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► **To cite this version:**

Isabelle Delpla. Is there a right to return ?. Filozofski godisnjak. Srpsko filozofsko drustvo (Belgrade), 2004, pp.121-144. halshs-00644968

**HAL Id: halshs-00644968**

**<https://halshs.archives-ouvertes.fr/halshs-00644968>**

Submitted on 25 Nov 2011

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Is there a right to return?

*Filozofski godisnjak, XVI, Srpsko filozofsko drustvo, Belgrade, 2004, p. 121-144.*

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Abstract

Nowadays, the main humanitarian organizations in charge of refugees, notably the UNHCR, are part of a large return movement helping refugees and displaced persons to go back to their prewar homes, whether in Africa, Afghanistan or the Balkans. Great difficulties are encountered in the return of minority groups, ranging from basic material problems to conflicts with a sometimes hostile majority. Whereas most (international) actors of this return process and many returnees tend to see it as a fulfillment of what is right and just and a peaceful erasing of ethnic cleansing, there are also many refugees and returnees who are quite reluctant to go back to a place where they would belong to a minority, preferring to settle elsewhere while benefiting from a right to asylum or resettlement. The issue of return intertwines many conflicting viewpoints and heterogeneous factors (economic, temporal, etc.) and is loaded with political implications. Beyond this obvious “politicization,” however, what are the theoretical grounds that we could bring to bear to clarify this conflict of judgments about the right to and rightness of return? Do the divergent points of view on the issue reflect conflicting conceptions of identity: international humanitarian organizations being, as some argue, implicitly dependant on a substantialist view of identity tied to origin, whereas refugees have ended up constructing a more “narrative” form of identity, including the dimensions of time, change and exile? Should a return or resettlement right be granted on the basis of free choice and individual rights (property, for instance) or according to a right to live with the majority? Is there such a thing as a specific right to return? Or, instead of being derived from a global theory of identity, should such a right rather be analyzed as being made up of more basic and common rights as the right to property, to security, to freedom of movement, etc.? In that case, would the issue of the rightness of return simply come down to conditions of justice and a bundle of rights that may or may not obtain?

Nowadays, the main humanitarian organizations in charge of refugees, notably the UNHCR, are part of a large return movement helping refugees and internally displaced persons (DP) to go back to their prewar countries or prewar homes, whether in Africa, Afghanistan or the Balkans. Even though return to one's country has long been considered by international humanitarian organizations as a preferable and durable solution to the refugee problem, this push for return has become a priority in the last ten years : the UNHCR announced in 1992 the first year of a decade of return. In this general return process, great difficulties are encountered in the return of minority groups, ranging from basic material problems to conflicts with a sometimes hostile majority. Whereas most (international) actors involved in this return process and many returnees tend to see it as a fulfillment of what is right and a peaceful erasing of the process of persecution that had led to exile, there are also many refugees and returnees who are quite reluctant to go back to a place where they would belong to a minority, preferring instead to settle elsewhere while benefiting from a right to asylum or relocation. The issue of return is a thorny one, since it intertwines many conflicting viewpoints and heterogeneous factors (economic, temporal, etc.) and is loaded with political implications, on both the national and international levels.

Beyond this obvious “politicization”, however, what are the theoretical grounds that we could bring to bear to clarify this conflict of judgments about the right to and rightness of return? Do the divergent points of view on the issue reflect conflicting views of identity, international humanitarian organizations being, as some argue, implicitly dependant on a substantialist view of identity tied to origin, whereas refugees have ended up constructing a more “narrative” form of identity, including the dimensions of time, change and exile? Should a return or resettlement right be granted on the basis of free choice and individual rights (property, for instance) or according to a right to live with the majority? Is there such a thing as a specific right to return? And, instead of being derived from a global theory of identity, should such a right rather be broken down into more basic and common rights such as the right to property, to security, to freedom of movement, etc.? In that case, would the issue of the rightness of return simply come down to conditions of justice and a bundle of rights that may or may not obtain? After underlining the inadequacy of an approach to the issue in terms of identity, whether it is tied to origin or changing with time, I will point to the importance but also the limitations of an approach in terms of rights.

One of the difficulties involved in this issue, is the obvious political misuse of any concept, like that of minority rights, about which Will Kymlicka rightly argues that its use in

Nazi propaganda for expansionist views discredited it for a long while.<sup>1</sup> Likewise, concerning the right of return, and more specifically that of minorities, a humanist rhetoric, pleading for the refugee's best interests, might hide political agendas that use refugees as pawns according to the usefulness of their return, relocation or staying in place.

The second major difficulty is the risk of hasty generalization: first, in ignoring the diversity of situations and considering that one case is paradigmatic, like that of Palestinian return, which retains international attention when, in fact, the specificity of the difficulties involved there might actually be a hindrance to grasping other situations; second, in generalizing, not only from one situation to others, but also from a situation to certain concepts giving meaning to the return process, yet not taking into account the material conditions of their application. Such, it seems to me, is an interpretation of the relevance of return in terms of identity, whether collective or individual.

Therefore, to treat this vast and problematic subject, I will present a concrete example coming from my current research, namely the case of minority return in Bosnia-Herzegovina (BH). This case involves a number of return-related problems that can be found elsewhere and put in a comparative perspective; it might also shed some light on the specific issue of minority return and the relationship between minority rights and (collective) identity. Indeed, in this case, return is supposed to take place to one's prewar home and not just to one's country, leaving candidates for return with the potential alternative between relocation with one's group or return as a minority.

I shall begin my discussion by providing a brief overview of the main international legal texts on the right to return. I shall then discuss the interpretation of the divergence of position concerning return between humanitarian organizations and many refugees in terms of identity. After presenting the empirical situation of return in BH, as perceived through both personal observation<sup>2</sup> and international or local reports, I will examine the relevance of speaking about return in terms of identity or individual rights. This is an oblique approach to

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<sup>1</sup> Will Kymlicka, *Multinational Citizenship: A Liberal Theory of Minority Rights*, Oxford: Oxford University Press, 1995, chapter 4, section 2 (p. 88 of the French edition).

<sup>2</sup> These considerations about return are partly based on a four-month field study that I conducted in BH from April to July 2002. It involved direct observation and roughly 60 interviews, qualitative in method, about the personal reception of humanitarian aid (including aid for return) and the process of post-war justice. Interviews were conducted with (among others) refugees and returnees, victim, refugee and returnee associations and local employees of humanitarian organizations taking part in the return process. I also held some interviews with similar refugee and victim associations in Belgrade in June 2003.

This study is part of an "ACI" research program concerning "International ethics and justice through the prism of the human sciences;" it was made possible through the generous support off the French Ministry of Research.

the question of minority rights, but: 1) on the one hand, referring back to Arendt's analysis in *Imperialism*,<sup>3</sup> minorities and refugees are considered as two sides of the same coin, that of stateless individuals, who have no right to rights; 2) on the other hand, I will also specifically deal with the question of minority rights in terms of minority return, which is a more specific case than the general right to return of refugees to their home country.

### I. The main international legal texts on the right of return

The main international texts on the right to return (which I quote in an appendix for clarification, without legal competence on the issue) set forth the general principles that states and international organizations are supposed to respect and apply, and determine any approach to this issue in terms of rights. They are in large part, but not exclusively, linked with the status of refugee.<sup>4</sup>

First, the right to return appears as a part of the universal declaration of human rights (December 10, 1948) under the general provisions of freedom of movement and residence and a general right to leave one's country and to come back (article 13). This double aspect of the freedom of movement, external (freedom of movement between states) and internal (freedom of movement within one's country) is further stated in the 1966 International Covenant on Civil and Political Rights (ICCPR), in which the right to return does not depend on a person's status as a refugee.<sup>5</sup>

Concerning the specific status of refugee, the basis for the right to return can be found in the Convention relating to the status of refugees (28 July 1951) and its 1967 Protocol. International refugee law affirms, indirectly, the right to return through the emphasis it places on voluntary repatriation as the preferred durable solution to refugee situations. There is a cessation of international protection and a voluntary repatriation of the refugee to his own country when he can once again avail himself of the protection of that country and “the

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<sup>3</sup> Hannah Arendt, *Imperialism*, New York: Harcourt, Brace and World, 1951, chapter 5.

<sup>4</sup> For a clear overview and presentation of these texts, cf. the Human Rights Watch web site on the right to return (Human Rights Watch, “Human Rights Watch Policy on the Right to Return.” <http://www.hrw.org/campaigns/israel/return/ic>.)

<sup>5</sup> As is stressed in the Human Rights Watch Policy on the Right to Return, every individual who has maintained “genuine and effective links” with the territories in question should enjoy the right to return, regardless of whether he or she is a refugee, that is, someone who fled persecution. And the question of whether refugees left voluntarily or were expelled does not affect the right to return under this International Covenant on Civil and Political Rights. This helps to distinguish the issue of the right of return from that of the conditions which led a person to leave the country or not; hence, for instance, this makes it possible to separate the issue of the right of return for Palestinians from the question of their condition of departure, whether it was a voluntary one or a forceful expulsion. Therefore, according to the French international lawyer Monique Chemillier-Gendreau, the conditions of departure are relevant only for the negotiations concerning reparations, not concerning the right to return in itself: see “Le retour des Palestiniens et le droit international,” p. 299.

circumstances in connection with which he has been recognized as a refugee have ceased to exist.”<sup>6</sup> Hence, a hosting country is not allowed to expel a refugee if his life or freedom would thereby be threatened (article 33 on prohibition of expulsion).

International refugee law and international human rights law stress the right to return by insisting on freedom of movement and residence as well as on the prohibition of expulsion, which would make return a violation of refugees' rights.

Except through the idea of freedom of residence, however, those texts do not specify the right to return home. For this right, we have to turn to the humanitarian law of the Geneva Conventions (4<sup>th</sup> convention, 1949). Article 49, on deportations, transfers and evacuations, prohibits individual or mass forcible transfers. In case of displacement, it stipulates: “Persons evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased [...]. The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” This text affirms the right to return of protected populations, and safeguards the condition of return in forbidding the installation of another population on the same territory.

## II. The international policies for return and the point of view of returnees: discordant views

In accordance with these texts, return has long been recognized as a durable solution for the situation of refugees, and it has become preponderant as an effective UNHCR policy in the 1990's.<sup>7</sup> This return policy corresponds to the matching between the concern of the main donors, i.e. states, to get rid of refugees (European countries have been developing among the most restrictive immigration and asylum policies) and the view of the HCR, according to which freely accepted return and integration constitute the best solution.

As soon as the reasons that led to the exile have disappeared, nothing legitimizes the refugees' staying in the hosting countries and spontaneous return is then justified. The ending

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<sup>6</sup> Article 1.C of the Refugee Convention stipulates that international protection for refugees ceases only under the following conditions: once a refugee has “re-availed himself of the protection of the country of his nationality,” or “having lost his nationality, he has voluntarily re-acquired it,” or he has “voluntarily re-established himself in the country which he left or outside which he remained,” or “being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence.”

<sup>7</sup> In 1991, Sadako Ogata said that she was foreseeing the beginning of a decade of return which was officially announced in 1992; cf. Michael Barutciski, “Le droit international des réfugiés et le rapatriement involontaire,” Luc Cambrézy et Véronique Lasailly-Jacob, *Populations réfugiées. De l'exil au retour*, Paris: IRD, 2001, p. 323.

of refugee status means that international protection ceases when the refugee has “re-availed himself of the protection of the country of his nationality.”

With the ending of the persecution that caused the exile of the refugee in the first place, the return should be viewed as a return to normality, an undoing of the process that brought about the depriving of rights and, therefore, to a rehabilitation of rights, along with the restitution of the right to rights. This sense that return not only corresponds to the end of the cause of the exile but also to an undoing and a reversal of this process can be found in several statements of humanitarian organizations and NGOs, which, in public fund-raising campaigns, tend to represent return as the best solution corresponding to the deepest desires and hopes of refugees suffering from exile. It is particularly clear in the official declaration of the High Representative in BH, who claims that they invented a new human right, the right to return after a war,<sup>8</sup> or in the different reports of the International Crisis Group, which present return as a victory over ethnic cleansing and nationalism. The return process appears at least as a partial undoing of injustice, or, in the best case, as an accomplishment of what is right.

Of course, there have been many successful returns, at least from the returnees' point of view, that seem to correspond to this view, as is the case of Albanians in Kosovo after the 1999 war or Afghan people, whose speedy and spontaneous return has surpassed the expectations and accompanying capacities of the HCR. Nonetheless, the return processes as seen from the returnees' perspective is not always all that successful and often does not correspond to the criteria of free choice.

1) First, there are situations where return has amounted to expulsion when the HCR, under pressure from states, sent refugees to places where they were in real danger.<sup>9</sup>

This might simply be seen as a deplorable discrepancy between theory and practice, but there are further conditions leading to conflicting views between refugees and those promoting the “right to return.”

2) The only obligation of states which have signed the refugee convention is a prohibition of expulsion, in a context of insecurity; the freedom of choice, though emphasized by the HCR as a principle, is not a legal obligation incumbent upon states and it is not even

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<sup>8</sup> Interview of Paddy Ashdown in the Guardian, October 11, 2002, quoted in the ICG Balkans report n° 137 “The continuing challenge of refugee return in Bosnia & Herzegovina,” p. 39.

<sup>9</sup> This was the case, for example, for Bedouins in Kuwait after the 1991 Iraq war according to Annick Bartoli, “De la théorie à la pratique. L’ambiguïté des politiques de rapatriement du HCR au Koweït et dans l’ex-Zaïre,” in *Populations réfugiées*. pp. 337-352. It is also the case of Albanian Kosovars expelled to Kosovo by various European countries in 1998, contrary to the demands of the HCR (cf. “Europe: reluctant hosts to Refugee reports,” U.S. Committee for refugees, vol. 19, no. 9, September 1998).

explicitly stated in the 1951 convention on refugees.<sup>10</sup> Voluntary and free return is a political and humanitarian preference, but not a legal requirement. The only obligation is the prohibition of expulsion leading to new exposure to danger and persecution. A simple ending of the persecution does not, therefore, entail freedom of choice for refugees when they face returning to places without a house, economic opportunity or a viable future. For instance, this is clearly the case of Bosnian refugees in Germany: benefiting from far better living conditions in the host country, the majority did not want to return to Bosnia after the war unless they were forced to do so.

Leaving aside any consideration of rights, the simplest utilitarian evaluation can help us to understand the possible discrepancy between the affirmation of the right to return and the preferences of refugees. The refusal or acceptance of return greatly depends on the difference of situation, well-being and opportunities (especially economic ones) between the conditions of exile and the conditions of return. Nonetheless, such a utilitarian perspective, though relatively easy to specify for a given individual or a given group, is far more difficult to establish from an impartial perspective, since, with the growing number of refugees and DPs, the number of candidates for asylum-seeking refugee status surpasses the capacities of even the most welcoming countries.

3) There are cases where return, though freely accepted, does not meet refugee's hopes and expectations. When Thailand decided to close its refugee camps (1992-1993), Cambodian refugees were offered the choice between a sum of money and a plot of arable land along with material to construct a house. Most of them chose a piece of land close to their home and family, which was a way to go back to tradition and a rural mode of life. Subsequently, however, 90% of them accepted the money offer: land-plots were full of mines or in combat zones. The return was one that was neither to a previous life nor to normality.<sup>11</sup>

Such a discrepancy between the ideal dream of return and its actual refusal might even be the case among refugees stuck in refugees camps, whose situation seems particularly precarious and undesirable. In Luanda, Angola, refugees occupied the HCR building at the beginning of November 2002, to protest against their living conditions and oppose being returned to their country, asking instead for a right of resettlement in another country.<sup>12</sup>

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<sup>10</sup> As is explained by Michel Barutski in "Le droit international des réfugiés et le rapatriement involontaire" in *Populations réfugiées*, pp. 323-336.

<sup>11</sup> Cf. Christel Thibault, "Terres spoliées, terres minées. Les obstacles au retour des réfugiés cambodgiens et les contraintes de la reconstruction nationale" in *Populations réfugiées*, pp. 353-376.

<sup>12</sup> Cf. Michel Agier, "La main gauche de l'empire," *Multitudes*, no 11 (winter 2003), p. 71.

### III. An interpretation in terms of identity

The material conditions of return make it easy to understand such a refusal. There are cases of successful return, of course, in terms of institutional granting of rights and satisfaction of returnees. In many cases, however, return is not a panacea and does not amount to a return to before or to normalcy or a re-entitlement to the right to rights. Further, the longer the exile lasts, the more return means going back to an alien place. Indeed, when Hannah Arendt was writing her famous text on refugees, minorities and stateless peoples, she was already quite aware of the possible illusion of return: “More often than can be imagined, after the first world war, people hid behind their status of stateless person in order to stay where they were and avoid expulsion and return towards their ‘home’ country, where they would only have been foreigners.”<sup>13</sup>

Beyond these empirical factors, the question is whether this issue can be put into conceptual terms? Is there any theoretical basis for this difference of point of view between international organizations and involuntary returnees? Such is the case, at least, according to the thought-provoking observations of Michel Agier, a French anthropologist, who has it that humanitarian organizations rely on a conception of identity linked to origin that is flawed. In fact, there is a vast amount of literature on refugees that presents this status as a loss of identity, both individual and collective, due to the loss of home, country, rights, previous employment, social status and social life, often after a process of dehumanization.

According to Agier, the refugee's “naked” existence “is based on a loss of a place, to which were attached the characteristics of identity and memory, and on the absence of a new social place.”<sup>14</sup> Such a status of place deprivation is also one of right deprivation. Talking about refugee camps in Africa where people stay as long as 10 or even 20 years, where they might be born and die, Agier notes that the only status accepted by the camp is that of the victim who is dependant upon humanitarian assistance and not allowed to work. In Kenya, for example, the refugee has no identity card, whether national or international.<sup>15</sup>

As a consequence of this unidentified status, the place of origin becomes the point of reference defining identity and social place. Within this framework, the return of refugees to their home appears to be the only solution for their reintegration into the normal order of

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<sup>13</sup> *L'Impérialisme*, p. 254 of the French edition Paris, Fayard, Point Essais, 1982 (my translation); see also her comment that “the label ‘DP’ was forged during the war (2<sup>nd</sup>) to get rid once and for all of the phenomenon of statelessness by merely ignoring its existence. Not acknowledging the deprivation of a state amounts to expulsion towards the country of origin which either refuses to acknowledge the potential returnee as a citizen or wants to have him back at any cost to punish him”, p. 256 of the French edition (my translation).

<sup>14</sup> Michel Agier, *Au bord du monde, les réfugiés*, Paris: Flammarion, 2002, p. 55.

<sup>15</sup> *Ibid.* pp. 93-94.

things, both from the standpoint of humanitarian organizations<sup>16</sup> and according to the European security policies which promote this as the humanist justification for national closure.<sup>17</sup>

Despite the loss of previous identity, identity itself is not lost. Refugees tend to create new identities, distanced from their national one. “Among refugees confronting the obvious heterogeneity of their home society, ethnic relations become redefined, and, what is more, life in camps creates identity, both ethnic and non-ethnic. In the precarious material conditions and social instability [of camp life], it is an apprenticeship in... a distanced outlook on their own identity and the experience of a change that takes place...”<sup>18</sup> In this refusal to go back home, as in the case of refugees in the Maheba camp, there are multiple reasons: age, family situation, the situation in the camp, the supposed situation back home, etc. Agier underlines that all this diversity of attitudes towards return corresponds to the conditions of identification in exile.<sup>19</sup>

Thus, according to Agier, the situation created by wars and exodus leads to a questioning of the main pillars essential to nation-states: the first pillar connects birth with nationality (leaving in the dark the status of second-generation refugees, children born in a refugee camp), while the second establishes a relationship between citizenship and humanity,

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<sup>16</sup> It should be added, nonetheless that, even though the HCR is the expression of the will of states, which are the signatories of refugee conventions and the HCR's principal donors, the priority of return and native place is not as fundamental to the HCR's position as Agier claims. For instance, concerning the repatriation of Kosovars or Bosnians, the HCR pleaded several times for an extension of asylum rather than sending back refugees to places where they were in real danger. Nonetheless, its pleas have often been ignored. Besides, the HCR has included the “risk of return” in its criteria, if it is a potential destabilization for the peace process or for the returnees themselves (Cf. *Handbook: Voluntary Repatriation: International Protection*, Geneva: United Nations High Commissioner for refugees, 1996).

<sup>17</sup> M. Agier, “La main Gauche de l'empire,” pp. 72-73. Cf. also “Les réfugiés du camp de Maheba (Zambie),” *Autrepart*, no 25 (March 2003): “D’une façon générale, dans les milieux politiques et humanitaires qui traitent des réfugiés, les lieux d’origine sont considérés comme la référence identitaire et la place sociale naturelle des populations déplacées sous la contrainte. Cette conception linéaire, non contradictoire, du lieu d’où l’on vient, d’où l’on a été chassé par la violence et où l’on veut revenir, ne peut que déboucher de manière dominante, univoque, sur l’expression d’un ‘droit au retour’ défendu comme revendication à la fois politique et vitale indiscutable, sur la ‘priorité au retour’ présentée comme seule solution à long terme par le HCR quand il s’agit de la réintégration des réfugiés, ou encore sur l’argument du bien-fondé humaniste du renvoi des populations réfugiées ‘chez elles’ dans les politiques sécuritaires actuelles en Europe.”

<sup>18</sup> M. Agier, *Au bord du monde, les réfugiés*, p. 154.

<sup>19</sup> According to M. Agier, “Les réfugiés du camp de Maheba (Zambie)”: “Pourtant, très souvent, les êtres en exil, au moment même où les organisations internationales, ou bien les Etats, prévoient leur retour, ont déjà fait l’expérience d’un nouvel emplacement dans les zones urbaines ou sur les sites humanitaires où ils se sont retrouvés d’abord confinés malgré eux, et où ils ont dû s’accommoder durant plusieurs années. Cette constatation est plus importante encore dans le cas de la “seconde génération” de réfugiés, la génération de ceux qui sont nés dans les camps ou qui y sont arrivés enfants [...]. Pour les réfugiés vivant à Maheba, on voit que la guerre et l’exil ont complexifié la conception des lieux, modifié les conditions de leur appropriation et entraîné des recompositions sociales autant que spatiales... C’est à partir de cette dynamique catégorielle, qui s’est construite au fil du temps dans ce camp, et des changements identitaires qui l’ont accompagnée, que se conçoivent les réponses à l’offre de retour”.

since any application of universal abstract human rights always depends on its application in a given place, such that people are only entitled to rights when they have access to national citizenship.<sup>20</sup> By contrast, refugees could be emblematic of an emerging post-national order.<sup>21</sup>

According to Agier's approach, the divergence in the evaluations of the rightness of return reflects two conceptions of identity: on the one hand, one rooted in origin (in native place and country) that corresponds to the identity of the original group (a nation) and is a given; on the other, an identity linked to change, both in space and time - a more individual identity rooted in events. That the latter conception of identity is more meaningful for refugees would explain their reluctance to return. As Agier rightly underlines, the former (national) conception of identity is not more fundamental than the other, since this national identity is no less a construct using origin as a founding myth. The "impossibility" of return for many refugees, where return would involve a recapturing of their original identity, also reveals the vacuity of such a model of identity.

I would like to push this idea a little further by opposing an origin-based model of identity to a narrative conception of identity, as framed by the French philosopher Paul Ricoeur.<sup>22</sup> A narrative conception of identity takes into account the historical aspect of the subject and the role of action, events and experience in the construction of identity. The identity is not a given but the narrative of one's life. Answering the question "who are you?" does not just involve saying where you are from, but telling a life story; narrative identity is neither stable nor without faults and is more fitting for the uprooted situation of a refugee. The relevance of this approach appears in the light of the procedures for the right of asylum and the status of refugee, which are based on a person telling his or her story of persecution and on his or her testimony.<sup>23</sup> But the relative paucity of cases where this right is granted would only show the prevalence of the origin-based /national conception of identity.

#### IV. The limits of an approach in terms of identity

This recourse to the idea of identity is attractive inasmuch as it definitely sheds light upon the potential illusion of return when this is conceived as going back to one's origins, the

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<sup>20</sup> M. Agier, "La main gauche de l'empire", p. 72.

<sup>21</sup> According to Arjun Appadurai, *Modernity at large, Cultural dimension of Globalization*, Minneapolis: University of Minnesota Press, 1996, quoted by Agier, "La Main gauche de l'empire", p. 73.

<sup>22</sup> Among other texts, see Paul Ricoeur, *Temps et récit, 3. Le temps raconté*, Paris: Seuil, 1985, p. 439 sq. or *Soi-même comme un autre*, Paris: Seuil, 1990, sixth study.

<sup>23</sup> It is also the framework of many social science works or artistic representations concerning refugees or DPs, which are often based on life stories ('récits de vie').

possible disappointment of returnees who were hoping for such a return to “before” or their refusal to return when they have started a new life in exile. Nonetheless, I am diffident about the relevance of identity for evaluating return whether one deems return home to be appropriate for an origin-based identity or one considers relocation to another place or country to be more suited to a narrative and changing identity. The passing of time and the creation of a new identity are, of course, key factors, but they are not decisive. On the one hand, the return of Kosovars and Afghanis has been all the more massive for the fact that their exile was relatively short, but the massive return, in these cases, corresponds not only to the brevity of exile but also to a drastic change in the political situation. On the other hand, in Laos, for instance, most of the refugees who went back in 1989, after the closing of refugee camps in Thailand, returned after 15 years of exile and after having refused offers of resettlement in western countries or in China.<sup>24</sup> In Bosnia, one of the largest minority returns has taken place in the area of Prijedor, nearly ten years after the people left their homes in 1992. Indeed, returnees have gone back there in much larger numbers than in Srebrenica, which Muslims massively left in 1995. According to a returnee from Kozarac, one reason (among others) for this difference is that, in Prijedor, people have had more time for mourning and healing.<sup>25</sup>

It could be added that, while time definitely affects the individual choice of refugees and DPs, it does not necessarily open or close rights. For instance, according to the French professor of international law, Monique Chemillier-Gendreau, views on return, and the use they would make of this right if they were to obtain it, vary widely among individual Palestinians, but this issue has to be distinguished from the right of return as a community.<sup>26</sup> Besides, whatever the influence of time and identity on individual choice, the refugee's freedom of choice is not, in the actual system of international law, an obligation for the states who have signed the refugee conventions. One might hope for a more liberal state of the world with less drastic immigration policies and a new post-national order where individuals would be freer to change residence, and would not be identified by and tied to their origin, their village, their land. But, Arendt's analysis of the status of refugees, whether in exile or in repatriation, might still be valid: instead of revealing a post-national, cosmopolitan tendency with a prevalence of individual and human rights, it highlights the power of states and nations in the world order.

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<sup>24</sup> Cf. Fabrice Mignot, “Le rocher de la prospérité. La réinsertion des réfugiés au Laos,” in *Populations réfugiées*, pp. 377-401.

<sup>25</sup> Interview conducted on July 6, 2002 in Sanski Most with a forty-year-old widow, in the process of returning to Kozarac.

<sup>26</sup> M. Chemillier-Gendreau, “Le retour des Palestiniens et le droit international,” p. 300 sq. and p. 310.

Hence, what Agier suggests, namely ceasing to speak about identity only in terms of place of birth and origin, is not enough: in my view, identity itself should not be taken as a normative category, but rather -at best- a descriptive category likely to shed light on the choices and trajectories of refugees, as groups or as individuals. More precisely, even if this speaking in terms of identity is enlightening concerning the alternative between resettling abroad or going back to the country of origin, it is no longer helpful concerning the more precise issue of minority return (or more broadly the issue of whether one should go back home or resettle elsewhere in the country - which is not a side issue, given that the number of DPs has drastically grown in recent years, making the problem of internal DPs as crucial as that of refugees who crossed a border).

Let us consider the following problem: according to his or her (original/ narrative) identity, where should/could a person go if his or her group has been largely displaced and return would be to a place where he or she would be minority? Let us suppose an origin-based conception of identity where the self is an encumbered one, that is, tied to preceding links, to a past, to a community,<sup>27</sup> a conception likely to make sense of the longing for return. Where would that person go according to his or her identity: to the place where he or she comes from but where his or her community no longer lives and where his or her traditional activities might be over, as was the case for rural Cambodian refugees who could not farm mine fields? To the place where his or her previous community lives, which might be quite different from his or her home, as is the case for many rural refugees, in Cambodia or Bosnia, for example, who end up in the suburbs of big cities? When his or her community is scattered or dead, as might happen in the kind of mass killings that took place in Cambodia or Rwanda, going back to one's community might prove impossible or, if that community is defined in terms of sharing values and a conception of a common good, it might amount to settling far away from home, in a place where one's group constitutes a majority, with previously unknown people with whom one might have little else in common than nationality, implying a complete change of tradition (in many cases, from rural to urban).

Conceiving of the return process in terms of identity does not solve the dilemma, since the conception of political life and community in terms of identity and encumbered selves applies first and foremost to stable, rooted communities, and not to uprooted communities and individuals whose ties have been cut. The situation of refugees or returnees breaks down what the vision of an encumbered self in a community merges: previous, involuntary attachments.

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<sup>27</sup> For such a conception of the self and of identity, see, for instance, M. Sandel, *Liberalism and the Limits of Justice*, Cambridge: Cambridge University Press, 1982.

Identity always comprises a plurality: it is being from this or that place, belonging to this or that family, being a part of such a group, having these or those professional or personal relations. Hence going back home might correspond to an origin-based identity tied to place and yet constitute a rupture with a “national” or community-based identity. Narrative identity is not much more enlightening. It helps us understand that people are no longer attached by their previous ties, but it does not allow us to say if they should change community, place, way of life or personal relations. Evoking identity, whether origin-based or narrative, provides only the illusion of a justification, since it leaves open several conflicting possibilities.

Having underlined the limitation of an approach in terms of identity to embrace minority return, I would like to turn to an approach in terms of rights and conditions of justice, to see to what extent it might be more relevant. To discuss this issue, and to avoid the kind of hasty generalization involved in an identity-based approach, I will start with a brief, sketchy, and therefore very simplified presentation of a concrete case, that of return in BH.

#### V. The case of return in Bosnia-Herzegovina

The case of BH is particularly interesting because the return process is supposed to take place not just to the country of origin but, more specifically, to pre-war homes. Since the first years after the war, the greatest part of return has been to majority areas. In more recent years, however, international agencies, the HCR and NGOs have focused on the return of minorities to their pre-war homes, that is, to a place where one is part of a minority group.<sup>28</sup> A minority is taken, then, not only in the numerical sense of a group not constituting a majority (which would apply to Roms and Jews in all parts of BH), but also in the political sense of a non-ruling people, meaning not being part of the dominant group in terms of political, institutional, economic and territorial control (which would apply also, for instance, to Serbs in the Federation and to Muslims in RS, even in parts where they constituted a majority before the war and remain a majority on voting lists, as in Srebrenica). I leave aside the more complicated issue of the legal status of minorities in pre-war Yugoslavia and in present-day BH, where neither Serbs, nor Croats nor Muslims are minorities in the legal sense of the term but rather constituent peoples.

The legal framework for the return process is provided both by the international texts previously quoted and by the Dayton Peace Agreement (DPA), Annex 7, which proclaims the

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<sup>28</sup> Given the internal division of the country into two official entities (the Federation and the Republika Srpska – RS), if not in three unofficial ones (counting Croat controlled Herzegovina).

right of return for all refugees and DPs, in safety and without persecution or discrimination.<sup>29</sup> According to the general principle of freedom of choice, the “choice of destination shall be up to individual or family,” and properties are to be given back to their lawful owner or, if not, compensated. This entails a bundle of complicated issues. First, the right to private property: direct in the case of a private house, this right of property in a post-war process results from the privatization of socialized property on the basis of a pre-war right of occupancy. On top of the difficulties inherent to this privatization process - a process that is complicated, for example, in the case of religious properties which had been nationalized by the communist regime - there is the issue of actual access to lodging when the former homes of returnees are occupied by other DPs. Not only may a conflict arise with the current occupant, but also the possibility of legally regaining the apartment is contingent upon: 1) the legal framework (war-time laws giving the rights of occupancy to refugees should be cancelled to give the priority to pre-war occupant/owners over war-time occupants), and 2) the effectiveness of the eviction of current occupants, generally belonging to the majority. Hence, the return process implies a vast displacement of populations backwards, sometimes years after they have settled in a new place in some kind of vast musical chairs game.

As on the international scene, the issue of return is very politicized and any ideal principle can hide not so well-meaning political interests. Hence the principle of freedom of choice, for instance, is promoted both by the partisans of return and by those supporting relocation which is very much in favor among parties that practiced and favored ethnic cleansing in the first place and want to maintain ethnic separation by defending the freedom of choice to live with one's group. In any case, freedom of choice seems to be a hollow principle when it amounts to no choice for finding a place of residence in the new place after expulsion from a war-time apartment.

Therefore, granted the opposition or reluctance of many ruling authorities to minority return, any material, administrative or political difficulties can be redoubled, at any stage of the process, to make it even more difficult. The main obstacles to return cited again and again by various sources, whether in direct interviews with refugees and returnees, in international reports<sup>30</sup> or in local newspapers, are:

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<sup>29</sup> Dayton Peace Agreement, Annex 7: “All refugees and DPs 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.”

Office of the High Representative, “The General Framework Agreement for Peace in Bosnia and Herzegovina” Annex 7. ([http://www.ohr.int/dpa/default.asp?content\\_id=375](http://www.ohr.int/dpa/default.asp?content_id=375).)

<sup>30</sup> A large amount of information about return in BH and neighboring countries, mainly Serbia and Croatia, can be found in the reports of international organizations (available on their web sites) in charge of implementing

1) mines, bombs, threats, attacks on returnees or DPs visiting their homes or cemeteries, murder, the destruction of houses belonging to potential returnees, theft, the presence of war criminals in the local police, the dynamiting of religious edifices, difficulties for practicing one's religion, the hostility of the local population and DPs' fear of the other group (especially in cases of extreme violence between the communities during the war, as in Srebrenica), arrests for draft evasion or war crimes.

2) a housing shortage (because of destruction or occupation by others), which can be aggravated by hostile relocation, meaning the bringing in of other DPs to prevent the return of original owners (as happened in Drvar), difficulties in reclaiming property (especially land and business premises), lack of resources, unemployment.

3) discrimination and legal obstacles, intimidation by local authorities, administrative delays, discrimination in access to social services reserved for the majority, to public services and to facilities like water and telephone, being treated as a second-class citizen (which has led many refugees to return to BH from a third country), job discrimination (in the context of high unemployment, the public sector remains the main employer), objectionable school curricula (especially concerning recent history), intimidation by their own authorities when these favor relocation with one's group.

Given such obstacles, factors favoring return are the possibility of visiting previous homes and cemeteries and traveling inside the country, the absence of violence against returnees, guarantees of safety, the absence of violence between communities during the war (as in Drvar), the arrest of war criminals (especially when they belong to the police, as in Prijedor), efficacy on the part of Sfor and international police (IPTF) in protecting returnees and the reform of local police, the availability of housing and the successful reclaiming of property, the availability of humanitarian aid for reconstructing property (often in the form of self-help, which involves the house being constructed by the family concerned using provided materials).

Due to the high level of obstruction and discrimination, however, even successful return -in terms of number and duration-, depends on the returning group's ability to organize itself, as happened in Prijedor and Drvar. Sustainable return is most often that of a group,

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this return, such as the UNHCR, and OHR (Office of the High Representative in BH), which chairs the RRTF (the Reconstruction and Return Task Force) coordinating the support and actions of many agencies (UNHCR, the World Bank, the European Commission, etc.), or the OSCE. Cf. also the several reports of the ICG (International Crisis Group) or those by human rights organizations like Human Rights Watch or Amnesty International. There are too many such reports to quote them all.

Concerning the point of view of refugees' and returnee's associations belonging to the coordination "Living Together," see *Return*, a magazine for refugees and displaced persons promoting return, published by the Media Center "Prelom" in Banja-Luka.

rather than of individuals; return is often achieved thanks to grassroots returnees organizations, which are able to face obstructions and bring in returnees in large enough numbers to obtain representatives in local municipalities or even elect the mayor, as in Drvar. Return takes place more easily in areas where returnees belonged to a majority before the war or presently constitute a majority, either through settling in remote villages or by the creation of parallel institutions (like schools) and a separate economy. It also depends on the structure of the family, according to the number of working people in the family or its capacity to split apart in order to allow one part (old and retired people) to go back home while others stay in the majority area (but this might aggravate the housing shortage). Return is rarely reintegration and leads to a divided life, whether the division lived be at the level of the community or of the individual, as when a person resides in one entity while getting social benefits or working or sending kids to school in the other.

#### VI. The interpretation of the right to return as a bundle of rights

In the face of such gross discrimination against minorities and minority return, one might wonder if we need anything like sophisticated philosophical tools or specific theories of minority rights. These cases of discrimination are so obvious that a simple liberal principle of equality would suffice to guarantee minority return for those willing to go through the process. It would also benefit non-minorities, both returnees and non-returnees, whose access to jobs and apartments is adversely affected by nepotism and clientelism within the ruling parties. The main difficulties encountered previously amount to the violation of basic rights and liberties such as 1) security and freedom of movement (and freedom of conscience and religion), 2) property and 3) equality and non-discrimination in access to social services, schools and employment. Simply guaranteeing these fundamental rights would go a long way towards meeting the returnees' basic demands.<sup>31</sup> A basic theory of civil rights would help make sense of the point of view of refugees, who tend to deem return to be a desirable thing or yet another injustice according to whether the corresponding rights are honored or violated; for, often times, a loss of security and civil rights are the trade off for the right to live in one's home.

Hence, it could be argued that the issue of the rightness of return boils down to an issue of rights and conditions of justice, which may be present only in part or even altogether absent, the combination of all these rights being the condition for successful and fair return.

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<sup>31</sup> More specific issues, like disagreements concerning curricula and the teaching of history, are in great part not specific to minority issues but to relations between previously warring parties.

Therefore, on the one hand, there is not a right to return by itself that can be disconnected from the conjunction of more basic rights, like the right to security, property, civil rights and political representation. Return without these rights might be a fact, not a right. From this perspective, aiding returnees to build houses, as many humanitarian organizations do, helps only to support the access to property and the right to property, but not to promote the right of return if other rights like that of security are not guaranteed (as when returnees are killed in their regained houses). On the other hand, denying the right to return to someone or to a group is not just a side issue, but also the denial of the more basic rights of which it consists.

Once the importance of rights has been underlined, to what extent can the issue of return be reduced to a question of rights? There might be return without rights, yet there might also be rights and a right of return without return: guaranteeing rights might lead to return, but it might just as well not, given that many returnees who have recovered their home either leave it vacant, rent it to refugees occupying it or sell it (but this phenomenon is hard to assess, since it is an object of rumors and personal arrangements more than statistics). The right of return can be broken down analytically into a series of rights (property, freedom of movement, etc.) that one might choose to benefit from elsewhere. In that case, return is a derivative, not a primary right rooted in identity. What, then, is left of this right? Is there anything specific in it once no longer conceived in terms of identity tying people to a place and previous attachments?

Paradoxically, it could be argued, contrary to communitarian views, that a form of individualism and libertarianism could make sense of this right of return. Since rights are attached to individuals,<sup>32</sup> it is the right of property, and not identity or place, that attaches me to my home and confers importance on a right of return. Likewise, seeing a violation of basic individual rights as a deep attack on the self would make sense of a person's wish not to return. A theory of the disencumbered self does not fail more than a theory of the encumbered self to explain the attachments to one's belongings. On the contrary, such a theory can make sense of the rightness of return even when it does not succeed to restore previous links and attachments. At first sight, it is not clear that a libertarian theory can take into account this desire and right of return, when a certain view of the detached self might also lead to a praise of free movement. But, given that return does not amount to a simple re-establishing of previous attachments, the disencumbered self attached to his rights might be a better image of the successful returnee than someone in search of a lost identity.

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<sup>32</sup> See for instance, Nozick's views in *Anarchy, State and Utopia*, Oxford: Blackwell, 1974.

Besides, Nozick's criterion of the correction of injustice would allow us to understand the importance of the right to return without return: if, when rights are minimally guaranteed, everyone chooses to sell his or her house and settle elsewhere, then it does not amount to the same thing as no right to return and mere compensation. The right to sell one's property creates a form of justice in transfer and acquisition that breaks the cycle of violation to initiate an order of legitimacy. Even if, in the end, the social order amounts to the one created by violence, it is not entirely founded on violence<sup>33</sup>.

There is something provocative in this recourse to a right/individualist theory, of course, since return as a political process and the right of return are also a matter of groups and institutions and since they show the vacuity of formal rights: the right to possess one's house without the house, the right to move freely without a means of transportation, an official equality of rights without the power to exercise those rights, which exist only on paper. The material and economic difficulties encountered by returnees would underline the vacuity of formal rights without material or institutional support. As a DP from Srebrenica, reluctant to return home, bluntly put it: "it's nice to rebuild our house, but we already saw that during the war: you cannot eat the walls". Speaking only in terms of rights certainly captures the discrimination part of the picture, but, even if basic rights were respected, it is still not a good image of fair return.

Let us suppose that, in a given area where all houses were destroyed, each person (belonging to the majority or the minority) is granted the same amount of material for reconstructing his or her home according to the practice of self-help. Obviously if you have lost a leg during the war, you will be unable to do it yourself. Likewise, if you are a widow or someone whose family is dead or absent, the distance between the right to a home and the accomplishment of that right will depend on the solidarity of the community and the real presence of family and social relations, which cannot be framed in terms of rights.

Hence, I would like to suggest, as a hypothesis that should be further worked out, that the rightness of return could be conceived in the light of Amartya Sen's theory of capabilities, which underlines the limitation of a theory of rights, while keeping an individual perspective. Such a perspective, which cannot provide the whole picture, of course, is nonetheless essential to avoid treating refugees and returnees as simple pawns in a political game.

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<sup>33</sup> This seems to be in agreement with the clauses on restitution of property in the DPA, Annex 7, article 12, section 2 "any person requesting the return of property who is found by the Commissions to be the lawful owner of that property shall be awarded its return."

Article 12, section 3 states: "in determining the lawful owner of any property, the Commission shall not recognize valid any illegal property transaction, including any transfer that was made under duress, exchange for exit permission or documents, or that was otherwise in connection with ethnic cleansing."

Capabilities are what allow us to bridge the gap between resources and accomplishment, between the theoretical possession of rights and the actual exercising of those rights. Certainly being a part of a minority in the midst of a possibly hostile or unwelcoming majority is a matter of rights, but it is not only that. The level of powerlessness should also be viewed through the lack of the capabilities constituted by family, professional and social relations, which make it possible to bridge the gap between rights and their actual exercising. On this view, the importance of inter-subjective attachments with neighbors, one's group or one's community in the return process is more fully accounted for than in an approach in terms of rights, without being cast in terms of identity: the necessity to conceive capabilities in terms of social relations with members of the same group is also revealing of less apparent forms of discrimination than simple denial of rights.

Addendum:

In lieu of a conclusion to this paper, I would like to clarify a few of the problems and objections raised in the framework of the conference “Collective identity, sovereignty and minority rights.”<sup>34</sup> I have defended an individual approach to the question of the right of return, and, more specifically, minority return, and I argued that there is no specific right to return apart from a bundle of more basic rights, without the coordination of which return is a fact and not a right. I also argued that the evaluation of this right has little to do with a question of identity, whether collective or individual, and that narrative identity is hardly more relevant than origin-based identity. Promoting or opposing return, relocation or exile in terms of identity often thinly masks dysfunctional institutions and the violation of rights. This does not mean that there is no relevance in the various issues often evoked under the category of identity, such as previous attachments, relations with one's group or the passing of time, but their relevance for the evaluation of the rightness of return might be better accounted for in terms of capabilities as conditions for the exercising of individual rights.

Hence, my perspective is neither legal and strictly normative nor merely descriptive of the refugees' views. It would be preposterous to pretend that rights or identity describe the actual choices or systems of evaluation of refugees and returnees, whose motives and decisions often remain multifaceted and opaque. What I have tried to provide is a conceptual reconstruction of what justice and fairness in return would (and would not) be. While trying to

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<sup>34</sup> I would like to thank the participants of the conference for helpful objections and remarks as well as Tobias Vogel for the discussion that followed it.

make explicit the specific cases which nourished my thinking in order to avoid hasty generalization.

How, though, can the fairness of return be evaluated in individual rather than collective terms? Pleading for an individual approach to the right to return does not mean that return is not a collective right detained by a group or a people. Though most international texts on the right of return refer to individual rights, the question of whether or not the Geneva Conventions protecting the right of populations to return home defend a collective right is a controversial one.<sup>35</sup> Leaving aside this issue, to what extent can a collective and an individual approach be separated? From a theoretical and legal perspective, it can be claimed that these two approaches can be dealt with separately: on the one hand, as Monique Chemillier-Gendreau argues, a collective right can exist whether or not individuals decide to use it; on the other hand, return as a right is guaranteed by individual rights, even in the absence of a collective right to return. In the realizing of a right to return, however, an individual approach cannot be separated from a collective one.

First, the individual's right to return cannot be separated from the possibility, if not the right, to return as a group, since successful return is most often that of a group rather than individuals (a factor which the idea of the capabilities takes into account). Conversely, the right to return as a group is empty and vain if it does not correspond to individual rights to do so. The realizing of a collective right to return is not separable from the individual rights that make return a right. In the absence of security, freedom of movement or freedom of conscience, return is for each individual not a right but a fact, whether another group or his or her own group deprives him or her of such rights.

Furthermore, though I began by saying that return is a very thorny issue because very politicized, this is no longer so clearly the case when we come down to the individual level: not only does the mosaic of individual attitudes towards return fall on all sides of ethnic or community lines, but it also does not follow stark political divisions like that between nationalists opposing minority return and liberals promoting it in the name of multiculturalism. Such a mosaic can lead to unpredictable results, as a recent and very controversial poll among Palestinian refugees suggests: refugees' views on return fit neither with the insistence of Palestinian authorities on the priority of the right of return nor with the

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<sup>35</sup> According to Monique Chemillier-Gendreau this right is not only individual (as in the declaration on human rights) but also collective. She holds that while the term "population" is used in the Geneva Convention, and not the term "people", what is meant, in the context of 1949, is the safeguard of the group as such with its national rights and on its territory, from which it can be expelled only on the condition of being returned. Furthermore, the possibility of a right to return as a group can be derived from the 1960 texts on decolonization and the right of peoples (*op. cit.* p. 300 sq.).

Israelis' refusal to grant such a right for fear that Palestinian refugees would arrive en masse.<sup>36</sup> From an individual perspective, the right of return, even collectively granted, might be a matter of a relatively wide spectrum of various possible degrees, ranging from no return at all to full return and everything in between. In which case, return is more easily dealt with in political terms. In accordance not only with the plurality of individual choices, but also with the conception of the right of return as a bundle of rights, return is not a collective block or an absolute. Therefore, even though it cannot be separated from the actualization of a plurality of rights, it can be realized in a plurality of ways, leading, for instance, to the return of the dead, return as a landlord, etc. Various degrees of return do not allow a fragmentation of rights since burying the dead at home, for instance, also requires security, freedom of movement or freedom of conscience in religious funeral rites.

Finally, an individual approach to the right of return should lead us to distinguish two levels: that at which problems can be solved and that at which solutions and their fairness are to be evaluated. A recent academic publication sponsored by the UNHCR, *Imagine Coexistence*, sheds light on the ambiguities and flaws of return and reconciliation policies based on an individual and inter-subjective approach. Attempts at restoring dialogue among individuals from divided communities through micro-projects are generally successful at an individual level, where professional and personal relations succeed in overcoming prejudices, whether in Bosnia, Kosovo or Rwanda. But, those micro-level initiatives do not extend beyond the individual level, contrary to the expectations of their promoters, who were hoping to be able to use those micro-projects as a lever to effect political change towards multiculturalism and democracy through the development of a civil society. The changes in prejudices and attitudes towards the other group remain limited to the individuals encountered (in the form of “he's great, but he is not like the other ones”), or to a micro-level (for instance, when a multicultural change at a municipal level is blocked at the cantonal level).

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<sup>36</sup> This poll was conducted by Khalil Shikaki, director of the Palestinian Center for Policy and Survey Research and included 4500 refugee families living in the West Bank, the Gaza Strip, Jordan and Lebanon. Only 10% said they would pursue permanent residence in Israel and more than half said that they would accept compensation. According to the New York Times of July 14, 2003, “Dr. Shikaki said the poll's result showed that refugees were less interested in being nationalist standard-bearers than in living fuller lives. ‘Refugees are human beings with needs’ he said. ‘These people want to live their lives.’” On the mob attack against Shikaki in Ramallah, see the article of the New York times, July 14, 2003, “Palestinian Mob Attacks Pollster Over Study on 'Right of return’” by James Bennet.

This study has been criticized for being biased and for giving up the right to return (cf. for instance, the comments of Ali Abunimah in the article “Who said that Palestinians have given up their rights?” published in the Daily Star, July 23, 2003), but it could also be argued that this study provides strong grounds for granting the right of return as a matter of principle, since doing so would not pose a threat to Israelis' demographic and political balance. (All my thanks to T. Vogel for bringing those articles to my attention).

I can only concur with two of the diagnoses proposed in this study for such a gap between expectations and results. First, the hope of wider political changes through micro-level initiatives relied on an overly simplistic conception of identity and otherness as key factors for the preceding conflicts, such that it was expected that an actual encounter with the “other” would break walls of prejudice. Second, they also relied on an overly subjective and psychological conception of reconciliation as an inter-subjective process between individuals, underestimating the institutional dimension of the process.<sup>37</sup> Therefore, I would argue that an individual perspective is necessary for evaluating the fairness of return in order to avoid using individuals as displaceable pawns, whether to promote nationalism or multiculturalism. This does not entail, however, that the problems encountered in the return issue can be dealt with at the individual level nor that individuals can bear the whole burden of coping with or reforming unfair and dysfunctional institutional systems.

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<sup>37</sup> See *Imagine coexistence*, Antonia Chayes and Martha Minow (eds), San Francisco, Jossey-Bass, 2003. Concerning the absence of “spill-over” in these projects and particularly, concerning the flawed conception of identity and otherness, cf. especially chapter 4 “Grand visions and small Projects. Coexistence efforts in Southeastern Europe” by Diana Chigas and Brian Ganson. Concerning the overly psychological conception of reconciliation, cf. particularly the afterword by Michael Ignatieff “Reflections on coexistence”.

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## Appendix

### Main international legal texts on the right to return

Universal declaration of human rights (December 10, 1948): According to Article 13

- (1) Everyone has the right to freedom of movement and residence within the borders of each state
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

1966 International Covenant on Civil and Political Rights (ICCPR) (article 12)

1. Everyone lawfully within the territory of a State shall, within that territory, **have the right to liberty of movement and freedom to choose his residence.**
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant
4. **No one shall be arbitrarily deprived of the right to enter his own country.**

Concerning the specific status of refugee, the basis for the right to return under international refugee law can be found in the Convention relating to the status of refugees (July 28, 1951) and its 1967 Protocol (in reference with the UN Charter and the Universal declaration of human rights).

Article 1.C of the Refugee Convention stipulates that international protection for refugees ceases only under the following conditions:  
once a refugee has “re-availed himself of the protection of the country of his nationality”... or he has “**voluntarily** re-established himself in the country which he left or outside which he remained”, or “being a person who has no nationality he is, because of the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence”.

Article 33. - Prohibition of expulsion or return (“refoulement”)

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion

Concerning the specific right to return home, cf. the humanitarian law of the Geneva Conventions (4<sup>th</sup> convention of August 12, 1949.)  
Art. 49 - Deportations, transfers, evacuations

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.

Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. **Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.**

The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place.

The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

**The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies**

The right to return to one's home might be stated specifically in regional texts or resolution on specific countries or political situations like in the Dayton Peace Agreement of 1995 for BH or by the United Nations General Assembly Resolution 194 (III) of December 11, 1948 concerning the status of Palestinians refugees<sup>38</sup>.

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<sup>38</sup> 11. Resolves that the refugees wishing to return to their homes and live at peace with their neighbors should be permitted to do so at the earliest practicable date, and that compensation should be paid for the property of those choosing not to return and for loss of or damage to property which, under principles of international law or in equity, should be made good by the Governments or authorities responsible;

Instructs the Conciliation Commission to facilitate the repatriation, resettlement and economic and social rehabilitation of the refugees and the payment of compensation, and to maintain close relations with the Director of the United Nations Relief for Palestine Refugees and, through him, with the appropriate organs and agencies of the United Nations.