CHAPTER 9
ETHNIC CLEANSING: APPLICABLE NORMS, EMERGING JURISPRUDENCE, IMPLEMENTABLE REMEDIES

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A. INTRODUCTION

In the light of the increasing internationalization and inter-dependence of the modern world, the concept of ethnic homogenization of a state appears anachronistic. One would have thought that after the defeat of Hitler’s racist Weltanschauung in Europe and after the failure of Apartheid in Southern Africa, policies of forcible separation of cultures and peoples would be thoroughly discredited.

In the light of modern international law, the attempt to achieve separation by means of forced population transfer is not only anachronistic and grotesque: it is illegal. Without a doubt, ethnic cleansing constitutes an internationally wrongful act, giving rise to state responsibility, and an international crime, giving rise to individual penal liability. The same applies to the colonial practice of implanting settlers in occupied territories.

Expulsion and implantation also have important human rights implications. As the first United Nations High Commissioner for Human Rights, José Ayala-Lasso, stated on May 28, 1995: “the right not to be expelled from one’s homeland is a fundamental human right,” and on February 17, 1997 at the opening of an expert seminar in Geneva: “Compulsory population transfers, including the implantation of settlers, are a serious matter, not only because they affect many people, but also because they violate the whole gamut of civil and political rights, economic, social and cultural rights. Let us remember, human rights are not exercised in a vacuum, but quite concretely where one lives. Expulsion by its very nature deprives victims of the exercise of many rights and is frequently accompanied by physical abuses and even by the ultimate violation of the right to life.”

Viewed from this perspective, this chapter may appear superfluous. If the law is so clear, why write about it? Only because population transfers are still occurring today; because colonizers are being implanted in occupied territories; because victims of expulsion are still prevented from returning to their homes and denied restitution.

Alas, in the same way as the Bible has not done away with sin, in the same way that Article 2, paragraph 4, of the United Nations Charter has not ended the threat or the use of force in international relations, and in the same way that the Convention against Torture has failed to stop the occurrence of this abhorrent practice, the prohibition of forced population transfers and the implantation of settlers has not dissuaded some nationalistic politicians from ravaging their neighbors—to too often with impunity.

The phenomenon of ethnic cleansing in Kosovo and in the former Yugoslavia is not the first manifestation of forced population transfers in this century of refugees. And, incidentally, victims of ethnic cleansing have not been only the Albanians, the Croats and the Muslim Bosniacs, but also the 150,000 Serbs from the Krajina in Croatia.3 All are individual victims of injustice, and they deserve our compassion and solidarity.

“Ethnic cleansing”—this dreadful new concept—is but a new term to describe the old state practice of expelling minorities on racial or religious grounds. Even before the First World War the Balkans saw numerous expulsions and population “exchanges.”4 During the war, pent up nationalism led to the genocide against the Armenians and to the expulsion of the Greek communities from Asia Minor. At the Paris Peace Conference the international community established the League of Nations and created a system of minority protection by treaty. Thousands of petitions were submitted to the League of Nations and some came before the Permanent Court of International Justice (PCIJ) at the Hague, which held that the minorities' treaties were not being duly observed. But neither those minorities' treaties nor the judgments of the PCIJ succeeded in ensuring the human rights of minorities in the inter-war period.5

A particularly injurious precedent for Europe and the world was the 1923 Treaty of Lausanne, because it legitimized the so-called population exchanges between Greece and Turkey, which were anything but voluntary. I sympathize