Introduction

VOLUNTARY REPATRIATION IN PUBLIC INTERNATIONAL LAW: CONCEPTS AND CONTENTS

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Guest Editor

To the memory of Mariano Garcia Rubio

> "*Tu vas me demander, poursuivit Khâli, pourquoi j'ai dit à ces gens qui étaient là le contraire de la vérité. Vois-tu, Hassan, tous ces hommes ont encore, accrochée à leurs murs, la clé de leur maison de Grenade. Chaque jour, ils la regardent, et la regardant ils soupirent et prient. Chaque jour reviennent à leur mémoire des joies, des habitudes, une fierté surtout, qu'ils ne retrouveront pas dans l'exil. Leur seule raison de vivre, c'est de penser que bientôt, grâce au grand sultan ou à la Providence, ils retrouveront leur maison, la couleur de ses pierres, les odeurs de son jardin, l'eau de sa fontaine, intacts, inaltérés, comme dans leurs rêves. Ils vivent ainsi, ils mourront ainsi, et leur fils après eux. Peut-être faudra-t-il que quelqu'un ose leur apprendre à regarder la défaite dans les yeux, ose leur expliquer que pour se relever il faut d'abord admettre qu'on est à terre. Peut-être faudra-t-il que quelqu'un leur dise la vérité un jour. Moi-même je n'en ai pas le courage*".
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> *Amin Maalouf*, Léon l'Africain

Introduction

Traditionally, the three durable solutions to refugee crises have been held to be voluntary repatriation to the country of origin, integration into the country of asylum, or resettlement to a third country. Voluntary

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repatriation is nowadays assumed to be the most satisfactory solution, while the other solutions would be mere palliatives to the refugee's abnormal state of affairs. This enthusiasm towards voluntary repatriation is closely linked to the myth of nostalgia for a home and memories of the past associated with return.[1] However, it is only relatively recently that the United Nations has begun treating voluntary repatriation of refugees as the primary solution. Although preference for voluntary repatriation began to emerge in General Assembly resolutions during the 1970s, it is since 1983 that it clearly became the central component of "the most desirable and durable solution to problems of refugees".[2] It has then been endorsed by the General Assembly as the "ideal solution to refugee problems".[3]

The continued emphasis upon voluntary repatriation as the preferred solution undoubtedly signals "an erosion of political support for the other classic durable solutions for refugees, local integration and resettlement".[4] Such an emphasis on repatriation paves the way for a new conception of the whole international protection regime of refugees. However, there has been little investigation of its legal implications and its theoretical framework compared to other issues of refugee protection. Voluntary repatriation is still today a largely indeterminate concept, whose legal content depends on various parameters. From a general international law perspective, voluntary repatriation expands the borders of contemporary refugee law, as provided for in the Geneva Convention relating to the Status of Refugees on the basis of the so-called exilic bias. The main difficulties stem from the fact that voluntary repatriation is a generic concept enshrined in various branches of international law, namely: Humanitarian Law (Part. I.), Refugee Law (Part. II.) and Human Rights Law (Part. III.). The object of this contribution is to identify the multiple legal facets of voluntary repatriation. Only a general perspective, through its different normative aspects, may attempt to draw the contours of this elusive concept.

I. Voluntary Repatriation and Humanitarian Law

International humanitarian law represents one of the oldest bodies of international law containing norms on voluntary repatriation. These rules

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[1] See on this issue the excellent article of Daniel Warner, "Voluntary Repatriation and the Meaning of Return to Home: A Critique of Liberal Mathematics", *Journal of Refugee Studies*, 1994, pp. 160-174.

[2] UN Doc. A/Res./38/121 (1983).

[3] UN Doc. A/Res./39/169 (1994). See also UN Doc. A/Res./50/152 (1995); UN Doc. A/Res./51/75 (1996); UN Doc. A/Res./52/103 (1997).

[4] J. Fitzpatrick, "The End of Protection: Legal Standards for Cessation of Refugee Status and Withdrawal of Temporary Protection", *Georgetown Immigration Law Journal*, 1999, p. 433.

were codified by the four Geneva Conventions of 12 August 1949 now ratified by 192 States.[5] The concept of voluntary repatriation, as a rule of humanitarian law, is specifically mentioned for two categories of protected persons, namely: prisoners of war (A) and civilians (B).

A. Voluntary Repatriation of Prisoners of War

The treatment of prisoners of war, including their release and repatriation, is governed by the Third Geneva Convention of 12 August 1949 relative to the treatment of prisoners of war.[6] Two provisions of this Convention are particularly relevant. Each of them covers two different situations: repatriation of prisoners of war during hostilities and after the cessation of hostilities.[7] Article 109 of the Third Convention provides for the release and repatriation of sick and injured prisoners of war during hostilities. According to its first paragraph:

> "Parties to the conflict are bound to send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war, after having cared for them until they are fit to travel, in accordance with the first paragraph of the following Article".

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[5] *States party to the Geneva Conventions and their Additional Protocols*, International Committee of the Red Cross, June 2004.

[6] 75 *U.N.T.S.* 135. See on this Convention A.J. Esgain & W.A. Solf, "The 1949 Geneva Convention Relating to the Treatment of Prisoners of War: Its Principles, Innovations and Deficiencies", *North Carolina Law Review*, 1963, pp. 537-596; H.S. Levie, *Prisoners of War in International Armed Conflict*, US Naval War College, 1978; H. Fischer, "Protection of Prisoners of War" in D. Fleck (ed.), *Handbook of Humanitarian Law*, Oxford University Press, 1995, pp. 321-367. After the First World War, repatriation of Russian prisoners of war was the first task of Fridtjof Nansen the founding father of the international protection of refugees. See the special issue we edited last year in *Refugee Survey Quarterly*, 2003, vol. 22, n° 1 on "Fridtjof Nansen and the International Protection of Refugees".

[7] See on this question L.B. Schapiro, "Repatriation of Deserters", *BYIL*, 1952, pp. 310-324; J.P. Charmatz and H.M. Wit, "Repatriation of Prisoners of War and the 1949 Geneva Convention", *Yale Law Journal*, 1952-1953, pp. 391-404; D.E. Graham, "Repatriation of Prisoners of War during Hostilities – A Task Unsuited for the Private Citizenry", *International Lawyer*, 1974, pp. 832-840; C. Shields Delessert, *Release and Repatriation of Prisoners of War at the End of Active Hostilities: A Study of Article 118, paragraph 1, of the Third Geneva Convention Relative to the Treatment of Prisoners of War*, Schulthess Polygraphischer Verlag, 1977; Y. Dinstein, "The release of prisoners of war" in C. Swinarski (ed.), *Studies and essays on international humanitarian law and Red Cross principles in honour of Jean Pictet*, ICRC, Martinus Nijhoff, 1984, pp. 37-45; M. Sassoli, "The Status, Treatment and Repatriation of Deserters under International Humanitarian Law", *Yearbook of the International Institute of Humanitarian Law*, 1985, pp. 310-324; F. Bugnion, *The International Committee of the Red Cross and the Protection of War Victims*, MacMillan, 2003, pp. 678-688. See also the excellent article of Stéphane Jaquemet, "The cross-fertilization of international humanitarian law and international refugee law", *IRRC*, 2001, pp. 651-674.

The wording of this provision suggests that this obligation is imperative for the Detaining Power and Article 110 goes on to specify in detail the categories of sick and injured prisoners to be repatriated.[8] However, this obligation of repatriation is not absolute. Article 109 paragraph 3 provides for an important exception:

> "No sick or injured prisoner of war who is eligible for repatriation under the first paragraph of this Article, may be repatriated against his will during hostilities".

Article 109 paragraph 3 of the Third Geneva Convention is one of the first clear-cut conventional recognitions of voluntary repatriation as a norm of international law. The former Prisoner-of-War Convention of 27 July 1929 did not mention such a guarantee, which was inserted into the 1949 Convention as a result of the experience of the Second World War. This provision was approved after long discussion at the 1949 Diplomatic Conference. Some delegations were afraid that a detained foreigner could demand to stay in a country which was not his own.[9] The scope of this absolute prohibition of forcible return is nevertheless limited to sick and wounded prisoners of war. It applies, therefore, in exceptional situations. In practice, the vast majority of prisoners of war are able-bodied and they are usually repatriated at the end of the hostilities.

In such a case, Article 118 of the Third Convention requires that:

> "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities".

The main question raised by Article 118 is whether prisoners of war may be repatriated without their consent. The wording of this provision is categorical. The only conditions for repatriation are that it be conducted "after the cessation of active hostilities" and "without delay". Contrary to Article 109, this provision does not indicate that it shall be on a voluntary basis. In fact, during the 1949 Diplomatic Conference, an Austrian amendment was introduced to grant prisoners of war a right "to apply for their transfer to any other country [than their country of origin] which is ready to accept them".[10] The proposal, however, was rejected by the large majority of delegations. The main concern of States at the 1949 Diplomatic Conference was that such a right of option could be used by Detaining

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[8] These are, broadly, the incurably wounded and sick, those who are unlikely to recover within one year and who have suffered severe mental or physical impairment, and those who, although recovered, have suffered severe mental or physical impairment. A special annex to the Third Geneva Convention (Annex I) includes a detailed list of disabilities giving eligibility for early repatriation.

[9] J.S. Pictet (ed.), *Geneva Convention relative to the Treatment of Prisoners of War: Commentary*, ICRC, 1960, p. 512.

[10] *Ibid.*, p. 542.

Powers as a pretext for extending captivity of the prisoners of war, who might not be able to express themselves with complete freedom while in captivity.[11]

Subsequent State practice has, however, dramatically changed the meaning and the content of Article 118. Since the Korean War, a practice has grown of not repatriating prisoners who are unwilling to return home. At the close of the Korean War, after considerable debate, a special Agreement on Prisoners of War allowed prisoners of war to choose repatriation.[12] A few months before, the General Assembly of the United Nations had proclaimed in a resolution adopted on 3 December 1952 that:

> "Force shall not be used against prisoners of war to prevent or effect their return to their homelands, and no violence to their persons or affront to their dignity or self-respect shall be permitted in any manner or for any purpose whatsoever".[13]

The question of voluntary repatriation of prisoners of war arose again in the early 1990s following the end of the long armed conflict between Iran and Iraq. The International Committee of the Red Cross consulted prisoners and those wishing to remain in the detaining State were allowed to do so.[14] After the first Gulf War, the coalition forces also considered in the same vein that Iraqi prisoners of war must indicate their consent to return to Iraq before being repatriated.[15] As Theodor Meron has pointed out, "practice has in fact recast Article 118. Interpretation has drastically modified its categorical language, steering it to respect for individual autonomy".[16]

By adopting such an interpretation, State practice endorsed the interpretation already given in 1960 by the International Committee of the Red Cross in its Commentary to the Third Geneva Convention. It proposed the following standard for the purpose of interpreting Article 118:

> "1. Prisoners of war have an inalienable right to be repatriated once active hostilities have ceased. In parallel [...], it is

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[11] *Ibid.*, p. 542.

[12] See on this question R.R. Baxter, "Asylum to Prisoners of War", *BYIL*, 1953, pp. 489-498; J. Mayda, "The Korean Repatriation Problem and International Law", *AJIL*, 1953, pp. 414-438.

[13] UN doc. A/Res/610(VII) (1952). See also Resolution 427 (V), December 14, 1950, *United Nations Year Book* 1950, p. 568.

[14] J. Quigley, "Iran and Iraq and the Obligations to Release and Repatriate Prisoners of War after the Close of Hostilities", *American University Journal of International Law and Policy*, 1989, p. 82.

[15] M.V.A. Ary, "Concluding Hostilities: Humanitarian Provisions in Cease-Fire Agreements", *Military Law Review*, 1995, p. 148.

[16] Th. Meron, "The Humanization of Humanitarian Law", *AJIL*, 2000, p. 256. See also H. McCoubrey, *International Humanitarian Law. Modern Developments in the Limitation of Warfare*, Ashgate, Dartmouth, 1998, pp. 170-171.

> the duty of the Detaining Power to carry out repatriation and to provide the necessary means for it to take place. [...]
> 2. No exception may be made to this rule unless there are serious reasons for fearing that a prisoner of war who is himself opposed to being repatriated may, after his repatriation, be subject of unjust measures afflicting his life or liberty, especially on grounds of race, social class, religion or political views, and that consequently repatriation would be contrary to the general principles of international law for the protection of the human being. Each case must be examined individually".[17]

This interpretation is clearly inspired by the Geneva Convention relating to the Status of Refugees of 28 July 1951.[18] Stéphane Jaquemet has rightly observed that: "Article 118 of the Third Geneva Convention, as interpreted during successive international armed conflicts, has proven to be a good example of the complementary character of international humanitarian law and refugee law: they do not simply overlap, but instead represent a legal and institutional 'hand-over'".[19] Article 1 of the Refugee Convention implies therefore that if a prisoner of war has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, he is eligible for the status of refugee, unless there are serious reasons for considering that he has committed a serious crime, in particular a war crime or a crime against humanity during the hostilities.

B. Voluntary Repatriation of Civilians

The Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) of 12 August 1949[20] refers, implicitly or explicitly, to voluntary repatriation and related aspects in various provisions. Three categories of civilians are specially protected in this respect, namely: the population of occupied territory, aliens within the territory of a party to the conflict, and civilian internees.

First of all, Article 49 paragraph 1 contains a basic prohibition for the Occupying Power:

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[17] J.S. Pictet (ed.), *Geneva Convention relative to the Treatment of Prisoners of War: Commentary*, *supra* note 9, pp. 546-547.

[18] 189 *U.N.T.S.* 150.

[19] He continues: "As long as prisoners of war are held in captivity and there is no obligation to release them, they are protected by the [Third] Geneva Convention. They have POW status and are under the responsibility of the Detaining Power. But as soon as there is an obligation to release them, those who would be at risk of persecution in their country of origin are entitled to have their claimed examined and their refugee status determined by the Detaining Power": S. Jaquemet, "The cross-fertilization of international humanitarian law and international refugee law", *supra* note 7, pp. 663-664.

[20] 75 *U.N.T.S.* 287.

> "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive".[21]

In prohibiting only forcible deportations, the Convention leaves room for lawful voluntary transfers of civilians from occupied territory. The Commentary to the Fourth Geneva Convention explains – albeit in cautious terms – that: "some might up to a certain point have the consent of those being transferred. The [Diplomatic] Conference had particularly in mind the case of protected persons belonging to ethnic or political minorities who might have suffered discrimination or persecution on that account and might therefore wish to leave the country. In order to make due allowance for that legitimate desire the Conference decided to authorize voluntary transfers by implication, and only to prohibit 'forcible' transfers".[22]

Voluntary repatriation is more clearly mentioned with regard to the situation of aliens on the territory of a party to an international armed conflict. According to Article 35 paragraph 1 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War:

> "All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the State".

The wording of this provision unequivocally shows that the departure of aliens will take place on a voluntary basis. The International Committee's original draft provided that no protected person could be repatriated against his will.[23] In the final text, however, Article 35 was worded in positive terms rather than negative ones. The Commentary to the Fourth Geneva Convention notes in this respect that: "the same idea is implicit in the text actually adopted, although it is expressed somewhat differently."[24]

Although Article 35 does not specify the destination for repatriates, aliens will normally choose to return to their country of origin. They are nev-

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[21] Forcible deportation or transfer is a grave breach under Article 147 of the Fourth Convention. It is also considered as a war crime or a crime against humanity under the Rome Statute of the International Criminal Court (Article 7 (d) and Article 8 para. 2 (a) (vii) and (b) (viii)). See on this prohibition of forced deportations: A. De Zayas, "International Law and Mass Population Transfers", *Harvard International Law Journal*, 1975, pp. 207-258; R. Lapidoth, "The Expulsion of Civilians from Areas which Came under Israeli Control in 1967: Some Legal Issues", *European Journal of International Law*, 1991, pp. 97-109; J.-M. Henckaerts, *Mass Expulsion in Modern International Law and Practice*, Martinus Nijhoff Publishers, 1995, pp. 143-178.

[22] J.S. Pictet (ed.), *Geneva Convention relative to the Protection of Civilian Persons in Time of War: Commentary*, ICRC, 1958, p. 279.

[23] *Ibid.*, p. 235.

[24] *Ibid.*

ertheless free to go elsewhere. According to the Commentary to the Fourth Convention, "[Article 35] lays down that they are entitled to leave, but does not say what their destination is to be. A belligerent is therefore also bound to authorize the departure of protected persons who wish to go to a country other than their home country, to a neutral State for example".[25] Belligerents may only refuse permission to leave the territory, if the departure is "contrary to the national interests of the State". This reservation takes into account the general practice of refusing to repatriate certain classes of civilians, in particular men of an age to bear arms or aliens whose manpower considered as essential to the economy of the belligerent.[26] Article 35 provides for a specific procedure in order to prevent arbitrary decisions.[27]

After laying down the principle of voluntary departure and defining the procedure for applying it, Article 36 entitled "method of repatriation" sets forth basic safeguards governing its implementation. It recalls that:

> "Departures permitted under the foregoing Article shall be carried out in satisfactory conditions as regards safety, hygiene, sanitation and food. [...]
> The practical details of such movements may, if necessary, be settled by special agreements between the Powers concerned".

In parallel to the right of aliens to leave the territory of a State involved in an international armed conflict, the Fourth Geneva Convention considerably restricts forcible transfers by the Detaining Power. Article 45 paragraph 1 declares that:

> "Protected persons shall not be transferred to a Power which is not a party to the Convention".

The term "transfer" here is meant to be broadly understood. Indeed, "any movement of protected persons to another State, carried out by the Detaining Power on an individual or collective basis, is considered as a transfer for the purposes of Article 45. The term 'transfer', for example, may mean internment in the territory of another Power, repatriation, the returning of protected persons to their country of residence or their extradition".[28] However, this prohibition cannot be used by Detaining Powers as

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[25] *Ibid.*

[26] *Ibid.*, p. 236.

[27] "The applications of such persons to leave shall be decided in accordance with regularly established procedures and the decision shall be taken as rapidly as possible. [...] If any such person is refused permission to leave the territory, he shall be entitled to have such refusal considered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose [...]".

[28] J.S. Pictet (ed.), *Geneva Convention relative to the Protection of Civilian Persons in Time of War: Commentary*, *supra* note 22, p. 266.

an excuse for refusing repatriation after the end of the hostilities. Article 45 paragraph 2 clearly recalls that:

> "This provision shall in no way constitute an obstacle to the repatriation of protected persons, or to their return to their country of residence after the cessation of hostilities".

Moreover, Article 45 paragraph 5 provides for an essential guarantee:

> "In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs".

This prohibition is absolute, allowing no exception. As pointed out in the Commentary, "since one of the fundamental principles proclaimed by the Convention is the prohibition of discrimination (Article 27, para. 3), it follows that the Detaining Power cannot transfer protected persons unless it is absolutely certain that they will not be subject to discriminatory treatment or, worse still, persecution".[29] This humanitarian principle of *non-refoulement* paves the way for its further affirmation – two years later – in the 1951 Refugee Convention, before becoming the cornerstone of international refugee law.

The Fourth Convention also contains other specific provisions on repatriation of civilian internees. In time of international armed conflict, States tend to frequently intern nationals of enemy Powers in their territories. In such a context, repatriation is considered as the logical consequence of the obligation to release interned civilians. According to Article 132:

> "Each interned person shall be released by the Detaining Power as soon as the reasons which necessitated his internment no longer exist.
> The Parties to the conflict shall, moreover, endeavour during the course of hostilities, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees, in particular children, pregnant women and mothers with infants and young children, wounded and sick, and internees who have been detained for a long time".

Although this last provision does not mention the voluntary character of such repatriation, the delegations agreed at the Diplomatic Conference that returnees were under the protection of Article 45 paragraph 5 pro-

[29] *Ibid.*, p. 269. See also Article 44 of the Fourth Geneva Convention.

hibiting repatriation in a country where they feared persecution.[30] The situation would appear to be different at the end of the hostilities. In parallel to the obligation of release expressed in Article 133, the Fourth Convention further states in Article 134 that:

> "The High Contracting Parties shall endeavour, upon the close of hostilities or occupation, to ensure the return of all internees to their last place of residence, or to facilitate their repatriation".

The voluntary character of repatriation of internees after the end of the hostilities is more controversial because States at the Diplomatic Conference refused to adopt a more stringent provision.[31] However, as the prisoners of war released at the end of the hostilities, the Refugee Convention is plainly applicable to those unwilling to go home. The Geneva Convention relating to the Status of Refugees thus fills the gap for repatriated internees who fear persecution in their country of origin. It highlights the complementary nature of international humanitarian law and international refugee law.

II. Voluntary Repatriation and Refugee Law

Immediately after the Second World War, voluntary repatriation emerged as a key principle of the international protection of refugees. The General Assembly proclaimed in a resolution adopted on 12 February 1946 that:

> "No refugees or displaced persons who have finally and definitely, in complete freedom, and after receiving full knowledge of the facts, including adequate information from the governments of their countries of origin, expressed valid objections to returning to their countries of origin [...] shall be compelled to return to their country of origin.
> The future of such refugees or displaced persons shall become the concern of whatever international body may be recognized or established".[32]

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[30] J.S. Pictet (ed.), *Geneva Convention relative to the Protection of Civilian Persons in Time of War: Commentary*, *supra* note 22, p. 513.

[31] The Draft of Article 134 read as follows: "The High Contracting Parties shall endeavour upon the close of hostilities or occupation, to facilitate the return to their domicile, or the settlement in a new residence, of all persons who, as the result of war or occupation, are unable to live under normal conditions at the place where they may be. The High Contracting Parties shall, in particular, ensure that these persons may be able to travel, if they so desire, to other countries and that they are provided for this purpose with passports or equivalent documents": *ibid.*, p. 516.

[32] UN Doc. A/Res/8(I) (1946).

Voluntary repatriation was enshrined in the Statute of the United Nations High Commissioner for Refugees (UNHCR), adopted by the General Assembly in its resolution of 14 December 1950.[33] It then became – through a gradual process – the cornerstone of the UNHCR mandate. However, contrary to humanitarian law, no binding instrument in universal international refugee law contains an express provision on voluntary repatriation. Although the Geneva Convention of 28 July 1951 prohibits forced return, the legal content of refugee status tends to encourage local integration in the country of asylum rather than voluntary return to the country of origin. The continued emphasis upon voluntary repatriation by the General Assembly thus contributes to create a growing discrepancy between the institutional responsibilities of UNHCR and the legal framework provided for in the Refugee Convention. Indeed, the main ambiguities stem from the fact that, under refugee law, the concept of voluntary repatriation denotes an institutional policy rather an inter-State norm. This is a creation of UNHCR practice (A), largely born outside the framework of the Refugee Convention (B).

A. Voluntary Repatriation and UNHCR practice

The UNHCR Statute calls upon the High Commissioner to facilitate and to promote voluntary repatriation.[34] UNHCR's primary responsibility is to provide international protection to refugees and to seek "permanent solutions for the problem of refugees by assisting Governments and, subject to the approval of the Governments concerned, private organizations to facilitate the voluntary repatriation of [...] refugees, or their assimilation within new national communities" (§ 1). Paragraph 8(c) of the UNHCR Statute reiterates that the High Commissioner shall provide for the protection of refugees "by assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities", while paragraph 9 authorises UNHCR to engage in "such additional activities,

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[33] *Statute of the Office of the United Nations High Commissioner for Refugees*, GA res. 428 (V), annex, 5 UN GAOR Supp. (N° 20), UN Doc. A/1775 (1950).

[34] See on this question R. Hofmann, "Voluntary Repatriation and UNHCR", *Zeitschrift für ausländisches und öffentliches Recht*, 1984, pp. 327-335; G.J.L. Coles, *Voluntary Repatriation: A Background Study*, prepared for the Round Table on Voluntary Repatriation, UNHCR in co-operation with the International Institute of Humanitarian Law, 1985; G.S. Goodwin-Gill, "Voluntary Repatriation: Legal and Policy Issues" in G. Loescher & L. Monahan (eds), *Refugees and International Relations*, Oxford, 1990, pp. 255-285; T. Allen, "The United Nations and the Homecoming of Displaced Populations", *International Review of the Red Cross*, 1994, pp. 340-353; B.S. Chimni, "The Meaning of Words and the Role of UNHCR in Voluntary Repatriation", *International Journal of Refugee Law*, 1993, pp. 442-459; M. Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, The Hague/Boston/London, Martinus Nijhoff Publishers, 1997; S. Takahashi, "The UNHCR Handbook on Voluntary Repatriation: The Emphasis of Return over Protection", *International Journal of Refugee Law*, 1997, pp. 593-612.

including repatriation and resettlement, as the General Assembly may determine, within the limits of the resources placed at his disposal".

While the 1950 Statute does not refer to any particular hierarchy between the three solutions (repatriation, assimilation and resettlement) mentioned above, voluntary repatriation has been receiving increasing attention from the international community since the beginning of the 1980s. From this time, the importance of voluntary repatriation has been repeatedly stressed in a number of General Assembly resolutions. The UNHCR has also been called upon by the General Assembly to carry out various functions in connection with large-scale repatriation operations, which have resulted in an expansion of the original terms of its mandate, more particularly as regards the provision of assistance to countries of origin to facilitate the re-integration of returning refugees. This extension of UNHCR responsibilities is particularly clear in a resolution of 23 December 1994, in which the General Assembly:

> "*Reiterates* that voluntary repatriation, when it is feasible, is the ideal solution to refugee problems, calls upon countries of origin, countries of asylum, the Office of the High Commissioner and the international community as a whole to do everything possible to enable refugees to exercise freely their right to return home in safety and dignity, ensuring that international protection continues to be extended until that time, and assisting, where needed, the return and reintegration of repatriating refugees, and further calls upon the High Commissioner, in cooperation with States concerned, to promote, facilitate and coordinate the voluntary repatriation of refugees, including the monitoring of their safety and well-being on return".[35]

The role of UNHCR moved therefore from a relatively passive facilitation of voluntary repatriation to the active creation of conditions conducive to the return of refugees. This practice takes place, however, in somewhat of a legal *vacuum*, as General Assembly resolutions adopted subsequent to the 1950 Statute only devise guidelines of these new responsibilities without specifying their content. The Executive Committee of the High Commissioner's Programme[36] thus undertakes to fill the gap in elaborating

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[35] UN Doc. A/Res./39/169 (1994). See also UN Doc. A/Res./50/152 (1995); UN Doc. A/Res./51/75 (1996); UN Doc. A/Res./52/103 (1997); UN Doc. A/Res./53/125 (1998); UN Doc. A/Res./54/146 (1999); UN Doc. A/Res./55/74 (2000); UN Doc. A/Res./56/135 (2001); and UN Doc. A/Res./57/183 (2002).

[36] The UNHCR Executive Committee is currently made up of 66 countries. It advises the High Commissioner on protection matters and approves the agency's annual programme and budget. The Executive Committee helps to set international standards with respect to the treatment of refugees through the adoption of conclusions. From the international law perspective, ExCom's Conclusions are not formally binding, even if they contribute to the soft law process. See on this question J. Sztucki, "The Conclusions on the International Protection of Refugees Adopted by the Executive Committee of the UNHCR Programme", *International Journal of Refugee Law*, 1989, pp. 287-318.

basic standards relative to the legal content of voluntary repatriation. The Executive Committee first examined this issue in detail in 1980. Its Conclusion n° 18 (XXXI) emphasises the voluntary nature of repatriation as an absolute prerequisite. The Executive Committee:

> "(a) Recognized that voluntary repatriation constitutes generally, and in particular when a country accedes to independence, the most appropriate solution for refugee problems;
> (b) Stressed that the essentially voluntary character of repatriation should always be respected;
> (c) Recognized the desirability of appropriate arrangements to establish the voluntary character of repatriation, both as regards the repatriation of individual refugees and in the case of large-scale repatriation movements, and for UNHCR, whenever necessary, to be associated with such arrangements;
> (d) Considered that when refugees express the wish to repatriate, both the government of their country of origin and the government of their country of asylum should, within the framework of their national legislation and, whenever necessary, in co-operation with UNHCR take all requisite steps to assist them to do so;
> (e) Recognized the importance of refugees being provided with the necessary information regarding conditions in their country of origin in order to facilitate their decision to repatriate; recognized further that visits by individual refugees or refugee representatives to their country of origin to inform themselves of the situation there – without such visits automatically involving loss of refugee status – could also be of assistance in this regard".

Once the voluntary character of repatriation is clearly established, Conclusion n° 18 (XXXI) identifies two complementary principles governing the implementation of the repatriation operation. The Executive Committee:

> "(f) Called upon governments of countries of origin to *provide formal guarantees for the safety of returning refugees* and stressed the importance of such guarantees being fully respected and of returning refugees not being penalized for having left their country of origin for reasons giving rise to refugee situations; [...]
> (i) Called upon the governments concerned to *provide repatriating refugees with the necessary travel documents, visas, entry permits and transportation facilities* and, if refugees have lost their nationality, to arrange for such nationality to be restored in accordance with national legislation [...]" (emphasis added).

Surprisingly, the change of circumstances prevailing in the country of origin is not mentioned *expressis verbis*. The only indirect reference is related to "the formal guarantees for the safety of returning refugees", as a condition of the repatriation program itself, rather than a prerequisite for repatriation. Voluntariness seems therefore to be the sufficient and necessary prerequisite. The subjective element of voluntary repatriation overshadows the objective one relating to the situation in the country of origin. However, both elements are complementary in identifying the legal prerequisite of voluntary repatriation. Voluntariness alone cannot be the exclusive criterion, without regard to the change of circumstances in the country of origin. This ambiguity is not completely removed by the subsequent Conclusion No. 40 (XXXVI) adopted in 1985. Reaffirming the 1980 conclusion "as reflecting basic principles of international law and practice", the Executive Committee reiterates the voluntary character of repatriation as the central criterion:

> "(a) The basic rights of persons to return voluntarily to the country of origin is reaffirmed and it is urged that international co-operation be aimed at achieving this solution and should be further developed;
> (b) The repatriation of refugees should only take place at their freely expressed wish; the voluntary and individual character of repatriation of refugees and the need for it to be carried out under conditions of absolute safety, preferably to the place of residence of the refugee in his country of origin, should always be respected".

Contrary to the previous Conclusion, the Executive Committee expressly makes mention of the situation of the country of origin which caused the refugee outflow. Nevertheless, this crucial aspect of voluntary repatriation is formulated in quite vague and ambiguous terms, in connection with the prevention of refugee flows and the responsibilities of States towards their nationals. According to Conclusion No. 40 (XXXVI):

> "(c) The aspect of causes is critical to the issue of solution and international efforts should also be directed to the removal of the causes of refugee movements. Further attention should be given to the causes and prevention of such movements, including the co-ordination of efforts currently being pursued by the international community and in particular within the United Nations. An essential condition for the prevention of refugee flows is sufficient political will by the States directly concerned to address the causes which are at the origin of refugee movements;
> (d) The responsibilities of States towards their nationals and the obligations of other States to promote voluntary repatria-

> tion must be upheld by the international community. International action in favour of voluntary repatriation, whether at the universal or regional level, should receive the full support and co-operation of all States directly concerned. Promotion of voluntary repatriation as a solution to refugee problems similarly requires the political will of States directly concerned to create conditions conducive to this solution. This is the primary responsibility of States".

Eleven years later in April 1996, the UNHCR *Handbook on Voluntary Repatriation* attempts to clarify the guidelines set forth by the Executive Committee. It provides a more substantial theoretical framework in defining the basic components of voluntary repatriation and in highlighting the interaction between its voluntary nature and the change of circumstances in the country of origin. Recalling that "the principle of voluntariness is the cornerstone of international protection with respect to the return of refugees", the UNHCR *Handbook* defines the concept of voluntariness in broad and negative terms:

> "Voluntariness means not only the absence of measures which push the refugee to repatriate, but also means that he or she should not be prevented from returning, for example by dissemination of wrong information or false promises of continued assistance".[37]

Indeed, from the UNHCR's perspective, the principle of voluntariness:

> "must be viewed in relation to both:
> • conditions in the country of origin (calling for an *informed decision*);
> and
> • the situation in the country of asylum (permitting a *free choice*)".[38]

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[37] *Handbook on Voluntary Repatriation*, UNHCR, Geneva, 1996, § 2.3.

[38] *Ibid.*, § 2.3 (emphasis added). The *Handbook* provides three examples where the condition of voluntariness is not satisfied: "Refugee repatriation is *not* voluntary when:
• host country authorities deprive refugees of any real freedom of choice through outright coercion or measures such as, for example, reducing essential services, relocating refugees to hostile areas, encouraging anti-refugee sentiment on the part of the local population.
• factions among the refugee population or exiled political organizations influence the refugees' choice either directly by physically pressuring them to return, or indirectly by activities such as disinformation campaigns about the risk of remaining in the country of asylum or dangers related to returning home.
• certain interest groups in the host country actively discourage voluntary repatriation by disseminating false information including incorrect promises of assistance, economic opportunities or improvement of the legal status": *ibid.*, § 4.1.

More substantially, the *Handbook* draws a line between the two basic components of voluntary repatriation. The "general improvement in the situation in the country of origin" is clearly mentioned, in addition to voluntariness, as one of the "*essential preconditions* to be met for UNHCR to promote voluntary repatriation movements".[39] The *Handbook* explains that:

> "Promotion of repatriation can take place when a careful assessment of the situation shows that the conditions of 'safety and dignity' can be met: in other words, when it appears that objectively, it is safe for most refugees to return and that such returns have good prospects of being durable"[40].

After laying down the concept of "return in safety and dignity" as a prerequisite of voluntary repatriation, the *Handbook* specifies the content of its core elements. Return in safety is defined as:

> "Return which takes place under conditions of legal safety (such as amnesties or public assurances of personal safety, integrity, non-discrimination and freedom from fear of persecution or punishment upon return), physical security (including protection from armed attacks, and mine-free routes and if not mine-free then at least demarcated settlement sites), and material security (access to land or means of livelihood)".[41]

Return with dignity is a complementary condition, which is more difficult to assess. The UNHCR *Handbook* acknowledges that:

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[39] *Ibid.*, § 3.1.

[40] *Ibid.*, § 3.1. UNHCR's *promotion* of voluntary repatriation has to be distinguished from the mere *facilitation* of voluntary repatriation. In such a case, respect for the refugee's will calls for a more passive involvement of UNHCR, because there is no change of circumstances in the country of origin. According to the *Handbook*:
"Respecting the refugees' right to return to their country at any time, UNHCR may *facilitate voluntary repatriation* when refugees indicate a strong desire to return voluntarily and/or have begun to do so on their own initiative, even where UNHCR does not consider that, objectively, it is safe for most refugees to return. This term should be used only when UNHCR is satisfied that refugees' wish to return is indeed voluntary and not driven by coercion. While the condition of fundamental change of circumstances in the country of origin will usually not be met in such situations, UNHCR may consider facilitating return in order to have a positive impact on the safety of refugees/returnees as well as to render assistance which the refugees may require in order to return. [...] In designing and carrying out its protection and assistance functions, UNHCR, however, has to make it clear to the authorities and, most importantly, to the refugees, that UNHCR support for such repatriations is based on respect for the refugees' decision to repatriate and cannot be interpreted as an indication of adequate security": *Ibid.*, § 3.1.

[41] *Ibid.*, § 2.4.

> "The concept of dignity is less self-evident than that of safety. The dictionary definition of 'dignity' contains elements of 'serious, composed, worthy of honour and respect.' In practice, elements must include that refugees are not manhandled; that they can return unconditionally and that if they are returning spontaneously they can do so at their own pace; that they are not arbitrarily separated from family members; and that they are treated with respect and full acceptance by their national authorities, including the full restoration of their rights".[42]

Paradoxically, the concept of return in safety and dignity tends to blur the legal content of voluntary repatriation. Although the 1996 *Handbook* clearly defines voluntary repatriation on the basis of two cumulative preconditions (voluntary nature and change of circumstances), the subsequent evolution of the concept of return in safety and dignity overemphasizes the objective element to the detriment of the subjective one. UNHCR's background Note on Voluntary Repatriation, adopted for the Global Consultations on International Protection in April 2002, is a typical example of this new approach. The voluntary nature of repatriation is mentioned in vague terms almost incidentally:

> "The search for solutions has generally required UNHCR to promote measures, with governments and with other international bodies, to establish conditions that would permit refugees to make a free and informed choice and to return safely and with dignity to their homes".[43]

Voluntariness is curiously not further developed in the background Note. Emphasis is placed on safety in the country of origin rather than on the truly voluntary character of repatriation. Indeed:

> "From UNHCR's perspective, the core of voluntary repatriation is return in and to conditions of physical, legal and material safety, with full restoration of national protection the end product".[44]

Safety seems therefore to be put forward as a self-sufficient condition for voluntary repatriation, which as such presupposes the will of refugees. After being considered as the exclusive criterion during the 1980s, voluntariness is nowadays overridden by the objective conditions prevailing in

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[42] *Ibid.*, § 2.4.

[43] EC/GC/02/5, 25 April 2002, § 14. The text of this document is published in the annex of this special issue.

[44] *Ibid.*, § 15.

the country of origin. This brief overview of UNHCR's practice relating to voluntary repatriation highlights the difficulties of defining a concept *ex nihilo* outside the legal framework of universal refugee law. The changing content of voluntary repatriation may be explained – at least partially – by the lack of a clear-cut recognition in the Geneva Convention relating to the Status of Refugees. Against this context, guidelines on voluntary repatriation tend to become dependent on extra-legal considerations largely dominated by short-term political constraints rather than pre-established legal standards.

B. Voluntary Repatriation and the Geneva Convention relating to the Status of Refugees

The Geneva Convention relating to the Status of Refugees, commonly regarded as the *Magna Carta for Refugees*,[45] does not contain any specific provision on voluntary repatriation.[46] On the contrary, the Geneva Convention implicitly favours integration in the country of asylum. Refugee status entails a wide range of civil, economic and social rights for refugees lawfully established in the territories of State's Parties, such as access to courts (Article 16), the right to work (Article 17), access to public education (Article 22) and the right to social security (Article 24). In addition, naturalization of refugees should be facilitated by the countries of asylum (Article 34). Moreover, the only references to return are negative: Article 32 bars expulsion of refugees, except for exceptional circumstances, and Article 33 lays down the fundamental principle of *non-refoulement.*[47] According to Article 33 paragraph 1:

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[45] J.M. Read, *Magna Carta for Refugees*, United Nations, Department of Public Information, 1951.

[46] See on the relationship between voluntary repatriation and the Geneva Convention, in addition to the previous references, P. van Krieken, "Repatriation of Refugees under International Law", *Netherlands Yearbook of International Law*, 1982, pp. 93-123; J. Feitsma, "Repatriation Law and Refugees", *Netherlands Quarterly on Human Rights*, 1989, pp. 294-307; M. Zieck, "Voluntary Repatriation: An Analysis of the Refugee's Right to Return to His Own Country", *Austrian Journal of Public International Law*, 1992, pp. 137–176; M. Othman-Chande, "The Emerging International Law Norms for Refugee Repatriation", *Revue hellénique de droit international*, 1993, pp. 103-126; J.C. Hathaway, "The Meaning of Repatriation", *International Journal of Refugee Law*, 1997, pp. 551-558; J. Vedsted-Hansen, "An Analysis of the Requirements for Voluntary Repatriation", *International Journal of Refugee Law*, 1997, pp. 559-565; M. Barutciski, "Involuntary Repatriation when Refugee Protection is no longer Necessary: Moving Forward after the 48th Session of the Executive Committee", *International Journal of Refugee Law*, 1998, pp. 236-255; V. Ullom, "Voluntary Repatriation of Refugees in Customary International Law", *Denver Journal of International Law and Policy*, 2001, pp. 115-145.

[47] See on this subject V. Chetail, "Le principe de non-refoulement et le statut de réfugié en droit international ", in V. Chetail & J.-F. Flauss (eds), *La Convention de Genève du 28 juillet 1951 relative au statut des réfugiés – 50 ans après: bilan et perspectives*, Bruylant, Brussels, 2001, pp. 3-61.

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

Although their scope and legal meaning may differ, there is an obvious interaction between the concept of voluntary repatriation and the principle of *non-refoulement*. The prohibition of forced return paves the way for voluntary return.[48] In a Note on Voluntary Repatriation, the High Commissioner considers that:

> "The essential need for repatriation to be voluntary is, indeed, the counterpart of the fundamental and generally accepted principle *non-refoulement*, according to which no person may be returned against his will to a territory where he has reason to fear persecution".[49]

The *Handbook on Voluntary Repatriation* reiterates in the same vein that:

> "The principle of *voluntariness* is the cornerstone of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951 Refugee Convention, it follows directly from the *principle of non-refoulement*: the involuntary return of refugees would in practice amount to refoulement".[50]

Conversely, the voluntary nature of repatriation is "an inherent safeguard against *forced* return".[51] The interfacing of voluntary repatriation and *non-refoulement* is not surprising, for "refugees are by definition 'unrepatriable'. As long as a person satisfies the definition of refugee in the contemporary instruments, he remains, moreover, 'unrepatriable' and consequently benefits from the prohibition of forced return".[52] According to Article 1 A (2) of the Geneva Convention, a refugee is a person who:

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[48] For R. Hofmann, "the principle of *non-refoulement* [...] protects any refugee from being returned to his country of origin against his will. The principle of *non-refoulement* thus implies the necessity of any repatriation being voluntary": R. Hofmann, "Voluntary Repatriation and UNHCR", *supra* note 34, p. 333.

[49] *Note on Voluntary Repatriation*, UN doc. EC/SCP/13 (1980), § 3. See also *Note on International Protection*, UN Doc. A/AC. 96/815, 1993, § 58: "voluntary repatriation is the direct corollary of the principle of non-refoulement". See however *Report of the UNHCR Working Group on International Protection*, July 6, 1992, § 83.

[50] *Handbook on Voluntary Repatriation*, *op. cit.*, § 2.3.

[51] G.S. Goodwin-Gill, *The Refugee in International Law*, 2nd ed., Oxford University Press, 1996, p. 274.

[52] M. Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, *supra* note 34, pp. 101-102.

> "*owing to a well-founded fear of being persecuted* for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and *is unable or*, owing to such fear, *is unwilling to avail himself of the protection of that country*".

From that perspective, "the voluntary character of repatriation can thus be seen as the necessary correlative to the subjective fear which gave rise to flight; willingness to return negatives that fear".[53] In such a case, the Geneva Convention specifically provides a set of cessation clauses spelling out the situations in which refugee status may be terminated.[54] The cessation clauses can be divided into two main categories. The first is based on a voluntary action undertaken by the refugee himself. According to Article 1 C of the 1951 Convention:

> "This Convention shall cease to apply to any person falling under the terms of section A if:
> (1) He has voluntarily re-availed himself of the protection of the country of his nationality; or
> (2) Having lost his nationality, he has voluntarily re-acquired it; or
> (3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or
> (4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution".

In practice, all of these circumstances largely coincide – albeit not automatically – with voluntary repatriation. More controversial is the second category of cessation clauses. Article 1 C of the Refugee Convention mentions two additional situations, when the causes of persecution no longer exist:

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

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[53] G.S. Goodwin-Gill, "Voluntary Repatriation: Legal and Policy Issues", *supra* note 34, p. 257.

[54] See on this question, UNHCR, *The Cessation Clauses: Guidelines on their Application*, Geneva, 1999; J.R. Tarwater, "Analysis and Case Studies of the 'Ceased Circumstances' Cessation Clause of the 1951 Refugee Convention", *Georgetown Immigration Law Journal*, 2001, pp. 563-624; J. Fitzpatrick & R. Bonoan, "Cessation of Refugee Protection", in E. Feller, V. Türk & F. Nicholson (eds), *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, Cambridge University Press, 2003, pp. 491-544.

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

These provisions relate to changes of circumstances which take place independently of the will of the refugee. Termination of refugee status may thus be decided by the State of asylum without the consent of the refugee, when a fundamental change in the country of origin removes the initial fear of persecution. However, even in the case of a fundamental change of circumstances, the will of refugees is not completely irrelevant. Article 1 C (5) and (6) of the Geneva Convention mentions indeed the following exception:

> "This paragraph shall not apply to a refugee falling under section A (I) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality".

Although the text of this provision is limited to statutory refugees (i.e. those recognised on the basis of instruments adopted before 1951), subsequent State practice has contributed to enlarge the scope of this guarantee in favour of refugees falling under the Geneva definition.[55] A refugee is therefore entitled to refuse the protection of his country of origin, because of the "compelling reasons" exception.[56] Whatever the precise extent of this exception, cessation of refugee status does not necessarily equate with forcible return. Former refugees may still be protected against involuntary repatriation under human rights law. Human rights treaties and their subsequent interpretation have a broadening impact upon the principle of *non-refoulement* under the Geneva Convention. Bars to *refoulement* on human rights grounds are particularly relevant in two situations: where

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[55] UNHCR, *Summary Conclusions – Cessation of Refugee Status*, Lisbon Expert Roundtable, May 2001, § 18. See also, for example, the interpretation of the French *Commission des Recours des Réfugiés*: CRR, 28 February 1984, *Ibarguren Aguirre*; CRR, 27 April 1989, *Arrozpide Sarasola*; CRR, 18 October 1999, *Molina Cancino*.

[56] Examination of this exception is generally done during the cessation process. According to UNHCR, this might for example include "ex-camp or prison detainees, survivors or witnesses of violence against family members, including sexual violence, as well as severely traumatised persons. It is presumed that such persons have suffered grave persecution, including at the hands of elements of the local population, and cannot reasonably be expected to return": *Daunting Prospects Minority Women: Obstacles to their Return and Integration*, UNHCR and UNHCHR Study, 2000, cited in *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees*, HCR/GIP/03/03 (2003), § 20.

there is a present risk of torture[57] or where return would constitute an unjustifiable interference with the right to family life that refugees may have developed in the country of asylum.[58]

Notwithstanding this human rights law dimension, voluntary repatriation usually appears as an alternative to forced return, in case of a change of circumstances justifying the termination of refugee status. The existence of such an alternative is, however, commonly argued to belong to the realm of political will of the asylum States, because of the deafening silence of the Geneva Convention on this issue. It has been concluded that: "under the 1951 refugee regime, therefore, the notion [of voluntary repatriation] represents a policy recommendation for States, rather than a legal obligation".[59] In practice, however, despite the absence of an explicit universal obligation in this regard, voluntary repatriation remains the rule, and forcible return the exception. The disinclination of States to apply cessation clauses and the correlative emphasis upon voluntary repatriation may be understood as an acknowledgment that refugees are the best judges of deciding when return is more appropriate. Moreover, even if States withhold the ultimate power to enforce mandatory returns by way of the cessation clauses, the mere possibility of forced returns should be suspended when voluntary repatriation is promoted by UNHCR. This minimum standard derives from the obligation of States Parties to cooperate with UNHCR in the exercise of its functions, as enshrined in Article 35 of the Geneva Convention.[60]

At the regional level, inclination towards voluntary repatriation, rather than forcible return, has been expressly endorsed in the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.[61] This African instrument complementary to the

[57] See notably Article 3 of the 1984 Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, UN Doc. A/RES/39/46; Article 7 of the 1966 International Covenant on Civil and Political Rights, 999 *UNTS* 171; Article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, *ETS* N° 5. See on this last provision V. Chetail, "Le droit des réfugiés à l'épreuve des droits de l'homme: Bilan de la jurisprudence de la Cour européenne des droits de l'homme sur l'interdiction de renvoi des étrangers menacés de torture et de traitements inhumains ou dégradants", forthcoming: will be published in the *Revue Belge de Droit International*.

[58] See notably Article 8 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms. See on this question H. Lambert, "The European Court of Human Rights and the Right of Refugees and Other Persons in Need of Protection to Family Reunion", *International Journal of Refugee Law*, 1999, pp. 427-450.

[59] M. Barutciski, "Involuntary Repatriation when Refugee Protection is no longer Necessary: Moving Forward after the 48th Session of the Executive Committee", *supra* note 34, p. 249. See also J.C. Hathaway, "The Meaning of Repatriation", *supra* note 34, pp. 551-558.

[60] According to Article 35 paragraph 1:
"The Contracting States undertake to co-operate with the Office of the United Nations High Commissioner for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions, and shall in particular facilitate its duty of supervising the application of the provisions of this Convention".

[61] 1001 *UNTS* 3.

Geneva Convention dedicates an entire Article to voluntary repatriation and the relevant standards to be applied. Article V paragraph 1 stresses the importance of the voluntary nature of repatriation, recalling that:

> "The essentially voluntary character of repatriation shall be respected in all cases and no refugee shall be repatriated against his will".

The absolute wording of this last sentence has been held "incoherent", because "it ignores the possibility of involuntary repatriation when a person is no longer a refugee according to the cessation clause found in Article I (4) (c)".[62] On the contrary, Article V simply recalls that voluntary repatriation takes precedence over forcible return which can only be applied as a last resort. By insisting that there must be new improved circumstances prevailing in the country of origin, Article V implies that voluntary repatriation is a complementary alternative rather than a conflicting principle with forced returns in accordance with the cessation clause grounded on a fundamental change of circumstances.[63] The 1969 African Convention therefore explicits a growing practice which has then been developed within the framework of universal refugee law.

III. Voluntary Repatriation and Human Rights Law

The contemporary preference for voluntary repatriation of refugees has benefited from a broader acceptance within the framework of human rights law. It finds its normative expression in human rights treaties through the right to return to one's country of origin (A), even if the applicability of the right to return has raised some controversies in case of mass influx of refugees (B).

A. The Right to Return and Voluntary Repatriation

Although voluntary repatriation is not expressly mentioned as such in human rights treaties, this concept is part of the broader right to return

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[62] M. Barutciski, "Involuntary Repatriation when Refugee Protection is no longer Necessary: Moving Forward after the 48th Session of the Executive Committee", *supra* note 34, p. 250.

[63] Article V paragraph 3 provides that:
"The country of origin, on receiving back refugees, shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country, and subject them to the same obligations".
Paragraph 4 declares further that, whenever necessary, the country of origin should issue an appeal assuring that:
"[T]he new circumstances prevailing in their country of origin will enable them to return without risk and to take up a normal and peaceful life without fear of being disturbed or punished".

to one's own country.[64] This right is embodied in numerous multilateral instruments relating to human rights both at the universal and regional level. The first international instrument in which the right to return was laid down *expressis verbis* was the Universal Declaration of Human Rights of 10 December 1948. Article 13 paragraph 2 acknowledges that:

> "Everyone has the right to leave any country, including his own, and to return to his country".[65]

This right has been then enshrined in the 1966 International Covenant of Civil and Political Rights, which gives it a firm and broad conventional basis, currently ratified by 144 States. Article 12 paragraph 4 provides that:

> "No one shall be arbitrarily deprived of the right to enter his own country".[66]

Various specialized universal instruments adopted under the auspices of the United Nations also recall the right to return within their own fields of application. For example, Article 5 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination imposes on States Parties the obligation:

> "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights [including notably]: [...] (ii) The right to leave any country, including one's own, and to return to one's country".[67]

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[64] For a general study on the right to return and its counterpart the right to leave, see R. Higgins, "The Right in International Law of an Individual to Enter, Stay In and Leave a Country" *International Affairs*, 1973, pp. 341-357; S. Jagerskiold, "The Freedom of Movement", in L. Henkin (ed.), *The International Bill of Rights. The Covenant on Civil and Political Rights*, Columbia University Press, New York, 1981, pp. 166-184; R.B. Lillich, "Civil Rights", in Th. Meron (ed.), *Human Rights in International Law: Legal and Policy Issues*, Clarendon Press, Oxford, 1984, pp. 149-152; H. Hannum, *The Right to Leave and Return in International Law and Practice*, Martinus Nijhoff, Dordrecht/Boston/Lancaster, 1987; M. Nowak, *U.N. Covenant on Civil and Political Rights CCPR Commentary*, N.P. Engel, Kehl/Strasbourg/Arlington, 1993, pp. 197-221; V. Chetail, "Freedom of Movement and Transnational Migrations: A Human Rights Perspective", in T.A. Alexander & V. Chetail (eds), *Migration and International Legal Norms*, Cambridge University Press, 2003, pp. 47-60.

[65] G.A. Res. 217A (III).

[66] 999 *UNTS* 171.

[67] 660 *UNTS* 195. See also Article 2 of the 1973 Convention on the Suppression and Punishment of the Crime of Apartheid, 1015 *UNTS* 243; Article 10 paragraph 2 of the 1989 Convention on the Rights of the Child, 1577 *UNTS* 44; Article 8 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, G.A. Res. 45/158 (annex).

At the regional level, the right to return is similarly reinforced by all the instruments relating to human rights.[68] Although the right to return was originally considered as a means for strengthening the correlative right to leave, it has acquired an independent existence. However, despite its worldwide acceptance, the precise wording of this right differs from one text to another. Universal and regional instruments alternatively refer to the "right to enter" or the "right to return". From a systemic point of view, the right to return is included within the broader right to enter.[69] The word "enter" is used in fact to cover individuals who are born outside their country of origin and who can, strictly speaking, not "return" but who wish to enter their country for the first time.[70] Nevertheless, the question remains open to ascertain what link must exist between an individual and a State in order that the right to enter/return applies. Both the European Convention and the American Convention expressly limit the right of return to the State of which the person is a national.[71] On the other hand, the Universal Declaration, the International Covenant and the African Charter speak of "his country" or "his own country" without specifying that there must be a link of nationality. It is commonly argued that this far-reaching and somewhat ambiguous expression covers both nationals and permanent residents on the territory of States Parties.[72]

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[68] Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (*ETS* 46), adopted in 1963, recalls in Article 3 paragraph 2 that: "No one shall be deprived of the right to enter the territory of the State of which he is a national. "Article 22 paragraph 5 of the 1969 American Convention on Human Rights (*OAS TS* 69) declares in similar terms that: "No one can be expelled from the territory of the state of which he is a national or be deprived of the right to enter it".
The 1981 African Charter on Human and Peoples' Rights (OAU doc. CAB/LEG/67/3 rev. 5) proclaims in Article 12 paragraph 2 that: "Every individual shall have the right to leave any country including his own, and to return to his country". See also Article 22 of the Arab Charter on Human Rights adopted in 1994 (not yet in force), reprinted in *Human Rights Law Journal*, 1997, p. 151.

[69] See however I. Bantekas, "Is Repatriation a Human Right under International Law?", *Indian Journal of International Law*, 1998, pp. 43-55.

[70] The Human Rights Committee notes, in its General Comment N° 27 (Freedom of Movement), that: "The right of a person to enter his or her own country [...] includes not only the right to return after having left one's own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person's State of nationality)": CCPR/C/21/Rev.1/Add.9 (1999) § 19.

[71] See also the not yet binding Arab Charter on Human Rights.

[72] According to the General Comment N° 27 of the Human Rights Committee: "The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ('no one'). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase 'his own country'. The scope of 'his own country' is broader than the concept 'country of his nationality'. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality

Whatever the exact scope *ratione personae* of the right to return, it is plainly applicable for the vast majority of refugees still possessing the nationality of their countries of origin. From a theoretical perspective, the human right to return is "the basic principle underlying voluntary repatriation".[73] The Human Rights Committee recalls in its General Comment 27 on Freedom of Movement that:

> "The right to return is of the utmost importance for refugees seeking voluntary repatriation".[74]

Even more precisely, the right to return constitutes the legal precondition to realise voluntary repatriation. In other words, voluntary repatriation presupposes that the refugees are entitled to exercise the human right to return in their country of origin. As a corollary of this right, the State of origin is bound to admit its national. The right to return, as enshrined in the human rights treaties, contributes therefore to fill the silence of the Geneva Convention in terms of repatriation, highlighting the interplay between these two branches of international law. The relationship between refugee law and human rights law is nevertheless complementary and not exclusive. As a matter of law, a refugee is not an ordinary alien. Given the link between human rights violations and the refugee definition, the exercise of the right to return rests on the supposition that the human rights situation in the country of origin has improved to such a degree as to remove the initial fears of persecution. General Recommendation N° 22 on refugees and displaced persons, adopted by the Committee on the Elimination of Racial Discrimination, emphasizes in this respect that:

> "(a) All such refugees and displaced persons have the right freely to return to their homes of origin under conditions of safety;
> (b) States parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees".[75]

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in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence": *ibid.*, § 20.

[73] *Handbook on Voluntary Repatriation*, *supra* note 37, § 2.1.

[74] General Comment N° 27 (Freedom of Movement), *supra* note 70, § 19.

[75] General Recommendation No. 22: Article 5 and refugees and displaced persons, UN Doc. A/51/18 (1996).

From that perspective, both the voluntary nature of repatriation and the conditions of safety, supposing a general improvement of the human rights situation in the country of origin, are intrinsically interlinked. Gervase Coles rightly observes that:

> "In the refugee situation the right to return is not just the right to return; it is necessarily also the right to enjoy in the country of nationality all applicable rights. It cannot be said that a right to return exists where conditions in the country of origin, in particular the grave violations of human rights, are such that no reasonable person would wish to return. [...] The individual can have no free choice in the matter of return where the conditions in his country of origin are such that he has every valid ground for not returning. [...] There is no meaningful choice for the free exercise of his will. Rather, the starting point should be that the conditions which gave rise to the situation which produced the refugee problem should be changed".[76]

B. The Right to Return and Mass Influx of Refugees

While the right of the individual refugee to return to his country of origin is not contested, scholars are divided on the issue relating to the applicability of such a right in case of mass transfer of refugees. A non-negligible proportion of legal commentators argue that the right to return is limited to individuals, excluding collective repatriation of refugees. The latter situation would be a question for a political answer or possibly one within the framework of self-determination, rather than a truly human rights issue. Stig Jagerskiold, writing about the scope of Article 12 paragraph 4 of the International Covenant of Civil and Political Rights, explains that the right to return:

> "is intended to apply to individuals asserting an individual right. There was no intention here to address the claims of masses of people who have been displaced as a byproduct of war or by political transfers of territory or population, such as the relocation of ethnic Germans from Eastern Europe during and after the Second World War, the flight of Palestinians from what became Israel, or the movement of Jews from the Arab countries. Whatever the merits of various 'irredentist' claims, or those of masses of refugees who wish to return to the place where they originally lived, the Covenant does not deal with those issues and cannot be

[76] G.J.L. Coles, *Voluntary Repatriation: A Background Study*, *supra* note 34, p. 194 and 200.

> invoked to support a right to 'return'. These claims will require international political solutions on a large scale".[77]

Manfred Nowak argues, on the contrary, that:

> "Regarding refugees and stateless persons, this provision is applicable even earlier, since these persons may lack a 'home country' and are forced to create a new one. As soon as the political situation in the country of origin of refugees or displaced persons improves and these persons wish to return to their 'original home country', the establishment of a 'second home country' must not be invoked for the purpose of preventing them from returning home, even if masses of people are claiming this right".[78]

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[77] S. Jagerskiold, "The Freedom of Movement", *supra* note 64, p. 180. Another commentator writes that: "There is no evidence that mass movements of group such as refugees or displaced persons were intended to be included within the scope of article 12 of the Covenant by its drafters, particularly where those seeking to return are not nationals of the state of destination. [...] The expulsion or flight of large numbers of persons from disputed territory is more appropriately viewed as an issue related to self-determination or national sovereignty, rather than forced into the constraints of the much more narrow question of whether or not there exists a right of entry or return": H. Hannum, *The Right to Leave and Return in International Law and Practice*, *supra* note 64, p. 59 and the accompanying footnote 175.
The position of H. Hannum is however less clear, when he deals with voluntary repatriation of refugees: "The preferred permanent solution to the problem of refugees is voluntary repatriation to their country of origin when conditions have changed sufficiently to make return feasible and desirable. Obviously, voluntary repatriation requires the consent and cooperation of the country of origin; such consent should be forthcoming as a part of every country's obligation to respect the right of its nationals to return": *ibid.*, p. 66.
The legal debate is, moreover, obscured by the important question of Palestinian refugees. The non-applicability of the right to return to large-scale repatriation is frequently invoked by certain lawyers for justifying the policy of Israel with regard to Palestinian refugees. See K.R. Radley, "The Palestinian Refugees: The Right to Return in International Law", *American Journal of International Law*, 1978, pp. 586-614; R. Lapidoth, "The Right of Return in International Law, With Special Reference to the Palestinian Refugees", *Israel Yearbook on Human Rights*, 1986, pp. 103-125; E. Benvenisti & E. Zamir, "Private Claims to Property Rights in the Future Israeli-Palestinian Settlement", *American Journal of International Law*, 1995, pp. 324-325; M. Zell & S. Shnyder, "Palestinian Right of Return or Strategic Weapon? A Historical, Legal and Moral Political Analysis", *Nexus A Journal of Opinion*, 2003, pp. 77-120. See however J. Quigley, "Displaced Palestinians and a Right of Return", *Harvard International Law Journal*, 1998, pp. 171-229. Israel's refusal relating to repatriation of Palestinian refugees is more a political exception, grounded on a unilateral practice, than an international legal rule recognised as such. Ironically, the State of Israel was mainly created thanks to the right to enter of Jews, who, once the State was established, refused to recognise this right in regards to former inhabitants of Palestine.

[78] M. Nowak, *U.N. Covenant on Civil and Political Rights CCPR Commentary*, *supra* note 64, p. 220.

This last interpretation is more coherent with the recent developments of international law in this field. The right to return should be applied, regardless of whether or not its exercise is part of a large-scale displacement.[79] Examination of the conventional texts, together with subsequent practice, leads to the same conclusion. Nothing in the text or *travaux préparatoires* of the relevant provisions of all the human rights instruments excludes the benefit of the right to return in case of mass movements of refugees.[80] In the absence of an express provision on this point, one could argue nevertheless that a specific exception for collective returns has emerged from the subsequent interpretation of the States Parties. However, State practice suggests the exact opposite. The numerous tripartite agreements, concluded in the framework of voluntary repatriation operations, refer expressly to "the right of all citizens to leave and to return to their country of origin as enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights", assuming therefore that this right applies to the refugee groups concerned.[81] This assumption also appears in various peace agreements[82]. Moreover, the Security Council, in dealing with major refugee crises, has consistently recalled over

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[79] See in that sense J.-M. Henckaerts, *Mass Expulsion in Modern International Law and Practice*, *supra* note 21, pp. 183-187; M. Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, *supra* note 34, pp. 123-128; J. Quigley, "Mass Displacement and the Individual Right of Return", *British Yearbook of International Law*, 1997, pp. 65-125; E. Rosand, "The Right to Return under International Law following Mass Dislocation: The Bosnia Precedent?", *Michigan Journal of International Law*, 1998, pp. 1092-1139; *id.*, "The Kosovo Crisis: Implications of the Right to Return", *Berkeley Journal of International Law*, 2000, pp. 229-240.

[80] More generally, contrary to the right to leave, the right to return does not contain any particular exception in the vast majority of human rights treaties. Only the African Charter provides for a general exception applicable both to the right to leave and to return. According to Article 12 paragraph 2:
"This right [to leave and to return] may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality".

At the universal level, the term "arbitrarily" contained in the Covenant may also imply some possible limits to its scope. According to the Human Rights Committee: "The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable": General Comment N° 27, *supra* note 70, § 21. States practice remains however sparse on this point and all the other international instruments do not refer to the term "arbitrarily", assuring an unrestricted right to return.

[81] See the examples mentioned in M. Zieck, *UNHCR and Voluntary Repatriation of Refugees: A Legal Analysis*, *supra* note 34, pp. 127.

[82] See, for example, the Final Act of the Paris Conference on Cambodia, Article 20.1, UN Doc. A/46/608 (1991) and the General Framework Agreement for Peace in Bosnia and Herzegovina, Dec. 14, 1995, Annex 7, Article I, UNGA A/50/790.

the last two decades the right of large groups of refugees to return to their own country.[83] There is thus no conclusive evidence suggesting that the initial wording of the right to return has been subsequently modified by State practice, in order to exclude collective repatriation from its natural ambit. Indeed, it is quite dubious logic that the applicability of a human right could be inversely proportional to the number of individuals entitled to invoke it.

Conclusion

Voluntary repatriation represents one of the best examples of the intertwining of humanitarian law, refugee law and human rights law. Voluntary repatriation may be understood as a *concept* derived from a variety of rules, an umbrella term sufficiently wide and accepted to be encapsulated within the three major branches of public international law rooted on the common need to protect human beings. As a *norm* of international law, however, the exact legal content of voluntary repatriation may vary from one branch of law to the other. While its application is circumscribed under humanitarian law to two particular categories of protected persons (namely prisoners of war and civilians), it is subject to a much broader meaning in human rights law. Ironically, refugee law remains relatively indifferent to the concept. While inspiring the main principles of refugee law, voluntary repatriation is not expressly mentioned in the Geneva Convention of 28 July 1951. Given this legal context, human rights law provides a more firm legal basis for voluntary repatriation operations initiated by UNHCR in various regions of the world.

This brief overview of the various international rules governing the concept of voluntary repatriation confirms our assumption that, as with humanitarian law,[84] refugee law can be regarded as a species of the

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[83] See, for example, during the Kosovo crisis: S.C. Res. 1239, *SCOR*, 54th Year, UN Doc. S/RES/1239 (1999) ("reaffirms the right of all refugees and displaced persons to return to their homes in safety and dignity"); SC Res. 1199, *SCOR*, 53rd Year, UN Doc. S/RES/1199 (1998); SC Res. 1203, *SCOR*, 53rd Year, UN Doc. S/RES/1203 (1998). See also *Georgia/Abkhaiza*: SC Res. 971, *SCOR*, 50th Sess., UN Doc. S/RES/971 (1995); SC Res. 1187, *SCOR*, 53rd Sess., UN Doc. S/RES/1187 (1998); SC Res. 1225, *SCOR*, 54th Sess., UN Doc. S/RES/1255 (1999); *Bosnia*: SC Res. 1034, *SCOR*, 50th Sess., UN Doc. S/RES/1034 (1995); SC Res. 1088, *SCOR*, 51st Sess., UN Doc; S/RES/1088 (1996); *Tajikistan*: SC Res. 999, *SCOR*, 50th Sess., UN Doc. S/RES/999 (1995); *Rwanda*: SC Res. 1078, *SCOR*, 51st Sess., UN Doc. S/RES/1078 (1996); *Croatia*: SC Res. 1145, *SCOR*, 52nd Sess., UN Doc. S/RES/1145 (1997); *East Timor*: SC Res. 1264, *SCOR*, 54 th Sess. UN Doc. S/RES/1264 (1999). Similarly, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance unequivocally declared its universal recognition of "the right of refugees to return voluntarily to their homes and properties in dignity and safety, and urge[d] all States to facilitate such return": World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Declaration, § 65 (September 2001).

[84] V. Chetail, "The contribution of the International Court of Justice to international humanitarian law", *International Review of the Red Cross*, 2003, pp. 235-269.

broader genus of human rights law.[85] The *lex specialis* that represents refugee law may therefore be supplemented by human rights law. These two bodies of international norms are both complementary and interdependent. Although human rights law constitutes the general framework for voluntary repatriation, attention has to be paid to the particular situation of refugees. Voluntary repatriation is not a cause within itself. Its ultimate aim is to restore the basic rights in the country of origin that were lost through being forced into exile. From that perspective, while voluntariness remains a key prerequisite for repatriation, it presupposes a general improvement of the human rights situation prevailing in the country of origin. The relationship between the existing standards of voluntary repatriation and the cessation clauses of the Refugee Convention remains, however, problematic, particularly in case of a fundamental change of circumstances, as international protection under the Geneva Convention is formally no longer necessary. Nevertheless, the international community has consistently held that voluntary repatriation remains in such circumstances the most preferred course of action, even if States of asylum theoretically hold the ultimate authority to enforce forcible returns. Both the theoretical framework of voluntary repatriation and the experience of UNHCR in the field show how it is a complex notion, where legal parameters interplay closely with political considerations.

In editing the present issue of *Refugee Survey Quarterly*, we try to highlight some of the most important issues related to the concept of voluntary repatriation from a theoretical as well as practical perspective. Professor M. Zieck has kindly accepted to study the principles developed by UNHCR in this regard, which reveal the complexity of this notion in its relation to the body of international refugee law. Professor B.S. Chimni puts voluntary repatriation in a historical perspective with regard to durable solutions to refugee problems. He argues, notably, that overemphasis on concurrent notions, such as safe return, risks of distracting the attention from the fundamental principle of *non-refoulement*, which constitutes the core element of the refugee regime inherited by the 1951 Convention. A more balanced approach of durable solutions is therefore necessary. Making repatriation the ultimate goal of the international protection of refugees may lose sight of the primary fact that the right to seek asylum abroad is as essential as the right to return to one's homeland.

Voluntary repatriation remains the most appropriate durable solution, only if the circumstances in the countries of origin, as well as the international cooperation of all involved parties, permit it. Recent practice that has emerged from voluntary repatriation operations is particularly relevant for that purpose. We identify some of the most representative programs organised during the last decade. Inspired experts kindly accepted to analyse different large-scale operations in various regions of the world,

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[85] V. Chetail, *Le statut de réfugié en France et au Royaume-Uni: étude de droit international et de droit comparé*, University Paris II, 2003.

namely: Guatemala (Yasmin Naqvi), Bosnia, Herzegovina, Croatia and Kosovo (Walpurga Englbrecht), Afghanistan (Katharina Lumpp, Shoko Shimozawa and Paul Stromberg), East Timor (Andreas Wissner) and Angola (Kallu Kalumiya). These case studies reveal that there is no archetypal solution to refugee problems. There is a multiplicity of circumstances, which requires in regard to each situation different appropriate durable solutions. Each voluntary repatriation program has its own particular background and dynamic, which depend on the political, social and economic contexts of the countries involved. Two preliminary remarks may nevertheless be drawn from the case studies. First of all, examination of the recent practice underlines that concurrent notions, as return in safety or mandatory return, tend to blur the legal content of voluntary repatriation. Such a survey underlines the necessity to clearly restate the basic prerequisites of voluntary repatriation and the urgent need to distinguish this concept from other notions. The case studies demonstrate, secondly, that voluntary repatriation is a much more pervasive issue, which cannot be confined within the traditional borders of contemporary refugee law. Beside its purely legalistic dimension, the concept of voluntary repatriation calls for a comprehensive approach of the refugee problem by the whole international community. It implies a stronger international cooperation between all the States concerned and the United Nations agencies involved. Financial assistance for the long-term process of peace-building, political settlement, and sustainable reintegration of displaced populations together with economic development are essential ingredients in making voluntary repatriation a truly durable solution. International solidarity remains the pivotal link between the concept of voluntary repatriation and the overall search for durable solutions to the plight of refugees. This concept thus opens the Pandora's Box of the international society, which is confronted to its own responsibilities.