

Akdeniz Havzasında Soykırımcı Niyetin Kanıtı Olarak Mültecilerin Dramı: Bosna, Kıbrıs, Irak, Libya ve Suriye Üzerinden Zorunlu Göçü Yorumlamak*

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Öz

Uluslararası toplum, 1980'lerden bu yana giderek artan bir şekilde çeşitli toplulukların evlerini terk etmeye zorlanmalarını, güvenlik riski şeklinde değerlendirdikleri için bu durumu “soykırım” olarak kınamaya başladı. İran'ın Bahailere yönelik eylemleri, BM soykırım araştırma komisyonu tarafından soykırım olarak sınıflandırılan eylemler içerdiğinden 1980'lerde kınanmıştır. Diğer kitlesel mülteci göçleri, zaman zaman soykırım olarak tanımlanmış, bazılarında filli olarak da müdahale edilmiştir. Örneğin Hindistan'ın Doğu Pakistan'daki Bengallilere ve Hindulara yapılanları soykırım ilan etmesi, Vietnam'ın komünist Kamboçya'da yaşananlar için soykırım ilan etmesi bunlar arasında sayılabilir. 1992'den itibaren, Türkiye ve diğer Doğu Akdeniz ülkeleri Bosnalı Sırp'ları ve Sırp'ların Bosnalı Müslümanlara karşı “etnik temizlik” politikalarını “bir çeşit soykırım” olarak eleştirmeye başladılar. Boşnakların Sırp'lar tarafından soykırıma uğradığı suçlaması, askeri müdahaleyi doğurmuştur. Bu makale, uluslararası hukukun zorla göç ettirilenlere yönelik muameleyi tanımladığı kavramlarla başlamaktadır. Daha sonra, savaş zamanlarında veya ulusal güvenliğe yönelik diğer tehditler söz konusuysa soykırımcı niyet hukukunu ele almaktadır. Bu makalenin temel tezi, yargı mercilerinin, Eski Yugoslavya Uluslararası Ceza Mahkemesinin içtihatlarını Doğu Akdeniz mültecilerine soykırım yapılmasını engellemek üzere uyarlanabilecekleri şeklindedir.

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Soykırım • Mülteciler • Mahkemeler • Bosna Hersek • Irak • Suriye

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The Plight of Refugees in the Mediterranean Basin as Evidence of Genocidal Intent: Interpreting Forced Migration from Bosnia, Cyprus, Iraq, Libya, and Syria*

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Abstract

Since the 1980s, it has become increasingly common for members of the international community to condemn as “genocide” such policies as forcing communities to flee their homes because they are seen as a security risk. The treatment of the Baha’i by Iran attracted condemnation during the 1980s that included such acts to be classified as genocide by a UN-commissioned study on genocide. Other mass refugee exoduses resulted in occasional recognitions of genocide, including some resulting in action, such as India’s declaring a genocide of the Bengalis and Hindus in East Pakistan, and Vietnam’s declaring a genocide in communist Cambodia. Starting in 1992, Turkey and other Eastern Mediterranean powers began to criticize Bosnian Serb and Serbian policies of “ethnic cleansing” against Bosnian Muslims, declaring them to be a “form of genocide.” The condemnation of the Bosnian Serbs for having committed genocide led to military intervention. This paper begins with concepts defined by international law and used to address the treatment of forced migrants. It then describes the law of genocidal intent during times of war or other threats to national security. Its thesis is that courts could utilize the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia to apply the proscription against genocide to the plight of refugees from the Eastern Mediterranean.

Keywords

Genocide • Refugees • Tribunals • Bosnia • Iraq • Syria

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In 2015, published photographs depicting Syrian refugees dying en route to Europe “shocked the world,” especially those taken of the young boy Aylan Kurdi, who had been washed onto a beach after the boat carrying him, his brother, and his mother capsized (Açikgöz, 2015; Walsh, 2015). For some commentators, the Kurdi family’s tragic end underlined the callousness and insularity of “fortress Europe,” a secure zone for which the Mediterranean and the Eastern European countries served as a buffer against both refugees and persons fleeing poverty and disease (Açikgöz, 2015). Previously, the Channel Tunnel camps in northern France, the annual death toll due to migrants’ boats capsizing on the high seas, and similar episodes told the same tale. To others, it recalled encounters with the representation of genocide in Bosnia, Rwanda, or Sudan (Conley, 2015).

Syrian refugees are among the more recent of many waves of flight from conflict in the Eastern Mediterranean¹ basin. Prior to 2003, the Balkans, Cyprus, and the Palestine were prominent as sources of refugees. Palestinians found themselves as the most controversial refugees at the international level with Palestinian militant groups being seen as among the most threatening until the Balkan Wars of 1991-1999 (Weiner, 1997, p. 1). Cyprus represented the largest “internal displacement problem in Europe,” though it was actually a refugee crisis given the occupation of half of the island for decades (Internal Displacement Monitoring Center, 2005; Sert, 2010, p. 239). The Turkish Republic of Northern Cyprus, in pursuing a policy of “division ... along ethnic lines” (Sert, 2010, p. 250), refused to allow displaced Greek Cypriots to return to their homes. According to the Republic of Cyprus, almost 80% of privately owned land in northern Cyprus was taken from Greek Cypriots (Sert, 2010, pp. 248–252; see also, Tsilas, 1997, p. 1602).² The Balkan displacement crisis led to Security Council resolutions and military intervention aiming not only to forestall breaches of the international peace in Germany, Hungary, Macedonia, or other neighbors of Yugoslavia, but also to encourage international criminal tribunals to punish genocide (Travis, 2017). The top three source countries for asylum-seekers in the early 2000s were Iraq, Turkey, and Yugoslavia (Baldwin-Edwards, 2005, p. 11).

Countries in the Eastern Mediterranean basin also serve as reluctant host countries for refugees in many instances. The twin humanitarian crises of Darfur and Iraq took place between 2004 and 2010; the latter crisis, to which President George W. Bush and other world leaders failed to respond (Eshoo, 2007), had some 2.5 million displaced persons inside the country by 2007. At the center of the Eastern Mediterranean

1 The Eastern Mediterranean region often includes Cyprus, Turkey, Egypt, Israel, Jordan, Lebanon, and Syria, while the Eastern Mediterranean basin extends further, including the neighbors of these countries as far east as Iran and Afghanistan, as far west as the Balkans, and as far south as Saudi Arabia, Sudan, and Yemen.

2 Turkey alleged that the Greek Cypriots committed genocide against the Turkish Cypriots, necessitating military intervention to protect the Turks on the island, dozens of whom had been killed in 1974. Turkey may be the only country to recognize the TRNC (Papadakis, 2014, p. 127).

region, Greece did not always treat Iraqi refugees according to the most idealistic international norms, with secret returns of migrants to Turkey and puncturing of rubber boats being among the charges leveled by [Human Rights Watch \(2008, pp. 3–4\)](#). The U.S. administration persuaded many American judges that Iraqi asylum-seekers had little to fear from being returned to Iraq, a democratic and freedom-loving state post-2003 ([Travis, 2009b, pp. 1007–1060](#)). Israel, despite its own history as a nation partially founded by refugees, faced criticism over its treatment of refugees from Darfur, whose people were suffering genocide ([Derfner, 2008](#); [Furst-Nichols & Jacobsen, 2011, pp. 55–56](#)). Meanwhile, Egypt used live ammunition to kill “several hundred migrants” ([Furst-Nichols & Jacobsen, 2011](#)).

There is an emerging nexus between refugee exoduses in the Eastern Mediterranean basin, and the pursuit of justice for atrocities by international criminal tribunals. As described below, a UN-backed tribunal for the former Yugoslavia has articulated in some detail the elements of genocide, crimes against humanity, and war crimes, which although having been on the books, were somewhat dormant since the abandonment of most trials of Nazis and their collaborators in the early 1950s. The displacement of two million or more persons from the Darfur region of Sudan led to a Security Council referral of the situation in Sudan to the International Criminal Court (ICC) in the spring of 2005, and a warrant for genocide in 2010 naming the president of Sudan as a suspect ([ICC, 2010](#)). Surveying a variety of sources, Prunier estimates that at least 280,000 deaths occurred due to flight from and killing in Darfur from the summer of 2003 to January 2005 ([Prunier, 2008, pp. 135–152](#)). However, most victims of the Darfur conflict were not immediately massacred. Instead, many succeeded in surviving direct attacks on themselves and their villages, only to die as a result of exposure, hunger, or disease during their flight. Such events, then, raise questions of partial genocide ([ICC, 2010](#)). The Iraqi High Tribunal, meanwhile, convicted an aide to President Saddam Hussein for the mass killings and widespread displacement of Kurds during the late 1980s in particular.

When refugees flee their homes and homelands, questions often arise as to whether international criminal tribunals should be convened and whether outside intervention is needed to return them to their communities or to relieve their suffering in the places where they temporarily reside ([United States Department of State, 1995, pp. 9–18](#)). Sometimes, however, scholars view deportation and forced migration as being incompatible with such crimes as genocide or war crimes. Some scholars argue that allowing members of the victim group to survive, even if they must start new lives somewhere else, prevents a finding of genocidal intent ([De Waal, 2009](#)). Turkish officials and sympathetic foreign writers have claimed that late Ottoman massacres and deportations of Armenians and Assyrians were justifiable on national security grounds or due to the exigencies of war, while writers have made similar observations

about the plight of Iraqi Assyrian refugees in 1933 ([Republic of Turkey, 2014](#); [Republic of Turkey, General Staff, 2007](#); [Republic of Turkey, Ministry of Foreign Affairs, 2007](#)).³ The British government accepted this argument in both cases. Initially, the British government defended the conduct of the Iraqi army against international condemnation in 1933 and made analogous remarks in relation to the conduct of the Ottoman army in 1915 with respect to Armenians ([Malek, 1935](#); [Robertson, 2014](#)). Although there was no standing international criminal tribunal in 1915-1920, the French proposed “exemplary punishment” of 896 figures who violated the laws and customs of war, including Field Marshal Liman von Sanders for “Armenian and Syrian massacres” ([The Trial of German Officers, 1920](#)).

Since the 1980s however, it has become more common for members of the international community to condemn as “genocide” such policies as forcing communities to flee their homes because they are seen as a security risk. The treatment of the Baha’i by Iran and the Iranian Kurds by Iraq attracted condemnation during the 1980s ([U.N. Economic and Social Council, Commission on Human Rights, 1985](#); [United Nations Security Council, 1985](#)). Starting in 1992, Turkey and other Eastern Mediterranean powers criticized Bosnian Serb and Serbian policies of “ethnic cleansing” against Bosnian Muslims as a “form of genocide” ([United Nations Economic and Social Council-Commission on Human Rights, 1992](#); [United Nations General Assembly, 1992](#); [United Nations Security Council, 1993b](#)).

This research note begins with concepts defined by international law to address the treatment of forced migrants. It then describes the law of genocidal intent during times of war or other threats to national security. In judicial opinions arising out of prosecutions for genocide against the Bosnian Muslims, Darfurian non-Arabs, and Iraqi Kurds, judges have analyzed genocidal intent by examining evidence of massacres, rapes, forcible deportation, area bombardment, and deprivation of property. The methodology of international law is to gather evidence of such destructive and discriminatory acts, using them as a basis to infer genocidal intent, to declare an international crime, and to plan efforts to prevent or punish its commission or recurrence.

The Eastern Mediterranean illuminates not only several aspects of the various concepts of genocide, but also of genocidal intent. First, since genocidal intent does not necessarily entail total extermination, it is a legal concept that covers many instances of the refugee experience. Second, the International Criminal Tribunal for the former Yugoslavia (ICTY) has regarded forced migration itself as a key marker of genocidal intent when peoples are removed from their habitual homelands. Third, the Arab Spring is bringing about a pervasive crisis of forced migration. Finally, both the politics of the Eastern Mediterranean and the broader European and western Asian

3 See also ([McCarthy, 2010, p. 111, 138–139, 172, 188, 236–242](#); [McCarthy, 2000](#)).

environment are blocking a similar response to the crisis of widespread displacement of peoples that the international community extended to Bosnia.

One aim of this article is to connect the seemingly distinct narratives of refugee flight from conflict zones, such as Syria, and of persecution by groups such as the Islamic State and *al Qaeda*. Another aim is to engage in a detailed exploration of when and under what conditions refugee flight from the Eastern Mediterranean basin may justify the United Nations or a penal tribunal to declare genocidal intent.

Literature Review

This section attempts to explain certain concepts used by international jurists to describe and redress the plight of refugees and other displaced people. The methodology of international law is to develop concepts defining a type of crime or a category of right or wrong so as to respond to transnational dangers. Some of the key concepts in this area include refugees, crimes against humanity, and genocide, with sources of international law defining these concepts. The methodology of studying problems using notions related to international law is to develop principles and practices from these concepts, such as the prohibition of forcing refugees to return to countries where they fear persecution or do not enjoy state protection, or the principle of *non-refoulement*, with which to address contemporary global issues. This article will necessarily depart from a focus on the Eastern Mediterranean, at least temporarily, in order to explore the origins and meanings of some of these concepts.

Refugees/*Muhajirs*

Protestant Calvinists and Huguenots fleeing Catholic regimes to more tolerant mixed or Protestant societies in the sixteenth century led to the popularization of the word “refugee” (Zolberg, Surhke, & Aguayo, 1989, pp. 5–9). An estimated 200,000 to 1.2 million persons fled their communities as a result of religious persecution (Norwood, 1969, p. 31, 51). Other notable refugee populations included Jewish refugees from Catholic Spain during the Age of Discovery, refugees from nineteenth-century Eastern European pogroms, Catholic refugees from Tudor England, Jewish refugees from Nazi-era Europe, Palestinian refugees from the 1948 and 1967 wars with Israel, and refugees from communism (Basri, 2003, p. 656; Guilday, 1914; Kamm, 1986, p. A11; Norwood, 1969, pp. 13–25).

In the Eastern Mediterranean basin, a series of related refugee exoduses occurred at the intersection of the Russian-Ottoman and British-Ottoman spheres of influence. Since around 2004, Russian archival documents and other evidence of more than 500,000 Circassian and other Caucasian Muslims’ deaths resulting from violence or flight have led to discussions of genocide (Shenfield, 2006). According to post-

1870 censuses of the Ottoman Empire however, many of the Circassians that some scholars had assumed must have died at Russian hands may have been among the two million refugees that fled from the Caucasus to the Ottoman Empire (Karpas, 1978, p. 246; 1985, pp. 65–69; Shaw, 2008, p. 1026).

In the 1920s, the major powers created new institutions to deal with refugees from World War I and its aftermath, with the Office of the League’s High Commissioner having an initial focus on Russian and Armenian refugees that, over time, led to a mandate to aid Assyrian, Assyro-Chaldean, Greek, Bulgarian, and Turkish refugees (Travis, 2009b, p. 1009, 1011). World War II caused an even larger displacement of populations, leading to the “Refugee Convention” of 1951 (United Nations Convention Relating to the Status of Refugees, 1951, p. 150), which defined a refugee as a person displaced from his or her country who was either unwilling or unable to return as a result of events occurring before January 1, 1951 due to “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion...” (Feller, 2001, pp. 129–130).

International law has three principal sources: (1) state practice stemming from a sense of international obligation to create customs, (2) treaties and other international agreements, and (3) general principles of law common to civilized courts (United Nations, 1945, annex, Art. 38(1); Brownlie, 1990, p. 3; Jennings & Watts, 1992, p. 24). A refugee is identifiable with reference to the concept of “persecution.” The term “persecution” is defined broadly so as to include not only risks or dangers to a person’s life, freedom, property, or political rights due to a state’s or state-like actor’s actions against that person, but also failures to protect him or her from such risks (Kugelman, 2011). Asylum is typically a longer-term status of protection than refugee status, which is reducible in principle, if not in practice, to protection from involuntary return (*refoulement*) to the state where an individual is unprotected or fears persecution (Kugelman, 2011).

Crimes against Humanity Such as Ethnic Cleansing, Extermination, and Deportation

In the 1990s, the concept of “ethnic cleansing” gained currency as shorthand for the process by which intimidation is used to push ethnic or religious groups out of cities or regions within countries. A report to the Security Council in 1994 described the concept as “relatively new” but particularly useful to describe the plight of Bosnian refugees and internally-displaced persons (United Nations Commission of Experts to the Security Council, 1994, pp. 55–56).

In 1998, the international community moved to systematize crimes against humanity. Apartheid, slavery, and torture were included, while the use of nuclear weapons and colonial wars were not (Cassese, Gaeta, & Jones, 2002). Extermination and persecution

are particularly important war crimes from the standpoint the plight of refugees, for they have been applied by international criminal tribunals addressing mass displacement from Nazi-occupied Europe, the former Yugoslavia, and the Darfur region of Sudan (Jurdi, 2013, p. 205). The International Criminal Tribunal for the Former Yugoslavia ruled that terrorization of the civilian population, i.e. targeting of the civilian population with acts or threats of violence accompanied by discriminatory intent and the purpose of spreading terror, constituted a crime against humanity requiring persecution, while ethnic cleansing entailed the discriminatory removal of an ethnic, racial, or religious group from a region by means of a widespread or systematic attack upon them (Jurdi, 2013, p. 43).

In the Eastern Mediterranean basin, crimes against humanity took place in several waves. In addition to the Circassian and Ottoman Muslim experience of flight from Russia and the Balkans before 1914, Britain, France, and Russia condemned “all the members of the Turkish government” for the Armenian “massacres” occurring in 1915, deeming them to be “crimes against humanity and civilization” (Bassiouni, 2008, p. 440). In 1919, Britain detained Marshal Liman von Sanders for crimes against Armenian and Assyrian Christians, later releasing him without holding a trial (Brown & Brown, 1919).

Between 1925 and 1938, Turkey’s campaigns against Kurdish separatism resulted in the death or disappearance of up to 250,000 Kurds, although European and local Kurdish estimates were much lower (van Bruinessen, 1994, pp. 166–169, 180–181). In 1933-1934, Iraq’s army and allied Kurdish forces massacred thousands of Assyrians and drove the autonomy-minded indigenous Christians out of the country and often out of the entire region (Donabed, 2015). In the 1950s and 1960s, Turkey’s persecution of Greeks living in Istanbul and northern Cyprus displaced the vast majority of Greeks from these areas, which probably included more than 200,000 people (Human Rights Watch, 1992, pp. 5–9; Skenderis, 2004, pp. 1599–1605).

Between 1960 and 1990, Iraq’s army and internal-security forces destroyed hundreds or thousands of villages located in the northern part of the country and in the vicinity of the Kurdish Democratic Party’s territory, the Patriotic Union of Kurdistan insurgency, and where military operations by Kurdish forces alongside the Islamic Republic of Iran had taken place. Estimates of the dead and of those who disappeared ranged up to 200,000 Kurds and 20,000 Assyrians (van Bruinessen, 1994, pp. 180–181). Turkey’s conflict with Kurdish sympathizers of the Kurdistan Workers’ Party which included the air-bombing of villages that resulted in up to 40,000 deaths as well as two million persons from the Kurdish-dominated southeastern region being displaced from 1980 to 2010 (International Crisis Group, 2011, p. 1).⁴

⁴ Similar figures have been cited in *The Economist* (“Can Kurds and Turks Settle?” 1998, p. 44), the *Congressional Record* (Rossides, E., & American Hellenic Institute, 1998, p. H27687), the reports of Human Rights Watch (1995; 1999), and reports by the United States Department of State (1993, pp. 933–934).

The Arab Spring ushered in a somewhat smaller wave of mass displacements and killings than those which had occurred in the 1980s, 1990s, and 2000s. In addition to one in eight Libyans fleeing either the civil war, foreign-backed opposition attacks on civilian communities, or the U.N.-backed aerial bombardment of Libya by NATO and Arab League forces in 2011, up to 50,000 Libyans were killed in the conflict (Gardane, 2011; Travis, 2013, pp. 104–106, 132; United Nations High Commissioner for Refugees, 2011, p. 21). Turkey, after having condemned its own nationalist and Kurdish rebels as “terrorists” on many occasions, was a key supporter of the Libyan rebellion (Travis, 2013, p. 105). After protests of the Syrian regime and the ensuing conflict with rebels, terrorist forces, and defecting army units, the government of Syria responded with aerial bombardment, artillery, torture, and possibly death squads, leaving millions of people displaced (Associated Press, 2012; United States Agency for International Development, 2014, p. 1). Tens of thousands were violently killed in Syria as foreign-backed Sunni Arab extremist rebels fought government and allied Lebanese and Iraqi Arab forces (Draitser, 2015; International Crisis Group, 2012, 2014; Peace Association of Turkey and Lawyers for Human Rights, 2015; Sadat, 2015).⁵

Genocidal Intent

This section addresses whether the requirement of an “intent to destroy,” rather than an “intent to displace” as per the terms of the Genocide Convention, is inconsistent with viewing the plight of refugees as evidence of genocidal intent. Raphael Lemkin and the other drafters of the Genocide Convention set the stage for the jurisprudence of the international criminal tribunals, due in part to their study of the Armenian and Assyrian refugee plight in the post-World War I era (Travis, 2010, pp. 27–31). Article II (b) and II (c) of the Genocide Convention define as genocidal acts not only the infliction of serious bodily or mental harm on members of an ethnic or religious group, but also the deliberate imposition of such conditions that will lead to the destruction of its members (Travis, 2010, 56–57).

The “intent to destroy” required by the Genocide Convention was not analyzed as carefully on its own terms prior to the 1990s as it is today. The founder of the Genocide Convention, Raphael Lemkin, tended to infer genocidal intent not only from a racial or religious animus, but also from genocidal acts themselves (Travis, 2010, pp. 27–31). He spoke of genocides during the persecution of Christian sects by the Roman Empire and by the Holy Roman Empire, even during episodes of selective killing, more similar to Ottoman-era massacres of the Tiyari tribe of Assyrians in the 1840s or the Adana massacre in 1909, than to the events of 1915 (Travis, 2010, pp. 27–31). In writing of the Native Americans, Lemkin inferred genocidal intent from

⁵ Various sources attribute a death toll of more than 150,000 in the conflict to unscientific reports by “activists” (Novosti, 2014; Surk, 2014).

the removal of natives from their lands, confining them in close quarters, taking away their children, and exposing them to disease (Docker, 2004). In speaking of genocide perpetrated by communists in the 1950s, Lemkin emphasized that selective attacks on priests and the kidnapping of non-communist children were genocidal (Gigliotti, 2015, pp. 46–47; Weiss-Wendt, 2005, pp. 551–559). Lemkin, therefore, did not limit “intent to destroy” to total destruction, such as the Jewish Holocaust.

The intent of the Nazis towards the Jews was, of course, emblematic of genocidal intent as the Genocide Convention was drafted. The German invasion and occupation of Poland killed at least three million non-Jewish Poles, including nearly 60% of Poland’s lawyers, 45% of its doctors and dentists, 40% of its professors, 30% of its technicians, and 30% of its clergy (Crowe, 2001, p. 34; Katz, 1989, p. 148), in addition to three million Jewish Poles. As the United States declared to the International Court of Justice in 1951, “the extermination of millions of Jews and Poles by the Nazis [was an] outstanding example of the crime of genocide” (International Court of Justice, 1951, p. 25). Regarded by the United States as victims of genocide, the Poles were not totally destroyed. Indeed, some of them even went on to engage in the postwar cleansing of German Poles from their own homes.

Facing more two-sided acts of violence than the events of the Holocaust, the international criminal tribunals for the former Yugoslavia and Rwanda defined genocidal intent using a five-factor inquiry or test. The test does not require an announcement or proclamation that a certain group has been or will be destroyed. Instead, intent may be inferred from (1) a context of other crimes against the same group, (2) large-scale killings or other abuses, (3) excluding non-members of a particular group from attack, (4) the number of group members affected, and (5) the political doctrine or derogatory rhetoric motivating the violence (Travis, 2010, p. 80). In the context of displacement to camps, the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia [ICTY] has made it clear that genocidal intent could be inferred even when most detainees (and in some cases up to 90%) survived their encounter with hostile Bosnian Serb forces (ICTY, 2001, para. 75; 2005, para. 647–654; 2007, para. 104, 123). The Trial Chamber of the ICTY declared that “the *forced migration of civilians*” could manifest genocidal intent “by the Serbs [sic] to eliminate Muslim control of, and presence in, substantial parts of Bosnia-Herzegovina” (ICTY, 2005, para. 663). The Appeals Chamber clarified that although forced migration without killing would not be enough, the two together could represent the “physical destruction” of a community, thereby constituting genocide (ICTY, 2004, para. 31–33; 2007, para. 123). The “intent to displace” is therefore not incompatible as such with genocidal intent.

The UN Special Adviser to the Secretary-General for the Prevention of Genocide applies many of the same factors as the ICTY, leading to warnings of genocide in

situations less extreme than the establishment of hundreds of concentration camps and large death camps as occurred during the Holocaust. This office looks to past discrimination and other human rights abuses against a group, acts such as killing or abductions that divide or target people on ethnic or religious groups, ethnic cleansing, a situation of impunity due to lack of the rule of law or propaganda against a group, the existence of illegal militias, and illegal regime change or other circumstances that could trigger genocide (United Nations Special Adviser to the Secretary-General on the Prevention of Genocide [SAPG], 2009, 2010). The special adviser sees a “risk of genocide” in, among other factors, “elements of genocide, such as killings, abduction and disappearances, torture, rape and sexual violence, *ethnic cleansing or pogroms*, or the deliberate deprivation of food” (SAPG, 2010). In examining genocidal intent in particular, the special adviser uses, in part, pervasive or policy-based practices that cause displacement, torture, or killing; ethnic cleansing by means that reveal a plan to violate the social or economic underpinnings of a distinct group; the destruction or targeting of religious or cultural buildings or rituals of a distinct group so as to reveal a policy of decimating the continuity of the group; discriminatory killings of the group’s leaders or its military-aged members of a specific gender, or its children and youth; and other acts or omissions manifesting a strategy of excluding the group from enjoying a social or political role in a country (SAPG, 2009, pp. 15–16). In viewing ethnic cleansing or pogroms as evidence of genocide, the office of the special adviser on genocide opens the door to viewing the plight of refugees as proof of genocide.

Although there were few international genocide trials during the Cold War, it has since become more common to prosecute large-scale ethnic cleansing targeting noncombatants as well as rebel groups as episodes of genocide. Since 1992, international commissions and tribunals have turned their attention to claims of genocide in Bosnia, Kosovo, Sudan, Libya, Palestine, and Syria.⁶ The ICTY clarified that the “systematic expulsion from homes,” a key aspect of the refugee experience, may be a genocidal act and part of the calculus of genocidal intent (Human Rights Watch, 2004; ICTY, 1996, para. 93; 2001, para. 513; 2004, para. 28–57; 2005, para. 624–671). The Security Council, often citing mass displacement as well as violence in Bosnia in 1992–1993 and Kosovo in 1999, referred the situation in Yugoslavia to the ICTY and empowered it to make genocide charges among others (United Nations Security Council, 1993a, 1993c). At that time, the death toll was about 14,000, and there were Croatian Muslim and Bosnian Muslim insurgencies against the federal Yugoslav government, which had been a member State of the United Nations for more than four decades (Rehn, 1996, 1997; Reuters, 1993, p. 77; Sciolino, 1993).

6 See (Associated Press, 2011; International Criminal Court, 2010a, 2009b, 2011; Travis, 2014a; United Nations Fact-Finding Mission on the Gaza Conflict, 2009; United Nations Independent Fact Finding Committee on Gaza, 2009; United Nations Independent International Commission of Inquiry on the Syrian Arab Republic, 2012; United Nations Security Council, 2005).

The General Assembly emphasized that not only were displaced persons and war victims losing access to water, electricity, fuel, and communication in Bosnia and Herzegovina, but that humanitarian aid was not flowing freely, Sarajevo was under a “siege,” and refugees and displaced persons could not return to their homes (United Nations General Assembly, 1992).

More recent rulings of the International Court of Justice (ICJ) and the ICTY have undermined aspects both of the earlier judgments of the ICTY and of the General Assembly’s 1992 genocide decree. The ICJ determined in 2007 that the intent of the Bosnian Serbs and of the government of Serbia was to partition Bosnia into Bosnian Serb and Muslim-Croat zones, not to eliminate the Bosnian Muslim or Croat groups. Thus, despite considerable displacement, conflict, and atrocities in 1992-1995, no genocidal intent was formed outside of the content of the Srebrenica massacre (ICJ, 2007, pp. 299–308). In 2013, the Appeals Chamber of the ICTY confronted the Bosnian Serb leader’s argument that the ICJ and a variety of ICTY judges had concluded that no genocide had occurred outside of Srebrenica (ICTY, 2013, p. 34). The ICTY found the ICJ ruling not to be binding, deciding that there was ample evidence on which to base a finding of genocidal intent, including evidence that the leader wanted Muslims to “disappear” by a combination of flight, killing, partition, and conversion (ICTY, 2013, pp. 35–39). The Trial Chamber of the ICTY has once again acquitted the leader of the charge of genocide outside of Srebrenica after fuller consideration of the evidence, but this too is subject to appeal (ICTY, 2016). Such rulings by the trial chambers of the ICC and ICTY have repeatedly been reversed in the past, and have been routinely excoriated by scholars (ICTY, 2013, pp. 35–39; Scheffer, 2007, pp. 125–127, 129–130; Travis, 2012). Among other things, there is a contradiction between finding a partial genocide at Srebrenica despite the survival and transportation of women and children and a refusal to find such a partial genocide in other Bosnian, Croatian, or Serbian villages where men were killed and the place was emptied of its originally predominant ethnic or religious component. The rationale for finding no genocide outside of Srebrenica was at least in part that the Bosnian Serbs desired to make peace with the Muslims who had survived the war. Yet, the same might also be said for the surviving women and children of Srebrenica (ICTY, 2016, pp. 1007–1008).

Other tribunals have echoed the ICTY in finding potential “intent to destroy” when most victims were displaced rather than immediately killed. The ICC concluded in 2010 that a warrant for genocide should be issued against the President of Sudan, Omar al-Bashir, because thousands had been killed and “hundreds of thousands of civilians” had suffered “acts of forcible transfer” within the Fur, Masalit, and Zaghawa groups (ICC, 2010, pp. 5–8). The Pre-Trial Chamber I of the ICC has explained that damaging the infrastructure needed for survival in a village, while simultaneously resettling other tribes into the homes of its forcibly displaced inhabitants, is “calculated

to bring about the physical destruction of a part of those ethnic groups” inhabiting it (Chetail, 2016; ICC, 2010). Vincent Chetail argues, based on this decision and many others, that forcible displacement “falls under the material element of the crime of genocide by causing serious bodily or mental harm,” and may be intertwined with “physical or biological destruction to such an extent that forced displacement may equally exhibit the genocidal intent” (Chetail, 2016, p. 938, 940). In addition, an Iraqi tribunal led in part by American personnel convened a trial to decide whether genocide had occurred in Iraq (Iraqi High Tribunal, 2007a, 2007b; Scharf & Newton, 2006). The tribunal used evidence of widespread displacement of Iraqi Kurds, as well as evidence of their killing by aerial bombs, chemical weapons, artillery shells, sniper rifles, and other weapons, to find that genocide had occurred (Iraqi High Tribunal, 2007a, pp. 40–43, 63–64; Iraqi High Tribunal, 2007b, pp. 24–27). Neither the ICC nor the Iraqi High Tribunal required total destruction to issue a charge of genocide.

Legal and social-scientific scholars have analyzed ethnic cleansing as evidence of genocide throughout the Eastern Mediterranean basin, arguing that one common thread between the Armenian and Greek plight during and after World War I and the forced displacement of Cypriot Greeks starting in 1974 was targeted rape and sexual assault (Pipinelli & Kalayjian, 2010, p. 310). In the context of rape for purposes of ethnic cleansing in Bosnia, Bassiouni and Manikas (1996, p. 587) linked this tactic to the possibility of group destruction by interference with procreation (Fournet, 2007, p. 41). Journalists widely reported on the situation in Bosnia as being a worse genocide than the “tribal” struggle in Rwanda during the same era (Macgregor, 2013, pp. 176–177). Shahrazad Mojab (2003, p. 22) argued that genocide occurred when the Iraqi armed forces’ assaults on the Kurdish region caused three million persons to flee toward the mountains and the Turkish border. Mark Levene (1998, pp. 419–421) connected this zone of genocide in southeastern Turkey and northern Iraq with the impunity for the genocidal deportations of 1914–1923. According to Mojab (2003, p. 23), “gendercide” in this zone continued under the autonomous Kurdish administration after Iraq was driven out in 1991, characterized by honor killing and gender-based persecution leading to many suicides by self-immolation. Majed El Shafie, an Egyptian-Canadian activist for religious freedom, maintains that in the most recent decade, Iraq has manifested a persistent “culture of impunity” when it comes to violence against Christians, marked by assassinations, kidnappings, deprivation of wealth and property, and massacres, including the killing of more than 50 worshipers at a Chaldean church in 2010, which he visited (2012, part. 82).

This culture of impunity culminated in the attacks by the Islamic State of Iraq and Syria, or ISIS, on Yezidis, Christians, Shiites, and moderate Sunni Muslims in 2014–2015, leading to declarations by the European Parliament and the U.S. State Department of an ISIS genocide against Christians, Yezidis, and other ethnic and

religious minorities as persecution emptied communities, nearly destroying entire cultures and ruining cities (Cornwell, 2016; Shea, 2016). Britain, Iraq, France, Russia, Lithuania, and the Vatican also recognized the religious-minority genocide by ISIS (Cornwell, 2016).⁷ In 2015, the Minority Rights Group reported that “executions, forced conversion, rape, sexual enslavement, the destruction of places of worship, the abduction of children, the looting of property, and other severe human rights abuses” were “part of a systematic strategy to remove these [minority religious] communities permanently from areas where they have lived for centuries” (Minority Rights Group, 2015; see also, Recede, 2015; Tony Blair Faith Foundation, 2015).

The Christian population of Syria fell by two-thirds by 2015 and possibly by 80-90% by late 2016 (Knights of Columbus and In Defense of Christians, 2016; Williams, 2016). In 2016, the European Parliament, the Russian Foreign Ministry, the U.S. Congress, and the U.S. State Department declared that Christians and Yezidis suffered genocide in Iraq and/or Syria between 2014 and 2016 (Bacon, 2016; Paraszczuk, 2016; Plis, 2016). Had Assyrian, Mandaean, and Yezidi communities not been targeted on religious grounds, there could have been nearly 2.8 million of their members in Iraq today, rather than the current 700,000 (Travis, 2009a, p. 439, 442–443, 463–464, 466–467; Travis, 2017).⁸ The recognition of this mass exodus as another genocide serves as diplomatic confirmation of the ICTY’s jurisprudence, and of scholarly accounts of genocidal intent.

Social scientists and psychologists/psychiatrists have begun to quantify the mental harm suffered by refugees and displaced-persons, which may be crucial as prosecutors and courts attempt to grapple with charges of genocide by the infliction of serious bodily or mental harm upon group members. In 2007, a study appeared on persons largely displaced from rural northern Iraq to the metropolitan Dohuk area. The authors reported that the population experienced emotional “problems” and post-traumatic stress disorder, which they attributed to the continuing effects of the violence in the early 1990s (Ahmad et al., 2007, p. 6, 21). In 2008, a study of Iraqi refugees in Syria by the UN Refugee Agency indicated that all those surveyed had undergone a traumatic event,

7 See also (Associated Free Press, 2015; BosNewsLife Americas Service, 2016; Geller, 2014; Hall, 2015; Hollande Raises Issue of Christians of Middle East and Armenians, 2015; Paraszczuk, 2016; Republic of France, 2015; Tass Russian News Agency, 2015; Tumenaite, 2015; U.N. Committee on the Elimination of Racial Discrimination, 2014 p. 3, para. 6; Yakovenko, 2014)

8 There were an estimated 1.4 million Christians in Iraq in 1984, when the Iraqi population was 50% smaller than it is today (or 15 million versus more than 30 million) (Maddison, 2008). A conservative estimate of the increase in the Christian population absent the targeted persecution that took place would be an additional 600,000, leaving two million today. In fact, there are about 200,000 to 300,000 left in Iraq (Batchelor, 2015; Eshoo et al., 2010). The Yezidi population declined from 500,000 or 600,000 in 2006 to as few as 300,000 in 2014 (Leibovitz, 2014; Travis, 2009a, pp. 463–467; Travis in press). Had this population increased along with the rest of Iraq’s population until 2016, or by about 20%, it would be 100,000 larger today, or about 700,000 strong, leaving a deficit of about 300,000. Iraq’s Mandaean population used to number about 60,000, but has dwindled to less than 6,000. It should have increased 20% to 70,000, leaving a deficit of 60,000.

with 75% knowing a murder or war victim, 72-80% having seen another person be shot or car-bombed, and 77% having experienced aerial bombardment or artillery/rocket fire (Chon, 2008). Another 2008 study tested for violence to family members, finding that one in five Iraqis in Jordan and one in three in Lebanon reported being “subject to, before or while fleeing, direct experiences of potentially highly traumatizing events, including witnessing the assassination of relatives and friends, kidnapping, torture, and rape” (Schinina, Bartoloni, & Nuri, 2008, p. 16). Panic attacks and thoughts of death happened between 40% and 80% of families, depending on whether trauma had been directly confronted by the family (Schinina et al., 2008, p. 84). In a 2010 survey of Iraqis who returned to Baghdad after having fled before 2008, 60% lived in fear of bombings, war, kidnapping, or persecution (Associated Press, 2010). The U.N. Secretary-General observed in 2012 that food, medicine, and fuel for heating homes were in short supply, that more than 40% of hospitals and health centers had been damaged or converted to other uses, and that 2.5 million Syrians were in need of aid (U.N. Secretary-General, 2012). In 2013-2014, the U.N. reported that among Syrian refugees in northern Iraq, patterns of “extensive sexual harassment, intimidation, and threat (perceived or actual) of sexual violence compounded women’s feelings of vulnerability and fear” (United Nations Entity for Gender Equality and Women’s Empowerment, 2014, p. 6). Many Iraqis and Syrians may eventually die of preventative child or maternal mortality, based on the experience of other countries suffering civil and sectarian wars (United Nations Office for the Coordinator of Humanitarian Affairs, 2007).

A potentially even more important field of study, which has direct implications for the determination of genocidal intent by judges, involves death tolls from conflict and mass displacement. Crude mortality rates, infant mortality rates, and under-five mortality rates, when combined with population estimates, give rise to excess-death calculations. Research into a variety of instances of conflict-related displacement has recorded crude mortality rates of up to 80 times normal rates (Kelley, 2009, p. 22). In 2004-2005, the journals *Criminology* and *The Lancet* published estimates of hundreds of thousands of deaths in Iraq and Darfur, Sudan, that would not have occurred absent ethnic/religious cleansing and mass displacement (Hagan, Raymond-Richmond, & Parker, 2005; Travis, 2014b, pp. 131–132, 147–148). A variety of other studies have attempted to extrapolate elevated crude-mortality rates, acute malnutrition rates, and child mortality rates in IDP camps in Darfur to the entire Darfuri IDP population, generating estimates of tens of thousands of deaths due to displacement every month (Prunier, 2008, pp. 135–152). By 2008-2010, studies prepared in part for the ICTY estimated up to 305,000 deaths in Bosnia and Herzegovina and the greater region due to elevated mortality rates due to the 1992-1995 Bosnian war, more than three times the count derived by counting victims of violence (Travis, 2014b, pp. 131–132). Similar studies have been done with respect to displacement in/from Kosovo and the Congo (Kinshasa) (Travis, 2014b, pp. 131–132). Such work may aid jurists in

assessing whether government and rebel forces have engaged in killing, the deliberate infliction of substandard conditions of life, and the infliction of serious harm within the meaning of the Genocide Convention.

Directions for Future Research

Four types of juridical methodologies are used today to respond to instances of forced migration both in the Eastern Mediterranean basin and other regions: international criminal law, early warning systems for genocide, refugee and asylum law, and socio-legal approaches to empirical problems in the field. Too often, these methodologies do not refer to one another, causing refugees' plight not to be reflected from the standpoint of survey evidence or asylum law in the work of international criminal tribunals. Future research within these methodologies must improve our understanding of the Eastern Mediterranean region's experience of mass refugee flight. Priorities for research include: establishing thresholds or indicators to assess when ethnic cleansing or forced migration qualifies as genocide, mapping the empirical research dealing with refugee and IDP mortality and trauma onto Article II (b)-(e) of the Genocide Convention, and studying the interconnections among genocides, mass exoduses, and the rise and diffusion of groups like ISIS and *al Qaeda*. Genocidal intent may emerge at the juncture of civil war, deportations, extreme and exclusionary ideologies, and refugee and IDP mortality.

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