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THESIS

Right to Freedom of Movement and Choice of Residence

-Also an IDP's right?

Case Study on IDP Returns in Bosnia and Herzegovina



“For those who rule and must oppress in order to rule must work according to reason; and if, carried away by their passions or driven by an adversary, they go beyond the limits of reasonable action, they start down the slippery slope and thereby reveal the commencement of their own downfall”. (Ivo Andric).

ABSTRACT:

This thesis discusses whether the human rights to freedom of movement and choice of residence have been adequately taken into account when framing laws and making policies related to internally displaced persons in Bosnia and Herzegovina. It investigates whether the international and domestic actors have considered these rights in their policy making and whether there could be special situations when internally displaced persons may have experienced violations of these rights. Both qualitative and quantitative data as well as interviews have been used as sources.

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(cover photo: destroyed house in Bosnia and Herzegovina. All photos in this thesis taken by the author).

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1. Background

In November 1995 the Dayton Peace Agreement put an end to the war in Bosnia that had caused nearly half of its population to flee. The wars in the countries of the former Yugoslavia have been of great interest to the rest of Europe and to the USA, the hosts of the Dayton peace discussions. After the Second World War, who would have expected a war in the very centre of Europe in the 20th century? Also, this war was extraordinary violent, as one of the main targets were ordinary citizens. No wonder, many countries became interested in solving the conflict which shocked the whole world and that many countries are still involved in the on-going peace-building and consolidation process.

The war in Bosnia was an intra-State conflict, although with an inter-State dimension¹. This, and the attacks against the civilian population, caused huge refugee-flows inside the country, which resulted in a large number of “internally displaced persons” (IDPs) without protection under international refugee law. As the war was an internal affair, the international community could not, immediately, interfere. Therefore, the possibility of international intervention in cases of grave human rights violations as well as the legal status of internally displaced persons have become important subjects for discussion and debate but remain without exact definitions and answers.

To put it simply, the rights of an IDP ought to be the same as those of every other citizen of a State within that State; fundamental human rights shall be guaranteed for all citizens including IDPs². However, displaced persons are in a special situation as having been forced to flee by the circumstances such as organised ethnic cleansing which may have been effectuated by that same State whose protection the citizens are supposed to enjoy. Violations of their legal and human rights may also be caused by the current situation of displacement. Thus, internally displaced persons may be more vulnerable than other citizens of a State, and, therefore, there is a need to further discuss their rights and status.

Much has been written in order to explain how and why the war erupted and how future violent conflicts are to be avoided. A major problem of conflict and peace studies is the question of how to avoid war. It may sound simple at first sight, however, there are no clear-cut answers nor ready-made recipes, and no conflicts have had quite the same reasons/course/effects. This thesis

¹ Various groups participated in the war inside BiH, whereas most likely supported by other States.

² J. Fitzpatrick, *The Human Rights of Refugees, Asylum-Seekers, and Internally Displaced Persons: A Basic Introduction*, in Fitzpatrick, Joan (ed.), *Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons, A Guide to International Mechanisms and Procedures*, New York, USA, Transnational Publishers Inc, 2002, pp. 1-3.

concentrates on one of the effects of an intra-State conflict, namely the rights of internally displaced persons. At the same time it has natural connections with conflict prevention, such as what happens in a society after a conflict, i.e. the fact that how the causes of the conflict and its effects are dealt with, will naturally also affect to the probability of a future violent conflict. Therefore matters related to the return of internally displaced persons also have an effect on the future stability of Bosnia and Herzegovina.

Having earlier written a smaller thesis on the Dayton peace negotiations and, after several visits to the region, I find it interesting to do a more in-depth study of one of the Annexes of the Dayton Peace Agreement, namely the annex that guarantees the right to voluntary return: Annex 7. In this thesis, the internally displaced persons' possibilities to enjoy the rights to freedom of movement and to choose one's place of residence will be discussed.

2. Introduction

The prerequisite for the full implementation of the General Framework Agreement for Peace (GFAP) is the fulfilment of the Annex 7 which stipulates the possibility for refugees and internally displaced persons (IDPs) to return voluntarily to their pre-war homes. Other annexes of the agreement either: “[D]epend on refugee return, or were created to assist in implementing refugee return”³. However, fulfilling Annex 7 has been one of the most difficult parts of the Dayton agreement to implement⁴; even today it remains partly an unresolved issue and there are some 27,910 refugees in Bosnia and Herzegovina (BiH) having fled from neighbouring countries during the wars in the countries of the former Yugoslavia and, also, about 125,977 refugees from BiH in those same neighbouring countries. Moreover, there remains some 358,300 IDPs in BiH still waiting either to return to their pre-war homes or for another solution to their situation⁵. Probably, as long as almost ten percent⁶ of a country's population are IDPs, full stabilisation will not be possible. Therefore, this issue should be solved as soon as possible.

³ International Crisis Group, *Is Dayton Failing- Bosnia Four Years After the Peace Agreement*, Brussels, Belgium, ICG, 1999. p. 83.

⁴ J. S. Rogan, *Facilitating Local Multiethnic Governance in Postwar Bosnia and Herzegovina* in Dimitrijevic, Nenad (Ed.), *Managing Multiethnic Local Communities in the Countries of the Former Yugoslavia*. Local Government and Public Service Reform Initiative, Budapest, Hungary, Open Society Institute, 2000, p. 187.

⁵ UNHCR, *Estimate of Refugees and Displaced Persons, Still Seeking Solutions in South Eastern Europe*, update as of 30 April, 2003.

The GFAP, as well as other related documents, states that it is a question of voluntary return and therefore the right *not* to return is inherent in the right to return. Consequently, the individual refugee/IDP should have the possibility to choose whether to return or not. The possibility to choose may be rather different for a refugee and an IDP due to their different legal status, which will be discussed later in this thesis. However, this thesis concentrates on the return of IDPs and the underlying purpose is to investigate if there is also a need to discuss more the right *not* to return. This is because it seems that this duality of Annex 7 has not been much discussed and that much funding has gone into the implementation of the return of refugees while almost no funding at all, it would seem, has gone into other, alternative, solutions. It could be questioned whether the individual IDPs have had a possibility to make a well-grounded choice whether to return or not or whether the only alternative, in fact, has been to return or to remain displaced. Furthermore, it could be questioned whether there exist special situations in which individual IDPs would, in fact, prefer not to return but feel that they have to for one reason or another, and whether these situations are taken into account in the legal documents. This thesis concentrates on these two questions: firstly, it will examine whether the remaining IDPs would like to return and which are the plans of the implementing parties of the GFAP⁷ for the remaining IDPs: do these plans include a choice for an IDP to return or not? Secondly, the situations that could be problematic for an IDP and when an individual IDP's human rights could be violated as a result of the implementation of Annex 7 will be looked for. These situations will be compared with the existing legal provisions. The theoretical background to these questions will be elaborated later in this thesis.

3. Method and literature:

Firstly, the legal framework as regards the right to return will be investigated to familiarise the reader with existing legal provisions. Key documents in this regard are Annex 7 of the GFAP as well as the Constitution of BiH included in the GFAP, refugee/IDP laws of the Federation of BiH (FBiH) and Republika Srpska (RS), property laws of FBiH and RS, United Nations Office for the Co-ordination of Humanitarian Affairs (OCHA) Guiding Principles for Internally Displaced Persons, and literature on the analysis of these documents as well as on the right to return (and not to return) as a human right.

⁶ Pre-war estimation of BiH population was about 4,3 millions. No new census has been made to date. M. Vandiver, *Reclaiming Kozarac: Accompanying Returning Refugees*, in Dzermal Sokolovic & Florian Bieber (Ed.), *Reconstructing Multiethnic Societies: The case of Bosnia-Herzegovina*, Hampshire, England, Ashgate, 2001, pp. 168-169.

⁷ The domestic authorities of BiH and the International Community.

Secondly, the domestic authorities' and the International Community's (IC) policies and plans, as regards the fulfilment of Annex 7, will be investigated. To date the IC has managed most of the supervision of the administration in BiH under the leadership of the Office of the High Representative (OHR). This means that most of the decision-making has taken place, not only on the domestic political level, but also in the IC: in OHR and in other international organisations and actors. The OHR's Peace Implementation Council Steering Board consists of Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, the United States, the Presidency of the European Union, the European Commission, and the Organisation of the Islamic Conference (OIC), which is represented by Turkey. Furthermore, many international organisations are present in BiH and much funding comes from various international players, such as the European Union. Therefore, to get an overall view of the IC's plans it is necessary to take both the OHR's and other organisations' policies into account. The key documents in this regard will be a joint document composed by the Ministry for Human Rights and Refugees (MHRR) and the IC, represented by the OHR and the United Nations High Commissioner for Refugees (UNHCR)⁸. In this document the MHRR and the IC have their own separate chapters where they present their plans and the chapters will be used separately to trace the plans and policies of the IC and the MHRR respectively. Furthermore, the opinions of other international actors will be looked for in the records of the Reliefweb⁹: all articles, reports and press releases published by any International Organisation concerning refugee/IDP return in Bosnia and Herzegovina during the period of 10/2002- 3/2003 will be read. Also the reports of the OHR's Return and Reconstruction Task Force (RRTF), published on the OHR's Internet page¹⁰, will be read.

As the domestic authorities will, from the beginning of 2004, take over the IC's functions in the field of return and property law implementation, their plans are of crucial importance. The MHRR is going to be the monitoring body in BiH and its plans for the takeover will be read in the earlier mentioned joint document composed by the Ministry and the IC. No other documents have been identified as regards the MHRR's plans for the implementation of Annex 7, and therefore, their chapter in this joint document will be the only source of information.

⁸ UNHCR, MHRR & OHR, *Annex VII (GFAP) Strategy, A Strategy of Bosnia and Herzegovina and the RRTF for the Implementation of Annex VII with Regard to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions*, Sarajevo, BiH, 15 January, 2003.

⁹ <http://www.reliefweb.int/w/rwb.nsf/ByCountry/Bosnia+and+Herzegovina?OpenDocument&StartKey=Bosnia+and+Herzegovina&Expandview>. Accessed 15 May, 2003. N.B. ReliefWeb is a project of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and has directories of the main documents and press releases published by international organisations, NGOs and news agencies like Radio Free Europe/Radio Liberty (RFE/RL) and Institute for War and Peace Reporting (IWPR).

¹⁰ <http://www.ohr.int/ohr-dept/rrtf/>. Accessed 15 May, 2003.

Thirdly, the Bosnian political parties' programmes will be studied as regards Annex 7, as these programmes and the parties' opinions naturally may affect the future plans of the authorities, especially after the MHRR's takeover of the IC's functions. The programmes of all the parties that were elected to Parliament in the last elections are presented in a book published by the Bosnian Helsinki Committee on Human Rights¹¹. Furthermore, during the field trip to BiH representatives of the main political parties were interviewed in order to get some clarification on their programmes and opinions as regards the implementation of Annex 7. The outcome of these interviews will be included in the general presentation of the parties' policies and opinions, which will be based both on the party programmes and on the information gathered during the interviews.

There is potentially vast amounts of information that would need to be investigated in this connection e.g. in order to find out about the programmes that have already been implemented by the IC and/or domestic actors to meet the need of realising the right not to return. In the realm of this minor study, however, only the objectives and the policies of the IC and the domestic actors will be investigated, not the real activities that have been undertaken by them.

Fourthly, interviews with IDPs still displaced, were conducted in three areas of BiH (Bosniak, Croat and Serb majority areas¹²), in order to find out about the willingness to return and the situations when there are problems related to return. When investigating the willingness to return or relocate all IDPs were asked some identical questions, and these results will be counted and it will be possible to present more quantitative results on the basis of this information. The problematic situations that an IDP might face are presented as examples and this part of the research will have a more qualitative nature and, therefore, the outcome will not be mathematically calculated, instead cases will be treated individually. Information on the various problems that individual IDPs have faced arose during the interviews and discussion with the IDPs.

Fifthly, as UNDP's Early Warning System (EWS) project has conducted opinion polls on various issues, including the willingness to return, this part of their surveys will be used in order to

¹¹ Koalicija nevladnih organizacija BiH "Izbori 2002", *Programi- politickih partija i koalicija zastupljenih u Predstavnickom domu Parlamentarne skupstine BiH*
Helsinki komitet za ljudska prava u BiH i Koalicija nevladnih organizacija BiH "Izbori 2002", Sarajevo, Bosna i Hercegovina, 2002.

¹² Bosniak has become the most widely accepted denomination of the Bosnian Muslims, as the word Muslim refers to a religious affiliation and many Bosnian Muslims, in fact, are Muslims only by their "ethnicity", not by their religion. This term is also sometimes used to describe Muslims in other countries of the Former Yugoslavia. The Bosniak-denomination will be used throughout this thesis. Furthermore, people could identify themselves as Croats or Serbs either or both by ethnicity or religion: Catholics or Orthodox respectively. Many people could consider themselves belonging to an ethnic group without being religious. Furthermore, many names and first names in the region can often be identified as Bosniak, Croat or Serb respectively, and it could also have effect on why people, as well as the outside world, in fact, do identify themselves, as belonging to an ethnic group although not being religious or not even belonging officially to "their own" religious group. The "real" existence of ethnic groups could probably be questioned, having in fact its roots on religious differences and foreign domination as well as shifts in the power-balance. However, people do identify themselves according to ethnicity and religion and therefore they cannot be ignored.

compare the interview results. However, it should be born in mind that the issue of return is only one minor part of these opinion polls which have a much larger scope including many social and political aspects such as public and personal safety.

Besides the interviews I also had the opportunity to follow the Swiss Humanitarian Aid Secondment at UNHCR Sarajevo: DuSoCC (Durable Solutions for Collective Centre Residents) in the field for one day and to follow their work and see the problems as regards the return process from “the other side”. This gave an important insight in seeing which problems the international players encounter when trying to help to implement Annex 7.

When designing the research, the questions etc, I used the guides of King/Keohane/Verba¹³ and Berg¹⁴. The findings from the interviews and the opinion polls will be used in a comparison with the legal framework and the domestic authorities’, political parties’ and the IC’s policies and plans. The comparison is supposed to reveal whether these four implementing parties have taken the wishes and the needs of the IDPs into account and whether the legal documents are in line with the IDPs needs and international standards. Situations when the individual IDP’s human rights may be violated or are in risk of violation are looked for. The overall aim of this thesis may in this sense be regarded as to further the discussion and development of the IDP guidelines and definitions concerning the right to return as this issue has been more or less unaddressed as concerns the right not to return. The aim is definitely not to do an evaluation of the IDP return process in BiH so far. The scientific value of this thesis may be in the development of the international/national instruments concerning return related matters.

4. Limitations and Flaws:

Firstly, not being a lawyer but a political scientist, the legal argumentation in this thesis may present some flaws. However, the intention is to bring social scientific aspects together with legal ones and to present a truly interdisciplinary piece of work.

Secondly, the Annex 7 concerns both refugees and IDPs. However, this thesis will only encompass IDPs in BiH as, if refugees were included, it would automatically necessitate

¹³ G. King; R.O. Keohane, S. Verba, *Designing Social Inquiry, Scientific Inference in Qualitative Research*, New Jersey, USA, Princeton University Press, 1994.
King et.al.1994.

¹⁴ B.L. Berg, *Qualitative Research Methods for the Social Sciences*, , MA, USA, Allyn & Bacon, Needham Heights, 2001.Berg, 2001.

investigations into more than one host country where refugees from BiH reside, as well as possibly refugees from other countries of the former Yugoslavia residing, presently, in BiH. It would be impossible, within the confines of this short thesis, to cover such a wide area of research.

Thirdly, the IDPs interviewed are all members of one of the three main constituent people¹⁵ (Bosniak, Croat and Serb) and they all reside in an area where their respective ethnic group constitutes the majority. However, there is a great number of other ethnic groups in BiH and although some IDPs reside in an area where they are in the minority, these will not be included in the ambit of this thesis, as their inclusion would make it too wide. Furthermore, programmes and opinions of only five political parties will be studied, although there are numerous parties in BiH.

Fourthly, the interviews carried out by myself may represent a high degree of quality, but a very low degree of quantity, which may limit the possibility for generalisations. The hope is, however, that this flaw be compensated by the opinion polls conducted by the UNDP, which have a better quantitative quality as in the realm of these polls, around 1,500¹⁶ people have been interviewed. Furthermore, the interviews with the IDPs were conducted on quite a random basis: In some areas the interviewed resided in collective centres (CCs) whereas in other areas they resided in private accommodation. The plan was to visit only collective centres in order to eliminate differences in the respondents' conditions of living. But, during the field excursion, it transpired that in some centres, there were very few people left, and that some were not willing to be interviewed. Therefore, also people not staying in collective centres were interviewed. The living conditions may have some effect on the answers but during the journey it also appeared that none of the collective centres had similar conditions and that, in fact, some people lived in schools or barracks sharing bed-/living rooms, sanitary rooms and/or cooking facilities while others in houses with own (private) apartments with quite modern standards. Therefore, the difference in the conditions of living would not have been eliminated even if all the respondents had resided in collective centres. Therefore, to an even greater extent, these differences in the conditions of living shall be taken into account and, therefore, to an even lesser extent, it will be possible to make generalisations based on the respondents' answers.

Fifthly, as regards the choice of respondents, naturally, it would have been ideal to try to obtain all the personal information necessary in order to choose whom to interview in a more scientific way. However, equally it would have been impossible to gain access to personal information on the IDPs. Therefore, the qualitative nature of this research should, again, be

¹⁵ Constituent peoples according to the amended Constitution of BiH are Bosniaks, Croats, Serbs and Others.

¹⁶ The UNDP BiH- Early Warning System (EWS) uses in its public opinion polls uses an initial sample size of 1560 to obtain 1500 valid interviews. This amount is based on statistical estimates on the current population size. UNDP BiH – EWS, Quarterly Reports, October- December 2002, p. 45.

emphasised along with the fact that the results should so be analysed: on a case by case basis, and be seen more as examples of possible situations when violations against individual IDPs' human rights may possibly occur, but will not necessarily do so in every situation presenting similar characteristics.

Sixthly, it is possible that the people still remaining displaced and who were interviewed for the purposes of this study are the least willing to return as those who had the chance and who wished to return may already have returned. On the other hand, the main purpose of this research is not to conduct a traditional opinion poll, but to find situations where return could be problematic. Therefore, even though the opinion poll might be biased for this reason, this very fact could be positive for this type of research as it could increase the amount of problematic cases and would make it easier to identify the situations in which IDPs have not wanted or been able to return, from their own point of view.

Seventhly, as regards the interviews with the political parties, it may be important to highlight that the information gathered does not necessarily correspond to the real aims of the parties and that their real activities, now and in future, could be quite different from what was said during the interviews and in the party programmes. However, it would probably be impossible to verify the information and therefore the only reasonable thing to do for the purposes of this thesis, is to take this lack into account when analysing the results.

5. Definitions of IDPs:

For the purposes of this thesis, various sources will be used to define the term 'IDP'. According to the Law on Displaced-Expelled Persons and Repatriated in the Federation of Bosnia and Herzegovina an IDP is: “[...] a citizen of Bosnia and Herzegovina who has been displaced in the territory of the Federation as a result of conflict, persecution, or a well-founded fear of being persecuted or having his/her rights violated, within the territory of Bosnia and Herzegovina, while there do not exist conditions for safe and dignified return to his/her former permanent residence, nor has s/he voluntarily decided to settle in a new place of living¹⁷”. Furthermore: “The status of a displaced-expelled person shall cease:

1. upon return to his/her permanent residence;

¹⁷ Law on Displaced-Expelled Persons and Repatriated in the Federation of Bosnia and Herzegovina, Article 4.

2. when there is a possibility for safe and dignified return to his/her permanent residence, but a displaced-expelled person has not returned there;
3. when a displaced-expelled person has voluntarily decided to permanently settle in another place within the territory of the Federation”¹⁸.

According to the Law on Displaced Persons, Refugees and Returnees in Republika Srpska: “[A] displaced person [..]is a citizen of Bosnia and Herzegovina who has been displaced in the territory of the Republika Srpska as a result of conflict, destruction caused by war, well-founded fear of being persecuted or having his/her rights violated in the territory of Bosnia and Herzegovina, while there do not exist conditions for safe and dignified return to his/her former place of permanent residence”¹⁹. Furthermore: “The status of a displaced person shall cease:

1. Upon voluntary return to his/her former place of permanent residence,
2. Where there is a possibility for safe and dignified return to his/her former place of permanent residence, but a displaced person has not returned there,
3. When a displaced person has voluntarily decided to permanently settle in a place of his/her free and voluntary choice,
4. When a displaced person has freely disposed of his/her property in the place of his/her previous permanent residence, thus creating conditions for his/her permanent settlement in a place of his/her free and voluntary choice”²⁰.

According to the Guiding Principles on Internal Displacement: “[I]nternally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”²¹.

¹⁸ Ibidem, Article 10.

¹⁹ Law on Displaced Persons, Refugees and Returnees in the Republika Srpska, Article 2.

²⁰ Ibidem, Article 17.

²¹ OCHA, Guiding Principles on Internal Displacement, Introduction- Scope and Purpose (2).

6. Definitions of Other Terms:

As BiH was before the war one of the republics of the former, socialist, Yugoslavia, it had a different system of ownership as regards apartments and real property than the Western European countries, but also different from Communist countries of the Eastern Europe. There existed socially owned apartments, i.e. owned by the State or State enterprises, and private persons could gain occupancy rights, which could be passed on by inheritance, but the apartment could not be sold. After the war it has been possible to regain the occupancy right and transfer it into a real property right through acquisition. There were also two types of ownership rights of real property: user or possession rights and ownership rights. As regards the regaining of real property, problems have been caused mostly by the lack of documentation or confusing and varying systems of documentation that have historical grounds²². The deadline for submission of claims for return of apartments in FBiH expired 3 December 1999 and in RS 18 June 2000. However, not all filed claims have been solved, and in many cases either the apartment is occupied by someone else or is not in a habitable condition. There is no deadline for the submission of claims for return of real property.²³

The term “temporary accommodation” is generally used for accommodation provided by e.g. a municipality, to which the IDP has a legal right while waiting to return to the pre-war home or finding another solution. Temporary accommodation could be e.g. in a collective centre (CC). However, it could also mean lawful accommodation in a private apartment or real property. The term “alternative accommodation” generally means an accommodation provided for a returning IDP while e.g. awaiting the reconstruction of a regained but destroyed property. This could also be in a collective centre, in a private apartment or real property. “Relocation/Resettlement” is used in this thesis to designate IDPs moving to another area that is not their pre-war area of residence and not the present residence. The term “integration” is used to describe when an IDP stays in the current area of residence and establishes a permanent residency status there, whereby the IDP status ceases.

²² <http://www.crpc.org.ba/new/download/en/decisions/PropertyRightsCRPCDecisionsrev19Feb.pdf>. Accessed 22/5/2003.

²³ <http://www.crpc.org.ba/new/download/en/claims/EngInfoSheet7HowtoLodgeedited.pdf>. Accessed 22/05/2003.

7. Theoretical Framework:

According to a number of documents on international human rights refugees have the right to return to their home country²⁴. The right to voluntary repatriation is at the moment also under study in the Sub-Commission on the Prevention of Discrimination and the Protection of Discrimination and the Protection of Minorities²⁵. Although, the 1951 Convention relating to the Status of Refugees and the 1967 Protocol do not discuss the aspect of repatriation, it is understood that after a refugee is no longer in need of international protection he or she: “[C]an be expected to avail himself of that country’s [i.e. the country of nationality’s] protection”²⁶.

As an IDP has not crossed the international border of his/her home country, he/she cannot be regarded as a “refugee” meriting international protection as such²⁷. However, the right to return can be regarded as a human right also as regards IDPs as it is linked to other rights e.g. the freedom of movement. Although it is not only international law that regulates the status and rights of an IDP but also domestic law, certain international standards should have been taken into account when drafting the domestic legal documents so that no breach against human rights occur as a consequence of the implementation of domestic law. Fitzpatrick has stated that: “Protection of IDPs falls squarely within the international human rights regime, as no separate refugee-like legal system exists to protect them”²⁸. The most basic rights in the Universal Declaration of Human Rights and certain treaties, e.g. the International Covenant on Civil and Political Rights (ICCPR)²⁹, guarantee the right to freedom of movement and residence³⁰ and the right to property³¹. According to

²⁴ The 1948 Universal Declaration of Human Rights, Article 13 (2), the European conventions for the Protection of Human Rights and Fundamental freedoms, Article 2, the International Convention on the Elimination of All Forms of Racial Discrimination, Article 5, the International Covenant of Civil and Political Rights, Article 12, and the American Conventions on Human Rights at Article 22.

²⁵ UNHCR, Executive Committee, Discussion Note on Protection Aspects of Voluntary Repatriation, (EC/1992/SCP/CRP.3), UNHCR, 1992.

²⁶ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status, under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, Geneva, Switzerland, 1992.

²⁷ J. Fitzpatrick, *The Human Rights of Refugees, Asylum-Seekers, and Internally Displaced Persons: A Basic Introduction*, in Fitzpatrick, Joan (ed.), *Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons, A Guide to International Mechanisms and Procedures*, New York, USA, Transnational Publishers Inc, 2002, p. 5.

²⁸ *Ibidem*, p. 6.

²⁹ International Covenant on Civil and Political Rights, Article 12. N.B. Bosnia and Herzegovina is a Party of the ICCPR.

³⁰ Universal Declaration of Human Rights(UDHR), Art. 13 (1).

³¹ *Ibidem*, Art. 17 (1)-(2).

Fitzpatrick the: “[E]ssence of freedom of movement is the right to choose one’s own residence and to determine where and when one wishes to travel”³². Furthermore, any limitations to freedom of movement rights should be reasonable, proportionate and serve a legitimate State interest³³. According to the Report of the Representative of the UN Secretary-General on Internal Displacement, forced displacement: “[M]ay be undertaken only in the specific circumstances provided for, with due regard for the principles of necessity and proportionality, and should last no longer than the exigencies of the situation. Furthermore, it must not occur on a discriminatory basis”³⁴. Moreover, the International Covenant on Civil and Political Rights (ICCPR) requires that restrictions on the freedom of movement and choice of residence should be: “(a) provided by law: (b) consistent with other rights recognized in the ICCPR; and (c) necessary to protect national security, public order, public health or morals, or the rights and freedoms of others”³⁵. Also, the ICCPR Article 12: “[I]ncludes protection against all forms of forced internal displacement”, and: “[P]rohibits States from preventing individuals from entering or remaining in a defined part of the territory”³⁶. Furthermore: “[T]hose lawfully within the State must be able to move around in the entire territory and establish themselves in a place of their choice. The enjoyment of this right cannot depend on the purpose or reason for the person wanting to move or to stay in a place”³⁷. The Convention on the Elimination of All Forms of Racial Discrimination (CERD), General Recommendation XXII on Refugees and Displaced Persons states that: “[S]tates parties are obliged to ensure that the return of such refugees and displaced persons is voluntary and to observe the principle of non-refoulement and non-expulsion of refugees”³⁸. As regards the special protection of women the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) states that: “States Parties shall accord to men and women the same rights with regard to

³² J. Fitzpatrick, *The Human Rights of Refugees, Asylum-Seekers, and Internally Displaced Persons...*, p. 11.

³³ *Ibidem*, p. 11.

³⁴ United Nations, Economic and Social Council, Commission on Human Rights, *Internally displaced persons, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39, E/CN.4/1998/53*, 11 February 1998.

³⁵ A. Bayefsky; S. Farrior; K. Hanrahan; A. Langham, Protection Under the Complaint Procedures of the United Nations Treaty Bodies, in Fitzpatrick, Joan (ed.), *Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons, A Guide to International Mechanisms and Procedures*, New York, USA, Transnational Publishers Inc, 2002. p. 63.

³⁶ *Ibidem*, p. 63.

³⁷ *Ibidem*, pp. 63-64.

³⁸ Convention on the Elimination of All Forms of Racial Discrimination, CERD, General Recommendation XXII, Article 5 and refugees and displaced persons, (Forty-ninth session, 1996). N.B. Bosnia and Herzegovina is Party of CERD.

the law relating to the movement of persons and the freedom to choose their residence and domicile”³⁹.

Return, as defined by the GFAP, must be voluntary as the “right to voluntary return” includes per definition a right not to return. If the right not to return does not exist, then, the return may consequently amount to forced return. Therefore, there should exist alternatives to return. Some such alternatives could be to integrate the persons concerned at the present location or to relocate/resettle to another location. Consequently, to fulfil GFAP, the implementation of Annex 7 means not only that all IDPs shall have the right to return, but also that those who do return should have had a possibility to make a well-considered choice to return. They should further have had the possibility to choose between more than one option. It follows from this that if return is not voluntary GFAP Annex 7 is unfulfilled⁴⁰.

Right to property is not very clearly defined in international human rights law.⁴¹ The GFAP, and the BiH legislation, however, guarantee this right. Most likely the right to return and to regain property or occupancy rights as guaranteed by the GFAP should be regarded as individual rights as each and everyone has the individual right to decide whether or not to return and to apply to the competent authorities for the reacquisition of lost property. These rights could have some collective aspects⁴², as would for instance be the case after a large-scale forced displacement of people of a certain ethnic/religious group. However, a mass return of this people to the pre-war areas of domicile might or might not occur. Some people might want to return only if there is a considerable amount of others returning to that area and consequently, if no arrangements are made for a collective return, nobody might wish to return⁴³. Furthermore, in connection with IDP-return in BiH there have been discussions on the reversal of ethnic cleansing and it has been expressed that the return of IDPs, in fact, is a necessity for a future stable multiethnic society in BiH⁴⁴ as a state.

Circumstances where people have to leave their homes during an intra-State conflict are not comparable to the circumstances during an international conflict. During an international conflict

³⁹ CEDAW, Article 15(4). N.B. Bosnia and Herzegovina is Party of the CEDAW.

⁴⁰ See also M. Stavropoulou, *Bosnia and Herzegovina and the Right to Return in International Law*, in O’Flaherty, Michael and Gisvold, Gregory (Ed.), *Post-war protection of human rights in Bosnia and Herzegovina*, London, UK, M. Nijhoff Publishers, 1998. pp. 129 & 132.

⁴¹ J. Fitzpatrick, Joan, *The Human Rights of Refugees, Asylum-Seekers, and Internally Displaced Persons ...*, p. 15.

⁴² However, a right to “mass return” is not guaranteed by the BiH legislation nor by the GFAP.

⁴³ As earlier stated, the collective aspects of the right to return are not guaranteed by the BiH legislation. However, they might affect the realisation of the individual right to return, which *is* guaranteed by the law.

⁴⁴ M. Stavropoulou, *Bosnia and Herzegovina and the Right to Return in International Law ...*, p.128.

the situation may be that refugees flee the country for security or other reasons. After the conflict they may return when the situation has stabilised again, even though the country they are returning to might be destroyed. It could be that most of the people, refugees and those who stayed, find themselves in the same situation: they might need to rebuild their lives from scratch and, mentally, the situation might even strengthen the unity of the people.

An intra-State conflict is also a civil issue as civilians, in many situations, can be the primary targets of the aggressors, be it the military, paramilitary forces civil servants or other civilians. It is in these circumstances it becomes very clear to potential refugees that their presence is unwanted. Circumstances such as these cause society to be cut off for instance along ethnic lines and there are people who loose everything: some have to flee, others suffer torture or even death. But there are also potential beneficiaries of this new situation. These could be for instance the majority ethnic group in a certain area, or the representatives of a certain ethnic group that happens to have gained military control over that area. These circumstances create an asymmetric situation in relations between people, and can break any earlier sense of unity which might have existed among them. Returning after this type of conflict is therefore extremely difficult, as those power relations may still exist after the conflict, especially if the group with military control also has benefited from the situation which arose during the conflict with a consequential increase in economic power⁴⁵.

The return of refugees and IDPs has been justified by many authors by the moral imperative of reversing ethnic cleansing⁴⁶. It has also been stated that it is necessary for the country's stability⁴⁷. It could however be questioned whether there is any proof showing that stability would indeed increase if the people do return. A counterargument to this could be for example that when people return, so will the pre-war situation. If there still exists enough nationalism, fear, distrust etc., actual stability might decrease instead of increase⁴⁸. It is also possible that as long as the international forces remain in BiH there is stability but that their very presence prevents us from knowing what the situation would be like in their absence. This we will know only when these

⁴⁵ See also Lundgren, Bo Richard et al., *Att förebygga och hantera etniska konflikter – fyra forskningsbidrag*, Stockholm, Sweden, Överstyrelsen för civil beredskap, 2000.

⁴⁶ M. Stavropoulou, *Bosnia and Herzegovina and the Right to Return in International Law...*, p. 128

⁴⁷ M. Vandiver, 2001, *Reclaiming Kozarac: Accompanying Returning Refugees*, in Dzermal Sokolovic & Florian Bieber (Ed.), *Reconstructing Multiethnic Societies: The case of Bosnia-Herzegovina*, Hampshire, England, Ashgate, 2001, pp. 168-169.

⁴⁸ A. B. Downes, *The Holy Land divided, Defending Partition as solution to ethnic wars*, in «Security Studies», vol. 10, Number 4, Summer 2001, p. 62. N.B. Although the name of this article refers to the Palestinian conflict, the author of it draws in it parallels to the conflict in BiH.

forces leave BiH, but then it might also be too late: a violent conflict might erupt again. The uncertainty as to the possible outcome of refugee return is to be weighed against the moral obligation of ensuring people's right to free choice concerning one's place of living.

Few authors have considered stability and multiethnicity as more or less each other's opposites, stating that re-creation of a multiethnic BiH, as a result of the return, may destabilise the country in future as the country would return to its pre-war demography which, according to some authors, was the cause of the war⁴⁹. But, do we really know the real cause of the war, and was it really because people from different ethnic/religious groups did not want to live together anymore? It is a possibility, but at the same time it probably had more to do with political manipulation of the people by politicians using historic or quasi-historic arguments calling for revenge for past generations' atrocities against the own ethnic community, using arguments which work particularly well in times of economic crisis. However, it should be acknowledged that managing a multiethnic society after a violent conflict might require special attention, and extraordinary measures in order to solve the new problems created by the war, including intolerance, distrust and hatred. But these problems should not be regarded impossible to overcome, as this, at the same time, disqualifies most States that are multiethnic but peaceful. It would be absurd to even try to arrange tiny and neat single-ethnic States as most States in today's world are ethnically heterogeneous. Moreover, ethnicity is usually not people's only affiliation. Other important affiliations number religious, cultural, linguistic etc. Furthermore, many examples could be given where people of the same ethnicity have different religions and vice versa.

Security problems in connection with refugee returns that may arise should be regarded from a wider constitutional spectrum of BiH. This should be done because the Dayton agreement and the Bosnian constitution consolidated the division of the constituent peoples of BiH. Building a multiethnic State in these circumstances may seem difficult if not impossible⁵⁰. However, the thesis by authors such as Downes, that partition is superior to solutions based on a multiethnic State was rejected by many officials/ politicians that I discussed with during my field excursion.

So it may be necessary to allow people to return to their homes in BiH in order to create stability as the return may reduce dissatisfaction among returning people. However, according to the IDP guiding principles and the GFAP, return should be voluntary. An involuntary return may amount to forced displacement and may have an equally destabilising effect as the impossibility to

⁴⁹ Ibidem, pp. 70 & 72.

⁵⁰ Ni Aolain, Fionnuala, *The Fractured Soul of the Dayton Peace Agreement: A Legal Analysis*, in Dzemal Sokolovic & Florian Bieber (Ed.), *Reconstructing Multiethnic Societies: The case of Bosnia-Herzegovina*, Hampshire, England, Ashgate, 2001, 69-70.

return. Furthermore, in a post-war country, where democracy is slowly being implemented, it's primary concern should be letting people be a part of decisions as regards things affecting their lives. This is necessary for the creation of a sense of *appartenance* by the people in the State so that people feel that they can make a difference and thus that it is necessary to express their will and, perhaps most importantly, to vote. Therefore, a political objective, e.g. the reversal of ethnic cleansing, should never be given priority over the will of an individual IDP or refugee, and this is exactly where the difference between the individual and the collective right to return appears. It may be necessary that return be a collective movement before an individual person takes the decision to return because returning may include safety aspects. Furthermore, the IDP may not wish to become an extremely small minority in an area or even live among people that have moved there from elsewhere. This having been said, the individual's right to a *voluntary* return is a democratic right of a more fundamental nature, and should have priority over the collective right to return.

There could be other reasons not to return related to future security: some people may not wish to return because they distrust the continuation of the stabilisation process after the IC has left the country. They may fear another forced expulsion from their homes once the IC forces have left, and therefore deem it more safe to remain where they are: "wait and see". At least statistics show that there are quite a lot of people who believe that the war will start again once the international community leaves the country⁵¹. Not helping to allay these fears, now and then there are reports on military equipment stores found by the international police forces and others stating that certain groups are, in fact, preparing for a future battle⁵².

Naturally, the circumstances in the current domicile have an effect. If the property/apartment is occupied by someone else, that most certainly will hinder the owner to exercise his/her right to return. The owner's right should naturally be respected⁵³ and in this type of situation resettlement to a third area/ accommodation could be an alternative if the person occupying the property/apartment does not want to return. This type of arrangement may require adequate funding and may be difficult to implement in practice. However, return and reconstruction is also an expensive project and the funds should be (or should have been) allocated in a way that makes a free and individual choice possible.

⁵¹ The latest survey of UNDP showed that 39.3% of Bosniak, 17.8% of Croat and 36.3% of Serb respondents believed that another war will break out if SFOR withdraw from BiH. UNDP BiH- Early Warning System, *Quarterly report*, October- December, 2002, p. 41.

⁵² Transitions Online, Balkan Reconstruction Report of 21 May, 2002, *Secret Weapons*, <http://www.tol.cz/look/BRR/article.tpl?IdLanguage=1&IdPublication=9&NrIssue=1&NrSection=1&NrArticle=4439&earch=search&SearchKeywords=hidden&SearchLevel=0>, Accessed, 19 May, 2003.

⁵³ One possible restriction to freedom of movement is the rights of others. See note no. 35.

Some authors have stated that: “Where there is a shortage of housing, the international strategy has been to work on eliminating ‘multiple occupancy’, where families have unlawfully acquired more housing space than they need. Another strategy has been to develop systems to detect when a property becomes available for return, either through reconstruction or by the departure of its current occupant, and to make sure that the owner vacates the temporary accommodation immediately. This frees space for a second return. By creating systems that can track and manage the return process effectively, it is possible to generate a cycle of returns, minimizing the need to evict genuine humanitarian cases”⁵⁴. Furthermore it is stated that: “IDPs occupying claimed property may be unable to return to their own homes and may have a genuine humanitarian need”⁵⁵.

It could be questioned whether the decision of refugee return was an expression of the people’s will. It is in this regard not interesting what is right from a moral perspective⁵⁶, but whether it is the expression of the will of the people. The parties that negotiated at Dayton and agreed on the GFAP were the International Community, represented by the “Contact Group”, the leaders of Yugoslavia, Croatia and Bosnia and Herzegovina and it could be questioned whether the signatories were seen as legitimate representatives by the people of BiH. Furthermore, it could be questioned whether the international community was a legitimate negotiator and, now, whether it is a legitimate administrator. Normally, in democratic systems, even minorities may take part in the decision-making and with democratic consolidation, obviously necessary as per some democratisation theories, one basic element and a necessity for democratic consolidation is a sense of *appartenance* among the citizens in a country, meaning that the citizens should feel like they are part society, that their will counts, and that they are able to affect the political decisions that affect their lives⁵⁷. It could be asked whether IDPs have been in a position to affect the crucial decisions that more than anything have affected their lives. From a democratic point of view it is important that the will of the citizens is taken into account when policies are drafted.

If the policies/plans of the IC, the political parties and the public opinion do correspond, it is in this matter a positive development for the country and its future democratic consolidation. If they do not correspond, this could be considered alarming from the point of view of democratisation, as

⁵⁴ M. Cox; C. Harland, *Internationalized Legal Structures and The Protection of Internally Displaced Persons*, in Fitzpatrick, Joan (ed.), *Human Rights Protection for Refugees, Asylum-Seekers, and Internally Displaced Persons, A Guide to International Mechanisms and Procedures*, New York, USA, Transnational Publishers Inc, 2002. p. 536.

⁵⁵ Ibidem, p. 538.

⁵⁶ With the “moral perspective” it is meant in this regard e.g. the idea of reversal of ethnic cleansing, that all people that had to leave their homes during the war should return in order to thwart the idea of ethnic cleansing.

⁵⁷ Biekart, Kees, *The Politics of Civil Society Building*, Utrecht, Netherlands, International Books, 1999. pp. 40-48.

the will of the people in that case seems not to matter. This may further decrease people's sense of *appartenance* in the State.

As regards free choice, it is possible to claim that it is not available to ordinary people as they are influenced by political propaganda, etc. It could also be questioned whether, in a democratic country, people's choices are ever rational/free/well founded. It is true, that before, during and after a violent conflict, it is difficult, if not impossible, to ensure that the information people have access to is not biased by for instance political manipulation, that has been made possible by e.g. media ownership structure. During a period of democratisation, people may already have been granted civil and political rights. However, as the economic, social and cultural rights may remain unrealised and, as the actors in the democratic arena may be more interested in their personal gain, than in the rebuilding of the country, people, when benefiting of their newly gained rights may draw conclusions and make decisions that, in fact, they would most likely not do, if living in a stable democratic society. It all comes to the question whether civil and political rights should be granted to people immediately after a violent conflict in an emerging democracy? If not, who would then decide over the people: the politicians, authorities, IC? Civil and political rights have been guaranteed to the people of BiH. The question is: do they have the possibility to benefit of these rights? Therefore, to state that people cannot decide for themselves what is best for them would undermine the purpose of democratic rule.

There is quite obviously a moral obligation to let people go to their homes if they freely choose to do so. But in situations where people wait for years for the possibility to return arises the question whether we have the moral right to waste years and years of peoples' lives? The real question is therefore: to what price and within which timeframe are we ready to enforce a nearly 100% return? Obviously there does exist people who have spent around 10 years in temporary accommodation awaiting the possibility to return. It is therefore important to find out whether these people would prefer relocation or integration for example in the area where they already are and where they might already have jobs, their children might already go to school and have friends.

In this essay some situations and circumstances will be highlighted where individuals might be willing to choose e.g. relocation or integration instead of return. The real choice is also naturally important as regards the possibility to return and to tackle the obstacles related to return. This is an issue that has been much discussed in relation to the conflicts in the countries of former Yugoslavia and there is no need to add more to it in this thesis.

The aim of this study is *not* to speak against the return of refugees/IDPs. The aim, which needs to be emphasised, is to show situations where rights of individual IDPs risk violation, to discuss these cases and to bring them into light so that in future, if similar situations arise, problems could be tackled in a better way in order to minimise individual suffering. The choice of return should be made freely without coercion of any kind. And to be able to make a free and well-considered choice, alternatives should include a possibility to integrate/relocate to another area depending on the circumstances and the wishes of IDPs. If return is the one and only viable alternative, the choice made may not be regarded as free.

It is important to be aware that the political decisions, whether they are made in the domestic political arena or in the international organisations, affect people's lives and should always be made with the people's best interests in mind, which may not always be exactly the same as what appears morally right: it is also directly in opposition to the western political tradition to sacrifice a few generations in order to reach some higher aims, for example a multicultural society. This type of management is reminiscent of some dictators' ideologies. No-one should be sacrificed for whatever ends it may be. If sacrifice is necessary, the aims should be changed, because in a real democracy a person is unlikely to agree to his/her own sacrifice.

8. Legal Framework as Regards the Right to Return:

According to the GFAP Annex 7, article I (1): "All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived [...] and to be compensated for any property that cannot be restored to them". Furthermore, it is stated that the: "[E]arly return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina", and that the return should be safe and: "without risk for harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion". Also, the individual or family shall have the right to choose their destination and the: "principle of the unity of the family shall be preserved"⁵⁸. It is also stated that the choice of the destination is up to the individual or the family, the same paragraph states that: "Parties [...] shall [not] compel [the IDPs or refugees] to remain in or move to situations of serious danger or insecurity, or to areas lacking in

⁵⁸ GFAP, Article 1(4).

the basic infrastructure necessary to resume a normal life”. Furthermore: “Parties shall facilitate the flow of information necessary for refugees and displaced persons to make informed judgments about local conditions for return”⁵⁹. Also the GFAP Annex 7 states that UNHCR should develop a repatriation plan that would allow for an: “early, peaceful, orderly and phased return of refugees and displaced persons [...]”⁶⁰. Furthermore the Constitution of BiH Article II(5) states that: “All refugees and displaced persons have the right freely to return to their homes of origin”.

The Federation of Bosnia and Herzegovina (FBiH) Law on Displaced-Expelled Persons and Repatriated in the FBiH regulates the status of the Displaced/Expelled Persons and Repatriated, as well as their rights e.g. to accommodation during the duration of their status as such⁶¹. Furthermore, the law regulates that the persons it refers to: “shall have the right to return freely to their permanent residence or to a new place of living without the risk of intimidation, terrorizing, persecution and discrimination”⁶². Also, the law regulates that the: “competent authorities of the federation, canton and municipality shall undertake all the necessary measures, and in particular those in relation to: “freedom of movement, compliance with human rights and elementary freedoms, increased residing security in the place of the return, the return of property to owners, construction and reconstruction of houses and apartments, creation of new jobs and other conditions affecting safe and dignified return of displaced/expelled persons and repatriates”⁶³.

The Law on Displaced Persons, Refugees and Returnees in the Republika Srpska also regulates the status the displaced persons⁶⁴ and when it shall cease⁶⁵. In addition it states that: “Displaced persons and returnees shall enjoy, in full equality, the same rights and freedoms under the international and national law as do other citizens of the Republika Srpska. They may not be discriminated against in the enjoyment of any rights and freedoms on any grounds whatsoever, and particularly not on the ground that they are or were displaced. Displaced persons and returnees have the right to freedom of movement and freedom to choose his/her permanent residence”⁶⁶. Furthermore, the law regulates other rights of IDPs such as the right to an adequate standard of

⁵⁹ Ibidem, Article 1(4).

⁶⁰ Ibidem, Article 1(5).

⁶¹ FBiH refugee law Articles: 4-20. See also above: ‘definitions of IDPs’.

⁶² Ibidem, Article 21.

⁶³ Ibidem, Article 21.

⁶⁴ Law on Displaced Persons, Refugees and Returnees in the Republika Srpska, Article 2.

⁶⁵ Ibidem, Article 17.

⁶⁶ Law on Displaced Persons, Refugees and Returnees in the Republika Srpska, Article 5.

living⁶⁷ and to temporary accommodation⁶⁸. Furthermore, the law states that: “The process of social reintegration and return shall be carried out in accordance with freely expressed and individual wish of a refugee and/or a displaced person to choose a place of his/her permanent residence on the basis of objective and accurate information⁶⁹”.

9. Legal Framework as Regards the Right to Temporary Accommodation:

The Law on Displaced Persons, Refugees and Returnees in the Republika Srpska and the Law on Displaced/Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina regulate the right to temporary accommodation. The RS law states that: “All displaced persons have the right to an adequate standard of living, the right to temporary basic accommodation, health care, social security, education and vocational training”⁷⁰. Also, the FBiH law states that: “A person whose status of a displaced-expelled person has been recognized, as well as a repatriate, shall be temporarily provided with: 1. accommodation; 2. food supplies; 3. social reintegration and psychological support; 4. health care; 5. education of children and youth; 6. other necessary living essentials”⁷¹. Furthermore, article 12 in the same law regulates the space and type of the temporary accommodation.

According to the FBiH law: “In cases where a displaced/expelled person [...] has regulated his/her accommodation in accordance with the positive housing law and holding the acquiescence of the competent body, and has been requested to vacate his/her current accommodation, s/he shall have the right to another adequate accommodation [...]”⁷². Equally, the RS law states that the competent bodies shall find temporary basic accommodation also for displaced persons and refugees who are, according to provisions of the Law on the Cessation of Application of the Law on the Use of Abandoned Property ([...]), required to vacate their current houses and apartments,

⁶⁷ Ibidem, Article 6.

⁶⁸ Ibidem, Article 10.

⁶⁹ Ibidem, Article 19.

⁷⁰ Ibidem, Article 6.

⁷¹ Law on Displaced-Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina, Article 11.

⁷² Ibidem, Article 12.

providing that they do not have any other accommodation or that the right to accommodation is not guaranteed to them by another, more favourable legal basis.

This provision shall also apply for displaced persons and refugees against whom it has been determined that they use a house or an apartment without legal basis, and who cannot return to their former permanent residence, which shall be verified by a competent body”⁷³.

Both laws lay down that only an IDP holding the status of a displaced person according to the law on refugees and displaced persons in the relevant entity have the right to temporary accommodation. The definitions of an IDP in both laws are stated above in chapter five.

10. Legal Framework as Regards the Use of Vacated Real Property and Apartments

The Law on the Cessation of Application of the Law on the use of Abandoned Property of RS and the Law on the Cessation of the Application of the Law on Abandoned Apartments in the FBiH respectively regulate the use of real property in RS (privately owned business premises, privately-owned houses, privately-owned apartments, apartments with occupancy rights) and apartments in FBiH that were vacated at the outbreak of the war whether officially declared abandoned or not⁷⁴.

Both laws lay down that all contracts made during the war and some time after it be declared nul, and state conditions in which contracts may be revalidated. Both laws also state the situations in which real property/apartments may be used as temporary accommodation and in what situations they should be vacated by the temporary occupants. The laws also regulate the procedure how repossession claims should be filed. According to the law the entity’s relevant ministry shall issue a decision within 30 days from the date of receipt of the claim⁷⁵. The deadline for vacating the property is 15 days in both entities for temporary users of the property and apartment⁷⁶. If the occupants fulfil certain criteria the deadline may be extended to a maximum of 90 days and in

⁷³ Law on Displaced Persons Refugees and Returnees in the Republika Srpska, Article 10.

⁷⁴ Law on the Cessation of Application of the Law on the use of abandoned property in RS, Art. 1, Law on the Cessation of the Application of the Law on Abandoned Apartments in FBiH, Art. 1. Both these laws use throughout the same wording.

⁷⁵ Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 9.

⁷⁶ Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 11a, and Art. 18a and Law on the Cessation of the Application of the Law on Abandoned Apartments, Art. 6.

exceptional cases up to one year⁷⁷. Furthermore the laws define cases of multiple users which preclude the occupation of vacant property. This: "[I]ncludes, among others, a current user who uses a real property or an apartment and who:

1. holds an occupancy right to or is using more than one apartment; or
2. has a family house or apartment, in cases where the family house or apartment is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions (basic protection against weather; access to water and electricity; a heating source; basic privacy; and security of belongings); or
3. is in possession of the house or apartment in which s/he lived on 30 April 1991 ('1991 home'); or where a member of his/her family household is in possession of his/her 1991 home; in cases where his/her 1991 home is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions; or
4. has already been provided with alternative accommodation by a competent authority; or
5. has a member of his/her family household who has accommodation anywhere on the territory of [Republika Srpska or Federation of Bosnia and Herzegovina] or in the same city or municipality as the 1991 home anywhere else in the territory of Bosnia and Herzegovina; or
6. has a legal right to return into possession of his/her 1991 home; and his/her 1991 home is sufficiently intact, or can be made so with minimal repairs, to provide for basic living conditions, as explained in this paragraph; and it is possible for him/her to return into possession of his/her 1991 home; or
7. whose accommodation needs are otherwise met [see below]⁷⁸.

Also, the laws enumerate situations where a temporary user's accommodation needs are otherwise met requiring him/her to vacate the property. A temporary user who's accommodation needs are otherwise met is:

1. "a temporary user who voluntarily sold the real property in which s/he lived on 30 April 1991; or
2. a temporary user who voluntarily exchanged the real property or apartment in which s/he lived on 30 April 1991 and who is in possession of the apartment or real property or has transferred it to a third party; or

⁷⁷ Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 11a, and Art. 18a and Law on the Cessation of the Application of the Law on Abandoned Apartments, Art. 7a.

⁷⁸ Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 24a and Law on the Cessation of the Application of the Law on Abandoned Apartments, Art. 11.

3. a temporary user who refuses alternative accommodation offered in writing by the competent authority, or refuses assistance in the reconstruction of his/her residence of 30 April 1991. The competent authority shall inform the temporary user of the consequence of refusing alternative accommodation or reconstruction assistance; or
4. a temporary user who resides in the same municipality as s/he did in 1991, unless s/he can provide evidence as to why he or she cannot return to his or her 1991 home; or
5. a temporary user who was a sub-tenant in 1991; or
6. a temporary user who has sufficient disposable income, including assets, to provide for his/her own accommodation. Sufficient disposable income shall be defined as one-fourth of the applicable breadbasket, as calculated by the competent statistical institute, per current family household member, plus 200 KM⁷⁹; or
7. a temporary user, in a case where the owner or occupancy right holder provides him/her with a different accommodation as a tenant within the same municipality, unless the temporary user agrees in writing to another municipality elsewhere, for at least six months [..]; or
8. a temporary user who left his/her apartment or residential private property in the territory of Bosnia and Herzegovina between 30 April 1991 and 19 December 1998 and there was a claim for repossession of that apartment or residential private property filed, if the claim for repossession is subsequently withdrawn; or
9. a temporary user who has been allocated any state-owned, including formerly socially-owned, land since 6 April 1992, more than 150 days from the date the allocation issued pursuant to a waiver granted by the Office of the High Representative, unless s/he cancels the allocation within 60 days of the date of the confirmation or of the date this provision comes into force, whichever date is the later; or
10. a temporary user who, unless a waiver application is pending before the Office of the High Representative, has been allocated any state-owned, including formerly socially-owned, land since 6 April 1992, unless s/he cancels the allocation within 60 days of the date this provision comes into force; or
11. a temporary user who has received housing credits, building materials, or any other form of housing construction/purchase assistance, more than 150 days from the date of receipt of the assistance or the date of receipt of the first instalment of the assistance, unless s/he cancels the assistance within 60 days of receipt of the assistance, or the first instalment of the assistance, or within 60 days of the date this provision comes into force, whichever date is the later”⁸⁰.

⁷⁹ Ca. 100 €.

⁸⁰ Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 24b.

Furthermore, the laws state that: “[F]amily household’ shall mean all members of the family household as of 30 April 1991; or, if they were not members of the family household as of 30 April 1991, any spouse, parents, children, or other persons registered together with a temporary user”⁸¹.

11. Legal Framework as Regards the Right to Relocation/Resettlement

According to the GFAP, Annex 7, as stated earlier: “All [...] displaced persons have the right freely to return to their homes of origin”⁸². Furthermore, also, paragraph 3 mentions: “safe and voluntary return”. Paragraph 4 states that the: “Choice of destination shall be up to the individual or family”. Moreover, the parties agreed upon providing assistance: “to facilitate their voluntary return in a peaceful, orderly and phased manner [...]”⁸³. There is no mention of relocation or resettlement in the GFAP but as it states that the return shall be voluntary, the provision may be regarded to include an inherent right not to return.

According to the Guiding Principles on Internal Displacement IDPs have the right to: “[L]iberty of movement and freedom to choose his or her residence”⁸⁴. However, the Guiding Principles is not a legally binding document but a recommendation. On the other hand the Constitution of the BiH states that: “The rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina. These shall have priority over all other law”⁸⁵. The Constitution also states that: ”All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms [...]; these include: [...] The right to liberty of movement and residence”⁸⁶.

⁸¹ Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 24a and Law on the Cessation of Application of the Law on Abandoned Apartments, Art. 11.

⁸² GFAP, Annex 7, Article I.

⁸³ Ibidem, Article II.

⁸⁴ OCHA, Guiding Principles on Internal Displacement, Principle 14(1).

⁸⁵ GFAP, Annex 4, Constitution of Bosnia and Herzegovina, Article II(2).

⁸⁶ GFAP, Annex 4, Constitution of Bosnia and Herzegovina, Article II(3:m).

There is no mention of freedom of movement or residence in the European Convention. However, possibly the article 8 ‘Right to respect for private and family life’ could also include the freedom to choose one’s residence might be regarded included as the articles states: “Everyone has the right to respect for his private and family life, his home and his correspondence”⁸⁷.

The FBiH Law states that the IDPs’: “[S]hall have the right to return freely to their permanent Residence [i.e. pre-war residence] or to a new place of living, without the risk of intimidation, terrorising, persecution and discrimination”⁸⁸. The same article states that: “With a view to creating conditions for the return of persons [...], the competent authorities of the Federation, Canton and municipality shall undertake all the necessary measures, and in particular those in regard with: freedom of movement, compliance with human rights and elementary freedoms, increased residing security in the place of the return, the return of property to owners, construction and reconstruction of houses and apartments, creation of new jobs and other conditions affecting safe and dignified return of displaced-expelled persons and repatriates”.

Also the Law on Displaced Persons , Refugees and Returnees in the Republika Srpska regulates the freedom of movement: “Displaced persons and returnees have the right to freedom of movement and freedom to choose his/her permanent residence”⁸⁹. Furthermore, the same law states that: “The process of social reintegration and return shall be carried out in accordance with freely expressed and individual wish of a refugee and/or a displaced person to choose a place of his/her permanent residence on the basis of objective and accurate information”⁹⁰.

⁸⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 8(1).

⁸⁸ Law on Displaced-Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina, Article 21.

⁸⁹ Law on Displaced Persons, Refugees and Returnees in the Republika Srpska, Article 5.

⁹⁰ Ibidem, Article 19.

12. Investigations of Political Parties

The five main political parties in the two houses of parliament are: Stranka Demokratske Akcije (SDA)⁹¹; Hrvatska Demokratska Zajednica (HDZ)⁹²; Srpska Demokratska Stranka (SDS)⁹³; Socijaldemokratska Partija Bosne i Hercegovine (SDP)⁹⁴ and Stranka za BiH (SBiH)⁹⁵. In order to find out about the opinions of these ruling parties on the IDP return issues, their party programmes were read. Moreover, interviews were conducted with the representatives of four of these parties: SDA, HDZ, SDS, and SDP. At SDA, a meeting was arranged with the Honourable Minister of Refugees and Human Rights, Mr. Mirsad Kebo; at HDZ with the Advisor to the Office of the Croat Member of the Presidency, Mr. Davor Cordas⁹⁶; at SDS with the Member of the RS National Assembly and Banja Luka City Assembly, Dr. Vesna Ecim; and, at SDP with the Secretary General, Mr. Svetozar Pudaric. The aim was also to interview the fifth largest party in BiH parliament, SBiH but unfortunately, due to time constraints, it was not possible to find a suitable occasion for a meeting.

The party representatives were asked questions about their parties' policies and opinions on IDP return in BiH, and the aim was to find out whether the parties support return or not and why, and what they think about the right to not to return. It was hoped that the answers would reveal in what direction the parties affect or will affect in future the implementing authorities. Some of the party representatives and the party programmes gave extensive views on return issues, and some did not. Therefore, there are differences in the length of the presentations below.

12.1. The Parties Opinions, Policies and Programmes as Regards the Return of IDPs

The SDA's party programme states that only through the return of refugees and IDPs to their homes of 1991 it is possible to forget the genocide and the ethnic cleansing that took place. According to the party all refugees and IDPs have the right freely to return to their pre-war homes and that everybody also has the right to choose where he/she wants to live, meaning that everybody

⁹¹ Party of Democratic Action.

⁹² Croat Democratic Union.

⁹³ Serb Democratic Party.

⁹⁴ Social Democratic Party.

⁹⁵ Party for Bosnia and Herzegovina.

⁹⁶ Mr. Davor Cordas is also the National Commissioner of the Commission for Real Property Claims (CRPC).

also has the right to live elsewhere than where the person lived in 1991. But that should not happen at the expense of other refugees or IDPs. Furthermore, the SDA is against encouraging refugees and IDPs to change their domiciles to others than their pre-war homes and that the return of refugees and IDPs is a precondition for a peaceful, stable and democratic BiH. The party also mentions some preconditions for return, which have to do with international aid, education, labour market and economic issues⁹⁷.

Perhaps more noteworthy, according to the SDA it is important that the ethnic cleansing is reversed and that a multicultural BiH is recreated so that people will want to return. The party wishes that everybody returns to their homes but asserts that the will of the parties in the RS to homogenize the country causes problems. The fact that people are returning will bring stability to the country and shows that the war was waged in vain⁹⁸.

The SDS party programme states that refugees and IDPs shall have the possibility to choose, without any pressure, whether they want to return or stay. It also puts emphasis on the refugees' and IDPs' free will to choose the place of living as a democratic right⁹⁹. The SDS stated that it supports fully Annex 7: the right to stay at the present location or to choose one's place of living. According to the party there has been too much emphasis on return and there are many people who would like to stay where they are at the moment. As regards the prospects for stability and the return process, the SDS emphasises that return needs to be fully voluntary, otherwise no stability will be reached and that the creation of a multiethnic country should not be the main aim, but the people's right to choose should be respected¹⁰⁰.

⁹⁷ Koalicija nevladnih organizacija BiH "Izbori 2002", *Programi- politickih partija i koalicija zastupljenih u Predstavnickom domu Parlamentarne skupstine BiH*, Helsinki komitet za ljudska prava u BiH i Koalicija nevladnih organizacija BiH "Izbori 2002", Sarajevo, Bosna i Hercegovina, 2002. pp. 11-12.

⁹⁸ Interview with the SDA, Ministry for Human Rights and Refugees HQ, Sarajevo, BiH, Mirsad Kebo, Honourable Minister for Human Rights and Refugees, 26/3/2003.

⁹⁹ Koalicija nevladnih organizacija BiH "Izbori 2002", *Programi- politickih partija i koalicija zastupljenih u Predstavnickom domu Parlamentarne skupstine BiH*, Helsinki komitet za ljudska prava u BiH i Koalicija nevladnih organizacija BiH "Izbori 2002", Sarajevo, Bosna i Hercegovina, 2002. pp. 58-59.

¹⁰⁰ Interview with SDS HQ Banja Luka, RS, BiH, Vesna Ecim, Member of the Parliament of RS, Member of Banja Luka City Council, 14/3/2003.

According to the SDP party programme, the return of IDPs, refugees and expelled persons is a prerequisite for the integration and survival of the State of BiH¹⁰¹. It is also stated that the: “SDP has never supported and will never support politics that would lead to a creation of ethnically clean areas and a division of BiH on ethnic grounds”¹⁰². Furthermore, the SDP wants to emphasise the necessity of minority, not only majority returns¹⁰³. It supports specific programmes for return and also emphasises the need for legal reform, funding of employment programmes and harmonisation of the various public functions for instance within education¹⁰⁴. SDP also states that it is necessary to work to secure the safety for those who return and to work against discrimination due to nationality, political or other grounds¹⁰⁵, etc. To this end, it states that it would be necessary to extend the mandate of the Stabilisation Force in BiH (SFOR) and International Police Task Force (IPTF)¹⁰⁶ in order to secure the safety of returning refugees, IDPs and expelled persons¹⁰⁷. The SDP gives extensive proposals for the restructuring and harmonising of the functions of the domestic implementing parties as well as the IC and that financing and fundraising activities as well as legislation should be harmonised and coordinated by a central organ established for this purpose¹⁰⁸. Furthermore, the SDP states that some “key hindrances” for the return shall be got rid of by for instance creating a truly multiethnic Police and Judiciary and a common education system¹⁰⁹.

The SDP stated that it fully supports the return of refugees and IDPs and sees it as important that the pre-war demographic structure is recreated in BiH. The SDP emphasised that the main obstacles to the return are economic and administrative and states that too little emphasis has been put on the reconstruction of society. At the same time the SDP also saw it as important that those who do not wish to return shall have right to choose and that no one should be forced to return.

¹⁰¹ Koalicija nevladnih organizacija BiH “Izbori 2002”, *Programi- politickih partija i koalicija zastupljenih u Predstavnickom domu Parlamentarne skupstine BiH*, Helsinki komitet za ljudska prava u BiH i Koalicija nevladnih organizacija BiH “Izbori 2002”, Sarajevo, Bosna i Hercegovina, 2002. p. 86.

¹⁰² Ibidem, p. 86.

¹⁰³ Ibidem, pp. 86-87.

¹⁰⁴ Ibidem, p. 87.

¹⁰⁵ Ibidem, p. 87.

¹⁰⁶ At the time of writing of the party programme the IPTF was still at place, which is now replaced by the European Union Police Mission (EUPM).

¹⁰⁷ Koalicija nevladnih organizacija BiH “Izbori 2002”, *Programi- politickih partija i koalicija zastupljenih u Predstavnickom domu Parlamentarne skupstine BiH*, Helsinki komitet za ljudska prava u BiH i Koalicija nevladnih organizacija BiH “Izbori 2002”, Sarajevo, Bosna i Hercegovina, 2002. p. 87.

¹⁰⁸ Ibidem, p. 87.

¹⁰⁹ Ibidem, pp. 87-88.

Furthermore, the party stated that the return process is not just about carrying people back to their homes so that they continue living from where they were before the war; this is not possible as society and infrastructure have been destroyed and need to be reconstructed until it is possible for people to live in their pre-war homes. It also emphasised that IDPs should not be regarded as one homogeneous group, but that people who left their homes had different motives for doing so, the circumstances in which they left were different as were the consequences of their leaving. All these facts affect their status and choice whether to return or not. Therefore the SDP stated that nationality issues do not really matter to people but that the economic situation and circumstances now and at that moment when they fled have the most influence on the decision whether to return or to integrate/resettle. Physical return of people and property is not a reason enough for people to want to live in their pre-war homes¹¹⁰.

According to the HDZ there are about 20,000 to 25,000 mainly Bosniak IDPs from RS in the FBiH and if these people do not return, the return of Croat IDPs and refugees to the FBiH is made more difficult. Furthermore, about 50% of the former Croat population are either outside of FBiH (majority) or in the RS. The party's opinion is that as nobody fled voluntarily, everyone should return, but they are conscious that there might be some problems as a very long time has passed since the war ended. Consequently the party accepts resettlement as a part of Annex 7. At the same time the party wishes that as many Croats as possible stay in the FBiH, since if they do not the HDZ cannot exist. Also, many people from central Bosnia have already established lives in the areas where they live now i.e. in the Croat majority areas of FBiH¹¹¹.

Furthermore, according to the HDZ's party programme, the return of refugees and IDPs and return of private property in BiH are all prerequisites of functioning social politics. But there has been an emphasis from the IC's side on the return of Bosniaks and Serbs and not enough funding has gone to the return of Croats. The HDZ, therefore, wants to see the unconditional return of all refugees and IDPs to their homes. But before this may take place the damaged infrastructure has to be repaired¹¹².

Stranka Za BiH, in its party programme, emphasises economic reform of BiH, but also states that for instance construction of houses and apartments will help to resolve other problems such as

¹¹⁰ Interview with SDP HQ, Sarajevo, BiH, Mr. Svetozar Pudaric, Secretary General of SDP 26/3/2003.

¹¹¹ Interview with HDZ, Presidency, Sarajevo, Mr. Davor Cordas, Advisor, Office of the Croat Member of the Presidency, 27/3/2003).

¹¹² Koalicija nevladnih organizacija BiH "Izbori 2002", *Programi- politickih partija i koalicija zastupljenih u Predstavnickom domu Parlamentarne skupstine BiH*, Helsinki komitet za ljudska prava u BiH i Koalicija nevladnih organizacija BiH "Izbori 2002", Sarajevo, Bosna i Hercegovina, 2002. p. 37.

refugee return¹¹³ and that the safe return of refugees and IDPs and a fast implementation of the property laws are important issues to the party¹¹⁴.

12.2. Analysis of the Party Programmes

Generally, most parties seem to support the principle of a right to return, which is understandable from the point of view that it is a right stipulated in the GFAP and in other domestic legal documents of BiH. Even the SDS, which, according to some people whom I interviewed during the fieldtrip, seems to have been most reluctant to the return process, has, probably for political reasons, stated in its party programme that everyone should have the right to return.

What differentiates the parties is their degree of support for the return process. As could be expected, the SDA seems to support the return process more than for instance the SDS. This is because the SDA traditionally is the main Bosniak party in BiH, and firstly the Bosniaks have become to be regarded as the main victim of the conflict in BiH, and, secondly, the group that could benefit most from a recreation of a multiethnic BiH as large numbers of Bosniak IDPs elsewhere in BiH and refugees outside BiH are waiting to return to their respective minority areas. Without the return process, the Croat parts as well as the Serb parts might wish to secede from BiH leaving the Bosniaks with a small piece of territory, impossible to administer, in the central and north-western parts of BiH..

The HDZ seems to support the return of Bosniak IDPs to the RS but the SDS seems to emphasise the right to choose one's residence, probably meaning that others than Serbs that fled the RS should resettle elsewhere than RS. These opinions have clear political undertones, as naturally both the SDS and HDZ would wish to have as much political support in their respective majority areas as possible, and therefore the HDZ wishes Bosniaks to move back to RS probably in order firstly, to encourage more ethnic Croatians to return and, secondly, to increase the percentage of Croatians in their majority area. This opinion was, in fact, clearly expressed during the interview with the HDZ. The SDS seems to wish to keep as many ethnic Serbs in the RS as possible in order to maintain their majority situation, even though they do not overtly discourage the return of the Bosniak minority. The SDA and SBiH seem to encourage the return of Bosniaks to all minority areas in order to increase their influence in BiH as a whole. These tendencies are not overtly expressed in party programmes nor were they during the interviews, but they are my interpretation

¹¹³ Ibidem, p. 21.

¹¹⁴ Ibidem, p. 24.

of the intentions behind the statements. For reasons that are evident, the parties cannot express the underlying motivations of their programmes, but looking at the practical consequences of the different programmes, the above conclusions seem logical.

13. Strategy of the Ministry for Human Rights and Refugees:

Interviews were planned with the Ministry for Human Rights and Refugees. But, as this proved impossible, contacts were instead established with Ministry officials in order to obtain documentation as regards their plans for the forthcoming takeover of the IC functions when it comes to the administration of refugee/ IDP- return. The exhaustive document, according to the Ministry, in this regard is the joint strategy document of the IC and the MHRR. In it the IC recognises the Ministry as a: “partner for the issues of forthcoming transfer of tasks from international community institutions to the authorities of BiH”¹¹⁵ since the: “Law on Human Rights and Refugees of BiH places these issues under the competence of the Ministry [...]”¹¹⁶. However, the Ministry emphasises that it has not got the capacity to: “react adequately to the demands of such a complex task”¹¹⁷. The Ministry acknowledges that the interest in return is in: “constant growth” and that there is currently a: “disparity between the level of interest in return and the existing potential for reconstruction”¹¹⁸.

The issues that the Ministry underlines as important as regards the fulfilment of Annex 7 are first and foremost the: “[H]armonisation of legal bases in BiH, its Entities and the Brcko District, as well as organisational reform, unified planning and realization of reconstruction, the consistent and full application of the New Strategic Direction for property law implementation in BiH”, as well as the: “[E]xistence of a unified database system, and systematic de-registration of displaced persons in BiH”¹¹⁹. Furthermore, the MHRR emphasises the need for: “[E]mployment, access to pensions and health care, the harmonization of the school system, and especially continued demining¹²⁰”, and also safety¹²¹.

¹¹⁵ Annex Vii (GFAP) Strategy, 2003, p. 8.

¹¹⁶ Ibidem.

¹¹⁷ Ibidem.

¹¹⁸ Ibidem, p. 7.

¹¹⁹ Ibidem, p. 11. See also pp. 6-7.

¹²⁰ Ibidem, p. 6.

The Ministry acknowledges that principles which should be taken into consideration in this regard are the rights freely to return to homes/property; the right to a safe return and the creation of suitable conditions for return and; the right to return without a risk of discrimination on account of ethnic origin, religious beliefs or political opinion¹²². Also, the return fund, mentioned in the GFAP, Annex 7, should be put into function at the level of BiH¹²³. The Ministry plans to: “complete the process of return of refugees and displaced persons to and within BiH” by the end of year 2006¹²⁴.

14. Strategy of the International Community

The core objective of the IC is: ”The full implementation of Annex VII (GFAP) in BiH”. and: ”to ensure that the activities leading towards the realization of its objective continue: “even after the transfer of its functions to the domestic institutions”. Furthermore the Annex VII (GFAP) Strategy document states that: “[T]he draw-down of the IC’s involvement must be linked to creating a local capacity reflecting the spirit of Annex VII (GFAP), anticipating not only the choice of every individual who wishes to exercise her/his right to return and to repossess her/his property, but also the ability of domestic institutions to continue to facilitate the exercise of this right”. And that the strategy will: “address various levels of the BiH government and civil society and it will focus on: Developing the legal and procedural basis upon which domestic institutions carry out Annex VII (GFAP) return and reconstruction functions; Increasing the technical capacity to manage information; Increasing the operational capacity to monitor the return process, establish funding priorities and monitor project implementation; Developing, at the local and municipal levels, the capacity and tools to cooperate with other domestic and international institutions to create an environment that supports return; Engendering donor support for the expanded role of the MHRR; and Ensuring that property disputes will be channelled to and addressed by the competent domestic institutions”. Furthermore, the MHRR’s four-year strategy would be taken into account¹²⁵.

¹²¹ Ibidem, p. 18.

¹²² Ibidem, p. 12.

¹²³ Ibidem, p. 13.

¹²⁴ Ibidem, p. 10.

¹²⁵ Ibidem, p. 30.

UNHCR has expressed the hope that by the end of 2003 the: “majority of the displaced will have either returned to their homes, or will have found alternative solutions through local integration and that, eight years after Dayton, UNHCR’s responsibilities under Annex 7 will largely have been met”¹²⁶. One arrangement made in to find new solutions for collective centre residents, including return, is the Durable Solutions for Collective Centre Residents- project, which, during the period of 1st August 1999 and 31st December, 2002, has had 1,155 beneficiaries in total¹²⁷.

The Stability Pact for South Eastern Europe published a report on the 10th meeting of the Steering Committee on Refugee matters¹²⁸. In this report Mr. Schwartz –Schilling, International Mediator for Bosnia Herzegovina mentions voluntary return. While not discussing it in any great depth, he does mention what causes hindrances to returns. In the same document it was stated that the closure of the Collective Centres would be: ”[A] priority for 2003”¹²⁹.

The European Union published a press release on: ”Western Balkans: The question of refugees and internally displaced persons (IDPs), results and priority actions”¹³⁰. In this press release it is stated that: “[A]chieving genuine and sustainable integration of minority returnees should be assessed as an integrator of political and democratic maturity, as well as compliance with European standards”¹³¹.

The Council of Europe in its recommendation states that: “[T]he return process in the region should be very carefully managed [...]”. It is further stated that: “[U]nresolved internal political questions concerning the future status of the different entities in the Federal Republic of Yugoslavia as well as in Bosnia and Herzegovina should not impede the measures taken in order to improve the humanitarian situation of refugees and displaced persons”. Therefore it recommends that: [T]he Committee of Ministers:[...] react positively by financing or granting loans to possible future projects elaborated by the countries of the region and relating to return or integration of refugees and displaced persons”. It also: “[U]rge[s] the authorities of Bosnia and Herzegovina:[...] to ensure careful consideration of every appeal by internally displaced persons evicted from illegally

¹²⁶ <http://www.unhcr.ba/programme/refugeedps.htm>, 14.02.2003.

¹²⁷ DuSoCC Briefing Kit, February 2003 release, PT-DuSo Workshop Novi Sad. CD-rom obtained by the project coordinator, UNHCR, Sarajevo.

¹²⁸ Stability Pact for South Eastern Europe, *Regional Return Initiative: 10th meeting of the Steering Committee on refugee matters*, 29 Nov., 2002.

¹²⁹ Stability Pact for South Eastern Europe, *Regional Return Initiative: 10th meeting of the Steering Committee on refugee matters*, 29 Nov., 2002.

¹³⁰ European Union, 7 February, 2003.

¹³¹ European Union, 7 February, 2003.

occupied houses and in justified cases provide them with alternative accommodation even if their own houses have been reconstructed, instead of forcing them to return to their places of origin”¹³².

The latest report by the OHR- RRTF available is the one from March 1998. It states that: “Freedom of choice requires that the right to return is truly effective (i.e. that political conditions are in place for safe return), but the ‘right to return’ does not include any ‘right to a job’ or ‘to a house’ in the place of return even though assistance may be provided to that effect. Financial assistance is not a major factor in the decisions refugees and displaced persons make about whether to return or to relocate. Using donor resources to generate movements is unlikely to be successful. But external support may well be essential for the eventual success of reintegration in areas where refugees and displaced persons have decided to settle”¹³³.

An earlier report by the OHR- RRTF from December 1997 states that: “Relocation is clearly unacceptable when it takes place as a result of official manipulation. Even when it takes place as a result of individual, informed decision making it remains problematic. Relocation puts pressure on the existing housing stock, notably in popular return destinations such as cities with economic growth potential [...] The RRTF is adamant that relocation must not be allowed to undermine minority return. It recommends that international grant aid should not be used to support relocation at this stage of the peace process”¹³⁴.

When reading these documents it appears that no clear policy of the IC as such exists. However it would seem that most international organisations support the return of refugees and IDPs but devote very little consideration to alternative solutions such as integration. The only organisation which does discuss voluntary return more in-depth is the Council of Europe. Also UNHCR has acknowledged that there could be need for alternatives to return, but has not further developed this argument in any of the documents read in connection with this thesis. The organisations directly involved in the daily work of implementation of Annex 7, therefore, seem to emphasise return and reject relocation/integration as alternative solutions.

¹³² Council of Europe, *Population displacement in South-Eastern Europe: trends, problems, solutions – recommendation 1588 (2003)*, 27 January, 2003.
<http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/3400b276ebd107bfc1256cbc004fbfbf?OpenDocument>, Accessed 6 May, 2003.

¹³³ OHR- RRTF, *Reconstruction and Return Report March 1998*,
http://www.ohr.int/ohr-dept/rtrf/key-docs/reports/default.asp?content_id=5616, accessed 1 July, 2003.

¹³⁴ OHR- RRTF, Report December 1997, *Resources, repatriation and minority return*,
http://www.ohr.int/ohr-dept/rtrf/key-docs/reports/default.asp?content_id=5606, accessed 27 April, 2003.

15. Interview Method

During a period of three weeks 75 interviews were carried out in three areas in Bosnia and Herzegovina. The areas (Tuzla, Banja Luka and Capljina) were chosen according to the description below:

In Tuzla the plan was to visit collective centres. However, one of these refused to allow the interviews and therefore, only one collective centre was visited. This centre housed Bosniak IDPs from Eastern Bosnia. As all these IDPs had left their pre-war areas in similar circumstances under severe pressure (e.g. from Srebrenica), I decided to visit another area, Bosanski Petrovac, which, according to the information gathered during the excursion, hosts a large amount of Bosniak IDPs originally from central Bosnia. In Banja Luka I visited two Collective Centres. As many of the centres are about to close down only a few people resided there, and in one of the centres only one person was willing to answer the questions. Therefore, while in Banja Luka region, I also visited the town of Prnjavor that hosts a large amount of Serb IDPs from various parts of BiH. In Capljina, three collective centres were visited.

When visiting the collective centres, the aim was usually to speak with the manager of the centre, and then to walk around the area, talk to people in the streets, knock on their doors etc. When visiting Bosanski Petrovac and Prnjavor, some offices, shops, cafés etc. were visited, and I talked to the people there. Usually people were willing to talk, and would invite us into their homes, serve coffee etc, although, sometimes we had to interrupt due to strong emotions and also unwillingness among the people to answer the questions posed.

The main problem with this interviewing method was the uncertainty of whether the person interviewed really was an IDP as defined by the refugee laws of the FBiH and RS as well as by other documents. However, with the questions we asked, the purpose was to find this out and then later not to include answers not originating from “real” IDPs in the analysis. Therefore, out of the 75 people’s answers only 66 were used in this thesis. This sample method may constitute a major flaw in this thesis, however, as a student, it is impossible to gain access to official records on IDPs including names, addresses. Consequently the only way to find the right people for interviews was to visit areas with large, known IDP populations and to talk to people there.

From the answers and statistics presented in this thesis the reader is introduced only to a minor part of what was said during the interviews. The persons interviewed often told their entire life-stories: about their families, how and where they fled, detailed descriptions of what had happened to them or to their families etc. Very often the interviewed were filled with emotions and cried. Many of them were desperate and hoped that I would be able to help them. But, out of all the information given by these persons, I believe it was possible to single out those who really were

IDPs and those who were not, according to the definitions¹³⁵, and whether they were trustworthy or not. The emotional part of this field study naturally made it difficult to be objective as an interviewer and naturally it was necessary to be aware of this during the interviews.

The interviewees were told at the beginning of the interviews that no personal information such as name is recorded and that the purpose of the interview was only scientific and that the information would be used for statistical purposes, and that no persons could be traced later on. I believe this was of major importance, as many people seemed relieved and also sometimes asked again whether nobody really would be able to trace them. They could have been concerned for many reasons, but in my opinion the recording of personal details may affect the results of any opinion poll especially in a country like BiH where lack of trust seems to be a major tendency among people. This is also why no names on exact locations/CCs are mentioned in this thesis although the information exists and is duly recorded and can be presented when necessary.

Firstly, some information was recorded regarding the persons age, sex, religious/ ethnic affiliation, pre-war residence, time spent away from the pre-war residence, reason for leaving the pre-war residence, time spent in the current residence, whether the person was employed, student or retired and about a possible filed property claim. It may be important from the point of view of willingness to return how long time the IDP has been displaced as for the sense of being “at home” in the pre-war home, integration in the present location and possible future ethnic reintegration in the pre-war area of residence¹³⁶.

The opinion poll itself consisted of the following questions:

1. Would you like to return to your pre-war area of residence if you had the chance a) under the prevailing circumstances, b) under improved circumstances (economically, security-wise, educationally, labour-market-wise, politically),
2. If you could choose between getting property back and compensation, what would you choose (for those with own property).
3. Would you be ready to resettle to another area if you had the possibility.
4. Would you prefer resettlement to return.

To all the questions there was a possibility for the IDP to explain why.

As regards property, many people, not in direct possession of property (e.g. a family member of the owner), seemed often not to know whether the owner had filed a claim etc.

¹³⁵ See above the definitions of an IDP in chapter 5.1.

¹³⁶ M. Cox, *The Right to Return Home: International intervention and Ethnic Cleansing in Bosnia and Herzegovina*, in «The International and Comparative Law Quarterly: The Journal of the Society of Comparative Legislation», London, UK, Bd.47, 1998. p. 627.

Therefore, these persons were recorded as not owning property, most of them being young people and women. However, the persons often knew if the property had been regained but was destroyed or whether it had been exchanged or sold, which helped to determine the IDP status of the person (in the first case the person would most likely be IDP and in the second not).

In addition to the personal details etc. living conditions were also examined and questions were asked about the following: central heating, running water, hot water, continuous electricity supply, own houses, own apartments, dormitories, own rooms, how many people per room, own/ shared kitchen, distance to a centre/ rural area, distance to children/ day-care, distance to schools.

It was hoped that all these questions put together would reveal in which circumstances the persons would be unwilling to return to their pre-war areas of residence as the answers to the opinion poll questions would be compared to the respondents' gender, age, whether they were employed/ unemployed/ retired, time factor and reason for leaving.

16. Choice of Interview Areas and Respondents

The following is based primarily on the UNHCR's Handbook for Returnees. In the handbook, in addition to the extensive contact information, there is also information about the refugee/ IDP situation in BiH. The information is divided into cantons, municipalities and regions and I will use the same division below when explaining the choice of area(s) of study.

The general approach of this part of the thesis was to study the IDPs' opinions as regards their return to their pre-war areas of residence. To get a balanced view of the opinions, it was necessary to interview persons from (at least) the three constituent peoples: Bosniaks, Serbs and Croats. People from all these groups still live displaced in areas where their own group is in the majority. In the RS the overwhelming majority of displaced persons are Serbs and have their pre-war residences in the FBiH's areas under Bosniak or Croat control and so on. Of course, also some persons from "other" groups, mixed families or other minorities reside as IDPs elsewhere than before the war, a fact that complicates the choice of interviewees. As it is necessary to drastically limit the area of research within the ambit of this type of thesis, I have decided to exclude refugees inside and outside of BiH as these are either citizens (or to be regarded as citizens) of other (neighbouring) countries and therefore (theoretically and legally) without real political power in BiH or, are scattered in many other countries around the world and often out of reach.

Bosnia and Herzegovina is divided into seven regions (RS) and 10 cantons (FBiH). The cantons are: Una-Sana, Posavina, Tuzla, Zenica-Doboj, Bosnia- Podrinje, Central of Bosnia, Herzegovina- Neretva, West-Herzegovina, Sarajevo and Herzeg-Bosna. The regions are: Banja Luka, Doboj, Vlasenica, Sokolac, Srbinje and Trebinje. In UNHCR's information eight cantons, 18 municipalities, six regions and one district are listed¹³⁷. Many of the municipalities overlap with the cantons but the information provided is useful when deciding where to conduct the interviews. The information gathered in this regard is listed below.

The names of the cantons, municipalities etc. are those used by UNHCR. The population figures are estimates of the post-war populations (no new census has been conducted yet). The number of IDPs may in some cases include refugees, and when this is the case, it is indicated separately. The place of origin reflects the majority IDPs' pre-war domicile.

¹³⁷ UNHCR, Handbook for Returnees, 2001.

IDP Population in BiH

Canton	Population	IDPs	origin	Majority	%
Una Sana	273,251	20,034	RS	Bosniak	94%
Posavina	n/a	n/a	-	Croat	73%
Tuzla	441,888	70,326	RS	Bosniak	86,4%
Zenica-Doboj	350,000	33,000	RS	Bosniak	83%
Bosnia-Podrinje	n/a	4,320	n/a	Bosniak	96%
Central Bosnia	212,662	26,324	n/a	Bosniak	58%
Sarajevo	302,000	58,500	RS	Bosniak	81%
Herzeg-Bosna	n/a	n/a	n/a	Croat ¹³⁸	n/a
Municipality					
Municipality	Population	IDPs	origin	Majority	%
Mostar (East: Bosniak)	103,032 ¹³⁹	13,241	W. Mostar ¹⁴⁰	Bosniaks ¹⁴¹	52%
Mostar (West: Croat)		9,435	E. Mostar ¹⁴²		
Jablanica	12,791	2,700	n/a	Bosniak	98%
Konjic	33,282	5,400	n/a	Bosniak	91%
Prozor/Rama	15,413	n/a	n/a	Croat	79%
Ravno	n/a	n/a	n/a	Croat	n/a
Stolac & Capljina	38,021	1,988	n/a	Croat	60%
Teslic	53,050	10,500	FBIH	Serb	80%
Doboj	n/a	20,000 (?)	FBIH	Serb	n/a
Derventa	36,000	12,000 ¹⁴³	FBIH etc. ¹⁴⁴	Serb	97%
Bosanski/Srpski Brod	23,000	13,000 ¹⁴⁵	Croatia & ?	Serb	98%
Pelagicevo	n/a	1,800	FBIH	Serb	n/a
Odzak/ Vukosavlje	6,900	3,500	FBIH	Serb	n/a
Bosanski Samac/ Samac	26,000	7,000	FBIH	Serb	n/a
Srpsko Orasje	4,600	n/a	n/a	Serb	n/a
Visegrad	19,000	12,000	FBIH	Serb	n/a
Rudo	8,807	1,606	n/a	Serb	n/a
Nevesinje	18,000	6,000	n/a	Serb	n/a
Region					
Region	Population	IDPs	origin		%
Banja Luka	493,239	75,000	FBIH	Serb	93%
Bijeljina	148,000	n/a	n/a	Serb	n/a
Vlasenica	n/a	30,000	n/a	Serb	n/a
Sokolac	n/a	n/a	n/a	Serb	n/a
Srbinje	n/a	n/a	n/a	Serb	100% ¹⁴⁶
Trebinje	n/a	12,495	FBIH	Serb	n/a
Brcko District					
Brcko District	n/a	n/a	n/a	Serb	n/a

¹³⁸ Except in Bosanski Grahovo, where there is a Serb majority.

¹³⁹ In entire Mostar.

¹⁴⁰ 3763 of the IDPs are from West Mostar.

¹⁴¹ In entire Mostar.

¹⁴² 4670 of the IDPs are from East Mostar.

¹⁴³ Including refugees.

¹⁴⁴ Croatia and Slovenia.

¹⁴⁵ Including refugees.

¹⁴⁶ The Serb majority is now nearly 100%.

Some of the information needed in this context was not always available, and therefore, when the missing information is essential, those areas are excluded from the study. The first essential information in this regard is the amount of IDPs. The areas excluded due to lack of information in this regard were: the cantons of Posavina and Herzeg-Bosna, the municipalities of Prozor Rama, Ravno, Srpsko Orasje and the regions of Bijeljina, Sokolac, Srbinje, Brcko. In the case of the municipality of Doboje, the information could not be corroborated and therefore, also that area was excluded. Furthermore the figures from the municipality of Derventa and Bosanski/Srpski Brod also include refugees, and therefore also these areas were excluded. But even after these exclusions, there were twenty-one areas to choose from.

The second criterion was that there be a “sufficient” number of possible interviewees in order to make sure that enough people willing to be interviewed could be found. As the main areas were cantons and regions that included municipalities these were firstly taken into account: The cantons and regions hosting more than 30,000 IDPs are the region of Banja Luka, the cantons of Tuzla, Sarajevo and Zenica- Doboje and the region of Vlasenica. There was no information in the handbook for the cantons of Herzeg-Bosna, Herzegovina-Neretva and West-Herzegovina, but some municipalities in these cantons were listed and information was found there: Herzeg-Bosna canton has six municipalities: Drvar, Bosansko Grahovo, Glamoc, Livno, Kupres and Tomislav Grad. No information on the amount of IDPs in these municipalities was provided in the UNHCR handbook. Herzegovina-Neretva canton has 16 municipalities: Prozor Rama, Konjic, Jablanica, Mostar Central Zone, Mostar North, Mostar South, Mostar West, Mostar East, Mostar South East, Mostar South West, Mostar Stari Grad (In practice Mostar is only divided into two: West and East, and the numbers given in the UNHCR handbook are also divided accordingly), Citluk, Capljina, Stolac, Neum and Ravno. In this canton, according to the information on the municipalities above, there reside some 65,796 IDPs. In West-Herzegovina canton there are four municipalities: Posusje, Siroki Brijeg, Grude and Ljubuski. No information on the amount of IDPs in these municipalities was provided in the UNHCR handbook. Consequently, Herzegovina-Neretva canton was added to the list of more than 30,000 IDPs, and the list read at this stage: the region of Banja Luka, the cantons of Tuzla, Herzegovina-Neretva, Sarajevo, Zenica- Doboje and the region of Vlasenica.

A fourth criterion for the choice concerned access to the interviewees. There are at least two ways of reaching IDPs as a private person. These are via a collective centre, where IDPs reside or via an IDP association. Information of the collective centres currently operating was found in the UNHCR handbook and in order to find persons willing to be interviewed there should be at least some 20 residents in the collective centres. The areas with larger collective centres are: cantons of

Zenica and Tuzla and the municipalities of Jablanica (Herzegovina-Neretva¹⁴⁷), Capljina (Herzegovina-Neretva), Grude (West-Herzegovina), Travnik (Central Bosnia), Kakanj (Zenica-Doboj), Gorazde (Bosnija-Podrinje), Lukavac (Tuzla), Doboj East (Tuzla), Visegrad (Srbinje – already excluded), Lukavica (Bosnia-Podrinje), Pale (Bosnia-Podrinje), Prijedor (Banja Luka), Bratunac (Vlasenica), the region of Banja Luka and the municipality of Laktasi (Banja Luka). In addition, there are operating IDP associations in many of the municipalities and/or towns of: Banja Luka (4), Berkovici (2) (Herzegovina-Neretva [Trebinje]), Bileca (2) (Herzegovina-Neretva [Trebinje]), Bosanska Krupa (1) (Una-Sana [Bihac]), Bosanski Novi/ Novi Grad (2) (Banja Luka), Bosanski Petrovac (2) (Una-Sana [Bihac]), Bosanski/ Srpski Brod (1) (Banja Luka), Bratunac (2) (Vlasenica), Bugojno (1) (Srbinje- already excluded), Cajnice (1) (Srbinje- already excluded), Capljina (1) (Herzegovina- Neretva), Derventa (already excluded), Srbinje (already excluded), Gacko (2) (Herzegovina- Neretva [Trebinje]), Ilidza (1) (Sarajevo), Kotor Varos (2) (Banja Luka), Ljubinje (2) (Herzegovina-Neretva [Trebinje], Mostar (East) (3), Mostar (West) (2 + 1 in Nevesinje), Pale (2) (Bosnia-Podrinje), Prijedor (5) (Banja Luka), Prozor/ Rama (already excluded), Ravno (already excluded), Rogatica (1- in Sarajevo), Rudo (1) (Srbinje- already excluded), Sanski Most (8) (Una-Sana), Srebrenica (1) (Bosnia-Podrinje), Srpsko Gorazde (2) (Bosnia-Podrinje), Teslic (1) (Banja Luka), Travnik (1) (Central-Bosnia), Trebinje (2) (Trebinje), Trnovo FBiH (1) (Sarajevo), Trnovo RS (1) (Srbinje- already excluded), Visegrad (2) (Srbinje- already excluded), Vlasenica (1), Vosgosca (1) (Sarajevo), Zvornik (1) (Vlasenica). If we only count those with more than two associations, we arrive at the following list: municipalities and towns of Mostar (Herzegovina-Neretva), Prijedor (Banja Luka), Sanski Most (Una-Sana), Sarajevo (including the suburbs) and Banja Luka. Of these there are collective centres in Banja Luka and Prijedor (Banja Luka).

The last criterion when choosing an area was the “ethnic origin” of the interviewees as Bosniaks, Croats and Serbs should all appear on an equal footing in the research. It seemed, according to the above, natural to conduct the study in the following cantons and/or regions: Tuzla (Bosniak-majority area), Banja Luka (Serb-majority area) and Herzegovina-Neretva (Croat-majority area). Interviews were to be carried out in collective centres, in Banja Luka, Tuzla. In Herzegovina- Neretva these were to be conducted in Capljina, as there is a significant number of Croat IDPs in that municipality (1988- which is more than elsewhere), two collective centres and one IDP association.

Mostar could have been another alternative to interview Croat IDPs as it hosts some 22,676 IDPs (mainly Croats and Bosniaks but also some Serbs). However, out of these IDPs 8,433 are

¹⁴⁷ The canton/ region there the municipality/ town belongs to is given in brackets.

originally from the “other” side of Mostar and are therefore much closer to their pre-war homes than other groups in other areas and are therefore in a different situation. Also, it is not established exactly how many the Croats there are in Mostar. This is why it was “safer” to choose Capljina.

In order to reflect the population as a whole of BiH, it would have been necessary to interview at least 1,500 people¹⁴⁸. However, this was obviously impossible for the purposes of this thesis and, therefore, only a minor amount of interviews was conducted. However, as there are statistics already available from opinion polls conducted using more or less quantitative methods, I tried in my own survey to increase the qualitative part and tried to conduct as many interviews as possible, although few, but at the same time tried to conduct them as deeply as possible in order to avoid misunderstandings. The method when interviewing included the avoidance of presence of other people, i.e. conducting individual interviews where only the interviewer, the respondent and an interpreter were present. This was in order to avoid the presence of Collective Centre staff, etc, as these at the same time are persons upon whom the IDPs depend. This was not due to some prejudice against this personnel, but an effort to eliminate any possible bias in the answers. Naturally, this is not possible when conducting quantitative, form based surveys, also the quality of the interviews may be better, even though quantitative surveys may cover a much more comprehensive part of the country.

16.1. Interview Results:

66 people were interviewed,¹⁴⁹ of which 34 were men and 32 women. Thereof 24 Bosniaks residing in a Bosniak majority area; 19 Serbs residing in a Serb majority area and 23 Croats residing in a Croat majority area. As regards the validity and credibility of the answers a few remarks need to be made: Firstly the group of respondents was rather small from a quantitative point of view. Therefore the answers are presented in a more qualitative manner. Secondly, some of the respondents had already visited their pre-war areas of home, some had not. Those who had not could base their opinion on whether they wanted to return or not on information from subjective/manipulative political sources and rumours, but also from medias reporting on incidents of violence etc. It is probably impossible to know how a person forms an opinion as many things may affect

¹⁴⁸ The UNDP BiH- Early Warning System (EWS) uses in its public opinion polls uses an initial sample size of 1560 to obtain 1500 valid interviews. This amount is based on statistical estimates on the current population size. UNDP BiH – EWS, Quarterly Reports, October- December 2002, p. 45.

¹⁴⁹ In fact 75 people were interviewed but nine of the interviewees could not be considered as IDPs for one reason or another.

the process. However, as stated earlier, in a democracy, everyone should have the right to an opinion, even though that opinion could be the product of political manipulation: if things are forced upon an unwilling people, for the very reason that they have not been able to make objective and well-grounded choices, what would be the point with having democracy at all? Furthermore, in modern, so to say well-functioning democracies, the people are probably most of the time under political/ societal etc. influence when making decisions, even though never denied the right to do so. This is a paradox of democracy, but before implementing a semi-democracy, not giving the people full rights, maybe a redefinition of the term “democracy” would be necessary, or even research into and the invention of new ways of governing a State in a manner that does not oppress its people.

In total 55 of the 66 respondents did not want to return under the prevailing conditions¹⁵⁰ but 39 would like to return under improved conditions. Many people singled out one condition of the given examples and the only ones that seemed to matter were economy (jobs) and security. Here, it should be noted that there significant differences between the answers depending on the ethnic affiliation: 21 out of 24 Bosniak respondents were willing to return under improved conditions, whereas this was so for only 10 out of 19 Serb respondents and eight out of 23 Croat respondents. 26 of those who owned property (38 individuals in total) preferred compensation¹⁵¹, 47 of all respondents were willing to resettle¹⁵² and 43 preferred resettlement to return¹⁵³.

Some people, when interviewed, expressed that they would only settle within their own majority area. Many people also stated that they would resettle to any area where they could find a job and could secure their own and their family’s future. Overall there did not seem to be any large differences in the willingness to return/relocate etc. between those who owned property and those who didn’t: the prevailing tendency seemed to be that at the moment the great majority would not wish to return but they would consider doing so in future if the living conditions improved. However, many people stated that they did not think that living conditions would improve and that they would most likely never return. As we see from the percentages above, the least willing group to return were the Croats.

¹⁵⁰ 18 Bosniaks, 18 Serbs and 19 Croats did not wish to return.

¹⁵¹ Property owners were 10 Bosniaks, 11 Serbs and 17 Croats. Eight Bosniaks preferred compensation as well as seven Serbs and eleven Croats.

¹⁵² 18 Bosniaks, 15 Serbs and 14 Croats.

¹⁵³ 16 Bosniaks, 14 Serbs and 13 Croats.

When comparing the answers with the age of the respondents the following was revealed: The most reluctant age group to return was the one of 36-50 years¹⁵⁴. The next most unwilling group to return were respondents between the ages 51-65 years. The respondents belonging to the age groups 18-26 years, 27- 35 years and over 66 years were all equally reluctant to return¹⁵⁵. About half of those aged above 66 and half of those between 36 and 50 years of age were willing to return under improved conditions (4). Ten out of 16 in the ages of 51-65 were willing to return under improved conditions. The most willing to return under improved conditions were those aged between 27- 35 and 18-26¹⁵⁶.

The youngest respondents did not own property (only one in group 27-35) and therefore only the three other groups are compared as regards compensation. The majority of the respondents owning property would prefer compensation: nine out of 12 in group 36-50, eleven out of 16 in group 51-65 and six out of nine in group over 66.

The majority in all age groups were willing to resettle. Those least willing were the oldest (five out of eight). The next least willing was that of the youngest (eight out of 12) and the three others were all equally willing to resettle¹⁵⁷. As many respondents also preferred resettlement/relocation to return.

Only 15 interviewees were employed most of them belonging to the Bosniak and Serb groups. Out of the Croatian respondents only one was employed. 14 of the employed were not willing to return; but 13 were willing to return under improved conditions. Nine were willing to resettle, but only five preferred resettlement to return.

Three people left their homes under pressure and none of them were unwilling to return and only one considered improved conditions a precondition. All of them were willing to resettle and also preferred resettlement to return. 34 people left their homes due to warring in their area of residence; 29 of them do not want to return and 19 would not return even under improved conditions. 21 were willing to resettle and 19 would prefer resettlement to return.

20 people were forced to leave their homes and 15 of them do not wish to return but 18 would like to return under improved conditions, 16 would be willing to resettle and 14 would prefer resettlement to return. It is remarkable that many of those forced to return were from Eastern Bosnia out of whom five out of a total of fifteen were willing to return now and thirteen under improved conditions.

¹⁵⁴ One would return and 19 would not.

¹⁵⁵ Age group 18-26: 8; Age group 27-35: 8; and age group over 66 years: 7.

¹⁵⁶ Six of eight and nine of 11 respectively.

¹⁵⁷ Age-group 36-50: 14-18; 27-45 years: eight out of nine; 51-65 years: 12 out of 17.

People from areas where war had been waged seemed to be more reluctant to return, even under improved conditions, than for instance people forcibly displaced from their homes. Six people left their homes because they were afraid (not because of direct warring, but for example the possibility of warring/ethnic cleansing etc.). 83,3% of them were not willing to return, 50% would be willing to return under improved conditions, 83% would be willing to resettle and also preferred resettlement.

Only two persons left to avoid being mobilised. None of them wished to return, but under improved conditions, one of them would resettle and preferred it. Only two persons left their home in 1991. 19 people left the following year, 1992, and 16 of them did not wish to return, 12 of them would return under improved conditions, 16 were also willing to resettle and 14 would prefer resettlement. Another 19 people left their homes in 1993 and 15 of them would not be willing to return, 10 would return under improved conditions, 15 would like to resettle and 13 would prefer resettlement. Only two persons left their homes in 1994. In 1995 20 people left their homes, 18 of them did not wish to return, 12 would consider returning under improved conditions and 11 would consider resettling and also preferred resettlement. In 1995 four people left their homes and none of them would return now. One would return under improved conditions and all of them would resettle and would prefer resettlement.

When comparing the duration of the stay in the current area of residence there is a large diffusion, which makes comparison difficult. People have moved into their current residences every year between 1992 and 2003 (except 2001). However, it seems that those most willing to return under prevailing conditions were those that had moved in during 1996. Those least willing to return were those that had moved in during the past five years (1997-2003) and a few of those that had moved in between 1992 and 1995 were willing to return. Those that had moved in between 1999 and 2003 were most unwilling to return even under improved conditions. Otherwise it is difficult to see any other patterns or trends. Those who had moved in the last three years were all residing in Capljina area, and many of them had already moved several times. The reason for the unwillingness to return could be linked to the sense of being uprooted that may have resulted from several relocations and the willingness to finally settle down somewhere.

Many IDPs interviewed said that after so many years of displacement, any solution was better than staying in an uncertain situation, for instance in a collective centre. However, return did not seem to be an option. Many felt frustrated over their situation of not being able to continue a “normal” life but living in someone else’s home, collectively in one room with several other people etc

17. Observations During the Interviews



Collective Centre barracks



“Kitchen” in a Collective Centre

The observations of problems that IDPs may face during their displacement were not counted quantitatively but are given here as examples of situations that the IDPs had experienced as problematic and these situations are then compared with the existing legal framework in order to find out whether there could be gaps in the legal protection (international and domestic) of the human rights of the IDPs. The main objective in this regard is that return should be voluntary, there should be the possibility to choose whether to return or not and there should be a possibility to choose one's residence¹⁵⁸.

Many people, during the interviews, complained about the impossibility of selling or exchanging their real property or apartments (hereafter: property). The property could have been reacquired but destroyed and therefore without necessary reparation/ reconstruction, nobody would buy it. Many people also complained that in case they received funding and started to repair the property, they would be evicted from their current housing as soon as the property fulfilled the demands for appropriate housing according to the law. However, this would be much before the property would be in a condition making it possible to sell/ exchange it. Therefore they would not even start to do the reparations but waited to find another solution.

Another problem some people had experienced related to sales/ exchange, was that the property could be located in a rural area where finding either employment or a buyer seemed

¹⁵⁸ No exact places/ times of the interviews are given here below to protect the integrity of the respondents. All this information can however be presented when necessary.

impossible. Therefore, many people did not even file a claim, but preferred to stay where they were, as it appeared impossible to sustain oneself economically in the pre-war area of domicile, not for some economical gain.

Many people also felt that it was problematic that they were supposed to gain repossession of their property before they could sell/ exchange. This appears natural, but remains troublesome, since after repossession of the property, they would risk eviction from their temporary accommodation. For example one person's family members had been in a concentration camp and did not want to return under any circumstances, but would like to sell or exchange the property.

Many of the female respondents were not the principal owners of their pre-war homes and very often did not know whether their husband had filed a claim. Some women who had divorced their husbands during the displacement did not know whether they had any right to economic compensation for a property regained by their husbands nor did they have any place to return to.

Some young respondents who had reached the age of 18 during their displacement complained that they would also be evicted as soon as their parents (who wanted to return) repossessed/ reconstructed their property, even though they would not like to return. One of these cases had found employment in the area of temporary accommodation.

Many respondents said that they would return if most of their former neighbours also did, but that they would not return alone. Also, some people stated that most people from their pre-war home area had already relocated somewhere else and would not return, and therefore neither would they.

One IDP stated that as he had already spent 10 years in the current location, it would not be practical to return. One IDP who did not want to return to the pre-war area of residence due to safety concerns related to the murder of family members, preferred to wait and see while not beginning any reparations of his property in that area.

18. UNDP Opinion Poll Results:

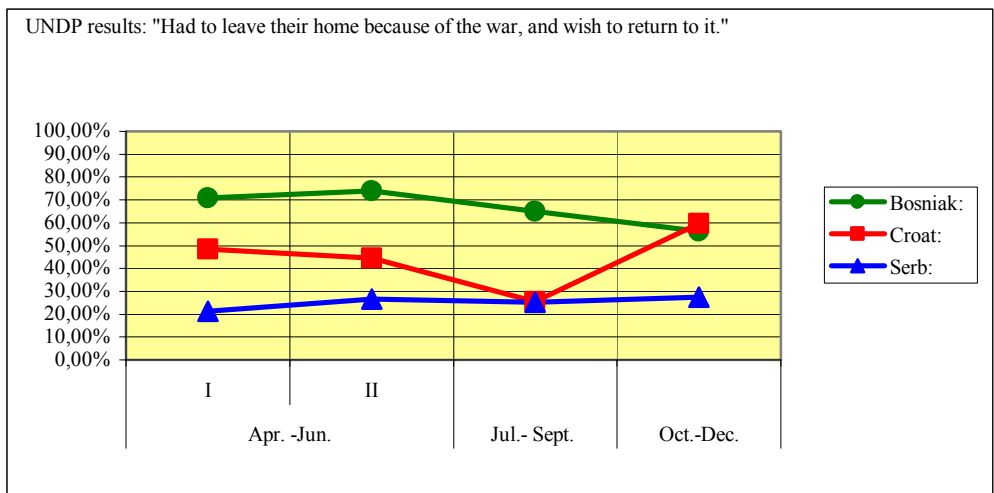
The UNDP Early Warning System (EWS) conducts regular opinion polls on various issues in Bosnia and Herzegovina. One issue that is investigated is the willingness to return and the results are published in EWS quarterly reports. For the purposes of this research I tried to establish contact with UNDP EWS- BiH on several occasions via e-mail and by visiting their premises in Sarajevo. This in order to clarify some questions as regards the results of their polls. Unfortunately, no reply was obtained from UNDP and therefore, there may be aspects of which I am unaware which could

affect the interpretation of the results. However, the results in this thesis are used as a support to the empirical data collected during the field trip to BiH. Below is a table on UNDP's results. The data in the table has been collected from EWS reports:

UNDP Opinion Poll Results for 2002:

"Had to leave their home because of the war, and wish to return to it":

	Apr. -Jun.		Jul.- Sept.	Oct.- Dec.
	I	II		
Bosniak:	70,8%	73,9%	64,9%	56,3%
Croat:	48,4%	44,4%	25,4%	59,8%
Serb:	21,2%	26,6%	25,2%	27,5%



From the table it may be read that during 2002 the majority of the Bosniaks remained willing to return, but that the willingness had been in decline. The Croat group's willingness was stable in the beginning of the year and then it declined dramatically only to increase again to almost 60%. The Serb group has been the least willing to return and the willingness has been stable at below 30%. In the UNDP's information there is no mention on whether the polls included refugees and IDPs. However, it would be natural to assume that that it did not include refugees outside BiH as the polls have been conducted in BiH, and that it has not included other countries' citizens residing in BiH as refugees. Consequently it would only include IDPs in BiH, but, as stated above, it has been impossible to confirm this.

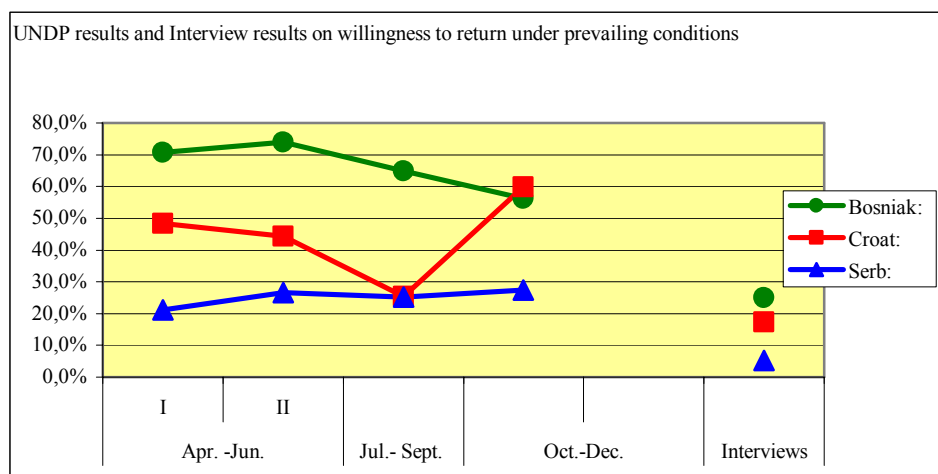
19. Comparison of UNDP Opinion Polls and Interview Results:

In order to compare the interview results with the UNDP's results it is necessary to single out the sole ethnic division from the interviews conducted for the purposes of this thesis:

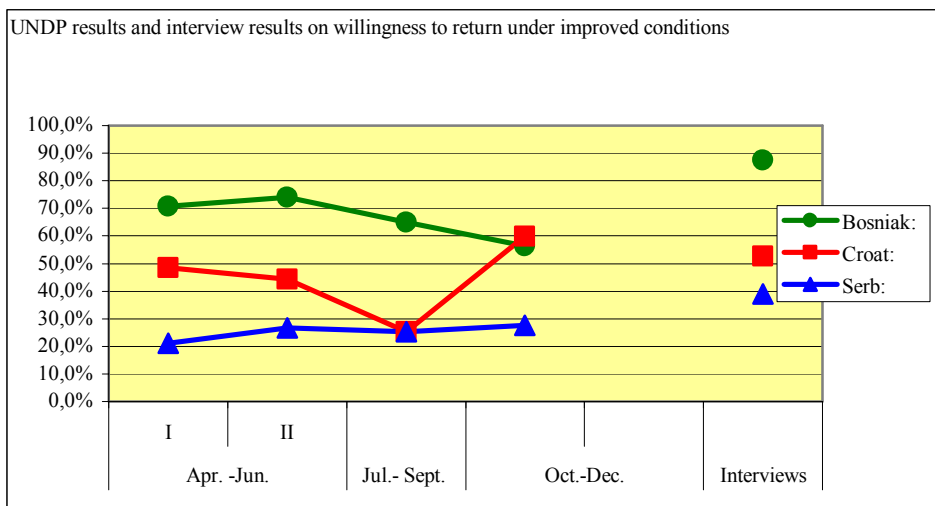
Willingness to return under current conditions in %

Bosniak	25,0%
Croat	17,4%
Serb	5,3%

When we transpose the interview results to the UNDP results we can see that there is a big difference in the Croat and Bosniak responses, but not as large a difference in the Serb responses. Both surveys, however, seem to agree that Bosniaks and Croats are those most willing to return and that Serbs those least willing to return.



If we include the interview results on willingness to return under improved conditions we can see that the Bosniak group would be much more willing to return than according to the UNDP results, while the Serb and Croat responses are similar to those of UNDP's results. However, even here, the Serb group remain the least willing to return.



According to the UNDP polls, only a slight majority seems willing to return and a realistic assessment would be that even fewer would actually like to do so unless conditions improve. However, as the interviews conducted for the purposes of this thesis revealed that many of the interviewed IDPs would in fact prefer resettlement/relocation, it seems that for many people the main priority is not to return to the pre-war home, but to secure an income and the future of themselves and their families and to live wherever these objectives can be realised. Other authors have also stated that the reasons why some people do not want to return might not only be inter-ethnic ones but to a higher degree economic ones¹⁵⁹. Furthermore, some of the differences between the results might be explained by the fact that the interviews conducted for this thesis were conducted in majority areas, whereas the IDPs interviewed, if they returned, would become the minority. As minority return has been the slowest, this might explain the difference. However, again, it has not been possible to establish with certainty whether the respondents in the UNDP's polls resided in majority or minority areas.

20. Analysis of the Results:

Political and Institutional Policies v the Will of the IDPs

It seems that all of the political parties support the return of refugees, although they emphasise it to varying degrees. The SDA, SDS and SDP all stated that return should be voluntary and based on the free will of the IDPs, although this opinion could be based on the wish to secure

¹⁵⁹ Chandler, David, *Bosnia, Faking Democracy after Dayton*, London, UK, Pluto Press, 2000, p. 104-105).

political support. The HDZ did not mention free will but that everybody preferably should return. SBiH did not say much at all on IDP returns.

Although documents of the IC state that return should be voluntary, it did not seem to want any funding to go to other solutions than return such as relocation. However, it now seems that the IC has accepted that not everybody will return, for one reason or another, and therefore that other alternative solutions will have to be found for their local integration. In fact, the only document found on these issues by the international community was the one of the Council of Europe where it is clearly stated that IDPs should have a real choice between return and resettlement. It is noteworthy that the main actors in BiH in the field of IDP return, UNHCR and the OHR seem to have emphasised return although the most recent UNHCR documents acknowledge local integration as an alternative to return.

The MHRR seemed to be on an equal footing with the IC, possibly as it wishes to get funding from various international sources in view of its upcoming overtake of responsibilities¹⁶⁰. On the other hand, it mentioned the fulfilment of Annex 7 as its objective which, as stated earlier, means voluntary return and therefore includes the possibility not to return, although alternative solutions were not presented in the MHRR's chapter of the joint document.

The will of the majority of IDPs may earlier have been to return to their pre-war homes, in most cases including reacquisition of lost property. At the moment, however, it seems that most of those who still remain displaced, at least in their own majority areas, do not wish to return. Even though the right to voluntary return implicitly includes the right not to return, there seems not to have been any discussion in the IC nor in the domestic political or institutional levels of BiH on concrete policies how to tackle the issue of relocation/integration.

The Legal Framework v the Needs of the IDPs

The GFAP states that return should be free and that property rights should be restored, and if this is not possible then there should be the possibility of compensation for lost property. It also states that early return is an important objective of the settlement of the conflict in BiH. Furthermore, the GFAP states that the right to choose the destination should be that of the individual or a family. The GFAP does not discuss specifically the right to relocation or

¹⁶⁰ UNHCR, MHRR & OHR, *Annex VII (GFAP) Strategy, A Strategy of Bosnia and Herzegovina and the RRTF for the Implementation of Annex VII with Regard to the Return of Refugees and Displaced Persons and Building Capacity for a Transfer of Responsibilities to Domestic Institutions*, Sarajevo, BiH, 15 January, 2003, p. 9.

resettlement but acknowledges the right to freedom of movement contained in the Constitution of BiH.

FBiH law states that IDPs should have the right freely to return to their permanent pre-war residences or to a new place of living and have the right to freedom of movement. According to RS law, IDPs shall enjoy same rights and freedoms as other citizens of RS including freedom of movement and liberty to choose one's residence. Furthermore there should be the possibility to choose on the basis of objective and accurate information. Moreover, both FBiH and RS law states that the right to temporary accommodation should be linked to the duration of IDP status. When a person loses his/her IDP status, he/she either has to return or find another place to stay. IDP status ceases in the following situations in the FBiH: "1. upon return to his/her permanent residence; 2. when there is the possibility for safe and dignified return to his/her permanent residence, but the displaced/expelled person has not returned there; 3. when a displaced/expelled person has voluntarily decided to permanently settle in another place within the territory of the Federation".

According to RS law IDP status ceases:

1. "Upon voluntary return to his/her former place of permanent residence,
2. Where there is the possibility for safe and dignified return to his/her former place of permanent residence, but the displaced person has not returned there,
3. When a displaced person has voluntarily decided to permanently settle in a place of his/her free and voluntary choice,
4. When a displaced person has freely disposed of his/her property in the place of his/her previous permanent residence, thus creating conditions for his/her permanent settlement in a place of his/her free and voluntary choice".

Furthermore, there is an extensive list of situations in RS and FBiH law when a person occupying real property or apartment should vacate them. These were listed earlier in chapter nine.

It is natural to expect that places where tremendous atrocities have been committed may not be popular for return. Also, hatred and distrust that might not have existed before the war, may have grown during it. The only thing people can now be sure of is the capability of the "other" side to commit the atrocities it committed during the war and there is no proof of contrary conduct¹⁶¹. Furthermore, fear is difficult to overcome, and the fear of repeated atrocities probably remains. Only when people do not fear their neighbour (who already betrayed them once) will they be ready

¹⁶¹ A.B. Downes, *The Holy Land divided, Defending Partition as solution to ethnic wars*, in «Security Studies», vol. 10, Number 4, Summer 2001. pp. 70-72.

to live next to him/her again. However, judging by the results presented in this thesis, there does not seem to exist any connection between willingness to return and the place the IDPs fled from. For example it seems that many people from the Eastern parts of Bosnia (such as Srebrenica) are in fact willing to return (although some are not).

Another important aspect that should be taken into account is the time-factor: how long should an IDP wait to return and how long should there be provisions for temporary accommodation? Right to property may be quite self-evident as it is also a fundamental human right stated in numerous international and regional human rights instruments. It may, however, be linked to the right to return/ integration/ relocation, where there is no reasonable possibility for compensation/ exchange/ sale of the repossessed property. These situations, as earlier stated, may amount to forced displacement, if there is no possibility for real choice of return but the return is the result of economic implications. It could, therefore, be questioned how tightly the right to the return of property and the right to return should be linked with each other: has a person got the right (in practice) to the return of property, but still to remain displaced until she/he has been able to exchange/sell/rent the property? Should there be a time-limit for how long time after the return of the property the IDP should be allowed to stay displaced in order to benefit from the right not to return. Naturally, it is problematic if the IDP who has been evicted stays on, occupying someone else's home. Also if he/ she stays in a collective centre, he/ she may be taking up space which could benefit someone else. When defining policies in this area all these aspects, but also the IDP's rights, should be taken into account. At the end of the day it is a question of conflict of rights: whose rights should be given precedence?

It could be possible that if an IDP occupies someone else's home, the owner could, in stead of returning, formally be returned his/her property (dominium). In that sense the right to property would not be violated but the right to return (possessio) would be, and the possibility to fully repossess one's property. The right to property of the IDP in occupation, if depossessed (dominium), would not be violated either. But possibly, if evicted before having had the possibility to exchange or sell the property, the right not to return could be violated (possessio). As result, one IDP's right to return would be weighed against another IDP's right not to return.

An IDP's rights, staying in a collective centre, could be somewhat easier to define, as it could be difficult to defend the violation of a person's human rights in economic terms. However, when there are other IDPs or repatriates waiting to get access to temporary accommodation in that very collective centre, this IDP could be occupying space from other people who would now be denied a place to stay.

One of the main problems IDPs experienced regarding their status was, according to the respondents' stories related to evictions from temporary accommodations. According to both RS and FBiH refugee law, an IDP loses his/her right to temporary accommodation when: "there is a possibility for a safe and dignified return to his/her permanent residence [...]". In this phrase voluntary return is not mentioned, but a person cannot be regarded as an IDP anymore when there is a possibility to return and therefore loses the right to temporary accommodation and consequently needs to find alternative accommodation, most probably in the pre-war home. In this regard, the enjoyment of the rights as an IDP is not related to the willingness to return but the conditions in the pre-war area of residence.

Furthermore, RS refugee law states that when an IDP has: "freely disposed of his/her property" IDP status ceases. This could mean that a person who has filed a claim, has received a positive decision, and has freely sold/exchanged the property, should not have the right to temporary accommodation but should look for another accommodation. It is unclear whether the term "dispose of" in this regard also includes failure in filing a property/ compensation claim. It could be in connection with the earlier paragraph 2 (when there is a possibility to return). However if to "dispose of" means performing legal acts in relation to property one could probably never "dispose of" something to which one does not have legal title.

Also, according to the Law on the Cessation of the Application of the Law on Abandoned Apartments as well as the Law on the Cessation of the Law on the Use of Abandoned Property, an occupant should vacate occupied property when there is a possibility to return to the pre-war home or when the temporary user sold/exchanged his/her real property. Also when the occupant refuses alternative accommodation, assistance in the reconstruction, has sufficient disposable income, including assets, has withdrawn an earlier claim for repossession of property, or has been allocated any state-owned, including formerly socially-owned, land, housing credits, building materials, or housing construction/purchase assistance he/she should vacate occupied property.¹⁶² Furthermore, the definition of a household is given in the laws.¹⁶³

It seems that the legal framework and practice (as explained by the IDPs) may cause problems for the IDPs' enjoyment of their property rights when, for instance, they do not wish to return. If an IDP claims his/her property back with the objective of returning, there are generally no

¹⁶² Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 24b.

¹⁶³ Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 24a and Law on the Cessation of Application of the Law on Abandoned Apartments, Art. 11.

problems. But, on the other hand, if a person wishes to sell/exchange his/her property but not return, the IDP may face a situation where he/she can choose only between losing the property (if not claiming it) and returning.

Formally there exists a possibility for compensation for property that cannot be returned and there is a provision in the GFAP for the establishment of a compensation fund to this effect¹⁶⁴. However, the fund was never established, and even though the CRPC also accepts compensation claims¹⁶⁵, honouring these claims appears impossible, especially since there is a distinct lack of international or other donations for its funding¹⁶⁶. It is also possible that alternative forms of compensation such as bonds for those not wishing to return, issued by the Commission for Real Property Claims would turn the Commission into a: “clearing house for the exchange of property which would ensure that the distribution of property comes to reflect the demographic results of ethnic cleansing”¹⁶⁷. According to Cox, the Office of the High Representative: “has taken a strong policy position against internally facilitated relocation”¹⁶⁸.

The statistics of property-law implementation give extensive information on claims received by the municipal authorities, decisions by the municipal authorities and repossessions of property.¹⁶⁹ However, in spite of several attempts, no separate statistics on compensation claims, decisions or possible paid compensations have been obtained. It is possible that compensation claims and decisions are included in the basic statistics and not presented separately.

The issue of compensation should, for obvious reasons, be clarified, since at the moment the best option for a person not wishing to return but to reclaim a property is in fact to stay in a situation of multiple occupancy¹⁷⁰ as long as possible. A situation which may hinder other IDPs from enjoying their property rights (possessio) and right to return.

¹⁶⁴ GFAP Art. XIV.

¹⁶⁵ Claim for return – compensation of real property under the provision of annex VII, Dayton Agreement (Registration Form), sample form from 2002, received by the Commission for Real Property Claims of Displaced Persons and Refugees, Sarajevo, BiH.

¹⁶⁶ M. Cox, *The Right to Return Home: International intervention and Ethnic Cleansing in Bosnia and Herzegovina*, in «The International and Comparative Law Quarterly: The Journal of the Society of Comparative Legislation», London, UK, Bd.47, 1998. pp. 611-612.

¹⁶⁷ *Ibidem*, p. 612.

¹⁶⁸ *Ibidem*, p. 628.

¹⁶⁹ UNHCR, OHR, OSCE, UNMBIH, CRPC, Statistics, Implementation of the Property Laws in Bosnia and Herzegovina, 31 December, 2002.

¹⁷⁰ Keep the reclaimed property and not returning to it, if it is destroyed, not repairing it, and at the same time legally/illegally stay in a temporary accommodation.

As regards the return of occupancy rights of socially owned apartments, there does not seem to have existed a possibility to file a compensation claim. The only alternative for those not wishing to return is to claim the return of the occupancy right, then transfer it into a real property right and then to sell/exchange the apartment. It remains unclear how many people, after reacquisition of the occupancy right, have in fact not returned to the pre-war home.

At the same time people should have the right to property, and not to be deprived of one's property as guaranteed in the GFAP Annex 7. At the same time, however, people should also have the right to choose where they want to live. This might then imply that the persons who cannot or do not want to reside in the place where they have their property should have the option of compensation, in order to enable them to move elsewhere. If they cannot get compensation, it is quite natural that they may choose to return or at least get their property back in order to sell/exchange/rent it just because they do not want to lose their property. Therefore, if the arrangements are only available for those who do return and not for those who do not want to, the choice is not free, however good the economy, the power-balance or the security situation.

Another general problem that many young and female IDPs faced was that the right to temporary accommodation is in practice guaranteed for a pre-war household or anybody who at the moment could be regarded as part of the household (e.g. through marriage)¹⁷¹. IDPs who have reached the age of 18 during their displacement may find it problematic as they are expected to return with their family even though they themselves, for various reasons, do not want to. It may be economically impossible to provide individual temporary accommodation, but this is an issue that maybe needs further discussion in order to minimise the violation of individual right not to return. Furthermore, ownership rights in divorced couples is a matter which needs clarification especially regarding divorces during displacement since there is a possibility that according to domestic law, property that belonged to the husband before the marriage, is regarded as his also after the marriage. This may result in a more or less permanent displacement of the wife and children.

Another matter that seemed problematic for IDPs was the question of collective return. Not being very related to the legal framework, it could nevertheless be necessary to emphasise the need for collective return solutions (these have already been undertaken to some extent) at an early phase, when most people from one area have yet to find permanent residence elsewhere, to enable

¹⁷¹Law on the Cessation of Application of the Law on the Use of Abandoned Property, Article 24a and Law on the Cessation of Application of the Law on Abandoned Apartments, Art. 11.

as many people as possible to return who in fact wish to return, but at the same time not forcing anybody to do so.

Finally, it seems that long displacement and several relocations may reduce the willingness to return, and therefore early return, as stated by the GFAP, should again be emphasised. This, together with collective return programmes and together with the possibility of compensation for property for people who do not wish to return, could solve the matter of internal displacement in a timely manner giving the possibility for those wishing to return to return at an early stage, and for those not willing to return to relocate elsewhere with the help of compensation, leaving space in temporary accommodation for those returning to war-damaged areas.

However, as there is less than one year to go and still over 380,000 IDPs of which 3,128 in CCs¹⁷², many of the IDPs could be expected to find an “alternative solution through local integration” which in practice means that the IC acknowledges that many of the IDPs will not be able to return by the end of 2003.

¹⁷² Estimate of Refugees and Displaced Persons still seeking solutions in South-Eastern Europe, UNHCR, 30 April, 2003.

21. Conclusion:

In Bosnia, many people appear to have expressed their will to return and also have returned to their pre-war homes. But even if many people have earlier been willing to return, the majority of IDPs still displaced seemingly do not want to return. Most documents consulted for the purposes of this study emphasise the right to return, and obstacles to it, but very little attention seems to have been paid to the right not to return. There have been some construction programmes arranged by some domestic political parties, where houses have been built for people wishing to resettle or who are unable to return. However, in the policy documents this has not been a matter of focus. Instead, the focus has been put on things like security, economical-, labour market- and educational obstacles to return. This may have been a contra-reaction to some BiH political parties nationalist aims to keep people where they are in order to keep and increase their political power. But in some circumstances this policy might affect people's individual rights not to return.

There should be a possibility for every individual to choose between return and for instance relocation but naturally, as the domestic laws of BiH already state a continued occupation of somebody else's property is not an option, nor is staying in a Collective Centre, as these are only intended as temporary accommodation, and no other people's rights to property or accommodation should be violated. However, the possibility to e.g. exchange property exists. Still, if the possibility to find alternative temporary accommodation in another area than the pre-war area of residence exists, then IDPs not wishing to return could, without occupying someone else's home, use this accommodation. The problem seems to be that in many cases no such accommodation exists, and that people's options are limited to either try to stay as long as possible in the temporary accommodation or to return to the pre-war home.

There seems to be somewhat of a power struggle in this regard. The Bosniak leadership as well as the IC are trying to reverse the ethnic cleansing and recreate a multiethnic BiH. The other two constituent people's nationalist parties are trying to keep as many of their "own" people in their respective majority areas as possible. These two lines of interests conflict and counteract each other, and it seems that the IC amongst others is doing its best to thwart the nationalist movements' plans. The result is that most attention is given to the return of IDPs and almost no attention to those who do not wish to return. The only groups that seem to get some attention are often labelled as "vulnerable groups" such as the elderly, the sick, women-led households and children. This is also shown by the numerous projects and funding given in order to make people return and on the almost non-existing funding of alternatives to return. Some alternative projects have been funded by

e.g. the SDS and the HDZ, such as building alternative housing for people in order to encourage them to stay¹⁷³. These projects, however, seem to have had political nationalist motives and therefore, it is quite natural that the IC is not in a position to support them.

It seems alarming and surprising that so many people do not want to return but are in a situation between permanent displacement and return. They do not seem to know themselves how to resolve their situation: the economy and the labour market situation not showing any signs of improvement but are likely to deteriorate if the IC reduces its aid, and the political situation is still in turbulence. It is therefore difficult to seek a permanent solution for these people and this may seem frustrating. It seems that many people would like to stay some more in their present location to wait and see and then later decide what to do. However, having many people living in areas where they do not have any interest in doing something constructive due to the temporary nature of their situation may be a bad solution for the stability of the country. For many people, the long wait seems to have led to a sort of apathy and unwillingness to try to change their own life situation. Some other reports may tell of related psychological problems that I would suspect are very common indeed in among displaced people, especially those living in bad conditions, without the possibility to work, study etc. Whatever final solutions will be there for the internally displaced persons in BiH, they will have to be undertaken as soon as possible, to enable this large group of people to return to a normal life.

¹⁷³ No documentation was found of these, but this information was received during the interviews with the SDS, HDZ and the IDPs in the Croat and Serb majority areas respectively.

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List of Abbreviations (in alphabetical order):

BiH	Bosnia and Herzegovina
CC	Collective Centre
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
DuSoCC	Durable Solutions for Collective Centre Residents
EUPM	European Union Police Mission
EWS	Early Warning System (of UNDP)
FBiH	Federation of Bosnia and Herzegovina
GFAP	General Framework Agreement for Peace
HDZ	Hrvatska Demokratska Zajednica ¹⁷⁴
IC	International Community
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
IPTF	International Police Task Force
MHRR	Ministry of Human Rights and Refugees
OCHA (UN)	Office for the Coordination of Humanitarian Affairs
OHR	Office of the High Representative
OIC	Organisation of Islamic Conference
RRTF	Reconstruction and Return Task Force (of OHR)
RS	Republika Srpska
SBiH	Stranka za BiH ¹⁷⁵
SDA	Stranka Demokratske Akcije ¹⁷⁶
SDP	Socijaldemokratska Partija Bosne i Hercegovine ¹⁷⁷
SDS	Srpska Demokratska Stranka ¹⁷⁸
SFOR	Stabilisation Force in Bosnia and Herzegovina
UDHR	Universal Declaration of Human Rights
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees

¹⁷⁴ Croat Democratic Union.

¹⁷⁵ Party for Bosnia and Herzegovina.

¹⁷⁶ Party of Democratic Action.

¹⁷⁷ Social Democratic Party.

¹⁷⁸ Serb Democratic Party.

Annex: Map of Bosnia and Herzegovina



Source: CIA, World Fact Book 2002.

2003

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