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Decentring the Study of Migrant Returns and Return Policies

Concept note

Return and Related Concepts in International Law

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Abstract

Although the general literature on return migration studies has increased in recent years, there still needs to be more clarity regarding definitions, concepts, and terminology. The same ambiguity remains for the terminological definitions of and conceptual approaches to return-related matters, including the term 'return itself', particularly in international law.

Introduction

Although the general literature on return migration studies has increased in recent years, there still needs to be more clarity regarding definitions, concepts, and terminology. The same ambiguity remains for the terminological definitions of and conceptual approaches to return-related matters, including the term 'return itself', particularly in international law. As stated in the International Commission of Jurists' (ICJ) Practitioner's Guide on migration and international human rights law (ICJ 2014, 39), one of the difficulties for any publication that aims to address problems of migration – in law or in practice – is the complexity and diversity of the migration experience. This difficulty, however, is not only related to the dynamic nature of the concept of return but also because of the general complexity of the system of international law, which is attracted both by State sovereignty and human rights (Wheatley 2019, p. 63; Reisman 1990, p. 876; Shen 2000, p. 419; Donnely 2004, p. 2; Henkin 1995, pp. 31-32), especially when it comes to the migration-related matters (Higgins 1973, p. 342; Dauvergne 2004 , pp. 589-591, Chetail 2014, p. 27).

As a principle in international law, based on the territorial sovereignty of States, each State has the discretion to regulate matters of entry into (admission), stay, and exit of foreigners. This discretion is also reflected in the States' 'right' to expel foreigners. Hence, the legal scope of each component of the return activity is mainly defined or crystalised or both by each relevant State, and a binding, uniform, and thorough body of rules that define and regulate return migration in its broad meaning does not exist in international law. Nevertheless, there are certain attempts to assert uniform conceptualisation of some essential components of return migration, such as expulsion. In 2014, International Law Commission (ILC) adopted 'Draft Articles on the Expulsion of Aliens' (Draft Articles). At present, Draft Articles does not have a binding effect on international law; but it serves as a significant demonstration that supports the claim that expulsion, which is one of the fundamental elements of return migration, is a phenomenon recognisable and codifiable by international law (Kanstroom 2017, p. 50). Draft Articles defines expulsion as 'a formal act or conduct attributable to a State by which an alien is compelled to leave the territory of that State; it does not include extradition to another State, surrender to an international criminal court or tribunal, or the non-admission of an alien to a State' (Art. 2). Draft Articles, on the other hand, reiterates the 'right of expulsion' being a 'right of a State' (Art. 3) and therefore confirms the sovereignty-based State discretion on the matter. However, it should be noted that this discretion, not only for regulating the expulsion but also for regulating the other components of return migration such as entry-into (admission), exit, and stay of a foreigner is not of an absolute character. Apart from the mere domestic constitutional necessities of the rule of law, it is framed on two grounds that bear international character (Goodwin-Gill, 1976), as confirmed by the ILC under the Draft Articles, particularly in relation to expulsion. These are the principles in international law that apply to inter-State relations together with the obligations thereof and the principles of international human rights law, while from a

positivist view, the functional bindingness of both being subject to legitimacy through either existing rules under international conventions or within customary law.

Hence, there is a polarising nature of the concept of return that can be seen through the perspective of international law from two dimensions: namely, from the State-to-State interaction and from the State-to-individual interaction. This so-called polarisation in the first dimension appears to be between the sovereignty rights of each State and their obligations towards each other, whereas, in the second dimension, it is viewed in two forms: (1) between the inter-State obligations of the States and the obligations of the States to respect and protect individual rights; and (2) between the sovereignty rights of the States and the States' obligation to respect and protect individual rights. The debates regarding return-related matters in the legal literature are mostly derived from this backdrop, which is also one of the most significant demonstrations of the complexity of the international legal system itself. Consequently, the relevant literature in international law either focuses on clarification of the rights and obligations of the States not only towards each other but also towards the individual or, sometimes to seek for an equilibrium point, question and weigh the level of influence of the two attractors of the system, namely, sovereignty and human rights, which pull it in different directions at a time (Wheatley 2019, p. 63).

Return as a Matter of the Individual's Action: The Scope of Right to Leave and Right to Return (Enter) as a Fundamental Human Right

Direct mention of return in the binding instruments of international law can be seen in '**the right to return to one's own country**' provided under the Universal Declaration of Human Rights (UDHR) (Art. 13) and adopted by international human rights conventions. However, this statement does not define return but provides the scope of a guarantee attributed to individuals. This could be taken as one of the legal norms that function, as Aleinikoff (2002, p. 11) states, to constrain and channel State authority over migration. The reflection of this right can be seen in other international instruments,[1] albeit with a different wording: 'right to enter'. This difference in the wording has not been much of an interest of the literature as generally two terms are being used interchangeably. Goodwin-Gill (1995) states that the usage of the term 'return' *is used for convenience but should also be interpreted sufficiently broadly to include the admission of a national who, for whatever reason, may be making a first-time entry*.[2] Agterhuis (2004, p. 2) also has similar considerations for using the term in a broad sense. Bantekas (1998, p. 60) seems to have the only distinct opinion on the matter distinguishing right to return from right to enter.

Right to return (or right to enter) in the International Covenant on Civil and Political Rights (ICCPR) is regulated under freedom of movement, which is seen as one of the most significant connecting factors of extraterritorial human mobility to the area of international (human rights) law and a subject of interest among legal scholars (Juss 2006; McAdam 2011; Kochenov 2015; Goodwin-Gill 1995; De Vittor 2013; Paz 2018; Ramji-Nogales & Goldner Lang 2020). Hence, the legal scholarship indicates that the extraterritorial freedom of movement is uniquely expressed and channelled through a duo of proclaimed rights: the right to leave any country, including one's own, and the right to return to one's own country (Kochenov 2015, p. 149; McAdam 2011, pp. 5, 6; Harvey and Barnidge 2005, p. 3; Chetail 2014, p. 26).

One of the debates in the legal literature that is related to return-migration can be seen in the asymmetrical relation between the right to leave and the right to return. Based on the scope of these rights enshrined under international law, scholars point out that the right to leave does not automatically secure the right to return (enter)[3] (Juss 2006, p. 294; Harvey and Barnidge 2005, p. 1; Higgins 1973), although it is also asserted that the rights of entry, stay, and exit are inseparable: the denial of any one of these rights renders the exercise of the others illusory rather than tangible (Higgins 1973). The main reason for this is shown as the State's right to expel and duty to readmit their own nationals (Goodwin-Gill 1978, p. 21; McAdam 2011, p. 2; Coleman 2009, p. 28). This is why some scholars refer to freedom of movement of foreigners as a right that has remained 'incomplete' (Juss 2006, p. 294; McAdam 2011, p. 2; Paz 2018). Hence, the scholars tend to clarify each right in their own terms, especially considering their context in the instruments of international law (Agterhuis 2004; Goodwin-Gill 1995; Harvey and Barnidge 2005; Hannum 1987; Jagerskiold 1981; Whelan 1981; Chetail 2014).

Among the various international organisations of a universal character, created within their respective treaty systems, only the United Nations Human Rights Committee (HRC) has thoroughly investigated these rights within the framework of the ICCPR. In this setting, the General Comments (GC) and Communications of the HRC hold significance as they serve as the foundation for comprehending this entitlement. General Comments encompass fundamental principles that offer guidance on the practical implementation of the right. Communications exemplify how the right has been interpreted in cases where States are accused of violating their legal commitments under the ICCPR. On the other hand, the case law of the European Court of Human Rights (ECtHR) also constitutes a significant source for understanding the scope of these rights in international law, albeit a regional one.

Right to leave in the codified international law refers to 'the right to leave any country, including one's own country' whereas UDHR secures the **right to return** stating that 'everyone has the right to return his country'. However, both ICCPR and the P.4, Art. 3 (2) of the ECHR regulate the latter right with different wordings. While ICCPR stipulates that 'no one shall be arbitrarily deprived of the right to enter his own country', P.4, Art. 3(2) of the ECHR provides that no one shall be deprived of the right to enter the territory of the State of which he is a national.

Right to leave is not a non-derogable right and may be restricted on grounds of national security, public order, public health, or morals, or for the protection of rights and freedoms of others provided that such restrictions are in accordance with law and are necessary in a democratic society.[4] Scholars have discussed that the majority of problems concerning the implementation of the right to leave, including one's own country, primarily may arise when States impose what they consider to be acceptable restrictions on this right due to the fact that certain restrictions require concretisation (Kochenov 2015, 168-172; Hannum 1987, 45; Goodwin-Gill 1995).

Right to return, on the other hand, is not subjected to the same restriction provision in the UDHR. However, the possible impact of the differentiation of the wording related to this right in international law is discussed among legal scholars on two inter-related matters: (1) the possible deprivation from entry (Agterhuis 2004, pp. 6, 7; Hailbronner 1997, pp. 5, 6; Coleman 2009, pp. 31, 32; Hannum 1987, p. 45); and (2) whether the personal scope of the right involves solely the citizens (Agterhuis 2004, pp. 7, 8; Hailbronner 1997, pp. 3-5; Coleman 2009, pp. 29, 30; Hannum 1987, pp. 56-63) .

For the personal scope of the right to leave, however, there is not much of a discussion because the 'legality' of the person's situation in the departure country does not affect the enforceability of the right to leave. As further confirmed by the HRC, the right is not restricted to **persons lawfully within the territory of a state.**[5] There are two consequences of this situation. First, considering that citizens of a State are in principle always lawfully within the territory of that State,[6] the right should be applicable to foreigners as well as the citizens[7] without a need for further clarification of the term 'own country'. This is why there has been no interest in the legal literature to explain the term within that context, as opposed to the interest in defining the same term in relation to right to return. Second, a foreigner who is lawfully subjected to expulsion should also enjoy the guarantees secured by this right.[8] The right is considered to secure the freedom to choose the State of destination (**choice of destination**) subject to that State's agreement.[9] Hence, a foreigner who is lawfully being expelled from a State also has the right to choose the specific country they wish to relocate to, provided that the receiving State agrees. As a result, it is asserted that if such a destination State exists, the exit State should not be able to forcibly remove the individual to another State[10] (Gürakar-Skribeland 2022; Taylor 2020, p. 336).

Facilitating the right to leave a country does not preclude the provision of a passport or a substitute travel document as a standard requirement for international travel.[11] In this context, the HRC underlines that the right imposes obligations not only on the State of residence but also on the State of nationality, given that the **right to obtain necessary documents to travel** is included within the right to leave and that refusal by a State to issue a passport or prolong its validity for a national residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere.[12]

When considering the connection between the right to leave and the act of returning, particularly when it pertains to foreigners leaving a country, the requirement for travel documents, on some occasions, has been seen by some scholars to potentially restrict the exercise of this right (Kochenov 2015, p. 162) and by some to directly affect the practical exercise of the right (Hannum 1987, p. 21). Hailbronner (1997, p. 6), on the other hand, approaches the matter from the perspective of the right to return of the individual and the obligation of the State to readmit its nationals and concludes that, specifically, individuals who have left their home country without the required travel documents in order to seek asylum or those who have intentionally destroyed their travel documents, often face difficulties in obtaining the necessary papers to facilitate their return to their country of origin. It should be noted that the possible effect of the claimed restriction or the effect on the choice of destination and its impact on transforming a voluntary departure into a forced removal together with **detention** practices – indicated to be used increasingly in State practices for (forced) return activities (Majcher and Strik 2021, p. 126) – have not been comprehensively evaluated in the literature of international (human rights) law. Hence, McDonnell (2021) and Gürakar-Skribeland (2022) observe that the right to leave remains underexplored and often overlooked.

Return as a Matter of (Inter-) State Action: The Scope of the State's Right to Expel and the Obligation to Readmit

The research on States' right to expel and the duty to readmit in the international law literature mostly focuses on the clarification of the scope and legitimacy of these notions and their position against or with the relevant rights of the individual (Hailbronner 1997; Coleman 2009; Goodwin-Gill 1976; Kochenov 2015; Opeskin 2009; Agterhuis 2004; Noll 1997). There is not much of a dispute among scholars regarding **the duty of a State to readmit its own nationals** and a **State's right to expel foreigners** being principles of international law (Aleinikoff 2002, p. 15; Noll 1997, p. 25; Hailbronner 1997, p. 7; Kochenov 2015, p. 145). Scholars tend to explain the inter-relation between these two notions by stating that the obligation to readmit a State's own national is the inherent counterpart of the right to expel foreigners (Hailbronner 1997, p. 7; Noll 1997, p. 30; Goodwin-Gill 1976, p. 58; Giuffre 2015). The scope of the restrictions of the right to expel emerged from this inter-relation in international law therefore has been a debatable topic (Goodwin-Gill 1976; Coleman 2009, p. 30, Hailbronner 1997, pp. 15-37).

Another point in this regard is the restrictive effect of human rights law on the dominancy of the State in migration control. Costello (2016, p. 316) criticises the State's sovereign prerogatives especially in a legal environment like the EU, where migration control and status are increasingly regulated by the EU law in a shared manner and the interaction across different human rights regimes is encouraged. In this context, the statist migration control assumption, which veils the human rights impacts of migration status and migration control measures, is unsettled (ibid.).

As a requirement of the principle of proportionality, the State's interest(s) in expelling a foreigner needs to be balanced with the effect of expulsion on the individual's fundamental rights. In that context, interference of family and private life with the State's right to expel has been a matter of discussion among scholars (Majcher 2020, pp. 124-146; Cholewinski 1994). However, as the strongest restriction on the right to expel derives from international human rights law, the effect of the **non-refoulement** principle has been widely researched in the literature. More recent debates on the matter are focused mostly on questioning the protectional scope provided by either ECtHR or United Nations Treaty Bodies (Simeon 2019; Çalı, Costello and Cunnigham 2020; Blöndal and Arnadottir 2019; Stoyanova 2018), the relationship between non-refoulement and climate change (Scott 2014; De Coninck and Soete 2022; Herrault 2021), extraterritorial application of the principle and border checks (Trevisanut 2014; Kim 2017; Goldner Lang and Nagy 2021; Özturanlı and Ergüven 2020), and the need for strengthening the protection level against restrictive interpretations of non-refoulement (Gil-Bazo 2015; Moran 2020).

Particular restrictions on expulsion have also been of interest in the literature, such as **prohibition of collective expulsion,** including **pushback** activities (Ciliberto 2021; Di Filippo 2022; Riemer 2020; Carlier and Leboeuf, 2020; Henckaerts 1995). Based on the ECtHR's case law derived from the P.4, Art. 4 of the ECHR where it is stated that the 'collective expulsion of the aliens is prohibited', the prohibition of collective expulsion prevents the expulsion of foreigners without an objective and reasonable examination of their concrete and individual circumstances.[13] This type of expulsion is also prohibited under other regional international law instruments, such as American Convention on Human Rights (Art. 22/9), 2004 Arab Charter on Human Rights (Art. 26/2) and African Charter of Human and Peoples' Rights (Art. 12/5). Collective expulsion is also contrary to the procedural safeguards to which

foreigners are entitled in the context of expulsion, for instance, provided under P.7, Art.1 of the ECHR and Art. 13 of the ICCPR.

Unlike the ECHR and the above-mentioned conventions, there is no explicit provision in the ICCPR on the prohibition of collective expulsion. However, the incompatibility of the safeguards secured under Art. 13 with collective expulsions has been emphasised by HRC, which has repeatedly condemned such expulsions and underlined that these practices are incompatible with the Covenant's provisions.[14] In this respect, the prohibition does not prevent expulsion but rather group expulsion without such safeguards and without an individualised assessment (Wouters 2019, p. 952). Reimer (2020, pp. 17-22) highlights the use of two distinct terminologies in literature and conventional provisions regarding the prohibition of expelling a group of foreigners. For instance, while ECHR (P.4, Art. 4), American Convention, and Arab Charter use the term 'collective expulsion', African Charter refers to 'mass expulsion'. This differentiation is also seen in the literature. Reimer (2020, p. 14) questions whether these two terms are used for the same phenomenon and concludes that an analysis of the literature on these issues and of judgments and other legal documents reveals that there is no clear, universally applicable answer. Nevertheless, she concludes that 'mass' and 'collective' expulsion are legally indistinguishable and refer to the same group size (ibid., p. 21). Indeed, Henckaerts (1995, pp. 18, 19), as an author who uses the terms interchangeably, also strongly opposes the distinction between collective and mass expulsion as this would create unacceptable differences in protection standards and harm human rights. Collective expulsions, in some cases, may be initiated with pushback activities. In the case of *Hirsi Jamaa and Others v. Italy*, the ECtHR conducted a comprehensive analysis and defined 'expulsion' as the act of 'driving someone away from a place' in a general sense.[15] The Court further concluded that when a State's authorities remove foreigners during interceptions on the high seas as part of their sovereign authority with the intention of preventing them from reaching the State's borders or 'pushing them back to another State', it is considered an exercise of jurisdiction under Article 1 of the Convention. This action makes the State accountable for violating the prohibition of collective expulsion as stated in P.4, Art. 4 of the ECHR.[16] According to Den Heijer (2013, p. 290) the approach taken by the ECtHR in the Hirsi case highlights the need to first establish adequate reception systems and safeguards in transit countries before allowing any form of readmission, transfer, or return.

In certain situations, expulsion may not be possible, leading to individuals who cannot be deported – known as '**non-returnable**' or '**non-deportable**' people – becoming a cause for concern. This is highlighted by Mann (2021) and Majcher and Strik (2021), as well as Majcher (2020). Majcher points out that the situation of these individuals may be seen as a 'legal limbo' (2020, pp. 229, 234, 235). She asserts that individuals who cannot be deported and find themselves in a partially legal state of uncertainty (a semi-legal limbo) are at risk of being subjected to abuses and exploitation (ibid., p. 235). How this matter should be approached in terms of **regularisation** of these individuals in international (human rights) law, however, is somewhat underexplored. Majcher (ibid., p. 138) argues that the ECtHR case law on positive obligations under Article 8 (family and private life) can be applied by analogy to the situation of non-deportable people. On the other hand, although regularisation of the status of foreigners is mainly considered to be a matter that falls within State power (Aleinikoff 2002, p. 15), Costello (2016, pp. 82, 83) also argues that ECtHR case law reflects a recognition that time and ties matter and attachment to the host community continues over time. She asserts that in this recognition, ECtHR paves the way for other courts, particularly national

ones, to conduct the regularisation role (ibid.). Concerning the return activities, **detention** practices have also been a point of focus among legal scholars in terms of their compatibility with international (human rights) law, especially regarding their length, proportionality, necessity, and applicability for vulnerable individuals such as children (Majcher 2020; Cole 2002; Cornelisse 2010; Wilsher 2012; Guild 2016, pp. 141-155; Lyon 2014).

Another point scholars question in the context of the right to return and the personal scope of the duty of the States to readmit is whether permanent residents and former nationals fall under the scope of the State's duty to readmit (Hailbronner 1997; Coleman 2009; Bantekas 1998). Hailbronner asserts that given the absence of a consistent State practice and widespread acceptance, it is debatable whether there is a general customary international law obligation to readmit former nationals in cases where their status changes before entering a third country (1997, p. 24). On the other hand, the obligation to readmit permanent residents and other individuals with special ties with the given country is seen as a conventional obligation derived from ICCPR (Art. 12/4) towards the individual (Taylor 2020, pp. 346-349; Hannum 1987, pp. 56-63; Coleman 2009, pp. 29, 30).

While it is an obligation of international law to readmit a State's own national, there are instances where countries of origin do not comply with this obligation. Moreover, differently than the situation of readmission of a State's own national, there is no explicit binding rule either in a convention or in a form of customary norm in international law that obliges a State to readmit a third-country national. According to Hailbronner (1997, p. 31), the obligation contained in modern **readmission agreements** to readmit nationals of third States having entered unlawfully to a neighbouring State or staying illegally in the State of residence stems from the principle of (good) neighbourliness and the responsibility of a State for those impairments to other States emanating from its territory. However, he concludes that simply acknowledging this fact does not automatically establish a State practice and *opinio juris* (ibid., p. 34) – the two factors necessary for the emergence of a customary norm that would obligate States to readmit these individuals without requiring a readmission agreement. Yet, Hailbronner (ibid., p. 35) implies that there is an open door for the development of an obligation to readmit third-country nationals between neighbouring States. Against that backdrop, bilateral readmission agreements serve as a facilitator and an expeditor for the return of the nationals (Strik 2017, p. 313; Coleman 2009, p. 36) and as a compelling tool for the readmission of the third-country nationals (Hailbronner 1997, p. 37) based on the mutual consent of the sending and re-admitting State.

As a rule, readmission agreements do not cover asylum seekers or refugees directly but mainly focus on (irregular) migrants who are subjected to expulsion. However, safe third-country practice allows the State to reject the asylum application because the applicant could have requested or been granted protection elsewhere. As a result of the application's rejection (usually on inadmissibility grounds), the status of an individual is converted from being an asylum seeker (or applicant for international protection) to a foreigner who does not have a legal basis to stay in the country and, therefore, is subjected to expulsion. Against this background, (former) asylum seeker falls under the scope of the readmission agreement. Given that safe third-country practices are not regulated in a binding international law instrument that enables a uniform implementation but regulated under domestic laws, as stated by Coleman (2009, p. 67), it seems contradictory since the success of these policies relies on the involvement of related third countries. A country can label a third country as 'safe' according to its own laws and consequently refuse to provide refuge to those who passed

through that country. But, if the third country doesn't agree to receive those individuals on its territory, this policy won't work. Hence readmission agreements also serve as a facilitator for, and a complementary of, the practice of the **safe third-country concept** in the context of asylum (Abell 1999, p. 64; Coleman 2009, p. 67). Nevertheless, the lack of a binding instrument comprehensively regulating the safe third-country practice in international law and the function of readmission agreements for securing admission of rejected asylum seekers by a third country without a further requirement raise concerns regarding the compatibility with the non-refoulement principle (Suller 2022; Shamatava 2020; McDuff 2019) and with access to international protection (Abell 1999, 66; Alpes *et al.* 2017; Giuffre 2015). Recently, the functions and scope of these agreements, together with their effect on safe third-country practices, have been studied in the literature (Coleman 2009, p. 36; Hailbronner 1997; Majcher 2020, pp. 622-652), focusing especially on informal readmission arrangements (deals) as in the case of EU-Turkiye Deal of 18 March 2016. The literature mainly questions these arrangements' position towards the compatibility with international (human rights) law and refugee law, access to justice, transparency, and rule of law (Kassoti and Idriz 2022, p. 4; Peers 2016; Den Heijer and Spijkerboer 2016; Gatti 2016; Matuşescu 2016; Carrera et al. 2017; Öztürk 2020; Thym 2016; Kaya 2020).

The interplay between the individual's right to leave and return and the State's right to expel and readmit has also been subject to debate in literature, particularly the effect of '**voluntariness**.' The literature approaches this matter from three main aspects. The first weighs the competing impacts of two notions, namely, voluntariness as a requirement of an individual's right, on the one hand, and the State's right to force derived from its duties, on the other. Hailbronner (1997) argues that if the obligation to readmit its own nationals can be derived from both the authority to regulate the entry and residence of foreigners, as established by international law, as well as from territorial sovereignty, it logically follows that this obligation exists independently of any individual's claim to a right of return. Referring to the inter-state character of the obligation to readmit, he concludes that the power of a State to terminate someone's residency generally implies an involuntary nature (ibid., p. 5). On the other hand, Noll (1997) points out that the relationship between the inter-State obligation to readmit individuals and the individual's right to leave their own country is not clearly defined in international law. He concludes that if such an obligation includes citizens who are unwilling to return, it could potentially hinder the exercise of the right to leave one's country (ibid., p. 417, fn.7).

The second aspect is in relation to certain practices, such as **voluntary departure** and (**assisted**) **voluntary return** and their qualification. If the action of relocation based on these practices is considered 'voluntary', they can potentially be qualified as exercises of an individual's right rather than a forced movement imposed by the State's right to expel. From this point of view, indicating that the element of voluntariness is often constrained and mixed with coercion in practice (Dünnwald 2013, p. 228; Cleton and Chauvin 2019), the question of 'to what extent these practices can be considered voluntary' is examined by the literature. Webber (2011) points out that voluntary return is presented as a less burdensome option instead of subjecting individuals to ongoing destitution and inevitable forced return. However, it is often challenging for the returnee to make an Informed decision regarding the specific country they will return to (ibid., p. 103). Similarly, Majcher (2020) argues the level of voluntariness in voluntary departure practices[17] and states that the individual's 'consent' in this context only indicates that the person has agreed to comply with the decision to return

rather than implying an informed decision to return to their country of origin. The author concludes that as a result, such practice of the concept of voluntary departure should be seen as a euphemism (ibid., p. 547).[18] It should also be noted that scholars have raised another matter in relation to voluntary departure practices: limiting the opportunities for voluntary departure and implementing (re-)**entry bans** upon exit may have the unintended consequence of reducing cooperation with the return process as fewer individuals would be inclined to participate willingly (Majcher and Strik 2021, p. 126). Scholars have also discussed entry bans in a wider context, including but not limited to non-refoulement and other requirements of international human rights law (Baldaccini 2009; Majcher 2020).

The third aspect is related to the second but focuses on **voluntary repatriation**. The term is not defined in a binding instrument as it is presented as one of the durable solutions by UNHCR in soft law instruments.[19] UNHCR defines voluntary repatriation as the free and informed **return of refugees to their country of origin in safety and dignity.**[20] It also includes in the definition that the voluntary repatriation may be organised or spontaneous.[21] Compared to the other notions researched in international law, repatriation is one of the most comprehensive matters that fall within the scope of return-migration in conjunction with international refugee law and human rights law (Chetail 2004, p. 30). The subject is covered by a range of studies; most of the discourse highlights the 'voluntariness' requirement of the term and argues how this could be maintained in practice (Selim 2021, pp. 562, 567; Hathaway 1997, p. 553; Mathew 2008, p. 161; Vedsted-Hansen 1997, p. 560; Fouda 2007; Cantor 2018).

Lastly, as a point of debate, scholars (Majcher 2020, p. 661; Alpes and Nyberg Sorensen 2016) indicate the risks of the human rights violations returnees may face upon return and emphasise the significance of **post-return monitoring** (Majcher 2020, p. 661).

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