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Committee on Legal Affairs and Human Rights

Enforced population transfer as a human rights violation¹

Report

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A. Draft resolution

1. Population transfer is a practice or policy having the purpose or effect of moving persons into or out of an area, either within or across an international border, or within, into or out of an occupied territory, without the free and informed consent of the transferred population and any receiving population. It involves collective expulsions or deportations and often ethnic cleansing.
2. Involuntarily population transfers have not only occurred in history, the practice and its consequences still affects present conflicts such as those in the Western Balkans, Cyprus and the Caucasus region.
3. Enforced population transfer traumatises the populations concerned, causes much individual suffering and leads to political instability.
4. Acts of enforced population transfer have been declared illegal several times since the Allied Resolution on German War Crimes, adopted in 1942. The strongest and most recent condemnation is found in the Rome Statute on the International Criminal Court, which clearly defines deportation, forcible transfer of population and implantation of settlers as war crimes.
5. Deportation on political and ethnic grounds of groups of populations occurred after the Second World War in the former communist countries and their consequences still exist.
6. There is currently no single legal principle applicable to population transfers, which take many forms. But enforced population transfers violate international human rights law (in particular the European Convention on Human Rights and its Protocols), international criminal law and international humanitarian law, as well as public international law principles such as the principle of self-determination.
7. The Assembly
 - 7.1. Expressly condemns any form of enforced population transfer, in Europe and elsewhere;
 - 7.2. Invites all member states the Council of Europe to condemn any such practice, including in their international relations with states outside Europe;
 - 7.3. Invites the member states of the Council of Europe properly to investigate their own past with regard to enforced population transfers and to promote knowledge thereof among their populations;

¹ Draft resolution adopted by the Committee in Paris on 13 December 2011.

7.4. Calls on the member states of the Council of Europe to promote, in international fora, the adoption of an international, legally binding instrument which consolidates the existing standards set out in different international law instruments and defines and outlaws all forms of enforced population transfers.

8. The Assembly recalls its Resolution 1522 (2006) on Establishment of a European remembrance centre for victims of forced population movements and ethnic cleansing.

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1. Procedure to date

1. On 7 July 2009, the Parliamentary Assembly decided to refer to the Committee on Legal Affairs and Human Rights, for report, the motion for a resolution "Population transfer as a human rights violation" (Doc. 11982) of 30 June 2009². At its meeting on 16 November 2009, the Committee appointed Mr Renato Farina (Italy, EPP/CD) as its rapporteur. Following Mr Farina's departure from the Assembly, the Committee appointed me as its rapporteur on 25 January 2011.

2. Introduction

2. Population transfer is a complex phenomenon, the policy and practice of which has been largely absent from the human rights debate.

3. Involuntarily transfers of populations have not only occurred throughout history, they are also a contemporary phenomenon, and the consequences of recent acts of this kind are still felt very acutely in such regions as the Western Balkans, the Caucasus and Cyprus.

4. I share the deep concern of the signatories of the motion for a resolution about the past and still continuing practice of such human rights violations conducted both by states that European countries have intense economic and other relations with, and even more regrettably population transfers that have been conducted in Europe. Pointing to a number of cases of population transfers which have occurred in Europe and elsewhere, it is necessary for the Parliamentary Assembly to take a clear stand on this human rights issue and to unequivocally condemn such practices.

5. The Assembly has so far only rarely dealt with the issue of population transfer as such, and has never as yet dealt with the legal and human rights aspects of this practice.

6. On 5 October 2006, the Assembly adopted Resolution 1522 (2006) on Establishment of a European remembrance centre for victims of forced population movements and ethnic cleansing³. It called for the establishment of a centre to commemorate victims of deportations, mass expulsions and population transfers to be created under the auspices of the Council of Europe to raise public awareness and promote research on mass deportations past, present and future in the Council of Europe's member states. In the explanatory memorandum, the Rapporteur, Mr Mats Einarsson, cited the expulsion of 16 million Germans in the aftermath of the Second World War, 2 million of whom died during the process, as well as forced transfers of

² Motion available at: <http://assembly.coe.int/Documents/WorkingDocs/Doc09/EDOC11982.pdf>.

³ Available at: <http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta06/ERES1522.htm>.

Jews, Roma, Poles, Finns, Hungarians, Italians, Slovaks, Lithuanians, Latvians, Ukrainians, Byelorussians, Serbs, Croats and Estonians.

7. The Centre called for in the Resolution never saw the light of day, as the Assembly's idea was not pursued.

8. The United Nations have, in the past, dealt with the issue of population transfer. The then Commission on Human Rights and the Economic and Social Council (ECOSOC), in 1998, adopted a draft declaration on population transfer⁴ (hereafter "population transfer declaration"). The declaration had been preceded by a report, issued in 1997 by special rapporteur Mr. Al-Khasawneh on "Human rights and population transfer"⁵. This report was broad in scope and dealt with the phenomenon of population transfer in general, human rights, economic, social and cultural rights, territorial changes, state succession and nationality, military necessity and remedies, all on a world-wide level.

9. I will attempt to take stock of the current legal situation concerning population transfers, by first clarifying the terminology and secondly pointing to a number of examples of population transfers before, thirdly, turning to legal and human rights aspects of this practice.

3. Terminology and forms of population transfer

10. There is no international legally binding definition of the term "population transfer", yet there is an abundant terminology surrounding this term.

11. Population transfer involves population movement. All population transfers have the common feature of large-scale movement of groups of people. They entail the permanent movement of a large group of people, often defined by their ethnicity or religion, from one region to another. Sometimes two groups are transferred in opposite directions at the same time, in which case the process is termed "population exchange". In order to distinguish population transfer from other migratory processes, the involuntary or forced character of the practice of population transfer should be included in the term used, even for purposes of the title of this report. This distinction cannot be made with total clarity, as sometimes even "voluntary" migratory processes are triggered by the action or inaction of States making living conditions so difficult for certain population groups that they prefer to migrate "voluntarily".

12. In most cases, population transfers are initiated by government policy. Generally speaking, the practice is based on grounds of ethnic composition of the people being moved or the people into whose territory settlers are being moved. Enforced population transfers, whether in the form of settlement or of removal, often is part of a wider policy directed at a specific racial, ethnic or religious group. They are usually politically motivated and often rooted in racism. There are two broad categories affected by enforced population transfers: the people being transferred (the settlers or removed people) and those into whose area the others are being moved (the original inhabitants; some or all of these may be removed against their will as well).

13. Population transfer within the meaning of this report therefore entails a deliberate policy decision of a military-strategic or political nature. In other words, there is always an underlying "reason" for governments engaging in population transfers. This means that not all large-scale movements of people constitute population transfer, which is distinct from refugee situations, as indicated above. Justifications such as 'voluntariness', 'national security' and 'temporariness' are often offered, but should be treated sceptically as they often merely conceal a government's wish to create demographic changes in order to consolidate, control and, in some instances, even to destroy in whole or in part a particular community.

14. For the purposes of this report, I shall resort to Article 3 of the (non-binding) UN Population Transfer Declaration which defines unlawful population transfer as

⁴ This declaration was drafted by the Commission on Human Rights' Sub-Commission on Prevention of Discrimination and Protection of Minorities, which was renamed Sub-Commission on the Promotion and Protection of Human Rights in 1999 until its functions and responsibilities were taken over, in 2006, by the UN Human Rights Council. It is available in Annex II at <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.1997.23.En?OpenDocument>.

⁵ Human rights and population transfer, Final report of the Special Rapporteur, Mr. Al-Khasawneh, E/CN.4/Sub.2/1997/23, 27 June 1997, available at: <http://www.unhchr.ch/huridocda/huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.1997.23.En?OpenDocument>.

“A practice or policy having the purpose or effect of moving persons into or out of an area, either within or across an international border, or within, into or out of an occupied territory without the free and informed consent of the transferred population and any receiving population”⁶.

15. From this definition it can be inferred that freely consented population transfers may be lawful⁷. In this report, I will deal with what is commonly termed as compulsory or involuntary population transfer.

16. Population transfer can take several forms, as also pointed out by our former colleague Mats Einarsson in his Explanatory memorandum on the Establishment of a European remembrance centre for victims of forced population movements and ethnic cleansing⁸. It can take the form of mass deportation, expulsion or other forms of ethnic cleansing. All these forms of population transfer have one thing in common: to render one or several states more homogeneous, in ethnic, religious or linguistic terms.

17. Historically, forced population transfers have served two purposes: the acquisition of territory without the indigenous population and deportation for the purposes of slavery⁹.

18. As will be seen below, in the twentieth century, two forms of population transfer can be detected: conventional and non-conventional population transfer.

4. Examples of population transfer

19. There are plenty of examples throughout history of population transfers¹⁰. The explanatory memorandum of our former colleague Mats Einarsson gives a sound overview of a number of population transfers that have occurred in and since the twentieth century¹¹.

20. Major population transfers occurred already in biblical times, e.g. in the ninth to the seventh centuries BCE when the Neo-Assyrian Empire forcibly resettled some 4.5 million persons, including 10 of the 12 tribes of Israel. In the sixth century BC, Nebuchadnezzar deported the remaining tribes of Judah to a 70-year captivity in Babylon. Roman times saw many transfers, while others followed in the wake of the invasions of Attila and Genghis Khan. In the Americas the indigenous populations were displaced and confined in reservations, while the French Acadians were uprooted by the British Governor of Nova Scotia and scattered through the other British colonies. Africans were transferred to slave labour in America.

21. In the 20th century, Armenians, Assyrians, and Greeks were displaced and massacred within the Ottoman Empire; compulsory population exchanges took place pursuant to the Lausanne Treaty of Peace with Turkey¹²; the entire German population from East Prussia, Pomerania and Silesia was expelled between 1945 and 1948¹³.

22. Moreover, the partial removal of potentially trouble-making ethnic groups was a technique used consistently by Joseph Stalin: Poles (1939–1941 and 1944–1945), Romanians (1941 and 1944–1953),

⁶ Article 3 of the Population Transfer Declaration.

⁷ For a detailed analysis, see Emily Haslam, Population, Expulsion and Transfer, Max Planck Encyclopedia of Public International Law, at paragraphs 14, available at: <http://www.mpepil.com/ViewPdf/epil/entries/law-9780199231690-e861.pdf?stylesheet=EPIL-display-full.xsl>.

⁸ See paragraph 13 of the report.

⁹ See Alfred de Zayas, Forced Population Transfer, Max Planck Encyclopedia of Public International Law, paragraph 8, available at: <http://www.mpepil.com/ViewPdf/epil/entries/law-9780199231690-e802.pdf?stylesheet=EPIL-display-full.xsl>.

¹⁰ For an overview see: Emily Haslam, Population, Expulsion and Transfer, Max Planck Encyclopedia of Public International Law, at paragraphs 3 – 11, available at: <http://www.mpepil.com/ViewPdf/epil/entries/law-9780199231690-e861.pdf?stylesheet=EPIL-display-full.xsl>.

¹¹ He pointed to many cases following the dissolution of the Ottoman empire, to the Soviet Union and the Baltic republics, to Nazi Germany and other population transfers during the Second World War, to the aftermath of the Second World War and to recent times, in particular the conflicts in former Yugoslavia and in the South Caucasus. See paragraphs 27 – 54 of the report.

¹² This Treaty provided for the compulsory transfer of 1.5 million ethnic Greeks of Turkish nationality and 400,000 ethnic Turks of Greek nationality. On minorities exempted from this Treaty, see PACE Resolution 1704 (2010) - Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (eastern Greece), available at: <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta10/ERES1704.htm>, AS/Jur report (Doc. 11860), available at: <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc09/EDOC11860.htm> and AS/Jur report (Doc. 12526), The situation of the inhabitants of Rhodes and Kos with a Turkish cultural background, available at: <http://www.assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc11/EDOC12526.htm>.

¹³ For a detailed study, see Andreas Kossert, Kalte Heimat – Die Geschichte der deutschen Vertriebenen nach 1945, Bonn 2008.

Lithuanians, Latvians, Estonians (1941 and 1945–1949), Volga Germans (1941–1945), Ingrian Finns (1929–1931 and 1935–1939), Finnish people in Karelia (1940–1941, 1944), Crimean Tatars, Crimean Greeks, Kalmyks, Balkars, Karachays, Meskhetian Turks, Karapapak/Terekeme Turks, Far East Koreans (1937), Chechens and Ingushs (1944). Shortly before, during and immediately after World War II, Stalin conducted a series of deportations on a huge scale which profoundly affected the ethnic map of the Soviet Union. It is estimated that, between 1941 and 1949, nearly 3.3 million were deported to Siberia and the Central Asian republics.

23. More recently, in the 1990s, the policy of ethnic cleansing in the former Yugoslavia brought about major population displacements and in the 21st century tribal and religious conflict in Sudan has led to mass flight and displacement, particularly in the Darfur area.

24. Finally, the recent or ongoing conflicts in the Caucasus region¹⁴ have led to population displacements.

5. Legal and human rights aspects

25. At present, there is no clear single code specifically outlawing enforced population transfer or regulating its outcome; a distinct right of individuals and groups not to be subjected to enforced population transfer has yet to be recognised. There is no single legal principle applicable to all types of enforced population transfers, given the variety of this phenomenon.

26. Nevertheless, many cases of enforced population transfers are in breach of international human rights law, international humanitarian law and international criminal law.

27. In the lines that follow, I shall deal with compulsory population transfer. Given the effects on each individual concerned, no difference should be made from a legal standpoint between a population transfer (one-way) and a population exchange (two-way).

5.1. International human rights law

5.1.1. The European Convention on Human Rights and its annexes

28. The European Convention on Human Rights (ECHR) and its annexes contain a number of rights that can be invoked in the context of population transfer. Article 2 guarantees the right to life, Article 3 prohibits inhumane and degrading treatment, Article 5 provides for the right to liberty and security and Article 8 ensures respect for private and family life and the home. Article 1 of the Protocol [No. 1] to the ECHR provides for the protection of property. Article 1 of Protocol No. 7 to the ECHR¹⁵ contains procedural safeguards relating to the expulsion of aliens, by granting to a legal alien a number of judicial rights. Paragraph 2 of this article, however, allows for the expulsion of an alien when it is necessary in the interests of public order or is grounded on reasons of national security. It thereby contains a procedural safeguard for an alien threatened with expulsion comparable to article 13 of the International Covenant on Civil and Political Rights.

29. Article 3 of Protocol No. 4 to the ECHR¹⁶ is very clear. It is entitled “prohibition of expulsion of nationals” and it reads as follows:

“(1) No one shall be expelled, by means either of an individual or of a collective measure, from the territory of a State of which he is a national.

(2) No one shall be deprived of the right to enter the territory of the state of which he is a national.”

¹⁴ Such as the recent war between Russia and Georgia (see Assembly Resolution 1648 (2009) - The humanitarian consequences of the war between Georgia and Russia, available at <http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta09/ERES1648.htm>) or the conflict between Armenia and Azerbaijan (see Resolution 1553 (2007) - Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions, available at <http://www.assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta07/ERES1553.htm>).

¹⁵ Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Strasbourg, 22.XI.1984.

¹⁶ Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and the First Protocol thereto, Strasbourg 16.IX.1963.

This Article, therefore, contains an express prohibition of mass expulsions. Article 4 of Protocol No. 4 in turn prohibits the collective expulsion of aliens. Restriction clauses are not provided for in these two Articles.

30. Article 2 of Protocol No. 4 recognises that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence", although subject to the broadly formulated exception and limitation clauses contained in paragraphs 3 and 4. Under these provisions some forms of population transfer could arguably be justifiable on grounds of security or ordre public.

31. Concerning the expulsion of 180,000 Greek Cypriots from northern Cyprus by Turkey in the course of the invasion of northern Cyprus in 1974, the European Commission of Human Rights and the European Court of Human Rights held in several reports and judgments that provisions of the ECHR (right to family life, the right to return to one's home and possessions, and the right to property) had been violated by Turkey¹⁷.

32. The question of restitution was addressed in the leading case of *Loizidou v Turkey*¹⁸, where the Strasbourg Court found a breach of Article 1 of Protocol No. 1¹⁹.

5.1.2. *The International Covenant on Civil and Political Rights*

33. Compulsory population transfer is very likely to violate numerous provisions of the International Covenant on Civil and Political Rights (ICCPR)²⁰, notably the right not to be subjected to torture or inhuman treatment (Art. 7 ICCPR), the prohibition of forced labour (Art. 8 ICCPR), the right to liberty and security of person (Art. 9 ICCPR), the right to freedom of movement and right to return to one's homeland (Art. 12 ICCPR), the right of aliens to individual judicial and administrative proceedings in case of expulsion (Art. 13 ICCPR), the right to a fair hearing (Art. 14 ICCPR), the right to privacy (Art. 17 ICCPR), the right to family (Art. 23 ICCPR), the right to special protection of children (Art. 24 ICCPR), the right to political participation (Art. 25 ICCPR), the right to equality (Art. 26 ICCPR), minority rights (Art. 27 ICCPR), and the prohibition of incitement to violence and racial hatred (Art. 20 ICCPR).

5.1.3. *Other Council of Europe and UN conventions*

34. Enforced population transfers may also be in breach of other Council of Europe (in particular the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities) and UN conventions, which space precludes from treatment at this point²¹.

5.2. *The right to self-determination*

35. Compulsory population transfer can furthermore be in breach of the right to self-determination of the population groups concerned, as enshrined in Articles 1, 55, 73 and 76 of the Charter of the United Nations, since no person or community can exercise this right if subjected to expulsion²².

¹⁷ See cases *Cyprus v. Turkey* (6780/74), *Cyprus v. Turkey* (6950/75) and *Cyprus v. Turkey* (25781/94). The European Commission on Human Rights considered in its deliberations, inter alia, "that the transportation of Greek Cypriots to other places, in particular the excursions within the territory controlled by the Turkish army, and the deportation of Greek Cypriots to the demarcation line ... also constitute an interference with their private life", guaranteed in article 8 (1). According to this deliberation, "transportations" and deportations of Greek Cypriots were considered infringements of the right to private life.

¹⁸ Application 15318/89.

¹⁹ It was only in December 2003 that Titina Loizidou received from Turkey 1.3 million Euros in compensation for the lost use of her property located in the occupied northern part of Cyprus. However, she has still not been allowed to return to her home. The remedy of compensation ordered by the ECtHR to Titina Loizidou had remained unimplemented for over five years. It required three resolutions by the Committee of Ministers to convince Turkey to make reparation payments pursuant to the judgment of 1998.

²⁰ Available at: <http://www2.ohchr.org/english/law/ccpr.htm>.

²¹ For an extensive analysis, see: The realisation of economic, social and cultural rights - The human rights dimensions of population transfer, including the implantation of settlers, Preliminary report prepared by Mr. A.S. Al-Khasawneh and Mr. R. Hatano, at paragraphs 183 – 274, available at: http://www.unhcr.ch/Huridocda/Huridoca.nsf/%28Symbol%29/E.CN.4.Sub.2.1993.17*.En?Opendocument#.

²² It is understood that this principle constitutes *ius cogens* under customary international law and is a continuous right. Thus, the forced removal of people away from their traditional lands, or the implantation of settlers without the consent of the original inhabitants into whose territories they are being moved, for instance, constitute obvious breaches of right to self-determination.

5.3. *International Criminal law*

36. The earliest explicit mention of population transfer in an international legal document was the recognition of mass expulsions as a war crime in the Allied Resolution on German War Crimes, adopted by representatives of the nine occupied countries, exiled in London, in 1942²³.

37. The 1945 Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal²⁴ (Nuremberg Tribunal), includes, in Article 6, lit. c, deportation as a crime against humanity.

38. The Rome Statute on the International Criminal Court²⁵ terms deportation or forcible transfer of population, i.e. the forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law as a crime against humanity²⁶ and, referring to the Geneva Conventions, as a war crime²⁷. Furthermore, when committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, the forced transfer of children is explicitly mentioned as a form of genocide²⁸.

39. Likewise, the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY)²⁹ includes deportation as a crime against humanity³⁰ and also expressly mentions the forced transfer of children in the context of genocide³¹.

40. The crime of forced population transfers as a component of the policy of ethnic cleansing in the former Yugoslavia in the 1990s has thus been the subject of numerous indictments by the International Criminal Tribunal for the Former Yugoslavia (ICTY), including those of Slobodan Milošević³², Radovan Karadzic and Ratko Mladic³³.

41. In some cases, the ICTY has ruled that aspects of ethnic cleansing, such as the massacre of Srebrenica in 1995, constitute genocide³⁴.

42. The above-mentioned cases illustrate the fact that forced population transfers constitute not only illegal acts, but also international crimes subject to penal sanctions.

5.4. *International humanitarian law*

43. International humanitarian law is the set of rules which seeks, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare³⁵. This body of law is of particular relevance to population transfers when they take place in or around an armed conflict.

5.4.1. *The Fourth Hague Convention*

44. The fourth Hague Convention on "Laws and Customs of War on Land"³⁶, adopted in 1899 and revised in 1907 codifies in detailed form conduct in times of war. It does not explicitly deal with population transfer. However, its Articles 42 to 56, dealing with military authority over the territory of the hostile state offer an implicit protection against population transfer. According to Article 43, the occupant is under an obligation to

²³ Resolution on German war crimes signed by representatives of nine occupied countries, London, 12 January 1942, available at: <http://www.ibiblio.org/pha/policy/1942/420112a.html>.

²⁴ Available at: <http://www.icrc.org/ihl.nsf/FULL/350?OpenDocument>.

²⁵ Available at: http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf.

²⁶ See Article 7, paragraph 1, lit. b and paragraph 2, lit. b.

²⁷ See Article 8, paragraph 2, lit. a vii.

²⁸ See Article 6, lit. e.

²⁹ Available at: http://www.icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf.

³⁰ See Article 5, lit d.

³¹ See Article 4, paragraph 2, lit. e.

³² Prosecutor v Slobodan Milošević (Indictment) ICTY-02-54 [8 October 2001] paragraph 35, available at: http://www.icty.org/x/cases/slobodan_milosevic/ind/en/ind_cro010927.pdf.

³³ Prosecutor v Radovan Karadzic and Ratko Mladic (Indictment) ICTY- 95-5 [24 July 1995] paragraph 19.

³⁴ See e.g. unanimous judgment in case Prosecutor v Radislav Krstic, Case No. IT-98-33-A, available at: <http://www.icty.org/x/cases/krstic/acjug/en/krs-aj040419e.pdf>.

³⁵ For more information, see ICRC publication on: http://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf.

³⁶ Available at: http://avalon.law.yale.edu/20th_century/hague04.asp.

take all the measures in its power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country. Article 46 stipulates that family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected and that private property cannot be confiscated.

5.4.2. *The Fourth Geneva Convention (1949) and its Additional Protocols I and II (1977)*

45. Pursuant to Article 49 of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War (1949)³⁷, individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, are prohibited, regardless of their motive. This prohibition is almost absolute, the only exception in paragraph 2 being that the occupying power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Furthermore, Article 49 stipulates that the occupying power shall not deport or transfer parts of its own civilian population into the territory it occupies. It must be stressed, once more, that Article 49 only applies in case of armed international conflict.

46. As for a non-international armed conflict, one can submit that the prohibition of population transfer can be inferred from Article 3³⁸, common to all Geneva Conventions, as it is given that this article, though not explicitly mentioning population transfer, sets a minimum standard concerning the treatment of persons protected by the Geneva Conventions.

47. Article 147, relating to grave breaches, includes unlawful deportation or transfer or unlawful confinement of a protected person.

48. According to Article 85, paragraph 4, of Protocol I, the wilful transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Geneva Convention constitutes a grave breach of the Protocol. Furthermore, Article 85 of Protocol I specifies that "without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes".

49. Article 17 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) stipulates that the displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand; should such displacements need to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

³⁷ Available at: <http://www.icrc.org/ihl.nsf/FULL/380?OpenDocument>.

³⁸ It reads as follows:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - (b) taking of hostages;
 - (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
 - (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- (2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

5.4.3. *The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity*

50. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity³⁹ extends the concept of war crimes and crimes against humanity as defined by the Charter of the Nuremberg Tribunal. It also embodies the principle that no statutory limitations shall apply to the crimes referred to in the Convention, "irrespective of the date of their commission". Furthermore, Article 1 (b) specifies that crimes against humanity may be committed "in time of war or in time of peace". Article 2 stresses that inaction, as distinct from active involvement, on the part of the State authorities in not preventing the commission of international crimes is sufficient to bring those persons within the ambit of the Convention.

6. Conclusion

51. Population transfers occur under varying circumstances ranging from wars and post-war situations to internal conflicts and even in peacetime. They may include the removal as well as the settlement of persons, within or across the boundaries of a state. In the past, population transfers used to be accepted as a means to settle political, ethnic and religious conflict. Nowadays they are rightly considered as serious violations of international law.

52. No single legal principle can be applied to all population transfers. Depending on the individual circumstances of each population transfer and the various groups it affects, different legal standards and principles apply.

53. The absence of a single international instrument on population transfer leads to overlap, inaccessibility and disparity in the level of protection available to victims of different forms of enforced population transfer⁴⁰.

54. Forced population transfer is not compatible with public international law. As has been seen, it runs counter to principles of *ius cogens*, including the right to self-determination. In times of peace, such transfers violate civil, political, economic social and cultural rights. In times of war, they also violate principles of international humanitarian law. In this context, public international law forbids the annexation of occupied territory, demographic manipulations and recruitment of forced labour.

55. Enforced population transfer can trigger state responsibility, including an obligation to make reparations. As a violation of international criminal law, it triggers the rules of individual criminal responsibility.

56. I would like to conclude with a quote to which I fully subscribe from Alfred de Zayas when he states in the Max Planck Encyclopedia of Public International Law: " 'Transfer' is a euphemism to hide the trauma of forced separation from one's homeland and the consequent dislocation of one's identity and traditions, entailing the destruction of historical and emotional links to the native earth, ancestral landscapes, cultural heritage, churches and cemeteries. Political pundits sometimes try to disguise mass expulsions in the name of contributing to lasting peace. Such has never been the real motivation of population transfer. Peace is secured only by respecting the human rights of the populations concerned"⁴¹.

³⁹ Available at: <http://www2.ohchr.org/english/law/warcrimes.htm>.

⁴⁰ See Emily Haslam, Population, Expulsion and Transfer, Max Planck Encyclopedia of Public International Law, paragraph 27, available at: <http://www.mpepil.com/ViewPdf/epil/entries/law-9780199231690-e861.pdf?stylesheet=EPIL-display-full.xsl>.

⁴¹ See Alfred de Zayas, Forced Population Transfer, Max Planck Encyclopedia of Public International Law, paragraph 4, available at: <http://www.mpepil.com/ViewPdf/epil/entries/law-9780199231690-e802.pdf?stylesheet=EPIL-display-full.xsl>.