REPARATIONS TO PAKISTAN FOR HOSTING AFGHAN CITIZENS AND LEGAL OBLIGATIONS OF THE INTERNATIONAL COMMUNITY UNDER INTERNATIONAL LAW

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بِسْمِ اللهِ الرَّحْمٰنِ الرَّحِيمِ

IN THE NAME OF ALLAH,

THE MOST MERCIFUL AND

BENEFICIENT

DEDICATION

This thesis is solemnly dedicated to the refugees around the world, to their strength, their struggles, and their unwavering hope for justice and dignity. May this work be a whisper in the call for recognition, responsibility, and settlements, reminding everyone that their sacrifices should never be forgotten.

DECLARATION

I, **Muhammad Inzemam Khan**, hereby declare that this dissertation is original and has never been presented in any other institute till today. Also, I declare that any kind of secondary information used in this dissertation has been duly acknowledged properly as per the prescribed rules.

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Date: _____

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Folks say that writing a thesis is like running a marathon in the dark: it's prolonged journey, full of impediments and requires all the strength one can muster. But when you eventually cross the finish line, the journey becomes its own reward. This thesis has been exactly that: a long, meaningful journey that morphed me in ways that words can hardly describe.

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List of Abbreviations

Abbreviations	*Full Form*
Albania	People's Republic of Albania
ARSIWA	Articles on the Responsibility of States for Internationally Wrongful Acts, 2001
ACCs	Afghan Citizen Cards
Afghanistan	Islamic Republic of Afghanistan / Islamic State of Afghanistan / Islamic Emirate of Afghanistan
Advisory Opinion	Reparations for injuries suffered in the service of the United Nations, Advisory Opinion (11th April, 1949)
BRPs	Biometric Residence Permits
Chorzow Factory	Case Concerning the Factory at Chorzów (The Government of Germany v. The Government of the Polish Republic), 13th September 1928, Series A. – No. 17, Permanent Court of International Justice (PCIJ)
Corfu Channel	Corfu Channel Case (United Kingdom of Great Britain & Northern Ireland v. People's Republic of Albania), Judgment (Merits), 1949 I.C.J. Reports 4 (April 9th, 1949); & Judgment (Assessment of the Amount of Compensation), 1949 I.C.J. Reports 244 (December 15th, 1949)
CPA	Comprehensive Plan of Action
DRA	The Democratic Republic of Afghanistan
EU	European Union
EECC	Eritrea-Ethiopia Claims Commission
Germany	The Government of Germany
GCR	The Global Compact on Refugees, 2018 (by the UNGA)
IACHR	The Inter-American Court for Human Rights

ILC	International Law Commission
ICCPR	International Covenant on Civil and Political Rights
IHL	International Humanitarian Law
IHRL	International Human Rights Law
IRL	International Refugee Law
ICJ	International Court of Justice
ICC	International Criminal Court
ICTY	International Criminal Tribunal For the Former Yugoslavia
ILA	International Law Association
NGOs	Non-Governmental Organizations
NATO	The North Atlantic Treaty Organization
Optional Protocol	The 1967 Optional Protocol to the 1951 Convention Relating to the Status of Refugees
PIL	Public International Law
PCIJ	Permanent Court of International Justice
PCO	Pakistan Census Organization
Pakistan	Islamic Republic of Pakistan
Poland	The Government of Polish Republic
PoR Cards	Proof of Registration Cards
Refugee Convention	The 1951 Convention Relating to the Status of Refugees
R2P Doctrine	The Responsibility to Protect Doctrine
RIAA	Reports of International Arbitral Awards
RRP	Regional Refugee Response Plan
RAHA	Refugees Affected & Hosting Areas
SSAR	Solution Strategy for Afghan Refugees
SAFRON	The Federal Ministry for States & Frontier Relations

Trail Smelter	Trail Smelter Arbitration (United States v. Canada), Decision of the Tribunal (16 April 1938 and 11 March 1941)
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
UNHCR	United Nations Human Rights Commissioner for Refugees
UNCC	United Nations Compensation Commission
UNSDCF	United Nations Sustainable Development Cooperation Frameworks
UK	United Kingdom of Great Britain and Northern Island
USA / US	The United States of America
USSR	The Union of Soviet Socialist Republics / Soviet Union
UDHR	Universal Declaration on Human Rights, 1948
UNICEF	The United Children's Fund / The United Nations International Children's Emergency Fund
UNDP	United Nations Development Programme
UN-IOM	United Nations International Organization for Migration
WW-I	World War I
WW-II	World War II

ABSTRACT

This research addresses the core issue of whether Pakistan may be deemed an 'injured State' under international law with a right to reparations after hosting millions of Afghan citizens during multiple displacement phases. The study employs a doctrinal approach to trace the development of reparations from classical thought and legal history to their codification in contemporary jurisprudence. It glances at significant cases like the Chorzów Factory, the Trail Smelter arbitration, the Corfu Channel case, and the judgements of the International Court of Justice on state responsibility, as well as the International Law Commission's Draft Articles on State Responsibility (ARSIWA, 2001).

In order to assess Pakistan's socioeconomic, political, security, and other costs, the study analyze legal sources with empirical data from government publications, UNHCR reports, and World Bank data. Pakistan's plea for restitution, compensation, and satisfaction is based on the customary principles of general international law, as the study contend that prolonged mass displacement is an internationally wrongful act that involves both source states and the larger international community.

The findings indicate that although there is a strong legal foundation for reparations, there are several obstacles to their implementation, such as the lack of legally binding procedures, the political resistance of strong governments, and gaps in the global refugee system. In order to streamline burden-sharing and guarantee that injuries brought on by displacement are acknowledged as actionable claims under international law, the thesis concludes by suggesting institutional and legal modifications.

Keywords: Customary International Law, State Responsibility, ARSIWA, Trail Smelter, Displacement, Burden-Sharing, Refugee Protection, Reparations, Pakistan, Afghan Refugees.

INTRODUCTION

Refugee crisis, being a global issue, has been exposed to its ever-complex structure in the contemporary world, and no solution proposed, or acted upon, so far, has worked effectively to overcome the challenge. In addition, this situation has influenced the actions of states that host refugees and play a humanitarian role in their protection, particularly those neighbouring the country from which the refugees fled. As a result, the world is witnessing a significant policy shift that focusses not only on limiting the acceptance of refugees but also on deporting those who are already hosted. In particular, the case of Afghan citizens in Pakistan is of utmost significance because it has been nearly half a century since the first exodus, and they are now facing large-scale deportation and the closure of the border for a new influx. This situation always raises the question of whether this challenge has ever been approached from the sustainable angle? Invariably, the response is negative. Therefore, this study proposes a novel solution to the crisis – an extension of the right to reparations to the host states for hosting refugees and to claim full reparations for all the injuries incurred upon them from their presence – whereas such a right to be claimed from the international community is its legal obligation, which is regarded as the most obvious obligation under any regime of responsibility and is well established under international law. This research will not only assist the host states but will also influence their behaviour towards strengthening refugee protection.

Since decades, Pakistan remains one of the major operational areas for refugees due to the mass-influx of Afghans in its territory in various phases.[1] It started in 1978 post-communist coup, when millions were welcomed with an open-door policy on humanitarian ground. The process continued smoothly for two decades and adopted a

[1] Yousaf Ali, Muhammad Sabir, and Noor Muhammad. eds., "Refugees and Host Country Nexus: A Case Study of Pakistan." Journal of International Migration and Integration 20, no. 1 (2018): 137–53 https://doi.org/10.1007/s12134-018-0601-1.

modified yet strict position with closed-door policy after two decades, whereas international support was officially requested within a year since the first mass influx and the first volunteer repatriation has been conducted in the last part of the first decade. This also resulted in irritant relations between States due to decline in donor assistance, domestic constraints, weak economy, refugee fatigue, growing threat of terrorism, and others.[2] Currently, it is host to around 1.5 million Afghans, residing across the country, particularly in Khyber Pakhtunkhwa and Balochistan, with plus 0.7 million and plus 0.3 million, respectively'[3]. Despite with valid and justified reasons of stay in the host-State, the number has been drastically decreased following forced deportation and repatriation induced by the host-State deportation pressure. Since the mass deportation flow initiated in September 2023 until the end of July 2025, nearly 1.6 million Afghans has been returned to Afghanistan with 87 per cent of the total due to fear of arrest, whereas 17% of the population returned since April 2025 has been deported.[4]

This research focuses on the core idea that the presence of Afghan citizens has caused devastating impacts on Pakistan, therefore, the international community is under a legal obligation to make full reparations to the host-state for all the injuries incurred upon it. To elaborate it further, Pakistan's policy shift created a threatening and fearful situation for Afghans therein. However, the host-State justify it through a common statement that their presence has caused devastating impacts on Pakistan, including in socioeconomic, environmental, demographic, political, administrative, strategic and security, law and order, health and medical, and educational sectors. Therefore, the study aims to ensure refugees protection, and thus it urges the international community that it is their legal obligation under international law to make full reparations to the host-State for

[2] Anchita, Borthakur. ed., "Afghan Refugees: The Impact on Pakistan." Asian Affairs 48, no. 3 (2027): 488–509 https://doi.org/10.1080/03068374.2017.1362871.

[3] For statistical data, visit 'Operational Data Portal, Statistical Data of Registered Afghans in Pakistan' (Last Updated 30 June 2025) https://data.unhcr.org/en/country/Pak (Last assessed 25th July 2025).

[4] IOM Pakistan. "Pakistan: Flow Monitoring of Afghan Returnees – Bi-Weekly Report (16-31 July 2025)." Posted & Originally Published 12th August 2025 https://dtm.iom.int/reports/pakistan-flow-monitoring-afghan-returnees-bi-weekly-report-16-31-july-2025 (Last assessed 13th August 2025).

all the injuries incurred upon it. Also, my study claims that the international community must also compensate the host-State for hosting Afghan citizens under the principle of common and shared responsibility.

Globally, the complexity of Afghan refugees crisis is more severe than any, as admitted by the UNHCR in the most recent Global Refugee Compact.[5] Hence, the complexity of the study makes it novel, therefore, the study initially has two parts which are fundamental for the later part – the primary focus of the study, the Pakistan's case; firstly, it argues how the principle of reparations has been developed in the legal history for centuries to become the principle of general international law and how it could be applied to refugee regime as a State right; secondly, whereas the second part covers the discussion regarding the implications of the mass influx of Afghans on various aspects of the host-State; followed by Pakistan's case to claim full reparations for all the injuries incurred upon it through such presence. The study's complexity is the primary reason why researchers so far were not attracted to write down on it, however, still scholars have contributed to the principle of reparations in international law globally. Particularly, the principle is approached in IHL and IHRL plus IRL with respect to reparations in case of State's violation of its international responsibility and to the extent of individual's rights.

A. Literature Review

While majority of the prior researchers have talked about the refugee crisis, the literature till date misses what this study focuses on, the application of reparations as State's right in both general perspective and specific case of Pakistan. Still, reflections from the contemporary literature in relevance to this study reveals different aspects of it to some extent, initially, the historical perspective of principle of reparations from its origin in natural law to its development in natural law and later on adoption and progressive development in the positive law.[6] This angle of the study shows that the

[5] "UNGA Global Compact on Refugees", International Journal of Refugee Law 30, no. 4 (2018): 744–73 https://doi.org/10.1093/ijrl/eez010.

[6]Richard M. Buxbaum. "A Legal History of International Reparations." Issues in Legal Scholarship 6, no. 2 (2006) https://doi.org/10.2202/1539-8323.1079; J. Steward, Gelatt. ed., "A Reign of

majority of historians whose research focuses on reparations agree that its origin in the legal history dates back to the *Mesopotamians* both orally and in writings, wherein orally it refers to the incident of *Lagash* and in writings their legal scripts are referred, including the *Code of Ur-Nammu*, the *Laws of Eshnunna*, and the *Code of Hammurabi*.[7] Their concept of reparations was not only limited to the extent of public law, but was restricted therein also, therefore, it then not only developed from the perspective of public law, but also from private law aspect by the Western world's archaic societies, particularly the Greeks, Romans, and Germans.[8]

Among the scholars, Aristotle, Grotius, and Locke did more contributions that later on influenced the *Justinian Corpus Iuris Civilis*, followed by the *European legal thought* and then its adoption yet continuous use by the international Courts and Tribunals resulted in the incorporation of ARSIWA in 2001. Locke was the first to

Justice: Ancient Mesopotamia and the Modern Quest for a Just Social Order." The Year 2023 Annual Proceedings of the ASSR 40 (2023) https://www.assronline.org/_files/ugd/24c0b5_f7eafa1ebfa84896853dfbae2b477eb1.pdf#page=44.

[7] Alexe Doizé and Kopanias Konstantinos. eds., "Crime and Punishment: A Comparative analysis of the Mesopotamian Legal System of the 3rd and 2nd Mill BCE." Thesis (Academic Year 2023-24), Department of History and Archaeology (National and Kapodistrian University of Athens) https://pergamos.lib.uoa.gr/uoa/dl/object/3420758/file.pdf; Benny, Saputra, Oliver, Bene, and David Aprizon, Putra. eds., "Analyzing the Code of Hammurabi: Exploring Ancient Legal Principles and Their Relevance in Modern Law." NEGREI: Academic Journal of Law and Governance 4, no. 1 (2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4941585.

[8] Geoffrey, MacCormack. ed., "Revenge and Compensation in Early Law." The American Journal of Comparative Law 21, no. 1 (1973): 69–85 https://doi.org/10.2307/839418; René, Koekkoek. ed., "Rethinking the History of Reparations for Historical Injustices: An Early Modern Perspective." The Journal of Modern History 96, no. 2 (2024): 253-290 https://doi.org/10.1086/730043; Haig, Khatchadourian. ed., "Compensation and Reparation as Forms of Compensatory Justice." Metaphilosophy 37, no. 3/4 (2006): 429–48 http://www.jstor.org/stable/24439497; Thomas C., Brickhouse. ed., "Aristotle on Corrective Justice." The Journal of Ethics 18, no. 3 (2014): 187–205 http://www.jstor.org/stable/43895870; Ernest J., Weinrib. ed., "The Gains and Losses of Corrective Justice." Duke Law Journal 44, no. 2 (1994): 277–97 https://doi.org/10.2307/1372873; Francesco, Parisi and Fon, Vincy. eds., "Causation and responsibility: The compensation principle from Grotius to Calabresi." Md. L. Rev. 64 (2005): 108 http://digitalcommons.law.umaryland.edu/mlr/vol64/iss1/8; Larry, May. ed., "Reparations, Restitution, and Transitional Justice." Chapter in Morality, Jus Post Bellum, and International Law, edited by Larry May and Andrew Forcehimes (2012): 32–48, ASIL Studies in International Legal Theory, Cambridge: Cambridge University Press (2012) https://doi.org/10.1017/CBO9781139161916.003; Alex J., Bellamy. ed., "The Responsibilities of Victory: 'Jus Post Bellum' and the Just War." Review of International Studies 34, no. 4 (2008): 601–25 http://www.jstor.org/stable/40212494; Bernard R., Boxill. ed., "A Lockean Argument for Black Reparations." The Journal of Ethics 7, no. 1 (2003): 63–91 http://www.jstor.org/stable/25115749.

generalize the principle of reparations in international law, but Jennings was the first from the very few in the ongoing period who not only revolutionized the principle of reparations in general international law in the contemporary times, but also pointed towards its necessity as a State right in international refugee law. In particular, Jennings considered reparations to refugees' host-States as a permanent solution to refugees' crisis and enunciated this debate very openly before the World War II in his scholarly writings and decisions as an adjudicator. In his short article "*Some International Law Aspects of the Refugee Question*", he considered willful generation of refugees a real illegality or a *fortiori* which is embedded in the principles of natural justice and abuse of rights.

Although, it is nearly a century to Jennings movement in support of reparations as right of refugees' host-States, fellow scholars are less in the number it would have been. Jennings was further supported by a number of prominent scholars, including Lauterpacht, Brownlie, and Goodwin-Gill whose support for reparations embedded in the Latin phrase '*sic utere tuo ut alienum non laedas*' which means that "use your own property in such a manner as not to injure that of another". In addition, the reparations movement has a number of recent scholars in its support, including Alan Dowty and Loescher Gill whose brilliant piece of writing "*Refugee Flows as Grounds for International Action*" further developed Jennings idea in particular perspective of refugee regime that as a host-State to refugees gets flooded with a huge number of refugees, such presence gives the host-State numerous grounds to use it as a cause for its injuries. Also, the ambiguity whether this principle apply to States or not, is removed by Oppenheim while taking influence from the Latin phrase '*sic utere tuo ut alienum non laedas*' that it equally applies to States and individuals, whereas consider this as part of the general principles of law in Article 38 of the ICJ Statute that bounds the Court for its application.

A bit earlier to Jennings, the PCIJ and the Arbitral Tribunal commenced invoking it on a regular basis, later on followed by the ICJ in its broadest sense, and since then it has been regarded as the general principle of customary international law, that can be allied to and invoked in any legal regime. Thus, the international adjudicator stepped in to contribute to the concept of reparations soon after the WW-I and has been doing it since then. In the adjudicatory bodies, the PCIJ was the first to address the principle of

reparations in the Chorzow Factory case in a generalized form that can be invoked in any regime and since then it became uncontroversial. The court not only directly linked it with the nature and extent of consequences of the illegal act, but also conceptualized its aim explicitly, set a high standard for it, and prescribed its forms in international law. Furthermore, the Arbitral Tribunal in the Trail Smelter case addressed ecological injuries on the basis of the general principles of international law, particularly the principles of transboundary harm and territorial sovereignty, and thus, it clearly provided the possibility to extend its application to any legal regime.

Similarly, the ICJ addressed reparations in several cases, initially, in its advisory opinion concerning the injuries suffered in the service of the UN, wherein it answered several important questions with respect to the applicant who can file an application to claim reparations and interpreted the term "injury" in its widest possible way and still declared it a non-exhaustive list, while including any damage caused to its interests itself, to its administrative machine, property, and assets, as well as to the interests of which it is the guardian. Also, the case is vital to provide guidelines with respect to the quantification and calculation of whatever is owed in reparations. Moreover, the Corfu Channel case stands as the first regular case with the subject matter in the domain of PIL heard by the ICJ. Therein, not only the principle of reparations was addressed to the extent of compensatory amount, but UK's request for formal apology from Albania was later on incorporated as the third for of reparations, namely 'restitution' in the ARSIWA. In all these cases, reparations were developed, but neither refugees' protection in any way, nor Pakistan's specific case was invoked, however despite that, these adjudications are of high significance for this study as the principles of general international law were the basis for all.

Finally, the time came when all the efforts from the past whether by historians in public law or private law, or general international law by Locke and international adjudicatory bodies, or particularly in refugee regime by Jennings and other pro-

reparations scholars were incorporated in ARSIWA[9] by the ILC in 2001 following decades of struggle. The draft although contains the fundamentals of reparations in international law, it is from a general perspective, which can be invoked in any regime, including the one concerning refugees. The draft is the first international instrument that define reparation(s), prescribes its forms, implications, and parameters while grounded on the principles of customary international. It states that the responsible state is under an obligation to make full reparations for the injury caused by the internationally wrongful act, whether the injury is material moral.[10] This obligation may also be owed to another State, one or more, or to the International Community as a whole and may accrue to any person or entity other than a State.[11] Furthermore, this principle is also incorporated under the codified rules of IHL, as per which a State responsible for violations of IHL is required to make full reparations for the loss or injury caused.[12] Moreover, the UDHR also refers to the same concept, but with regards to the implementation of individuals' rights through the respective national courts.[13]

The second perspective of the study is to peruse the five phases of mass influx of Afghan citizens in Pakistan, the implications such presence caused to various sectors of the host-State and its assessment and measurement, and the host-State's costs to such hosting. To the specific case of the study, there exist no scholarly writings, however,

[9] United Nations. International Law Commission's Draft Articles on "Responsibility of States for Internationally Wrongful Acts." (2001) – ARSIWA https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf; The ILC is a body of legal experts set up by the UNGA in 1949 to codify and progressively develop International Law. It completed its long-standing project of over four decades concerning ARSIWA in its 53rd Session in August 2001, which are the generally applicable rules on State Responsibility.

[10] Ibid., 31 (1) & (2).

[11] Ibid., 33 (1) & (2).

[12] International Humanitarian Law Databases, Customary IHL, List of Rules, Rule 150, "Reparation" (2024) https://ihl-databases.icrc.org/en/customary-ihl/v2/rule150.

[13] The Universal Declaration of Human Rights (1948), Article 8 https://www.un.org/en/about-us/Universal-Declaration-of-Human-Rights.

certain researchers has done much appreciable work on some aspects of this perspective of the study in a generalized way, not specific to Pakistan, but in relevance to refugees' protection. Among them, the earlier contribution came three decades earlier from Luke Lee who in "*The Declaration of Principles of International Law on Compensation to Refugees: Its Significance and Implications*" argues that the right to compensation to host-States do not need recognition, as it has already been since early history, rather requires an effective implementation mechanism, and if such success is achieved, it will render justice not only to the host-States, but also to the vulnerable community of refugees and will also overcome the challenge by minimizing the creation of refugees.

Whereas, the remaining work has been done within the last ten years, for instance, while relying on Grotius idea of "fault creates the obligation to make good the loss", Joseph Blocher and Mitu Gulati in their joint work on "*Competing for Refugees: A Market-Based Solution to a Humanitarian Crisis*" aims for a market-based novel legal solution to refugee crisis and its political ways of implementation in order to discourage the origin-States from creating refugees and encourage host-States for their acceptance, and their most sensible find to the problem is to take compensation from the former country against creating refugees and pay the same to the later country in exchange of their acceptance.

Similarly, Michael A. Greenop makes a compelling case to overcome refugee crisis in his recent article on the "*Two Birds with One Stone: A Legal Obligation to Compensate States for the Burden Associated with a Mass Influx of Refugees*". He considers compensating host-States for the associated burden of mass influx of refugees as the right angle to overcome such issue, and because of a joint venture of both ameliorative and preventative strategies, Greenop named it a solution to kill two birds with one stone. Greenop further analyzes whether a host-State in this case can be deemed an injured-state in international law, in order to oblige the state-of-origin to pay compensation against the violation of its international responsibilities. This approach has been undertaken by Dr. Satarupa Ghosh with slight development in her writing on "*A Conceptual and Theoretical Study of Responsibility of State of Origin of Refugees towards the Host States*", who writes that the doctrine of responsibility sharing is a core

principle of global responses to refugee crisis, but this burden needs to be completely on the part of the States-of-origin in order to regulate the refugee flow and protect the rights of refugees.

Furthermore, Mohd Afandi Salleh, Abdullahi Ayoedi Ahmad, Nur Amani Pauzi, and Hafiz Mohamed Abdul Majid in their collective effort on "*The Burden of Refugees' Accommodation and the Right of Host Nation to Compensations*" views that the burden of millions of refugees is shouldered on the host-States, without any sufficient assistance from the international community, particularly from the origin-States. They argue that an increase in such burden with time creates a negative impact on the economic, social, and other circles of the host-States, even some cannot bear the costs anymore. Therefore, there is a dire need of new refugee policies in the global arena, not only with a concrete solution to the challenge, but also a mechanism for the host-States' cause of action to claim reparations from the origin-country. This approach has been taken in Pakistan specific way, but to a limited extent, by a group of scholars from Pakistan, including Sohail Anwar, Muhammad Hassan, and Dr. Allauddin Kakar in a collective effort on "*Afghan Refugees Implications on Pakistan*" addressed the implications Afghans presence on economic, social, political, security, and environmental perspectives of Pakistan in the post-Soviet invasion period of Afghanistan.

Similarly, Md. Ayub Ali sheds light on "*Bangladesh's Claim for Reparation from Myanmar due to Rohingya Influx: Options and Challenges*", however, he initially approach his study with application of the principles and practices of international law to assess the compensation of the damage caused to Bangladesh as a result of the Rohingya influx due to Myanmar hostilities and the findings confirms Bangladesh's entitlement to sue Myanmar for the injuries incurred upon it as a result of Rohingya's refugees influx, as the UNHCR's statements corresponds the statements that such presence caused enormous negative impact on economic, environmental, and judicial spheres of the host-State. Moreover, to double-check whether there exist such implications or it is a myth, Sarah Deardorff Miller's exceptional contribution on "*Assessing the Impacts of Hosting Refugees*" under the initiative of the World Refugee Council argues it. Her major focus is on the identification areas of consensus, debates, and gaps in knowledge, policy, and

practice in implications of refugees' presence on economic, social, political, environmental, security, and other perspectives of the host-State. Interestingly, she finds out that it is not reality that refugees carry devastating implications for the host-States with their presence, as over 80 per cent of refugees are hosted by the developing world that is already facing these challenges. Her recommendations suggest certain ways to assessment and measurement of such impacts; however, the task is extremely challenging, and that is why its result always portrays negative information.

The aforementioned literature forwards a quality contribution to the challenge of refugees' protection, however, despite various attempts by the scholars, it lacks the theme of this study. Because today's world presents a totally different set of challenges comparatively to the past, hence, the mechanisms established in the past are not able to overcome the modern-day refugee challenge. Thus, in short, no writings provide complete and effective information with regards to the application of the principle of reparations in international refugee law as a host-State's right. The highlighted areas, either gives a global thought with regards to reparations in general international law, or the impacts of Afghans influx on Pakistan to a very limited extent. Furthermore, clear guidelines concerning assessment and measurement of such impacts and its range also misses out. Moreover, the literature completely ignores the fate of Pakistan's case as the study suggests. Therefore, it raises numerous concerns as a result of the gaps therein, which qualifies as research questions of my study.

Although the Afghan refugee crisis in Pakistan has been extensively studied, the majority of these studies have focused on the socioeconomic, political, and security aspects of the issue, with particular attention to the effects on social cohesion, governance, employment, and resources. Comparably, interstate conflicts, environmental damage, and war crimes have dominated international legal scholarship on reparations, with seminal cases like Chorzów Factory and Trail Smelter serving as the main frameworks. There is still a significant gap between these two areas, though: whether the extended hostility of refugees and the disproportionate costs incurred by a host nation su2ch as Pakistan can be viewed as an injury under international law that warrants reparations for the state. Seldom does current research address the legal responsibilities of the international

community in this context or treat refugee hosting as an internationally wrong act involving state responsibility. By providing a doctrinal legal analysis of Pakistan's status as a 'injured state,' placing its reparations claim within the framework of the International Law Commission's Articles on State Responsibility (ARSIWA) and international jurisprudence, and pointing out the enforcement challenges that continue to exist in operationalizing such claims, my study addresses this gap.

B. Significance of Research

Initially, the proposed research peruse the existing concepts of the application of the principle of reparation as States' right in international refugee law, focuses on the complex case of Afghan citizens in Pakistan. Furthermore, it analyzes the implications of the presence of Afghan citizens in Pakistan on different aspects of the host state and measure the costs to Pakistan. Moreover, it finds out how Pakistan's position entitles it to ask for full reparations for the damage incurred upon it.

As the crisis has been escalating day by day due to the lack of a proper mechanism, the earlier literature was unable to overcome that challenge. Not only the principle of reparation in international refugee regime was vague, but also the Afghan refugee crisis were never approached from this lens. Therefore, in total, this comprehensive study serve as a significant pathway for scholars, host-states, UN Agencies, particularly the UNHCR and IOM, NGOs and many others to further develop the concept of reparations in refugee law, an effective and sustainable way to overcome refugee crisis on a global scale.

Moreover, the study explain how the application of reparations to this case restore various internal departments of Pakistan, particularly in Khyber Pakhtunkhwa and Balochistan provinces, as are subjected to injuries and backlash due to the mass influx of refugees. Resultantly, the study not only assist, compensate, and repair the refugees host-states, but also result as a hurdle for the states-of-origin to create further refugees, and most importantly ensure protection of the rights of refugees.

C. Research Questions

Aligned with my research study are the following three research questions:

1. Whether, in international law, Pakistan can be deemed an injured State for hosting a mass influx of Afghan citizens in different phases since decades?
2. What are the grounds to make the International Community legally bound under international law in order to ensure Pakistan's claim to full reparations?
3. Whether the principle of Trail Smelter entitles Pakistan to claim reparations for the injuries caused to it as a result of Afghans' presence and under what possible grounds?

D. Research Objectives

This comprehensive research aims to achieve various objectives, as follows:

1. Initially, to comprehensively examine the fundamental concept of reparations and its application to State's right; in order to remove the present in-depth ambiguity in the literature, which form the basic structure of the study.
2. Furthermore, to find out how can Pakistan be deemed an injured State for hosting millions of Afghan citizens forcibly displaced of wars and instability since decades in various phases while applying the principle of *Trail Smelter*, for the purpose to stand it favorable to reparations.
3. Moreover, to search out the grounds that build an arguable case for Pakistan to full reparations and to identify ways evaluate the costs it has incurred as a host-state to Afghan citizens in all the phases.
4. In addition, this study analyze the challenges UN in general and its agencies in particular - especially the UNHCR faced, as well as peruse the areas where such issues related provisions are required to be adopted.

In conclusion, to find out the expected results and objectives, this research aims come out as a regime change document that not only reshape the whole structure of various departments of Pakistan, but also protect the rights of displaced persons through a

legally guaranteed mechanism. Also, it suggest ways for other refugees hosting-states to claim the same award, which in result will overcome the long-standing challenge of refugees' crisis on a global scale.

E. Chapters Division

This thesis is divided in three chapters, apart from an introduction at the start and conclusions with recommendations in the end of thesis. The first chapter explores reparations from historical perspective in line with the contemporary international law until its incorporation in the ARSIWA and analyzes case laws on reparations that sets a foundation for this research, in particular the *Trail Smelter* case that favors Pakistan being a Claimant. In the second chapter, it analyzes; how the Afghans mass exodus to Pakistan took place in five different phases; what implications their presence therein carried for the host-State; how to assess and measure such impacts; and, what could be the costs for Pakistan against such presence. The third chapter being the most important part of the thesis includes findings to the research questions, followed by conclusion to the thesis and certain recommendations to the host-government, UN, UNHCR, and NGOs to give a practical shape to the primary objective of the study.

CHAPTER 01

REPARATIONS IN LEGAL HISTORY AND CONTEMPORARY INTERNATIONAL LAW

The absence of the level of attention refugee's crisis deserved from the international community pushed it to the present form, the complex ever. Reparations to host-State for hosting refugees by the international community could be one of the best possible solutions to overcome this longest-standing crisis. Though the principle has deep historical roots, still the concept is pre-mature in the contemporary international law. To understand foundations of the principle and its position in the contemporary international law, it is important to analyze it historically. Therefore, initially, this chapter analyzes; when, where, why, how, and in which forms this principle got originated in the past? Furthermore, it then analyzes how it got developed in the legal regime, while reached today's concept? Moreover, view of a number of jurists are analyzed who developed the idea of reparations in favor of host-State that proved to be the foundation for my stance throughout the thesis. Also, some jurisprudence of the international judiciary is also analyzed in this regard.

In general, reparations in law refer to compensation provided to individuals or groups who have suffered harm, often due to historical injustices, such as slavery, colonialism, or systemic discrimination. The goal is to address past wrongs and promote justice, often through financial payments, restitution, or other forms of redress. Examples include reparations for Holocaust survivors, Japanese Americans interned during WW-II, and the ongoing debates about reparations for descendants of enslaved people in the U.S. legal frameworks vary by jurisdiction and context. Whenever we flip the pages of historical injustices, we found it tied with reparations. Though the scope may vary, but still there are certain key instances that highlight reparations as a ground to address historical wrongs.

1.1 Reparations in Legal History

There is no authentic qualified source to trace the exact time of origin of the principle of reparations in legal history. However, scholars in support, identify the legal scripts of *Mesopotamians* as the oldest versions to trace reparations in the available possible evidence, followed by its development in the Western world's archaic societies, in particular the Greeks, Romans, and Germans, wherein Aristotle, Grotius, and Locke were the major contributors. Since its origin in various codes of the Mesopotamians until Locke's support as a foundation for the same principle in the contemporary international law, major developments have been seen across every phase.

1.1.1 Ancient Mesopotamians Approaches to Reparations

Historically, the principle of reparation can be traced back as far as we can – to the earlier legal scripts of *Mesopotamians.* They believed that the universe has two fundamental requirements, whether generally of whatsoever the subject is or specifically in the justice system: the balance and reparation.[14] Though oldest legal instruments are hard to find to locate the accurate origin of this concept and the reliance in such case would on what exists before us. However, a number of sayings can prove its exercise even before what we have in the form of written evidence, for instance, the promotion of justice was a prominent theme in the Mesopotamians, as reflected from the story of *Lagash* (currently named as *Al-Hiba*, located in the modern day *Iraq*) in 2430 B.C.E, when its governor (namely *En-te-māyna*) while granting volunteer freedom to its population being one of the principle of natural justice he also initiated a series of restorative acts in order to repair the past wrongs.[15]

In the written legal instruments, the historical origin of reparations is also linked with *Mesopotamians,* with three primary codes, namely the *Code of Ur-Nammu* by the founder King and his successor King (also, his son) from the Ur dynasty in 2100 B.C.E,

[14] J. Steward, Gelatt. ed., "A Reign of Justice: Ancient Mesopotamia and the Modern Quest for a Just Social Order." 40 (1) (Last Assessed 10th April, 2025).

[15] Ibid., para 3.

the *Laws of Eshnunna* by Dadusha dynasty in 1770 B.C.E, and the *Code of Hammurabi* by the Babylonian dynasty in 1754.[16] All these laws reflect the concept of reparation, initially, the *Code of Ur-Nammu* appears to be the law of earliest codified provisions regarding reparations based on the doctrine of social justice, limited to the extent of the regime of crimes, whether related to humans, animals, or property.[17] Thereafter, the *Code of Hammurabi*, famous for the legal principles incorporated therein, particularly when human rights are debated, refined the approach of reparation, particularly it embedded both retributive and restitutive approaches, the former in case of bodily injury, whereas the later in case of any kind of damage to property.[18]

1.1.2 Western World's Archaic Societies Understanding of Reparations

The concept of reparation evolved further within the Western world's archaic societies, particularly the Greeks, Romans, and Germans.[19] *Mesopotamians*' work was more focused on the public law perspective, however, jurists and philosophers from romans, medieval, neoscholastic, and early modern times are given the same credit by legal historians for the development of reparations from private law perspective. In specific, the principle that *iniuria* establish the legal obligation to make reparation for the loss occurred as a result of this iniuria was influenced by the Romans' *Lex Aquilia.*[20] Initially, this legal statute of the Romans was adopted by *Justinian Corpus Iuris Civilis* and then it influenced the *European legal thought* when rediscovered in the eleventh

[16] Alexe Doizé ed, "Crime and Punishment: A Comparative analysis of the Mesopotamian Legal System of the 3rd and 2nd Mill BCE." (Last Assessed 3rd April, 2025).

[17] Ibid.

[18] J. Steward, Gelatt. ed., "A Reign of Justice: Ancient Mesopotamia and the Modern Quest for a Just Social Order." para 8; See also, Benny, Saputra, Oliver, Bene, and David Aprizon, Putra. eds., "Analyzing the Code of Hammurabi: Exploring Ancient Legal Principles and Their Relevance in Modern Law."

[19] Geoffrey, MacCormack. ed., "Revenge and Compensation in Early Law."

[20] René, Koekkoek. ed., "Rethinking the History of Reparations for Historical Injustices: An Early Modern Perspective." 275, 1.

century.[21] Neoscholastic legal thinkers has no contradiction that *iniuria* establish the obligation of *restitution* to compensate the *damnum* (loss).[22]

However, this notion was further developed as an authoritative expression by Thomas Aquinas in his *Summa Theologiae* from 1265 to 1273 by following the ideas of Aristotle and Saint Augustine.[23] For instance, from Aristotle ideas, he conceived his theory of corrective justice, coming in the following paragraphs, whereas from Augustine, he conceived his fundamental theory that restitution has a mandatory place if there exist a sin of wrongdoing, which cannot be forgiven. In relevance to the main idea of the thesis, in particular, the most important contributions were made by Aristotle, Hugo Grotius, John Locke, and then Professor Jennings recently.

1.1.3 Reflection of Reparations in Aristotle's Theory of Justice

Whenever, compensation as a form of the contemporary reparation is debated, Aristotle's name comes in. Because he was one of the main and initial contributors to the theory of compensatory or corrective justice that formulated the legal notions of the contemporary principles of restitution and redress. In the 5th volume of *Nicomachean Ethics*, Aristotle articulated a distinction between distributive and corrective justice, the two main categories of justice. William Blackstone further elaborated the terms further, wherein distributive justice has three fundamental elements in its criteria, which are the distributions of goods, offices, and honors among citizens of the state. In contrast, corrective justice is the closest alternative concept to today's compensatory justice.[24]

Initially, Aristotle gives the idea of corrective justice in 4th volume of his book, that this particular type of justice is concerned with the rectification of injustices from

[21] Ibid.

[22] Ibid., 2.

[23] Ibid.

[24] Haig, Khatchadourian. ed., "Compensation and Reparation as Forms of Compensatory Justice."

interactions between persons.[25] The main purpose of Aristotle's corrective justice is; to nullify gain and loss, and; to re-establish a just relationship.[26] Wherein understanding the gain and loss is directly related to understanding the unjust occurred, generally in two ways, as discussed in the previous paragraph: a voluntary interaction – when there is an inequality of goods, and an involuntary interaction – when there is an inequality of evils or bodily harm.[27] A third type of justice was also introduced in the 5th volume of his book, commonly known as "proportional reciprocity", in order to support and ensure effective implementation of both corrective and distributive justice. To Aristotle, this newly introduced type is only to provide guidelines only in that case wherein quantities of different kinds of goods are voluntarily exchanged and has nothing to do merely with the other two types.[28]

Aristotle's philosophy regarding the types of concepts within the theory of justice are understood, but it is not clear to whom the liability should accrue? Whether his ideas can provide us with any guidelines to understand Pakistan's case in the coming chapters and the liability of the international community towards it? To better understand these issues, understanding of his ideas around the concepts of gain and loss he has given in relevance to this issue is necessary. To Aristotle, to oblige a person to any liability, it fundamentally requires only one element to be fulfilled, which is the commission of wrong. To him, gain and loss is the quantitative representation of the doing and suffering of wrong, meaning thereby that this phrase refer to surpluses and shortfalls not from what the parties had before the unjust act, but from what the parties ought to have in view of the requirements of corrective justice.[29] For instance, if Aristotle's strict approach is

[25] Thomas C., Brickhouse. ed., "Aristotle on Corrective Justice." 188-189, 3.

[26] Ibid., 195, Last para.

[27] Ibid., 196, 2.

[28] Ibid., 200-201, Last para (Cont.).

[29] Ernest J., Weinrib. ed., "The Gains and Losses of Corrective Justice." 289, 1.

applied to the subject matter of this thesis, it do not include where Pakistan was before the arrival of Afghan Citizens, rather how and what kind of implications their presence has carried out on various sectors of Pakistan would be relevant.

According to him, liability is the legal response to an unjust gain by the defendant (for instance, the international community in the broader context of this thesis) that is correlative to the claimant's unjust loss (for instance, Pakistan).[30] As the defendant gain what exactly the claimant lost as a result of the unjust transaction, therefore, Aristotle's concept of corrective justice as a part of his theory of justice creates a nexus between both the parties in a bipolar relationship which mirrors correction of the wrong accrued.[31] For instance, applying this aspect of his idea to the whole scenario of Pakistan's claim to repair, the question is what to repair? What exactly it lost by hosting millions of Afghan Citizens for many decades and this reparation should mean everything. But again, the question is that from where, whom, and why to repair? Reparation to be carried out from what exactly the international community gained by establishing the crisis of forced displacement in Afghanistan for decades and over burdening Pakistan with such crisis.

1.1.4 Hugo Grotius Idea of Reparations

Although the term 'reparations' itself emerged post WW-II, the core idea of reparations was regularly used in legal thought and practice since ancient times, developed with time by various scholars. However, Hugo Grotius, the Dutch humanist legal scholar and theologian, systematized and reworked some of the foundational ideas through addition of legal reasoning to those prevailed earlier.[32] In 1625, Grotius in his major contribution of *"De Jure Belli ac Pacis"* or "The Law of War and Peace" further utilized the central concepts that articulate "the obligation to make full reparations"

[30] Ibid., 277, 1.

[31] Ibid.

[32] René, Koekkoek. ed., "Rethinking the History of Reparations for Historical Injustices: An Early Modern Perspective." 273, 1.

including injury (injuria), damage or loss (damnum), and fault or wrong (culpa).[33] A number a scholars worked on the core idea of reparations in various regimes in between the era of Aristotle and Grotius, but the later is given more appreciation in this regard, because:

> "The importance of Grotius in this regard is threefold. First, he offered a more general account of injury (or delict) and the obligation of restitution than his predecessors. His account, moreover, specified several forms of injury for which reparations may be due and put forth the principle that descendants of victims may in some cases be rightful claimants of reparations. Third, his major work, On the Law of War and Peace, published two years after the Amboyna trial, became by far the most influential reference work in the Protestant world of legal scholarship and learning."[34]

Grotius work of *De Jure Belli ac Pacis*, meaning thereby that 'fault creates the obligation to make good the loss' generalized the principal of reparations and then held its further specification into several forms, influenced the legal system of the Europe, specifically protestants. This idea is further reflected in the contemporary international law generally and specifically in international refugee regime. The mainstream idea of Grotius theory of reparations rests on the natural rights of an entity, which if violated, gives rise to an obligation *resarcio* (to repair). Earlier, whether in Roman legal system or others, as previously mentioned, this concept prevailed either in private law or public law or both, however, Grotius interpreted this idea in a general way, which can be taken in any regime. In specific, Roman legal system used this principle more as a punishment, which during reparations used to create an imbalance in the form of compensation. Grotius idea is the development of what prevailed earlier in all aspects.

However, it is relevant to know to what extent such reparations are to be made? The common sense principle given by Grotius resolve this issue, is the principle of equalization – the Aristotelian-Thomist view, which is *restitutio in integrum* (restoring

[33] Ibid., 271, 3.

[34] Ibid., 276, 1.

the injury to its original position).[35] In his time, he was the most explicit and forceful advocate of the idea of equitable apportionment of damages against the liability incurred upon an entity, even when neither party is negligent or no assessment to such negligence is possible.[36] Grotius further interpret this principle that the highest degree of obligation, both under the regime of natural law and law of nations (positive law) is to repay whatsoever you owe.[37]

This obligation, as was earlier considered the right to punish the wrongdoer, has roots in the natural law, afterwards adopted and developed in the positive law. It arises in certain ways, but those relevant here are that it pertains only to those circumstances; firstly, wherein the wrong committed gives rise to an injury that is "unambiguously destructive" to the society; secondly, it involves the question of the enforcement of legal rights; thirdly, wherein the reparation of injuries is only option left.[38] After centuries, Grotius ideas regarding the principles of justice enlightened the doctrine of reparation in many ways and was one of the major guide for the globe to reach what exist regarding justice and reparations in the contemporary era and can still play a further role to overcome refugees crisis being a strong voice for reparations.

1.1.5 John Locke's Obligation of Reparations

John Locke is another strong voice to formulate a civilized society by integrating natural rights and social contract theory. In sections 10 and 11 of his *Chapter* on the *"State of Nature"* in "*The Second Treatise of Government",* he contributed to the concept

[35] Ibid., 277, 2.

[36] Francesco, Parisi and Fon, Vincy. eds., "Causation and responsibility: The compensation principle from Grotius to Calabresi." 113, 1.

[37] Larry, May. ed., "Reparations, Restitution, and Transitional Justice." 36, 2.

[38] Alex J., Bellamy. ed., "The Responsibilities of Victory: 'Jus Post Bellum' and the Just War." 604, 1.

of reparations and further developed it through his theory of reparations.[39] His theory is more special because he gives entitlement of reparations to the later generation (without encountering itself to any transgressions) for their earlier generation (because transgressions occurred against them).[40] Meaning thereby his theory extends the right to claim reparations to those not being directly impacted by such transgressions, but needs a link to be established. Till here, Locke's opinion works clearly, but the question arises about whom from should the reparation be claimed? To put it simply, we can rely on what solution Boxill proposed in response to reparation claim by the African Americans for slaving their ancestral – the responsible entity to receive such claims from should be the respective government, as in Boxill's case it supported slavery against the African Americans.[41] The case, this thesis deals with, is exactly the same, rather can be more clear than what Boxill argues, as the aggressor to create Afghan refugees' crisis is the international community.

Boxill further supports the case of reparation for the African Americans with instances in the light of Locke's theory of reparations, as follows:

> "If I transgress on your rights and harm you I need not have caused the harms that your transgressions on others cause them. This is true even if you would not have committed the transgressions had I not transgressed on you. If my robbing you makes you distraught, and you drown your disappointment in drink, drive off, get into an accident and harm someone, he may not be entitled to seek reparation from me. He would be entitled to do so, only if my robbing you made it impossible for you to avoid getting into the accident. Had I not robbed you, you would not have caused the accident, but it does not follow that I caused the accident, if you could have avoided it."[42]

[39] Richard M. Buxbaum. "A Legal History of International Reparations." 63, 1-2. .

[40] Ibid., 65, 1.

[41] Ibid., 2.

[42] Ibid,, 66.

Application of the above paragraph from Boxill's writing makes our case more transparent if strictly applied. For instance, as grounded in the later chapters, the international community waged war and instability in Afghanistan for decades in several phases itself, resultantly Afghans were forcibly displaced, took refuge across the globe, with majority being in Pakistan and Iran. Specifically in case of Pakistan, their exodus occurred in six different phases, which carried devastating implications for the host-State i.e. Pakistan. Despite the Burden being responsibility of the international community was taken by Pakistan as a humanitarian challenge, the host-State did not receive the support for taking this burden as it was entitled to. Consequently, its guests itself became a challenge for it and caused severe harm to the host-State. Now, applying Locke's theory-based Boxill's principle to this case, although the international community did not cause harmed Pakistan directly, but the crisis it produced did so. Therefore, the international community is responsible to make full reparations for all the injuries caused to it.

While grounding his opinion concerning compensatory form of reparation on Locke's theory of reparation – the common view for compensation, Boxill argues that "I follow the common view that compensating a harmed person involves bringing him to the level of well-being he would have enjoyed had he not been harmed"[43]. Further moving with our case in the same way Boxill followed, it could be the best possible way to compensate Pakistan's harm resulted from the burden of Afghan citizens. To simply put it, the international community in the light of Boxill's arguments (based on Locke's theory of reparations) is under an obligation vis-à-vis imposed by the principles of natural justice to compensate Pakistan for their injuries that stand the host-State at a place where it could have been if there would have no mass influx of Afghan Citizens therein. It means that if the crisis had never occurred, either there would have no such impacts on Pakistan or Pakistan would have never complained about these implications.

But two important questions arises on this occasion: firstly, what if the concerned government refuses to compensate (or make reparations to) the injured entity (for instance, it may be a person or State) by taking the plea that either the current

[43] Ibid., 67, 1.

government is changed (not the one which did so) or the current government do not agree with policies of the past government that established such crisis, secondly, that the government do not have any intention or planning or prior knowledge about what we have in the form of the existing crisis. For instance, in case of Pakistan, the international community (the whole or to the extent of the responsible States only) refuses to make reparations to it, by taking the plea that either the current government(s) is not the one which contributed to these crisis through its policies or it was not aware or did not planned or had no intention of what we faced in the form of refugees crisis, therefore, the case falls under exception and no reparation to be made. Boxill's response to these questions is, as follows:

> "It will be objected that it is simply a basic fact of social ontology that governments and nations exist for centuries, and consequently that their identities cannot depend on the identities of their members. It is often appropriate to speak in this way, but not when doing so means that individuals are born burdened with duties they never took on and that are not required of them by Natural Law. The second part of the preceding sentence must not be ignored. I do not mean that the only duties we have are those we take on deliberately. We can have duties that we do not take on deliberately and are unaware that we have, if such duties are required by Natural Law. The U.S. Government at the time of slavery was complicit in the crime of slavery, and therefore had a duty required by Natural Law to make reparation to the slaves. It does not matter that the government ignored that duty, and denied and was unaware that it had the duty. It is sufficient that the government assisted the slave holders and did so culpably. None of this supports the claim that the present U.S. Government owes present day African Americans the reparation an earlier U.S. Government owed their ancestors but never paid."[44]

Boxill's aforementioned response to earlier questions clearly supports Pakistan's claim for full reparations against the burden of Afghan citizens – refugees, therefore, no argument or plea whatsoever can work in refusal. Because reparation to any injury or harm – whether caused deliberately or unintentionally or in the absence of any prior knowledge, is a duty imposed by natural law, that do not require any legislation or

[44] Ibid., 71, 1.

approval of whatsoever authority. Therefore, it is enough for Pakistan's entitlement to its claim in this case that the international community caused this crisis, as without their contribution to the acts which caused such crisis, it would have never been possible. Hence, analysis of Pakistan's case in the light of Locke's theory of reparations and Boxill's analysis makes it very clear that the claim is valid and the host-State is entitled to be fully repaired for the injuries it received against the Burden of refugees for years.

1.2 Reparations in the Contemporary International Law

Though different jurists and scholars expressed their views about reparations in distinct ways, but a number of international treaties, declarations, resolutions, and adjudications also highlighted and promoted it in whatsoever context it was required. Furthermore, the ILC's Draft Articles on the Responsibility of States for Internationally Wrongful Acts 2001 is considered as the most precious instrument in this regard, besides the first codified document, it carries the decades-struggle and centuries old principles to overcome this issue. Also, it defines reparations in its most recent approach in international law, as well as specifies its forms, implications, and parameters. Moreover, a number of international cases highlights the importance of reparations in different contexts whether pre-or-post World War II, including its aim in the *Chorzow Factory* case by the PCIJ, the human rights approach held by the Tribunal in the *Trial Smelter* case, and a number of other cases. Additionally, the subject both in general trend and also in Pakistan's specific case qualifies as a potential case for strategic litigations, for instance, it contains even wider scope than the Holocaust Litigation (1996-2015), Belgian Deportees (1919) and others.

Initially, the Chorzow Factory case addressed the aim of Reparation and made it an uncontroversial principle in international law since then, that the breach of any engagement gives rise to the obligation to make adequate reparation to the injury resulted therefrom. Then it was further broadened by the Nicaragua case that it equally applies to all regimes of international law, whether of environment, or in times of conflict, peacetime, or even in case of transition between the two. Later on, the principle was taken in its broadest sense, which exists as a general principle of customary international and can be allied to any regime. However, still it is unclear that which specific regime

should use it in singular form and which in plural one. As the fundamental question of this thesis is refugees-specific, therefore, it involves the plural use of this terminology and will be used as such. In this regard, reliance is made on *war reparations*, because the question of reparations with reference to refugees' crisis arises in the post-war reparations' movement, which involves the use of various forms of reparations. Understanding the term is so challenging, that Sir Michael Wood called for its conceptual and terminological clarity, however, he suggested a broad understanding of this phrase if it is with reference to *war reparations*.[45] Also, though ARSIWA has used the concept of reparations in singular form, but as all its forms are invoked in our case, therefore, it is also used in plural form. Additionally, despite this significant development, still it is debatable in international law that whether the principle of reparations exists under the *lex lata* or *lex faranda* claim.[46]

1.3 Prof. Jennings' Concept and Supportive Scholars

Professor Sir Robert Yewdall Jennings represents a revolutionary jurisprudential thought that aim to balance philosophical principles with pragmatic legal implementation in refugee regime, the present-day biggest and most complex challenge. Jennings is considered as the most prominent figure in recent times who supported reparations for States which hosts refugees as a permanent solution to refugees' crisis. Despite refugees being there in the history, customary international law was silent, because the issue got highlighted in the twentieth century when refugees' flows exploded and started considered as a threat to sovereignty of the States. Thereafter, institutional and legal responses got developed, still the focus was limited to the extent of protection of refugees. Then, as mentioned earlier, the classical general principle of justice do provide a legal basis for reparations of host-States as part of the remedial action against the States generating refugees.

[45] Christian, Marxsen. ed., "Unpacking the International Law on Reparation for Victims of Armed Conflict." Reparation for Victims of Armed Conflict, Max Planck Institute for Comparative Public Law and International Law (MPIL) Research Paper 2018-19, 3 (2018): 539, 2 & 523, 2 https://zaoerv.de/78_2018/78_2018_3_a_521_540.pdf (Last Assessed 28th January, 2025).

[46] Ibid., 530, 2.

However, Jennings enunciated the debate of reparations to refugees' host-States very openly before the World War II, though it is nearly a century old commencement to the debate, very few writers contributed later on to its normative development. The peak of refugees crisis in the first half of the previous century was marked in 1939, when, initially, Jennings write his short article "Some International Law Aspects of the Refugee Question".[47] Therein, he pointed out that the general and customary international law is relevant to one aspect of the refugee challenge – the consideration of the legality or illegality of the conduct of the state generating refugee population.[48] He argued, that "generating refugees through a willful act, is not merely an inequitable act, rather a real illegality – a *fortiori* – defined as a destitute condition in which refugees are compelled to enter another country to take refuge".[49] Also, the theory of natural justice, specifically the doctrine of abuse of rights legally oblige State(s) of origin to avoid injuries to other States across its border through creation of refugees, irrespective that refugee law do not mentions it explicitly.[50]

Dowty and Gil further elaborated Jennings' argument, that while making policies, the refugees generating States even do not take into account its repercussions on the material interests of the third States vis-à-vis States which hosts refugees and their approach remains the same while initiating a conflict, even in cases where a state is not guilty of illegal acts or their status is not yet clear.[51] Therefore, Jennings and the pro-

[47] R. Yewdall, Jennings. ed., "Some International Law Aspects of the Refugee Question." British Year Book of International Law, 20 (1939): 98-114 https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/byrint20&section=9 (Last Assessed 5th February, 2025). .

[48] Ibid., 110.

[49] Ibid., 111.

[50] Alan, Dowty and Loescher, Gill. eds., "Refugee Flows as Grounds for International Action." International Security 21, no. 1 (1996): 43–71 (55, 1-2) https://doi.org/10.2307/2539108 (Last Accessed 22nd January, 2025).

[51] Ibid., 2.

reparations scholars including Lauterpacht, Brownlie, and Goodwin-Gill favors that that domestic law of a State shall be strictly subject to Latin phrase '*sic utere tuo ut alienum non laedas*' – widely used in common law, means that "use your own property in such a manner as not to injure that of another".[52] In this way, a third state gets flooded with a huge number of refugees, as primarily such vulnerable people are unable to stay in their own places due to conflict(s) and instability. Resultantly, it gives the host States numerous grounds to use of refugees' presence as a cause for its injuries, as Dowty and Gil states:

> "Therefore, by flooding another state with refugees it creates grounds for the affected state to resort to measures of *retorsion*, which is the retaliation for discourteous, or unkind, or unfair and inequitable acts by acts of the same or of a similar kind, as defined in Oppenheim's classic treatise on international law. Such acts of retaliation or reciprocation are commonly used to force states to alter their treatment of aliens or their trade practices."[53]

Hence, to tackle this challenge, Dowty and Gil termed the legal obligation of the State of Origin as "economic sanctions" vis-à-vis costs equivalent to refugees burden, the host State(s) received, shall be imposed on the country of origin.[54] Otherwise, these implications may go beyond and create certain new challenges in international refugee law, for instance, the incidents happening with Afghans in Pakistan post aid-cut era by the Trump administration. Nearly a century ago, when the World did not consider refugees challenge as a universal crisis, Jennings firmly believed that it is. Jennings and other scholars of the pro-reparations philosophy, considers that the illegality of the action resulting in generation of refugees, is not a new addition, rather is a generally accepted principle of the abuse of rights and theory of natural justice. The Latin phrase '*sic utere tuo ut alienum non laedas*' further support this view, which Oppenheim equally apply to

[52] Ibid., 1.

[53] Ibid.

[54] Ibid., 54, 2.

States and individuals, whereas regards it as one of the general principles of law in Article 38 of the ICJ Statute that bounds the Court to apply it.[55]

Before the World War II, Jennings proposed the idea of reparations to host-States as their legal right and country of origin's legal duty. However, its normative development took near a century and is still undeveloped and lacks strong advocacy, as only few writings paid attention to this argument post 1990. Krtizman-Amir addressed reparations to the extent of the right to compensation for host-States under the principle of responsibility-sharing to overcome refugee crisis by sharing its burden. Whereas, Blocher and Gulati argued not only in favor of compensation to refugees but also to refugee-hosting states, calling it as a 'market-based solution'. Furthermore, Dowty and Gil not only declared it as a legal obligation of the State of Origin grounded in the doctrine of abuse of rights of the receiving States or refugees-hosting States, but also calls for it as "economic sanctions" against the State of Origin vis-à-vis to impose costs on the Country of Origin in equivalence to the burden of refugees' host State(s) received. Moreover, some other scholars took it the same way Jennings initially suggested and then the later interpreted in their best possible approach to overcome the crisis - all calls it in come the legal responsibility of the State of Origin for what they produced.

1.4 Reparations in Jurisprudence of International Adjudication

The campaign to promote reparations as a customary principle of general international law begun by the first world court – the Permanent Court of International Justice (PCIJ) in the case concerning Chorzow Factory and later on developed by its predecessor – the ICJ, and other international Tribunals in different contexts in distinct cases and advisory opinions. Though neither 'refugees' in general nor 'Afghans' in specific remain a subject matter of any case whatsoever, however, each of the cases developed certain basic principles from the perspective of the general international law and customary practices, that can be applied to any aspect of international law, including refugee regime.

[55] Ibid, 55, 1.

1.4.1 Aim of Reparations in the Chorzow Factory

In the suit regarding Chorzow Factory [56] before the PCIJ, Germany sued Poland that 'Polish acts were contrary to the provisions of Articles 6-22 of the Geneva Convention, 1922'[57]. Germany claimed reparations for the consequential damage suffered by German citizens and corporations (including a Chorzów based nitrate factory) as a result of Polish attitude through certain legislative and administrative decisions. The suit being the first ever international litigation regarding reparations, conceptualized its aim, standard, and forms in international law – 'received much appreciation since the adoption of ARSIWA'[58]. Its influence, later on, resulted in formulation of the ARSIWA. The court claimed that reparations is directly linked with the nature and extent of consequences of the illegal act, therefore, set the high standard of full reparation, through either restitution or compensation:

> "The essential principle contained in the actual notion of an illegal act … established by inter- national practice and … decisions of arbitral tribunals … that reparation must, as far as possible, wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed. Restitution … if … not possible, payment of a sum … which should serve to determine the amount of compensation due for an act contrary to international law."[59]

[56] Case Concerning the Factory at Chorzów (The Government of Germany v. The Government of the Polish Republic), 13th September 1928, Series A. – No. 17, Permanent Court of International Justice (PCIJ). See for Ref; Series A: Collection of Judgments (1923-1930), (A17), Factory at Chorzow (Merits) https://www.icj-cij.org/pcij-series-a (Last Assessed 17th February, 2025). Also, it is suggested to read Linda, Kinstler. ed., "The Factory That Wiped Out the Past: Chorzów and the Reparative Imagination." In Redefining Reparations, Routledge (2025): Edt. 1, 111-129 https://www.taylorfrancis.com/chapters/edit/10.4324/9781003377146-8/factory-wiped-past-linda-kinstler (Last Assessed 5th April, 2025).

[57] Ibid., 32, 1.

[58] Felix E., Torres. ed., "Revisiting the Chorzów Factory Standard of Reparation – Its Relevance in Contemporary International Law and Practice." Nordic Journal of International Law 90, 2 (2021): 190-227 (191, 2) https://doi.org/10.1163/15718107-bja10023 (Last Assessed 23rd February, 2025).

[59] Chorzow Factory, 47, 2.

The preceding para of the PCIJ's judgment portrays the whole approach of the Court towards reparations. It defined the principle, prescribed its standards and forms, and most importantly its aim. In accordance with the Court's perspective, 'reparations presuppose a violation that is consequential of the breach of norms, therefore, it serves a corrective function, which must be proportional to the harm suffered'[60]. Furthermore, it also established that the consequences of an internationally wrongful act must be eliminated in accordance with the prescribed standard of State Responsibility in international law – which is full reparations to the harm. Moreover, it also rendered that if suppose the Polish act was legitimate, then still its legality would have been subject to the fair amount of compensation (regarded as 'adequate') – later on developed as prompt, adequate, and effective amount – the *Hull Formula* or *Principle*.[61] Therefore, the aim of compensation vis-à-vis reparations is not only to replace *restitutio in integrum*, but to re-establish the situation that would have existed if the wrong done has not been committed.

1.4.2 Principle of Trail Smelter and its relevance to the Refugee Regime

The Trail Smelter [62] Arbitral Tribunal, consisting of three arbitrators including a chairman, with two scientists to assist the tribunal, was constituted under, and derived its powers from (also, limited to) the Convention between the United States of America and Dominion of Canada, 1935. The case was named after a *Canadian Consolidated Mining and Smelting Company Limited* which run a smelter facility in *Trail* (British Colombia, Canada).[63] The Company enhanced its facility and so the capacity of its production,

[60] Flavia Zorzi, Giustiniani. ed., "The Obligations of the State of Origin of Refugees: An Appraisal of a Traditionally Neglected Issue." Conn. J. Int'l L. 30, 171 (2014): 198-200 https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/conjil30&section=13 (Last Assessed 21st February, 2025).

[61] Felix E., Torres. ed., "Revisiting the Chorzów Factory Standard of Reparation – Its Relevance in Contemporary International Law and Practice." 207, 1.

[62] Trail Smelter Arbitration (United States v. Canada), Decision of the Tribunal (16 April 1938 and 11 March 1941), Reports of International Arbitral Awards (RIAA), Vol. III (December 1950): 1905-1982 https://www.un-ilibrary.org/content/books/9789213627839c028 (Last Assessed 13th January, 2025).

[63] Trail Smelter, 1929, 3 ("The words "Trail Smelter" are interpreted as meaning the Consolidated Mining and Smelting Company of Canada, Limited, its successors and assigns.").

resultantly quadrupled the emission of *Sulfur Dioxide Fumes* (SDF), which, through the Colombia river, caused damage to the land, crops, and trees in the *State of Washington* – the nearby border State of the US. Therefore, the US complained to the Canadian government various times, resultantly, formal arbitration to resolve the issue was attempted twice, initially, from 1928-31 before the International Joint Commission of the US-Canada (IJC-UC); resulted in restriction of the Trail Smelter's emission of Sulphur Dioxide along '$350,000/- damages on Canada to pay the US in respect of violation of its sovereignty'[64]; secondly, from 1935-41, which resulted in Emissions Convention – a Special Agreement to decide the matter permanently. To the pending amount, the Tribunal's responded as:

> "damages in respect of interest on 5350,000 eventually accepted in satisfaction of damage to January 1, 1932, but not paid until November 2, 1935", the Tribunal is of opinion that no payment of such interest was contemplated by the Convention and that by payment within the term provided by Article I thereof, the Dominion of Canada has completely fulfilled all obligations with respect to the payment of the sum of $350,000. Hence, such interest cannot be allowed."[65]

Overall, such emissions had enormous implications on the environment of Washington and the problem still remained there, hence, both States had to resolve the issue permanently through a formal arbitration Tribunal under the Convention. Article III of the Convention laid four important questions to be finally decided by the tribunal, whereas its Article IV dealt with the applicable laws to the dispute i.e. The US Domestic Laws and International Law. These questions are:

> "Firstly, whether damage caused by the Trail Smelter in the State of Washington has occurred since 1st January 1932, and, if so, what indemnity should be paid therefor?; secondly, if the first question's first part's answer is "yes", whether the Trail Smelter should be required to refrain from causing damage in the State of Washington in the

[64] Ibid., 1932, 2 (See also, submission of the US that such amount is yet to be paid by Canada – accepted in satisfaction of damage to January 1,1932, but not paid until November 2, 1935).

[65] Ibid., 1933, 4.

future and, if so, to what extent?; thirdly, to refrain from this exercise, what measures or régime, if any, should be adopted or maintained by the Trail Smelter?; fourthly, what indemnity or compensation, if any, should be paid on account of any decision or decisions rendered by the Tribunal?"[66]

The Tribunal finally decided the matter and is regarded as a historic decision in terms of general international law. It used various tools to detect the direction and velocity of wind, turbulence, ambient temperature, barometric pressure, and Sulphur Dioxide concentrations used by Trail Smelter in different years. Comparatively, it is of more fundamental importance for reparations in any legal regime for various reasons. In specific, its application to Pakistan's case is the most suitable option than anything else and may be proved very effective. In response to the questions stated above, the Tribunal's took the following approach:

> "In the determination of the first part of this question (first), the Tribunal has been obliged to consider three points; the existence of injury, the cause of the injury, and the damage due to the injury … Also, it interpreted the word "occurred" as applicable to damage caused prior to January 1, 1932, in so far as the effect of the injury made itself felt after that date … In considering the second part of the question as to indemnity, the Tribunal … principle of law … set forth … by the United States Supreme Court in Story Parchment Company v. Paterson Parchment Paper Company (1931), 282 U. S. 555 … The Tribunal … considered the items of indemnity claimed by the United States … in the statement presented by … the United States, claims for damages of $1,849,156.16 with interest of 5250,855.01—total $2,100,011.17 … divided into seven categories … (a) cleared land and improvements; (b) of uncleared land and improvements; (c) live stock; (d) property in the town of Northport; (e) wrong done the United States in violation of sovereignty, measured by cost of investigation from January 1, 1932, to June 30, 1936; (f) interest on $350,000 accepted in satisfaction of damage to January 1, 1932, but not paid on that date; (g) business enterprises … Tribunal disallowed the claims of the United States with reference to items (c), (d), (e), (f) and (g) but allowed them, in part, with respect to the remaining items (a) and (b) … the Tribunal has awarded with respect to

[66] Ibid., Article III, 1908 (The extent of damage and followed-up compensation were also raised before the IJC-UC, are regarded as the fundamental, yet initial questions, in cases of reparations; refer to pages 1918-19).

damage to cleared land and to uncleared land … an indemnity of sixty-two thousand dollars ($62,000); and … sixteen thousand dollars ($16,000) — being a total indemnity of seventy-eight thousand dollars ($78,000) … for the period from January 1, 1932, to October 1, 1937 … the Tribunal answers Question 1 in Article III … Damage caused by the Trail Smelter in the State of Washington has occurred since the first day of January, 1932, and up to October 1, 1937 … Interest at the rate of six per centum per year will be allowed on the above sum of seventy-eight thousand dollars ($78,000) from the date of the filing of this report and decision until date of payment … decision is not subject to alteration or modification by the Tribunal hereafter …. "[67]

As answer to the first part of the initial question was affirmative, therefore, the Tribunal recorded its response to the second question that the earlier drafted Convention exactly came in response to this question. To reach an effective solution that is just to the concerned parties, the Tribunal held that:

"…., therefore, finds that the above decisions, taken as a whole, constitute an adequate basis for its conclusions … that, under the principles of international law … no State has the right to use or permit the use of its territory in such a manner as to cause injury … in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."[68]

"…. Professor Eagleton … "A State owes at all times a duty to protect other States against injurious acts by individuals from within its jurisdiction." … International decisions, in various matters, from the Alabama case onward, and also earlier ones, are based on the same general principle, and, indeed, this principle, as such, has not been questioned by Canada. But the real difficulty often arises rather when it comes to determine what, *pro subjecta materie*, is deemed to constitute an injurious act … The Tribunal, therefore, answers Question No. 2 … So long as the present conditions in the Columbia River Valley prevail, the Trail Smelter shall be required to refrain from

[67] Ibid., 1920, 1931, 1933, & 1940.

[68] Ibid., 1965, 4.

causing any damage through fumes in the State of Washington; the damage … and its extent … would be recoverable ...."[69]

The Tribunal decided the third question in the light of its response to the previous questions that the damage to the State of Washington not only occurred in the past, but it believes that it may occur in the future, therefore, Smelter's operations shall be subjected to some control in order to avoid it further. Hence, the Tribunal favored a permanent measure or regime of control that shall remain in full force to overcome this issue while taking into account the principle of "solution fair to all parties concerned"[70]. The Tribunal was sure that such regime will [probably] encounter not only the causes of the controversy in question, but will also [probably] result in preventing any injury of a material nature the State of Washington may face in the future.[71]

Finally, in response to the fourth question (the last one), the Tribunal held that although the prescribed regime is responsible to ensure the desirable vis-à-vis expected result (as formed in response to the third question), however, the possibility exists that it may not be achieved. Therefore, Smelter shall refrain from causing any damage to the State of Washington in the future. Otherwise, the indemnity or compensation, shall be paid in the following way:

"Firstly, if any damage occurred since 1st October 1940 or later on, irrespective of the failure by Smelter or notwithstanding the maintenance of regime, reparations (compensation) shall be made, subject to the arrangements to made by the two Governments. Secondly, if as a consequence to the Tribunal's response to the first two questions, the US considers it necessary to maintain a future agent(s) to ascertain whether the damage shall have occurred in spite of the regime, it shall be paid as a compensation where the reasonable cost of such investigations do not exceed $7,500/- in a single year, subject to the decision made by the Governments regarding occurrence of the damage in

[69] Ibid., 1963 (2, 3) & 1966 (1).

[70] Ibid., 1966-80.

[71] Ibid., 1980, 5.

the said year, due to Smelter's operation. In both cases, compensation against the damage shall not exceed the prescribed amount."[72]

'The principle of territorial sovereignty includes not only State's right to exercise exclusive jurisdiction over its own territory, but also its legal obligations to prevent its subjects from committing acts which violate another State sovereignty'[73] (and also the State itself – as earlier para mentioned about the acts and/or policies). As mass expulsion or creation of Refugees (also, both bears State-to-State relationship) cast burden on receiving vis-à-vis host-States, therefore, it clearly run against the principle of territorial sovereignty – violating the guarantee to respect the territorial integrity and rights of other States.[74] The issue remain unaddressed in an effective way, therefore, States are critically reluctant to accept refugees contemporarily. Although Trail Smelter dealt with reparations for ecological injuries, still the reliance of the decision on the principles of general international law in findings of the Tribunal allowed commentators to apply this rule beyond pollution to any damage. The Tribunal held that:

"…., therefore, finds that the above decisions, taken as a whole, constitute an adequate basis for its conclusions … that, under the principles of international law … no State has the right to use or permit the use of its territory in such a manner as to cause injury … in or to the territory of another or the properties or persons therein …."[75]

The crux of today's refugees crisis is that it the problem of inter-state relations, therefore, its foundation must also be based on those principles which extends to the

[72] Ibid., 1980-81, 5.

[73] Jack I., Garvey. ed., "Toward a Reformulation of International Refugee Law." (June, 24 2008), Harvard International Law Journal 26, no. 2 (1985): 494, 2 https://ssrn.com/abstract=1150970 (Last Assessed 15th February, 2025).

[74] Ibid.

[75] Trail Smelter, 1965, 4.

same relation.[76] Therefore, as identified by the UNGA Resolution as an "immense burden" for the receiving States that has severe implications therein, the principle of Trail Smelter is surely applicable to the injuries resulted from the burden of refugee flow.[77] If not applied so far to refugee regime, it, at least carries the possibility to be applied, because it has been manifested earlier in the development of space law regarding objects launched from one sovereign territory, but falls on another sovereign territory, and also in Nuclear Tests cases regarding Nuclear fall-out.[78] Also, it has been further extended to other a number of other matters carrying global concerns with transnational impacts, including prohibition and obligations of the whole international community regarding high seas pollution.[79] Hence, the whole case of Trail Smelter is significant contribution to assist the developments required in the current regime of refugees regarding reparations, both globally and particularly to Pakistan's case.

1.4.3 ICJ Advisory Opinion Concerning Reparations of Injuries Suffered in the Service of the United Nations 80

The assassination of the UNSC Mediator in the Palestine Conflict – Folke Bernadotte and a French UN Observer – Colonel Andre Serot, by the Stern Group – Israeli extremists, on 17th September 1948, following their contributions for Palestinians, resulted in UNGA Resolution of 3rd December 1948, to clarify from its principal judicial organ – the ICJ, whether it can bring reparations claim in its official capacity for the injuries caused to it or its agents. The ICJ declared it a super-State, which as a subject of international law posses international rights and duties, and therefore, has the capacity to

[76] Jack I., Garvey. ed., "Toward a Reformulation of International Refugee Law." 500, 3.

[77] Ibid., 495, 1.

[78] Ibid.

[79] Ibid., (also, 496).

[80] Reparations for injuries suffered in the service of the United Nations, Advisory Opinion, 11th April 1949: I.C.J. Reports 1949: 174 https://www.icj-cij.org/case/4 (Last Assessed 21st February, 2025).

maintain its rights by bringing international claims.[81] Furthermore, the Court held a wider interpretation of the term *injury*; it includes the damage caused to its interests itself, to its administrative machine, property, and assets, as well as to the interests of which it is the guardian – still the list is not exhaustive, as the Court cannot pretend to forecast all kinds of damage.[82]

Moreover, the Court directly linked the measure of reparations with the amount of damage suffered from the wrongful act or omission of the State, therefore, the rules of international law will apply to its calculation and reparations would include reimbursement of any reasonable compensation as one of the options.[83] Also, the Court argued that the breach of an international obligation gives rise to the claim and excludes justification or interference of the municipal law in defence.[84] In line, the injured entity (the UN or State) has various options to claim reparations; to bring the claim on the international plane, to negotiate, to conclude a special agreement, to prosecute the claim before an international tribunal, and it is also possible to use the traditional rule of diplomatic protection.[85]

Post advisory opinion, the UN Secretary General was authorized by the UNGA through a resolution to press for a claim. Resultantly, Israel was asked for a formal apology (regarded as 'satisfaction', incorporated in the ARSIWA later on), arrest of the culprits, and to pay a compensatory amount of $54,624/- for the harm suffered by the UN – wherein, Israel paid the amount due and submitted a regret letter through its Ministry of Foreign Affairs, but stated that it could not traced the culprits despite all its efforts due to

[81] Ibid., 179, 3.

[82] Ibid., 180, 3.

[83] Ibid., 181, 1.

[84] Ibid., 180, 3.

[85] Ibid., 181, 3.

unsatisfactory evidence (which were regarded as a 'substantial compliance' by the UN Secretary General.[86] Overall, this opinion awarded the principle of reparations a solid constitutional character, later on invoked by the same Court and other international Tribunals in different contexts.

1.4.4 Development of Reparations in Corfu Channel

The first regular case with the subject matter in the domain of Public International Law heard by the ICJ between Albania and UK. Initially, the issue arose on 15th May 1946 when two British warships got heavily damaged alongside serious injury to a number of British sailors and some died while crossing the *Corfu Channel* [87], followed by Albania's denial of UK's request for apology, as it declared the matter subject to prior consent before crossing the channel. The matter got repeated on 22nd October 1946, therefore, the UK decided to gather evidence within the Albanian Territorial Sea without authorization from Albania (rather conducted a strong protest over it). Thereafter, the matter was brought on the table of the ICJ upon recommendation of the UNSC Resolution, wherein Albania rejected Court's jurisdiction and then reentered the case through a compromise with the UK – the Court held Albania responsible while issued three judgments; preliminary objections, merits, and compensatory amount for the damage. In merits, the ICJ held Albania responsible for the tragedy, that:

> "In fact, nothing was attempted by the Albanian authorities to prevent the disaster … grave omissions involve the international responsibility of Albania … is responsible under international law for the explosions which occurred … in Albanian waters, and for

[86] Pierre, d'Argent. ed., "Reparation for Injuries Suffered in the Service of the United Nations (Advisory Opinion)." MPEPIL (Stand: December 2006) (2007): para 9, Assessment and Relevance (C), https://odireitointernacionalpublico.wordpress.com/wp-content/uploads/2019/11/repar.pdf (Last Assessed 23rd February, 2025).

[87] Corfu Channel Case (United Kingdom of Great Britain and Northern Ireland v. People's Republic of Albania), Judgment (Merits), 1949 I.C.J. Reports 4 (April 9th, 1949) https://www.icj-cij.org/case/1/judgments (Last Assessed 11th February, 2025); See also; Judgment of the same case on 'Assessment of the Amount of Compensation', 1949 I.C.J. Reports 244 (December 15th, 1949) https://www.icj-cij.org/case/1/judgments (Last Assessed 11th February, 2025).

the damage and loss of human life which resulted from them … a duty upon Albania to pay compensation to the United Kingdom."[88]

Furthermore, UK also made specific allegations regarding involvement of Yugoslavia in the same case, however, the Court rejected it that it could not be accused of held liable in its absence.[89] Moreover, when the UK requested to assess the amount of compensation, Albania objected that the questions were limited to; Firstly, is there any responsibility of Albania as a result of the tragedy? Secondly, is there any duty to pay compensation? The Court rejected the claim and referred to a number of stages that allowed the Court to do so, for instance, the UNSC Resolution recommended both parties to immediately refer "the dispute" to the Court, which without any doubt aimed its final adjustment wholly, and following it UK filed an application that pointed to "determine the reparation and compensation".[90] Therefore, Albania did not appeared in the first ever compensatory judgment of the ICJ, wherein the Court order it to pay £843,947/- to the UK under Article 53 of the ICJ Statute vis-à-vis procedure in default of appearance.[91] Here, the Court distanced itself from the standard of "full reparations" which would have been valuing the injuries at the time of identification and valued the injuries at the time of their loss.

1.5 Reparations in International Law Commission's Draft Articles on the Responsibility of States for Internationally Wrongful Acts, 2001 (ARSIWA)

As discussed earlier, historically, reparations have been used in various forms and contexts. In the contemporary international law, it originated a century ago, soon after the World War I and has been approached by the international courts and tribunals differently as a peremptory international norm since then. However, its codified history

[88] Ibid., Judgment on Merits, 23, 2 & 3.

[89] Ibid., 17, 2.

[90] Ibid., 23 (Last para) & 24, 2.

[91] Ibid., Judgment on Assessment of the Amount of Compensation, 247, 1.

starts from August 2001, when the ILC drafted ARSIWA – the most productive and fundamental instrument on the principle of reparations in international law that focuses on both State-to-State responsibility and State-to-individual responsibility. ARSIWA is highly significant in this study as it expressly governs the question of reparations due in leu of an international wrongful act(s) while dealing with its forms, implications, and parameters.

1.5.1 Forms, Implications, and Parameters of Reparations in International Law

In the heated debate of reparations, three aspects are important to fully understand any issue; firstly, what exactly Reparations mean and the possible forms; secondly, its implications; and thirdly, its parameters. ARSIWA state three different forms of reparations i.e. restitution, compensation, and satisfaction. Furthermore, ARSIWA call it as the most obvious duty, not a charity, thus carries legal consequences if violated. Moreover, ARSIWA expressly mentions a number of parameters that aim to address the past wrongs to the extent it has been committed.

1.5.1.1 Forms of Reparations

Generally, the idea of reparation claim for the past and present (on-going injustices) developed from individuals to the extent of States, range from symbolic (official recognition, apologies, commemoration) to material forms (compensation, restitution, and restoration).[92] ARSIWA lists a number of forms of reparations which must be provided by the responsible State to the victim State, either in single or in combination, including restitution[93], compensation[94], and satisfaction[95]. However,

[92] René, Koekkoek. ed., "Rethinking the History of Reparations for Historical Injustices: An Early Modern Perspective." 253, 1.

[93] ARSIWA, Art. 35.

[94] Ibid., Art. 36.

[95] Ibid., Art. 37.

comparatively, the UNGA Resolution regarding basic principles mentioned a comprehensive list of forms, including compensation, rehabilitation, satisfaction, and 'guarantees to non-repetition'[96] – that is not a form of reparations as per ARSIWA, rather is an obligatory principle which arises upon an internationally wrongful act.

ARSIWA prescribed these forms in a hierarchy, wherein restitution is preferable to compensation, whereas satisfaction is a residual form of making full reparations.[97] However, as earlier stated, ARSIWA also made it possible to have all the three in a single claim, if it fulfills the criteria. Meaning thereby that reparations in any form is an obligatory act that is always made by the State responsible for the internationally wrongful act in order to place the aggrieved party in the similar position as of a normal status prior to such violation. Thus, as stated by Aristotle, all in all, the globally accepted objective of reparations is to rectify the wrong done to the injured party and correct injustice by restoring the status quo ante.[98]

1.5.1.1.1 Restitution

Restitution is to re-establish the situation which existed before the wrongful act was committed, subject to the conditions that it is not materially impossible and does not involve a burden out of all proportion to the benefit deriving from restitution instead of compensation.[99] Furthermore, restitution comes first and is only replaced by the

[96] Ibid., Art. 30 & Art. 48(2)(a).

[97] Giulia, Pinzauti and Larry-White, Merryl. eds. "To repair or not to repair: What are the questions?." In Research Handbook on International Law and Environmental Peacebuilding, Edward Elgar Publishing (2023): 253-276 (255, 3) https://www.elgaronline.com/edcollchap-oa/book/9781789906929/book-part-9781789906929-20.xml.

[98] Dinah, Shelton. ed., "Righting Wrongs: Reparations in the Articles on State Responsibility." The American Journal of International Law 96, no. 4 (2002): 833–56 (844, 1) https://doi.org/10.2307/3070681.

[99] ARSIWA, Art. 35.

subsidiary mean being compensation or satisfaction when it is not possible to guarantee reparations through restitution.[100]

Moreover, as discussed in the paragraphs concerning *Chorzow* Factory, restitution being the primary form of reparations set the high standard of full reparation while serving as a corrective function, in order to wipe out all the consequences of the illegal act by re-establishing the situation that would have existed in the absence of commission of such act. Thus, in short, restitution is complete elimination of all the possible consequences by re-establishing the situation that would have existed if the wrong done has not been committed. However, the establishment of prior situation is mandatory for the award of restitution, otherwise, other means of reparations will take priority.

1.5.1.1.2 Compensation

If the damage cannot be made good by restitution, then compensation is paid to repair it, in particular it cover any financially assessable damage including loss of profits established.[101] However, the generality of the principle of full reparation is probably inevitable due to the wide variety of international obligations, therefore, the amount of reparations through compensation will vary according to the quantum of harm.[102] As earlier discussed, the PCIJ in the Chorzow Factory held that if it is not possible to decide the matter of reparations through restitution, then the second option of compensation should serve as a mean of reparations to determine the amount of compensation due for the act in question that is contrary to international law.

[100] Gabriel, Echeverria. ed., "The UN Principles and Guidelines on Reparation: is there an Enforceable Right to Reparation for Victims of Human Rights and International Humanitarian Law Violations?." PhD Dissertation, University of Essex (2017): 53, Last para https://repository.essex.ac.uk/20021/ (Last assessed 27th May, 2025).

[101] ARSIWA, Art. 36.

[102] Dinah, Shelton. ed., "Righting Wrongs: Reparations in the Articles on State Responsibility." 846, 1.

The Court further developed the standard regarding the amount of compensation which shall be 'adequate' (proportional and fair), in order not only to replace *restitutio in integrum*, rather also to re-establish the same situation that would have existed if no wrong has been committed, while compensating the injured party. Moreover, the Reparation Principles of the UNGA highlighted several areas for which compensation may be awarded, including physical or mental harm; lost opportunities, for instance, employment, education and social benefits; material damages and loss of earnings, for instance, loss of earning potential; moral damage; costs required for legal or expert assistance, medicine and medical services, and psychological and social services.[103] Crawford further specified this interpretation into material injury, for instance, loss of earnings, pensions, medical expenses, etc. and non-material injury, for instance, pain, suffering, mental anguish, humiliation, loss of enjoyment of life, and loss of companionship or Consortium, wherein the latter usually quantified on the basis of an equitable assessment.[104]

1.5.1.1.3 Satisfaction

If a damage cannot be made good by either restitution or compensation, then the damage is made good through satisfaction as a third mean of reparations, which is obligatory, subject to the conditions that it shall be proportional to the damage caused and shall not be carried out in way that humiliate the responsible State – commonly, it consists of an acknowledgement of the breach, an expression of regret, a formal apology or another appropriate modality.[105] Furthermore, it is normally invoked for symbolic character of injuries, that arise purely from the breach of the obligations and not from the

[103] Iris Marín, Ortiz. ed., "Reparation Measures." Sistema Bibliotecario de la Suprema Corte de Justicia de la Nación Catalogación: 363 (Edt. 1st, June 2022): 369 https://www.onlinelibrary.iihl.org/wp-content/uploads/2023/03/2022-UNHCR-ICRC-Manual-on-Internal-Displacement.pdf#page=383.

[104] Amezcua-Noriega, Octavio, "Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections." 4, 10.

[105] ARSIWA, Art. 37.

consequences resulted thereof.[106] Examples may include violation of territorial integrity or sovereignty, ill-treatment with State officials, authorities, or even citizens.[107] Moreover, it may take the forms of restitution, or compensation, or both, however, it in any form will be referred only as satisfaction and will always be distinguished from the other means of reparations.[108] For instance, it may take the form of monetary payments, which in such case will not be compensation, rather has a connection with non-material injury.[109]

1.5.1.2 Implications of Reparations

A State that violate any rule of international law carries the responsibility for its actions under international law and is bound to correct it, the concept is simply termed as the principle of State Responsibility.[110] Such responsibility could be determined from a set of rules prescribed by ARSIWA and once it is established, it must be addressed fully in the manner that effectively correct the initial wrongful act.[111] The ILC's approach to reparations as a general conception of law enshrined under ARSIWA creates the possibility to invoke it in any regime of international law. It lays down in very explicit words that every international wrongful act or omission of a State, regardless of its origin

[106] International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts (with commentaries), A/56/10, Art. 37: 264-265, Last para cont.

[107] Ibid.

[108] Anita, Grigoryan. "Moral Damages in Investment Arbitration." Jean Monnet Papers 03 (2023): 22, 2 https://www.uni-saarland.de/fileadmin/upload/lehrstuhl/bungenberg/Jean_Monnet_Papers/%C3%9Cberarbeitet_Logo/Moral_Damages_in_Investment_Arbitration__Anita_Grigoryan___.pdf.

[109] Ibid.

[110] ARSIWA, Art. 1.

[111] Eriksson Johanna, Marty. ed., "Responsibility for Aiding or Assisting in the Commission of a Wrongful Act: Examining State Responsibility under Article 16 ARSIWA." Master's Thesis in Public International Law (2024): 13, 1. Department of Law, Uppsala Universität https://www.diva-portal.org/smash/get/diva2:1881306/FULLTEXT01.pdf.

or character, carries an international responsibility that involves a legal obligation to provide remedy, not only for the violation, but also for its effects.[112]

Furthermore, implications are understood as the legal effects and consequences arises from an international wrongful act by a State, which hold such State internationally responsible if its conduct; firstly, is attributable to the state; and secondly, constitutes a breach of an international law obligation; subject to the condition that there is no circumstance precluding unlawfulness, including valid consent by one state to the actions of another state.[113] Comparatively to international legal responsibility, this accountability promises to establish good governance and transparency, irrespective of the applicable law, and thus includes the norms of good governance and transparency in both the decision-making process and the implementation of decisions.[114] Therefore, only reparations through any of its forms is not a complete remedy, but the same violation also invoke further future oriented obligation of cessation and assurances vis-à-vis guarantee of non-repetition, by which the State is bound as a continued duty of performance.[115]

ARSIWA derived this basic architecture regarding the breach of an international obligation, from a number of international cases, in particular the Chorzów Factory, wherein the State has to incur a twofold general obligation to cease the wrongdoing under its Article 30 and to make full reparation under its Article 31.[116] Whenever the case of an international wrongful act is in question, the international judiciary try to answer two key questions; firstly, cessation of the wrongful act that stops the violator from further

[112] ARSIWA, Art. 1 & 12 (Note: This point supports Pakistan's case).

[113] W Doyle, Michael. Prantl, Janine, and J. Wood, Mark. eds. "Principles for Responsibility Sharing: Proximity, Culpability, Moral Accountability, and Capability." 110 CAL. L. REV. 935: (2022): 948 (Last para con.) & 949 (1) https://scholarship.law.columbia.edu/faculty_scholarship/3775.

[114] Ibid.

[115]ARSIWA, Art. 29 & 30.

[116] Felix E., Torres. ed., "Revisiting the Chorzów Factory Standard of Reparation – Its Relevance in Contemporary International Law and Practice." 194, 3.

development of the wrongful act; and secondly, to reverse the effects which have already been produced, that is to re-establish the situation which existed before the wrongful acts were committed.[117] Thus, ARSIWA put the responsibility to repair on; States directly involved in this offence; allies of such States which may aid, assist, direct, control exercise, or even coerce other States, entities, or individuals; entities or individuals that makes any kind of contributions to this complicity. Hence, 'the responsible State is under a legal obligation to make full reparation for the injury caused through its internationally wrongful act in whatever form it is, whether material or moral'[118]. The phrase "to make full reparations", if invoked in refugee regime, intends the plural form, because it involves reparations in various forms.

Moreover, it is challenging for a State in many cases to commit an international wrongful act, individually or on its own, therefore, it has been a practice of States since decades to act in the form of a group of States vis-à-vis allied form. Also, certain individuals or entities, falling outside the domain of the definition of State under international law, provides support of various kinds to these States, making themselves complicit in it. Therefore, to encounter this issue, ARSIWA provides a broader scope of the application of this obligation, which may also be owed to another State, one or more, or to the international community as a whole and may accrue to any person or entity other than a State, subject to the character and content of the obligation and circumstances in which the breach occurred.[119] In addition, this responsibility may be extended through the principle of 'derived responsibility' to a third State, if it aids, assists, directs, controls exercise, or even coerce another State in such engagement.[120]

[117] Ibid., 197, 1; ICJ developed its approach (for instance, in the recent Case of - Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), 3 February 2012, ICJ, para 37 www.icj-cij.org/files/case-related/143/143-20120203-JUD-01-00-EN (Last assessed 23rd May, 2025).

[118] ARSIWA, Art. 31 (1) (2) & 34.

[119] Ibid., Art. 33 (1) & (2).

[120] Ibid, Art. 16-18.

1.5.1.3 Parameters of Reparations

The right to reparations can be regarded as both an individual and a collective right, that is inherent in nature, and is a part of the right to judicial protection or access to justice, resultantly, which cannot be deviate from, in no situation.[121] Its general objective of reparations is to bring justice to the victim by reestablishing the *status quo ante*.[122] Therefore, itself, it is also not an absolute principle, rather is subject to certain parameters in international law with reference to the scope of its application in order to ensure justice to everyone. Although there are no concrete rules in this subject, the general international law provides a general principle of "reasonable parameters"[123] in this regard. Initially, the principle of causality must be qualified, that creates a casual link between the illegal act, the existing violation, the injuries resulted therefrom, and the reparations sought therefor.[124] Furthermore, analysis of ARSIWA reveals that, at first, it shall cease the international wrongful act and guarantee its non-repetition in the future.

Thereafter, it shall fully repair the past wrong, both material and moral, through either of the forms laid down under ARSIWA while following structural hierarchy.[125] However, its application shall be strictly subject to the principle of proportionality with

[121] UNHCR in Mexico - Delegation for Mexico and Central America of the ICRC Coordinators. "Manual on Internal Displacement." 1st edt. in June 2022: 366, 2 & 371, 3 https://www.onlinelibrary.iihl.org/wp-content/uploads/2023/03/2022-UNHCR-ICRC-Manual-on-Internal-Displacement.pdf.

[122] ICTJ and Human Rights Association. "Design parameters for a reparations program in Peru." Original in Spanish, Translation by the International Center for Transitional Justice (ICTJ) and Human Rights Association (Asociación pro Derechos Humanos–APRODEH) September 2002: 2, 2 https://www.ictj.org/sites/default/files/ICTJ-Peru-Reparations-Parameters-2002-English.pdf.

[123] Center for International Environmental Law (CIEL). "Climate Justice Proceedings at the ICJ: Top Arguments to Watch for in the Written Submissions." Center for International Environmental Law (CEIL) (2024): 23, 2 http://www.jstor.org/stable/resrep65367.

[124] Octavio, Amezcua-Noriega. ed., "Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections." Briefing Paper 1 (2011): 5-6, 16 https://www.corteidh.or.cr/tablas/r26681.pdf.

[125] Ibid., 3, 5.

respect to the injury incurred, regardless of the gravity of the breach.[126] Therefore, it shall avoid being as an exemplary measure, rather shall aim at remedying the injuries resulted from the wrongful act. This opinion prevailed for decades; however, this brought no positive result to the reparations principle, but also destroyed its fundamental objective regarding reestablishment of the *status quo ante*. John Crawford, the former Special Rapporteur of the International Law Commission on State Responsibility, further developed this perspective, that as there exists differences between casual link and breach of the international obligations, therefore, other elements of the breach shall be taken into account, for instance, the willful misconduct of the State organs.[127]

Then who are truly entitled for reparations, whether those individuals, entities, or sectors, influenced both directly and indirectly, or it will be limited to only the direct ones. The earlier opinion was only restricted to direct influence, whereas the Inter-American Court for Human Rights (IACHR) jurisprudence concerning environmental cases further narrowed the award of reparations that 'it shall follow not only the directness standard, but also the immediate effect principle'[128]. Meaning thereby that it is limited only to those with direct and proximate effects, even ignoring those with direct or later effects. However, in refugee regime, this principle includes both direct and indirect harm irrespective of the kind, and regardless of the knowledge and intention of the State of Origin, as evident from the decisions of the international courts and tribunals. Because reparations primarily aim at placing the things at the same place they used to have earlier to the commission of the wrongful act, and therefore, 'such measures should neither

[126] Ibid., 3, 6.

[127] Ibid, 3, 7.

[128] Perez-Leon-Acevedo and Juan-Pablo. eds., "Reparations in environmental cases: Should the International Criminal Court consider the Inter-American Court of Human Rights' jurisprudence?." Journal of International Dispute Settlement 15, no. 3 (2024): 377-403 (382, 1) https://academic.oup.com/jids/article-abstract/15/3/377/7624170.

enrich nor impoverish the victim because of its sole objective to eliminate the effects of the violations committed'[129].

Moreover, the similar harm can have another extension beyond the direct and indirect influence, that give rise to claim reparations, which is the establishment of a 'casual link between the wrong done in the past and its continuing harm in the present'[130]. In refugee law, application of this extended principle can give a more insightful picture of durable solution to the complex focus of this study. In addition, several other principles shall be taken into account with due respect, including the principle of due-recognition of victimhood, the implicit principle that applies a flexible approach to the standard and burden of proof in reparations claims, the procedural principle of effective victim participation, the principle of taking due account of the victims situation in any given case, and the principle of non-discrimination.[131] Also, reparations is an autonomous right which cannot be attributed to any other principle, rather is required to be fully made in case it is due following violation of any right or obligation. These parameters may face several challenges in refugee regime, in particular wherein the matter is related to a systemic or ongoing issue.[132]

[129] Octavio, Amezcua-Noriega. ed., "Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections." 5, 15.

[130] Rémi, Fuhrmann and Schweizer, Melissa. eds., "Ending The Past: International Law, Intertemporality, and Reparations for Past Wrongs", German Law Journal (2025): 1-21 (17, 1) https://www.cambridge.org/core/journals/german-law-journal/article/ending-the-past-international-law-intertemporality-and-reparations-for-past-wrongs/9EE445F2FADF49A0C0A22164FB00855C.

[131] Octavio, Amezcua-Noriega. ed., "Reparation Principles under International Law and their Possible Application by the International Criminal Court: Some Reflections." 6-7, 17-21.

[132] Iris Marín, Ortiz. ed., "Reparation Measures." 387, 1.

CHAPTER 02

EXODUS OF AFGHANS TO PAKISTAN, THEIR IMPACTS, AND COSTS OF THE HOST-STATE

The communist coup in 1978 resulted in the first displacement of Afghans, followed by its acceleration later due to a number of incidents. In resistance to the coup and Soviet invasion in 1979, Pakistan welcomed Afghan citizens for the very first time post-communist coup on humanitarian ground. However, Afghanistan never achieved stability and peace, and thus the mass influxes of Afghans to Pakistan never ended. Furthermore, not only the past research suggests, but also the host-State claimed many times that Afghans presence has serious implications for it in various circles, and in the absence of a proper support from the international community, it cannot continue this support anymore. Moreover, it influenced a continuous yet inhumane change in the the host-State's policies towards its guests it welcomed on humanitarian grounds, and it adopted a closed-door policy while not only restricting acceptance of new influxes, but also started deporting those already resided therein. Therefore, this chapter analyzes that; firstly, when, how, and why the mass exodus of Afghans to Pakistan took place; secondly, whether is it a true statement or a myth that such presence impacted the host-State from several perspectives and how could it be assessed and measured; and thirdly, what will be the costs of Pakistan to file a claim against the international community.

2.1 Mass Influx of Afghans in Pakistan in Different Phases

Pakistan has encountered major migration movements since its creation, including post-partition, Kashmiris, Afghans, and several other. However, among all, not only the movement, but also the duration of Afghans always remains a matter of concern for the host-State, resulted in major policy shifts since their acceptance. The in-out migration movements of Afghans took place in several phases since the Soviet invasion in 1979, categorized into six phases for the purpose of this study. Generally, the population throughout remained in millions, however, 'one-third of the total population of

Afghanistan lived as migrants in Pakistan in the initial two decades'[133]. The population remained at its peak due to lack of official registration, as the host-State did not initiate their official registration as refugees or migrants for 25 years continuously until 2005 when the host-State initiated the process of registration.[134] Resultantly, the population declined, except in the later phases when Afghans were compelled to move again to the host-State due to the unfavorable conditions back-home. This policy shift in the post-2000 period from the host-State towards Afghans resulted from the lack of international support, change in the geo-political landscape following 2001 US attack, Pakistan being ally of the US, and an increase in terrorism globally, in particular within Pakistan.[135]

2.1.1 First Phase of Afghans Influx (1978-1989)

Afghanistan's politics faced a major setback in the late 1970s, initially in the shape of communist coup and then the Soviet invasion in the support thereof, resultantly the creation of the resistance group, the *Mujahideen* took place. This battle created unfavorable conditions for human living; hence, a large number of the population has to leave their homes and take refuge in various countries globally, including Pakistan. This was the first phase of Afghans mass influx to Pakistan that commenced in the aftermath of the April 1978 Saur Revolution, however, it was substantially accelerated by the Soviet intervention in December 1979, that lasted until 1989 with the Soviet withdrawal from Afghanistan.[136] During the whole period of the Soviet military intervention, more than 7 million Afghans were displaced both internally and externally, wherein 3.1 million

[133] Shireen S., Issa. Desmond, Gail, and F. Ross-Sherif. eds., "Refguee history and policies of Pakistan: an Afghan case study." Immigration Worldwide: Policies, Practices, and Trends (2010): 171-190 (175, Last Para) https://books.google.com/books?hl=en&lr=&id=_1PiBwAAQBAJ&oi=fnd&pg=RA1-PT92&dq=related:w20QMBskFfAJ:scholar.google.com/&ots=o6CxN6wP85&sig=jk8PbPZAQZafGisYEj3D1ergDnc.

[134] Ibid., 176, 1.

[135] Ibid., 2.

[136] Anwesha, Ghosh. ed., "Afghan migration and Pakistan's policy response: Dynamics of continuity and change." In Public Policy Research in the Global South: A Cross-Country Perspective, edited by Cham: 215-230, Springer International Publishing (2019): 215, 1 https://link.springer.com/chapter/10.1007/978-3-030-06061-9_12.

fled to Pakistan (nearly 50 per cent of the whole).[137] This was the official registered number of the displaced population, whereas the unregistered population exceeded this number.

2.1.2 Second Phase of Afghans Influx (1989-1995)

The second phase of Afghan influx in Pakistan started since the post-Soviet withdrawal from Afghanistan in 1989 and lasted until 1995. The Soviet withdrawal led to a war between the then government and *Mujahideen*, wherein the later got success in 1992 and formed the *Islamic State of Afghanistan*. The same year marked the largest voluntary refugee repatriation program in the global history including over a million of Afghans from Pakistan returning back-home. However, this led to a further instability and stopped the repatriation program, as the civil war commenced between different groups within *Mujahideen* in search of power. The war led to the formation of *Taliban* group in 1994/95 that ultimately defeated the *Mujahideen* in 1996 and took control of Afghanistan and formed *Islamic Emirate of Afghanistan*. To the majority of the Afghans, this period was even more bloodier than the earlier war with the Soviet and its supportive government, and therefore, the number of displaced community significantly increased during these years.[138] During this whole time, Afghans' in-out to Pakistan continued and the registered figure recorded by the UNHCR in these years were 3.3 million in 1989-1990, and 3.1 million in 1991, whereas it then declined in the following years that reached 1.2 in 1995/96 due to the repatriation programme by the *Taliban's* regime.[139]

[137] Katja M. Mielke, et al. eds., "Figurations of Displacement in and beyond Pakistan: Empirical findings and reflections on protracted displacement and translocal connections of Afghans." Transnational Figurations of Displacement (TRAFIG) working paper 7, no. 08 (2021): 7, 2 https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://trafig.eu/output/working-papers/figurations-of-displacement-in-and-beyond-pakistan/D054-TWP-Figurations-of%2520Displacement-Pakistan-Mielke-etal-2021-v02p-2021-11-05.pdf&ved=2ahUKEwjh1MuztY2PAxV2UVUIHfHeOzUQFnoECF0QAQ&usg=AOvVaw0yEvU8mZe0tXSpJbfH97dG (Last assessed 26th June 2025).

[138] Anwesha, Ghosh. "Afghan migration and Pakistan's policy response: Dynamics of continuity and change.", 221, 2.

[139] Ibid., 222, Table 1.

2.1.3 Third Phase of Afghans Influx (1996-2001)

The third phase include the whole period of the *Taliban's* first-time government that lasted from 1996 until 2001 following the US attack on Afghanistan. However, 'during this period, nearly a million Afghans fled to Pakistan not only due to the continuous fight between the *Taliban* and *Northern Alliance* for the seat of Kabul, but also with General Dostum's forces'[140], as well as 'the country's shift from a wider interpretation of Shariah to a narrow one'[141]. The total number of officially registered Afghan citizens in Pakistan reached nearly 4 million due to the reasons mentioned earlier. Initially, this number remained constant for the first few years due to repatriation programme, however, it then started rising and accelerated in June and October 2000 respectively following the heavy fighting in the northern Afghanistan, wherein the UNHCR recorded the new entry of around 0.2 million Afghans, making it a total of 4 million with the already registered population.[142]

2.1.4 Fourth Phase of Afghans Influx (2001-2021)

The US invasion of Afghanistan in the aftermath of the September 11 incident resulted in the fall of the *Taliban's* government. Such incident created a destabilized environment for the general population and once again individuals fled to Pakistan to protect their lives. Initially, the population declined until 2004 due to the voluntary repatriation programme commenced in 2002, recorded as 3 million, 1.5 million, and nearly 1 million in 2002, 2003, and 2004, respectively.[143] Thereafter, the first and only

[140] Ahmad Walid, Barlas. "Population Movements in Afghanistan: A Historical Overview, Migration Trends under the Taliban Regime, and Future Outlooks." Munich Personal RePEc Archive (MPRA) Paper no. 114179 (12th August 2022): 7, 1-2 https://mpra.ub.uni-muenchen.de/114179/.

[141] Anwesha, Ghosh. "Afghan migration and Pakistan's policy response: Dynamics of continuity and change.". 222-23, Last para cont.

[142] USCRI Blog Post." USCR Country Report Afghanistan: Statistics on refugees and other uprooted people." Jun 2001 https://reliefweb.int/report/afghanistan/uscr-country-report-afghanistan-statistics-refugees-and-other-uprooted-people-jun (Last assessed 25th June 2025).

[143] UNHCR Pakistan' Operational Data Portal. "Statistical Data of Registered Afghans in Pakistan." (Last Updated 30 June 2025) https://data.unhcr.org/en/country/Pak.

Census of Afghan citizens in Pakistan was conducted in 2005 through a joint effort by the Pakistan Census Organization (PCO) and UNHCR, that covered the population of Afghans since their first arrival until 2005, excluding those accepted as national of the host-State due to any reason.[144] Resultantly, the number remained constant until 2006 with a slight change, however, it went upward to 2.4 million in 2007, followed by a slight decrease each year until 2021 when the *Taliban* took control of Afghanistan for the second time.[145]

2.1.5 Fifth Phase of Afghans Influx (2021-onwards)

The fifth vis-à-vis last phase of Afghans mass influx to Pakistan so far started with the US announcement of its withdrawal from Afghanistan on 22nd July 2021, followed by the Taliban's takeover of Afghanistan for second time only three weeks later.[146] Resultantly, thousands of Afghans left their homeland due to political, economic, and security reasons, as the situation worsened further, reportedly stated as around 0.7 million by the UNHCR soon after the *Taliban's* takeover.[147] The number reached a total of 4 million in 2023, including 1.7 million undocumented individuals, however, the same year mass deportation process by the host-State declined the number. As of 30th June 2025, the registered Afghan citizens in Pakistan numbered around 1.5 million, in which

[144] Nasra M., Shah, R. Amjad M. Hameed, and Shahzad, Almazia. eds., "Pakistan migration report 2020." Lahore School of Economics (2020): 53, 3 https://www.gids.org.pk/wp-content/uploads/2021/06/Migration-Report-2020-V1-Complete-1.pdf.

[145] UNHCR Pakistan. 'Operational Data Portal for Statistical Data of Registered Afghans in Pakistan."

[146] Shaiza, Nazeer. Abdul Basit, Khan. and Muhammad Ashraf, Javed. eds., "Quest to Resolve the Conundrum of Afghan Diaspora: Analyzing Problems and Exploring Viable Means of Repatriation of Afghan Refugees from Pakistan", Pakistan Languages and Humanities Review 8, no. 2 (2024): 904-914 (909, 1) https://www.ojs.plhr.org.pk/journal/article/view/1124.

[147] Muhammad Ajmal, Khan. ed., "Pre-Afghan Taliban Refugee Exodus and the Complexities of Returning Home." The Pakistan Development Review 63, no. 1 (2024): 111–22 (117, 1) https://www.jstor.org/stable/27293367; See also, Z, Dashti. ed., "Afghan External Migration Movements in the Historical Process." Asya Studies-Academic Social Studies / Akademik Sosyal Araştırmalar 6, no. 20, (2022): 301-314 (310) https://dergipark.org.tr/en/download/article-file/2183901.

over a million has been living in Khyber Pakhtunkhwa and Balochistan, with the former being the host to over 0.7 million and the later to over 0.3 million individuals.[148]

2.2 Impacts of Afghans' Presence on Pakistan

Millions of Afghan citizens have lived in Pakistan for more than 40 years, and their presence has had a significant and varied impact on the host-nation. Socioeconomic impacts on institutions and communities, environmental deterioration, changes in the demographic balance, political unrest, administrative difficulties, security risks, public health emergencies, and pressures on educational systems are just a few of these effects. The following analysis of each impact category draws from academic studies and reports that demonstrate the profound effects of the Afghan influx on Pakistan.

2.2.1 Socioeconomic Impacts

The impact of Afghan citizens on Pakistan's economy has been uneven. On the one hand, the vulnerable community have assimilated into local economies by supplying labour shortages in small businesses, construction, and agriculture.[149] According to UNHCR, a large number of Afghans "have been woven into local economies," establishing business alliances and even getting married to people they don't know, which has led to some entrepreneurial activity.[150] Various researchers agree that Pakistan's production has increased and investment has been stimulated over time by refugee inflows. For instance, one econometric study entails, Afghan immigration

[148] UNHCR Pakistan. "Operational Data Portal for Statistical Data of Registered Afghans in Pakistan".

[149] Candler, Ms. Philippa. eds., "*A Call for Compassion: Afghan Refugees in Pakistan and the Path to Hope*", UNHCR Asia Pacific, March 2025 https://www.unhcr.org/asia/news/stories/op-ed-call-compassion-afghanrefugeespakistanandpathhope#:~:text=Regardless%20of%20when%20they%20arrived%2C,to%20the%20fringes%20of%20society.

[150] Ibid.

eventually increases GDP growth and capital formation.[151] Nonetheless, there is ample evidence of short-term strains on the host economy. Local experts stress that unexpected immigration has increased unemployment among Pakistani workers by driving down wages and congested labour markets.[152] Although it might eventually boost aggregate demand, *Javaid et al.* conclude that the presence of refugees "increases unemployment" in the short term and raises the cost of living.[153]According to other academics, the result is painful corollaries for Pakistan, including higher poverty among the hosts, decreased employment prospects for locals, and inflation of commodity prices.[154] Despite the fact that the Afghans' presence generates some economic activity, the majority of studies concur that it has a substantial negative socioeconomic impact, particularly on low-income Pakistanis. Large refugee populations have been connected to "unemployment among local labour, inflation, drug abuse … [and] child labour" in Pakistan, as noted by *Anwar et al.*[155] These factors exacerbate social tension and hardship.

2.2.2 Environmental Impacts

In some areas, housing Afghan refugees has had a detrimental impact on the environment. Refugees have faced competition from locals for land, fuel, and water in Khyber Pakhtunkhwa and Balochistan, where camps and settlements have emerged.[156] Around refugee camps, observers note widespread erosion and deforestation as common

[151] Maria, Faiq. et al, eds., "*The Impact of Afghan Refugee Influx on Labor Market Outcomes in Pakistan.*" Review of Applied Management and Social Sciences, September 2022 https://ramss.spcrd.org/index.php/ramss/article/view/237.

[152] Ibid.

[153] Ibid., 366.

[154] Ibid., 356.

[155] Ibid., 360.

[156] Shaiza, Nazeer. Abdul Basit, Khan. and Muhammad Ashraf, Javed. eds., "A Historical Analysis of the Socio-Economic Implications of Afghan Refugees for Pakistan." Pakistan Languages and Humanities Review 8, no. 3 (2024): 753-763 https://www.ojs.plhr.org.pk/journal/article/view/1123.

lands are overgrazed by livestock and wood is cut for shelter and heating. According to a thorough analysis, the refugee crisis "caused environmental problems by over-exploitation of natural resources, land erosion, [and] deforestation."[157]Similarly, "tensions … over grazing areas … and pressure on natural resources like water and forests" are highlighted in local surveys.[158]New wells and irrigation for Afghan agriculture have stretched water supplies, which has led to shortages later on. In conclusion, researchers stress that Pakistan's ecological stress has been made worse by the four decades of Afghan migration: field research and remote sensing link significant forest loss and land degradation to high refugee numbers (3–5 million).[159] In border districts, these environmental effects have weakened sustainable livelihoods and intensified resource conflicts.

2.2.3 Demographic Impacts

The Afghans' presence has changed the demographic makeup of frontier provinces. Historically, Pashtuns and other related ethnic groups have grown to make up the majority of Afghanistan's displaced population. According to a 2002 census, 81% of Afghans living in Pakistan were Pashtuns, with the majority of them residing in northern Balochistan and Khyber Pakhtunkhwa.[160] The Durand Line's Pashtun population densities have been strengthened as a result. Local organizations in some places are concerned that permanent Afghan settlement may change ethnic majorities. For instance, Baloch nationalists have openly voiced their concern that a large number of Afghan refugees have obtained Pakistani identity cards, or CNICs, which may eventually weaken

[157] Sohail, Anwar. Muhammad, Hassan. and Allauddin, Kakar. eds., "Afghan refugees implications on Pakistan." Pakistan Journal of International Affairs 4, no. 3 (2021): 116-129 https://www.researchgate.net/profile/Sohail_Anwar13/publication/357269195_Afghan_Refugees_Implications_on_Pakistan/links/61c41d2aabcb1b520ada4c5b/Afghan-Refugees-Implications-on-Pakistan.pdf.

[158] Ibid., 754.

[159] Ibid., 355.

[160] Ibid., 118.

the political influence of nearby Baloch communities.[161] In some places, Afghan refugees have completely integrated and intermarried, causing demographic boundaries to become less distinct. To put it briefly, the long-term presence of millions of Afghans has led to new ethnic balances in Pakistan's border regions by increasing the number of Pashtun speakers and other Afghan ethnicities. While some residents at first welcomed refugees of similar ethnic backgrounds, many eventually saw a demographic threat, a problem that nationalist leaders have politicized.[162]

2.2.4 Political Impacts

Pakistan's decision to host millions of Afghans has generated political controversy. Pakistani governments have alternated between calls for mass repatriation and open-door policies since the 1980s, frequently exploiting the refugee issue for domestic political objectives. According to one analyst, once the burden became too great, "locals called for ... repatriation" by the late 1980s. [163] Political leaders in Khyber Pakhtunkhwa and Balochistan, two provinces that majority of the host refugees, have occasionally accused the Afghan presence of escalating instability and financial hardship. For instance, the government has claimed that Afghan settlers harbor militants or engage in destabilizing activities during sporadic crackdowns. According to Homeland Security, recent authorities have claimed national security threats and used the refugee issue as justification for widespread deportation drives.[164] On the other hand, these actions have been denounced as politically motivated scapegoating by international organizations, humanitarians, and opposition voices. A diplomatic dimension has been added by the

[161] Ibid.

[162] Ibid.

[163] Ibid., 755.

[164] Megan, Fahrney. "Pakistan, Afghanistan, Refugees: Homeland Security Newswire." Pakistan, Afghanistan, Refugees | Homeland Security Newswire (December 19, 2023) https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://www.homelandsecuritynewswire.com/Border_Immig%3Fpage%3D8&ved=2ahUKEwiv9-XtopmPAxU5FhAIHQHiLsgQFnoECBoQAQ&usg=AOvVaw0ZTp7JiMMKa4VMxReMTby0.

Taliban government in Kabul protesting the expulsions of Pakistanis. Afghan citizens have turned into a political football in Pakistan, influencing foreign policy, provincial-national relations, and party politics (for example, the rhetoric surrounding refugees frequently occurs during local elections). Scholars observe that political pressures and humanitarian concerns are equally reflected in Pakistan's treatment of Afghan asylum seekers, including changing policies and the use of biometric ID cards.[165]

2.2.5 Administrative Impacts

It has taken a lot of state resources to manage the Afghan population administratively. Pakistan has handled Afghans in accordance with its own laws since it is not a signatory to the 1951 Refugee Convention. With the issuance of Afghan Citizen Cards (ACCs) in the 1980s and 1990s and their conversion to Biometric Residence Permits (BRPs) in 2021, Islamabad gradually established a bureaucratic framework for refugees. Police verification, registration centers, and identity management – a major administrative task – are all part of these programs. The federal Ministry of States and Frontier Regions (SAFRON) has also called for international assistance to address the needs brought on by refugees. The UNHCR's RAHA Program, which directs donor funds into districts that host refugees, has been the main response. For instance, according to RAHA, it has carried out about 4,260 development projects totaling USD 220 million, helping 12.4 million people (roughly 15% of whom are Afghan) with infrastructure, water, health, and education.[166] The logistical strain on Pakistani authorities is highlighted by this extensive aid administration. Local governments are also required to supply camps and new settlements with services like healthcare, education, and law enforcement. Scholars highlight this strain: according to one study, Afghan

[165] Jawed Aziz, Masudi. ed., "View of Mass Deportation of Afghan Refugees from Pakistan: Refugee Law at Stake or Solution for Halting Terrorism?." Pakistan Journal of Int'l Affairs 6, no. 3 (2023): 315-326 http://pjia.com.pk/index.php/pjia/article/view/903/628.

[166] UNHCR Pakistan. "Refugee-Affected and Hosting-Areas." https://www.unhcr.org/pk/refugeeaffectedandhostingareas#:~:text=Since%202009%2C%20RAHA%20Programme%20implemented,health%2C%20livelihoods%2C%20water%20and%20infrastructure (Last assessed 25th May 2025).

camps "put an extra pressure on infrastructure … for instance; education institutes, hospitals"[167]. Together, these initiatives, ID card systems, joint UN-Govt programs, refugee camp supervision, etc., represent a significant administrative endeavor resulting from the Afghan inflow.

2.2.6 Strategic and Security Impacts

Perhaps the most contentious political issues have been the strategic and security ramifications of the Afghan refugee crisis. Security concerns and refugee movements have historically collided along Pakistan's border with Afghanistan, which has long been a site of militancy. For instance, Islamabad saw the Afghan refugees as a "direct threat to … internal security" during the *Soviet-Afghan war* because Soviet and Mujahideen fighters regularly crossed the Pakistani border in search of them.[168] Later decades saw a number of insurgent groups (including *Islamic State Khorasan* and *Tehrik-e-Taliban Pakistan*) turn to camps along the border as safe havens. Today, Pakistani security officials make a clear connection between undocumented Afghans and cross-border terrorism: interim leaders maintain that "a significant portion of those involved in criminal and terrorist activities are among these illegal immigrants."[169] In reality, Afghan refugee communities have made counterinsurgency operations more difficult by making it difficult to distinguish between combatants and civilians. Furthermore, in the past, militant groups have used vulnerable tribal communities where refugees reside to launch attacks. According to security experts, Pakistan's military and intelligence services are on high alert as a result of hosting refugees; recent military operations, such as *Zarb-e-Azb*, were partially justified by claims of *Taliban* safe havens in areas where Afghans have settled. All things considered, Pakistan's security calculus has consistently connected Afghan migration to perceptions of strategic threats at both the state and local levels.

[167] Ibid., 356.

[168] Saad, Bhatty. ed., "Impact of the Afghan Refugees on Pakistan." Master's Thesis, Florida International University (1987) https://digitalcommons.fiu.edu/etd/1674.

[169] Ibid.

2.2.7 Law and Order Impacts

Large refugee populations have made social order and policing more difficult on the local law-and-order front. The refugee environment is a breeding ground for criminal networks and smuggling rings, according to Pakistani authorities and the media. According to studies, the refugee exodus has led to an increase in major social issues, such as drug trafficking and human smuggling. According to a thorough analysis, the Afghan influx in Pakistan "begat security issues and added terrorism, [high crime] rates, [including] child labour [and] drugs."[170] Refugees have been accused of flooding the police with social unrest and small-time crimes in some urban areas. Meanwhile, there have been conflicts between the two communities: Pakistani residents have sometimes objected to the Afghan presence in their communities. Islamabad defended the 2023 deportation campaign as a step to re-establish law and order, expressing the belief that unchecked refugee flows jeopardized public safety.[171] Human rights observers argue that the majority of Afghans want peace, but academic studies and police records show that this prolonged displacement has put the social fabric to the test.

2.2.8 Health and Medical Impacts

The hosting of Afghan refugees has placed a great deal of strain on Pakistan's health systems. Hospitals and clinics in areas that host refugees run far above capacity. As Afghan patients and students vie with Pakistani citizens for limited resources, UNHCR observes that "healthcare, education and other public services are often overburdened".[172] Owing to overcrowding and poor sanitation, disease outbreaks (such as measles, polio, and malaria) have occasionally occurred in refugee settlements. In fact, polio outbreaks that threatened to spread to Pakistan's population were linked to chronic under-immunization in refugee camps. According to one impact study, Afghans contributed to Pakistan's healthcare burden by bringing illnesses like malaria and

[170] Ibid.

[171] Ibid.

[172] Ibid.

poliomyelitis.[173] Malnutrition and infectious diseases are more common in refugee communities, according to health surveys, which raises hospitalization rates in nearby hospitals. Some development aid (World Bank IDA programs) has financed the expansion of health facilities in Khyber Pakhtunkhwa and Balochistan in order to cope.[174] However, the overall impact is evident: Pakistan's public health needs have become more expensive as a result of having to divert significant medical care and emergency response to refugee areas.

2.2.9 Educational Impacts

The Afghan presence has also caused obstacles for the education sector. While many Afghan children attend local schools or learning centers run by NGOs, hundreds of thousands of Afghan children do not attend formal schools in Pakistan. Afghans are enrolling alongside Pakistani children, causing overcrowding in Pakistani public schools, especially in border districts. According to UNHCR, dozens of new classrooms were constructed for refugees as part of collaborative programs; however, the influx of refugees has left "education ... frequently overburdened."[175] Increased student-teacher ratios and a lack of resources are observed by educators and administrators. Local demographics have been impacted by some Afghan families sending their kids to Pakistani universities and madrassas. To address this need, the RAHA program has specifically provided funding for school construction and repair, including the establishment of numerous new schools for both boys and girls.[176] However, a whole generation of Afghan youth in Pakistan have experienced interrupted or informal education, and Pakistani authorities have had to make up for this by providing more funding and instructional resources to districts affected by the refugee crisis.

[173] Ibid.

[174] Ibid.

[175] Ibid.

[176] Ibid.

2.3 Assessment and Measurement of Afghans Refugees' Impacts on Pakistan

Although it is difficult to fully quantify the impact of Afghan refugees on Pakistan, different approaches help to highlight the burden. The RAHA indicators offer one indicator on the humanitarian front: as previously mentioned, Pakistan has invested about $220 million in development projects in refugee-hosting regions since 2009 (with donors).[177] This amount, which has been applied to over 4,000 projects, illustrates the magnitude of the required investment. International organizations have also monitored population trends: Refugees International (2023) estimates that there are currently 2.2 million Afghans living in Pakistan who are not registered, in addition to the 1.3 million who are, according to Refugees.[178] The strain on services is gauged by these figures.

More detailed economic analyses have been attempted by scholars. For instance, according to a time-series analysis of Pakistan's labour market (1979–2022), Afghan refugees increase both formal and informal employment over the long term, but they also temporarily increase unemployment.[179] According to other econometric research, refugee inflows initially reduce GDP growth and compress wages, but they may eventually boost demand.[180] These studies isolate the refugee variable using common economic indicators, such as GDP growth, CPI, and unemployment rate. According to a 1994 study on public opinion in Pakistan, almost two-thirds of participants believed that Afghan refugees were an "economic burden" on the nation.[181] This information sheds light on the social side of

[177] Ibid.

[178] Devon, Cone and Sabiha Khan. eds., "They Left Us without Any Support': Afghans in Pakistan Waiting for Solutions." Refugees International, July 15, 2023 https://www.refugeesinternational.org/reports-briefs/theyleftuswithoutanysupportafghansinpakistanwaitingforsolutions/#:~:text=An%20estimated%C2%A0600%2C000%C2%A0Afghans%20have%20fled%20into,Afghan%20refugees%2C%20many%20of%20whom.

[179] Ibid.

[180] Ibid.

[181] Ibid.

the issue. Similarly, qualitative field research shows that refugee density is associated with a drop in local living standards (pasture usage, water availability).

A thorough measurement remains elusive in spite of these efforts. It is challenging to calculate a single cost because of the informal economy, unreported flows, and inconsistent aid. However, the convergence of approaches consistently reveals that Pakistan has been subjected to significant quantitative burdens as a result of the Afghan presence. The effects have been significant and long-lasting, whether expressed in terms of lost GDP, degraded forests, clogged school seats, or overburdened hospitals. Even the most empathetic analyses agree that the cost of refugees to Pakistan would not be overstated by a multibillion-dollar accounting. "The cost of caring for [Afghans] started to heavily burden Pakistan," as one analyst put it bluntly.[182]

2.4 Pakistan's Costs for Hosting Afghan Citizens

The costs to Pakistan have been substantial, both materially and financially. Even though the UN and other donors have provided a lot of aid, Pakistan has borne a large portion of the costs. Academic and governmental sources frequently describe the Afghan presence as a significant financial burden. For instance, public officials publicly stated in the late 1980s that Pakistan could no longer assist refugees due to its "deteriorating economy" and dwindling foreign funding.[183] According to studies and local media, during years of high influx, Pakistan spent hundreds of millions of dollars annually on services related to refugees, such as camps, education, and police. There have also been significant indirect costs: aid distribution strains provincial budgets, and security operations in tribal areas must be paid for by Pakistani taxpayers. Support for refugees "invited hostility" and was "costly economically," according to one long-term survey.[184] In other words, even the general public acknowledged a significant financial sacrifice.

[182] Ibid.

[183] Ibid.

[184] Ibid.

The international community has been urged by the UNHCR to recognize and compensate for this expense. "Pakistan is stuck in a tough spot – balancing the needs of its own people, dealing with a growing security challenge, and shouldering the financial impact of hosting refugees", as UNHCR Representative Philippa Candler noted in 2025.[185] Practically speaking, Pakistan's financial contributions consist of camp land, subsidized health and education for refugees, and registration administrative expenses. Additionally, Pakistan has provided funding for repatriation programs that demand continuous investment, like the Afghan Citizens Card and biometric registration system. Economists point out that these expenses mount up over time; for example, maintaining water and road systems in formerly isolated regions now populated by refugees necessitates additional funding.

My study goes beyond descriptive recounting by establishing Pakistan's refugee-related burdens within the framework of state responsibility. A State that commits an internationally wrongful act is required by Article 31 of the ILC's Articles on State Responsibility (ARSIWA, 2001) to provide full reparation for the harm caused, which is defined as including both material and moral damage. [186] This can be done in the form of restitution, compensation, or satisfaction, either separately or in combination. The principle that reparations must "as far as possible wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed" is crystallized in the PCIJ's Chorzów Factory decision, which further solidifies this foundation.[187] The refugee-hosting context does, however,

[185] Ibid.

[186] Remy, Jan Yves. "*The Application of the Articles on Responsibility of States for Internationally Wrongful Acts in the WTO Regime.*" EJIL, August 2, 2021. https://www.ejiltalk.org/the-applicationofthearticlesonresponsibilityofstatesforinternationallywrongfulactsinthewtoregime/?utm_source=googlescholar.

[187] G. Nelson, Timothy. "*A Factory in Chorzow: The Silesian Dispute That Continues to Influence International Law and Expropriation Damages Almost a Century Later* ." A Factory in Chorzow: The Silesian Dispute that Continues to Influence International Law and Expropriation Damages Almost a Century Later - Journal of Damages in International Arbitration - Vol. 1, No. 1 | ArbitrationLaw.com, April 1, 2014. https://arbitrationlaw.com/library/factory-chorzow-silesian-dispute-continues-influence-international-law-and-expropriation?utm_source=googlescholar.

reveal important limitations: no precedent currently equates mass displacement to an internationally wrongful act, nor does it provide a clear enforcement mechanism to compel reparations. This reveals a jurisprudential gap that this chapter critically highlights while laying the foundation for the legal argument developed in later chapters.

All aspects considered, it is evident that Pakistan has faced a heavy burden. According to analysts, the nation has welcomed Afghans "with open hearts" but is now running low on resources.[188] The refugee crisis has been "costly economically, and [posed] a threat to peace and order" for Pakistan, according to one researcher.[189] Pakistani officials now contend that these total expenses, which are paid for by host communities and national budgets, establish a moral and legal basis for requesting aid or compensation from other countries. Arguments (in later chapters) that Pakistan is, in essence, an injured state entitled to reparations for the harm caused by this decades-long refugee burden are framed by this reality.

2.5 Enforcement Limitations in International Reparations

The ICJ's jurisdictional restrictions provide an immediate obstacle to Pakistan's reparations claim, despite the fact that it is backed by ICJ jurisprudence and ARSIWA doctrine. Pakistan cannot oblige the Court to decide its claim unless Afghanistan or other involved states agree to its jurisdiction, as the Court functions on the basis of the parties' consent. Even when legal entitlement is established, the enforceability of reparations frameworks is severely limited by this fundamental procedural constraint (as stated by Suter in *The Successes and Limitations of International Law*, fourth section on ICJ limitations).[190]

[188] Ibid.

[189] Ibid.

[190] Suter, Keith. "*The Successes and Limitations of International Law and the International Court of Justice*." *Medicine, Conflict and Survival* 20, no. 4 (2004): 344–54. Accessed August 2, 2025. https://www.jstor.org/stable/27017609.

Additionally, standing is complicated even in cases where jurisdiction is established. Although displacement, particularly that which results from civil unrest or systemic neglect, does not neatly fit traditional categories of 'international wrongful acts,' state responsibility doctrine assumes that a state has been clearly harmed. Seldom have states presented themselves as such when hosting refugees. As a result, Pakistan's status as a claimant in the ICJ may be legally challenged, highlighting a jurisprudential gap that needs to be filled by innovative analogical reasoning based on precedents such as Trail Smelter and Corfu Channel.[191]

Ultimately, political will is still necessary for ICJ rulings to be followed. The Court does not have an enforcement arm, even after judgements are delivered. Non-compliance must be reported to the UN Security Council in accordance with Article 94(2) of the UN Charter, but the council only takes action "if it deems necessary," making compliance optional and susceptible to political vetoes. [192] Due to the unreliability of real-world enforcement, legal victories might not result in tangible reparations unless they are supported by robust institutional and political frameworks.

[191] Hathaway, Oona A., Maggie M. Mills, and Thomas M. Poston. "War Reparations: The Case for Countermeasures." *Stanford Law Review* 76, no. 5 (May 2024): 971–1070. https://review.law.stanford.edu/wp-content/uploads/sites/3/2024/05/Hathaway-et-al.-76-Stan.-L.-Rev.-971.pdf.

[192] Bryan, Kenza. "World Court Says Failure to Meet Climate Goals Could Lead to Damages." Financial Times, July 23, 2025. Accessed August 2, 2025. https://www.ft.com/content/8cfdeb7d-9b6a-4f86-990e-05f79370de08.

CHAPTER 03

PAKISTAN'S CLAIM TO REPARATIONS AND LEGAL OBLIGATIONS OF THE INTERNATIONAL COMMUNITY

Pakistan's long history of hosting Afghan citizens has led to a claim that it is owed reparations under international law for the harm and burdens it has borne. This chapter looks at the legal basis for Pakistan's claim for reparations and the duties that the rest of the world has to meet. It is based on the ideas of state responsibility that were addressed about in Chapter One and the facts about Afghans' displacement and its effects that were discussed about in Chapter Two. The primary assertion posited is that the substantial influx of Afghans into Pakistan, resulting from conflicts, instability, and persecution in Afghanistan, represents an injury to Pakistan, attributable to internationally wrongful acts (either of commission or omission) by the international community, particularly the source-States (those who created this mess in Afghanistan directly, their allies directly or indirectly, and other entities who supported these initiatives), thereby necessitating a duty to provide full reparations. It is also said that the whole international community has legal duties to make sure that Pakistan gets the reparations it deserves, because some of the norms involved are *erga omnes* and the refugee problem is a collective issue. This chapter examines Pakistan's position as an injured state (Section 3.4) and its legal entitlement to reparations (Section 3.5) within the context of state responsibility (Section 3.2) and the doctrine of international wrongful acts leading to displacement (Section 3.3). Subsequently, it looks at what the rest of the world ought to be doing to assist and ensure that reparative justice happen in this case (Section 3.6).

3.1. Pakistan's Claim for Reparations

Pakistan's claim for reparation centers on its contention that the millions of Afghan refugees who have lived on its soil for many years as a result of the unrest in Afghanistan have seriously harmed Pakistan and that full compensation is legally owed. It is a well-established principle in international law that a state is required to provide full reparations to the injured party whenever it commits an internationally wrongful act that

causes harm.[193] The responsible state must "wipe out all the consequences of the illegal act" and return the situation to what it would have been if the wrong has not been committed in the *Chorzów Factory* and ARSIWA.[194] Pakistan claims that the large and protracted influx of Afghan nationals, which can be linked to wrongdoing in Afghanistan, has injured it and that those responsible for this influx are therefore obligated by international law to make amends equal to the harm that was caused.

One of the world's longest-lasting refugee populations, primarily from Afghanistan, has been housed in Pakistan for more than 40 years. Millions of Afghans fled across the border into Pakistan after the Soviet invasion of their country in 1979, the civil wars that followed, the atrocities committed by the Taliban regime, and the insurgency that followed in 2001. About 1.4 million Afghan refugees were officially registered in Pakistan by 2021 (the number is nearly similar to what is living currently), and hundreds of thousands more were living there in various statuses.[195] In light of this legacy, Pakistani President *Arif Alvi* noted that his country "carried a huge burden in hosting Afghans for nearly four decades," which has "deeply impacted our economy and culture," including job market competition and strains on infrastructure and resources.[196] Chapter Two has described the effects of housing such a sizable refugee population: Significant socioeconomic costs have been incurred by Pakistan (such as the burdens of education, healthcare, housing, and employment); environmental degradation (caused by deforestation and excessive resource use in areas inhabited by refugees); demographic

[193] H., Gary. ed., "The Right to Compensation and Refugee Flows: A 'preventative Mechanism' in International Law?." International Journal of Refugee Law 10, no. 1 (1998): 97–117 https://doi.org/10.1093/ijrl/10.1.97.

[194] Ibid

[195] Hanne, Beirens and Le Coz., Camille. eds., "The International Community Must Develop a Well-Coordinated Protection Strategy for Afghan Refugees – Afghanistan." ReliefWeb (August 23, 2021) https://reliefweb.int/report/afghanistan/international-community-must-develop-well-coordinated-protection-strategy-afghan.

[196] Sarah, Zaman. ed., "Hosting Afghans a Huge Burden, Pakistani President Says." Voice of America (November 16, 2023) https://www.voanews.com/a/hosting-afghans-a-huge-burden-pakistani-president-says/7357939.html.

and social changes; and political and security issues (such as the spread of weapons and drugs after the Afghan wars and militancy spillover).[197] Although these numbers are up for debate, Pakistani officials have occasionally estimated the total economic cost in the hundreds of billions of dollars and have repeatedly emphasized how the refugee crisis has hampered Pakistan's progress and security prospects.

Pakistan's government has increasingly presented its acceptance of Afghan refugees as an act of international burden-bearing that calls for reciprocal support in light of these significant injuries. Legally speaking, Pakistan asserts that it is an injured state under international law and is therefore qualified to hold the state or states accountable for their actions that caused the refugee exodus. Pakistan's main argument is that all those States who created refugee's crisis in Afghanistan, primarily including the USSR and US with their allies (origin-States) have an obligation to compensate Pakistan for the harms caused by the mass exodus from Afghanistan, to the extent that it was caused by internationally wrongdoing (such as armed aggression, population persecution, or other violations). In other words, Pakistan aims to apply the general law of state responsibility to the refugee situation. This means that, just as a state that causes transboundary harm (like environmental damage or an armed attack) must reimburse affected states, a state (or the relevant responsible actors) that causes a large-scale refugee outflow must also reimburse the country of asylum for the harm sustained.[198] My thesis endorses the opinions of eminent academics and jurists. As early as 1939, Sir Robert Jennings made the case that a state commits an unlawful abuse of rights against its neighbor if its domestic policies force a large number of people to migrate to that country, thereby creating responsibility. According to Jennings, "domestic rights must be subject to the principle *sic utere tuo ut alienum non laedas*" (use your own [rights] so as not to harm others).[199] Furthermore, it is as blatant an abuse of rights as it is possible to imagine for a

[197] Ibid

[198] Ibid., 105.

[199] Basheska, Elena, and D. Kochenov,. eds., "*The Good Neighbourliness Principle in EU Law*", University of Groningen (Dissertation, 2014).

State to use these rights with the declared intent of burdening other States with undesirable segments of its population.[200] This doctrine is essentially put into practice by Pakistan's claim that the origin-States violated its duty to protect Pakistan by expelling or driving out sizable portions of its population, who subsequently became Pakistan's responsibility.

In particular, one of the biggest refugee crises of the late 20th century was brought on by the Soviet Union's invasion and war in Afghanistan in 1979, which is generally considered to have violated the U.N. Charter's ban on aggression. An aggressor state is accountable under general international law for any direct or indirect harm brought about by its wrongdoing, including the movement of refugees across international borders. By analogy, the Soviet Union (and its successor state, Russia), the US and its allies, and/or other parties whether States or other entities in support of these actions could be held accountable for the refugee burden imposed on Pakistan by the war they incited, just as Iraq was held accountable for "any direct loss, damage, and injury to foreign States" following the 1990–91 Gulf War for its invasion of Kuwait (a liability that included, among other things, Jordan's expenses of hosting fleeing individuals and other economic losses).[201] Therefore, Pakistan's demand for compensation as the original territorial state possibly cover any state whose internationally wrongdoing in or toward Afghanistan resulted in the mass displacement, including the Soviet Union or the US and their allies from the States or entities. This broad perspective is consistent with the idea that accountability for harm is proportionate to the role that was played in causing it, which may include the actions of foreign powers during Afghanistan's decades-long unrest.

It is imperative to recognize that Pakistan's pursuit of compensation for housing refugees is a first for the legal system. As of right now, no state has been able to

[200] Ibid., 46.

[201] D. D., Caron and Morris, Brian. eds., "The UN Compensation Commission: Practical Justice, Not Retribution." European Journal of International Law 13, no. 1 (2002): 183–99 https://doi.org/10.1093/ejil/13.1.183.

successfully file an international claim purely to recoup the expenses of providing asylum or refuge to citizens of another nation. Nonetheless, a lack of prior litigation does not necessarily indicate a lack of legal rights. Instead, as academics like *Luke T. Lee* and others have noted, it reflects practical and political obstacles in spite of sound legal reasoning.[202] In 1986, *Lee* argued in favor of acknowledging a "right to compensation" for asylum-granting nations, arguing that the responsibility for providing care for refugees "has fallen onto the shoulders" of asylum states and refugees themselves, while "overlooked are the responsibilities of the countries of origin" that caused the crisis.[203] In addition to being fair, he contended that compensating source nations could also have a preventative effect by discouraging them from persecuting or expelling their citizens. This line of thinking backs Pakistan's position and substantiates the normative assertion that Pakistan's situation should be resolved by international law.

Pakistan uses soft-law developments and corroborating views from international law scholarship to support its stance. Recognizing the need to codify principles governing compensation for refugee flows, the ILA, a reputable non-governmental organization of jurists, adopted the Cairo Declaration of Principles of International Law on Compensation to Refugees in 1992. The Cairo Declaration, which affirmed a "right to return home" or receive compensation in lieu of it, was among the first documents to suggest that states-of-origin should be held accountable for giving refugees "adequate compensation" for losses they have suffered. It even called for "equal compensation for nationals and aliens for unlawful expulsion".[204] The Declaration's premise upholds the general idea of source-state liability for mass expulsion or forced exodus, despite its emphasis on compensating the refugees rather than host states. It reflects a growing consensus (at least among academics) that forcing people into exile involves international responsibility and is not solely within domestic jurisdiction. Thus, Pakistan's demand for

[202] Ibid., 101.

[203] Ibid.

[204] Ibid., 102.

reparations can be placed within this changing doctrinal framework; it is an effort to transform the standard from scholarly proposals and soft law into a legally binding demand.

Pakistan's demand for compensation is based on the claim that, in accordance with international law, it is an injured state as a result of the large-scale migration of Afghan citizens brought on by wrongdoing in Afghanistan. Persuasive authorities in international law scholarship who have long considered refugee-generating behavior as an internationally cognizable wrong, as well as general principles of state responsibility (the obligation to provide full reparations for harm caused by a breach), support the claim. We go into great detail in the sections that follow, including the legal basis for claiming state responsibility in this situation (3.2), the definition of displacement as an international wrong committed by the source state (3.3), Pakistan's designation as a legally recognized injured State (3.4), and the extent of Pakistan's right to compensation (3.5). We also examine the corollary question of what responsibilities the entire international community may have to guarantee the realization of Pakistan's right (3.6). These sections seek to show that, despite being novel, Pakistan's reparations claim is firmly based in international law by referencing case law, doctrinal writings, and pertinent international practice.

3.2. Legal Framework for Invoking State Responsibility of the International Community

The general international law of state responsibility, the set of regulations that specify when a state is accountable for violating an international obligation and what happens as a result, is invoked in Pakistan's claim. According to the principles outlined (though not legally binding) in the ARSIWA, a state commits a "internationally wrongful act" when its actions or inactions are attributable to it and constitute a violation of an international duty that it owes[205] Therefore, two conditions must be met: (a) an international obligation must be broken, and (b) the state must be held accountable for the

[205] Pooja R., Dadhania. ed., "State Responsibility for Forced Migration." Boston College Law Review 64, no. 4 (2023): 745-800 https://bclawreview.bc.edu/articles/3071.

violation.[206] The responsible state faces legal repercussions if both requirements are met, primarily the duty to provide complete compensation for the harm inflicted.[207] In addition to claiming appropriate remedies (such as guarantees of non-repetition, reparations in various forms, and the cessation of the wrongdoing), the injured state or states also acquire corollary rights to invoke the liability of the responsible state.

Applying this framework to refugee flows presents difficult issues, such as which state has violated which duty and who is eligible to claim responsibility as an injured state. According to Pakistan, Afghanistan (the country from which the refugees have fled), the USSR, the US, and their allies, as well as the entities which supported these incidents (or may be termed as the international community), violated some international agreements, a claim that is discussed in Section 3.3. As a result, Pakistan is the state that has been harmed. Accordingly, Pakistan aims to claim accountability from the international community and demand compensation (explained in Sections 3.4 and 3.5). Finding the pertinent obligation that was violated and proving that it is owed to Pakistan under international law, or to a group of states that include Pakistan, or to the international community at large, in which Pakistan has standing, are therefore vital. In this context, two legal theories can be put forth: (a) Violation of a specific duty owed to Pakistan (either bilaterally or as a neighboring state): It could be argued that Afghanistan owed Pakistan either a specific duty to refrain from allowing its policies or territory to harm Pakistan's interests or territory, or a general duty of good neighborliness. The venerable principle *sic utere tuo ut alienum non laedas* (one must use one's own territory in such a way as not to harm that of others) provides support for such an obligation in customary international law.[208] This idea, which has historically been used in territorial and environmental contexts (for instance, in the *Trail Smelter* and *Corfu Channel*), can be expanded to include large-scale refugee outflows. In fact, the principle of *Trail Smelter*

[206] Ibid., 746.

[207] Ibid., 756.

[208] Ibid., 746.

established that a state cannot allow activities on its soil that seriously harm another state by holding Canada accountable for transboundary pollution that caused property damage in the US.[209] As with noxious fumes or armed bands crossing the border, it could be considered a violation of Pakistan's territorial integrity and tranquility if Afghanistan's actions and the role of the international community therein (such as widespread persecution or a failure to maintain internal peace) caused a flood of people and their burdens to spill into Pakistan. Therefore, Pakistan could portray the violation as the international community's obligation to protect Pakistan from predictable harm caused by large-scale refugee outflows, a duty that is arguably based on the general international law principles of good neighborliness and prevention of transboundary harm.[210] According to this theory, Pakistan is an injured state with a direct legal claim since the obligation is owed specifically to Pakistan (as well as to any other neighboring state that may be similarly impacted, like Iran).

(b) Breach of obligations owed *erga omnes* or to a group of states (with Pakistan particularly impacted): Pakistan may also contend that such wrongdoings breached universal or collective international obligations owed to the international community at large, such as fundamental human rights standards or prohibitions on crimes against humanity. *Erga omnes proper* obligations (that is owed to all states), such as the prohibition of genocide or other egregious violations of human rights, are frequently broken by mass persecution, ethnic cleansing, or other atrocities that result in refugees. In these situations, Pakistan may have the right to claim responsibility because of its unique injury or because it is a member of the international community that is concerned about the violation, even if the obligation is not owed to Pakistan specifically. In particular, if a state is "specially affected" by the breach or if the breach is of a nature that "radically alters the position" of all other states to which the obligation is owed, the ARSIWA expressly acknowledges in Article 48 that states other than the directly injured state may invoke responsibility for breaches of obligations owed to a group of states or erga

[209] Ibid., 745.

[210] Ibid.

omnes.[211] This was a new but significant legal development that "expanded the domain" of state responsibility beyond the purely bilateral model[212] One could argue that Afghanistan violated its commitments under international humanitarian law or human rights (such as the right to life, freedom from persecution, etc.) that affect all states in Pakistan's case by failing to protect its citizens, which resulted in the flight of refugees. Pakistan meets ARSIWA's requirements for claiming responsibility even when the obligation violated was owed to a larger collective since it was disproportionately affected by the refugee exodus.[213] According to this criterion, Pakistan's claim might be interpreted as representing the injured state and/or the injured people (the refugees) as well as the interest of the international community in maintaining basic standards. Notably, *Edith Brown Weiss* and other international jurists have noted that Article 48 of ARSIWA is a progressive development that permits non-injured (or indirectly injured) states to pursue remedies for flagrant violations of their international commitments to the community.[214] Since the widespread forced relocation of civilians implicates preemptive norms (for instance, if it is due to persecution on ethnic or religious grounds, it engages the prohibition of crimes against humanity and possibly genocide), Pakistan's invocation of responsibility fits this paradigm. Pakistan and all other states have a legal stake in stopping and fixing these violations; therefore, it has a stronger case to demand corrective actions, including reparations, because of its particular exposure to the repercussions.

Pakistan would need to cope up with jurisdiction and proof issues when claiming state responsibility. It would have to explicitly attribute the harm it endured to particular wrongdoings by recognizable state actors (such as the military intervention of another state or the policies of the Afghan government). The crucial element is *causation*: according to international law, the harm for which compensation is requested must have

[211] Ibid., 755.

[212] Ibid.

[213] Ibid.

[214] Ibid.

resulted from the wrongdoing. Numerous actors and factors contributed to the refugee flows because of the complexity of Afghanistan's conflict history. However, from a legal perspective, a state may be held accountable for harm if its wrongdoing was a direct cause of the exodus that caused harm to Pakistan. The causal chain leading to Pakistan's refugee crisis is clear in the case of the USSR and US invasions alongside their allies, which was recognized at the time as a direct result of the war and an internationally wronged act of aggression. One could cite egregious human rights abuses committed by Afghanistan's own governments (such as the *Taliban's* persecution of the *Hazara Shia* community in the 1990s or widespread violations of women's rights) that led to the exodus of many people; if such actions are determined to be in violation of international human rights obligations that Afghanistan is bound by, they also have a causal connection to Pakistan's situation.

Standing and the adjudication forum are additional components of the legal system. Being a case falling under the nature of strategic litigation, Pakistan would prefer to negotiate a settlement or submit a claim to an arbitral tribunal or international court in order to seek reparations. If responsible states agrees or if a relevant treaty compromissory clause is present, the ICJ may have jurisdiction. Though Pakistan's claim as a state for its own losses is simpler, it is theoretically possible for Pakistan to sponsor a claim on behalf of the refugees themselves for their losses (for example, by citing diplomatic protection or the doctrine of *parens patriae* for stateless persons). According to the ICJ's jurisprudence in the Reparations for Injuries advisory opinion (1949), organizations other than states, such as the UN, can legally demand compensation for harm done to their agents.[215] Similarly, a state can undoubtedly make a claim for harm it has suffered as a result of another state's wrongdoing. Furthermore, the ICJ highlighted in the Wall in Occupied Palestinian Territory advisory opinion (2004) and Namibia advisory opinion (1971) that all states have a legal interest in fulfilling *erga omnes* obligations and can act (individually or collectively) when those obligations are violated. The idea that Pakistan's support for reparations engages not only a local national interest

[215] Ibid., 746.

but also the international rule of law regarding accountability for serious wrongs (such as forced relocation) is supported by these precedents.

It is important to note that although the state responsibility in this situation is different from international refugee law, but it does intersect with it. The 1951 Refugee Convention and its 1967 Protocol regulate how refugees are treated (such as non-refoulement), but they notably do not require third states to share the burden or hold the country of origin of refugees accountable for creating refugee flows. Scholars have long recognized this silence in treaty law as a gap in the international protection regime.[216] Despite not being a signatory to the 1951 Convention, Pakistan has welcomed refugees on humanitarian grounds and has generally upheld the principle of non-refoulement. In order to balance the scales, Pakistan maintains that international law beyond the Refugee Convention – that is, general principles of responsibility and human rights – must be applied. That gap can be filled by the legal framework of state responsibility, which focuses on the cause of the harm (the wrongdoing that led to the creation of refugees) rather than just how refugees are treated after the fact. Traditional refugee law "does not hold states accountable for the forced migration they cause," as one commentator succinctly stated; therefore, it is necessary to "shift the discourse … towards a state accountability approach" using general international law.[217]

According to ARSIWA, a state owes the injured state full reparations as soon as its responsibility is established. As earlier discussed, it can take three forms: satisfaction (acknowledgment of wrongdoing, apologies, assurances of non-repetition), compensation (monetary payment for economically assessable damage), and restitution (restoring the situation to the status quo ante, as far as possible).[218] Restitution in Pakistan's context

[216] Vedika, Shah. ed., "Refugees' Right to Compensation under International Law." Society of International Law and Policy (August 31, 2017) https://silpnujs.wordpress.com/2017/08/31/refugees-right-to-compensation-under-international-law/.

[217] Pooja R., Dadhania. ed., "State Responsibility for Forced Migration." 746.

[218] Vedika, Shah. ed., "Refugees' Right to Compensation under International Law." 102.

would literally mean that the country would no longer be housing the refugees while overcoming the crisis and Pakistan would be restored to its original position from all perspectives of its injuries; in other words, Afghans would voluntarily return to a safe Afghanistan with guaranteed rights and protection, whereas the affected sectors of the host-State to be repaired in a way that it would have been, if there were no refugees exodus. Although Pakistan does hope that the refugees will eventually return home, this will depend on the situation in Afghanistan and cannot be accomplished unilaterally by the responsible state after the fact. Furthermore, the financial payment to cover Pakistan's material costs (such as public expenditures on refugees, environmental restoration, infrastructure wear and tear, etc.) and possibly moral damages for the strain on its society makes compensation the main form of reparation sought. Moreover, in order to gain political clout, Pakistan may also insist on formal acknowledgements from the international community (particularly those responsible for creating this challenge) of the burden Pakistan carried and an apology for creating this complex situation for nearly half century. Here, the famous *Chorzów Factory* rule that reparations must "wipe out all the consequences of the illegal act" would be translated into sizeable aid or compensation packages equal to the expenses and losses Pakistan suffered as a result of the refugee crisis.[219] Although it would be difficult for any tribunal to quantify such damages, there are methods for doing so (such as figuring out the costs of refugee assistance, the opportunity costs to Pakistan's economy, and even security costs related to conflict spillover). However, the further use post-receiving such costs by the host-State shall also be guaranteed within the sectors it is granted for.

Pakistan also uses supportive United Nations practice, which tacitly acknowledges state responsibility, when claiming it. United Nations. Resolutions passed by the General Assembly have reaffirmed the significance of tackling the underlying causes of refugee flows and the idea of international solidarity in distributing the burden of refugees. For instance, the "duty of States to refrain from actions that compel mass migrations" was mentioned in GA Resolution 36/148 (1981), despite the fact that

[219] Ibid.

political sensibilities frequently refrain from calling it an internationally wrongful act.[220] A UN Group of Governmental Experts on International Cooperation to Avert New Flows of Refugees conducted a thorough study on refugee crisis prevention in 1986. Although this group placed a strong emphasis on non-intervention, it made a suggestion that it might be against international responsibility to create circumstances that drive people to flee.[221] The idea that origin states should be held responsible gained more support when in reaction to conflicts, the UNSC began to portray large-scale displacement as a threat to peace (as was the case in the 1990s Balkan wars), which made enforcement actions possible. The aforementioned Gulf War example provided the strongest support for the idea that causing displacement entails liability: Security Council Resolution 687 (1991) held Iraq accountable to Kuwait as well as to third parties like Jordan for damages resulting from the refugee and expellee inflow.[222] As a tangible example of a state making reparations to other states for an act of aggression that caused refugees, the UNCC later granted financial compensation to a number of nations for expenses incurred as a result of Iraq's invasion.[223]

Similarly, a cautious but developing judicial openness to reparations in complex contexts is reflected in recent legal precedent. After confirming the specific damages related to displacement, the International Court of Justice (ICJ) in DRC v. Uganda (2022) not only upheld Uganda's accountability but also granted significant financial

[220] Ibid., 102.

[221] Ibid.

[222] Ibid., 186.

[223] United Nations, "*Follow-up Programme for Environmental Awards Compensation Commission*", S/AC.26/Dec.258(2005), Decision Taken on December 8th 2005 https://uncc.un.org/en/what-we-did/follow-programme-environmental-awards#:~:text=Approximately%20US%244,the%20State%20of%20Kuwait.

compensation. [224]A further indication of a move towards rigorous evidentiary appraisal was the Court's appointment of expert panels. [225]Even though there was an armed conflict rather than a refugee crisis, Pakistan's situation can directly benefit from procedural analogies like determining causality, estimating economic harm, and providing compensation. These cases demonstrate that even in lengthy, complex situations outside of traditional conflict frameworks, there is now a jurisprudential baseline for claiming the legitimacy of reparations claims, even though courts are still slow and evidence-intensive.

Precisely, general international law provides a solid foundation for Pakistan's legal framework for claiming state responsibility. Pakistan must prove that (1) origin States committed an internationally wrongful act and (2) that Pakistan suffered harm as a result of the large-scale refugee inflow and related consequences. If these conditions are met, the responsible state is required by international law – which is reflected in ARSIWA and case law – to provide Pakistan with complete reparations.[226] Pakistan may claim this duty as a state that has been directly harmed or, in the event that community obligations have been broken, as a state that has been particularly impacted by a breach of *erga omnes norms*.[227] The main focus of first element will be examined in the following section: whether, in accordance with the relevant standards of international law, the displacement of Afghans can be considered an internationally wrongful act committed by the origin-States.

[224] International Court of Justice. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Case No. 116.* International Court of Justice, accessed August 28, 2025. https://www.icj-cij.org/case/116.

[225] Murphy, Sean D., and Yuri Parkhomenko. "*Now You See Them, Now You Don't: International Court-Appointed Experts, Wartime Reparations, and the DRC v. Uganda Case."* GW Law Faculty Publications & Other Works. Washington, D.C.: George Washington University Law School, 2020. Accessed August 2, 2025. https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2910&context=faculty_publications.

[226] Ibid., 746.

[227] Ibid., 755.

3.3. Displacement as an International Wrongful Act of the origin-States

Establishing that the origin-States violated international law is a crucial step in Pakistan's case. In the past, persecution or unrest that forced people to flee was frequently seen as an internal matter of a sovereign; while it was tragic from a humanitarian standpoint, it was outside the purview of international law unless it escalated into aggression or genocide. Contemporary international law, however, is beginning to acknowledge that the forced relocation of civilian populations, whether through direct action or the creation of intolerable conditions, can be considered an internationally wrongful act. The legal nature of a state's actions that result in refugees is examined in this section, which demonstrates how such actions may contravene several international commitments, including the obligation to protect the fundamental human rights of one's own people, the ban on mass expulsion, and the no-harm principle with regard to neighboring states. The ARSIWA criteria for an internationally wrongful act attributable to the state would be met if Afghanistan and the origin-States (through its governments or de facto authorities) engaged in such behavior.

Throughout its turbulent history, Afghanistan has seen periods of extreme violence and repression against segments of its own population. These include the scorched-earth tactics of the Soviet-backed regime in the 1980s, ethnic massacres during the civil war in the 1990s, and the *Taliban's* harsh denial of fundamental rights, particularly for women and minorities. Civilian flight was frequently the direct result of these actions. Such behavior may violate a number of international commitments. Certain human rights standards are enforceable as customary law despite the fact that Afghanistan may not have ratified all human rights treaties, particularly under previous regimes membership (which carries human rights obligations based on the Charter). For instance, the ICCPR, to which Afghanistan was a party prior to 2021, includes rights to life, liberty, security, and freedom from discrimination, all of which are violated by systematic racial, ethnic, or religious persecution. The right to stay in one's country and live in peace is essentially denied when circumstances are created that effectively force people to flee their own country out of fear for their lives or their freedom. According to Article 12(4) of the ICCPR, "no one shall be arbitrarily deprived of the right to enter his own country," meaning that a state cannot forcibly expel or persecute its citizens or

forbid them from returning.[228] Similar rights to freedom of movement, freedom of residence within one's nation, and freedom to return home are asserted in Articles 13 and 14 of the UDH. One could argue that a state violates these rights when its actions, like violent repression, force people to flee in large numbers.

More dramatically, the source state has violated the preemptive standards of international law if the displacement is brought about by crimes against humanity (such as persecution, forced population transfers, or deportations) or genocide. The Rome Statute of the ICC (Article 7(1)(d)) specifically lists deportation or forcible population transfer as a crime against humanity. This is defined as the forcible removal of individuals in question by expulsion or coercion from the area in which they are lawfully present, without justification allowed by international law. Notably, this crime can be committed not only by physical transport but also by causing people to flee through coercion or fear. The *Taliban* regime and other Afghan authorities violate international law and face state responsibility if they committed actions that effectively resulted in the forcible displacement of civilians, such as the reported atrocities against Hazaras in the late 1990s, which included mass killings and intimidation that forced tens of thousands to flee. Afghanistan is a party to the Genocide Convention, which requires states to prevent and punish genocide. If acts of genocide (such as the intent to exterminate an ethnic group, which may involve expulsion) took place on Afghan territory, Afghanistan's inaction or complicity would violate the obligation *erga omnes*. In the 2007 Bosnian Genocide case, the ICJ held Serbia accountable for its failure to stop genocide, emphasizing that states are accountable for both their actions and inactions when genocide occurs. Afghanistan may therefore have violated its obligation to prevent atrocities if it failed to shield its citizens from widespread violence that drove them into exile, particularly when the state is the one committing or inciting the atrocities.

[228] Luke T., Lee. ed., "The Right to Compensation: Refugees and Countries of Asylum." Cambridge Core (2017) & American Journal of International Law 80, no 3 (1986): 532-567 https://www.cambridge.org/core/journals/american-journal-of-international-law/article/abs/right-to-compensation-refugees-and-countries-of-asylum/28FD7329F347918411783FA7BCCD6372.

International law has long acknowledged that a state cannot violate its rights in a way that unjustly harms other states or people, even in the absence of serious crimes like genocide. As previously mentioned, in 1939, Sir Robert Jennings described the deliberate expulsion of a population as a clear violation of a state's sovereign rights.[229] This is consistent with the theory of *abus de droit*, which maintains that activities that are officially within a state's domestic purview (such as population control) cannot be carried out in a manner that infringes upon the rights of others. This was alluded to by the League of Nations in its handling of refugee crises during the interwar years, and the expulsion of populations was widely denounced following World War II (e.g., the expulsion of ethnic Germans from Eastern Europe, although politically tolerated, was seen as exceptional and required special agreements). Mass expulsion, particularly of non-nationals, is expressly forbidden by contemporary law (for instance, Article 12 of the African Charter on Human and Peoples' Rights and other human rights instruments prohibit mass expulsion of non-nationals). The situation is more complicated for citizens: states typically have the authority to allow or prohibit emigration, but they do not have the authority to arbitrarily deprive citizens of their citizenship or to compel them to leave and become the responsibility of another person. The ILC made an implicit distinction between illegal coercive mass outflows and legal individual departures in its 2014 Draft Articles on the Expulsion of Aliens. The commentary recognizes that expelling groups of people in a way that creates a humanitarian crisis is against fundamental principles, even though those Draft Articles primarily address aliens. One could argue that some regimes in Afghanistan purposefully drove out undesirable groups and political opponents. The "deliberate creation of conditions" that force people to leave, like terror campaigns or deprivation of livelihoods, can be legally equivalent to direct expulsion even if it is not carried out by official decree.[230] Experts acknowledged this concept of "indirect coercion" explicitly: according to a 1983 report on mass expulsion by the International Institute of Humanitarian Law, a state cannot avoid accountability by claiming that

[229] Ibid., 546.

[230] Ibid.

individuals left "voluntarily" if, in reality, the state purposefully made their lives intolerable.[231] According to the report, indirect coercion is when circumstances are created that so severely infringe upon fundamental rights that individuals are forced to flee their country of origin. Such behavior is unquestionably wrong on an international level because it infringes on the rights of those individuals as well as the rights of the neighboring states that are required to take in those individuals, as Jennings would emphasize.

In fact, some have compared the situation of push factors created by a state to an act of aggression. Malaysian officials famously characterized the Vietnamese boat people's exodus as a "weapon of war" by Vietnam during the 1980s Indochinese refugee crisis.[232] Even though that statement was political, it highlights the idea that intentional state policy can lead to large refugee flows, which is equivalent to an assault on the stability of receiving states. This idea was noted by the UNGA in resolutions pertaining to "human rights and mass exoduses"; eventually, GA Resolution 41/70 (1986) called for international cooperation to lessen the burden on asylum countries and stressed the need to address human rights violations that result in mass exoduses.[233] Such resolutions suggest that causing a mass exodus is a wrongdoing that requires redress (at least politically), even though they are worded cautiously in terms of cooperation and root causes. They only refrain from outright denunciation because of the principle of non-intervention, which was acknowledged by the Group of Experts in 1986, which bemoaned the diplomatic sensitivity of attributing refugee flows to wrongdoing.[234] However, the direction of international law is unmistakable: heinous acts that externalize a humanitarian crisis cannot be justified by sovereignty.

[231] Ibid.

[232] Ibid., 550.

[233] Ibid., 552.

[234] Ibid., 557.

The displacement must be attributable to the state in order for Afghanistan to be held accountable; this means that it must have been caused by state agencies or by individuals whose actions are legally attributable to the state. The activities of non-state armed groups (such as Taliban insurgents or Mujahideen factions) or general chaos frequently cause refugee flows. Nonetheless, a state may be held accountable under the law of state responsibility for both its direct actions and its failure to stop specific damaging acts committed by non-state actors on its soil. Afghanistan is responsible if the *Taliban's* 1990s persecution of civilians is regarded as an act of the country's then-current de facto government. One could argue that successive Afghan governments, including the Islamic Republic that followed in 2001, inherited a responsibility to remedy and were required to try to resolve the situations that created refugees. However, attribution becomes murkier if the displacement occurred during times of civil war (such as the late 1980s or early 1990s), when no effective government controlled all territory. In any event, even if governments change, Afghanistan's state (as a legal entity) stays the same according to the continuity of state principle.[235] Therefore, it is theoretically possible for the state under a new regime to inherit the responsibilities incurred by the previous one. If Pakistan's claim (against the current *Taliban*-led Afghanistan for wrongs largely committed by earlier regimes) were to be pursued now, this would be crucial. Even after a change of government, international law permits claims against states. For instance, claims against Yugoslavia and Iraq persisted following transitions and Saddam's downfall, respectively. Therefore, regardless of regime change, Afghanistan as a state can be held accountable for internationally wrongdoing that results in refugee flows, even though the current government may politically dispute responsibility for the actions of their predecessors.

As mentioned above, one legal description is that a large-scale refugee flow is a breach of the receiving state's territorial integrity. States are entitled to manage their borders and restrict foreigners' access. A neighboring state has effectively jeopardized the receiving state's border control and territorial integrity when its actions unleash a

[235] Ibid., 539.

human tide that is difficult for a state to control without going against humanitarian norms. This was the main idea of the comparison that jurist *T. Alexander Aleinikoff* and others made. According to *Alexander Aleinikoff* and others, releasing refugees across a border is illegal, just like releasing pollutants (although the latter are victims themselves).[236] While relying on *Trial Smelter* principle, one could argue an analogous breach if we consider the refugee flow to be one of the "harmful effects" coming from Afghanistan. It is true that it can seem insulting to compare refugees – who are human beings with rights – to "noxious fumes".[237] The more accurate perspective is that the state's actions that have a cross-border impact are being compared to pollutants rather than individuals. The core problem, according to one commentator, is "the responsibility which derives from the fact of control over territory"; a state is accountable for what occurs on its territory when it causes harm across borders.[238] The responsibility of that state is thus implicated in Afghanistan's inability to control violence and persecution within its borders, which led to the influx of millions of refugees into Pakistan.

Legal scholars like *Rainer Hofmann* specifically backed up this analogy in 1985 when he stated that it is "beyond doubt" that states are required by international law to prevent activities within their borders from harming other states, *per sic utere tuo*.[239] The question that remained was whether a legally binding standard that forbade "refugee-generating policies" could be derived from that principle.[240] Hofmann and others in the mid-1980s held the opinion that a customary rule could be formed by the accumulation of state practice and *opinio juris*, even though no specific treaty imposed such a norm. The

[236] Ibid., 550. .

[237] Rudolf, Hofmann. "*Refugee-Generating Policies and the Law of State Responsibility.*" *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 45, no. 4 (1985): 694.

[238] Ibid., 707.

[239] Ibid., 708.

[240] Ibid., 707. .

case that intentional displacement is an internationally wrong act is reinforced by resolutions, scholarly discussions, and incidents such as the *Kosovo* intervention, in which NATO tacitly viewed *Serbia's* mass expulsion of *Kosovars* as a violation of international peace and security. Even the ICTY reaffirmed that it is wrong to cause refugee flows by prosecuting Yugoslav officials for deportation as a crime (for example, in the *Krstić* and *Stakić* cases). The state of Afghanistan can also be held accountable for its policies of forced displacement under the doctrine of state responsibility, even though those were individual criminal trials.

To put it into concrete terms, let's list particular wrongdoings committed by Afghanistan that led to refugee flows to Pakistan at various times: The DRA regime used harsh counterinsurgency tactics from 1979 to 1989 (Soviet occupation and Afghan Civil War), including scorched earth campaigns, village destruction, and targeted persecution of tribes thought to be providing support to the Mujahideen. These acts, which were primarily carried out by or with assistance from the USSR, violated human rights and international humanitarian law (Common Article 3 of the Geneva Conventions, etc.). By 1988, about 3 million refugees had fled to Pakistan as a result of war crimes and persecution committed by the Afghan government. Furthermore, inviting Soviet military intervention (if regarded as a puppet government's action) may have been illegal (albeit legally complex), but at the very least, the invasion's consequences involved Afghanistan's obligation to compensate its neighbors, even though the USSR was the main aggressor. One may remember the Iran Hostages case (ICJ, 1980), in which Iran was found accountable for failing to stop and then supporting the militant takeover of the U.S. embassy. In a similar vein, the Afghan government at the time was held accountable for failing to stop the large-scale refugee exodus and instead encouraging the policies that led to it.

Atrocities and indiscriminate shelling caused by faction-based fighting in Kabul and other places resulted in new waves of refugees. For a portion of this time, there was a recognized government (Rabbani/Massoud), but warlords were mostly responsible for the violence. Nonetheless, de facto control areas suggest those authorities had duties under international law. It might be difficult to assign blame given the collapse of the

Afghan state, but Pakistan could counter that due to internal conflict, Afghanistan was unable to fulfill its international duty to protect its citizens from harm, which affected Pakistan. As the de facto government ruling the majority of Afghanistan from 1996 to 2001, the Taliban persecuted many people, particularly Hazaras and women who disobeyed their orders. For instance, the Taliban killed 8,000 Hazara civilians in Mazar-i-Sharif in 1998, which prompted the Hazaras to flee to Pakistan. Basic humanitarian standards and human rights were breached by the Taliban's actions (again, common Article 3, bans on attacking civilians, etc.). The Afghan state is responsible for these; even if the Taliban government is not officially recognized, their authority renders the actions accountable. As a result, Afghanistan violated its international commitments, which in turn led to an increase in the number of refugees in Pakistan.

Between 2001 and 2021 (Islamic Republic and insurgency), the Afghan government was acknowledged globally and vowed to respect human rights (it was a signatory to numerous treaties). The Taliban insurgency's acts (terror attacks, threats) led to displacement even though the government itself did not have a policy of expelling citizens—quite the contrary, it promoted the repatriation of refugees. The tricky part is that while insurgents are not the state, it would be hard to blame the Republic for people escaping the Taliban's terror if Pakistan's claim is against the state of Afghanistan. As security deteriorated, many refugees actually fled again after returning in the early years. Although Pakistan may have other complaints about cross-border militant sanctuaries, etc., which are outside the purview of this article, this period might not significantly strengthen Pakistan's case against Afghanistan. The Taliban, a non-state actor until 2021, may be primarily responsible for the wrongdoings that have resulted in displacement in this area. The idea that a state must take reasonable steps to stop private individuals from using its territory to harm others may implicate Afghanistan's state responsibility; however, it may be unrealistic to expect the ineffective Afghan government to stop Taliban terror.

After 2021, when the Taliban regained control, there were new refugee flows. In 2021–2023, approximately 700,000 Afghans fled to Pakistan due to fears of persecution,

particularly among women professionals, activists, former officials, and minorities.[241] A coercive atmosphere has been established by the Taliban's harsh regulations (such as prohibiting secondary education for girls and placing severe restrictions on women's mobility and employment), as well as reports of extrajudicial executions of certain former officials. Numerous human rights obligations, such as the right to education and the prohibition against discrimination, are violated by these policies. These acts could be described as perpetuating the pattern of wrongdoing that results in displacement if they are perceived as targeted at or having the effect of driving out particular populations. According to President Alvi's statements in 2023, Pakistan believes the Taliban's return is connected to a fresh inflow and an increase in terrorism that affects Pakistan.[242] Therefore, the cycle of wrongdoing (Taliban harboring militants who attack Pakistan, perhaps another breach, but again beyond scope) and displacement that follows goes on.

Accordingly, origin-state committed international wrongdoing by: (1) engaging in violent and persecutory behavior against general public, which violated humanitarian and human rights standards; and (2) abusing its sovereign rights and obligations in a way that caused harm to Pakistan by causing a mass exodus of refugees, which violated the no-harm principle and good-neighborly duties. One or both of those breach categories can be used to map each stage of the Afghan refugee crisis. It may be argued that not all refugee flows can be attributed to the source state's wrongdoing. Of course, not all refugee situations are the result of intentional state policy; some are brought on by natural disasters or unintentional widespread violence. Liability for inadvertent or purely internal failures is not imposed by international law (apart from the due diligence to protect human rights). But proving egregious misconduct is crucial to Pakistan's case. Generally speaking, the state responsibility principle calls for either deliberate or careless violation of an obligation. Instances such as deliberate persecution or careless military actions in Afghanistan show intent or at the very least egregious negligence with regard to the duty to care for civilians. Furthermore, Afghanistan's decades-long failure to assist

[241] Sarah Zaman. "Hosting Afghans a Huge Burden, Pakistani President Says.".

[242] Ibid.

with repatriation or to establish safe return conditions may be considered a persistent wrongful omission, not only from the origin-State, but also from the Afghan is itself. It is a customary law that the state bears responsibility for the duration of an unlawful act if it persists (for example, by continuing to wrongfully prevent refugees from returning or by continuing a policy of persecution).[243]

When a state violates its international commitments (human rights, humanitarian law, no-harm to neighbors), it may be guilty of an internationally wrongful act by displacing people. The history of Afghanistan offers a solid factual foundation for the claim that the state, through a number of regimes, broke these commitments, which in turn caused the refugee crisis in Pakistan. This meets the first requirement for Pakistan to seek compensation, which is that there must have been a wrongdoing committed by the state of origin. Expelling one's own citizens or establishing circumstances that force their departure is not an exercise of domestic sovereignty free from repercussions; rather, it engages in international responsibility, as the ILA's Cairo Declaration (1992) confirmed.[244] Pakistan's status as an injured state will be covered in the following section, which will essentially complete the connection between Afghanistan's wrongdoing and Pakistan's right to seek redress.

3.4. Pakistan's Position as an Injured State

An injured State is one that has the legal right to claim another's responsibility under the law of state responsibility because it has been disproportionately impacted by the latter's wrongdoing. My stance here will assess Pakistan's eligibility as an injured state after establishing the wrongdoing (mass displacement brought on by Afghanistan's violations) in the previous section. Pakistan essentially contends that it has been directly harmed by Afghanistan's wrongdoing, meeting both the ARSIWA criteria for an injured state and customary understanding. The economic, social, environmental, and security

[243] ARSIWA, Art. 14.

[244] Sarah Zaman. "Hosting Afghans a Huge Burden, Pakistani President Says."

aspects of these injuries, which are well-documented in Chapter Two, highlight how the refugee crisis has materially impacted Pakistan's national well-being.

Article 42 of ARSIWA states that a state is deemed injured if the obligation was owed to it specifically, or if the obligation was owed to a group of states or the international community and (a) specially affects that State; or (b) is of such a character as to radically change the position of all the other States to which the obligation is owed in terms of performance of the obligation. Both arguments can be made in the case of Pakistan. First, if we acknowledge that Afghanistan owed Pakistan a duty to prevent harm through refugee flows (a sort of inter partes obligation between neighbors), then it is obvious that Pakistan is directly impacted by the violation of that duty, in fact, the main party affected. Second, Pakistan is clearly "specially affected" by Afghanistan's actions, even if the breached obligation is framed in more general terms (*erga omnes* or community interest); this is because Pakistan has hosted the largest share of Afghan refugees since 1979 (at great expense).[245] Except for Iran, to a somewhat lesser extent, no other nation saw the influx on the same scale as Pakistan. Therefore, Pakistan is a state that has been harmed and has the right to seek compensation.

It is important to highlight the type and severity of Pakistan's injury. Between 3 and 4 million Afghan refugees have resided in Pakistan over the course of 40 years, with the number reaching its highest points in the late 1980s and early 1990s. Although many Afghans have returned home during times of calm (roughly 3 million did so in the early 2000s), recent upheavals have led to recurrent influxes, and Pakistan currently houses well over 1.4 million registered refugees and possibly an equal number of undocumented Afghans, according to Voice of America (Urdu).[246]This ongoing presence has had a variety of effects. In order to assist refugee populations, Pakistan's government has had to spend a significant amount of money on public health and education services, camp land, food subsidies, and indirect costs like damaged infrastructure and lower wages in

[245] Ibid.

[246] Ibid.

local labor markets. Although there have been complicated economic repercussions from the presence of refugees, many of whom are employed in the unorganized sector, Pakistani officials have consistently maintained that the overall impact has been one of economic burden.[247] Even though refugee-taken jobs are frequently low-paying, they represent missed opportunities for Pakistani citizens, which can lead to unemployment or lower wages in some industries. According to a 2021 Pakistani policy document, the direct and indirect costs of housing an additional 700,000 Afghan refugees would exceed $0.5 billion annually, or roughly 0.2% of GDP.[248] The total expenses over many years can easily amount to billions of dollars. Applying ARSIWA's Article 36, these monetary losses and extra-budgetary strains are tangible harms that are, in theory, compensable under international law as financially assessable damage. In contrast, other nations have calculated these expenses. For example, Jordan submitted claims to the UNCC for hundreds of millions of dollars for housing people during the Gulf War. Pakistan is also able to list the financial costs.

Communities in Pakistan are under a great deal of social strain as a result of the unexpected arrival of millions of people, particularly in the provinces of Khyber Pakhtunkhwa and Balochistan, where the majority of refugees have settled. Refugees and host communities occasionally experienced social tension as a result of the strain on local resources (housing, schools, and water). The demographic makeup of the population in places like Quetta and Peshawar changed, occasionally leading to ethnic or sectarian tensions (some Afghan refugees belong to different ethnic groups or sects than the local population, which has occasionally been a flashpoint). Despite being humanitarian in nature, these effects are considered injuries because they disturb society. These are probably included in the list of injuries incurred upon it in Pakistan's claim.

[247] Ibid.

[248] News, MG. "Hosting New Afghan Refugees to Cost Pakistan More than $0.5bn Every Year: IMF." Mettis Global Link - Pakistan Economy News, Forex & Finance Updates (October 19, 2021) https://mettisglobal.news/hosting-new-afghan-refugees-to-cost-pakistan-more-than-0-5bn-every-year-imf/?amp=1#:~:text=,large%20influx%20could%20Burden.

As mentioned in Chapter Two, in some areas of Pakistan, refugee camps and settlements caused overgrazing, deforestation (trees cut down for firewood), and stress on water supplies. For instance, during the 1980s and 1990s, the enormous *Jalozai* camp grew to hundreds of thousands of people, causing problems with sanitation and groundwater depletion. Similar to traditional transboundary environmental harm, this type of environmental degradation took place inside Pakistan as a result of the influx. The UNCC granted compensation for environmental damage following the Gulf War, demonstrating that international tribunals have acknowledged environmental harm as a compensable injury.[249] Since the refugees wouldn't have been there to exert such pressure but for Afghanistan's wrongdoings, the environmental damage in Pakistan can therefore be considered a component of the harm caused by those wrongdoings.

The presence of Afghan refugees has presented Pakistan with security issues. As the *anti-Soviet jihad* was fueled by Pakistan, the 1980s refugee crisis was accompanied by an influx of weapons (the so-called *Kalashnikov* culture) and drugs.[250] Militants occasionally used refugee camps as resting or recruiting locations. Over time, Pakistan's internal security problems were exacerbated by militant elements hiding among refugee populations (for example, some Afghan fugitives or later the Pakistani *Taliban* found refuge in these communities). As an indirect result of welcoming Afghans, the Pakistani government has frequently pointed to a rise in crime and terrorism. President Alvi reaffirmed this claim, associating the refugee population with a "dramatic rise in terror attacks" in recent years.[251] Although there are many reasons for these security problems, Pakistan can legitimately contend that one of the harms of Afghanistan's unrest spreading

[249] Cymie, Payne. ed., "UN Commission Awards Compensation for Environmental and Public Health Damage from 1990-91 Gulf War", ASIL 9, no. 25 (2005): Insights https://www.asil.org/insights/volume/9/issue/25/un-commission-awards-compensation-environmental-and-public-health-damage#:~:text=The%20United%20Nations%20Compensation%20Commission,environmental%20and%20public%20health%20damage.

[250] Ibid.

[251] Ibid.

is the need to police and combat these threats, including the financial expenses of counterterrorism and law enforcement in refugee-heavy areas. Legally speaking, this is more of a consequential injury than a direct one, but it is still part of the chain of events that led to the original wrongdoing.

In addition to material expenses, Pakistan may claim that its sovereign rights have been violated. Each state has the sovereign right to control who is allowed to enter and remain on its soil. Humanitarian necessity overrode Pakistan's ability to control its borders in the case of the Afghan influx; in other words, Pakistan was essentially forced to admit these masses (both morally and in accordance with international norms such as non-refoulement). One could argue that this violates Pakistan's sovereign right to sole authority over its territory. Although Pakistan willingly kept its borders open for humanitarian reasons, the circumstance was forced upon it by Afghanistan's internal chaos. The loss of control and the ensuing need to manage a sizable refugee population for decades represent a form of harm to Pakistan's sovereign interests. This harm is sometimes referred to as damage to sovereignty in the discourse on state responsibility, much like the ICJ described harm to the UN's functional sovereignty in reparations (1949) when its agent was killed.

Pakistan makes a strong case for being an injured state in light of these aspects of injury. It has not only been impacted by Afghanistan's shortcomings, but it has also possibly suffered disproportionately from them, which satisfies the ARSIWA concept of special affectation. Pakistan's role within the community of states can, in fact, be compared to that of a frontline state that assumed a burden that ought to be shared by all. This is in line with the burden-sharing principle in refugee cases, which is acknowledged as equitable even though it is not required by law. It is possible to interpret Pakistan's insistence that it is entitled to reparations as an appeal to convert that equitable principle into a formal claim for harm. Moreover, Pakistan satisfies procedural requirements as well, having a clear interest and not having contributed to the wrongdoing in a way that would bar its claim (in legal terms, Pakistan is not precluded by complicity or consent). Pakistan never waived its right to seek redress or caused Afghans to flee (the causes were in Afghanistan); rather, it repeatedly indicated in international fora that it expected the

world to help find solutions and shoulder the burden. For instance, Pakistan's representatives stressed that they had done more than their fair share and called for greater international responsibility-sharing at the 40th anniversary conference on Afghan refugees in 2020.[252] Such declarations protect Pakistan's rights; they most definitely do not imply that it will continue to pay the expenses.

Whether Pakistan could be regarded as an injured state in relation to Afghanistan as well as other states that may have contributed to the wrong situation is an intriguing legal nuance. As a neighboring state inundated with refugees (a recognized war damage – for example, Iran and Turkey were considered injured by Iraq's aggression in 1990 because of refugee flows and received compensation), Pakistan was obviously harmed by the Soviet breach (aggression), if one were to argue about the role of the Soviet Union. Similarly, Pakistan could claim harm from aspects of the way that war was fought (e.g., collateral displacement by military operations) if one believes that the 2001 U.S.-led invasion and the conflict that followed contributed to displacement (even though the initial invasion was arguably legal and many refugees returned, the later insurgency did cause new refugees). However, these raise issues of comparative responsibility and multiple responsible states, which are outside the purview of this article but are worth mentioning because Pakistan may have claims on several fronts due to its injured status.

According to my analysis, Pakistan is the model injured state in relation to Afghanistan because it has suffered "injury resulting from" Afghanistan's internationally wrongful acts (to use the language of ARSIWA Article 31.[253] Any harm, material or moral, caused by the wrongdoing is considered an injury under Article 31. Pakistan has suffered both material (financial losses, depletion of resources, deterioration of infrastructure) and moral (sovereign insult, social stress) harm. Pakistan is therefore entitled to full compensation for all of those injuries from the state that caused them.

[252] UJVARI, Balazs. "Afghan Refugees: €21 Million in Humanitarian Aid for Host Communities and Vulnerable Populations in Pakistan and Iran." European Commission - European Commission (February 2020) https://ec.europa.eu/commission/presscorner/detail/en/ip20293.

[253] Ibid.

Furthermore, the fact that Pakistan's injuries were predictable and even anticipated by the international community supports its injured status. UN reports recognized Pakistan's heavy burden for decades. This predictability relates to causality: Afghanistan (and other actors who intervened therein) knew or should have known that their actions (such as waging war or persecuting civilians) would injure Pakistan by driving people into the country. According to international law (the *Naulilaa* arbitration principle of proximate causation, etc.), harm to a third state is compensable if it is a predictable result of an unlawful act. Pakistan has ample evidence of the effects of the refugee presence (studies, UNHCR statistics, etc.), which satisfies the Trail Smelter ruling's requirement that damage be proven and established. Joint reports from the World Bank and UNHCR on the effects of Afghan refugees in Pakistan have actually been released; they quantify the needs of host communities and may be used as proof of harm.

It's important to address a counterargument, which holds that Pakistan gained advantages from taking in refugees, such as low-cost labor and foreign aid. Although Pakistan received some aid and refugees can make economic contributions, these factors do not offset the overall harm. International aid, such as the approximately $1 billion Pakistan received annually from a group of donors in the 1980s to aid refugees, only partially offset costs and frequently stopped when international attention faded. Furthermore, any small advantages (such as skilled Afghans fostering business relationships or cultural exchanges) are incidental and do not negate the burdens; this is comparable to the argument that pollution may fertilize certain plants but still harms the forest as a whole, which is legally unrelated to the obligation to make amends. Declaring that "nobody has given any cooperation" comparable to the task, President Alvi categorically rejected the notion that promises of cooperation had come to pass. Pakistan's injury is still genuine and unpaid as a result.[254]

In multilateral settings, Pakistan continually defended its injured-state status, going beyond theoretical framing. As an instance, Pakistan has frequently advocated for fair burden-sharing at the UN General Assembly, saying that "the international

[254] Ibid.

community… must share this burden more equitably" in reference to the Afghan refugee crisis.[255]At UNHCR forums, it has also underlined the necessity of increased responsibility-sharing and urged donor nations to align their humanitarian rhetoric with funding.[256] Although these diplomatic actions reveal real-world challenges, they also show that Pakistan is cognizant of political realities. It is extremely difficult to quantify the harm caused by refugees in the economic, environmental, demographic, and security domains, particularly in light of decades of unrecorded expenses. Furthermore, Pakistan's geopolitical location and economic might continue to limit diplomacy, making it harder to legally brand itself as an injured state.

Pakistan's extensive negative consequences from the refugee-generating actions make it a state that is considered injured under international law. Because of this status, Pakistan is legally able to hold Afghanistan accountable and demand compensation for the full extent of the harm. Determining the type and number of reparations, which I address in the following section, is also made possible by establishing injury. However, it is crucial to emphasize that, as an injured state, Pakistan is acting as a rights-holder under international law, seeking redress for wrongs done to it, rather than as a volunteer or good Samaritan host seeking charity. The core of Pakistan's argument is this reinterpretation of charity as responsibility.

3.5. Pakistan's Legal Right to Reparations

Subsequent to establishing that Pakistan endured harm as a result of Afghanistan's actions, I move on to the primary argument regarding Pakistan, which is that it has a legal claim to full compensation for the harm it has suffered. Once state responsibility is assumed, the responsible state is required by international law to fully

[255] Permanent Mission of Pakistan to the UN. "Pakistan is Afghanistan's closest neighbor. Our two great nations have shared destinies drawing strength from fraternal bonds of geography, history, culture, …" *X (formerly Twitter)*, July 7 2025. Accessed August 2, 2025. https://x.com/PakistanUN_NY/status/1942303593861693659?utm.

[256] *Government of Pakistan and United Nations High Commissioner for Refugees.* Chairperson's Summary of the Islamabad Refugee Summit, 17–18 February 2020, hosted in Islamabad, Pakistan, "Hosting Afghan Refugees in Pakistan: A New Partnership for Solidarity." UNHCR Operational Data Portal. Accessed August 2, 2025 https://data.unhcr.org/en/documents/details/75622.

compensate the harmed state in a way that eliminates the effects of the wrongdoing.[257] This unquestionable principle—which has its roots in the *Chorzów Factory* and is reiterated in the ILC's Articles—requires that all harm be addressed, either by restitution if feasible or by compensation and satisfaction where appropriate. Since restitution (in the sense of reversing the refugee influx) is not practical until and unless refugees repatriate voluntarily, compensation is the main type of reparation that is intended in Pakistan. Pakistan might also look for guarantees of non-repetition (that Afghanistan won't create new exoduses in the future) and a measure of satisfaction (perhaps an apology or an admission of responsibility by all those who created this crisis and contributed to it, whether from States or other entities).

This violation of international obligations is the direct cause of Pakistan's right to reparations, as reflected in ARSIWA's Article 31(1), that "the responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act"[258]. According to Article 31(2), injury encompasses any harm—material or moral—caused by the wrongdoing. There is no exception: the goal of the law is complete reparation, even in cases where the extent of the harm is extensive, as it is in this case. The renowned Chorzów Factory ruling stated that reparations must, to the greatest extent feasible, eliminate all repercussions of the unlawful act and restore the circumstances that would have existed in the absence of the act.[259] In a perfect world, Pakistan would be placed in the same position it would have been in had Afghanistan's unrest not spread, which could potentially result in a Pakistan free of millions of refugees and the associated expenses. In practice, wiping out consequences refers to paying Pakistan for the burdens

[257] Matthias, Cazier-Darmois. "Overview - Limits to the Principle of 'Full Compensation." Global Arbitration Review (18th October 2019) https://globalarbitrationreview.com/review/the-european-arbitration-review/2020/article/overview-limits-the-principle-of-full-compensation#:~:text=Overview%20,the%20situation%20which%20would (Last assessed 23rd May 2025).

[258] Ibid.

[259] Neill, James. ed., "Chorzów Factory and Beyond: Case Law Update." Presentation, Landmark Chambers (2018) https://www.landmarkchambers.co.uk/wp-content/uploads/2018/08/Presentation-JN-Chorzow-Factory.pdf.

borne and assisting in the removal of those burdens in a legal manner (e.g., resettlement of refugees to third countries or safe return to Afghanistan, when possible, funded by the responsible parties), as removing the physical presence of refugees by force would violate refugee law (no one suggests refoulement or forced return).

Additionally, Analogies to other reparations cases can be used to support Pakistan's legal right. For illustration, in the *Corfu Channel*, Albania was forced to reimburse the UK for warship damage brought on by mines in Albanian waters. The amount was intended to cover both loss of life compensation and the repair or replacement of the vessels. By analogy, the Origin-States should pay for Pakistan's damage, that is, the expenses of restoring the social and economic fabric, supplying services, etc., since it is accountable for the mines of conflict that exploded on Pakistani soil in the form of refugee crises. The ICJ also emphasized that compensation is required for all damages that directly result from the wrongdoing; in Pakistan's case, this would include all expenses that are a direct and predictable consequence of the refugee crisis.

A closer analogy is provided by the UNCC following the Gulf War, wherein massive migrations of refugees, migrant workers, and evacuees into neighboring states were among the effects of Iraq's invasion of Kuwait. Neighbors' costs of providing humanitarian aid to displaced people were considered compensable damages by the UNCC. For instance, Saudi Arabia and Jordan received reimbursement for the expenses of providing food, shelter, and medical care to Kuwaiti refugees and people from third countries who were fleeing.[260] This establishes a precedent that the costs of housing displaced people brought on by the wrongdoing of another state are recoupable. The situation in Pakistan is a decades-old version of the same idea: the responsible state, not Pakistan alone, should bear the costs.

Following the Eritrea-Ethiopia war, each state was found liable for the illegal expulsion of the other's citizens in the EECC arbitration (2005–09), and they were

[260] Mensah, Thomas. "United Nations Compensation Commission." Max Planck Encyclopedia of Public International Law, Oxford University Press, online edition, https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e3924 (Last assessed 27th May 2025).

mandated to make up for the losses brought on by those expulsions. For example, Ethiopia was required to reimburse Eritrea for the expenses and suffering incurred by the expulsion of tens of thousands of Eritreans, who subsequently returned to Eritrea as refugees.[261] Even though it was a two-state situation with reciprocal expulsions, it serves as further evidence that when people are displaced, there is an obligation to compensate both the individuals and the state that ultimately receives them. Pakistan's unilateral claim is strengthened by the fact that it is one-way (Afghans enter Pakistan).

Pakistan's right to reparations is conceptually sound in light of these precedents. It is necessary to think about the reparation's modalities. For elaboration, restitution would, in theory, entail returning Pakistan to its pre-Afghan refugee state and all of its effects. In this case, restitution in kind would mean that Pakistan's burden would end and the refugees would return to a stable Afghanistan. Forcing restitution is problematic, even though Pakistan does want the voluntary repatriation of refugees (and has collaborated with UNHCR on repatriation programs, such as the assisted returns of 2002–05). Afghanistan must be safe and willing to accept the return of its citizens, as international law forbids the refoulement (forced return) of refugees to danger. As a result, complete compensation is not available right away. Pakistan may contend, however, that partial restitution ought to be sought as part of reparations; for instance, Afghanistan (and the international community) ought to take steps to facilitate and promote the return of refugees, including granting them travel documents, ensuring their property rights, and establishing circumstances (such as security, housing, and work in Afghanistan) that would facilitate their return. Indeed, the "right to choose to return home" for refugees was one of the tenets of the Cairo Declaration.[262] Afghanistan may therefore be required to make reforms or take steps to make repatriation easier as reparations (this overlaps with satisfaction/non-repetition in some ways). However, compensation becomes the focus because immediate restitution is elusive.

[261] John R., Campbell. ed., "The Limitations of International Law at the Eritrea-Ethiopia." Journal of Eastern African Studies, Taylor & Francis Journals 15, no. 4 (1970): 604-623 https://ideas.repec.org/a/taf/rjeaxx/v15y2021i4p604-623.html.

[262] Ibid., 612.

According to ARSIWA Article 36, Pakistan is entitled to reimbursement for "financially assessable damage" brought on by the influx.[263] The costs of infrastructure used or constructed (roads to camps, expanded facilities), the costs of relief assistance given over years (food, shelter, healthcare, and education for refugees), the costs of environmental remediation, the losses to Pakistan's economy (such as higher unemployment or lower wages for locals, an additional burden on public services), and even security-related costs (extra policing, border management, counter-terror operations linked to refugee-camp radicalization) are all included in this. Pakistan can rely on studies conducted by the World Bank, UNHCR, and its own planning departments that have estimated these costs, even though some of them are more difficult to quantify (such as macroeconomic impacts). According to a 2016 Pakistani Senate report, for instance, the country spent roughly $200 million a year on refugees in the 2000s, with cumulative effects over decades totaling several billions of dollars (not including indirect costs). Pakistan may also be able to claim lost opportunities, such as when resources diverted to refugee care forced the postponement or reduction of certain development projects in Khyber Pakhtunkhwa.

There are several possible structures for compensation. Afghanistan may make a one-time payment, but given its current state of poverty, this could raise capacity issues and possibly shift some of the responsibility to other states, as will be covered in Section 3.6. Or it might be a deal whereby Afghanistan benefits Pakistan in some way (e.g., concessional trade terms, or future payments once its economy recovers, similar to war reparations paid over time). Debt swaps, which credit Pakistan for expenses against any debts or aid flows, could be an innovative solution. Ideally, a neutral commission or tribunal would perform the quantification. Mass claims commissions, such as the UNCC or EECC, have been used in international practice to handle complicated compensation scenarios. If Afghanistan were receptive, which is currently unlikely without pressure, Pakistan might suggest a bilateral commission with Afghanistan (and possibly an international component) to assess costs and determine compensation.

[263] Ibid., 611.

Pakistan may also pursue intangible forms of compensation. A formal apology or acknowledgement of responsibility from Afghanistan's leadership for the suffering inflicted on Pakistan could be a sign of satisfaction. Even though it is merely symbolic, such recognition could be very beneficial for rapprochement and satisfy Pakistan's sense of justice. Germany's acknowledgements and apologies, for example, were a part of the reparations process to affected countries following World War II. Afghanistan (and any other responsible states) would be satisfied in this situation if they made a formal statement acknowledging Pakistan's burden, thanking it, and expressing regret for the situation that resulted. Furthermore, because Afghan crises are cyclical, assurances of non-repetition would be essential. Pakistan would like guarantees that Afghanistan will uphold its citizens' rights going forward in order to prevent the creation of new refugee waves. This could be formally stated in an agreement, such as Afghanistan agreeing (possibly under UN auspices) to a set of human rights standards and to consult with Pakistan and the UNHCR in the event that an internal situation threatens to force a mass exodus, in order to manage it cooperatively rather than allowing it to escalate. Including such guarantees in a settlement is a moral and political commitment, despite the fact that they are difficult to enforce.

It is important to remember that the amount of time that has passed does not lessen Pakistan's right to reparations. Since the situation is still ongoing (refugees are still present), international law does not have a statute of limitations per se for state-to-state claims. One could argue that the wrong situation continues and that the obligation to make reparations is ongoing as long as refugees are still living in exile as a result of the original wrongdoing. This is known as the doctrine of continuing breach. Additionally, Pakistan has never renounced its claims; instead, it has made them in diplomatic form on occasion (e.g., burden-sharing calls). If anything, the extended period raises the amount of compensation that must be paid.

One might wonder: whom should receive or receive reparations? Pakistan claims damages to the state, which indirectly helps the host communities and refugees. Funds to the Pakistani government to cover past expenses or to improve infrastructure in areas affected by refugees (which Pakistan has had to bear) could be the form of reparations.

As an alternative, some reparations might be used to fund initiatives that help Pakistanis and refugees alike, which would also make repatriation easier in the future. For instance, providing development assistance within Afghanistan to facilitate return can be viewed as a type of reparation (since it relieves Pakistan of some of the burden by allowing refugees to depart). Reparations in international practice can occasionally take the shape of proactive steps (such as constructing homes for returnees). Direct budgetary compensation to Pakistan, financing for Pakistan's development initiatives in refugee-affected areas, and financing for repatriation and reintegration initiatives in Afghanistan are all possible components of a comprehensive reparative package. All of these would seek to eliminate the effects by either making up for the loss or eliminating the reason for it (i.e., refugees staying in Pakistan).

It is important to emphasize that, despite political means of enforcement, Pakistan's right to reparations is enforceable under international law. Pakistan may seek international adjudication (if jurisdiction is found) or UNSC intervention (though that depends on geopolitics and seems not possible as nearly all the veto powers are complicit in the issue except China) if the origin-States and their allied and/or supportive entities does not willingly acknowledge and pay. Theoretically, the UNSC could request that these States and entities pay Pakistan or work with it to find a solution under Chapter VI or VII, particularly if the refugee crisis is thought to pose a threat to international peace. Realistically, reaching reparations might necessitate diplomatic negotiations, perhaps with the help of third-party guarantors or mediators (such as major powers or UN agencies mediating an agreement). All of that, however, only addresses implementation; it does not deny the existence of the right. Scholarly endorsements are another source of support for Pakistan's rights. Luke T. Lee maintained that the state of origin has a legal right to compensate both host states and refugees.[264] According to his formulation, "compensation to refugees and host States [is] obligatory" when a state of origin commits wrongdoing that renders its citizens refugees.[265] Though they have cautioned about

[264] Ibid, 611. .

[265] Ibid.

practicality, scholars such as *Guy Goodwin-Gill* and Professor *Atle Grahl-Madsen* have recognized the logic of state responsibility in this area. Legal analyses, like the one by Dadhania (2023), have more recently come to the clear conclusion that state responsibility includes an obligation to provide compensation for forced migration, either in cash or through resettlement.[266] Pakistan's position is entirely consistent with these authoritative interpretations: it invokes a legal obligation rather than requesting charity.

Applying to reality, Pakistan's legal path might, in principle, start with a case before the ICJ based on ARSIWA precedents and principles, such as Chorzów Factory and Trail Smelter. However, there are jurisdictional barriers to such litigation, and it won't proceed unless Afghanistan agrees or binds itself by treaty. Alternatively, in line with the Global Compact's promotion of burden-sharing, Pakistan could make claims in UNGA resolutions or through new forums like the Global Refugee Forum. The ICJ's reparations ruling in DRC v. Uganda (2022) demonstrates a high evidentiary threshold, as the Court awarded US $325 million only after thorough documentation of harm. Nevertheless, each avenue must overcome proof-based barriers. [267]As a result, that case highlights the need for rigour while also serving as precedent and a warning, confirming the possibility of reparations. Pakistan may be able to strategically combine advocacy and legal doctrine by promoting UN-mandated assessments, creating burden-sharing funds, and presenting the burden of displacement as an emerging standard of state responsibility.

Additionally, the mentioned components are included in Pakistan's legal right to reparations. Pakistan should be compensated for the socioeconomic costs and other damages resulting from the refugee influx, as Afghanistan (and any other responsible parties) have an obligation to fully repair the injury. In order to cover all past and present costs and losses, entitlement to compensation is the main option, since restitution in integrum is not always possible. Additional forms of compensation include promises to

[266] Ibid., 616.

[267] Jaber, Safaa. "Case Note: The International Court of Justice's 2022 Reparations Judgment in *DRC v. Uganda*." *International Review of the Red Cross*, no. 928 (June 2025): 529–544. https://doi.org/10.1017/S1816383125000050.

refrain from future wrongdoing (non-repetition), formal acknowledgement and apology (satisfaction), and steps to ensure the safe return of refugees (partial restitution). This claim is well-founded and not a new aberration, thanks to support from international law principles and analogies. By claiming this right, Pakistan is essentially attempting to turn the responsibility-sharing concept from a voluntary morality into a legally binding claim against those responsible for the refugee flows. It establishes a significant precedent: that when host states deal with refugee situations brought on by the wrongdoing of others, they have rights under international law in addition to obligations. In addition to bringing equity in this particular instance, Pakistan's realization of this right could fortify international solidarity by requiring source nations (and complicit actors) to bear the consequences of their actions, thus discouraging future refugee-generating behavior. Since international action may be necessary in practice to secure reparations for Pakistan and because the international community is frequently cited as having a responsibility in major refugee crises, the discussion will be expanded to include the role of the larger international community in the following section.

3.6. Obligations of the International Community

Pakistan's stance asserts that the international community as a whole has legal obligations to guarantee Pakistan receives full reparations and to share the burden of the refugee crisis, in addition to the source-state's (Afghanistan) obligation to make reparations. This argument acknowledges that large refugee flows involve international interests and cooperative obligations and are not just a bilateral problem. In order to effectively provide reparative justice to Pakistan, a wider range of states and institutions must be mobilized, given Afghanistan's limited capacity and the international nature of the Afghan conflict (involving numerous external actors). The legal basis for the international community's obligation under international law to support Pakistan's claim and aid in its fulfilment is thus examined in this section. This includes other states, both individually and collectively, as well as international organizations.

The international community as a whole is owed erga omnes obligations, which include the prohibitions on crimes against humanity and severe human rights violations that have been violated in Afghanistan. Every state has a legal stake in stopping

violations of these standards and addressing the fallout. According to ARSIWA's Article 48, any state may demand cessation and compensation for *erga omnes* obligations (in the injured party's best interests).[268]Every state (as a member of the international community) has an obligation to work together to put an end to these violations and deal with their effects if we define the fundamental wrongdoing in the Afghan refugee situation as, for example, persecution that amounts to crimes against humanity. This provides legal support for the claim that other nations, in addition to Afghanistan, must help mend the damage done to Pakistan. In real terms, this might imply that other nations, particularly those involved or influential in Afghanistan, are required to help finance and facilitate reparations. Because of the 1979 violation of the norm against aggression, the former Soviet Union (now Russia) may have an *erga omnes* obligation dimension. Similarly, if Taliban Afghanistan violates the norm against harboring terrorists, it could be argued that all states are implicated because of the threat to peace.

The UN's duty of international cooperation goes beyond *erga omnes* norms. charter as well as other international agreements. Article 56 of the UN Charter embodies that all members are required by the charter to work with the UN to accomplish universal respect for human rights and social progress through both separate and collective action. It could be argued that supporting a nation overrun by refugees in order to protect their rights and promote the welfare of the host community is within the purview of international cooperation for humanitarian and human rights goals. In fact, the United Nations has viewed severe refugee crises as issues that call for international cooperation. General Assembly (which has passed multiple resolutions urging states to share responsibility for refugees). For example, UNGA Resolution 72/150 (2017) on the UNHCR Office "calls upon the international community to… share burdens and responsibilities" with regard to refugee situations.[269] Repeated consensus resolutions, even though they are framed as calls, can help create an expectation that states will take action, which can lead to an obligation, particularly in extreme situations.

[268] Ibid.

[269] Ibid.

Despite being traditionally moral or political, the principle of solidarity and humanitarian assistance is being used more and more in legal discussions. For example, the International Law Commission has worked on Draft Articles on the Protection of Persons in Disasters, which acknowledge cooperation duties in responding to humanitarian crises. One way to think of a mass refugee situation is as a long-term catastrophe for the host nation. States with the ability to assist should do so in accordance with emerging principles. The Responsibility to Protect (R2P) doctrine is another example. While its main goal is to prevent atrocities, R2P's third pillar calls on the international community to act collectively when a state fails to protect its citizens. R2P reasoning suggests that if Afghanistan's failure resulted in a refugee outflow—a population escaping atrocities—it would be the duty of the international community to support both the populations and the states providing sanctuary. It is arguable that post hoc assistance to victims and impacted nations is a component of the continuum, even though R2P typically considers intervention or preventive action.

Moreover, the international community is not a single entity; some states have more direct responsibilities because of their activities in or related to Afghanistan. As an illustration: because it started the war in 1979, the Soviet Union/Russia is largely to blame for the 1980s refugee crisis. Russia took on the state responsibilities of the USSR as a successor state, despite not being the USSR today. Because the 1979 wrongful act of aggression was committed by the USSR and Russia, as its perpetrator, is liable for its consequences, one could argue that Russia has a duty to help Pakistan with reparations under the law of state responsibility for internationally wrongful acts. In fact, Pakistan could have claimed compensation from the USSR for the costs of occupation after World War II, just as Austria did, had a peace treaty been in place in the late 1980s. Although no such treaty was signed, the claim was still legally valid. In reality, this is legally tenable but politically controversial.

The Coalition's allies and the United States are one of the others to be blamed for the refugee's crisis, as they joined in 2001 and stayed for 20 years. States may be partially liable if any part of that intervention is deemed unlawful (for example, certain military actions that result in the displacement of civilians). Pakistan may not blame them

for the refugee problem, though, as the U.S./NATO presence temporarily reduced the number of refugees (allowing returns), possibly with the exception of their poor handling of the 2021 withdrawal, which caused a sharp exodus of people who were afraid of Taliban rule. These nations have, however, frequently acknowledged a moral duty to aid Afghanistan's neighbors. For example, the United States has provided Pakistan with significant aid for refugees (albeit also to further its geopolitical objectives). It could be stated that states that indirectly or directly caused the instability have a shared responsibility to correct its effects. In international law, the concept of shared responsibility is developing; for instance, several polluters share responsibility for transboundary harm. In a similar vein, several nations involved in a conflict that results in refugees share accountability for aiding the impacted host.

The OAU Convention Governing Refugee Problems in Africa (1969), which calls for African solidarity in burden-sharing for refugees, is one example of how international law occasionally imposes obligations for regional cooperation. Although there isn't a comparable situation in Asia, it could be argued that regional norms or general principles encourage Pakistan's neighbors—such as Iran, Turkey, Gulf states, and others—who have an interest in the stability of Afghanistan. Such obligations might be outlined in a SAARC or SCO framework.

Apart from this, the United Nations is part of the international community. The UN is tasked with spearheading international action on refugees under the UN Charter, through the UNHCR and other agencies. One could argue that the UN has a duty to organize and support efforts at reparation even though it is not a state and is not responsible for the initial wrong. The 1949 Reparations advisory opinion from the ICJ established that the UN has the right to seek compensation for harm done to its agents or to itself.[270] Could the United Nations, by analogy, make a claim against Afghanistan on Pakistan's behalf? Not typically, since Pakistan is able to assert its own rights. However,

[270] ICJ Advisory Opinion (1949). "Reparations for Injuries Suffered in the service of the United Nations."

the UN can support Pakistan's claim by acknowledging its legitimacy and urging members to carry out their responsibilities.

One must acknowledge that the concept of obligation in this context is less precise than the obligation of the state that committed the wrongdoing. It is more a combination of multiple legal obligations, including the obligation to cooperate (under the Charter and human rights treaties), the obligation to refrain from acknowledging or assisting in the wrongdoing (under Article 41 of ARSIWA), and potentially obligations under particular refugee instruments. For instance, many other states are parties to the 1951 Refugee Convention, but Pakistan is not. The Preamble of the article implies international solidarity, but it is not required. Article 2 of the Refugee Convention stipulates that refugees must follow the laws of their host nation, and it is arguable that other nations should assist in preventing the host nation from becoming overburdened so that it can preserve the spirit of the Convention (such as non-refoulement). Additionally, international financial organizations (World Bank, etc.) frequently assist—not because they are required to by law, but rather because it is their policy. Nonetheless, new soft laws such as the Global Compact on Refugees attempt to organize that assistance in a methodical manner (e.g. a Global Refugee Forum for pledges).

Collective enforcement is implied by the idea of ensuring Pakistan's claim to full reparations. The international community may have to enforce the responsibility if Afghanistan (or any other responsible party) refuses to comply voluntarily. While Article 54 of ARSIWA is non-committal and permits but does not require countermeasures by non-injured states, it does allow states to take legal action to guarantee cessation and reparations in the interest of all. Theoretically, a group of nations could put Afghanistan under sanctions or take other actions until it consents to pay Pakistan back. Punitive enforcement, however, is unlikely and ineffective given Afghanistan's fragility. Rather, the duty of the international community can be seen as a subsidiary responsibility: the community is expected to provide financial support if the primary offender is unable to make full reparations. The UN established an oil-funded mechanism (the UNCC took a portion of Iraq's oil revenue) when Iraq was first unable to pay Gulf War damages. In a similar vein, one might imagine an internationally administered fund for Afghan refugee-

related expenses, essentially the world covering Afghanistan's current costs. Pakistan could contend that as part of its obligation to cooperate in burden-sharing, the international community must establish and contribute to such a fund. In fact, at international conferences in the past, Pakistan has argued in favour of a refugee impact fund.

The Comprehensive Plan of Action (CPA) for Indochinese Refugees in 1989 was a multilateral agreement in which Western and regional states shared responsibility; some took refugees for resettlement, while others provided funding for camps in ASEAN states, and so on. This serves as precedent for pooling funds. Despite being political, that was presented as a shared duty. Similar initiatives have been made for Afghan refugees, such as the UNHCR's Solutions Strategy for Afghan Refugees (SSAR), which was started in collaboration with Afghanistan, Pakistan, and Iran and is essentially a framework for international assistance to host and repatriation communities. Although helpful, these were still optional. Pakistan's stance attempts to elevate it: the international community needs to make sure, not just try, that Pakistan is not left holding the bag.

The United Nations Security Council has the power to declare certain circumstances to be threats to international peace and to order action. Chapter VII resolutions were prompted by the perception that large refugee flows, such as the Kurdish refugees in 1991 or the Kosovo refugees in 1999, posed a threat to global peace and security. In theory, the Council might mandate that nations give Pakistan financial assistance or that Afghanistan collaborate on finding solutions. In reality, the Council more frequently arranges peacekeeping missions or makes non-binding requests for states to provide aid in order to stabilize the situation and allow refugees to return. The Council might feel obliged to take more forceful action if Pakistan's predicament worsened to the point where it destabilized the area. The Council might step in to coordinate a response, for example, if Pakistan began mass-expelling refugees for lack of support, which could lead to conflict.

An emerging legal principle in refugee law is responsibility-sharing, which states have a shared obligation to make sure that no state is disproportionately burdened with

refugee protection. It has been repeatedly endorsed in international fora and has strong support in equity, despite not being a legally binding standard as of yet. Pakistan's position is that this principle needs to be regarded as mandatory in its situation. This implies that other nations are expected to help lessen the effects by giving money, resettling some refugees (so Pakistan has fewer to host), or providing Pakistan with development assistance.

The UNGA adopted the Global Compact on Refugees (GCR) in 2018 (with resounding support), so we should specifically bring it up. Recognizing that protecting refugees is a global responsibility, the GCR lays out procedures for sharing burdens and responsibilities, such as a financing mechanism and a Global Refugee Forum for pledges. It offers a reputable declaration of the commitment of the international community, despite not being legally binding. Pakistan can take advantage of this by claiming that, despite the GCR's status as soft law, it shows that the international community agrees that action is necessary and that Pakistan's circumstances call for the operationalization of those commitments. One tangible example was the UNHCR-coordinated international conference in 2020 called 40 Years of Afghan Refugees in Islamabad, where states united to pledge support, even though the pledges fell short of needs. The result confirmed the shared responsibility tenets.

One may wonder if states are required to pay Pakistan under any legally binding treaties. Not directly, as burden-sharing provisions are not a part of any refugee conventions to which Pakistan is a party. Some, however, contend that environmental law's tenets of equity and prevention, such as the polluter pays principle—or, as Luke T. Lee put it, the "persecutor pays" principle, which holds that those who cause refugees should bear the expenses—could be adopted.[271] Additionally, states must work together to uphold economic and social rights under human rights law (ICESCR Article 2(1)). One could argue that all states parties to the ICESCR should assist Pakistan in meeting its rights if the burden of refugees compromises its capacity to provide basic health and

[271] Ibid.,

education. This is a novel way to link accountability to international cooperation for rights.

The obligation of the international community can be derived from: (1) the collective nature of the norms violated (*erga omnes*, therefore collective responsibility to respond), (2) the United Nations, even though it may not be as clearly defined as a treaty clause. Charter duties of cooperation, (3) established practice and soft law anticipating burden-sharing, and (4) the widely acknowledged practical necessity that global issues require global solutions. From Pakistan's point of view, portraying it as a legal requirement encourages action and possibly guilt or pressure on possible donor nations to take action. For example, Pakistan frequently reminds Western nations that, because they supported human rights or were involved in the war in Afghanistan, they have moral and legal obligations. According to President Alvi, "the world makes promises... but nobody has given any cooperation"[272] is essentially a claim that the international community has not fulfilled its obligations. Pakistan could, for instance, ask for a resolution from the UNGA or the UNSC recognizing States' duties to help (even though such a GA resolution is not legally binding, it still has moral weight). The international community's responsibilities under Pakistan's reparations claim are to help hold the state that caused the harm accountable, to share costs and provide resources to repair Pakistan's harm, and to work with long-term solutions (such as repatriation or third-country resettlement) to lessen Pakistan's predicament. This illustrates an interpretation of international law in which duty, not charity, is what solidarity is. It makes use of the idea that when one state is harmed by global issues (especially when it is not its fault), other states are legally obligated to assist in restoring it. This idea is in line with the universal human ideal that forms the basis of much of the United Nations' framework.

[272] Ibid.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

This thesis concludes that Pakistan has suffered consequential costs as a result of the decades-long presence of millions of displaced Afghan citizens, and as such, it is entitled to full reparations from those responsible and stipulates the international community to support such reparations. Because reparations always deliver justice that further poster trust and unity among communities globally. The last chapter of the study draws subsequent conclusions of each research question, which strengthen the thesis with evidence from eminent experts in international law and pertinent legal doctrines. Primarily, the study finds out that when a country of origin's actions (or failures) force individuals to seek refuge abroad, that country bears responsibility to both the refugees and the host countries for full reparations. Commentators have deduced that the principled of customary international law guarantees everyone the right to redress for rights violations, including displaced individuals and countries hosting them. Despite recognition being there, it yet to be consistently and systematically enforced. This has led to calls to institutionalize origin-states' responsibility to render justice to refugees and prevent future flows.

Firstly, in this instance, it is possible to see Pakistan's ongoing responsibility to house Afghan refugees as harm brought on by internationally infractions in Afghanistan (and consequently, by external powers' actions in Afghanistan) that resulted in a large-scale displacement. Pakistan's aid of $200 billion and other contributions to this challenge since decades directly suffered it extraordinary harm, including financial hardship, social unrest, security issues, environmental deterioration, and so on; which clearly qualifies as "injury" for which full reparation(s) is required, backed by the principle of customary international law under ARSIWA. Importantly, Pakistan's injury is based on legal rights and obligations rather than just being political or moral duty. Despite having humanitarian origins, the prolonged mass influx of Afghans has ipso facto made Pakistan an injured party because it is the direct result of the origin State or other responsible actors as a breach of their international obligations. Thus, the unrest in

Afghanistan resulted from the acts of the international community are viewed as violations that caused harm to Pakistan grounded in the law of State-responsibility, to be deemed as an injured-State. Resultantly, it has the legal right to demand full reparations in order to undo the effects of those wrongdoing.

Secondly, consensus to be based on the principle of *Trail Smelter,* as it reflects the circumstances of Pakistan's case. Although it developed the ecological 'principle of pollute pays', however, as the doctrine did not existed earlier in the environmental law itself, rather it was an analogy on the basis of the principles of general international law, particularly the principle of transboundary harm. Therefore, it can be applied to any legal regime, for instance, it was extended to several other legal regimes, including space law, sea law, nuclear test cases, and carries the possibility in all those cases which grounds the larger benefit of the international community, particularly concerning human rights abuses. Furthermore, the same decision reflects Jennings idea of abuse of right to hold a State oblige under international law to avoid the cross-border generation of damage to other States. Moreover, integrating Jennings' philosophy with Tribunal's findings, the principle of Trail Smelter provides the possibility to link international responsibility to domestic policies and/or acts in refugee regime, when the right of refugees' host States to freely exercise its domestic sovereignty is violated in response to receiving and caring for a sudden mass exodus of refugees. Thus, Pakistan's stance is based on international law's no-harm rule; that no state or the international community as a whole should allow one country to bear an excessive amount of the costs of a crisis that starts outside of its borders. Similar to the preventative reasoning in Trail Smelter, this principle not only validates Pakistan's demand to full reparations, but also serves as a warning that states should exercise caution when implementing policies that cause neighbors to suffer.

Thirdly, Pakistan is an injured State and Trail Smelter entitled it to claim full reparations, but as this is the responsibility of the origin-States, including the international community, then how could it be made legally possible to ensure full reparations to Pakistan. As proved earlier, Pakistan's case fall under the *Erga Omnus Proper* obligations; which involve duties owed to the entire international community, with additionally the responsibility of burden-sharing and the evolution of international

solidarity are all touched upon in this issue. Since international law is traditionally state-to-state, the origin-States bears primary responsibility for wrongdoing (for instance, causing refugee flows). However, the focus shifts to the larger international community when the origin-States are unable or unwilling to make reparations, as is frequently the case in refugee situations. These grounds are, as follows:

Initially, two legal avenues are relevant, firstly, the principle of international cooperation in resolving refugee issues, and secondly, obligations *erga omnes* and the right of States other than the harmed State to seek cessation and reparation. Therefore, Pakistan need not to pursue its claim for reparations alone, rather the international community and international organizations have the duty to assist, support, and guarantee adherence to the law. Meaning thereby that the obligation to make reparations does not go away if origin-States are unable to do so (for whatever reason, such as political disintegration or a lack of funding); rather, it becomes the collective duty of the international community to uphold the rights that were infringed. In short, this fundamental duty is grounded in the Geneva Conventions and is supported by numerous UNGA resolutions on burden-sharing responsibility and host-State's right to reparations, reporting the duty to cooperate.

Furthermore, the international community is obligated to support host nations under the framework of international refugee law and more general human rights law. The Preamble of the Refugee Convention consider international cooperation necessary for a satisfactory solution to overcome the refugee crisis, indicating towards a fair burden-sharing as an integral part of the refugee protection system, while acknowledging undue heavy burden of host-States. Also, the GCR and the 2016 New York Declaration for Refugees and Migrants both specifically call for predictable and equitable burden-and-responsibility-sharing by the international community, reinforcing this principle in contemporary instruments. Although not legally binding, but a consistent state practice and declarations crystallize new norms in areas where there are gaps in legally binding regulations. Therefore, the international community is, at the very least, politically and morally obligated to assist Pakistan; however, there are growing claims that this is beginning to take the form of a legal duty based on the idea of international solidarity and

the UN Charter's duty to cooperate, as a global coordinate action was necessitated in pandemics or environmental damage.

Moreover, Pakistan has repeatedly stated that the international response has not been adequate in its case. To manage and support the refugee population, the State officials continuously called for more assistance from the international community, and thus, it has been forced to rely on insufficient and erratic voluntary aid due to the lack of a formal legal mechanism. It, thus emphasizes an accountability gap in the contemporary international legal system, therefore, analogies to collective liability could support the argument for the international community's legally binding obligations. In order to compensate, relying on the UNSC Compensation Commission in Iraq-Kuwait dispute in 1990, one could imagine a global framework in which wealthy countries contribute to a Reparations Fund for Pakistan, while states that directly or indirectly contributed to the Afghan conflict do the same, as having support in the scholarship of international law in such like intricate situations with numerous accountable parties.

The study, with having grounds in the contemporary international law, establishes that Pakistan's call for full reparations is not a cry for charity; rather, it is supported by the growing global legal consciousness that solidarity is a duty, not a choice. One commentated regarding refugee flows that it challenge the basic principle that the arrival of human beings cannot as such be considered to constitute injury, but consequences of such arrivals must be shared to prevent international justice from being undermined. In addition, Pakistan's case represents a must-needed development in international law: the understanding that nations that bear the brunt of crises caused by the global community (such as prolonged refugee situations) are entitled to full reparations or at the very least significant material assistance from the international community.

In short, research questions are positively responded. Given the measurable harm caused by the flood of Afghan citizens, Pakistan is indeed considered an injured state under international law, and therefore, Pakistan's claim to full reparations is doctrinally supported by ideas such as Trail Smelter's no-harm rule, which compares transboundary pollution to transboundary displacement. Indeed, *erga omnes* responsibility, international

cooperation mandates, and the equitable principles that underpin refugee law provide strong grounds for the argument that the international community has a legal obligation to guarantee Pakistan receives full reparations. The main argument, which is based on solid legal and moral grounds, is that the international community must legally compensate Pakistan for all the harm that has been done, in whatsoever form it suits. The gap between principle and practice, converting these findings into tangible action, remains. In order to ensure that Pakistan's rightful claims are acknowledged and taken into consideration, the final section makes recommendations to switch from lex lata, the law as it is, or as it is emerging, to lex ferenda, the law as it ought to be, put into practice.

B. Recommendations

Building on the findings above, this section of the thesis offers specific recommendations for key stakeholders with the goal of strengthening the institutional and legal foundation for burden-sharing and operationalizing Pakistan's right to reparations. The UN, the UNHCR, the Government of Pakistan, NGOs, and civil society advocates are the targets of these recommendations, which were developed in light of the research's findings. The goal is to direct policy and action in order to address the disparities that have been identified and prevent future crises by implementing a more forceful international response.

Recommendations to the Government of Pakistan, includes, as follows:

1. First, the Government of Pakistan should mount a concerted diplomatic and legal campaign to demand reparations for the refugee-related injuries it has suffered. Presenting a thorough White Paper or dossier at the UN that lists the socioeconomic costs (such as the reported $200+ billion expenditure) and the security/environmental effects of housing Afghan refugees is one way to do this. Pakistan can bolster its argument that it is an injured state entitled to reparations by calculating its losses and connecting them to particular wrongdoings (such as foreign invasions of Afghanistan or the Taliban's persecution of populations). To create a coalition in favour of Pakistan's claim, diplomatic efforts should be

focused on like-minded nations and organizations (OIC, EU, SCO, etc.). Even though such a resolution is non-binding, it can influence opinion and set the stage for future legally binding agreements. Pakistan may ask the UNGA to adopt a resolution recognizing its burden and calling for compensation mechanisms.

2. Second, Pakistan may also think about using the International Court of Justice's jurisdiction, such as by requesting an ICJ Advisory Opinion on the issue of state accountability for refugee flows and international community duties. Although not legally binding, an advisory opinion would have substantial moral and legal weight in elucidating Pakistan's rights. Although it might not be feasible at the moment, Pakistan could also investigate controversial cases (if there is any jurisdictional basis) against Afghanistan or another responsible State. The important aspect is that, by using the international legal principles established in this thesis, Pakistan's government should turn the issue from a political appeal to one of legal entitlement.
3. Third, the claim fulfils the criteria of being a strategic litigation, therefore, Pakistan can ask Iran and other States hosting Afghan citizens with the same reasons, as well as NGOs and civil society organizations to fully support the case before the international courts in terms of finances, evidence collections, campaign and whatever seems relevant.
4. Fourth, to turn its legal entitlement into a persuasive case, the Government of Pakistan must take a proactive and systematic approach. To prepare a thorough reparations brief, a specialised interministerial taskforce comprising representatives from the Ministry of Finance, the Ministry of Law and Justice, and the Ministry of Foreign Affairs must be established. In addition to compiling doctrinal arguments based on ICJ and ARSIWA precedents, this body would also translate them into an advocacy document that could be presented to prospective adjudicatory forums and multilateral bodies. Systematic cost documentation is equally important. Pakistan has frequently mentioned the refugee burden in broad strokes, but accurate harm quantification is necessary for international adjudicatory practice. Pakistan would be able to support its claim with verifiable evidence if it established a national mechanism to calculate displacement-related

costs across healthcare, education, environmental degradation, and security expenditures. Furthermore, Islamabad needs to make a concerted effort to form coalitions with other nations that host refugees and are similarly impacted, like Iran, Jordan, and Lebanon. In addition to increasing diplomatic clout, a concerted group of harmed states would advocate for the international legal recognition of displacement-related injuries as actionable harms.

5. Fifth, Pakistan should advocate for the institutionalization of State-of-origin responsibility for refugee flows by using its diplomatic clout in organizations like the UN, G77, OIC, and others. For instance, Pakistan might suggest that the UN establish an International Solidarity Fund for Refugee Host Countries, which would function similarly to the Climate Change Green Fund in that it would be financed by state contributions determined by responsibility and ability and would distribute money to host nations for verified refugee-related expenses. This idea finds support in scholarly proposals that call for systematic enforcement of compensation obligations through defined mechanisms. The German-Israeli Reparations Agreement (1952), in which Germany paid Israel for resettling Holocaust survivors, and the Uganda-Canada agreement following Uganda's expulsion from Asia, in which Uganda paid compensation that assisted Canada in covering resettlement expenses, are examples that Pakistan's diplomats should keep in mind. By bringing up these instances, Pakistan can contend that its predicament is not unique and that there is precedent for one nation (or the international community) to reimburse another for the costs associated with refugees. Pakistan could advocate on a multilateral level for the inclusion of tangible burden-sharing financing instruments in the GCR' follow-up, even if they are initially voluntary. In the region, seeking a special grant from Islamic development funds or China's Belt and Road partners could also be an option for short-term respite. When a nation is overrun by externally generated refugee flows, Pakistan's advocacy should ultimately strive for a new international protocol or framework that codifies the obligation of third states to contribute to reparations and the responsibility of origin states.

6. Sixth, Pakistan should maintain avenues for a future claim settlement despite the delicate political situation in Afghanistan (the Taliban government is not recognized internationally). Countries have traditionally negotiated population and refugee issues through bilateral treaties; for example, India once demanded payment from Pakistan for the refugee crisis in Bengal in 1971. When possible, Pakistan may pursue a bilateral agreement for compensation or cost-sharing of the repatriation and reintegration of refugees with a legitimate Afghan government, if one is established. Furthermore, Pakistan ought to hold other nations accountable for their actions that fueled the exodus of refugees. This entails holding the US, Russia (the USSR's successor), and other nations accountable for the financial and moral fallout from their actions in Afghanistan. Pakistan can at least obtain increased assistance as an implicit form of burden responsibility, even though direct reparations from these powers are unlikely in the absence of pressure. Notably, the United States and other coalition members have admitted that they owe Afghanistan's unrest a "moral debt".[273] Pakistan should take advantage of this by pursuing development assistance or special financial packages that adequately offset the effects of refugees (e.g., funding for infrastructure in Khyber Pakhtunkhwa and Balochistan, which have been severely impacted by refugee concentrations).
7. Seventh, Pakistan's government ought to think about joining the 1951 Refugee Convention and passing comprehensive refugee laws (Pakistan isn't a signatory yet, and it operates on an as-needed basis).[274] Although this action focusses on protecting refugees internally, it also has strategic significance because it would demonstrate Pakistan's adherence to international norms and strengthen its authority when requesting that others fulfil their responsibilities. Pakistan will be able to more accurately estimate its expenses and efficiently direct foreign aid if

[273] E. Lily, Yu. "The U.S. Owes Vulnerable Afghans More than a Hasty Exit." Prism, June 26, 2021 https://prismreports.org/2021/06/25/theusowesvulnerablefghansmorethanahastyexit/#:~:text=The%20U,to%20the%20people%20of%20Afghanistan.

[274] Ibid.

refugees in Pakistan have clear legal status (through registration, documentation, and rights to work, education, etc.). By proving that it bears the financial and legal responsibilities for refugees, responsibilities that many nations avoid, it also deflects criticism and improves Pakistan's negotiating position. In order to provide evidence in international negotiations, Pakistan should also invest in impact assessment mechanisms. For example, it could assign its Finance or Planning Commission to create yearly reports on the economic impact of refugees. To reassure donors that any funds for refugee assistance or reparations will be properly managed, institutional capacity, such as the Commissionerate for Afghan Refugees, should be strengthened and made more transparent.[275] Pakistan can make a stronger case for outside assistance and make sure that it directly compensates for its losses by organizing its own affairs (for instance, by lowering the cost of refugee services).

8. Eighth, it is suggested that Pakistan continue to treat Afghan refugees humanely throughout this campaign. Any severe actions (like the proposed mass deportations in 2023) attract criticism from around the world and can make Pakistan's case weaker by drawing attention away from its adherence to international law.[276] Pakistan's greatest moral asset, on the other hand, is its generosity over the past 40+ years; observers have observed that Pakistan has "hosted one of the world's largest refugee populations, frequently with insufficient international support".[277] The government ought to draw attention to this impressive track record and resolve any justifiable security issues without jeopardizing the rights of refugees. Maintaining close collaboration with UNHCR (e.g., issuing Proof of Registration cards, permitting refugee children to attend public schools, etc.) will convey that Pakistan's efforts to make amends are about

[275] Ibid.

[276] Ibid.

[277] Ibid.

sharing responsibility and being fair, not about placing the blame on the refugees.[278]This strategy maintains the goodwill required to inspire international compassion and action in support of Pakistan.

Recommendations for the United Nations are, as follows:

1. At first, the general principle of international law that relates to refugee's crisis puts two important obligations on the international community, one to omit; that States shall not create refugee outflow, whereas the other to act; that States shall take refugee challenge as a burden-sharing responsibility being part of international cooperation. However, both obligations seem missing, and therefore, 'refugee challenge in general has been a matter of concern for the receiving States, not because of their plight *per se*, rather due to the implications they carry'.[279] Therefore, a revisit is required to expressly revise the international refugee regime to overcome the crisis; its structure, composition, and the framework of rights and obligations of both States and individuals therein. Because it not only failed to address the issues, but also the crisis escalated further and gone up tenfold comparatively to the time when such mechanism was established, and is expected to enhance further.[280]
2. Second, the UN should take the lead in developing a practical system to support nations like Pakistan that are home to sizable refugee populations, either through the UNGA or another suitable agency. One suggestion is to hold talks for an International Agreement on Responsibility-Sharing for Refugees. This could be a UN GA Declaration followed by a protocol or a multilateral treaty. The principles that are currently soft law, such as the requirement that countries of origin make up for refugee outflows and the expectation that other states will work together to

[278] Ibid.

[279] Noor, Sanam. "Afghan Refugees After 9/11." *Pakistan Horizon* 59, no. 1 (2006): 59–78 (59, 2) http://www.jstor.org/stable/41394381.

[280] Garvey, Jack I., "Toward a Reformulation of International Refugee Law." 495.

support host states, would be codified in such an instrument. The creation of a Global Fund for Refugee Impact Relief under UN sponsorship might be a creative strategy. All UN member states would make assessed or voluntary contributions to this fund, with larger contributions coming from those more capable of handling the crisis. Payments would then be made to host nations in accordance with verified expenses incurred. This concept, which places it in an institutional framework, is similar to the reparative principle observed in the Trail Smelter and Chorzów Factory cases. Such a fund could be managed by the UN High Commissioner for Refugees, in collaboration with the World Bank and UNDP, guaranteeing that funds are utilized for host community development and refugee assistance. The idea that host states have the right to request material aid was approved by the UN General Assembly in the 1980s. Now is the time to put that idea into action, particularly since the ongoing refugee crisis (from South Sudan, Syria, Myanmar, etc.) makes this a global issue rather than just one that affects Pakistan. My research suggests that a Special Envoy or Taskforce on Refugee Burden-Sharing be appointed by the UN Secretary-General to formulate such proposals and provide updates to member states.

3. Third, the UN must not hesitate to assign responsibility when the source of refugee flows can be identified and is a viable business. Resolutions under Chapter VI or VII could be passed by the Security Council, if applicable, recognizing that mass refugee outflows pose a threat to global peace and security because they frequently destabilize regions and calling on the source state to assist in facilitating safe return or providing reparations. Afghanistan may find it politically challenging to take direct Security Council action, but UNGA can step in. For example, a UNGA resolution (by two-thirds majority under the Uniting for Peace mechanism if required) could request an international compensation plan and declare that Afghanistan (and implicitly other states whose actions in Afghanistan contributed to the crisis) bear responsibility for improving the situation of Afghan refugees.[281] The resolution might also ask the ICJ for an

[281] Ibid.

advisory opinion on the legal obligations for refugee flows, effectively presenting Pakistan's predicament to the World Court as a legal matter. By outlining the scope of responsibilities for all states (origin, transit, and third-party), such an advisory opinion could encourage the creation of legally binding regulations. The UN should affirm that the creation of refugees is an internationally wrong act that involves the responsibility of the state of origin and the collective duty of all states to aid the victims (both hosts and refugees) using its normative clout.[282] By doing this, it establishes a precedent for future crises and opens the door for Pakistan's claims to be taken seriously.

4. Fourth, the UN should use its current channels to provide Pakistan with more immediate assistance. The UNHCR-led Regional Refugee Response Plan (RRP) for the Afghanistan situation, which addresses humanitarian and certain host community needs in Pakistan, will be fully funded as part of this.[283] Donor nations must be actively urged to comply with the requests by UN leadership, including the Secretary-General and UNHCR. Humanitarian response plans have been underfunded in recent years; this trend needs to be reversed by highlighting the fact that helping refugees is a shared responsibility and not charity under international law.[284] Similar to pledging conferences for Syrian refugees, the UN can organize donor conferences especially for prolonged refugee situations in Pakistan, inviting governments, international financial institutions, and the private sector to help cover Pakistan's hosting expenses. Furthermore, programs like the IDA18 Refugee Sub-Window, which currently offers development funding to nations with sizable refugee populations, should be expanded by the UN through

[282] Ibid.

[283] Ibid

[284] Aamir, Latif. "Pakistan Demands 'More' Global Support to Handle Afghan Refugees." Anadolu Agency: Asia-Pacific (July 8, 2024) https://www.aa.com.tr/en/asia-pacific/pakistan-demands-more-global-support-to-handle-afghan-refugees/3269659.

the World Bank and other partners.[285] One concrete way to implement de facto reparations is to make sure Pakistan reaps the benefits of such initiatives (such as low-interest loans and grants for constructing infrastructure, schools, and hospitals in areas that host refugees). In order for development assistance to be considerate of and partially offset by the refugee burden, we advise that the UN system incorporate refugee impacts into Pakistan's development framework (for example, by including them in UN Sustainable Development Cooperation Frameworks).

5. Fifth, as part of responsibility-sharing under the Global Compact on Refugees, the UN should advocate for more Afghan refugees from Pakistan to be resettled in third countries.[286] The burden on Pakistan is essentially reduced with each refugee relocated to a third nation (such as the United States, Canada, the European Union, etc.). In UN forums, the UNHCR should make a stronger case for additional resettlement slots for Afghans.[287] Similarly, the UN can support the creation of educational scholarships or labour mobility programs for Afghan refugees, both of which act as acts of solidarity and indirectly reimburse Pakistan by offering long-term solutions outside of its boundaries. A multilateral 'Refugee Solidarity Initiative' could be started by the General Assembly, inviting nations to either accept a certain number of Afghan refugees or pay for Pakistan's assistance (based on a principle of common but differentiated responsibility similar to climate agreements). This would put into practice the often-stated maxim that protecting refugees is a global duty.[288]

[285] UNHCR Pakistan. "Media Update-2: United Nations Pakistan, 20 June 2025 - Press Release, Islamabad." Issued 23 June 2025 https://pakistan.un.org/en/296754-media-update-2-united-nations-pakistan-20-june-2025.

[286] Ibid.

[287] Ibid.

[288] Ibid.

6. Sixth, the UN should keep an eye on the execution of any reparations or assistance commitments made, whether through ad hoc pledges or a new mechanism. Pakistan's documented needs and the amount of support it has received could be reviewed annually by an independent expert panel or an ECOSOC standing committee, which would then report on any discrepancies. By being transparent, the international community will be held to its moral and legal commitments, avoiding lip service. The UN can progressively establish a customary norm that host states have the right to anticipate and obtain timely and comprehensive assistance for the effects of refugees by institutionalizing follow-up.
7. Nevertheless, in order to operationalize responsibility-sharing through institutional mechanisms, the UN must move beyond rhetorical pledges of solidarity. The creation of regional burden-sharing mechanisms that are suited to regions like South Asia, where Pakistan and Iran still bear an excessive share of the refugee burden, is one alternative. These mechanisms would work in tandem with international agreements like the Global Compact on Refugees, guaranteeing host nations in particular areas have access to consistent and fair assistance. The UN General Assembly should also create a special fund for burden-sharing and reparations. This mechanism would institutionalize collective responsibility by offering financial support to states that are hosting long-term refugee populations, much like the trust funds currently in place for post-conflict recovery. While updating it for the displacement context, such initiatives would be consistent with the principle stated in the Trail Smelter case, which states that no state should permit its territory to be used in a way that harms another. Additionally, the UN's participation would provide impartiality and legitimacy, lessening the impression that demands for reparations are arbitrary or driven by politics.

Recommendations for the UNHCR are, as follows:

1. UNHCR ought to publicly back Pakistan's calls for international aid and justice as the UN agency tasked with protecting refugees and assisting host nations. Despite having one of the biggest refugee populations, Pakistan has already been

recognized by UNHCR as having received "insufficient international support"[289]. The High Commissioner ought to utilize his international position to present Pakistan's predicament as one in which burden-sharing is mandated by international law and not merely a voluntary altruism. UNHCR can support Pakistan's requests by presenting professional proof of the pressure on Pakistan and by citing state responsibility principles (even though UNHCR, being humanitarian, stays out of direct legal arguments, it can emphasize the idea of 'responsibility-sharing'). For instance, UNHCR can emphasize in its statements that international solidarity is crucial and that prolonged refugee situations "should not leave the host country carrying a disproportionate burden"—wording that is consistent with new legal requirements.[290] UNHCR's advocacy has the power to shape donor behavior and create momentum for official procedures.

2. As a humanitarian organization and a reliable source of information on refugee flows and effects, the UNHCR holds a crucial position. It ought to go beyond its mandate by helping Pakistan create frameworks for gathering evidence that comply with international legal requirements. This would entail recording host-state expenses in a way that complies with ARSIWA's evidentiary requirements in addition to reporting the number of refugees and their immediate needs. The repurposing of humanitarian data into legal evidence appropriate for reparations claims would be guaranteed by such collaboration. The UNHCR should also step up its efforts to encourage donor states to share responsibility fairly. Despite the agency's historical avoidance of legal-political disputes, its technical know-how and moral authority enable it to draw attention to the negative effects of disproportionate burdens, supporting Pakistan's stance that hosting refugees is an international obligation rather than just a humanitarian gesture.

3. UNHCR and the Pakistani government should collaborate closely to evaluate and record the effects of the Afghan refugee crisis. This entails working together on

[289] Ibid.

[290] Ibid.

cost analyses, environmental impact studies, and socioeconomic surveys. UNHCR can assist Pakistan in producing reliable data to support its compensation claims by sharing its technical expertise. Additionally, UNHCR ought to be prepared to serve as a trustee or manager of any aid or compensation money sent to Pakistan. For instance, UNHCR (in collaboration with organizations like UNDP) could oversee projects that restore infrastructure, increase services in areas that host refugees, and offer livelihood opportunities that benefit both refugees and locals if an international fund is established or if multiple donors contribute funds for refugee assistance. This guarantees that aid directly compensates for the harm Pakistan has suffered (e.g., restoring forests that were cut down for firewood in camps for refugees or extending hospitals that have provided medical care to refugees). In addition to providing assistance to Pakistan, UNHCR establishes a success story to support further funding by efficiently managing such initiatives. In order to coordinate all foreign assistance for Afghan refugees in Pakistan and communicate with Pakistani authorities regarding needs assessment and implementation, we advise UNHCR to form a special Pakistan Support Task Force within its own organization.

4. UNHCR should keep up its efforts to increase Afghan refugee resettlement opportunities in Pakistan. Increased resettlement to third countries is a crucial component of reducing Pakistan's burden, as mentioned in recent joint statements.[291] In order to demonstrate that this is a concrete contribution to responsibility-sharing, UNHCR should ask states that have resettlement programs to greatly increase their quotas for Afghans living in Pakistan. UNHCR can also encourage other routes like humanitarian visas, academic scholarships, and family reunification. In addition to receiving protection, every Afghan who finds a solution overseas also helps Pakistan's population. Essentially, the UNHCR's resettlement role ought to be utilized as an example of 'solidarity in action.'
5. Moreover, UNHCR need to help Pakistan enhance the refugee protection area in order to preserve a setting that is favourable to foreign assistance. This entails

[291] Ibid.

encouraging and assisting the government in registering all refugees and providing documentation (Proof of Registration cards) to both recent arrivals and long-term refugees. As suggested by proponents of refugee law, UNHCR can offer financial and technical assistance for such registration drives. Refugees are less likely to be viewed as a burden and more as potential contributors when they are granted documentation and access to services (such as healthcare, education, and legal employment opportunities), which can lessen some of the negative effects on Pakistan. In order to assist both refugees and host communities, UNHCR should extend its programs in urban areas, where a large number of refugees reside outside of camps. For instance, funding schools, clinics, and vocational training would benefit all refugees (international.org). In addition to reducing tensions locally, this kind of inclusive programming can show that, with the right assistance, refugees can contribute to the economy rather than deplete it.

6. As previously mentioned, UNHCR should subtly persuade Pakistani officials to enact national refugee laws and accede to refugee instruments. The UNHCR frequently offers technical assistance on legal reform; implementing this in Pakistan would formally assign duties to both parties. Another long-term solution related to the idea of source-state responsibility is the UNHCR's ability to mediate discussions on voluntary repatriation terms between Pakistan and Afghanistan (or the de facto authorities and other stakeholders). When circumstances permit, preparatory work (such as obtaining guarantees for future returnees or small-scale pilot returns to safe areas) can start, even if a large-scale return is premature. The idea that the international community, including the country of origin, must work together to resolve refugee crises rather than leaving hosts in limbo indefinitely is implicitly supported by UNHCR's mandate to pursue durable solutions. UNHCR should not only act as a humanitarian actor but also as a facilitator of justice in this situation, assisting in the conversion of the reparation principle into useful assistance for Pakistan and making sure that Pakistan's interests and refugee protection are aligned.

Recommendations for NGOs are, as follows:

1. Non-governmental organizations, both domestic and foreign, should step up their advocacy efforts to draw attention to Pakistan's extended hosting of refugees and the need for greater international assistance. NGOs humanize the legal arguments by describing the difficulties faced by both refugees and hosts, which elicits sympathy from the public and puts pressure on donor governments. They should highlight examples of how refugees have improved Pakistan's economy and society with the correct help, presenting foreign aid as an investment in shared human security rather than a handout. To support Pakistan's argument academically, law and policy think tanks can host seminars and publish briefs that quote academics such as Jennings, Lee, Beyani, and Tomuschat. By adding to the global public conversation that failing Pakistan on this front is an injustice that needs to be rectified, this civil society chorus can support diplomatic efforts. Public interest solicitors and human rights NGOs should, whenever feasible, look into litigation tactics to further the cause of responsibility-sharing or reparations. A creative use of jurisdictions such as national courts could be tried, for instance, lawsuits against foreign governments or companies for their roles in Afghanistan's conflicts that led to refugee flows (comparative precedent exists where victims of conflicts sue for damages), even though individual refugees have limited standing in international courts. While such cases face long odds, they keep the conversation alive in legal terms and might unearth useful information about accountability. NGOs can also ask Special Rapporteurs or UN human rights bodies (such as the Special Rapporteur on international solidarity or the human rights of migrants) to look into Pakistan's situation and issue reports that call for more international aid. One could use the newly emerging idea of a human right to international solidarity to argue that the burden of refugees undermines Pakistan's population's right to development and security, particularly in areas that host refugees, and thus calls for international assistance.
2. Moreover, operational NGOs should keep up and grow initiatives that lessen the strain that the refugee crisis has placed on Pakistan. This includes initiatives known as the humanitarian-development nexus, which benefit both local communities and refugees. For example, with international funding, education-

focused NGOs can assist in the construction or renovation of schools in Khyber Pakhtunkhwa that serve both Afghan and Pakistani children. In areas with a high refugee population, health NGOs can support clinics and immunization campaigns, lowering the burden of disease for everyone. To address the environmental degradation surrounding major refugee settlements, environmental NGOs could work on clean water or reforestation projects. These programs successfully make up for some of the harm, even though they are not "reparations" in the traditional sense (such as restoring overused natural resources or expanding livelihood opportunities to reduce competition).[292] By showcasing solutions on the ground, NGOs bolster the claim that the negative impacts of refugee situations can be mitigated with sufficient resources, thereby strengthening the call for the international community to supply those resources. These noticeable advancements also promote social cohesiveness, which makes it simpler for Pakistan to maintain its hospitality without facing domestic criticism.

3. Nonprofits engaged in livelihoods, microfinance, and skills training ought to step up initiatives that assist Afghan refugees in becoming self-sufficient and even in creating jobs. The perceived financial burden on Pakistan lessens if refugees are able to sustain themselves. For instance, NGOs could work with host community members and refugees to provide small grants and entrepreneurship training, thereby promoting employment-generating small businesses. Additionally, they could support value-chain initiatives that integrate refugees into local economies, such as those in services, handicrafts, and agriculture. There is evidence from other contexts that allowing refugees to work lawfully and contribute to the economy can ultimately benefit host nations. NGOs can help counteract claims of loss if they can produce data in Pakistan that demonstrates refugees paying taxes, renting houses, purchasing goods, and thereby boosting the economy. On the other hand, they can argue that with the right investment, the international community can assist in turning a burden into a situation where everyone benefits. This story can support the legal one: instead of Pakistan suffering in isolation, the

[292] Ibid.

refugees can become an asset with international assistance. However, this transition necessitates upfront foreign investment, which is essentially what compensation or reparations would offer.

4. In order to guarantee the transparent and efficient use of funds received (or domestic allocations) for refugee matters, Pakistani civil society should also hold their own government responsible. This guarantees that internal mismanagement won't make the harm Pakistan claims worse. NGOs can issue report cards on government spending and refugee services, or they can participate in oversight committees. By doing this, they increase the confidence of foreign donors that funds sent to or through Pakistan will end up in the hands of the intended recipients. The Government of Pakistan should also be encouraged by domestic NGOs to implement the above recommendations (e.g., enact refugee law, join the Refugee Convention, and refrain from coercive refugee returns that violate international law). Pakistan is in a better position to demand justice on a global scale when the host environment is well-managed and respects human rights.
5. Apart from this, international and domestic non-governmental organizations (NGOs) can be crucial allies in bolstering Pakistan's reparations demand. Their main contribution is the grassroots gathering and validation of data. NGOs can add detailed evidence to government statistics by recording the effects of refugees on local economies, healthcare facilities, and educational systems. This increases the validity of Pakistan's cost estimates. Additionally, NGOs can serve as impartial evaluators, giving Pakistan's claims credibility and impartiality in the eyes of donor nations and international adjudicatory bodies. In order to present Pakistan's claim as a component of a global justice agenda, NGOs should broaden their advocacy networks beyond data. NGOs can assist in transforming the reparations discourse from a bilateral demand into a multilateral principle that calls on the conscience of the global community to recognise refugee hosting as a shared international responsibility by placing Pakistan's experience within the larger framework of prolonged refugee situations around the world.
6. Nevertheless, civil society and NGOs play a variety of roles: they are watchdogs, ensuring that both national and international actors fulfil their obligations; they

are innovators and implementers, demonstrating the impact of increased support; and they are advocates, bringing the issue of Pakistan's rightful reparations to the attention of policy circles. Civil society can assist in converting the ethical and legal consensus that no nation should incur excessive costs for providing shelter to the persecuted into practical action and resources for Pakistan by collaborating with UN agencies, the media, and governments that share this view. In addition to moving Pakistan and Afghan refugees closer to a just resolution, the government, UN, UNHCR, and NGOs' combined efforts as described above would establish a significant precedent in international law: that the principle of full reparations, which was eloquently promoted by academics and famously stated in the Chorzów Factory, can be achieved through collective will, even in the intricate field of refugee protection. [293]In an interconnected world, this would represent a major advancement in the defence of human rights and international justice.

[293] Ibid.

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