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# Return Seen From A European Perspective: An Impossible Dream, An Improbable Reality, or An Obstruction to Refugee Policy?

Joanne van Selm*

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## Abstract

The central theme of this Essay is that both individuals in need of protection and governments obliged to grant protection to those in need generally hold the eventual return of citizens to their countries of origin to be the ideal scenario. However, this ideal cannot always come to fruition – not only due to circumstances in the country of origin, but also as an unintended consequence of policy decisions taken by governments concerning the protection of refugees (or indeed internally displaced persons ("IDPs")) and the reactions of individuals to the outcomes of those policy decisions. Return, it will be suggested, takes on added "dream" like qualities because those involved know that it is probable to be something of an impossible dream. The suggestion in this Essay is that the myth of return, as envisioned in different ways by refugees and policy makers, obstructs effective policy making on refugee protection issues, and can reduce the potential for a fruitful period of refuge with at least "temporary [*1507] integration. At first sight counter-intuitive: perhaps better integration of refugees in and with the "host" society could in fact support the prospects for eventual and sustainable return. In addressing this theme, we will first look at the story of "return" in and from Europe in the 1990s and the Cold War thinking which has formed the context of protection policy that is only gradually starting to change. We then turn to the approaches of governments and of individuals sustained by the "myth" of return. Individual choices in seeking protection and migration also relate to government policies, and their attachment to the ideal of return can be influenced in reaction to their understanding of government policies. Specific attention is given to the situation of IDPs in Georgia, as an example of displaced persons clinging to the myth of return. Turning to the other side of return, the Dutch government policy on the return of rejected asylum seekers is then discussed, demonstrating that the tough language of returning rejected asylum seekers can, but does not automatically, lead to removal. Bringing the issues together, we look more broadly at the focus on readmission within a general refugee, asylum and migration policy, and the international sentiment about the conditions under which return is possible. In conclusion, we consider the policy implications of looking holistically at return, and combining the ideal of return with pragmatic approaches to integration.

# RETURN SEEN FROM A EUROPEAN PERSPECTIVE: AN IMPOSSIBLE DREAM, AN IMPROBABLE REALITY, OR AN OBSTRUCTION TO REFUGEE POLICY?

*Joanne van Selm**

## *INTRODUCTION*

Return to the country of origin, and preferably even the town or village and the home that a refugee left, is considered by many to be the preferred "durable solution" to a protection need.[1] In his paper, published posthumously in this volume, Arthur Helton notes "conceptually, repatriation is the most congruent solution to refugee flight. What could be more harmonious than the return home of an exile?"[2] However, in his volume *The Price of Indifference*, Helton also describes the "romanticized notion of repatriation" associated with idealized images as "clearly the exception to the way it usually works."[3] He describes all the reasons, with reference to numerous examples, for which going home is, in reality, either impossible for many, or something which does not and cannot live up to expectations created over years in exile.[4]

In spite of the difficulties, it is perhaps not surprising that refugees dream of return, or that the return of someone who was in exile seems the most "harmonious" end to their situation. However, this mythologized vision of return as the goal is in a sense matched and challenged, by another policy vision focused

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* Senior Policy Analyst, Migration Policy Institute and Senior Researcher, Institute for Migration and Ethnic Studies. I would like to thank my colleagues Erin Patrick and Betsy Cooper for their comments on an earlier draft. Responsibility for the contents remains with the Author.

1. *See, e.g.*, Susan M. Akram & Terry Rempel, *Temporary Protection as an Instrument for Implementing the Right of Return for Palestinian Refugees*, 22 B.U. INT'L L.J. 1, 7-8 (2004) (discussing voluntary repatriation as a "durable solution" and the most appropriate solution to refugee flows); Nadia Yakoob, *Report on the Workshop on Temporary Protection: Comparative Policies and Practices*, 13 GEO. IMMIGR. L.J. 617, 625 (1999) (discussing repatriation as the most desirable "durable solution").

2. Arthur C. Helton, *End of Exile: Practical Solutions to the Palestinian Refugee Question*, 28 FORDHAM INT'L L.J. ##, ## (2005).

3. *See* ARTHUR C. HELTON, THE PRICE OF INDIFFERENCE: REFUGEES AND HUMANITARIAN ACTION IN THE NEW CENTURY 178 (2002).

4. *See id.* at 177-83.

on the ideal of return. When European governments talk about "return" today, they do not always refer only to the durable solution aspect of the phenomenon.[5] Removal of a person who is not legally admitted to the territory of a State to which he or she has sought entry or who has overstayed a period of legal residence which will not be reauthorized also usually involves transportation to the country of origin.[6] This form of return is of increasing interest to European governments, without diminishing their simultaneous interest, in principle, in seeing people who need protection able to return to their country of origin once that protection need is over. As such, it is suggested in this Essay, return is no longer only a dream or a myth cherished by many displaced persons. It is also mythologized by European governments, eager to remove rejected asylum seekers as well as to see refugees ultimately able to return home.

While these two forms of return are most often considered quite separately by researchers and analysts, and they are in many ways very obviously distinct from each other, they also have much in common. Given that policy makers in Europe are dealing with the two types of return as parts of one whole, those outside government should start tackling them in the same way. The Tampere Conclusions of 1999 already mentioned the two forms of return within one paragraph:

> The European Council calls for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States.[7]

The common features of these two types of return include

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5. *See, e.g.*, Commission of the European Communities, Communication From The Commission To The Council And The European Parliament On A Community Return Policy On Illegal Residents, Brussels, COM (2002) 564 final, at 7, ¶ 1.2.1.

6. Removal to a "safe third country" of a person claiming a protection need, whose asylum claim, it is judged, should be heard in a country other than that in which it is finally made, is the exception. *See* Stephen H. Legomsky, *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, 15 INT'L J. REFUGEE L. 567 (2003) (discussing criteria for returning asylum-seekers to "safe third countries.").

7. Tampere European Council, Presidency Conclusions, Towards a Union of Freedom, Security and Justice: The Tampere Milestones, ¶ 26 (Oct. 15-16, 1999), *available at* http://www.europarl.eu.int/summits/tam_en.htm.

the mythic quality of "return" as an ideal scenario (even if return after a period of exile is a shared dream of governments and refugees alike, whereas the return of a rejected asylum seeker is more likely the dream of the authorities only) and the practical difficulties in achieving the goal of return, which permeate every step in the process. The two types of return-ideals also have in common the concern that a strong focus on them as goals could potentially lead to policies or policy impacts, which frustrate the overall harmony of refugee protection, including frustrating the potential for return itself. But, perhaps their most important common feature is the need to absolutely avoid *refoulement*: no-one should be sent back to a situation of danger or persecution.[8]

The central theme of this Essay is that both individuals in need of protection and governments obliged to grant protection to those in need generally hold the eventual return of citizens to their countries of origin to be the ideal scenario. However, this ideal cannot always come to fruition — not only due to circumstances in the country of origin, but also as an unintended consequence of policy decisions taken by governments concerning the protection of refugees (or indeed internally displaced persons ("IDPs")) and the reactions of individuals to the outcomes of those policy decisions.[9] Return, it will be suggested, takes on added "dream" like qualities because those involved know that it is probable to be something of an impossible dream. The suggestion in this Essay is that the myth of return, as envisioned in different ways by refugees and policy makers, obstructs effective policy making on refugee protection issues, and can reduce the potential for a fruitful period of refuge with at least "temporary

8. *See* Seyla Benhabib, *The Law of Peoples, Distributive Justice, and Migrations*, 72 FORDHAM L. REV. 1761, 1784-85 (2004) (discussing the principle of "non-refoulement" according to the Geneva Convention of 1951 on the Status of Refugees and its Protocol of 1967, stating that "[t]his principle obliges signatory [S]tates not to forcibly return refugees and asylum seekers to their countries of origin if doing so would pose a clear danger to their lives and freedom" and that "just as sovereign [S]tates can manipulate the meaning of the terms of this article to define life and freedom more or less narrowly as it befits their purposes, it is also possible to circumvent the 'non-refoulement' clause by depositing refugees and asylees in so-called 'safe third countries'").

9. *See* Charles Westin, *Regional Analysis of Refugee Movements: Origins and Response*, *in* REFUGEES: PERSPECTIVES ON THE EXPERIENCES OF FORCED MIGRATION CONTINUUM 37 (Alastair Ager ed., 1999) (discussing that the changing conditions of asylum in response to the Bosnian refugee crisis led people in need of protection to enter Western countries illegally).

integration."[10] At first sight counter-intuitive: perhaps better integration of refugees in and with the "host" society could in fact support the prospects for eventual and sustainable return.

In addressing this theme, we will first look at the story of "return" in and from Europe in the 1990s and the Cold War thinking which has formed the context of protection policy that is only gradually starting to change. We then turn to the approaches of governments and of individuals sustained by the "myth" of return. Individual choices in seeking protection and migration also relate to government policies, and their attachment to the ideal of return can be influenced in reaction to their understanding of government policies. Specific attention is given to the situation of IDPs in Georgia, as an example of displaced persons clinging to the myth of return.[11] Turning to the other side of return, the Dutch government policy on the return of rejected asylum seekers is then discussed, demonstrating that the tough language of returning rejected asylum seekers can, but does not automatically, lead to removal.[12] Bringing the issues together, we look more broadly at the focus on readmission within a general refugee, asylum and migration policy, and the international sentiment about the conditions under which return is possible. In conclusion, we consider the policy implications of looking holistically at return, and combining the ideal of return with pragmatic approaches to integration.

Among these policy implications are that the perspective of return as an improbable but valiantly hoped for ideal leads to a vicious circle of increasing focus on the desirability of return, ever more restrictive policies and an ever less relaxed approach

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10. This term "temporary integration" seemingly incongruous as it is, is being invoked by the Georgian authorities in relation to the Internally Displaced Persons ("IDPs") who, after 12 years of waiting to go home to Abkhazia or South Ossetia, a return which would signify that those territories were once more under the control of Tbilisi, still have no perspective and remain, for the most part, in deteriorating shelter conditions. Their case is viewed in more depth below. *See* Akram & Rempel, *supra* note 1, at 7 (noting that integration is viewed as a less desirable option by the States charged with refugee solutions than the implementation of refugee return to place of origin.).

11. *See* Refugees International, Hope Slipping for Georgia's IDPs (Nov. 13, 2002), *available at* http://www.refugeesinternational.org/content/article/detail/828?PHPSESSID=AD3b36abe0319546090df3dc2546dcee.

12. Immigratie- en Naturalisatiedienst, Return Policy for Failed Asylum Seekers and Other Aliens, (Aug. 2004) (explaining the Dutch government policy on the return of rejected asylum seekers, *available at* http://www.ind.nl/en/Images/08_2004_fa_eu_4819_tcm6-10648.pdf.

towards integration.[13] This is particularly problematic for people in need of protection, not only because of the difficulties they may face during the period of their protection. In addition, it is possible that a consequence of this circle of restrictions would be more emphasis on rejection and removal of would be asylum seekers, so that even people who actually need protection do not achieve it, for example because they become fearful of applying, or because case decision-makers feel they must reject applicants as often as possible in order to uphold policy and keep their jobs.[14]

Meanwhile for refugees and displaced persons, the apparent unlikelihood of return can lead to despair, depression and disillusionment. Combined with the restrictions imposed by authorities as suggested above, this reaction on the part of refugees and displaced persons can mean that they are psychologically uninterested in, or unwilling to, integrate.[15]

Two policy responses emerge — both of which seem more idealistic than realistic, though they could well be the only pragmatic answers. The first would focus less on the returns governments wish would happen, and more on those that have happened while extracting the positive lessons from those returns, including the sometimes relatively greater propensity for people who have integrated well and developed new skills to make an informed choice to return and rebuild their homeland. The second policy response would combine programs of integration with programs preparing people not only for return, but also for the possible long wait prior to return.

## I. *BACKGROUND*

Until the mid-1990s, States in the developed world very

13. *See* European Council on Refugees and Exiles, *New Solutions for Refugee Protection*, ECRE ANNUAL REPORT 6 (2003) ("Europe appears to live in a vicious circle. The stricter border controls become, the more the numbers of potential migrants or asylum seekers recoursing to the trafficking networks increase. The greater the numbers of migrants bypassing the existing barriers and controls, the harsher the control-measures become.").

14. *See* UNCHR, Communication from the European Commission on a Common Policy on Illegal Immigration COM (2001) 672 final, ¶ 6.

15. *See* James A.R. Nafziger, *A Commentary on American Legal Scholarship Concerning the Admission of Migrants*, 17 U. MICH. J.L. REF. 165, 175 (1984) (noting that many refugees who consider their status only temporary are unwilling to integrate themselves effectively into the society and culture of recipient states.).

rarely sought to return or repatriate people who had arrived on their territories as refugees.[16] Hathaway attributed this to "the cultural, economic, and strategic considerations [which] argued for granting permanent residence status to refugees."[17] In fact, even those who were not found to be refugees, and thus not granted asylum, have most frequently not been removed from the territory of European States, and thus not returned to their countries of origin.[18] Rather, they have most often rather "disappeared," remaining irregularly in the country in which they have no legal residence status or in another European State.[19]

Although return is the most frequently engaged durable solution, various factors make it seem improbable. These include: that it cannot always be the outcome for every refugee; that return from a developed region to a less developed region is difficult to make feasible for all concerned; that not everyone who wants to or who could return (or who a government would like to see return) ultimately does so; and that the actual resolution to a conflict may not make re-integration in the State or community left behind a real possibility.

Discussion of return in Europe during the past two decades has focused philosophically and conceptually on issues such as return in "safety and dignity;" the need for return to be "voluntary;" whether "mandatory" return is acceptable, and if so, how it should be carried out; the "sustainability" of return and how the "right to return" and even a possible "duty to return" might apply.[20] Operationally, the focus has been on such issues as property restitution; the willingness of governments in countries of origin to accept returnees and guarantee their human rights; and the inability to determine the country of origin of an individual, whether as a result of the lack of documentation, or because territorial boundaries have changed following conflict, for

16. *See* James C. Hathaway, *The Meaning of Repatriation*, 9 INT'L J. REFUGEE L. 551, 552 (1997).

17. *Id.*

18. *See id.*

19. *See* Editorial, *Is it Realistic to Halve Asylum Applications?*, BBC NEWS, Feb. 10, 2003, *available at* http://news.bbc.co.uk/1/hi/talking_point/2737667.stm.

20. *See, e.g.*, GUY GOODWIN-GILL, THE REFUGEE IN INTERNATIONAL LAW (2d ed. 1996); B.S. Chimni, *Perspective on Voluntary Repatriation: A Critical Note*, 9 INT'L J. REFUGEE L. 542-44 (1991); Jens Vedsted-Hansen, *An Analysis of the Requirements for Voluntary Repatriation*, 9 INT'L J. REFUGEE L. 559-65 (1997).

example.[21] These operational experiences point to useful policy approaches such as the need for early and accurate registration, which can facilitate later disputes about property rights and compensation linked to return.[22]

Discussion of return as a central issue in dealing with asylum and refugee policy really started during the 1990s in response to the Balkan displacements, when most of the protection offered in Europe (and in Australia) was explicitly temporary in nature.[23] This focus has continued into the twenty-first century, and the scope of the discussion has expanded geographically, both as concerns of people no longer in need of protection and those people not found to be in need of protection in the first instance. The two forms of return being linked in this Essay find common ground conceptually on issues such as voluntariness. Hathaway has noted that the "[i]nsistence on *voluntariness* as the only acceptable guarantee that return does not amount to *refoulement* is likely simply to fortify the resolve of the North to avoid contact with refugees altogether."[24] Certainly, where rejected asylum seekers are concerned, European governments seem to be moving away from such an insistence on voluntariness, although they continue to seek it, as the case of the Netherlands' approach detailed below demonstrates.[25]

Since the mid-1990s, governments across Europe increasingly want rejected asylum seekers, people found to be irregular migrants, and in some cases, those people whose country of ori-

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21. *See generally* ALASTAIR AGER, REFUGEES: PERSPECTIVES ON THE EXPERIENCES OF FORCED MIGRATION CONTINUUM (1999).

22. The need for greater emphasis on early and accurate registration emerges also from other approaches to durable solutions, e.g., resettlement. *See* Vic Ullom, *Voluntary Repatriation of Refugees and International Law*, 29 DENV. J. INT'L L. & POL'Y 115, 115 (2001) (discussing other approaches to durable solutions).

23. *See* Joanne van Selm, Temporary Protection: Some Preliminary Lessons of the Balkans Crises (1992-1999), Bergen Conference of the International Society for the Study of European Ideas (2000), *available at* http://www.univ-paris13.fr/CRIDAF/ASMCF-CRECIB/Edition/Exemple.PDF (last visited May 18, 2005).

24. Hathaway, *supra* note 16, at 555.

25. *See* Satvinder S. Juss, *Free Movement and the World Order*, 16 INT'L J. REFUGEE L. 289, 296-97 (2004) (discussing rights of migrations and rights to seek asylum); *see also United Nations General Assembly Executive Committee of the High Commissioner's Programme Fifty-fourth Session 2 July 2003*, 16 INT'L J. REFUGEE L. 124, 136-37 (2004) [hereinafter *Fifty-fourth Session*] (discussing issues of voluntary repatriation); Akram & Rempel, *supra* note 1, at 97 n.439 (listing refugee statistic numbers on the Netherlands for Bosnian Refugees); Geoff Gilbert, *Is Europe Living up to its Obligations to Refugees?*, 15 EUR. J. INT'L L. 963, 966-68, 973 (2004) (listing refugee statistic numbers on the Netherlands).

gin is no longer in a situation that would warrant refugee status elsewhere to "return."[26] A major reason why governments desire to remove or return people who do not "qualify" or no longer qualify to be on their territory is that removal would be a visible expression of a government's ability to manage migration: a government can avoid an immigration debate during an election period if the public (and thereby the electorate) believes that the government controls the borders and residence within the State.[27] An opposition party perceiving an absence of effective immigration control will likewise promise to remove and return more people.[28] Sometimes such promises alone can contribute to the image of a country as unfriendly towards immigrants, refugees and asylum seekers, and in turn exercise a downward influence on arrival numbers (resulting in fewer people to return

26. *See* Akram & Rempel, *supra* note 1, at 7 n.19; *see also* James C. Hathaway & R. Alexander Neve, *Making International Refugee Law Relevant Again: A Proposal for Collectivized and Solution-Oriented Protection*, 10 HARV. HUM. RTS. J. 115, 209 (1997) ("States increasingly want to avoid the particularized obligations that arise when refugees arrive at their territory. They are also unconvinced that refugees will ever return home. As a result, governments have adopted policies that envisage the deterrence of refugees by non-entrée and other containment practices, or drive refugees away by offering only an inhumane variety of 'protection.'").

27. *See United Nations General Assembly 11 September 2002 Executive Committee of the High Commissioner's Programme Fifty-third Session*, 14 INT'L J. REFUGEE L. 420, 432 (2002) [hereinafter *Fifty-third Session*] ("Restrictive measures were particularly evident in a number of countries which had seen a rise in electoral support for political parties expressing xenophobic views."); *see also* Nicole Jacoby, Note, *America's De Facto Guest Workers: Lesson from Germany's Gastarbeiter for U.S. Immigration Reform*, 27 FORDHAM INT'L L.J. 1569, 1624-25 n.286-87 (2004) (citing statistics showing how pressing the issue of immigration is on the minds of voters).

28. *See Fifty-third Session*, *supra* note 27; *see also* Katherine Baldwin, *Migrant System Backed*, ADVERTISER (Austl.), Feb. 8, 2005, at 24 ("Tony Blair is on track for victory but a weekend poll showed an attack by the opposition Conservative Party on what it calls a shambolic asylum and immigration system had struck a chord with the public. . . . Hitting back, the Labour Government is expected to unveil a points scheme for immigrants to screen out unskilled workers. It will also announce fresh efforts to deport bogus asylum seekers. . . . 'Controlled migration is beneficial to Britain,' Mr Blair wrote in an article in The Times newspaper."); Jill Lawless, *European Voter Backlash if Nothing Seen to be Done, Anxiety Over Immigrants*, ADVERTISER (Austl.), Mar. 12, 2005, at 64. ("Prime Minister Tony Blair's Labour Party in Britain is campaigning on the slogan, 'Your country's borders protected', while the Opposition says immigrants should be tested for HIV. . . . In the Netherlands, thousands of asylum seekers await deportation. In France, the government is considering a special immigration police force and the ruling German coalition is struggling to contain the uproar over allegations of lax visa procedures. . . . Polls suggest the politicians are reflecting a popular anti-immigrant mood but they are in a bind. Most studies say Europe desperately needs immigrants to replenish ageing populations and low birthrates.").

one way or another).[29]

## II. *THE APPROACH OF GOVERNMENTS*

The "dream" of every government, it seems, is to remove people who do not qualify under their criteria to be in their country, but can a government do that in reality? And should it? Should it only remove people under certain circumstances? Hathaway noted in 1997 that "repatriation, particularly from North to South, [cannot] simply be something we hope will happen; it must rather be made feasible."[30] How can a government make return feasible?

In considering these questions, we must also ask whether there is a qualitative difference between the return of a rejected asylum seeker (or other irregular migrant) and the return of a person who has benefited from protection — either temporary or refugee status, which has been revoked due to a change in circumstances. After all, there are many similarities in making the return of either type of individual (or group) feasible. For example, in order to return an individual, the government of the country of origin must accept the return and legal safeguards guaranteeing rights on return must be in place, or else return is not safe and is potentially *refoulement.*[31] Likewise, the issues which may make return unfeasible, as described above, have many similarities. The over-riding distinction could be that the returning or returned person who enjoyed protection for some period of time had remained for a longer time in the European State than the rejected asylum seeker.[32] However, even a

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29. *See Asylum Figures Continue to Fall,* BBC NEWS Feb. 22, 2005 ("The figure represents a 60 [percent] fall in asylum applications since a high of 84,130 cases in 2002 — a record 7,000 arrivals a month . . . . Meanwhile, refugee agencies appealed for calm over the way politicians discuss asylum and immigration ahead of the expected general election . . .").

30. *See* Hathaway, *supra* note 16, at 556.

31. *See* Marie Lacroix, *Canadian Refugee Policy and the Social Construction of the Refugee Claimant Subjectivity: Understanding Refugeeness,* 17 J. REFUGEE STUD. 147, 151 (2004) (discussing whether Canadian policies amount to refoulement or return); *see also* Theresa Sidebothom, *Immigration Policies and the War on Terrorism,* 32 DENV. J. INT'L L. & POL'Y 539, 544-45 (2004) (discussing generally refoulement versus return in international law).

32. *See* Roman Boed, *The State of the Right of Asylum in International Law,* 5 DUKE J. COMP. & INT'L L. 1, 20-24 (1994) (addressing some of the distinctions between returning someone and refoulement); *see also* Gretchen Borchelt, *The Safe Third Country Practice in the European Union: A Misguided Approach to Asylum Law and A Violation of*

rejected asylum seeker could have been resident, irregularly, for months or years before even making the asylum claim, in order to avoid or delay removal in the first place.[33]

## III. *INDIVIDUAL DECISIONS AND GOALS*

What is not very often recognized in the policy and juridical literature on return (although it appears in sociological and anthropological literature),[34] is the passion with which many refugees and IDPs (and some other migrants for that matter too) long to "go home." Return is not just the apparent ideal scenario for governments seeking to "manage" immigration. It is also the dream of many of the very people whom governments either wish to see return or perhaps would prefer not to admit to their territories in the first place.[35]

The longing of refugees and IDPs to return is often most

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*International Human Rights Standards*, 33 COLUM. HUM. RTS. L. REV. 473, 477-80 (2002) (discussing principles adopted in the Refugee Convention in 1951 distinguishing treatment of refugees from asylum seekers); Jaya Ramji, *Legislating Away International Law: The Refugee Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act*, 37 STAN. J. INT'L L. 117, 123-25 (2001) (addressing some of the distinctions between return and refoulement).

33. *See* MICHELA MACCHIAVELLO, FORCED MIGRANTS AS AN UNDER-UTILIZED ASSET: REFUGEE SKILLS, LIVELIHOODS, AND ACHIEVEMENTS IN KAMPALA, UGANDA 26 (Working Paper No. 95, Refugees Studies Centre, Queen Elizabeth House, Oct. 2003), *available at* http://66.102.7.104/search?q=Cache:on6yFudv7pEJ:www.reliefweb.int/library/RSC_Oxford/data/UNHCR%2520Working%2520Papers%255C95%2520refugee%2520skills%2520in%2520Kampala.pdf+unregistered+refugees+in+hiding&hl=en.

34. *See* Daniel J. Steinbock, *Refuge and Resistance: Casablanca's Lessons for Refugee Law*, 7 GEO. IMMIGR. L.J. 649, 651 n.8 (1993).

35. *See* Pierre Bertrand, *An Operational Approach to International Refugee Protection*, 26 CORNELL INT'L L.J. 495, 503 (1993) ("On the other hand, once refugees have found asylum, notwithstanding the degree to which they have been integrated into local society, 'home sweet home' remains a normal human objective. The most classical, desirable, and enduring solution for most refugees is to return home voluntarily, in safety and dignity. Obviously, this solution can take place only when the root causes of flight are removed."); *see also* Matthew J. Gibney, *Between Control and Humanitarianism: Temporary Protection in Contemporary Europe*, 14 GEO. IMMIGR. L.J. 689, 691-692 (2000) ("While we should avoid the mistake of thinking that forced migrants are generally reluctant to return home, there are a range of reasons why the views of governments and refugees might, differ on the desirability of repatriation. Most commonly, refugees might, for example, decide that their home country, or the particular town, city, or province they wish to return to is not safe. Moreover, in any refugee population, there will invariably be those who cannot return, either because they have lost everything that would connect them to their homeland, or because their associations with their previous 'homeland' are now so traumatic that a return to a functioning life there is out of the question.").

manifest at the beginning of their displacement, but it can potentially continue for much longer than that.[36] It is sometimes unclear whether refugees and IDPs dream of going back only in the sense of returning to territory and a given piece of property, or if they in fact entertain the illusion that everything will be exactly how it was, no matter what has happened in the meantime.

IDPs from the autonomous region of Abkhazia in Georgia, for example, have been displaced for some twelve years by 2005.[37] Meeting their civil society representatives (many of whom are IDPs themselves) as well as several families in a shelter in Tbilisi in February 2005, it was clear that the vast majority of the IDPs cherished the dream of returning to their "beautiful" province and retaking possession of their lost homes. The only IDPs who expressed some hesitation about the total desirability of return were those who had found interesting and active work opportunities in Tbilisi.[38]

This type of situation gives rise to the question of whether the dream is, or can be expected to be, more prevalent or valid if the refugees/IDPs live in poor conditions. One IDP in Georgia commented that he would not be any less likely to want to leave Tbilisi and return to Abkhazia just because the lift in his thirteen storey shelter building might be repaired.[39] Yet, it is certainly true to say that the IDPs in Georgia have, for the most part, remained housed in quite appalling conditions, including families

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36. *See generally*, UNCHR, *Dreams, Fears and Euphoria: The Long Road Home*, 134 REFUGEES MAG., Mar. 2, 2004.

37. *See* Constantinos Papadopoulos, *International Law & Pipeline Geopolitics in the Caspian Sea*, 36 TEX. J. BUS. L. 1, 17-18 (1999) (providing a brief history of displacement in Georgia and Abkhazia); *see also* Eric Rosand, *The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?*, 19 MICH. J. INT'L L. 1091, 1132 n.165 (1998).

38. However most of those people were working on IDP related issues and interests, either for local Non-governmental Organizations ("NGOs") or for international organizations. Those jobs would of course cease to exist if the more than 200,000 IDPs indeed would, for the most part, return, or, with the conflict in the region resolved, no longer have the status of IDP even if they remained in Tbilisi or the other parts of the country in which they have been sheltered all these years. *See* Thomas Bruck, *The Growth of Georgian Womens Organizations*, *in* WOMEN, WAR, AND DISPLACEMENT IN GEORGIA (2000) *available at* http://www.osgf.ge/wie/6_6.html (last visited May 18, 2005).

39. *See* Center for the Study of Mind & Human Interactions at the University of Virginia Health System, *One IDP Family's Story, The Republic of Georgia*, *available at* http://www.healthsystem.virginia.edu/internet/csmhi/idpstory.cfm (last visited May 18, 2005).

sharing a hospital room as a "home" for a full twelve years after one of their members was taken there with war injuries. Those housed in better conditions, in particular in two once "luxurious" hotels in Tbilisi have recently had the windfall of U.S.$7,000 compensation per room from private investors who will be renovating the now empty hotels.[40] Those IDPs have been able in turn to invest in apartments in the suburbs of Tbilisi. It remains to be seen whether such independence will make them less likely to return should the conflict in Abkhazia be resolved.[41]

Refugees in most European Union ("EU") Member States live in relatively better conditions. Although with the ability to compare their circumstances to those of nationals and other residents around them, particularly in larger cities, they may not always perceive their situation as being as good as the homes and lives they were forced to flee.

Zetter, looking at Cypriot refugees has set out two conceptual frameworks for examining protracted exile — adaptation and transition, and the theme of return, especially in its mythologized form.[42] He asks whether the myth of return actually helps refugees to adapt and survive, "secure that there is a past that can be reclaimed," or whether it means there is a focus on the past and on somewhere else that might prevent refugees from adapting to their current surroundings and circumstances.[43] He finds that refugees do adapt and make the transition, but how well they do this depends on whether the "myth of return" is a matter of belief for them, or one of hope.[44] Where the myth is founded on belief the opportunities for transition

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40. *See* Dow Kimbrell, *Georgian Displaced Persons Pressured to Vacate Hotel*, GEORGIA DAILY DIGEST (Aug. 25, 2004), *available at* http://www.eurasianet.org/resource/georgia/hypermail/200408/0064.shtml.

41. Arthur Helton was one of the few western scholars paying attention to events in the Caucasus from the early 1990s. In *The Price of Indifference*, he describes the IDPs, Georgian government, NGOs and International Organizations as all being "hostages" to the continuing situation. *See* Helton, *supra* note 3, at 187-90. Many of these actors remain in the same situation as he witnessed in 2000, although the Rose Revolution of November 2003 has brought hope to Georgian IDPs as to most other Georgians that things might change for them now. *See* Richard Beeston, *A Bright Hope for Georgia*, TIMES (London), Jan.14, 2005, at 6.

42. *See* Roger Zetter, *Reconceptualizing the Myth of Return: Continuity and Transition Amongst the Greek-Cypriot Refugees of 1974*, 12 J. REFUGEE STUD. 1, 1-22 (1999).

43. *See id.*

44. *See id.* at 14-15.

are closed down: the past, and its certainties, overwhelm the future, which is uncertain apart from the belief in an idealized return.[45] The hope of return, on the other hand, links past, present and future, allowing for transitions, and for a positive response to an evolving situation.[46]

Doná and Berry meanwhile note that Guatemalan refugees in Mexico expressed a clear desire to return.[47] One of their findings from a survey of refugees is that the reference point for decisions about return was the country of origin and not the place of refuge.[48] Those who wanted to return emphasized the positive aspects of their country of origin; those who wanted to integrate locally emphasized the negative aspects of their country of origin and not the positive aspects of the place of refuge.[49] Safety and property rights were the two issues of most concern to refugees pondering a return.[50]

The approach used by Zetter, as well as Doná and Berry's approaches, show the notion of return as something of a "dream" or ideal and idealized scenario for the refugee and displaced person themselves. Yet, when a country of origin is simply not "home" anymore, return can also turn into something more closely resembling a nightmare. Such nightmare qualities can also be attached to the life lived while believing in return, as in the case of the Georgian IDPs described above. When the wait to return drags out, at times unattainable for decades, it might be nightmarish enough, as the cherished belief in a mythologized return appears all but impossible. For these IDPs the nightmare of reality also extends to the living conditions endured while trying to survive a long intervening period. They would surely be untenable without the sustaining dream of going home to something many times better.

The literature referenced here and the observations reported above center on people with a protected status. They do not address the individual choices of rejected asylum seekers fac-

45. *See id.* at 15.

46. *See id.*

47. *See* Giorgia Doná & John W. Berry, *Refugee Acculturation and Re-acculturation, in* REFUGEES: PERSPECTIVES ON THE EXPERIENCES OF FORCED MIGRATION CONTINUUM 179 (Alastair Ager ed., 1999).

48. *See id.* at 183.

49. *See id.*

50. *See id.*

ing removal. For years such people did not in fact face removal on a consistent basis.[51] Since 2000 several Western European States have become far more active in their removals, including Belgium, Denmark, France, Germany, the Netherlands, and the United Kingdom.[52] These removals, quite frequently involving the coerced boarding of aircraft, have occasionally led to violence and serious injury or death of the person being expelled.[53] Politicians tend to suggest that increased removals, and increasing threat of more removals, have contributed to the decline in the number of people seeking asylum in the EU-15 by 2005.[54] It is impossible to know whether this is accurate.

One test of whether the drop in arrivals is because "bogus" asylum seekers are no longer falsely claiming protection will be if the lower asylum seeker arrival statistics are balanced by an increase in the percentage of accepted cases. Even that will only

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51. This is one reason for which smuggling and asylum-seeking have become so intertwined both in politicians' and the public's perceptions and in reality. A smuggler could "coach" a would-be migrant in an asylum story to achieve at least short-term regular residence, and possibly longer-term status or residence, even on a sporadic basis. *See* Hathaway, *supra* note 16, at 552.

52. *See* Marlise Simons, *Dutch House Votes to Expel Many Denied Political Shelter*, N.Y. TIMES, Feb. 18, 2004, at A3; *see also* Ian Black, *Dutch Pass Law to Expel Failed Asylum Seekers: Thousands of People Face Return to Conflict Zones*, GUARDIAN (London), Feb. 18, 2004, at 14; Stephen Castle, *Netherlands To Send Back 26,000 Failed Asylum-Seekers*, INDEP. (London), Feb. 18, 2004, at 20 (discussing developments in Netherlands); Andrew Grice & Nigel Morris, *The Immigration Debate: Clarke's Five-Year Plan to Cut Immigration Aims at Low-Skilled in Hardline Approach*, INDEP. (London), Feb. 8, 2005 at 8 (discussing the "tough new immigration policy" introduced earlier this year in the United Kingdom); United Kingdom, White Paper — Secure Borders, Safe Haven: Integration with Diversity in Modern Britain (2002), *available at* http://www.official-documents.co.uk/document/cm53/5387/cm5387.pdf (last visited May 18, 2005) (discussing, *inter alia*, United Kingdom "fast-track" system for removal); General Secretary Peer Baneke, Asylum in Europe: Developments in 2001, Address at the European Council on Refugees and Exiles Biannual Meeting in Seville (Jun. 9, 2002), *available at* http://www.ecre.org/speeches/bgmsev.shtml (citing an increased removal in Belgium and Denmark due to political and legislative changes); Maria Margaronis, *Europe's Unwelcome Guests: Resentment Against Immigrants, Even Those Seeking Asylum, Is at the Boil*, NATION, May 27, 2002, at 14 (discussing bill that would "tighten Germany's already tough asylum laws").

53. *See* Council of Europe, Parliamentary Assembly, Expulsion Procedures in Conformity with Human Rights and Enforced with Respect for Safety and Dignity, Recommendation 1547 (2002), *available at* http://assembly.coe.int/Documents/WorkingDocs/Doc03/EDOC9671.htm (last visited May 18, 2005).

54. The number of asylum seekers in several of the ten new European Union ("EU") Member States has risen during the same period. *See* ASYLUM LEVELS AND TRENDS IN INDUSTRIALIZED COUNTRIES, 2004 REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (2004), *available at* http://www.unhcr.ch/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=422439144 (last visited May 18, 2005).

demonstrate that asylum systems are once again becoming the domain of "genuine" asylum seekers. However, it will not show us whether would-be economic migrants are now not moving at all, or in fact moving and just not filing an asylum claim. Nor will we know whether people who are in need of protection have been frightened out of applying to the European Union's asylum systems. Above all, any change in the level of accepted cases will not demonstrate that the focus on removals was the basis of the individual decisions to request asylum or not — which could also have been based on more restrictive admissions criteria, speedier processing and simply the public relations impact of tougher talk about asylum.

Suffice it to say that broad questions will remain. In the meantime, questions also remain about the efficacy in implementation of a strong removals policy.

## IV. *POLICY PERSPECTIVES: A GOVERNMENT'S "NIGHTMARE" TOO? THE PARTICULAR CASE OF THE NETHERLANDS*[55]

For governments, the promise (to the electorate) of ultimate return of people granted temporary protection and of those people whose claim to asylum is rejected can also become something of a "nightmare." If such returns transpire to be unachievable, the promise to the electorate is broken. Furthermore, the inclusion of return as the intended outcome of a period of temporary protection, such as that used in EU States for (most) Bosnians and Kosovars in the 1990s, has been understood by many to almost imply an intention to assist in resolving the crisis which gave rise to the protection need in the first place.[56] Policies of containment, such as those creating "safe areas" in Bosnia led far more explicitly to interventionist approaches and expectations than the implication of refugee return, of course.[57] Yet, the full package of the "comprehensive

55. *See supra* note 52 and accompanying text. The Dutch policy on return of rejected asylum seekers has the highest profile, but many other European States are also intensifying their activities in this area, including Belgium, Denmark, Switzerland, and the United Kingdom.

56. *See* Julie Mertus, *The State And The Post-Cold War Refugee Regime: New Models, New Questions*, 20 MICH. J. INT'L L. 59, 83 (1998).

57. *See* T. Modibo Ocran, *The Doctrine of Humanitarian Intervention in Light of Robust Peacekeeping*, 25 B.C. INT'L & COMP. L. REV. 1, 7-8 (2002).

approach" as conceptualized in Europe during the 1990s, meant that return as the "end game" of temporary protection was intertwined with ensuring such return would be possible.[58]

Some EU Member States have made significant promises of removals. Dutch Minister for Immigration and Integration, Rita Verdonk, faced a hefty parliamentary debate and much public scrutiny, as well as protests outside parliament, when she announced in 2004 her plan to remove 26,000 rejected asylum seekers over a three year period.[59] These were people who had been in the Netherlands for some five years, and exhausted all their procedural opportunities to get their claim recognized.[60] The largest groups came from Azerbaijan, Iran, Iraq, Somalia, and the former Yugoslavia.[61]

One year into the three-year period, it was already emerging that several thousand of the total group would not be removed at all.[62] By mid-February 2005, 8,636 of the 26,000 cases had been re-examined by the Ministry of Justice.[63] 3,503 of these people had been granted status in the Netherlands (41% of the cases re-assessed thus far).[64] Of these, 1,949 previously rejected asylum seekers were granted status on the basis that they had a

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58. *See* JOANNE VAN SELM, REFUGEE PROTECTION IN EUROPE: LESSONS OF THE YUGOSLAV CRISIS (1998).

59. One interesting aspect of the debate was the insistence of some actors on calling the Minister's intent "deportation." The Minister strongly rejected this term, due to its close linkage in Dutch usage with the deportations of Jews to Nazi concentration camps and their deaths during the Second World War. The NGOs, with former Minister of Development Cooperation Jan Pronk leading the largest of them, saw the return to countries of origin as unsafe for most of these people. Meanwhile, the Minister could not implement a policy using a term which suggested that she was sending people home to potential death, which, after all, would be *refoulement*. *See* Rutger van Santen, *Debating Deportation*, Radio Netherlands (Feb. 6, 2004), *available at* http://www2.rnw.nl/rnw/en/currentaffairs/region/netherlands/dut040206.html?view=Standard.

60. *See* Marlise Simons, *supra* note 52; *see also* Ian Black, *Dutch Pass Law to Expel Failed Asylum Seekers: Thousands of People Face Return to Conflict Zones*, GUARDIAN (London), Feb. 18, 2004, at 14; Stephen Castle, *Netherlands To Send Back 26,000 Failed Asylum-Seekers*, INDEP. (London), Feb. 18, 2004, at 20.

61. *See* Simons, *supra* note 52, at 20; *see also* Lauren Comiteau, *An Eye For An Eye? From The Killing Fields Of Cambodia To The Ongoing Ethnic Conflict In Kosovo*, CHI. TRIB., Jul. 11, 2004, at C1; Ambrose Evans-Pritchard, *Dutch to Kick Out Failed Asylum Seekers*, DAILY TELEGRAPH (London), Feb. 18, 2004, at 12.

62. *See* Ian Bickerton, *Dutch Stance on Deportation Publicity Labelled Inhumane*, FIN. TIMES (London), Mar. 23, 2005, at 7.

63. *See id.*

64. *See id.*

genuine claim to asylum after all.[65] Fourteen were granted permission to stay on the basis that, through no fault of their own, they simply could not return to their country of origin.[66] Meanwhile 3,085 had "departed to an unknown destination," a euphemism which covers all kinds of "disappearance" from crossing the border into another EU Member State, to disappearing into illegality within the Netherlands leaving no sign behind.[67] Minister Verdonk had stated categorically during the Parliamentary Debate resulting in the approval of her policy, that the authorities would seek to minimize the number of people "administratively" leaving in this way.[68]

The remaining 2,030 people whose cases were re-considered had left the Netherlands by February 2005 in a way which made their departure known to the authorities.[69] One thousand five-hundred eleven of these had done so willingly, with International Organization for Migration ("IOM") assistance.[70] Two hundred fourty-four of them had been "removed," and 275 had left under conditions that were monitored.[71] Thus, just over half

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65. *See VluchtelingenWerk Nederland, Geen Pardon maar Terugkeer? Een evaluatie van de uitvoering van de Pardonregeling en het Terugkeerbeleid voor uitgeproceerde asielzoekers* (Feb. 2005) [Dutch Refugee Council, No Pardon just Return? An evaluation of the implementation of the Pardon Rule and the Return Policy for rejected asylum seekers] [Author's translation of the title]. One hundred forty-two were permitted to stay for medical reasons and 349 due to the extreme circumstances of their situation. Four hundred seventy were permitted to stay for other reasons including family unity. Nine people had naturalized, and nine had passed away.

66. *See id.*

67. *See A. M. van Kalmthout, Terugkeer mogelijkheden van vreemdelingen in vreemdelingenbewaring,* [Report: Return possibilities for Aliens in Detention](2004) (demonstrating the latter). It is suspected that many of these people who leave "destination unknown" are reaching other EU Member States and claiming asylum there. The figures for the number of claims under the Dublin Regulation made by other EU States to the Netherlands concerning asylum seekers who appear to have been present in the Netherlands previous to their asylum claim elsewhere rose significantly in 2004. Research would be needed to establish any direct connection with the expulsion policy as opposed to, for example, simply a better working of the Dublin Regulation which had previously not functioned at its maximum expected capacity. The Dublin Regulation determines the State responsible for assessing an asylum claim, and is adhered to by the EU Member States, Iceland and Norway.

68. *See* Rotterdam Institute of Social Policy Research, Report: Migration and Migration Policies in the Netherlands 58 (2003), *available at* https://ep.eur.nl/bitstream/1765/1861/2/SOC-2003-012.pdf (last visited May 18, 2005) (discussing administrative removals).

69. *See* Dutch Refugee Council, *supra* note 65.

70. *See id.*

71. *See id.*

of the first 8,636 people who would, according to government policy, be removed from the country had "left," but only a quarter of the 8,636, were definitely known to have crossed a Dutch border.[72]

Having staked a reputation for toughness on the implementation of these returns, in a political climate which had been turning increasingly against all (and particularly Islamic) immigration, it remains to be seen whether non-removal will prove to be a nightmare scenario for the Minister's own political career and the re-election ambitions of her party. The lessons for other States also remain a work in progress, and vary from confirming the need to review the cases of rejected asylum seekers before undertaking any removal to ensure the avoidance of *refoulement*, to the need for mechanisms to monitor the situation and whereabouts of people whose cases are pending reconsideration with an eye to removal. Some of those who have "administratively" left the Netherlands with an unknown destination might, after all, in fact be refugees.

## V. *RETURN AND READMISSION WITHIN BROADER ASYLUM, REFUGEE AND MIGRATION APPROACHES*

During recent years, the United Nations High Commissioner for Refugees ("UNHCR"), EU Member States and some commentators have started to locate thinking on return and on removals within the context of broader asylum and even general migration approaches, rather than treat departure as an isolated issue. This has been done in a number of ways, including qualifying opinions on the appropriateness of removal; the focus on readmission agreements; linking removal to *refoulement* and thinking about the voluntariness of departure and the sustainability of return.[73]

Some academics suggest that pessimism about the nature of protection since the early 1990s led to more UNHCR attention to refugee return.[74] Indeed, while some voices from the NGO (and academic) communities seem to suggest that no removals

72. *See* Bickerton, *supra* note 62.

73. *See* Karin Landgren, Deflecting International Protection by Treaty: Bilateral and Multilateral Accords on Extradition, Readmission and the Inadmissibility of Asylum Requests, Working Paper No. 10, J. HUMANITARIAN ASSISTANCE (June 1999), *available at* http://www.jha.ac/articles/u010.pdf (last visited May 18, 2005).

74. *See* Michael Barutciski, *Involuntary Repatriation When Refugee Protection is No*

can ever be possible. Others acknowledge and support the notion that in order for the protection and asylum systems of States to be robust and meaningful, people who do not need protection should face removal as part of a broader migration approach.[75] This policy is set out, for example, in UNHCR's Agenda for Protection under goal 2 on refugees in broader migration patterns where the "Return of persons found not to be in need of international protection" is discussed.[76] The Agenda suggests that States, the IOM, UNHCR, and as appropriate NGOs, should develop strategies including bilateral and regional readmission agreements to promote the return and readmission of persons not in need of international protection — in a humane manner and in full respect for their human rights and dignity, and without resort to excessive force.[77] Such activities, it notes, should be predicated on the States' obligation to readmit their own nationals, a factor which obstructs a significant amount of return.[78]

The need to demonstrate the robustness of the system seemed to underlie the Dutch focus on clearing out a backlog of asylum cases by looking, over a number of years and under several governments, at either some form of amnesty for people whose claims had been in procedures for very long periods of time or a removal program for those people who simply did not have a claim.[79] Ultimately, a large-scale amnesty was opposed, although some two or three thousand people were granted status early in 2004 just before the removal policy was agreed upon.[80] Nonetheless, as can be seen in the Dutch Refugee Council Report cited above, the removal policy has, thus far, actually resulted in status for some 41 percent of the people who were made to believe they would be forced to go home.[81]

In the meantime, efforts continue to ensure that countries of origin will readmit their nationals, and that removals from the EU can take place earlier, limiting the extent of irregular resi-

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*Longer Necessary: Moving Forward After the 48th Session of the Executive Committee*, 10 INT'L J. REFUGEE L. 236 (1998).

75. *See* Hathaway, *supra* note 16, at 555.

76. *See* UNHCR, AGENDA FOR PROTECTION 51 (2003).

77. *See id.*

78. *See id.*

79. *See, VluchtelingenWerk Nederland*, *supra* note 65.

80. *See id.*

81. *See id.*

dence.[82] Readmission agreements could be considered the most tangible expression of the EU "dream" of removing and returning people not found to be in need of protection (as well as those non-asylum seeking immigrants who are not in possession of appropriate entry and admission papers such as a visa, residence or work permit). Yet very few such agreements have actually been reached (just four at the EU level and only a small number agreed bilaterally by individual EU Member States with countries of origin).[83] This predicament perhaps contributes to the nightmare. Secrecy tends to surround the negotiation and signing of any readmission agreements. There is no disclosure to UNHCR of the planned contents of agreements under discussion, although they are informed of almost every other aspect not only of refugee and asylum policy development, but also of migration policy issues. Those that have been agreed seem to be poorly implemented.[84] Countries of origin appear to be very reluctant to accept the return of their own nationals.[85] This problem may not be so surprising given that the individuals concerned often do not inform authorities accurately about their actual country of origin. Additionally, a person who manages to work in an EU country is likely to remit quite significant amounts of money and goods, supporting their family, community, and ultimately, the national economy. In its attempts to secure agreements with the countries closest to its borders, the EU has recently started to include the suggestion of an exchange of work visas for readmission in its Neighbourhood Policy "Ac-

82. *See* Jan Niessen, *Five years of EU Migration and Asylum Policy- making under the Amsterdam and Tampere Mandates* 37-40 (German Council of Experts for Immigration and Integration, May 2004) *available at* http://66.102.7.104/search?q=cache:mNvpCFq8uaAJ:www.bamf.de/template/zuwanderungsrat/expertisen/expertise_niessen.pdf+efforts+continue+to+ensure+that+countries+of+origin+will+readmit+their+nationals,+and+that+removals+from+the+EU+can+take+place+earlier&hl=en (last visited May 18, 2005).

83. *See* Press Release, Looking Ahead after the 19 July Council Meeting, (July 20, 2004), *available at* http://europa.eu.int/comm/justice_home/news/intro/wai/news_0704_en.htm ("Only four readmission agreements have been signed since September 2000, with Hong Kong, Macao, Sri Lanka and Albania.")

84. *See* Press Release, Readmission Agreements, European Commission (June 17, 2002), *available at* http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/02/142&format=HTML&aged=1&language=EN&guiLanguage=en.

85. *See* UNITED NATIONS, INTERNATIONAL MIGRATION AND DEVELOPMENT 61 (2003) (discussing the reluctance of countries of origin to accept the return of those who have left and claimed asylum abroad) *available at* www.un.org/esa/population/publications/reviewappraisal/ (last visited May 18, 2005).

tion Plans."[86]

The Dutch case, set out above, would also seem to demonstrate that caution is needed to ensure that readmission does not become a cover for *refoulement.* The implication of the overview of the reassessments during the first year seems to be that a hastier removal of the 8,636 cases reassessed thus far would have resulted in 1,949 refugees being *refouled,* and even nine naturalized Dutch citizens being sent back to a country of origin.[87]

UNHCR's Agenda for Protection also addresses improved conditions for voluntary repatriation and sustainable return.[88] These issues reflect the debates of the 1990s, as would be expected for an Agenda set as a result of global consultations in 2001 and 2002.[89] In this context, the focus is on physical, legal and material safety which require, for example, amnesties, human rights guarantees and measures to enable the restitution of property (all to be appropriately communicated to refugees).[90] Meanwhile, reconciliation and dialogue are to be fostered in countries of origin to which refugees are returning, and the support of countries in which refuge was sought and found is also required.[91] In particular, UNHCR encourages States to allow "go and see" visits, whereby protected persons are funded in (temporarily) "returning" to their country of origin to investigate conditions there for themselves, but able to decide that the time is not right for their long-term repatriation.[92] Some European States employed such an approach for Bosnians, but rejected it as inefficient in actually promoting full return by the time temporary protection for Kosovars was ending in late 1999.[93] The Agenda for Protection also sets out the need for strengthened international cooperation to make repatriation sustainable, and links this to development, education and other opportunities as well as equity between returnees, displaced per-

86. *See* European Neighbourhood Policy, European Union, *available at* http://www.europa.eu.int/comm/world/enp/index_en.htm (last visited May 18, 2005); *see also* JOANNE VAN SELM, THE FUTURE OF EU NEIGHBOURHOOD POLICY: LOOKING EASTWARDS, IMEPO (forthcoming 2005).

87. *See* Bickerton, *supra* note 62.

88. *See* AGENDA FOR PROTECTION, *supra* note 76, at 69-71.

89. *Id.* at 5.

90. *See id.* at 16.

91. *See id.* at 75.

92. *See id.* at 76.

93. *See* JOANNE VAN SELM, KOSOVO'S REFUGEES IN THE EUROPEAN UNION, (2000).

sons and local residents who remained.[94]

## *CONCLUSION*

Return is the ideal for many actors involved in refugee protection. For those who are in need of protection, it would close the circle — demonstrate that a life has been saved, and a conflict or situation of feared persecution resolved. For those who are not in need of protection, it would prove the robustness of both the asylum system and immigration control policies of the State they entered. Yet, in both cases, it can be a difficult process. To prevent both the romanticized vision of return as the only positive outcome, as well as the fear of its improbability, from obstructing constructive refugee policy making, a shift in basic thinking is necessary. Part of that shift is to think comprehensibly about return and removal, their consequences, and their impact.

Refugees, as Helton noted, "often return to become internally displaced."[95] What seems to be return is not. And refugees who have spent unsatisfactory periods in exile, unable to fulfill their potential, particularly in States and societies that resent their presence can go back as "harbingers of conflict" — one of what Helton characterizes as the "wasteful and negative outcomes" of return processes that more than balance the romanticized vision.[96] A person who returns after rejection of their case, who might believe that they are entitled to a better life somewhere else because of their experiences of poverty or social exclusion can likewise "return" physically, only to feel further excluded and to seek to move again. None of this means return cannot be the best outcome, or the just result of a procedure to assess refugee status which demonstrates that the individual is not in need of protection. However, the negative potential of both types of return must give rise to questions about the most appropriate approach, from a humanitarian perspective, and about the benefit to societies at large.

A focus on return in the EU has, for more than a decade, gone hand in hand with a relative refusal to countenance integration. Refugees and immigrants more broadly have been ex-

94. *See* AGENDA FOR PROTECTION, *supra* note 76, at 71.
95. Helton, *supra* note 3, at 179.
96. *See* Helton, *supra* note 3, at 178.

pected to adapt, to assimilate (even if it has not been called that) to their "host" societies. Acceptance has been minimal: opinion-makers in many EU Member States agree by 2005 that "multi-culturalism" in the European context has been something of an empty term.[97] Perhaps, somewhat counter-intuitively, in order to be more pragmatic about return, there needs to be a greater focus on the benefits of integration.

National integration policies have been developed during the past few years, but most are focused at people who intend to, and are expected to, remain.[98] Most of these programs focus on language skills above all else, not on employment or skill acquisition.[99] Explicit in the discussions of temporary protection in the 1990s, but more implicit in more recent policy decisions, is an apparent tension between actively integrating refugees and the shared dream of return.

Yet, anecdotal evidence at least would seem to suggest that people who are better integrated in their host society might be more likely to make a success of any eventual return. The types of negative and wasteful images of return that Helton discussed were primarily linked to situations where the refugees had not really been accepted as members of society during their period of exile.[100] And skills, as much or more than language, are likely to be useful tools in making return work, just as they are useful tools in facilitating integration. This seems apparent when one observes Afghans and Iraqis returning from the United States since 2002 and 2004 respectively, and participating in the reconstruction and democratizing processes in their countries of origin. Such constructive returns from the United States have been more noticeable in media reports at least than returns from European countries. Research would be needed to bear out this

97. *See* Paul Scheffer, Het Multiculturele Drama [The Multicultural Drama], NRC HANDELSBLAD, Jan. 29, 2000; *see also* Trevor Phillips, Speech at the Civil Service Race Equality Network (Apr. 26 2004) (discussing the meaning of multiculturalism in Britain), *available at* http://www.cre.gov.uk/publs/connections/conn_04sp_britishness.html; Morten Kjaerum, Presentation at the Migration Policy Institute (May 4, 2004), *available at* http://www.migrationpolicy.org/events/050404_sum.php (discussing European integration policies).

98. *See* Sylvia Zappi, *French Government Revives Assimilation Policy*, Oct. 4, 2003, *available at* http://www.migrationinformation.org/feature/display.cfm?ID=165 (analyzing France's assimilation policy).

99. *Id.*

100. Helton, *supra* note 3, at 177-81.

view. If it is accurate then it would be worth noting that the United States does not have any integration policies as such (nor stronger return policies), but employment (and thus on-going skill acquisition and development) is certainly prioritized over other features of integration success. Hence the first suggestion noted in the introduction to this Essay: that governments should focus on the positive lessons of some returns (and learn the positive out of the negative aspects of others) and pay attention to the apparently relative greater propensity for people who have integrated well and developed new skills to make informed choices about returning and participating in the rebuilding of their homelands.

The second policy response is to combine programs of integration with programs preparing people not only for return, but also for the possible long wait before such a return. Refugees are not simply going to do what a policy suggests they should. If the apparent unlikelihood of return can lead to despair, depression and disillusionment among refugees, then something needs to be done to convey realism about time-scales and prospects. Attention should also be paid to the fact that the messages being sent out to would-be arrivals through restrictive policies such as that in the Netherlands reach the refugees who are already in the country unfiltered. They then understand that they are unwelcome guests, rather than people who form part of the society but may one day go back to rebuild the society they had to leave.

Both of these policy suggestions are aimed at avoiding the obstruction of positive, protective refugee policies in Europe by an over-emphasis on the need for return. Clearly return is a worthwhile and positive goal, whether we are talking about refugees, or talking about demonstrating to a general public that sovereign control over entry means allowing in those who need protection (or are permitted to work or join family), but excluding those who have no claim, or falsify a claim to any of these ends. Yet, in order for governments to respect the rights of individuals and of societies, their policies should pay due attention to the need for realism about the chances of real return, and blend the goal of successful return with the greater goals of *non-refoulement* and meaningful protection.