The right of return: A typology of claims

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Abstract

The right of return is a critical norm in the international human rights and refugee regimes, and the subject of intense political debate, particularly in the context of the beleaguered Middle East peace process. Although most scholarly and legal discussions of the right of return have focused on the complex case of the Palestinian refugees, the concept of the right of return has also figured centrally in many other displacement situations and repatriation processes, from Georgia and Burundi to Iraq and Bosnia. In recent years, a growing number of advocates have argued that properly interpreted, the right of return entails not only the right of the exiled to re-enter their countries of origin, but more specifically the right to return to and reoccupy their original homes and lands. However, an analysis of the diverse contexts in which the right of return has been evoked demonstrates a much broader range of possible interpretations of the meaning, underpinnings and implications of this claim. This paper presents a preliminary typology of interpretations of the right of return, drawing on examples from different repatriation processes. It argues that in light of the diverse interpretations of this concept advanced by refugee communities, as well as by states and international organizations, the right of return should not be reduced to a claim to regain particular pieces of land, but should be understood more broadly, including as a claim for political membership.

> *...the homeland has a great significance for us. It means belonging, self-esteem and history for the generations who live in that part of the earth...I would like to remind you that the right of return is an essential human value and not only a Palestinian political issue. It is also the issue of belonging.* (Palestinian refugee Adnan Shahada, quoted in Nabulsi 2003: 493)

In political debate and academic discussion, the right of return often seems inseparable from the Israeli-Palestinian conflict. In this highly fraught case, the right of return is typically understood as the claimed right of those refugees who were uprooted in 1948 and their descendants to repossess and resume living on their lost lands. Although this case has received the lion's share of attention in discussions of the right of return, the notion of the right of return has also figured centrally in many other refugee situations and repatriation processes, from Georgia and Burundi to Iraq and Bosnia. Indeed, the right of return is a fundamental principle of international law. The Universal Declaration of Human Rights, for example, states that 'Everyone has the right to leave any country, including his own, and to return to his country' (Article 13.2). While the Universal Declaration of Human Rights and related instruments such as the International Covenant on Civil and Political Rights frame the right of return in broad terms, in recent years a growing number of advocates have argued that properly interpreted, the right of

return entails not only the right of the exiled to re-enter their countries of origin, but more specifically the right to return to and reoccupy their original homes and lands, a reading of the right that meshes closely with its typical interpretation in the Palestinian case.

However, as the reflections of Palestinian refugee Adnan Shahada underline, even in the Palestinian case the right of return is not simply about property claims or refugees' geographic location. The right of return is also, amongst other things, a membership claim and a question of belonging. An analysis of the diverse contexts in which the right of return has been evoked demonstrates a broad range of possible interpretations of the meaning, underpinnings and implications of this claim. The goal of this paper is to set out a preliminary typology of interpretations of the right of return, drawing on examples from different refugee situations. I suggest that the right of return may be understood variously as a claim to re-enter a state; repossess lost property; be recognized as a legitimate member of the political community of the state; and enjoy freedom of movement. It may also be understood as a claim for the redress of historical injustice, or as a religious calling or prerogative. These categories are not mutually exclusive. When refugees demand or act on their right of return, they may in fact be advancing complex claims for a variety of different political, socio-economic and remedial rights. In light of the diverse interpretations of this concept advanced by refugee communities as well as by states and international organizations, this paper argues that the right of return should not be reduced to a narrow claim to regain particular pieces of land, no matter how well founded these claims may be. Rather, the right of return should be understood more broadly, including as a claim for political membership. In support of this view, I will first briefly contextualize the right of return in international law. After setting out the central categories of my typology, I will then briefly discuss some important variations and strategies affecting the way in which actors frame the right of return.

Although this typology focuses on the right of return as a critical norm related to the resolution of refugee situations through the 'durable solution' of voluntary repatriation, it is important to recognize that the right of return is also a critical right for non-refugees who may leave their states of origin for a variety of reasons, such as work, studies or tourism.[1] Internally displaced persons (IDPs) may also demand the right to return to their homes and communities, although they have not crossed an international border.[2] Interpretations of the right of return that do not relate to refugees are however outside the scope of this paper. My focus is also limited to claims for the right of return mounted after World War II. At the outset, it is important to stress that my intent is to not weigh in on the merits of any particular case in which the right of return is being claimed. Rather, my goal is to help move discussion of the right of return beyond an

[1] In the context of the international refugee regime, displacement is typically resolved through the application of one of three 'durable solutions' to displacement: local integration in the country of asylum; resettlement in a third country such as Canada or Australia; or voluntary repatriation to the refugee's country of origin. Since the mid-1980s, voluntary repatriation has emerged as the predominant solution to displacement, with more than 24.7 million refugees returning to their countries of origin over the past twenty years. Return rates have been declining since 2004; however, return remains the predominant solution to displacement: for every refugee resettled since 1998, fourteen have repatriated. Voluntary repatriation is the only durable solution that is recognised as a right under international law. See UNHCR 2008: 10.

[2] Internally displaced persons' right of return is recognized in the Guiding Principles on Internal Displacement, which state that 'Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons' (Principle 28.1).

idiosyncratic focus on the Palestinian refugee situation by distinguishing what is being claimed when the right of return is invoked in different cases.

The right of return in international laws, treaties and documents

In some cases, displaced populations may 'return' to a particular state without this movement being a question of rights. For example, after the 2010 earthquake in Haiti, Senegalese President Abdoulaya Wade offered land and citizenship rights to any Haitians who wished to voluntarily 'repatriate' to Senegal. Since Haiti was originally populated by slaves from West Africa, this offer of resettlement was framed as a question of return, but not as a right (BBC 2010). However, the return of refugees to their country of origin is typically recognized as a human rights issue, in large part because the right of return is intimately connected to a widely accepted rationale for states' exercise of sovereign power: if the state's power is legitimate, it is because the state upholds its citizens' basic rights, and protects their wellbeing (Deng 1995, ICISS 2001). For this logic to hold, citizens who find themselves outside their country of origin must have the right to return to and avail themselves of the protection of their state. In cases where the state has forced some of its citizens into exile, this implies that if the state is to maintain or regain its legitimacy, it must establish conditions amendable to the safe and dignified return of its expelled citizens. Given the pivotal role of the right of return in underpinning the logic of the state system, it is not surprising that provisions on the right of return appear in many different branches of international law, including treaties on human rights and refugee issues.[3]

These provisions reflect a wide range of perspectives on the nature of the right of return, which will be examined in more detail in the following typology. In general, those provisions found in international human rights treaties tend to frame the right of return broadly in terms of the right to re-enter one's country of origin, and often directly link the right of return with the right to leave any country. Indeed, many human rights advocates have focused moreso on the right to leave than on the right to return, given the widespread restrictions placed on departures from Communist countries during the Cold War. In contrast, recent peace treaties, United Nations Security Council and General Assembly resolutions tend to conceptualize the right of return more precisely, as the right not only to enter one's country of origin, but to return to and reclaim original home or lands.

The Magna Carta of 1215 was perhaps the first treaty to recognize individuals' freedom 'to go out of our Kingdom, and to return safely and securely, by land or by water' (Hannum 1987: 3). In the more modern context, the Universal Declaration of Human Rights (UDHR) states that 'No one shall be subjected to arbitrary exile' (Article 9), and stipulates that 'Everyone has the right to leave any country, including his own, and to return to his country' (Article 13.2). Similarly, the International Convention on Civil and Political Rights (ICCPR) provides in Article 12.4 that 'No one shall be arbitrarily deprived of the right to enter his own country'. The ICCPR drafters used the language 'enter his own country' rather than 'return to his country' (as provided in the UDHR) in order to protect the rights of people such as refugee children who may have a right to enter a particular country (such as their parents' state of origin) although they have never been there and so cannot technically 'return'.[4]

Several regional human rights instruments also include important provisions on the right of return. For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol 4) indicates that 'No one shall be deprived of the right to enter

[3] For general discussions of the right to leave and return in international law, see for example Hannum (1987) and Vasak and Liskofsky (1976).
[4] On this point see Hannum (1987: 56).

the territory of the State of which he is a national' (Article 3.2), while the African Charter on Human and Peoples' Rights states that 'Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions provided for by law for the protection of national security, law and order, public health or morality' (Article 12.2). The derogations allowed on the right of return in the African Charter are comparatively anachronistic; in contrast to the African Charter, 'Both the European Convention on Human Rights and the American Convention on Human Rights assert the right to return to the country of which one is a national in absolute terms; the possibility of a non-arbitrary denial of entry is excluded' (Hannum 1987: 45). Hannum (1987: 20) argues that 'Given the absolute statement of the right' in the ICCPR, which has broader geographic scope than the regional conventions, 'the point of departure [for determining the legal content of the right of return] must be the widest possible scope of free movement into one's own country and out of any country, including one's own'.

Beyond contention over the extent to which legal provisions on the right of return are subject to derogation, legal debate on the right of return has focused on whether this right applies only to a state's citizens, or also to permanent residents. The delegates to the Uppsala Colloquium on the Right to Leave and the Right to Return suggested that 'one's country' should be understood broadly, arguing that 'A person's "country" is that to which he is connected by a reasonable combination of such relevant criteria as race, religion, language, ancestry, birth and prolonged domicile. Governments come and go, and their political fluctuations and vagaries should not affect the fundamental right of human beings, such as the right to return to one's own country and to have a homeland' (quoted in Hannum 1987: 58).

Hundreds of the United Nations resolutions and peace agreements pertaining to particular conflicts and displacement situations negotiated since the end of World War II specifically address the right of return, but in contrast to the articles on the right of return contained in international human rights treaties, these provisions typically focus on the right of refugees to return to their places of origin. Amongst the most influential General Assembly resolutions addressing the right of return is General Assembly Resolution 194(III) of 1948, which pertains to the displacement of Palestinians from their homes in the course of the Arab-Israeli war. This resolution famously states that:

> ...refugees wishing to return to their homelands and live at peace with their neighbours 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 the 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.

Although never implemented, these provisions have been reaffirmed yearly in General Assembly resolutions, and are oft-cited pieces of political rhetoric that have helped to consolidate the connection between refugees' right to return and their claims for compensation and, in particular, the restitution of their lost lands. Indeed, some scholars and advocates have argued that because Resolution 194(III) has been so regularly reaffirmed by the General Assembly, it now has the status of international law (Boling 2001). Unsurprisingly, Israel rejects this view, and underscores that Resolution 194(III) does not in fact establish a *right* of return, as it merely resolves that refugees '*should* be permitted' to return (Israel Ministry of Foreign Affairs 2007, italics added).

In addition to United Nations resolutions articulating a right of return for refugees in different situations, a wide range of peace agreements have also tackled this issue.[5] The 1992 General Peace Agreement for Mozambique appears to be the first major post-World War II peace treaty to recognize this right, stating that '...returnees shall have the right of return to their former places of residence or to any other places of their choice within Mozambique...The Mozambican Government shall ensure that returnees have access to land for settlement and use, in accordance with Mozambique laws...[and] shall, in accordance with the relevant provisions of Protocol III of the General Peace Accord, assist returnees who attempt to recover their lost property.' However, the 1995 General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement) represented a true watershed in efforts to establish and popularize a strong and explicit right for refugees to return to and reclaim their properties. The Dayton Agreement was the first peace treaty to explicitly recognise refugees' right to return to their pre-war homes, and far surpassed previous agreements in terms of its specificity, and the determination of the international community to ensure that the rights to return and restitution were realised. Annex 7 of the Dayton Agreement is devoted to refugees and displaced persons, and famously states:

> All refugees and displaced persons have the right freely to return to their homes of origin. They shall have the right to have restored to them property of which they were deprived… and to be compensated for any property that cannot be restored to them. The early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina.

Through this ambitious provision, the right of return and property restitution were made central to efforts to build peace in Bosnia. The Dayton Agreement's provisions on restitution and return have been echoed in several subsequent agreements, with virtually every peace treaty signed since 1995 recognising refugees' right to return and redress in some manner (Phuong 2005: 12). The *Peace Agreement Drafters' Handbook* prepared by the Public International Law and Policy Group (2005) includes model articles on the right of return and property restitution for refugees, implying that such provisions are now accepted as staples in any agreement that aspires to end a conflict involving extensive displacement. However, as the following typology demonstrates, the relatively terse and tidy provisions on the right of return that are set out in international conventions, United Nations resolutions and peace treaties may belie the complex range of claims at stake when refugees demand or exercise their right of return.

A typology of claims

This preliminary typology is in part a response to scholars such as Elazar Barkan (2005: 86) who suggest that 'The demand for a right of return is relatively uncommon in international relations and is hardly ever implemented. Most frequently, it appears in the Israeli-Palestinian context, but rarely if ever in any of the other numerous cases involving tens of millions of refugees worldwide.' To be sure, the Palestinian-Israeli case stands out for the vociferous nature of debate on the existence and content of the right of return. However, demands for the right of return—whether voiced by host states, international agencies, advocates or refugees themselves—have also played an important role in conflicts in countries including Bosnia,

[5] See Leckie (2007) for a compendium of these resolutions.

Rwanda, Georgia, Tajikistan, Iraq, Cambodia, Bhutan, Guatemala, El Salvador, Chile and Burundi. In some cases, states have refused to acquiesce to the demands made by refugees and other actors to recognize displaced persons' right of return. But in perhaps the majority of recent cases, states of origin have recognized and participated, whether voluntarily or under pressure, in efforts to realize this right. As noted above, provisions on the right of return are now included in virtually every peace agreement drafted in response to conflicts involving large-scale displacement (Phuong 2005). Under the auspices of such agreements, more than 24.7 million refugees have returned to their countries of origin over the past twenty years (UNHCR 2008: 10). The absence of heated debate over the exercise of the right of return in some of these cases does not mean that the right of return was not relevant in these instances. Rather, it suggests the considerable traction certain interpretations of the right of return has acquired amongst many of the actors involved in the refugee regime, and in peacebuilding efforts.

The following typology lays out in six broad categories some of the different but interconnected ways in which the right of return has been interpreted in key cases, resolved and unresolved. My focus in this typology is on the different types of claims that are being advanced through calls for the right of return, including claims for entrance, land, membership and free movement. Many of these interpretations of the right of return may be at play within a single case, particularly as conceptualizations of the right of return vary between institutional actors and amongst individuals.

Before discussing this typology, it is important to distinguish between claims for the right *of* return, and the right *to* return. I understand the latter to be the claimed right of states to deport non-citizens who are deemed not to have legal grounds to remain within the borders of the state. In some instances, claims for the right *of* return and the right *to* return may be closely intertwined. For example, Germany agreed to temporarily host refugees from the Bosnian civil war, but was highly vocal in its support for the right of these refugees to return to Bosnia. Germany explained its support for the right of return largely in terms of 'turning back the tide' of ethnic cleansing and supporting the reconstruction of a multi-ethnic Bosnia (Phuong 2000a, 2000b). However, given the German public's unwillingness to provide a permanent home to hundreds of thousands of Bosnian refugees, Germany's strategic support for the right of return was calibrated so that the refugees would leave Germany without state agents having to physically intervene in too many instances to implement the state's right *to* return (i.e. deport) non-citizens (Holbrooke 1999: 275).[6] This typology focuses on claims for refugees' right of return, rather than on claims that host states may have a right to return or otherwise deport them.

ROR as a claim to re-enter a state

In the early decades of the modern refugee regime, international actors, particularly the Office of the United Nations High Commissioner for Refugees (UNHCR) interpreted the right of return minimally, as the right of a refugee to return to his or her state of origin. The limited attention paid to conceptualizing what the right of return might entail beyond re-crossing an international border is perhaps unsurprising, as the regime was focused on upholding the cardinal rule of non-refoulement, that is, protecting refugees from involuntary return to harm. The return

[6] A relatively low number of refugees were forcibly apprehended and returned from Germany, but many were exposed to serious pressure to return, including the threat of deportation. Many advocates concerned with this case suggested that the pressure placed on Bosnian refugees in Germany to exercise their right of return before conditions in Bosnia were secure represented a form of refoulement. See Bagshaw (1997).

of refugees, particularly those fleeing Communist struggles, was unthinkable from the perspective of the western countries that played leading roles in shaping the regime. Accordingly, in his 1954 Nobel Peace Prize lecture, the first UN High Commissioner for Refugees, G.J. van Heuven Goedhart, opined that 'voluntary repatriation is no longer of great importance', and it was not until 1980 that the UNHCR Executive Committee passed its first Conclusion on voluntary repatriation. The first general Executive Committee Conclusion to specifically recognize the right of return was adopted in 1985. This conclusion states that 'the basic rights of persons to return voluntarily to the country of origin is reaffirmed and it is urged that international co-operation be aimed at achieving this solution and should be further developed' (UNHCR Executive Committee 1985, Conclusion 40, *sic*). This is however the only reference to the idea of rights in the entire conclusion. The 1980s witnessed the development of more specific international norms indicating that the right of return must not only be exercised voluntarily, but it must also be exercised in conditions of safety and dignity (Bradley 2008, 2009). However, as Barnett and Finnemore (2004: 101) point out, developing these norms on safety and dignity was not so much an attempt to give meaningful content to the notion of the right of return as it was an attempt to 'avoid offending sovereignty-sensitive governments' by explicitly asking for concrete improvements in human rights.

This conceptualization of the right of return as simply the right of a refugee to re-enter his or her state of origin was evident in the UNHCR's involvement in efforts to facilitate the return from India of some ten million persons uprooted in the war between East and West Pakistan to the newly independent state of Bangladesh between 1971 and 1972 (UNCHR 2001: 59-60). From the outset, India was insistent that it would not accept the long-term presence of the Bangladeshi refugees, and no other states were willing to extend resettlement opportunities to the displaced. This left return as the only viable option for the resolution of the refugees' displacement. In the absence of a well-developed set of normative commitments to guide UNHCR's policymaking and practice in repatriation operations, and without a clearly articulated set of demands from the refugees themselves regarding the exercise of their right of return, the principal aim of the operation was to ensure that the refugees were safely transported across the border. Although efforts were made to help re-establish the refugees in their areas of origin, in this operation and others of its time, there was no sense on the part of UNHCR that this was, beyond the initial border crossing, an issue of human rights. This operation was informed by humanitarian principles of equitable and efficient delivery of assistance, rather than the conviction that as citizens returning from exile, refugees may be able to lay claim to more specific rights than simply being re-admitted into the territory of their state of origin.[7]

ROR as a claim for freedom of movement/opposition to forced displacement

Rather than understanding the right of return as a specific claim to re-enter one's country of origin, the right of return may be understood more broadly as a question of free movement, or opposition to arbitrary or forced displacement. Some limitations on free movement and the exercise of the right of return are widely accepted, for example in the case of land appropriations and the displacement of communities to make way for development projects deemed to be in the broad public interest. Although it is typically impossible for those who are ousted to make way for mega-projects such as dams and highways to return to their lands, these projects are often

[7] This analysis is informed by archival research on the Bangladesh repatriation operation conducted by the author at the UNHCR archives in Geneva in December 2010.

seen as justifiable. However, as discussed above, international law on the right of return generally prohibits arbitrary deprivation of the right of exiled citizens to return to their countries of origin, and even within a state's borders, arbitrary displacement and prohibitions on return are typically seen as an unacceptable infringement on the right to free movement.

The notion that refugees subjected to secondary displacement while in exile may have a right to return to their homes within the host state was demonstrated in Lebanon in 2007, when scores of Palestinian refugees were displaced from Nahr El-Bared camp after the Lebanese government's 105-day siege on Fatah El Islam militants who were holed up in the camp. After the siege ended, the government of Lebanon publicly recognized that the refugees had a right to return to the reconstructed camp. Through posters identifying the Republic of Lebanon, the Presidency of the Council of Ministers and the Lebanese-Palestinian Dialogue Committee as 'partners in responsibility', the government publicised the following commitment (superimposed over an image of intertwined Lebanese and Palestinian flags):

> Our Palestinian brothers and sisters. Your departure from Nahr El Bared is a safety precaution… The Lebanese Government is adamant on the return of all those who were forced to flee the fighting and will strive to ensure their homecoming as soon as the current conflict comes to an end. The Government is also determined and committed to assist in redressing all the damage suffered by Palestinian civilians and their possessions.

Although progress in implementing these commitments has been decidedly lacklustre, Lebanon's rhetoric demonstrates the credibility adherence to norms on the right of return and respect for freedom of movement can lend a government in the eyes of the international community. The Lebanese government's commitment affirms its intention to continue reforming its longstanding policies of crippling discrimination against the Palestinian refugees it hosts. From the perspective of the international community, the stance signals that the beleaguered Lebanese government remained a legitimate authority that could be trusted to play its part in the reconstruction of the camp. Interestingly, in this case the conceptualization of the right of return as a claim for freedom of movement is also intertwined with other interpretations of the right of return as a claim to repossess lost lands. Amongst the leaders of those displaced from Nahr El-Bared, there was a strong conviction that insisting on the right of return to the camp was essential to upholding claims for the right of return to lands that became part of Israel in 1948. For example, camp resident Abdel Hakim Sheref observed, 'People only want to return to Nahr Al-Bared. It is a step on our way to Palestine' (Groult 2007).

ROR as a property claim

The notion that the ideal solution to displacement is for refugees to return to their home countries and more specifically to their original places of residence has deep roots that considerably predate the establishment of the modern international refugee regime. As I discuss below, this idealization of the return of refugees to their original places of residence is partially attributable to the recognition that the voluntary repatriation of refugees may function as a form of redress or a rectification of past injustice; the restoration of refugees' original properties seems to be a fitting and intuitively compelling approach to making good on the rights of return and redress. The assumption that refugees should return to their original places of residence also reflects a sedentarist bias in which individuals are seen as belonging not only in a particular

country, but on a certain piece of land. In this worldview, migration itself is inherently problematic, as people on the move are 'out of place' in the world.

In recent years, however, a growing number of advocates have argued that the return of refugees to their original lands is not only the ideal solution to displacement but is in fact required for the right of return to have been properly upheld. This interpretation of the right of return is closely associated with particular displaced groups, such as the Palestinian refugees, and is also closely tied to the push to articulate and entrench stronger restitution rights for refugees. The view that property restitution and the right of return are two sides of the same coin is reflected in the statement by former UN Special Rapporteur on the Right to Restitution and Compensation for Refugees and Displaced Persons, Sergio Pinheiro, that

> The best solution to the plight of millions of refugees and displaced persons around the world is to ensure that they attain the right to return freely to their countries and to have restored to them housing and property of which they were deprived during the course of their displacement, or to be compensated for any property that cannot be restored to them. It is the most desired, sustainable and dignified solution to displacement (Centre on Housing Rights and Evictions 2005).

In conjunction with leading restitution advocates, the Special Rapporteur developed the 2005 UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles), which strongly reflect this interpretation of the right of return as a claim to regain lost property. The introduction to the Principles suggests that 'For virtually all of the world's displaced, their main wish is to return to their original homes in safety and dignity,' and contends that the 'right to voluntary, safe and dignified return is now understood to encompass not merely returning to one's country of origin, but to one's original home as well' (Leckie 2005: 3). The preamble to the Pinheiro Principles and Principle 10 reiterate this interpretation of the right of return. Principle 10 states that 'All refugees and displaced persons have a right to return voluntary to their former homes, lands or places of habitual residence, in safety and dignity', although Principle 2.2 recognizes that 'The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.'

The development of the Pinheiro Principles and the strong articulation of this interpretation of the right of return as the reclamation of lost lands was informed by influential documents such as UN General Assembly Resolution 194(III), and in particular by experiences promoting return and property restitution under the Dayton peace agreement. The Dayton agreement was not the first time Bosnians had been displaced *en masse* and called to return to their original homes. Following World War II, Tito ordered an 'eight offensive' (*osma ofensiva*), under which 'Everyone was to go home. Everyone was to face his or her neighbours...Anyone who dared to utter an unkind world to someone of another nationality would sit for ten days in jail; if the unkind word was about someone's mother, the sentence would be three months' (Sudetic 1998: 36). Similarly, the provisions in Annex 7 of the Dayton Agreement aimed to enable the 2.2 million Bosnians who were displaced in the context of the country's 'ethnic cleansing' to return to their homes, thus recreating Bosnia's multi-ethnic mosaic. From the perspective of the international actors involved in the repatriation process, the right of return was only understood to have been upheld if refugees resumed living in their original places of residence. In particular, international authorities were interested in supporting 'minority returns',

the return of displaced persons to areas that, under the terms of the Dayton agreement, were to be governed by members of an opposing ethnic group. 70 percent of Bosnian refugees in Europe were from ethnically cleansed areas that were to be governed largely by members of an 'opposing' ethnic group, and where they would find themselves in the minority upon return (Van Metre and Akan 1997: 2).

At the outset, property restitution was seen as instrumental to enabling this form of return, and over the course of the often beleaguered restitution process, more than 215,000 property claims were filed, 92 percent of which were decided and enforced in favour of the displaced claimants by December 2003 (Williams 2006: 443, Prettitore 2006: 190). However, regaining possession of their original homes or lands did not mean that displaced persons were necessarily willing or able to return to them, due to persistent insecurity, impoverishment and discrimination. Eventually, the international actors responsible for the restitution process reframed it as first and foremost a contribution to re-establishing law and order in Bosnia and Herzegovina, and only secondarily as a contribution to resolving displacement by enabling the right of return.

In September 2004, UNHCR announced that over one million refugees and IDPs, or almost fifty percent of all those displaced, had returned to their pre-war homes; just under half of this number were minority returns (Heimerl 2005: 383-384). Heimerl (2005: 384) calls this a 'relatively high proportion', while Williams (2006a: 456) says these rates 'exceeded all early expectations'. However, minority return rates plummeted after 2003, and no reliable data are available on how many minority returnees actually stayed. Anecdotal evidence suggests that many returnees sold up and moved on after reclaiming their original homes. In short, relatively few refugees were interested in or able to embrace the conception of the right of return imposed upon them by the international powers that steered the Dayton negotiations. The Bosnian experience therefore demonstrates that even if the right of return is defined as refugees resuming residency in their original communities, restoring refugees' property to them is not sufficient to enable this claim to be exercised. Despite the shortcomings of this process, the Bosnian experience serves as an example and inspiration to other groups, such as the Palestinian refugees, who share the Dayton architects' conception of the right of return as a claim for the restitution of lost properties.

ROR as a membership claim

Theorists such as Hannah Arendt (2001: 267) have characterized the refugee as 'stateless, rightless, scum of the earth', arguing that the refugeehood strips the displaced of the 'right to have rights' in the first place. When refugees assert the right of return, they challenge these characterizations, and the prerogative of the state to unilaterally determine the boundaries of membership in the political community of the state. When exiled citizens demand the right of return, this may be understood as a claim for recognition as equal and legitimate, rights-bearing members of the state. This dimension is not typically captured in legal provisions on the right of return, which more typically focus on the right of return as a right to re-enter one's state, enjoy freedom of movement, or repossess lost property. However, this is arguably one of the most important ways of understanding and asserting the right of return, because it is presumably only when returnees are recognized as legitimate, rights-bearing citizens that voluntary repatriation may represent a viable, durable solution to displacement. When enabling the right of return is understood to mean accepting returnees as legitimate, rights-bearing members of the political

community, the right of return then becomes a springboard from which returnees may make other important claims for the recognition and rectification of their entitlements as citizens.

To be sure, the notion that the right of return may entail accepting returnees as legitimate members of the political community is one of the reasons why it is opposed in countries such as Israel, where accepting the right of the Palestinian refugees to return to the lands their families lost in 1948 would mean reimagining the nature of the political community, and the meaning of Jewish self-determination. However, cases such as the Palestinian refugee situation, in which would-be returnees are not citizens of the state to which they would return, are relatively rare. Most contemporary refugees are not stateless, but citizens with unresolved, ineffective rights claims. The challenge posed by this interpretation of the right of return is to use the repatriation process as an opportunity to advance the reform of state structures, so that they are more receptive to the rights claims advanced by all citizens, including the displaced. The Guatemalan repatriation movement (discussed below) is an important example of a case in which the right of return was interpreted as membership claim, and the exercise of this right was seen as an opportunity to challenge the behaviour and nature of a highly repressive state. It is important to recognize that exiled populations demanding a right to return as citizens to their countries of origin do not always have legitimate rights claims in mind. For example, Hutu *genocidaires* operating in refugee camps in Zaire used the rhetoric of the right of return to justify and rally support for a re-invasion of Rwanda, with the goal of reasserting 'Hutu power' and completing the genocide of the minority Tutsi population (Terry 2002).

Even when refugees do not aim to be recognized as members (or citizens) of the state to which they would return, the right of return may be central to a group's identity or sense of membership. For example, when Palestinian refugees demand their right of return, surveys suggest that the majority do not see this as involving a claim for membership in the state of Israel. Most of the refugees continue to identify much more strongly with the Palestine Liberation Organization (PLO)/Palestinian Authority (PA) and other Palestinian governance structures than with the notion that Israel could become a binational state in which Jews and Palestinians would live side by side. Nonetheless, the right of return is still closely connected to the issue of membership in this case, because claiming the right of return has become central to the Palestinian national identity. As Nabulsi (2003: 494) reflects on the role of the right of return in her own identity as a Palestinian, 'the right of return represents a collective will, the force and power of a people. It is even more the heart of my identity and home. It is a constant presence and the filaments that attach it through time and space are greater yet more intimate than the sense of a particular place.' The centrality of the right of return to claims to belonging in the Palestinian national community is evident in the fact that many Palestinians who are seen to have betrayed or given up on the right of return are scorned or pushed to the margins of the community (Cohen 2003).

The case of the Bihari refugees' struggle for the right of return effectively demonstrates the sense in which the right of return can represent a claim for membership, even when neither the contemporary refugees nor their ancestors lived in the country to which they would return. The Biharis are Urdu-speaking Muslims who migrated to East Pakistan, mostly from the Indian state of Bihar, when the subcontinent was partitioned in 1947. Under the patronage of the West Pakistan elite, the Biharis enjoyed a privileged position in East Pakistan, but relations with the Bengali majority deteriorated sharply in the 1950s and 1960s. During the 1970-1971 civil war that led to the independence of Bangladesh, many Biharis joined the Pakistani army in inflicting violence on Bengalis, while vicious Bengali attacks led to the death of 10,000-15,000 Biharis

(Paulsen 2006, Sen 1999: 628, Ahmad 2003: 173-174). After the war, 60-95 percent of Biharis expressed their wish to 'repatriate' to Pakistan (Paulsen 2006: 55, Sen 1999: 640). Although the Biharis had never physically lived in West Pakistan, the Pakistani government initially accepted their claimed right to 'return' to the state with which they identified. However, in practice Pakistan limited repatriation rights to former residents of West Pakistan, government employees and their families, and a modest number admitted on humanitarian grounds. Under the 1974 New Delhi Tripartite Agreement, some 170,000 Biharis repatriated to Pakistan in the early aftermath of the war. However, thousands more were denied repatriation rights, denationalised by Pakistan, and left 'stranded' in Bangladesh. Although integration as citizens in Bangladesh appears to be an increasingly viable option preferred by the younger generations of Bihari 'refugees', a significant proportion of Biharis, including the community's traditional leaders, continue to press for recognition of their right of return to Pakistan, as legitimate members of the Pakistani political community (Ahmad 2003: 177, Paulsen 2006: 55). In 1984, Pakistani General Zia ul Huq promised to secure the Biharis' return, 'even if I have to carry them on my back', and a trust was established with US$278 million from Saudi Arabia to facilitate the repatriation (Ahmad 2003: 178). However, the would-be returnees have continued to languish in Bangladeshi camps, largely because of Pakistan's concerns that a large-scale movement of as many as 300,000 returnees would increase tensions in the already fragile country, particularly within the Sindhi community. Contestation over who is recognized as a member of the political community with a legitimate right of return is not always as heated as it has been in this case, but in almost every repatriation operation this process of debating and recognizing membership claims is essential to making the right of return, and in turn other rights claims, effective.

ROR as a religious claim

Beyond being a claim to be recognised as a legitimate member of the political community of a state, or to repossess a particular piece of land based on historical entitlements, the right of return may also in some cases be seen as a religious calling or conviction, or as an expression of faith. The most prominent example of this conceptualization of the right of return pertains to the 'return' migration of Jews from the diaspora to Israel. Although there are a wide range of strains of Zionism, many of them secular, for some Zionist Jews the belief that members of the Jewish diaspora have a right to return to Israel and become Israeli citizens is an article of faith, a right given by God who created the land of Israel for the Jewish people. This belief is backstopped by Israel's Law of Return, which was passed by the Knesset in 1950 and enshrines the right of all Jews to make *aliyah*. Under this interpretation, however, the right of return is not rooted in humans' legal or moral agreements, but is justified by divine command.[8]

ROR as a redress claim

In almost every case, demands for the right of return may be understood as claims for a remedy for past injustice, whether the injustice at stake is understood as enforced exile from one's own country, the loss of one's home, non-recognition of one's status as a legitimate member in the political community, or denial of the right to free movement. The notion that individuals have a right to redress for past injustices, and particularly for violations of human

[8] For a critique of this interpretation of the right of return to Israel, see Prior (2001). For a broader defence of the Law of Return, see Perez (2011).

rights, is a 'basic maxim of law'; every legal system requires that this obligation be met in some form (Roht Arriaza 2004: 12). The right to redress is recognized in agreements such as the Universal Declaration of Human Rights and the International Convention on Civil and Political Rights, and standards such as the 2005 United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Reparations Principles) recognize that the implementation of certain forms of the right of return such as 'return to one's place of residence' may represent a form of redress for past injustice (UN Reparations Principles, Section IX, para. 19). In principle, the right of return need not necessarily entail the return of refugees to their original homes in order for it to be seen by refugees and other actors as a form of redress; this will depend on how refugees conceive of the wrong that has been inflicted on them, and their preferences regarding the resolution of their displacement. Similarly, a variety of forms of redress could be applied to address the wrongs associated with displacement, including compensation, apologies, trials and truth-telling processes. The physical return of refugees to their countries of origin and in particular to their reclaimed homes and lands is typically understood as a form of restitution, which is a form of redress that aims to restore (to the extent possible) the conditions that existed before a violation of rights occurred, and has conventionally been seen as the preferred remedy for injustices under international law.

However, several recent standards, such as the UN Reparations Principles, challenge restitution's conventional place at the top of the remedial hierarchy, and suggest instead that the most appropriate forms of redress will depend on the specifics of the case at hand. This meshes with the interpretations of the right of return and redress adopted by groups such as the Guatemalan refugees who collectively negotiated their return from Mexico in the late 1980s and early 1990s. The refugees certainly understood the enactment of their right of return to Guatemala as part of the rectification of the injustices inflicted upon them. However, their aim in asserting their rights to return and redress was not to re-establish the conditions that existed prior to their displacement, but to challenge the exclusionary and discriminatory nature of the Guatemalan state itself. Although some refugees sought the restitution of their original lands, others preferred to resettle on alternative lands upon which returnees could live together, and ideally make a better living than would be possible on their original lands (Stepputat 1994, 1999, 2006). This case demonstrates that while the voluntary exercise of the right of return may be broadly seen as a form of redress and a claim for recognition of the wrongs associated with displacement, the goal of this process is not necessarily the restitution of the *status quo ante*.

Claiming the right of return: Variations and strategies

The examples discussed above demonstrate that there are a wide variety of ways in which the right of return has been and may be interpreted by refugees, host countries, states of asylum, international organizations such as UNHCR, and other key actors in the refugee regime. Clearly many of the conceptualizations of the right of return set out above are not mutually exclusive: a particular refugee group, such as Iraqi refugees displaced from oil-rich Kirkuk, may see themselves as having a right of return that involves the right to re-enter the country, reclaim lost lands, and be recognized as legitimate members of the state, but they might not see this claim as a divinely given entitlement. Alternatively, other refugee groups, particularly those who are landless, may see themselves as having a right to re-enter their state of origin and be recognized

as citizens, but may admittedly have no original lands to claim in the context of asserting their right of return.

In certain instances, some of the interpretations of the right of return discussed above are much more widely accepted than others. The factors affecting whether claims for the right of return are accepted as legitimate include who is making the claim (is it expressed as an individual claim, or as a right pertaining to a large group of returnees whose repatriation may fundamentally change the fabric of the state of origin); the returnees' relationship to powerbrokers in the country of origin; and the perceived relationship between the exercise of the right of return and the consolidation of peace. As UNHCR recognizes, the implementation of the right of return is widely seen as a 'symbol of political success' and an indication that peace processes are gaining traction (Crisp 303). Conversely, leaving displaced groups in border camps with unresolved claims for return and reparation is seen as representing a potentially serious threat to the long term stability of peace processes. When claims for the right of return are framed as integral to the success of a peacebuilding process, and when host states are eager to dispense with their responsibility for a longstanding refugee population, international actors are often much more likely to throw their support behind efforts to implement particular interpretations of the right of return, including by designing, financing and staffing property restitution processes, and by providing financial support for the physical return and reintegration of refugees.

The interpretations of the right of return set out above may be advanced in a variety of ways, with important implications for whether these claims are accepted by the actors involved. For example, claims for the right of return may be advanced in an *exclusionary* or in an *inclusionary* manner. When claims for the right of return are exclusionary, refugees may for example seek to repossess their lost properties and oust secondary occupants who have been living on and using the land in their absence. In contrast, when claims for the right of return are framed in an inclusionary manner, the concerns of returnees are balanced alongside the concerns of secondary occupants, and other citizens affected by the return process, such that each citizen's claims and concerns are considered and assessed equitably. Claims for the right of return may also be framed as questions of *principle*, or as *pragmatic* claims that need to be addressed in order for refugees to benefit from a durable solution to their displacement. For example, the leaders of Georgian, Bhutanese and Palestinian refugee communities have in some cases encouraged their fellow refugees to reject more immediately available durable solutions such as local integration or resettlement opportunities, because accessing these durable solutions is perceived to mean that the refugees renounce their right of return. In such cases, political recognition of the principle of the refugees' right of return may make it more socially acceptable for the refugees to choose alternative solutions.

The meaning of the right of return is for many refugees a highly personal question, and there are innumerable variations on how this right of return may be framed and strategically advanced. The intersecting interpretations of the right of return set out in this typology reflect only some of the ways in which the right of return has been interpreted and advanced by key actors in the refugee regime. My aim has not been to evaluate the relative merits of these interpretations, or to assess the legitimacy of particular claims for the right of return. Rather, my aim has been to highlight the diversity of meanings attributed to this idea, and the variety of claims that are implicit in calls for the right of return. Although interpretations of the right of return as the right to repossess lost property have become increasingly influential in recent years, this typology suggests that advocates should be wary of adopting such a narrow

conceptualization as the baseline for understanding what the right of return entails. While it may be appropriate for refugees to have the opportunity to return to their places of origin, if this is what they desire, this is far from the only way of understanding what is at stake in the right of return.

Bibliography

AHMAD, Z. (2003) 'The Bihari Muslims of Bangladesh: In a State of Statelessness'. In Chari, P.R., Joseph, M. and Chandran, S. (eds.) *Missing Boundaries: Refugees, Migrants, Stateless and Internally Displaced Persons in South Asia*. New Delhi: Manohar Publishers.
ARENDT, H. (2001) *The Origins of Totalitarianism.* New York: Harcourt.
BAGSHAW, S. (1997) 'Benchmarks or Deutschmarks? Determining the Criteria for the Repatriation of Refugees to Bosnia and Herzegovina'. *International Journal of Refugee Law* 9(4).
BARKAN, E. (2005) 'Considerations Toward Accepting Historical Responsibility', in A. Lesch and I. Lustick (eds.) *Exile and Return: Predicaments of Palestinians and Jews*. Philadelphia: University of Pennsylvania Press.
BARNETT, M. and **FINNEMORE, M.** (2004) *Rules for the World: International Organizations in Global Politics*. Ithaca: Cornell University Press.
BBC (2010) 'Senegal offers land to Haitans', *BBC News*, 17 January 2010. See http://news.bbc.co.uk/2/hi/8463921.stm.
BOLING, G. (2001) 'Palestinian Refugees and the Right of Return: An International Law Analysis'. *BADIL Information and Discussion Briefs* 8.
BRADLEY, M. (2009) 'Return in dignity: A neglected refugee protection challenge', *Canadian Journal of Development Studies* 28(3).
BRADLEY, M. (2008) 'Back to basics: The conditions of just refugee returns', *Journal of Refugee Studies* 21(3) (2008).
CENTRE ON HOUSING RIGHTS AND EVICTIONS (COHRE) (2005) 'UN to Adopt Pathbreaking New Global Standard which Demands Return of Confiscated Refugee Land and Housing'. Media Release, 11 August 2005.
COHEN, H. (2003) 'Land, memory and identity: The Palestinian Internal Refugees in Israel,' *Refuge* 21: 2.
DENG, F. (1995) *Sovereignty, Responsibility and Accountability*. Washington, D.C.: Brookings Institution Press.
GROULT, S. (2007) 'Lebanon refugees yearn to return home once fighting ends'. *Agence France-Presse*, 1 September 2007.
HANNUM, H. (1987) *The Right to Leave and Return in International Law and Practice.* Dordrecht: Martinus Nijhoff Publishers.
HEIMERL, D. (2005) 'The return of refugees and internally displaced persons: From coercion to sustainability?'. *International Peacekeeping* 12(3).
HOLBROOKE, R. (1999) *To End a War*. New York: The Modern Library.
ICISS (2001) *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty* (ICISS). Ottawa: International Development Research Centre.
ISRAEL MINISTRY OF FOREIGN AFFAIRS (2007) 'Israel, the Conflict and Peace'. <http://www.mfa.gov.il/MFA/MFAArchive/2000_2009/2003/11/Israel%20the%20Conflict%20and%20Peace-%20Answers%20to%20Frequen>.

LECKIE, S. (2005) 'An Introduction to the "Pinheiro Principles"'. In *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons*. Geneva: Centre on Housing Rights and Evictions.
LECKIE, S. (ed.) (2007a) *Housing, Land and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials*. Cambridge: Cambridge University Press.
NABULSI, K. (2003) 'Being Palestinian'. *Government and Opposition* 38(4).
PAULSEN, E. (2006) 'The Citizenship Status of the Urdu-speakers/Biharis in Bangladesh'. *Refugee Survey Quarterly* 25.
PEREZ, N. (2011) 'Israel's Law of Return: A Qualified Justification'. *Modern Judaism* 31(1): 59-84.
PHUONG, C. (2005) *Forcible Displacement in Peace Agreements.* Geneva: International Council on Human Rights Policy. <http://www.ichrp.org/paper_files/128_w_05.doc>.
PHUONG, C. (2000a) 'At the heart of the return process: Solving property issues in Bosnia and Herzegovina'. *Forced Migration Review* 7.
PHUONG, C. (2000b) '"Freely to Return": Reversing Ethnic Cleansing in Bosnia-Herzegovina'. *Journal of Refugee Studies* 13(2).
PRETTITORE, P. (2006) 'Refugee return in Bosnia and Herzegovina'. In Dumper, M. (ed.) *Palestinian Refugee Repatriation: Global Perspectives*. New York: Routledge.
PRIOR, M. (2001) 'The Right to Expel: The Bible and Ethnic Cleansing', in N. Aruri (ed.) *Palestinian Refugees: The Right of Return*. London: Pluto Press.
PUBLIC INTERNATIONAL LAW AND POLICY GROUP (2005) *Peace Agreement Drafters' Handbook*. Washington, D.C.: Public International Law and Policy Group.
ROHT-ARRIAZA, N. (2004) 'Reparations in the aftermath of repression and mass violence'. In Stover, E. and Weinstein, H. (eds.) *My Neighbour, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*. Cambridge: Cambridge University Press.
SEN, S. (1999) 'Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia, Part 1'. *International Journal of Refugee Law* 11.
SEN, S. (2000) 'Stateless Refugees and the Right to Return: The Bihari Refugees of South Asia, Part 2'. *International Journal of Refugee Law* 12.
STEPPUTAT, F. (1994) 'Repatriation and the Politics of Space: The Case of the Mayan Diaspora and Return Movement'. *Journal of Refugee Studies* 7(2/3).
STEPPUTAT, F. (1999) 'Repatriation and Everyday Forms of State Formation in Guatemala'. In Black, R. and Koser, K. (eds.) *The End of the Refugee Cycle? Refugee Repatriation and Reconstruction*. Oxford: Berghahn Books.
STEPPUTAT, F. (2006) '"Sustainable returns"?: State, Politics and Mobile Livelihoods—The Guatemalan Case'. In Dumper, M. (ed.) *Palestinian Refugee Repatriation: Global Perspectives.* New York: Routledge.
SUDETIC, C. (1998) *Blood and Vengeance: One Family's Story of the War in Bosnia*. New York: W.W. Norton and Company.
TERRY, F. (2002) *Condemned to Repeat? The Paradox of Humanitarian Action*. Ithaca: Cornell University Press.
UNITED NATIONS GENERAL ASSEMBLY (2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Reparations Principles), UN Doc. A/RES/60/147.
UNCHR 2001: 59-60

UNHCR (2008) *2007 Global Trends: Refugees, Asylum-seekers, Returnees, Internally Displaced and Stateless Persons.* Geneva: UNHCR.
VAN HEUVEN GOEDHART, G. J. (1955) 'Refugee Problems and their Solutions'. Nobel Lecture at the Nobel Institute, Oslo, Norway, 12 December 1955.
VAN METRE, L. and **AKAN, B.** (1997) 'Dayton Implementation: The Return of Refugees'. *USIP Special Reports* 26.
VASAK, K. and **LISKOFSKY, S.** (eds.) (1976) *The Right to Leave and to Return: Papers and Recommendations of the International Colloquium held in Uppsala, Sweden.* Ann Arbor: The American Jewish Committee.
WILLIAMS, R. (2006) 'Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice'. *New York University Journal of International Law and Politics* 37(2).