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The Right to Return of Refugees in International Law

The Case Study of Bosnia and Herzegovina

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... To all, forced to flee and waiting to return...



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List of Acronyms

BiH	Bosnia and Herzegovina
DPA	Dayton Peace Agreement
EUFOR	European Union Military Force (Operation ALTHEA)
FBiH	Federation of Bosnia and Herzegovina
GFAP	General Framework Agreement for Peace
IDPs	Internally displaced persons
OHR	Office of High Representative
OSCE	Organization for Security and Co-operation in Europe
RS	Republika Srpska
SFOR	Stabilization Force (NATO)
UN	United Nations
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNPROFOR	United Nation Protection Force in Former Yugoslavia
UN SC	United Nations Security Council
UN SG	United Nations Secretary General

Introduction

The closing decade of the 20th century began with a large part of the world either involved in armed conflicts of varying proportions and intensity, or striving to cultivate an uncertain peace. Most of these conflicts were civil wars, fuelled as much by racial, ethnic or religious animosities as by ideological fervour. Grave violations of international humanitarian and human rights law and obvious disrespect for normative framework of humanity that has emerged over the past 50 years is a trademark of all conflicts today, whether they be inter- or intra-state fought. Another distinguishing feature of the modern warfare is the escalating proportion of civilian victims involved. Communities which lived together for generations have been separated and millions of people displaced – whether in the former Yugoslavia, or Africa's Great Lakes region, Caucasus or Afghanistan. The deliberate targeting of civilians and their enforced flight has not only represented methods of warfare but has become the very objectives of the conflict.

Yet the human suffering, ethnic cleansing, genocide and vast humanitarian crises with the massive displacement of people whether internally or abroad have contributed to introduction of innovative features to cope with the radically transformed agenda. It confirmed the presumption that international refugee protection is as necessary today as it was when the 1951 Convention was adopted over fifty years ago, as prevalent instability and insecurity often accompany displacement within and from failed States or States where central government only controls part of the territory – hardly offering conditions for safe return. The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol to the Convention are the modern legal embodiment of the ancient and universal tradition of providing sanctuary to those at risk and in danger. Both instruments reflect a fundamental human value on which global consensus exist and are the first and only instruments at the global level which specifically regulate the treatment of those who are compelled to leave their homes because of a rupture with their country of origin.

Further international developments in the last seventeen years have led to fundamental changes in international efforts to respond to refugee needs and demands and

has led to the conclusion that return was not only seen as a solution for individual refugees, but the main pillar of peace processes. However, the return of refugees has not always been a high priority internationally. Between the Second World War and the late 1980s, the main proponents of the international refugee regime rarely considered the return of refugees as important. But since the end of the Cold War and specially with the outbreak of the crisis in Former Yugoslavia, international attention has been drawn more substantially to the return of refugees, as flows of refugees has dramatically increased. At the same time return has also become the preferred durable solution to the problems faced by refugees, based on the presumption that most refugees and displaced persons wish to return to their former homes.

Historically speaking, the right to return had achieved customary status in international law by 1948. The right of refugees to return to their homes and properties is anchored in three separate bodies of international law: humanitarian law; human rights law; and refugee law. The right of return applies in cases where persons have been deliberately barred from returning after a temporary departure and in cases of forcible expulsion (on a mass scale, or otherwise). In the latter case, the obligation of the state of origin under international law to receive back illegally expelled persons is even stronger.

The almost four years of conflict in Bosnia and Herzegovina (BiH) has resulted in the largest displacement of people occurred in Europe since World War II. At the end of the war more than 2.2 million people had been uprooted, forced to flee from their homes, where 1.2 million had fled across the border, seeking asylum in the neighboring countries as well as in some West European host states and approximately one million had become internally displaced.¹ The peace was finally reached on 14 December 1995 with the signing of Dayton Peace Agreement (DPA) and thus providing for a strong international presence for peace enforcement and establishing the Office of High Representative to coordinate the activities of organizations involved in the civilian aspects of the agreement and to monitor its implementation.

¹ ECOSOC, Commission on Human Rights, Report of the representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, *Specific Groups and Individuals: Mass Expellees and DPs, Mission to BiH* (2005). E/CN.4/2006/--/Add.3.

Annex VII of DPA assigned to United Nations High Commissioner for Refugees (UNHCR) a specific mandate for coordinating the post-war humanitarian relief effort and for designing and implementing a return plan “*that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons (DPs)*”.² In addition, Annex VII has explicitly recognized *the right to return in safety and dignity* as a both a remedy to the human rights violations of unlawful transfers or deportations and as a means to reverse the ethnic cleansing during the war. Promoting the return of refugees and DPs to BiH is to be understood as the overall reconstruction and peace stabilization effort in the country and on the other hand as to recreation of the multi-ethnic country.³

Many problems and obstacles to refugee return were present in first few years after the Agreement was signed. Lack of security, presence of land mines, restriction of movement and the property repossession were only some of the problems deterring the return. The immediate period after the end of the war was strongly characterized by population movements and continuous displacement.

Until 1999 the minority return was almost inexistent where the main impediment were the lack of political will, nationalistic based obstruction present at all levels of administration to support it. Minority return⁴ was recognized as the key test and challenge for the success of the DPA. In early years after the DPA was signed, the overwhelming majority of people returned to areas controlled by their own ethnic group, and few minority returns took place. Various strategies have been used to try to open some areas to minority return.⁵ However, the year 2001 marked an increase in the number of minority returns in BiH, where UNHCR recorded a total of 92,061 minority returns.⁶ The reason for the increase in returns has been many, where refugee impatience, new international community effectiveness and a change in the psychology of both majority

² UNHCR Humanitarian Issues Working Group, *UNHCR's Activities to find Durable Solutions for Refugees and DPs under the GFAP*, 2002, p.1.

³ Phoung C. " *Freely to Return*": *Reversing Ethnic Cleansing in Bosnia-Herzegovina*, *Journal of Refugee Studies*, Vol.13, No.2, 2000, p.166

⁴ International Crisis Group has defined minority return as return to areas where a different ethnic group retains military control and a population majority.

⁵ *Ibid, Supra note, p.174*

⁶ UNHCR Humanitarian Issues Working Group (2002), *UNHCR's activities to find durable* , p.2

and minority populations are just some of them.⁷ The increase in property restitution which has occurred as a result of a more vigorous implementation of the property laws has been another crucial factor.⁸

Since the end of the war, significant progress has been achieved in the implementation of *the right to return*. If judged by numbers alone, the return process has been reasonably impressive. Since 1996, more than one million former refugees and DPs have returned to their pre-war homes and municipalities, out of an estimated 2.2 million persons uprooted during the war. As of the end September 2008, the number of DPs which have returned to their places of origin was 579,051 in addition to more than 447,456 refugees from abroad. UNHCR recorded until now some 467,120 minority returns.⁹ However, not all people returning from abroad have been able to return to their pre-war homes, thus many of them have been displaced again.

Nevertheless, today, almost thirteen years after the war ended, the general progress in return process, has made more apparent the plight of those displaced in the country or abroad for whom return in safety and dignity remains problematic by a number of obstacles which still deter their return. A large number of persons still remain displaced within the region and in need of durable solutions as there are unwilling or unable to return to their place of origin.

According to report of Representative of the UN Secretary-General on the human rights of internally displaced persons, the main obstacles to the sustainable return of displaced populations in BiH “...are physical insecurity, reconstruction of buildings and an economic, social and political environment discouraging return and reintegration”. As it will be discussed in the present thesis, there are many forms of obstruction of return and discrimination against returnees, which ranges from the non-implementation of decisions on the right to repossession of the property and obstruction from local power-wielders to exercise any of their fundamental rights such as waiting

⁷ ICG Balkans Report, *Bosnia's refugee Logjam Breaks: Is the international community ready?*, 2000, p.5.

⁸ *Ibid*, *Supra note*, p.2

⁹ UNHCR *Statistical Summary* as at 30 September 2008. Available at www.unhcr.ba.

for the electricity network to be reconstructed and reconnected, water supply, roads, the rights to health, social protection or education.¹⁰

The analysis of the present Thesis having as a case study the right to return in Bosnia and Herzegovina has been developed in the light of the following basic facts: after a declaration of independence, a violent internal conflict, with the involvement of neighboring states, broke up, in a republic, previously being part of a multinational state. Unable to resolve it internally, this called for involvement of external factors. When peace agreement was reached, a post-war political settlement involved strong international community to enforce peace and stability and to implement the right of refugees to return to their places of origin.

It is important to note that my personal experience while working with the UNHCR Representation in Bosnia and Herzegovina in the beginning of 2006 was another crucial factor influencing the development and the outcome of the present Thesis. The accessibility of primary data either in the form of internal documentation or through interviews of key personnel, in-depth and first hand information gathered in the numerous field visits to returnees areas, collective centers, at meetings with municipal counterparts and international organizations contributed outstandingly to the overall understanding of the complex return process.

The present Thesis is divided into two parts. The first section will examine the legal framework of the right to return endorsed by international law instruments. The three bodies of international law, respectively international human rights law, international humanitarian law and international refugee law will be analyzed.

The second section of the Thesis will address the case study of Bosnia and Herzegovina. The focus of the analysis will be on return and repatriation process, where the causes of displacement are being presented in the first chapter. The following chapters will lay down the legal basis for the right to return as set forth in the Dayton Peace Agreement and outline the return process, as well as involvement of main international actors. Despite the substantial numbers of returnees, there are still many whom return remains problematic, therefore the major obstacles that still questions a final solution

¹⁰ Helsinki Committee, *Report on the Status of Human Rights in BIH*, 2006.

for refugees and displaced persons in BiH will be addressed. In the last chapter the future challenges will be discussed where focus should be on enhancing human rights and finding appropriate durable solutions for the most vulnerable among displaced population.

Part I

The right to return: legal framework

1. The right to return in international law instruments – legal basis for return of refugees and internally displaced persons

The purpose of this Chapter is to outline the legal background for *the right to return* in the main bodies of international law.

The first formal acknowledgement of the right to return in national law can be found in the *Magna Carta*. In 1215, at a time when rights were being questioned in England, the *Magna Carta* was agreed to by King John. It provided that “..it shall be lawful in the future for anyone ... to leave our Kingdom and to return, safe and secure by land and water..”.¹¹ The right to return is considered part of the right to freedom of movement. During the 17th century Hugo Grotius postulated the principle that “every nation is free to travel to every other nation”. The relevant international documents deal with the right to return in this broader context of free movement. Freedom of movement contains two main aspects: an internal aspect, meaning freedom of movement within a country, and an external aspect, meaning freedom of movement between States.¹² The latter aspect is usually referred to as the right to leave one’s country, either temporarily or permanently, and to enter or return to one’s country. While the rights to leave and return are closely connected, in that the existence of one allows for the effective exercise of the other, they respectively respond to different needs of the individuals exercising them. The person leaving his or her country may be doing so out of a desire to travel, to emigrate, or to seek refuge. The person seeking to return to his or her country is usually motivated by a desire to return home, to the place where he or she belongs, to his or her roots.¹³ This ‘natural desire for a base or homeland’ has been said to demon-

¹¹ *Magna Carta*, Ch. 42. The translation quoted is from S.E. Thorne *et al.*, *The Great Charter: Four Essays on Magna Carta and the History of Our Liberty*, New York, Pantheon Books, 1965, p. 133. in S. Aglerhuis, *The right to return and its Practical Application*

¹² S.A.F. Jagerskiold, *The freedom of Movement*, in L. Henkin, (ed.) *The International Bill of Rights*, New York, Columbia University Press, 1981 p. 167-70. in S. Aglerhuis, *The right to return and its Practical Application*.

¹³ D.D.N. Nseroko, *The Right to Return Home*, in «Indian Journal of International Law», vol. 21, 1981, p. 336: “It is innate in human nature to yearn to be back home” in S. Aglerhuis, *The right to return and its Practical Application*.

strate ‘the logical connection’ of freedom of movement with the right to a nationality and in this sense the right to return is closely connected with the legal concept of nationality.¹⁴ Besides, the right to return can be closely linked with other human rights, such as the right to property, the right to privacy and the right of admission for nationals. Although it has been argued that “*the right of everyone to leave any country, including his own, and to return to his country is founded on natural law*”, the formal recognition and development of these rights¹⁵ have been slow and often delayed by frequent backlash.

The return of refugees has not always been a high priority internationally. Between the Second World War and the late 1980s, the main proponents of the international refugee regime rarely considered the return of refugees as important. But since the end of the Cold War and specially with the outbreak of the crisis in Former Yugoslavia, international attention has been drawn more substantially to the return of refugees, as flows of refugees has dramatically increased. The post-Cold War conflicts and the changed environment for UN to deploy peacekeeping operations has led to the conclusion that return was not only seen as a solution for individual refugees, but the main pillar of peace processes.¹⁶ At the same time return has also become the preferred durable solution to the problems faced by refugees, based on the presumption that most refugees and displaced persons wish to return to their former homes.¹⁷ As Black and Gent¹⁸ noted, the return has also become a highly politically charged process in a number of context, both for returnees and those who did not flee and that doubts remain both about the conditions and voluntariness of return, the ability of individual returnees to re-integrate in their home countries and regions and the wider sustainability of the return process.

¹⁴ M. Cranston, *The Political and Philosophical Aspects of the Right to Leave and to Return*, 1976 in «Uppsala Colloquium», p. 28.

¹⁵ *Ibid*, *Supra* note 12.

¹⁶ R. Black, S. Gent, DRC on Migration, Globalization and Poverty, *Defining Measuring and Influencing Sustainable Return*, 2004, pp.4-6.

¹⁷ Economic and Social Council, Commission on Human Rights 54th Session, Economic, Social and Cultural Rights: The return of refugees’ or displaced persons’ property. Working Paper by P.S.Pinheiro. E/CN.4/Sub.2/2002/17.

¹⁸ *Ibid*, *Supra* note 16, p.4.

Historically speaking, the right to return had achieved customary status¹⁹ in international law by 1948 and is fully recognized in international law²⁰. According to Boling²¹ the right to return “...applies in cases where persons have been deliberately barred from returning after a temporary departure and in cases of forcible expulsion (on a mass scale or otherwise)”. The right of refugees to return to their homes and properties is embodied in four separate bodies of international law: the refugee law, the law of nationality, as applied upon state succession, humanitarian law and human rights law. For the purposes of the present work I will focus on three main bodies of international law.

2. The right to return in International Human Rights Law

The right to return as a customary norm of international human rights law is found in many international and regional human rights treaties.²² The body of principles and rules in international law which currently governs the issue of human rights is known as international human rights law. It is derived from the:

- The Charter of the UN (1945); Preamble and Art. 1(3), 13(b), 55(c), 62(2) and 76(c)
- The Universal Declaration of Human Rights (1948)
- The two International Covenants on Human Rights (1966): The International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights

¹⁹ As customary norms are legally binding upon all states, states are therefore legally obligated to follow the rules codified by these norms.

²⁰ Boling, J.G., *Palestinian Refugees and the Right of return: An International Law Analysis*. BADIL, Information and Discussion Brief Issue No.8, 2001. Available on www.badil.org/Publications/Briefs/Brief-No-08.htm.

²¹ *Ibid.*

²² UNHCR, *Voluntary Repatriation: International Protection*, Handbook, 1996, Geneva.

- other instruments, treaty-based or otherwise, developed within the framework of the UN and specialized agencies.²³

The right to return is besides an individual's wish to return to its place of origin, also asserted as a fundamental right by two instruments of the International Bill of Human Rights. The Universal Declaration of Human Rights of 1948 in its article 13(2) states that

"...everyone has the right to leave any country, including his own and to return to his country."

However, the Universal Declaration is not a binding treaty of international law, but it is conceived as "a common standard of achievement for all peoples and all nations" and set the direction for all subsequent work in the field of human rights.²⁴

The second instrument which includes the right to return is the International Covenant on Civil and Political Rights where in its Article 12 (4) states that

"...no one shall be arbitrarily deprived of the right to enter his own country".

In both mentioned instruments the same articles are underlying another basic principle related to the right to return, the principle of voluntary repatriation. The third major international human rights convention, the International Convention on the Elimination of All Forms of Racial Discrimination²⁵ also incorporates the right to return in its Article 5d (ii) phrasing that everyone has *"...the right to leave any country, including one's own, and to return to one's country"*.

Another important document in the system of human rights recognizing the right to return is the 1993 Vienna Declaration and Programme of Action, adopted by the UN World Conference on Human Rights. The Declaration in its Articles 8 and 23 reaf-

²³ J. Symonides 2000, p.350

²⁴ <http://www.ohchr.org/english/about/publications/docs/fs2.htm>,

²⁵ *International Convention on the Elimination of All Forms of Racial Discrimination, UN General Assembly resolution 2106 (XX) of 21 December 1965. Entry into force 1969.*

firmed the right of everyone without distinction of any kind, to return to his or her country where mentioning voluntary return in safety and dignity as the preferred solution to displacement situations.²⁶

The right to return has been enshrined in a various international human rights instruments and is related to many fundamental rights such as the right to life, liberty and security of person, the right not to be subjected to torture or cruel, inhuman or degrading treatment and punishment and the right to freedom of movement.²⁷

Like international humanitarian law, the international human rights law also incorporates the general prohibition against forcible expulsion, mass or otherwise, from one's home or place of origin. A forcible expulsion violates many enumerated rights contained in the broad corpus of human rights law and specially violates the protection of freedom of movement.

3. The right to return in International Humanitarian Law

The right to return is embodied in international humanitarian law²⁸, in its two "branches" the Hague and the Geneva Law. The Hague Conventions and the four Geneva Conventions, both recognize the right to return after the cessation of the hostilities. In this respect, Hague Regulations annexed to the 1907 Hague Conventions Respecting the Laws and Customs of War on Land, which are universally recognized to have achieved customary status by 1939 and the 1949 Geneva Civilian Convention provides for the right to return of displaced persons to their places of origin after the war ends.²⁹

Under humanitarian law, there is a so-called general right to return, which applies to all displaced persons, irrespective of how they came to be displaced during the conflict. This rule was first codified in Article 43 of the Hague Regulations and incor-

²⁶ S. Agterhuis, *The Right to Return and its Practical Application*, p.15. and Vienna Declaration and Programme of Action (1993) paragraph 23.

²⁷ *Ibid*, *Supra* note 22.

²⁸ The humanitarian law covers the conduct of military operations as well as the protection of the victims of armed conflicts.

²⁹ *Ibid*. *Supra* note 20.

porated into all subsequent customary humanitarian law, including the Geneva Conventions and their two Protocols. According to this rule, a belligerent occupant must preserve the legal and social status quo in the occupied territory to the maximum extent possible, pending the final legal resolution of the conflict, like for example a peace agreement such as in the case of Bosnia and Herzegovina, the Dayton Peace Agreement³⁰. This include requirement, that the belligerent occupant must let the local population to remain in, or return to their place of origin following the cessation of hostilities. The sources of the right to return in the Forth Geneva Convention are Articles 4, 6, 40 and 158 (3). These Articles include definitions of protected persons and duration of the applicability of the Convention.³¹

However, there is a second type of the right to return provided for in humanitarian law instruments, where special attention is also brought on cases where persons have been displaced through a forcible expulsion. The involuntary transfer of even a single individual, e.g. through deportation, is prohibited under humanitarian law.³² In the Bosnian case where mass scale forcible expulsions were carried out, these where huge violations of humanitarian law. As Boling³³ noted, the only appropriate corrective remedy for forcible expulsions in general, under international law is implementation of the right to return.

³⁰ Dayton Peace Agreement was signed in Paris on 14 December 1995, the official proclamation of end of war in BiH was on 22 December 1995, Official Gazette.

³¹ *Ibid*, *Supra* note 20.

³² *Ibid*, *Supra* note 20.

³³ *Ibid*, *Supra* note 20.

4. The right to return in International Refugee Law

4.1. *International Refugee Law*

International Refugee Law is principally governed by the 1951 Convention Relating to the Status of Refugees as modified by the 1967 Protocol Relating to the Status of Refugees. Both documents, very often referred to as Convention, provide a definition of a refugee and confer a number of rights and protections to persons falling within this definition. The Convention also consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees yet attempted on the international level³⁴.

The origins of the Convention can be tracked back to the early 20th Century. Prior to this time, customary law imposed an obligation on states to protect their own nationals only. During the interwar years of 1919 to 1939, numerous violent conflicts and political problems in Europe and Middle East led to the displacement of large numbers of people. This exodus clashed with the desire of individual states to control immigration and led the international community to respond to the refugee issue. The League of Nations³⁵ did so by formulating agreements to provide for refugee protection. Such agreements³⁶ related to specific refugee situations and were thus ad hoc in nature. Moreover, they contained a group or category approach, where the sufficient and necessary conditions to achieve refugee status were that someone was - outside his or her country of origin and – without the protection of the government of that state. However, during this period the general definition of refugee was not developed. When masses of people were uprooted after the World War II, and the world was recovering from a deeply traumatizing and destructive period of global war and human rights violations on a horrendous scale it was perceived that the refugee problem was not a temporary one,

³⁴ UNHCR, *Convention and Protocol Relating to the Status of Refugees, Introductory Note*, Geneva, 2007, available at <http://www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>.

³⁵ Fridtjof Nansen was appointed in 1921 as the first refugee High Commissioner of the League of Nations.

³⁶ The 1933 League of Nations' Convention relating to the International Status of Refugees and the 1938 Convention concerning the Status of Refugees coming from Germany were developed, but provided limited protection for uprooted peoples.

and that instrument with a broader approach would more effectively address emerging refugee crisis. It was in these circumstances that the 1951 Convention Relating to the Status of Refugees was adopted by a special United Nations Conference on 28 of July 1951.³⁷ The inspiration for the Convention was the strong international concern to ensure that the disregard for human life, the displacement and the persecution of the war years would not be repeated. The Convention was avowedly humanitarian in character. States moved to extend the global reach of the Convention particularly when, subsequently, they concluded a Protocol to the Convention in 1967. This applied its provisions to all refugees, not simply those forced to flee before 1951 or those in Europe. Over the years, the obligations contained in both instruments have also been complemented, indeed reinforced, by the progressive development of international human rights law.

4.1.1. Further development of refugee law

The General Assembly³⁸ assigned to the Office of the UNHCR a crucial role in the development of international refugee law. The legal basis for UNHCR's responsibilities, which are related to the development of international refugee law represents UNHCR's Statute adopted by the General Assembly as an annex to resolution 428 (V) of 14 December 1950.³⁹ As described above, the main instrument governing rights of refugees and states' obligations towards them is the 1951 Convention relating to the Status of Refugees and its related 1967 Protocol. The 1951 Convention is significant in two aspects. First, although it was initially limited to refugees from Europe, it provides in its Article 1, a general definition of a refugee. A refugee is defined as..

³⁷ J. Vrachnas, K. Boyd, M. Bagaric, P. Dimopoulos, *Migration and Refugee Law*, Cambridge University Press, 2005, pp.172-173.

³⁸ UNHCR was created as a subsidiary organ of the UN General Assembly.

³⁹ C. Lewis, *UNHCR's Contribution to the Development of International Refugee Law: Its Foundations and Evolution*, Oxford University Press, 2005, p.69.

“...someone outside his or her own country and unable to return as a result of a well founded fear of persecution on grounds of race, religion, nationality, political opinion or membership of a social group, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

This means that people displaced within their borders do not come under the international legal definition of refugees. Second, it recognizes that people who fall within the refugee definition should benefit from certain rights and that helping refugees should not simply be a question of international charity and political advantage. The Convention places obligations upon states which are party to it, the most fundamental of which is the principle of “*non-refoulement*”.⁴⁰

UNHCR contributes to the development of international refugee law created by states that of customary international law on refugees, which is an important source of law since states that are not parties to the Convention neither its Protocol are still bound by relevant customary international law rules.⁴¹

The particular circumstances of refugee situations in some regions led States to elaborate special refugee instruments. The member States of the Organization of African Unity (OAU) concluded the Convention governing the Specific Aspects of Refugee Problems in Africa in 1969, and Central American States, Mexico and Panama agreed on the Cartagena Declaration in 1984. Both instruments take the 1951 Convention refugee definition as their starting point, recognizing its applicability to the specific circumstances in the respective regions, while explicitly including those fleeing generalized violence or other events seriously disturbing public order. Most recently, the Asian-African Legal Consultative Organization agreed in June 2001 on a set of principles concerning the treatment of refugees, which revised and consolidated what are known as the Bangkok Principles. They are the result of more than six years of negotia-

⁴⁰ UNHCR, *The State of World's Refugees, 50 years of Humanitarian Action*, 2000, p.2

⁴¹ *Ibid*, *Supra note*, p.85.

tions and for many countries in Asia represent the only agreed, albeit non-binding, statement of refugee protection principles which applicable regionally.⁴²

Primary the responsibility for protecting and assisting refugees lies with states, particularly the countries of asylum to which refugee flee. The UNHCR has also an important role in promoting and monitoring states adherence to the Convention and enabling them to offer adequate protection to the refugees on their territory.⁴³ While the international community has addressed the refugee problem in a more consistent and global manner since 1950, there has always been tension between different actors involved in responding to the problem of forced displacement. The UNHCR core mandate has not changed since 1950. The protection of refugees and the search for solutions to the problems of refugees remain the central objectives of the organization. But the environment in which the Agency works and the types of activities undertaken by the organization have changed significantly over the last 55 years.

4.1.2. New challenges after the end of Cold War: Internally displaced persons

The far reaching political consequences of the end of the Cold War added to the impact of another transformation which took shape in the 20th Century. When the Convention was adopted in 1951, the European Refugees on which it focused were mainly people fleeing actual or feared persecution from totalitarian governments or people displaced by fascism. However, political repression and massive human rights violations continue to be significant elements of today's displacement.

In the 1990s major increase in international humanitarian action and the increased willingness of the international community contributed to introduce innovative features to cope with the changed agenda. International community in the new political environment had some difficulties to find the right solution for intervening in new conflicts, where the common feature seemed to be gross and massive violation of human rights and international humanitarian law. Yet the human suffering, ethnic cleansing,

⁴² UN General Assembly A/AC.96/951, 13 September 2001.

genocide and urgent crises have contributed to reviewed humanitarian agenda and protection measures in international diplomacy. Much of the armed conflicts from the 1990s onwards have proved particularly dangerous for civilians, as shown by the scale of displacement. The nature of conflict began to change, from superpower confrontation via client states to dozens of more localized, internal struggles. Although targeting of civilian populations is not a new phenomenon in the longer perspective of human history, what distinguished the 1990s from earlier decades was the weakening of central governments in countries that had been shored up by superpower support and the consequent proliferation of identity-based support conflicts, many of which have engaged whole societies in violence. The prevalence of civil wars and failed states resulted in the vast humanitarian crisis and serious violation of human rights. This type of conflicts has helped produce far larger numbers of internally displaced victims.

The internally displaced persons (IDPs) are defined as ..

“.. civilians, individuals or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict or persecution, situations of generalized violence and human rights abuses or natural or human-made disasters and who have not crosses an internationally recognized State border.”⁴⁴

As they are not crossing international frontier they are not classified as refugees and thus not able to access the safeguards and assistance afforded to the refugees.⁴⁵ Primary responsibility for protecting internally displaced persons, and all persons within their own country, rests with the national authorities of the country. National responsibility is a core concept of any response to internal displacement. It is a fundamental operating principle of the international community and is routinely emphasized by governments themselves, as a function of their sovereignty. Yet, it is sometimes the very governments responsible for protecting and assisting their internally displaced populations that

⁴³ *Ibid.*

⁴⁴ UNHCR, *Guiding Principles on Internal Displacement, 1998, UN Doc. E/CN.4/1998/53/Add2(1998)*

⁴⁵ UNHCR, *Internally displaced persons, Questions and Answers, 2006, Geneva.*

are unable or even unwilling to do so, and might even be directly involved in forcibly uprooting civilians. Even then, however, the role of international actors is to reinforce, not replace, national responsibility. This requires a two-pronged approach of encouraging States and other authorities to meet their protection obligations under international law while also supporting the development of national and local capacities to fulfill these protection responsibilities. Although, international law does not specifically address the plight of internally displaced persons, this does not mean that they are not protected under the law. In fact, the following three bodies of law provide a comprehensive legal framework for protection in all situations of internal displacement, including during armed conflict: international human rights law; international humanitarian law; and international criminal law.⁴⁶

In the past, internally displaced people received limited assistance or sometimes none at all. The International Committee of the Red Cross - as the guardian of the Geneva Conventions - has been active in this field for many decades. Other agencies and governments began a wider debate in the late 1990s and in 2005 - acknowledging a widespread failure to adequately help internally displaced civilian and adopted a more practical approach to helping this huge and particularly vulnerable group.⁴⁷ As part of that process the Guiding Principles on Internal Displacement⁴⁸ were adopted in 1998 - a set of 30 recommendations, which define who IDPs are; outline the large body of existing international law protecting people's basic rights; and describe the responsibility of states. The Guiding Principles on Internal Displacement bring together in one document the main rules of international law, drawn from international human rights law and international humanitarian law, and, by analogy refugee law⁴⁹ that are relevant to protec-

⁴⁶ UNHCR, *Handbook for the protection of Internally displaced persons*, Provisional Release, 2007, Geneva.

⁴⁷ *Ibid*, *Supra* note 42.

⁴⁸ *Prepared by the Representative of the UN Secretary-General on Internally Displaced Persons, at the request of the UN General Assembly and UN Commission on Human Rights*, UN Doc. E/CN.4/1998/53/Add.2.

⁴⁹ Refugee law does not directly apply to IDPs. However, given its focus on issues arising during displacement, some of its principles are instructive by analogy, in particular that of *non-refoulement*, the core principle of international refugee law, which prohibits forcible return of refugees to a place where their lives or freedom would be at risk. In fact, this principle has its basis in human rights law, particularly the rights to freedom of movement, life, liberty, and protection against torture or cruel, inhuman and

tion in situations of internal displacement. The Guiding Principles set out the rights of IDPs and the responsibilities of States and other authorities towards them. Although not legally binding, they constitute a comprehensive minimum standard for the treatment of IDPs and are being applied by a growing number of states and institutions. They may also help empower IDPs themselves by providing them with information about their rights as citizens of their own country.

4.2. *The right to return in International Refugee Law*

The right to return is included in the refugee law. The cornerstone of international protection is the principle of voluntariness with the respect to the return of refugees and prohibition of expulsion or involuntary return of a refugee which follows directly from the principle of *non-refoulement*.⁵⁰ The notion/principle of *non-refoulement* is found in Article 33 of the 1951 Convention and is the most significant contribution to the development of customary international law on refugees. The principle of *non-refoulement* is a concept which prohibits states from returning a refugee or asylum-seeker to territories where there is a risk that his/her life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion⁵¹. The successful evolution of the principle into a norm of customary international law is evidenced also by the Statement in the Declaration of State parties in connection with the Global Consultations process⁵² and in the later Agenda for Protection⁵³.

degrading treatment. On these grounds, IDPs similarly have the right to be protected against forcible return or resettlement to a place where their life, safety, liberty and/or health would be at risk.

⁵⁰ *Ibid.*

⁵¹ *Ibid, Supra note 34.*

⁵² In response to the numerous challenges confronting refugee protection for States, as well as for the UNHCR and on the occasion of the 50th anniversary of the *1951 Convention relating to the Status of Refugees*, UNHCR set in train, in December 2000, the *Global Consultations on International Protection*. The purpose was to provoke both reflection and action to revitalize the 1951 Convention framework and to equip States better to address the challenges in a spirit of dialogue and cooperation.

⁵³ Following the final Global Consultations, UNHCR completed in 2002 an Agenda for Protection deriving from the entire Global Consultations process. The Agenda is the first comprehensive framework for

As Boling⁵⁴ noted, the juridical source of refugees' right of return in refugee law is human rights law, while actual implementation of the right of return is through the Office of the UNHCR. The purpose of international protection is not, however, that a refugee remains a refugee forever, but to ensure the individual's renewed membership of a community and the restoration of national protection, either in the country of origin or through integration elsewhere.⁵⁵

Moreover, UNHCR mandate expanded from that of an agency whose sole purpose was to secure asylum for refugees and prevent involuntary return to one of providing humanitarian assistance to large numbers of IDPs and other war affected people⁵⁶, and thus the right to return has been also included in Guiding Principles on Internal Displacement. In its principle 28 special attention is brought on the responsibility of competent authorities to establish the conditions for facilitating the return and at the same time to ensure full participation of IDPs in the planning of their return, resettlement and reintegration.⁵⁷

4.2.1. The principle of voluntariness

As mentioned before, the principle of voluntariness represents the foundation of international protection with respect to the return of refugees. While the issue of voluntary repatriation as such is not addressed in the 1951 Refugee Convention, it follows directly from the principle of *non-refoulement*: the involuntary return of refugees would in practice amount to *refoulement*. A person retaining a well-founded fear of persecution is a refugee, and cannot be compelled to repatriate. However, the Convention

global refugee policy in five decades, combining clear goals and objectives with suggested activities to strengthen refugee protection.

⁵⁴ *Ibid. Supra note 45.*

⁵⁵ *Ibid, Supra note 27.*

⁵⁶ UNHCR, *The State of the World's Refugees 2006*, UNHCR, Geneva, Chapter 7.

⁵⁷ Guiding Principles on Internal Displacement SECTION V – Principles Relating to Return, Resettlement and Reintegration Principle 28: 1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons. 2. Special efforts should be made to ensure the full participation

makes clear that refugee status is a transitory condition which will cease once a refugee resumes or establishes meaningful national protection.⁵⁸ Article 1 C explicitly defines the various situations in which the cessation of refugee status is warranted. When relating to voluntary repatriation, one may broadly distinguish two categories of cessation clauses. Paragraphs (1), (3) and (4) of Article 1 C reflect a change in the situation of the refugee that has been brought about by himself, namely:

- voluntary *re-availment* of national protection;
- voluntary *re-acquisition* of nationality;
- voluntary *re-establishment* in the country where persecution was feared.⁵⁹

Voluntary repatriation, when feasible, is widely recognized as the most desirable durable solution. It requires, however, a high level of political engagement to resolve often complex and protracted situations in countries of origin, as well as a commitment to fostering a favorable socio-economic and legal framework conducive to safe and dignified return.⁶⁰ Return in safety is referred to..

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

The concept of dignity is less self-evident than that of safety. In practice, elements of return with dignity must include that..

“..refugees are not manhandled; that they can return unconditionally and that if they are returning spontaneously they can do so at their own pace; that they are not arbitra-

of internally displaced persons in the planning and management of their return or resettlement and reintegration. See also Guiding Principles 29 and 30.

⁵⁸ *Ibid. Supra note 27.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

*rily separated from family members; and that they are treated with respect and full acceptance by their national authorities, including the full restoration of their rights.”*⁶¹

Successful implementation of this principle may require a combination of measures by different actors, ranging broadly from confidence-building measures, through legal and judicial capacity-building activities to the conclusion of formal voluntary repatriation agreements, the setting up of effective returnee monitoring arrangements and the design of targeted reintegration packages in the country of origin.

⁶¹ *Ibid.*

Part II

The case study of Bosnia and Herzegovina

1. Causes of refugee displacement in Bosnia and Herzegovina

1.1. Outbreak of the conflict in 1991-1992

The general situation in Yugoslav politics at the end of 1990 was very tense. Nationalist politicians swept to victory in a series of elections in 1990 and 1991. This period brought to power in all six Yugoslav republics the individuals and political parties who would soon prosecute the wars of Yugoslavia's breakup. The struggle between Serbia on the one hand and Slovenia and Croatia on the other had intensified in the second half of the year. By early 1991 Slobodan Milosevic was openly declaring that if there were to be any attempt to replace the federal structure of Yugoslavia with some confederal agreement, he would seek to annex areas of Croatia and Bosnia and Herzegovina.

Although the Yugoslav crisis was one of the most predictable ever, the efforts by the international community⁶² to stop the fighting have proved unsuccessful. The violent break-up of the Socialist Federal Republic of Yugoslavia⁶³ had devastated consequences and resulted in the largest refugee crisis in Europe since the Second World War.

It was June 1991 when two republics of the former structure, namely Croatia and Slovenia declared their independency from Yugoslavia. Afterwards some serious hostility began in Croatia which had a minority population of over half a million Serbs. Following Croatia's declaration of independence, the Yugoslav army and Serb paramilitaries rapidly seized control of a third of Croatian territory. It was in Croatia that the violent phenomenon which became known as "ethnic cleansing" first became evident. At first, thousands of Croats were expelled from areas which fell under Serb control. Subsequently, in the mid of 1995 thousands of Serbs were forced from their homes by Cro-

⁶² In August 1992, the EC established an arbitration Commission, known as *Badinter Commission*, to determine the criteria under which Yugoslav successor states could gain European recognition and a peace conference for Yugoslavia under the chairmanship of Lord Carrington, later renamed into International Conference on the Former Yugoslavia.

tian forces. In Croatia, in 1991-1992 alone, some 20,000 people were killed, more than 200,000 refugees fled the country, and some 350,000 became internally displaced.⁶⁴

In 1992, the war spread to neighboring Bosnia and Herzegovina, with even more devastating consequences. Bosnia and Herzegovina was the most ethnically mixed of all the republics of the former Yugoslavia. According to the 1991 census, BiH had 4.4 million inhabitants⁶⁵, of which 43.7 per cent were Bosniak (or Muslim), 31 per cent were (Bosnian) Serbs, 17.3 per cent were (Bosnian) Croats and 7.6 per cent were other nationalities. The population is similarly split along religious lines: Bosniaks are Muslim, Serbs are Orthodox Christian, and Croats are Roman Catholic. The remainder of the population is made up of some seventeen “national” minority groups, the largest of which is the Roma.⁶⁶ It is important to note that by the late 1980s 30 per cent of marriages in urban districts were mixed marriages.⁶⁷ The 1991 census also indicate that Bosnian Serbs were distributed throughout 94.5 per cent of the territory, Bosniaks through 94 per cent and Croats through 70 per cent; and that they were everywhere so densely intermingled that territorialization, on whatever criteria it was carried out, could only demonstrate the falsity of the assertion that BiH was an artificial construct of three elements. It had never had separate ethno-religious territories.⁶⁸

⁶³ See attachment 1.

⁶⁴ W.J. Durch, *Twenty-first Century Peace Operations*, The United States Institute for Peace, Washington 2006, pp.53-60.

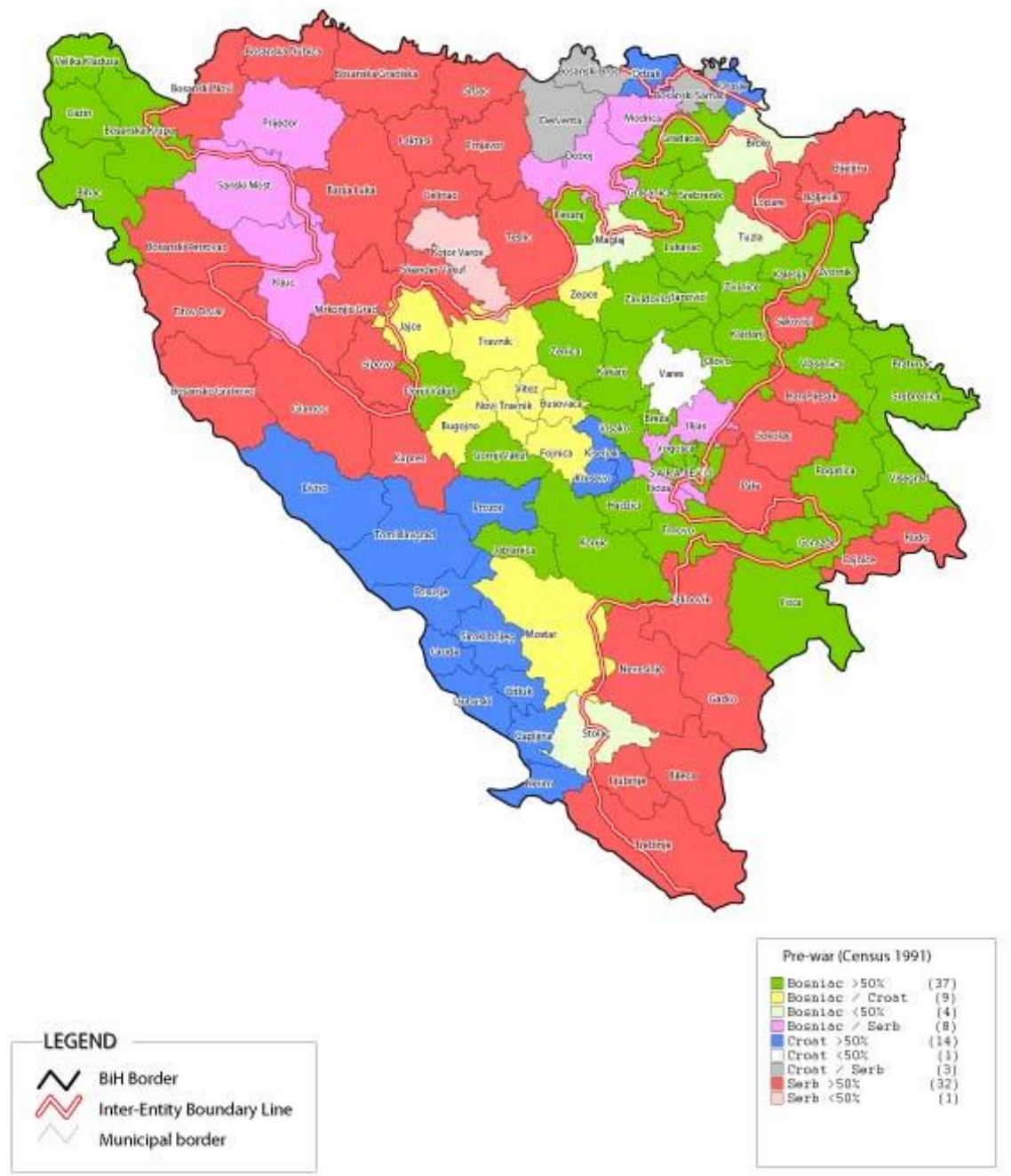
⁶⁵ There has been no census since the war, and therefore there are no official statistics on the current ethnic make-up of the country. However, best estimates place the population at about four million people. (<http://www.oscebih.org/overview/default.asp?d=7>)

⁶⁶ OSCE, <http://www.oscebih.org/overview/default.asp?d=7>

⁶⁷ N. Malcom, *Bosnia, A short history*, Papermac 1996, p.222

⁶⁸ B. Mangas; I. Zanic; N. Malcolm, *The war in Croatia and Bosnia-Herzegovina 1991-1995*, Frank Cass 2001, p. 144.

POPULATION STRUCTURE IN BiH - Census 1991



Map 1: Population structure after 1991 census in BiH.⁶⁹

⁶⁹ Source, UNHCR. Available at www.unhcr.ba

When Bosnia and Herzegovina declared its independence in March 1992, the government of Serbia, led by President Slobodan Milosevic, vowed to fight on behalf of the Serb minority population there. On 6 April 1992 Bosnia was recognized as an independent state by the European Community. In the beginning of April, Serbian paramilitary forces moved into the eastern part of the republic and began killing or expelling Muslim and Croat residents.⁷⁰

At about the same time, Serb forces from the Yugoslav army took to the hills surrounding the Bosnian capital Sarajevo and began attacking it with artillery. By the end of April 1992, 95 per cent of the Muslim and Croat populations in the major towns and cities of eastern Bosnia had been forced from their homes and Sarajevo was under daily bombardment. By mid-June, Serb forces controlled two-thirds of Bosnia and Herzegovina and approximately one million people had fled their homes. In the early stages of the war, Muslims and Croats in BiH fought together against the Bosnian Serbs, but in early 1993, fighting broke out between Bosnian Croats and Bosnian Muslims. Another round of “ethnic cleansing” began, this time in central Bosnia. Bosnian Croat forces, backed by Croatia, attempted to create an ethnically pure part of territory adjoining Croatia. Although tensions between them continued, fighting between Bosnian Croat forces and the mainly Muslim Bosnian government forces came to an end in March 1994, with the signing of the Washington Agreement and the creation of a Muslim–Croat Federation. The war in BiH was by far the largest and bloodiest of the wars of Yugoslav succession. By the time the war ended in December 1995, over half the 4.4 million people of Bosnia and Herzegovina were displaced. An estimated 1.3 million were internally displaced and some 500,000 were refugees in neighboring countries. In addition, around 700,000 had become refugees in Western Europe.⁷¹

⁷⁰ *Ibid*, *Supra* note 2.

⁷¹ UNHCR, www.unhcr.ba

1.2. Reaction of international community on humanitarian and refugee crisis

These massive population movements and the extensive media coverage of the horrors of the war prompted one of the largest international relief operations ever mounted. In October 1991, in the midst of the population displacement taking place in Croatia, the Yugoslav authorities requested UN assistance and to bring relief to needy internally displaced people affected by the conflict and to coordinate humanitarian action in the region.

With the resolution 757 (on 30 May 1992) the Security Council (SC) demanded that all parties create the conditions necessary for unimpeded delivery of humanitarian supplies to BiH, including the establishment of a security zone encompassing Sarajevo and its airport. United Nations Protection Former Yugoslavia⁷² (UNPROFOR) pursued negotiations with the parties to the conflict aimed at stopping the fighting around the airport and reopening it for humanitarian purposes. On 6 June 1992, the Secretary-General reported to the Council that UNPROFOR had negotiated an agreement for the handing over of the Sarajevo airport to the Force. On 29 June 1992, by resolution 761, the UN SC authorized deployment of additional elements of UNPROFOR to ensure the security and functioning of the airport. By 3rd July, despite continued fighting in the area, UN observers and troops were deployed at the airport and at other locations in Sarajevo, and the airport was reopened for the humanitarian airlift. In resolution 776, which was adopted on 14 September 1992, the Security Council approved the Secretary-General's report, in which he recommended the enlargement of UNPROFOR's mandate and strength in BiH. He proposed that UNPROFOR's task would be to support efforts by the UNHCR to deliver humanitarian relief throughout BiH, and in particular to provide protection, at UNHCR's request, where and when UNHCR considered such protection necessary. In addition, UNPROFOR could be used to protect convoys of re-

⁷² Initially, established in Croatia UNPROFOR's mandate was to ensure that the three "United Nations Protected Areas" (UNPAs) in Croatia were demilitarized and that all persons residing in them were protected from fear of armed attack. However, it was envisaged that after the demilitarization of the UNPAs, 100 UNPROFOR military observers would be redeployed from Croatia to certain parts of BiH. In light of the deteriorating situation in BiH the Secretary-General decided to accelerate this deployment by sending 40 military observers to the Mostar region on 30 April 1992.

leased civilian detainees if the International Committee of the Red Cross (ICRC) so requested and if the Force Commander agreed that the request was practicable.⁷³ The peacekeeping operation in former Yugoslavia has changed significantly as it was supplemented with so-called “mandated humanitarian action”.⁷⁴ Beside the military and political dimension, the humanitarian dimension became a crucial part of the peacekeeping operation.

Unable to agree on how to end the conflict, the international community focused much of its energy on supporting the humanitarian relief operation led by UNHCR⁷⁵. For the first time in its history, UNHCR coordinated—in the midst of an ongoing war—a large-scale relief operation to assist not only refugees and internally displaced people, but also hundreds of thousands of other war-affected civilians.⁷⁶ Governments offered large amounts of funding for the relief operation, but were able to find a consensus on little else. The humanitarian operation increasingly became the only visible response of the international community to the war.⁷⁷

In a further development, the Security Council, on 9 October 1992, adopted its resolution 781 banning all military flights (“no-fly zone”) in the airspace of BiH. In February 1993, the Secretary-General's report noted that the Force had succeeded in keeping Sarajevo airport open despite of hostile military action against humanitarian aircraft. In the period from 3 July 1992 to 31 January 1993, the humanitarian airlift organized by UNHCR under UNPROFOR protection brought in 2,476 aircraft carrying 27,460 tons of food, medicines and other relief goods. The operation to protect humanitarian convoys throughout BiH had been made impossible by obstruction, mines, hostile fire and the refusal of the parties on the ground (particularly, but not exclusively, the Bosnian Serb party), to cooperate with UNPROFOR.⁷⁸

⁷³ United Nations, http://www.un.org/Depts/dpko/dpko/co_mission/unprof_b.htm.

⁷⁴ Sterbenc P., *Odnos Varnostnega sveta OZN do krize v Bosni in Hercegovini: (september 1991-september 1994)*, 1995, Fakulteta za družbene vede, Ljubljana, p.19.

⁷⁵ After May 1992 the role of UNHCR became central as the UN humanitarian agency began delivering thousands of tones of relief supplies by air to Sarajevo, and by road to destinations throughout the country.

⁷⁶ United Nations, http://www.un.org/Depts/dpko/dpko/co_mission/unprof_b.htm.

⁷⁷ UNHCR, *The State of Worlds refugees, 50 years of Humanitarian Action*, 2000, pp.218-225.

⁷⁸ United Nations, http://www.un.org/Depts/dpko/dpko/co_mission/unprof_b.htm

1.3. Displacement during the war, ethnic cleansing and the creation of “safe areas”

As ethnic cleansing continued to produce waves of refugees and internally displaced people, the international community looked for new ways of protecting civilians to avoid the outflows.

At the beginning of 1993, a critical situation developed in eastern Bosnia, which had largely been emptied of non-Serbs, except for three small pockets of territory around Srebrenica, Zepa and Gorazde. These enclaves were crowded with Muslims, many of whom had fled there from the surrounding countryside. They were defended by poorly armed Bosnian government soldiers and surrounded by Bosnian Serb forces. The situation in Srebrenica became increasingly intolerable. In mid-March, UN reported that thousands of Bosnian Muslims were seeking refuge in Srebrenica and that 30 to 40 persons were dying daily from military action, starvation, exposure to cold or lack of medical treatment. In April the same year, after Bosnian Serb shelling had killed 56 people during a UN-organized evacuation from Srebrenica, the Security Council adopted resolution 819 declaring the enclave to be a UN-protected ‘safe area’ and called on UNPROFOR to increase its presence there.⁷⁹ On 6 May 1993, the SC adopted Resolution 824 in which it demanded that all parties also declaring Sarajevo, Tuzla, Zepa, Gorazde, Bihac and its surroundings as a “safe areas”⁸⁰. The Council declared that in those areas armed attacks must cease, all Bosnian Serb military or paramilitary units must withdraw and all parties must allow UNPROFOR and the international humanitarian agencies free and unimpeded access to all safe areas. On 4 June 1993, the Security Council, by its resolution 836 further expanded the mandate of UNPROFOR to enable it to protect the safe areas. The Council authorized UNPROFOR, acting in self-defense, to take necessary measures, including the use of force, in reply to bombardments against the safe areas; to

⁷⁹ See UN SC Res 819, available at <http://daccessdds.un.org/doc/UNDOC/GEN/N93/221/90/IMG/N9322190.pdf?OpenElement>.

⁸⁰ Also referred as safe havens, security zones or protected areas.

armed invasion into them; in the event of any deliberate obstruction to the freedom of movement of UNPROFOR or of protected humanitarian convoys.⁸¹

The safe areas were established without the consent of the parties to the conflict and without the provision of any credible military deterrent. Although the UN Secretary General had warned that an additional troops would be required “to obtain deterrence through strength”, governments were not willing to provide large number of troops. The SC deployed additional 7,500 peacekeepers for this task⁸². UNPROFOR troops were permitted to use force only in self-defense, and not in defense of the civilians they had been sent to protect. This was eventually to prove entirely inadequate. As UN Secretary General Kofi Annan later acknowledged, the areas designated by the UN Security Council as safe areas were in fact “*neither protected areas nor safe havens in the sense of international humanitarian law, nor safe areas in any militarily meaningful sense*”.⁸³

Since the safe areas contained not only civilians but also Bosnian government troops, the Bosnian Serb forces considered them to be legitimate targets in the war. They often shelled them and subjected them to sniper fire. On many occasions, attacks carried out by Bosnian Serb forces were in response to attacks made out of the safe areas by Bosnian government troops. The Bosnian Serb authorities denied the people living in the safe areas freedom of movement through Serb-controlled territory, and frequently prevented humanitarian organizations from reaching them. The safe areas provided some refuge for vulnerable civilians, but they also became areas of confinement where civilians were trapped.⁸⁴

Meanwhile, as the international community focused on the safe areas, little attention was given to the plight of any remaining non-Serbs living in Serb-held territory. As a result these people became even more vulnerable to ‘ethnic cleansing’. Throughout the war, it remained unclear whether the primary aim of the safe areas was to protect territory or people. In his report on 9 May 1994, the Secretary-General stressed that the intention of safe areas is primarily to protect people and not to defend territory and that

⁸¹ *Ibid*, *Supra* note 13.

⁸² *Ibid*, *Supra* note 13.

⁸³ The detailed report of Secretary-General on the fall of Srebrenica available on <http://www.un.org/Docs/journal/asp/ws.asp?m=A/54/549>.

⁸⁴ UNHCR, *The state of the World Refugees*, 1996, Geneva, pp. 222-224.

UNPROFOR'S protection of these areas is not intended to make it a party to the conflict and that the mandate must take into account UNPROFOR's resource limitations and the conflicting priorities that inevitably arise from unfolding events.⁸⁵ He believed that safe areas could be made more effective and manageable but were not a long-term solution to the fundamental conflict in BIH. This ambiguity led to misunderstandings and created many false expectations. As UN Secretary-General Kofi Annan acknowledged in November 1999 in a highly critical report on the United Nations' role in Srebrenica, by failing to admit that declaring particular places to be safe areas entailed a significant commitment to their defense, the UN Security Council resolutions in effect created a false sense of security.⁸⁶ On 11 July 1995, the Bosnian Serb army overran Srebrenica, taking hundreds of Dutch peacekeepers hostage and forcing some 40,000 people to flee. Meanwhile some 8,000 people, all of them Bosniak men or boys between the age 16 and 65 were killed by Bosnian Serb forces in the largest massacre in Europe since the Second World War. The former Secretary-General Kofi Annan in his final report on the fall of Srebrenica describes the scenes of barbarity occurred between 11 and 20 of July 1995 as "*scenes from hell, written on the darkest pages of human history*".⁸⁷ Three weeks after the fall of Srebrenica, Serb forces overran Zepa, another so-called safe area.

⁸⁵ *Ibid.*

⁸⁶ *Ibid, Supra note 83.*

⁸⁷ *Ibid.*

1.4. Dayton Peace Agreement

Four major peace plans were offered before and during the war; The Carrington-Cutileiro peace plan, resulted from the European Community (EC) Peace Conference held in February 1992 in an attempt to prevent Bosnia-Herzegovina sliding into war; in early January 1993, the UN Special Envoy Cyrus Vance and EC representative Lord Owen began negotiating a peace proposal with the leaders of Bosnia's warring factions. The proposal became known as the Vance-Owen peace plan, involved the division of Bosnia into ten semi-autonomous regions and received the backing of the UN; on August 20 1993, the U.N. mediators Thorvald Stoltenberg and David Owen unveiled a map that would partition Bosnia into three ethnic mini-states; between February and October 1994, the Contact Group (U.S., Russia, France, Britain, and Germany) made steady progress towards a negotiated settlement of the conflict in Bosnia-Herzegovina, known as a Contact Group plan.⁸⁸

During 1994 the military and humanitarian situation in BiH continued to worsen. Persistent bombardment of Sarajevo, deliberate obstructions of humanitarian relief convoys, attacks against UN personnel and other humanitarian organizations, heavy shelling of the safe area of Gorazde by Bosnian Serbs, on which NATO answered launching air strikes against Bosnian Serb positions. In August and September 1994 attacks escalated in the safe area of Sarajevo and were directed at residences, pedestrians and moving vehicles, such as trams packed with people. United Nations personnel were also targeted and suffered fatalities. Attacks both by Bosnian Serbs and Government forces on Sarajevo airport resulted in its frequent closure.⁸⁹ In October, the Bosnian Croat forces attacked the Bosnian Serb forces in the Bihac pocket. This and the ensuing counter-attack by the Bosnian Serbs induced terror in the local population and another massive exodus of refugees. On the diplomatic scene, all efforts to come to a cease-fire turned out to be to no avail, here again mostly because of Bosnian Serb obstruction. In March and May 1994, a peace agreement was mediated between the warring Bosnian Croats and the government of Bosnia and Herzegovina, and signed in Washington. The

⁸⁸*Ibid*, *Supra* note 2.

Washington Agreement created the Federation of Bosnia and Herzegovina. Under the agreement, the combined territory held by the Croat and Bosniak forces was divided into ten autonomous cantons.⁹⁰

In the mid-1995 a number of events dramatically changed the dynamics of the war. In May, the United Nations' credibility in BiH was further marked when hundreds of UNPROFOR soldiers were taken hostage by the Bosnian Serbs following airstrikes carried out by NATO at UNPROFOR's request. In July, as mentioned above the Bosnian Serb army overran the safe areas of Srebrenica and Zepa. In early August, the Croatian army launched 'Operation Storm', a massive military offensive involving more than 100,000 troops, in which it overran all Serb-controlled areas in the western and southern Krajina region of Croatia. As a result, some 200,000 Serb civilians fled, the majority of them going to the Federal Republic of Yugoslavia, while smaller numbers remained in Serb-controlled parts of Bosnia and Herzegovina. Then, on 28 August 1995, Bosnian Serb forces fired a shell into a busy market place in Sarajevo, killing 37 people and injuring dozens more. NATO responded by launching a two-week intensive air campaign against Bosnian Serb targets. Bolstered by the air strikes, Croatian and Bosnian government forces mounted a joint offensive in BiH to recapture Serb-held territory, taking back a third of the territory held by Bosnian Serb forces. Aware that they were losing territory by the day, Bosnian Serb officials accepted a ceasefire and agreed to attend peace talks in Dayton, Ohio.

The General Framework Agreement for Peace in Bosnia and Herzegovina (also known as the Dayton Peace Agreement) which resulted from these talks was signed in Paris on 14 December 1995 by the presidents of the Republic of BiH, the Republic of Croatia, and the Federal Republic of Yugoslavia. It was witnessed by the 'Contact Group' comprising, the US, the Russian Federation, Germany, UK and France. Although the agreement keeps Bosnia and Herzegovina united as a single state, it recognizes two entities: Republika Srpska and the Federation of Bosnia and Herzegovina (FBiH, the Muslim - Croat Federation). Dayton's mediators claimed that the agreement

⁸⁹ *Ibid*, *Supra* note 13.

⁹⁰ See the appendix 2.

was meant to achieve three objectives: to end the fighting; to establish a viable Bosnian state; to restore multiethnic Bosnian society.⁹¹



Map 2: BiH, political boundaries after Dayton Peace Agreement.⁹²

The agreement contained 11 annexes, with precise delineation of the cessation of hostilities, withdrawal of foreign forces, redeployment of forces, and prisoner exchanges. It contained detailed provisions for demilitarization of the former parties to the conflict and for the replacement of UNPROFOR by a 60,000-strong NATO led Implementation Force (IFOR).

⁹¹ *Ibid*, p.61.

⁹² Source: UNHCR, available at www.unhcr.ba.

Less attention, however, was given to the implementation of the civilian aspects of the peace agreement. For this purposes the Office of the High Representative (OHR) was created to coordinate the activities of organizations involved in the civilian aspects of the agreement and to monitor its implementation. The OHR received political guidance from the Peace Implementation Council (PIC) comprising 55 countries and international organizations that support the peace process and fund the OHR. (53 percent by the EU and 22 per cent by the US) A Steering Board meets regularly and issues communiqués concerned with the implementation of the Framework Agreement with regard to civilian aspects.⁹³

Aware that civil harmony and the repatriation of refugees would only take place under safe conditions, the Annex VI of the Framework Agreement laid down stringent ‘benchmarks’ for human rights and set up mechanisms such as the Commission on Human Rights and the Commission for Displaced Persons and Refugees. These benchmarks were slow to be met and which had a direct bearing upon the implementation of the provisions relating to the repatriation of refugees contained in Annex VII.

Annex VII of the agreement called on UNHCR ‘to develop in close consultation with asylum countries and the parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons’. Although the peace agreement stated that ‘all refugees and displaced persons have the right freely to return to their homes of origin’, it made no provisions to enforce such returns. Rather, it relied on the former parties to the conflict voluntarily to create an environment in which refugees could return ‘in safety, without risk of harassment, intimidation, persecution, or discrimination’.⁹⁴

⁹³ More about OHR implementation activities is available at www.ohr.int

⁹⁴ *Ibid*, *Supra* note 2.

Annex	Title	Key Implementers
1A	Military Aspects	NATO-Led Implementation Force
1B	Regional Stabilization	Organization for Security and Co-operation in Europe (OSCE)
2	Inter-Entity Boundary Line and Related Issues	International Arbitrator
3	Elections	OSCE
4	Constitution	European Court of Human Rights, International Monetary Fund
5	Arbitration	N/A
6	Human Rights	OSCE, Council of Europe
7	Refugees and Displaced persons	UN High Commissioner for Refugees
8	Commission to Preserve National Monuments	UN Educational, Scientific, and Cultural Organization
9	Bosnia and Herzegovina Public Corporations	European Bank for Reconstruction and Development
10	Civilian Implementation	Office of the High Representative
11	International Police Task Force	United Nations

Table 1: General Framework Agreement for Peace (Dayton Agreement), Annexes with Key Implementers

The military provisions of the agreement were successfully implemented and there have been no clashes between the military forces of either side since the agreement was signed. On the civilian side, however, the agreement left the nationalist leaders in power on both sides, undermining, among other things, prospects for reconciliation amongst the different ethnic groups and the possibility for displaced people and refugees to return to the areas from which they were ethnically cleansed during the war.⁹⁵

The number of civilian deaths in the war, almost 150.000, is appalling. The four years of conflict has resulted in the largest displacement of people occurred in Europe

⁹⁵ *Ibid, Supra note 2.*

since World War II. At the end of the war more than 2.2 million people had been uprooted, forced to flee from their homes, where 1.2. Million had fled across the border, seeking asylum in the neighboring countries as well as in some West European host states and approximately one million had become internally displaced.⁹⁶



* The figures for other European countries are from Sept. 1996 and are based on information made available to UNHCR by governments (Humanitarian Issues Working Group, HIWG96/6, 11 Dec. 1996).

Map 3: Refugee displacement in neighboring countries, 1996.

In spite of strong pressure from a public opinion, the measures adopted by the international community have been for too long restricted to the protection of humanitarian aid convoys and the enforcement of sanctions. The lack of a clear political objective and different views on the character of the conflict were undoubtedly the factors of

⁹⁶ *Ibid*, *Supra* note 1.

avoiding military action.⁹⁷ Peace-enforcement appeared to be one possibility, although the political, military and financial costs of intervention against well-armed Serbian forces were not being ignored.⁹⁸

2. The right to return of refugees in BiH, Annex 7 of GFAP

The emergence of a discourse on the right to return has resulted from a context in which warring parties have been seen as directly pursuing displacement of particular ethnic groups of people as a principal war aim. The conflict in BiH has been seen as a war of ethnic cleansing and it was characterized by the fact that forced displacement of populations was not a mere feature, but its principal objective. Throughout the conflict, population transfers, population exchanges, deportations, expulsions and forced evictions have been carried out by the parties on a massive and systematic scale. Following the displacements, areas have been repopulated with persons from a different ethnic background.⁹⁹ The policies and practices of ethnic cleansing violate fundamental obligations binding on all the parties to this conflict under humanitarian and human rights law. Under humanitarian law, ethnic cleansing and the individual atrocities accompanying the removal of populations constitute a crime against humanity and a grave breach of the Geneva Conventions¹⁰⁰ applicable in internal armed conflicts. According to International Criminal Tribunal for the Former Yugoslavia¹⁰¹ (ICTY), in general, the

⁹⁷ SIPRI, *SIPRI yearbook 1993: world armaments and disarmament*. Oxford University Press, Oxford, 1993, p.92.

⁹⁸ *Ibid*, p.56.

⁹⁹ C. Meindersma, *Population Exchanges: International Law and State Practice, Part II*, in *International Journal of Refugee Law*, Vol.9 No.4, 1997,p. 615.

¹⁰⁰ Violation of common Article 3 of the Geneva Conventions applicable in internal and international conflict, which enshrines a minimum humanitarian standard of treatment for persons not taking part in the hostilities,

¹⁰¹ Following widely publicized and credible reports by the media and different human rights organizations and by representatives of the international community about widespread atrocities committed in the framework of practices of ethnic cleansing, including rapes allegedly committed on a systematic basis and as a policy, in particular by Bosnian Serb forces, international community insisted on the punishment of those responsible for such serious violations. As a consequence the UN SC establishes in Resolution 780 (1992) a Commission of Experts to inquire into alleged violations which later publishes a very extensive report. But it goes further, by establishing in Resolution 827, the International Criminal Tribunal for the former Yugoslavia (ICTY). This resolution was passed on 25 May 1993 (while the war was still going

atrocities committed during the course of carrying out ethnic cleansing constitute war crimes, while the policy of ethnic cleansing would constitute a crime against humanity and entail the individual criminal responsibility of the perpetrator.¹⁰² War crimes and crimes against humanity are also recognized as crimes under customary international law. Under international human rights law, ethnic cleansing and types of actions it entails violate the most basic rights of the human person, such as the prohibition of genocide, racial discrimination, the right to life and the prohibition of torture.¹⁰³ As mentioned, war crimes are understood to mean serious violations of international humanitarian law committed during international or non-international armed conflicts where it is important to note that one single act may constitute a war crime. The following acts are, among others, included in the definition of war crimes: willful killing of a protected person (e.g. wounded or sick combatant, prisoner of war, civilian); torture or inhuman treatment of a protected person; willfully causing great suffering to, or serious injury to the body or health of a protected person; attacking the civilian population; unlawful deportation or transfer; using prohibited weapons or methods of warfare; killing or wounding perfidiously individuals belonging to a hostile nation or army; pillage of public or private property.¹⁰⁴ ICTY consider a crime against humanity, any of the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds: murder, extermination (any act or omission resulting in a mass killing event, including participation in planning); enslavement (the exercise of any powers attaching to the right of ownership over a person); deportation (involuntary evacuation from a territory of residence by threat of physical force); imprisonment (arbitrary deprivation of liberty without due process of law); torture (act or omission resulting in severe pain or suffering, deliberate, and aimed at obtaining information or a confession, or to punish any victim or a third person); rape (sexual penetration, however slight, with knowledge it occurs

on) in the face of the serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

¹⁰² *Ibid*, *Supra* note 27, pp. 619-620. See also UN SC Res. 666.

¹⁰³ *Ibid*, *Supra* note 27, p. 632.

¹⁰⁴ www.icrc.org/web/eng/siteeng0.nsf/iwpList2/Humanitarian_law:International_criminal_jurisdiction?OpenDocument.

without consent); persecution on political, racial and religious grounds; other inhumane acts (a residual category for whatever has damaging effects on the victim).¹⁰⁵

During the conflict in BiH many attempts were made to find a peaceful solution of the conflict¹⁰⁶, to stop the policy of ethnic cleansing and to make the return of IDPs and refugees possible. The UN SC affirmed in many resolutions that the practice of ethnic cleansing is unlawful and unacceptable and insisted that all displaced persons enabling to return to their former homes in safety and dignity.¹⁰⁷ The solution of the conflict was after almost four years of fighting finally reached in Dayton in 1995 where the GFAP was signed. At the end of the war more than 2.2 million people had been uprooted, forced to flee from their homes, where 1.2 million had fled across the border, seeking asylum in the neighboring countries as well as in some West European host states and approximately one million had become internally displaced.¹⁰⁸

The return was made a central element in resolving the conflict, with Annex 7 of the GFAP Agreement on Refugees and Displaced Persons¹⁰⁹, stating that the early return and reintegration of refugees and DPs is an important objective of settlement of the conflict and is an integral part of the peace-building effort,¹¹⁰ and mandated the international community and the parties to agreement to make this right concrete. As Rosand noted¹¹¹, although the existence of a right to return for displaced people was not new, it was new that international community determined in a peace treaty that they should be able to exercise the right to return to their homes of origin, reflecting what were seen as new circumstances that led to displacement in the first place and entrusted the UNHCR to lead and coordinate the international action to ensure it¹¹². Traditionally work of the

¹⁰⁵ ICTY, <http://www.un.org/icty/cases-e/factsheets/achieve-e.htm#4>

¹⁰⁶ See the Peace Proposals for a Settlement in the Former Yugoslavia in 1992 convened in London, The Vance-Owen Plan proposed in March 1993, The Owen-Stoltenberg or Invincible Plan proposed in September 1993, and the Washington Agreement between Bosnian Croats, Croatia and BiH signed in March 1994.

¹⁰⁷ See UN SC res. 787, UN SC res. 859 and UN SC res. 836.

¹⁰⁸ *Ibid*, *Supra* note 1.

¹⁰⁹ See appendix 3.

¹¹⁰ *Ibid*, *Supra* note 3.

¹¹¹ R. Black, S. Gent, *DRC on Migration, Globalization and Poverty,, Defining Measuring and Influencing Sustainable Return*, 2004, p.10.

¹¹² GFAP (1995) Annex 7, Art.3.

UNHCR was limited to repatriation to the country of origin and did not go as far as to ensure that each refugee was returning to his or her own home.¹¹³

There are a number of reasons why resolving displacement is inextricably linked with achieving peace. Helping displaced populations to return and reintegrate can simultaneously address the root causes of a conflict and help prevent further displacement. Specifically, the return of displaced populations can be an important sign of peace and the end of conflict; repatriation can play an important part in validating the post-conflict political order, for example by legitimizing elections; the return of the displaced can be a pre-condition for peace if they are politically active.¹¹⁴

The basis for the right to return for refugees and displaced persons in BiH, apart from the general obligations under international law, is found in the Annex 7 article 1 of GFAP, which states:

“...all refugees and displaced persons have the right freely to return to their homes of origin.”

In support of this central right of individuals to return to their homes, parties to the treaty are expected to ensure that returnees do not face *“harassment, intimidation, persecution or discrimination, particularly on account of their ethnic origin, religious belief or political opinion”* and they are asked to respect human rights and fundamental freedoms of all persons within their jurisdiction.¹¹⁵

The context of the right to return in BiH set forth in Dayton Peace Agreement is linked with the two basic elements of international human rights law:

- the freedom of movement and
- property repossession.

¹¹³ *Ibid*, *Supra* note 41.

¹¹⁴ Brookings-Bern Project on Internal Displacement for the Swiss Federal Department of Foreign Affairs, *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building*, 2007, available at www.unhcr.com.

¹¹⁵ The GFAP (1995), Annex 7, art.1.

2.1. Freedom of movement

As issues of freedom of movement were central to the conflict in BiH, the DPA provided for respect of this right. As already discussed in previous Chapters, the right of freedom of movement is also defined in Art. 13 of Universal Declaration of Human Rights and in other human rights instruments such as in European Convention on Human Rights Protocol IV Arts.2 and 3.¹¹⁶ As defined in art.13 of Universal declaration this right includes the right to leave a country and to return to one's country, as well as the right to internal freedom of movement and choice of residence. The right has since been included, in one form or another, in a number of international conventions and in the constitutions and laws of many states. The most important binding international instrument containing the right to freedom of movement is the International Covenant on Civil and Political Rights (ICCPR). In Article 12, the ICCPR requires that *"Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant. No one shall be arbitrarily deprived of the right to enter his own country."*¹¹⁷

Moreover, cleansing a territory of members of other ethnic groups directly violates the individual's right to freedom of movement within a State, as well as on their right to remain and return.¹¹⁸

¹¹⁶ Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (1963) securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto states in its Art.2 Freedom of movement "...Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own.", and in Art. 3 Prohibition of expulsion of nationals that "...No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national. No one shall be deprived of the right to enter the territory of the state of which he is a national.

¹¹⁷ UNHCR, <http://www.unhcr.bg/cis/n13.pdf>.

¹¹⁸ Ibid., p.632

2.2. Property repossession

The property repossession was placed at the heart of effort to promote return in BiH¹¹⁹. During the war, about 2.2 million people were forcibly displaced from their homes. Existing wartime regimes then allocated abandoned socially owned and private properties to those who were displaced. They also established complex legal and administrative barriers to prevent returns, designed to make the large scale displacement of population irreversible. The area of property repossession has required significant investment by UNHCR, OHR and other international organizations, especially OSCE¹²⁰, as this was a particularly critical issue but has made great contribution in facilitating return.

The link between the right to return and the restoration of property is established by Annex 7 in Art.1, where it clearly states..

“...that all refugees and DPs have the right to have restored the property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them”.

The Annex 6 of the DPA “The Agreement on Human Rights” makes the European Convention for the Protection of Human Rights and Fundamental Freedoms, directly applicable in all BiH jurisdictions. This includes *the right to respect for home* under Article 8 and *the right to property* under article 1 of the First Protocol.¹²¹ In the immediate post-war years, Annex 6 and Annex 7 operated in concert to promote property restitution, where the main distinction of Annex 7 were its specific reference to IDPs and refugees allowance for the prioritization of certain categories of returnees and discretion for the individual to choose the location to which he or she would return.

¹¹⁹ M. Bradely, *The Conditions of Just Return: State Responsibility and Restitution for Refugees*, Refugee Studies Center, Working Paper No.21, March 2005, University of Oxford.

¹²⁰ The OSCE’s mandate was established under the GFAP and is one of the key agencies involved in the post-conflict building of BIH. OSCE also maintains a major programme of monitoring and reporting on human rights conditions, which includes the completion of the PLIP. See www.osce.ba.

¹²¹ *Ibid*, *Supra* note 41.

As a first step in realizing this fundamental provision of the Peace Agreement, property issues needed to be fully resolved. For this purpose, the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) was established under Annex 7 to take responsibility for facilitating the recognition and enforcement of displaced persons' and refugees' property rights. It began its operations in March 1996. In addition to the establishment of the CRPC, the international community in BiH initiated a concerted and sustained campaign to repeal wartime laws on abandoned property and create a comprehensive legal framework for property repossession. Local authorities intensively resisted those efforts requiring the international community to exert constant and sustained pressure over an extended period of years in order to achieve these results.¹²²

The Property Law Implementation Plan (PLIP) was adopted in October 1999. As already mentioned UNHCR, through its implementing partner NGO *Vasa Prava Legal Aid Network*, with the OSCE and OHR was an important actor in PLIP, with a wide network of focal points devoted to this issue in the field. According to Philpott, the goal of the property laws was *restitutio in integrum*- the return of individual homes.¹²³ Restitution *in integrum* in situations of ethnic cleansing demands the implementation of the right to return of all refugees and IDPs to their homes, as the preferred solution.¹²⁴ Therefore the property law regime in BiH focused on a collective reversal of ethnic cleansing rather than the recognition of individual rights *per se*, and this was particularly evident in the case of socially-owned apartment restitution which was returned based. This was widely abused by local authorities to make restitution contingent upon return and thereby they would deny property to those they deemed as having no intention to return or those they alleged had abandoned the property for reasons other than the war. However, Annex 7 required that compensation be given for property that could not be restored.¹²⁵ *Restitutio in integrum* was possible in most cases¹²⁶ and where restitution

¹²² OSCE Mission to Bosnia and Herzegovina, Internal Report, 2007.

¹²³ Philpott, C.B. (2006) *From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in BiH*. Oxford University Press., p.42. Available on www.ijrl.oxfordjournals.org

¹²⁴ *Ibid*, *Supra* note 26, p.638.

¹²⁵ According to Philpott, compensation was never seriously countenanced for those who chose not to return, and there also has not been any discussion of compensation to owners and occupancy right holders for the period when they were physically prevented from returning, either before or after the restitution laws were passed, because their property was occupied.

was not possible, owners and occupancy right holders could claim to the courts for illegal expropriation.¹²⁷ The role of the OHR was extremely important in the process of property repossession, as the guarantor of the implementation of the Dayton Accords and the highest authority in BiH was authorized under Annex 10 to impose laws and remove officials in BiH.

On 23 November 2006 Bosnia and Herzegovina finally completed the Property Law Implementation Substantial Completion (PLISC) process throughout the country. PLIP sought to enhance international pressure on the authorities to implement the property laws. Since then more than 93 per cent of property claims has been resolved through repossession by the pre-war owners or occupancy right holders.¹²⁸ As of 23 November 2006, the PLISC verification was finalised in 129 municipalities (out 185) in BiH. In total, 211,791 claims for contested property have been submitted to the local authorities in BiH. Out of that number, 197,688 claims have been resolved.¹²⁹ Nevertheless, there are still a number of property cases pending before the second instance administrative bodies and courts. Local authorities have a continuing obligation to resolve these cases and in between to allocate financial means for alternative/emergency accommodation purposes. Also numerous international donors invested significant resources in reconstruction assistance linked with return of property.

2.3. Overview of national legal framework relating to refugees and IDPs

- BIH is a State party to the 1951 Convention and its 1967 Protocols relating to the Status of Refugees. By virtue of Annex 1 of its Constitution BiH is also a party to other relevant international and regional instruments.

¹²⁶ The exception to the process of restitution as a whole were apartments formerly belonging to the Yugoslav National Army (JNA), where OHR decided that "...some persons who had served in the JNA during and after the conflict were not to be deemed refugees or IDPs and their restitution claims could be rejected".

¹²⁷ *ibid.*

¹²⁸ OSCE Mission to Bosnia and Herzegovina internal document; UNHCR, Update on Conditions for Return to BiH, Sarajevo, 2005 p.1

¹²⁹ OSCE Mission to Bosnia and Herzegovina internal report; Helsinki Committee, Report on the Status of HR in BiH, 2006.

▪ National legislation

The legal basis for all activities and legislation pertaining to return is Annex VII of the Dayton peace Agreement which stipulates that all refugees and displaced persons have the right freely to return to their home of origin. According to the Article 146 of the Criminal Code of BiH, the prevention of return and displaced persons is a criminal offence. The Criminal Code of FBiH and the Criminal Code of RS are harmonized with the State Criminal Code.¹³⁰

The Law on Refugees from BiH and Displaced Persons in BiH, which is the main legal instrument regulating return, was substantially amended at the end of 2003. These amendments regulate:

- the establishment of a Return Fund financed by the State Entities and Brcko District to be used for the realization of return and reconstruction projects
- the establishment of four regional centres of the Ministry for Human Rights and refugees for Return and Reconstruction across the country
- composition and mandate of the State Commission for Refugees and DPs.

After the adoption of the amendments, a working group as established composed of representatives from the competent State and Entity Ministries, OSCE, OHR and UNHCR endowed with the task of harmonizing the Entity Laws on displaced persons and returnees with the State Law.¹³¹

▪ Asylum policy

The BiH legislation on asylum is generally in line with both internationally laid down principles in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and the minimum standards in the EU acquis.¹³² The asylum policy was influenced by the wish to enter into accession talks with EU which was reinforced by the two European Commission funded projects implemented

¹³⁰ UNHCR, *BIH 2005 Annual Protection Report*, Sarajevo, 2005, p.5.

¹³¹ *Ibid.*

¹³² *Ibid.*, p.4.

by UNHCR; national CARDS » support to asylum management capacities in BiH« and regional CARDS »Establishment of EU compatible legal, regulatory and institutional frameworks in the field of asylum, migration and visa matters« for the Western Balkans. Both capacity-building projects aimed to promote, primarily EU compatible, standards in asylum legislation and institutions.¹³³

▪ *Policy and practice relating to Refugees, Returnees and IDPs*

Recognizing the remaining number of persons displaced throughout the region and the need to find durable solutions for them, three international actors OSCE, the EC and UNHCR came together to encourage the three governments of BiH, SCG and Croatia to formulate a policy to find durable solutions for refugees in the region within a reasonable timeframe. This »3x3 Process« led to the January 2005 Regional Ministerial Conference on Refugee Returns which resulted in a Ministerial Declaration in January 2005.¹³⁴

The general discussions in regard to the post-Dayton caseload in BiH focused on the need for sustainable return and several international actors initiated projects aimed at enable the design of future interventions that ensure the long-term social and economic sustainability of return and reintegration of refugees and DPs in BiH and contribute to human development of BiH communities as well as finding durable solutions for the remaining vulnerable caseloads.¹³⁵

¹³³ *Ibid.*, pp.5-6.

¹³⁴ *Ibid.* p.6

¹³⁵ *Ibid.*

3. Process of return to and within BiH

3.1. The return process between 1996 - 1999: Continued ethnic separation

Following the signing of the DPA return of refugees and displaced persons started. The first phase of return process started in 1996/97 under the “Zones of Separation” plan and through process of cross-entity “Assessment visits”, during which freedom of movement was limited. As issues of freedom of movement were central to the conflict in BiH, the DPA provided for respect of this right, but in first few years after the war ended this was extremely sensitive issue.

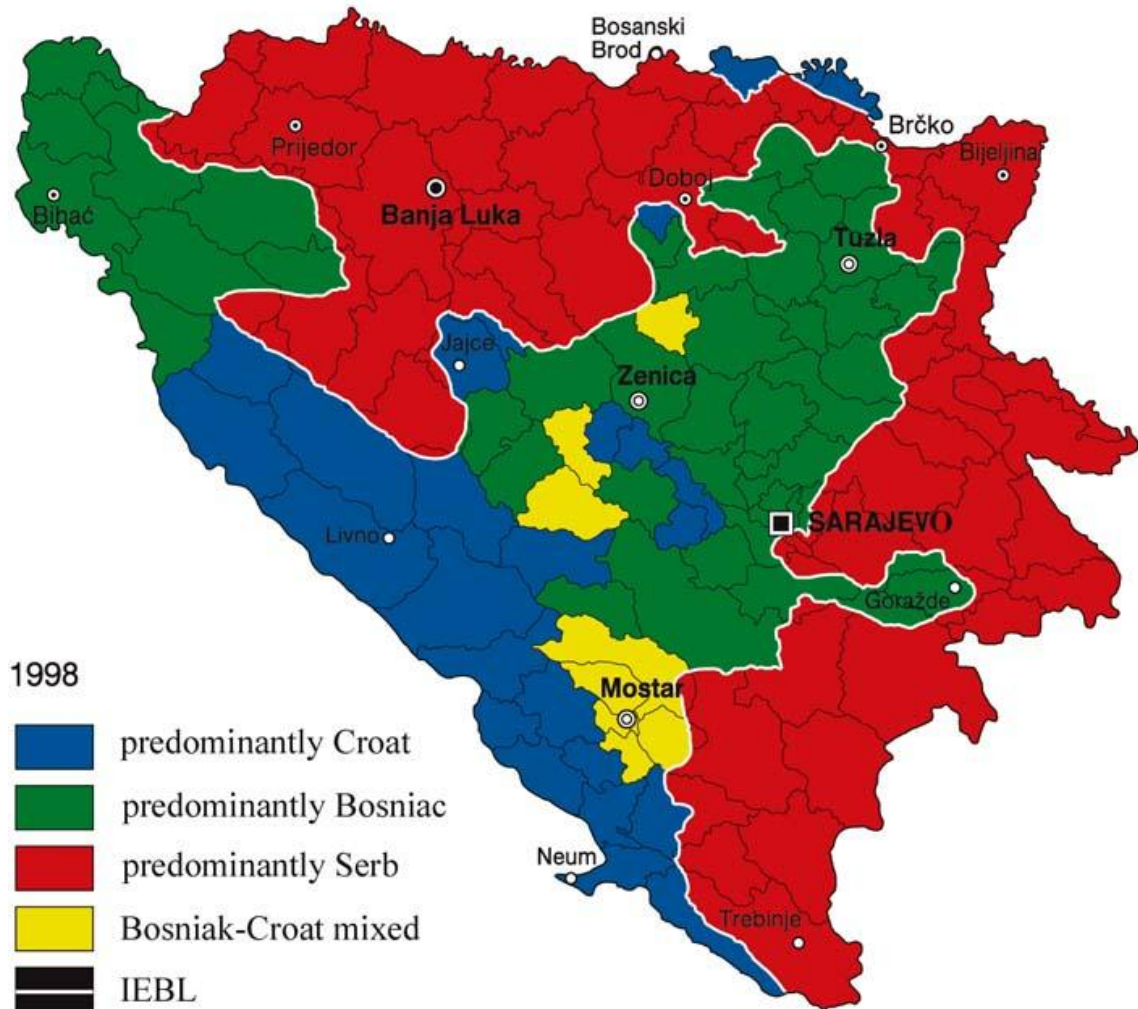
The second phase of return was carried out in 1999 through house cleaning process in destroyed villages. Until 1999 the minority return was almost inexistent where the main impediment was the lack of political will and the obstruction present at all levels of administration to support it. In early years after the DPA was signed, the overwhelming majority of people returned to areas controlled by their own ethnic group. Many problems and obstacles were reported to deter the return process in particular lack of security, presence of land mines, restriction of movement and the property repossession. For reversing the situation of continued ethnic cleansing even in the absence of war, the international organizations have been promoting various strategies to try to open some areas to minority return.¹³⁶

The first years of return process were marked by political obstruction, where local political leaders on both sides repeatedly blocked returns by relocating members of their own ethnic group into available housing space and creating a climate of fear and intimidation for minorities. It is important to note that, minority returns were recognized as the key test and challenge for the success of the DPA. Although some 395,000 of the refugees who fled BiH during the war returned to the country by December 1999, the majority of them did not return to their original homes. Instead, most of them relocated to new areas and in conditions of internal displacement, where their own ethnic group

¹³⁶ C. Phoung, “*Freely to Return*”: *Reversing Ethnic Cleansing in Bosnia-Herzegovina*, *Journal of Refugee Studies*, 2000, Vol.13, No.2, p.174.

was in the majority. At the end of 1999, some 800,000 people in BiH remained displaced and unable to return to their former homes.¹³⁷

Ethnic composition of BiH after the war



Map 3: Ethnic composition of BiH after the war, figure from 1998.¹³⁸

UNHCR and other humanitarian organizations have made strenuous efforts to encourage reconciliation, and to facilitate voluntary returns of refugees and displaced people to their original homes, even where this involved returning to areas which have

¹³⁷ UNHCR, *Statistical Summary*, September 2008, Sarajevo. Available at www.unhcr.ba.

become dominated by another ethnic group. UNHCR set up a number of initiatives, like for example, bus lines travelling between the two entities and has facilitated group visits of refugees and displaced people to places of origin. At the same time reintegration assistance packages were provided which included small scale community-based income-generating projects founded through Quick Support Funds, shelter programmes, domestic items assistance¹³⁹, the distribution of self-help kits, etc. UNHCR also set up an ‘Open Cities’ project, whereby donors were encouraged to invest in cities, which allowed minority groups to return. But there is a limit to how much can be done by humanitarian organizations.

Even if small numbers of people have returned to areas where they formed part of an ethnic minority, there had been minimal progress in rebuilding genuinely multi-ethnic societies in BiH. Fewer than five per cent of the 650,000 Muslims and Croats who were expelled by the Serbs from western Bosnia and Herzegovina had returned to their former homes, and fewer than one per cent of those who were expelled by the Serbs from eastern Bosnia had returned.¹⁴⁰ Of the few who have returned to areas where they now form part of a minority ethnic group, many are people who have returned to areas near the inter-entity boundary line, which was closely monitored by the NATO-led military force, and many were elderly people, who were not considered by the local authorities to pose any real threat. Moreover, some of those who have returned have done so with the intention of making arrangements to exchange their property.

The process of ethnic separation, which began during the war, has continued by other means in the post-war period.

¹³⁸ Source, Office of High Representative. Available at www.ohr.int

¹³⁹ UNHCR domestic items assistance included beds, blankets, plastic sheeting, mattresses, stoves.

¹⁴⁰ UNHCR Humanitarian Issues Working Group, *UNHCR's Activities to find Durable Solutions for Refugees and DPs under the GFAP*, 2002, Sarajevo.

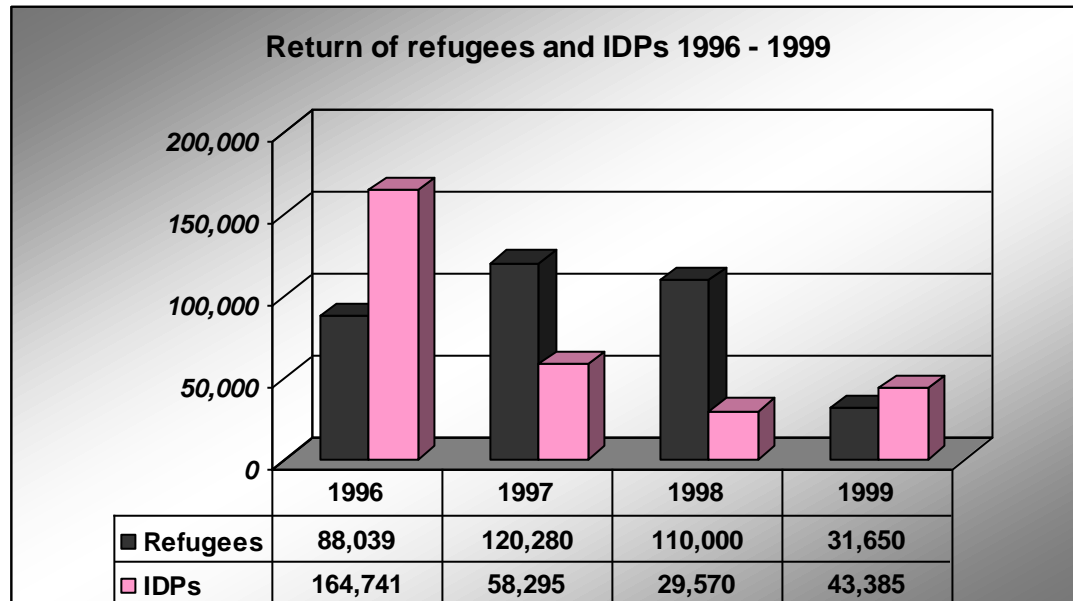


Chart 1: Numbers of return between 1996 and 1999.¹⁴¹

3.2. Return process between 2000 - 2008: Increases in minority return

While the total number of returns to areas dominated by another ethnic group remained low, UNHCR and other observers noted a substantial increase in the number of ‘minority returns’ in Bosnia and Herzegovina during the first few months of 2000.

The year 2001 marked an increase in the number of minority returns, where UNHCR recorded a total of 92,061 minority returns, as a result the so-called “pockets of resistance” to return has decreased. Also important has been the increased number of minority returns to the FBiH, which has had the effect of opening up the return possibilities for minority Bosniaks and Bosnian Croats to return to Republika Srpska (RS).¹⁴²

This increase was attributed to impatience amongst refugees and displaced people, a change in the psychology of the majority and minority populations, new Bosnian government policies, and measures taken by the Office of the High Representative to remove obstructionist officials and to implement property laws. In addition, improved security situation in the whole country due to the improved international com-

¹⁴¹ *Ibid*, *Supra* note 135.

munity effectiveness, removed checkpoints between two entity lines, uniformed car registration plates and ID cards made a great contribution for return. The increase in property restitution which has occurred as a result of a more vigorous implementation of the property laws has been another crucial factor.¹⁴³ However it has become apparent that after repossessing property, many people sold, exchanged or rented it, opting not to return permanently.

Nevertheless, following the year 2003 the return process to and within BiH has dramatically decreased and will continue to slow down. This drop in return figures largely parallels the decreasing property repossession figures as the repossession system drew to a close, but at the same time there has also been a considerable fall of donor funds for reconstruction assistance.

	Total to date	Current year - 2008
Federation of BiH	274, 935	252
Republika Srpska	170,090	1,135
Brcko district	22,095	-
TOTAL NUMBER OF MINORITY RETURNS	467,120	1,387

Table 2: Total number of minority returns (refugees and IDPs) who returned to their place of origin in BiH, 1996 - 2008. ¹⁴⁴

While the return figures suggest that the persons have been able to return to their pre-war place of residence, in line with the goals of Annex 7 of the DPA, in reality the actual return to place of origin may be considerably less than envisaged. Minority returns continues to be emphasized and remains a major political issue raised as not being successful. Moreover, there are indications that many returnees did not stay in their place of return permanently for various reason. Those who have returned permanently

¹⁴² *Ibid*, *Supra* note 70, p.2.

¹⁴³ *Ibid*.

¹⁴⁴ Source, *UNHCR Statistical Summary*, September 2008. Available at www.unhcr.ba.

tend to be older and in rural areas where they depend upon agriculture. Many younger people tend not to return and prefer to remain in their place of displacement seeking education, social and economic opportunities that are scarcer in their communities of origin. However, the general trend nowadays seems to be that people are remaining in or moving to areas where they can live amongst their own ethnic group. However a definite assessment of the demographic composition of the population in BiH will only be possible once a new census has taken place.¹⁴⁵

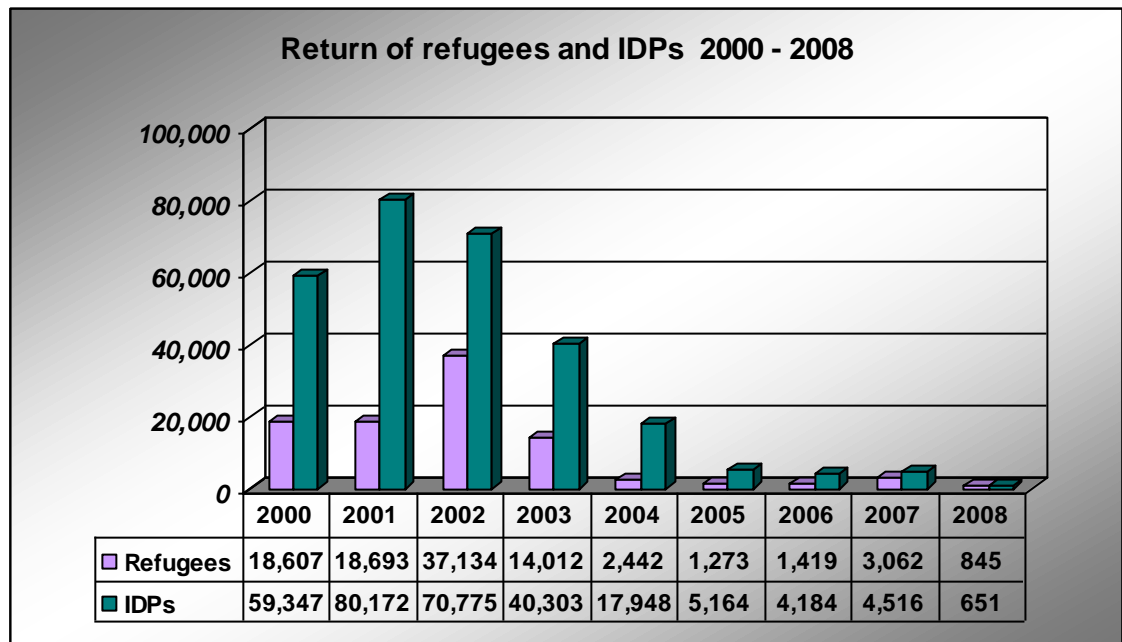


Chart 2: Figures of return between 2000 and 2008.¹⁴⁶

3.3. Main international actors involved in the return of refugees

3.3.1. UNHCR

As already mentioned in the previous chapters, UNHCR started its operations in BiH during the war, with one of the biggest relief operations ever organized. Thousands of tons of aid were shipped to BiH and distributed to the victims of war. Since 1992,

¹⁴⁵ UNHCR, *Briefing Note on UNHCR and Annex 7 in Bosnia and Herzegovina*, Sarajevo, 2007. Available at <http://www.unhcr.ba/updatedec07/DPOct07.pdf>.

UNHCR has been the leading agency with regard to humanitarian assistance and protection of displaced persons in BiH. In 1995, UNHCR was entrusted with assisting the government in the implementation of Annex VII of the Dayton Peace Agreement. Together with the local governments and authorities and in cooperation with other international partners, UNHCR facilitates the return of both refugees and displaced persons to their homes of origin.¹⁴⁷

The impressive efforts by the UNHCR in implementing Annex 7 are evident by the numbers of the return of refugees and internally displaced persons to their places of origin. Since the signing of GFAP in 1995, more than one million former refugees and IDPs have returned to their pre-war homes and municipalities, out of an estimated 2.2 million persons uprooted during the war. UNHCR has undertaken a wide variety of measures to support the return process since and has been cooperating with all main actors involved in post-conflict rehabilitation process of BiH. Current activities continue to focus on promotion of return of IDPs as the most suitable durable solution, by closely cooperating with the competent national authorities and endeavoring to remove remaining obstacles to return, particularly for the most vulnerable among IDP population.¹⁴⁸

3.3.1.1. Association *Vasa Prava* Bosnia and Herzegovina

Association *Vasa Prava* BiH is a local nongovernmental and non-profit organization which provides free legal aid to refugees, internally displaced and other persons of concern throughout the country. It was initially founded under the auspices of UNHCR in 1996 as a Network of Information and Legal Aid Centers (LAICs) aimed at providing legal aid and information to persons of concern to UNHCR¹⁴⁹ in the post-war period.¹⁵⁰

The LAICs Network was transformed into the NGO *Vasa Prava* in January 2004 and registered at the state level in 2005. Today, *Vasa Prava* BiH is the largest free legal

¹⁴⁶ Source, UNHCR Statistical Summary, September 2008. Available at www.unhcr.ba.

¹⁴⁷ More about UNHCR Representation in BiH available at <http://www.unhcr.ba/>.

¹⁴⁸ *Ibid.*

¹⁴⁹ UNHCR has supported the work of the Network with more than USD 8,000,000 in the period between 1996 and 2003.

aid NGO in the country and one of the largest NGOs in the entire Balkan region. Its free legal aid services have been extended not only to those still affected by the consequence of the war, but also to the socially vulnerable people in general. Vasa Prava BiH also plays important role in ensuring national asylum system to meet with international standards of refugee protection. Thus, the Association has a unique role in the Bosnian civil society for its protection of human rights and realization of social justice for a wider range of beneficiaries. The beneficiaries of Vasa Prava BiH include refugees, asylum seekers, persons granted a subsidiary form of protection (i.e. temporary residence on humanitarian grounds), persons under temporary admission, displaced persons, returnees, stateless persons, victims of trafficking in human beings and vulnerable persons among the local population.¹⁵¹

3.3.2. OSCE

The OSCE's mandate was established under the GFAP. The OSCE is one of the key organizations involved in the post-conflict building of BiH. The Mission has established programmes to promote the development of democratic political institutions at all levels of BiH, from the local to the State level. The Mission's work is divided into the categories of education, democratization, human rights and security co-operation.¹⁵² Currently, OSCE maintains the largest field presence in the country and major programme of monitoring and reporting on human rights conditions. Property implementation was until 2006 one of the main areas of work of human rights department. In those municipalities where property implementation was comparatively low, target-oriented work plans were prepared and tighter monitoring was introduced. Everywhere, human rights teams endeavored to ensure that available budgetary resources for alternative housing are used in the most effective manner to promote the completion of the Property Law Implementation Programme. Rule of Law activities focused on monitoring the implementation of the recently adopted criminal procedure codes through regular meet-

¹⁵⁰ UNHCR, *Vasa Prava BiH Briefing Note*, Sarajevo, 2007.

¹⁵¹ *Ibid.*

¹⁵² OSCE, <http://www.oscebih.org/overview/mandate.asp?d=7>

ings with judicial and police authorities. Special attention will also be devoted to the improvement of inter-Entity co-operation in criminal matters. In light of the expected increase in the number of war crimes trials before domestic courts, the OSCE monitors the capacity, and willingness, of authorities to deliver court summons in due time and to comply with requests for an inter-Entity transfer of suspects.¹⁵³

The OSCE is also the lead agency for promoting democratic development in BiH, through assisting local authorities with the reform of the legislative framework of local self governance in BiH and working in conjunction with all levels of government to aid the smooth transition of BiH to a stable and democratic state.

3.3.3. EUFOR

UN Security Council Res. 1575, adopted unanimously on 22 November 2004, welcomed the EU's intention to launch an EU military operation in BiH. The EU launched a military operation called Operation EUFOR – ALTHEA, in December 2004, 9 years after the war ended and after the decision by NATO to conclude its SFOR mission.¹⁵⁴ EUFOR is a legal successor to SFOR. The EU deployed a robust military force at the same manpower levels as NATO's SFOR (just under 7,000 troops) to ensure continued compliance with the Dayton Agreement and to contribute to a safe and secure environment, deny conditions for a resumption of violence, manage any residual aspect of the GFAP.¹⁵⁵ Military presence has been of extreme importance in establishing and maintaining the secure environment and thus facilitating the return process. Today, EUFOR is still present throughout the country and continues to provide reassurance to local communities and works to insure that the situation remains safe and secure for all the citizens and demonstrates continuing International Community support to BiH, and ensure that EUFOR can react appropriately to any change in the security situation.

¹⁵³ OSCE, http://internet.osce.ba/oscebih_eng.asp; OSCE Mission to Bosnia and Herzegovina Internal reports.

¹⁵⁴ EUFOR, http://www.euforbih.org/eufor/index.php?option=com_content&task=view&id=13&Itemid=29

¹⁵⁵ EUFOR, http://www.euforbih.org/eufor/index.php?option=com_content&task=view&id=12&Itemid=28

Moreover the Mission is also involved in many humanitarian (reconstruction of schools, electricity reconnection, etc.), de-mining and other projects.

3.3.4. Other bilateral donors and international organizations assisting the refugee return

BiH's needs have moved significantly beyond humanitarian assistance and post-conflict recovery. In the first seven years after Dayton, BiH received nearly \$5 billion in humanitarian and reconstruction assistance, about 75 percent of which was in the form of grants. Total assistance levels have been declining for the past few years. Donor assistance is critically important to BiH as it covers roughly 25 percent of its annual current account deficit.¹⁵⁶

The largest official grant donor is the EU, and the principal lenders are the World Bank and EBRD. The EU program is concentrated on helping BiH in areas required for it to begin the Stabilization and Association Process that will eventually take BiH into the European Union.

United Nations Development Programme (UNDP) has been present in the country since 1996 and helping to transfer the focus of development planning from post-war recovery to long-term development. Since the war, UNDP has delivered US\$181 million via various human development interventions. UNDP has been involved activities such as: providing assistance to war-affected populations, supporting the reintegration of refugees and IDP's, local development, and youth participation, small arms and lights weapons demilitarization, mine action and early warning system, local poverty reduction initiatives. The years 2008/2009 conclude UNDP's country programme cycle of 2005 - 2009, in which UNDP is completing its realignment of activities from humanitarian relief to development support. The future UNDP's work will focus on alleviating income poverty through pro-poor economic growth, to improve democratic governance, enhance human security and improve environmental sustainability.¹⁵⁷

¹⁵⁶

¹⁵⁷ UNDP, <http://www.undp.ba/index.aspx?PID=37&RID=2>

On a bilateral level, one of the most important actors in supporting development and economic project is USAID. USAID's strategy for assisting Bosnia and Herzegovina beginning with 2006 builds on the assistance USAID and other donors have provided and on the progress the country has made over the past decade. The assistance strategy will formally move beyond its post-conflict reconstruction character and focus on BiH's current need to deepen economic reform, strengthen its institutions for democracy and governance, and build a viable state. USAID's \$890 million in assistance from 1996 to 2000 had two principal objectives: Repair war-damaged infrastructure to facilitate minority refugee and IDP returns and recreate multi-ethnic communities, and jump start the private sector in the face of a collapsed banking system by injecting liquidity and assisting small and medium enterprises. Under its 2001-2005 Strategic Plan, USAID provided another \$200 million for three strategic objectives that supported minority returns; assisted economic restructuring; and aided in building democratic institutions. The Mission's current strategy and program direction will focus on the key areas of economic development, building democracy, and combating trafficking in persons.¹⁵⁸ Other important bilateral donors to BiH are: Swedish Development Agency (SIDA), Japan International Cooperation Agency, Swiss Agency for Development and Cooperation, German GTZ, etc.

¹⁵⁸ USAID, <http://www.usaid.ba/>.

4. Obstacles to the implementation of the right to return in BiH

Refugees returning to Bosnia and Herzegovina have long faced a number of challenges in rebuilding their lives. This is particularly true of those returning to rural locations where their ethnic group is a minority. The right to return is an evolving right, which requires more than just simply moving across borders and includes the issues from housing reconstruction, property repossession to security problems and political issues and especially issues of sustainable return. The sustainable return includes basic rights to which returnees are entitled such as access to public services, the right to employment, the right to education, health care, social security and other social benefits. But to accomplish these, many problems and obstacles need to be removed. According to Petrin¹⁵⁹, setting up new state structures often takes much longer than the initial post-repatriation and reintegration phases and it is impossible for refugees to return to a ready-made situation in which state can absorb them to full capacity in a way that fully respects their human rights as well as economic developmental needs. And as Phoung pointed out, it is only by involving the displaced persons themselves in the return process that it will be easier to identify the potential obstacles to return.¹⁶⁰

Local authorities must in this case make a first step towards populations of returnees by showing good will in accepting them into their old communities, where for example facilitating basic utilities supplies, could be a first step. In addition, the improvement of relationship between local authorities and returnees is often done through civil society. Although, BiH is in a process of development of strategy for cooperation of the Government with civil society and currently there is no institutional body in charge of relations with civil society, there are many non-state actors involved in different civil society activities.¹⁶¹

Thirteen years after DPA was signed the responsibilities under Annex VII are still not met. Final solution for people displaced in the country, in neighboring countries

¹⁵⁹ Petrin, S., *Refugee return and state reconstruction: a comparative analysis. Working Paper No.66, UNHCR, Evaluation and Policy Analysis Unit, 2002.*

¹⁶⁰ *Ibid, Supra note 67, p.181.*

and elsewhere must be reached as soon as possible. Following obstacles were identified to discourage the return and thus the full implementation of Annex VII of GFAP:

- Political obstruction
- Employment and economic problems
- Reconstruction assistance
- Security/safety related concerns
- Education
- Access to health care and social assistance.

4.1. Political obstruction

Political obstruction remains important obstacle to minority return and where hard-line or nationalist politicians are in control of a municipality, very few minority return take place in that municipality. As to the US Annual Report on Human Rights of 2007, ethnic differences remained a powerful force in the country, although mixed communities exist peacefully in a number of areas.¹⁶²

In previous years nationalist oriented politicians sought to increase the ethnic homogeneity of the population in areas they controlled by discouraging IDPs of their own ethnicity from returning to their pre-war homes if they would be in the minority there.¹⁶³ Although, the political obstruction related problems decreased from previous years, they still persist in hard-lines areas, as in some towns in eastern RS which continued to resist minority returns, obstructing returnees' access to local services, including municipal power and running water, education, issuance of important civil documents and health care.¹⁶⁴ In addition, returnees face problems regarding participation in public affairs, which complicate returns and subsequent social integration. In BiH, a general mistrust in local authorities exists which represent a serious democratic defi-

¹⁶¹For more detailed analysis of civil society and non-state actors see Project Synopsis. Final Project Report.

¹⁶² US State Department, Bureau of Democracy, Human Rights and Labor: Country Report on Human Rights Practices in BIH-2005 (2006)

¹⁶³ *Ibid.*

¹⁶⁴ US State Department, Bureau of Democracy, Human Rights and Labor: Country Report on Human Rights Practices in BIH-2005 (2006)

cit.¹⁶⁵ Local politicians in power are in many cases perceived by returnees, as corruptive and to subsist on *clientelism*. Thus, the relationship between local authorities and returnees is difficult and in many municipalities almost inexistent.

It is important that all actors mandated by the DPA, this is governmental, cantonal and local authorities are involved in the removing political obstructions and thus making (sustainable) return possible. Moreover, the international efforts to put pressure on local officials, where possible, must be coordinated. As Phoung¹⁶⁶ noted, local officials should be more closely involved with the international efforts to return minorities, as such efforts to overcome the political obstruction to minority returns are closely linked with efforts to ensure the protection of human rights (Annex 6 of the DPA) and support the democratization process. OHR as the highest authority in the country has extended powers which include the ability to dismiss or suspend the officials for “Anti-Dayton” activities, the so-called Bonn Powers. However, especially the OSCE has been involved in the process of monitoring and reporting the political obstruction.

The most common form of political obstruction is lack of any or significant support to returnees from local authorities, municipal and/or cantonal, and discriminatory practices to returnees as regards the access to public utilities and access to employment.

Insufficient contribution of the municipality budget to improve basic infrastructure needs such as improving or repairing local roads, electricity reconnection, running water, telephone (PTT) reconnection to the houses of returnees is widespread through municipalities in BiH. To improve the local or state infrastructure, such as hospitals and schools can have a clear impact on the long-term sustainability of return and contribute to the improvement of basic rights.

4.1.1. Obstruction of access to public utilities

The electricity reconnection and running water are very important issues for return process to succeed. The UNHCR has been actively pursuing the reconnection of returnees’ houses to the electricity network, particularly in the municipalities of the RS.

¹⁶⁵ *Ibid*, *Supra note 1*, p. 19.

Many regional meetings between different international actors (mainly UNHCR, OSCE and OHR) involved in the return process were held to tackle this issue.¹⁶⁷ The legal network of *Vasa Prava* is also involved in the reconnection of houses to electricity network by pursuing the legal procedures, especially as regards the high re-connection costs that returnees are obliged to pay to electric companies.

Besides above mentioned actors, the Ministry for Human Rights and Refugees and their regional centers, Entity Ministries for Electricity, local municipalities and electric companies have the decisive role in electricity reconnection issue. The lack of transparency, high re-connection costs and discriminatory procedures still remain an obstacle to return for many returnees. On 13 December 2005 the Ministry for Human Rights and Refugees, electric companies and Ministries of Energy signed the Agreement on Reconnection of Returnee Housing Units to the Electricity Network in BiH and thus to remove the remaining obstacles.¹⁶⁸ The Agreement contains the commitment of BiH electricity companies on covering the costs of issuing attestation on conditions of internal electricity installations for the most vulnerable returnees as well as other reconnection cost.¹⁶⁹ However, the returnees are in some areas of the BiH still obliged to pay the re-connection fee, which amounts approximately to 30 EUR.¹⁷⁰ The problem of electricity reconnection is still being resolved on a case-by-case basis and approaching the problem differently in every municipality.

Another important issue for returnees especially those living in rural and remote areas is the reconnection of the telephone network. The reconnection to PTT network can make return more dignified and secure, especially for elderly returnees. The legal network *Vasa Prava* is also involved in the process of PTT reconnection, reporting to UNHCR on current pending cases and problems with the municipality obstructions in implementing the OHR Decision of 1999, where all pre-conflict subscribers shall be reconnected free of charge.¹⁷¹

¹⁶⁶ *Supra note 3, p.178*

¹⁶⁷ Regional HRWG Meeting, March 2006, internal document.

¹⁶⁸ *Ibid, Supra note 128.*

¹⁶⁹ *Ibid.*

¹⁷⁰ Information gathered in the field visit with the UNHCR Staff in LC Maklenovac, Municipality of Doboj, May 2006.

4.2. Employment and economic problems

One of the major obstacles today for sustainable return is the impossibility to exercise the right to work, enshrined in a number of international human rights instruments to which BiH is a state party. Main instrument governing the right to employment is the ILO Convention 111,¹⁷² to which BH is a state party.

During the war, the economic infrastructure of BiH was completely destroyed. Many businesses vanished from the earth whereas others were closed down or were unable to be run. Currently the Bosnian economy faces many problems, such as high unemployment figures, the enlargement of the informal economy and the high rate of corruption. Moreover, the government is still facing the remnants of several decades of socialism and thus being in a transition to a solid market-economy. Additionally, progress is slowed down by political disparities.

Since the creation of the division along entity lines, the respective governments have taken all political decisions separately. Consequently this has caused for a large disparity in policy outcomes and the unequal distribution of wealth among people. The differences between the entities are reflected in many ways. Figures of 2006 indicate that 311,600 people were unemployed in the Federation (44, 6% the employable population). Within RS the numbers are lower. 138,111 people were unemployed in December 2006 (37%). Due to the high level of informal economy¹⁷³ in the country, the real level of unemployment is much lower than often claimed. However, with a lack of government legislation and physical inability to spur economic growth overnight, it is hardly surprising people resort to illegal means.¹⁷⁴ According to statistics approximately 20% of people live in poverty.¹⁷⁵

Employment plays a crucial role in the long-term sustainability of returns and overall post conflict reconstruction of the country. The general lack of employment op-

¹⁷¹ The Decision of the OHR on PTT reconnection issued on 30 July 1999. Available on www.ohr.int

¹⁷² ILO Convention 111(1958), *Discrimination and Respect of Employment and Occupation*. BiH ratified it in 1993.

¹⁷³ When talking about informal economy one may refer to activities such as unreported income, tax evasion and tax avoidance, trade of stolen goods or theft for own use.

¹⁷⁴ World Bank, *Bosnia and Herzegovina Country Economic Memorandum*. Poverty Reduction and Economic Management Unit Europe and Central Asia Region, 2006, p.107.

¹⁷⁵ *Ibid.*

portunities is aggravated for IDPs, returnees, in particular minority returnees who are more likely to encounter discrimination.¹⁷⁶ As Helsinki Committee reported “...*the largest number of returnees is in the category of poor people*”.¹⁷⁷ Discrimination in employments of returnees in the municipalities, public institutions and public enterprises is widespread in the country.¹⁷⁸ In addition, minority returnees are in most cases unable to obtain re-employment in their pre-war state-owned firms. As a result returnees have to become self-sufficient, either by starting private business with their limited resources or falling back on subsistence agriculture¹⁷⁹. Therefore, many of them decide to go back to their area of displacement or emigrate in search for work.¹⁸⁰ Among other problems, the lack of necessary skills represents an obstacle to employment and additional training is needed, especially for female headed-households and displaced people. The fact that most of refugees and DPs were not able to work or receiving additional vocational training during their displacement is noteworthy. In the absence of formal employment opportunities, the informal labor market, small business, pensions and welfare payments provide the means for many returnee families to survive.¹⁸¹ Substantial differences are between the urban and rural areas where for the latest there is little interest to return, especially among young people, mostly because of the difficulties to find employment. Returnees in the rural areas are mostly elderly people, which represent an obstacle for long term sustainable return.¹⁸²

Thus, bilateral donors and international organizations assisting the refugee return in finding the employment opportunities is critically important to BiH.

¹⁷⁶ See UNDP Human Development Report 2007.

¹⁷⁷ *Ibid*, *Supra* note 92.

¹⁷⁸ Helsinki Committee, Report on the Status of Human Rights in BiH 2006, available on www.bh-hchr.org/Reports/reportHR2006.htm.

¹⁷⁹ *Ibid*, *Supra* note, p.14.

¹⁸⁰ Amnesty International, Press Release *BiH: Widespread discrimination blocking refugee return* (2006), as seen on 20 April 2006 on www.amnesty.org/library/Index.

¹⁸¹ UNHCR BiH 2005 *Annual Protection Report*, p.28; Interview with the UNHCR Official, June 2006.

¹⁸² UNHCR BiH 2005 *Annual Protection Report*, p.28, available on www.unhcr.ba

4.3. Reconstruction assistance

Besides demographic destructions the war also radically changed the situation in the housing sector in BiH, with partial or total destruction of almost a half of the pre-war housing stock. In the period from 1992 to 1995 some 452,000 housing units were partially or completely destroyed. Out of this number, around 80% of housing units were either destroyed or heavily damaged.¹⁸³

Problems related to housing, which include property repossession and reconstruction of damaged or destroyed pre-conflict units, especially the later still represent an obstacle to return. Since the end of the war support from the international community to reconstruction process in BiH was substantial. Even so, the amount of funds available to support the return process represents only a fraction of the resources required to close the gap between actual returns and the reconstruction assistance required for the full implementation of the Annex 7 of the DPA.¹⁸⁴ By transfer of ownership for the return process from foreign to domestic institutions the reconstruction support by the international community has been drastically reduced. At the same time, reconstruction costs of the entire remaining destroyed and damaged housing stock as per actual damage grade could be assessed at around EUR 1.3 billion.¹⁸⁵

Reconstruction followed the return process and since the Dayton Peace Agreement to date some 260, 000 of housing units have been reconstructed, out of which over 170, 000 with donor resources. In years immediately after the war participation of international community in financing reconstruction was almost hundred percent, after which domestic sources have gradually started to join this process through setting aside of very significant budgetary resources at all levels of authorities in BiH.

¹⁸³ Ministry for Human Rights and Refugees, BiH, <http://www.mhrr.gov.ba/SektorZalzbjglice.html>

¹⁸⁴ *Ibid.*

Reconstructed housing units 1996 - 2005		260,388	
Housing stock Rehabilitation		57,94%	
Remaining number of destroyed/damaged housing units (per damage level)	5% - 20%	17,963	9,59%
	25% - 40%	24,945	13,32%
	45% - 65%	29,355	15,67%
	75% - 100%	82,219	43,90%
	no damage evaluation	32,791	17,51%
TOTAL remaining unrepaired housing stock		187,273	42,06%

Table 3: Figures housing stock situation in BiH in 2005.¹⁸⁶

In the years after the war, in order to get reconstruction assistance for destroyed homes, individuals needed to apply to the municipal body responsible for reconstruction where they were placed on a list. When the municipality received funds from the international community, it disbursed money to those on the list in chronological order. Many individuals have been waiting for several years to receive such reconstruction assistance. Again, belonging to an ethnic minority could impact the ease with which one could obtain or not obtain such reconstruction assistance. In addition, certain reconstruction projects required that refugees abroad first return to BiH before their application for assistance was assessed. That meant that persons must first return to places of internal displacement, often in collective centers while waiting their application to be processed. Even then, there was no guarantee that their home was in fact accepted into a reconstruction project.¹⁸⁷

New and additional sources of funding are still needed to resolve the remaining needs in reconstruction of houses and other infrastructure. BiH Ministry for Human Rights and Refugees reported in 2006 that more than 120,000 people (43,000 families) wish to return and have applied for reconstruction of their destroyed property.¹⁸⁸

¹⁸⁵ *Ibid.*

¹⁸⁶ Source, Ministry for Human Right and Refugees, BiH.

¹⁸⁷ UNHCR, *Extremely Vulnerable Individuals: The Need for Continuing International Support in Light of the Difficulties to Reintegration Upon Return*, Sarajevo, 1999.

¹⁸⁸ UNHCR, *The State of Annex VII*, March 2007.

The infrastructure in some areas remain critical and in ruins, like for example in some municipalities of Eastern RS which was one of the most destroyed areas during the war, in the North, Posavina region, and in Western part of BiH. One of the provisions taken to resolve the issue was a loan to BiH from Council of Europe Development Bank in the amount of 8 million Euros approved in November 2004 for the reconstruction of about 1,100 housing units, where 500 houses for each entity and 100 for Brcko District.¹⁸⁹ The UNHCR, together with the entity ministries for DPs and municipalities officials was working to select the beneficiaries, as the project have been benefiting selected persons currently living in Collective Centers or Alternative Accommodations. UNHCR selection process consisted of officials carrying on interviews with those expressing interest to return in the above mentioned temporary accommodations.¹⁹⁰ The total project cost was estimated at 12 million Euros and was completed in 2007.¹⁹¹

4.4. Security/safety related concerns

According to UNHCR 2005 report “...*security is still an important concern for returnees in BiH and continues to constitute an obstacle to return for some returnees*”. *In most return locations, the security situation has steadily improved and many returnee communities report that relations with local residents are good and that the local police are acting professionally*”.¹⁹²

However, lack of personal safety remains a concern, as isolated acts of violence continue to occur and some of them ethnically motivated. Land mines pose another significant obstacle to the sustainable return, especially for the economic development activity in BiH. US State Department Report on Human Rights Practices in 2006 states that the security situation in sensitive return areas and police responsiveness to incidents targeting minority returnees did not improve. Harassment and discrimination against

¹⁸⁹ Ibid.

¹⁹⁰ Interview with the UNHCR officials, May 2006.

¹⁹¹ Ibid, *Supra note 29*.

¹⁹² Ibid, *Supra note*.

minorities continued throughout the country, mainly as a consequence of property disputes.¹⁹³

The general concern about the presence of suspected war criminals still at large, constitutes an important obstacle to return for witnesses and victims of war crimes, as well as for severely traumatized persons. For these categories of persons special attention must be brought in providing them adequate and functional witness protection programme.¹⁹⁴

For removing the security obstacles the support of EUFOR is very important, especially for minority returns, which are likely not be well accepted by the local population. The military force EUFOR, although every year with reduced presence in the country, has a very important role in the return process, as they often act as deterrent. For example, UNHCR sometimes asks EUFOR to patrol the area before the planned return and in the following period to prevent attacks or harassment on returnees. Moreover, EUFOR is also involved the process of the de-mining activities and project contributing to the electricity reconnection. The presence international military force contributes do general perception of trust and security of returnees.

Another important actor in improving the security situation is EUPM¹⁹⁵ which has the aim push for the inclusion of minority groups within police forces in areas of minority returns as to help to improve confidence of potential returnees in the local police force, which constitutes an important factor for general confidence-building process.

4.4.1. Isolated acts of violence

In BiH today, the overall security is reported to be good and do not seem to be a major obstacle for return to the pre-war municipalities. Although, the incidents related to return, such as serious incidents against returnees or their property, as well as inci-

¹⁹³ US State Department, *Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices 2005*, March 2006, available on www.state.gov/g/drl/rls/hrrpt/2005/61640.htm.

¹⁹⁴ ECOSOC, Commission on Human Rights, Report of the Representative of the Secretary-General on the Human Rights of internally displaced persons, Walter Kalin, Specific Groups and Individuals: mass Exoduses and DPs, Mission to BiH (2005), p.15

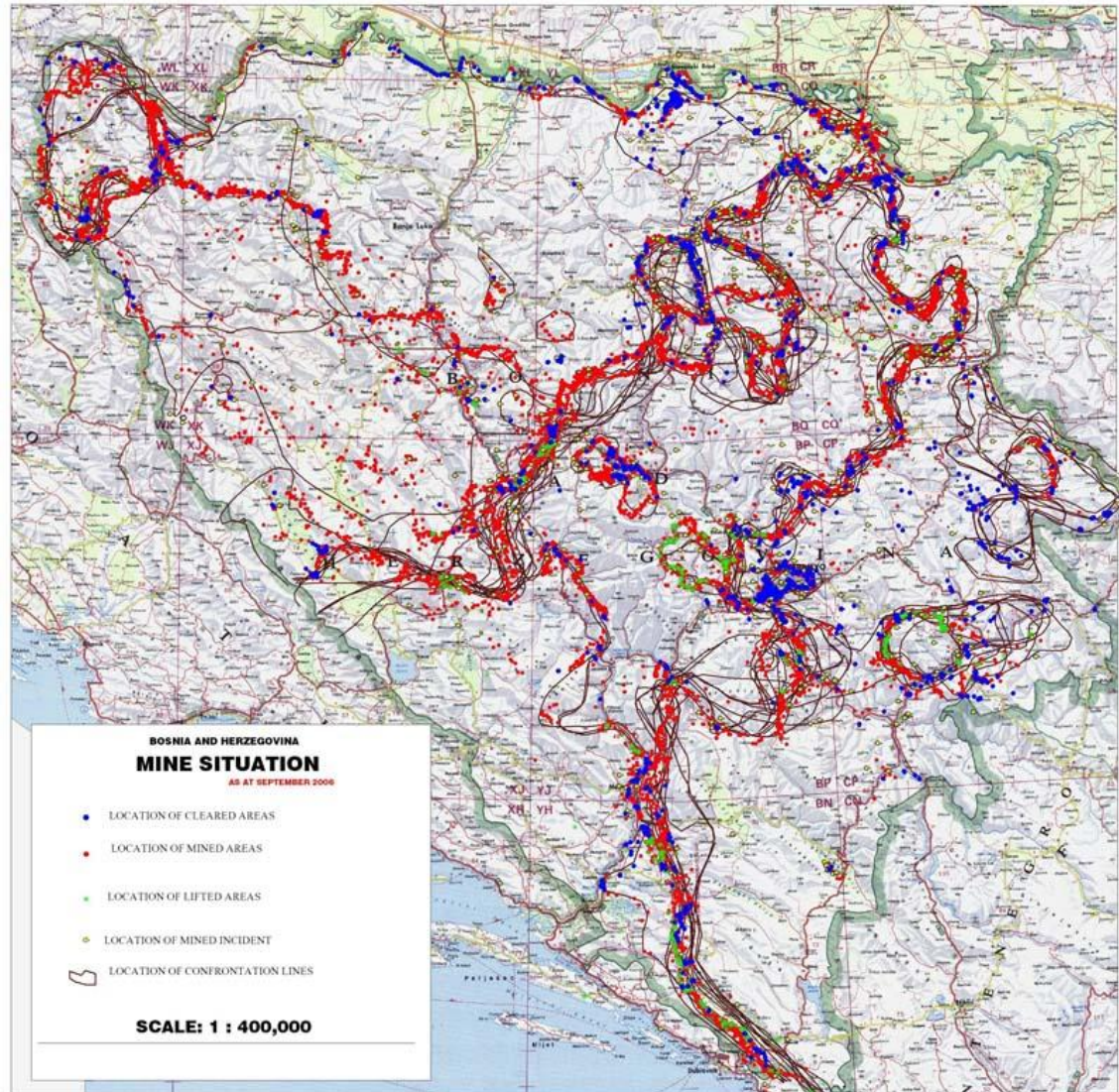
dents of harassment and vandalism of religious premises continue. Local police has on many occasions failed to effectively investigate and prosecute the incidents and further contribute to police, system of justice and the rule of law confidence. In addition, local police almost never classified the incidents occurred in returnee communities as ethnically motivated, therefore a closer monitoring of international community is still needed. Further monitoring by international organizations (EUPM, EUFOR, OSCE and UNHCR) must focus also on potential security issues where on many occasions the provocative and offensive ethnically motivated incidents towards religious premises or incidents of physical or property damage to returnees can trigger some major security issues and contributes to general negative atmosphere in returnee areas. Another example of the potential security issues related to return process is reconstruction or building of new churches and mosques in hundred percent returnee areas. Sharing and exchange of information through local security forums contributes to better cooperation between international organizations involved in the area and improves the communication between local communities and police forces.

4.4.2. Land mines

After thirteen years of de-mining activities, BiH remains one of the most heavily mined countries in South East Europe. After the signing of the Dayton Peace Agreement the threat posed by land mines turned out to be one of the most critical issues faced by the whole population. In 1996, BiH Government requested the assistance of the UN Mine Action Center (UNMAC) to establish a de-mining capacities for coordinated and continuous mine action activities in the country. UNHCR cooperated with UNMAC by establishing six clearance teams, focusing on clearance of houses where refugees were about to return. The National Structure BiH MAC officially took over the responsibilities for the implementation of de-mining programme in July 1998, with further support of United Nations Development Programme (UNDP). BiH MAC has two

¹⁹⁵ EUPM (European Union Police Mission) operates in line with the general objectives of Annex 11 of the DPA and it is supported by European Community instruments.

main offices in Sarajevo and Banja Luka and 8 Regional Offices established across the Country allowing operational activities to be carried out locally.¹⁹⁶



Map 4: Mine situation in BiH, 2006.

As for BiH MAC¹⁹⁷ there are 18.600 minefield records, which presents approximately 4,2% of the territory of BiH mine suspected. Through landmine impact survey, 1366 local communities in 128 municipalities were identified as communities contaminated with mines and/or UXO which directly affect safety of approximately 1.375.807 persons. Although, today, in most of the cases land mines do not represent a major ob-

¹⁹⁶ More information on BH MAC available on www.bhmac.org.

¹⁹⁷ *Ibid.*

stacle to return, they can represent an obstacle for sustainable return and the development of economic activity, as in many cases return is in rural areas, where major income generating activities is agriculture. According to data from the ICRC, there have been a total of 1,532 mine victims since the war. Although the number of victims has been drastically decreasing since the first years after the war ended, the number has been steady in the last two. In the year 2007, 18 mine incidents with civilian casualties took place.¹⁹⁸

4.4.3. Transitional justice

The presence of suspected war criminals at large in the community continued to be a concern and a potential security threat to returnees. A number of suspected war criminals still have official functions in local authorities and the failure to arrest and prosecute them is an obstacle to return and affects the sense of security of returnees. Witnesses testifying before the International Criminal Tribunal for the former Yugoslavia (ICTY) still require additional protection due to the number of suspected and or indicted war criminals still at large and the fact there still is not a functional witness protection programme in place in BiH.

The war Crimes Chamber of the State Court which became operational in the beginning of 2005, hears the most serious cases deferred by the ICTY, but the majority of cases continue to be dealt with by domestic courts under the jurisdiction of the Entities. The continuing work of the ICTY, national courts and the removal of criminal elements that are thought to remain in public employment, particularly the police, will help return and expose facts in order for the reconciliation process to begin. Identifying individuals who are responsible for crimes as opposed to applying collective guilt for abuses carried out during the war will also help the reconciliation process.¹⁹⁹

¹⁹⁸ BiH 2005 Annual Protection Report, p. 24

¹⁹⁹ *Ibid.*, pp. 23-24

4.5. Education

Families with children considering the return always inquire on information about the location of the school where the returnee children will go, whether school-age or adolescent. For certain families planning the return to their pre-war homes especially in the remote rural areas and sending their children to school can become very difficult. If there is no school in the return village or the school is far away this can provide additional cost for transportation to school. In many cases, returnee families have small revenue and public transportation represent a cost which they cannot afford. In this case a solution can be met by municipalities and social welfare system in funding vulnerable category of families children's bus transportation to school.

Another issue of much greater concern is current fractured education system in BiH, in which students learn according to several biased, "ethnically-colored" curricula, and are therefore either assimilated or segregated. This is having the effect of creating three separate sets of citizens, each uninformed and distrustful of the "other". Among international organization, the OSCE has the leading role in issues of education and is working for a fair and equal education policy for all. Education Officers through out the country are working to ensure schoolrooms are free from discrimination, and encouraging school districts to hire minority and returnee teachers. Special concern pose Roma children, because many families cannot afford textbooks, school clothes or transportation for their children and in addition, some Roma parents are keeping children out of school through fear of discrimination or a lack of confidence in the current education system.²⁰⁰ Even so, the right of the child to education is a basic human right incorporated in the Convention on the Rights of the Child and included in the Constitution of BiH, and all the necessary activities should be taken with the aim to implement this right. In addition, the OSCE is facilitating the administrative unification of "Two Schools under One Roof".²⁰¹ These segregated schools found in do not allow students to interact in a multi-ethnic environment where children are attending separate classes un-

²⁰⁰ OSCE <http://www.oscebih.org/overview/tuzla.asp?d=7#1>

²⁰¹ *Ibid.*

der different education curricula in one school, which pose additional barrier to the difficult process of reconciliation.

Another issue of concern is the basic utilities reconnection to schools. For example, in some remote primary schools where most of the returnee children are going, schools are without electricity reconnection and running water. The infrastructure of the school premises through out the whole country should be improved, where the commitment of local authorities in budgetary terms must improve.

4.6. Access to health care and social assistance

Access to health care and social security for returnees is affected by the lack of harmonization between the relevant legislation and welfare system of the two entities. Different insurance scheme applied in the Republika Srpska, Brcko District and in the FBiH could be an obstacle preventing the return as the coverage cannot be transferred from one entity to another.²⁰² Therefore, returnees are in some cases traveling to other entity to get the access to health care. In addition, the fact that in many local communities there is no health center or the doctor is visiting the center only once a week, represent an obstacle particularly for elderly people or persons with serious medical problems and in this cases the return should be reconsidered. The Inter-Entity Agreement on Health Care concluded in 2001,²⁰³ aimed at enabling returnees to access health care services in the place of return should be fully implemented.

Access to social assistance is also deterring the return. The problem of different Laws on entity level, different amounts of social assistance granted (in FBiH is reported to be higher) and different parameters for the implementation of the criteria for granting social assistance within cantonal and municipal levels is a matter of concern for those considering the return.²⁰⁴ As OSCE reported, the process for applying for social assistance is not formalized and transparent and providing the access to social assistance

²⁰² *Ibid*, *Supra* note 1, p.19.

²⁰³ *Ibid*, *Supra* note 97.

²⁰⁴ Notes from HRWG Srebrenica, Bratunac June 2006.

should be carried out on non-discriminatory bases.²⁰⁵ The returnees and DPs are often amongst the most vulnerable groups in BiH, where some of them living in the hopeless poverty and deplorable living conditions. UNHCR continues to monitor these cases and where possible provides the assistance or linkage with social assistance networks. However, this is an issue of great concern as the state should be able to provide the basic social assistance to vulnerable groups as the fundamental right guaranteed by many international human right treaties to which BiH is a state party.

4.7. Case study of selected municipalities in eastern BiH

The Eastern part of BiH has been particularly heavily destroyed and affected during the 1992 – 1995 War. The most horrendous crimes, such as the Srebrenica genocide have occurred in the area and in its remote villages, especially towards the Bosniak population. During 2006, I have spent four months working with the UNHCR in this region and I was given the opportunity to gather in-depth understanding and first hand observations and information through numerous field visits, meetings with returnees, municipal counterparts and other international actors. I have selected the three municipalities of the eastern BiH, respectively Bratunac, Srebrenica and Zvornik, according to my personal judgment and common sense and based on the fact that in all three cases the post-war population figures have changed drastically compared with the pre-war statistical data, specially when it comes to ethnic composition. If the pre-war numbers show that in all three cases the majority of population was Bosniak, today the majority consist of (Bosnian) Serbs. In these municipalities special attention has been paid to ease and consequently monitor the returnee process and to detect any possible obstacle for the suitable return and thus to reverse the ethnic outcome of the War. Yet, the outcomes are not satisfactory and will be difficult to improve them in the near future.

²⁰⁵ OSCE Mission to BiH, *Assessing the Realization of the Right to Social Assistance in BiH*, December 2005, internal document.

4.7.1. Municipality of *Bratunac*

Bratunac municipality is located in northeastern BiH on the left bank of the Drina River, bordering with the neighboring Serbia. The municipality is currently divided into 20 local communities. Owing to a strong SDS (Serb Democratic Party, founded by Radovan Karadzic) grassroots presence, Bratunac was one of the first municipalities to be affected by ethnic tensions and violence in the early 1990's. Some of the most prominent events took place in the gym of the Vuk Karadzic primary school, Glogova, Konjevic Polje, and Kravica, amongst others. During the 1992 take over, local forces, the JNA's Novi Sad Corps and Serbian paramilitaries ethnically cleansed the area of more than 20,000 non-Serbs, committing rape, torture and murder against civilians, as well as establishing concentration camps where numerous atrocities were committed.²⁰⁶ The Bratunac corridor was strategically significant during the war because of the repeated battles in the area in the attempts to capture Srebrenica and then subsequently in the attempts of escape of the man captured in the safe area.

As consequence of the war, approximately 80% of the housing stock within Bratunac municipality was devastated, and mainly in the more rural areas. This resulted in a huge number of IDPs, who ultimately found refuge in the town itself. The continuity of violent war forced people to flee further to areas of internal displacement and/or abroad.

Before the war, the town hardly a city had a total population of 33,619, of whom more than 21,535 were Bosniak. According to the 1991 Census, pre-war population was 33,619. Pre-war ethnic composition was: Bosniaks 21,535; Bosnian Serbs 11,475; Bosnian Croats 40; Yugoslavs 223; Others 346. Between 1991 and 2003, the demographic picture of Bratunac municipality changed completely. Now with an estimated population of approximately 19,522 people (2003), this figure represented just 58.2% of the pre-war population (1991). The ethnic composition of the population changed dramatically, where, prior to the war, Bosniaks accounted for 64.2% of the entire population, in 2002 they represented just 15.5%.²⁰⁷ The town is today mainly populated by Serbs. Most of the Bosniaks from Bratunac now live in Tuzla (8800 persons) and abroad (5300

²⁰⁶ EUFOR Municipality Information Bratunac, January 2006

²⁰⁷ UNHCR Review of returns to Bratunac, 2007, internal document

persons).²⁰⁸ In both places of displacement, there is little or no interest to return. However, the figures changes explain a lot about the return process itself.

Bratunac was known as a hard-line municipality and not conducive to return. However, the situation has improved due to the proactive role of the international community. Bratunac established a municipal return commission in November 2002, after some pressure by the international community and it has becoming the main coordinating mechanism for return and is monitored by UNHCR.²⁰⁹ However, the municipal administration must continue to work on political level towards removing the obstacles for returnees, especially when it comes to access of basic public utility services. Moreover, the municipality must improve cooperation with local police in securing the safe environment for returnees, as ethnically motivated isolated acts of violence as well as incidents of vandalism of religious premises continue and are often not successfully resolved or properly investigated by the local police.

4.7.2. Municipality of Srebrenica

The developments during the war and the legacy of 1995' genocide have made the minority return in Srebrenica an extremely sensitive issue, not only for people who wished to return but also for international community.

According to the 1991 Census, the pre-war population equaled 36,666 with the following pre-war ethnic composition: 27,572 Bosniaks; 8,315 Serbs; 38 Croats; 380 Yugoslavs; 361 others. Presently, Srebrenica is mainly populated by Serbs. It is very difficult to assess the current population of the Municipality and its demographic profile.²¹⁰

Return process in Srebrenica have been slow to begin with and many families remain in displacement, primarily in collective centers and settlements in the FBiH. Minority returns to Srebrenica as well as in most other areas in Eastern RS started only in 2000. Since then as to 2007, UNHCR registered 4,069 minority returns. Minority re-

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

turns (Bosniak minority) have return primarily in isolated returns area, away from the town centre.²¹¹ Female headed households comprise a very significant percentage of those who returned to Srebrenica or of those who have expressed an interest to return. Many female households continue to be displaced in Tuzla or Sarajevo Cantons.

The Property Law Implementation Plan was completed in February 2004, after 1,688 families repossessed their former homes. Approximately 6.600 houses were destroyed during the war, where some 1,530 were reconstructed by the end of 2005.²¹² The Srebrenica municipality has further to deal with a significant number of displaced persons accommodated in the area. The RS Ministry for DPs and Refugees is paying rental payments for 181 beneficiaries. In addition, alternative accommodation has been provided in buildings of the RS Government, pre-fabricated housing units and in collective accommodation that generally provide very poor living conditions. Dozen of families live in military barracks without access to indoor running water, or bathrooms; to use the toilet, they must go outside. When it rains, displaced families sleep in leak. A number of IDPs living in the collective centers are permanent beneficiaries of social assistance while others one-time assistance.²¹³ Living conditions are better, but still not satisfactory, for twenty-two displaced families living in the Hotel in the center of town, where displaced persons live in overcrowded quarters and complaints about hygiene are frequent and routinely ignored by the hotel management.

The infrastructure in these areas remains critical, in ruins and some of the Srebrenica's villages are accessible only by bad and dirt roads (e.g. the road to the village Skelani). However, the repair and the maintenance of primary roads are assisted by a World Bank loan. UNDP has been present in the municipality implementing the Regional recovery programme and providing assistance for the reconstruction of rural feeder roads, these projects are co-financed with the municipality. The water system was repaired with funding from the government of the United Kingdom. In recent years

²¹⁰ OSCE Mission to Bosnia and Herzegovina, Municipal Internal Information Database, Overview of municipality of Srebrenica, as seen on October 2008.

²¹¹ UNHCR Review of returns to Srebrenica, 2006, internal document

²¹² *Ibid*, *Supra* note 129.

²¹³ OSCE Mission to Bosnia and Herzegovina, Municipal Internal Information Database, Overview of municipality of Srebrenica; UNHCR Review of returns to Srebrenica, BIH (2007), internal document.

in Srebrenica the situation regarding water connections and telephone has significantly improved.²¹⁴

Another factor of great importance that provided a critical incentive to the return and the reconciliation process in Srebrenica was the establishment of the Potocari Memorial Center for the victims of 1995 genocide.

Although progress have been made in prosecuting war criminals, the fact that the most prominent indicted war criminals are still at large and that many more suspected war criminals continue to lead a life in total impunity is extremely delicate issue for return process in Srebrenica municipality. When considering the possibility to return in safety and dignity this represents one of the main obstacles. The BiH Prosecutor's Branch office for War Crimes commenced work in March 2008. The investigators of War Crimes Department will work in the area to collect information on war crimes in Srebrenica. A phone line is open for anonymous calls to report on war crimes and their perpetrators.²¹⁵ Yet, certain categories of people as war crimes witnesses and severely traumatized individuals who actually returned will continue to have protection needs.

4.7.3. Municipality of Zvornik

Zvornik is located on the North-eastern part of the RS on the banks of river Drina which forms the border with Serbia. Zvornik was strategically significant during the war and was an important link on the Belgrade-Tuzla-Sarajevo line. Zvornik was also the scene of huge atrocities during the war such as massive deportation and executions of Bosniak populations. After the signing of the DPA the municipality was divided into two municipalities, Zvornik in RS and Sapna in FBiH.

According to the 1991 Census, the pre-war population equaled 81,295. Pre-war ethnic composition was: Bosniaks 48,102 (app 59%); Bosnian Serbs 30,863 (app 38%); Croats 122; Yugoslavs 1248; Others 960.²¹⁶ Today, Zvornik is mainly populated by Serbs. However, despite Zvornik has the highest number of returns in the Northern

²¹⁴ Interview with Vasa Prava staff, Srebrenica, April 2006.

²¹⁵ *Ibid.*

²¹⁶ EUFOR Municipality profiles 2005, internal document.

Eastern BiH, several problems hamper the return process and the sustainability of return, mainly as the lack of employment opportunities for returnees and intermittent security problems. Majority of returns are from Tuzla or Sarajevo Canton. The number of displaced persons is around 25,000 and according to UNHCR statistics there are around 15,000 Bosniak returnees (minority returnees).

According to OSCE Municipality Profiles 2004, PLIP was finished on 6th April 2004 and Property Law Implementation Substantial Completion was signed on 28th September 2004.

Other major obstacles for return are in the provision of adequate housing, as a great deal of infrastructure requires repair, most notably the water supply and the road system. There are still cases of families with children living in a sheds or damage property or in the reconstructed houses without water supply or electricity. From 1997 to 2004 only UNHCR investment in different projects mainly in reconstruction of infrastructure and legal assistance in Zvornik Municipality amounted to 3,432,462 US \$.²¹⁷

As mentioned, one of the most pertinent issues that makes return difficult is caused by the lack of employment opportunities and methods of income generation. At this stage the situation is probably even more difficult for returnees in the urban areas, who are usually without fertile land, and have difficulty to sustain their families.

Another issue making the return more difficult is linked with education and returnee children wishing to attend schools with their ethnical curricula. Although, comparing figures with 2003, a significant increase in the enrolment of returnee children in local schools has been observed. However, the significant numbers of returnee children living in Zvornik are still traveling and attending schools in Federation. In comparison with the number of enrolled returnee children, the amount of employed returnee teachers is still very low. To make the return more sustainable there is still a lot of room for improvement in the area of education.

In addition, in the area of municipality of Zvornik there are many potential security threats reflecting in a small scale isolated acts of ethnically motivated violence and incidents towards religious premises or of physical or property damage to returnees.

²¹⁷ UNHCR Municipal Profile for Zvornik, April 2005

5. Future challenges

Thirteen years after the signing of the Dayton Peace Agreement tangible progress in the return of BiH refugees and IDPs is visible. As of September 2008, 1,026,507 former refugees and IDPs had returned to their pre-war homes and municipalities in BiH out of an estimated 2,2 milion persons forcibly displaced during the war²¹⁸. The return process has not been completed yet. Only in the current year 1,596 returns were regitstred, where 845 were from aborad and 652 of IDPs.²¹⁹

	Total to date	Current year - 2008
Returns from abroad	447,456	845
Returns of IDPs	579,051	651
TOTAL NUMBER OF RETURNEES	1,026,507	1,496

Table 4: Total number of refugees and displaced persons who returned to/within BiH

In 2005, State and Entity authorities, with the co-operation of UNHCR engaged in a country-wide re-registration of IDPs. Following the last similar exercise in the year 2000, when over half a million persons registered as IDPs, the aim was to adjust operating figures by determining an accurate number and identifying the main needs of those still displaced in 2005. The re-registration and subsequent revision of displaced person status confirmed that 135,500 IDPs remained in need of a durable solution in BiH. According to the 2005 re-registration, there were 61,415 IDPs in the Federation, 72,935 in the RS, and 1,153 in Brcko District. Since then, approximately 16, 000 people re-

²¹⁸ For more detailed figures see Annex 4 .

²¹⁹ UNHCR, *Statistical Summary September 2008*. Available at www.unhcr.ba.

turned.²²⁰ The significant drop in IDP figures from the year 2000 indicates that many people have found a solution and are no longer in need of IDP status.



Chart 3: Total numbers of return to/within BiH, distribution per year 1996 – 1998

Despite the overall general progress in return process, this has made more apparent the plight of those displaced in the country and abroad for whom return in safety and dignity remains problematic and thus in a critical need of appropriate durable solution. The competent national authorities and international community must increase their efforts to remove remaining obstacles of return, particularly for the most vulnerable IDP population.

²²⁰ *Ibid*, *Supra* note 73.

5.1. Durable solutions for particularly vulnerable groups

International community continues to promote return of IDPs as the most suitable durable solution, by closely co-operating with the competent national authorities and endeavoring to remove remaining obstacles to return, particularly for the most vulnerable among the IDP population.

Among the IDPs are significant numbers of persons who need special attention: female headed households, persons who are physically and/or mentally challenged and chronically ill, people residing in collective centers, elderly without family support and disabled, severely traumatized individuals, witnesses in war crimes investigation and Roma. As described in previous chapter, this particularly vulnerable group of people is facing today numerous problems and their living conditions remain a grave concern. Their return to their places of origin is unlikely for a variety of reasons to occur for numerous reasons, among others are: unresolved property repossession processes; their houses have not been reconstructed (sometimes because they have been unable to submit the required documents); adverse conditions in communities of origin, such as lack of infrastructure, employment opportunities, access to education and health care; changes in the ethnic structure of return communities or the still outstanding return of other community members.²²¹ Special assistance to them is necessary and starting systematic efforts to find durable solutions for them is a matter of urgency.

While international as well as local assistance projects have so far mainly focused on facilitating return by reconstructing damaged houses and rehabilitating the infrastructure of main return areas, the needs of those who are not able to return either for protection or humanitarian reasons, have remained essentially unaddressed. More emphasis should be placed on efforts designed to assist the most vulnerable individuals who are not able to return and in a need of protection.²²² Local integration projects with sustainable care for the most vulnerable IDPs, so far not widely considered, will represent an important durable solution in a number of situations, although its realization requires investment in public confidence-building, particularly with local com-

²²¹ *Ibid*, *Supra* note 111.

²²² UNHCR, *Briefing note on UNHCR and Annex 7 in BiH*, Sarajevo, 2007. Available at www.unhcr.ba.

munities, as well as mobilizing socio-economic incentives within an international framework. However, the problems to be address to improve conditions for many IDPs go far beyond return and local integration efforts. In future, political will to implement social policies to address the needs of this vulnerable population will be required.²²³

IDPs residing in collective centers

At the end of the war some 45,000 internally displaced people resided in collective centers. The number of residents in these centers declined drastically to 18,500 at the end of 1996, after the majority returned to their pre-war residences or find some other alternative accommodation if unable to return. Since then, however, the number of persons still requiring assistance provided in these centers has only reduced gradually.²²⁴

International community and especially UNHCR were providing assistance to such accommodation and focused its activities to the identification of durable solutions for the residents, leading to the eventual closure of the centers. At the same time, they have been encouraging the Entity authorities to take a more proactive approach in resolving the plight of this vulnerable population. Since 2001, the Federal Ministry for Social Affairs, Displaced Persons and Refugees made attempts to close some collective centers by accommodating the individuals concerned in reconstructed houses. The Ministry for Refugees and Displaced Persons in Republika Srpska continued its strategy of housing collective centers residents in newly constructed apartments for a one year tenancy period.²²⁵

Today, some 7000 displaced people still leave in collective centers or some other form of collective housing and are particularly vulnerable and live in difficult conditions.²²⁶ IDPs residing in this type of accommodations are facing many difficulties, mostly connected with their precarious social and economic status, although benefiting some basic rights from their status of IDPs. The collective accommodation which is available today provides only the most rudimentary living conditions. Many persons

²²³ *Ibid.*

²²⁴ UNHCR, *Collective Centers Report*, Sarajevo, 2003. Available at www.unhcr.ba.

²²⁵ *Ibid.*

²²⁶ UNHCR, *Global Appeal 2008 – 2009*, Geneva, 2008, p.290. Available at www.unhcr.org.

have lived in these facilities for years due to a lack of funds for repair and development of infrastructure and services and slow implementation of reconstruction in many areas of BiH.

5.2. Resolving regional refugee displacement

Refugee return in BiH is a regional issue that also affects Croatia, Serbia and Montenegro.²²⁷ On 31 January 2005, a joint Ministerial declaration was signed in Sarajevo, between the Ministers of BiH, Croatia and Serbia and Montenegro, supported by the EU, UNHCR and OSCE. Under the Declaration, the governments of Croatia, Bosnia and Herzegovina and Serbia committed to solve the remaining population displacement by the end of 2006 through facilitating returns or local integration of refugees and internally displaced persons, depending on the individuals' decisions, without any discrimination.²²⁸ The process is known as the “the 3x3 Initiative”. The Declaration was the first regional agreement on refugee return after the 1995 Dayton Peace Accords.

As the follow up, in March 2006, heads of the EC Delegations, UNHCR and OSCE Missions in Bosnia and Herzegovina, Croatia, and Serbia met in Belgrade to discuss the implementation of the Sarajevo Ministerial Declaration on Refugee Return and Integration. The international community in their facilitating and advising capacity, commended the three countries for their efforts in the challenging and complex process of ensuring sustainable returns or local integration, and resolving the remaining refugee related issues in a finite time-frame. At the same time, they concluded that because this trilateral regional effort has proceeded very slowly, the three governments need to further intensify their efforts, and create conditions for the achievement of durable solutions and ensure access to all rights and entitlements, including the right to housing, in line with international standards.²²⁹

²²⁷ See Annex 5.

²²⁸ UNHCR, *Annual protection report*, BiH 2005, p.1

²²⁹ <http://www.unhcr.ba/press/2006pr/270306.htm>

5.3. Enhancing protection of human rights for IDPs

Since the signing of the Dayton Peace Agreement, human rights issues were placed high on the agenda of the post-conflict reconstruction of BiH. The GFAP²³⁰ in its Annex 6 set forth internationally recognized human rights and calls for a number of international organizations to play a substantial role in human rights monitoring and protection in BiH, including the OSCE, the UNHCR, the EUPM/UNIPTF, UN High Commissioner for Human Rights, the Council of Europe and the representation of EU. From the beginning of its mandate the Office of the High Representative recognized the need for coordination of human rights issues and at the London Conference decided to establish a Human Rights Task Force to bring together international actors involved in implementation of the human rights provisions of the Peace Agreement.²³¹ Thus, the OHR established the Human Rights Coordination Centre (HRCC) within his office²³². HRCC further established five groups, the Regional Human Rights Working Group in Banja Luka, Tuzla, Mostar, Sarajevo and Brcko.

The mechanism of HRWG has been active since the beginning of its establishment with some changes from the starting idea. NGOs involved in the field of human rights, especially on the regional and local level, have joined representatives of the international organizations to report and share information related to human rights issues.

As human rights instruments can contribute to refugee protection and give effect to forms of enforcement, the Working Groups pay special attention on return related issues which include security of returnee communities and sustainability of return. The return of refugees and DPs to their pre-war communities should include the restoration of their rights²³³ which represent the main pillar of return in safety and dignity and significantly contributes to sustainable return.

²³⁰ Annex 6 of GFAP available on http://www.ohr.int/dpa/default.asp?content_id=374

²³¹ OHR Peace Implementation Council (1996) *Implementation of the Human Rights Provisions of the Peace Agreement*, available on www.ohr.int/print/?content_id=5170, as seen 09/05/2006

²³² The staff of the HRCC includes representatives of the OHR OSCE, UNMIBH Civil Affairs Office, the Office of the High Commissioner for Human Rights, the EU Mission, and the UNHCR. HRCC further established five groups, the Regional Human Rights Working Group in Banja Luka, Tuzla, Mostar, Sarajevo and Brcko.

²³³ These rights are: the right to property, the right to housings, the right to education, the right to employments, the right to non-discriminatory treatment.

Placing human rights issues on the agenda of all actors involved in post-conflict peace process in BiH and especially involving national authorities in the implementation of human rights instruments through monitoring and reporting of violations, is of extreme importance for the fulfillment of the commitments set forth in DPA, including the return process. Monitoring the situation of returnees can contribute to more effective response to the violations reported. This is true especially, for the sensitive minority return areas where political obstruction and other discrimination practices to return and displaced persons is being reported, as well as for security related problems where in most of cases local police almost never classified the security incidents and crimes as ethnically motivated. In addition, coordinated action of international actors in putting pressure on local officials is proven to be more effective. However, the real “added value” of the consultation process of HRWG is the communication between local authorities and international organizations and the improvement of the coordination action between all actors working in a particular area, as this process includes reporting on their past and current activities.

When the minority return started the Regional HRWGs decided to increase their activities and improve the information sharing. The local meetings were very useful in identifying the human rights violations or potential violations and security issues from the field staff located in the areas where minority return was particularly problematic. Enhancing the protection of return populations in their former homes is essential in the contribution of further confidence-building in the country. The items on the agenda normally included security issues, human trafficking activities, municipality needs in terms of electricity, water and PTT reconnection, education process, social and economic issues and sustainability of return. The importance of facilitating the exchange of information between international actors involved in post-conflict reconstruction process in BiH and national authorities responsible for protection human rights is at this stage of the process crucial also in the light of future EU accession negotiations.

However, the future challenge for the country lies in creating conditions for everyone to be able to enjoy his/her economic, social, and cultural rights as well as his/her civil and political rights. But there is still a long way ahead. As, the Helsinki Committee report on the status of human rights in BiH stressed, the relations between three consti-

tutive ethnic groups “...are still loaded by attempts or ruling nationalists parties to preserve ethnic homogenization including preservation of territorial division on ethnic principles.”²³⁴ There is still fear from the others and nothing is being done to boost tolerance and the respect to differences and the rights of members of other ethnic groups and national minorities. For a country that still needs to cope with its war legacy, enhancing human rights contributes to a climate of confidence and standards for a democratic society and finally, a step forward the reconciliation process.²³⁵

²³⁴ *Ibid*, *Supra* note 10.

²³⁵ United Nations, available on www.un.org/rights/hrtoday/hrconfl.htm.

Conclusions

The right to return endorsed by many international documents was in the changed environment of international relations considered by Dayton's mediators the main pillar for successful peace process and conflict resolution of the Bosnian conflict. The tenth anniversary of the Dayton Peace Agreement that brought peace to Bosnia and Herzegovina was also a chance to examine the success and implementation of it. Among the most difficult responsibilities set forth in the Agreement was repatriation and reintegration of refugees and displaced persons to their pre-war homes and thus the promotion of lasting peace and stability in BiH. To succeed in this commitment the Accords provided for a strong international presence. The key to the Agreement's implementation was from the very beginning the successful return of refugees guaranteed by Annex VII of the General Framework Agreement for Peace and BiH constitution. All other Annexes of the Agreement either depend on refugee return or were created to support the implementation of it.

The Agreement proclaimed the right of all refugees and displaced persons to return to their homes, and the state obligation to make this eventuate. Although Dayton Peace Agreement provided all the necessary mechanisms to promote and implement the right, yet, the reality is quite different. True, BiH is a peaceful country today, but is still deeply immersed into the past, where the legacy of the wartime nationalistic ideas persists and the return in safety in dignity is still an issue for many displaced in the country, abroad or in neighboring countries.

The crisis in BiH has been characterized by a high degree of external involvement. United Nations and UNHCR were involved from the outset of the crisis in emergency humanitarian assistance and post-1995 has given to UNHCR the role of lead agency in the return of refugees and displaced persons. The Office of High Representative, the Peace Implementation Council, EUFOR/SFOR, OSCE and other UN agencies have created a virtual international protectorate of the state with increasing interventions in legislation concerning property and the removal of officials who obstructed return or the repossession of occupied property. The international community sought to

promote return through political, financial and other means. Representatives of international agencies mandated to deal with return frequently negotiated agreements with authorities at various levels allowing IDPs and refugees to return. In some places resistance to return was gradually countered through negotiated phased return to specific locations. The presence of international agencies, in particular regular patrols by the military stabilization force also provided security to returnees in the first phases of a return movement. Transport and legal aid were other activities of significant support. In 1999, key international agencies established a mechanism, the Property Law Implementation Plan aimed at monitoring and ensuring compliance with the laws governing the repossession of property, which led to the resolution of almost all claims by 2004. This enabled owners or occupancy right holders to return to previously occupied housing or alternatively let or sell their houses or apartments and find durable solutions elsewhere. Unfortunately, the break-through in this process came at a point when international assistance to reconstruction had dropped significantly.

The numbers of returns since 2005 have been particularly discouraging. The return rate has sharply decreased and the situation seems not to change soon. The current return figures in the country are too small to reverse the purpose of the wartime and to achieve the goal of remixing the ethnic composition of the country in the near future. Even in the areas in which the population is again mixed, the ethnic divide remains entrenched. The separate schools for children of different nationalities are a particularly outstanding expression of this.

Nevertheless, despite, the impressive external involvement and efforts in reconstruction and return process, the repatriation of refugees has not gone smoothly. Thirteen years, after the signing of Dayton Accords there are still many whom return in safety and dignity remains uncertain. Political obstruction, employment and economic problems, reconstruction assistance, security/safety related concerns, education and access to health care and social assistance are just some of the obstacles discouraging the return process. As return must above all remain an individual choice, reaching a final solution is a difficult goal to achieve. And there is a limit how much international community can do.

Clearly, there are some difficulties to assess the success of return of refugees and displaced people to/within BiH. To some extent the numbers of returned or resettled refugees is an important element showing relatively high and positive results and pointing to a success story. The numbers of return has been impressive. Since the end of the war more than one million (1,026,507) former refugees and IDPs had returned to their pre-war homes and municipalities in BiH out of an estimated 2,2 million persons forcibly displaced during the war. But on the other hand the consistency of the return with human rights law and refugee conventions or durability of the return which are crucial elements, are hardly being met.

After the war there was a clear and urgent need for external intervention in the coordinating elements in a repatriation process. But the lack of a co-ordinate and harmonized approach by international actors and especially by EU states led to a variety of different assistance programmes being implemented for returnees in BiH, offering varying levels of assistance. This caused resentment and confusion both amongst returnees as well as those who remained. In addition, a disorganized NGO sector emerged, in which numerous international NGOs were present, often implementing government schemes with little local accountability. The co-ordination at an operational level was present, but still in some cases have not manage to ensure more efficient dissemination of information and avoid duplication of services. The lack of effective governance and reconstruction activity was an important contribution to the slow pace of repatriation to BiH which contributed to already complex domestic, as well as regional political situation dominated by nationalistic or ethnic issues.

The problems of those who return are many. Above all at the end remains the process of reconciliation and successful reintegration which is critical to any national reconciliation and reconstruction process. Repatriation does not take place at the end of a process of reconciliation and the healing of wounds, but, usually, at the beginning. Indeed, it is part of the process of reconciliation and healing. At the beginning emotions are running high and enmities are still very fresh. The fact that returnee communities in BiH are not integrated leads to the system of segregated communities. In addition, a general mistrust in local authorities exists which represent a serious democratic deficit. Local politicians in power are in many cases perceived by returnees as corruptive and to

subsist on *clientelism*. Widespread discrimination face by returnees to participate in public affairs additionally complicates the subsequent social integration. Therefore, confident-building measures must be enhanced, where international organizations should further monitor the implementation of decisions taken by the national authorities and intervened where necessary. The improvement of relationship between local authorities and returnees should be through civil society initiatives. Moreover, when thinking about the difficult process of reconciliation we must not forget that Bosnia was the scene of some of the worst horrors in Europe since the Second World War, including the genocide in Srebrenica in July 1995. The work of the war crimes tribunal for the former Yugoslavia, remarkable though it has been, cannot be enough to satisfy the cry for justice from the hundreds of thousands of Bosnians whose relatives were killed and homes were destroyed. Far too many are still at large, among them most important military or political leaders, like for example General Ratko Mladic. Their decade-long defiance has fueled Serbian nationalism in Bosnia, impeding much-needed reconciliation.

For BiH, the successful completion of return process is also a prerequisite for ultimate European integration. The continued involvement of the international community is still required to ensure the sustainability of returns in Bosnia and Herzegovina, but it is now up to the national authorities to fully assume their responsibility to govern the country in the interests of all its citizens. Reconciliation and peaceful reintegration of returnees to their former municipalities represents a big challenge for the future of BiH and for the final success of the implementation of Dayton Peace Accords. But let us not forget and hope that Bosnia and Herzegovina could, as so many times in its rich and turbulent history, find the way to reinvent its self and demonstrate that its beauty and strength lies in its diversity of religions, multiculturalism and multiethnic society.

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Appendix

Appendix 1

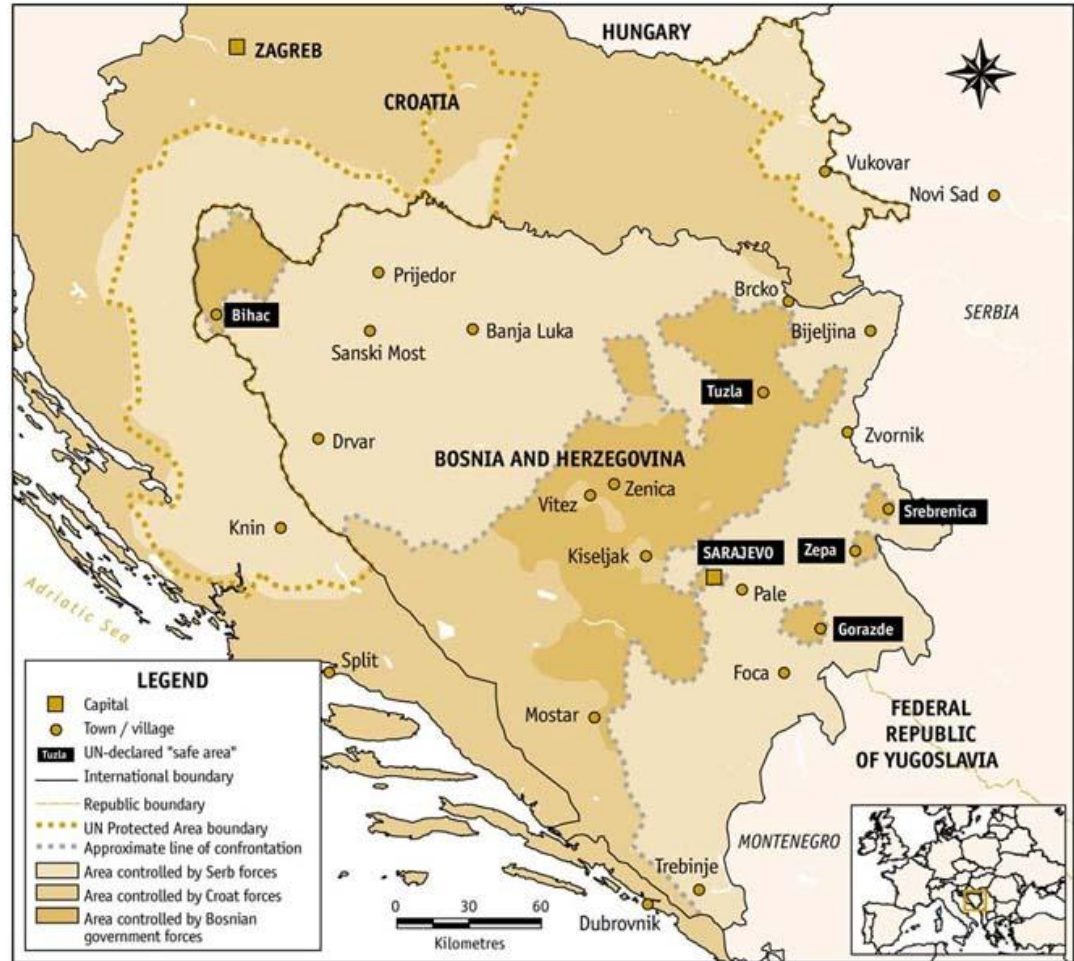
Map of Former SFR Yugoslavia



Source: United Nations,
<http://www.un.org/Depts/Cartographic/map/profile/frmryugo.pdf>

Appendix 2

Areas of control in Croatia and Bosnia and Herzegovina, April 1995



Source: UNHCR, State of World Refugees, 1996, p.223.

Appendix 3

General Framework Agreement for Peace, Annex 7, Agreement on Refugees and Displaced Persons

The Republic of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, and the Republika Srpska (the "Parties") have agreed as follows:

Chapter One: Protection

Article I: Rights of Refugees and Displaced Persons

All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.

The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. To demonstrate their commitment to securing full respect for the human rights and fundamental freedoms of all persons within their jurisdiction and creating without delay conditions suitable for return of refugees and displaced persons, the Parties shall take immediately the following confidence building measures:

the repeal of domestic legislation and administrative practices with discriminatory intent or effect;

the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;

the dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals;

the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;

the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.

Choice of destination shall be up to the individual or family, and the principle of the unity of the family shall be preserved. The Parties shall not interfere with the returnees' choice of destination, nor shall they compel them to remain in or move to situations of serious danger or insecurity, or to areas lacking in the basic infrastructure necessary to resume a normal life. The Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return.

The Parties call upon the United Nations High Commissioner for Refugees ("UNHCR") to develop in close consultation with asylum countries and the Parties a repatriation plan that will allow for an early, peaceful, orderly and phased return of refugees and displaced persons, which may include priorities for certain areas and certain categories of returnees. The Parties agree to implement such a plan and to conform their international agreements and internal laws to it. They accordingly call upon States that have accepted refugees to promote the early return of refugees consistent with international law.

Article II: Creation of Suitable Conditions for Return

The Parties undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group. The Parties shall provide all possible assistance to refugees and displaced persons and work to facilitate their voluntary return in a peaceful, orderly and phased manner, in accordance with the UNHCR repatriation plan.

The Parties shall not discriminate against returning refugees and displaced persons with respect to conscription into military service, and shall give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives.

Article III: Cooperation with International Organizations and International Monitoring

The Parties note with satisfaction the leading humanitarian role of UNHCR, which has been entrusted by the Secretary-General of the United Nations with the role of coordinating among all agencies assisting with the repatriation and relief of refugees and displaced persons.

The Parties shall give full and unrestricted access by UNHCR, the International Committee of the Red Cross ("ICRC"), the United Nations Development Programme ("UNDP"), and other relevant international, domestic and nongovernmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons, the provision of medical assistance, food distribution, reintegration assistance, the provision of temporary and permanent housing, and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments. These activities shall include traditional protection functions and the monitoring of basic human rights and humanitarian conditions, as well as the implementation of the provisions of this Chapter.

The Parties shall provide for the security of all personnel of such organizations.

Article IV: Repatriation Assistance

The Parties shall facilitate the provision of adequately monitored, short-term repatriation assistance on a nondiscriminatory basis to all returning refugees and displaced persons who are in need, in accordance with a plan developed by UNHCR and other relevant organizations, to enable the families and individuals returning to reestablish their lives and livelihoods in local communities.

Article V: Persons Unaccounted For

The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.

Article VI: Amnesty

Any returning refugee or displaced person charged with a crime, other than a serious violation of international humanitarian law as defined in the Statute of the International Tribunal for the Former Yugoslavia since January 1, 1991 or a common crime unrelated to the conflict, shall upon return enjoy an amnesty. In no case shall charges for crimes be imposed for political or other inappropriate reasons or to circumvent the application of the amnesty.

Chapter Two: Commission for Displaced Persons and Refugees

Article VII: Establishment of the Commission

The Parties hereby establish an independent Commission for Displaced Persons and Refugees (the "Commission"). The Commission shall have its headquarters in Sarajevo and may have offices at other locations as it deems appropriate.

Article VIII: Cooperation

The Parties shall cooperate with the work of the Commission, and shall respect and implement its decisions expeditiously and in good faith, in cooperation with relevant international and nongovernmental organizations having responsibility for the return and reintegration of refugees and displaced persons.

Article IX: Composition

The Commission shall be composed of nine members. Within 90 days after this Agreement enters into force, the Federation of Bosnia and Herzegovina shall appoint four members, two for a term of three years and the others for a term of four years, and the Republika Srpska shall appoint two members, one for a term of three years and the other for a term of four years. The President of the European Court of Human Rights shall appoint the remaining members, each

for a term of five years, and shall designate one such member as the Chairman. The members of the Commission may be reappointed.

Members of the Commission must be of recognized high moral standing.

The Commission may sit in panels, as provided in its rules and regulations. References in this Annex to the Commission shall include, as appropriate, such panels, except that the power to promulgate rules and regulations is vested only in the Commission as a whole.

Members appointed after the transfer described in Article XVI below shall be appointed by the Presidency of Bosnia and Herzegovina.

Article X: Facilities, Staff and Expenses

The Commission shall have appropriate facilities and a professionally competent staff, experienced in administrative, financial, banking and legal matters, to assist it in carrying out its functions. The staff shall be headed by an Executive Officer, who shall be appointed by the Commission.

The salaries and expenses of the Commission and its staff shall be determined jointly by the Parties and shall be borne equally by the Parties.

Members of the Commission shall not be held criminally or civilly liable for any acts carried out within the scope of their duties. Members of the Commission, and their families, who are not citizens of Bosnia and Herzegovina shall be accorded the same privileges and immunities as are enjoyed by diplomatic agents and their families under the Vienna Convention on Diplomatic Relations.

The Commission may receive assistance from international and nongovernmental organizations, in their areas of special expertise falling within the mandate of the Commission, on terms to be agreed.

The Commission shall cooperate with other entities established by the General Framework Agreement, agreed by the Parties, or authorized by the United Nations Security Council.

Article XI: Mandate

The Commission shall receive and decide any claims for real property in Bosnia and Herzegovina, where the property has not voluntarily been sold or otherwise transferred since April 1, 1992, and where the claimant does not now enjoy possession of that property. Claims may be for return of the property or for just compensation in lieu of return.

Article XII: Proceedings before the Commission

Upon receipt of a claim, the Commission shall determine the lawful owner of the property with respect to which the claim is made and the value of that property. The Commission, through its staff or a duly designated international or nongovernmental organization, shall be entitled to have access to any and all property records in Bosnia and Herzegovina, and to any and all real property located in Bosnia and Herzegovina for purposes of inspection, evaluation and assessment related to consideration of a claim.

Any person requesting the return of property who is found by the Commission to be the lawful owner of that property shall be awarded its return. Any person requesting compensation in lieu of return who is found by the Commission to be the lawful owner of that property shall be awarded just compensation as determined by the Commission. The Commission shall make decisions by a majority of its members.

In determining the lawful owner of any property, the Commission shall not recognize as valid any illegal property transaction, including any transfer that was made under duress, in exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing. Any person who is awarded return of property may accept a satisfactory lease arrangement rather than retake possession.

The Commission shall establish fixed rates that may be applied to determine the value of all real property in Bosnia and Herzegovina that is the subject of a claim before the Commission. The rates shall be based on an assessment or survey of properties in the territory of Bosnia and Herzegovina undertaken prior to April 1, 1992, if available, or may be based on other reasonable criteria as determined by the Commission.

The Commission shall have the power to effect any transactions necessary to transfer or assign title, mortgage, lease, or otherwise dispose of property with respect to which a claim is made, or which is determined to be abandoned. In particular, the Commission may lawfully sell, mortgage, or lease real property to any resident or citizen of Bosnia and Herzegovina, or to either

Party, where the lawful owner has sought and received compensation in lieu of return, or where the property is determined to be abandoned in accordance with local law. The Commission may also lease property pending consideration and final determination of ownership.

In cases in which the claimant is awarded compensation in lieu of return of the property, the Commission may award a monetary grant or a compensation bond for the future purchase of real property. The Parties welcome the willingness of the international community assisting in the construction and financing of housing in Bosnia and Herzegovina to accept compensation bonds awarded by the Commission as payment, and to award persons holding such compensation bonds priority in obtaining that housing.

Commission decisions shall be final, and any title, deed, mortgage, or other legal instrument created or awarded by the Commission shall be recognized as lawful throughout Bosnia and Herzegovina.

Failure of any Party or individual to cooperate with the Commission shall not prevent the Commission from making its decision.

Article XIII: Use of Vacant Property

The Parties, after notification to the Commission and in coordination with UNHCR and other international and nongovernmental organizations contributing to relief and reconstruction, may temporarily house refugees and displaced persons in vacant property, subject to final determination of ownership by the Commission and to such temporary lease provisions as it may require.

Article XIV: Refugees and Displaced Persons Property Fund

A Refugees and Displaced Persons Property Fund (the "Fund") shall be established in the Central Bank of Bosnia and Herzegovina to be administered by the Commission. The Fund shall be replenished through the purchase, sale, lease and mortgage of real property which is the subject of claims before the Commission. It may also be replenished by direct payments from the Parties, or from contributions by States or international or nongovernmental organizations.

Compensation bonds issued pursuant to Article XII(6) shall create future liabilities on the Fund under terms and conditions to be defined by the Commission.

Article XV: Rules and Regulations

The Commission shall promulgate such rules and regulations, consistent with this Agreement, as may be necessary to carry out its functions. In developing these rules and regulations, the Commission shall consider domestic laws on property rights.

Article XVI: Transfer

Five years after this Agreement takes effect, responsibility for the financing and operation of the Commission shall transfer from the Parties to the Government of Bosnia and Herzegovina, unless the Parties otherwise agree. In the latter case, the Commission shall continue to operate as provided above.

Article XVII: Notice

The Parties shall give effective notice of the terms of this Agreement throughout Bosnia and Herzegovina, and in all countries known to have persons who were citizens or residents of Bosnia and Herzegovina.

Article XVIII: Entry into Force

This Agreement shall enter into force upon signature.

For the Republic of Bosnia and Herzegovina

For the Federation of Bosnia and Herzegovina

For the Republika Srpska

Appendix 4

Returns summary to BiH, 1 October 1996 - 30 September 2008

FEDERATION OF BiH										
REFUGEES	DISPLACED PERSONS					BOS	CRO	SER	OTH	TOTAL
	BOS	CRO	SER	OTH	TOTAL					
1996	76,385	3,144	552	33	80,114	101,266	447	1,179	21	102,913
1997	74,552	33,495	2,849	754	111,650	38,821	10,163	3,971	205	53,160
1998	77,310	22,930	4,307	1,453	106,000	9,041	4,040	6,059	300	19,440
1999	17,359	5,960	4,370	491	28,180	14,320	5,747	9,649	219	29,935
2000	4,815	3,498	5,164	569	14,046	9,638	6,660	13,811	172	30,281
2001	1,966	2,285	9,108	542	13,901	9,058	4,890	24,794	343	39,085
2002	3,341	2,080	18,079	290	23,790	6,791	4,632	21,108	624	33,155
2003	897	1,183	5,430	230	7,740	9,356	1,858	14,963	145	26,322
2004	187	310	936	74	1,507	5,669	955	3,277	56	9,957
2005	70	113	313	3	499	1,320	422	1,177	10	2,929
2006	33	40	144	10	227	1,231	224	713	4	2,172
2007	35	53	119	3	210	684	322	671	1	1,678
2008	11	14	49	8	82	98	5	170	6	279
TOTAL	256,961	75,105	51,420	4,460	387,946	207,293	40,365	101,542	2,106	351,306

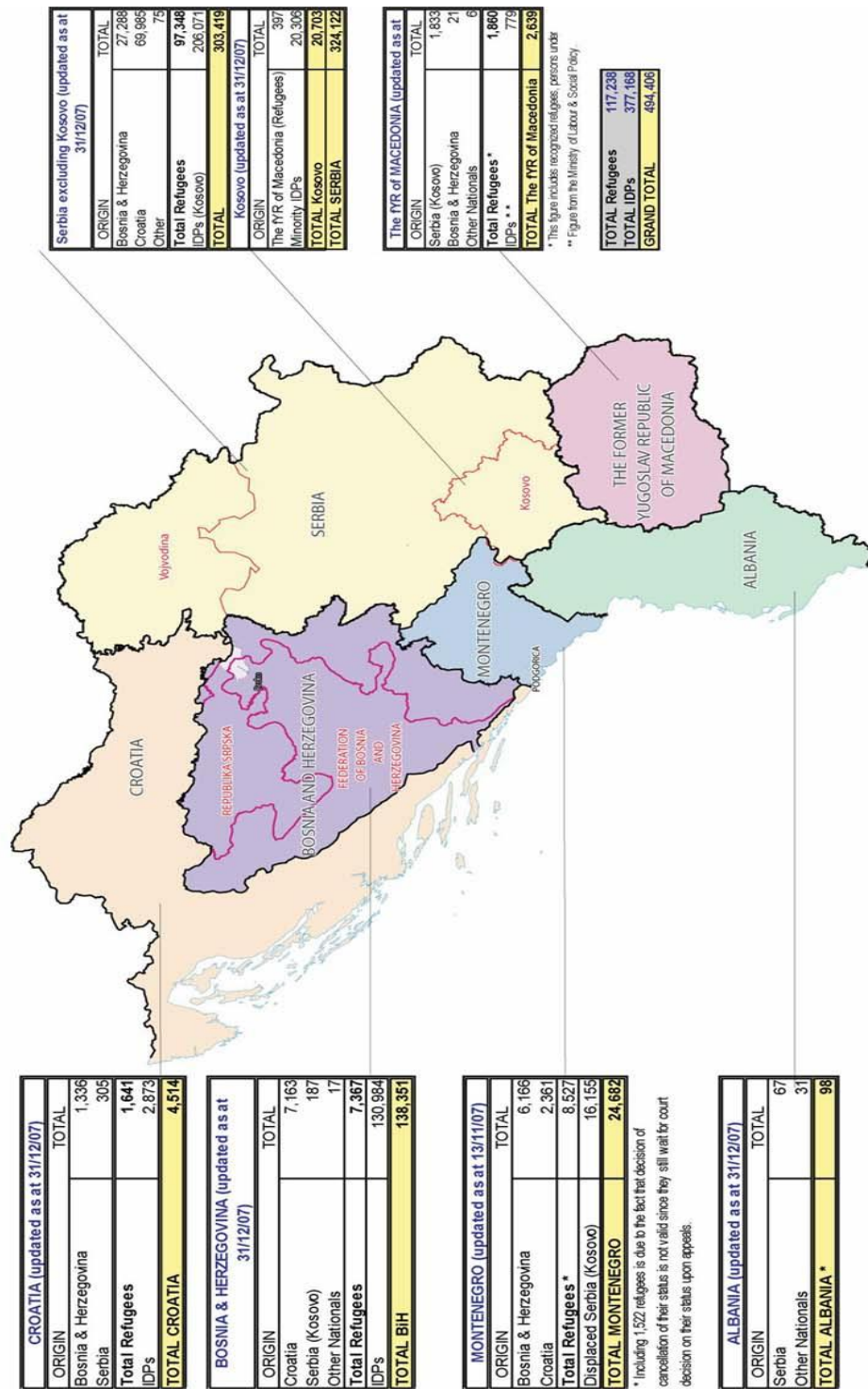
REPUBLIKA SRPSKA										
REFUGEES	DISPLACED PERSONS					BOS	CRO	SER	OTH	TOTAL
	BOS	CRO	SER	OTH	TOTAL					
1996			7,925		7,925	136	58	61,613	21	61,828
1997	204	73	8,287	66	8,630	626	28	4,481		5,135
1998	1,279	257	2,458	6	4,000	6,765	285	3,080		10,130
1999	1,081	339	1,962	88	3,470	10,587	1,013	1,666	184	13,450
2000	2,818	1,336	139	268	4,561	22,461	456	362	277	23,556
2001	2,676	1,959	47	110	4,792	34,952	471	611	93	36,127
2002	9,119	2,107	134	99	11,459	29,511	351	585	106	30,553
2003	4,343	1,609	50	191	6,193	11,803	123	440	7	12,373
2004	789	140	6		935	7,099	17	602		7,718
2005	735	38	1		774	2,220	15			2,235
2006	1,065	106	14	7	1,192	1,890	9	113		2,012
2007	1,324	1,514	2		2,840	1,980	69	88		2,137
2008	760	3			763	367			5	372
TOTAL	26,193	9,481	21,025	835	57,534	130,397	2,895	73,641	693	207,626

BRCKO DISTRICT										
REFUGEES	DISPLACED PERSONS									
	BOS	CRO	SER	OTH	TOTAL	BOS	CRO	SER	OTH	TOTAL
2000						4,845	663	2		5,510
2001						4,032	599	329		4,960
2002	132	1,746	7		1,885	5,209	336	1,522		7,067
2003	17	60	2		79	702	286	620		1,608
2004						208	56	9		273
2005										
2006										
2007		12			12	338	227	136		701
2008										
TOTAL	149	1,818	9		1,976	15,334	2,167	2,618		20,119

TOTAL BOSNIA AND HERZEGOVINA										
REFUGEES	DISPLACED PERSONS									
	BOS	CRO	SER	OTH	TOTAL	BOS	CRO	SER	OTH	TOTAL
1996	76,385	3,144	8,477	33	88,039	101,402	505	62,792	42	164,741
1997	74,756	33,568	11,136	820	120,280	39,447	10,191	8,452	205	58,295
1998	78,589	23,187	6,765	1,459	110,000	15,806	4,325	9,139	300	29,570
1999	18,440	6,299	6,332	579	31,650	24,907	6,760	11,315	403	43,385
2000	7,633	4,834	5,303	837	18,607	36,944	7,779	14,175	449	59,347
2001	4,642	4,244	9,155	652	18,693	48,042	5,960	25,734	436	80,172
2002	12,592	5,933	18,220	389	37,134	41,511	5,319	23,215	730	70,775
2003	5,257	2,852	5,482	421	14,012	21,861	2,267	16,023	152	40,303
2004	976	450	942	74	2,442	12,976	1,028	3,888	56	17,948
2005	805	151	314	3	1,273	3,540	437	1,177	10	5,164
2006	1,098	146	158	17	1,419	3,121	233	826	4	4,184
2007	1,359	1,579	121	3	3,062	3,002	618	895	1	4,516
2008	771	17	49	8	845	465	5	170	11	651
TOTAL	283,303	86,404	72,454	5,295	447,456	353,024	45,427	177,801	2,799	579,051

Source: UNHCR, Statistical Summary September 2008. Available at www.unhcr.ba.

Appendix 5 Estimate of refugees and displaced persons still seeking solutions in the region



Source: UNHCR, www.unhcr.ba