

THE HISTORICAL and CONTEMPORARY CONTEXT of THE ‘FORCED TRANSFER of THE ETHNIC GROUPS’ FROM HUMAN RIGHTS PERSPECTIVE: THE BALKAN CASE

Research Article

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ABSTRACT

Since the 1990s, crimes against humanity have been codified in different international treaties such as the Statute of the International Criminal Tribunal for the former Yugoslavia (1993) and the Rome Statute of the International Criminal Court (1998). The Rome Statute provides the most recent and broad list of criminal acts that may constitute crimes against humanity, including forced migration. However, in the early 20th cc, within Southeastern Europe, population transfers were legitimated by the bilateral agreements based on so-called liberating actions and supported by the international institutions as a tool to sustain peace in the region. This paper by analyzing the bilateral agreements and population transfers between the Balkan states aims to answer these main questions: Why did ‘forcible transfer of population’ began to be defined as ‘a crime against humanity’ by the UN in 1998 but not before? Why population and especially minority transfers were seen as a mean for peace before 1990s? The comparative approach of this paper based mainly on the Balkan region, by displaying the historical and contemporary contexts of

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population transfers, suggests a new theoretical framework that the early population transfers and contemporary displaced population are different in terms of 4 issues: legal frameworks; the impact on national identity; the geographical extension and lastly reintegration and return policies.

Keywords: *Forcible Transfer of Population, Immigrants, Minorities, International Criminal Court (ICC), The Balkans*

İNSAN HAKLARI AÇISINDAN ETNİK GRUPLARIN ZORUNLU GÖÇLERİNİN TARİHSEL ve GÜNCEL BAĞLAMDA ANALİZİ: BALKANLAR ÖRNEĞİ

ÖZET

1990'lı yıllardan bu yana insanlığa karşı işlenen suçlar, Eski Yugoslavya Uluslararası Ceza Mahkemesi Statüsü (1993) ve Uluslararası Ceza Mahkemesi Roma Statüsü (1998) gibi çeşitli uluslararası antlaşmalarda düzenlenmiştir. Roma Statüsü, zorunlu göç de dahil olmak üzere insanlığa karşı suç teşkil edebilecek belirli fiillerin en güncel ve kapsamlı listesini sunmaktadır. Diğer yandan 20. yüzyılın başlarında Güneydoğu Avrupa'da nüfus transferleri, bölgedeki barışı sağlamak için uluslararası kurumların desteğiyle sözde kurtarıcı eylemlere dayanan ikili antlaşmalarla meşrulaştırılmıştır. Bu makale, Balkan devletleri arasındaki ikili anlaşmaları ve nüfus transferlerini analiz ederek şu temel sorulara yanıt vermeyi amaçlamaktadır: Zorunlu nüfus transferi neden daha önceki bir tarihte değil de, 1998'de BM tarafından 'insanlığa karşı suç' olarak tanımlanmaya başlanmıştır? 1990'lı yıllardan önce nüfus ve özellikle azınlık transferleri neden barış için bir araç olarak görülüyordu? Bu makalenin özellikle Balkan bölgesine dayanan karşılaştırmalı yaklaşımı, nüfus transferlerinin tarihsel ve güncel bağlamlarını göstererek, erken dönem nüfus transferleri ile günümüzdeki yerinden edilenler arasında yeni bir kuramsal çerçeve çizmektedir. Nüfus transferleri şu dört konuda farklılık göstermektedir: yasal çerçeveler; ulusal kimlik üzerindeki etkileri; geniş coğrafi etkiler ve gruplar arası yeniden uyum ile geri dönüş politikaları.

Anahtar Kelimeler: Zorunlu Nüfus Transferi, Göçmenler, Azınlıklar, Uluslararası Ceza Mahkemesi (UCM), Balkanlar

INTRODUCTION

Forced migration is a central theme of history. Since the Second World War (WW2), it tried to be analyzed from a more humanitarian perspective rather than a tool for security, and starting from the 1990s, population transfer became an issue arising often in areas of ethnic tension from Middle-East, to Eastern Europe, Caucasus and Balkan region. On the other hand, population exchanges were a very common policy in the Balkan region in the early 20th century, and they were legally and detailed defined by the bilateral agreements and they include mostly the expulsion of Muslim groups, who are seen as ‘Ottoman Heritage’ that threatens the national security and homogenization.¹

In the late Ottoman period, there were two significant waves of migration from the Balkans to Türkiye: the migrations caused by the Russian-Ottoman War of 1877-1878 and the migrations that were caused by the Balkan wars of 1912-1913. After these wars, more than half a million Muslim refugees from the Russian Caucasus and the areas south of the Danube, which were under Russian protection, were settled in the Ottoman Empire.² Every emerging predominately Christian state in the Balkans eventually forced at least part of its Muslim population to flee the country. These nineteenth and twentieth century wars and population exchanges resulted in around one and a half million Muslims being expelled or forced to migrate, almost exclusively to Türkiye. During these periods for the Balkan peoples, religion compared to language has been a factor that has strongly influenced these migrations. The ruling Unity and Progress Party (*İttihat ve Terakki*) has taken up the issue of emigration by signing an agreement on population exchange.³ The relocation of

¹ Maria, Todorova: “The Ottoman Legacy in the Balkans,” In *Imperial Legacy: The Ottoman Imprint in the Balkans and the Middle East*, Ed. Carl Brown, 1997, New York: Columbia University Press.

² Justin, McCarthy: *Death and Exile: The Ethnic Cleansing of Ottoman Muslims, 1821-1922*, 1996, p.90. According to McCarthy, the Ottoman Empire had already taken in over a million Caucasus refugees before the Russo-Turkish War of 1877/1878. They had been expelled after the Crimean War (1853–1856) and in the wake of the Russian conquest and pacification of the North Caucasus (1864).

³ Dündar, Fuat: *İttihat ve Terakki’nin Müslümanları İskân Politikası (1913-1918)*, 2001, İstanbul, İletişim Yayınları.

immigrants from the Balkans to Anatolian lands has been mainly in the border regions near Thrace, where the population was largely non-Muslim.⁴ The Congress of Berlin was convened in 1878 to negotiate the modalities of the joint supremacy of European powers in Southeast Europe and especially to clamp down on Russia’s hegemonic claims. The Congress, however, did not succeed in bringing about a lasting peace in Southeast Europe.⁵ On the contrary, the Berlin agreements had grave implications for religious and ethnic populations, who had suddenly become minorities and had to fear expulsions resulting from segregationist practices. As a conclusion while only 38 percent of the Muslim population living in the Balkans region in the year 1911 remained in 1923, the rest had been expelled, had fled, had died in the battle or had been massacred.⁶

In general, these bilateral agreements are part of a broader series of state-directed population resettlement projects starting with the Second Balkan War and later in the interwar period that had the demographic homogenization of nation-states in Southeastern Europe. Hence they enabled demographic engineering. The process also caused institutionalization of nation-states and international organizations on settlement laws.⁷ These expelled groups were forbidden to return to their home-lands as well. As a result, since Ottoman period, Anatolia became the safe haven for the Muslim groups who had to flee from their lands due to suppression, violence or subordination.

⁴ Erjada, Progonati, “A Historical Framework for the Balkan Migrations to Turkey”, ANKASAM, 2017. <https://www.ankasam.org/a-historical-framework-for-the-balkan-migrations-to-turkey/?lang=en>

⁵ Misha, Glenny: *The Balkans: 1804–1999: Nationalism, War and the Great Powers*, London 1999; Barbara, Jelavich: *Russia’s Balkan Entanglements 1806–1914*, Cambridge 1991.

⁶ Nesim, Şeker: “Forced Population Movements in the Ottoman Empire and the Early Turkish Republic:

An Attempt at Reassessment through Demographic Engineering”, *European Journal of Turkish Studies*, 2013.

⁷ Prior to 1923 population exchange, there had been little official organization of migration and settlement in Turkey. In 1913 the Dep Settlement and Tribes had been organized but was inadequate. So on November 8, 1923, a Ministry of Reconstruction, Exchange, and Settlement was established.

While some of these bilateral agreements include compulsory population exchange of the co-nationals between the kin-states, many of them are regulated as voluntary transfer, which later through the pressures from the nation states and dominant nationalist groups, became a forced one. Repressive measures were also undertaken to encourage migration and create a right atmosphere for it. The emigration of non-Slavic or Muslim groups were mainly such that, largely supported given that they were not seen as groups that could be fully assimilated. This was same for the non-Muslim groups within Türkiye.⁸ Therefore, although since 1998, “deportation or forcible transfer of population” has been defined as a crime against humanity by the Article 7 of the Rome Statute of the International Criminal Court (ICC)⁹, in the early 20th cc, within Southeastern Europe, they were legitimated based on so-called liberating actions and supported by the international institution as a tool to sustain peace in the region. Migration policy was preferred rather than ethnic cleansing as a means for solution to the ‘minority problem’. That is why usually these treaties are named as peace or friendship agreements.

Why was ICC established and ‘forcible transfer of population’ began to be defined as ‘a crime against humanity’ by the UN in 1998 but not before? Why population and especially minority transfers were seen as a mean for peace before 1990s? Why haven’t the international courts made distinction between the crime of deportation between the states and within the states? For this purpose, it will first give brief information about the various definitions of minorities and the development of the ‘protection of minority rights’ idea. In the second section the bilateral agreements between the newly emerged Balkan countries (19th -20th cc) will be analyzed and compared in order to show the legal justifications and impact of population transfers. The third and main part will focus on the Article 7 “forcible population transfer” issue in the 1998 Rome Statute of the International Criminal Court and discuss the rationality behind this improvement from the human rights perspective. Later, comparison and conceptualizing of forced population movements in the Balkans during the early 20th century and 1990s will be presented.

⁸Utku Özer / Burcu Taşkın, “The Human Rights Action Plan and Turkey’s Non-Muslim Minorities”, *Journal on Ethnopolitics and Minority Issues in Europe*, 22.1, 2023, 63–93.

⁹ M. Cherif, Bassiouni, *Crimes Against Humanity in International Law*, The Hague: Kluwer Law International, 1999, p. 312

1. Definition of Minorities

Minority issues and deportation of different groups have long been a delicate topic for states. Therefore, because it is the governments that make international law, it is not a surprise that international minority rights, protection of these rights and forcible transfer of these populations have lagged behind the definition of other branches of human rights.¹⁰ Until the second half of the 20th cc., the use of human rights language to improve the treatment of minority and disadvantaged groups were not highly preferred. Not surprisingly, before the 1990s, there were no significant international human rights institutions addressing minorities. Particularly following the collapse of communism in Eastern Europe, there was a rapid growth in the number of minority-related NGOs, and the ‘minority issue’ has taken place on the agenda at national, regional and international levels.

The Ottomans did not use the term ‘minority’ (ekalliyet) and, until the collapse of the empire, did not grant minority status to any ethnic group. The most important criterion of difference among Ottoman subject was religion based on the ‘millet system’ introduced by Sultan Mehmet II to organize the state’s administration effectively where non-Muslims composed one third of the whole population. Within this system there were two major groups: Muslims and non-Muslims. Thus, until the beginning of the modern era, ethnicity carried little significance.¹¹ Rather, people had strongly imprinted local or regional identities-another boundary, even if it did not count as much as religious difference. Only after the establishment of nation-states in the Balkans did the issue of minorities evolve, at the latest after 1830, when an independent Greece emerged and minority status became an issue under debate. Serbia, Montenegro and Romania received and/or expanded their right to autonomy after 1812 and, as a result of the Ottoman-Russian War of 1877-78, gained their independence. In 1878, the Bulgarian principality was founded. The administration of Bosnia and Herzegovina was

¹⁰Burcu, Taşkın: Political Representation of Minorities in Greece and Turkey: Nationalism, Reciprocity and Europeanization. İstanbul: Libra Kitap, 2019.

¹¹Burcu, Taşkın: “Osmanlı İmparatorluğu’nda Gayrimüslim Tebaa’nın Yönetimi ve Yönetimdeki Gayrimüslümler”, In Sessiz Gemi: Prof. Dr.Bilal Eryılmaz’a Armağan. Marmara Belediyeler Birliği Kültür Yayınları, 2021.

transferred to the Austro-Hungarian government. The most important minority in these areas was comprised of Muslims.

It can be said that, almost a century later since the establishment of the League of Nations and implementing minority issue into the peace agreement, and there is still no accepted definition of the concept ‘minority’ in international law.¹² The types of minority definition secured by international documents differs as ‘ethnic, linguistic and religious’ minorities [in the Article 27 of the International Covenant on Civil and Political Rights (ICCPR)] to ‘national’ minorities (Article 10 in the Council of Europe documents).¹³ This lack of definition shows the complexity of the subject.

Since WWI, minorities and the protection of their collective rights came to the fore and these principles were added to both bilateral and international agreements afterwards.¹⁴ From the beginning the agreements were based on expulsion and homogenization of the populations rather than co-existence. Almost all the Ottoman-Russian wars during the 19th cc. caused mass migrations in occupied territories, and the creation of the Balkan states in the nineteenth century was accompanied by migrations and population transfers also, for different reasons and different scales. Even before the Balkan wars of 1911-1913, negotiations on ethnic and religious population transfers took place between the parties. Migrations occur as either forced or voluntary, mass or individual, planned or chaotic actions. All the reasons for migrations occurred in the Balkans throughout history.

Another argument on the definition and recognition of minority rights emerges, whether they should be regarded as individual or collective

¹² UN Declaration on the rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities UN Res 47/135 of 18 December 1992.

¹³The Council of Europe, Framework Convention for the Protection of National Minorities. <https://www.coe.int/en/web/minorities/fcnm-factsheet> (accessed: 09

¹⁴ Group rights, also called collective rights, are the rights held by a group as a whole rather than by each of its individual members. Examples are: The right for a religious group to freely practice communal religious expression; The right to preserve one’s culture, including the right to speak a native language and teach one’s children in it. B. Ali, Soner, “Azınlık Hakları: Ayrılıkçı mı, Çoğulcu mu?”, İnsan Hakları Yıllığı, 26, 79–95, 2008.

rights.¹⁵ It is argued after WWII that the rights given to individual will provide the protection of minorities. On the other hand, some believes collective rights guarantee the survival of the group, as emphasizes by the ethnic, linguistic and religious difference of that group from the others.¹⁶ However, it can also lead to the suppression of the individual's preferences by the group.

The end of the Cold War brought the “minority issue” and “identity politics” back to the agenda of political science, which began to analyze the newly erupted ethnic conflicts in the Balkans, the Caucasus, and Eastern Europe. As new nation-states were emerging, minority rights and protection of their rights became a focus of the researches.¹⁷ Despite the bilateral agreements between Türkiye and Bulgaria on the protection of minority rights, expulsion of the ethnic and religious minorities Turks in Bulgaria even continued during this period.¹⁸

Following the collapse of the League of Nations regime, the concept of a general, universal protection of human rights evolved with the establishment of the UN Charter. That’s why the most comprehensive and widely used definition of minority was made by United Nations Human Rights Commission’s “Deterrence of Discrimination and Protection of Minorities” report in 1978. According to this report, “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members- being nationals of the State- possess ethnic, religious and linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language” are defined as minority. Later in 1985 the sentence “a collective will to survive and whose aim is to achieve equality with the majority in fact and in law” is

¹⁵ Will Kymlicka, "Introduction", In Will Kymlicka (ed.), *The Rights of Minority Cultures*, Oxford, Oxford University Press, 1995, pp.13-14.

¹⁶ Darlene M. Johnston: "Native Rights as Collective Rights: A question of Self-Preservation", In Will Kymlicka (ed.). *The Rights of Minority Cultures*, Oxford University Press, 1995, p.179, 182.

¹⁷ Ibid. Kymlicka, *Multicultural Citizenship*, pp 10-33.

¹⁸ Tomasz, Kamusella, “Ethnic Cleansing During the Cold War: The Forgotten 1989 Expulsion of Turks from Communist Bulgaria”, In, *Ethnic Cleansing During the Cold War* Routledge, 2019.

added to the definition.¹⁹ An important distinction of UN's definition from the League's is the substitution of the adjective 'ethnic' instead of 'racial'.

In 1992 at Council of Europe Framework Convention for the Protection of National Minorities (FCNM) minorities are defined as: "separate or distinct groups, well defined and established on the territory of a state, the members of which are nationals of that state and have certain religious, linguistic, cultural or other characteristics which distinguish them from the majority of the population".²⁰ Finally, the European Union used its level of conditionality in order to influence the minority performance of all states applying for EU-membership. FCNM which entered into force on 1 February 1998 and is now in force in 39 states, is still Europe's most comprehensive treaty protecting the rights of persons belonging to national minorities. It is the first legally binding multilateral instrument devoted to the protection of national minorities worldwide, and its implementation is monitored by an Advisory Committee composed of independent experts.

To summarize, the violation of the minority rights, the tension between ethnic and religious groups, and territory losses constituted the bilateral agreements for population transfers within the Balkan region. On the other hand, these conventions for the protections of the minorities, do not have any articles about the voluntary or forced population transfer of these groups. They mainly focus on the defined collective and individual rights of the recognized minorities within the territories of a nation state. Moreover, they do not interfere to the bilateral agreements between the states that include population transfers. At this point, in order to understand the transition from bilateral solutions to the legally binding multilateral instruments and the contribution of 1998 ICC's decision on 'forced population transfer', a historical analysis of the bilateral agreements between the Balkan states on population transfer is crucial.

¹⁹ <http://www.un.org/en/documents/charter/chapter4.shtml>; (UN Doc. E/CN.4/Sub.2/1985/31). Naz, Çavuşoğlu: Uluslararası İnsan Hakları Hukukunda Azınlık Hakları, İstanbul, Su Yayınları, 2001.

²⁰ Marc, Weller: Rights of Minorities in Europe: A Commentary on the European Framework Convention for the Protection of National Minorities, Oxford University Press, 2005.

2. Bilateral Agreements and Population Transfers in the Balkans

As aforementioned, the concept of 'minority' and 'protection of their rights' had originated following the WWI, and because the new Balkan states were already founded during 19th cc, they tried to solve 'their minority problem' by policies of expulsion or extermination. As territories change hands between these countries, co-ethnic and co-religious groups were divided within these new states. Starting from second Balkan wars, we begin to see 'population exchange agreements' so called peace or friendship agreements between states that preferred to transfer their co-nationals peacefully rather than territorial expansion. In many cases the population rather than the borders would have become negotiable.

This policy has continued even during the Cold War years. According to 877 thousand 209 people emigrated from the Balkans to Türkiye between 1923-1949 and 286 thousand 430 people between 1950-1958.²¹ Some of these migrations were voluntary, some were forced, some were guaranteed under mutual or international committees, and some occurred due to rise of communism in some countries and nationalization of lands belongs to non-core groups, or assimilation policies towards them. Even in the voluntary ones, the groups were obliged to leave their properties, sell their lands or houses, and migrate with limited properties and jewellery. Therefore, within these bilateral agreements, there exists articles on whether the transfer is mandatory or voluntary; the groups and regions included; the new settlement organization; the duration of the transfer; the conditions and (if there is) compensation for the properties left behind; the size of the population (rural or urban) and their religious or ethnic features (*see Table 1*). Regardless of the motivation for migration, Bookman argues that the migrant exercises free choice in the migration decision. On the other hand, in cases of involuntary or forced migration the decision to migrate is imposed.²² The non-core groups may also prefer to migrate to kin-state which they find safer rather than being a minority in a new nationalizing nation-state. But, it is widely accepted in

²¹ Peter A., Andrews, *Ethnic Groups in the Republic of Turkey*, Wiesbaden: Dr.Ludwig Reichert Verlag. 1989, p28, pp.98-99.

²²Milica Z. Bookman, *Ethnic Groups in Motion: Economic Competition and Migration in Multiethnic*

States, London: Frank Class, 2002, p.112.

international law that every exchange of populations means the renunciation of the protection principle.

While the Treaties gave to individuals the option of emigrating to their own national state, and provided that those who did so should not suffer financially because of their decision, they did not provide for any wholesale and organized transfer or exchange of populations. Only in the Balkans was this alternative solution of the problem adopted, and even here it was accepted as a supplement to the theory of protection rather than as an alternative. Even the “voluntary” Greek-Bulgarian exchange offered minorities the unappealing choice of either remaining in states that had expressed a public preference that they leave, or migrating as refugees to a new land, often with resentful neighbours with whom they happened to share a common language and/or religion.²³ It can be said that migrations from Balkan to Türkiye in different periods of history have been especially in the basis of religion. The people with Muslim religious identity moved from Balkans to Türkiye for different reasons.²⁴ Muslims from Bulgaria, Bosnia-Herzegovina, Serbia, Greece, Crete and Cyprus were in turn expelled by the new rulers, finding refuge in the remaining Ottoman regions (Thrace, Macedonia) or the Ottoman heartland (Anatolia) and Syria. The refugee groups, far from being homogeneous, included indigenous Balkan populations (Muslim Albanians, Slavic or Bulgarian-speaking Muslims such as the Pomaks and Muslim Roma, etc.) as well as members of the Turkic peoples (such as Crimean Tatars) and Caucasus peoples (such as the Circassians) but also Jews.²⁵ In Atatürk's period, such an immigration movement from abroad started to Türkiye that this immigration population constitutes approximately one-fifth of the country's population; the majority of the migration is from the Balkans.²⁶

Within the Balkan history, there exists protocols for the protection of minority rights which is unilateral and does not include population transfers (e.g. 1920 Protocol of Kapshtica between Albania and Greece

²³ Leonard, Smith, “A Bad and Vicious Solution”, <https://thelausanneproject.com/2021/10/01/a-bad-and-vicious-solution/>

²⁴ Berna, Pekesen, *Expulsion and Emigration of the Muslims from the Balkans*, European History Online, 2011.

²⁵ Alexandre, Toumarkine: *Les Migrations des Musulmans Balkaniques en Anatolie: 1876–1913*, Istanbul 1995, pp. 42–44.

²⁶ Fahir, Armaoğlu: *20.Yüzyıl Siyasi Tarihi 1914- 1980, Türkiye İş Bankası Kültür Yayınları*, Ankara 1984.p. 39.

about the Greek minority in Albania) or there are forced migration of minorities which lacks consent of the kin-states and against the protection of minority rights (e.g. Muslim-Turkish minority from Bulgaria to Türkiye in 1950s and 1980s; migration of Romioi minority from Türkiye in 1960s; expulsion of Albanian Chams from Greece in 1940s) or forced mutual population exchange without a signed peace treaty such as transfers of Turkish and Greek Cypriots. However, in order to compare the bilateral peace treaty that defined population exchange and protection of minority rights, this paper only includes 8 bilateral agreements that include population transfers and minority rights between Balkan states (summarized in Table 1). In opposite to the article defined by ICC, these transferred groups (whether voluntary or compulsory) included in the bilateral agreements, were forbidden to return back to their previous lands.

Table 1. Bilateral Agreements on Population Transfers (1913-1953)²⁷

Bilateral Agreement	Parties	Region	Voluntary vs. Compulsory	Size of Transferred/ Migrated Population	Mutual Exchange vs. One-side
1913 Constantinople (İstanbul) Agreement	Bulgaria Ottoman State	only border regions	voluntary	9,472 Bulgarian, 9,714 Muslim	mutual exchange based on ethnicity and religion
1919 Treaty of Neuilly	Bulgaria Greece	All regions	voluntary	First only 197 Greek families and 166 Bulgarian families. In total 46,000 Greeks and 92.000 Bulgarians	mutual exchange based on ethnicity

²⁷ Compiled by the author.

1923 Treaty of Lausanne	Greece Türkiye	All population except Muslims in W. Thrace and Epirus in Greece; Romioi in Istanbul Imbros, Tenedos islands in Türkiye	compulsory	1.2 million Muslims migrated to Türkiye, among them the 400,000 persons with Lausanne Treaty. 1.2 million Romioi Orthodox to Greece.	mutual exchange based on religion
1925 Ankara Friendship and Cooperation Agreement	Bulgaria Türkiye	All regions	voluntary	Until around 200,000 Muslim Turks to Türkiye.	Mutual but one-sided
1936 The Convention Regulating the Immigration of Turkish People in Dobruja	Romania Türkiye	Dobruja and around	voluntary within 5 years	Around 70,000 Turks	one-sided
1938 Convention Regulating the Emigration of the Turkish Population from the Region of Southern Serbia in Yugoslavia	Türkiye Yugoslavia	Muslims in south Yugoslavia (Kosovo, Sandzak and Macedonia)	Forced migration within six years	Türkiye agreed to take 40,000 families. between 1918 and 1941 range from 77,000 to 240,000.	one-sided but enforced
1940 The Treaty of Craiova	Bulgaria Romania	Population in the north & south	compulsory	Beside the population living in this territory, all the	mutual exchange

		Dobruja. Then, All Romanians in Bulgaria, and all Bulgarians in Romania		Bulgarians of Romania (179,046 individuals) were to leave: the Bulgarians living in the Banat (10,012), in Bessarabia (136,726), as well as those living in Wallachia and Moldavia (5,308).	
1953 Open Migration (Gentlemen’s) Agreement	Türkiye Yugoslavia	Turks in	voluntary and non-written	nearly 140,000 people emigrated from Yugoslavia to Türkiye in the 1950s (almost 120,000 between 1954 and 1958)	one-sided

Given in the table, a supposedly “voluntary” exchange between Greece and Bulgaria written in Treaty of Neuilly paved the way to the “compulsory” exchange detailed in the convention appended to the Treaty of Lausanne of July 1923. It differed from the Neuilly Convention in that the exchange was to be a compulsory one and the sole criteria for exchange was religion, but in other respects its provisions were similar to those of the Neuilly Convention. Migration was to involve an automatic change of nationality, and emigrants were allowed to take with them their movable property. Unable to imagine a return to a multi-ethnic state, Turkish and Greek delegations agreed to a population exchange that forcibly relocated 1.6 million people.

According to this compulsory transfer agreement (Convention Concerning the Exchange of Greek and Turkish Populations) signed at Lausanne, Switzerland, on 30 January 1923, the (mostly Turkish-speaking) Greek Orthodox Christians of Asia Minor were to be exchanged

for the (mostly Greek-speaking) Muslim population from Greece.²⁸ This was also an ex post facto sanctioning of movements of flight and expulsion that had occurred in both groups since the Balkan Wars. The Treaty of Lausanne would come to serve as a prototype: population transfers were considered legitimate political measures for solving “ethnic conflicts” and thus to be conducive to “keeping the peace” until after the Second World War. During the First World War and the subsequent Greco-Turkish War (1920–1922) about 1.2 million Muslims migrated to Türkiye, among them the 400,000 persons who were forcibly exchanged as a result of the Treaty of Lausanne.²⁹ In the opposite direction, over a million Greeks had to leave or were expelled from their ancestral homeland in Türkiye’s Aegean and Black Sea regions. With few exceptions, those who remained were forced to relocate.

In the 1990s, international attention began to focusing on uprooted people, in the Balkan region, especially where there are tensions between ethnic populations and movement of populations started to cause instability not only within Yugoslavia but within West and other Southeast countries as well. During this period ethnic cleansing, a term used by the Serbs, was a process of population transfer aimed at removing the non-Serbian population from large areas of Bosnia and Herzegovina (BiH).³⁰ With this policy, Serbs aimed to justify their claims on the other territories. These numbers compared to Table 1, exceeds the total number of population transfer for the Balkan countries before the Yugoslavia War, where after four years of war and “ethnic cleansing”, there were 4.5 million refugees and displaced persons in former Yugoslavia in 1995, which represents one-fifth of the population of the Yugoslav Federation in 1991.³¹

²⁸ The only Muslims who were exempted from this exchange were those of Western Thrace and the Albanian-speaking Muslims of northwestern Greece, known as Çams (Chams).

²⁹ John A., Petropoulos: The Compulsory Exchange of Populations: Greek-Turkish Peacemaking 1922–1930, in: Byzantine and Modern Greek Studies 2. 1976.

³⁰ Christopher M. Goebel: A Unified Concept of Population Transfer (Revised), 22 Denv. J. Int'l L. & Pol'y 1, 1993.

³¹ Parliament of EU, Doc. 7397. 25 September 1995.
<https://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7025&lang=EN#:~:text=After%20four%20years%20of%20war,the%20Yugoslav%20Federation%20in%201991> (accessed: 14.10.2024).

Table 2: Number of Refugees from the Former Yugoslavia in various European States as of (Dec. 31,1993).³²

State	No. of Refugees
Germany	300,000
Sweden	50,000
Austria	74,300
Italy	32,000
Türkiye	20,000
Switzerland	14,500
France	7,000
United Kingdom	6,600
Total	504,400

Source: World Refugee Survey, 1994, p.41. Washington: US Committee for Refugees.

According to the 1991 census, the total population in Bosnia and Herzegovina was 4, 377,033 before the Bosnian War, and forced war migration moved about 2 million people, nearly 50 percent of the total population. About one million refugees and displaced person fled abroad or outside the borders of BiH, which is 22,85% of the population in 1991. After the war, some of the refugees returned from abroad however it is estimated that the migration demographic losses in BiH are around 986, 216.³³ By 2017, around 2 million people had returned, although returnees often faced difficulties reintegrating.³⁴ During this War, Türkiye was again

³²Michael, Barutciski: EU States and the Refugee Crisis in the Former the Yugoslavia, Canada’s Journal on Refuge,1994, 14.3,pp.32-36.

³³ Mariana Lukic Tanovic/ Stevo Pasalic/ Jelena Golijanin: “Demographic Development of Bosnia and Herzegovina from the Ottoman Period Till 1991 and the Modern Demographic Problems”, Procedia - Social and Behavioral Sciences, 120, 2014, pp.238-247.

³⁴ International Organization for Migration (IOM), ASSISTED VOLUNTARY RETURN AND REINTEGRATION, 2017 Key Highlights.

seen as the safe haven for the Muslim refugees, but it was not the only destination for the Muslim Bosnians.

The General Framework Agreement for Peace in Bosnia and Herzegovina, also known as the Dayton Peace Agreement (DPA) which was formally signed on 14 December 1995, put an end to the three-and-a-half-year-long Bosnian War, which was part of the much larger Yugoslav Wars. After the war, while there were some territorial changes between Bosniaks (Muslims), Bosnian Serbs and Bosnian Croats, the agreement did not include population transfer between the ethnic majoritarian regions. On the contrary, the return of these refugees to their homes is one of the central promises of the Dayton Agreement. Annex 7 of the Dayton agreement fully details the rights of refugees and internally displaced persons and the commitments of the signatory parties.³⁵ Although the agreement has been criticized for entrenching the ethnic cleansing of the previous war, inheriting ethnic segregation and causing ethnic tensions,³⁶ this perspective change of the international actors towards the ethnic conflicts and solutions to them, significant to show the historical and contemporary difference in terms of ‘forced transfer’ of the ethnic groups.

3. Human Rights and International Law on Forced Population Transfer

International law on human rights refers to legal frameworks and treaties that ensure the protection of fundamental human rights globally. United Nations Charter which is introduced in 1945 after WW2, became the foundation for promoting respect for human rights and fundamental freedoms globally. Shortly after Universal Declaration of Human Rights (UDHR) accepted in 1948 and constituted as a milestone document that lists basic rights such as the right to life, liberty, security, and freedom from

https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/DMM/AVRR/avrr-2017-key-highlights.pdf

³⁵ Lauren, Van Metre/ Burcu, Akan: Special Report, Dayton Implementation: The Return of Refugees, September 2, 1997, <https://www.usip.org/publications/1997/09/dayton-implementation-return-refugees>

³⁶ Muhidin Mulalić/ Hasan Korkut: “Implications of Dayton Peace Agreement on Current Political Issues in Bosnia-Herzegovina”, Süleyman Demirel Üniversitesi Fen-Edebiyat Fakültesi Sosyal Bilimler Dergisi 2, 2009, pp.107-117.

torture. Though not legally binding, it heavily influences global standards.³⁷

Prohibited acts against humanity include: Murder, extermination, enslavement, *deportation or forcible transfer of population*, imprisonment, torture, sexual violence, persecution against an identifiable group, enforced disappearance of persons, the crime of apartheid, and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.³⁸ Population transfer is a practice or policy having the purpose or effect of moving persons into or out of an area, either within or across an international border, or within, into or out of an occupied territory, without the free and informed consent of the transferred population and any receiving population.³⁹ It involves collective expulsions or deportations and often ethnic cleansing.

The most significant limitations on a state's right to control the movement of people are based not on principles of economic interdependence but rather on rules designed to protect human rights.⁴⁰ The UDHR, article 13, provides that (1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country. Therefore, settlers moving across borders unquestionably have the right to leave their country. This raises a threshold question: are settlers freely or voluntarily leaving their country? This leads and links ‘forced population transfer’ to the question of human rights.

3.1 International Law on Population Movement and Crime Against Humanity

International law on forced migration addresses the protection, rights, and responsibilities of individuals who are forced to leave their homes due to persecution, conflict, violence, human rights violations, or environmental disasters. The legal framework primarily focuses on

³⁷ Micheline R. Ishay, *The Human Rights Reader*, Routledge, Inc., 1997.

³⁸ <https://trialinternational.org/topics-post/crimes-against-humanity/> (accessed: 25.01.2024)

³⁹ Council of Europe, Parliamentary Assembly, Resolution 1863 (2012).

⁴⁰ G.A. Res. 217, U.N. Doc. A/810, at 71, 1948

refugees, asylum seekers, internally displaced persons (IDPs), and stateless persons.

Deportation on political and ethnic grounds of groups of populations occurred before, during and after the WW2, and their consequences still remain today. Population transfer is a practice or policy having the purpose or effect of moving persons into or out of an area, either within or across an international border, or within, into or out of an occupied territory, without the free and informed consent of the transferred population and any receiving population. It involves collective expulsions or deportations and often ethnic cleansing. Crimes against humanity and including involuntary population transfers within this category appeared for the first time in a treaty in the 1945 Nuremberg Charter (Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal) at the end of the WW2, albeit with a different definition than today. The mass removal of citizens across internationally recognized borders of a state is called mass deportation or expulsion (The Nuremberg Charter, Article 6/b). Mass deportations, such as those perpetrated by Nazi Germany, may violate the Nuremberg principles and, therefore, constitute war crimes or crimes against humanity in times of international and, it has been argued, civil war.⁴¹ As a result of millions of displaced population during the WW2, the international community steadily assembled a set of guidelines, laws and conventions aimed at protecting the basic human rights and treatment of people forced to flee conflict and persecution. Geneva Conventions (Common Article 3, 12 August 1949) and their additional protocols (Protocol I & II, Article 48 and 53, 1977) offer protection to civilians, including refugees and displaced persons, during armed conflicts. International Humanitarian Law (IHL) prohibits forcible displacement in situations of conflict unless the safety of civilians or imperative military reasons demand it.

The following other international law articles relevant to forced migration can be given as the 1951 Refugee Convention and its 1967 Protocol are the key legal documents that form the basis of UNHCR's work which is created in 1950. They define the term 'refugee' and outline their rights and the international standards of treatment for their protection. The 1967 Protocol removed geographic and temporal limitations of the

⁴¹ Report of the Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808, at para 47, U.N. Doc. S/25704, 1993.

1951 Convention, making the protection framework applicable worldwide. The UNHCR is the leading international body responsible for protecting refugees and forcibly displaced persons. It monitors compliance with the 1951 Convention, assists governments in developing asylum systems, and coordinates humanitarian assistance for displaced populations. According to these protocols (Article 1), a refugee is someone who, owing to a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion, is outside their country of nationality and unable or unwilling to return. These laws also introduced legal frames for 'non-refoulement' principle that prohibits states from returning refugees to a country where they face serious threats to their life or freedom.⁴² This suggests that the refugee receiving country cannot unilaterally transfer the refugees back to their home-states.

There are also regional legal frameworks on human rights and forced population transfers such as for America continent 1984 The *Cartagena Declaration on Refugees*⁴³; in Europe the *European Convention on Human Rights* (ECHR- 1950) that provides protection to asylum seekers and refugees through the European Court of Human Rights and the *African Union Convention for the Protection and Assistance of Internally Displaced Persons* (Kampala Convention, 2009) which is a legally binding document aimed at addressing internal displacement across the Africa continent. In 1998, a group of countries signed a treaty with the goal of ending impunity for the world's most serious crimes by establishing a permanent international criminal tribunal, the International Criminal Court (ICC). As a result, on 1 July 2002, a group of countries around the world established a forum to investigate and prosecute those responsible for the world's most serious crimes. The Rome Statute of the International Criminal Court (1998 Rome Statute), which governs the ICC and today has 123 states parties, builds on the legacy of the ad hoc international tribunals that preceded it, marking a milestone in the advancement of international criminal law. Hence most recent condemnation is found in the 2002 Rome Statute of the International Criminal Court (Article 7/d), which is the most transnational and universal

⁴² <https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention> (accessed 12.02.2024)

⁴³ The declaration is the result of the "Colloquium on International Protection for Refugees and Displaced Persons in Central America, Mexico and Panama", which was held in Cartagena, Colombia, from 19 to 22 November 1984

convention, and clearly defines deportation, forcible transfer of population and implantation of settlers as war crimes.⁴⁴

3.2 Road to Rome: Population Transfers from Balkans to the Middle East and Africa

Enforced population transfer traumatizes the populations concerned, causes much individual suffering and leads to political instability. Forced migration is a very complex and broad concept, hence to make a more rational comparison, this paper only includes forced migration of the ethnic groups that were dislocated or escaped due to ethnic and armed conflicts, but excludes the groups that migrate due to other reasons related to economy, climate change, natural disaster, development-induced displaced persons etc.

With the onset of the Cold War, post-war cooperation to advance international criminal law slowed dramatically. However, in 1990, the ILC's post-Nuremberg project was revived following a special session of the UN General Assembly focused on international drug trafficking prosecutions and a well-received ILC report that went beyond this limited issue.⁴⁵ Building on this success, the ILC resumed the task of preparing a draft statute for a comprehensive international criminal court.⁴⁶ The move proved timely as it coincided with the return of international criminal justice to the agenda of the international community in response to atrocities in Yugoslavia and Rwanda.

In the Yugoslavia war started in 1991, the expulsion of masses of non-Serbs from eastern Croatia across front lines, by bus and other methods, was accomplished through coercion, including threats, violence and discrimination. Similarly, in Bosnia and Herzegovina, the mass deportation of people to create ethnically pure areas was a strategy important to Serbia.⁴⁷ At the end of 1999, Macedonia hosted about 17,000 refugees, including about 10,000 ethnic Albanians from Kosovo, 4,000

⁴⁴ Scott, McTaggart et. all, *The International Criminal Court: History and Role*, Hill Studies 2023.

⁴⁵ M. Cherif, Bassiouni: *Crimes Against Humanity in International Law*, p.17.

⁴⁶ UN, International Law Commission, *Draft Statute for an International Criminal Court*, 1994. https://legal.un.org/ilc/texts/instruments/english/draft_articles/7_4_1994.pdf (accessed: 11.04.2024)

⁴⁷ HELSINKI WATCH, *WAR CRIMES IN BOSNIA-HERCEGOVINA* 75-81 (1992).

Roma from Kosovo, 3,000 ethnic Albanians from southern Serbia, and 400 refugees from Bosnia. Macedonian nationals lodged 1,170 asylum applications in other European countries during the year, roughly as many as had in 1998. During the Kosovo crisis, 360,000 people (equivalent to 16 percent of the country's own population) sought refuge in Macedonia. Nearly all departed the country the same year. The number of refugees present on Macedonian territory peaked at 255,000 in mid-June. Periodically during the crisis, Macedonia refouled at least 20,000 refugees to a situation where many faced immediate physical danger by its refusal to let them cross the border.⁴⁸ The international community quickly identified the need to evacuate significant numbers of refugees from Macedonian territory. From 6 to 11 April 2000, 4,420 refugees flew to Germany, 2,941 to Türkiye, and 515 to Norway.

Moreover, 1990s in addition to the Rwanda civil war and genocide that caused death of approximately 800,000 inhabitants. As a consequence, around 1 million Rwandans were internally displaced and 1.2 to 1.5 million fled to neighboring countries. Many of them returned under controversial circumstances after more than two years in exile. The massive and much-awaited refugee return was officially welcomed by the government and many in the international community. The size and suddenness of the repatriation, however, posed enormous resettlement and reintegration challenges in a society where ethnic tensions lingered in the aftermath of the country's 1994 genocide.⁴⁹

The world also witnessed the expulsions of ethnic Kurds, Turkmen, and Assyrians from the Kirkuk region amount to an Iraqi government policy of forced transfer of populations, pursued to change the demographic nature of the Kirkuk region-a policy commonly referred to as the ‘Arabization’ of the Kirkuk region. That caused the mass exodus of Kurds to neighboring States especially towards Türkiye, where they were

⁴⁸U.S. Committee for Refugees World Refugee Survey 2000 – Macedonia.
<https://www.refworld.org/reference/annualreport/uscri/2000/en/24426> (accessed: 15.05.2024)

⁴⁹U.S. Committee for Refugees World Refugee Survey 1997 - Rwanda
<https://www.refworld.org/reference/annualreport/uscri/1997/en/15547> (accessed: 15.06.2024)

settled to the camps in Muş, Mardin and Diyarbakır.⁵⁰ Underlying this demographic change is the government's desire to reduce the political power and presence of ethnic minorities in order to retain or increase government control over this oil-rich region. The forced and arbitrary transfer of these populations, without any grounds permissible under international law, recognized as a crime against humanity.

Since the 1990s, crimes against humanity have been codified in different international treaties such as the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY-1993), the Statute of the International Criminal Tribunal for Rwanda (ICTR-1994) and the Rome Statute of the International Criminal Court (1998). The Rome Statute provides the most recent and broadest list of criminal acts that may constitute crimes against humanity. Yet, there was a strong distinction between international and civil war in determining whether population transfers are crimes against humanity. Unlike other human rights violations, war crimes do not engage State responsibility but individual criminal responsibility (Article 25 & 28). This means that individuals can be tried and found personally responsible for these crimes. The ICTY and ICTR both operated for more than 20 years, and more than 150 individuals were convicted for international crimes committed in the two countries.⁵¹

Following the ethnic intra-state wars, the long-standing definition of “deportation” as a crime against humanity also began to include the crime of forced population transfer within a state's borders. The Guiding Principles on Internal Displacement (1998) prepared by the UN have 30 standards that outline the protections available to internally displaced people (IDPs) and they brought new dimension to the definition of forced population transfer and right to return. First, the principles (5 to 9) were established to protect IDPs—people who are displaced within their own countries due to conflict, natural disasters, or human rights abuses but have not crossed an international border. The principles affirm that IDPs retain their rights as citizens (principles 10 to 23) and should have access to humanitarian assistance (principles 24 to 27), protection from violence, and support for voluntary return or resettlement (principles 28 to 30). Although they do not constitute a binding instrument, these principles

⁵⁰ Avşar, B.Zaki/ F. Solak/ S.Tosun; Son Beş Yılda Anadolu'ya Göçler, Silahlı Kuvvetler Dergisi, Gen. Kur. Bşk.lığı, ATASE Yayını, 399, 1994.

⁵¹ Scott, McTaggart et. all, The International Criminal Court, p.3.

reflect and are consistent with international human rights and humanitarian law and analogous refugee law.⁵² Therefore, the international courts did not distinguish between the crime of deportation between the states and within the states, both are regarded as crimes committed against humanity. Since IDPs remain within their own countries, they are not protected under the 1951 Refugee Convention, complicating their legal protection. The second issue is about the principle ‘right to return’ because while most international human rights instruments recognize the right to return to one's country; there is no specific provision in international covenants affirming the right of internally displaced persons to return to their places of origin. Thirdly, the recent conventions may also create tension between the priority of state sovereignty vs. refugee rights. Countries may be reluctant to adhere to international refugee obligations due to concerns over national security, resources, or political pressures.

For instance, the war in Bosnia created almost half a million casualties, one million refugees and an almost equal number of internally displaced persons, who were either forced from their homes or fled to avoid violence. The return of these refugees to their homes is one of the central promises of the Dayton Agreement. Annex 7 of the Dayton agreement fully details the rights of refugees and internally displaced persons and the commitments of the signatory parties.⁵³ However, because of the political nature of refugee returns, humanitarian interventions by the international community have been met with persistent noncompliance by the parties. Despite the legal statements, there were many obstacles to the return process and the larger political, economic, social, legal, and security-related implications of refugee returns. In conclusion, refugee returns are not simply a matter of humanitarian concern but are critical to the political outcome of the conflict. For instance, despite the fact that the agreement ensured that victims are compensated for their loss the assumption at Dayton that the majority of displaced persons and refugees would return home is consistently challenged by the relatively low number of returns. UNHCR estimated 870,000 returns in 1996, but saw only about

⁵² Introductory Note, <https://api.internal-displacement.org/sites/default/files/publications/documents/199808-training-OCHA-guiding-principles-Eng2.pdf> (accessed: 11.10.2024).

⁵³ Lauren Van Metre/ Burcu Akan, Special Report, Dayton Implementation: The Return of Refugees, September 2, 1997, <https://www.usip.org/publications/1997/09/dayton-implementation-return-refugees>

250,000 resettlements--240,000 of which were to majority areas. House burnings, beatings, isolation, intimidation by local police, and attacks by paramilitary groups were some of the primary means of violent resistance. Most refugees returning from Europe have been resettled in majority areas in which their ethnic/religious co-members construct majority. This also jeopardized the multi-ethnic structure of the new BiH, which can lead to ethnic based separatist activities in future.

ICTY which revised the war crimes that took place during the conflicts in the Yugoslavia War in the 1990s, lasted from 1993 - 2017, and it irreversibly changed the landscape of international humanitarian law, by providing victims an opportunity to voice the horrors they witnessed and accounted the responsible persons for the committed atrocities during armed conflicts. As an example, on 22 November 2017, in the final Trial Judgement of the ICTY, it convicted Ratko Mladić, former Commander of the Main Staff of the Bosnian Serb Army (VRS) of genocide, crimes against humanity and violations of the laws or customs of war. These crimes were committed by Serb forces during the armed conflict in BiH from 1992 until 1995. Mladić was convicted of genocide and persecution, extermination, murder, and the inhumane act of forcible transfer in the area of Srebrenica in 1995; of persecution, extermination, murder, deportation and inhumane act of forcible transfer in municipalities throughout BiH; of murder, terror and unlawful attacks on civilians in Sarajevo; and of hostage-taking of UN personnel. Mladić was sentenced to life imprisonment.⁵⁴ As seen, one of the charges recognized his act as ‘crime against humanity’ includes the objective of permanently removing Bosnian Muslims and Bosnian Croats from Bosnian Serb-claimed territory.

4. Historical and Contemporary Contexts of Population Transfers

By analyzing historical and contemporary context of population transfers, this paper claims the early population transfers and contemporary displaced population are different in terms of 4 issues: legal frameworks; the impact on national identity; the geographical extension and lastly reintegration and return policies.

⁵⁴ UNICTY 2017. ICTY convicts Ratko Mladić for genocide, war crimes and crimes against humanity. <https://www.icty.org/en/press/icty-convicts-ratko-mladi%C4%87-for-genocide-war-crimes-and-crimes-against-humanity>

In terms of legal frameworks, in the early 20th century, treaties like the Lausanne Treaty (1923) were formalized population exchanges often conducted under international oversight. As defined in Table 1, who will be included in the transfer, how and when will the transfer take place, and the property compensations were legally defined for these population transfers. However, for the post-1990s, displacements, particularly in the Balkans and the Middle East, are often informal, resulting from war, ethnic cleansing, or state collapse, with international bodies like the UNHCR (the UN High Commissioner for Refugees) and IOM (International Organization for Migration) playing significant roles. That is one of the reasons why, ICC included population transfer of the internally displaced persons (IDPs) also as a crime against humanity. The fact that the global wars are mainly intra-state wars (such as civil wars) rather than inter-state wars, the number of internally displaced persons is much higher than the early 20th century.

Considering *the impact of the population transfers on the national and ethnic identity* of the states during the early 20th cc. the difference became highly visible. As aforementioned in the previous sections, early treaties typically focused on creating more homogenous nation-states, while recent displacements involve a mix of ethnic, religious, and political factors. A government undertakes settlements in order to change the demographic structure or the political, cultural, religious, or other characteristics of the original inhabitants in the receiving area. In the contemporary population transfers, it is mostly seen to be taken care by the fighting guerrillas to have a more ethnic or religious homogeneity within a small controlled region, rather than the whole territory of that nation-state. As a consequence, the contemporary peace agreements are also less likely to be enforced because the responsible part is not a unified nation-state, on which international institutions and laws expected to have more pressure.

The third frame is *the geographical extension* of the forced population transfers. The contemporary ethnic wars and the population movements caused by them have a larger geographical impact because there is no target state for the movement, which increased regional and global economic and political instability. While the population transfers in the early 20th century were limited between two or three states (see Table 1), the Yugoslavian war caused millions of internal and external displaced persons and there migrated to at least 8 different countries mainly in

Europe (see Table 2). The recent ethnic and religious based wars in the Middle East including Iraq, Syria and Palestine caused flow of refugees not only limited to the region but extended to Europe, America and Asia continents. According to the recent data given by the UNHCR, 117.3 million people worldwide are forcibly displaced. Most refugees – 75 per cent – are hosted by low- and middle-income countries. Overall, there were 82.4m forcibly displaced people by the end of the year (The Economist, 18 June 2021).⁵⁵ Moreover, by 2020, Türkiye still continued to host world's largest refugee population, even these populations were not from Turkish descent or from Europe compared to the previous and legal transfers.

According to the 1951 and 1998 international laws on refugees, the hosting countries are also not allowed to forcibly send the refugees back to their home-states. One of the obligations that can provide protection in this context is the “principle of non-refoulement”, which expresses the obligation of states not to return a person to a situation where he would be at risk of serious harm, such as torture, inhuman or degrading treatment or punishment, or deprivation of life.⁵⁶ The principle of non-refoulement is regulated in Article 33, paragraph 1, of the 1951 Convention Relating to the Status of Refugees as follows: “No Contracting State shall expel or return a refugee, in any form whatsoever, to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

As a result, EU states have been particularly interested in improving the control of refugee flows before the evolving union eliminates internal barriers to freedom of movement. Just as national security might motivate governments to remove minorities through expulsion, civilian settlements across the internationally recognized

⁵⁵ https://www.economist.com/graphic-detail/2021/06/18/the-number-of-forcibly-displaced-people-reaches-another-record-high?utm_medium=cpc.adword.pd&utm_source=google&ppccampaignID=18151738051&ppcadID=&utm_campaign=a.22brand_pmax&utm_content=conversion.direct-response.anonymous&gad_source=1&gclid=Cj0KCQjwgrO4BhC2ARIsAKQ7zUlpqwdkLIK3T6vnKOKNA9J7Cem8zyurbO9RQDj3Ud2N69h7IBWGGkaAtrREALw_wcB&gclsrc=aw.ds (accessed: 11.08.2024)

⁵⁶ Uzun, Elif: “Geri Göndermeme (Non-Refoulement) İlkesinin Uluslararası Hukuktaki Konumu Üzerine Bir Değerlendirme”, *Uluslararası Hukuk ve Politika*, 8.30, 2012, p. 36.

borders of a state are sometimes claimed necessary for the security of the transferring power and, therefore, essential to preserve public order and safety. Here the tradeoff continues between the security of the hosting nation-state and the free movement rights and human rights and security of the forced civilians.

This tradeoff leads to the forth frame of this comparison: *reintegration and return policies*. People who are displaced within their own countries due to conflict, natural disasters, or human rights abuses but have not crossed an international border. European states admitted tens of thousands of people fleeing the war zone. The principles affirm that IDPs retain their rights as citizens and should have access to humanitarian assistance, protection from violence, and support for voluntary return or resettlement. According to the Rome Statue, these people have right to return. Refugee returns were considered a matter of humanitarian concern. However, as in the case of Syria and Palestine, the peace agreement has not been signed yet and there is lack of a stable nation-state to be responsible of the reintegration and re-settlement.

In the BiH case, despite the implementation of Dayton agreement and will to establish a multiethnic, stable Bosnia, it was seen that conflicting groups advocate the political unity and military separation of the parties. The desires to provide immediate compensation for loss while ensuring future returns to rebuild a multiethnic Bosnia seem mutually exclusive. As refugee returns are inescapably political in nature, the major impediment to returns has been political resistance by parties, ranging from bureaucratic stonewalling to violent attacks against returnees. As aforementioned, while UNHCR estimated 870,000 returns in 1996, it saw only about 250,000 resettlements--240,000 of which were to majority areas.

Yet, humanitarian interventions by the international community to create an environment conducive to return have met with serious resistance from the local leadership and persistent noncompliance by the parties. UNHCR and other institutions, which are in the business of encouraging returns, do not have the appropriate political and economic resources to overcome such resistance, nor deal effectively with larger economic, social, legal, and security-related obstacles. Settling these people instead in majority areas opens up the possibility of manipulation of potential relocations to politically sensitive or strategically important areas to serve

the political interests of the parties. This creates obstacle for the reintegration of the conflicting sides of the society.

CONCLUSION

Comparing the forced population transfers of ethnic groups in historical and contemporary contexts, this study has revealed the results and effects of the changes in the structure of wars throughout history and the shift of international institutions and public opinion from a security-based perspective to a more humanitarian perspective in the 1990s towards identity politics, ethnic cleansing and displacement. Although it has mainly focused on the Balkan region and communities and nation-states within the Southeast Europe, the conceptual framework presented by this study can be utilized for the other regions as well.

By analyzing historical and contemporary context of population transfers, this paper claims the early population transfers and contemporary displaced population are different in terms of 4 issues: legal frameworks; the impact on national identity; the geographical extension and lastly reintegration and return policies. 21st centuries wars became more global and they have larger geographical impact. The comparison of the 1938 and 1953 agreements between Yugoslavia and Türkiye (table 1) to the Annex 7 of the Dayton agreement 1995 which fully details the rights of refugees and internally displaced persons and the commitments of the signatory parties, while contemporary international community desires multi-cultural societies more than ethnically homogeneous nation-states and pursues reintegration policies, the comparison also reveals that refugees' "right to return" and "principle of non-refoulement" makes it more complicated for the countries that host refugees.

It is also important to develop the subject with further studies examining the trial cases of the leaders who committed crimes against humanity by involving in the forced migration of the populations in the Balkans and the nearby geography.

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