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# **International Unaccountability: The Normalisation of the Syrian Regime and its Impact on Refugee Protection**

**Taran Anna Kaur Cheema**

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## **Abstract**

The failures of our international legal edifices to end atrocity crimes in Syria have paved the way for normalisation. This article considers the legal and political implications of normalisation with regimes like Bashar al-Assad's on refugee protection. It does so by demonstrating how states are exploiting the trend of normalisation and the implicit suggestion that Syria is safe to erect illegal refugee return practices. It closely examines the security situation in Syria that precludes refugee returns in accordance with International Refugee Law and concludes that normalisation is placing Syrian refugees in an increasingly vulnerable position. Centring the priorities of the Syrian community is the principal component to achieving meaningful accountability in Syria. Insofar as most Syrians are unwilling to return to a Syria ruled by Assad and continue to demand a political transition, opposing normalisation should be one of these priorities. Failing to do so poses a serious challenge to ongoing accountability efforts. This article argues that normalisation will affect the strength of the international refugee protection regime by encouraging short-sighted return policies and beyond the Syrian context, is likely to contribute to broader disrespect for international laws and global norms. Ultimately, although normalisation with Assad has a myriad of concerning implications, particularly on the force and leverage of international law, this article identifies that its most imminent threat is to the safety of Syrian refugees.

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# 1 Introduction

The Syrian regime<sup>1</sup> is said to be responsible for some of the worst crimes against humanity in modern political history. And yet Syria's President, Bashar al-Assad, has enjoyed complete impunity.<sup>2</sup> The conflict in Syria emerged as a test; a test of the strength and efficacy of our international justice system, and a test of the international community's ability to deliver accountability for atrocity crimes. An examination of the last twelve years demonstrates that 'the international community largely failed this test.'<sup>3</sup>

Driven by war fatigue and innumerable failures to deliver justice and end gross human rights violations in Syria, many states appear resigned to the inevitability of the Syrian regime's survival.<sup>4</sup> This has paved the way for the deepening of political and economic cooperation between the Syrian regime and other regional states, widely referred to in political commentary and discourse as 'normalisation.' Normalisation of the Syrian regime has generated much criticism, and the fear that 'failing to hold the Syrian government accountable for abuses would legitimise authoritarianism and destabilise the country and the region.'<sup>5</sup> This fear is compounded by the fact that the Syrian regime's crimes continue to this day. In 2023, the Independent International

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<sup>1</sup> This paper refers to the present and central Syrian government as the 'Syrian regime'. The United Nations and its agencies use the term 'the Syrian government'. Other referenced materials for this paper may use the term 'Assad regime' as synonymous with the Syrian regime.

<sup>2</sup> Wolfgang Kaleck and Patrick Kroker, 'Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe?' (2018) 16(1) JICJ 165, 166.

<sup>3</sup> Beth Van Schaak, *Imagining Justice for Syria* (OUP 2020) 14.

<sup>4</sup> Burcu Ozelik, 'Normative Costs of Normalizing Al-Assad' (*Carnegie Endowment for International Peace*, 1 December 2022) <<https://carnegieendowment.org/sada/88528>> accessed 26 March 2023.

<sup>5</sup> The Tahrir Institute for Middle East Policy, 'TIMEP Brief: Normalization of the Syrian Regime' (13 May 2019) <<https://timep.org/2019/05/13/timep-brief-normalization-of-the-syrian-regime/>> accessed 27 May 2023.

Commission of Inquiry on the Syrian Arab Republic (COI) reports ‘continuing patterns of crimes against humanity and war crimes’<sup>6</sup> related to torture and ill-treatment in detention, including practices causing death in detention, as well as arbitrary detention and enforced disappearances.

Normalisation has created uncertainty and confusion among stakeholders, policymakers and other key actors. Despite ample evidence to the contrary, the international community has slowly begun to espouse the narrative that ‘Syria is safe’ for the return of Syrian refugees.<sup>7</sup> Failures to accurately report the threats facing Syrian returnees has contributed to a rise in anti-refugee policies and sentiment. As a result of the international community’s failure to act in Syria, we have seen a growing disrespect for the international legal framework and specifically, the global refugee protection regime. This article aims to demonstrate how the normalisation of regimes such as Assad’s is likely to increase the risk of forced refugee returns that may violate International Refugee Law.

Normalisation is an increasingly important part of the discourse of accountability in Syria. This article asks what normalisation with Assad means for accountability and for the political resolution that Syrians

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<sup>6</sup> United Nations General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (7 February 2023) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/010/21/PDF/G2301021.pdf?OpenElement>>; United Nations General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (17 August 2022) <<https://digitalibrary.un.org/record/3987490?ln=en>> both accessed 27 May 2023.

<sup>7</sup> Alica Medina, ‘“Syria is safe, refugees should return”: The dangers of the growing narrative’ (*Syria Direct*, 29 June 2021) <<https://syriadirect.org/syria-is-safe-refugees-should-return-the-dangers-of-the-growing-narrative/#:~:text=According%20to%20a%20SACD%20study,persecution%20for%20returnees%20is%20real>> accessed 27 May 2023.

continue to call for. Accountability and justice efforts for Syria must prioritise the demands of Syrian civil society, survivors, victims, displaced populations, and other actors in order to be meaningful and lasting. As a result of the international community's failure to act in Syria, we have seen a growing disregard for the international legal framework beyond the Syrian context and specifically, for the global refugee protection regime. This article maintains that despite a host of concerning legal implications associated with normalisation, the most imminent threat is to the safety of Syrian refugees.

Section 2 defines normalisation in the Syrian context. It examines the trajectory of normalisation over the last five years and identifies a shift from symbolic acts to more substantial actions that qualify the rising threat to refugee protection. Section 3 demonstrates how normalisation with the Syrian regime has impacted refugee protection and the increasing vulnerability of Syrian refugees. This section examines the substantive requirements that govern refugee returns as per international law. It finds that the security situation in Syria makes it clear that any return policy or practice would violate the international legal obligations of states under the Refugee Convention.<sup>8</sup>

Section 4 will situate the discussion of normalisation within the larger discourse regarding accountability in Syria. It evaluates current accountability routes and the remarkable role of Syrian actors in ongoing transitional justice processes. It argues that understanding how we can achieve accountability requires prioritising Syrian voices. Section 4 concludes by drawing the connection between normalisation and a broader growing disregard for international norms.

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<sup>8</sup> Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

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## 2 The Problem of Normalisation

### 2.1 Defining Normalisation

The process of normalisation has become important to our understanding of the protracted conflict in Syria and critical to our imagining of the future for Syria. Visoka and Lemay-Hébert argue that implicit studies related to normalisation in international politics are scarce, and therefore the term is often subject to semantic debate.<sup>9</sup> The vocabulary of normalisation has often been used interchangeably with concepts of recovery, reconstruction, order, peace, and safety.<sup>10</sup> Existing accounts in world politics frame normalisation as analogous with peacekeeping, state-building, and humanitarian assistance. In these cases, invocations of normalcy and normalisation are neutral and objective, uninfluenced by political dynamics. Visoka and Lemay-Hébert maintain that this conceptualisation negates the political dynamics behind discourses of normalisation.<sup>11</sup>

This article supports this hypothesis and evidences how normalisation can be a prerequisite for strategic political relationships, by demonstrating how rapprochement with Assad is enabling various governments to capitalise on situations that could yield both sides economic or political benefits.<sup>12</sup> “Political discourse” concerning Syria is a valuable lens through which to contribute to recent academic debates that cite a shift from the term’s past association with a ‘good and desired state of affairs’<sup>13</sup> to its current relegation as a means to strengthen the legitimacy of an authoritarian regime.

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<sup>9</sup> Gëzim Visoka and Nicolas Lemay-Hébert, *Normalization in World Politics* (University of Michigan Press 2022) 2.

<sup>10</sup> *ibid* 4.

<sup>11</sup> *ibid*.

<sup>12</sup> *ibid* 149.

<sup>13</sup> *ibid* 2.

The concept of normalisation discussed in this article more closely resembles the latter association. Normalisation throughout this article, refers to a process, as opposed to a ‘fixed destination’,<sup>14</sup> one that is at odds with the safe and voluntary return of Syrian refugees. Normalisation with the Syrian regime encapsulates many political phenomena and is happening on different levels.<sup>15</sup> The following analysis takes as its point of departure the characterisation of normalisation as cooperation with the Syrian regime. This article does not have the scope to examine all normalisation gestures. Instead, it focuses on instances of regional and international normalisation efforts that can be characterised as economic, diplomatic, or security-based approaches initiated by political actors.

## 2.2 Normalisation of the Syrian Regime

<sup>14</sup> Frederick Z Brown, ‘Cuba, Vietnam and Normalisation’ (SSRC, April 2015)1 <<https://www.american.edu/centers/latin-american-latino-studies/upload/2015-au-ssrc-brown-cuba-vietnam-and-normalization-final.pdf>> accessed 27 May 2023.

<sup>15</sup> For example, there is an increasing use of light-toned language: a shift from usage of ‘the Syrian regime’ to the ‘Syrian government’. Furthermore, there is an increase of travel influencers entering Syria after a security clearance from Syria’s General Intelligence Directorate. These visits are supervised by a regime affiliated tour to ensure that influencers project the image of Syria that the regime wants. Scholars have accused them of ‘whitewashing crimes’ and normalising the Syrian regime. Hussam al-Mahmoud, ‘How EU officials’ visits to Syria give share in “Illusion Building”’ (*Enab Baladi*, 20 September 2022) <<https://english.enabbaladi.net/archives/2022/09/how-eu-officials-visits-to-syria-give-share-in-illusion-building/>> accessed 27 May 2023; Zaman al-Wasl, ‘The Influencers “Whitewashing” Assad Regime Despite War Crimes’ (*The Syrian Observer*, 18 August 2022) <<https://syrianobserver.com/features/78180/the-influencers-whitewashing-assad-regime-despite-war-crimes.html>> accessed 27 May 2023; Sophie Fullerton, ‘Influencers are whitewashing Syria’s regime with help from sponsors’ (*The Washington Post*, 8 August 2022) <<https://www.washingtonpost.com/opinions/2022/08/08/travel-influencers-whitewash-syrian-war/>> accessed 27 May 2023.

Twelve years after the outbreak of the Syrian conflict, Syria is still mired in low-level conflict, political instability, human rights violations, civil society repression, and poverty.<sup>16</sup> The human rights abuses common before 2011, have only been exacerbated by the war. Despite this, international punitive isolation has developed into ‘step by step’<sup>17</sup> diplomacy.

There is a general consensus amongst scholars and critics of the regime that normalisation has ‘been tacit and continues to increase incrementally.’<sup>18</sup> Normalisation efforts were set into motion in 2018 when the United Arab Emirates (UAE) and Bahrain reopened their embassies in Damascus.<sup>19</sup> Shortly after this, several other countries in the region, including, Egypt, Jordan, Sudan, Bahrain and Oman undertook tentative public cooperation with Syria.<sup>20</sup> These actions can

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<sup>16</sup> United Nations General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (2022) (n 6).

<sup>17</sup> In addressing the Security Council in December 2021, UN special envoy, Geir Perderson endorsed normalisation as a viable approach to securing a meaningful political solution in Syria: ‘political and economic steps are needed—and that these can really only happen together—step-by-step, step-for-step’. United Nations Special Envoy for Syria Geir O Pedersen, ‘Briefing to the Security Council on Syria’ (26 January 2022) 2 <<https://reliefweb.int/report/syrian-arab-republic/united-nations-special-envoy-syria-geir-o-pedersen-briefing-security-11>> accessed 27 May 2023.

<sup>18</sup> Joe Macaron, ‘The Muted Arab Attempt to Restore Influence in Syria’ (*Arab Centre Washington DC*, 18 March 2020) <<https://arabcenterdc.org/resource/the-muted-arab-attempt-to-restore-influence-in-syria/>> accessed 27 May 2023.

<sup>19</sup> ‘UAE reopens Damascus embassy after seven years’ (Aljazeera, 28 December 2018) <<https://www.aljazeera.com/news/2018/12/28/uae-reopens-damascus-embassy-after-seven-years>> accessed 12 June 2023.

<sup>20</sup> For example, Ali Mamlouk, security advisor to Assad, undertook an unofficial visit to Egypt in 2016, there was a meeting between Syrian and Jordanian officials to discuss cross-border trade and Sudanese President Omar al-Bashir visited Syria. In 2019, Jordan appointed a charge d’affaires to its Damascus embassy, and in 2020, Oman reinstated its ambassador to



be said to have been purely symbolic gestures, however, recent developments are indicative of a more meaningful shift. In 2021, Syria's return to the Arab fold accelerated substantially. Several moves towards normalisation from key regional actors, such as the United Arab Emirates and Saudi Arabia, attracted global concern, prompting discussions about its potential legal implications.<sup>21</sup> In May 2021, a Saudi delegation led by intelligence chief General Khaled Humaidan

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Damascus. 'Syria spy chief in Egypt to discuss "Assad support"' (*The New Arab*, 17 October 2016) <<https://www.newarab.com/news/syria-spy-chief-egypt-discuss-assad-support>> accessed 27 May 2023; 'Sudan's Bashir first Arab leader to visit Syria since war began' (*Aljazeera*, 17 December 2018) <<https://www.aljazeera.com/news/2018/12/17/sudans-bashir-first-arab-leader-to-visit-syria-since-war-began>> accessed 27 May 2023; Giorgio Cafiero, 'Jordan makes a U-turn to reintegrate Syria into the regional fold' (*TRT World*, 4 October 2021) <<https://www.trtworld.com/opinion/jordan-makes-a-u-turn-to-reintegrate-syria-into-the-regional-fold-50469>> accessed 27 May 2023; 'Oman Becomes First Gulf state to reinstate ambassador in Syria' (*Aljazeera*, 5 October 2020) <<https://www.aljazeera.com/news/2020/10/5/oman-becomes-first-gulf-state-to-reinstate-ambassador-in-syria>> accessed 27 May 2023.

<sup>21</sup> Further developments included the Nassib-Jordan border crossing between Syria and Jordan being reopened, and a meeting between the respective Egyptian and Syrian Foreign Minister during the United Nations General Assembly in September. Following this, Jordanian leader King Abdullah took an official phone call with Assad and UAE Foreign Minister met Assad in Damascus. 'Jordan says Jaber-Nassib border crossing with Syria will reopen this week' (*The New Arab*, 27 September 2021) <<https://www.newarab.com/news/jordan-announces-reopening-border-crossing-syria>> accessed 27 May 2023; Suleiman Al-Khalidi, 'Jordan's Abdullah receives first call from Syria's Assad since start of conflict' (*Reuters*, 3 October 2021) <<https://www.reuters.com/world/middle-east/jordans-abdullah-receives-first-call-syrias-assad-since-start-conflict-2021-10-03/>> accessed 27 May 2023; Kareem Chehayeb, 'UAE foreign minister meets Syria's Assad in Damascus' (*Aljazeera*, 10 November 2021) <<https://www.aljazeera.com/news/2021/11/9/uae-foreign-minister-visits-damascus-set-to-meet-president-assad>> accessed 27 May 2023.

visited Damascus, hinting at the thawing of relations between regional adversaries.<sup>22</sup>

In 2011, in a move to reprimand the regime for its violations of its Arab League resolutions, and the rights of the Syrian people, Syria's membership in the Arab League was suspended.<sup>23</sup> Over the last twelve years, scholars have maintained that Saudi Arabia is the 'main obstacle to Assad's rehabilitation in the Middle East'.<sup>24</sup> Yet in April 2023, Syrian Foreign Minister, Faisal Mekdad travelled to Jeddah to discuss 'efforts to reach a political solution to the Syrian crisis...and the return of Syrian refugees to their homeland'.<sup>25</sup> This was the first visit of its kind in more than a decade and it came days before an Arab foreign Ministers' meeting that discussed Syria's possible return to the Arab League.<sup>26</sup> On 7 May 2023, Arab leaders agreed to readmit Syria, ending

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<sup>22</sup> Martin Chulov, 'Meeting between Saudi and Syrian intelligence chiefs hints at detente' *The Guardian* (London, 4 May 2021) <<https://www.theguardian.com/world/2021/may/04/meeting-between-saudi-and-syrian-intelligence-chiefs-hints-at-detente>> accessed 27 May 2023.

<sup>23</sup> Neil MacFarquhar, 'Arab League Votes to Suspend Syria Over Crackdown' *The New York Times* (12 November 2022) <<https://www.nytimes.com/2011/11/13/world/middleeast/arab-league-votes-to-suspend-syria-over-its-crackdown-on-protesters.html>> accessed 27 May 2023.

<sup>24</sup> Aron Lund, 'After Syria earthquake, Saudi Arabia is linchpin to Assad's normalization' (*Al-Monitor*, 22 February 2023) <<https://www.al-monitor.com/originals/2023/02/after-syria-earthquake-saudi-arabia-linchpin-assads-normalization>> accessed 1 March 2023.

<sup>25</sup> Saudia Arabia Foreign Ministry Government Account (KSAmofaEN), 'Vice Minister of Foreign Affairs H.E. receives Minister of Foreign Affairs and Expatriates of Syria Dr Faisal Mekdad upon his arrival at King Abdulaziz Airport' (*Twitter*, 12 April 2023) <<https://twitter.com/KSAmofaEN/status/1646157720955789314>> accessed 13 April 2023.

<sup>26</sup> Samer Al-Atrush, 'Saudia Arabia hosts foreign minister for first time since civil war' *Financial Times* (London, 12 April 2023) <<https://www.ft.com/content/7ba0dfcd-efb2-4a13-b72c-17fdf2a6c1fa>>

the 12-year suspension and consolidating regional efforts to normalise ties. The readmittance of Syria into the Arab League is perhaps the most significant move in the trend of normalisation and a tangible move towards the end of Assad's regional isolation.

The 'normalisation momentum'<sup>27</sup> across the region is having a catalytic effect on Europe. On the 13th of September 2022, the United Nations High Commissioner for Refugees (UNHCR), Filippo Grandi, met with Syrian Foreign Minister in Damascus to discuss the UNHCR's programs in Syria.<sup>28</sup> He was joined by Head of the EU Delegation to Syria, Dan Stoenescu.<sup>29</sup> This visit was authorised despite the EU's own agreement, drawn up in 2021, that prohibited any diplomatic engagement with the Syrian regime.<sup>30</sup>

The 2023 Syria-Türkiye earthquake appears to have provided a platform for states interested in normalisation to accelerate a trend already in the making. After the earthquake, delegations from the UAE, Jordan and Egypt visited Damascus and messages of solidarity from other Arab leaders were received through a series of official phone

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accessed 12 April 2023.

<sup>27</sup> Mattia Serra, 'Syria's Normalization Momentum' (*Italian Institute for International Political Studies*, 10 December 2021) <<https://www.ispionline.it/en/publication/syrias-normalization-momentum-32594>> accessed 27 May 2023.

<sup>28</sup> Mazen Eyon, 'Mikdad, Grandi discuss UNHCR's programs in Syria' (*SANA*, 13 September 2022) <<https://sana.sy/en/?p=283684>> accessed 27 May 2023.

<sup>29</sup> 'EU Supports Safe, Dignified Return of Syrian Refugees: Dan Stoenescu' (*The Syrian Observer*, 15 September 2022) <<https://syrianobserver.com/news/78750/eu-supports-safe-dignified-return-of-syrian-refugees-dan-stoenescu.html>> accessed 27 May 2023.

<sup>30</sup> European Parliament Resolution of 11 March 2021 on the Syrian conflict – 10 years after the uprising [2021] OJ C 474/130 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021IP0088>> accessed 27 May 2023.

calls.<sup>31</sup> Whilst most of this diplomatic activity has come from states that have already started normalisation with Assad, many critics of the regime argue that Assad exploited the humanitarian situation and manipulated the need for earthquake relief in order to advance his normalisation agenda.<sup>32</sup> Following the earthquake, Grandi conducted a five-day visit to Syria, meeting with Assad in Damascus to discuss the humanitarian response to the earthquake.<sup>33</sup>

In March 2023, a Bipartisan Policy Letter addressed to President Joe Biden and Secretary of State Antony Blinken criticised the administration's silence in response to accelerating normalisation of diplomatic ties with Assad.<sup>34</sup> The letter, signed by US officials, experts, humanitarian professionals and civil society actors, stated that accountability and war crimes investigations must remain a priority. The EU have reiterated its rejection of any normalisation with Assad and explained their meetings as having humanitarian purpose only.<sup>35</sup>

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<sup>31</sup> Hèlène Sallon, 'Bashar Al-Assad, expert in disaster diplomacy' (*Le Monde*, 6 March 2023)

<[https://www.lemonde.fr/en/opinion/article/2023/03/06/bashar-al-assad-expert-in-disaster-diplomacy\\_6018362\\_23.html](https://www.lemonde.fr/en/opinion/article/2023/03/06/bashar-al-assad-expert-in-disaster-diplomacy_6018362_23.html)> accessed 27 May 2023.

<sup>32</sup> Kadir Üstün, 'The debate over normalization with the Assad regime in Washington' (SETA, 29 March 2023) <<https://www.setav.org/en/the-debate-over-normalization-with-the-assad-regime-in-washington/>> accessed 27 May 2023; Sallon (n 31); Charles Lister, 'Syria's Earthquake Victims Are Trapped by Assad'

(*Foreign Policy*, 7 February 2023) <<https://foreignpolicy.com/2023/02/07/syria-earthquake-aid-assad/>> accessed 9 February 2023; Lund (n 23).

<sup>33</sup> 'Step up support to Syria-Türkiye earthquake survivors: UN; refugee chief' (*UN News*, 13 March 2023) <<https://news.un.org/en/story/2023/03/1134502>> accessed 15 March 2023.

<sup>34</sup> Foundation for Defence of Democracies, 'Lawmakers, Former Top Officials Offer Bipartisan Rebuke of Biden's Syria Policy' (27 March 2023) <<https://www.fdd.org/analysis/2023/03/27/lawmakers-former-top-officials-offer-bipartisan-rebuke-of-bidens-syria-policy/>> accessed 30 March 2023.

<sup>35</sup> Saaed Abdulrazek, 'EU Reiterates Refusal to Normalize Ties with Syrian Regime' (*Asharq Al-Awsat*, 5 February 2023)

However, the optics of political acceptance have real consequences. They may influence public opinion through the implicit suggestion that Syria is safe, which could increase the risk of forced refugee returns. These meetings promote continued normalisation and grant Assad the opportunity to re-establish the regime's regional and international legitimacy.

In the wake of Assad's return the Arab League, the international community must assert their commitment to the human rights regime by calling for the Syrian regime to cease atrocity crimes altogether. States must assert that any normalisation is contingent on the Syrian regimes' support of United Nations Security Council Resolution 2254.<sup>36</sup> In June 2012, representatives of the international community agreed on a political solution to the conflict in Syria.<sup>37</sup> This was to be achieved through a Syrian-led- and owned political transition to a pluralistic, democratic Syria.<sup>38</sup> In 2015, the United Nations Security Council (UNSC) unanimously adopted Resolution 2254, which marked a moment of international opposition to the normalisation or rehabilitation of the Syrian regime.<sup>39</sup> Over time,

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<<https://english.aawsat.com/home/article/4138616/eu-reiterates-refusal-normalize-ties-syrian-regime>> accessed 27 May 2023.

<sup>36</sup> UNSC Resolution 2254 (18 December 2015) <<https://digitallibrary.un.org/record/814715?ln=en>> accessed 27 May 2023.

<sup>37</sup> UNSC, 'Final communiqué of the Action Group for Syria - Identical letters dated 5 July 2012 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council' (6 July 2012) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/407/87/PDF/N1240787.pdf?OpenElement>> accessed 27 May 2023.

<sup>38</sup> Muriel Asseburg, Wolfram Lacher and Mareike Transfeld, 'Mission Impossible? UN Mediation in Libya, Syria and Yemen' (2018) Stiftung Wissenschaft und Politik German Institute for International and Security Affairs SWP Research Paper 8/36 <[https://www.swp-berlin.org/publications/products/research\\_papers/2018RP08\\_Ass\\_EtAl.pdf](https://www.swp-berlin.org/publications/products/research_papers/2018RP08_Ass_EtAl.pdf)> accessed 27 May 2023.

<sup>39</sup> UNSC Resolution 2254 (18 December 2015).

international agreements calling for political reform were obstructed by increasingly complex conflict dynamics. Both Russia and the US respectively convinced the regime and the opposition that Syria could be won through military intervention.<sup>40</sup> As foreign military involvement escalated and a complex pattern of alliances emerged, it became increasingly clear that the Syrian regime was unlikely to engage genuinely in the process endorsed by the UNSC. Consequently, the international agreements lost gravitas. *The resolution demands not only a political solution, but the release of arbitrarily detained persons and that all parties cease human rights violations and comply with their obligations under international law.*<sup>41</sup> In order to prevent normalisation, the international community can use tools at their disposal. They must work to achieve the political transition called for in UNSC Resolution 2254.

Although this article will not analyse the motivations behind each state's reengagement with the Syrian regime, there are various factors, particularly the regional security situation and shared threat perceptions, that are potential push factors. In particular, the desire to limit Iran's regional influence and the need for regional stability.<sup>42</sup> Other motivations include the 'prospects of profiting from investment opportunities in the reconstruction of Syria,'<sup>43</sup> combating drug smuggling, and containing regional Islamist movements.<sup>44</sup> The importance of illustrating these interests is to demonstrate that, against the landscape of normalisation, negotiating the safe and voluntary

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<sup>40</sup> Asseburg, Lacher and Transfeld (n 37).

<sup>41</sup> UNSC Resolution 2254 (18 December 2015).

<sup>42</sup> Muriel Asseburg and Sarah Charlotte Henkel, 'Normalisation and Realignment in the Middle East' (*SWP Berlin*, 28 July 2021) <<https://www.swp-berlin.org/en/publication/normalisation-and-realignment-in-the-middle-east>> accessed 27 May 2023 6.

<sup>43</sup> *ibid* 4.

<sup>44</sup> 'IntelBrief: The United Arab Emirates Engages Assad' (*The Soufan Center*, 16 November 2021) <<https://thesoufancenter.org/intelbrief-2021-november-16/>> accessed 27 May 2023.

return of Syrian refugees is becoming more complicated. Opening up to Damascus is becoming more compelling to Syria's neighbours due to their increasing economic interests. It seems that as a result, the interest and safety of Syrian refugees is competing with other domestic priorities. Lebanon and Jordan, countries that host respectively the highest and second highest share of refugees per capita globally,<sup>45</sup> have unveiled plans to repatriate refugees. This is not only to the detriment of refugee safety, but also to the possible benefit of both countries' domestic political pressures and economic infrastructures.<sup>46</sup> Since 2019 Lebanese Lira has lost 90% of its value and more than 80% of Lebanon's population have been pushed below the poverty line.<sup>47</sup> With living costs increased by 600%,<sup>48</sup> the Lebanese population has been deprived of basic rights to electricity, public services, healthcare, education.<sup>49</sup> Critics highlight that it is becoming common for Lebanese politicians to argue that Syrian refugees are an economic

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<sup>45</sup> UNHCR, 'Factsheet: Lebanon 2023' <<https://reporting.unhcr.org/document/4449>> accessed 12 April 2023; UNHCR, 'Jordan' <<https://www.unhcr.org/uk/countries/jordan>> accessed 10 April 2023.

<sup>46</sup> Nohad Topalian, 'Lebanon releases plan for Syrian refugees' return' (30 July 2020) <[https://almashareq.com/en\\_GB/articles/cnmi\\_am/features/2020/07/30/feature-01](https://almashareq.com/en_GB/articles/cnmi_am/features/2020/07/30/feature-01)> accessed 27 May 2023.

<sup>47</sup> United Nations General Assembly, 'Visit to Lebanon Report of the Special Rapporteur on extreme poverty and human rights, Olivier De Schutter' (11 April 2022) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/306/19/PDF/G2230619.pdf?OpenElement>> 27 May 2023.

<sup>48</sup> Human Rights Watch, 'Lebanon: Electricity Crisis Exacerbates Poverty, Inequality' (9 March 2023) <<https://www.hrw.org/news/2023/03/09/lebanon-electricity-crisis-exacerbates-poverty-inequality>> accessed 11 April 2023.

<sup>49</sup> Human Rights Watch, 'World Report 2022: Lebanon' (2022) <<https://www.hrw.org/world-report/2022/country-chapters/lebanon#:~:text=More%20than%2080%20percent%20of,according%20to%20the%20United%20Nations>> accessed 11 April 2023.

burden.<sup>50</sup> Since 2011, Jordan's GDP growth has averaged 2% annually,<sup>51</sup> and studies show that hosting refugees has put additional pressure on Jordan's public services and the labour market.<sup>52</sup> Both Jordan and Lebanon have suffered economically over the last decade. The worsening economic situation in both countries combined with public figures using Syrian refugees as scapegoats to divert attention away from their economic failures has caused increasing social unrest.<sup>53</sup> It can be argued that such host countries, are encouraging refugee returns in order to alleviate domestic political pressures and perceived strain on public infrastructure, housing and livelihoods.

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<sup>50</sup> Cathrine Brun and Ali Fakh, 'Debunking the dangerous myth that refugees are an economic burden in Lebanon' (*The New Humanitarian*, 26 September 2022) <<https://www.thenewhumanitarian.org/opinion/2022/09/26/Syrian-refugees-Lebanon-economics>> accessed 12 April 2023. Also see, 2021 report from the World Refugee and Migration Council shows that the steady collapse of Lebanon's economy predates the arrival of Syrian refugees. It concludes that due to the presence of Syrian refugees, Lebanon's economy has benefitted from substantial international aid. Cathrine Brun and others, 'The Economic Impact of the Syrian Refugee Crisis in Lebanon What It Means for Current Policies' (World Refugee and Migration Council Research Report, September 2021) <<https://wrmcouncil.org/publications/research-paper/the-economic-impact-of-the-syrian-refugee-crisis-in-lebanon-what-it-means-for-current-policies/>> accessed 10 April 2023.

<sup>51</sup> World Bank, 'GDP growth (annual %) — Jordan' <<https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=JO>> accessed 11 April 2023.

<sup>52</sup> Hamzah Khawaldah and Nidal Alzboun, 'Socio-economic and environmental impacts of Syrian Refugees in Jordan: A Jordanian's perspective' (2022) 8 *Heliyon* <[https://www.cell.com/heliyon/fulltext/S2405-8440\(22\)01293-2?\\_returnURL=https%3A%2F%2Flinkinghub.elsevier.com%2Fretrieve%2Fpii%2FS2405844022012932%3Fshowall%3Dtrue](https://www.cell.com/heliyon/fulltext/S2405-8440(22)01293-2?_returnURL=https%3A%2F%2Flinkinghub.elsevier.com%2Fretrieve%2Fpii%2FS2405844022012932%3Fshowall%3Dtrue)> accessed 11 April 2023.

<sup>53</sup> Kelly Petillo, 'From aid to inclusion: A better way to help Syrian refugees in Türkiye, Lebanon, and Jordan' (*European Council on Foreign Relations*, 31 January 2023) <<https://ecfr.eu/publication/from-aid-to-inclusion-a-better-way-to-help-syrian-refugees-in-T%C3%BCrkiye-lebanon-and-jordan/>> accessed 27 February 2023.



Normalisation may contribute to further human rights abuses in Syria.<sup>54</sup> Ben Taub argues that ‘nowhere has the supposed deterrent of eventual justice proved so visibly ineffective as in Syria’.<sup>55</sup> According to the Syrian Network for Human Rights (SNHR), over 135,253 people are still forcibly detained, having been arrested since March 2011.<sup>56</sup> Normalisation validates the habitual methods of the regime and allows the continuing unravelling of the rule of law in Syria. Evidence from Syrians living under regime-control supports this conclusion: ‘respondents were more than twice as likely to state that Syrian regime behaviour had worsened rather than improved.’<sup>57</sup> Normalisation indicates to the Syrian regime that it has emerged triumphant and can engage with the international community without any changes in behaviour or reform.<sup>58</sup>

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<sup>54</sup> National Coalition of Syrian Revolution and Opposition Forces, ‘SOC: Assad Regime Won’t Change its Behaviour as it Lives Off Terrorism’ (23 June 2022) <<https://en.etilaf.org/all-news/news/soc-assad-regime-wont-change-its-behavior-as-it-lives-off-terrorism>> accessed 27 May 2023.

<sup>55</sup> Ben Taub, ‘Does Anyone in Syria Fear International Law?’ (*The New Yorker*, 31 August 2016) <<https://www.newyorker.com/news/news-desk/does-anyone-in-syria-fear-international-law>> accessed 27 May 2023.

<sup>56</sup> Syrian Network for Human Rights, ‘On the 12th Anniversary of the Popular Uprising: A Total of 230,224 Civilians Documented as Dead, including 15,275 Who Died due to Torture, 154,871 Arrested and/or Forcibly Disappeared, and Roughly 14 Million Syrians Displaced’ (15 March 2023) <<https://reliefweb.int/report/syrian-arab-republic/12th-anniversary-popular-uprising-total-230224-civilians-documented-dead-including-15275-who-died-due-torture-154871-arrested-andor-forcibly-disappeared-and-roughly-14-million-syrians-displaced>> accessed 18 March 2023.

<sup>57</sup> Syrian Association for Citizens’ Dignity (SACD), ‘Normalisation of Horror, Security and Living Conditions in Assad-Held Syria’ 31 (17 August 2021) <[https://syacd.org/wp-content/uploads/2021/08/Normalisation\\_of\\_Horror.pdf](https://syacd.org/wp-content/uploads/2021/08/Normalisation_of_Horror.pdf)> accessed 27 May 2023.

<sup>58</sup> Asseburg and Henkel (n 41).

### 3 The Impact of Normalisation on Refugee Protection

#### 3.1 The International Political Context

Since August 2021, the Taliban has seized control of Afghanistan, Russia started its aggression against Ukraine, Iran responded to anti-regime protests with excessive and lethal force, and torrential rain and flooding affected 33 million people in Pakistan.<sup>59</sup> The combination of these events has contributed to the speed and scale of forced displacement,<sup>60</sup> outpacing any long-term solutions for refugees. In 2022, EU Member States recorded a 64% increase in detections of irregular border crossings and a 46% increase in asylum applications.<sup>61</sup> This recent surge in migration has raised political tensions across Europe leading to an increase in anti-refugee sentiment and a drift towards the far-right.<sup>62</sup> In response, many European countries have

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<sup>59</sup> Human Rights Watch, ‘World Report 2022: Events of 2021’ (2022) <[https://www.hrw.org/sites/default/files/media\\_2022/01/World%20Report%202022%20web%20pdf\\_0.pdf](https://www.hrw.org/sites/default/files/media_2022/01/World%20Report%202022%20web%20pdf_0.pdf)> accessed 10 April 2023; Human Rights Watch, ‘World Report 2023: Events of 2022’ (2023) <[https://www.hrw.org/sites/default/files/media\\_2023/01/World\\_Report\\_2023\\_WEBSPREADS\\_0.pdf](https://www.hrw.org/sites/default/files/media_2023/01/World_Report_2023_WEBSPREADS_0.pdf)> accessed 10 April 2023.

<sup>60</sup> UNHCR, Press Release, ‘Global displacement hits another record, capping decade-long rising trend’ (16 June 2022) <<https://www.unhcr.org/mx/news/unhcr-global-displacement-hits-another-record-capping-decade-long-rising-trend>> accessed 10 April 2023.

<sup>61</sup> International Centre for Migration Policy Development, ‘ICMPD Migration Outlook 2023’ (2023) <[https://www.icmpd.org/file/download/58952/file/ICMPD\\_Migration\\_Outlook\\_2023.pdf](https://www.icmpd.org/file/download/58952/file/ICMPD_Migration_Outlook_2023.pdf)> accessed 10 April 2023.

<sup>62</sup> Anna Bailey-Morley and Claire Kumar, ‘The rise of the far right in Denmark and Sweden—and why it’s vital to change the narrative on immigration’ (*Overseas Development Institute*, 14 December 2022) <<https://odi.org/en/insights/the-rise-of-the-far-right-in-denmark-and-sweden-and-why-its-vital-to-change-the-narrative-on-immigration/and>> accessed 7 March 2023.

adopted a tougher line on immigration, prioritising short-term strategies and allowing the root causes of displacement to go unaddressed.<sup>63</sup> The last few years have seen a diminished respect for migrant and refugee rights across Europe, with increased violations of refugee rights with very few repercussions.<sup>64</sup>

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<sup>63</sup> The UK has recently introduced the Illegal Immigration Bill. In public statements, the UNCHR and the Equality and Human Rights Commission noted that the Bill, if passed, would breach the UK's obligations under international law and would amount to an asylum ban—extinguishing the right to seek refugee protection in the United Kingdom for those who arrive irregularly, no matter how compelling their claim may be.

Illegal Migration Bill HC 284 (2022–2023), Equality and Human Rights Commission, 'Statement following the announcement of the Illegal Migration Bill' (7 March 2023) <<https://www.equalityhumanrights.com/en/our-work/news/statement-following-announcement-illegal-migration-bill>> accessed 10 March 2023; UNHCR, 'Statement on the Illegal Migration Bill' (7 March 2023) <<https://www.unhcr.org/uk/news/statement-uk-asylum-bill>> accessed 10 March 2023; UNHCR, 'Legal observations on the Illegal Migration Bill' (2 May 2023) <<https://www.unhcr.org/uk/media/unhcr-legal-observations-illegal-migration-bill-02-may-2023>> accessed 27 May 2023.

<sup>64</sup> Including but not limited to: States increasingly using border violence to circumvent their obligations. The practice of pushbacks of men, women and unaccompanied children, executed on land and sea to unsafe countries, are becoming more common. Asylum seekers and refugees are being detained in abusive and brutal detention centres that by no means reach the UN international standards. Refugees are routinely denied access to asylum processes, and countries are preventing rescues at sea, and criminalising those who attempt it. Border Monitoring Violence Network, 'The Black Book of Pushbacks: Volume I' (December 2020) <<https://acrobat.adobe.com/link/track?uri=urn%3Aaid%3Ascids%3AUS%3A3f809f15-bada-4d3f-adab-f14d9489275a&viewer%21megaVerb=group-discover>> accessed 27 May 2023; Human Rights Watch, 'Frontex Failing to Protect People at EU Borders: Stronger Safeguards Vital as Border Agency Expands' (23 June 2021) <<https://www.hrw.org/news/2021/06/23/frontex-failing-protect-people-eu-borders>> accessed 27 May 2023; Giorgos Christides and others, 'EU Border Agency Frontex Complicit in Greek Refugee Pushback Campaign' (*Spiegel International*, 23 October 2020)

The Mixed Migration Centre uses the term ‘scandalously extreme’<sup>65</sup> to describe the divergence between the stated value systems of these countries and their migration policies.<sup>66</sup> In the face of large-scale migration, it appears that European states are rushing to reinforce their collective and individual borders by any means necessary. This political landscape is crucial to understanding how normalisation with the Syrian regime is likely to accelerate this trajectory and endanger Syrian refugees. The latest asylum trends show that applications for asylum in the EU from Syrian refugees rose by 74% between January 2022 and January 2023.<sup>67</sup> Governments such as Poland, Hungary, Greece, Cyprus, Austria, and Italy have all called for policy changes that align

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<[https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7?utm\\_source=dlvr.it&utm\\_medium=twitter#ref=rss](https://www.spiegel.de/international/europe/eu-border-agency-frontex-complicit-in-greek-refugee-pushback-campaign-a-4b6cba29-35a3-4d8c-a49f-a12daad450d7?utm_source=dlvr.it&utm_medium=twitter#ref=rss)> accessed 27 May 2023; United Nations Human Rights Council, ‘Report of the Independent Fact-Finding Mission on Libya’ (1 October 2021) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/355/67/PDF/G2135567.pdf?OpenElement>> accessed 27 May 2023; OHCHR, “‘Lethal Disregard’ Search and rescue and the protection of migrants in the central Mediterranean Sea’ (May 2021) <[https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHC\\_HR-thematic-report-SAR-protection-at-sea.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHC_HR-thematic-report-SAR-protection-at-sea.pdf)> accessed 27 May 2023; Amnesty International, ‘Greece: humanitarian workers’ lives remain on hold as trial is adjourned’ (18 November 2021) <<https://www.amnesty.org/en/latest/news/2021/11/sean-binder-and-sarah-mardinis-lives-remain-on-hold-as-trial-is-adjourned/>> accessed 27 May 2023. <sup>65</sup> Chris Horwood, ‘Normalisation of the extreme 2020’ (*Mixed Migration Centre*, 17 December 2020) <<https://mixedmigration.org/articles/normalisation-of-the-extreme-2020/>> accessed 27 May 2023.

<sup>66</sup> *ibid.*

<sup>67</sup> European Union Agency for Asylum, ‘Latest Asylum Trends—January 2023’ (23 March 2023) <<https://euaa.europa.eu/latest-asylum-trends-asylum>> accessed 28 March 2023.

with the interests of Assad.<sup>68</sup> Some scholars have attributed this to a rise in nationalist and populist politics.<sup>69</sup> Others maintain that these governments consider Assad a fundamental factor in curbing migration movements and reducing the number of Syrian refugees seeking protection in Europe.<sup>70</sup>

As normalisation of the Syrian regime proliferates, and countries begin to restore ties with the Syrian regime, there will be significant implications for the protection and safety of Syrian refugees. Charles Lister argues that ‘governments ought to realize that letting Assad off the hook will only lead to even greater refugee flows than before’.<sup>71</sup> It is clear that the global political landscape is compounding the damage that normalisation may do to refugee protection and we are seeing that ‘Syrians can be exposed to danger if European politicians decide they must be’.<sup>72</sup>

### 3.2 The Designation of Syria as a ‘Safe Country’

The normalisation of Assad’s regime has enabled a political environment in which states are able to espouse the false narrative that ‘Syria is safe’.<sup>73</sup>

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<sup>68</sup> Charles Lister, ‘Is the EU Starting to Wobble on Freezing Out Assad?’ (*Foreign Policy*, 27 October 2022) <<https://foreignpolicy.com/2022/10/27/eu-syria-policy-assad-migration/>> accessed 17 March 2023.

<sup>69</sup> *ibid.*

<sup>70</sup> The Tahrir Institute for Middle East Policy (n 5).

<sup>71</sup> Lister (n 68).

<sup>72</sup> James Snell, ‘Syrians across Europe start to feel the anti-refugee tide turn on them’ (*TRT World*, 13 January 2022) <<https://www.trtworld.com/opinion/syrians-across-europe-start-to-feel-the-anti-refugee-tide-turn-on-them-53618>> accessed 27 May 2023.

<sup>73</sup> Info Migrants, ‘Denmark declares parts of Syria safe, pressuring refugees to return’ (3 April 2021) <<https://www.infomigrants.net/en/post/30650/denmark-declares-parts-of-syria-safe-pressuring-refugees-to-return>> accessed 27 May 2023.

Immigration policies that fail to consider accurate assessments of the safety situation for returning refugees are already being seen in countries such as Denmark, Lebanon, and . In March 2023, contrary to the UN and the EU’s official positions, Denmark deemed it safe for refugees to return to certain regions in Syria, namely Latakia and Tartous.<sup>74</sup> The decision was made on the grounds that ‘improved security in the province made it safe for refugees to return’.<sup>75</sup> Denmark is now one of two European countries to revoke the residency permits of Syrian refugees. This decision comes despite ample documentation that Syrians face grave abuse from security services when returning home.<sup>76</sup> Danish policy has led to a worrying trend across Europe.<sup>77</sup> In 2019, the Swedish Migration Agency declared parts of Syria safe,<sup>78</sup> and Eastern European states like Romania, Hungary, the Czech Republic,

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<sup>74</sup> Marta Bernild, ‘Syrian Refugees in Denmark at Risk of Forced Return’ (*Human Rights Watch*, 13 March 2023) <<https://www.hrw.org/news/2023/03/13/syrian-refugees-denmark-risk-forced-return>> accessed 18 March 2023.

<sup>75</sup> Johannes Birkabaek and Nikolaj Skysdgaard, ‘Denmark deems Syrian province safe for returning refugees, worrying UNCHR’ (*Reuters*, 17 March 2023) <<https://www.reuters.com/world/middle-east/denmark-deems-syrian-province-safe-returning-refugees-worrying-unhcr-2023-03-17/>> accessed 28 March 2023.

<sup>76</sup> Amnesty International, ‘You’re Going to Your Death’ (2021) <[https://www.es.amnesty.org/fileadmin/user\\_upload/Report\\_\\_You\\_re\\_going\\_to\\_your\\_death\\_\\_ENG.pdf](https://www.es.amnesty.org/fileadmin/user_upload/Report__You_re_going_to_your_death__ENG.pdf)> accessed 27 May 2023.

<sup>77</sup> Human Rights Watch, ‘Denmark: Flawed Country of Origin Reports Lead to Flawed Refugee Policies: Joint Statement’ (19 April 2021) <[https://www.hrw.org/news/2021/04/19/denmark-flawed-country-origin-reports-lead-flawed-refugee-policies?fbclid=IwAR0LLPWZF4pZM0zFtqv5YpL6iw53-QXoYeoY9meorDyHfHQRPCClcwB3\\_ZQ](https://www.hrw.org/news/2021/04/19/denmark-flawed-country-origin-reports-lead-flawed-refugee-policies?fbclid=IwAR0LLPWZF4pZM0zFtqv5YpL6iw53-QXoYeoY9meorDyHfHQRPCClcwB3_ZQ)> accessed 27 May 2023.

<sup>78</sup> European Council on Refugees and Exile ECRE, ‘Sweden: Migration Agency Declares Parts of Syria Safe’ (5 September 2019) <<https://ecre.org/sweden-migration-agency-declares-parts-of-syria-safe/>> accessed 27 May 2023.

and Poland have followed suit.<sup>79</sup> Since 2019, Hungary has been attempting to re-open their embassy in Damascus in plans to normalise with Assad's regime.<sup>80</sup> Furthermore, the UK Home Office advised a 25-year-old Syrian asylum seeker he could return to the country because it is now safe.<sup>81</sup> There is an increasing risk that states in designating Syria as safe for return, are not meeting their international refugee law obligations under the 1951 Convention<sup>82</sup> or 1967 Protocol,<sup>83</sup> and in particular, the principle of non-refoulement, which I will discuss in the next section.

Countries such as Denmark have 'set a dangerous precedent from within the European Union.'<sup>84</sup> Türkiye and Lebanon, which host far more refugees,<sup>85</sup> may see these decisions as a form of clearance to

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<sup>79</sup> Giorgio Cafiero and Alexander Langlois, 'Why the EU's Consensus on Syria Could Be Slowly Unravelling' (*The New Arab*, 30 November 2021) <<https://www.newarab.com/analysis/why-eus-consensus-syria-could-be-slowly-unravelling>> accessed 27 May 2023.

<sup>80</sup> 'Hungary looking to upgrade diplomatic relations with Assad's Syria' (*The New Arab*, 11 September 2019) <<https://www.newarab.com/news/hungary-looking-upgrade-diplomatic-relations-assads-syria>> accessed 27 May 2023.

<sup>81</sup> Diane Taylor, 'Home Office tells asylum seeker he can return to Syria safely' *The Guardian* (London, 9 January 2022) <<https://www.theguardian.com/uk-news/2022/jan/09/home-office-tells-syrian-asylum-seeker-he-can-return-safely>> accessed 27 May 2023.

<sup>82</sup> UN Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention).

<sup>83</sup> UN Refugee Protocol (entry into force 4 October 1967, in accordance with paper VIII) 606 UNTS 267 (Refugee Protocol).

<sup>84</sup> Human Rights Watch, 'Syria: Returning Refugees Face Grave Abuse' (20 October 2021) <<https://www.hrw.org/news/2021/10/20/102tanf-returning-refugees-face-grave-abuse102tanf>> accessed 27 May 2023.

<sup>85</sup> Approximately 5.5 million refugees—live in neighbouring countries within the region, such as Türkiye, Lebanon, Jordan, Iraq and Egypt. Türkiye hosts the largest population—3.6 million. United Nations High Commissioner for Refugees Cyprus, 'Syria Refugee Crisis—Globally, in Europe and in Cyprus' (18 March 2021) <<https://www.unhcr.org/cy/2021/03/18/102tanf-refugee->

implement their own anti-refugee policies and practices of mass returns. In October 2022, Lebanese authorities reported that 751 Syrian refugees were voluntarily returning to Syria under a repatriation programme coordinated by Lebanon’s General Security.<sup>86</sup> President Recep Tayyip Erdogan recently announced a plan for the ‘voluntary’ return of a million Syrians to Northern Syria.<sup>87</sup>

Globally, Syria is ranked among the worst nations when it comes to human rights abuses. Freedom House’s 2023 Syria Country Report finds that ‘political rights and civil liberties in Syria are severely compromised by one of the world’s most repressive regimes’<sup>88</sup> and Syria is ranked in 161st place out of 163 nations on the annual Global Peace Index 2022.<sup>89</sup> It is becoming clear that normalisation with Assad is not contingent on adherence to human rights obligations but can be explained as ‘led by convenience and an alignment of mutual interests and concerns.’<sup>90</sup> For many countries seeking to normalise with Assad,

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crisis-globally-in-europe-and-in-cyprus-meet-some-syrian-refugees-in-cyprus/102tanf> accessed 27 May 2023.

<sup>86</sup> ‘Lebanon begins “voluntary” repatriation of Syrian refugees’ (*Aljazeera*, 26 October 2022) <<https://www.aljazeera.com/news/2022/10/26/103tanforbegins-voluntary-repatriation-of-syrian-refugees103tanfor>> accessed 15 March 2023.

<sup>87</sup> Martin Chulov, ‘Turkey’s plan to forcibly relocate Syrian refugees gains momentum’ *The Guardian* (London, 27 May 2022) <<https://www.theguardian.com/world/2022/may/27/turkeys-plan-to-forcibly-relocate-syrian-refugees-gains-momentum>> accessed 27 May 2023.

<sup>88</sup> ‘Freedom in the World—Syria Country Report’ (*Freedom House*, 2023) <<https://freedomhouse.org/country/103tanf/freedom-world/2023103tanf>> accessed 1 April 2023.

<sup>89</sup> Institute for Economics and Peace, ‘Global Peace Index 2022’ (2022) <<https://www.economicsandpeace.org/wp-content/uploads/2022/06/GPI-2022-web.pdf>> accessed 18 March 2023.

<sup>90</sup> Nicholas Frakes, ‘As countries normalise with Syria, refugees remain in limbo’ (*NOW*, 17 March 2023) <<https://nowlebanon.com/as-countries-normalize-with-syria-refugees-remain-in-limbo/>> accessed 18 March 2023.



discussions of refugee return have been a priority, and it seems some will exploit this trend to benefit their own interests.<sup>91</sup>

Normalisation is beginning to affect the strength of the international refugee protection regime. To date, no European country has actually deported refugees to return to Syria.<sup>92</sup> However, considerations of safe return are undermining any protections granted to Syrian refugees and causing them to feel insecure in their host countries.<sup>93</sup> The attempts to ramp up the anti-refugee rhetoric or detain individuals under deportation notices<sup>94</sup> that cannot yet be implemented, subvert the essence of the international refugee protection regime, namely that people fleeing war, conflict and persecution deserve compassion and empathy.<sup>95</sup> Parekh maintains our policies and practices must necessarily treat the forcibly displaced as fully human and with dignity,<sup>96</sup> and argues that the refugee protection regime is underpinned by moral

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<sup>91</sup> Malik al-Abdeh and Lars Hauch, 'Political settlement first, refugee return second' (*IPS*, 4 April 2023) <<https://www.ips-journal.eu/topics/foreign-and-security-policy/political-settlement-first-refugee-return-second-6619/>> accessed 4 April 2023.

<sup>92</sup> Kelly Petillo, 'Stuck in Limbo: How Europe can protect Syrian refugees' (*European Council on Foreign Relations*, 20 January 2022) <<https://ecfr.eu/article/stuck-in-limbo-how-europe-can-protect-syrian-refugees/>> accessed 27 May 2023.

<sup>93</sup> Human Rights Watch, 'Our Lives Are Like Death' (20 October 2021) <<https://www.hrw.org/report/2021/10/20/our-lives-are-death/Syrian-refugee-returns-lebanon-and-jordan>> accessed 27 May 2023.

<sup>94</sup> At present, Denmark does not have direct dealings with the Syrian regime. The Danish Embassy remains closed in Damascus. This means that Syrians without valid residency or accepted form of identification to Syrian border authorities are held in detention holding centres indefinitely as they await deportation.

<sup>95</sup> UNHCR, 'UN Refugee Agency opposes UK plan to export asylum' (14 April 2022) <<https://www.unhcr.org/uk/news/news-releases/un-refugee-agency-opposes-uk-plan-export-asylum-0>> accessed 27 May 2023.

<sup>96</sup> Serena Parekh, *Refugees and the Ethics of Forced Displacement* (Routledge 2017) 3.

significance.<sup>97</sup> To that end, the trend towards designating Syria as ‘safe’ should be cautiously and seriously considered, in line with the legal and moral implications.

### 3.3 Returning Home

There are two main forms of return migration: voluntary return and forced return. In the context of migration frameworks and refugee protection, ‘return’ is often used as an umbrella term that encompasses the numerous ways that non-nationals return to their country of origin—whether independent, with assistance or by force.<sup>98</sup> As there is no legal definition in relation to ‘returns’, institutional ambiguity has meant that discussions of return migration are complex.

Nonetheless, voluntary repatriation is a ‘core tenet of the international refugee regime’<sup>99</sup> and is specifically envisaged in UNHCR’s statute.<sup>100</sup> The repatriation of refugees has thus become a legally and practically distinct process. UNHCR developed a set of protection thresholds that must be met before they can justify a returning program and ensure the safe and dignified return of refugees is possible.<sup>101</sup> Some of the 22

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<sup>97</sup> *ibid.*

<sup>98</sup> United Nations General Assembly, ‘Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations Report of the United Nations High Commissioner for Human Rights’ (3 January 2018) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/001/99/PDF/G1800199.pdf?OpenElement>> accessed 27 May 2023.

<sup>99</sup> ‘Return: voluntary, safe, dignified and durable?’ (*FMR*, October 2019) 62 <<https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/return/return.pdf>> accessed 27 May 2023.

<sup>100</sup> UNHCR, ‘Statute of the Office of the United Nations High Commissioner For Refugees’ (adopted by the UN General Assembly Resolution 428 on 14 December 1950) <<https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/060/26/PDF/NR006026.pdf?OpenElement>> accessed 27 May 2023.

<sup>101</sup> UNHCR, ‘Comprehensive Protection and Solutions Strategy: Protection

protection thresholds include: the Syrian regime providing guarantees that no returning refugees will face persecutory or punitive measures, that every individual's decision to return is genuinely voluntary without any coercion, that the safety of refugees is ensured, that the UNHCR is granted 'free and unhindered access to all refugees and returnees'.<sup>102</sup>

In 2021, the UNHCR announced that the present conditions in Syria 'remain un conducive for large-scale organized returns that are safe, dignified and sustainable'<sup>103</sup> and that it would likely take several years for them to be realised. As a result, the UNHCR's recent visits to Syria in September 2022 and March 2023 by the UNCHR chief have caused alarm amongst human rights groups.<sup>104</sup> Amnesty International state that 'there has been a growing focus in returns programming—particularly inside Syria—across the UN in recent months',<sup>105</sup> in contrast to the UNCHR's own policy and strategy that states only when the conditions in Syria have 'substantially changed'<sup>106</sup> would voluntary return plans be discussed.

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Thresholds and Parameters for Refugee Return to Syria' (February 2018) <<https://data.unhcr.org/en/documents/details/63223>> accessed 27 May 2023.

<sup>102</sup> *ibid.*

<sup>103</sup> UNHCR, 'International Protection Considerations with regard to people fleeing the Syrian Arab Republic' (March 2021) Update VI 52–53 UN Doc HCR/PC/SYR/2021/06 <<https://www.refworld.org/docid/606427d97.html>> accessed 14 June 2023.

<sup>104</sup> Amnesty International, 'Public Statement: Rights Groups Urge UNHCR Chief Grandi To Halt Syria Return Programme' (12 September 2022) <<https://www.amnesty.org/en/wp-content/uploads/2022/09/MDE2460192022ENGLISH.pdf>> accessed 27 May 2023.

<sup>105</sup> *ibid.*

<sup>106</sup> UNHCR, 'Comprehensive Protection and Solutions Strategy: Protection Thresholds and Parameters for Refugee Return to Syria'(n 101).

The strongest moral and legal norm related to people seeking asylum is the principle of non-refoulement,<sup>107</sup> which has been described as ‘the cornerstone of refugee protection’.<sup>108</sup> The essence of the principle is to protect the most fundamental human rights of any migrant or refugee from being returned to any territory where they would face torture, cruel, inhuman, or degrading treatment or punishment and other irreparable harm.<sup>109</sup>

As much as non-refoulement is the bedrock of the refugee protection regime, free and informed consent should be the cornerstone of any discussions about refugee return. In terms of repatriation, the only protection guarantee for individuals is that repatriation to their country of origin must be voluntary. Refugees must have access to sufficient information about the conditions in the country of origin and the situation in the country of asylum, ‘presented objectively and through appropriate media’.<sup>110</sup> Surveys suggest that returning Syrian refugees

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<sup>107</sup> The principle is enshrined in the (1951 Refugee Convention) and its (1967 Refugee Protocol). Article 33 of the 1951 Convention Relating to the Status of Refugees:

No Contracting State shall expel or return (refouler) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion. Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention) art 33; Protocol relating to the Status of Refugees (entry into force 4 October 1967, in accordance with paper VIII).

<sup>108</sup> UNHCR, ‘Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol’ (26 January 2007) 2 <<https://www.unhcr.org/uk/media/advisory-opinion-extraterritorial-application-non-refoulement-obligations-under-1951-0>> accessed 29 May 2023.

<sup>109</sup> UN Refugee Convention, art 33.

<sup>110</sup> UNHCR, ‘Discussion Note on Protection Aspects of Voluntary Repatriation’ (1 April 1992) <<https://www.unhcr.org/publications/discussion->

felt they did not have accurate information about the conditions in Syria. They felt unaware of ‘critical factors that present enormous risks’ to their personal security and freedom on return.<sup>111</sup>

Rights groups have criticised the UNHCR for failing to accurately report the threats facing returnees, especially the security situation in regime-controlled areas.<sup>112</sup> Failure to do so enables other governments to continue ignoring the reality faced by individuals in regime-held Syria, giving them the legitimacy needed to encourage refugee returns. Furthermore, without transparency, it is difficult to guarantee that refugees choosing to return home are able to ‘make an informed choice and to feel confident about their return.’<sup>113</sup> If influential organisations such as the UNHCR are seen to be seemingly encouraging normalisation, it may result in other key actors and states doing the same. SADC assert that UNHCR’s failures are leading to ‘ill-informed returns decisions which therefore cannot be considered to be voluntary.’<sup>114</sup> In light of this implication, Amnesty has urged the UNHCR and other UN agencies to halt any programmes that could incentivise unsafe returns.<sup>115</sup> Returnees must also be assured of legal, physical and material safety and be ensured their dignity.<sup>116</sup> Dignity in

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note-protection-aspects-voluntary-repatriation> accessed 29 May 2023.

<sup>111</sup> Syrians Association for Citizens’ Dignity (SACD), ‘We are Syria’ (20 July 2020) <[https://syacd.org/wp-content/uploads/2020/07/SACD\\_WE\\_ARE\\_SYRIA\\_EN.pdf](https://syacd.org/wp-content/uploads/2020/07/SACD_WE_ARE_SYRIA_EN.pdf)> accessed 29 May 2023.

<sup>112</sup> Syrian Association for Citizens’ Dignity (SACD), ‘Normalisation of Horror, Security and Living Conditions in Assad-Held Syria’ 31 (n 57).

<sup>113</sup> UNHCR, ‘Discussion Note on Protection Aspects of Voluntary Repatriation’ (n 110).

<sup>114</sup> Syrians Association for Citizens’ Dignity (SACD), ‘New SACD briefing details deep concerns over UNHCR’s approach to return in Syria’ (9 September 2022) <<https://syacd.org/new-sacd-briefing-details-deep-concerns-over-unhcrs-approach-to-return-in-syria/>> accessed 30 May 2023.

<sup>115</sup> Amnesty International, ‘Public Statement: Rights Groups Urge UNHCR Chief Grandi To Halt Syria Return Programme’ (n 104).

<sup>116</sup> UNHCR, ‘Handbook on Voluntary Repatriation: International Protection’

practice includes treating refugees ‘with respect and full acceptance by their national authorities, including the full restoration of their rights’.<sup>117</sup>

The legal status of the refugee in the country of asylum is also a way to determine informed consent.<sup>118</sup> If recognised as a refugee, an individual has rights and protections.<sup>119</sup> In this case, their choice to repatriate is more likely to be truly free and voluntary. In the case of refugee returns from Lebanon or Türkiye, as detailed below, it is clear that the decision is not an exercise of free will but is ‘dictated by a combination of pressures due to political factors, security problems or material needs’.<sup>120</sup> Authorities in countries such as Lebanon and Türkiye have pursued a series of coercive policies that make life exceedingly difficult so that Syrian refugees cannot access basic necessities and often their human rights. In Lebanon, Syrians have been subject to ad hoc curfews, evictions, arbitrary arrests, and detention and demolition of their shelters.<sup>121</sup> Türkiye has used hate speech, exploitation, deportations,

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(1996) <<https://www.unhcr.org/uk/media/handbook-voluntary-repatriation-international-protection>> accessed 30 May 2023.

<sup>117</sup> *ibid.*

<sup>118</sup> UNHCR, ‘Comprehensive Protection and Solutions Strategy: Protection Thresholds and Parameters for Refugee Return to Syria’ (n 101).

<sup>119</sup> The Convention Relating to the Status of Refugees is the main source of legal protections for refugees. It provides a definition of refugee, safeguards the right to seek asylum, protects against being forcibly returned to a country where one would face persecution (non-refoulement) and sets minimum standards for the treatment of persons who are found to qualify for refugee status. UN Refugee Convention.

<sup>120</sup> UNHCR, ‘Handbook on Voluntary Repatriation: International Protection’ (n 116) 10.

<sup>121</sup> UNHCR, ‘Inter-Agency Coordination Lebanon: Key Findings of the 2020 Vulnerability Assessment of Syrian Refugees in Lebanon’ (16 February 2021) <<https://reliefweb.int/report/lebanon/inter-agency-coordination-lebanon-key-findings-2020-vulnerability-assessment-syrian>> accessed 30 May 2023.

and threats of long-term detention to coerce Syrians into surrendering their residency permits.<sup>122</sup>

To satisfy the criteria of voluntariness, it should be evident that the ‘positive pull-factors in the country of origin are an overriding element in the refugee’s decision to return, rather than possibly push-factors in the host country.’<sup>123</sup> Despite this, reports show there has been no significant increase in spontaneous refugee returns to Syria.<sup>124</sup> Those who have stayed and continue to live in these ‘increasing levels of vulnerability’ are adamant that returning to Syria poses a greater threat to life.<sup>125</sup> Syrian refugees cannot freely and readily consent to return to their country due to the conditions in Lebanon and Türkiye. It subverts the essence of non-refoulement to mount such intense indirect pressure that refugees feel compelled to return to a country where they face serious harm.

The importance of the voluntary nature of refugee return is critical and emphasises the key distinction between forced returns and repatriation. This line is often blurred by states interested in the return of refugees. In this case, espousing the narrative that ‘Syria is safe’ empowers states to believe that the return of displaced Syrians is under the mandate of voluntary repatriation. Erdogan described his plans to encourage the ‘repatriation of thousands of Syrians’ as a ‘voluntary return’ project.<sup>126</sup>

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<sup>122</sup> Syrians for Truth and Justice, ‘Turkey Continues to Forcibly Return Refugees, Ignoring International Warnings that Syria is Still Unsafe’ (14 February 2022) <<https://stj-sy.org/en/turkey-continues-to-forcibly-return-refugees-ignoring-international-warnings-that-syria-is-still-unsafe/>> accessed 30 May 2023.

<sup>123</sup> UNHCR, ‘Handbook on Voluntary Repatriation: International Protection’ (n 115) 7.

<sup>124</sup> Human Rights Watch, ‘Our Lives Are Like Death’ (n 93).

<sup>125</sup> *ibid.*

<sup>126</sup> Hosem Salem, ‘Fear among Syrian refugees over Türkiye “voluntary return” plan’ (*Aljazeera*, 20 July 2022) <<https://www.aljazeera.com/news/2022/7/20/fear-among-syrian-refugees->

Lebanon has already begun its ‘voluntary repatriation’ programme without the involvement of the UNHCR.<sup>127</sup> This amounts to a breach of Lebanon’s obligations not to forcibly return people to countries where they face a clear risk of torture or persecution under international legal instruments.<sup>128</sup> It is becoming increasingly clear that these returns are neither voluntary nor legal.<sup>129</sup>

Under the right conditions, the option for Syrians to return home would be a positive development and welcomed. However, the COI maintains that, in 2023, the conditions in Syria are not safe for return.<sup>130</sup> This is primarily due to the fact that the root causes of the displacement remain unaddressed and unaffected. The ‘authoritarian and repressive nature of the regime’<sup>131</sup> remains unchanged. Surveys conducted with displaced Syrians show that security-related reasons were the largest cause of displacement throughout the years of the conflict, and that security concerns remain the biggest obstacle for return.<sup>132</sup>

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over-turkey-voluntary-return-plan> accessed 30 May 2023.

<sup>127</sup> Lama Fakih, ‘Forced Return of Syrians by Lebanon Unsafe and Unlawful’ (*Human Rights Watch*, 6 July 2022) <<https://www.hrw.org/news/2022/07/06/forced-return-syrians-lebanon-unsafe-and-unlawful>> accessed 10 April 2023.

<sup>128</sup> Lebanon has not signed the 1951 Refugee Convention however it has signed most other human rights treaties relevant to the protection of refugees. Lebanon is party to the Convention Against Torture and is also bound by the customary international law principle of nonrefoulement.

<sup>129</sup> Syrian’s Association for Citizens’ Dignity (SACD), ‘The Myth of “Voluntary” Returns from Lebanon’ (2022) <<https://syacd.org/wp-content/uploads/2022/11/Lebanon-Report-En.pdf>> accessed 18 April 2023.

<sup>130</sup> United Nations General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (2023) (n 6).

<sup>131</sup> Veronica Bellintani, ‘The Assad Regime’s Post-Conflict Narrative in the International Arena’ (*The Tahrir Institute for Middle Eastern Policy*, 5 October 2022) <<https://timep.org/2022/05/10/the-assad-regimes-post-conflict-narrative-in-the-international-arena/>> accessed 30 May 2023.

<sup>132</sup> Syrians Association for Citizens’ Dignity (SACD), ‘We are Syria’ (n 111).



The Syrian regime is pushing a narrative that the problems in Syria can be reduced to a military conflict, leading many countries to equate safety with an absence of military offensives. However, the ‘the vast majority of surveyed Syrians don’t feel safe in regime-controlled areas’,<sup>133</sup> despite claims from states such as Denmark that these areas are safe for return. All components of the Syrian security forces have been involved in systematic detention, torture, and murder of tens of thousands of Syrian civilians in secret detention centres.<sup>134</sup>

Between 2016 and 2020, the UNHCR has verified that some 267,170 refugees spontaneously returned to Syria.<sup>135</sup> In 2021, the UNHCR recorded the return of close to 36,000 refugees to Syria.<sup>136</sup> Refugee returnees have experienced arbitrary arrests, sexual violence, rape, detention, extortion, enforced disappearance, severe beatings, dehumanising treatment, summary executions, and torture at the hands of the Syrian government and affiliated militias.<sup>137</sup> Amnesty

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<sup>133</sup> Syrian Association for Citizens’ Dignity (SACD), ‘Normalisation of Horror, Security and Living Conditions in Assad-Held Syria’ 83 (n 57).

<sup>134</sup> United Nations General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (11 March 2021) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G21/059/73/PDF/G2105973.pdf?OpenElement>> accessed 30 May 2023.

<sup>135</sup> UNHCR Data, ‘Syria Refugee Regional Response Durable Solutions’ (Operational Data Portal Refugee Situations, 2023) <<https://data.unhcr.org/en/situations/syria>> accessed 30 May 2023.

<sup>136</sup> UNHCR UK, ‘Eleven years on, mounting challenges push many displaced Syrians to the brink’ (15 March 2022) <<https://www.unhcr.org/uk/news/briefing-notes/eleven-years-mounting-challenges-push-many-displaced-syrians-brink>> 30 May 2023.

<sup>137</sup> Human Rights Watch, ‘Our Lives Are Like Death’ (n 93); Louisa Loveluck, ‘Assad urged Syrian refugees to come home. Many are being welcomed with arrest and interrogation’ (*The Washington Post*, 2 June 2019) <<https://www.washingtonpost.com/world/assad-urged-syrian-refugees-to-come-home-many-are-being-welcomed-with-arrest-and-interrogation/2019/06/02/54bd696a-7bea-11e9-b1f3->

International confirms these gross violations are ‘consistent with and confirms a wider pattern of violations committed by the Syrian regime against perceived political opponents since the beginning of the conflict’.<sup>138</sup> There have also been widespread land and property seizures making sustainable return impossible.<sup>139</sup>

Dignity in relation to the return of refugees implies that the choice of individuals must be respected. It is manifest in social reforms that empower individuals to shape their own future. ‘We live in humiliation inside Syria and outside Syria’,<sup>140</sup> and ‘dignity is being able to reply and speak out when there is abuse’;<sup>141</sup> these testimonies from Syrian refugees demonstrate the condition of dignity has not been realised. Accountability for Syrians must aim for the ‘recognition of the dignity of individuals, the redress and acknowledgement of violations’ and ‘to prevent them from happening again’.<sup>142</sup>

The creation of ‘voluntary, safe and dignified’ conditions is an ongoing political process, and it goes far beyond the capacities of the UNHCR. At a minimum, the UNCHR has a responsibility to halt any shift from

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b233fe5811ef\_story.html> accessed 30 May 2023; Amnesty International, ‘You’re Going To Your Death’ (n 76).

<sup>138</sup> *ibid.*

<sup>139</sup> Voices for Displaced Syrians, ‘Is Syria Safe for Return? Returnees’ Perspective’ 33 (November 2021) <<https://voicesforsyrians.org/wp-content/uploads/2021/12/Syrian-Returnees-11.12.2021.pdf>> accessed 30 May 2023.

<sup>140</sup> *ibid.*

<sup>141</sup> Francesca Grandi, Kholoud Mansour and Kerrie Holloway, ‘Dignity and displaced Syrians in Lebanon’ 10 (*Humanitarian Policy Group*, November 2018) <<https://cdn.odi.org/media/documents/12532.pdf>> accessed 30 May 2023.

<sup>142</sup> Ashi Al-Kahwati and Johanna Mannergren Selimovic, ‘Addressing Atrocity in Syria: New Challenges for Transitional Justice’ (*Swedish Institute of International Affairs*, 2021) 21 <<https://www.ui.se/globalassets/ui.se-eng/publications/ui-publications/2021/ui-paper-no.-2-2021.pdf>> accessed 30 May 2023.

refugee aid to ‘return programming’.<sup>143</sup> The UNHCR and other European states may have failed to adhere to the position that Syria is unsafe due to normalisation. Many states have espoused the narrative that Syria is safe, despite the consensus of human rights organisations that facilitating returns to Syria right now would be ‘knowingly putting Syrian refugees at risk of suffering from heinous abuse and persecution upon their return to Syria’.<sup>144</sup> The failure of these states has contributed to a dangerous refugee return agenda. The principles of protection and preconditions for safe return are a prerequisite of any repatriation. As of 2023, there is no evidence that the Assad regime is committed to sustainably reintegrating individuals forced to flee or individuals associated with the opposition.<sup>145</sup> Therefore encouraging returns to Syria will amount to a breach of states’ non-refoulement obligations.

## 4 Accountability in Syria

### 4.1 Imagining Accountability

Accountability means a lot of different things. The simplest meaning is that individuals who are responsible for grave human rights abuses—should

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<sup>143</sup> UNHCR, ‘Comprehensive Protection and Solutions Strategy: Protection Thresholds and Parameters for Refugee Return to Syria’ (n 101).

<sup>144</sup> Amnesty International, ‘Lebanon: Stop the so-called voluntary return of Syrian refugees’ (14 October 2022) <<https://www.amnesty.org/en/latest/news/2022/10/lebanon-stop-the-so-called-voluntary-returns-of-syrian-refugees/>> accessed 30 March 2023.

<sup>145</sup> United Nations General Assembly, ‘Report of the Independent International Commission of Inquiry on the Syrian Arab Republic’ (2022) (n 6); Centre for Strategic and International Studies, ‘Babel: Translating the Middle East: “Accountability in Syria”’ (9 August 2022), comments by Beth Van Schaack, United States Ambassador-at-Large for Global Criminal Justice <<https://www.csis.org/podcasts/babel-translating-middle-east/accountability-syria>> accessed 30 May 2023.

be held responsible in some way—for what they have done and how they have harmed others.<sup>146</sup>

The problem of normalisation is part of a much larger intentional legal conversation about accountability in Syria. The demands of demonstrators for accountability and reform in 2011 were ‘among the first demands that triggered the popular Syrian revolution.’<sup>147</sup> Over twelve years later and despite the conflict having the most substantive and ‘well-documented international crime base in human history’,<sup>148</sup> the Syrian regime continues to ‘benefit from a long-standing culture of impunity’.<sup>149</sup> In the wake of systemic human rights abuses, criminal justice often occupies centre stage as a form of accountability. However, in the case of Syria, there are no options to pursue justice domestically,<sup>150</sup> and at the international level, the UNSC is largely gridlocked from implementing coercive measures against Assad’s

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<sup>146</sup> *ibid* 1.

<sup>147</sup> Haid Haid, ‘Towards Tangible Actions for Transitional Justice in Syria: Where to Go From Here?’ (*Heinrich Böll Stiftung Middle East*, October 2017) 3 <[https://lb.boell.org/sites/default/files/transitional\\_justice\\_paper\\_final.pdf](https://lb.boell.org/sites/default/files/transitional_justice_paper_final.pdf)> accessed 30 May 2023.

<sup>148</sup> Van Schaak (n 3) 1.

<sup>149</sup> United States Senate Committee on Foreign Relations, ‘Closing the Accountability Gap in Syria: Pathways to Prosecution’ (testimony of Professor Milena Sterio, The Charles R. Emrick Jr—Calfree Halter & Griswold Professor of Law, Cleveland-Marshall College of Law; Managing Director, Public International Law and Policy Group) (18 May 2022) <[https://www.foreign.senate.gov/imo/media/doc/060822\\_%20Sterio\\_Testimony.pdf](https://www.foreign.senate.gov/imo/media/doc/060822_%20Sterio_Testimony.pdf)> accessed 30 May 2023.

<sup>150</sup> Howard Varney and Katarzyna Zduńczyk, ‘Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes’ (*International Center for Transitional Justice*, 2020) <[https://www.ictj.org/sites/default/files/ICTJ\\_Report\\_Universal\\_Jurisdiction.pdf](https://www.ictj.org/sites/default/files/ICTJ_Report_Universal_Jurisdiction.pdf)> accessed 9 April 2023; Human Rights Watch, ‘Syria: Criminal Justice for Serious Crimes under International Law’ (November 2013) <<https://www.hrw.org/news/2013/12/17/syria-holistic-approach-needed-justice>> accessed 27 March 2023.

regime. Because of this fact, international accountability in Syria remains elusive and extremely challenging politically.

This section will address the current accountability routes and their potential impact on Syrians. It will first consider criminal justice but argue that due to its limitations in the case of Syria, other transitional justice mechanisms may become a more viable avenue. This section will highlight the remarkable contributions of Syrian civil society in transitional justice processes—inside the courtrooms, but also through truth-telling mechanisms, memorialisation, and storytelling.<sup>151</sup> By defining what accountability looks like for Syrians, this section identifies the objectives that should drive the accountability process. This article argues that centring Syrian voices is the principal component of understanding how we can achieve accountability. This is becoming more pertinent in the face of normalisation.

Accountability for atrocity crimes perpetrated by the Syrian regime is already challenging, made more so by the fact that crimes are still being committed in Syria by parties to the conflict, most notably by the Syrian regime. Normalisation complicates this further. This section demonstrates that the implications of normalisation are likely to transcend the Syrian context and be reflected generally in the current political climate. It identifies the broader global implications of normalisation with the Syrian regime in the pursuit for international accountability.

## 4.2 Criminal Justice Measures

Criminal prosecutions of atrocity crimes committed by the Syrian regime present immense challenges. The administration of justice in Syria is fundamentally flawed—this is because the judiciary lacks

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<sup>151</sup> Alanah Travers, ‘The Prolonged Path to Accountability in Syria’ (*RUDAW*, 17 March 2022) <<https://www.rudaw.net/english/middleeast/syria/17032022>> accessed 5 April 2023.

independence and as a result, injustice and impunity are enmeshed.<sup>152</sup> Syria's criminal justice system, including its institutions and laws, criminalise fundamental freedoms, such as freedom of speech, expression, assembly and association.<sup>153</sup> In addition to this, there is an absence of political will to initiate independent and criminal prosecutions.<sup>154</sup> There have been no steps taken by the Syrian government to identify, investigate, prosecute, or punish officials who have violated human rights. The same is true for crimes that preceded the war.<sup>155</sup> This is likely because persons in positions of authority or close to those in power are implicated.<sup>156</sup> The UN Commission of Inquiry concluded that there are serious impediments to domestic criminal justice and it very unlikely that independent, credible national prosecutions in line with international standards could be carried out in Syria.<sup>157</sup>

Since 2021, attention has shifted to the possibility of prosecuting international crimes committed in Syria in European courts, through the principle of universal jurisdiction. Universal jurisdiction refers to 'the assertion of jurisdiction over offences regardless of the place where they were committed and the nationality of the perpetrator or the victim.'<sup>158</sup> The principle allows states that recognise it to investigate

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<sup>152</sup> International Legal Assistance Consortium, 'ILAC Rule of Law Assessment Report: Syria 2017' (2017) <<http://www.ilacnet.org/wp-content/uploads/2017/04/Syria2017.pdf>> accessed 24 April 2023.

<sup>153</sup> Varney and Zduńczyk, 'Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes' (n 150).

<sup>154</sup> *ibid.*

<sup>155</sup> Human Rights Watch, 'Syria: Criminal Justice for Serious Crimes under International Law' (n 150).

<sup>156</sup> *ibid.*

<sup>157</sup> United Nations General Assembly, 'Report of the independent international commission of inquiry on the Syrian Arab Republic' 124 (5 February 2013) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G23/010/21/PDF/G2301021.pdf?OpenElement>> accessed 30 May 2023.

<sup>158</sup> International Committee of the Red Cross (ICRC), 'Factsheet: Universal

allegations of war crimes and crimes against humanity, for instance in Syria. Syrian human rights advocate and member of Families for Freedom, Lamis Alkhateeb, states that ‘universal jurisdiction provides a glimmer of hope’,<sup>159</sup> and it has led to the possibility of justice in contexts previously thought impossible.<sup>160</sup> Domestic legal proceedings to address crimes committed in Syria are ongoing in France, Austria, Belgium, Norway, Germany, the Netherlands, Sweden, and Switzerland.<sup>161</sup> In January, 2022, at the Higher Regional Court in Koblenz, Germany, senior Assad government official Anwar Raslan was convicted for a crime against humanity—‘in the form of killing, torture, serious unlawful detention, rape and sexual assault’.<sup>162</sup>

Whilst criminal accountability is a key component of justice for Syria, there were substantial criticisms of the Koblenz trial that must be considered. Due to the various actors involved in trying to achieve accountability through criminal justice for Syria, there is always a risk that Syrians themselves may be unheard ‘with little chance to influence strategies.’<sup>163</sup> The trial was held in a German court, with German

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Jurisdiction Over War Crimes’ (21 May 2021) <<https://www.icrc.org/en/document/universal-jurisdiction-over-war-crimes-factsheet>> accessed 28 April 2023.

<sup>159</sup> Human Rights Foundation and The Syria Campaign, ‘Framing Justice in Syria: The Road Towards Comprehensive Justice’ (April 2022) <<https://hrf.org/new-report-framing-justice-in-syria/>> accessed 12 April 2023.

<sup>160</sup> Varney and Zduńczyk, ‘Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes’ (n 148).

<sup>161</sup> United Nations General Assembly, ‘International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011’ (11 February 2022) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/256/36/PDF/N2225636.pdf?OpenElement>> accessed 30 May 2023.

<sup>162</sup> United States Senate Committee on Foreign Relations, ‘Closing the Accountability Gap in Syria: Pathways to Prosecution’ (n 149).

<sup>163</sup> Al-Kahwati and Selimovic, ‘Addressing Atrocity in Syria: New Challenges

judges, in German, which meant it was largely inaccessible for the majority of Arabic-speaking Syrians.<sup>164</sup> Syria Justice and Accountability Center (SJAC) executive director, Mohammad Al Abdallah argued this alienation ‘can lead to serious long-term impacts on survivors and the families of victims beyond what they already face.’<sup>165</sup> Universal jurisdiction is important for global accountability.<sup>166</sup> Universal jurisdiction cases may inspire other justice initiatives, and act as international acknowledgment and record of the crimes committed. However, work needs to be done to ensure that the Syrian community is included in the process.

This trial also demonstrated the significance of documentation efforts in pursuing justice.<sup>167</sup> Scholars claim that ‘the issue of accountability was literally delivered to the doorsteps of the European States by the refugees arriving from Syria.’<sup>168</sup> Since the start of the conflict, international actors, UN bodies and NGOs created and maintained huge databases of human rights violations and documentation that would be relevant for justice in Syria.<sup>169</sup> As the German police could not access

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for Transitional Justice’ (n 142) 20.

<sup>164</sup> In addition to this, courts in Germany are under no obligation to provide translations of their verdicts, which are exclusively written in German. Alexander Dünkelsbühler, ‘Universal jurisdiction without universal outreach?’ (*Völkerrechtsblog*, 13 January 2021) <<https://voelkerrechtsblog.org/universal-jurisdiction-without-universal-outreach/>> accessed 30 May 2023.

<sup>165</sup> Human Rights Foundation and The Syria Campaign, ‘Framing Justice in Syria: The Road Towards Comprehensive Justice’ (n 159).

<sup>166</sup> Varney and Zduńczyk, ‘Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes’ (n 150).

<sup>167</sup> Mansour Omari, ‘Reflections on the Syrian Torture Trial in Koblenz’ (*Amnesty*, 13 January 2022) <<https://www.amnesty.org.uk/blogs/campaigns-blog/reflections-syrian-torture-trial-koblenz>> accessed 30 May 2023.

<sup>168</sup> United States Senate Committee on Foreign Relations, ‘Closing the Accountability Gap in Syria: Pathways to Prosecution’ (n 149).

<sup>169</sup> Some of these documentation efforts: The Independent International Commission of Inquiry on the Syrian Arab Republic (COI), The International,



any crime scene to collect evidence, around 800,000 original documents collected in Syria were smuggled out by Syrian refugees, lawyers, activists, and others for this trial.<sup>170</sup>

Documenting human rights violations is often seen as a ‘steppingstone’<sup>171</sup> to catalysing and supporting accountability and criminal justice efforts. However, there is a growing body of scholars who argue for its function as a transitional justice mechanism in and of itself, on which the next section will expand.<sup>172</sup> The Syrian case differs because the majority of evidence was collated by Syrian eyewitnesses and ordinary citizens.<sup>173</sup> For this reason, documentation was of intrinsic importance. Syrians were not solely collecting evidence to ‘support judicial efforts in post-conflict settings’.<sup>174</sup> Aboueldahab argues that their documentation was essential in another way: ‘writing atrocities is, in and of itself, a healing process, as it ensures that victimization is

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Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM) The Organisation for the Prohibition of Chemical Weapons (OPCW) set up a Fact Finding Mission (FFM) The Commission for International Justice and Accountability (CIJA).

<sup>170</sup> Mansour Omari, ‘Countless Brave Syrian Activists Made The Koblenz Torture Trial Possible’ (*Amnesty International*, 12 October 2020) <<https://www.amnesty.org.uk/blogs/campaigns-blog/countless-brave-syrian-activists-made-koblenz-torture-trial-possible>> accessed 30 May 2023.

<sup>171</sup> Noha Aboueldahab, *Writing Atrocities: Syrian Civil Society and Transitional Justice* (Brookings Doha Analysis Paper 21, May 2018) <[https://www.brookings.edu/wp-content/uploads/2018/04/transitional-justice-english\\_web.pdf](https://www.brookings.edu/wp-content/uploads/2018/04/transitional-justice-english_web.pdf)> accessed 10 April 2023.

<sup>172</sup> Al-Kahwati and Selimovic, ‘Addressing Atrocity in Syria: New Challenges for Transitional Justice’ (n 142); Aboueldahab (n 171).

<sup>173</sup> Aboueldahab (n 171).

<sup>174</sup> Paul Williams, Lisa Dicker and Danae Paterson, ‘The Peace vs. Justice Puzzle and the Syrian Crisis’ (2017) 24(2) *ILSA J Intl & Comp L* 417 <<https://nsuworks.nova.edu/ilsajournal/vol24/iss2/7/>> accessed 8 April 2023.

acknowledged, recorded, and remembered.’<sup>175</sup> She goes on to explain that their involvement contributed to producing a transitional justice process that is more victim-led.<sup>176</sup> The process of documentation in the Syrian context presented a unique opportunity to localise an often-internationalised justice process.<sup>177</sup>

Universal jurisdiction as a route to accountability is simply one potential component of larger criminal justice efforts. It is not adequate to address the magnitude and complexity of the crimes committed in Syria. The flaws of the Koblenz trial process crystallise that centring Syrian voices is the most important element of achieving accountability. Only through the initiation of a well-planned, transparent, and inclusive consultation with Syrian civil society<sup>178</sup> can we best serve those affected by the crimes.

### 4.3 Transitional Justice

Syrian society has suffered immeasurable loss and the innumerable atrocity crimes committed in Syria are too vast to be addressed by judicial measures alone. A multifaceted transitional justice approach has emerged as a means of addressing these challenges.<sup>179</sup> This section evaluates the ongoing efforts to pursue accountability in Syria from a

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<sup>175</sup> Aboueldahab (n 171).

<sup>176</sup> *ibid.*

<sup>177</sup> *ibid.*

<sup>178</sup> Paul Seils, ‘Towards a Transitional Justice Strategy for Syria’ (*International Centre of Transitional Justice*, 2013) <[https://www.ictj.org/sites/default/files/ICTJ-Syria-Analysis-2013\\_0.pdf](https://www.ictj.org/sites/default/files/ICTJ-Syria-Analysis-2013_0.pdf)> accessed 21 April 2023.

<sup>179</sup> Centre for Strategic and International Studies, ‘Babel: Translating the Middle East: “Accountability in Syria”’ (n 143); Al-Kahwati and Selimovic, ‘Addressing Atrocity in Syria: New Challenges for Transitional Justice’ (n 140); Anwar El Bunni, ‘Breaking new ground: Transitional justice in Syria’ (*Brookings*, 24 November 2020) <<https://www.brookings.edu/opinions/breaking-new-ground-transitional-justice-in-syria/>> accessed 30 May 2023.

transitional justice perspective. Using the lens of a practice that represents itself as victim-centred,<sup>180</sup> enables us to identify the gulf, often cited by critics between ‘the demands of victims and what transitional justice processes deliver’.<sup>181</sup> The Koblenz trial illustrated the tension ‘between the idea of a process centred on the needs of victims and an increasingly prescriptive global approach to transitional justice’.<sup>182</sup> As Simon Robins argues, ‘despite the claim of victim-centrism, transitional justice does not in practice effectively address the needs of victims’.<sup>183</sup>

The UN defines transitional justice as,

‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’.<sup>184</sup>

Within academic literature there is a lack of semantic clarity around the idea of transitional justice, and it is ‘still struggling for a consistent definition that reflects a worldwide consensus’.<sup>185</sup> Paul Greedy and

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<sup>180</sup> United Nations, ‘Guidance Note of the Secretary-General: United Nations Approach to Transitional Justice’ (March 2010) <<https://digitallibrary.un.org/record/682111?ln=en>> accessed 10 April 2023.

<sup>181</sup> Simon Robins, ‘Failing Victims? The Limits of Transitional Justice in Addressing the Needs of Victims of Violations’ in *Human Rights and International Legal Discourse* (University of York 2017) 41–58 <<https://eprints.whiterose.ac.uk/122438/>> accessed 10 April 2023.

<sup>182</sup> *ibid.*

<sup>183</sup> *ibid.* 57.

<sup>184</sup> UNSC, ‘The rule of law and transitional justice in conflict and post-conflict societies’ (23 August 2004) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement>> accessed 30 May 2023.

<sup>185</sup> Laurel E Fletcher and Harvey M Weinstein, ‘Writing Transitional Justice: An Empirical Evaluation of Transitional Justice Scholarship in Academic

Simon Robins explain that the fundamental challenge transitional justice faces is that it does not know what it is or who it is for.<sup>186</sup> In turn, transitional justice is deemed an over-burdened and under-conceptualised idea.<sup>187</sup>

What is clear is that transitional justice encompasses a range of responses that help societies transition from the legacies of atrocity crimes toward a sustainable future. Ultimately, we cannot formulate a one-size-fits-all remedy for a society marked by systematic violations of human rights. Justice will look different within different contexts. Transitional justice has become associated with transition phases and an important component to ‘successfully complete a transition from war or dictatorship to peace and democracy.’<sup>188</sup> A transitional phase may have been previously seen as a prerequisite for pursuing transitional justice. However, Al-Kahwati and Selimovic argue in sum that this criterion is too narrow and that rather than moving from war to peace definitively, today’s conflicts often morph into ‘uneasy states of grey zones’ that fall somewhere between.

In the case of Syria, transitional justice mechanisms have comprised a combination of initiatives such as the use of universal jurisdiction to hold perpetrators accountable, digital displays of art, large-scale collection of documentation, memorialisation efforts, and reparations to the victims.<sup>189</sup> A distinguishing feature of the transitional justice

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Journals’ (2015) 7 J Hum Rights Pract 193.

<sup>186</sup> Paul Greedy and Simon Robins, ‘Transitional Justice and Theories of Change: Towards evaluation as understanding’ (2020) 14 Int J Transit Justice 280 <<https://academic.oup.com/ijtj/article/14/2/280/5874491>> accessed 10 April 2023.

<sup>187</sup> Anna Macdonald, *Local Understandings and Experiences of Transitional Justice: A Review of the Evidence* (Justice and Security Research Programme, Paper 6, 2013) 4.

<sup>188</sup> Robins (n 181).

<sup>189</sup> Al-Kahwati and Selimovic, ‘Addressing Atrocity in Syria: New Challenges for Transitional Justice’ (n 140) 20.

process for Syria is that crimes are still being committed by the Syrian regime and there is exhaustive documentation to evidence it.<sup>190</sup> Syrian human rights lawyer and head of the Syrian Center for Legal Studies and Research, Anwar Al-Bunni, notes that ‘historically, transitional justice processes have been delayed, evidence has vanished, been hidden, or destroyed, and victims and witnesses have died or moved away, making fully detailed memory impossible.’<sup>191</sup> A huge advantage of this is that the documentation movement, a key component of transitional justice started whilst the conflict was ongoing and continues today. In contrast to previous experiences of transitional justice, Syrian civil society has had the chance to define their vision and course of justice. Noha Aboueldahab suggests that ‘Syrian civil society has transformed how transitional justice is pursued during active conflict’.<sup>192</sup>

According to Aboueldahab, Syrian civil society has also necessitated rethinking how of civil society is understood—exactly how we can define it and what its role is in advocating and securing various forms of justice.<sup>193</sup> Transitional justice processes have become more institutionalised due to being funded by Western donors and backed by intergovernmental organisations and NGOs.<sup>194</sup> Gready and Robins argue that this has led to the neglect of the ‘full range of roles civil society can play in shaping transitional justice.’<sup>195</sup> They coin the term

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<sup>190</sup> Syrian Network For Human Rights, ‘Most Notable Human Rights Violations in Syria in December 2022’ (5 January 2023) <<https://snhr.org/?s=Most+Notable+Human+Rights+Violations+in+Syria+in+December+2022>> accessed 10 April 2023.

<sup>191</sup> El Bunni, ‘Breaking new ground: Transitional justice in Syria’ (n 177).

<sup>192</sup> Aboueldahab (n 171) 27.

<sup>193</sup> *ibid.*

<sup>194</sup> Eric Hoddy and Paul Gready, ‘Transitional Justice and Peacebuilding’ *Palgrave Encyclopedia of Peace and Conflict Studies* (2020) 1503–1514 <[https://link.springer.com/referenceworkentry/10.1007/978-3-030-77954-2\\_133](https://link.springer.com/referenceworkentry/10.1007/978-3-030-77954-2_133)> accessed 10 April 2023.

<sup>195</sup> Gready and Robins (n 184) 280.

“‘new’ civil society’ in an effort to provide a new model for understanding transitional justice. They distinguish between ‘new’ civil society that ‘champions autonomy, independent action and the modelling of alternatives, often choosing not to see the state as a principal’<sup>196</sup> and ‘old’ civil society that ‘privileges advocacy, support and capacity building, with the state and state institutions as the main point of reference’.<sup>197</sup> Syrian civil society organisations focused on accountability and justice do not have the capacity to work with the state. The absence of this relationship has encouraged Syrians to reinvent transitional justice ‘as a set of political processes within society rather than institutional mechanisms.’<sup>198</sup> To this end, Syrian civil society epitomises the ‘new civil society’ that Gready and Robins describe.

Transitional justice is important to the Syrian case, but the reverse is true also. The Syrian context may transform the way transitional justice is sought. In the case of Syria, it is acknowledged that the transitional justice process was initiated by Syrian society and the will of the victims themselves.<sup>199</sup> Looking at the idea of transitional justice from the Syrian perspective supports Bready and Robins new model of transitional justice where both ‘justice and transition are dynamic, diverse and contextual’.<sup>200</sup> Reconsidering the importance of Syrian civil society in ongoing accountability efforts may offer ‘new avenues to address histories of rights violations and the potential to re-imagine transitional justice as justice in transition.’<sup>201</sup>

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<sup>196</sup> Paul Gready and Simon Robins, ‘Rethinking Civil Society and Transitional Justice: Lessons from Social Movements and “New” Civil Society’ (2017) 21(7) *Int J Hum Rights* 956–975.

<sup>197</sup> *ibid.*

<sup>198</sup> *ibid.*

<sup>199</sup> El Bunni, ‘Breaking new ground: Transitional justice in Syria’ (n 179).

<sup>200</sup> Gready and Robins (n 196).

<sup>201</sup> *ibid.*

#### 4.4 Centring Syrian Voices

As this push for accountability comes at the same time that many states are taking steps to normalise relations with Assad, it is becoming pertinent to ask how we can act in the best interests of Syrians themselves. We must seriously consider the concerns raised against the poor efforts of the ongoing justice processes to centre Syrian civil society. This section looks at the surveys, interviews and reports produced by Syrian survivors, CSOs, NGOs, and actors that should be used as the springboard for any attempts to secure accountability. Whilst justice is important, any attempt to secure accountability for the commission of atrocity crimes should not divert attention away from the priorities of the victims.<sup>202</sup> Syrians must play an active role in constructing a vision of rights and justice. They should not be relegated to recipients of transitional justice or as ‘nominal or instrumental actors’<sup>203</sup> but engaged as leading partners.

A coalition of organisations of Syrian survivors and relatives of victims of enforced disappearance put forward a Truth and Justice Charter in February 2021.<sup>204</sup> One of the principal aims was to ‘develop a discourse expressing the demands and aspirations of the victims, and prioritizing their own narrative, within the framework of international legal

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<sup>202</sup> Jeremy Julian Sarkin, *The Conflict in Syria and the Failure of International Law to Protect People Globally: Mass Atrocities, Enforced Disappearances and Arbitrary Detentions* (Routledge, 2021) 229.

<sup>203</sup> Robins (n 181).

<sup>204</sup> Association of Detainees and Missing Persons in Sednaya Prison, Caesar Families Association, Coalition of Families of Persons Kidnapped by ISIS (Massar), Families for Freedom and Ta’afi Initiative, ‘Truth and Justice Charter: A Common Vision on the Question of Enforced Disappearance and Arbitrary Detention in Syria by Syrian Victims’ and Family Members’ Organisations’ (February 2021) <[https://www.impunitywatch.org/wp-content/uploads/wix-legacy/f3f989\\_ea2bcacb68664b52a2b9dc090b3c775e.pdf](https://www.impunitywatch.org/wp-content/uploads/wix-legacy/f3f989_ea2bcacb68664b52a2b9dc090b3c775e.pdf)> accessed 5 March 2023.

principles and humanitarian standards'.<sup>205</sup> This Charter should be seen as an instructive document and an essential point of reference to policymakers, stakeholders, and human rights organisations involved in accountability efforts. This charter is a reflection of '[Syrians'] common vision on how to advance victims' rights and the cause of justice and truth in Syria.'<sup>206</sup>

Determining what happened to the disappeared, along with securing the immediate release of all detainees, is the most urgent priority in the Truth and Justice Charter and among Syrians for the last twelve years.<sup>207</sup> Syrian associations and organisations representing families of victims and survivors of detention and enforced disappearance in Syria believe that peace can only be achieved once the fates of detainees and the disappeared are revealed and all the unjustly detained are released.<sup>208</sup> The Syrian regime continues to withhold information about the fate of those forcibly disappeared, prolonging the anguish and suffering of hundreds of thousands of families.<sup>209</sup> While it seems

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<sup>205</sup> *ibid.*

<sup>206</sup> *ibid.*

<sup>207</sup> The Independent International Commission of Inquiry on the Syrian Arab Republic, 'Syria's Missing and Disappeared: Is there a way forward?' (2022) <[https://www.ohchr.org/sites/default/files/2022-](https://www.ohchr.org/sites/default/files/2022-06/PolicyPaperSyriasMissingAndDisappeared_17June2022_EN.pdf)

06/PolicyPaperSyriasMissingAndDisappeared\_17June2022\_EN.pdf>

accessed 21 April 2023; Position paper, prepared by Caesar Families Association, Families for Freedom, the Coalition of Families of Persons Kidnapped by ISIS-Daesh (Massar), Ta'afi Initiative, Hevdesti (Synergy) Association for Victims, the Association of Detainees and the Missing in Sednaya Prison (ADMSP), Adra Detainees Association, Families of Truth and Justice, Release Me, and lastly the General Union of Detainees, 'An international mechanism for confronting the crisis of detention and enforced disappearance in Syria' (2021) <<https://hevdesti.org/wp-content/uploads/2022/07/Position-Paper-En.pdf>> accessed 20 April 2023.

<sup>208</sup> Syria Justice and Accountability Centre, 'New Justice Charter Gives Voice to Victims' Demands' (18 March 2021) <<https://syriaaccountability.org/new-justice-charter-gives-voice-to-victims-demands/>> accessed 30 May 2023.

<sup>209</sup> United Nations General Assembly, 'Report of the Independent International



unlikely that this normalisation momentum can be stalled, ‘progress on detainee releases and missing persons is a much more attainable, but nonetheless valuable, goal.’<sup>210</sup> SJAC argue that normalisation could be used to incentivise the Syrian government’s cooperation in a missing persons process and bring important relief to Syrians. SJAC proposes that we can simultaneously reject normalisation but work with regional allies to demand the release of detainees in exchange for reintegration.

Displacement is another key issue in considering transitional justice in the Syrian context. Transitional justice as a whole seeks to contribute to the issue of displacement by ‘facilitating the integration or reintegration of displaced persons’.<sup>211</sup> However due to the scope and complexity of the Syrian case, ‘transitional justice measures have a limited capacity to deal directly with the problem’.<sup>212</sup> The security situation in Syria precludes the creation of justice mechanisms designed to facilitate return and reintegration in accordance with international refugee law. Transitional justice mechanisms often fail to meaningfully engage forcibly displaced in national processes.<sup>213</sup>

A review of surveys and interviews with Syrians shows a clear consensus and three key concerns that define a safe environment in which Syrians would consider returning home:

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Commission of Inquiry on the Syrian Arab Republic’ (2021) (n 133).

<sup>210</sup> Syria Justice and Accountability Centre, ‘Syria’s Normalisation: An Opportunity for Reform?’ (13 April 2023) <<https://syriaaccountability.org/syrias-normalization-an-opportunity-for-reform/>> accessed 19 April 2023.

<sup>211</sup> ICTJ Research Unit, ‘Transitional Justice and Displacement: Challenges and Recommendations’ (Brookings-LSE Project on Internal Displacement, June 2012) 4 <<https://www.refworld.org/pdfid/506158102.pdf>> accessed 20 May 2023.

<sup>212</sup> *ibid* 5.

<sup>213</sup> Anna Lise Purkey, ‘Justice, Reconciliation and Ending Displacement’ (2016) 35(4) RSQ 1–25.

1. The security situation in Syria is the main barrier to return. Most believe only a sustainable political transition will ensure their safety.<sup>214</sup>
2. The immediate release of detainees and forcibly disappeared persons. A joint statement made by civil society groups maintains that revealing the fate of the missing and releasing detainees is the best guarantee to end impunity and lay the foundations for political peace and stability.<sup>215</sup>
3. Syrians demand complete accountability for ‘the aftermath of war crimes and crimes against humanity’.<sup>216</sup> They have asked the international community to consider the ‘creation of a Nuremberg-like tribunal for the prosecution of Syrian war criminals’.<sup>217</sup>

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<sup>214</sup> Maya Yahya, Jean Kassir and Khalil el-Hariri, ‘Unheard Voices: What Syrian Refugees Need to Return Home’ (*Carnegie Middle East Center*, 2018) 17

<[https://carnegieendowment.org/files/Yahya\\_UnheardVoices\\_INT\\_final.pdf](https://carnegieendowment.org/files/Yahya_UnheardVoices_INT_final.pdf)> accessed 30 May 2023.

<sup>215</sup> Syrians for Truth and Justice, ‘Joint Statement on the Fate of the Missing, Detained and Forcibly Disappeared and Guarantee the Freedom and Safety of Human Rights Defenders in Syria 2191 days’ (11 December 2019) <<https://stj-sy.org/en/joint-statement-on-the-fate-of-the-missing-detained-and-forcibly-disappeared-and-guarantee-the-freedom-and-safety-of-human-rights-defenders-in-syria/>> accessed 30 May 2023.

<sup>216</sup> Syrian Association for Citizens’ Dignity (SACD), ‘What Needs to Happen Before Voluntary, Safe, and Dignified Return to Syria is Possible?’ (8 May 2022) 3 <<https://syacd.org/wp-content/uploads/2022/05/What-needs-to-happen-before-voluntary-safe-and-dignified-return-Briefing-.pdf>> accessed 30 May 2023 .

<sup>217</sup> Syria Justice and Accountability Centre, ‘Consideration of a “Pooled Jurisdiction” Tribunal for Syria’ (25 November 2020) <<https://syriaaccountability.org/consideration-of-a-pooled-jurisdiction-tribunal-for-syria/>> accessed 30 May 2023.

These concerns must be incorporated in appropriate ways into justice and accountability efforts, particularly in the increasingly complex landscape of normalisation where discussions of refugee returns are emerging. Syrians continue to leave Syria every day, to a large extent, because ‘they fear the outcome of normalisation with Assad’.<sup>218</sup> Evidence suggests that that ‘prematurely induced returns result in increased needs and exposure to risks among returnees, such as cycles of displacement and exile’.<sup>219</sup> In other words, when refugees return to unstable situations, they often need to flee again. As anti-refugee policies and sentiments become more prevalent, justice and accountability efforts must confront not only past human rights abuses but mitigate future ones. Accountability for Syria must include a ‘comprehensive transitional justice process in which the forcibly displaced are partners in designing and directing it in a way that makes it compatible with their priorities and grievances’.<sup>220</sup> Only by doing so will accountability initiatives in Syria ‘be more achievable and conducive to the justice desires of Syrian society’.<sup>221</sup>

#### **4.5 The Impact of Normalisation on International Accountability**

The greatest harm of normalisation is perhaps the damage to the legitimacy of the international community if those responsible for gross

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<sup>218</sup> Rena Netjes, ‘Normalization With Assad Could Lead to a New Exodus of Syrian Refugees’ (*DAWN*, 23 September 2022) <<https://dawnmena.org/normalization-with-assad-could-lead-to-a-new-exodus-of-syrian-refugees/>> accessed 30 May 2023.

<sup>219</sup> World Bank, ‘Forcibly Displaced: Toward a Development Approach Supporting Refugees, the Internally Displaced, and Their Hosts’ (2017) <<https://openknowledge.worldbank.org/server/api/core/bitstreams/3a36a9f4-209d-587e-b082-78a0f78af577/content>> accessed 30 May 2023.

<sup>220</sup> Global Initiative for Justice Truth and Reconciliation, ‘Forced Displacement and Transitional Justice in Northern Syria’ (2022) <<https://gijtr.org/wp-content/uploads/2022/05/TDA-Syria-Forced-Migration-and-TJ-Case-Study-Jan-2022-EN-final.pdf>> accessed 18 March 2023.

<sup>221</sup> Aboueldahab (n 171) 27.

human rights violations are not held accountable. The lack of decisive action from the international community has bred a culture of impunity, and this has contributed to a political landscape that has permitted normalisation. The inverse is equally true. Continued cooperation with the Syrian regime is softening the international community's stance on Syria, their sanctions, policies, and practices. The repercussions of this will be felt by Syrian refugees, who are becoming increasingly more vulnerable to forced returns.

Through the prism of Syria, 'international law seems to wane, receding into the background and losing its normative force.'<sup>222</sup> The Syrian regime has not only committed atrocity crimes that violate international humanitarian and customary law, but has also breached numerous UN Security Council resolutions, without any accountability.<sup>223</sup> In the context of Syria, many scholars and legal professionals have begun to focus on the failings of the law in practice and the limitations of UN processes dependent largely on state consent.<sup>224</sup> The academic scholarship on this subject argues that the law and relevant UN processes that investigate, report and make recommendations, failed to protect and assist civilians in Syria.<sup>225</sup> Sarkin argues that 'ensuring

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<sup>222</sup> Dan E Stigal, 'The Syrian War's Forcing Effect on International Law' (*Just Security*, 13 May 2022) <<https://www.justsecurity.org/70144/the-syrian-wars-forcing-effect-on-international-law/>> accessed 30 May 2023.

<sup>223</sup> In particular, Resolutions 2042, 2139 and 2254. UNSC Resolution 2042 (14 April 2012) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/295/28/PDF/N1229528.pdf?OpenElement>>; UNSC Resolution 2139 (22 February 2014) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/243/39/PDF/N1424339.pdf?OpenElement>>; UNSC Resolution 2254 (18 December 2015) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/34/PDF/N1544334.pdf?OpenElement>> all accessed 30 May 2023.

<sup>224</sup> Sarkin (n 202).

<sup>225</sup> Van Schaak (n 3); Michael P Scharf, Milena Sterio and Paul R Williams, *The Syrian Conflict's Impact on International Law* (CUP March 2020); Sarkin (n 202).

Syria's compliance and commitment to its international human rights obligations through soft law has achieved little to no success.<sup>226</sup>

Much of this criticism is directed at the UNSC which is tasked with the primary responsibility of 'maintaining international peace and security'.<sup>227</sup> In the last twelve years, seventeen vetoes by Russia and China have blocked international efforts to end atrocities in Syria.<sup>228</sup> As a result of these vetoes, UNSC has failed to adopt draft resolutions that called for the situation in Syria to be referred to the International Criminal Court.<sup>229</sup> It has further failed to adopt resolutions that condemned the Syrian regime's war crimes and crimes against humanity, calling for the immediate cessation of indiscriminate shelling on civilian infrastructure, the killing of peaceful protestors, the end of enforced disappearance, the prohibition of chemical weapons, and the delivery of UN aid for more than four million internally displaced persons.<sup>230</sup> The UNSC's failure to act and halt the conflict in Syria has

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<sup>226</sup> Sarkin (n 200) 45.

<sup>227</sup> UNSC Meeting: Peacebuilding and Sustaining Peace (2023) <<https://www.un.org/securitycouncil/>> accessed 28 March 2023.

<sup>228</sup> Syrian Network for Human Rights, 'Russia and China's Arbitrary Veto Use 16 Times Contributed to Killing Nearly a Quarter of a Million Syrians, the Arrest of Nearly 150,000 Others, and the Spread of Impunity' (17 July 2020) <[https://snhr.org/wp-content/pdf/132tanfor/Russia\\_and\\_Chinas\\_Arbitrary\\_Veto\\_Use\\_16\\_Times\\_Contributed\\_to\\_Killing\\_Nearly\\_a\\_Quarter\\_of\\_a\\_Million\\_Syrians\\_en.pdf](https://snhr.org/wp-content/pdf/132tanfor/Russia_and_Chinas_Arbitrary_Veto_Use_16_Times_Contributed_to_Killing_Nearly_a_Quarter_of_a_Million_Syrians_en.pdf)> accessed 20 March 2023; UNSC Meetings and Outcomes Tables, 'Security Council—Veto List' <<https://research.un.org/en/docs/sc/quick>> accessed 20 March 2023.

<sup>229</sup> UNSC Draft Resolution S/2014/348 <[https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2014\\_348.pdf](https://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2014_348.pdf)> accessed 30 May 2023.

<sup>230</sup> UNSC Draft Resolution S/2011/612, UNSC Draft Resolution S/2012/77, UN Draft Resolution S/2012/538, UNSC Draft Resolution S/2014/348, UNSC Draft Resolution S/2016/846, UN Draft Resolution S/2016/1026, UN Draft Resolution S/2017/172, UN Draft Resolution S/2017/315, UN Draft Resolution S/2017/884, UN Draft Resolution S/2017/962, UN Draft

rendered it ‘increasingly impotent’<sup>231</sup> and respect for the international legal framework and UN has been weakened by a failure to act in Syria.<sup>232</sup>

The eventual outcome of normalisation will be the erasure of the regime’s crimes. Normalisation poses a serious challenge to ongoing accountability efforts for Syria. However, failing to challenge normalisation may lead to broader disrespect for international laws and global norms. We have begun to see this reflected generally in the current climate, not just the Syrian context.

International law has been undermined intrinsically, but also instrumentally, and this has wide-reaching implications. For example, the procedural power of the veto, preventing the council from enforcing international law has encouraged perpetrators to act ‘without fear of accountability.’<sup>233</sup> International law is important in the matter of global deterrence: ‘law has a deterrent effect only if those in power believe they may have to explain their actions in front of a court of justice’.<sup>234</sup>

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Resolution S/2017/970, UN Draft Resolution S/2018/321, UN Draft Resolution S/2019/756, UN Draft Resolution S/2019/961, UN Draft Resolution S/2020/654, UN Draft Resolution S/2020/667, UN Draft Resolution S/2022/538.

<sup>231</sup> D Malone and A Day, ‘The UN at 75: How today’s challenges will shape the next 25 years’ (2020) 26(2) *Global Governance* 236–250.

<sup>232</sup> Independent International Commission of Inquiry on the Syrian Arab Republic, ‘Civilians Under Attack in Syria: Towards Preventing Further Civilian Harm’ (28 June 2022) <[https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/cois\\_yria/2022-06-28/Policy-paper-CoH-27-June.pdf](https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/cois_yria/2022-06-28/Policy-paper-CoH-27-June.pdf)> accessed 31 May 2023.

<sup>233</sup> Global Centre for the Responsibility to Protect, ‘A Decade of Atrocities and International Failure in Syria’ (17 March 2021) <<https://www.globalr2p.org/publications/a-decade-of-atrocities-and-international-failure-in-syria/>> accessed 20 March 2023.

<sup>234</sup> United Nations Meeting Coverage, Press Release, ‘Briefing General Assembly, International Mechanism Head Calls Crimes Committed in Syria “Barbaric” Urges Pursuing Accountability’ (1 April 2022)

The systematic failures to ensure accountability at every level in Syria have set a dangerous precedent of immunity for atrocities, which may have encouraged further human rights abuses globally.

For example, many scholars are beginning to draw similarities between the conflict in Syria and the conflict in Ukraine.<sup>235</sup> Accountability and resisting normalisation are critical now ‘in the wake of the ongoing conflict in Ukraine, and the commission of atrocities there by Russian forces’.<sup>236</sup> It appears now that Syria was the military testing ground for the offensive in Ukraine; the tactics, people and weapons used by Russia mirror those it tested in Syria.<sup>237</sup> Drawing on these parallels, a statement issued by the Syria Justice and Accountability Centre (SJAC) called for the international community to consider the Syrian experience as instructive.<sup>238</sup> The statement instructed that ‘to maintain the international legal order and to ensure that perpetrators are held to account, the hard work of preserving evidence must start now’.<sup>239</sup>

In March 2023, the International Criminal Court (ICC) issued an arrest warrant for Mr Vladimir Vladimirovich Putin for war crimes in

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<<https://press.un.org/en/2022/ga12413.doc.htm>> 31 May 2023.

<sup>235</sup> Ozcelik (n 4); Marc Otte, ‘Syria, The Middle East and the War in Ukraine’ (*Egmont Royal Institute of International Relations*, 6 September 2022) <<https://www.egmontinstitute.be/syria-the-middle-east-and-the-war-in-ukraine/>> accessed 12 April 2023; Emma Beals, ‘How the Lessons in Syria May Safeguard Lives In Ukraine’ (Carnegie Middle East Center, 27 April 2022) <<https://carnegie-mec.org/2022/04/27/how-lessons-of-syria-war-may-safeguard-lives-in-ukraine-pub-87005>> accessed 10 March 2023; United States Senate Committee on Foreign Relations, ‘Closing the Accountability Gap in Syria: Pathways to Prosecution’ (n 147)13.

<sup>236</sup> United States Senate Committee on Foreign Relations (n 147).

<sup>237</sup> Beals (n 235).

<sup>238</sup> Syria Justice and Accountability Centre, ‘Accountability for Russian Crimes in Syria and Ukraine’ (18 March 2022) <<https://syriaaccountability.org/accountability-for-russian-crimes-in-syria-and-ukraine/>> accessed 10 March 2023.

<sup>239</sup> *ibid.*

Ukraine.<sup>240</sup> Whilst this warrant doesn't reflect the magnitude of atrocity crimes that Russian leadership is potentially responsible for, Amnesty International expect that future warrants will be issued as investigations begin to yield results.<sup>241</sup> The international community's response to Ukraine is very likely to have implications for justice in Syria, and the reverse is true also. As Syrian criminals begin to be prosecuted on the principle of universal jurisdiction, we can begin to explore other avenues for justice in Ukraine. Normalisation with Assad is coinciding with the international community's attempts to hold Russia to account for human rights violations in Ukraine. This demonstrates profound inconsistencies and double standards in the application of international law and norms. This inconsistency is also reflected by the duality of normalisation happening at the same time as a push for accountability. Some have suggested that the exercise of universal jurisdiction shows that the commission of atrocities will not continue to be tolerated by the international community.<sup>242</sup> However, at the same time, the international community's limited efforts to stall normalisation are becoming more challenging to accept in light of the Assad regime's ongoing crimes and the greater evidence that has been made available from these cases.<sup>243</sup>

Demands for justice and accountability in Syria will reverberate for decades. Whilst we have seen some victories from accountability

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<sup>240</sup> International Criminal Court, Press Release, 'Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova' (17 March 2023) <<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>> accessed 17 March 2023.

<sup>241</sup> Amnesty International, 'Russia: ICC's arrest warrant against Putin a step towards justice for victims of war crimes in Ukraine' (17 March 2023) <<https://www.amnesty.org/en/latest/news/2023/03/russia-iccs-arrest-warrant-against-putin-step-towards-justice/>> accessed 20 March 2023.

<sup>242</sup> Human Rights Foundation and The Syria Campaign, 'Framing Justice in Syria: The Road Towards Comprehensive Justice' (n 157) 53.

<sup>243</sup> Travers (n 149).



efforts in Syria, these processes ‘often need political backing as much as they need financial support.’<sup>244</sup> For most Syrians, ‘an integral part of any justice process involves systemic change’.<sup>245</sup> The trend of normalisation paired with the failures of international law are beginning to calibrate the expectations of this happening. The UK, France, USA and Germany reject normalisation and have reiterated their commitment to ‘a political process that represents the will of all Syrians’.<sup>246</sup> However, if normalisation continues, and there is no unified international policy, the Syrian regime has no incentive to engage in a political process, and Assad may be empowered to continue committing atrocity crimes—including against Syrians returning to the country.<sup>247</sup> It is not sufficient to bring claims against perpetrators of crimes in Syria under universal jurisdiction mechanisms outside the country. The international community must recommit to the priorities of Syrians and find ways and mechanisms to facilitate the political transition called for in Res 2254.

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<sup>244</sup> The Swedish International Development Cooperation Agency, ‘Transitional Justice and Reconciliation: Thematic Overview’ (2020) <<https://cdn.sida.se/app/uploads/2020/12/01125338/transitional-justice-and-reconciliation.pdf>> accessed 10 April 2023.

<sup>245</sup> Human Rights Foundation and The Syria Campaign, ‘Framing Justice in Syria: The Road Towards Comprehensive Justice’ (n 157) 56.

<sup>246</sup> US Department of State, ‘Joint Statement on the Occasion of the 12th Anniversary of the Syrian Uprising’ (16 March 2023) <<https://www.state.gov/joint-statement-on-the-occasion-of-the-12th-anniversary-of-the-syrian-uprising/>> accessed 18 March 2023; ‘US says opposed to normalisation of “brutal” Syrian regime after Assad’s UAE visit’ (*The New Arab*, 23 March 2022) <<https://www.newarab.com/news/us-says-opposed-normalisation-brutal-syrian-regime>> accessed 31 May 2023; United States Mission to the United Nations, ‘Remarks at a UN Security Council Briefing on the Political Situation in Syria’ (29 June 2022) <<https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-the-political-situation-in-syria-7/>> accessed 31 May 2023.

<sup>247</sup> Human Rights Watch, ‘Our Lives Are Like Death’ (n 92).

## 5 Conclusion

The principle aim of this article was to demonstrate how normalisation with Assad is affecting the strength and efficacy of the international refugee protection regime. This article argues that several countries seeking to normalise with Assad are exploiting the trend of normalisation and its pretext that Syria is safe to discuss refugee return. This conclusion has already begun to be realised, evidenced by a wave of policies for the mass return of Syrian refugees, advanced by Türkiye, Lebanon, Denmark and Sweden. Forced returns that have already begun in Lebanon and Jordan are likely to be accelerated by the decision to readmit Syria into the Arab League.<sup>248</sup> Syria's readmission represents a prioritisation of regional political interests, raising critical questions about the precarious situation of Syrian refugees.

This article demonstrates that the conditions in Syria preclude the safe return of refugees. Returning refugees have already faced grave human rights abuses and persecution perpetrated by the Syrian government<sup>249</sup> and SACD found that those who did not face threats to their life or physical integrity, were living in constant fear.<sup>250</sup> This already dire situation was compounded by 'the worst economic and humanitarian crisis the country has faced since the start of conflict.'<sup>251</sup> UNHCR's polling data, released in May 2023, shows that only 1.1% of Syrian refugees are willing to consider returning to Syria in the next 12

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<sup>248</sup> Cathrin Schaer, 'Syria returns to Arab League: What will it change?' (9 May 2023, Deutsche Welle) <<https://www.dw.com/en/syria-returns-to-arab-league-what-will-it-change/a-65561532>> accessed 13 June 2023.

<sup>249</sup> Human Rights Watch, 'Our Lives Are Like Death' (n 92).

<sup>250</sup> Syrian Association For Citizens' Dignity (SACD), 'UNHCR's Failure to Uphold its Responsibility to the Displaced Syrians' (25 November 2019) <<https://syacd.org/wp-content/uploads/2020/09/UNHCRSACDBriefing1.pdf>> accessed 31 May 2023.

<sup>251</sup> United Nations General Assembly, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (2022) (n 6).

months<sup>252</sup> and data collected by SNHR shows that as long as human rights violations continue, Syrian refugees will not return voluntarily.<sup>253</sup> In light of this, present plans or policies to return Syrian refugees would violate the principle of non-refoulement. UNHCR argues that returning home voluntarily ‘remains a deep and longed-for aspiration’<sup>254</sup> and centring the demands of Syrians in the pursuit of accountability is the only way to realise this goal.

Normalising relations with the Syrian regime, who are responsible for war crimes, crimes against humanity and forcibly disappearing tens of thousands of civilians over the last twelve years, is highly contentious for several reasons. Without efforts to implement genuine accountability and pressure for political transition, there is little reason to assume these practices will stop. Further to undermining ongoing accountability efforts for Syria, normalisation will also have broader global ramifications. It is likely to damage to the legitimacy of the international community. Coupled with the systemic failures of the international legal system to hold those accountable for grave human rights violations, normalisation is contributing to a broader disregard for international laws and global norms. Syrian voices are central to our understanding of accountability and, in the face of normalisation, the

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<sup>252</sup> UNHCR, ‘Eighth Regional Survey on Syrian Refugees’ Perceptions and Intentions on Return To Syria’ (May 2023) <<https://data.unhcr.org/en/documents/details/10085>>1 accessed 15 June 2023.

<sup>253</sup> Syrian Network for Human Rights, ‘Statement: Readmitting the Syrian Regime into the Arab League Does Not Mean that Syria is Safe for the Return of Refugees Since the Syrian Regime is Still Committing Crimes Against Humanity’ (18 May 2023) <<https://reliefweb.int/report/syrian-arab-republic/readmitting-syrian-regime-arab-league-does-not-mean-syria-safe-return-refugees-syrian-regime-still-committing-crimes-against-humanity>> accessed 13 June 2023.

<sup>254</sup> UNHCR UK, ‘UNHCR statement on the return of displaced Syrians’ (26 July 2021) <<https://www.unhcr.org/uk/news/news-releases/unhcr-statement-return-displaced-syrians138tanfor>> accessed 31 May 2023.

international community must use their voice and vision as the framework for any accountability efforts. This must include opposing the normalisation and appeasing of Assad and demanding the political transition called for in Resolution 2254. Two recent moves are indicative of a long overdue and concerted effort by States to use existing accountability tools to pursue justice and counter the trend of normalisation. Firstly, Bipartisan U.S lawmakers introduced a bill on 16 May 2023, dubbed the ‘Assad Anti-Normalisation Act’ to hold Assad accountable and deter normalisation.<sup>255</sup> The Bill explicitly prohibits any official action to recognise or normalise relations with any Government in Syria led by Assad.<sup>256</sup> The release of the Bill came days after the Arab League voted to readmit Syria and is a presumed warning to other countries that normalising ties with Assad will have severe consequences.<sup>257</sup> Moreover, on 8 June 2023, Canada and the Kingdom of the Netherlands started joint legal proceedings at the International Court of Justice against the Syrian Arab Republic for systemic violations of the Convention against Torture<sup>258</sup> since 2011. ‘A lasting

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<sup>255</sup> Foreign Affairs Committee Chairman McCaul, ‘McCaul, Wilson, Gonzalez, Hill, Boyle Introduce Bipartisan Bill to Hold Assad Regime Accountable’ (11 May 2023) <<https://foreignaffairs.house.gov/press-release/mccaul-wilson-gonzalez-hill-boyle-introduce-bipartisan-bill-to-hold-assad-regime-accountable/>> accessed 13 June 2023.

<sup>256</sup> Assad Regime Anti-Normalisation Act of 2023 HR 3202 Bill (2023–2024) <<https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Ascds%3AUS%3A11958dc6-4a15-374a-ae63-3a38dfaff1d2&viewer%21megaVerb=group-discover>> accessed 14 June 2023.

<sup>257</sup> Daphne Psadedakis and Maya Gebeily, ‘US lawmakers introduce bill to combat normalization with Syria’s Assad’ (11 May 2023) <<https://www.reuters.com/world/us-lawmakers-introduce-bill-combat-normalization-with-syrias-assad-2023-05-11/#:~:text=The%20bill%2C%20first%20reported%20by,sanctions%20on%20Syria%20in%202020.>>> accessed 13 June 2023.

<sup>258</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted 10 December 1984, entered into force 26 June 1987) 1465 UNTS 85 (Convention Against Torture).

political solution in Syria is only possible if there is no impunity'<sup>259</sup> and this is an important addition to ongoing criminal justice efforts.

A lasting political solution must also prioritise the 12 million Syrians who are displaced either inside the country or in exile.<sup>260</sup> This ongoing regional normalisation with the Syrian regime necessitates more – not less – protection for Syrian refugees. Preventing their forced return is not only a moral imperative but a significant component of accountability and a lasting political solution for Syria. This article demonstrates that the global refugee protection regime remains only as strong as the political will, interests and deterrent behind it. This conclusion is drawn from a close examination of the relationship between normalisation, international accountability and the increase in illegal refugee return practices. Ultimately, normalisation has many concerning legal implications, but in the imminent future, its impact will be felt most acutely by Syrian refugees.

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<sup>259</sup> Government of the Netherlands, 'The Netherlands holds Syria responsible for gross human rights violations' (18 September 2020) <<https://www.government.nl/latest/news/2020/09/18/the-netherlands-holds-syria-responsible-for-gross-human-rights-violations>> accessed 12 June 2023.

<sup>260</sup> Jeremy Julian Sarkin, *The Conflict in Syria and the Failure of International Law to Protect People Globally: Mass Atrocities, Enforced Disappearances and Arbitrary Detentions* (Routledge, 2021) 65.