

The Right of Asylum Viewed from the Constitutional and International Viewpoints

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Abstract:

This paper aims to address the forms of displacement/departure of the population that leaves its country of origin as a result of the violent circumstances created in the place of displacement or the place of escape. As well, this paper aims to deal with the provision of protection for people who flee in search of shelter and to study international obligations of the states based on the international norms including their laws. The purpose of this study is to consider treatment of refugees who leave their country of origin due to violence, war or any humanitarian reason. The main issues addressed in this study are causes of displacement, treatment of refugees according to the international law and their definition, international laws for refugees, and responsibilities of states regarding displacement and migration. During the research, we used several methods without which the research would not have been possible: the method of theoretical analysis, method of comparison, and quantitative method. This study identified the causes or triggers that lead to immigration, including violence and human rights abuses that are increasingly intertwined with ethnic and religious hostilities. Security, effects from international terrorism and the lack of border control can be the main causes. This study is applicable in the field of international relations, particularly to researchers who deal with global crises related to migration issues. Also, this study can be applied to categories that deal with refugees and people who deal with the issue of asylum at different levels. Furthermore, this study can also be used by representatives of civil society, workers of international organizations such as UNHCR, representatives of international organizations that protect the rights of refugees and persons seeking international protection. The novelty in this study is the treatment of the complex nature of migration and identification of the factors that lead to massive displacement, crisis management, states' care and obligations in providing international protection to refugees, respecting international conventions and agreements, and the internal legislation of states where this movement of refugees can occur.

Keywords: the right of asylum, constitutional and international norms of migration, displaced persons, refugees.

宪法和国际视野下的庇护权

摘要:

本文旨在解决因流离失所地或逃亡地造成的暴力环境而离开原籍国的人口流离失所/离开形式。此外，本文旨在处理为寻求庇护而逃离的人提供保护的问题，并研究各国根据国际规范（包括其法律）承担的国际义务。本研究的目的是考虑因暴力、战争或任何人道主义原因离开原籍国的难民的待遇。本研究解决的主要问题是流离失所的原因、根据国际法及其定义对难民的待遇、国际难民法以及各国在流离失所和移民方面的责任。在研究过程中，我们使用了几种方法，没有这些方法就不可能进行研究：理论分析法、比较法和定量法。这项研究确定了导致移民的原因或触发因素，包括与种族和宗教敌对行动日益交织在一起的暴力和侵犯人权行为。安全、国际恐怖主义的影响和缺乏边境管制可能是主要原因。本研究适用于国际关系领域，特别适用于处理与移民问题相关的全球危机的研究人员。此外，这项研究可以应用于处理难民的类别和处理不同级别庇护问题的人。此外，这项研究也可供民间社会代表、联合国难民署等国际组织的工作人员、保护难民权利的国际组织代表和寻求国际保护的人使用。本研究的新颖之处在于处理移民的复杂性并确定导致大规模流离失所的因素、危机管理、国家对难民提供国际保护的关怀和义务、尊重国际公约和协定、以及可能发生这种难民流动的国家的国内立法。

关键词: 庇护权、移民、流离失所者、难民的宪法和国际规范。

1. Introduction

1.1. Causes of Displacement

Providing protection or shelter is a value that has stood the test of time and was recently articulated by all 193 member states of the United Nations in the New York Declaration on Refugees and Migrants, adopted in September 2016. There are now almost 66 million people displaced from their homes by conflict, violence, and persecution, of which around a third have fled across borders as refugees – a level similar to the mid-1990s, when the aftermath of the Cold War caused similar unrest. The magnitude and complexity of forced displacement today are directly related to proliferation, the scale and longevity of today's conflicts, and the inability of the international community to find the unity of purpose necessary to resolve them.

Those who move generally do so as part of irregular migration flows, including people who move for a wide range of reasons, including economic opportunities. It is important to maintain a clear distinction between refugees and migrants, with refugees holding a special status in international law since they are unable to return home because of conflict and persecution – although both groups face many of the same risks, often disappearing or exposed for physical damage in dangerous land and sea journeys.

More than 80% of those fleeing their countries as refugees find protection in neighboring countries, whose people and governments are often struggling to manage the impact of impending conflict and address their own development challenges. Over half of all

refugees are children – compared to about a third of the world's total population. Fewer than one in five refugees move further; when they do, it is often because of a lack of perspective and insufficient support, including from host countries and communities.

There are now more refugees in the world than at any time since the end of World War II. The causes of contemporary displacement have become increasingly complex, after conflict, violence and human rights abuses are increasingly intertwined with ethnic and religious enmities, and poverty. An alarming number of refugees are living in limbo due to conflicts that have continued for years or even decades, without resolution. More than half of the world's refugees are children and, if nothing changes, their children will be refugees too (Nicholson, and Kumin, 2017).

People become refugees when the rule of law in their countries breaks down. They depend on the rule of law to find protection in other countries. They hope for the restoration of the rule of law in their countries, so that one day they can return to their homeland. The international refugee protection system developed after World War II was created in response to the potentially destabilizing effects of population movements.

International solidarity and sharing of responsibilities are essential elements, but often elusive of that system, vital to protect the rights of refugees wherever they are, and to support the countries that host them (Nicholson, and Kumin, 2017).

1.2. Treatment of Refugees According to the International Law and Their Definition

The 1951 Convention and the 1967 Protocol cover three main topics: the definition of refugees, with provisions for cessation and exclusion from refugee status; legal status (rights and obligations) of refugees in their country of asylum (including the refugees' duty to respect the laws and regulations of the country of asylum and their rights in that country, protection from return); and obligations of states, including cooperation with the UNHCR in the exercise of functions and to facilitate its task of supervision over the implementation of the Convention.

An asylum seeker is someone who is seeking international protection but whose claim for refugee status has not yet been determined. In contrast, a refugee is someone who has been recognised under the *1951 Convention relating to the status of refugees* to be a refugee (Phillips, 2015).

According to the 1951 Convention, a refugee is someone who has a well-founded fear of being persecuted because of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it (UNHCR, 2010).

Furthermore, the 1951 Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of the rights of refugees at the international level (UNHCR, 2010). In contrast to earlier international refugee instruments, which applied to specific groups of refugees, the 1951 Convention endorses a single definition of the term "refugee" in Article 1. The emphasis of this definition is on the protection of persons from political or other forms of persecution (UNHCR, 2010). A refugee, according to the Convention, is someone unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion (UNHCR, 2010).

An asylum seeker is a person who crosses international borders due to the fear of persecution. It is defined so, as long as he has not yet received an answer or a decision on his request to obtain refugee status (UNHCR, 2010). Until the request is examined, the asylum seeker has the right not to return to the country of origin. Even as he receives refugee status or any other status, e.g., humanitarian protection, the asylum seeker is called a refugee or a person who has received asylum (UNHCR, 2010). The forced migration is the involuntary displacement of a person to escape an armed conflict, a situation of violence, violation of his/her rights, a natural disaster, or a man-made disaster (UNHCR, 2010). This term is used for displacements of

refugees and forced displacements of populations between countries (UNHCR, 2010).

Adding to the definition of refugee found in the 1951 Convention relating to the Status of Refugees, Organization of African Unity [OAU] 1969 Convention governing specific aspects of refugee problems in Africa includes a regional definition of refugees also including any person forced to leave his/her country "due to external aggression, occupation, foreign domination, or events seriously disturbing public order in part or all of his country of origin or nationality" (Feller et al., 2003).

2. Methods

The method of theoretical analysis was used in studying scientific literature, which has been the basis for this research. The main literature used included books, guidelines, Constitutions, legal acts, sub legal acts, international norms/conventions, etc. The method of comparison served to gain a more realistic overview to compare the legal-international cooperation of Kosovo in relation to the states of the region and identify the similarities and differences that they have foreseen with the different states. The quantitative method was used for collecting data and analyzing them, and drawing conclusions about the situation with migration and asylum in the world. It was also applied for reviewing documents and studies that have been conducted by analysts and international institutes, and for examining secondary sources from the statements of experts in the field and researchers of international relations.

3. Results and Discussion

3.1. International Laws for Refugees

According to Law no. 06/L-026 on Asylum, the refugee is considered a person who owing to the well-founded fear of persecution for the reasons of race, religion, nationality, political conviction, or belonging to a particular social group, is outside their country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to that country (Government of the Republic of Kosovo, 2018).

The 1951 Convention and the 1967 Protocol were designed to ensure refugees the widest possible enjoyment of their rights. To respond to regional specificities, states in different parts of the world have developed regional laws and standards that complement the international refugee protection regime. The 1969 OAU Convention, governing specific aspects of refugee problems in Africa the conflicts that accompanied the end of the colonial era in Africa, gave rise to a series of large-scale refugee movements (Cooper et al., 2021).

These population movements prompted the drafting

and adoption not only of the 1967 Protocol but also of the 1969 Organization of African Unity (OAU) Convention that regulates specific aspects of refugee problems in Africa. The OAU Convention sets out other important points. He asserts that “granting asylum to refugees is a peaceful and humanitarian act” which should not be considered an “unfriendly act” by any OAU Member State (now the African Union), and requires the States Parties to take appropriate measures to ease the burden of a State granting asylum “in the spirit of African solidarity and international cooperation”. In 1984, in Cartagena, Colombia, a colloquium of government representatives and distinguished jurists convened to discuss refugee protection in Latin America. Inspired by the 1969 OAU Convention, they adopted what is known as the Cartagena Declaration on Refugees (IOM, 2007).

Since 1984, states in Central and Latin America have adopted three Declarations on the occasion of important anniversaries of the Cartagena Declaration, including most recently, the 2014 Brazil Declaration and Plan of Action. There are no regional binding instruments addressing refugee law in the Middle East or Asia. In 1994, the Arab Convention Relating to the Status of Refugees in Arab Countries was adopted by the League of Arab States (LAS), but never entered into force. In October 2017, the League of Arab States adopted a new Arab Convention on Refugees. In 2001, Asian and African countries adopted the revised Bangkok Principles on the Status and Treatment of Refugees. Both the proposed Arab Convention and the Bangkok Principles use the definition of refugee found in the 1969 OAU Refugee Convention. The Arab Convention further extends it to persons fleeing disasters or other serious events disturbing public order (Nicholson, and Kumin, 2017).

The most extensive regional developments have come from the European Union (EU), which in 1999 decided to create a common European Asylum System based on “the full and comprehensive implementation of the Geneva Convention”. Since then, four main legislative instruments have been adopted in their original and revised (or “recast”) versions. Each adds content to refugee law in an area not covered by the 1951 Convention (Weis, 1965).

These instruments deal with: (a) temporary protection; (b) reception of asylum seekers; (c) qualification for refugee status or “complementary protection” and the rights and status for which beneficiaries are entitled; and (d) standards for asylum procedures. Except this, “Dublin III Regulation” sets out the criteria for determining which EU member state or other participating state is responsible for examining an asylum application. To provide operational support, two EU agencies were created: The European external border agency Frontex in 2005 and the European Asylum Support Office (EASO) in 2010.

The Charter of Fundamental Rights, adopted in

2007, it has a status equal to that of the founding treaties of the EU. It includes provisions on the right to asylum and protection from removal, deportation or extradition in serious danger of being subject to the death penalty, torture or other inhuman or degrading treatment or punishment (Obregón Gieseken, 2017).

3.2. The Right to Seek and Enjoy Asylum

The concept of asylum is accepted in all regions of the world. It can be traced back to ancient traditions of hospitality, in philosophical teachings and religious texts. The concept is also recognized in numerous human rights instruments, especially in Article 14 (1) of the Universal Declaration of Human Rights, which determines that “Everyone has the right to seek and enjoy asylum from persecution”. The legal framework established by the 1951 Convention and the 1967 Protocol derives directly from the right to seek and enjoy asylum affirmed in the Universal Declaration. The right to seek and enjoy asylum is enshrined in the national constitution. Many states recognize the right to seek and enjoy asylum in their constitutions, but do so in different ways. Regardless of whether constitutions or national legislation refer to an individual right to request and enjoy asylum or a corresponding obligation of the state, it is useful to provide a clear legal basis for asylum. The language may reflect the definition of refugee contained in the 1951 Convention and applicable regional instruments, or it may refer to the right to seek and enjoy asylum based on international legal obligations. This helps make clear the humanitarian and non-political character of the right to seek and enjoy asylum.

3.3. Responsibilities of States Regarding Displacement

State responsibility begins with addressing the root causes of forced displacement. Strengthening the rule of law and providing citizens with security, justice and equal opportunity are essential to breaking cycles of violence, abuse and discrimination that can lead to displacement. When countries accede to the 1951 Convention or the 1967 Protocol, they agree to protect the refugees on their territory and under their jurisdiction, in accordance with the terms of these instruments (University of Kashmir, n/d).

States have also agreed to extend relevant rights for refugees in accordance with international human rights obligations. Even states that are not parties to the Convention or Protocol are bound by the principle of non-refoulement, which is considered a norm of customary international law and, as such, is binding on all states. The various branches of government, whether executive or legislative or the judiciary have complementary roles and responsibilities for the creation and maintenance of state asylum systems based on the rule of law, and providing protection and durable solutions for refugees. These responsibilities are not limited to the central government; regional and local

authorities also play an important role.

International cooperation is especially important when countries, especially developing countries, are required to host large numbers of refugees for long time, without necessarily having sufficient resources. Massive influxes and protracted refugee situations place tremendous strain on the host countries. Other countries can give an important contribution providing financial and technical assistance and participating in refugee resettlement programs (Boed, 1994).

In 2016, recognizing that the challenges posed by human mobility are “above all moral and humanitarian”, the UN General Assembly approved the New York Declaration for Refugees and Migrants (Nicholson, and Kumin, 2017).

The Declaration reaffirms the importance of the 1951 Convention and its 1967 Protocol, while emphasizing that the “scale and nature of refugee displacement today require us to act in a comprehensive and predictable manner” (Nicholson, and Kumin, 2017).

The General Assembly therefore agreed to develop comprehensive responses for situations involving large movements of refugees (Nicholson, and Kumin, 2017). The Declaration explains that these responses are to be “based on the principles of international cooperation and on burden and responsibility-sharing”, to be “better able to protect and assist refugees and to support the host States and communities involved.” This important international action will need backing at every level of society, especially from Parliamentarians. It is hoped that this Handbook will contribute toward achieving the goals set by the New York Declaration. “The Inter-Parliamentary Union ... calls on governments and parliaments to assume responsibility for protecting the rights of refugees and their right to international protection, and calls on parliaments and governments to fulfill their obligations to protect refugees and asylum-seekers” (Nicholson, and Kumin, 2017).

3.4. Migration

The period after World War I until 1945 was a period of limited migration. This stemmed from a mixture of economic stagnation, security concerns, increasing enmity toward migrants, and racism. The United States Congress, for example, put several laws in the 1920s to restrict the entry of persons from outside northwestern Europe, to preserve the racial and religious composition of the country (Frigo, 2014).

In particular, the Immigration Act of 1924 fostered the national origin quota system, which prevented large-scale migration to the United States until it was repealed in 1965.

In 1930, President Hoover tightened further immigration controls on the grounds of economic necessity that the provision of asylum to refugees was unknown before World War II. In American law, for example, the concept of refugee did not exist. Economic stagnation, increased hostility toward immigrants in the 1930s and the rise of anti-Semitism in American society

resulted in little work, for helping Jews escape from Nazi Germany (Aleinikoff, and Chetail, 2002).

Over the past century, international migration has become increasingly regulated by states developed better techniques to defend their territory against unwanted foreigners. The current balance seems to allow the admission of highly skilled migrants in the main receiving countries, and at least some for humanitarian reasons as defined in the human rights regime. However, economic and human rights regimes are far from being completed and in their current form fail to achieve their desired goals. Blaming the regimes alone would be wrong because the advocates of the flow point out that the sovereignty of the state is a fundamental contradiction in international law that prevents the development of an international regulatory system. Over time, states have increasingly reinforced their sovereignty over the admiring mission of foreigners. In this sense, it is no wonder that Kennedy refers to sovereignty as “an archaic enemy of international law” (Schindlmayr, 2003).

Article 13 of the Universal Declaration of Human Rights (1948) states that:

1) Everyone has the right to freedom of movement and residence within the borders of any state;

2) Everyone has the right to leave any country, including his own, and return to his own country. This notion is also confirmed in Article 12 of the International Covenant on Civil and Political Rights (1966) and in the following regional conventions: Article 12 African Charter on Human and Peoples’ Rights (1981), Article 22 American Convention on Human Rights (1969) and Article 2 Fourth Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (1963).

Asylum seekers seek international protection on the basis that they cannot return or return to their country of origin because they have a well-founded fear of persecution or are at risk of ill-treatment or other serious harm (see Chapter 3). Under EU law, asylum seekers are defined as “applicants for international protection”. Their situation is regulated by the EU asylum acquis. All relevant texts of the asylum acquis and the countries to which they apply are listed in Annex 1. Gaining access to the asylum procedure is discussed in Chapter 1. This section deals with those asylum seekers whose claims are pending and awaiting a final decision. EU law prohibits the removal of an asylum seeker until a decision on the asylum application is made. Article 9 (1) of the Directive on Asylum Procedures 2013/32/EU, provides that the presence of the asylum seeker in the territory of an EU member state is legal. It states that asylum seekers are “allowed to stay in the member state” for the procedure until a decision is taken by the responsible authority, although there are some exceptions, especially for later applications. Right to documentation for asylum seekers under EU law is defined in the Directive on Reception Conditions. Article 6 of this directive states that all those who apply for asylum must be given within three

days a document proving their status as an asylum seeker or who are allowed to stay during the processing of the asylum application. Under Article 6 (2), States may refrain from this when the applicant is in custody or at the border (European Union Agency for Fundamental Rights, 2015).

3.5. Immigration

Migration is increasingly recognized as an issue that requires a global approach and coordinated responses. States are not only discussing migration issues bilaterally, but also regionally and recently in global arenas. An understandable language is essential for this international coordination and cooperation to be successful (European Union Agency for Fundamental Rights, 2015).

The presence of those who have either entered or remained in a state without authorization or legal justification is considered irregular or illegal. Irregular or unlawful presence can arise in many ways, ranging from clandestine entry or escape from a mandatory address, to ineligibility to renew a legal residence permit due to a change in personal circumstances. The lack of legal status often affects the possibility of benefiting from other procedural and material rights. According to EU law, according to the Return Directive, third-country nationals with illegal residence can no longer be left in oblivion. EU Member States participating in the directive must either adjust their position or issue a return decision. All persons without legal authorization to stay fall within the scope of the directive. Article 6 obliges EU Member States to give them a “return decision”. However, Article 6 (4) also defines the circumstances that exempt states from this obligation. Together with humanitarian or other reasons, another reason to adjust the stay may be urgent family or private life reasons guaranteed under Article 7 of the EU Charter of Fundamental Rights and Article 8 of the ECHR (Cooper et al., 2021).

3.6. Protection of Migrants under International Law

The movement of migrants across international borders can result in severe humanitarian consequences and the need for protection and assistance for those involved. Although many reach their destinations safely, others may be located in a country experiencing armed conflict—either because they live there or are traveling there—and can endure great hardship and be particularly vulnerable. In these situations, as civilians, migrants are protected under international humanitarian law (IHL) against the effects of hostilities and when in the hands of a party to the conflict (Schindlmayr, 2003).

Armed conflicts in various parts of the world, including Afghanistan, the Central African Republic, the Democratic Republic of Congo, Somalia, South Sudan, and Syria, continue to cause immeasurable hardship to the entire population, resulting in increasing numbers of people to flee within countries or across

international borders. By the end of 2015, the number of refugees, asylum seekers, and internally displaced persons forcibly displaced worldwide due to armed conflicts, other situations of violence, persecution, or human rights violations reached an unprecedented 65.3 million. In 2015, the number of migrants—a term that covers a wide group of people, including refugees as a specific legal category under international refugee law—reached 244 million worldwide. Among migrants who have left their countries of origin or habitual residence (either forcibly or voluntarily), many may subsequently find themselves in a third country experiencing armed conflict. In these situations, migrants, like the rest of the civilian population, face great difficulties. They may be affected by hostilities, lose contact with their families, disappear or die, often with no clue of their fate or whereabouts. As foreigners, they tend to have additional vulnerabilities, encountering problems accessing basic services or being subject to restrictions on personal freedom. They may also be at risk of being returned to their countries of origin or to other countries, potentially against the law (Nicholson, and Kumin, 2017).

In international law, there is no universally accepted definition of the term “migrant”, although some categories are defined in specialized international instruments. Furthermore, various organizations define a migrant as “any person who is outside a country in which he or she is a national or national, or, in the case of a stateless person, his or her country of birth or habitual residence” (IML, 2011).

International humanitarian law gives protection to migrants as civilians, regardless of their migratory status, and unfavorable distinctions cannot be made on the basis of this status. According to this body of law, however, some distinctions can be made, for example, based on nationality like. As migrants may be more vulnerable to discrimination than nationals of a country due to origin, their ethnicity, race, or nationality, it is important to briefly review the principle of non-harmful distinction under the IHL, which is found in many specific provisions of the Geneva Conventions and their Additional Protocols (Frigo, 2014).

In international armed conflicts, migrants enjoy protection, first, under the general rules of IHL that cover the civilian population. Additionally, if they are considered protected persons, they also benefit from protection for foreigners in the hands of the party to the conflict or the occupying power. Furthermore, some migrants are specifically protected as “refugees”. When looking at who is a refugee for the purposes of IHL, it is important to note different meanings of who is covered by this term, depending on the applicable rules and what it means for their protection (Schindlmayr, 2003).

3.7. Voluntary Return to Kosovo and Regional Coordination

Before starting the defined of the process of

returning displaced persons in Kosovo, who are mainly members of minority communities, it is necessary to elaborate the definitions of displaced persons. Definitions for “the return of displaced persons” are as follows: Terms *returns* and *returnees* mean durable solutions, such as return to their place of origin, local integration, and placement in another place in the Republic of Kosovo (National Legislative Bodies/National Authorities, 2018).

According to the Regulation on the Return of Displaced Persons and Durable Solutions (GRK) No. 01/2018, displaced person means a person who was forced to leave or forced to abandon his/her place of residence between March 28, 1998 and March 31, 2004, particularly as result or to avoid the effects of armed conflict, situation of general violence, and human rights violations. Internally displaced person means a person displaced within the territory of the Republic of Kosovo. The definition of displaced Persons in the Region denotes persons displaced in Serbia, Montenegro, or Macedonia (National Legislative Bodies/National Authorities, 2018).

The same definitions are foreseen in the strategy for Communities and Return 2014 – 2018. Internally Displaced Persons (IDPs) - Their various persons or groups have been forced to leave or prevented from stopping their permanent place in Kosovo between January 1998 and the March 2004 fund, on request, as a result of or in order to avoid the effects of armed conflict, the conduct of general violence, and violations of all people, but remain within the territory of Kosovo (Ministria për Komunitete dhe Kthim, 2014).

Regarding the above definitions, these definitions are based on the moment of displacement of these persons, since at that time, Kosovo was not an independent state and these persons were treated according to the circumstances of the moment of displacement. However, with the constitution and relevant legislation, these definitions must be harmonized with each other, since displacement is a process that occurs within the borders of a state; therefore, here we have another situation from the moment of displacement and the circumstances created after the declaration of Kosovo's independence. Law No. 04/L-115 on Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence of Kosovo is amending and supplementing the Law No. 03/L-047 on the Protection and Promotion of the Rights of Communities and their Members in the Republic of Kosovo (the Law). This law has defined the obligations of the state for internally displaced persons and refugees. In this context, the notion of displaced persons who were considered internally displaced at the time of displacement now they considered as refugee, after Kosovo declared its independence in February 2008 (here we are talking about people displaced in Serbia, Montenegro and North Macedonia). In the spirit of this logic, the state of Kosovo after the phase of international supervision of its independence, has taken

legal responsibility that belongs, making legal changes regarding with rights of refugees and internally displaced persons. In this aspect, Kosovo undertakes some legal obligations as follows: all refugees from Kosovo and internally displaced persons shall have the right to return and claim their property and personal possessions in accordance with national and international laws (Assembly of the Republic of Kosovo, 2012).

Each individual shall have the right to make a free decision and to be informed about his/her place of return. The institutions of the Republic of Kosovo shall take all necessary measures to facilitate and to create a favorable atmosphere conducive to the safe and dignified return of refugees and displaced persons, based upon 'their free and informed decisions, including efforts to promote and protect their freedom of movement and protection from intimidation (Assembly of the Republic of Kosovo, 2012). Conditions for the return of displaced persons and mechanisms of cooperation with relevant international institutions shall be defined by the institutions of the Republic of Kosovo in accordance with the Constitution and applicable laws (Assembly of the Republic of Kosovo, 2012). Such a spirit has been defined by the Constitution of Kosovo according to Article 156 [Refugees and Internally Displaced Persons], which states that the Republic of Kosovo shall promote and facilitate the safe and dignified return of refugees and internally displaced persons and assist them in recovering their property and possession (Assembly of the Republic of Kosovo, 2015).

The Ministry of Community and Return is responsible for the return of displaced persons; the Ministry has the mandate to return displaced persons. Furthermore, it shall have the following responsibilities: preparing public policies, drafts legal acts, adopts bylaws, and defining mandatory standards in the field of promoting and protecting the rights of communities and their members, including the right to return, in accordance with the Constitution of the Republic of Kosovo (Government of the Republic of Kosovo, 2021). Supports the activities of municipalities in dealing with issues of communities and returns, ensuring the sustainable return of internally displaced persons and refugees, including the work of commissions for mediation, commissions for communities, Municipal Commission on Return, Central Review Commission, municipal offices for communities and the development and implementation of municipal strategies for return (Government of the Republic of Kosovo, 2021). Reviews and provides assistance to other ministries regarding existing procedures and activities, as well as proposed policies and draft laws, to ensure full respect for rights and interests of communities and their members and internally displaced persons and refugees in accordance with the legislative acts of the institutions of the Republic of Kosovo and the regulations of municipalities with important international standards

and with the provisions of the Constitution of the Republic of Kosovo (Government of the Republic of Kosovo, 2021).

In 2014, the Ministry for Communities and Return, with the assistance of the OSCE Mission in Kosovo and UNHCR, developed a regional initiative and organized the first regional conference dedicated to displaced persons from Kosovo (OSCE, 2019). The “inter-institutional initiative on displaced persons from Kosovo” otherwise known as the Skopje Process, was initiated in November 2014 in Skopje, where high-level representatives from Prishtinë/Priština, Belgrade, Skopje, and Podgorica through a joint communiqué agreed to work at the regional level to find durable solutions for displaced persons from Kosovo (OSCE, 2019). The key points of the joint communiqué consisted of the establishment of a regional Technical Working Group (TWG) and a High-level Forum to politically support proposals put forward for institutional co-operation on durable solutions for displaced persons from Kosovo, including both returns and integration in places of displacement (OSCE, 2019).

4. Conclusions

One of the primary aims of IHL when it comes to the protection of migrants in situations of armed conflict is to prevent the forced movement of persons in or out.

1) This has been one of the main focuses of the existing literature on the protection of refugees (and internally displaced persons) under IHL.

2) These rules are primarily intended to protect migrants from the effects of hostilities and to ensure that they are treated humanely when in enemy hands. In the first place, IHL protects migrants according to the general rules for the civilian population. In addition, they are entitled to special protection in international armed conflicts as protected persons.

3) As refugees, they enjoy special protection according to articles 44 and 70(2) of KP IV. As such, IHL includes important rules for protecting migrants who find themselves in situations of armed conflict.

4) Migrants also continue to enjoy protection under domestic law and under other applicable bodies of international law in international and non-international armed conflicts, and the interaction of IHL with other international obligations should be further considered. In particular, the complementary protection afforded by IHRL and international refugee law to migrants in situations of armed conflict and the interaction of these rules with IHL would merit further research.

5) As mentioned above, for example, it would be important to reflect on how the right to freedom of movement in IHRL and the rules regarding refugee return in international refugee law interact with IHL rules regarding the movement of persons.

6) Although briefly addressed, the potential obligations of third States, either during or after an armed conflict, based on common Article 1 should also be further considered to gain a fuller understanding of the protection of migrants under IHL. For example, to what extent, if any, is there an obligation on third states to try to ensure that parties to an armed conflict fulfill their obligations to restore family ties for migrants displaced in connection with the conflict or to account missing and dead migrants? If a party to an armed conflict is trying to restore family ties and seeks the assistance of a third state to do so, to what extent can the latter's refusal be seen as contributing to the commission of a violation of IHL.

7) Finally, as part of their duty to prevent violations of IHL, should third states contact parties to an armed conflict to try to facilitate the fulfillment of their obligations? Although this article does not address this issue in detail, determining the existence and scope of potential obligations of third states remains important, for example, to account for migrants lost and dead during or at the end of an armed conflict or for facilitating the voluntary return of migrants, as appropriate.

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