstrated that voluntary repatriation, when implemented under pressure or without adequate safeguards, risked violating the principle of non-refoulement and causing cycles of new displacement.

Furthermore, the research showed that voluntary repatriation is intrinsically linked to state sovereignty and the political interests of host and origin states. Sovereign rights often override the protection mandate of the UNHCR, meaning that international organisations can facilitate returns only to the extent that states permit. This creates a limitation: while the UNHCR can provide logistical and protective support, it cannot enforce compliance with voluntary return principles in host states¹³⁴¹, nor can it ensure that conditions in the country of origin are sufficient for sustainable reintegration.¹³⁴² The analysis concluded that these institutional, legal, physical and financial limitations of the UNHCR are among the primary barriers to fully realising voluntary repatriation as a durable and sustainable solution. Therefore, the thesis claimed that the concept of voluntary repatriation needs to be legally and detailly grounded

¹³⁴¹ See Chapter 4: Somalia.

¹³⁴² See Chapter 4: Afghanistan.

under IRL, supporting the limited institutional capacity of the UNHCR.

Thus, secondly, the thesis outlined the legal framework of voluntary repatriation within international law, identifying its principal elements and components. Notwithstanding, a significant finding was that voluntary repatriation lacks specifically binding regulations to ensure the durability and sustainability of returns. However, the principle of non-refoulement serves as a safeguard for voluntary repatriation. There is a legal gap in IRL, because the 1951 Convention does not explicitly and in detail cover voluntary repatriation and standards regarding voluntary repatriation were developed by UNHCR's soft law. However, voluntary repatriation is a common interacting ground for IRL, IHRL and IHL. Therefore, the thesis revealed that regulations regarding the right to return and the obligation not to force people to return where they face persecution strengthen the legal basis of voluntary repatriation under various kinds of treaties.¹³⁴³ Enforcement mechanisms of related treaties from IHRL and IHL play a complementary role in reinforcing the legal framework of voluntary repatriation. However, states have become internationally responsible for causing involuntary repatriation due to the violation of the principle of non-refoulement, which is restricted by the efficiency of the conventions' enforcement mechanisms.

The thesis contended that voluntary repatriation cannot be considered as independent of states' obligations to provide international protection due to an indispensable relationship with the principle of non-refoulement. Moreover, the global protection responsibility of states would not end with refugees voluntarily crossing borders; protection responsibility regarding returnees should continue until repatriation becomes a durable, sustainable solution for them. Voluntary repatriation becomes durable and sustainable only where the return is not merely physically possible but also legally safe, genuinely voluntary, and practically viable. This requires that

¹³⁴³ See Chapter 2.

returnees be protected from renewed persecution or serious harm and be able to reintegrate into their country of origin by accessing rights, services, livelihoods, documentation, housing, and security. Thus, durable and sustainable repatriation depends on the interaction between refugee protection, reintegration support, development assistance, peacebuilding and the restoration of effective state protection. Therefore, the main argument of the thesis is that voluntary repatriation of refugees is an essential part of the international protection regime. Findings derived from UNHCR's recent international law of voluntary repatriation supported the main argument of the thesis. UNHCR strengthened principal elements: objective assessment about the conditions of the country of origin to promote voluntary repatriation, voluntariness, safety and dignity and extended components of voluntary repatriation with reintegration, rehabilitation and reconstruction to provide sustainability and durability for repatriation, not only by cooperating with affected states but also by activating global cooperation at all. However, the soft law character of the UNHCR's standards is insufficient to implement these standards effectively. According to the present thesis, voluntary repatriation legally requires specific, binding obligations to guarantee the timing, conditions, durability and sustainability of voluntary repatriation.

Moreover, drastically changed conditions of refugee phenomena in the 21st century make voluntary repatriation operations more vulnerable and limited, in addition to the institutional limitations of the UNHCR and the non-legally binding nature of the law on voluntary repatriation. Thus, thirdly, the thesis explored operational challenges of voluntary repatriation in practice. Accordingly, the findings identified two main reasons that create obstacles to effective voluntary repatriation in practice. The first one has been protracted refugee situations driven by long-lasting contemporary armed conflicts. It has left most of the refugees in a deadlock, where they have neither the right to remain in another state permanently nor the ability to return to their country of origin due to ongoing root causes. In 2024, 67 per

cent of world refugees were under protracted situations that lasted an average of 20 years.¹³⁴⁴

The second one has been identified as an urgent need for international solidarity on refugee issues more than ever. While the number of refugees has sharply increased in the 21st century, today 73 per cent of world refugees have been hosted by neighbouring low- and middle-income countries.¹³⁴⁵ Moreover, the thesis proved that widespread exclusion policies of host and third states against refugees have prevented implementations of local-integration and resettlement as traditional durable solutions. The thesis claimed that overall, these problems have created increasing pressure on repatriation, which is not a voluntary and durable solution, but a necessary and temporary option for a considerable number of refugees whenever feasible. Therefore, refugees usually return to their country of origin voluntarily due to the push policies of overwhelmed host states and the refugees' prolonged lack of access to their country of origin. However, as analysed under the Somalia and Afghanistan case studies, promoting voluntary repatriation before the stability provided in the country of origin generally caused a new refugee cycle between host and origin states due to ongoing root causes.¹³⁴⁶

In this regard, the thesis proposed a comprehensive system for voluntary repatriation under HDPN, incorporating practical global cooperation to make voluntary repatriation a durable and sustainable solution. Handling voluntary repatriation within a comprehensive HDPN approach, under a legal system that activates global collaboration, is the only way to overcome the complexity of voluntary repatriation, rather than repeating expectations from traditional understandings of solutions based on the responsibilities of war-torn governments. The relevance of the HDPN approach, combined with practical global cooperation, for durable and sustainable voluntary repatriation was clearly supported by the findings from an in-depth

¹³⁴⁴ 1951 Convention (n 1), Preamble and art 33; 1969 OAU Convention (n 4), art 5(1); ECHR (n 2), art 3; ICCPR (n2), arts 6 (1,3),7, 12 (2,4), CAT, art 3 ; CRC (n 2), art 19; Article 45 and 47 of Fourth Geneva Convention.

¹³⁴⁵ UNHCR, *Global Trends 2024* (12 June 2025) (n 8) 40.

¹³⁴⁶ *Ibid* 2.

analysis of case studies presented in Chapter 4. It examined two case studies, Somalia-Kenya and Afghanistan-Pakistan, the legal, practical and institutional dimensions of voluntary repatriation from the past to today. Significant lessons were drawn from the case studies, as indicated below.

- Both case studies confirmed the introduction of legal, institutional, and practical obstacles to voluntary repatriation in the thesis as a problem for their historical and contemporary voluntary repatriation initiatives. The absence of domestic law of explicit, binding international regulations for voluntary repatriation in host states leads to inconsistent practices and varying interpretations of governments while cooperating with the UNHCR. The UNHCR's ability to guarantee voluntary repatriation is constrained by the cooperation of sovereign states. While it provides logistical, humanitarian and protective support, it cannot enforce repatriation compliance with voluntary repatriation principal elements and components in practice.
- Case studies illustrated that the absence of secure conditions, adequate reintegration infrastructure, and coordinated humanitarian and developmental support undermines the durability and sustainability of returns. For instance, voluntary repatriation operations in Somalia and Afghanistan demonstrated that returnees have faced unstable security, limited access to housing, and inadequate legal, health, and educational services. These challenges continued even after large-scale assisted returns, highlighting the necessity of linking repatriation operations with broader reconstruction, reintegration, and peacebuilding efforts.
- Both highlighted the need for a paradigm shift in voluntary repatriation law and practice, emphasising the urgent need to provide secure and stable environments, strengthen weak governments with all their institutions and reintegration infrastructure, and coordinate with the UNHCR.

- However, analysis of case studies demonstrated that international cooperation and contributions to support HDPN conditions in the country of origin are far from enough to provide a sustainable environment for life and durable conditions for peace. According to the thesis, humanitarian, development, and peacebuilding actors must be coordinated to address security, infrastructure, governance, and livelihood challenges in countries of origin under a practical global cooperation.

Therefore, the thesis discussed the potential of the GCR for a proposed legal framework of voluntary repatriation, presenting the main argument that GCR provides a basis to connect the latest legal developments regarding voluntary repatriation standards, the HDPN approach, and the practical urgent cooperation needs. The thesis aimed to gain a deeper understanding of GCR's approach to the future of voluntary repatriation, while investigating whether the GCR provides a more effective way to deliver HDPN in the country of origin, thereby ensuring practical global cooperation. The investigation demonstrated that the voluntary repatriation of refugees aligns with the GCR's main aims by providing effective burden- and responsibility-sharing, from addressing root causes to clarifying contributions to support the country of origin. Hence, this implicit link with HDPN and legal foundation on existing normative standards of voluntary repatriation was evaluated as a positive note by the thesis. Nevertheless, the legally non-binding character of the GCR, based on voluntary contributions of states to provide burden- and responsibility-sharing, constituted a principal negative note for the improvement of voluntary repatriation in line with the main argument of the thesis. Despite its soft law nature, GCR provides innovative platforms and encourages actors to participate in cooperation through a multi-stakeholder approach.

The thesis explored this new approach under case studies. According to the thesis, GCR has the potential to make a significant difference in improving voluntary repatriation. However,

its contributions have not been sufficient to provide durability and sustainability of voluntary repatriation in Somalia and Afghanistan. For instance, supporting platforms established under GCR, DSI for Somalia and SSAR for Afghanistan offer a roadmap to meet the needs for durable and sustainable voluntary repatriation and coordinate multi-stakeholders to contribute funding for the development of the conditions in the country of origin to facilitate effective voluntary repatriation. This thesis introduces GCR as a meaningful tool for developing voluntary repatriation, transforming political commitments into concrete contributions for the country of origin's development.

According to the thesis, the GCR could become more effective for voluntary repatriation in line with the legal HDPN paradigm shift for voluntary repatriation, while facilitating international cooperation, depending on the implementation approach. The thesis suggested that innovative safe zone implementation through GCR in a way to support the durability and sustainability of voluntary repatriation in the country of origin. The investigation under Chapter 4 demonstrated that UNHCR's humanitarian assistance for Somalia and Afghanistan was only funded at 51% in August 2024, with only 43% of the required amount allocated to the country of origin.¹³⁴⁷ The thesis proposed that establishing safe zones on the other side of the border, with cooperation with armed groups and the UN Security Council, could be more effective than distributing funds between overburdened host states and countries of origin. This would not only alleviate pressure on host states but also provide sufficient funds for a sustainable life for returnees within a protective environment. A safe zone could be spread across the country, promoting self-reliance and confidence among returnees. The Global Responsibility Sharing Platforms could also provide a catalyst for building durable and sustainable voluntary repatriation for most refugees within the safe zone projects.

¹³⁴⁷ See Chapter 4 and 5.

2. Originality

This thesis contributed several unique insights regarding the improvement of voluntary repatriation under international law and practice:

- Scholarly attention on voluntary repatriation within the context of the GCR is minimal as a research topic. The central original contribution of this thesis lies in its innovative integration of the GCR, HDPN, legal and operational realities of voluntary repatriation, offering a framework that is simultaneously legally informed, developmentally grounded, and practically implementable. By addressing both gaps in the international law of voluntary repatriation and challenges in practice, it provides a robust foundation for future research, policy design, and international cooperation aimed at achieving durable and rights-based solutions for forcefully displaced populations in the 21st century.
- Reframing voluntary repatriation under the case studies of Somalia and Afghanistan as a result of contemporary, comprehensive and comparative research that has been conducted from a legal standpoint and a refugee-centric approach provides a unique contribution to the development of legal literature on voluntary repatriation.
- Furthermore, this thesis contributed to policy and operational debates by offering guidance for both the UNHCR and state authorities. It identifies key legal, institutional, and operational challenges, including limitations in enforcement mechanisms, the absence of binding obligations under current international law, and the operational constraints faced by UNHCR, host, and origin states, while offering evidence-based recommendations to address these limitations in practice, based on the analysis of Afghanistan and Somalia with the GCR.

- Lastly, unlike previous research focusing on voluntary repatriation, this thesis investigated the history of the conceptual development of voluntary repatriation before the 1920s. The thesis refuted the general assumption on voluntary repatriation developed by the international community that repatriation has been voluntary, a natural choice of refugees, or that refugees naturally desire to return to their home states, with a deep investigation starting from ancient times. On the one hand, this thesis provided the first comprehensive historical investigation of the conceptualisation of voluntary repatriation under international bureaucracy and law before the 1920s. On the other hand, it demonstrated that general assumptions regarding voluntary repatriation lacked historical evidence.

3. Limitations and Future Directions

To preserve the focus and feasibility of the research within time and word count restrictions, the thesis focuses on large-scale refugee movements due to contemporary armed conflicts and their assisted repatriation by the UNHCR to the country of origin as a voluntary and durable solution. However, voluntary repatriation could be an option for internationally forcefully displaced people due to human rights violations and natural disasters, or people internally displaced because of the root causes above. Therefore, the thesis can provide a sufficient foundation to improve voluntary repatriation of internally or internationally displaced peoples, as human rights violence has not reached the conflict stage and natural disasters caused by climate change are a future concern.

Moreover, outcomes from the analysed two case studies, Somalia and Afghanistan, can provide an adjustable basis for voluntary repatriation of other case studies having similar

aspects. Somalia and Afghanistan demonstrate the difficulties of operationalising voluntary repatriation into practice in conditions of unstable security, weak governmental institutions, and inadequate reintegration circumstances, commonly found in countries such as South Sudan, Myanmar, Syria, the DRC, and Iraq, where repatriation remains meaningless without addressing the root causes and implementing comprehensive legal, humanitarian, and developmental strategies. Therefore, crucial findings and recommendations provide guidelines for research about other states as exemplified above.

4. Closing Statement: Towards Durable and Sustainable Returns

As a final note, I hope that the proposed paradigm shift regarding effective voluntary repatriation linked with the HDP nexus and the protective repatriation approach with a legally binding framework suggestion clarifying the principal elements would provide a meaningful contribution to the academic field, guidelines for policymakers and sovereign states. The proposed legal framework is necessary for the international community, with all stakeholders, which is crushed under the burden and responsibility of refugees, as much as it is needed for the refugees. Therefore, the deadlock crisis of refugee phenomena in the 21st century could be an opportunity to provide voluntary and durable repatriation for the large numbers of refugees. Suppose states choose to engage with the guidelines proposed in the thesis as a basis for rethinking their approach. In that case, they will be better positioned to cooperate internationally in developing and implementing durable and sustainable voluntary repatriation.

As rightly said by author Zygmunt Bauman, "...I don't believe there is an alternative, more comfortable and less risky, shortcut solution to the problem. Humanity is in crisis - and there is no exit from that crisis other than solidarity of humans."¹³⁴⁸

¹³⁴⁸ Bauman Zygmunt, *Strangers at Our Door*, (Polity Press, 2016) 19.

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