

The Fall of Afghanistan: Can the Refugee Protection Regime Handle the New Refugee Wave?

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Abstract

The Taliban takeover of Afghanistan on August 15, 2021, triggered a significant refugee crisis. By mid-2022, 2.8 million Afghan refugees were registered internationally, primarily in Pakistan and Iran, and by 2023, 4.3 million Afghans were internally displaced. Many at-risk Afghans were left behind as US-led forces withdrew. Despite resettlement efforts, many threatened by the Taliban remain excluded, as the Taliban targets former military, NGO workers, and Afghan government officials. Daily migration to Iran and Pakistan surged, with many seeking refuge through Iran to Turkey and Europe. This paper examines whether the current refugee protection mechanism can manage this influx. Using a normative legal research method, it analyzes secondary data from books, journals, reports, and documents, providing historical context on Afghan politics and displacement. It critically evaluates the international refugee protection regime, identifying gaps and shortcomings, particularly the lack of a binding responsibility-sharing mechanism. This has resulted in poorer nations hosting a disproportionate number of refugees, necessitating a commitment from the international community to address this inequity. The paper concludes with policy recommendations to improve the global response to the Afghan refugee crisis, emphasizing the need for equitable responsibility-sharing to enhance protection for Afghan refugees.

Keywords: Afghan Refugees; International Refugee Law; Refugee Protection Regime; Taliban

1. Introduction

The Taliban takeover of Afghanistan on 15 August 2021 has been concerning, both domestically and internationally. The Taliban previously ruled Afghanistan from 1996 to 2001 until they were toppled by the US-led coalition forces in 2001. The Taliban's severe human rights abuses in this era and imposing draconian measures such as banning men and particularly women from attending schools and universities are well-documented. By 2001, Afghanistan had 3,695,000 registered refugees globally and 956,000 Internally Displaced Persons (IDPs).¹

Now that the Taliban has seized power in Afghanistan, the number of Afghans fleeing the country has increased substantially. Shocking images emerged from Afghanistan when some took desperate measures to flee the country. Distressing images of

¹ UNHCR, 'UNHCR Afghan Refugee Statistics 10 Sep 2001', 2001.

people clinging to an outside US military plane were beamed across the world.² Many former Afghan government affiliates are stranded in Afghanistan and could potentially be targeted by the Taliban.³ Despite the US-led coalition evacuation of approximately 123,000 individuals from Kabul airport majority of whom are Afghans, there are still a significant number of Afghans who are stranded in Afghanistan and are at serious risk of persecution by the Taliban.⁴

UNHCR previously projected that approximately half a million Afghans are expected to leave the country by the end of 2021.⁵ UNHCR also projected that only 6.5 per cent of refugees resettled globally in 2022 would be Afghans.⁶ These figures were released prior to the Taliban takeover of Afghanistan and are woefully inadequate to meet current needs.⁷ Afghanistan has a staggering 4.3 million internally displaced persons (IDPs), with 400,000 of them recorded since the beginning of the year 2021⁸, and this number is expected to increase. UNHCR reported that from 10 April 2022 to 13 September 2022 alone, there were 32, 410 newly displaced individuals within Afghanistan.⁹ In addition, Afghanistan has 2.8 million registered refugees abroad 85 per cent of them are in Pakistan and Iran.¹⁰ It is estimated that 5,000 people daily crossing the border to Iran. Tajikistan has also become a new hub for Afghan refugees hosting 4,000 Afghan refugees.¹¹

The number of Afghans seeking protection will increase in the following months and years since there are reports of widespread Taliban-targeted killings of those who worked with the foreign military forces, NGOs and the previous government despite their promise of national amnesty. BBC reports that based on a confidential report presented by the RHIPTO Norwegian Center for Global Analyses to the UN, the Taliban are targeting so-called 'collaborators'. It has been claimed that the Taliban has been conducting door-to-door manhunt to find their targets and threaten their family members.¹²

The fundamental question is, can the international refugee protection regime respond to the needs of these newly displaced Afghan refugees? It has been claimed that the refugee protection regime has profoundly broken.¹³ Asylum seekers are constantly denied, deterred and detained by a growing number of States. Kenya is threatening to close its biggest Somali refugee camp; Iran, Pakistan, and Europe have been forcefully repatriating refugees back to Afghanistan (although that process was halted temporarily after the Taliban took over). The United States, Australia, Malaysia and Thailand intercept and push back asylum seekers at

² Luke Harding and Ben Doherty, 'Kabul Airport: Footage Appears to Show Afghans Falling from Plane after Takeoff', *The Guardian*, 2021.

³ Rory Stewart, 'The Afghan Crisis Demands a Coordinated Response on Refugees', *Foreign Policy*, 2022.

⁴ Amy Mackinnon Robbie Gramer, Jack Detsch, 'Those Left Behind in Afghanistan', *Foreign Policy*, 2021.

⁵ Reuters, 'Half a Million Afghans Could Flee across Borders - UNHCR', 2021.

⁶ UNHCR, *UNHCR Projected Global Resettlement Needs 2022*, 2021.

⁷ Bryony Lau, 'Will Afghan Refugees Stranded in Southeast Asia Be Resettled?', *Foreign Policy*, 2021.

⁸ Internal Displacement Monitoring Centre (IDMC), *Displacement Data*, 2022.

⁹ United Nations High Commissioner for Refugees (UNHCR), 'Afghanistan Emergency' (Web Page, 2022) <<https://www.unhcr.org/en-au/afghanistan-emergency.html>>.

¹⁰ UNHCR, 'Refugee Data Finder', 2023.

¹¹ United Nations High Commissioner for Refugees (UNHCR), *Afghanistan Situation Supplementary Appeal*, 2021, pp. 3-4.

¹² BBC, 'Afghanistan: Taliban Carrying out Door-to-Door Manhunt, Report Says', 2021.

¹³ Alexander Betts and Paul Collier, *Refuge: Transforming a Broken Refugee System* (Penguin UK, 2017); Thomas Gammeltoft-Hansen, 'International Refugee Law and Refugee Policy: The Case of Deterrence Policies', *Journal of Refugee Studies*, 24.4 (2014).

sea¹⁴. Additionally, Turkey, Jordan and Lebanon, which are hosting a significant number of refugees, are unwilling to allow any new arrivals.¹⁵

Against this backdrop, this paper begins by providing an overview of the underlying causes of the Afghan refugee movements in the last decades. Here, the paper provides a valuable historical context of Afghan politics and the drivers of displacement – contextualizing Afghan refugee movements as well as the global response. This paper then critically evaluates the international refugee protection regime and how States try to evade their responsibilities under this regime. This paper then concludes by examining how these shortcomings impact Afghan refugees and make several policy recommendations to improve the global response to the emerging crisis from Afghanistan.

2. Discussion and Analysis

2.1. Afghan Wars as the Main Cause of Forced Displacement: Pre-Taliban

Overall, Afghanistan has undergone six major phases of forced displacement. The first mass Afghan refugee movement began in 1973 when King Zahir Shah was ousted through a coup by Mohammed Daoud Khan. Daoud Khan adopted a harsh stance against the Islamists and the communists and this caused many to flee Afghanistan.¹⁶ A communist-led coup followed this in April 1978, resulting in the death of Daoud Khan, and a new government was formed under the Taraki, which paved the way for the Soviet Union invasion of Afghanistan in December 1979 and ended in 1989.¹⁷ The number of Afghan refugees in 1981 was around 1.5 million, while by 1986, this number reached approximately 5 million.¹⁸

The second phase encompasses 1989–1995, beginning in 1989 with the withdrawal of the Soviet Union from Afghanistan and the ensuing civil war until 1995. Phase three occurred from 1996–2001 when the Taliban ruled Afghanistan. Because of the Taliban's atrocities and severe human rights abuses, a renewed displacement was sparked. Therefore, the Taliban reigned Afghanistan from 1996 to 2001 ruthlessly.¹⁹ Many Afghans fled the country during the Taliban's reign. By the year 2000, there were as many as 3.6 million Afghan refugees the vast majority of whom were in Iran and Pakistan.²⁰

Phase four occurred between 2001 and 2002 when many people fled the country and were displaced in anticipation of US-led coalition intervention in Afghanistan. Phase five includes the mass repatriation of Afghans, the highest in history, with as many as 5 million Afghans returning to Afghanistan. At last, phase six starts from 2004 to the present due to the

¹⁴ T Alexander Aleinikoff and Leah Zamore, 'The Arc of Protection', in *The Arc of Protection* (Stanford University Press, 2020), p. 3.

¹⁵ Aleinikoff and Zamore.

¹⁶ Ayesha Khan, 'Afghan Refugee Women's Experience of Conflict and Disintegration', *Meridians*, 3.1 (2002), 89–121.

¹⁷ Saikal Amin, 'Modern Afghanistan: A History of Struggle and Survival', *London-New York*, 2004, p. 198.

¹⁸ Hiram A Ruiz, 'Afghanistan: Conflict and Displacement 1978 to 2001', *Forced Migration Review*, 13.8 (2004), 8–10 (p. 8).

¹⁹ Ruiz.

²⁰ Reliefweb, 'USCR Country Report Afghanistan: Statistics on Refugees and Other Uprooted People, Jun 2001', 2001.

intensification of the Taliban attacks on rural and urban areas in Afghanistan and the subsequent collapse of the government on 15 August 2021.²¹

2.2. The Taliban rise in the 1990s and Afghan Refugees: The First Phase

As highlighted above, in the last decades, Afghanistan has undergone many civil wars and international interventions, which have caused millions of people to flee the country. The Taliban had a significant role in causing and instigating civil wars and targeting civilians. The Taliban has been responsible for the deaths of thousands of people in Afghanistan and has caused millions of Afghans to flee the country since their emergence in the 1990s.

The Taliban were initially part of the *Mujahedeen* movement in the 1970s and throughout the 1980s that fought against the Soviet invasion of Afghanistan. They were mainly comprised of Pashtun tribesmen who were recruited from Madrasa (religious schools) and among refugees in refugee camps, backed by Pakistan's Inter-Service Intelligence Agency (ISI).²² Meredith Runion writes that the 'Taliban was initially formed as a Sunni Muslim puritanical movement composed of Pashtun students from the southern Helmand and Kandahar regions in Afghanistan. The primary goal of the Taliban was to impose a strict allegiance to Islamic law, and as such, they developed a politico-religious force, and almost 98 per cent were of the Pashtuns of southern Afghanistan and also from northwestern Pakistan. Pakistan has been the primary supporter of the Taliban and has been used as a tool to constantly destabilize Afghanistan in the last decades. The Taliban received training in weaponry and combat from the Pakistani government under Pakistan's Inter-Services Intelligence²³. Since its birth in 1947, Pakistan has had an intense relationship with Afghanistan to the extent that Afghanistan voted against the admission of Pakistan to the United Nations. The leading cause of this contentious relationship is the territorial dispute known as the Durand Line, which Pakistan inherited from India following its independence. Durand Line is a boundary established in 1893 running through the tribal lands between Afghanistan and then British India. Even prior to the formation of Pakistan in 1947, the Durand Line was a cause of contention between Afghanistan and British India. Afghanistan has constantly campaigned for the right of self-determination for the Pashtun ethnic on the other side of the Duran Line.²⁴

Some also attribute the backing of the Taliban by Pakistan as a 'strategic depth' against India.²⁵ Dorani notes that consecutive Pakistani governments since 1975 have held the view that Afghanistan should be 'a proxy in the broader regional' contest with India, and the threats the Islamic extremists presented to the stability of Pakistan should be countervailed by 'the geopolitical' and strategic advantages they provided Pakistan with.²⁶ He notes that 'the

²¹ Elizabeth G Ferris, Erin Mooney, and Chareen Stark, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (Brookings Institution-London School of Economics Project on Internal ..., 2011).

²² Jayshree Bajoria and Zachary Laub, 'The Taliban in Afghanistan', *Council on Foreign Relations*, 6 (2011).

²³ L Runion Meredith, *The History of Afghanistan* (Greenwood Press, 2007), p. 120.

²⁴ William Maley, *The Afghanistan Wars* (New York: Palgrave Macmillan, 2002), pp. 68-69.. For a detailed discussion, see Jonathan L Lee, *Afghanistan: A History from 1260 to the Present* (Reaktion Books, 2018), pp. 629-713.

²⁵ Clayton Thomas, 'Afghanistan: Background and US Policy', *Congressional Research Service*, 10 (2018), p. 19.

²⁶ Sharifullah Dorani, *America in Afghanistan: Foreign Policy and Decision Making from Bush to Obama to Trump* (Bloomsbury Publishing, 2019), p. 71.

Afghan Taliban, therefore, provided Pakistan with a government in Afghanistan that the Pakistani Army had desired since the middle of the 1970s, because it was against India, 'Pashtun-dominated', and 'sufficiently religious' but 'not nationalist enough' to raise the issue of Pashtunistan'.²⁷ It is also asserted that such control allows Pakistan to have easy access to connect itself to Central Asia via Afghanistan for economic reasons.²⁸

Following the formation of the communist regime in 1978 and the Soviet Union's invasion of Afghanistan in 1979, Pakistan saw an opportunity to increase its influence in Afghanistan. When General Zia-ul-Haq rose to power through a military coup in 1977 by toppling Zulfikar Ali Bhutto, the Pakistani ruler struggled to receive international legitimacy. Pakistan backed the *Mujahedeen* against the Soviet Union and hosted a significant number of Afghan refugees in this era which helped General Zia-ul-Haq to attain the legitimacy that it needed.²⁹

Soviet Union withdrew from Afghanistan in 1989, and the Soviet-backed Afghan government was overthrown in 1992. The Taliban, as we know it today, took shape in 1994. Both Amin Saikal and William Maley ascribe the then Pakistan's Minister of the Interior, Naseerullah Babar, as the 'godfather' of the Taliban who actively recruited and trained former Pashtun *Mujahedeen* fighters.³⁰ As Maley notes, this ruthless interference of Pakistan, which led to the seizing of power by the Taliban in 1996 in Afghanistan, denied Afghans to choose their political course.³¹ Christine Fair also emphasizes that the Pakistani government provided staunch support for the Taliban in the 1990s and post-2001 era. Pakistan provided a safe haven to the Taliban after the US-led coalition invasion of Afghanistan helped them regroup and resume their insurgencies in Afghanistan. She asserts that Pakistan had a substantial role in the empowering Taliban in post-2001 which ultimately led to the collapse of the Afghan government in August 2021.³²

2.3. US Invasion of Afghanistan and the Neo-Taliban

Following the military campaign Operation Enduring Freedom, which led to the Taliban's fall in 2001, a new chapter began in Afghan history.³³ An interim government under the leadership of Hamid Karzai was established to facilitate the drafting of a new constitution and a democratic election.³⁴ After decades of war and instability, Afghanistan experienced relative stability and considerable development in education, health, banking, and other public infrastructures.³⁵

²⁷ Dorani.

²⁸ Maley.

²⁹ Susanne Schmeidl and William Maley, 'The Case of the Afghan Refugee Population: Finding Durable Solutions in Contested Transitions', *Protracted Displacement in Asia: No Place to Call Home*, 2008, 131-79 (p. 140).

³⁰ Amin Saikal, *Modern Afghanistan: A History of Struggle and Survival* (I.B.Tauris & Co Ltd, 2004), p. 221; Maley.

³¹ Maley.

³² C. Christine Fair, 'Pakistan Is an Arsonist That Wants You to Think It's a Firefighter', *Foreign Policy*, 2021.

³³ Meredith.

³⁴ Amin Saikal, *Islam and the West* (Palgrave Macmillan, 2003), p. 12.

³⁵ Meredith. Education remains one of the biggest successes since Taliban fall in 2001. During the Taliban regime between 1996 to 2001, due to the closure of schools and universities, the illiteracy rate

Afghanistan also saw a substantial refugee repatriation with nearly 1.6 million Afghans repatriated from Pakistan in 2002.³⁶ In addition, by March 2005, 4 million Afghan refugees returned home with the help of the Office of the United Nations High Commissioner for Refugees (UNHCR), becoming the most significant return in the history of UNHCR.³⁷

In the post-2001 era, Pakistan's role in supporting the 'neo-Taliban' following the 9/11 incident was diminished but not eliminated. The Taliban's safe sanctuaries in Pakistan and the support they received from Pakistan's military and ISI enabled the 'neo-Taliban' to regroup, rearm and begin their insurgencies in Afghanistan.³⁸ Hassan Abbas states that the 'terrorist sanctuary in Pakistan's tribal belt was a critical enabling factor for the Taliban insurgency in Afghanistan'.³⁹ This is while the public opinion in Pakistan 'unquestionably sided with the Afghan Taliban in their armed struggle against foreign invaders'.⁴⁰ US Senators are moving a bill aimed at probing the role of Pakistan in backing the Taliban takeover of Afghanistan and authorizing the imposition of sanctions.⁴¹ Iran, as another important neighbour and regional player also underwent a shift in its policy and developed a close relation with the Taliban recently and helped the Taliban's movement.⁴²

As the Taliban grew stronger, this led the US and the Taliban, on 29 February 2020, to reach a peace deal in Doha, Qatar.⁴³ In this peace deal, the US agreed to withdraw all its troops and military bases from Afghanistan. In return, the Taliban agreed to cut its ties with Al-Qaeda and other terrorist organizations and not allow its soil to be used against the US and its allies. The Taliban agreed to begin the intra-Afghan dialogue following the release of its 5,000 prisoners by the Afghan government.⁴⁴

Not only the US-Taliban peace deal did not reduce the violence level in Afghanistan by the Taliban, but it also exacerbated the security situation in Afghanistan. The Taliban launched two attacks which shocked many. One attack was on Kabul's Dasht-e-Barchi hospital, a Médecins Sans Frontières-run maternity clinic. The other was an attack on a funeral in eastern Nangarhar province.⁴⁵

among men and women reached to 60 and 90 per cent respectively. Opium became the only source of revenue in Afghanistan during this era.

³⁶ Sanam Noor, 'Afghan Refugees After 9/11', *Pakistan Horizon*, 59.1 (2006), 59–78 (p. 67).

³⁷ Daniel A Kronenfeld, 'Afghan Refugees in Pakistan: Not All Refugees, Not Always in Pakistan, Not Necessarily Afghan?', *Journal of Refugee Studies*, 21.1 (2008), 43–63 (p. 43).

³⁸ Schmeidl and Maley.

³⁹ Hassan Abbas, *The Taliban Revival* (Yale University Press, 2014), p. 116.

⁴⁰ Theo Farrell and Michael Semple, 'Making Peace with the Taliban', *Survival*, 57.6 (2015), 79–110 (p. 91).

⁴¹ Ismail Dilawar and Faseeh Mangi, 'Pakistan Stocks Fall, Rupee Hits Record Low on Concern About U.S. Sanctions', *Bloomberg*, 2021.

⁴² Shahram Akbarzadeh and Niamatullah Ibrahim, 'The Taliban: A New Proxy for Iran in Afghanistan?', *Third World Quarterly*, 41.5 (2020), 764–82.

⁴³ Raj Verma, 'US–Taliban Peace Deal and Regional Powers as Potential Spoilers: Iran as a Case Study', *International Politics*, 2021, 1–20 (pp. 1–2).

⁴⁴ US State Department, 'Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan Which Is Not Recognized by the United States as a State and Is Known as the Taliban and the United States of America', 2021.

⁴⁵ Abdul Basit, 'The US-Taliban Deal and Expected US Exit from Afghanistan', *Counter Terrorist Trends and Analyses*, 12.4 (2020), 8–14 (p. 8).

After two decades of active American military presence, The US military withdrew from Afghanistan on 31 August 2021.⁴⁶ The plight of Afghans trying to flee their country following the US-led coalition withdrawal and the Taliban takeover has caused an international outcry. Dominic Raab, the UK foreign secretary, was replaced by Liz Truss over mishandling of the situation in Afghanistan.⁴⁷ It also led to the resignation of the Dutch foreign minister Sigrid Kaag and Defence Minister Ank Bijleveld.⁴⁸

The Taliban are deeply unpopular' specifically in urban areas in Afghanistan. The humanitarian and economic crisis exacerbates this following their seizing power on 15 August 2021. Their leader known as *ameer-ul-momineen* (commander of the faithful) which is equivalent to the head of State has yet to be seen public, and there is speculation that he may have died last year due to COVID-19.⁴⁹ The majority of the top government roles are filled by those with limited qualifications or no qualifications at all. Extrajudicial killings and public executions have resumed.⁵⁰ Widespread protests around Afghanistan followed the Taliban takeover. The protestors were met with a violent response from the Taliban,⁵¹ who announced a ban on any future protests without their approval.⁵²

2.4. Afghanistan and Forced Displacement: The 2021 Taliban Takeover as a new crisis

As noted above, the forced displacement of civilians is not a new phenomenon in Afghanistan. During the past decades, millions of Afghans have fled their homes and communities as refugees and IDPs as a result of prolonged armed conflicts and severe human rights violations.⁵³ Therefore, Afghanistan has been at the forefront of the international community's attention for being the biggest refugee-generating country in the world.⁵⁴ This was a result of civil and foreign military intervention in Afghanistan, which began with the Soviet Union's invasion of Afghanistan in 1979, followed by a decade of civil war in the 1990s and years of Taliban rule from 1996 to 2001. The US-led coalition subsequently overthrew the Taliban regime in 2001 and aimed to install a democratically elected government in Afghanistan.⁵⁵

Afghanistan has been the site of the most prolonged displacement situation in the world after decades of violence and devastation. Filippo Grandi, UN High Commissioner for Refugees stated that 'Afghanistan's displacement crisis is one of the largest and most protracted in UNHCR's seven-decade history..... We're now seeing a third generation of Afghan children born in exile.'⁵⁶ Afghanistan has one of the highest refugee populations with

⁴⁶ Robbie Gramer, 'Last U.S. Troops Leave Afghanistan After 20 Years of War', *Foreign Policy*, 2021.

⁴⁷ Euronews, 'UK: Dominic Raab Replaced by Liz Truss as Foreign Secretary in Johnson Government Reshuffle', 2021.

⁴⁸ Reuters, 'Second Dutch Minister Resigns over Afghan Refugee Crisis', 2021.

⁴⁹ Lynne O'Donnell, 'Afghan Resistance Mulls Formation of Government in Exile', *Foreign Policy*, 2021.

⁵⁰ O'Donnell, 'Afghan Resistance Mulls Formation of Government in Exile'.

⁵¹ Stefanie Gliniski, 'Life Under the Taliban', *Foreign Policy*, 2021; BBC, 'Afghanistan: Taliban Fire Warning Shots at Protest in Kabul', 2021.

⁵² Peter Beaumont and Patrick Wintour Akhtar Mohammad Makoi, 'Taliban Ban Protests and Slogans That Don't Have Their Approva', *The Guardian*, 2021.

⁵³ Ferris, Mooney, and Stark.

⁵⁴ Annyssa Bellal, Gilles Giacca, and Stuart Casey-Maslen, 'International Law and Armed Non-State Actors in Afghanistan', *International Review of the Red Cross*, 93.881 (2011), 47-79 (pp. 47-48).

⁵⁵ Bellal, Giacca, and Casey-Maslen.

⁵⁶ UNHCR, 'How Many Refugees Are Fleeing the Crisis in Afghanistan?', 2021.

2.7 million refugees in 2022.⁵⁷ The continuing rise is mainly attributed to the Taliban takeover of Afghanistan after the August 2021.⁵⁸ When the Taliban's attack intensified in 2021, UNAMA reported that the rise was a 29 per cent increase in civilian casualties in the first quarter of the year compared to the year before.⁵⁹ In addition, it is reported that since the beginning of 2021, more than 700,000 vulnerable people have been forcibly displaced and this continues to grow rapidly.⁶⁰ Additionally, since 2014, when the Taliban managed to intensify their attacks in Afghanistan, every year, close to half a million were forcibly displaced on average beginning with 350,000 in 2015, 650,000 in 2016 and reaching its pick in 2021.⁶¹ The total number of IDPs as of 2022 stands at 4.3 million⁶² and the numbers are expected to increase. UNHCR reports that only from 10 April 2022 to 13 September 2022, 32, 410 individuals have been displaced in Afghanistan.⁶³

A recent internal United Nations report found widespread 'abuse of women and children, muzzling of media, targeting of civil society activists, shuttering of human rights organizations, and substituting public education with extreme religious indoctrination' since the Taliban have come to power since August 2021.⁶⁴ The Taliban have 'detained, beaten, tortured, and killed people, and torched their homes, in the Panjshir Valley, near Kabul, where resistance to Taliban rule has been sustained'.⁶⁵

With the increasing number of people fleeing Afghanistan and the recent conflict in Ukraine which has led to millions of people fleeing the country, the number of forcibly displaced individuals has reached a staggering number of 103 million.⁶⁶ These numbers were only seen during WWII. The question is, is the international refugee law (IRL) equipped to address this unprecedented crisis?

2.5. International Refugee Protection Regime and Issues Relating to Responsibility Sharing

The main instruments of the international refugee protection regime are the 1951 Convention Relating to the Status of Refugees (1951 Convention) and the 1967 Protocol Relating to the Status of Refugees (1967 Protocol). While the former was adopted to respond to the refugee crisis in Europe following WWII, the latter was adopted in 1967 to remove the temporal and geographical limitations of the 1951 Convention and give this instrument a global character.⁶⁷ As of 2023, there are 149 states that have ratified either or both of the IRL instruments.⁶⁸ Although these instruments continue to be relevant today, however, IRL has

⁵⁷ UNHCR, 'UNHCR's Refugee Population Statistics Database', 2022.

⁵⁸ UNHCR, 'UNHCR's Refugee Population Statistics Database'.

⁵⁹ United Nations Assistance Mission Afghanistan (UNAMA), '270,000 Newly Displaced This Year, Warns UNHCR', *United Nations*, 2021.

⁶⁰ United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 'Internal Displacement Due to Conflict', 2022.

⁶¹ United Nations Office for the Coordination of Humanitarian Affairs (OCHA).

⁶² (IDMC).

⁶³ UNHCR, 'Afghanistan Emergency', 2022.

⁶⁴ Lynne O'Donnell, 'The U.N. Knows Afghanistan Is Messed Up. But It's Keeping Mum', *Foreign Policy*, 2022.

⁶⁵ O'Donnell, 'The U.N. Knows Afghanistan Is Messed Up. But It's Keeping Mum'.

⁶⁶ UNHCR, 'Refugee Data Finder'.

⁶⁷ Erika Feller, 'The Evolution of the International Refugee Protection Regime', *Wash. UJL & Pol'y*, 5 (2001), 129 (p. 131).

⁶⁸ UNHCR, 'The Refugee Convention', 2023.

been unable to respond to the growing number of forced displacement⁶⁹ and offer protection to millions of displaced individuals.⁷⁰ The situation has been exacerbated by the Taliban takeover of Afghanistan and the recent conflict in Ukraine.

IRL contains several significant gaps which have allowed the states to use them in evading their responsibilities towards refugees and asylum seekers. States have disproportionate control in terms of the implementation and interpretation of the IRL instruments.⁷¹ One of the many gaps within the IRL regime, the biggest issue, is that it lacks responsibility-sharing mechanisms where some states, particularly the global south, are hosting a significantly higher number of refugees and asylum seekers and refugees than the global north.⁷²

This is evident in the latest data (as of 2023) provided by UNHCR indicating the highest number of refugee hosting countries which include 1) Türkiye 3.7 million; 2) Colombia 2.5 million; 3) Germany 2.2 million; 4) Pakistan 1.5 million; and 5) Uganda 1.5 million.⁷³ Therefore, these numbers indicate that wealthy nations of the global north are unwilling to have their share of hosting refugees. Since the 1951 Convention and the 1967 Protocol lack accountability mechanisms, they cannot force the states to fulfil their obligations under IRL and have a higher share of refugees in the world. This has created an imbalanced system where poorer nations which lack resources have agreed to adopt a higher number of refugees than the global north nations.

2.6. Afghan Refugees and the Resettlement Pledges

Afghanistan has experienced longstanding political turmoil and civil wars and years of civil war and devastation made Afghanistan one of the poorest countries in the world, with the highest number of refugees worldwide.

Afghanistan is the largest source country for refugees worldwide. As of 31 December 2020, recorded there were about 2,594,775 refugees and 238,799 asylum seekers had fled Afghanistan. There are 1,419,084 Afghan asylum seekers and refugees in Pakistan, 951,142 in Iran, 7,470 in India, 5,865 in Indonesia, 1,352 in Malaysia, 1,192 in Turkey, 1,110 in Syria and 627 in Azerbaijan.⁷⁴ As the fighting intensified prior to the Taliban's complete takeover of Afghanistan, until September 2021, UNHCR reported that 11,500 newly Afghan refugees had arrived in Iran, 5,300 in Tajikistan and 5,300 in Pakistan.⁷⁵ UNHCR also reports that as many as 663,969 people internally displaced in Afghanistan since the beginning of the year 2021.⁷⁶

⁶⁹ Luara Ferracioli, 'The Appeal and Danger of a New Refugee Convention', *Social Theory and Practice*, 2014, 123-44 (p. 123).

⁷⁰ Seyla Benhabib, 'The End of the 1951 Refugee Convention? Dilemmas of Sovereignty, Territoriality, and Human Rights', *Jus Cogens*, 2.1 (2020), 75-100.

⁷¹ Gammeltoft-Hansen.

⁷² Alexander Betts, 'The Global Compact on Refugees: Towards a Theory of Change?', *International Journal of Refugee Law*, 30.4 (2018), 623-26.

⁷³ UNHCR, 'Refugee Data Finder'.

⁷⁴ Refugee Council of Australia, *Why Additional Places Are Needed for Australia's Refugee Intake from Afghanistan*, 2021.. See also UNHCR, *Global Trend Forced Displacement 2020*, 2021..

⁷⁵ UNHCR, *Afghanistan Situation External Update - 20 September 2021*, 2021.

⁷⁶ UNHCR, *Afghanistan Situation: Emergency Preparedness and Response in Iran*, 2021.

The number of Afghan refugees is expected to rise further after the recent Taliban takeover significantly.⁷⁷

The US-led coalition forces evacuated more than 123,000 individuals by the end of August 2001, the majority of whom were Afghans.⁷⁸ Around 31,000 Afghans have arrived in the US, and 50,000 will be admitted shortly. This is on top of 97,000 Afghans who were already admitted to the United States since 2001.⁷⁹ Many of those evacuees were granted special visas due to involvement with the coalition military services and foreign-funded projects. A small number of people were evacuated as refugees due to their fear of persecution or family reunification abroad.⁸⁰

In addition to the US, several other countries have pledged to accept Afghan refugees. Canada has offered 40,000 places,⁸¹ the UK 20,000,⁸² and Australia 3,000.⁸³ Mexico has also committed to resettling over 100 journalists and the members of a female-winning robotics team⁸⁴ and Costa Rica has said it would welcome an unspecified number of Afghan women and girls.⁸⁵ These resettlement initiatives for the Afghans are promising since they are more significant to the number of Afghans resettled through UNHCR since 2003, which is 46,000 globally.⁸⁶ But these still fall well short of meeting the protection needs of Afghan refugees and asylum seekers.

2.7. Diplomatic pressure on Taliban to adhere to their commitments

The most effective way to reduce refugee flows out of Afghanistan is to address the causes of displacement. The international community must formulate a coherent response and must use its leverage to bring peace and stability to Afghanistan. This can be achieved by having a unified response in ensuring that the Taliban fulfils its promises to form an inclusive government, respect the democratic processes in Afghanistan and ensure the rights of women and other minority groups within the country. This pressure could include condition-based recognition, aid conditionality, and maintaining pressure on Taliban leaders through the UN blacklist and freezing of their assets. However, these measures must be carried out in a way that does not disrupt humanitarian assistance within Afghanistan.

The Taliban ruled Afghanistan from 1996 to 2001, with recognition from a few countries such as Pakistan, Saudi Arabia, and the United Arab Emirates. The lack of international recognition had a devastating impact on the Taliban regime in the previous administration. This time around, the Taliban are desperately seeking international recognition. The international

⁷⁷ UNHCR, 'Afghanistan', 2021.

⁷⁸ BBC, 'Afghanistan: How Many Refugees Are There and Where Will They Go?', 2021.

⁷⁹ Braeden Waddell, 'States That Have Welcomed the Most Refugees From Afghanistan', *U.S. News*, 2021.

⁸⁰ (Human Rights Watch, 2021b)

⁸¹ Rick Gladstone and Ian Austen, 'Canada Doubles Its Afghan Refugee Resettlement Target to 40,000 People', *The New York Times*, 2021.

⁸² Rachel Schraer and Nicholas Barrett, 'Afghanistan: How Many Asylum Seekers Has the UK Taken In?', *BBC*, 2021.

⁸³ Tom Lowrey, 'How Many Afghan Refugees Is Australia Taking? Are We Going to Expand Our Refugee Intake?', *ABC News*, 2021.

⁸⁴ Reuters, 'Mexico Takes in Fleeing Afghan Journalists, Including from N.Y. Times', 2021.

⁸⁵ The Tico Times, 'Costa Rica Offers Refuge to Afghan Women', 2021.

⁸⁶ Lau.

community must remind the Taliban that they will not be recognised unless they fulfil their international obligations and respect women's rights and the minority groups within Afghanistan. If the Taliban truly fulfils its international obligations and forms an inclusive government (as it has constantly promised), then it would discourage many Afghans from fleeing the country.

2.8. Continuing the Evacuation Process

Although as many as 123,000 were airlifted by the US-led forces from Afghanistan, there are still many Afghans who were eligible or are at risk and were unable to leave and are stranded in Afghanistan. These individuals include those who worked for Afghan and foreign armed forces, academics, NGOs, journalists, women politicians, activists, and human rights advocates. The international community must ensure that its evacuation process continues. The international community has pledged that they would continue their evacuation processes following reaching an agreement with the Taliban to offer safe passage for those who want to leave the country.⁸⁷ Some are however sceptical of the Taliban pledges.⁸⁸

The UN Security Council also adopted a resolution which urges the Taliban to allow the individuals to travel abroad and 'expects that the Taliban will adhere to these and all other commitments, including regarding the safe, secure, and orderly departure from Afghanistan of Afghans and all foreign nationals.'⁸⁹ Thus, the international community must press the Taliban to fulfil its safe passage pledge.

The international community must also expand its category of protection.⁹⁰ Currently, the eligibility criteria for these special visas are limited and mainly include those who have worked as translators and interpreters for foreign forces and foreign-funded projects. This has severely restricted the scope of these special visas. Therefore, the eligibility criteria must be expanded to include anyone who is at serious risk of persecution by the Taliban regardless of their affiliations with foreign forces and foreign-funded projects.⁹¹

⁸⁷ Lara Jakes, '98 Countries Pledge to Accept Afghans After U.S. Military Departs', *The New York Times*, 2021.

⁸⁸ Hazel Shearing and Doug Faulkner, 'Afghanistan: UK Sceptical of Taliban Safe Passage Pledge, Says Minister', *BBC*, 2021.

⁸⁹ Security Council Resolution 2593 (2021) Adopted by the Security Council at its 8848th meeting, on 30 August 2021 S/RES/2593 (2021)

⁹⁰ For instance, there two types of visas for Afghan refugees to the United States namely, special immigrant visa, also known as the SIV and P-2 Program. SIVs is designed for Afghan interpreters and translators for the U.S. military. P-2 priority includes: Afghans who do not meet the minimum time-in-service for a SIV but who work or worked as employees of contractors, [1] locally-employed staff, interpreters/translators for the U.S. Government, United States Forces Afghanistan (USFOR-A), International Security Assistance Force (ISAF), or Resolute Support; Afghans who work or worked for a U.S. government-funded program or project in Afghanistan supported through a U.S. government grant or cooperative agreement; Afghans who are or were employed in Afghanistan by a U.S.-based media organization or non-governmental organization. US State Department, 'U.S. Refugee Admissions Program Priority 2 Designation for Afghan Nationals', 2021.

⁹¹ Anthony Musa, 'The United States Needs an Afghan Refugee Resettlement Act', *Foreign Policy*, 2021.

2.9. Bolstering Refuge in Afghanistan's Neighbourhood

As the refugee inflow from Afghanistan is underway following the Taliban takeover, States in the region and beyond are adopting more onerous border restrictions. These include Pakistan, Iran and Turkey which have been instrumental in Afghans fleeing persecution in the last decades.⁹² It must be noted that these countries are already hosting a significant number of refugees and have limited resources.

For most refugees, the first stop is the neighbouring countries.⁹³ As stated, the Afghan neighbouring countries such as Iran and Pakistan have been hosting a significant number of Afghan refugees. In addition, Turkey is also hosting around 420,000 Afghan refugees many of whom lack legal status.⁹⁴ Afghans flee Afghanistan over land, making their way to Turkey. In the past month, it was estimated that 30,000 Afghans leave the country every week, the majority heading to Turkey and then trying to make their way to Europe.⁹⁵

Pakistan has expressed its unwillingness to accept any new Afghan refugees and insists that UNHCR must set up camps within Afghanistan. There are already reports of abuse and mistreatment of Afghan refugees in Pakistan.⁹⁶ The Afghan refugees are treated like criminals and their regional and ethnic leaders are requesting the government to turn the Afghan refugees away⁹⁷ Iran has been pushing back Afghan refugees.⁹⁸ Turkey has similarly expressed its reluctance to accept more Afghan refugees as it is already hosting 3.6 million Syrian refugees and a significant number of Afghan refugees.⁹⁹

This is even though many of the registered refugees have limited rights in these three countries. While the international community, particularly the European states, are trying to reach a deal with these countries, it is unclear how it can materialize. They are seeking to strike a deal with Turkey similar to that of the Syrian refugees.¹⁰⁰ The Financial Times reported that the European Commission, in order to assist with the expenses of the refugee influx, is planning to provide €600 million to Afghanistan's neighbours, such as Pakistan, Iran, Tajikistan, and Uzbekistan.¹⁰¹ Currently, the international community must ensure that Afghanistan's neighbouring countries, particularly Iran and Pakistan, keep their borders open for the Afghans who are feeling persecution. However, this does not mean that keeping Afghan refugees in the neighbouring countries should become a policy but a temporary measure to protect those fleeing persecution.

⁹² SINAN TAVSAN and TALA TASLIMI KIRAN SHARMA, 'Turkey, Iran and Pakistan Raise Entry Bars for Afghan Refugees', *Nikkei Asia*, 2021.

⁹³ Linda Nasr and Raymond P Fisk, 'The Global Refugee Crisis: How Can Transformative Service Researchers Help?', *The Service Industries Journal*, 39.9-10 (2019), 684-700.

⁹⁴ France24, '"Complete Stop": New Turkish Wall Confronts Fleeing Afghans', 2021.

⁹⁵ Carlotta Gall, 'Afghan Refugees Find a Harsh and Unfriendly Border in Turkey', *The New York Times*, 2021.

⁹⁶ (Human Rights Watch, 2021a)

⁹⁷ Zia Ur-Rehman, 'Afghans Flee to Pakistan. An Uncertain Future Awaits.', *The New York Times*, 2021.

⁹⁸ Gall.

⁹⁹ Gall.

¹⁰⁰ Hanne Beirens and Camille Le Coz, 'The International Community Must Develop a Well-Coordinated Protection Strategy for Afghan Refugees', *Migration Policy Institute*, 2021.

¹⁰¹ 'EU Plans €600m Package for Afghanistan's Neighbours to Avert Refugee Crisis', *Financial Times*, 2021.

2.10. Increasing refugee resettlement places for Afghan refugees.

The Canadian government expressed its commitment to accept an extra 20,000 Afghan refugees on top of the previously agreed 20,000, meaning it has doubled its initial plan.¹⁰² The Refugee Council of Australia has called on the Australian government to increase its Afghan refugee intake due to the compelling global need for resettlement, the scale of displacement from Afghanistan, the depth of Australia's connection to Afghanistan, recent cuts to Australia's refugee program, and Australia's generous responses to past crises.¹⁰³

Therefore, increasing refugee resettlement places for Afghan refugees will be critical in ensuring the safety of many who are stranded in Afghanistan and are under the direct threat of the Taliban. Likewise, it will also ease the burden of Afghanistan's neighbouring countries, such as Iran and Pakistan, who have limited resources and are currently hosting a significant number of refugees and are unable or unwilling to accept more Afghan refugees.

2.11. Ban on deportations/repatriation: Fulfil non-refoulement obligation.

The cornerstone of international refugee law is the principle of non-refoulement, which prohibits sending back individuals who would be at risk of persecution, harm and torture.¹⁰⁴ Therefore, Afghans in other countries or at any port of entry must only be sent back if their asylum claims have been processed. Consistent with UNHCR's non-return advisory, States are encouraged not to return any Afghans whose refugee status application has been rejected back to Afghanistan. Instead, these individuals should be offered residency status to be able to stay in these countries without being subject to the risk of deportation or detention.¹⁰⁵

Following the recent events in Afghanistan, the Swedish government announced that it is suspending the deportation of 7,000 Afghan refugees whose refugee status applications have been rejected. Similarly, Germany and the Netherlands have also announced that would not deport Afghans.¹⁰⁶ Afghanistan's neighbouring countries, particularly Iran and Pakistan, have assumed strict policies regarding Afghan refugees, they have stated their unwillingness to host new Afghan refugees. Human Rights Watch reported that Afghan refugees had faced abuses in Iran (Watch, 2013), such as being denied access to education, detention, deportation and being subject to 'no-go areas'.¹⁰⁷ Similarly, Human Rights Watch also reported Afghan refugees facing Police abuse in Pakistan¹⁰⁸ and subjected to forcible returns.¹⁰⁹ Human Rights Watch accordingly suggests that residency status for Afghans who are present in other countries must be extended, preventing possible detention and deportation.¹¹⁰ Therefore, it must be ensured that no country forcibly returns anyone to Afghanistan.

¹⁰² Gladstone and Austen.

¹⁰³ Australia.

¹⁰⁴ See Article 33(1) of the 1951 *Convention*.

¹⁰⁵ UNHCR, 'UNHCR Issues a Non-Return Advisory for Afghanistan', 2021.

¹⁰⁶ Elisabeth Braw, 'Biden Sparked a Refugee Crisis. He Must Help Europe Bear the Cost.', *Foreign Policy*, 2021.. The number of Afghans who were going to be deported from Germany were estimated to be 30,000.

¹⁰⁷ Ezatullah Mehrdad, 'As Deportations Soar, Afghan Returnees Struggle on Home Soil', 2021.

¹⁰⁸ (Human Rights Watch, 2021a)

¹⁰⁹ (Human Rights Watch, 2017)

¹¹⁰ (Human Rights Watch, 2021b)

3. Conclusion

The Taliban's seizing of power on 15 August 2021 following the hasty withdrawal of US-led forces has led to a new wave of Afghan refugees. This has led to the growing number of Afghan refugees (2.8 million) worldwide. In addition, the number of internationally displaced persons has reached 4.3 million as of 2023.

In response to the Taliban takeover of Afghanistan and the growing number of Afghan refugees, several countries such as the United States, Canada, the UK, Germany and Australia have stated their readiness to resettle Afghans who are at serious risk of persecution by the Taliban. While these initiatives are welcomed, there are several ambiguities regarding these resettlement processes' eligibility criteria and timeframe. The number and scope of these resettlement programs are also limited.

These resettlement figures for Afghan refugees by the US, Canada, UK, Australia and other countries, however, are much higher than the figures that the UNHCR resettled in the last two decades. The central question of this paper was whether the refugee protection regime is capable of responding to the new wave of Afghan refugees. This paper identified the gaps and shortcomings in the refugee protection regime that serve as obstacles to addressing these challenges. These gaps require responsibility-sharing mechanisms under the international refugee law regime. The refugee protection regime has no binding responsibility-sharing mechanism where the poorer nations of the global south host a significantly higher number of refugees than those of the worldwide north with higher resources. This has created an unfair system of responsibility sharing under the IRL regime, the addressing of which requires the commitment of the entire international community.

This paper showed that with the coming into force of the Taliban in August 2021, coupled with intensified fighting before their complete takeover of the country, a new wave of Afghan refugee crisis has been created where thousands of people have fled and continue to flee the country as a result. This paper offered several workable recommendations to address this crisis and ameliorate the plight of Afghan refugees worldwide.

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