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Property Restitution and Return: Revisiting the Case of Bosnia and Herzegovina

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Property Restitution and Return—Revisiting the Case of Bosnia and Herzegovina

Mari Katayanagi* and Satoru Mikami†

Abstract

The purpose of this paper is to verify empirically whether foreign interventions concerning property restitution in Bosnia and Herzegovina were effective in promoting the return of forced migrants, both refugees and internally displaced persons. The paper reviews the activities carried out by the international community to promote restitution, and statistically confirms the role played by the occupied properties in hindering the return of refugees and internally displaced persons. We further analyze the end results of the removal of public officials by the High Representative, for the reasons of obstructing the restitution and/or the return, and present the positive impact of the removal on the restitution rate and consequently on the composition of the returnees.

Keywords: return, property restitution, Bosnia and Herzegovina, foreign intervention, quantitative and qualitative analysis

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Introduction

“Why have you decided to come back?” To this question, a number of interviewed returnees in Bosnia and Herzegovina (“BiH”) gave the interviewer a perplexed look. “Why? This is my home”. Similar answers given included: “My ancestors’ tombs are here”; and “I was born and have grown up here”.¹

The three and half years of armed conflict in BiH caused approximately 1.2 million refugees and one million internally displaced persons (IDPs) (Bosnia and Herzegovina Ministry for Human Rights and Refugees (BiH-MHRR) 2005: 21). The purpose of this paper is to verify empirically whether foreign interventions concerning property restitution in BiH were actually effective in promoting the return of forced migrants, both refugees and IDPs. We pay particular attention to the “corrective actions” taken by an international organization.

In the policy-making arena, the first question to be asked will be whether the return is the best solution for those who left home because of the atrocities committed during the armed conflict. Since the 1990s, the widely accepted view regarding displacement is that voluntary return is the best solution, although an increasing attention is paid to other durable solutions such as local integration and resettlement (Smit 2012: 2).

It has been recognized that the forced migrants have the right, not the obligation to return. Theoretically the forced migrants make decisions whether to return, or to take another option, based on the available information and the actual circumstances. However, if the conditions to return home are not given, the displaced people are virtually deprived of the option to return. In this light, an important question for external actors, such as international organizations or aid agencies assisting refugees and IDPs, is what are the crucial conditions for sustainable return.

¹ These interviews were conducted by one of the authors during the field trips to different parts of BiH in October–November 2011 and June–July 2012, as described in the text below.

We do support the hypothesis of the existing studies which list the following as the factors which affect individuals' decision to return: personal security, economic viability, social conditions (health care, pension, etc.) and social capital (Stefanovic and Loizides 2011). In the context of voluntary repatriation, the UNHCR recognizes the importance of safety and categorizes it into three types: physical safety, legal safety and material safety (UNHCR 2002). Physical safety is personal security, while legal safety indicates non-discrimination and the protection of legal rights. Material safety denotes the access to means of survival and basic services. The conditions in the place of refuge is also an important factor.

As for the return process in BiH, there have been a number of studies which touch upon international interventions (Ito 2001; Englbrecht 2004; Harvey 2006; Stefansson 2006; Toal and Dahlman 2011). However, only a few studies are based on serious surveys that question why forced migrants decide to return or not to return. Among these few are a survey on the needs and concerns of IDPs conducted by the UNHCR in 2003 (UNHCR 2003); another survey carried out by NGO, IAN Medunardona mreža pomoci, among refugees, IDPs, returnees and local people in Serbia, Croatia and BiH (Opacic et al. 2005); and Pickering's study (2007) for International Organization for Migration (IOM) based on a large scale survey of Bosnian returnees from Western Europe. These surveys, however, do not single out any primary motive of return. The first two surveys nonetheless point to "property" as an important factor for the decision to return. Considering this finding and taking into account the availability of data, this paper also focuses on property restitution.

The restitution process in BiH has been extensively researched (Garlick 2000; Williams 2005; Philpott 2005, 2006; Buyse 2008). The novelty of this paper lies in its method -- combination of quantitative and qualitative analysis -- and its focus on international coercive interventions.

The main data used in this paper include return records compiled by UNHCR,² Property Law Implementation Statistics of the Office of the High Representative (OHR),³ and 1991 census of BiH,⁴ one of the constituent republics of the Socialist Federal Republic of Yugoslavia (SFRY) at the time. The field research for qualitative studies, in which interviews share the major part, was conducted twice, in October-November 2011 and in June-July 2012, in a number of municipalities in BiH as well as in Belgrade, Serbia.⁵

The paper is structured as follows. We start by looking into the specific context of return conditions in BiH, including the measures taken by the international community to assist with the return.⁶ The second section reviews how the return process progressed and the third section discusses motives and hindrances to the return. It is followed by the fourth section which analyzes the effect of removal intervention by the High Representative. The last section concludes with policy implications.

² UNHCR mission to BiH kindly provided the data on returnees for our studies. The data covers the period from October 1996 through November 2011 and is classified by municipality, date of return (registration), status (refugee/IDP) and ethnic group.

³ The statistics is available on OHR's website: <http://www.ohr.int/plip/> (last accessed on March 8, 2014).

⁴The last census in the SFRY was conducted in 1991. Available at: <http://www.fzs.ba/Dem/Popis/nacionalni%20sastav%20stanovnistva%20po%20opstinama.pdf> (last accessed on March 8, 2014). BiH conducted the first post-conflict census in October 2013.

⁵ The interviewees included head of municipalities, local government officials who dealt with properties during and post-conflict period, returnees and IDPs of different ethnic affiliations, current and former officers of international organizations who worked for restitution and/or return in BiH.

⁶ In the peacebuilding of BiH, the coordination of the work among international organizations and diplomatic corps, particularly Peace Implementation Council Steering Board members (Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, the United States, the Presidency of the European Union, European Commission, and the Organization of the Islamic Conference represented by Turkey) is fairly intensive. Here the international community means the both groups together.

1. Bosnian context for return

The violent conflict which erupted in BiH in the process of dissolution of the SFRY was extremely complex. Fighting took place between different forces in different locations, and two groups which fought against each other in one location could be allies in another place, and the allies could start fighting against each other in a different period of time. Ethnic cleansing was one of the features of the armed conflict in BiH, along with numerous war crimes, crimes against humanity and genocide. All these resulted in complicated flows of displaced persons in various directions over variable distances. People did not always move with a particular destination in mind, as expressed by an IDP: “we were like sheep.”⁷ Multiple relocations were also common.

The General Framework Agreement for Peace (GFAP), which ended the armed conflict, was the first international agreement which set forth the return of the displaced to their pre-war homes, not simply to their country of origin (Phuong 2004: 183). Annex 7 to the GFAP, which is the agreement on refugees and displaced persons, stipulates that “the early return of refugees and displaced persons is an important objective of the settlement of the conflict” in BiH. Regardless of the intentions of the three signatories, with respect to the future of BiH, the international community supporting the GFAP aimed at rebuilding a multi-ethnic society.⁸ However, the BiH Constitution (Annex 4 to the GFAP) recognized the divided structure of the country: Serb-majority Republika Srpska (“RS”) on the one hand, and the Federation of Bosnia and Herzegovina (“FBiH”) on the other hand, inhabited mostly by Croats and Bosniacs.⁹ The reality on the ground was that the country was subdivided into three territories controlled by each of the three ethnic groups.

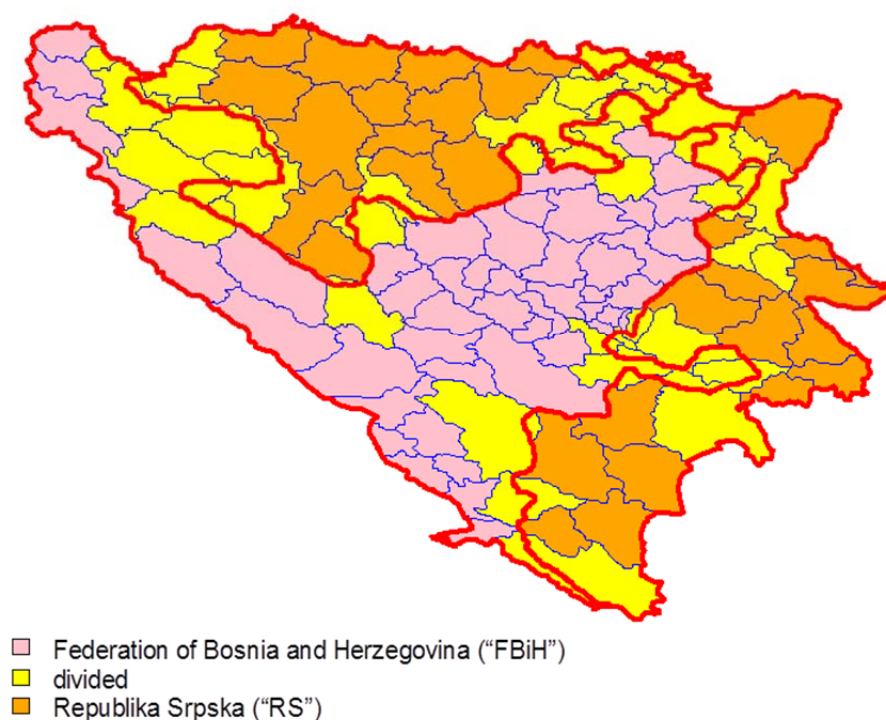
⁷ Interview of a female Serb IDP conducted in Srebrenica Municipality, 14 October 2011.

⁸ The three signatories are: the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia.

⁹ Bosnians include all three constituent peoples, namely, Bosniacs, Croats and Serbs, as well as the others who have BiH citizenship, while Bosniacs mean Bosnians who affiliate with Islamic religion. The Muslims themselves started using the term Bosniacs during the latest armed conflict.

Figure 1. Entities and municipalities after the General Framework Agreement for Peace (GFAP)

Entities and Municipalities



It is not an exaggeration to state that the peacebuilding in BiH has been led by the international community. While the UNHCR has been the lead agency in regard to the return issue itself, more generally a significant role has been played by a peculiar international organization, the OHR, which supervised the implementation of all civilian aspects of the GFAP. The Steering Board of the Peace Implementation Council (PIC) provides the High Representative with political guidance. In 1997, the PIC granted special authorities to the High Representative.¹⁰ The conferred powers are called "Bonn Powers" which include the power to

¹⁰ PIC Bonn Conclusions, 10 December 1997.

dismiss elected or public officials, amend or repeal any legislation or impose a new law. The special powers have been utilized so that the OHR could foster the property restitution and the return, as we will discuss later.

The return of the refugees and IDPs in the Bosnian context is often discussed in relation to property restitution. Some 452,000 housing units were destroyed during the conflict (BiH-MHRR 2005: 63). If one's house was not damaged, it was most likely to be occupied by someone else. The occupants could be either displaced persons from another area or local elites who had power to benefit from additional or better accommodation than one's own. To recover the occupied property, the returnees needed to have those occupants voluntarily leave or forcefully evicted.

Annex 7 to the GFAP provided for the establishment of a commission for property restitution. The Commission for Real Property Claims of Refugees and Displaced Persons (CRPC) consisted of three international members, four members from the FBiH and two from the RS.¹¹ The Commission determined the owner of the claimed property by issuing a certificate. Processing over 310,000 cases within its mandate, this body played an important role in achieving an unprecedented success of post-conflict restitution.

However, not only the work of the Commission but also various other interventions contributed to the actual restitution, as clearly illustrated by the scholarly works of Garlick (2000), Williams (2005), and Philpott (2006). Since the Commission did not have an enforcement arm, the international community needed to make the local administrative bodies carry out the task. In 1999, the Property Law Implementation Plan (PLIP) was prepared by OHR, UNHCR, OSCE, UN International Police Task Force (IPTF) and CRPC. The double occupancy committee, consisting of international and local officials, was established at the municipality level to check double occupancy cases as priority cases for eviction. PLIP statistics were announced monthly and served as a simple tool to identify the municipalities which were

¹¹ For CRPC's work, see Garlick (2000), Williams (2005), and Buyse (2008).

obstructing return. Furthermore, the return campaign was conducted through the media (Philpott 2005, Williams 2005, Buyse 2008). The success, therefore, was achieved by harmonized actions of a number of international organizations.

As noted above, the High Representative had special powers and such powers were utilized for the property restitution. Among several decisions that the High Representative made for this purpose, including the abolition of discriminatory laws and the introduction of new legislations, we here focus on the decisions to remove officials who have obstructed the return and restitution process. The effects of such decisions will be statistically analyzed later.

In November 1999, the High Representative, together with the OSCE Head of Mission, announced the removal of twenty-two public officials who had obstructed the return or the restitution.¹² The decision indicated the determination of the international community to promote the return. After a large number of refugees returned to the country in 1996–98, but not necessarily to the place of origin, the acceleration of the IDP return became the main challenge. The PLIP monitoring mechanism made it possible to collect detailed information on the restitution work at the municipality level. Based on the “non-compliance report,” the High Representative removed, in September 2000, 15 more public officials for obstructing the return or the restitution. According to Moratti (2008), more than 80% of the first wave of removal were politicians, while the second wave covered mostly “technicians” who had administered restitution cases as Housing Office officials. Politicians learned to keep a low profile not to be the target of the removal.

Against these backgrounds, the return of refugees and IDPs took place under the assistance and monitoring of the UNHCR. In the following sections, we will examine the forceful foreign intervention and its effects by using both the quantitative and qualitative methods.

¹² “High Representative and the OSCE Head of Mission announce the removal from office of various public officials”, OHR Press Releases, OHR/OSCE | 29/11/1999. All the High Representative decisions are available at: <http://www.ohr.int> (last accessed on March 8, 2014).

2. How the return happened

It should be noted that the displacement did not stop with the signing of the peace agreement. In the spring of 1996, Bosniacs and Croats were expelled from the territories awarded to the RS (Toal and Dahlman 2011: 176). Serbs and Croats in Sarajevo fled upon the inter-entity territory transfer, either forced by Bosniacs or because of an order issued by their own political leaders to leave and move across the inter-entity boundary.

Meanwhile, the return process started as the so-called “majority return,” the case in which the majority of the population in the recipient community is of the same ethnicity as the returnees. This type of return was relatively easy when the returnees’ residences had been left intact, because there was no other security concern stemming from the ethnic animosity. The significant portion of the majority return took place in the three years immediately following the GFAP (Englbrecht 2004: 102).

This tendency can be partially identified in the UNHCR statistics on returns which covers the period from October 1996 through November 2011, during which the number of refugees and IDPs who were recorded as “returned” reached 766,636.¹³ Approximately half of these returns have been recorded for the period prior to November 1999 in which the High Representative started to carry out a large number of removals of local officials who had been obstructing the return process.¹⁴ The ethnic proportion of the returnees, 36% Bosniacs, 11% Croats, and 22% Serbs, largely reflects the pre-war ethnic structure of the country (43%, 18%,

¹³ We note that this number is different from what has been announced by UNHCR elsewhere. For instance, an announcement was made that the total number of returnees to BiH by the end of July 2004 exceeded one million. ‘Bosnia and Herzegovina welcomes over 1 million returnees’ *New Stories*, 21 September 2004. <http://www.unhcr.org/414ffba4.html> (last accessed on March 8, 2014).

¹⁴ We should bear in mind that despite the success of property restitution, the owners of restituted property have not necessarily returned permanently (Phuong 2000: 175; Sert 2011). Some people return for a few days and give up staying. Some families decide that old parents return and young family members stay in the place of current residence. Other families decide to continue living in the current residence, but keep the house in the place of origin and spend summer vacations there. There are no statistics which track the record of people’s movement after the registration of return, however. In this light, the UNHCR’s statistics offer the most systematic and reliable record of the event of return.

and 31%). When we calculate the number by entities, however, we find that the returnees into RS whose majority residents were Serbs,¹⁵ were composed almost exclusively of Serbs (82%). In FBiH, in contrast, the proportion of Bosniac and Croat returnees (47.4% and 14.3%, respectively) was much larger than that of Serbs (8.2%).

The return rate, furthermore, testifies another trend in the majority return during the earlier stage.¹⁶ Despite the fact that the return rate can under-represent the overall progress of the majority return,¹⁷ the return rate of Serbs in RS (6.2%) and those of Bosniacs and Croats in FBiH (5.3% and 3.3%, respectively) are considerably higher than those of respective minorities in each entity. Although the Serb return rate in FBiH (3.1%) is very close to that of Croats, this is chiefly caused by one outlier, “Serb returnees to Bosansko Grahovo”, without which the rate declines to 2.5%. Bosansko Grahovo is a town in the western part of Bosnia whose population in 1991 was mostly Serbs.

¹⁵ For the detail of pre-war ethnic composition of each municipality, see Appendix.

¹⁶ The so-called return rate, which is calculated in this context as the number of returnees divided not by the number of residents who fled but by the former population size, therefore, can be a good indicator of the progress of return, only when the most residents were displaced from a given municipality. Such is the case where minority groups are collectively driven out from their hometowns. Otherwise it under-represents the progress due to the proportion of people who remained. In extreme cases where most residents of one particular ethnic group remained in the municipality, the return process of the group may be completed no matter how small the number of returnees is.

¹⁷ Since there are no systematic data indicating how many people evacuated from each municipality during the armed conflict, we are not capable of examining the composition of difference between the population size in 1991 and the number of returnees in each municipality in detail. The difference can include people who fled and not yet returned, and those who remained within the municipality, some of whom might have died meanwhile. The latter two categories cannot be the potential returnees. The inflow of internally displaced persons does not affect this difference, because the comparison is not with the current population size.

Table 1. Ethnic compositions of returnees during the early stage (top left), pre-war ethnic compositions of residents in each area (top right) and the return rate (bottom)

	Entities					"Entities"			
	to FBiH	to RS	to Divided	Total		"FBiH"	"RS"	"Divided"	Total
Bosniacs	49977 47.4%	7543 15.8%	80415 35.2%	137935 36.1%	Bosniacs	940617 51.7%	326280 27.9%	555380 43.6%	1822277 42.8%
Croats	15085 14.3%	577 1.2%	24670 10.8%	40332 10.6%	Croats	450333 24.8%	113332 9.7%	194896 15.3%	758561 17.8%
Serbs	8630 8.2%	39403 82.4%	34448 15.1%	82481 21.6%	Serbs	275070 15.1%	634882 54.4%	430425 33.8%	1340377 31.5%
others	31686 30.1%	317 0.7%	89041 39.0%	121044 31.7%	others	153147 8.4%	93485 8.0%	92982 7.3%	339614 8.0%
Total	105378 100.0%	47840 100.0%	228574 100.0%	381792 100.0%	Total	1819167 100.0%	1167979 100.0%	1273683 100.0%	4260829 100.0%

	Entities			
	to FBiH	to RS	to Divided	Total
Bosniacs	5.3%	2.3%	14.5%	7.6%
Croats	3.3%	0.5%	12.7%	5.3%
Serbs	3.1%	6.2%	8.0%	6.2%
others	20.7%	0.3%	95.8%	35.6%
Total	5.8%	4.1%	17.9%	9.0%

Note. “Divided” means that the pre-war municipalities were partitioned and now belong to different entities. We treat partitioned municipalities as one unit as they used to be, while taking into account the fact of partition. This “divided municipality” category also includes Brčko for technical reasons.

The “minority return”, the case in which the returnees go back to a community where the majority of the current population consists of a different ethnic group, did not progress during the early return stage, although 1998 and 1999 were designated as the years of minority return (Englbrecht 2004: 102, 123). In spite of the signing of the GFAP, the level of security concern was high for the first few years. Spontaneous returnees faced harassments, assaults and some even lost their lives through explosions and arsons (Englbrecht 2004: 104; Harvey 2006: 92; Stefansson 2006: 116; Toal and Dahlman 2011:190). The situation put international organizations on alert and the minority return was not encouraged or promoted, and in some cases, even discouraged. It was, therefore, the returnees themselves who attempted to break the ice (Belloni 2005). In order to do so, they had to fight against the pressure from their own ethnic leaders. The armed conflict had created more or less mono-ethnic communities. The political

leaders tried to maintain the consolidated community structure, encouraged the current residents to stay and discouraged the return to the place of origin (Ito 2001: 109; Englbrecht 2004: 123; Phuong 2004: 199; Dahlman and Tuathail 2005: 652–3).

Yet, in the eyes of many minority refugees and IDPs, the conditions on the ground did not yet look ripe for their return. External interventions were required to accelerate return.

3. Motives (or Hindrance) of the return

As stated in the introduction, the authors recognize that there are various factors which affect the decision of return by refugees and IDPs. In 2003, the UNHCR conducted a survey of 600 samples on the needs and concerns of IDPs living in Tuzla Canton, BiH. 55% of the interviewees expressed their wish to return to their pre-war homes. The main motive was their hope to recover their property, but a passive choice such as “no other place to go” can be also interpreted as an expression of such motive (UNHCR 2003: 3). However, 23% of the interviewees expressed their wish to remain in Tuzla, mainly for the reasons of poor security, fear of reprisals and psychological trauma (UNHCR 2003: 3, 6).

In 2004, *IAN Medunarodna mreža pomoci* conducted a survey, interviewing 1502 refugees, IDPs, returnees and local people in Serbia, Croatia and BiH. One query was to rate 18 items from a scale of 1 (not at all) to 5 (very much) according to their degree of influence over the decision whether to return or to integrate in the current place of residence. The top seven items that scored over 4.0 were: health insurance, security of family, economic situation, restitution of property, personal security, possibility of employment, and political stability (Opacic et al. 2005: 68–69). According to the same survey, the restitution of personal property, health insurance, family security, and personal security were the factors which had primarily influenced the decisions of those who had already returned (Opacic et al. 2005: 71–72).

In addition to the two aforementioned surveys, Pickering conducted both a statistical analysis and qualitative survey. Her statistical analysis was based on a large survey of refugees returning from Western Europe to Bosnia which had been conducted by the International Organization for Migration. Her findings was that a minority was more likely to return home if the person was older, was not a Serb, had expressed a desire to return to Bosnia, had escaped a close personal tragedy, and had a home in the FBiH (Pickering 2007: 105–106). None of the factors anticipated by the interest-based argument for migration decision-making, such as income, employment status, profession and even ownership of property, exerted significant influence on the return decision. Pickering concludes that minorities' emotional ties to communities matter for such decision-making (Pickering 2007: 109). However, some of her interviews show that displaced persons take into account job security upon return. The explanation can be that the stronger the tie with his/her community is, the more one could expect the acceptance by and the support from the community, regardless of the ethnic group.

We note that the “place of origin” at the time of the return is no longer the same as it was when the forced migrants left the place, both in terms of physical construction and the way the community looks like. The physical construction changes due to destructions and the community and its population structure are transformed. Psychological barriers may also exist now between different ethnic groups who fought each other violently (Smit 2012: 109). The Bosnian case indicates that whether a returnee feels their return sustainable ultimately depends on the conditions in each community (Phuong 2004: 200).

Based on the above discussion on various factors which can induce the decision to return, we will hereby focus on the occupied property as one of the main hindrances of the return of refugees and IDPs. Property restitution expectedly secures minimum material conditions for the return and fosters the hitherto deterred minority return. In practice, the process of the minority return took almost four years. This period, however, was much shorter than expected at the beginning of the process of the return, once it started, contributed to changing the situation on

the ground. As Cox and Garlick (2003, 81) point out, “once the first minorities have returned to their homes, a process of social transformation is set in motion which quickly becomes irreversible”. People did not always wait for the completion of the property restitution. They came back to the municipality of their origin and lived in makeshift tents waiting for the legal process. Sometimes people made a decision which they would never have taken, had they had accurate information.

As noted above, PLIP statistics were published monthly, from May 2000 to September 2004. It included the cumulative numbers of property right claims filed with the CRPC, the number of CRPC decisions made on the claims, and the number of cases where issued decisions were actually implemented, in each municipality. Due to the miscellaneous procedural changes in the course of the work, the numbers fluctuate and consequently it is hard to reconstruct the monthly changes precisely. However, the final consolidated cumulative number represents, more or less, the accurate occupancy of cases that existed in each municipality at the pre-return stage. We can calculate the occupancy rate in each municipality by dividing this number by the number of households in 1991. By plotting the rate of occupancy and the return rate of each ethnic group, we can identify which group suffered more in each municipality. As the contrasting configurations in Figure 2 shows, the high occupancy rate seems to have been one of the obstacles that prevented the minority return at the early stage (up to 1999). Especially, the negative correlation between the occupancy rate and the Bosniac return rate in RS municipalities is statistically significant even after the locations of municipalities are controlled for (Table 2).

Figure 2. Property occupancy and minority return at the early stage of return process (up to Oct. 1999). Left FBiH; right: RS

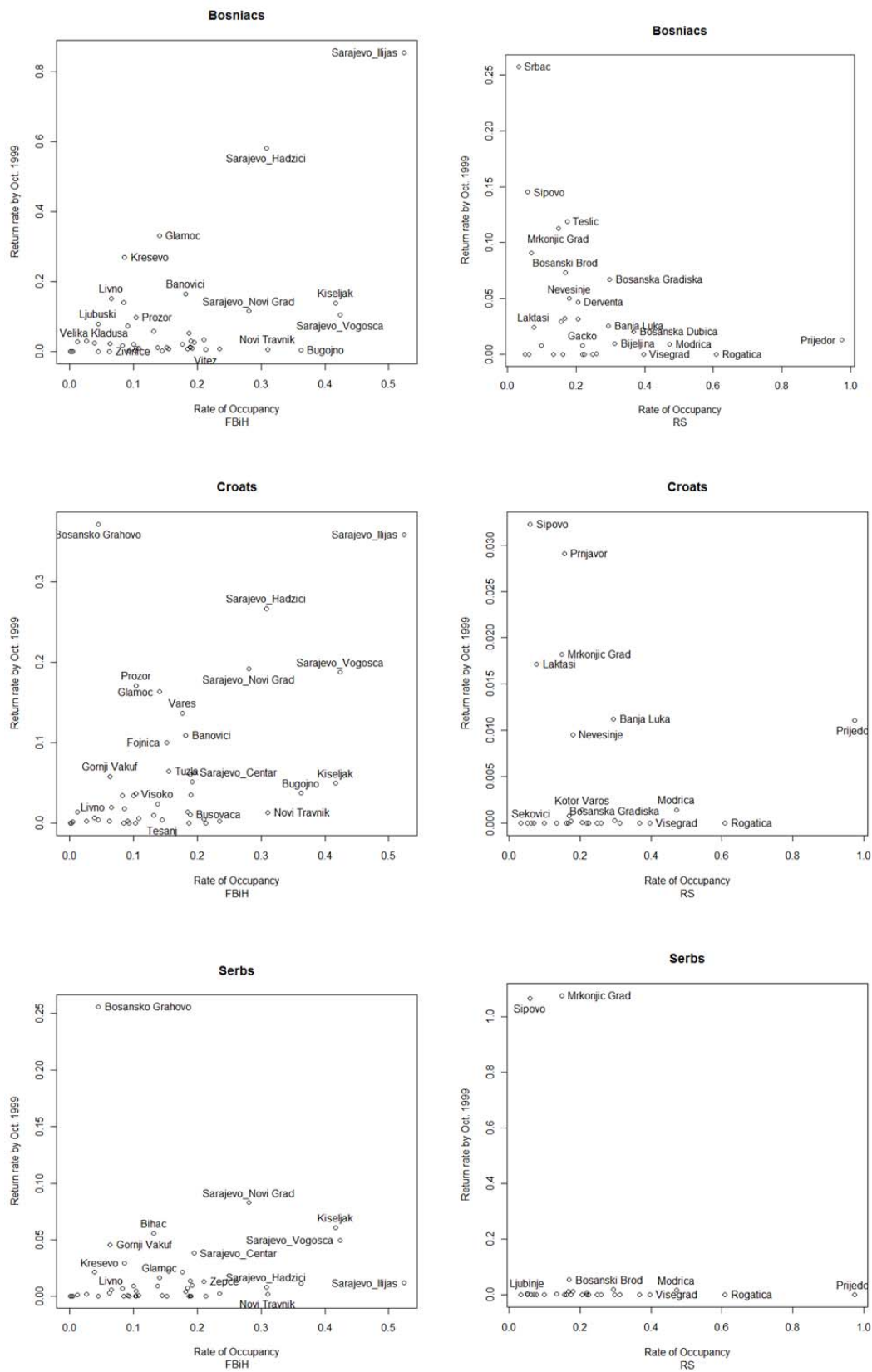


Table 2. Regressions of the return rate on the occupancy rate

	Bosniac return rate until Nov. 1999 into			Croat return rate until Nov. 1999 into		
	FBiH	RS	Divided	FBiH	RS	Divided
	municipalities	municipalities	municipalities	municipalities	municipalities	municipalities
	Coef. (SE)	Coef. (SE)	Coef. (SE)	Coef. (SE)	Coef. (SE)	Coef. (SE)
Occupancy rate	0.695 *** (0.190)	-0.095 * (0.050)	0.103 (0.613)	0.368 *** (0.113)	-0.005 (0.008)	0.013 (0.308)
Border with Serbia	-	-0.052 ** (0.025)	-0.188 (0.247)	-	-0.009 ** (0.004)	-0.130 (0.124)
Border with Croatia	0.032 (0.053)	0.034 (0.023)	0.003 (0.160)	0.012 (0.032)	-0.007 * (0.004)	0.063 (0.080)
Front line	0.021 (0.045)	-0.021 (0.023)	-	-0.006 (0.027)	-0.005 (0.004)	-
intercept	-0.044 (0.044)	0.073 *** (0.024)	0.188 (0.144)	0.002 (0.026)	0.011 *** (0.004)	0.107 (0.072)
Number of obs	47	32	28	47	32	28
F	5.030 ***	3.050 **	0.200	3.780 **	1.890	0.620
Adj R-squared	0.208	0.209	-0.097	0.153	0.103	-0.045

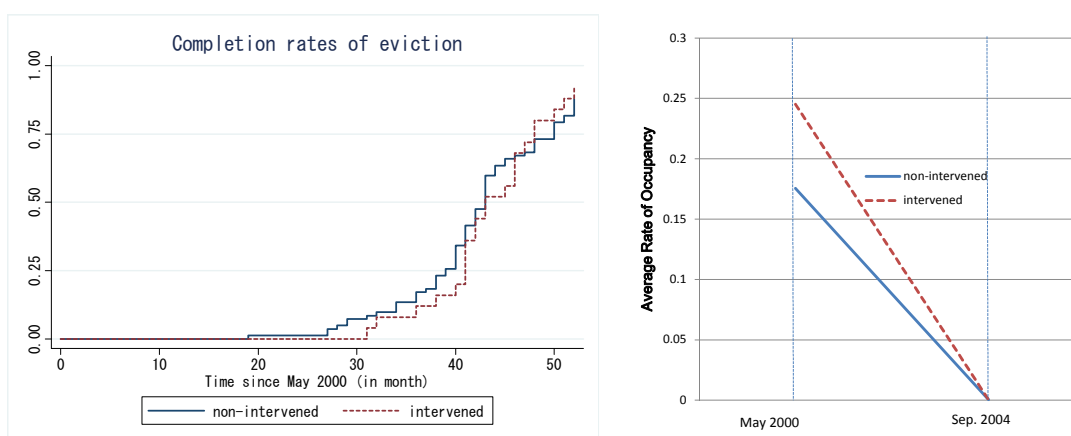
	Serb return rate until Nov. 1999 into		
	FBiH	RS	Divided
	municipalities	municipalities	municipalities
	Coef. (SE)	Coef. (SE)	Coef. (SE)
Occupancy rate	0.054 (0.055)	-0.137 (0.266)	-0.078 (0.276)
Border with Serbia	-	-0.026 (0.132)	-0.081 (0.111)
Border with Croatia	0.023 (0.015)	-0.059 (0.120)	0.093 (0.072)
Front line	-0.002 (0.013)	0.123 (0.120)	-
intercept	0.005 (0.013)	0.068 (0.127)	0.088 (0.065)
Number of obs	47	32	28
F	0.880	0.800	0.820
Adj R-squared	-0.008	-0.027	-0.021

Notes. Unit of analysis is municipality. Occupancy rate and “return rate” of each municipality are calculated by authors based on PLIP statistics and UNHCR statistics. Regression coefficients are reported. Standard errors are in parentheses.

* $p < .10$; ** $p < .05$; *** $p < .01$

Thus, even in retrospect, the international community’s policy of prioritising the eviction of occupants in order to redress the skewed pattern of return can be scientifically validated. In order to artificially make this “variable” change, the international community resorted to a coercive measure, namely the forced removal from office of local ethno-nationalistic officials, who had been obstructing the property restitution and the return. This proved to be effective as is evidenced by the statistically significant difference (7%, $p=.025$) between the intervened and non-intervened municipalities with regard to the reduction of the occupancy rate between pre- and post-intervention periods.¹⁸ As for the time that is necessary to complete the eviction, there is no difference between the two types of the municipalities, but the average occupancy rate was originally higher among the treated municipalities, which means that had it not been for the intervention, the eviction of occupants would not have been completed by September 2004 (Figure 3).

Figure 3. Completion rate of the eviction of occupants (left) and the reduction of the occupancy rate between May 2000 and Sep. 2004 (right)

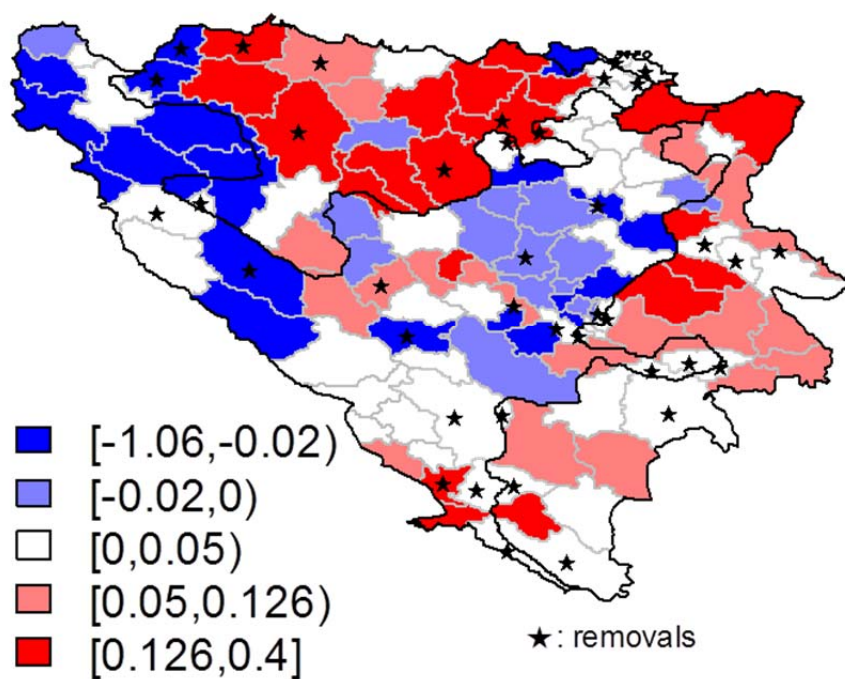


¹⁸ See Appendix for the complete list of municipalities where removal occurred.

The removal of hardline officials accelerated the property restitution in all municipalities and consequently the ethnic composition of returnees in many municipalities saw dramatic changes. As noted earlier, half of the total returnees as of November 2011 were those who had returned before November 1999, in which the first wave for the removal of the uncooperative officials was carried out. If we use this pre-intervention situation as the base line on which to assess the post-intervention nature of the return, we can observe contrasting patterns in returnees' ethnic affiliation and their destination of return. Figures 4a, 4b and 4c demonstrate differences in return rates of each ethnic group before and after the intervention. The red-colored areas are municipalities where return rates increased after intervention while the blue-colored areas are those where return rates declined after the intervention. We use here three different periodizations: 1) 37 months between October 1996 (when the UNHCR started to take the return record) and October 1999 (one month before the first large-scale removal) and 37 months between November 1999 and November 2002 (the same length of period after the first intervention); 2) 47 months between October 1996 and August 2000 (one month before the second round of removals) and 47 months between September 2000 and July 2004 (the same length of period after the second intervention); and 3) 37 months before the first intervention (October 1996 – October 1999) and 37 months after the second intervention (September 2000 – September 2003 (the same length of period)). We found out that the results are essentially the same regardless of the definitions of the period. Post-intervention return rates of the Bosniacs and the Croats increased in RS and decreased in FBiH while that of the Serbs increased in FBiH and decreased in RS.

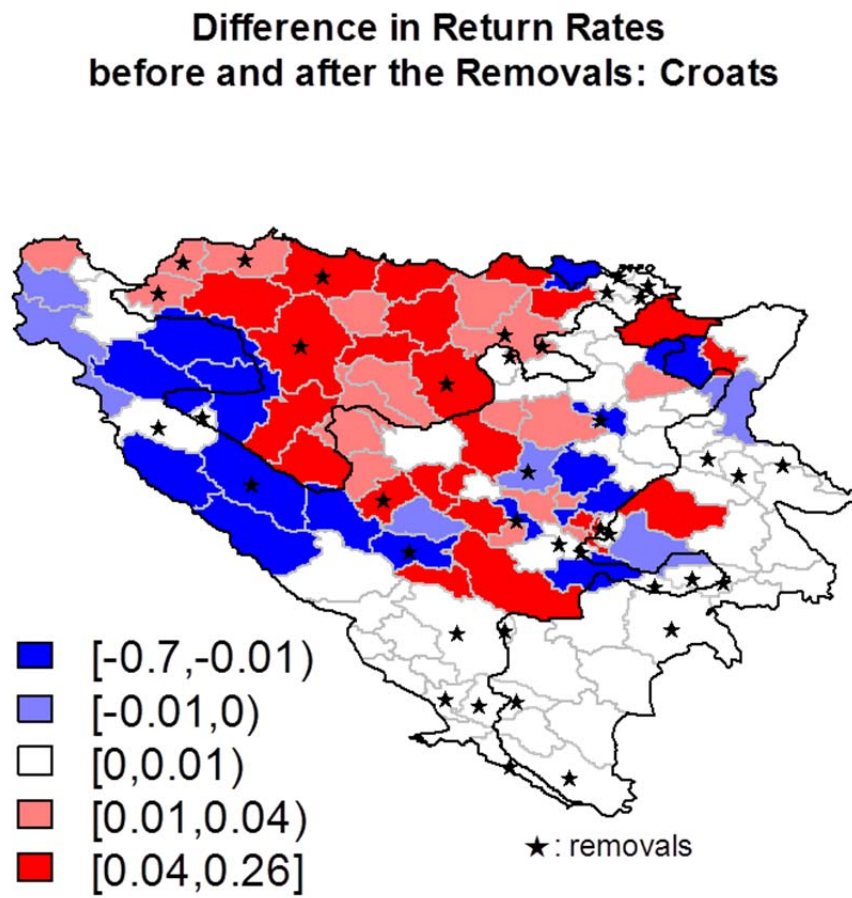
Figure4a. Differences in return rates of the Bosniacs before and after the removals

Difference in Return Rates before and after the Removals: Bosniacs



Note. Differences are divided into quintiles.

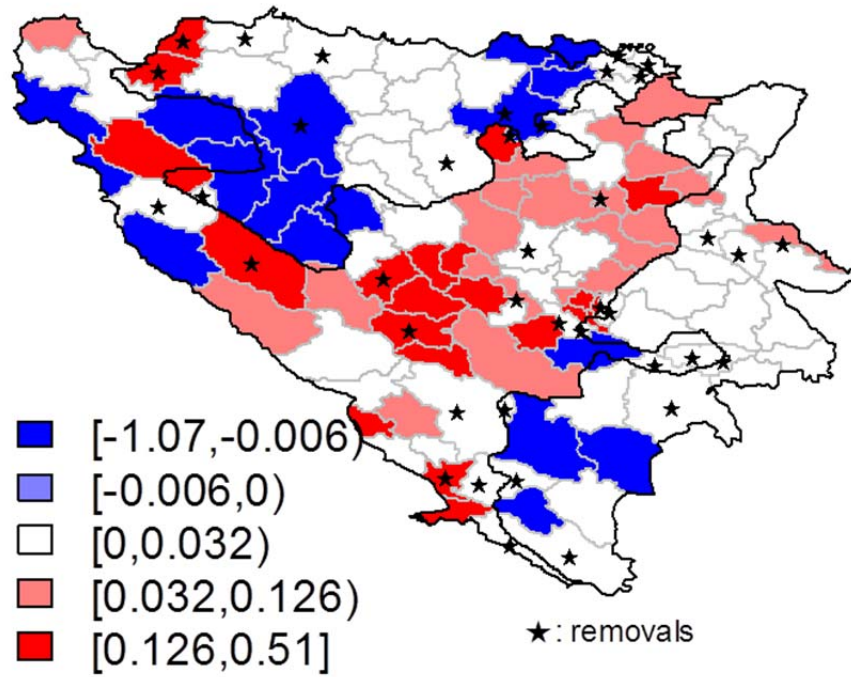
Figure4b. Differences in return rates of the Croats before and after the removals



Note. Differences are divided into quintiles.

Figure4c. Differences in return rates of the Serbs before and after the removals

**Difference in Return Rates
before and after the Removals: Serbs**



Note. Differences are divided into quintiles.

Table 3 “updates” Table 1 using the most recent data available. It clearly demonstrates that the ethnic composition of the returnees in each area as well as the return rate during the entire period (October 1996 – November 2011) have been substantially improved. It is hard to imagine that such a big change could have happened in such a short period without the extensive involvement of the international community, especially for the removal of uncooperative officials.

Table 3 Ethnic composition of returnees (left) and return rates as of November 2011 (right)

	Entities			
	FBiH	RS	Divided	Total
Bosniacs	82862 36.7%	99974 66.3%	166548 42.7%	349384 45.6%
Croats	36326 16.1%	8100 5.4%	39972 10.2%	84398 11.0%
Serbs	73251 32.4%	41734 27.7%	92877 23.8%	207862 27.1%
unidentified	33409 14.8%	983 0.7%	90600 23.2%	124992 16.3%
Total	225848 100.0%	150791 100.0%	389997 100.0%	766636 100.0%

	Entities			
	FBiH	RS	Divided	Total
Bosniacs	8.8%	30.6%	30.0%	19.2%
Croats	8.1%	7.1%	20.5%	11.1%
Serbs	26.6%	6.6%	21.6%	15.5%
unidentified	21.8%	1.1%	97.4%	36.8%
Total	12.4%	12.9%	30.6%	18.0%

Conclusion

As a number of scholars and practitioners have underlined, sustainable return is not only possible for housing but also economic and social conditions and physical security are attended. Particularly in the case of the minority return, achieving the normalization of life is not easy. One minority returnee in the southern part of BiH who was the leader of the return process and now appears to be successful in his agricultural work sheds light on this question. He says that, although the level of well-being of his family is relatively high, he does not feel like he is living a free life. He and his family take every caution not to provoke any animosity of neighbors belonging to the majority ethnic group.¹⁹

¹⁹ Interview of a male Serb returnee to a Croat majority municipality, 19 June 2012.

Bradley (2008, 286) rightly points out that the appropriate return process is “to put returnees back on an equal footing with their non-displaced co-nationals by restoring a normal relationship of rights and duties between the state and its returning citizens.” The UNHCR also insists that its objective in monitoring returnees is to ensure the reestablishment of an effective and durable state-citizen relationship (UNHCR 1997: 64; cited in Petrin 2002: 9). That kind of state-citizen relationship is problematic in BiH where the presence of the central government is kept weak in people’s life by the existence of the entities and Cantons dominated by a certain ethnic group.

In the absence of external pressures, those in control of the local governments had no motivation to welcome the returnees who belonged to different ethnic groups other than their own. In such localities, the problem of occupied properties was especially a serious obstacle against the return. Our statistical analysis illustrates the positive effects of the High Representative’s intervention to remove public officials obstructing the restitution and/or return process. Although the removal of dozens of officials did not bring about a full realization of legal and physical safety, it had the effect of informing all the citizens that ethno-politics could not reign.

The Bosnian example presents the positive effect of foreign intervention in the restitution through the promotion of the rule of law. However, we cannot neglect the fact that BiH was exceptional in the sense that the High Representative was powerful enough to impose the rule of law on everybody. That amount of power is seldom given to outside forces.²⁰

The removal and the consequent improvement of restitution, however, should not be regarded simply as a result of coercion. Although this paper could not deal with the subject in a substantial manner, the basic policy of the OHR and the CRPC was to deal with everybody equally before the law. It is true that, at the early stage of return, the international community

²⁰ If feasible, as Moratti argued, there are questions to be addressed in order to apply this kind of intervention in future cases, from the fair procedural viewpoint, including clear standards of removal, the right to be heard before a decision, and a judicial review (Moratti 2008).

focused just on return and faced obstructions by the local elites who wished to sustain the more or less mono-ethnic post-war population structure at the municipality level. Later on, however, the rule-of-law approach or rights-based approach was adopted in lieu of the return approach (Williams 2005; Philpott 2006; Buyse 2008).²¹ While the return was inherently political, the focus on property rights contributed to making the process neutral (Philpott 2006: 75). The standardized procedure, which at a later stage included chronological processing of claims, treated each and every claimant equally regardless the ethnic affiliation or political status.²² This neutrality may have contributed to persuading people to accept the preset rules.

In the advanced stage of the BiH restitution process, some people started moving out of someone else's house without going through the eviction procedure. It appears that among people who accepted the laws and regulations as well as the concept to respect rights of the others, the third party intervention was no longer required and the pre-war property owner and the secondary occupants could settle the restitution date between themselves.²³ This may be an important lesson for any restitution attempt in the place where a powerful international body such as the OHR does not exist. A full discussion on this point, however, needs to wait for a deeper study in the future.

²¹ The rule of law is defined in various ways. A report of the UN Secretary General, for instance, defines it as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards”. It further describes rule of law requirements as “adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (UN 2004, para. 6).

²² The shift of approach from return to property rights required various measures: certification of property rights, prescribed eviction procedure, monitoring of enforcement mechanism, and information campaign which made the public aware of what were their rights and obligations with respect to restitution. In the whole process, the removal intervention highlighted international community's determination to push the restitution process forward. Ethno-nationalistic politicians must have recognized it as a warning, while the ordinary citizens who had almost given up recovering their properties could recover their hope.

²³ Interview of a female Serb returnee to a Muslim majority municipality, 15 October 2011. The relationship between the pre-war owner of the property and the secondary occupant varies. It can be calm and civilized as this case, or it can be aggressive and hostile in other cases.

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Appendix . Former ethnic composition and current entity membership

	FBH	RS	Divided
Former Serb-dominated	<u>Bosansko Grahovo</u> , <u>Glamoč</u>	<u>Banja Luka</u> , <u>Bijeljina</u> , <u>Bileća</u> , <u>Bosanska Dubica</u> , <u>Bosanska Gradiška</u> , <u>Čelinac</u> , <u>Laktaši</u> , <u>Ljubinje</u> , <u>Mrkonjić Grad</u> , <u>Nevesinje</u> , <u>Prnjavor</u> , <u>Rudo</u> , <u>Šekovići</u> , <u>Šipovo</u> , <u>Sokolac</u> , <u>Srbac</u> , <u>Testlić</u>	Bosanski Petrovac(Bosanski Petrovac(FBiH), Petrovac(RS)), Drvar(Drvar(FBiH), Istočni Drvar(RS)), Sarajevo_Pale(Pale(RS), Pale-Prača(FBiH)), Skender Vakuf(Kneževo(RS), Dobretići(FBiH)), <u>Trebinje(Trebinje(RS), Ravno(FBiH))</u>
Fomer Bosniac-dominated	<u>Banovići</u> , <u>Bihać</u> , <u>Breza</u> , <u>Cazin</u> , <u>Jablanica</u> , <u>Kakanj</u> , <u>Kladanj</u> , <u>Konjic</u> , <u>Olovo</u> , <u>Sarajevo_Centar</u> , <u>Sarajevo_Hadžići</u> , <u>Sarajevo_Novi Grad</u> , <u>Srebrenik</u> , <u>Tešanj(Tešanj(FBiH), Usora(FBiH))</u> , <u>Tuzla</u> , <u>Velika Kladuša</u> , <u>Visoko</u> , <u>Zavidovići</u> , <u>Zenica</u> , <u>Žvinice</u>	<u>Bratunac</u> , <u>Srebrenica</u> , <u>Višegrad</u>	Bosanska Krupa(Bosanska Krupa(FBiH), Bužim(FBiH), Krupa na Uni(RS)), <u>Coražde(Coražde(FBiH), Novo Coražde(RS))</u> , <u>Gračanica(Gračanica(FBiH), Petrovo(RS))</u> , <u>Gradačac(Gradačac(FBiH), Pelagićevo(RS))</u> , <u>Kalesija(Kalesija(FBiH), Osmaci(RS))</u> , <u>Lukavac(Lukavac(FBiH), Petrovo(RS))</u> , <u>Sarajevo_Stari Grad(Stari Grad(FBiH), Istočni Stari Grad(RS))</u> , <u>Sarajevo_Trnovo(Trnovo (FBiH), Trnovo (RS))</u>
Former Croat-dominated	<u>Čapljina</u> , <u>Čitluk</u> , <u>Grude</u> , <u>Kreševo</u> , <u>Livno</u> , <u>Ljubuški</u> , <u>Neum</u> , <u>Posušje</u> , <u>Široki Brijeg</u> , <u>Tomislavgrad</u>		<u>Odžak(Odžak(FBiH), Vukosavlje(RS))</u> , <u>Orašje(Orašje(FBiH), Donji Žabar(RS))</u>
Former Serbo-Bosniac parity	<u>Donji Vakuf</u> , <u>Sarajevo_Ilijaš</u> , <u>Sarajevo_Vogošća</u>	<u>Bosanski Novi(Novi Grad (RS), Bosanska Kostajnica(RS))</u> , <u>Čajniče</u> , <u>Gacko</u> , <u>Han Pijesak</u> , <u>Kalinovik</u> , <u>Prijedor</u> , <u>Rogatica</u> , <u>Vlasenica(Vlasenica(RS), Milići(RS))</u>	<u>Doboj(Doboj(RS), Doboj East(FBiH), Doboj South(FBiH))</u> , <u>Foča(Foča(RS), Foča-Ustikolina(FBiH))</u> , <u>Ključ(Ključ(FBiH), Ribnik(RS))</u> , <u>Lopare(Lopare(RS), Čelić (FBiH))</u> , <u>Sanski Most(Sanski Most(FBiH), Oštra Luka(RS))</u> , <u>Sarajevo_Iliđza(Iliđza(FBiH), Istočna Iliđza(RS))</u> , <u>Sarajevo_Novo Sarajevo(Novo Sarajevo(FBiH), Istočno Novo Sarajevo(RS))</u> , <u>Ugljevik(Ugljevik(RS), Teočak(FBiH))</u> , <u>Zvornik(Zvornik(RS), Sapna(FBiH))</u>
Former Serbo-Croat parity		<u>Bosanski Brod</u> , <u>Derventa</u>	<u>Bosanski Šamac(Šamac(RS), Domaljevac-Šamac(FBiH))</u> , <u>Kupres(Kupres (FBiH), Kupres (RS))</u>
Former Croat-Bosniac parity	<u>Busovača</u> , <u>Fojnica</u> , <u>Gornji Vakuf</u> , <u>Kiseljak</u> , <u>Novi Travnik</u> , <u>Prozor</u> , <u>Travnik</u> , <u>Vitez</u> , <u>Žepče</u>		
Former tripartite	<u>Bugojno</u> , <u>Maglaj</u> , <u>Vareš</u>	<u>Kotor Varoš</u> , <u>Modriča(Modriča(RS), Vukosavlje(RS))</u>	<u>Brčko</u> , <u>Jajce(Jajce(FBiH), Jezero(RS))</u> , <u>Mostar(Mostar(FBiH), Istočni Mostar(RS))</u> , <u>Stolac(Stolac(FBiH), Berkovići(RS))</u>

Note. Underlined are intervened municipalities while Italics refers to “reversed” municipalities whose current ethnic composition contradicts to the former municipality population structure. The analysis in this paper excludes Gračanica and Lukavac, from which the third new municipality, Petrovo, was created while both pre-existing municipalities continue to exist. We could not have reconstructed the hypothetical present situations in Gračanica and Lukavac, had it not been for Petrovo.

Abstract (in Japanese)

要約

本稿の目的は、ボスニア・ヘルツェゴビナの不動産所有権返還に関する国際社会の介入が、難民・国内避難民の帰還を促進する上で有効であったのか、データに基づいて検証することである。論文では、まず、国際社会がボスニア・ヘルツェゴビナにおける不動産所有権返還のために行ってきた諸活動を振り返ったうえで、帰還が遅滞していた状況に対し、土地・家屋の占拠が与えていた影響の大きさを統計的に確認する。さらに、帰還を妨害していたボスニア・ヘルツェゴビナの公職者がボスニア・ヘルツェゴビナ上級代表（OHR）により免職処分されたことが、不動産所有権回復の加速化、ひいては帰還民の民族構成の是正に実際貢献していたことを示す。