Political Refugees, Captives, Slaves and Other Migrants in International Law of Ancient Near East (2nd Millenium BC)

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Abstract

International treaties in the 2nd millennium BC in the Ancient Near East (ANE) demonstrate the importance placed on regulating migratory movements at the time. The economic and political basis of such regulation helps outline a critical analysis in comparison to current international law regarding the same forms of migratory movements. The loss of social value of human beings arising from demographic changes explains the enormous difference between past and present regulatory models. Only the recovery of human value in its economic sense will permit changes to the current regulation of migratory movements. The variety of extradition clauses in the treaties is also an evidence of the problems that led to the convergence of personal and territorial criteria in claiming the exercise of jurisdiction during the emergence of the first large territorial states. Violation of established obligations of capture and extradition were asserted as just cause for war. The general analysis leads to a historical-dogmatic conjecture: the influence of regulatory categories from the 2nd millennium BC on the 16th-century ius publicum europaeum.

1. Migrants, treaties and correspondence in the Ancient Near East

   The first territorial states in which a king with sovereign powers clearly exercised his jurisdiction over a large territorial base, beyond the commercial city-states, appear in the 2nd millennium BC in the ANE. Surviving international treaties contain abundant
precise clauses regulating all the elements of the State: boundary delimitation\(^1\), recognition of governments\(^2\), nature and consequences of territorial sovereignty\(^3\) and control of population flows, the latter being the specific subject of this article. These regulations also created shared obligations and rights on the use of aquifers, rules of passage for international trade, uses of temples in border areas and the control exercised over nomadic tribes that traditionally moved through the defined territories.

Highly significant information has survived through international treaties\(^4\), diplomatic letters\(^5\) and other texts from the ancient Hittite world in particular (c. 1500-


\(^2\) Sometimes explicit, at others implicit in all clauses on succession, mutual loyalty or mutual assistance against uprisings. See, for example, § 11 Treaty between Tudhaliya II of Hatti and Sunashshura of Kizzuwatna; §§ 5 and 6; and Treaty between Suppiluliuma I of Hatti and Huqqana of Hayasa; ibidi. at 15-6, 24.


\(^4\) Approximately 20, according to the texts of Beckman.

\(^5\) For the hundred diplomatic letters from Hittite sites, see A. H. Hoffner (Jr.), Letters form the Hittite Kingdom (2009); and M. Weeden, ‘State Correspondence in the Hittite
1200 BC), although also from other nearby kingdoms, showing the existence of continuous population movement across these borders. Implicit in all these documents is the desire to establish an international regime to regulate them, constituted through clusters of bilateral treaties. The terms in Acadian or Hittite that refers to persons moving from one State to another are very varied.

In the correspondence we frequently find the Hittite term *pitteyant*. This simply refers to someone who leaves or flees from their previous place of residence. The word does not permit differentiation between a slave fleeing from a master to another territory or a fugitive fleeing for political reasons. This *Letter from the Hittite king to World*, in K. Radner (Ed.), *State Correspondence in the Ancient World. From New Kingdom Egypt to the Roman Empire* (2014), at 32.


8 Hoffner, *supra* note 5 at 111.
Kaššū[^9], the ‘Chief of the Army Inspectors’[^10] in a Hittite province with the duty to watch over border crossings, provides a general illustration of the term:

<table>
<thead>
<tr>
<th>(3) 13 LU.MEŠ <em>pît-te-an</em>-du-uš-kân</th>
<th>(3–5) Concerning the fact that you dispatched (to me) 13 (apprehended) fugitives: They have brought them here.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(4) ku-it pa-ra-a na44-it-ta (5) na-aš ú-wa-te-er</td>
<td></td>
</tr>
</tbody>
</table>

The term *hapirū* is also frequently used in Acadian texts. Linguists interpret this as referring to *foreigners from other lands*. They often offered their services as mercenaries to armies[^11]. Some authors think the *hapirū* might have been *Hebrews[^12]*, members of a group of warring semi-nomadic tribes that gave rise to the people of Israel. A large number of letters refer to them as a group that brought violence to the lands under the Pharaoh’s sovereignty[^13].

[^9]: Ibid. at 110.

[^10]: Ibid. at 95. Emphasis always added.

[^11]: Ibid. at 159.


Finally, the participle *munnabtu* is used systematically in the bilateral Hittite treaties to refer generally to ‘fugitives’ or ‘runaways’, again without specifying the reason for leaving\(^{14}\).

Although the scope of existing regulations is not always clear from the text, the overall information from the treaties, diplomatic correspondence and other documents that have been recovered provide a revealing sketch of the problems underlying these population movements in the period and the legal-political consequences associated with the numerous deportation clauses established in bilateral treaties. The high socio-economic value given to the population and the disvalue corresponding to their loss was eventually set down in a *system of capture and extradition obligations* as a fundamental part of international law in the period.

2. Reciprocity or asymmetry in extradition obligations

A useful form of classification for the conventional extradition clauses is based on the whether the extradition duty was reciprocal. It enables us to draw conclusions on the structure of international power at that time and place. There are few treaties in which provisions on deportation or extradition are symmetrical; only 4 out of 20. Symmetry in the capture and extradition obligations is evidence of relations of equality or near equality between the signatories. Non-reciprocal treaties show a subordinate relationship to Hatti, one of the major powers in the ANE from 1500 to 1200 BC. The

fragmentary nature of some treaties makes it impossible to know whether the extradition obligations were reciprocal\(^{15}\).

**A. Reciprocity**

The Treaty between Idrimi of Alalakh and Pilliya of Kizzuwatna contains a clause with fully corresponding mutual extradition obligations between the sovereigns. It is the exclusive object of the treaty. These were two kingdoms that were in turn vassals of the Great King of Hatti. Between them, the obligations of capture and extradition of fugitives were fully reciprocal. This indicates their formal and material equality. The subclass of fugitives to which they are applicable is not specified. The parties are subject to mutual obligations of capture and extradition that seem to extend to private persons:

Pilliya and Idrimi *swore an oath* by the gods and *made this binding agreement between each other*:

— *They shall thereafter always send back fugitives between each other.*

— Should Idrimi seize fugitives belonging to Pilliya, he shall send them back to Pilliya.

— And should Pilliya seize fugitives belonging to Idrimi, he shall send them back to Idrimi.

— And *anyone who seizes a fugitive shall return him to his lord*\(^{16}\)

\(^{15}\) For example, the Treaty between Niqmepa de Alalakh and Ir-Teshub of Tunip (c. 1425 BC) Text obtained from [http://etana.org/etact/search?subject=%22Treaties%22](http://etana.org/etact/search?subject=%22Treaties%22) (last visited 7 April 2015).
The treaty also provides a mechanism for cooperation between bordering states. It authorizes the ‘lords’ of the fugitives to enter the territory of the other State and capture them. In this case, they were exonerated from paying a reward: ‘— And if a fugitive belonging to Pilliya enters the territory of Idrimi, and no one seizes him, but his lord seizes him, then he (the fugitive's lord) shall not pay a ransom to anyone.’ 17

A further three treaties contain reciprocal extradition provisions for part of the Hittite Kingdom 18. Only in the Treaty of Kadesh between Hatti and Egypt does the reciprocity of obligations extend to the whole regime of rights and obligations. This shows the hierarchical equality between both large kingdoms. In the other two treaties, other provisions are not reciprocal, thus showing the inferiority of the other party with respect to Hatti although it was not projected to the issue of refugees.

B. Without reciprocity

There are numerous treaties with no reciprocity of obligations in this area, all of them in favour of Hatti. These place the other States in the treaty, vassals or

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16 Ibid. It is an example of a treaty between equal kings but subject to vassalage of the Great King of Hatti. On King Idrimi, G. Galvin, Egypt as a Place for Refuge (2011) at 23-27.

17 See also the text of Annals of Mursili II, see infra note 42.

protectorates, in a clearly subordinate position\textsuperscript{19} in an essential aspect of their politics: the control of migratory movements. The lack of correspondence in duties could be in two ways:

a) The Hatti kingdom had rights of extradition of its fugitives that it did not assume with respect to the other party;

b) Its extradition obligation was not symmetrical, as different conditions or forms of execution were established to that of the counterpart.

An example of an extradition agreement without reciprocity is that of the Treaty between Suppiluliuma I of Hatti and Shattiwaza of Mittanni. The text reflects the idea that the capital Hatti had become a ‘city of refuge’ for fugitives. From the moment they entered the territory of the Great King of Hatti they became his subjects:

§9. If a fugitive flees from Hatti and goes to the land of Mitanni, the Mittannians shall seize and return him. If a fugitive of the land of Mittani flees and goes to Hatti, the King of Hatti will not seize him and return him … The

\textsuperscript{19} The Treaty between Tudhaliya IV of Hatti and Shaushga-muwa of Amurru contains a clause in which the Hittite king orders the vassal prince to treat his friends as friends and his enemies as enemies. He names the kings with the same rank of the King of Hatti at that time. He mentions those of Egypt, Babylon, Assyria and Ahhiyawa. Beckman, \textit{supra} note 1, §11 at 101. On the differences in forms of subordination of the kingdoms, see A. Altman, ‘Rethinking the Hittite System of Subordinate Countries from the Legal Point of View’, 123 \textit{Journal of the American Oriental Society}, No. 4 (Oct. - Dec., 2003), at 741-756; G. Beckman, ‘International Law in the Second Millennium: Late Bronze Age’, in R. Westbrook, \textit{A History of Ancient Near Eastern Law} (2003), at 755-759.
household which Prince Shattiwaza is establishing in Hatti shall take charge of
the fugitive ... He will belong to Hatti\(^{20}\).

Nor was there any reciprocity in the *Treaty between Suppiluliuma I of Hatti and
Huqqana*\(^{21}\).

In other cases, while the obligation of the other party in the treaty is absolute, that
of the King of Hatti is discretionary: he may or may not agree to deportation of
fugitives after receiving the corresponding request. In the *Treaty between Suppiluliuma
I of Hatti and Aziru of Amurru*\(^{22}\), when the extradition of fugitive Hittite subjects is
involved, the obligation of Aziru is automatic and absolute: ‘§12. If a Hittite comes as a
fugitive from Hatti and turns to you, you, Aziru, seize him and send him to the King of
Hatti. But if you do send him, them you will have transgressed de oath\(^{1}\). However, when
ex-patriots from the kingdom of Amurru were involved, their deportation had to be
requested and the Hittite king would decide whether to do so on a discretionary basis:

§13. If a fugitive flees from the land of Amurru and comes to Hatti, the King of
Hatti will not seize him and return him …

§14. And if you, Aziru, want something, request it from the King of Hatti, and
take whatever the King of Hatti gives to you. *You shall not take what the King
of Hatti does not give to you.*

There are other cases in which the Hatti’s obligation of return is not so
discretionary. The sovereign of Hatti had to return the fugitive when requested by the
other party in the case of qualified craftsmen abandoning their country of origin with

\(^{20}\) Beckman, *supra* note 1 at 41.

\(^{21}\) *Ibid.* §§15-18 at 26

the aim of avoiding a professional obligation. The Treaty between Mursili II of Hatti and Targasnalli of Hapalla stipulated the following:

§6. … If a civilian captive under a service obligation or a free man comes from the land of Hapalla under a service obligation (?) or a free man comes from the land of Hapalla as a fugitive to Hatti, I will not give him back to you. It is not permitted to give a fugitive back from Hatti. But if the is a cultivator, or a weaver, a carpenter, or a leatherworker –whatever sort of craftsman, and he does not deliver his assigned work, but runs off and comes to Hatti, I will arrest him and give him back to you.23

C. Demographic birth policy and migration policy

The Treaty between Idrimi and Pilliya and the treaties with non-reciprocal extradition clauses demonstrate the existence of public demographic and migration policies in the very earliest origins of the territorial State. Both have the same intention: to maintain or increase the population within the State. On the one hand, these treaties set the rewards for return. Women were worth twice the value of men:

‘—If it is a man, then he (the fugitive's lord) shall pay 500 shekels of copper as his ransom, and if it is a woman, then they shall pay 1000 shekels of copper as her ransom’24.

This provision proves the presence of a demographic birth policy in that ancient period25. Sovereigns already realized the need to maintain a high birth policy as a

23 Ibid. at 66. Also in the Treaty between Muwatalli II of Hatti and Alaksandu of Wilusa (c. 1280 BC), Ibid. §15 at 86.

24 Supra note 16.
decisive factor in maintaining their economies and thus their power and influence. The demographic pattern at the dawn of civilization was typical of agricultural and war-based economies: birth and mortality rates were very high and population growth very slow\(^{26}\), with a high risk of becoming negative through catastrophes (epidemics, droughts) that were difficult to combat either preventively or reactively with the technical and scientific knowledge of the period. For this reason, women were worth so much more than men. In addition, generalisation of non-reciprocal extraditions in Hittite bilateral treaties is evidence of the imperial drive towards an *expansive migratory policy*, fully in line with its own democratic birth policy.

The general lack of reciprocity in the treaties between the Great Kingdom of Hatti and minor States, as well as clearly demonstrating its superior power, also shows systematic coordination of a migration policy through pacts, which would facilitate, consolidate or increase this basic vector of its power. The policy is imperial because it could only be based on a superior *de facto* power capable of ‘persuading’ weaker powers to accept a migration policy that harmed them in the medium and long terms. In the emerging, consolidation and expansion phases of its great territorial State, in competition with

\(^{25}\) See also §§ 5 and 6, *Treaty between a King of Hatti and Paddatissu of Kizuwatna*, Beckman, *supra* note 1 at 1-13.

\(^{26}\) Applying the growth ratios for that period provided by L. Bacci, in the 2nd millennium BC, the world population would have been around 28 million people. L. Bacci Massimo, *Storia minima della popolazione del mondo* (Società editrice il Mulino, 1998), at 41-44. For a general look at world *demographic transition phases*, see the classic article by Kingsley David ‘The World Demographic Transition’, *Annals of the American Academy of Political and Social Science*, Vol. 237, World Population in Transition (Jan. 1945), 1-11.
other great States of the ANE (Egypt, Assyria and Babylon), Hatti must have needed constant positive population growth. The migration policy systematically promoted by Hatti helped preserve and expand its population through obligations of extraditing its migrants without reciprocity for the other parties. The likelihood of a positive population balance became greater with the right to retain migrants entering its territory from subordinate states.

Small States would not have been ignorant of the negative consequences of this migration policy for their own future. The *Treaty between Idrimi and Pilliya*, two minor but equal states, offered a high reward for the return of women and created reciprocal obligations on the return of migrants. Thus small States had to accept this form for asymmetric regulation with powerful States as a lesser evil. As will be seen, unequal power meant that rejecting extradition obligations was not synonymous with maintaining control over the territory: war, another demographic catastrophe, could make rejecting extradition more inefficient in the short term with respect to population.

3. The type of people extradited

Another way of fully grasping the scope of these fugitive extradition clauses and what they explain about the period is to understand the political, civil or economic cause of these movements.\(^\text{27}\)

*A. Political refugees*

Numerous documents indicate that the Hittite Empire was continually subjected to internal rebellions.\(^\text{28}\) The Hittite alliance and vassalage treaties leave a deep regulatory

mark in this respect. Mutual military assistance obligations in the event of acts of rebellion or sedition were very frequent in the essential section on defensive alliance provisions:

§6 And if some other enemy rises up against the King of Hatti, and attacks Hatti, or if someone carries out a revolt against the King of Hatti, and you, Aziru, hear of it, and do not wholeheartedly come to the aid of My Majesty with infantry and chariotry, you will have transgressed the oath.  

This internal political instability generated refugees who fled punishment when victory fell to the other side. What was to be done with them? The treaties precisely identify the creation of a general obligation of deportation of those seeking asylum for acts of rebellion against the other party as an integral part of the defensive alliance. The allied sovereigns zealously protected their thrones and mechanisms of succession against treason. At the same time, other supplementary obligations flourished, such as the obligations to report and not provide support or promote the organization of subversive armed forces whose purpose was to make incursions into the other party’s territory. Thus, good neighbourly relations required a strict alliance with the Great King of Hatti that went further than the typical mutual defence clauses against external

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28 Bryce, *supra* note 6 at 74-76; 86-92; 96-120; 121-122; 143; 199-201; 212-216; 246-65.

29 Treaty between Suppiluliuma I of Hatti and Aziru of Amurru, Beckman *supra* note 1 at 34.

30 For an opposing view, see D. C. Snell, for whom up to the 1st millennium BC ‘it does not seem likely that until deportations in the first millennium BCE there were very many politically motivated refugees’. Snell, *supra* note 27 at 88.
aggression. Military assistance against internal rebellion or sedition and international persecution of rebels was also part of the basic content of treaties in that period.

The obligation of capture and extradition refers explicitly to persons who have planned or executed an act of disobedience against the sovereign. This is the case of the Treaty between a King of Hatti and Paddatissu of Kizzuwatna.

§1. If a subject of the Great King plots against his lord and then enters the land of Kizzuwatna, and the Great King sends after the fugitive, saying thus: ‘He revolted against me. I will have him returned.’

A further six treaties contain similar stipulations. Among these, §7 of the Treaty between Mursili II and Targasnalli of Hapalla is particularly explicit: ‘But if someone seeks to kill you, Targasnalli, or your son, but then escapes and comes to Hatti –as he is your enemy, he is likewise Mi Majesty’s enemy. I will arrest him ad give him back to you’.

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31 Beckman, supra note 1 at 12.

32 Treaty between Suppiluliuma I of Hatti and Huqqana of Hayasa §§15 to 18; Treaty between Suppiluliuma I of Hatti and Aziru of Amurru, §9; Treaty between Suppiluliuma I of Hatti and Tette of Nuhashshi §8; Treaty between Mursili II of Hatti and Tuppi-Teshshup of Amurru §12; and Treaty between Mursili II of Hatti and Niqmepa of Ugarit §8. Beckman supra note 1, respectively at 26; 35; 52; 57; 62; Treaty between Mursili II of Hatti and Targasnalli of Hapalla, §7 at 66.
In the Treaty between Tudhaliya II of Hatti and Sunashshura of Kizzuwatna\(^{33}\) the clause is more complex: an alternative obligation to extradite or punish is established, similar to the rule formulated by H. Grotius 3000 years later in his *De iure belli ac pacis* under the aphorism *aut dedere aut punire*\(^{34}\). The punishment for the crime of rebellion was execution of the criminal. The treaty also incorporates specific duties of mutual aid of a military nature against rebellions. In addition, it expressly states the right to conduct armed hostilities if the rebels or deserters receive material asylum from the other party:

§13. If someone revolts against His majesty, and he captures him, *His majesty shall do as he pleases with him* …

§14. *If the Hittites capture this enemy, they will kill him. If they give him into the custody of Sunashshura, he must kill him* … If his majesty asks Sunasshura for help, he must restore him to the throne. *If the Hittites do not kill that enemy or give him into the custody of Sunashshura so that he can kill him, Sunashshura must conduct hostilities against Hatti as far as he is able*\(^{35}\).

**B. Slaves, ‘captives of war’, populations**

Other extradition clauses refer to fugitives who escaped their masters, in other words slaves, or a closely related category, captives of war, designated with the

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\(^{33}\) *Supra* note 2. Although less clear because of its fragmentary and incomplete nature, the Treaty between Niqmeqa de Alalakh and Ir-Teshub of Tunip (1425 BC) may contain such clauses. See §§2 and 3, *supra* note 15.

\(^{34}\) H. Grotii, *De Iure Belli ac Pacis Libri Tres* (Vol. I, 1913) at 365, 368-369.

\(^{35}\) From the version in Acadian, see also §§15 to 17, 23 and 24. In the Hittite version of the treaty, §§1-10. Beckman, *supra* note 1 at 16, 17, 21-22.
Acadian logogram NAM-RA, civilian groups who are taken as booty by the right of conquest after military campaigns in other territories\textsuperscript{36}. During their bitter journey to their new lord’s territory\textsuperscript{37} or after being relocated in new settlements, they tried to flee in search of a better life.

1. Slaves

With respect to this category of migrant, the deportation clauses usually include supplementary obligations, such as: the duty to pursue and capture; the procedure to do so, being the appointment of representatives of the lord who had lost his slave to act on his behalf in the territory of the other State; the prices to pay for deportations when a slave has been captured and detained by someone from the other State to whom deportation has been requested; and the punishments applicable to people harbouring fugitives in violation of their duties. The Treaty between Niqmepa of Alalakh and ir-Teshub of Tunip contains a very full clause:

‘§5. If a fugitive, or male or female slaves, belonging to my land flees to your land, you must seize and return him. If someone seizes him and brings him to you, then you shall fetter (?) him in your prison; whenever his lord comes, you shall hand him over to him. If he is not found, you shall provide him (the fugitive's lord) a representative, and in whatever town (the fugitive) is found, he may seize him. In whatever town the fugitive is not found, the mayor together with his five witnesses shall swear by the gods, promising the fugitive's lord as follows: ‘If my servant dwells among you, then you shall inform me.’ If they do not agree to swear my


\textsuperscript{37} Bryce, supra note 6 at 100, 104-6.
oath, then they shall return his servant to him (the fugitive's lord). If he swears them (to the oath, but) afterwards he locates his servant (among them), then they are thieves; their hands shall be severed; 5,000 (shekels of) copper will be paid to the palace for him. 38

2. Captives of war

Other treaties refer to the deportation of fugitives ‘captives of war’. The NAM-RA were part of the victor’s war booty, a practice common to Hatti, Assyria, Mesopotamia, Egypt and the ancient Israelite people 39. Judging from surviving international texts, this must have been the most common reason for falling into the legal condition of slavery or servitude in the 2nd millennium BC in the ANE, and a fundamental instrument in the demographic policy of the large States. The captives who were not rescued fell into slavery to work on the land, in the temples, the army or other industrial activities of the time 40.

38 Supra note 15. The clause from the Treaty between Idrimi and Pilliya is also given supra note 16.

39 Slaves were considered livestock in legal terms. V. I. Mendelsohn, Slavery in the Ancient Near East (1898, reprinted 1978); Chirichigno, G. C., Debt Slavery in Israel and the Ancient Near East (1993).

The Treaty between Suppiluliuma I of Hatti and Aziru de Amurru even indicates their territorial origin. It shows previous victorious campaigns of Suppiluliuma that led to the capture and deportation of civilians as war booty:

‘§8 And whatever civilian captives of that land His Majesty has carried off –civilian captives of the land of Hurri, civilian captives of the land of Kinza, civilian captives of the land of Niya, or civilian captives of the land of Nushashshi ... You, Aziru, must rather seize them. Send them off to the King of Hatti’

Some places were left completely depopulated, set on fire and their inhabitants deported en masse to Hatti:

The Kaškaean town, that the mountain region of Ašḫarpaya occupied, I defeated and took it. But the mountain (region) of Ašḫarpaya I made empty …

I defeated the town of the Kaškaeans in the mountain region of Tarikarimu and took it. But the mountain region of Tarikarimu I emptied, and I burned the whole land of Ziharriya

Captives could sometimes amount to as much as tens of thousands of civilians. They must undoubtedly have been the most valuable war booty. It is easy to imagine the attempts to avoid becoming captives of war or to flee during the long arduous

Bryce, ‘Hittite State and Society’, in Genz, H. and Mielke, D. P. (Eds.), Insights into Hittite History and Archaeology (2011) at 94. For a broad study on the fundamental value of captives of war/slaves in the ANE economy in general, see I. Mendelsohn, Slavery in the Ancient Near East (1898, Reprinted 1978) at 92-120.

41 Beckman, supra note 1 at 35.

march to distant lands. Furthermore, once resettled in another land, the search for an opportunity to return to their old home and flee their new situation must have been constant.

An analysis of all the conventional clauses on captives and the crossing of official letters and other texts confirms the idea that maintaining or increasing power was inseparable from demographic growth for all the great kings of the period. The largest number of deportation clauses identifying the subjects of extradition refer to the NAM-RA. Forced migration of war captives must have been a decisive tool in this policy. Successful wars produced large numbers of slaves for the land and soldiers for the army, undoubtedly the most valuable booty. A letter from the King to Kaššū talks about repopulating 300 groups of NAM-RA from the city of Lišipra that had been depopulated after attacks from the Kashkas tribes. A group of NAM-RA is the equivalent of 10 people. This would thus represent a population increase of approximately 3,000 heads.

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43 Hoffner, supra note 5 at 164.

44 Beckman, supra note 1: Treaty between Suppiluliuma I of Hatti and Tette of §7, at 52; Treaty between Mursili II of Hatti and Tuppi-Teshshup of Amurru §11, at 57; Treaty between Mursili II of Hatti and Niqmepa of Ugarit §7, at 61-2; Treaty between Mursili II of Hatti and Targasnalli of Hapalla §13, at 68; Treaty between Mursili II of Hatti and Kupanta-Kurunta of Mira-Kuwaliya, §27, at 76; Treaty between Mursili II de Hatti and Manapa-Tarhunta of the Land of the Seha River, §4, at 78; Treaty between Muwatalli II of Hatti and Alaksandu of Willusa §15, at 86.

45 Hoffner, supra note 5 at 112-113. See also document HKM 37 ibid at 162-63. In general on the NAM-RA resettlement policies of the Assyrian Kingdom and other later civilisations, see Bryce, supra note 6 at 217-19, 222-23.
from war booty. We also know that the Hittite population suffered a dramatic drop due to a long epidemic during the reign of Mursili II (see below). Catastrophic mortality was another good reason for military incursions. Mass deportation and resettlement simultaneously met two major political objectives: a) the aforementioned *maintenance or increase in power* by possession, dispersal over the territory and economic exploitation; b) collaterally, that of *weakening the enemy*, by taking away one of their main sources of power.

C. Whole populations

Another notable extradition clause refers to movements of whole ‘populations’ or ‘cities’. These differ from the NAM-RA clauses. An example can be found in the *Treaty between a King of Hatti and Paddatissu of Kizzuwatna.*

*If the population of a settlement of the Great King,* including its women, its goods, and its large and small cattle, sets out and enter the land of Kizzuwatna, Paddatissu must seize them and return them to the Great King.47

The *Treaty between Suppiluliuma I of Hatti and Aziru de Amurru* impedes both their *settlement* in and their *transit* through the territory of the Amorites.

46 The most common figures in victorious campaigns are around 3,000 and 5,000 captives. Some cases mention up to 60 thousand. Lorenz and Schrakamp *supra* note 40 at 45-6, 48-9.

§11. And if some population sets out and comes to the land of Aziru, and you, Aziru, speak unfavorable words before them and direct them to the mountains or to another land, you will have transgressed the oath. You, Aziru, seize them and turn them over to the King of Hatti.

Similar clauses have been detected in another four treaties.

D. Indeterminate clauses

There are various treaties which, together with the specific provisions on the return of some of the fugitives listed so far (political, civilian war captives, slaves, whole populations forcibly deported or fleeing from a foreign war, army divisions), include other general ones for ‘fugitives’ without further precision. This would be a catch-all concept for other emigrants lacking authorization to leave the country of residence. An example of a catch-all clause appears in the Treaty between Tudhaliya II of Hatti and Sunashshura of Kizzuwatna. After paragraphs on extradition of political refugees (rebels, defections from lands, cities or army corps) the extradition obligations are complemented with others that determine the deportation of migrant or displaced people without further specification:

§5. If a fugitive from Hatti goes to Kizzuwatna, Sunashshura shall seize him and give him back to His Majesty. But if someone hides a fugitive, and he is

48 Beckman, supra note 1 at 35.

49 Ibid: Treaty between Tudhaliya II of Hatti and Sunashshura of Kizzuwatna §4-6, supra note 18, at 4; Treaty between Suppiluliuma I of Hatti and Tette of Nuhashshi §10, at 52-3; Treaty between Mursili II of Hatti and Niqmepa of Ugarit §11, at 62; Treaty between Hattusili III of Hatti and Ramses II of Egypt §§ 12 and 14, at 93-4.
disclosed in his house, he must pay twelve unfree persons. If he cannot come up with twelve unfree persons, he himself must be killed.\textsuperscript{50}

Contextually, they seem to have been applicable to all migrants: slaves, subjects, war captives, fugitives from justice and other persons subject to the jurisdiction of the sovereign from whose land they were fleeing.

Together with a clause on the extradition of whole populations, the Treaty between Suppiluliuma I of Hatti and Aziru of Amurru contains various provisions that tend towards facilitating extradition of any fugitive from both kingdoms\textsuperscript{51}; a dual obligation is included in the Treaty between Suppiluliuma I of Hatti and Shattiwazza of Mittani\textsuperscript{52}; and the Treaty between Suppiluliuma I of Hatti and Tette of Nuhashshi contains another clause applied to any subject of Nuhashshi present in Hatti\textsuperscript{53}. In this case, it appears after an automatic extradition clause for any NAM-RA or political refugee present in Nuhashshi from Hatti and before another one on movement of whole populations from Hatti to Nuhashshi. Another clause identical in content and context is found in the Treaty between Mursili II of Hatti and Nigmepa of Ugarit\textsuperscript{54} and in the Treaty between Mursili II of Hatti and Targsnalli of Hapalla\textsuperscript{55}.

3. Reasons for mass migration

\textsuperscript{50} Clause five develops the issue of restitution and is followed by the parallel obligation from Sunashushura’s perspective in §7 to 10. Beckman \textit{supra} note 1 at 21-22.

\textsuperscript{51} §§12-13, \textit{ibid.} at 35-6.

\textsuperscript{52} §9 \textit{ibid.} at 41.

\textsuperscript{53} §9 \textit{ibid.} at 52.

\textsuperscript{54} §9. Also §§12 and 13, \textit{ibid.} at 62.

\textsuperscript{55} §6 \textit{ibid.} at 66.
The treaties offer no explanation to the mass flight of populations to which they refer. They only identify the regulated events and establish the obligation of States to impede entire populations from fleeing by prohibiting passage or settlement in their territory, and returning them to their legitimate sovereign in both cases. But other surviving texts (historical annals, literary texts, official letters and myths) offer enough information to venture likely hypotheses for cases of mass migration. These mass migratory movements were due either to political-civil reasons or economic-environmental reasons, as in the present day. With the data from these documents, the Israelite Book of Exodus appears to be a religious narrative based partly or wholly on verifiable historical events from the 2nd millennium BC.

**A. Political-civil causes**

The Annals of Mursili II (1321-1295 BC) contains two stories possibly explaining what could push whole populations into exile for political-civil reasons. The inhabitants of a defeated city took on the status of NAM-RA. Their king’s army had been defeated in campaign by Hittite troops. The city was sacked. Their king escaped into exile across the sea. The whole population, knowing the fate awaiting them, also fled before capture:

‘Uhhaziti offered me no opposition; he fled before me and crossed the sea to the islands. And there he stayed. But the whole land of Arzawa fled.’\(^{56}\)

If in their attempt to flee they had passed through the territory of another State allied with Hatti, the Great King would have requested their capture and extradition in accordance with the treaties on the matter. The same historical text explains how, during one of the Great King’s victorious military campaigns, most of the population of

\(^{56}\) KBo. 3, 4 obv. II 30–33. Lorenz and Schrakamp, *supra* note 40 at 50.
the defeated cities managed to flee before being captured. They tried to take refuge in the State of Karkemish of the King Šarri-Kušuḫ (or Piyassili)\(^{57}\). Mursili II asks to enter his territory to capture them:

… I wrote as follows to Šarri-Kušuḫ: ‘The civilian captives who fled from before me … among them, civilian captives from Ḫuršanašša, Attarima, and Šuruta … Because the civilian captives have fled from before me and have taken refuge on the steep slopes of the mountains, (and) very little (remains) to us (of) the (present campaigning) year, let us proceed to surround only one of the two groups and lead it back down.’\(^{58}\)

We do not have the text of Šarri-Kušuḫ’s treaty of vassalage, but Mursili II renewed the treaty of vassalage of Karkemish during his rule\(^{59}\). We do have the bilateral treaty of vassalage/protectorate of Hatti with Shattiwaza, a neighbouring kingdom. It was signed slightly earlier and contains clauses on the handing over of fugitives\(^{60}\). Thus it is reasonable to deduce the existence of capture and extradition clauses in the other bilateral treaty between Hatti and Karkemish.

In short, §11 of the *Treaty between Mursili II of Hatti and Niqmepa of Ugarit* details this particular case of collective migration subject to extradition. It regulates flight by inhabitants of whole cities during a war in a foreign territory, faced with the fear of coming under siege from the troops. These populations would also become the

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\(^{57}\) Piyassili adopted the Hurrian name of Šarri-Kušuḫ when he took the kingdom of Karkemish.


\(^{59}\) V. the ‘Edict’ in Beckman, *supra* note 1 at 154.

\(^{60}\) See above note 20.
possession of the King of Hatti and could not settle in the territory of Ugarit: ‘if the population of some foreign land oppressed by battle sets out and enters the land of Ugarit, Niqmepa shall seize them and turn them over to the King of Hatti’. 61

B. Economic and environmental causes

Other texts offer numerous reasons for mass migration, besides war. These are of an economic and environmental nature, due to the close links between the economy and the environment in the Bronze Age. Natural catastrophes severely damaged the traditional forms of subsistence of human groups settled in a territory and forced them to move in search of territories with better conditions.

1. Silos

The Hittites are known to have built large silos to store their harvests. 62 Their existence indicates the frequency of periods of drought and scarcity. The period from 1500 to 1300 BC in the ANE seems to have been one of higher rainfall and production than the previous century. This climate change and other meteorological irregularities must have caused large population movements among nomadic and semi-nomadic peoples, among others, whose life depended wholly on the natural environment. The ‘years of hunger’ referred to in Hittite texts 63 caused high mortality rates. 64 Occasionally, this food

61 Ibid. at 62.

62 ‘gather it (ie the crops produced from having sown seed) in and store it (ie the newly produced grain) in underground silos. Then write to His Majesty’. HKM 18: 21-28, i.e. 1-5, en Hoffner, supra note 5 at 128.

63 HKM 8, HKM 19, HKM 24, HKM 50, HKM 80 and (Bo 2810), ibid. at 108, 137, 139, 188, 340 and 363.

64 Ibid. at 65 and 222.
shortage also meant large amounts of grain had to be imported from Syria and Egypt\textsuperscript{65}. The periods of scarcity are referred to in the Book of Genesis as a crucial reason from repeated movements of the Hebrew tribes, while the construction of silos is also mentioned. Thus the religious narrative of the Old Testament could confirm the content of the treaties and other Hittite texts and, likewise, the Hittite texts could prove this sacred text is not just religious, but also historic in nature.

At this time there first emerges the migration of the tribe of Abraham, the first Hebrew patriarch. According to Genesis, in times of scarcity, Abraham decided to abandon Canaan and move to Egypt\textsuperscript{66}. It was also because ‘famine is severe in Canaan’\textsuperscript{67} that the great tribe of Jacob/Israel moved from Canaan to Egypt, ‘the district of Ramses’\textsuperscript{68}. The first silo construction in Egypt is attributed specifically to the instructions of Joseph, the favourite son of Jacob/Israel who came from the lands of Canaan, an Amorite territory under the Hittites. It appears in the episode of the interpretation of Pharaoh’s dreams: the seven lean and ugly cows ate up the seven fat and sleek cows; the seven full and good ears swallowed by the seven withered ears are seven good years followed by seven years of famine\textsuperscript{69}. Joseph was named the Grand Vizier of the Pharaoh and ordered a granary to be built to store surplus harvests from abundant years for use in lean years.

2. Plagues and epidemics

\textsuperscript{65} Ibid. at 65-6.

\textsuperscript{66} Genesis 12.10.

\textsuperscript{67} Genesis 47.

\textsuperscript{68} Genesis 47.11.

\textsuperscript{69} Genesis 41.
In the light of the Hittite texts, the ‘plague of locusts’ referred to in the *Book of Exodus* or the ‘great plague’ that hit Egypt might not strictly be fantasy stories. The *Letter from the King to Kaššū and Pulli* mentions the existence of a plague of locusts and serious damage to the crops of the neighbouring Kaska tribe. For this reason, the Kaskians left their lands and invaded Hittite territory to steal its crops\(^{70}\). Kaššū and Pulli had requested military assistance from the King.

Nine more texts refer to the fear of *epidemics* that had dangerously decimated the Hittite population. A good reason for abandoning the city *en masse*. Firstly, there are two letters to the king from his territorial delegates reporting the existence of local epidemics and the death of the population\(^{71}\). Secondly, the most significant group of texts is the set of hymns and prayers by King Mursili II to the different gods relating to a major epidemic raging in Hatti\(^{72}\). In ‘Mursili’s Hymn and Prayer to the Sun-goddess of Arinna’, the king asks for a prophet to receive a message from the gods explaining the reason for their anger; or for the gods to reveal their will through dreams.

§6 O gods, What is this that you have done? *You have allowed a plague into Hatti, and the whole of Hatti is dying ...*

\(^{70}\) Hoffner, *supra* note 5 at 129-30.

\(^{71}\) *Ibid.* at 183 and 187.

\(^{72}\) *Mursili’s Hymn and Prayer to the Sun-goddess of Arinna; Mursili’s Hymn and Prayer to Telipinu; Mursili’s ‘Third’ Plague Prayer to the Sun-goddess of Arinna; Mursili’s ‘Second’ Plague Prayer to the Storm-god of Hatti; Mursili’s ‘First’ Plague Prayer to the Assembly of Gods and Goddesses; Mursili’s ‘Fourth’ Plague Prayer to the Assembly of Gods; Mursili’s ‘Fifth’ Plague Prayer to the Assembly of Gods, I.* Singer, *Hittite Prayers* (2002), at 49-69.
§7 … O gods, whatever sin you perceive, either let a man of god come [and declare it], or let the old women, [the diviners, or the augurs establish it], or let ordinary persons see it in a dream … On the one hand it is oppressed with the plague, [and on the other] it is oppressed by hostility …

§9 But now, all the surrounding lands have begun to attack Hatti. Let this become a further reason for vengeance for the Sun-goddess of Arinna. Goddess, do not degrade your own name!73

Cultural issues are also all present in numerous sections of the Torah, such as the previously mentioned interpretation of dreams by Joseph the Egyptian. In the prayer to Teshub, the God of the sky and storms74, Mursili II directly associates the 20 years of epidemic raging in this kingdom with the punishment of the gods for having previously broken the international treaty between Hatti and Egypt, attributed to his father, Suppiluliuma I. ‘Teshub’ was chosen as guarantor of the treaty. Breaking oaths to the gods was the cause of the expiatory punishment and the king tried to find the means of repairing the harm done:

‘§4 … Since the men of Hatti and the men of Egypt were bound by the oath of the Storm-good of Hatti, and the men of Hatti proceed to take the upper hand, the men of Hatti thereby suddenly transgressed the oath of the gods. My father sent infantry and chariotry, and they attacked the borderland of Egypt, the land of Amqa. And again he sent, and again they attacked …

§5 … When I found the aforementioned tablet dealing with Egypt, I inquired about it to the god through an oracle saying: ‘Has this matter been brought about

73 Ibid. at 51-3.

74 ‘Teshub’, Theus/Zeus.
by the Storm-god of Hatti because the men of Egypt and the men of Hatti had been put under oath by the Storm-god of Hatti?’

§6 … And it was confirmed by the oracle … .

§7 I will keep removing the causes of the plague which have been established through oracle, and I will keep making restitution for them. With regard to the problem of the oath of the gods which was established as a cause for the plague, I have offered the ritual of the oath for the Storm-god of Hatti, [my lord]. I have also offered ….”

In another prayer, the anguished king believes the cause of all the evils might be the broken vow. Supiluliuma I, his father, seized the throne illegitimately from his brother, the King Tudhaliya, who he murdered or had killed.

4. Execution of extradition obligations and *ius ad bellum*

Another conclusion to be drawn from the texts is the link between performing the obligation of capture and extradition of migrants of whatever kind and maintaining peaceful and neighbourly relations between the kingdoms involved. In the Hittite sources *the failure to deport migrants claimed by a given sovereign is mentioned on various occasions as just cause for war*. In legal terms, there were two different controversies that justified the licit resort to war:

  a) Allegation by one of the parties of *failure of the other party to perform the obligations of deporting exiles as established in the treaties*.

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75 ‘Mursili’s ‘Second’ Plague Prayer to the Storm-god of Hatti’, *ibid.* at 58-9.

76 ‘Mursili’s ‘First’ Plague Prayer to the Assembly of Gods and Goddesses’, *ibid.* at 61-2.
b) In the absence of bilateral treaties, the existence of a *conflict of jurisdictions*, personal jurisdiction versus territorial jurisdiction, which could be invoked to validate a claim to power over a person.

War established the validity of claims between the opposing parties. Thus one sees the first *ius ad bellum* rationalisations emerge.
A. Demand for the performance of conventional obligations

Various texts attest to the existence of a standard diplomatic procedure to obtain the extradition of fugitives associated with observing a treaty. Through diplomatic letters, the sovereign demanded in writing that extradition obligations be observed. Future relations between both kingdoms depended on satisfying the demand.

1. Request via diplomacy, formal protest

The oldest of these texts is the draft of a diplomatic letter Accusation to Madduwatta by Arunwanda I of Hatti77. The document contains a series of accusations of the King of Hatti to Madduwatta, a governor or vassal king. It clearly refers to numerous obligations established by treaty that have not been met. In the missive §6 notes the existence of an extradition obligation in relation to any Hittite fugitive reaching the lands of Madduwatta established by treaty. The formal protest for failing to meet this obligation and reiterated references to a duty still pending satisfaction are contained in §22. The response to this demand could not be more evasive:

‘you, Madduwatta, kept taking for yourself the fugitives of Hatti who [traveled] to you. [The father] of My Majesty and My Majesty wrote after them to you repeatedly, but you did not [give] them back. [And] we write to you [. . . ] about this matter, but you do [not] subsequently [present] a defense to us in the matter. [And] you [write] about some other matters. You always write us back about other matters.’78

Further on, (§§27, 28, 29) there are references to sending a diplomatic courier with another extradition request for a fugitive hunter from the court, also rejected by

77 Beckman, supra note 1, at 144-51.

78 Ibid. at 149.
Madduwatta

The surviving text is unfinished and we know nothing else about how the controversy was finally resolved. It all expresses great indignation at the behaviour of Madduwatta.

The *Letter of Hattusil III to Benteshina* contains another written request to return a political fugitive. Benteshina, the King of the Amorites, was restored to power by Hattusil III and had been made a vassal by treaty. The missive demands that Benteshina meets his obligation to do everything possible to capture and extradite the ‘enemy of His Majesty’:

Concerning what you wrote to me as follows: ‘About the enemy of His Majesty, my lord, I do not know whether he is in the land of Egypt or wheter he is in some other land’, capture him (and) bring him to me!

2. Answering the extradited potential

The §1 of the *Treaty between a King of Hatti and Paddatissu of Kizzuwatna* provides evidence of the mechanism for resolving an appeal against the obligation to extradite. The treaty contains the procedure for delivering the letter with the extradition request by diplomatic dispatch. What happened if the deportee denied the charges of rebellion?

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80 See the full historical explanation in §§2-5 of the *Treaty between Hattusil III of Hatti and Benteshina of Amurru*, Beckman *supra* note 1 at 95-8.

–If the charge is true, the fugitive must be returned. But if the fugitive denies it, claiming: ‘I myself am not in revolt against him’ – his word is false. Whatever trustworthy Hittites Paddatissu may ask for and oath will swear an oath about this, and the fugitive must be returned.\(^82\)

In other words, the word of the rebel questioning the charges sent by the king lost all probative value against the oath of the king’s noble diplomatic messengers demanding extradition.

3. **Aut dedere aut punire**

From the *Annals of Mursili II* comes a story that includes the particular case of the *execution of the obligation of capture*. It shows the option of executing the alternative obligation *aut dedere aut punire*. Mursili II of Hatti had requested that the governors of two cities deliver him two insurrectionaries, that is, ‘people who spoke badly’ of the Great King of Hatti. The inhabitants took the decision to execute the fugitives themselves through fear of attack:

‘To the people of Kammamma, though, and to the people of Palhuišša (?) as follows did I write: ‘Pazzanaš and Nunnataš [......] came in to you; seize them and deliver them to me! However if you do not seize them and do not deliver them to me, then I shall come and destroy you, and Palhuišša I will dedicate to the weather-god and declare [ ...... ] as sacrosanct. Also [.......] they [.......]. And when the people of Kammamma and the people of [.........] heard as much, they were afraid and killed Pazzananaš and Nunmutaš.’\(^83\)

**B. Failure to perform obligations established by treaty**

\(^82\) Bechman *supra* note 1 at 12. See also § 6.

\(^83\) Lorenz and Schrakamp, *supra* note 40 at 53.
In the international legal system of the ANE, violation of a treaty was a just cause for war\textsuperscript{84}. This rule was also applicable to the specific breach of the duties of capture and extradition established by treaty. This highlights its essential character in the alliance.

This is already visible in the historical preamble to the \textit{Treaty between Tudhaliya II of Hatti and Sunashshura of Kizzuwatna}\textsuperscript{85}. The first paragraphs describe the refusal of the King of the Hurrians to deport certain Hittite subjects who had fled after a rebellion. It then refers to the taking of captives by the Mittani king in Hittite territory. The text describes failure to deport the political fugitives and captives as a violation of the current treaty between both parties. It elliptically refers to breaking the ‘oath’, the traditional way of concluding treaties at the time. The Hurrian king claimed that the fugitives were his former subjects who had previously fled to Hatti. Having established the legal terms of the controversy and with the claims impossible to reconcile, war was the legal instrument for punishing and satisfying the previous international illicit act:

‘When the people of the land of Isuwa, subjects of My Majesty, commenced hostilities against My Majesty, I, My Majesty, went in battle against them. I overpowered the land of Isuwa, and the Isuwans fled before My Majesty. They went down into the land of Hurri. I, My Majesty, sent to the ruler of Hurri: ‘Return my subjects!’ But the ruler of Hurri sent back to My Majesty thus: ‘No!’ The populations of these cities had previously, in the time of my grandfather,

\textsuperscript{84} Beal \textit{supra} note 36 at 89; and L. Bell, ‘Conflict and Reconciliation in the Ancient Middle East: The Clash of Egyptian and Hittite Chariots in Syria, and the World’s First Peace Treaty between ‘Superpowers’, in K. A. Raaflaub (ed.), \textit{War and Peace in the Ancient World} (2007) at 98–120.

\textsuperscript{85} Beckman, \textit{supra} note 1 at 13.
come to the land of Hurri and settled here. And indeed they afterwards went as fugitives to Hatti. Now, finally, the cattle have chosen their stable. They have definitely come to my land.’

The ruler of Hurri did not return my subjects to My Majesty, but dispatched his infantry and his chariots. In the absence of My Majesty they plundered the land of Isuwa. They took to the land of Hurri whatever civilian captives, oxen, and sheep they captured, while I, My Majesty, remained elsewhere for battle against another enemy.

The ruler of Hurri transgressed the oath (...)\textsuperscript{86}

The Treaty between Suppiluliuma I of Hatti and Huqqana of Hayasa\textsuperscript{87} contains the standard elliptic reference to the use of war as a sanction for violating the obligation of extraditing political refugees. In §§15 to 17, an alliance is established between the parties against internal revolts. The §18 demanded that whenever Huqqana heard of the existence of a plot for his downfall woven abroad, if the sovereign hid it or gave shelter to the insurgent instead of reporting the situation and handing over the traitor, the ‘gods would destroy him’:

‘Or whatsoever evil matter you hear of – if you conceal it from me and do not report it to me, or conceal that person from me and do no report him to me, but even hide him – we have placed such matters as these under oath for you. If you do not observe it but transgress it, then these oath gods shall destroy you.’

The general rule was that breaking oaths led to the destruction of the offender through war sanctioned by the gods.

\textsuperscript{86} §§3 \textit{ibid.} at 14-15.

\textsuperscript{87} §18 \textit{ibid.} at 22-29.
Hence, the need to legitimize or justify war was a recurring theme in this period in the ANE\textsuperscript{88}. In the ethical vision of Hittites, Egyptians, Syrians and others, and likewise thousands of years later in the \textit{ius publicum europaeum}, war was conceived as a just instrument to resolve a legal dispute\textsuperscript{89} after satisfying the procedural rule of \textit{intimation} or \textit{requirement} of the action that one party considered applicable by law, and receiving an \textit{explicit refusal} (in writing through the exchange of diplomatic letters) or \textit{implicit refusal} (by failing to answer the requests) of the demand. The result of the war determined the validity of the prior legal claim leading to arms. The dogmatic reasoning behind this regulatory idea is the same as was later to figure in the origins of classic international law. Divine will, guarantor of the treaty, ratified by an oath to the gods, and not specifically the armies in battle, was what would decide the final outcome of the conflict and thus the greater right in the original legal controversy. \textit{War was just the specific way of determining the intrinsic sense of divine justice in a specific legal controversy between sovereigns unresolved by diplomatic means.} They swore an oath to the gods; the gods would decide who the perjurer was by taking victory away from them.

\textbf{C. Conflict of jurisdictions}

Three texts serve as examples of another variant of the recourse to war as a solution to controversies over fugitives. None of them refer to the violation of ‘oaths’, suggesting

\textsuperscript{88} For the Assyrian Empire and Israeliite people during the 1st millennium BC, see C. C. L. Crouch, \textit{War and Ethics in the Ancient Near East} (2009).

they were not conventional obligations in this context. However, the Hittite sovereign claimed his jurisdiction *ratione personae* be exercised against *fugitive subjects present in the territory of another sovereign*. Rejecting this claim was also invoked by Hatti as a just cause for war that would resolve jurisdictional disputes.

1. *Intimation, rejection and war*

According to the *Annals of Mursili II* King of Hatti, his troops had marched against the rebel cities of Attarimma, Huwarsanassa and Suruda. The city governors, together with some of their troops, fled and took refuge in the neighbouring kingdom of Arzawa. Mursili II asked Uhha-Ziti, King of Arzawa, to hand them over. The refusal to extradite led to the recourse to war. There was no invocation of a pre-existing treaty establishing a deportation obligation, hence it was not a matter of applying duties from a valid treaty, but of resolving a general jurisdictional claim:

‘But to Uhhaziti *I sent a messenger and wrote* to him: *My subjects, who came to you, as I demanded them back from you, you have not given back to me. And you have also called me a child and disparaged me. So, up now! We will each other! And the weathergod, my Lord, shall decide the lawsuit for us!*’

The formal refusal of the *petitum*, in this case, the rejection of the claim of a king to exercise his personal powers over his subjects and the assertion of territorial jurisdiction over the foreigners in the territory led to *the just war*, from the Hittite king’s position.

Another similar passage is found in the correspondence of Mursili II with King Pihhuniya of the Kashkas. In this case, the semi-nomadic warlike group of the Kashkas

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90 *KBo*. 3, 4 obv. II 9–14, Lorenz and Schrakamp *supra* note 40 at 40. Beal *supra* note 36 at 90.
had managed to successfully attack part of the domains of the Hittite kingdom. As part of the war booty, they had taken Hittite subjects captive. Mursili II unsuccessfully demanded that King Pihhuniya return the subjects. For Hatti, the subject or slave was considered ‘livestock’, illegally removed to another territory. Remember that the aforementioned historical preamble to the Treaty between Tudhaliya II of Hatti and Sunashshura of Kizzuwatna had metaphorically merged migrants with livestock: ‘Now, finally, the cattle have chosen their stable. They have definitely come to my land.’ For his part, the sovereign who housed, settled or gave asylum to migrants could invoke in his favour the exclusive right to exercise his jurisdiction with respect to everything that happened within his territory and thus freely make the decision on whether or not to return the foreigner. This document also does not invoke violation of a previous treaty or oath as the cause for war. The legal claims of the Hittite king and his opponent are general:

I, my Majesty, moved against him and sent him a messenger and wrote to him: ‘My subjects, that you have taken and have led down to Kaška, send back to me’. But Pihhuniya wrote back to me as follows: ‘I will give nothing back to you. And if you come to me for battle, I will by no means do battle in my own land, I will come against you in your (own) country and in your country I will do battle with you’. Since Pilluniya had written back to me in this way and had not given my subjects back to me, I went out against him in battle.  

The legitimate defence to which Pihhuniya refers entitled him not to wait for the first blow in his own lands and to put down an attack that was underway, violating the

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91 KBo. 3, 4 rev. III 76‘–85, Lorenz and Schrakamp supra note 40 at 41.
borders of the armed adversary. The political conflict must have been particularly severe if asylum was being granted to a fugitive rebel.

2. *Law or the policy of force?*

Finally, the *Letter of Hattusil III to the King of Ahhiyawan* has come down to us, which suggests that the rule of extradition of political refugees would not in fact have become consolidated as a general obligation without treaties. It was rather a policy of force promoted by the Great King of Hatti facing the threat to his military might and who wanted to turn it into a general legal obligation. The Hittite king complained that the King of Ahhiyawan might be giving support to Piyamaradu, a rebel fugitive from Hittite domains who was using asylum in the land of Ahhiyawan to carry out armed actions from this territory against Hatti. He was asked to hand the fugitive over or expel him for the territory:

‘According to this rumour, *during the time when he leaves behind his wife, children, and household in my Brother’s land, your land is affording him protection*. But he is continually raiding my land; whenever I have prevented him in that, he comes back into your territory. Are you now, my Brother, favourably disposed to this conduct? (If not), now, my Brother, write at least this to him: ‘Rise up, go forth into the Land of Hatti. Your lord has settled his account with you! Otherwise come into the Land of Ahhiyawa, and in whatever place I settle you, [you must remain there]. Rise up with your prisoners, your wives and children, and settle down in another place! So long as you are at enemity with the king of Hatti, exercise your hostility from (some) other country! From my country you shall not conduct hostilities!’"\(^92\)

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92 Bryce, *supra* note 6 at 292.
Once again, the letter does not refer to an existing conventional extradition obligation. The tone here is moderate, not at all threatening. It is not known whether the King of Ahhiyawan satisfied the request. Piyamaradu’s actions weakened the western region of the Hittite kingdom, increasing his influence over it. Thus, in the absence of conventional obligations, extradition between equals appeared to be more a friendly action than an obligation, implemented on discretion. If this is the case, then although giving asylum or refuge to, or simply accepting the settlement of, a foreigner entering their domains could be understood as a sovereign territorial prerogative with certain potential benefits, it was generally not exercised due to the threat of attacks or incursions from other hegemonic neighbouring States, or simply to avoid creating enemies; especially in cases of highly unequal in forces. Political independence and other possible practical advantages that might result from giving hospitality to asylum or refuge seekers involved certain risks to those doing so.

War against another State for refusing to extradite a subject, in the absence of treaties, would in these cases be a political decision made into law by force. The potential threat, occasionally carried out, must have also made it easier for the Kingdom of Hatti to transform their expansive population policy into international agreements obliging neighbouring kingdoms to deport subjects, captives of war or runaway slaves without reciprocity. Between vassalage or complete subjugation and annexation by force, the lesser evil was chosen, unless the protection of another great power was obtained, that proposed other, more circumstantially convenient, asymmetries. Only when similar

93 Ibid. 292-293.

forces were involved, such as the case of Egypt and the Treaty of Kadesh with Hatti, were obligations similar. Here extradition simply helped eliminate future friction over jurisdiction over nobles, subjects or runaway slaves in the respective kingdoms. It should not be forgotten that Hatti generally did not extradite migrants in treaties of unequal alliances.

5. Concluding remarks

The numerous bilateral treaties in the ANE during the 2nd millennium BC regulated *inter alia* all kinds of migratory movements. They reflect the enormous political and economic importance States gave to the demographic question.

When they were *non-political migratory phenomena*, the basis of the *capture and extradition* rules was the essential value of the population for the conservation or growth of the great territorial States of the 2nd millennium BC in a phase in world demographics characterized by high ordinary and catastrophic mortality rates. The basic actions for implementing this expansive demographic policy were to retain all inward migratory movements, obtain as many captives of war as possible by way of booty and prevent emigration. The agrarian and military economy required abundant labour. Since then the world population has developed from between 30 and 50 million humans and very slow growth to approaching 8 billion people with demographic patterns varying widely depending on the geographic-political area involved.

Demographics in the powerful, post-industrialized States, the Western world, are in the *modern phase*, with practically no population growth although for opposing reasons to the demographic pattern of the 2nd millennium BC: birth rates are at historic lows, leading to minimal population growth. Conversely, in less developed countries, birth rates remain very high and mortality rates are dropping thanks to improvements in health. What do the severe restrictions on migratory movements in the EU, USA and
other developed countries today indicate, compared to the expansive demographic policies of the ANE? *The loss of economic and social value associated with most human beings within contemporary economic models.* Thus, *only changes that restore the socio-economic value of human life simultaneously or alternatively in the migrants’ place of origin or destination will change contemporary migratory regulation regimes.*

The general industrialization of the economy, including agriculture, along with the rapid incorporation of ICTs into essential economic and social processes (production, distribution, trade of goods, public administration) means that for all countries, rich or poor, the *social costs* associated with retaining a generally poorly qualified population are higher than their aggregate *social value*. Thus the more developed countries limit the entry of migrant population as far as possible. The intention is to ensure a population growth rate close to zero to sustain the economic and social protection system. Nor do less developed countries, with positive population growth rates and growing social costs, have a particular interest in retaining the migrants, unlike the times at the dawn of civilization. Only when the human capital involved is more qualified, and hence potentially more valuable in social terms, do the immigration laws of developed countries become more permissive to receiving and retaining them. Here, the countries of origin may have an interest in retaining this population, yet the material and international legal instruments to do so are lacking. The end result of this migration policy in the major States is the same as in the ANE: the powerful States reinforce their economic and political dominance at the expense of minor States, although with an opposite regulatory system.

Numerous treaties also refer explicitly to *political refugees*. The obligation to detain and extradite these asylum seekers, including the most complex rule *aut dedere aut punire*, has a different basis. It is the optimum legal solution to ensure peaceful and
amicable relations between the States involved. Providing refuge to people seeking asylum for grave offences committed against another sovereign was seen as a serious illicit international act in the presence of conventional extradition clauses. And an unfriendly or hostile act when no such clauses existed. Territorial States had no discretionary power to punish or pardon crimes committed by people that affected another neighbouring social community. They renounced this through bilateral treaties. All States in the ANE claimed their right to demand the capture and extradition, or punishment, of persons who had offended their sovereignty and fled over their borders, a right they considered essentials for their dignity and security as sovereigns. Alliance treaties consolidated this right. Similarly today, extradition processes are essentially regulated through bilateral treaties. However, bilateral criminal extradition treaties usually exclude purely political crimes (treason, sedition, conspiracy, etc.), which were pursued with particular vigour in the treaties of the 2nd millennium BC. The progressive humanization of international law has provided wide protection against extradition of purely political migrants. This protection stems from the right of asylum (Art. 14 of the Universal Declaration of Human Rights) and the general principal of non refoulement (Art. 33 of the 1951 Convention Relating to the Status of Refugees).

Within a conventional bilateral framework, failure to extradite a fugitive for one or other type migratory movement clearly came to be considered a violation of oaths sworn to the gods: a most serious international illicit act. War, or seizure incursions into sovereign territories giving shelter to migrants, was a legitimate instrument for the recovery of fleeing ‘property’ or ‘subjects’ expressly covered in the treaties. The result of the war decided who had right on their side in the original cause and who had broken their word with the gods as witness. The texts show a set of rules configured from ius ad bellum identical to those found in early European public international law: a) the
existence of acts in breach of conventional obligations is *invoked*, the *just cause*; b) an end of the unjust deed is *intimated* or required; c) if it is not halted, there would be *recourse to war* to obtain an end to the illegitimate conduct (the return of the refugees), repair the damage done (the war booty) and punish the violation (on occasions the overthrow of the king accused of the illicit conduct or his replacement by a different line of succession in the same family).

This rule is an indication of the possible influence of ANE international law in the *ius publicum europeum*, although separated by over two thousand years. Our conjecture is that the regulatory categories of the 2nd millennium BC were transferred to the *ius publicum europeum* through the *Old Testament*, in particular the *Torah*, one of the key sources of knowledge for Scholasticism (Saint Augustine, Thomas Aquinas), Spanish Neo-Scholasticism (Vitora, Bartolomé de las Casas, Suárez) and also absolutist thought (H. Grotius) We have shown how historical phenomena and cultural themes from that period have reached us through these texts. Did the rules do as well? The rule *aut dedere aut punire* formulated by H. Grotius is not a random solution obtained two thousand years later, but one of many items borrowed unknowingly from the *ius publicum* of the ANE by the *ius publicum europeum* through the *Old Testament*, without realising. This is shown in another document. We also have evidence that international regulatory experience of the 2nd millennium BC ANE influenced the ancient Greco-Roman world. This would be another major inspiration for international law from the 16th century onwards.

Even without a bilateral treaty, failure to return persons or populations displaced from one territory to another was considered a hostile act opposing the will of another sovereign who exercised his jurisdiction *ratione personae* over the fugitive. This shows that it was a universal problem at the time, invariably leading to the existence of broad
territorial forms of exercising political powers. It led to the emergence of two potentially contradictory yet valid ways of exercising jurisdiction; two objective connections between a public power and the individual, personal and spatial, able to provide regulatory justification of jurisdictional title. The existence of a general international duty of extradition was dubious.

More generally, the texts studied here show that public international law emerged as a written regulatory system that broadly regulated basic political relations between territorial states from the 2nd millennium BC in the civilized region of the ANE. Recognition of governments and issues of succession, boundary delimitation and integrity, the scope of sovereign powers and rules on migratory movements are approached systematically in the treaties. International treaties are part of a lengthy legal current from the dawn of civilisation. The written codification of internal laws and international law appear simultaneously at the same place and time.