

THE LEGAL STATUS OF AFGHAN REFUGEES POST UNITED STATES WITHDRAWAL FROM AFGHANISTAN AND THEIR FUTURE

**A Thesis submitted in partial fulfillment of the requirement for obtaining the degree of
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(LLM International Law)**



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I hereby declare that this thesis titled as “**The Legal Status of Afghan Refugees Post United States Withdrawal from Afghanistan and Their Future,**” is my own work, and further that, it contains no such text or material which had already been published by some other person previously, nor a substance already approved for the award of any degree of any university of institute for a Higher Learning, provided that a reference has been made in the paper.

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FORWARDING SHEET

The thesis entitled as “**The Legal Status of Afghan Refugees Post United States Withdrawal from Afghanistan and Their Future,**” submitted by **Ms Saba Shaheen**, for the partial fulfillment of the requirement of the degree of **Master of Laws (LLM International Law)** has been completed under my guidance and supervision. I am contented and greatly satisfied with the quality of student’s research work and therefore recommend its submission.”

Dr. Susic Sejo

DEDICATION

This thesis is dedicated to my parents, for their endless love, support, and encouragement.

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ABBREVIATIONS

ACCs	Afghan Citizen Cards
CAT	Convention Against Torture
CCAR	Chief Commissionerate for Afghan Refugees
ExCom	Executive Committee (for the Office of the High Commissioner for Refugees)
GoP	Government of Pakistan
ICESCR	International Covenant on Civil and Political Rights
IOM	International Organization for Migration
NATO	North Atlantic Treaty Organization
OAU	Organization of the African Union
PoR	Proof of Registration
SSAR	Solutions Strategy for Afghan Refugees
UDHR	Universal Declaration of Human Rights
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
WWII	World War II

ABSTRACT

The sudden U.S. exit from Afghanistan in 2021 caused the swift Taliban control, triggering a massive humanitarian crisis as millions fled for safety, scattering into neighboring nations like Pakistan, Iran, and Tajikistan. Safeguarding these refugees became urgent due to uncertain security and potential rights violations under Taliban rule. International aid and governments swiftly offered immediate relief, including shelter and healthcare. Beyond immediate needs, protecting refugees involves ensuring safety, dignity, and essential services access. Host countries, like Pakistan and Iran, vital for decades, must adhere to international law obligations, providing asylum procedures, education, and healthcare. Legalizing refugees' status reduces risks of exploitation. With Afghanistan's instability, ensuring safe returns is challenging. International support for host countries, expanding refugee quotas, and aiding integration are crucial. This thesis delves into Pakistan's role in protecting Afghan refugees post-U.S. withdrawal, exploring its historical support, current efforts, legal responsibilities, challenges, and potential solutions. Understanding Pakistan's refugee sanctuary legacy aids in grasping its current hurdles and opportunities amidst this evolving crisis. Legal frameworks governing refugee protection are also pivotal in this analysis.

THESIS STATEMENT

The global community must reassess the future legal status of Afghan refugees and provide assistance to facilitate their return and contribute to the establishment of a peaceful and prosperous Afghanistan, as the Taliban's offer of a general amnesty following the US withdrawal may carry lasting implications for Afghan refugees worldwide.

CHAPTER 1

INTRODUCTION

1.1 Introduction

Afghanistan has experienced two major conflicts. The first conflict began in December 1979 when the USSR invaded Afghanistan, resulting in approximately 5 million refugees. The second conflict began in 2001 with the invasion of Afghanistan by American and Allied forces. These wars, along with numerous internal political and social upheavals, have led to a significant refugee crisis, with many displaced individuals seeking refuge in neighbouring nations like Pakistan, Iran and Türkiye, in Europe and the U.S.

The recent withdrawal of U.S. forces from Afghanistan and the subsequent Taliban takeover prompted the departure of more than 145,000 people from Afghanistan. Pakistan, as a neighbouring Muslim state to Afghanistan, has performed a crucial role by hosting a substantial number of refugees and actively participating in their rehabilitation and integration efforts.

Refugees are individuals who have fled their home countries due to the threats of war, violence, conflict, or persecution, seeking safety and security by crossing international borders into other nations. There are various compelling reasons that drive people to leave their places of origin and their national identities behind, taking on the status of a refugee. Often, they must embark on this journey with minimal luggage or

clothing, leaving behind their homes, jobs, businesses, possessions, and all their belongings. Refugees do not hold the status of nationals in any particular country according to legal frameworks.

Refugees benefit from the protection outlined in the 1951 Geneva Convention,¹ a crucial document that safeguards their rights. Article 1 of the Geneva Convention of 1951, in particular, defines the criteria for refugee status. It states as follows:

“As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a 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”²

1.1.1 Refugees and International Organizations

Refugees have legitimate claims to rights and protection established by international legal frameworks. These rights and protections are enshrined in both the Refugee Convention and significant human rights treaties. The primary global entity responsible

¹ Convention Relating to the Status of Refugees (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 137 (Refugee Convention) available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20189/v189.pdf>

² Ibid, Article 1(2).

for safeguarding the rights of refugees is the “United Nations High Commissioner for Refugees” (UNHCR).³ Additionally, the “International Organization for Migration” (IOM)⁴ is another international body engaged in affairs that concern the movement of refugees and, more broadly, migrants.

1.1.1.1 United Nations High Commissioner for Refugees (UNHCR)

The UNHCR takes the lead in coordinating international efforts to protect refugees and address refugee-related challenges. Its primary mission is to ensure the rights and welfare of refugees while actively seeking lasting solutions to their predicament. Additionally, UNHCR extends its responsibilities to internally displaced individuals, stateless populations, and individuals who have returned to their home countries after being refugees.⁵ Collectively, these individuals are commonly referred to as “persons of concern” within UNHCR’s purview.

The establishment of this office dates back to 1950, following the conclusion of WWII, when it was created by the UN General Assembly. Its role is marked by independence and impartiality, with its finances and operations being wholly funded by donors, the majority of which, around 86%, comes from governments and the European Union. UNHCR is accountable both to the UN General Assembly (UNGA) and an intergovernmental entity called the “Executive Committee for the Office of the High

³ “About UNHCR”, United Nations High Commissioner for Refugees, accessed January 20, 2023, <https://www.unhcr.org/about-unhcr>

⁴ “Who we are”, International Organization for Migration, accessed January 20, 2023, <https://www.iom.int/who-we-are>

⁵ Supra Note 3.

Commissioner for Refugees” (ExCom). The ExCom boasts a membership of 98 states.⁶

1.1.2 Refugee Convention and its Protocol

The pivotal legal documents in the realm of refugee rights are the 1951 Refugee Convention⁷ and its accompanying 1967 Protocol.⁸ With a collective membership of 149 states that are party to either one or both of these agreements, they establish the precise definition of a “refugee” and delineate refugees rights, with legal responsibilities of nations in safeguarding them.

The “*principle of non-refoulement*”, which adamantly states that a refugee cannot be returned to a nation where they would face serious dangers to their life or liberty, is at the core of these agreements. Today, this idea has developed into a generally accepted standard of customary international law.⁹ The 1951 Convention and its 1967 Protocol are kept safe by UNHCR. In addition to these legislative tools, member states are supposed to work with UNHCR to guarantee the protection and upholding of refugees’ rights.

1.1.3 Afghan Refugees in Pakistan

More than 1.4 million Afghan refugees are officially registered in Pakistan, and there

⁶ “Executive Committee”, United Nations High Commissioner for Refugees, accessed January 20, 2023, <https://www.unhcr.org/executive-committee>

⁷ Convention Relating to the Status of Refugees 1951, Supra note 1.

⁸ Protocol Relating to the Status of Refugees (adopted on 31 January 1967, entered into force on 04 October 1967) 606 UNTS 267, available at: https://treaties.un.org/doc/Treaties/1967/10/19671004%200706%20AM/Ch_V_5p.pdf

⁹ The Principle of Non Refoulement has been incorporated in various universal and regional human rights instruments. The principle states that no country shall return back any person or persons who is facing or likely to face the danger of persecution on the basis of race, religion, ethnicity, nationality or association with any particular group. See *UNHCR Note on the Principle of Non Refoulement, 1997*.

are an estimated one million or more unregistered individuals who have sought asylum there over the last forty years. Nearly a million Afghan nationals who are not registered are thought to be living in the nation at the moment. About 68% of these refugees reside in cities, with the remaining 32% living in what are known as “refugee villages,” which are effectively makeshift camps created to offer sanctuary.¹⁰

Remarkably, this refugee crisis remains one of the most substantial globally, despite receiving relatively limited support from the international community. Pakistan extends some access to social services for refugees and asylum seekers, even though they lack official status and cannot engage in legal employment. Notably, Pakistan currently lacks any national refugee legislation. The country is not a party to the 1951 Convention or the 1967 Protocol but has ratified the “International Covenant on Economic, Social and Cultural Rights” (ICESCR) without reservations.

Afghan refugees in Pakistan receive “Proof of Registration” (PoR) cards that include biometric features, granting them temporary legal status and freedom of movement. However, there are still many essential services and rights that they cannot access even with these PoR cards. These economic concerns are compounded by heightened security perceptions. To oversee the management of Afghan refugees in Pakistan, the GoP established the “Chief Commissionerate for Afghan Refugees” (CCAR).¹¹

¹⁰ European Union Agency for Asylum, “Pakistan-Situation of Afghan Refugees”, Country of Origin Information Report (Luxemburg: May 2022).

¹¹ Zuha Siddiqui, “For Afghan Refugees, Pakistan Is a Nightmare—but Also Home”, *Foreign Policy*, May 09, 2019, accessed from: https://foreignpolicy.com/2019/05/09/for-afghan-refugees-pakistan-is-a-nightmare-but-also-home/#cookie_message_anchor

An organised attempt has been made in the last several years to enhance the rights and welfare of Afghan refugees. A major element of the Pakistani government's 2017 policy for the management and voluntary return of Afghan citizens was the issuance of “Afghan Citizen Cards” (ACCs) to a sizable population of Afghan refugees. While these cards legalized the stay of Afghan refugees, they provide fewer rights than PoR cards. In 2019, only PoR cardholders were granted access to bank accounts.¹²

The policy objective of Pakistan has been to encourage voluntary repatriation, particularly following the fall of the Taliban. Between March and December 2002, over 1.52 million Afghans returned home. Pakistan, Iran, Afghanistan, and UNHCR adopted the “Solutions Strategy for Afghan Refugees” (SSAR) by 2012, highlighting the necessity of improved resettlement and more voluntary repatriation. Additionally, Pakistan's National Action Plan for Counterterrorism in 2012 intended to bring all Afghans home by the end of 2015, offering incentives such as \$400 per family to those returning.

However, the current crisis in Afghanistan suggests that Pakistan may not witness substantial numbers of Afghans returning in the foreseeable future. Large-scale evacuations occurred in August 2011, with approximately 124,000 people evacuated from Afghanistan in the last two weeks of that month. A significant portion of these

¹² Denielle Amparado , Helen Dempster and, Imran Khan Laghari, “With US Withdrawal, Rights of Afghan Refugees in Pakistan Hang in the Balance”, *Centre for Global Development*, August 25, 2021, accessed from: <https://www.cgdev.org/blog/us-withdrawal-rights-afghan-refugees-pakistan-hangbalance>

evacuees were foreign nationals or employees of international organizations for whom evacuation was necessary following the Taliban takeover. Meanwhile, thousands of Afghans have crossed the Chaman border into Pakistan. Despite already hosting millions of Afghan refugees, Pakistan is grappling with the challenge of handling another influx, and it's expected that Islamabad will soon halt their entry.

The Pakistani government has indicated that unlike the 1980s, when millions of Afghans arrived following the Soviet invasion, this time refugee camps would be established at the borders, and Afghans would not be allowed into the heartland. Presently, people can still enter the country through the Chaman border, but the window of opportunity appears to be closing, leading many to take significant risks to leave Afghanistan. Their destination beyond Pakistan remains uncertain.¹³

1.2 Significance of the Study

For various compelling reasons, refugee laws, particularly concerning Afghan refugees, hold immense significance. However, this paper primarily focuses on the Afghan refugee immigration process within the framework of International Refugee Law, specifically the Geneva Convention related to the Status of Refugees in 1951. This convention stands as the primary source for safeguarding the rights of refugees, a critical and emphasized aspect.

Within the entirety of this refugee immigration process lies a system designed for the protection and well-being of refugees between states. It is crucial to recognize

¹³ BBC, "Afghanistan: Fleeing the Taliban into Pakistan and leaving dreams behind", August 31, 2021, accessed from: <https://www.bbc.com/news/world-asia-58380551>

the necessity of reforming and adjusting the existing processes, with a central emphasis on ensuring the protection and rehabilitation of refugees as fundamental aspects. A pivotal question arising within this framework is whether the Pakistani government, which is hosting Afghan refugees on behalf of the United States, and other nations will agree to such a mechanism.

In light of this, it becomes imperative for Pakistan to propose a mechanism that aligns with its principles of independence, credibility, and effectiveness. This prompts an examination of the types of mechanisms that the United States, its allies, and the Pakistani government have thus far adopted for the resettlement of Afghan refugees during and after the Afghan War.

1.3 Literature Review

- A. **“The Structure of Entitlement under the Refugee Convention” by James C. Hathaway, 2021:**¹⁴ This book provides the inaugural comprehensive examination of refugees' human rights, as defined by the UN Refugee Convention. There have been concerns raised about whether refugees should have the right to reunify with their families, exercise their freedom of movement, seek employment, or access public welfare programmes in an era where countries are becoming less willing to simply accept migrants as fellow citizens. There have also been questions over whether it is morally right to admit refugees at all and if it is appropriate to exclude them from visa requirements

¹⁴ James C. Hathaway, “The Structure of Entitlement under the Refugee Convention.” In *The Rights of Refugees Under International Law*, 2nd ed., (Cambridge: Cambridge University Press, 2021) 173–311.

and other immigration laws. Hathaway applies this methodology to the most complicated protection issues facing the world today by linking the UN Refugee Convention's criteria to core tenets of international human rights law. This work breaks new ground as an academic reference for graduate students while simultaneously acting as an invaluable resource for advocates, jurists, and policymakers alike.

- B. **“The Oxford Handbook of Refugee and Forced Migration Studies” by E. Fiddian-Qasmiyeh, G. Loescher, K. Long, and N. Sigona, 2014:**¹⁵ This authoritative Handbook offers a critical examination of the origins and evolution of Refugee and Forced Migration Studies. It also delves into the significant contemporary and forthcoming challenges confronting scholars and professionals engaged in addressing the needs of forcibly displaced populations worldwide. This Handbook, which has 52 cutting-edge chapters written by eminent scholars, practitioners, and policymakers from universities, research institutes, think tanks, non-governmental organisations, and international organisations, provides a thorough and up-to-date overview of the main institutional, political, social, and intellectual issues arising from the global phenomenon of mass displacement. The lively and thought-provoking debates that characterize the quickly growing field of this profession's practice and research are aptly illustrated in these chapters.

¹⁵ Elena Fiddian-Qasmiyeh, Gil Loescher, Katy Long, Nando Sigona, *The Oxford Handbook of Refugee and Forced Migration Studies*, (Oxford University Press, 2014).

C. **“The Global Refugee Crisis: How Should We Respond?” (The Munk Debates 2016) By Louise Arbour, Simon Schama, Nigel Farage, and Mark Steyn, 2017:**¹⁶ The world is currently grappling with its most severe humanitarian crisis since World War II. Over 300,000 people have died in Syria alone, and another 1.5 million have been injured or rendered crippled. A startling 4.5 million people are frantically trying to get out of the nation. An increasing number of Middle Eastern and North African states are either failing or in the process of failing, and Syria is only one example of these entities. This begs the important question of how rich countries ought to respond to such pervasive human misery. Do wealthy Western nations—such as the United States and Canada—have a moral duty to help as many refugees as they can safely and sensibly take in? Otherwise, is this the time to exercise alertness and care in light of an impending wave of mass migration that might threaten the West's liberal and tolerant values? The argument against bestselling author Mark Steyn and former UK Independence Party leader Nigel Farage was presented in the nineteenth semi-annual Munk Debate on April 1, 2016, which featured former UN High Commissioner for Human Rights Louise Arbour and popular historian Simon Schama. The topic of discussion between them was how the West should handle the world's refugee problem.

D. **“International Human Rights and Humanitarian Law: Treaties, Cases, and Analysis by Francisco Forrest Martin, Stephen J. Schnably, Richard**

¹⁶ Louise Arbour, Simon Schama, Nigel Farage, and Mark Steyn, *The Global Refugee Crisis: How Should We Respond?*, *The Munk Debates 2016* (House of Anansi Press; 1st edition, March 14, 2017).

Wilson, Jonathan Simon, and Mark Tushnet, 2011”:¹⁷ Law students can use this book as an introduction to the international legal precedents and instruments that govern the substantive and procedural aspects of international humanitarian law and human rights law. This includes rights to culture, society, and economy. It also looks at the organisational structure and historical context of the systems in place to uphold humanitarian law and human rights. There is a separate chapter that explores the complications of the integration of international law into the legal system of the United States, specifically addressing the concerns of an American readership. This chapter discusses the self-execution doctrine, conflict settlement procedures, and basic principles of constitutional and statutory interpretation. There are parts in the book titled "Questions & Comments" that provide critical analysis of the topics raised.

E. **“Pious Peripheries: Runaway Women in Post-Taliban Afghanistan by Sonia Ahsan-Tirmizi, 2021”:**¹⁸ In order to get access to Afghan women's daily lives and social contacts, the Taliban converted religious devotion into a state-controlled company. “Pious Peripheries” explores the resistance of women by means of first-hand research carried out at a women's shelter in Kabul, which provided sanctuary to fugitive spouses, daughters, mothers, and sisters of the

¹⁷ Francisco Forrest Martin, Stephen J. Schnably, Richard Wilson, Jonathan Simon, and Mark Tushnet, *International Human Rights and Humanitarian Law: Treaties, Cases, and Analysis*, (Cambridge University Press; 1st edition, March 13, 2011).

¹⁸ Sonia Ahsan Tirmizi, *Pious Peripheries: Runaway Women in Post-Taliban Afghanistan*, (Stanford: Stanford University Press; 2021).

Taliban. Whether they were accused of singing sexist music in the open, suffered or avoided violence, or ran away to pursue marriage or divorce, these women labeled as “promiscuous” challenged the status quo while frequently having few means at their command. This book provides a window into the struggles Afghan women encounter on a daily basis as they devise fresh approaches to confront ingrained patriarchal customs. Sonia Ahsan-Tirmizi studies the ways in which women negotiate power relations based on gender, especially those that have its roots in Pashtunwali and Islam. While Pashtunwali is commonly referred to as an honour code, it is actually a discourse and a material practise that women uphold through acts like fasting, prayer, writing and oral poetry, and involvement in refugee and hospitality rituals. Through assuming responsibility for Pashtunwali and Islamic knowledge, both in textual and oral forms, women create a new, nurturing community, finding solidarity and camaraderie on the periphery of Afghan culture. By doing this, these women reinterpret the ideas of piety, equality, honour, and promiscuity in the context of Pakistan.

1.4 Research Design

This study provides an explanation of the fundamental concepts surrounding immigration and the settlement of refugees. It outlines various mechanisms for problem-solving and compares them. The primary emphasis of this research centers on Refugee Laws, particularly in the context of global immigration of refugees, with a specific focus on Afghan refugees migrating to or residing in Pakistan and the United States. The work delves into the legal underpinnings, detailing the sources and laws

involved. The process of legalizing refugees is thoroughly elucidated and supported by real-life examples, case studies, and legal precedents. The study employs deductive reasoning to address the question of whether the utilization of international laws governing refugees represents the most effective approach for resolving refugee-related issues.

1.5 Research Questions

- a) How Law provides protection to the Refugees?
- b) What are the main reasons to become a refugee?
- c) Pakistan is not signatory to the International Convention for the Protection of Refugees 1951, under which law Pakistan has been hosting a large number of Afghan Refugees since more than 40 years?
- d) Whether International community has been able to address the complex issues of Afghan refugees?
- e) Whether Afghan refugees are enjoying protection and rights provided by the International Convention for the Protection of Refugees 1951?
- f) Whether the obligations of the global community towards Afghan Refugees are fulfilled?

1.6 Research Objectives

- a) To find out how International Law protects Refugees.
- b) To determine the legal status of Refugees and their rights under the Law of Nations.
- c) To assess the Refugees situation in Pakistan.

d) To find ways and methods of rehabilitation of Afghan Refugees.

1.7 Thesis Outline

The following thesis has been divided into five chapters.

The first chapter provides the general introduction of the topic, the research method employed, literature review, and the significance of this study.

The second chapter gives a discourse on global refugee crisis. How and when the world got effected by the massive refugee migrations. How has the international community addressed this crisis.

The third chapter analyses the situation of Afghan Refugees in Pakistan and how Pakistan has addressed their issues.

The fourth chapter examines the subject of Refugees from the standpoint of International Law and International Legal Instruments.

The Final chapter will provide the conclusion and general recommendations and solutions.

CHAPTER 2

GLOBAL REFUGEE CRISIS

2.1 Introduction

International migration stands out as a prominent yet inadequately addressed issue on the policy agenda of the 21st century. All nations are touched by international migration, either as countries of origin, transit points, or destinations. Within the realm of migration, the displacement of refugees and individuals escaping life-threatening circumstances emerges as a particularly urgent concern. According to the “UN High Commissioner for Refugees” (UNHCR), by the close of 2014, there were more than 60 million refugees and “internally displaced persons” (IDPs), marking the highest number since World War II.¹⁹ The Syrian crisis epitomizes this challenge, affecting approximately four million refugees and about eight million IDPs. This crisis exerts a colossal impact on neighboring countries, exemplified by the fact that over 25 percent

¹⁹ “Global Trends 2014: World at War,” United Nations High Commissioner for Refugees, accessed January 22, 2023 <http://www.unhcr.org/556725e69.html>

of Lebanon's population, which totals four million, now consists of Syrian refugees. Mass migrations from places like South Sudan, the Central African Republic, Ukraine, and other regions further strain the humanitarian system. It's crucial to note that refugees and IDPs from these situations represent just the tip of the iceberg, as many find themselves in prolonged displacement situations, spanning decades, with no foreseeable solutions.

First steps have been taken by the “European Union” (EU) to divide up the duty of defending asylum seekers among its member nations. Nevertheless, this response has revealed significant divisions within the union. While some nations, like Hungary, have taken a strict approach, opting to construct barriers instead of aiding those attempting to enter their borders, others have accepted hundreds of thousands of Syrians and other asylum applicants, including Germany and Sweden. Simultaneously, few nations worldwide have stepped forward to resettle substantial numbers of Syrian refugees. Troublingly, contributions to international organizations dedicated to assisting and safeguarding such populations have dwindled. In early September 2015, the World Food Program announced a 30 percent reduction in aid for Syrian refugees in Jordan and Lebanon, reducing the food coupons monthly worth to just \$14 per person. This happened at the same moment that the strain on surrounding countries reached breaking points, prompting a number of states to block their borders to newcomers. Unsurprisingly, these policies have spurred those with the means to migrate to more affluent countries to undertake perilous journeys. The failure to respond compassionately and effectively to such crises or to devise lasting solutions for refugees is not a new predicament. However, there have been instances when the

international community united to protect and assist refugees and displaced individuals. Typically, strong political leadership has been the catalyst for effective and compassionate responses. This chapter calls for enhanced international solidarity in supporting refugees and the communities hosting them by increasing financial aid to asylum countries and expanding refugee resettlement programs. After a thorough examination of historical precedents, the article explores contemporary barriers to more effective responses, including donor fatigue and ambivalent public opinion, and offers recommendations to ensure better protection in the future.²⁰

The UNHCR's most recent reports indicate that 108.4 million people are displaced forcefully. Of them, 35.3 million are refugees, 5.4 million are asylum seekers, and 62.5 million are internally displaced people.²¹

2.2 Facts and Figures

Out of the total 35.3 million refugees, 76% are hosted by low- and middle-income countries, 70% in neighboring countries and 3.6 million alone in Türkiye.²² 52% of all the refugees originated from Syria, Ukraine and Afghanistan.

The global refugee population experienced an unprecedented increase of 35 percent in 2022, equivalent to 8.9 million individuals, reaching a total of 34.6 million. This surge was primarily driven by Ukrainian refugees fleeing the international conflict

²⁰ Susan F. Martin, "The Global Refugee Crisis," *Georgetown Journal of International Affairs* 17, no. 1 (Winter/Spring 2016): 5-11.

²¹ "Figures at a glance", United Nations High Commissioner for Refugees, accessed January 21, 2023, <https://www.unhcr.org/about-unhcr/who-we-are/figures-glance>.

²² "Global Trends Forced Displacement in 2022", United Nations High Commissioner for Refugees, accessed August 21, 2023, <https://www.unhcr.org/global-trends-report-2022>.

in their homeland, as well as revised estimates accounting for Afghans residing in Iran and Pakistan. Within this overall figure, approximately 24.3 million people are classified as refugees, 5.1 million find themselves in refugee-like conditions, and an additional 5.2 million require international protection.

Over the course of the year, around 5 million people received international protection. This comprised 717,300 people who filed individual asylum requests, 336,800 people who were recognised as a group, and an additional 3.8 million people who were granted temporary protection. Regretfully, accurate information about how many people in need of international protection have been awarded residency permits or other legal residency status in Latin American and Caribbean countries—where most of them are being hosted—is still not readily available.²³

2.2.1 Europe

By the end of 2022, over a third, or precisely 36 percent, of the world's refugee population resided in Europe, including Turkey. With millions of refugees fleeing Ukraine to seek safety in neighbouring countries, the number of refugees in European countries increased dramatically from 7 million at the end of 2021 to 12.4 million at the end of 2022. Türkiye maintained its position as the world's foremost refugee-hosting nation, accommodating 3.6 million refugees as of the end of 2022, constituting over 10 percent of the total global refugee population. Germany, in turn, hosted nearly 2.1 million refugees, equivalent to 6 percent of the global refugee population.²⁴

²³ Ibid, at Pg 14.

²⁴ Ibid.

2.2.2 Asia and the Pacific

Turning now to Asia and the Pacific, the region's host of refugees increased from 4.2 million at the end of 2021 to 6.8 million at the end of the year, accounting for almost 20 percent of all refugees globally. Revisions to estimates of population in Pakistan and Iran were blamed for this surge. An additional 2.6 million Afghans were registered in the Islamic Republic of Iran as a result of a government-led programme. Both fresh newcomers and long-term residents of Afghanistan were included in this group of newly accounted Afghans. Throughout the year, 178,100 more Afghans registered in Pakistan. Surprisingly, just three nations provided sanctuary to more than 90% of all refugees in the Asia-Pacific region: Bangladesh (952,400), Pakistan (1.7 million), and Iran (3.4 million).²⁵

2.2.3 The Americas

By the end of 2022, there were 5.2 million people living in the Americas who required international protection, in addition to 800,600 refugees. A sizable fraction of these people were Venezuelan citizens. The total amount of 6 million represented a 17 percent rise from the end of 2021, mostly as a result of revised projections for the number of people in Peru and Colombia who need international protection, which increased by 178,400 and 611,500, respectively. In the region, Ecuador (555,400), Peru (976,400), and Colombia (2.5 million) had the largest numbers of refugees and individuals in need of international protection.

²⁵ Ibid.

2.2.4 Sub-Saharan Africa

Of all the refugees globally, one in five were sheltered by countries in Sub-Saharan Africa. The total number of displaced refugees at the end of 2022 was 7 million, a little rise over the year before. 4.7 million refugees were received by the East and Horn of Africa and the Great Lakes region; like in the previous year, the main host nations were Ethiopia (879,600), Sudan (1.1 million), and Uganda (1.5 million). By the end of 2022, 1.6 million refugees would have been received by West and Central African countries, a 5% rise from the year before. More than 85% of the refugees in the area were hosted by Chad (592,800), Cameroon (473,900), and Niger (255,300). A little more than 773,000 Southern African refugees applied for asylum in several countries; the majority of them (520,500) resided in the Democratic Republic of the Congo.²⁶

2.2.5 Middle East and North Africa

In the end, 2.4 million refugees were being housed by countries in the Middle East and North Africa by the end of 2022, a 2% decline. Initiatives in Jordan, Iraq, and Lebanon for population verification were blamed for this decline. 87 percent of the refugees in the region were accepted by Lebanon (818,900), Jordan (697,800), Egypt (294,600), and Iraq (273,700).²⁷

2.3 Historical Background

A significant portion of the current international framework for safeguarding refugees evolved as a response to the failure of the global community to rescue refugees fleeing

²⁶ Ibid.

²⁷ Ibid.

Nazi Germany. As the numbers of persecuted individuals, including Jews, from nations under German control swelled during the 1930s, they encountered increasingly closed doors.²⁸ In July 1938, an international conference brought together delegates from thirty-two nations in Evian to address the predicament of refugees escaping Nazi Germany. This conference had a dual purpose: to encourage countries to accept refugees for resettlement and to persuade Germany to establish a structured emigration process. Despite expressions of sympathy for the refugees, tangible proposals emerged sparingly. From the outset, it was evident that the conference would yield limited results, with some delegates dedicating more time to enjoying the Alpine scenery than to discussing the refugees' plight. US President Franklin Roosevelt, in calling for the conference, explicitly stated that he did not expect any nation, including the United States, to alter its refugee policies. Consequently, no government committed to resettling substantial numbers of refugees, except for the Dominican Republic, which made a rather vague offer.²⁹

Germany's response in November 1938 was Kristallnacht, a widespread attack on Jewish businesses and synagogues across the country. With the outbreak of World War II, the mass imprisonment of Jews and other groups in concentration camps intensified, and Adolf Hitler initiated the Final Solution, a genocide strategy, confident that other nations would do little to rescue the Jews. In 1943, the Allies gathered in

²⁸ See also Claudena Skran, *Refugees in Inter-War Europe: The Emergence of a Regime* (Oxford: Clarendon Press, 1995), and Michael Marrus, *The Unwanted: European Refugees from the First World War through the Cold War* (Philadelphia: Temple University Press, 2002)

²⁹ *Ibid.*, 6.

Bermuda to discuss the refugee issue further. The UK delegation noted a complicating factor in developing new refugee policies: “There is a possibility that the Germans or their satellites may change over from the policy of extermination to one of extrusion, and aim as they did before the war at embarrassing other countries by flooding them with alien immigrants.”³⁰ The Bermuda conference dismissed what US diplomats described as “more radical proposals,” including “negotiations with Germany for the release of the Jewish population ... and the proposal to lift the blockade to allow departure of persecuted people of Europe.”³¹ The conference's communique outlined criteria for making recommendations, emphasizing that no actions would be taken on behalf of refugees that would “interfere with or delay the war efforts of the United Nations.”³²

The consequences of these policies became painfully evident with the liberation of the death camps in 1945. Millions had perished in the Holocaust, and millions more had been displaced by the war itself. Many were reluctant to return home, either because they had suffered persecution from their fellow countrymen or because the Soviet Union had assumed control over their homelands. To alleviate the burden on Western European nations and to bolster anti-communist foreign policy goals in the emerging Cold War era, a substantial resettlement program was initiated, with notable support from the United States, Canada, and Australia.

³⁰ United States Department of State, *Foreign Relations of the United States Diplomatic Papers 1*, no. 1 (Washington, DC: 1943): 134.

³¹ *Ibid.*, 155

³² *Ibid.*, 174

The “United Nations High Commissioner for Refugees” (UNHCR) was founded in 1950 to protect and assist remaining European refugees. The “1951 UN Convention Relating to the Status of Refugees” herein the “Refugee Convention” was adopted the following year, extending the definition of refugee to include anyone who have a legitimate fear of being persecuted due to their ethnicity, religion, nationality, affiliation with a specific social group, or political beliefs. The principal commitment of convention parties was to prevent from forcibly returning (refouling) refugees to dangerous situations. While the refugee system was first focused on Europe and individuals who had become refugees prior to 1951, it quickly extended to give protection and support to refugees worldwide.³³

Although most refugee crises were primarily addressed within the regions where they occurred, some major crises called for international solidarity. As early as 1956, the UNHCR was tasked with finding new homes for refugees fleeing the Soviet suppression of the Hungarian Revolution, leading to a significant resettlement initiative. In response to the influx of refugees from Vietnam, Cambodia, and Laos, an even greater international endeavour was launched. 1979 saw the United States chair an international conference that produced a number of agreements, including one from Vietnam to establish an organised departure programme, a commitment to resettle from other countries to lessen the burden on the first asylum countries, and promises from the region's first asylum countries to keep their borders open to refugees. Over the

³³ Palestinian refugees, however, fell outside the UNHCR's mandate because they were under the mandate of another UN organization the UN Relief and Works Administration for Refugees from Palestine.

subsequent years, more than twenty countries accepted over six hundred thousand Indochinese refugees. The 1998 Kosovo war refugee crisis, during which Macedonia closed its borders due to security concerns associated with accepting Kosovar refugees, elicited similar responsibility-sharing responses from the international community.

2.4 Contemporary Global Refugee Crisis

The spirit of solidarity that was evident in previous crises seems to be noticeably absent in contemporary times. There are various forms of solidarity, but three key types stand out in the current context: financial, geographic, and political.

Firstly, countries traditionally share the financial responsibility of aiding poorer nations that receive refugees. This is the most common form of solidarity, with the humanitarian aid system being structured around international agencies like the UNHCR and various non-governmental organizations. Wealthier nations typically provide funding to support the shelter, sustenance, services, and protection of refugees. However, the current resources allocated to support refugees fall significantly short of what is required, given the multitude of crises the humanitarian system is grappling with. Reduced donations to these organizations result in tangible cuts to the aid provided to refugees and internally displaced persons in peril.

Second, as the example of Southeast Asian migrants noted earlier shows, governments frequently share the burden of physically hosting refugees. The fundamental tenet of the refugee system is non-refoulement, which states that nations should refrain from sending refugees back to areas where they risk persecution. This usually entails giving people who transgress international borders asylum. In this situation, solidarity frequently takes the form of UNHCR-managed resettlement

initiatives, which try to relieve the pressure on first-assistance nations and provide for the needs of refugees unable to return home. UNHCR estimated in 2015 that some 960,000 refugees needed to be resettled, but there were only eighty thousand slots available globally for resettlement, not counting some recent special initiatives for Syrian refugees.³⁴ The United States, Australia, and Canada took in the lion's share of refugees resettled in 2013 (the most recent year for which figures are available). A smaller proportion of refugees were admitted by other countries.

Thirdly, nations can work together politically to address the underlying causes of large-scale displacement; however, this approach is frequently difficult because it calls for intervention in conflicts that lead to large-scale migrations. Usually, this solidarity is focused on the immediate causes, like the methods used by refugees to find safety (like blocking smuggling routes) or the particular causes of their displacement (like airdropping food to besieged areas where people might starve if they can't leave). Nevertheless, these measures may not always offer impacted individuals feasible substitutes for escaping and may even heighten the risk to their lives.

So, when has solidarity proven effective historically? Generally, a range of governments have shared the responsibility for refugees when three key factors have converged: robust support from constituencies favoring generous refugee policies in countries of first asylum, donor nations, and resettlement countries; alignment between such policies and foreign policy objectives; and a broad acknowledgment of the immediate humanitarian needs of refugees demanding swift action. The absence of

³⁴ "UNHCR Projected Global Resettlement Needs 2015," United Nations High Commissioner for Refugees, accessed August 21, 2023, <http://www.unhcr.org/543408c4fda.html>

these factors in the 1930s resulted in highly restrictive refugee policies. Conversely, during the Hungarian and Southeast Asian refugee crises of the 1950s and 1970s, all three factors were in play.³⁵ Strong constituencies, including ethnic co-nationals and Vietnam War veterans, backed a decisive response. Resettlement of those fleeing communist regimes served Cold War foreign policy interests, and media coverage underscored the humanitarian nature of the crises. As a result, there was substantial support for financial aid and resettlement, although political solutions to prevent displacement, such as following the Soviet invasion of Hungary or the North Vietnamese victory over South Vietnam, remained elusive until the end of the Cold War.³⁶

So, why is solidarity conspicuously lacking today? Several factors contribute to this situation. Firstly, the world is currently witnessing an unprecedented convergence of massive crises. While the humanitarian nature of these crises is evident, there may be a sense of exhaustion stemming from the sheer number of simultaneous challenges. According to a recent UNHCR assessment on global migration trends, at least 15 conflicts have started or rekindled in diverse locations in just the last five years alone, each resulting in mass displacement.³⁷ These crises have placed significant demands on donors, even with the advent of new donors to the humanitarian system, such as the

³⁵ See Gil Loescher and John A. Scanlon, *Calculated Kindness: Refugees and America's Half Open Door, 1945 to the Present* (New York: Free Press, 1986).

³⁶ Martin, "The Global Refugee Crisis," 8.

³⁷ "Worldwide Displacement Hits All Time High as War and Persecution Increase", United Nations High Commissioner for Refugees, accessed August 23, 2023, <http://www.unhcr.org/558193896.html>

nations of the Gulf Cooperation Council. Additionally, numerous natural disasters, such as the devastating earthquake in Haiti and Typhoon Haiyan in the Philippines, have required substantial donor attention. The timing of crisis fatigue coincides with an increasing need for funding and attention to address these situations, while many affluent countries are implementing fiscal austerity measures.

The media also plays a critical role in shaping public opinion and government policies. Prolonged negative coverage of immigration in some countries, like the United Kingdom, has influenced the formulation of more restrictive policies that apply not only to refugees but also to others attempting to enter. However, in the most recent refugee crisis in Europe, media coverage has brought the human faces of refugees to millions of people. Iconic images, such as that of a three-year-old Syrian child washed up on the shores of the Mediterranean, have mobilized public support for refugees, leading to large demonstrations in some countries and, to some extent, policy changes. For example, US President Obama declared that 10,000 more Syrians will be resettled in the upcoming year, and Cameron promised that the UK would take in 20,000 migrants from asylum-seeking nations over a four-year period. These represent small but tangible instances of burden sharing. Another example is the many Hungarians who assisted asylum seekers in their attempts to reach Austria by providing food, water, train tickets, and even shelter, aiming to mitigate some of the harsher effects of Hungarian government policies. Such displays of public support in the face of

government indifference, as seen during the Kosovo refugee crisis in 1998, have led to larger-scale relocations across the globe.³⁸

Furthermore, in contrast to the Cold War era, there are relatively few foreign policy ties to the contemporary refugee crises. Political leaders at the time saw aid for refugees as an essential component of their foreign policy. Ronald Reagan, for example, described Nicaraguan migrants as "voting with their feet" in opposition to the Communist government they had fled.³⁹ In contrast, refugees today are more often seen as victims on one hand and potential security risks on the other, rather than as integral components of the type of global foreign policy campaigns seen during the Cold War. While individual governments may establish special programs for refugees of particular interest, such as those who served as interpreters for their militaries, these initiatives do not translate into large-scale responsibility sharing.

2.5 Issues and Challenges

Refugees endure some of the direst circumstances globally, grappling with a multitude of formidable issues and hardships. These include the possibility of being forcibly returned to persecution, a practice known as refoulement of being detained arbitrarily and for an extended period of time, having restricted access to chances for education, healthcare, and employment, and always present risks of sexual and gender-based

³⁸ Martin, "The Global Refugee Crisis," 10.

³⁹ An analysis of the use of "voting with their feet" rhetoric by the Reagan Administration can be found in Norman L. Zucker and Naomi Flink Zucker, *Desperate Crossings: Seeking Refuge in America* (Armonk: ME Sharpe Inc., 1996).

violence, human trafficking, and torture.⁴⁰ The crisis of displacement is escalating continuously, entangling a complex web of international, domestic, and local legal and social dilemmas. The refugee predicament, within the framework of international law, is a complex interplay involving national, regional, and international legal systems.⁴¹

2.5.1 Life and Personal Security

Refugees, as a group, rank among the world's most vulnerable individuals. When they escape to and find shelter in host countries or camps, they often confront a disheartening loss of their possessions, their primary sense of security, family bonds, and, tragically, their lives. For many refugees, life in exile can be just as harsh or even worse than the conditions that forced them to flee their homeland. They face significant threats, including violence such as killings, torture, sexual assault, genocide, extrajudicial executions, and forced disappearances. Additionally, they are vulnerable to direct and indiscriminate attacks during wars, terrorist strikes, and the use of landmines as well as hazardous weapons.⁴²

⁴⁰ Alex Pagliaro, "Refoulement in the Asia Pacific", *Amnesty International*, January 18, 2010.

⁴¹ B S. Chimni, *International Refugee Law: A reader XII* (sage Publication New Delhi, 8th edn., 2012) 245.

⁴² B. C. Nirmal, "Refugee and human rights", *ISIL YEAR BOOK OF IHRL* 1(2001) 104.

2.5.2 Right to Voluntarily Return

Additionally, they need to be shielded from being compelled to return to places when doing so would endanger their safety, security, and dignity. Human rights legislation recognises an individual's right to return to their country after being outside of it. The United Nations Security Council has also affirmed refugees' rights to go back to their homes. The right of return arises from traditional international law, which emphasizes the responsibility of the governments of origin to welcome back their citizens upon their expulsion by the accepting state and to offer them diplomatic protection. However, the complex of obligations and duties arising from the concept of non-refoulement may prevent refugees from really returning.

2.5.3 Xenophobia

Historically, xenophobia denoted a fear of outsiders but has evolved to encompass ethnocentrism.⁴³ It is not surprising that a majority of refugees find themselves living in poverty, which intensifies their difficulties and exposes them to xenophobic attitudes and hostile behaviours, particularly in urban areas. Urbanization and population growth among refugees have generated new battlegrounds where conflicts between refugees and local citizens often emerge. Xenophobia, in its various forms, poses security threats to refugees, prompting the UNHCR to raise concerns about incidents in different geographic regions. Somalis and people from the Democratic Republic of the Congo

⁴³ Sarah Deardorff Miller, "Xenophobia toward Refugees and Other Forced Migrants", *World Refugee Council Research Paper No. 5*, September 2018, accessed from: <https://reliefweb.int/sites/reliefweb.int/files/resources/WRC%20Research%20Paper%20no.5.pdf>

(DRC) in Kenya, Rohingya in Myanmar, Zimbabweans, Somalis, Pakistanis, and others in South Africa, and asylum seekers in Greece are a few examples.⁴⁴

2.5.4 Racial Discrimination

Racial Discrimination impedes efforts to develop answers because it is both a cause and an effect of forced displacement. Even historically welcoming developing nations that are frequently facing their own socioeconomic difficulties are growing less willing to take in sizable refugee populations. Due to racial discrimination, ethnic violence, and intolerance in countries like Burundi, Burma, Bhutan, Indonesia, Sri Lanka, Turkey, and the former Yugoslavia, millions of people have been compelled to flee across borders. Although racial discrimination has been strongly denounced by the international community, it is still controversial to decide whether or not it qualifies as persecution. According to *Ali v. Secretary of State*, Kenyan citizens of Asian descent are unlikely to experience racial discrimination that qualifies as persecution under the 1951 Convention. The applicant feared being persecuted for their race and did not want to go back to their place of origin.⁴⁵ In recent years, there has been a rise in attacks and acts of violence directed towards migrants and asylum seekers in European countries based on race. For example, armed crowds attacked African students in Russia,

⁴⁴ Jean Pierre Misago, Iriann Freemantle & Loren B. Landau, “Protection From Xenophobia- An Evaluation of UNHCR’s Regional Office for Southern Africa’s Xenophobia Related Programmes”, accessed: January 12, 2023 <https://www.unhcr.org/55cb153f9.pdf>

⁴⁵ Sylvie Da Lomba, *The right to seek refugee status in the European Union* 53 (Intersentia Publication, New York 2004).

including many refugees, and many of the victims were afraid to report the crimes to the authorities.⁴⁶

2.5.5 Problem Faced by Refugee Women

Women have long had a precarious position among refugees, facing increased dangers of human rights abuses such forced prostitution, rape, kidnapping, and human trafficking while travelling. The requirement to trade sexual favours in order to be granted safe passage might indicate their journey to safety. Even in the relatively safe haven of refugee camps or settlements, women nevertheless shoulder extra responsibilities as head of household and struggle to be heard when it comes to important decisions, like voluntary return home.⁴⁷ Women are subjected to organised exploitation in certain situations, such as the widespread trafficking of Rohingya refugee women from Bangladesh, Kolkata, New Delhi, and Ajmer in Rajasthan to Karachi in Pakistan.⁴⁸ According to research by Amnesty International, women and girls who are refugees face violence, abuse, exploitation, and sexual harassment at every turn of their trip, with many of them being forced into sexual acts.⁴⁹

⁴⁶ Refugees, Asylum Seekers, Migrants, and Internally Displaced Persons, accessed: August 22, 2023 <https://www.hrw.org/legacy/wr2k2/refugees.html#Combating%20Racism%20and%20Xenophobia>

⁴⁷ Guy S. Goodwin Gill and Jane Mc Adam, *The Refugee in International Law* (Oxford University Press, New York, 3rd edn., 2007) 473.

⁴⁸ Rathin Bandyopadhyay, *Human Rights of the Non-Citizen: Law and Reality* (Deep & Deep Publication, New Delhi, 2007) 436.

⁴⁹ “Female refugees face physical assault, exploitation and sexual harassment on their journey through Europe”, *Amnesty International*, accessed from: <https://www.amnesty.org/en/latest/news/2016/01/female-refugees-face-physical-assault-exploitation-and-sexual-harassment-on-their-journey-through-europe/#:~:text=All%20the%20women%20described%20feeling,security%20staff%20or%20other%20refugees>. January 18, 2016.

2.5.6 Problem Faced by Refugee Children

Numerous young migrants either disappear on their travels or fall prey to human trafficking and sexual misconduct.⁵⁰ Inhumane incarceration, forced labour, kidnapping, irregular adoption, and military and armed assaults are among threats they face. For children who are refugees, being uprooted can have disastrous effects on their health, well-being, and educational opportunities. Refugee children have a human right to an education, but the UNHCR has difficulty providing necessary support. There is a dearth of educational opportunities in locations where people are displaced; just 76% of refugees are enrolled in primary schools worldwide, and only 36% attend secondary schools. Girls experience more difficulties than boys since they enrol at far lower rates. The typical teacher-to-student ratio is more than 1:70, and many do not complete the required 10 days of training. By grade 4, less than 6% of Eritrean refugee children in Ethiopia attain baseline reading fluency, a sign that many of these children do not advance academically.⁵¹

2.5.7 Condition of Camps

According to the UNHCR, there are approximately 2.6 million refugees residing in camps worldwide.⁵² While these camps offer a degree of safety compared to refugees'

⁵⁰ “Sex Trafficking and the Refugee Crisis: Exploiting the Vulnerable”, <https://www.cfr.org/blog/sex-trafficking-and-refugee-crisis-exploiting-vulnerable> May 08, 2017.

⁵¹ “Our Programme”, Education Above All, accessed: August 21, 2023 <https://educateachild.org/explore/barriers-to-education/refugees>

⁵² “Refugee Camps”, USA for UNHCR, accessed: August 21, 2023 <https://www.unrefugees.org/refugee-facts/camps/>

home countries, they often present deplorable living conditions. Issues include the absence of basic amenities like running water and electricity, insufficient food supplies, the constant threat of tuberculosis, and the presence of insects. Moreover, some camps, such as Moria in Greece, suffer from a rampant sexual assault problem. Overcrowding exacerbates these issues, as evidenced by Moria hosting 5,000 refugees, far exceeding its capacity of 2,000 people, leading to inhumane conditions. The distressing lifestyle in these camps takes a severe toll on the mental health of refugees, with some resorting to self-immolation attempts. Suicide attempts and high levels of anxiety, depression, and post-traumatic stress disorder (PTSD) are prevalent issues in refugee camps, highlighting the need for more effective protection of refugees' human rights.⁵³

2.5.8 Crisis of Language and Identity

Language barriers pose significant challenges for immigrants in any country, impacting various aspects of their lives, including employment, education, and daily interactions. Learning the native language is essential for basic functioning.⁵⁴ The absence of identifying credentials that are recognised internationally is another major problem for refugees and internally displaced people. When travelling, identity documents might be misplaced, destroyed, or stolen, leaving people who are fleeing persecution without the

⁵³ “Refugee Camps: Poor Living Conditions and their Effects on Mental Health”, available at: <https://sites.duke.edu/refugeementalhealth/2018/03/27/refugee-camps-poor-livingconditions-and-their-effects-on-mental-health/>

⁵⁴ “The Top 10 Problems Faced by Immigrants”, *IMMI Group*, May 10, 2022 <https://www.immigroup.com/news/top-10-problems-immigrants>

necessary paperwork.⁵⁵ The difficulties encountered by refugees and asylum seekers are exacerbated by the lack of identifying documents. Lack of identification might cause problems when registering with authorities or humanitarian organisations, as well as obstacles or delays at international borders. Those without accepted identity documents or proof of residency in their host countries have less freedom of movement and a higher chance of being arrested or deported. Refugees frequently find it difficult to obtain basic services like banking, cell phone connectivity, work, healthcare, and education without identification.⁵⁶

2.5.9 Burden Sharing

The idea of burden sharing is advisory in nature and does not force countries to comply with any laws. As a result, a number of industrialised countries have tightened their entrance requirements, making it more difficult for those seeking asylum—including those who have justifiable concerns about being persecuted—to enter their countries and submit an application. Consequently, developing countries have shouldered the burden of accommodating a disproportionately high number of refugees, further straining their fragile infrastructure and economic.

⁵⁵ “Refugees and Identity: Considerations for mobile-enabled registration and aid delivery”, *GSMA Intelligence*, July 20, 2017 <https://www.gsma.com/mobilefordevelopment/resources/refugees-and-identity/>

⁵⁶ *Ibid.*

2.5.10 Issues Related to Durable Solutions

Durable solutions for refugees encompass voluntary repatriation, local integration, and resettlement in third countries. However, these solutions are far from straightforward. There are instances where refugees are coercively repatriated under the guise of voluntariness, disregarding the principle of non-refoulement. Achieving integration necessitates agreements with host nations, and local integration presents its own set of constraints and difficulties in the current landscape. In 2020, global resettlement needs by region of asylum were estimated at approximately 1,440,408, a formidable task. Regrettably, only a minuscule fraction, merely one percent, of the world's refugees have been resettled in third countries. For hundreds of thousands of refugees, resettlement is the only practical alternative; yet, few have been given the chance to resettle, and even fewer have been forwarded to UNHCR-designated resettlement nations. The capacity of nations to resettle such refugees remains limited.⁵⁷

2.6 Conclusion

Despite past efforts to address displacement, the number of refugees continues to rise steadily. Consequently, the global refugee crisis remains unresolved. The contemporary refugee predicament differs significantly from its historical antecedents. In addition to traditional drivers of displacement, new factors have emerged, including inter-state conflicts, internal military conflicts, environmental changes, poverty, geographic

⁵⁷ V. Seshaiyah Shasthri and A. S. Dalal “Emerging Trends in the Refugee Protection- A Critique” 11 *MDULJ* (2006) 108.

deterioration, and an emphasis on national sovereignty by governments. Given the multifaceted causes of the contemporary refugee crisis, there is a growing consensus on the need for comprehensive approaches to diagnose refugee issues and related problems. This entails the development of detailed action plans that encompass the refugee's country of origin and their host nation, with a focus on prevention, protection, and sustainable solutions, supported by regional initiatives. International engagement is essential, and certain imperatives must be met: establishing agreements with the first country of refuge, ultimately aiming to establish shared areas for humanitarian asylum; proactive mediation and reconciliation efforts to avert protracted conflicts; the principle of burden-sharing to be adopted by both developed and developing nations; and encouraging the utilization of durable solutions as advocated by the UNHCR.

CHAPTER 3

LEGAL STATUS OF AFGHAN REFUGEES IN PAKISTAN

3.1 Introduction

An estimated 600,000 Afghans are thought to have moved into Pakistan since the Taliban seized power in Afghanistan in 2021. There are currently at least 2.2 million unregistered⁵⁸ Afghans residing in Pakistan who lack legal status or protection, on top of the 1.32 million recognised and registered Afghan refugees, many of whom have lived in the country for decades. A significant portion of the latest immigrants are women and girls who fled targeted threats and a general denial of their rights in Afghanistan. Unofficially, one aspect of the Afghan refugee dilemma that is becoming more prevalent is the unregistered Afghan population, who are unable to return to Afghanistan securely but are also unable to get legal status in Pakistan. While other countries have successfully relocated a number of Afghans from Pakistan, policy differences between the two nations have prevented the United States from fulfilling its commitments made two years ago to relocate Afghans under the P-1 and P-2 resettlement programmes.

⁵⁸ The use of the term “Unregistered Afghans” refers to Afghan Refugees without Afghan Citizens Card (ACC).

Despite the fact that Pakistan and Afghanistan share a border that is monitored and gated, Afghans who enter Pakistan without proper documentation or with visas obtained illegally are frequently ignored by Pakistani authorities. Not even the most basic information about these hundreds of thousands of new arrivals from Afghanistan is being recorded by the Pakistani government. These migrants who are not recognised are left feeling unsafe by this disdain and lack of formal recognition.

The situation for Afghans is especially perilous and upsetting since they can suffer Taliban reprisals. Several reports have demonstrated how the Taliban targets a wide range of people, such as members of ethnic minorities, former Afghan government officials, supporters of women's rights, and human rights campaigners. The Taliban's persistently strong measures against women's participation in public life in Afghanistan have resulted in the most recent restrictions on women working for non-governmental organisations and even the United Nations. This has left many Afghans who have migrated to Pakistan since 2021 with no other options and little hope of ever returning home, combined with an increasingly grave humanitarian situation.

Of the approximately 600,000 Afghans who landed in Pakistan recently, referrals for resettlement under the Priority 1 (P-1) and Priority 2 (P-2) categories have been made to the "United States Refugee Admissions Programme" (USRAP). Those "known" by the previous American Embassy in Kabul and recommended for resettlement by an American official fall under P-1 category. In August 2021, the State Department launched a new programme called P-2, which is intended for Afghans who have worked for a U.S.-based NGO or media outlet that can recommend them. These people have to be outside of Afghanistan in order to be processed for resettlement.

Resettlement is an option for those whose cases fit the requirements and who pass medical and security screenings. But even though many of these people have worked with U.S. mission personnel throughout their careers, and both parties share the same objectives regarding human rights and democracy in Afghanistan, the U.S. has not started to handle these individuals' cases because there seems to be a deadlock with Pakistan regarding how to proceed. After the United States withdrew from Afghanistan over two years ago, the P-1 and P-2 resettlement programmes in Pakistan failed to live up to expectations. According to the State Department, the Pakistani government's refusal to allow the creation of a Resettlement Support Centre (RSC) in the nation is the reason why resettlement from Pakistan is at a halt. There are reports that the Pakistani administration is worried that this would inspire more Afghans to migrate to Pakistan. According to the United States, cases must be moved out of Pakistan with an RSC in place. However, there are other options that the US might take that would permit resettlement to proceed while the US and Pakistan are having bilateral talks about creating an RSC. Regarding the specific reason behind the suspension of all resettlement referrals, the State Department has remained silent, even though other nations are still able to relocate a limited number of Pakistani cases. It is intolerable and hazardous for Afghans that there is no progress being made towards their aim of resettling in the United States from Pakistan.

This chapter outlines the overall landscape for Afghan refugees in Pakistan and their legal status, especially the protection of their human rights.

3.2 Afghan Refugees in Pakistan

3.2.1 Background

For a very long time, Pakistan has been the home of countless Afghan refugees. Periodically, it harbored the greatest number of officially recognised refugees in the world. Pakistan started to accept Afghan refugees after the Soviet-Afghan conflict broke out in 1979, and by 2001, the number had risen to 3.2 million. Even while many of them eventually did return home, millions of refugees have not done so since the Taliban seized over Afghanistan in August 2021.

3.2.2 Legal Status

The legal system that controls refugee situations is complicated because it strikes a balance between humanitarian principles drawn from international law and treaties and the concepts of state sovereignty and regional domination. Human rights breaches are commonplace for refugees, who frequently experience two violations of their rights: first-hand mistreatment in their own country that drives them to flee, and the difficulty they confront in regaining their basic liberties and rights in the new country. Such infractions are intended to be prevented by the international legal system, which is principally based on the “1951 Convention Relating to the Status of Refugees, and its 1967 Protocol”.⁵⁹

Nonetheless, the legal status of Afghan refugees living in Pakistan is unclear because that nation has not ratified either the 1951 Convention or its 1967 Protocol and does not have national legislation in place to handle refugees. Determining the

⁵⁹ Guy S. Goodwin-Gill, “The Refugee in International Law” (Clarendon Press, Oxford, 1983) 215.

eligibility of a person for refugee status might be difficult for nations that have not joined accords related to refugees. Rather, the emphasis should be on meeting the needs for protection, mainly in accordance with the rules of customary international law, most notably the non-refoulement principle, which guarantees that refugees are not forced returned to an area of danger.⁶⁰ In these countries, a state's signature on human rights treaties may give rise to additional rights claims. But in Pakistan's instance, this diversion is not required because the nation has already given Afghan nationals seeking asylum prima facie standing.⁶¹

Prima facie recognition is a prevalent method of determining refugee status, particularly in situations when a large number of individuals are involved. But in August 2001, Pakistan reversed course and began conducting individual evaluations in place of group decisions for newly arrived Afghan refugees in camps and maybe for cases that had already occurred. International, political, and humanitarian considerations are the driving forces behind the administrative management of refugee affairs by the Pakistani government. Only after the Soviet Union invaded Afghanistan was UNHCR granted permission to work with Afghan refugees; it has no official status in Pakistan. Afghan refugees registered with the UNHCR are normally issued renewable temporary residence cards by the Ministry of SAFRON, which is in charge

⁶⁰ “By way of illustration, reference can be made to the Vietnamese boat refugees, most of whom were stranded on shores of states not parties to any of the relevant instruments, as well as the Cambodian refugees in Thailand - not a party to the relevant instruments either - who were intentionally not designated in terms denoting refugee status by the host state. Their status as refugees was only made explicit in Part-V of the 1991 Paris Agreement and the tripartite agreement that was concluded.”

⁶¹ Marjoleine Zieck, “The Legal Status of Afghan Refugees in Pakistan, a Story of Eight Agreements and Two Suppressed Premises,” *International Journal of Refugee Law* 2, no.2 (2010): 1-3,

of managing Afghan refugees in Pakistan. Under the UNHCR's mandate, Pakistan's official policy is to provide temporary shelter to all Afghan refugees; however, it does not provide permanent resettlement to refugees who have been provided temporary shelter anywhere else.⁶²

3.2.2.1 Agreement of Pakistan with the Government of Afghanistan and the UNHCR regarding Afghan Refugees in Pakistan

a. The first agreement: “Agreement Between the Islamic Republic of Pakistan and the Office of the United Nations High Commissioner for Refugees on the Voluntary Return of Refugees (1988)”

Every major change in Afghanistan's political landscape has prompted negotiations over the voluntary repatriation of Afghan refugees from Pakistan. The first agreement was made on June 8, 1988, between Pakistan and UNHCR, and it was centred on the voluntary return of Afghan refugees living in Pakistan. The “Geneva Accords on the Settlement of the Situation Relating to Afghanistan,” which facilitated the Soviet Union's withdrawal from Afghanistan, were in line with this agreement. It was in line, specifically, with the bilateral agreement on the voluntary return of refugees between Afghanistan and Pakistan.

The voluntary return of Afghan refugees to their home country is expressly covered by the implementing agreement. But it ignores others who, by the same

⁶² Muhammad Zubair, “The Legal Status of Afghan Refugees Living in Pakistan with Reference to International Refugee Law”, PhD Dissertation, University of Peshawar, December 2018.

reasoning, have the right to refuse the offer of voluntary repatriation.⁶³ These people have the right to keep their status as refugees, which may only be revoked by voluntary return and subsequent reintegration into their home nation.

“The Office of the United Nations High Commissioner for Refugees will continue, as required, to extend its assistance to Afghan refugees pending their voluntary return to their homeland.”⁶⁴

Despite UNHCR's efforts to secure protection for individuals unwilling to return willingly, the Government of Pakistan implemented this clause with the goal of not giving the refugees an instant option.⁶⁵ UNHCR was worried that this particular phrase would suggest that aid for Afghan refugees in Pakistan would only be provided until the end of the voluntary repatriation programme. The agreement's provision that it would be in force for however long it took for the refugees to successfully return voluntarily only served to heighten this worry.

To address this issue, an exchange of letters took place, and the Government of Pakistan proposed the following language: “In its ongoing assistance to refugees in Pakistan, the UNHCR will maintain close collaboration with the Government of the Islamic Republic of Pakistan in accordance with established practice.”⁶⁶

⁶³ See also M.YA. Zieck, *UNHCR and Voluntary Repatriation of Refugees. A Legal Analysis* (1997), 105-15.

⁶⁴ Article 3 of the 1988 Agreement.

⁶⁵ UNHCR cable, 9 May 1988.

⁶⁶ UNHCR cable, 1 June 1988.

b. The second agreement: “Agreement Between the Government of the Islamic State of Afghanistan, the Government of the Islamic Republic of Pakistan and the United Nations High Commissioner for Refugees for the Repatriation of Afghan Refugees in Pakistan (1993)”

Following a significant, unplanned return of Afghan refugees after the overthrow of the Najibullah government, a second agreement on the voluntary repatriation of Afghan refugees was formed on August 17, 1993. This agreement was a tripartite one, with Afghanistan as one of the signed parties, unlike the previous one. “Afghan refugees” were the agreement's defined beneficiaries. Using common language, the agreement primarily highlights the voluntary nature of return. But there are no clauses in the agreement that deal with what happens to people who decide not to come back. The agreement's last paragraphs ambiguously say that it won't end until all parties concur that the Commission's goals have been achieved. Established in accordance with this agreement, enabling the safe, orderly, and voluntary return of Afghan refugees and their successful reintegration into Afghanistan is the Commission's main objective.⁶⁷ Following the accomplishment of these goals, the parties will assess the repatriation outcomes and, if required, take into account any further arrangements that could be required.⁶⁸ It seems that the agreement was just kept in effect for ten years without any additional preparations being made.

⁶⁷ Article 2 of the 1993 Agreement.

⁶⁸ Ibid, Article 10.

c. The third agreement: “Cooperation Agreement Between the Government of the Islamic Republic of Pakistan and the United Nations High Commissioner for Refugees (1993)”⁶⁹:

In order to officially recognize UNHCR's presence in Pakistan, a cooperation agreement was formalized between UNHCR and Pakistan on September 18, 1993. Considering that UNHCR has been present in the nation since 1979, this agreement was reached somewhat late. A cooperation agreement, which is classified as a host state agreement, specifies the rights and obligations of both parties with regard to privileges, immunities, and facilities in particular. The fact that a cooperation agreement specifies the precise reason for UNHCR's physical presence in the host state distinguishes it from a standard host state arrangement. In this instance, it makes clear the UNHCR's work towards achieving its declared goal of providing international protection for refugees and other people of concern, as well as the cooperative efforts between the host state and the UNHCR to achieve this objective.

d. The fourth agreement: “Agreed Understandings for the Screening Process for Afghans in Jalozai makeshift camp, Nasir Bagh camp and Shamshatoo camp to Determine Which Persons are in Need of International Protection and Which are Not (2001)”:

As mentioned earlier, Pakistan had previously employed a prima facie or collective recognition approach to grant refugee status. The exact date when this approach was

⁶⁹ Cooperation Agreement Between The Government of the Islamic Republic of Pakistan And The United Nations High Commissioner for Refugees (signed and registered on 18 September 1993) 1733 UNTS 79 available at: <https://treaties.un.org/doc/publication/unts/volume%201733/v1733.pdf>

abandoned remains unclear; however, it appears that this shift occurred around the summer of 2001, to be precise, on August 2. In order to determine which people need international protection and which do not, this adjustment was made concurrently with the agreement between the UNHCR and Pakistan called the Agreed Understandings for the Screening Procedures for Afghans in the Nasirbagh, Shamshatoo, and Jalozai temporary camps. Under this agreement, newly arrived refugees were subject to an individual status determination procedure. Interestingly, the following definition of a “refugee” is adopted by UNHCR in the agreement:

“any person who is outside his/her country of origin and who is unwilling or unable to return there or to avail him/herself of its protection because of (i) a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or (ii) a threat to life or security as a result of armed conflict and other forms of widespread violence which seriously disturb the public order.”⁷⁰

The actual number of refugees who underwent individual screening under this agreement remains uncertain. Its implementation faced its first interruption when Pakistan forcibly returned 150 Afghan individuals, which raised concerns about refoulement. Upon its resumption, it was halted once more shortly thereafter due to a fresh influx of Afghan refugees following the U.S. airstrikes on Afghanistan in the wake of the 9/11 attacks. Pakistan was requested by the United States to close its borders

⁷⁰ Article 2.

during this period.⁷¹ Although the original screening procedure was never resumed, it was revitalized through a subsequent agreement.

e. The fifth agreement: “Agreement Between the Government of Islamic Republic of Pakistan, the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees Governing the Repatriation of Afghan Citizens Living in Pakistan (2003)”⁷²:

After a significant number of refugees returned, a voluntary repatriation agreement was formed, emulating a similar series of events from ten years earlier. This time, the return was triggered by the signing of the “Bonn Agreement (Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions)” in December 2001. The negotiations pertaining to the beneficiaries of this new agreement appeared to be the cause of the delayed conclusion of the agreement. Unlike the previous two agreements, instead of just referring to Afghan refugees, this third voluntary repatriation agreement also widely refers to Afghan citizens who have sought asylum in Pakistan. Furthermore, in contrast to the previous agreements, the planned repatriation program was initially set to be temporally limited, primarily covering a period of three years, concluding in March 2006.⁷³

⁷¹ “Afghanistan, Iran, and Pakistan, Closed Border Policy: Afghan Refugees in Pakistan and Iran”, *Human Rights Watch*, Feb. 2002, 22.

⁷² United Nations High Commissioner for Refugees (UNHCR), *Agreement Between the Government of Islamic Republic of Pakistan, the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees Governing the Repatriation of Afghan Citizens Living in Pakistan*, 17 March 2003, available at: <https://www.refworld.org/docid/42fb2b7be.html> , accessed 9 August 2023

⁷³ Article 6, para 2.

f. The sixth agreement: “Memorandum of Understanding Between the Government of the Islamic Republic of Pakistan and the Office of the United Nations High Commissioner for Refugees on the Census and Registration of Afghan Citizens living in Pakistan (2004)”⁷⁴:

The broad categorization of Afghan individuals who sought asylum in Pakistan as beneficiaries under the 2003 Voluntary Repatriation Agreement implies that there was a belief that the Afghan community in Pakistan had undergone diversity. The fact that neither the UNHCR nor the Pakistani government was certain of the precise number of Afghans living in Pakistan presented a problem. Although estimates of this number had been inconclusive for years, it was felt that this information was necessary, particularly with regard to what would happen to individuals who would stay in Pakistan when the programme of voluntary repatriation ended. Another related topic was who was in charge of the Afghan community in Pakistan. To solve these difficulties, a census and registration of all Afghans were proposed, which resulted in the agreement reached on December 17, 2004. The Pakistani government agreed in this agreement that the UNHCR would accept the census findings in terms of numbers, and that not all Afghans living in the country were of concern to the organisation.⁷⁵ However, the agreement did

⁷⁴ United Nations High Commissioner for Refugees (UNHCR), *Memorandum of Understanding between the Government of the Islamic Republic of Pakistan and the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Census and Registration of Afghan Citizens Living in Pakistan*, 17 December 2004, available at: <https://www.refworld.org/docid/55e6a3534.html> accessed 9 August 2023

⁷⁵ Article 1, para 3.

not specify how those of concern to UNHCR would be identified, referring only to the screening process outlined in the 2003 Voluntary Repatriation Agreement.

g. The seventh agreement: “Memorandum of Understanding Between the Government of Islamic Republic of Pakistan and the Office of the United Nations High Commissioner for Refugees on the Registration of Afghan Citizens Living in Pakistan (2006)”⁷⁶:

On April 19, 2006, the Government of Pakistan and UNHCR came to a follow-up agreement over the registration of Afghan residents residing in Pakistan in connection with the Census Agreement. According to this agreement, the purpose of the exercise was to improve the UNHCR's and the Pakistani government's understanding of the different Afghan citizen groups living in Pakistan. With this information, comprehensive plans will be created for Afghan citizens residing in Pakistan once the Tripartite Agreement expires in December 2006.

All 3,049,268 Afghans counted in the 2005 census were required to register independently. The real registration process began on October 15, 2006, although it proceeded slowly since many Afghans were hesitant, fearing that the registration drive would be a pretext for forced return.⁷⁷ Even though those who registered were granted the status of Afghan citizens temporarily residing in Pakistan and were issued a proof

⁷⁶ United Nations High Commissioner for Refugees (UNHCR), *Memorandum of Understanding between the Government of the Islamic Republic of Pakistan (GOP) and the Office of the United Nations High Commissioner for Refugees (UNHCR) on the Registration of Afghan Citizens Living in Pakistan*, 19 April 2006, available at: <https://www.refworld.org/docid/55e6a0374.html> accessed 9 August 2023.

⁷⁷ “Why are Afghan refugees reluctant to register?”, *Daily Times*, 5 Nov. 2006; see also IRIN, “Pakistan: Unregistered Afghans to be treated as illegal immigrants”, 22 Nov. 2006.

of registration card that allowed them to stay for three years, worries persisted, especially over what would happen when the three-year period ended.

Regarding the registration, UNHCR described it as a 'protection measure' mainly for identifying purposes, verifying the bearer's status as an Afghan national living temporarily in Pakistan. It did not grant any new status or rights, but it did act as a barrier against harassment. While this is unquestionably true, it should be noted that UNHCR neglected to state that it would not lessen any rights that persons may already have or status as refugees that they may have obtained.

h. The eighth agreement: “Agreement Between the Government of the Islamic Republic of Pakistan, the Government of the Islamic Republic of Afghanistan, and the United Nations High Commissioner for Refugees Governing the Repatriation of Afghan Citizens Living in Pakistan (2007)”⁷⁸:

The tripartite committee, which was established in compliance with the 2003 Voluntary Repatriation Agreement, decided in early February 2007 to extend the voluntary repatriation scheme until December 2009. This issue was brought up again in June 2007 at a tripartite commission meeting.⁷⁹ However, rather than simply extending the 2003 Agreement, a new voluntary repatriation agreement was reached on August 2, 2007.⁸⁰

⁷⁸ United Nations High Commissioner for Refugees (UNHCR), *Agreement Between the Government of Islamic Republic of Pakistan, the Transitional Islamic State of Afghanistan and the United Nations High Commissioner for Refugees Governing the Repatriation of Afghan Citizens Living in Pakistan*, 2 August 2007, available at: <https://www.refworld.org/docid/555ae4254.html> 9 August 2023.

⁷⁹ Compare, UNHCR Kabul Press Information, “UNHCR to Host the 13th Tripartite Commission Meeting in Dubai”, 5 June 2007.

⁸⁰ UNHCR News Stories, “Agreement on Afghan repatriation from Pakistan extended three years”, 2 Aug. 2007

This new agreement supersedes the 2003 voluntary repatriation agreement and will remain in effect until December 31, 2009, unless the parties mutually agree to terminate it before that date.

The agreement restates that repatriation is voluntary and stipulates that individuals with proof of registration may only be returned in compliance with the voluntarism and gradualism principles that have been established, taking into consideration their comprehension of the requirements associated with voluntary repatriation. The phrase gradualism, which has recently gained popularity, refers to the necessity of phasing the rate of return in light of the host nation's severely constrained ability to accept returning citizens.

This new deal, in contrast to the 2003 voluntary repatriation agreement, does not, at the very least, address the circumstances surrounding individuals who might still be in Pakistan when the voluntary repatriation programme ends in December 2009. The agreement is similar to the one from 1988 in that it has no clauses pertaining to individuals who decide not to return.⁸¹

3.2.2.2 The Entitlements of Afghan Refugees

3.2.2.2.1 Introduction

It is evident that the issue concerning Afghan individuals in Pakistan, both refugees and non-refugees, remains significant. The sheer number of people affected underscores this fact. It is also clear that both the Government of Pakistan and UNHCR have recognized the necessity of addressing this matter. A significant challenge for effective

⁸¹ See Afghanistan Independent Human Rights Commission, *Economic and Social Rights in Afghanistan II*, August 2007.

planning has been the longstanding absence of data regarding those who would be the focus of such planning efforts. Making the problem more manageable by quantifying its extent with concrete data, as acquired through processes like the census and subsequent registration of Afghans in Pakistan, is arguably essential for finding solutions. However, it's crucial to note that beyond meeting practical needs, there are fundamental questions of legal principle at play. These questions will be explored in the following paragraphs.⁸²

3.2.2.2.2 Non-Refoulement

As long as individuals maintain their refugee status, they are safeguarded against forced return, and any return must occur voluntarily. The primary and crucial entitlement for refugees is protection against forced return, known as refoulement. This safeguard is explicitly stated in Article 33, paragraph 1 of the 1951 Convention⁸³, which reads:

“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.”⁸⁴

This prohibition aligns with the definition of a refugee outlined in Article 1(A)(2) of the 1951 Convention. Although Pakistan is not a party to the “1951 Convention (or the

⁸² Marjoleine Zieck, “In the Aftermath of Voluntary Repatriation: The Fate of Afghan Refugees in Pakistan,” *Pakistan Law Review* 3 (2007): 1-52

⁸³ Convention Relating to the Status of Refugees (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 137 (Refugee Convention) available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20189/v189.pdf>

⁸⁴ *Ibid.*, Article 33.

1967 Protocol)” and is thus not formally obligated to adhere to Article 33, paragraph 1, it can be argued that Pakistan is bound to follow this obligation if it can be considered a norm of customary international law. However, whether it meets this criterion can be set aside due to Pakistan's commitment to voluntary repatriation and its cooperation with UNHCR as outlined in their Cooperation Agreement. The substance of this cooperation includes UNHCR's Executive Committee conclusions, one of which pertains to the applicability of the prohibition of refoulement in situations of mass influx. Understanding that Pakistan is obligated to observe the non-refoulement principle doesn't fully clarify the extent of this obligation. Article 33, paragraph 1 of the 1951 Convention aligns with its definition of a refugee and doesn't extend beyond those who meet this definition. Nevertheless, Pakistan has implicitly accepted a much broader scope of this obligation. This broader interpretation can be inferred from the substance of the cooperation outlined in the cooperation agreement and can also be gleaned from the voluntary repatriation agreements Pakistan has concluded.⁸⁵

The agreements from 1988 and 1993 acknowledged the necessity for the 'voluntary' repatriation of Afghan refugees without narrowly defining the group. The agreement reached in 2003 'reaffirms' that the repatriation of "Afghan citizens who have sought refuge in Pakistan shall only take place at their freely expressed wish." In essence, the principle of voluntary repatriation has never been restricted to a narrowly defined group. This interpretation is further supported by the inclusive definition of a

⁸⁵ See Conclusions no. 22 (XXXII - 1981) (in this conclusion the Executive Committee qualifies the prohibition of *refoulement* as a peremptory norm of international law); no. 25 (XXXIII - 1982); no. 100 (LV - 2004); see also UNHCR's Note on International Protection, UN doc. A/AC.96/660 paragraph 1

refugee introduced in the 2001 Screening Agreement, which assessed the eligibility of those arriving in Pakistan. This definition encompassed both the classic 1951 Convention definition and a broader one, somewhat similar, although not identical, to the “1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.”

The aforementioned makes it clear that Pakistan must uphold the principle of non-refoulement for both those it has accepted and acknowledged based on the *prima facie* recognition of their status and for those who are deemed eligible after conducting individual assessments in accordance with the 2001 criteria.⁸⁶

3.2.2.2.3 Refugee Status

The conclusion drawn in the preceding paragraph should not overshadow the fact that *prima facie* recognition of refugee status, a recognition method practiced by Pakistan for many years until it mandated individual status determination in 2001, especially in a few designated refugee camps, presents conceptual challenges.⁸⁷ This collective acknowledgment of refugee status is typically employed in situations involving a mass influx of refugees. Moreover, it aligns with the wording of refugee definitions found in the 1969 OAU Convention and the Screening Agreement, which emphasize general circumstances like "armed conflict and other forms of generalized violence which seriously disturb the public order," rather than focusing solely on the individual's plight.

⁸⁶ Marjoleine Zieck, “In the Aftermath of Voluntary Repatriation”, 2007, p.32.

⁸⁷ See, e.g., UNHCR, *Return to Afghanistan 2002 at 5* (recounting that Pakistan declared in 2000 that Afghans would not henceforth have *prima facie* refugee status), but see R. Martin, *Regional Dynamics and the Security of Afghan Refugees in Pakistan*, 19 REFUGEE SURVEY QUARTERLY 2000, 71-78 at 74.

“Group determination on a prima facie basis means in essence the recognition by a State of refugee status on the basis of the readily apparent, objective circumstances in the country of origin giving rise to the exodus”⁸⁸

“Many states, as well as UNHCR, have applied this group-based recognition of refugee status prima facie, meaning that each individual within a particular group is presumed to qualify for refugee status. This presumption is grounded in objective information about the circumstances that prompted their flight. Prima facie recognition remains valid and does not necessitate subsequent 'confirmation,' even if individual determination becomes possible later on. It can only be terminated following established procedures and standards if circumstances justify its cessation, cancellation, or revocation.”⁸⁹

The quoted passage unequivocally confirms the entitlements of those whose refugee status has been recognized on a prima facie basis. Group determination implies that each individual within the group is considered a refugee unless evidence to the contrary is presented, thus granting them rights stemming from the collective assessment. While individual status determination may be warranted as an exception for refugees recognized collectively if ‘evidence to the contrary’ can be demonstrated, this process should not affect the entitlements of those whose prima facie recognition is valid based on the circumstances that led to their flight at the time of their departure.

⁸⁸ UN doc. EC/GC/01/4 (2001) (Protection of Refugees in Mass Influx Situations: Overall Protection Network) paragraph 6

⁸⁹ UNHCR Guidelines on the Application in Mass Influx Situations of the Exclusion Clauses of Article 1F of the 1951 Convention relating to the Status of Refugees, 7 February 2006 paragraph 9.

In other words, the assessment should be retroactive, considering the objective conditions in the country of origin at the time of the flight.

3.2.2.2.4 Counting and Registering does not Amount to Screening

The counting and registration process had multiple objectives: it aimed to determine the true count of Afghan citizens, encompassing both refugees and migrants, residing in Pakistan. Additionally, it sought to address the apparent issue of responsibility. UNHCR, which consistently underestimated the actual number of Afghans in the country, committed itself in the Registration Agreement to acknowledging the census-derived number. On the other hand, Pakistan agreed that not everyone counted would fall under the purview of UNHCR. It's important to note that a simple headcount does not distinguish between those who should and shouldn't be considered within the scope of UNHCR's concern.⁹⁰

3.2.2.2.5 Cessation of Refugee Status

The protection against forced return remains in effect until there is a valid reason to conclude that the individual no longer qualifies as a refugee. Loss of refugee status can occur in several ways:

1. When the refugee takes actions indicating that they no longer require international protection, such as voluntarily seeking the protection of their home country.
2. If the refugee, after losing their nationality, voluntarily regains it or acquires a new nationality and is protected by their new country.

⁹⁰ Marjoleine Zieck, "In the Aftermath of Voluntary Repatriation", 2007, p.36.

3. If the refugee willingly returns to the country they fled.

These examples are outlined both in the UNHCR Statute and the 1951 Convention. Although Pakistan is not legally obligated to adhere to these instruments, it is bound to consider the Statute as part of the normative framework governing its cooperation with UNHCR, as specified in the Cooperation Agreement.

Beyond what is derived from the Cooperation Agreement, one could argue that adhering to the cessation clauses makes sense independently. These clauses essentially signify the termination of the applicability of the refugee definition. Each clause negates the requirement that the individual is unwilling or unable to seek protection from their home country. Considering that Pakistan has agreed, initially implicitly and later explicitly, to adopt a specific refugee definition, it logically follows that Pakistan should not be obligated to continue protecting individuals who no longer meet that definition themselves. Loss of refugee status can also occur when the circumstances in the individual's home country that led to their recognition as a refugee have ceased to exist, and the individual can no longer reasonably refuse the protection of their home country.

This cessation clause, often referred to as the 'changed circumstances clause,' aligns with the definition of a refugee, regardless of whether it is the narrower 1951 Convention definition or the broader one accepted by both UNHCR and Pakistan in the Screening Agreement. In either case, it signifies that the basis for fearing threats to life or security can no longer be sustained. However, if the circumstances that led to flight are replaced by different circumstances that still justify refugee status, the relevant cessation clause cannot be invoked. For instance, in Afghanistan, where one form of

civil conflict was replaced by another, the cessation clause could not be applied despite significant political changes.⁹¹

3.3 Impact of Afghan Refugees on Pakistan: Challenges to Pakistan

3.3.1 Security

It has been understood that the influx of Afghan refugees into Pakistan has increased the pollution and traffic in the country. Refugees have also replaced locals for lower wages and thereby affecting the employment rates in the country. After 9/11, the attitude of the locals towards the Afghan refugees changed considerably as they wanted the Afghans to return to their homeland due to decreasing living spaces. The refugee camps have also been termed as safe havens for terrorist recruitment, training and accommodation and thereby, the protection by Pakistani officials has decreased with random interrogation forcing the refugees to return on a large scale. The Taliban have been able to easily penetrate the Pashtun dominated camps and blend in with the refugees, making any detection by officials difficult. Most importantly, information on refugees in the FATA region is restricted mainly as UNHCR officials are not allowed into these tribal zones, which poses a problem for the complete repatriation of the Afghan refugees. However, as part of the ongoing repatriation from Pakistan, mainly with the expiry of the proof of Registration cards, returnees are being given repatriation assistance of \$117 per person, as well as a travel allowance of between \$10 and \$40.⁹²

⁹¹ UN doc. EC/47/SC/CRP.30 (Note on the Cessation Clauses) (1997) para. 20.

⁹² “Afghans in Pakistan: Broadening the Focus”, Briefing Paper of the Afghanistan Research and Evaluation Unit, Collective for social science Research, January 2006, www.areu.org.af/.../602E-broadening%20the%20Focus-bp-web.pdf

Also, with the overall level of international funding for refugees having decreased, the economic burden on Pakistan has increased significantly. The government has claimed that the country does not have adequate infrastructure to support the remaining Afghan refugees and also prevent any further infiltration of terrorism and non-state actors into Pakistan. In 2006, the Pakistani government closed 32 camps as they were represented as a risk to its national security. The refugees were forced to move to alternative camps or to return to Afghanistan, with a number of camps being closed in Balochistan, despite increasing protests.⁹³

3.3.2 Challenges Faced by Management in Repatriation Process

Due to security challenges in 2007 Pakistan give option to the refugees either voluntarily repatriation or relocating to vacant camps in other parts of Pakistan that those who were against repatriation. Due to deterioration state of affairs in Afghanistan again repatriation of registered migrant delayed and on request of home country registered refugees were given an additional 3-year extension, till December 2015. To find durable solution of Pakistan Afghan refugees challenges our government also adopted the Afghan Management and Repatriation Strategy (AMRS) in 2010. Again, in December 2012, the stay of the registered refugees was extended until June 30, 2013 on same ground and after that above said time a fresh strategy on Afghan refugees was agreed, which included the extension of the PoR cards and the Tripartite Agreement on Voluntary Repatriation until end of 2015. Federal government approved a new National Plan centered on “voluntary safely repatriation, sustainable reintegration inside

⁹³ Rhea Abraham, “The Afghanistan Refugee Crisis: Implications for Pakistan and IRAN”, *AIR POWER Journal* Vol. 8 No. 3, Monsoon 2013 (July-September) 199.

Afghanistan, and assistance to refugees host countries known as the Solutions Strategy for Afghan Refugees (SSAR)". Recently, PM of Pakistan again extended dead line from March 2017 to December 2017.⁹⁴ From the last two-decade Pakistan facing violence and instability threats internally from FATA and KPK due to United States invasion of Afghanistan and establishment of Threek- eTaliban Pakistan (TTP). Pakistan Government concerns change in 2007, when many Afghan refugees alleged involvement in terrorism, during counterinsurgency operations against great security threats in consequence thereof federal government faced another challenge term of Internally Displace Persons (IDP). Again repatriation of the refugees become unavoidable as a result, under the 20-point National Action Plan, the government formulates a policy to deal with the issue of Afghan refugees. Meanwhile, NADRA was under burden by government to register all undocumented Afghan nationals until December 2015 but fail due to policy clashes between Interior Ministry and SAFRON.⁹⁵ This time was very critical not only for Pakistan but also for Afghan refugees, law enforcing agencies were authorized under NAP to start a major crackdown against undocumented Afghan refugees arrested and deport them after completing legal formalities. Afghanistan, in general, the majority of Afghan refugees have cited economic concerns and limited absorption capacity like "lack of livelihoods,

⁹⁴ Muhammad Jalil, "Afghan refugees and Pakistan's problems" March 6, 2017, Daily Times, <https://dailytimes.com.pk/24795/afghan-refugees-and-pakistans-problems/>

⁹⁵ Khalid Aziz, "Why the distance between Pakistan and Afghanistan?", Journal Conflict and Peace Studies, VOLUME 8 17, (Jan-Jun 2016).

land, shelter and limited access to basic services” in Afghanistan as main obstacles to return and sustainable reintegration.⁹⁶

3.3.3 Economic Impact

Soon after arrival of Afghan refugees in Pakistan, a competition was started between refugees and local citizens over resources, water, land, food and property. This created a gap between refugees and citizens of two provinces of Pakistan i.e. Khyber Pakhtunkhwa and Balochistan where refugees in large numbers were being hosted. With the passage of time and decades, refugees demand on resources, education, energy, transportation and employment were also increased which further created anger among locals of the two provinces. Both the provinces of Khyber Pakhtunkhwa and Balochistan are poor and claimed deprivation on their rights, and this exodus of Afghan really affected economic interests of locals of these two provinces. Economic activities of refugees might be beneficial for a particular class or government but for poor class and those depending on monthly incomes it is violation of their rights. Refugees work as a cheap labor which affect local labors as market follows profit and prefer cheap labor for their economic interests. Refugees are also one of the reasons of inflation, as presence of refugees in large numbers also accelerate demands of a product, if demand of resources increases than surely price of commodities also rise. These activities are profitable for market but locals suffer from inflation which accumulate fury among them.

⁹⁶ Mamoonah Khalid and Fozia Shaheen, “Pakistan Afghan Refugees: Challenges Faced by Management and Repatriation Issues in Pakistan”, *International Journal of Humanities and Social Science* Volume 7 Number 12 December 2017, Pg 103.

There are also economic concerns that most Afghan traders have their business in different cities of Pakistan but do not pay taxes. For instance, In Peshawar alone, these traders became billionaire but still acquitted themselves from paying taxes. Such things created burden for local tax payers and businessman, and growth of revenue collection is also badly affected.⁹⁷

Economic impact of refugees on host countries may also be positive, economic growth of country may generate and lead to the development. For instance, Much of Afghanistan's livestock too shifted to Pakistan with the refugees which is estimated almost 2.5 million, according to the United Nations high commissioner for refugees, Afghan brought with them 45,000 camels, 35,000 cows, and 25,000 donkeys etc. due to which local market of meat and milk was boosted up and local purchase of food increased. Because of refugee's assistance programs supplying of relief items by international agencies are also positive signs for local economies. Foreign funded projects and Aid organizations disburse their resources for building infrastructure and development of host state. Therefore, there are also positive aspects but large scale presence of refugees is really a burden on host country, especially for less developed countries.⁹⁸

⁹⁷ Christine Roehrs, "The Refugee Dilemma: Afghans in Pakistan between Expulsion and Failing Aid Schemes," Afghanistan Analysts Network 9 (2015) <https://www.afghanistanalysts.org/en/reports/migration/the-refugee-dilemma-afghans-in-pakistan-betweenexpulsion-and-failing-aid-schemes/>

⁹⁸ Sohail Anwar et al, "Afghan Refugees: Implications on Pakistan", Pak. Journal of Int'L Affairs, Vol 4, Issue 3 (2021) 120.

3.3.4 Social Impact

Refugees have direct and indirect impacts on the lives of locals. If refugees belong to the same ethnicity than a kind of sympathy generate among locals and people offer them shelters with open heart. In case of Yugoslavia, where almost 400,000 refugees were placed in their houses by locals just because of ethnic nationalism. And, if refugees belong to different ethnicity and linguistic group than many problems occur due to the clash of interests. In case of Balochistan, Local Baloch population consider refugees as a threat to imbalance their population, People here believe that many refugees have made their CNIC and adopted Pakistani identity which will challenge their majority status. Therefore, they consider refugees may become cause of demographic change which will convert local Baloch population into minority. Baloch nationalists in Pakistan are one of the main forces that demand to send refugees back to Afghanistan.⁹⁹

3.3.5 Political Impact

Another major impact is political and security impacts. Which mostly left negative impact on host state, where security risks prevail because of refugees. The political affiliation of refugees with their mother country creates disturbance in host state, same is the case in Pakistan. Afghans living in Pakistan were directly supporting Taliban movement against Soviet Union and still they are involving in anti-state activities in current Afghan war against Unites States. This created conflict, chaos and terrorism and these activities of refugees have destabilized the host State as well as the region. The

⁹⁹ Ibid. at 121.

province of Balochistan, KPK and Tribal areas of Pakistan are largely affected in this dirty war of terrorism and millions of people have faced intra state migration. Institutions in Tribal areas were destroyed, schools and hospitals were bombarded and masses were compelled to leave their native areas.¹⁰⁰

3.4 Conclusion

Pakistan has embraced a somewhat lenient stance regarding refugees from Afghanistan, which is more in line with the definition of a refugee found in the Organization of African Union (OAU) Convention of 1969, it can be concluded after analyzing the legal aspect of refugees in Pakistan. Even in the absence of specific national legislation for refugees and without having signed any international agreements pertaining to refugees, the Pakistani government adamantly maintains that, over the course of their almost four-decade stay, it has provided significant protection for Afghan refugees thanks to generous administrative measures. However, as a developing nation, Pakistan is reliant on aid from the international community and is unable to manage the substantial influx of Afghan refugees on its own for such a long time.

Therefore, it is imperative that the international community acknowledge this fact and act to safeguard these refugees by assisting the Pakistani government in providing for the needs of Afghan refugees who have been brought to their country by the USSR's invasion of Afghanistan and have been living there for nearly 40 years. It is crucial to acknowledge that Pakistan lacks legal provisions concerning refugees in

¹⁰⁰ Ibid.

general and Afghan refugees specifically. Since taking office in 1979, the administration has handled this issue in an ad hoc manner. The Foreigner's Act of 1946 is an outdated law that allows authorities to expel immigrants without their consent and treats refugees and other foreigners equally. This is against international customary law, which forbids the deportation of refugees to hazardous regions. The absence of clear standards that set refugees apart from other foreigners makes it more difficult to defend their rights. In light of these conditions, the government needs to amend the Foreigner's Act or enact new legislation in order to provide Afghan refugees with legal status that complies with international norms. To solve these issues and enhance the current level of refugee protection, it is therefore recommended that a national legislative framework for refugees and asylum seekers be established. This will benefit all parties involved. For Afghan refugees residing in Pakistan, voluntary repatriation to Afghanistan is the preferred course of action. But considering the circumstances at hand, it is imperative to recognise that this is a difficult and complex prospect. There have been some achievements persuading refugees to return, despite help from the Afghan, UNHCR, and Pakistani governments to enable their dignified and safe return. According to reports, there have been instances where the voluntary aspect of repatriation has been undermined, potentially as a result of coercion from Pakistani officials or unfavorable circumstances in Pakistan. The state of peace and order and the future of the Afghan economy are inextricably tied to the success of subsequent efforts to repatriate people from Afghanistan. Therefore, these repatriation initiatives suggest that if security in Afghanistan improves, a significant number of refugees are likely to return voluntarily to their native country.

CHAPTER 4

THE INTERNATIONAL LEGAL FRAMEWORK FOR THE PROTECTION OF REFUGEES

4.1 Introduction

Under international legal principles, when a person seeks sanctuary in another country, their legal status shifts to the non-refoulement obligation upon reaching the border, even if they are still awaiting formal permission to enter the territory.

Refugees who do not have legal status are deprived of basic human rights and are therefore open to being taken advantage of by different groups. In addition to labelling them as illegal aliens, this exploitation can take the form of human trafficking, arbitrary arrests, and detentions by state officials, which forces them even deeper into poverty and homelessness. Without legal protection, refugees are left in a state of permanent uncertainty where they must rely on donations, endure trauma and suffering again, and eventually risk being forcibly returned to violent, dehumanizing, and even deadly environments. In light of these unpleasant facts, it is essential to push for the

creation of a thorough and significant national legislative framework that complies with international norms and guarantees the true protection of refugees.

The primary motivation for this endeavor is not solely based on moral correctness but also offers advantages in terms of efficiency, cost-effectiveness, and improved practices compared to current approaches. Legal processes can lead to fair and prompt decisions, safeguarding the legal, economic, and social rights of refugees while preventing their exploitation and suffering. These procedures not only increase the effectiveness of government operations but also lower the material and human costs that governments bear when dealing with problems like extended detention periods for immigration, extended stays in camps, or costs associated with the social and medical welfare of refugees.

As Hathaway notes, immigration and asylum laws are not the same as refugee law, which is a tool for protecting human rights. With substantial ramifications for welfare and security policy, refugee laws are sophisticated and complex, connecting with immigration control, human rights legislation, and both national and international legal frameworks. The idea of modern citizenship, which is based on belonging to a defined geographical community, does not apply to refugees.¹⁰¹

Refugees and the associated laws often face opposition, with national media frequently reminding citizens that liberal asylum policies are not in the national interest. The challenge with refugees lies in their lack of effective state representation and

¹⁰¹ James. C. Hathaway, "Why Refugee Law Still Matters?" 8 *Melb J Intl Law*, (2007): 89.

protection; they are displaced, uprooted, and marginalized.¹⁰² International law ensures the dignified protection of all individuals regardless of their citizenship, prioritizing human rights over national interests.¹⁰³ However, the politics of border control, which aim to identify and reject people lacking a clear right of entry, does not exempt human rights.¹⁰⁴

4.2 International Legal Regime Governing Refugees

4.2.1 Customary International Law

4.2.1.1 The Principle of Non-Refoulement

The cornerstone of international law dealing to refugees is the concept of non-refoulement. This basic principle is the basis of refugee protection within the framework of international law. It is a key component of the “1951 Convention Relating to the Status of Refugees,” which is regarded by most as a crucial component of international customary law. Non-refoulement essentially means that countries cannot return refugees to places where they risk abuse, inhumane treatment, or danger to their lives and freedoms.¹⁰⁵

The principle of non-refoulement represents the commitment of the international community to safeguard fundamental human rights, including the freedom

¹⁰² Nevzat Soguk, *States and Strangers: Refugees and Displacement of Statecraft* (University of Minnesota Press 1999): 9–10.

¹⁰³ H. Lauterpacht, *International Law and Human Rights* (Stevens & Sons 1950) 72; Alison Kesby, *The Right to Have Rights* (OUP 2012) 101.

¹⁰⁴ Kesby, *The Right to Have Rights*, 103.

¹⁰⁵ Philip C.W. Chan, “The Protection of Refugees and Internally Placed Persons: Non Refoulement under Customary International Law”, 10 *INT’L J. HUM. RIGHTS* (2006) 231.

from torture and other cruel, inhumane, or humiliating treatment or punishment, as well as the rights to liberty and personal security.¹⁰⁶ The rationale behind this principle is extremely clear: it is a violation of the refugee's rights as well as many others to send them back to a place where they might face persecution or danger. Refoulement is specifically forbidden under a number of important international treaties on human rights. Refoulement is prohibited by the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) as well as the Geneva Convention pertaining to the Status of Refugees. Article 33 of the Refugee Convention declares that:

“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.”¹⁰⁷

Similarly, Article 3 of the CAT states that

“No State Party shall expel, return (refouler), or extradite a person to another State where there are substantial grounds for

¹⁰⁶ J. Allain, “The Jus Cogens Nature of Non-Refoulement”, 13*International Journal of Refugee Law*, 4 (2001).

¹⁰⁷ Convention Relating to the Status of Refugees (adopted on 28 July 1951, entered into force on 22 April 1954) 189 UNTS 137 (Refugee Convention) available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%20189/v189.pdf>, Art 33.

believing that he would be in danger of being subjected to torture.”¹⁰⁸

4.2.1.2 The Universal Declaration of Human Rights (UDHR)¹⁰⁹

Everyone has the right to request for and be given refuge in other nations when they are being persecuted, according to Article 14 (1) of the UDHR, which serves as the cornerstone of international human rights law and a significant contributor to customary international law. This implies that people have the right to request for asylum abroad if they fear persecution in their own country, as is the case for Syrians escaping violence. Asylum is the term used to describe the protection that a state extends to those who request it, either within its borders or in another area under its control,¹¹⁰ is a well-established concept in international law, rooted in historical state practices.¹¹¹

It is important to emphasize that the kind of asylum or legal status granted to refugees determines the rights and obligations that apply to individuals who are forced to leave their country of origin, which can have a significant impact on their future and

¹⁰⁸ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (adopted on *10 December 1984*, entered into force on 26 June 1987) 1465 UNTS 85 (Refugee Convention) available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%201465/v1465.pdf>, Art 3.

¹⁰⁹ Universal Declaration of Human Rights, (adopted on 10 December 1948 by UN General Assembly Resolution 217 (A)(III)), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹¹⁰ See María-Teresa Gil-Bazo, “Asylum as a General Principle of International Law”, *Int J Refugee Law* 27, (2015) 3-28.

¹¹¹ V Stoyanova, “The Principle of Non-Refoulement and the Right of Asylum Seekers to Enter State Territory”, *Interdisciplinary Journal of Human Rights Law*, Vol 3:1, (2008).

general well-being.¹¹² It basically establishes the basic rights to which they will be entitled, which include the freedom to roam about the host nation, the right to pursue legal work, and access to essential services like healthcare and education.¹¹³

The practical realisation of these essential rights is primarily dependent on the acknowledgment and acceptance given to those who are seeking asylum in the host country, even though many of these rights—such as the right to healthcare and education—are regarded as fundamental human rights on their own.¹¹⁴ The degree of legal protection offered by host nations frequently falls well short of what is required or advised by international law, which has grave negative ramifications for the degree to which refugees will be protected and supported during their stay in the host nation. A restricted legal position has been directly linked to increased susceptibility to abuse and exploitation, as numerous studies have shown.¹¹⁵

4.2.2 International Treaty Law

4.2.2.1 Convention Relating to the Status of Refugees, 1951 and the Protocol Relating to the Status of Refugees 1967

The “1951 Convention relating to the Status of Refugees and the 1967 Optional Protocol pertaining to the Status of Refugees” are the main international legal

¹¹² C Wouters, *International refugee and human rights law: partners in ensuring international protection and asylum*, in N. Rodley and S. Sheeran (eds.), *Handbook on International Human Rights Law*, (Routledge, 2013).

¹¹³ D J Whittaker, *Asylum Seekers and Refugees in the Contemporary World*, (London: Routledge, 2008).

¹¹⁴ Towle Richard, *Human Rights Standards: A paradigm for Refugee Protection?* In Bayesfsck and Fitzpatrick (ed), *Human Rights and Forced Displacement*, (Martinez Publishers, Netherlands, 2000).

¹¹⁵ For example, see: NRC Lebanon, *The Consequences of Limited Legal Status for Syrian Refugees in Lebanon*, 2014.

documents that regulate refugee law (1967 Optional Protocol). The 1967 Protocol extended the 1951 Refugee Convention's scope by requiring signatory nations to apply its substantive provisions to all refugees falling under the definition of refugees without any time constraints. This made the 1951 Convention universally applicable, whereas it had previously only applied to Europeans who had become significant refugees before January 1951.¹¹⁶ In particular, the Convention clarifies what is meant to be considered a "refugee" and reiterates one of its fundamental tenets—the previously mentioned concept of non-refoulement. Furthermore, it creates the UNHCR. This organization's main duties include providing “international protection” to refugees and collaborating with nations to identify “permanent solutions to the refugee problem.”¹¹⁷

Its protective functions encompass activities such as “promoting the initiation and ratification of international agreements for safeguarding refugees, overseeing their implementation, and suggesting modifications as needed.”¹¹⁸ The UNHCR is required by the Convention's signatory states to be permitted to operate inside their borders in order to assist refugees.¹¹⁹ The UNHCR provides humanitarian relief, therefore even nations that have not formally ratified the Convention usually work together. The main

¹¹⁶ Rubio-Marín, R. (ed.), *Human Rights and Immigration* (Oxford University Press, 2014).

¹¹⁷ “The Syrian Refugee Crisis: Refugees, Conflict and International Law” (London: Democratic Progress Institute, 2016)

¹¹⁸ United Nations High Commissioner for Refugees, “Statute of the Office of the High Commissioner for Refugees”, General Assembly Resolution 428 (V) of 14 December 1950, available at: <https://www.unhcr.org/media/statute-office-united-nations-high-commissioner-refugees> , para 11.

¹¹⁹ United Nations High Commissioner for Refugees, *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (2003).

foreign agency providing aid to refugees in Lebanon, Jordan, and Turkey is the UNHCR.¹²⁰

It is imperative to emphasize that the Convention carries substantial legal, political, and ethical ramifications that surpass its particular provisions.¹²¹ From a legal standpoint, it sets the essential tenets that will direct the application of international refugee protection. Politically, it provides a globally applicable structure that states can use to collaborate and divide the obligations resulting from forcible relocation. Finally, from an ethical perspective, it is a clear statement by the 140 signing states of their intention to protect and defend the rights of some of the most vulnerable people on the planet.¹²² This implies that international legal commitments remain in force even when a refugee hasn't managed to reach a specific country's territory.

By putting policies in place to bar refugees from accessing their borders, numerous nations have circumvented their obligations under the international system for refugee protection in the context of the Syrian refugee crisis. They argue that they lack jurisdiction or responsibility for refugees present in other nations' territories. This approach, known as the non-entree approach, involves denying refugees entry and thus avoiding the triggering of a state's jurisdiction. While this tactic allows most countries to formally adhere to refugee law, it falls short of fulfilling their treaty obligations in

¹²⁰ Gill Loescher and James Milner, *UNHCR and Global Governance of Refugees* In Betts, A. (ed.) *Global Migration Governance* (Oxford: Oxford University Press, 2001).

¹²¹ United Nations High Commissioner for Refugees, *Refugee Protection: A Guide to International Refugee Law*, (2001).

¹²² Ibid.

practice. However, this argument does not withstand expert analysis.¹²³ Refugee responsibility and jurisdiction do not solely hinge on the physical presence of refugees within a state's territory. The asylum system was not designed in that manner, and the normative duty to provide protection is not conditional on geographic engagement.¹²⁴

Moreover, the responsibilities pertaining to refugee protection stem not only from the humanitarian duty to assist those in need but also from the vital requirement for international stability, as will be further discussed in the following chapter. One could argue that providing asylum to displaced persons benefits all countries since it increases security through reintegrating people into the state structure and thereby averting conflicts.¹²⁵ Additionally, burden-sharing serves as a crucial avenue for states to collaborate in pursuit of international stability, a concept elaborated on in Chapters III and IV.

The 1967 Protocol and the Convention are categorised as international treaties, which means that only the nations who have formally accepted them are bound by them legally. However, a number of clauses in these agreements concerning the handling of asylum claims and refugees are thought to have become customary international law. It is implied that even states that have not ratified the Convention and Protocol are nevertheless somewhat bound by them because they “reflect an international consensus

¹²³ See for instance: Thomas Gammeltoft-Hansen, “International Refugee Law and Refugee Policy: The Case of Deterrence Policies”, *Journal of Refugee Studies* 2014 27: 574-595.

¹²⁴ Agnes Hurwitz, *The Collective Responsibility of States to Protect Refugees* (Oxford University Press, 2009).

¹²⁵ Alexander Betts, *Protection by Persuasion: International Cooperation in the Refugee Regime* (Ithaca: Cornell University Press, 2009).

on minimum legal standards to be applied to nationality” and serve as “reference points for determining customary international law.”¹²⁶

¹²⁶ T Einarsen, *The 1951 Convention*, in Aimmerman (ed.), *The 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol: A Commentary* (Oxford: Oxford University Press, 2011).

4.2.2.1.1 Naturalization and Assimilation

States must, to the maximum extent feasible, actively assist refugees in the process of naturalization and integration into their host countries in accordance with the 1951 Convention's stipulations. States must, at the absolute least, provide legal aid to refugees including the paperwork they need to apply for asylum and obtain formal refugee status. Both those seeking refugee status and those with it must be provided protection from expulsion (Article 32) and immunity from punishment for unauthorized entrance (Article 31). They should also be able to access the nation's courts on the same terms as its citizens.

4.2.2.1.2 Access to Basic Services

The treaty further requires refugees to be given the same level of public relief and assistance as citizens of the host country, and if they are of the right age, to obtain a primary education. This suggests that states have an obligation to provide public relief, which includes basic necessities like food, drink, shelter, and medical attention, to individuals seeking refuge. Since the ability to obtain these vital resources for survival is crucial, international human rights legislation can be considered to entail this commitment. In addition, minor refugees are given further protection. States are required to take all reasonable measures to ensure that children, regardless of whether they are asking for or have been granted refugee status, are granted all the rights outlined in the Convention on the Rights of the Child of 1990. These rights include bans on child labour, guardianship against abuse, and family division prohibitions.

4.2.2.1.3 Employment

According to the provisions of the 1951 Convention, refugees are entitled to receive treatment in terms of employment law that is at least as favorable as that granted to foreign nationals residing in the host countries. This means that if citizens of another country can legally seek employment within the host nation, refugees should have the same opportunity. Furthermore, the 1951 Convention specifies that refugees should enjoy the same legal protections as citizens concerning employment law and legal remedies in cases of exploitation or abuse. It also encourages states to take measures to facilitate the economic engagement of refugees within the labor force.

To sum up, the framework for international refugees is based on four essential ideas. First of all, it affirms everyone's right to apply for refuge when they are being persecuted. The protection from refoulement of both asylum seekers and recipients is necessary to prevent them from being sent back to a nation where their fundamental rights are in jeopardy. Regardless of their legal status, refugees are inextricably entitled to basic public assistance, which ensures that they have access to necessities for survival such as food, water, medicine, and shelter. Furthermore, refugees are entitled to treatment in the host country that is at least as favorable as that provided to other foreign citizens in areas like employment legislation.

It is imperative to underscore that maintaining the international refugee system is the responsibility of the international community.¹²⁷ In essence, the refugee issue is

¹²⁷ Eiko R. Thielemann & Torun Dewan, *Why States Don't Defect: Refugee Protection and Implicit Burden-Sharing* (London School of Economics, 2004).

inherently international.¹²⁸ Since nations have agreed upon the foundation of the entire refugee system, any attempt to restrict cooperation in this regard would be in opposition to the fundamental goal of refugee law, which is to fill protection gaps.¹²⁹ States agree to take in refugees on their soil on the condition that other states will follow suit; this is how the right to asylum is essentially dependent on international cooperation.¹³⁰

Similar to all international law, refugee law is a means by which states consent to give up some of their sovereign rights in order to handle difficult crisis circumstances and advance world peace.¹³¹ It was specifically for this reason that international refugee law was created a system to control forced migration was required. But as this essay will show, efforts to address the massive forced migration of people out of Syria are currently being made largely haphazardly and insufficiently.¹³²

4.3 Regional Framework

4.3.1 “The Convention of the Organization of African Union 1969 (OAU)

Governing the Specific Aspects of Refugee’s Problems”

After colonial powers left Africa, there was a major regional refugee crisis as a result of the ongoing wars that resulted from their withdrawal. The struggles faced by

¹²⁸ Hurwitz, *The Collective Responsibility of States to Protect Refugees*, 2009.

¹²⁹ James Milner, *Sharing the Security Burden: Towards the Convergence of Refugee Protection and State Security*, Refugee Studies Centre, Working Paper No. 4, (2000).

¹³⁰ Fonteyne J L, *Burden-Sharing: An Analysis of the Nature and Function of International Solidarity in Cases of Mass Influx of Refugees*, Australian Yearbook of International Law, Volume 8, 1983

¹³¹ James C. Hathaway, et al, “Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-oriented Protection”, *Harvard Human Rights Journal*, 1997.

¹³² Gammeltoft-Hansen, T, ‘*Creative Legal Thinking*’ and the Evolution of International Refugee Law, *Lakimies* (1): 99–105, 2014

these sizable groups of displaced people forced governments throughout Africa and the world to respond. As a consequence, the 1967 Protocol on Refugees and the “1969 Convention of the Organization of African Unity (OAU)” were established, which particularly addressed the issue of refugees in Africa. The only legally enforceable regional agreement in place at the moment is the 1969 OAU Convention, although the 1951 Refugee Convention continues to be the essential international agreement.

One important issue that needs consideration is the OAU Convention's definition of a refugee. It is consistent with the 1951 Convention's definition, but it goes beyond to cover those who are forced to flee their place of origin because to external attack, foreign occupation, dominance, or any other circumstance that seriously disturbs public order in that person's home country or any portion of it. According to this definition, anyone who flee their home countries because of civil unrest, acts of violence, or wars are eligible to apply for refugee status in any of the signatory nations, even if they do not have a legitimate fear of persecution. This pact is the only regional agreement with binding legal force on the African continent, with nearly all of the continent's 45 member nations.

4.3.2 The Declaration of Cartagena on Refugees

In 1984, an assembly convened in Cartagena, Colombia, gathering a significant number of delegates representing various governments and distinguished jurists from Latin America. The primary objective of this summit was to address the protection of refugees throughout the region. Following extensive deliberations, the participants endorsed several recommendations, collectively referred to as the Cartagena Declaration.

The Cartagena Declaration, in addition to its other provisions, broadened the scope of refugee protection to encompass individuals compelled to depart their home countries due to widespread violence. Subsequently, numerous countries within the region incorporated this expanded definition into their domestic laws.

4.5 Conclusion

In summary, the overarching concept that emerges from various refugee scenarios worldwide, regardless of the time or place, is that a refugee is an individual who requires recognition, safeguarding, and reintegration into a community where they possess rights, solely because of their humanity. Unfortunately, there is no unified international stance or solution that guarantees the necessary protection for refugees.

These people frequently turn into what are known as “orbit refugees”, constantly uprooted from one nation to another as host nations struggle with the legalities of their duty to offer safety. These factors led to the conclusion that, despite the work's emphasis on the rights and protection of displaced people outside of their home countries, refugees are people who have fled their homes for any reason and are either unable or unwilling to return home to seek protection from their home country, or who have no access to it at all. Basic human rights, as described by Louis Henkin, include the entitlements that each and every person has or ought to have.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

Conclusion

It is estimated that 600,000 Afghans have fled to Pakistan since the Taliban seized power in Afghanistan in 2021. At least 2.2 million Afghan refugees are in Pakistan without any official recognition or legal status, on top of the 1.32 million recognised refugees—many of whom have been there for decades. Women and girls who fled Afghanistan because of specific threats and the degradation of their rights make up a sizable portion of the recent arrivals. Unrecognized within the Afghan refugee crisis, these unregistered Afghans face dangerous conditions if they return to Afghanistan and are unable to obtain legal status in Pakistan.

Meanwhile, because of differences in policy with Pakistan, the United States has had challenges in carrying out its pledges, made two years ago, to resettle Afghans through the P-1 and P-2 resettlement programmes. These programmes are still inactive even though other nations have relocated Afghan refugees from Pakistan with success. This report proposes ways to resolve this seeming deadlock and start taking action to protect Afghans who are at risk in Pakistan.

Even though Pakistan and Afghanistan share a gated and guarded border, Pakistani officials frequently fail to stop undocumented Afghans or those with visas obtained illegally from entering the country. The lack of willingness on the part of Pakistan to gather even the most basic data regarding the hundreds of thousands of recent arrivals from Afghanistan puts these unrecognized migrants in a vulnerable and unsafe situation. Particularly alarming is this situation for Afghans who are facing Taliban retaliation. Numerous groups have reportedly been targeted by the Taliban, including members of the Afghan military, women's rights activists, and ethnic minorities. Additionally, the Taliban has put more and more limits on Afghan women's engagement in public life. These restrictions have recently included prohibitions on women working for the UN and non-governmental organizations. This means that many Afghans who have arrived in Pakistan since 2021 have few options and no clear chance to return to Afghanistan, especially in light of the growing humanitarian situation.

Out of the 600,000 Afghans who landed in Pakistan recently, about 20,000 have been referred for resettlement under the Priority 1 (P-1) and Priority 2 (P-2) categories to the United States Refugee Admissions Programme (USRAP). P-2 is a new programme launched by the State Department in August 2021 for Afghans who worked for U.S.-based NGOs or media organisations and who are referred by U.S. authorities. P-1 is for those "known" to the old U.S. Embassy in Kabul and referred by U.S. officials for resettlement. These people have to be outside of Afghanistan in order to be eligible for resettlement. Resettling individuals whose cases fit the requirements and pass medical and security screenings is possible. But even though many of these people had

collaborated with American missionaries who had similar objectives for democracy and human rights in Afghanistan, the US has not yet started resettling these people since there seems to be a standoff with Pakistan about how to handle these situations. Nearly two years after the United States withdrew from Afghanistan, the P-1 and P-2 resettlement programmes in Pakistan have not delivered on their promises. The State Department attributes the impasse to Pakistan's insistence on forbidding the construction of a Resettlement Support Centre (RSC) within its borders. The Pakistani administration fears that this would serve as motivation for additional Afghans to migrate to Pakistan. On the other hand, the US maintains that cases cannot be moved out of Pakistan without an in-country RSC. However, there are other strategies that the US might use to permit resettlement to continue while talks with Pakistan about the RSC's establishment go forward.

Little information has been released by the State Department as to why all referrals for resettlement have been halted, despite the fact that some other nations are still accepting a small number of Pakistani cases for resettlement. If there are workable ways to continue resettlement while RSC negotiations are going on, the United States should not let the ideal become the enemy of the good. It is intolerable and dangerous for Afghans that there is no progress being made towards the goal of resettling Afghans from Pakistan to the United States. As of right now, the US has not fulfilled its pledges to safeguard Afghans under the P-1 and P-2 initiatives.

An overview of the conditions experienced by Afghan refugees in Pakistan is given in this thesis, with particular attention to those who have arrived since August 2021. It also contains details on women and girls who suffer risks and challenges in Pakistan but are unable to return to Afghanistan. In addition to increasing protection and services for all Afghans inside its borders, the study calls on Pakistan to permit the United Nations Refugee Agency (UNHCR) and non-governmental organisations (NGOs) to assist all Afghans, not just those who are designated as legacy refugees. Additionally, the report lists obstacles to processing P-1 and P-2 cases and offers potential solutions. For Afghans, P-1 and P-2 referrals make up a reasonable burden. They are currently in the relocation process after being given hope for resettlement by the US government. Even if establishing an RSC proves difficult, the United States should investigate all available measures to enable Afghans seeking protection, as they lack rights in Pakistan and face the potential of deportation to Afghanistan where their lives may be in risk.

Recommendations

The persistent issue of Afghan refugees necessitates a rational and enduring solution. While it is agreed that all refugees must eventually return to Afghanistan, compulsion is not the way to make this happen. Rather, Pakistan needs to take a flexible and caring stance to guarantee a long-lasting repatriation procedure.

The Government of Pakistan should:

1. Adopt national legislation for asylum and refugee concerns that complies with the Refugee Convention and specifies how to receive, register, house, and integrate refugees.
2. Register people from Afghanistan who lack the necessary paperwork and provide “Proof of Registration (PoR)” cards to them, allowing them more mobility and access to banking, healthcare, and public education facilities. This registration procedure would expedite the resettlement of Afghans to other countries and improve support for all Afghan residents.
3. Permit access to all Afghan inhabitants in Pakistan, including those who have recently arrived and those who lack papers, for non-governmental organisations and the UNHCR.
4. Give permission for the US to open a Resettlement Support Centre (RSC) in Pakistan. If required, think about giving permission for a temporary RSC to function for a predetermined amount of time, like three or five years. This would provide the US enough time to handle Pakistani P-1 and P-2 cases that have already been given case numbers.
5. Grant Afghans exit permits so they can go from Pakistan to the United States for resettlement processing through other facilities, like Camp As-Sayliyah (CAS) in Doha, Qatar.

The United States Government should:

1. If an agreement cannot be achieved to establish an RSC in Pakistan, look into alternative models. A regional RSC, servicing Afghan populations in South and Central Asia, including those in Pakistan, is one option. It might be situated in Tajikistan or Nepal. Even if Pakistan would voice apprehensions regarding an increased US government presence in Islamabad, case processing might still begin at a regional RSC.
2. To improve performance, apply the CAS (Camp As Sayliyah) model for specialised, concurrent processing in any recently formed RSC. By assembling personnel from pertinent U.S. agencies in one place, this method guarantees that processing steps are completed concurrently rather than sequentially. Conduct initial interviews with Afghan refugees by the United States Citizenship and Immigration Services (USCIS) virtually in host countries to expedite processing.
3. Give top priority to completing resettlement cases for Afghan women at risk with P-1 or P-2 status as soon as an RSC is established. These women should be temporarily relocated to CAS or another appropriate facility. To aid with the program's future expansion, these initial cohorts of women and their families can act as pilot cases.

4. Process a small number of cases inside Pakistan through the U.S. Embassy in Islamabad, making sure that some cases are handled while also retaining the freedom to handle the issues raised by the Pakistani government.
5. Continue to communicate openly and on a regular basis with Afghans residing in Pakistan regarding their P-1 and P-2 cases, giving them clear updates regarding the progress of their respective cases.

The United Nations Refugee Agency (UNHCR) in Pakistan should:

1. Press the Pakistani government to recognise and register undocumented Afghans by providing them with Proof of Registration (PoR) cards; the UNHCR will support this process by providing technical assistance, financial support, and capacity-building.
2. Expand refugee-oriented services outside of refugee settlements to urban areas, where more undocumented refugees can obtain services like educational programmes, mental health and psychological support programmes, and livelihood initiatives.
3. Hold meetings with Afghans who arrived in Pakistan after August 2021 to assess their living circumstances, record any concerns about protection, and work with NGO partners to develop specialised programmes that cater to their individual needs.

International donors should:

1. Increase funding support for UNHCR Pakistan and the UN's Afghanistan Situation Regional Refugee Response Plan (RRP), making sure that these resources allow UN organisations and their partners to fulfil the growing needs of the Afghan community in Pakistan. Set aside some of the funds to assist Pakistan's Commissionerate for Afghan Refugees, with a focus on initiatives for recently arrived undocumented Afghans in particular.
2. Provide flexible funds for humanitarian relief in Pakistan, including support for regional NGOs and assistance for recently arriving refugees in metropolitan areas.
3. Encourage the Pakistani government to approve the issuing of PoR cards and the registration of all Afghan refugees, granting them rights and making it easier for them to access services offered by NGOs and UN organisations.

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