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Abstract

The paper argues that the right to return should be upheld as a political principle for mitigation of the boundary problem - who belongs to demos. Restoration of citizenship pursued through justified politics of return contributes to the democratic reconstitution of post-conflict societies. In the post-Yugoslav space, however, politics of return of refugees, internally displaced persons, diaspora, and deportspora can be charged with promoting some forms of citizenship inequality, preferring some citizens over others and impeding or effectively blocking the return of those thought undesirable.

Keywords:
Boundary problem, right to return, politics of return, citizenship constellations, refugees, internally displaced persons, diaspora, deportspora, inequality, post-Yugoslav space

I Introduction

In democratic theory there has been a recent revival of interest in the so-called boundary problem: how to legitimately delimit the political community relevant for democracy.[2] Boundary drawing was the result of historical contingencies with borders being entrenched, moralised and guaranteed by international law. Nonetheless, challenges arising from globalisation, secession and immigration have again stressed the controversial nature and practical relevance of the boundary problem. Who should decide what majority of which unit has the final say in deciding on secession? If the democratic legitimacy of *demos* stems from potential members of *demos* consenting to belong to *demos*, whose consent has been asked? Even though post-Yugoslav republics could rely on pre-defined *demoi* of the republics within Yugoslavia, they still had to face the boundary problem - who

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[2] On the "boundary problem" see: Frederick G. Whelan, "Prologue: Democratic Theory and the Boundary Problem", in J.R. Pennock, J. W. Chapman (eds.) *Nomos XXV: Liberal Democracy*, New York University Press, 1983, pp. 13-47; David Miller, "Democracy's Domain", *Philosophy and Public Affairs*, 2009, Vol. 37, No. 3, pp. 201-228; Terry Macdonald "Boundaries beyond borders: Delineating democratic 'peoples' in a globalizing world", *Democratization*, 2003, Vol. 10, No. 3, pp. 173-194; Francis Cheneval, "Constituting the Dêmoi Democratically", *NCCR Working Paper No. 50*, June 2011, Available from: http://www.nccr-democracy.uzh.ch/publications/workingpaper/wp50 [accessed 15 October 2012]

belongs to *demos* - since the very decision to apply a so-called continuity model[3] is a decision on the boundaries which had to be made and could have been decided otherwise. Citizenship regimes[4] of these new states have not been moulded *ex nihilo*; they have been conceptualised as a result of internal dynamics and external influences, but at a time with specific understanding of what counts as legitimate.

Boundaries always include some while excluding others. There is a difference, however, between whether the boundaries drawn fail to include those who potentially will have had legitimate claims to membership (e.g. immigrants) or whether their drawing effectively excludes those who were yesterday's members (e.g. refugees). Therefore, delimitation of *demos* taking place as a result of the expulsion of former citizens without the possibility for those who fled to restore their citizenship cannot be considered as a legitimate solution of the boundary problem. Here is where the idea of return as a restoration of citizenship and a reversing of ethnic cleansing comes in.[5]

In this paper I argue that the right to return should be understood as a political principle for mitigation of the boundary problem that is of special importance for post-conflict polities such as those in post-Yugoslav space. Understood strictly procedurally, democracy cannot successfully solve the boundary problem, but in its substantive form as a political regime of which political equality is a constitutive element, the boundary problem can be democratically mitigated by making citizenship more inclusive. Therefore, without taking into account return politics, citizenship scholars fail to evaluate citizenship regimes appropriately, but also citizenship regimes fail to satisfy democratic legitimacy criteria. As I found the triangle between return, citizenship and democracy inadequately explored in both the literature on return and on democratic citizenship, this paper will aim to narrow this gap and advocate for such a triadic perspective.

I shall begin my discussion by providing a specific interpretation of the right to return (section II) and the politics of return (section III) which I find useful. In section IV I make clear why I use the citizenship constellations approach to explain and evaluate the creation of conditions for return by main players involved in the politics of return - primarily country of origin, but also countries of asylum and other influential international actors. The empirical material on three different politics of return in the post-Yugoslav region obtained through elite interviews, personal observation and international or local reports is presented in the sections V, VI, and

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[3] Rogers Brubaker "Citizenship Struggles in Soviet Successor States" International Migration Review, 1992, Vol. 26, No. 2, pp. 278-9.

[4] "A citizenship regime is based on a given country's citizenship legislation defining the body of citizens (i.e. who is entitled to citizenship and all duties and rights attached to that status), on administrative policies in dealing with citizenship matters and the status of individuals, and, finally, on the official or non-official dynamic of political inclusion and exclusion." Jo Shaw and Igor Štiks "Citizenship in the new states of South Eastern Europe" Citizenship Studies, 2012, Vol. 16, No.3-4, p. 311.

[5] Katy Long "Refugees, repatriation and liberal citizenship", *History of European Ideas, 2011, Vol. 37,* pp. 232-241.

VII. It shows how outcomes of different politics of return within citizenship constellations often produce inequalities and unevenness of citizenship. In conclusion, and building on the empirical case of post-Yugoslav region, I restate the normative relevance of speaking about return in terms of citizenship and democracy.

II The right to return to one's own country when one's own country is a new country

The right to leave and return to one's own country is one of the most basic human rights.[6] Almost all of the scholarship dealing with the migration-citizenship nexus has been concentrated on the right to leave one's own country (right to emigrate) and the paradoxical lack of an internationally recognised right to immigrate and corresponding duty of states to accept immigrants, which might wrongly imply that the right to return to one's own country, as a codified right, is largely unproblematic in its conceptualisation and implementation. Quite the contrary, the codification of the right to return was more a postscript to the right to leave, which was perceived as a more important right in the context of the Cold War. It was not until 1999 that the UN Human Rights Committee in its General Comment No. 27 on freedom of movement identified who are the persons entitled to exercise this right by way of clarifying the meaning of the concept of "one's own country" with regard to article 12 of the 1966 UN International Covenant on Civil and Political Rights, which states that "No one shall be arbitrarily deprived of the right to enter his own country." Importantly, the elaboration of this right in the mentioned General Comment is the following:

> The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals *whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them*.[7]

This interpretation of the right to return implies that the right is somewhere in between the right to citizenship and the right to denizenship, since it sanctions the return to one's own country which may be a different country or part of a different

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[6] This right has been elaborated most notably in article 13 (2) of the Universal Declaration of Human Rights, and article 12 (4) of UN International Covenant on Civil and Political Rights.

[7] UN Human Rights Committee (HRC), *CCPR General Comment No. 27: Article 12 (Freedom of Movement)*, 2 November 1999, CCPR/C/21/Rev.1/Add.9, available at: http://www.unhcr.org/refworld/docid/45139c394.html [accessed 20 March 2013] (emphasis added.)

country by the time of an individual's return but it does not necessarily imply that return will be followed by citizenship status. It seems though that, in the absence of any human right to denizenship or human right to immigration, this right could only be effectively protected by citizenship legislation of these new countries which would include all of the people with the right to return into their citizenries, immediately or after a short passage of time. Once again, this points to the Arendtian paradox of rights: the right to return should be a universal human right independent of new countries' citizenship legislation but at the same time, it cannot be respected without new states' adjusting their sovereign right to determine their citizenries in such a way as to include those with the right to return. This right would, then, have to be understood as contingent on historical circumstances of potential returnees – what country, or better, what land they have lived in before and which they have the right to live in again would be contingent on individual or familial histories confirming "special ties to or claims in relation to a given country".[8]

The post-Yugoslav states applied a continuity model of citizenry with the exception of Kosovo which applied a new state model.[9] That meant that all previous citizens of particular Yugoslav republics have automatically been considered as citizens of new independent states. In this context, the right to return would imply an additional layer of citizens or would-be citizens beside those who were already included via the legal continuity model. These would be former Yugoslav citizens with republican citizenship other than citizenship of the republic where they actually resided. The claim that the right to return ought to determine citizenry of a new state is not the claim that the right to return is the solution of the boundary problem, or differently put, the problem of democratic constitution of the peoplehood. The argument is that with no democratically acceptable procedure that would solve the boundary problem - constitution of *demos* - we must face the less ambitious but not less pertinent task of democratic reconstitution. One of the necessary principles of democratic reconstitution by which excluded members have been again included into citizenship is the right to return.[10]

I should emphasise at the outset that the right to return is not a duty to return, nevertheless, in order to argue for agency of potential returnees, one needs to argue

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[8] After the 1955 Nottebohm (Liech. v. Guat.) case before I.C.J., the genuine link theory has been used to establish when states cannot confer citizenship rights on individual who does not have a genuine link to the country in question. In contrast, here I wish to emphasise how "special ties" entitle an individual to return, and, eventually, to obtain citizenship. Robert D. Sloane "Breaking the Genuine Link: The Contemporary International Legal Regulation of Nationality", *Harvard International Law Journal*, 2009, Vol. 50, No. 1, p. 1-60.

[9] Gëzim Krasniqi "Overlapping jurisdictions, disputed territory, unsettled state: the perplexing case of citizenship in Kosovo", *Citizenship Studies*, 2012, Vol. 16, No. 3-4, p. 354.

[10] I argued elsewhere that these reconstitution moments are recognition of old resident non-members, semi-members or excluded members as full members; *inclusion of new members; political construction of a new "we, the people"; and people's exercising its constituent power.* Biljana Đorđević, "A Democratically Reconstituted Demos", paper presented at the OSI Academic Fellowship Program, Disciplinary Group Meetings, Istanbul, Turkey, November 2012.

for a decision that primarily may depend on them. One such decision justified by international law is the decision to return since there is no internationally recognised right to immigrate. The right to return is understood in its extensive version which includes the right to return, return of rights, and creation of a political environment conducive to return.

III Politics of return

Return has not always been as globally prioritised among other durable solutions for refugees, such as local integration and resettlement, as it is today. This primacy was established after the end of Cold War, as a flipside of increasing immigration problems, but also as a consequence of the apparently ever larger number of refugees and emigrants fleeing from countries torn by civil wars.[11] In post-Yugoslav post-conflict societies, the right to return has been reaffirmed as "the right to return to their homes" in Bosnia and Herzegovina or the "right to sustainable return" in Kosovo as the most comprehensive elaboration of the right encompassing even the integration of refugees as a right. There is ambiguous application of the right to return, however, and return processes in the post-Yugoslav space indicate that there is neither impartial nor unconditional support for the implementation of that right by the international community. As power politics determines whose rights will be acknowledged and assures whose rights will be respected, the concept of politics of return is proposed for analysis of return to post-Yugoslav states. That does not mean that the right to return should not be considered as an important ethical and legal principle and that it should not be applied as a guiding principle of politics of return. Evaluation of these politics will depend on how these politics mirror the right to return. As it is the case with other human rights, the right to return has become the object of political struggles and its exercise can be seen as a symbol of political action. Who is returning - and who says who is returning - is a background against which a particular account of citizenship is promoted, an account of what it means to be a citizen of a new country that is never neutral or uncontroversial.

Politics of return encompasses political, legislative and administrative efforts by governments, international organisations and non-government organisations to change opportunity structures for potential returnees by way of securing the conditions for their sustainable return.[12] These conditions include the restoration of

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[11] Infamously, in Israel there is a Law of Return for Jews separate from the Citizenship Law and at the same time a denial of the right to return to Palestinian refugees, an issue that has been prominent for the past sixty years. Nevertheless, the problem of return to Israel, although inspiring many discussions, has been usually treated as incomparable with other cases. Even when UNHCR defines and provides statistics for the protracted refugee situations, Palestinian refugees who fall under the mandate of UNRWA are excluded from comparison. This explains why the problem of Palestinian refugees has not caused prioritisation of return earlier, not that we have nothing to learn from the case.

[12] "Return migration is sustainable for individuals if returnees' socio-economic status and fear of violence or persecution is no worse, relative to the population in the place of origin, one year after

rights which were "displaced" or lost with displacement of people, the creation of an environment which supports return through removal of obstacles to return, the imposition of sanctions upon those who actively impede return, or where necessary providing extra incentives for return. Although an attempt to prove that the non-existence of the politics of return equals deliberate prevention of return would be dubious, creation of obstacles for returnees conveys much clearer information with regard to desirable effect of return on citizenship regimes. Apparent discrimination sometimes no longer resides in the law, but it does not disappear from its implementation and everyday life. Therefore, politics of return is a concept which helps us discern both promotion and direct or indirect prevention of return. Different politics of return may serve different political purposes: restoration of normalcy, re-establishment of previously mixed communities, continuation of ethnic segregation, development, or mere rhetorical device for the legitimisation of new states which in fact may be effectively blocking significant return. Each of these political purposes pursued by different politics of return eventually affects the shape and scope of citizenship in different ways, approximating it to or departing from the key democratic value of equality.

There are three different politics of return that can be detected in the post-Yugoslav region and all of them are a direct or indirect result of conflict and post-conflict situations. These are: the politics of return of refugees and internally displaced persons in the aftermath of humanitarian emergencies, the politics of return of diaspora, especially highly qualified diaspora, i.e. scientific diaspora, and investment diaspora, and the politics of return of the abject class of migrants - rejected asylum seekers, irregular migrants, convicted criminals, i.e. the so-called *deportspora*.[13] These three politics of return elucidate how problematic the idea of returning "home" to "one's own country" may be, as homes and homelands can be "made, re-made, imagined, remembered or desired".[14] Different legal, functional and symbolic concepts of home are attached to different politics of return by different actors: returnees, countries of origin, and countries of destination. Moreover, different citizenship rights have been contingent on return for different categories of returnees. Before tackling each of these three kinds of politics of return in detail, I should explain my choice to use a type of upgraded structural (constellation) approach for explanation of these politics.

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their return." Richard Black et al., "Understanding voluntary return", *Home Office Online Reports*, Home Office, London, 2004, p. 38.

[13] Peter Nyers "Abject cosmopolitanism: the politics of protection in the anti-deportation movement" *Third World Quarterly*, 2003, Vol. 24, No. 6, p. 1070.

[14] Richard Black, "Conceptions of 'home' and the political geography of refugee repatriation: between assumption and contested reality in Bosnia-Herzegovina", *Applied Geography*, 2002, Vol. 22, No. 2, p. 126. See also Gearóid Ó Tuathail & Carl Dahlman, "Post-Domicide Bosnia and Herzegovina: Homes. Homelands and One Million Returns", *International Peacekeeping*, 2006, Vol. 13, pp. 242-260.

IV A citizenship constellations approach to politics of return

There are several explanations of return at hand. For instance, in both neo-classical economics and the new economics of labour migration return is the result of utility-maximising calculation and as such is a personal issue. Given the topic of this paper - how politics of return affect citizenship regimes – it is most suitable to rely on a structural approach which understands return as a social, institutional, and contextual issue, affected by factors in the place to which migrants are planning to return: political structure, economic structures, and normative values structuring social relations.[15] The structural approach needs to be ameliorated by the so-called citizenship constellations perspective since readiness and preparedness to return depends not only on factors in the country of potential return but also on factors and status and rights of returnees in countries of asylum/admission/residence.[16] According to Rainer Bauböck, citizenship constellations are "structures in which individuals are simultaneously linked to several such political entities, so that their legal rights and duties are determined not only by one political authority, but by several".[17] For the purposes of this paper, citizenship constellations should be understood in a more flexible manner, as refugees often have no recognised citizenship at all, whereas other types of returnees may have dual or multiple citizenship. The constellations approach compensates for the inadequacy of the standard structural approach which usually has not taken into account the transnational, back-and-forth movement of people. Although in principle I advocate for the transnational concept of return in which human mobility, open-endedness and transnational returnees' networks are integrated into the "durable" solutions for returnees and return is not understood exclusively as a final act of return to the country of origin, in this paper I wish to emphasise the political importance of a viable option of return home so that *home can be reconstructed*, not to postulate that everyone ought to return. Recent transnational turn in migration studies which heavily relies on critiques of return as the most desirable option may just as easily be compromised by allying itself with positions denying the sustainable right to return, justifying this denial with transnationalism, that is, circular migration, as the preferred option for migrants.

A compelling question is where and by whom are the rights granted, protected and exercised bearing in mind the displacement of sovereignty in general

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[15] Jean-Pierre Cassarino "Theorising Return Migration: the Conceptual Approach to Return Migrants Revisited, *IJMS: International Journal on Multicultural Societies,* 2004, Vol. 6 No. 2, pp. 253-279.

[16] Kibreab argues that when exile provides opportunities to refugees to enjoy citizenship or denizenship rights in the context of favourable structural factors and often superior to the rights they enjoyed before displacement and will likely enjoy upon return, refugees tend to choose not to return to their places of origin even when conditions that caused their displacement have been eliminated. Gaim Kibreab "Citizenship Rights and Repatriation of Refugees" *The International Migration Review*, 2003, Vol. 37. No. 1. pp. 24-73.

[17] Rainer Bauböck "Studying citizenship constellations" *Journal of ethnic and migration studies*, 2010, Vol. 36 No. 5, p. 848.

and recomposition of political communities in post-Yugoslav space followed by creation of weak states in particular. For instance, since large forcibly displaced populations present huge resource and capacity challenges, countries of origin may be reluctant to welcome returnees back because of the agenda of cementing ethnic cleansing as a result of war but also because reparations or compensations owed to refugees as measures of restorative justice are a financial burden which may be unaffordable to governments in place. Particular politics of return are thus often a result of negotiations among political actors within citizenship constellations - host states are also interested in reducing economic burdens that displaced populations put on their shoulders. If they are powerful enough, they will impose return from the "outside" by international actors such as the EU as an exclusive right conditioning it with state recognition, financial assistance, accession to international organisations, visa free regime etc.[18] The countries of origin then accept the return of refugees in exchange for external legitimacy more than for reasons of internal legitimacy. There often is a necessity of international involvement for return to succeed, with the downside being the dependency of respect for human rights of returnees on international monitoring, meaning the mechanisms for their promotion may easily collapse once there is no outside pressure.

Bauböck's concept of citizenship constellations is methodologically compatible with Francis Cheneval's philosophically justified proposal for the most optimal mitigation of the boundary problem: the creation of multiple *demoi* with legitimacy of any particular *demos* being "critically dependent on a relational setting of relatively open but independent *demoi*".[19] The criterion of openness helps to reduce the exclusion resulting from the boundary problem solutions in which some members accept each other but their decisions on membership violate principles of non-discrimination by excluding others. All returnees are affected by different citizenship regimes and it would be ideal that they are given proper choice to decide about where and how to continue their lives; after all *demoi* have allowed respect for rights legitimately attached to returnees' positions within citizenship constellations.[20]

Post-Yugoslav return politics can be charged with promoting some forms of citizenship inequality, preferring certain type of citizens over others, hence providing stronger incentives for return to those who are preferable (returnees of ethnic majority origin, co-ethnic investors and co-ethnic highly qualified individuals whose role is seen as strengthening the state and the nation), and impeding or effectively blocking return of those who are not desirable (minority returnees, readmitted

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[18] Mesić and Bagić argue that if imposed from the "outside" return will be recognized only as a formal right producing rejection rather than reconciliation. Milan Mesić and Dragan Bagić "Serb Returnees in Croatia – the Question of Return Sustainability", *International Migration,* 2010, Vol. 48 No. 2, p.138.

[19] Francis Cheneval "Constituting the Dêmoi Democratically", *NCCR Working Paper No. 50*, 2011, p.21. Available from: http://www.nccr-democracy.uzh.ch/publications/workingpaper/wp50

[20] For an example of a compelling defence of dual citizenship as instrumental to refugee integration see Viktor Koska, "Refugee integration and citizenship policies: the case study of Croatian Serbs in Vojvodina" presented at *18th Annual ASN World Convention*, Columbia University, New York, 2013.

persons). Likewise, inequality is reproduced not only with regard to possibility of return and the recognition of rights, but also once the return has taken place - returnees are often discriminated against on a number of grounds, being treated unequally in comparison to both preferable returnees of the same category and non-displaced citizens.

Overlapping and hierarchical citizenship constellations taken as units of analysis and offering different possibilities for access to status elucidate various inequalities among returnees - some of them may be deliberately unjust while others are unintended consequences of these complex and stratified relations which produce uneven citizenship. Bauböck differentiates between horizontally overlapping citizenship constellations formed by independent states with partially overlapping memberships and the so-called vertically nested citizenship constellations where members of several polities are nested within a larger encompassing polity.[21] It is clear that former Yugoslav citizenship corresponded to the vertical nested citizenship. As almost all returnees once lived in the same country having the same citizenship status and rights, there is a certain injustice in some of these rights only applying to refugees from one post-Yugoslav state and not another. The citizenship constellations perspective captures this problem far better than the monocular perspective of the citizenship regime of one particular new state. Although overlapping citizenship constellations replaced the nested citizenship constellation in the post-Yugoslav space, European states which have often been countries of destination need to be included into the constellation equation. These constellations are both horizontal and vertical - but not nested, or at least, not yet. I call them hierarchical citizenship constellations since European countries (usually the EU member states) have significant leverage over the development of citizenship regimes of post-Yugoslav states, some of which have joined the EU already (Slovenia and recently Croatia) while others strive toward becoming "nested" in it.

Citizenship has been one of the most positively evaluated concepts precisely because it is mostly about equal membership in a self-governing community. How are we to account for such an equal membership within not so self-governing citizenship constellations? Bauböck outlines two limitations: firstly, citizenship policies within constellations need to respond to moral claims of individuals but in such a way that they are mutually coordinated and without producing unjustifiable burdens for other countries; secondly, it is important to consider equality between individuals positioned differently within a constellation.[22] While in overall agreement with Bauböck, I offer a somewhat contextualised and expanded answer to the question of what kind of equality – equality among whom and equality of what? – I would look for within citizenship constellations. To respond equally to moral

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[21] Rainer Bauböck "Cold constellations and hot identities: Political theory questions about transnationalism and diaspora" in: Rainer Bauböck and Thomas Faist (eds.) *Diaspora and Transnationalism: Concepts, Theories and Methods,* Amsterdam University Press, 2010, p. 302.

[22] Bauböck, "Cold constellations and hot identities: Political theory questions about transnationalism and diaspora", 2010, p. 302.

claims of potential returnees, equal rights to return and equal restoration of rights needed for the sustainable return or free and informed choice on a durable solution other than return for people in equal or similar situations is critical.

If we compare the post-Yugoslav situation with the most extreme one, that of the Palestinian refugees, it will be clear that the right to return has not been officially denied. Many of the people in question have a legal right to citizenship of their country of origin. But the enjoyment of their citizenship rights is missing in such a way that it is more prudent not to return to a 'home' which is no longer welcoming. Effective hindrance of return is, especially by passage of time, effective elimination of physically not present legal subjects of a polity from its political body. To build upon another concept developed by Bauböck and associated with the constellations approach, namely that of stakeholder citizenship,[23] if citizenship should be accorded to those who have a stake in the future of the political community, a caveat is in order: particular politics of return may work to create a reality where many legal citizens no longer have a stake in a polity's future.

Having underlined both explanatory advantages and normative problems of the citizenship constellations approach, I would like to turn to application of this approach to three kinds of politics of return in post-Yugoslav space differentiated according to the types of migrants/returnees. Each of these politics is, for reasons of space, briefly sketched with emphasis on the most important problems that occurred in securing the right to return, return of rights, and creation of political environment conducive to return. The empirical material presented serves for examination of the extent of democratic reconstitution *via* return politics in the post-Yugoslav region.

V Politics of return of refugees and internally displaced persons (IDPs)

Ethnic cleansing was a major outcome of the wars in Yugoslavia, with internecine conflict being especially intense in Bosnia and Herzegovina, Croatia and Kosovo. In the aftermath of such conflicts which caused mass displacement, return was seen as a high post-war priority because of the plight of the displaced, the cost of influx of refugees on host communities, and in the attempt to bring back "normalcy". In one way or another all three conflicts were examples of domicide, "deliberate destruction of a home",[24] or "a war against homes on behalf of their idealized homelands"[25] where enormous number of homes were destroyed or severely damaged, minority houses being systematically burnt or occupied by the members of the majority ethnic

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[23] Stakeholder citizenship should account for citizens' permanent interest in membership and political participation, not just in particular decisions. Rainer Bauböck, *Stakeholder Citizenship: An Idea Whose Time has Come?* Washington, DC, Migration Policy Institute, 2008, p. 5.

[24] Douglas Porteous and Sandra E. Smith, *Domicide: The Global Destruction of Home*, McGill-Queen's Press, 2001, p. ix.

[25] Gearoid O. Tuathail and Carl Dahlman "Post-Domicide Bosnia and Herzegovina: Homes, Homelands and one million returns", *International Peacekeeping*, 2006, Vol. 13 Issue 2, p. 242.

group. Such a loss of home is the negation of life "in its social spatial context"[26] and while repossession of property is just one element of return politics, its importance as a pre-requisite to return and reintegration of the displaced is apparent. Nevertheless, as this section will try to show, return and property restitution was pursued by international actors as a depoliticised concept not followed by the political reconstitution of a new polity. Returnees struggled to restore their rights through citizenship and often failed to reclaim polity as theirs. In addition, as Jenne argued, in these three cases the principal barrier to minority return was the logic of ethnic spoils in which ethnic entrepreneurs of a group that gained control over a community's resources through war had strong incentives to deter displaced groups from returning and reclaiming rights. Through high or low intensity ethnic discrimination, the displaced were to be excluded from a share of the community resources.[27]

There are, of course, differences between these cases. Bosnia and Herzegovina is widely considered as the most successful story in the post-Yugoslav region when it comes to the actual return of refugees and displaced persons and the return of their property rights. The legal and institutional setting allowed for a more effective politics of return as all the key documents affirmed both the right to return and return of rights, most importantly the right to property restitution.[28] Annex 7 of the Dayton Peace Agreement explicitly guarantees:

> All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina. The Parties confirm that they will accept the return of such persons who have left their territory, including those who have been accorded temporary protection by third countries.[29]

Bosnia and Herzegovina also acknowledged the right to repossess apartments for which refugees or displaced persons had occupancy/tenancy rights (OTR).[30] The

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[26] Tuathail and Dahlman "Post-Domicide Bosnia and Herzegovina", p. 246.

[27] Erin K. Jenne "Barriers to Reintegration after Ethnic Civil Wars: Lessons from Minority Returns and Restitution in the Balkans", *Civil Wars*, 2010, Vol. 12, No. 4, pp. 372-373.

[28] Bosnia and Herzegovina has thus become an example of the emerging right to post-conflict property restitution, having in mind that it was only in 2005 that the UN Sub-Commission on the Promotion and Protection of Human Rights has adopted a document which directly linked the right to return with the right to property restitution. This is "Housing and Property Restitution for Refugees and Displaced Persons", a document nowadays widely referred to as the Pinheiro Principles (after their Brazilian author Sérgio Pinheiro, the U.N. Special Rapporteur on Housing and Property Restitution for Refugees and Internally Displaced Persons).

[29] The General Framework Agreement for Peace in Bosnia and Herzegovina, 1995, Article 1, Annex 7.

[30] In Socialist Federative Republic of Yugoslavia occupants of socially owned apartments had very strongly protected tenancy rights. These rights were based on personal financial contributions into a

return of property or recognition of OTR by allowing OTR holders to repossess their apartments has not necessarily translated into actual returns of all the affected people - estimations are that the measure of actual return stands at around 50%, while property was returned in 99% cases. All the same, the return of rights allowed refugees to exercise their agency in making the decision on their durable solution, that is, whether or not they want to return in a situation of meaningful choice.[31]

With regard to the creation of a more favourable environment for return, there were provisions that "employees of the State, Entity, Cantonal or municipal bodies, in charge of processing requests of refugees from BH and displaced persons, as regards the exercise of their rights, as well as other persons who prevent or delay the exercise of those rights without any justification, shall be held liable for such actions."[32] These provisions probably would have been only a dead letter if it were not for the plenipotentiary powers of the Office of High Representative and its Reconstruction and Return Task Force.[33] It has been argued that one of the most important factors for the success of return and restitution of property was the de-politicisation of restitution by accentuating the "rule of law" dimension of the restitution instead of the need for return of particular ethnic group.[34]

In addition to this, or perhaps precisely as a stimulation to these actions of the OHR, it should be noted that a couple of years after the ending of the war, western European states started pressuring some 700,000 Bosnian refugees to return to Bosnia and Herzegovina.[35] Although favourable for the return of refugees by way of

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common housing fund by those who were granted tenancy rights which included the right to live in their dwelling indefinitely and to transfer this right to direct family members. Council of Europe's **Resolution 1708 adopted on 28 January 2010** entitled "Solving property issues of refugees and internally displaced persons" invited CoE member states to recognise and protect occupancy and tenancy rights as the right to home in the sense of Article 8 of the European Convention on Human Rights and as possessions in the sense of Article 1 of Protocol No. 1 to that convention.

[31] There are some 10% of contested cases of socially owned apartments that are temporary used by municipalities. The Office of the High Representative requested a moratorium on selling of these apartments. Author's Interview with Representatives of Ministry for Human Rights and Refugees of Bosnia and Herzegovina, Sarajevo, 21 January 2013.

[32] Article 20 of the *Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina* [Bosnia and Herzegovina], 31 December 1999, available at: http://www.unhcr.org/refworld/docid/3ae6b5910.html [accessed 4 February 2013]

[33] The OHR's Reconstruction and Return Task Force was closed on the last day of 2003. As of 2004 institutions of Bosnia and Herzegovina took over responsibility for return process. Before that, the OHR removed many officials who obstructed return, including the Deputy Minister of the RS Ministry for Refugees and Displaced Persons. All the decisions on removals and suspensions are available at: http://www.ohr.int/decisions/removalssdec/archive.asp [accessed 20 March 2013].

[34] Charles B. Philipott "From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina" *International Journal of Refugee Law*, Vol. 18 No.1, 2006, pp. 30-80.

[35] Rhodri C. Williams "The Significance of Property Restitution to Sustainable Return in Bosnia and Herzegovina", *International Migration*, 2006, Vol. 44, No. 3, p. 44. See also Mikhael Barutcisku "The Reinforcement of Non-Admission Policies and the Subversion of UNHCR: Displacement and Internal

securing stronger incentives for the OHR to ensure the implementation of property laws, the effect of the operation of the citizenship constellations in this example cannot be understood without comprehension of the non-admission policies of countries of asylum. In the same vein, the international community and international donors were committed to supporting return to the exact places of origin so that the consequences of ethnic cleansing could be overturned. Nevertheless, many wanted to avoid minority return[36] and thus they changed the status of the refugees to that of internally displaced persons; more often than not they returned not to their place of origin, but to another municipality or entity where their ethnic community was in majority.

One example of the unequal position of displaced persons of the same category that could have been addressed properly by a joint regional solution, is the problem that emerged from the exchange of apartments. Namely, refugees from Bosnia and Herzegovina who fled to Croatia (mainly ethnic Croats) exchanged their apartments/houses with refugees from Croatia (mainly ethnic Serbs) who fled to Bosnia and Herzegovina. Bosnia and Herzegovina proclaimed these exchange contracts invalid resulting in the eviction of people from the housing units obtained through these exchanges. Croatia did not recognize foreign court rulings on the matter, so Bosnian refugees in Croatia remained in the houses/apartments obtained through exchange.[37] This ultimately means that Serb refugees from Croatia cannot claim back their property in Croatia and potentially return there, but that they also have no entitlement to use the apartments/houses obtained through exchange in Bosnia.

Croatian politics of return was far less affected by international actors and dominant citizenship regimes than was the case with Bosnian return politics. Return of rights in Croatia was much more conditional upon actual return instead of being an open option.[38] After Operation Storm more than 19,000 Serb houses were occupied by Croat refugees from Bosnia and Herzegovina and Croats displaced from elsewhere. In 1995 a law on temporary usage of abandoned property was promulgated. The Constitutional Court of Croatia annulled this law in 1999. Almost all of the properties have now been formally repossessed by their Serb owners, with the exception of 15 cases where temporary occupants demanded compensation for resources invested in the houses.

Assistance in Bosnia-Herzegovina (1992-94)", *International Journal of Refugee Law*, 1996, Vol. 8, No. 1/2, pp. 49-110.

[36] "Majority return" – the return of refugees and displaced to areas where people of the same ethnicity as returnees constituted the post-war majority, the politically dominant group, was largely not an issue. It was "minority return" that was of major concern for international actors.

[37] Some of these contracts have been considered valid in court but not all of them and some cases are still waiting for their resolution. The problems of people evicted from these housing units may perhaps be solved through the Regional Housing Program. Author's Interview with Representatives of Ministry for Human Rights and Refugees of Bosnia and Herzegovina, Sarajevo, 21 January 2013.

[38] For an advocacy of an open process to return see the study of Milan Mesić and Dragan Bagić, *Minority return to Croatia - study of an open process*, UNHCR Croatia, 2011.

While property return has been the most successful segment of Croatian return politics, the situation with OTR represents a paradigm of unequal treatment of refugees from ethnic minorities. After the break-up of Yugoslavia and the beginning of processes of privatisation, OTR were transformed into ownership rights in such a way that OTR holders could buy the apartments where they lived at favourable rates. This possibility lasted until 1996 when the concept of OTR was abolished, affecting some 30-40,000 families of Serbian ethnic origin who became refugees and were arbitrarily stripped of their rights on their apartments upon fleeing from Croatia.[39] Although presented as a solution for the former occupancy rights holders, the Housing Care Programme (HCP) has hardly been an adequate substitute. It remains silent about the discriminatory nature of OTR cancellations, thus confirming the position of the Croatian government that it has no legal obligation toward the former OTR holders, and it needlessly divides concerned refugees in two categories subjected to different conditions for acquiring housing rights. The HCP for the eligible OTR holders has first been envisioned only within the Area of Special State Concern - ASSC (which mostly corresponds to the territory of *Republika Srpska Krajina* during the war). However, the majority of OTR holders whose rights have been violated lived outside of the ASSC in urban centres under control of the Croatian authorities, who cancelled these rights through court procedures.[40] Due to the pressure of the international community, predominantly the EU, which made the opening of the EU-Croatia accession negotiations conditional upon finding a better solution to this problem, the HCP was also opened outside of the ASSC. Still, the application process for housing care outside ASSC - designed only for OTR holders who were refugees - has been closed rather quickly (and reopened only upon strong EU pressure) while the application process within the ASSC has remained open all the time, although it should be noted that not only refugees or former occupancy rights holders could have become beneficiaries of this programme, but also other vulnerable citizens. The HCP outside ASSC has been regulated by Government's Conclusion,[41] not by the law as with the HCP within the ASSC, clearly testifying how the former programme has been an ad hoc issue in comparison to the latter

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[39] European Council on Refugees and Exiles, *Serb Refugees: Forgotten by Croatia*, 2010. Failure of *Blečić v. Croatia* case to be decided upon its merit in ECHR has, among other things, been a significant attack on the OTR holders' chances to regain their rights. However, recent case in from of UN Human Rights Committee - *Vojnovic v. Croatia* - serves as legal evidence that OTR holders were indeed arbitrarily stripped of their rights only because of their Serb ethnicity.

[40] Over 20,000 tenancy rights were terminated in Zagreb, Split, Rijeka, Pula, and other large towns that are not located in the ASSC. It is hard to expect that the former OTR holders will return to rural areas of the ASSC instead of their former hometowns; they may not even qualify for housing care there at all. Human Rights Watch, *Broken Promises: Impediments to Refugee Return to Croatia*, 3 September 2003, D1506, available at: http://www.hrw.org/reports/2003/09/02/broken-promises [accessed 21 May 2013]

[41] The "Government Conclusion" is a bylaw of lesser legal strength in the hierarchy of legal acts than other acts adopted by the executive branch such as decrees or decisions.

programme. Finally, there is no disaggregated data available on the effect of both variants of the programme on the return of refugees.[42]

The legislation which established the ASSC had development of the war-torn area in mind, and had envisaged incentives such as more affordable buy-off conditions to attract people - not just refugees - to return, inhabit and stay in the ASSC, especially if they can contribute to the economic and social development of the areas of special state concern. Placing return of refugees within a development paradigm may be rather unsatisfactory when not coupled with attempts to right the wrongs done to the refugees. For instance, people can buy housing units under more favourable conditions but cannot sell them for ten years, thus being required to remain in rural areas where many of them face economic hardships. Those eligible to buy housing units outside of the ASSC (under far less favourable conditions in comparison to those within ASSC) can sell them immediately. The consequence of such a policy is that the return of Serbs to urban areas outside of the ASSC where the majority of the concerned OTR holders used to live has first been prevented by late opening of the HCP outside ASSC, but then a small portion of those who managed to use internationally induced HCP options for return outside the ASSC and bought apartments, are in no way incentivised to stay in the cities. There is no reasonable justification for this protracted differentiated treatment of different OTR holders as potential beneficiaries of the HCP.[43]

Bearing in mind the types of conditions for becoming a beneficiary of the programme, the measure behind it is not to restore justice and treat equal citizens equally (as other Croatian citizens could buy their socially owned apartments during privatisation and then sell them), but to address the humanitarian problem of one group of people so as to close the negotiations for the accession of Croatia to the EU on chapter 23 on judiciary and fundamental rights.

As for Kosovo, one of the arguments for NATO military intervention against the Federal Republic of Yugoslavia in 1999 was reaffirmation of the right to return. The same right has been repeated seven times in the UNSC Resolution 1244 where "the safe and unimpeded return of all refugees and displaced persons to their homes" is unquestionably understood as one of the reasons for the establishment of the international civilian mission in Kosovo after 1999. While the return of displaced Kosovo Albanians was an immense success, as less than two months after the end of the war the vast majority of Albanian refugees and displaced persons - more than

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[42] Author's Interview with Representative of Directorate for Housing Care and Statutory Rights **of the Ministry of Regional Development and EU Funds of Croatia**, Zagreb, 24 January 2013. The fact that data has not been disaggregated is an indication of the insignificant impact on return, otherwise it would have been in the interest of Croatia to emphasise the success of the program and its impact on return of Serbs. Moreover, this solution came too late for many of the refugees who have built their lives elsewhere and did not wish to return to Croatia with gloomy employment prospects.

[43] Human Rights Watch, *Broken Promises;* Grupa 484, *Izazovi prisilnih migracija u Srbiji: Položaj izbeglica, interno raseljenih lica, povratnika i tražilaca azila*, maj 2011, pp. 22-28.

one million - had returned to their pre-conflict homes,[44] the return of non-Albanians who had fled Kosovo *when* the international civilian mission was deployed has been a complete failure (less than 10% of return). UNMIK's lack of any attention to internally displaced persons' camps mostly sheltering Kosovo Serbs in the first couple of years of their mission certifies that international actors needed several years to notice that the oppressed minorities are now Serbs and Roma.[45]

The persecution of Serbs in post-war Kosovo was not only a means of revenge for previously suffered atrocities and the ethnic cleansing campaign by Serbian security forces, but the creation of a new reality where self-determination of Kosovo as an ethnically Albanian state would be hard to resist in the future.[46] A key component of ethnic cleansing campaigns is that of gaining territorial control of an ethnically cleansed region by the group that perpetrates the cleansing. Minority return and sustainability of minority communities should have been essential to the idea of Kosovo as a multicultural state which supporters of Kosovo's independence wanted to maintain. Yet, international civil and military missions (KFOR and UNMIK) did practically nothing to prevent this new ethnic cleansing and did not perceive the return of IDPs from Serbia to Kosovo as a priority.[47] The lack of proper response to the problem of ethnic purification of Kosovo is particularly puzzling when one is reminded that the UNMIK mandate has been, among other things, to establish "a secure environment in which refugees and displaced persons can return home in safety"[48] and, even more so, when one remembers that certain lessons, such as the importance of early return, have been learnt from the Bosnian experience of a semi-protectorate which was similar to that emerging in Kosovo.[49] As the majority of IDPs who never returned to Kosovo fled to the rather powerless FR of Yugoslavia, then held in low regard internationally (later the separate states of Serbia and Montenegro), which treated IDPs as citizens, there was no pressure from powerful

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[44] One of the reasons for this spectacular return rate is the fact that the conflict lasted for only 3 months and that most of the refugees were in neighbouring countries. I am grateful to Igor Štiks for raising this point. Some commentators also note a dramatic change in the political situation as a factor, but also a concern that others will occupy or loot the property that has pushed people to early return. This also coincided with the decline of services in the Macedonian refugee camps. Peter Marsden, "Myth and reality: the return of Kosovan Albanians", *Forced Migration Review*, August 1999, p. 27.

[45] Juan Pekmez, "The Intervention by the International Community and the Rehabilitation of Kosovo", Genève, *CASIN*, 2000.

[46] Fabrizio Hochschild "It is better to leave, we can't protect you", Flight in the first months of United Nations Transitional Administrations in Kosovo and East Timor, *Journal of Refugee Studies* 12(3) 2004, p. 290.

[47]"How is it possible for a 44,000-strong multinational force in one single area to both expunge the premeditated deportation of an entire people and to stand by, powerless, while another is deported?" Pekmez, p. 7.

[48] UN Security Council Resolution 1244, 1999.

[49] Explaining why she treats each of the three cases - Bosnia, Croatia and Kosovo - as *sui generis* interventions with regard to returns programmes, Erin Jenne evidences that many of her informants confirmed how little the three post-war administrations have learnt from past experiences of each other. Jenne, "Barriers to Reintegration", 2010, p. 380, note 4.

European states who wished to initiate and facilitate the IDPs' return.[50] Therefore, the attention paid to their right to return was different from the one paid to the return of Kosovo Albanians, but also to all other displaced persons from other post-Yugoslav regions.

UNMIK issued the Manual on Sustainable Return in 2003 and the Revised Manual on Sustainable Return in 2006. In the meantime, provisional institutions of self-government established a Ministry for Communities and Return. When Kosovo declared independence in 2008, it included in its Constitution (based on the internationally-sponsored Ahtissari Plan) a provision on the right to return. However, given how late all these policies were drafted and the complete implementation failure, the narrative on return to Kosovo amounts more to a window dressing by both Kosovo authorities and international actors than to an effective politics of return. There are many return projects by international organizations and now the Kosovo government, but it is only now, 13 years after the war, that there is any attempt to organise the first urban return project - return to Prizren. Since there have been numerous security incidents - looting, arson, even murdering of returnees, and consistent resistance by the receiving community to accepting returnees back home, especially in the so-called difficult return areas, the government even had to introduce a so-called "balancing component". To be exact, if within a project ten houses are to be built for ten displaced Serb families, then two will be built for socially vulnerable Albanian families.[51] Similarly, Kosovo Serb representatives from the north Kosovo insisted that any return of Kosovo Albanians to the north should be reciprocated by the return of Kosovo Serbs in south.[52] These are just some of the local examples of negotiation between the right to return and the power of established members to exclude.

VI Politics of return of diaspora

Putting aside the fact that diaspora[53] is not only a highly heterogeneous group but not really an entity at all, this section discusses the trend of all post-Yugoslav states to set up institutions dealing with diaspora matters, promoting, among other things, the idea of return. One of the instruments was the liberalisation of citizenship

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[50] FR Yugoslavia, and later on, Serbia, labelled its policies of assistance addressing vulnerable IDPs as "enhancement of IDPs livelihoods" rejecting pressures from international donors to call that "local integration", the second most favourable durable solution after return, arguing that if Serbia is to accept local integration policies, this would imply legitimating ethnic cleansing.

[51] Author's Interview with Mr. Radojica Tomić, Minister of Communities and Returns, Ministry of Communities and Returns of the Republic of Kosovo, Kosovo Polje, 29 January 2013.

[52] OSCE Mission in Kosovo, *Municipal responses to displacement and returns in Kosovo*, November 2010, p. 12, note 50.

[53] The term diaspora is used as all-encompassing term including those with foreign or dual citizenship of special ties to the country, and external citizens who are denizens of the foreign countries. It is also used for co-ethnics abroad regardless of citizenship and is frequently used for co-ethnics and citizens actually residing in neighbouring countries.

legislation[54] for co-ethnics opening doors for the unusual "returns" of the second or even third-generation children of first-generation immigrants to their parents' and grandparents' country of origin (reversal of the old migration for whatever reason). The proper diaspora return is in fact immigration of co-ethnics, but as King and Christou notice, "for the protagonists themselves, it is very much a real, ontological return to the land of their ancestors."[55] The political discourses on return of all post-Yugoslav states also prioritise the language of return to historical homeland - moral obligations toward co-ethnics, honouring their contributions in winning wars or remedying suffering that political exile for some diaspora members has caused in the previous period, but also for labour related factors - instead of immigration of foreign nationals who are returning to their parents' country of origin possibly having a "rejuvenating" effect on the aging population.

What initially started as hope that upon gaining independence or democratic changes a rich diaspora would return and invest at home, has soon transformed into the ill-conceived substitution of needs for highly skilled immigrants with the return of highly qualified diaspora (reversing the brain drain) which could be attracted by playing the ethnic and emotional card.[56] What is now emphasised in the discourse of return are policies targeting potential returnees on the grounds of their skills and resources. This is not unusual for emigration and developing countries: many of them have begun pursuing policies of engaging with their diasporas (their organisation, facilitation of investment, political participation and return) realising the potential diaspora offers for the development of home countries. Overall, engaging with diaspora by promoting their return is testing their commitment to maintenance and restoration of the homeland.

There is a somewhat paradoxical situation in that there are a myriad of documents and quite a lot of institutions in almost all post-Yugoslav states dealing with diaspora, but not, in fact, many substantive policies promoting return. Most of the concrete projects were realised by international governmental or non-governmental organizations (IOM, UNDP, WUS Austria, OSF). Each country has NGOs advocating for and launching brain gain campaigns about what is to be done to facilitate the return of those who have already returned spontaneously but also to

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[54] For liberalisation of citizenship in post-Yugoslav space see: Jelena Vasiljević, "Imagining and managing the nation: tracing citizenship policies in Serbia", Citizenship Studies, 2012, Vol.16, No.3-4, pp.328-329.; Viktor Koska "Framing the citizenship regime within the complex triadic nexuses: the case study of Croatia", Citizenship Studies, 2012, Vo.16, No. 3-4, pp. 402-404; Francesco Ragazzi and Kristina Balalovska "Diaspora Politics and Post-Territorial Citizenship in Croatia, Serbia and Macedonia", CITSEE Working Paper 2011/15. Edinburgh: School of Law, University of Edinburgh.

[55] Russell King and Anastasia Christou "Diaspora, migration and transnationalism: Insights from the study of second-generation 'returnees'", in Rainer Bauböck and Thomas Faist (eds.) Diaspora and Transnationalism: Concepts, Theories and Methods , Amsterdam University Press, 2010, p. 168.

[56] Kosovo Minister of Education, Science and Technology Hoxhaj stressed the importance of ensuring a positive return of some part of the diaspora. "We need qualified human resources and we must make our utmost efforts to provide effective conditions and encourage the return of our educated people to Kosovo", Balkan Insight "UN to Assist Kosovo "Brain Gain", 29 May 2008.

encourage the return of others. Given that these activities were of the project type and short-term, they can hardly be considered as sustainable. Perhaps the most advanced bottom-up initiative that resulted in promotion of scientific return is the Croatian Unity through Knowledge Fund which made cooperation between diaspora and home scientists in the area of science and technology and knowledge transfer, as well as return projects possible.[57] However, measures of return will now be cancelled because the cooperation projects turned out to be more prominent and effective and the overall conclusion that return is an outdated concept when it comes to the scientific diaspora.[58]

There are two objections regarding inequality that could be made here. One relates to the matter of prioritisation of one type of diaspora members or external citizens[59] (ethnic or skilful and rich) by openly inviting them and offering them better working conditions. The Croatian Ministry of Science had a measure of returning Croatian scholars from abroad to Croatian universities by way of funding their salaries. The narrative "we need you, please return" is countered by perceptions of the public that those who do return were actually not that good, otherwise they would not return.[60] This preference of a certain group is usually less of a problem than discrimination against a particular group whose return has been denied. The latter is prohibited. Another inequality argument concerns disadvantages of returnees once they have returned, such as problems with recognition of their international diplomas and the jobs spoil system (along the line of Jenne's ethnic spoil argument) that is, deterring external citizens and diaspora members from returning and competing for highly qualified jobs on the basis of clear criteria. One of the insurmountable hurdles for return to Serbia, for instance, has been overcome with passing the Amnesty Law, as many young and educated people left the country during and after the wars so to evade military recruitment - a criminal offense at the time.

Diaspora is a very political issue in Bosnia and Herzegovina as the concept of a Bosnian diaspora is somewhat contestable. It comes down to the question of who belongs to the Bosnian diaspora - are Bosnian diaspora members Bosniaks only, or all Bosnian citizens? The Department for Diaspora within the Ministry of Human Rights is the only institution (that is, a section within a particular institution) that sees

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[57] Return projects were short-term measures of returning diaspora scientists through "homeland visit" grant and "reintegration" grant.

[58] Author's Interview with Ms. Alessia Pozzi, Programme Manager, Unity through Knowledge Fund, Ministry of Science, Education and Sports, Zagreb, 25 January 2013.

[59] Rainer Bauböck, "The *rights and duties of external citizenship", Citizenship Studies, 2009 Vol.13, No.5, pp.* 475-499.

[60] *Return of Highly Qualified Migrants to the Western Balkans: Compendium of Policy Papers*, Group 484, 2011, available at:
http://www.grupa484.org.rs/sites/default/files/Return%20of%20Highly%20Qualified%20Migrants%20 to%20the%20Western%20Balkans,%202011.pdf [accessed 20 March 2013]

diaspora as a more inclusive group, acknowledging and embracing all Bosnians residing abroad as Diaspora who should be engaged and incentivised to return.[61]

If pressure coming from abroad more or less works when it comes to pushing the politics of return of refugees and rejectees, the lack of interest of EU states for prevention of brain drain and promotion of brain gain results in less support for such policies at a time when almost all that is done is done as an element of approximation of laws to the EU acquis. The diaspora offices/ministries of the countries of the post-Yugoslav states have acknowledged that some substantial improvement in policies toward diaspora, especially with regard to promotion of return of the highly qualified or prevention of brain drain has to come as the regional initiative which will result in demanding more prominence within EU policy toward potential candidate countries and candidate countries. The message was that only issues presented in EC Progress Reports as priorities tend to be taken seriously by governments and supported by EU delegation offices. One of the signs of such regional proactive approach can be found in the recent joint declaration agreed by the South East Europe ministers of science, technology and innovation who recognized that the South East Europe must speak with one voice on a European level on specific issues in order to push macro-regional agendas. One of the recommendations within this declaration was that SEE countries should "take advantage of existing EU Cohesion funds, national and regional IPA funds for research and innovation project and for research infrastructure funding and *measures that foresee the strategic inclusion of Diaspora scientists.*"[62]

VII Politics of return of the 'deportspora'

What has been discussed earlier is the voluntary return of refugees and diaspora members. The return of rejectees - rejected asylum seekers or irregular migrants - is forced return.[63] The majority of governments and international organizations prefer expressions such as induced voluntary return or assisted voluntary return in situations when rejectees are informed about their future removal from the host country, so they choose to return home by themselves and avoid deportation. Still, this is hardly a voluntary decision on the part of the returnees. For facilitation of this

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[61] Author's Interview with Ms. Aiša Telalović, a graduate of Staffordshire University, Sarajevo, 21 January 2013; Author's Interview with Programme Manager "Youth Employability and Retention Programme in BiH", MDG Achievement Fund, International Organization for Migration (IOM) BiH-Mission, Sarajevo, 22 January 2013.

[62] Joint Declaration of South East European Ministerial Round Table on Science and Technology & Innovation held on 23 November 2012 in Sarajevo, available at:
http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Venice/pdf/news/SEE_Ministerial_Round_Table_-_Joint_Declaration__23_Nov12_Sarajevo_.pdf [accessed 20 March 2013]

[63] For an argument that deportation is ignored among migration scholarship as a form of forced migration because it is considered as legitimate form of forced migration, although its legitimacy is often questionable see Matthew J. Gibney, "Is deportation a form of forced migration? ", *Refugee Survey Quarterly*, 2013, Vol. 32, No. 3, pp. 116–129.

type of return - where host countries use the right to return as the duty of the country of origin to accept the returnees - readmission agreements between countries of origin and countries of destination have been designed. Readmission agreements are, thus, not causes of forced return but instruments of such return. When the deporting country decides on removal or deportation it should take into consideration the human rights dimension. There are doubts, however, that in the case of Kosovo, readmission agreements actually facilitated human rights abuses since forced repatriation of Roma to Kosovo may be seen as breaching the principle of *non-refoulement*.[64]

The politics of return of rejectees is more of a result of the European countries' politics of return of those that they reject as immigrants than the result of the post-Yugoslav politics of return of their own emigrants. However, a constellation perspective allows us to analyse reintegration of readmitted returnees as a process for which two political entities are responsible, and the actions of one affects those of other. According to Walters, deportation is a "constitutive practice" of citizenship and "immanent to the modern regime of citizenship."[65] By exercising what seems to be essential for their citizenship regimes, European states (mostly the Schengen member states) produce new statuses and practices of citizenship in receiving states, which in these processes of return are states of origin. Politics of return cannot be separated from politics of integration of returnees. Each country is expected to accept its returning citizens as it is its obligation arising from the right to return although almost none has signed readmission agreements without negotiating something in return: visa liberalisation in the case of Serbia, Montenegro, Macedonia and Bosnia and Herzegovina, or state recognition in the case of Kosovo, which is the most controversial example of readmission agreements. Once Kosovo unilaterally declared independence, many states that recognised it immediately signed readmission agreements with Kosovo and offered no funding in return for reintegration of returnees. Kosovo was under political pressure to accept these agreements without having the budget or the capacity to receive the returnees in dignity and security.[66]

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[64] See Doc. 12168, Readmission agreements: a mechanism for returning irregular migrants, Report Committee on Migration, Refugees and Population, Rapporteur: Ms Tineke STRIK, Netherlands, Socialist Group, 17 March 2010. For UNHCR 2006 and 2009 recommendations not to deport Kosovo Roma and overall recommendation not to deport Kosovo Serbs to Kosovo, see UN High Commissioner for Refugees, *UNHCR's Position on the Continued International Protection Needs of Individuals From Kosovo*, June 2006, available at:
http://www.refworld.org/docid/449664ea2.html [accessed 19 May 2013] and UN High Commissioner for Refugees, *UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Individuals from Kosovo*, 9 November 2009, HCR/EG/09/01, available at:
http://www.refworld.org/docid/4af842462.html [accessed 19 May 2013].
[65] William Walters "Deportation, Expulsion and the International Police of Aliens", *Citizenship Studies*, 2002, Vol. 6 No. 3, p. 288.
[66] Report of the Council of Europe Commissioner for Human Rights' Special Mission to Kosovo, 23-27 March 2009, paragraph 156, available at: https://wcd.coe.int/ViewDoc.jsp?id=1466279 [accessed 10 July 2013].

From 1999 until 2008, when Kosovo was undisputedly under UN administration, UNMIK allowed only a certain number of returns to Kosovo.[67] The first country that signed an agreement with UNMIK on facilitation of deportation was Germany, a country that hosted an estimated 23,000 displaced people from Kosovo under the "toleration permit" system. The first Memorandum of Understanding between then-Special Representative UN Secretary-General (SRSG) was signed in November 1999, allowing readmission of a limited number of people with no international protection and who also did not belong to minorities. The second Memorandum of Understanding of a similar kind was signed in March 2003 and allowed the return of minorities such as Ashkali and Egyptians but did not allow deportations of Serbs and Roma. Kosovo Roma, perceived by Kosovo Albanians as pro-Serb community, have been a protected category since 1999 and were blocked from deportation by UNMIK until 2005, although the pressure from Western European governments was rather high. This did not follow for a limited number of Roma "males with a serious criminal record" who were allowed to be returned even prior to 2005.[68] As these countries still insisted on returning Roma, one of the ways of "circumventing restrictions on forced returns" was to return Serbian-speaking Roma to Serbia. [69] If a potential returnee was an Ashkali or an Egyptian, his or her return was dependent on individual screening. Deportations of Ashkali and Egyptians began as a consequence of "lack of progress with voluntary returns, and domestic political concerns about asylum and immigration."[70]

In all post-Yugoslav states affected by this type of return - mainly Serbia, Macedonia and Kosovo - the most complex question elucidating a problematic conceptualisation of home is the one dealing with deportation of children to their parents' countries of origin - their parents' former homes. For these children, Germany, Switzerland, Austria, Sweden or any other deporting state was the only home country they knew. Right from the outset of their return, these children are disadvantaged because of lack of elementary life conditions (their parents have sold everything they had before emigrating and left their countries of destination with nothing), lack of knowledge of language, and unfamiliarity with the culture and

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[67] UNMIK, Readmission Policy, Approved by SRSG on 28 November 2007.

[68] Human Rights Watch, *Rights Displaced*: *Forced Returns of Roma, Ashkali and Egyptians from Western Europe to Kosovo* 2010, p. 28, available at:
http://www.hrw.org/sites/default/files/reports/kosovo1010webwcover_1.pdf   [accessed 20 March 2013]

[69] HRW, *Rights Displaced,* p. 31. The head of the Belgrade Office of the Fund for Open Society treats this as misuse of rights of refugees and IDPs by returning them to Serbia instead of their country of origin, that is, Kosovo. Marija Ristic, "Western Europe Sends Kosovo Roma To Serbia", Balkan Insight, 20 July 2012. However, there is no uniform rule or practice of European countries - some states consult returnees about the place of return, while others return them to Kosovo.

[70] Although a precise number is not available, UNMIK estimates that a total of around 51,000 people were "readmitted" to Kosovo between 1999 and the end of 2007, and cites Germany, Switzerland and Sweden as the three countries returning the most people to Kosovo during that time. HRW, *Rights Displaced*, p. 31.

social norms of the local community. Children have often been sent to special schools because of insufficient quasi-native language skills. School entrance is sometimes conditional on acquiring documents of equivalence of previous "foreign" school certificates to the education certificates required for enrolment in "home" country schools, all of which poses a financial burden. There are no programmes for language training in their "foreign" language or promotion of active usage of languages they know for the purposes of improvement of their skills and future employability.[71]

Each country is monitored with regard to developing and implementing a mechanism of sustainable reintegration aiming to improve positions of returnees, but ultimately to prevent them from re-emigrating to deporting states. The Cairo Declaration from the 1994 Cairo Conference on Population and Development states: "Governments of countries of origin of undocumented migrants and persons whose asylum claims have been rejected have the responsibility to accept the return and reintegration of those persons, and should not penalize such persons on their return."[72]

However, recent threats by Schengen states that visa liberalisation will be lifted if the number of false asylum seekers or previously readmitted returnees who re-emigrated from states such as Serbia and Macedonia is not significantly reduced, end up adding to the problem they complain of – the penalisation of a certain category of people by restraining some of their citizenship rights, most notably, the right to leave one's country. The Macedonian government has introduced harsh measures to prevent abuse of the EU visa-free regime by confiscating passports from those it deems to have done so, and by threatening them with an exit ban (with ban on entrance). These policies of prevention of the abuse (protection of the visa free regime) are targeting Roma by profiling them on exit as potential false asylum seekers and scapegoating them in public discourse.

VIII Conclusion: return is political, and so is citizenship

The return of refugees and IDPs, and return to newly formed states especially, is inherently political. De-politicisation of return in Bosnia and Herzegovina through rooting the process more in the realisation of individual property rights and in the rule of law has won over approach of group return,[73] and it turned out to be successful at least in the medium term.[74] With strong international assistance to

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[71] Verena Knaus and Peter Widmann "Integration Subject to Conditions: A report on the situation of Kosovan Roma, Ashkali and Egyptian children in Germany and after their repatriation to Kosovo", UNICEF Kosovo and the German Committee for UNICEF, 2010.

[72] Programme of Action of the UN ICPD, available at:
http://www.unfpa.org/public/home/sitemap/icpd/International-Conference-on-Population-and-Development/ICPD-Programme#ch10c [accessed 20 March 2013]

[73] Williams "The Significance of Property Restitution to Sustainable Return in Bosnia and Herzegovina", p. 47.

[74] The rule of law approach was never complete as there was almost no room for the second legal remedy for violation of rights - compensation. The obligation for compensation when restitution was

minority return programmes, and ethnically segregating but return-wise more sustainable "return" of refugees and displaced persons not to places of their origin but to places within Bosnia and Herzegovina where their ethnic group is in majority, the Bosnian case combined de-politicisation and politicisation of return.

The avoidance of the political lurking behind this process, the political which demands comprehensive negotiations of membership and not only recognition of some civic rights, created a legitimacy gap in other cases. This de-politicisation is even more present in Croatian handling of OTR holders whose violation of rights, i.e. arbitrarily stripping of their tenancy rights due to their ethnicity and absence from Croatia, has been addressed on humanitarian grounds instead of on the ground of solidarity with fellow citizens who have been unfairly discriminated against. The message sent was that these people oblige Croatia because the EU requires Croatia to respect their human rights and because these people are vulnerable, but not because these people were equal to any other Croatian citizen whose rights should be respected.

Kosovo's politics of return of refugees and IDPs has been astonishingly politically asymmetrical and one-sided, and as such, highly unsuccessful in restoration of the pre-war communities. With low rates of return of the mainly old and rural population, return politics in Kosovo has never been significant enough to be politically important for all sides. As in all other cases where return involved reallocation of people from one post-Yugoslav country to another, minority returns to Kosovo were manipulated and politicised by both sides. Returnees have been perceived as Serbia's Trojan horse and the majority of municipal level authorities viewed displacement and return "as a political bargaining chip for independence – not as a humanitarian or human rights issue."[75] With lessons learnt from Bosnia and Herzegovina, and similar vast resources on the side of international actors in Kosovo, one must wonder how it is possible that the return of IDPs and their actual restoration of rights was such a failure.

The general conclusion is that, as refugees have been excluded from citizenry both physically and politically, the remedy of that exclusion should have been both physical and political inclusion, or at least to the extent refugees themselves wished to be included after they had such an option open.

While refugees more often than not needed to exercise their right to return in order to restore all other rights, and remained mainly politically foreign or unequal even with formal citizenship restored, new diaspora politics of almost all post-Yugoslav states did not condition diaspora members' and external citizens' citizenship status on their return. On the contrary, citizenship has become more available to external members if they wished so, and this was a first step towards the

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not possible was never really operationalised, in part because of the lack of international donor support, who thought of it as detrimental for politics of minority return.

[75] International Crisis Group (ICG), *Return to Uncertainty: Kosovo's Internally Displaced and the Return Process*, 13 December 2002, p. 18, available at:

http://www.unhcr.org/refworld/docid/3efde2694.html [accessed 20 March 2013]

creation of possibilities for their return. Current narratives prioritise the return of highly qualified external nationals or diaspora members, sending a message that these people are wanted primarily for economic but also for political development in terms of taking up the places of much needed experts in administrations to lead the process of EU accession. Little has been done actually to substantiate these goals.

Finally, various forced returnees are both living proof that citizenship functions to exclude those who do not belong and may not belong to the *demos* and paradoxical application of the right to return to one's own country. In this case citizenship is a tool of European *demoi* to exclude and remove from their territories those who have not citizenship or denizenship rights. Citizenship is, thus, externally exclusive but it is supposed to be internally inclusive,[76] meaning that countries where rejectees are returning should work on their reintegration into society and restoration of equal citizenship. The entire process is, however, difficult and involuntary. Given the time some of these rejected asylum seekers or irregular migrants have spent in the deporting states and social connections they have created with citizens of these states, their ties to a particular deporting country may be special enough to justify some potential future interpretations of their right to return to deporting country as their own country.[77] Since rejectees have a right to return to countries of their citizenship which they did not want to exercise, deporting states have basically enforced their right to deport in combination with other states' duty to accept returnees, imposing the obligation to return on rejectees. Receiving states do very little to actually include returnees – many of whom have suffered discrimination and deprivation which caused them to seek asylum or migrate irregularly elsewhere – and they often remain invisible and voiceless, somewhere in between their social membership in countries which deported them and legal membership in countries they left years ago and did not wish to return to. While voluntary return of refugees ideally restores their citizenship in a politically significant manner, and the return of members of diaspora is a consequence of their decision to return, made against the background of a bundle of options available to them in countries of origin and countries of immigration, the politics of return of rejectees usually involve no agency on the part of the citizens. There are only citizenship constellations within which usually asymmetrical political negotiations of states involved lead to an agreement to the terms of management of unwanted citizens.

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[76] Rogers Brubaker, *Citizenship and Nationhood in France and Germany*, Harvard University Press, 2002, p. 21.

[77] Joseph Carens defends something compatible with this view. He believes that time erodes the states right to deport and that people who were raised in a society became members of that society and that they should be treated as such. Joseph Carens, "A Case for Amnesty: Time erodes the states right to deport", *Boston Review*, May/June 2009. Available at: http://new.bostonreview.net/BR34.3/carens.php [accessed 20 July 2013] Also, the 2011 UNHRC decision in *Nystrom v. Australia* found that non-citizens in some cases may also have the right to enter their "own country".

This paper has tried to stress that the right to return is one of the essential principles for dealing with the boundary problem. Determination of the "who" of democracy in new or restored states ought not to be separate from determination of those who have special ties to a particular country and, ultimately, the right to return. That confirming or granting of formal citizenship is not enough can be seen, for instance, in the Croatian case where refugees never stopped being legal citizens of Croatian state, but they were physically forced to leave the country and through discriminatory practices were *de facto* excluded from enjoyment of their citizenship rights. Return is, therefore, political restoration of citizenship. Even though return of refugees and IDPs often takes place long after the initial determination of citizenry, it should not be considered as posterior inclusion but instead as restoration of membership that should have been confirmed and secured *ab initio*. When members of diaspora are without legal status of citizenship, their return is either a question of posterior inclusion into already bounded *demoi*, or fusion of the right to return with the ethnic criteria for determination of citizenry under the pretext of restoration of historical nation. As long as "who" within diaspora has the right to return is not ethnically but more inclusively defined - with the reference to special ties to a given country - the politics of return of diaspora can be tailored to uphold more democratic boundaries (e.g. the inclusive Bosnian diaspora). The same goes for the return of those members of diaspora who are already formal citizens but are physically and politically absent - their resuming of citizenship and preservation of the existing boundaries is justifiable when return of all of them is equally promoted. Return of deportspora is also a form of restoration of citizenship of those who for various reasons, from discrimination to economic hardship, informally tried to renounce their citizenship and become members of other polities. The legitimacy deficit lies in the fact that their return is not the return of those who want their citizenship restored - the boundaries are confirmed or redrawn as the effect of external *demoi* of deporting states that are confirming or redrawing their own boundaries.

The right to return that properly inspires politics of return which then serve as a democratic reconstitution moment for *demos* can legitimately be expressed through the autonomous political engagement of all returnees in a direct renegotiation of the content of citizenship with the state and its recognized citizens. Both return and citizenship so conceived should be at the same time objects and instruments of democratic transformation of new polities. Boundary redrawing that produced multiple *demoi* pertaining to accord to the democratic ideal ought to be accompanied with an understanding that mutual openness of *demoi*, freedom of movement of their citizens, denizens and returnees with special ties to one or more countries, and dual citizenship in specific cases, should be among the norms of democratic legitimacy.[78] This paper tried to defend the association of justifiable politics of return with the processes of both redefining peoplehood and advancement of democratic culture based on understanding that reconstruction of homes and homelands or building of

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[78] Cheneval, "Constituting the Dêmoi Democratically", p. 2.

new homes and new homelands requires returnees and citizens to be able to reclaim their polities, instead of remaining their outcasts. The unsuccessful political reconstitution *via* return politics in the post-Yugoslav space stands as a warning that the consequences of the actual return politics are not only changed demography and citizens' rights denied or exported as problems to other countries, but also slim chances for building the inter-ethnic trust and faith in equal opportunity for political influence and justice that democracy requires.

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