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RESEARCH ARTICLE / ARAŞTIRMA MAKALESİ

The Right of Meskhetian Turks to Return to Their Country

Ahıska Türklerinin Ülkelerine Geri Dönme Hakkı

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Abstract

Meskhetian Turks were deported from the Meskhetian region of the Georgian Soviet Socialist Republic in November 1944, following the State Defence Committee of the Union of Soviet Socialist Republics' decision No. 6279 (July 31, 1944). In 1989, just two years before the collapse of the Soviet Union, a significant number of Meskhetian Turks residing in Uzbekistan's Fergana region were forcibly relocated by the Soviet administration to various parts of the Soviet Union, resulting in a second wave of deportation. Today, Meskhetian Turks live not only in the former Soviet territories but also in several States, notably Türkiye and the United States of America. This article explores the legal pathways that could enable Meskhetian Turks, now dispersed globally, to return to their ancestral homeland in the Meskhetian region of present-day Georgia. The first section focuses on the history of the Meskhetian Turks, detailing their deportation and subsequent efforts to return to their country. The second section examines the definition, scope, and nature of the 'right of return,' explores whether Meskhetian Turks possess this right under the law of state succession, and studies the legal remedies available to them. It is proposed that the Human Rights Committee, the supervisory body of the 1966 United Nations Covenant on Civil and Political Rights, would serve as the most effective mechanism for enabling Meskhetian Turks to reclaim their right to return to their homeland.

Keywords

Exile, International Covenant on Civil and Political Rights, Mass Deportation, Meskhetian Turks, Right of Return

Öz

Ahıska Türkleri, Sovyet Sosyalist Cumhuriyetler Birliği'nin Devlet Savunma Komitesinin 31 Temmuz 1944 tarihli ve 6279 sayılı kararı uyarınca 1944 yılının Kasım ayında Gürcistan Sovyet Sosyalist Cumhuriyeti'nin Ahıska bölgesinden Orta Asya'ya tehcir edilmiştir. 1989 yılında, yani Sovyet Sosyalist Cumhuriyetler Birliği'nin çöküşünden iki yıl önce, Özbekistan'ın Fergana bölgesinde yaşayan önemli sayıdaki Ahıska Türkü, etnik şiddete maruz kalmaları nedeniyle, Sovyet yönetimi tarafından Sovyet Sosyalist Cumhuriyetler Birliği'nin başka bölgelerine tahliye edilmişler ve böylece ikinci bir tehcir daha yaşamışlardır. Ahıska Türkleri, günümüzde, eski Sovyetler Birliği coğrafyasının yanısıra başta Türkiye ve Amerika Birleşik Devletleri olmak üzere çeşitli devletlerde yaşamaktadır. Bu makale dünyanın muhtelif yerine dağılmış Ahıska Türklerinin, anavatanları olan ve günümüzde Gürcistan Devleti sınırları içinde kalan Ahıska bölgesine geri dönme haklarının bulunup bulunmadığını tartışmakta, ülkelerine geri dönmelerine imkân sağlayacak hukukî yolları incelemekte ve değerlendirmektedir. Bu çerçevede, makalenin ilk bölümü Ahıska Türklerinin tarihine, sürgün edilme süreçleri boyunca yaşananlara ve ülkelerine geri dönme çabalarına ayrılmıştır. Çalışmanın ikinci bölümünde ise uluslararası hukuk altında "geri dönme hakkı"nın tanımı, kapsamı ve niteliği incelenmekte, Ahıska Türklerinin halefiyet hukuku altında geri dönme hakkına sahip olup olmadıkları tartışılmakta, bu hakkı kullanabilmek için başvurabilecekleri hukuki yollar üzerinde durulmakta ve bu hukuki yollar içinde en etkili mekanizmanın 1966 tarihli Birleşmiş Milletler Medenî ve Siyâsî Haklar Sözleşmesi'nin denetim organı olan İnsan Hakları Komitesi'ne başvuru mekanizması olduğu tespiti yapılmaktadır.

Anahtar Kelimeler

Ahıska Türkleri, Geri dönme hakkı, Medeni ve Siyasi Haklara İlişkin Uluslararası Sözleşme, Sürgün, Toplu Tehcir

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1. Introduction

Meskhetian Turks were deported from the Meskhetian region of the Georgian Soviet Socialist Republic in November 1944 in accordance with the decision of the State Defence Committee of the Union of Soviet Socialist Republics No. 6279 (July 31, 1944)[1]. In 1989, two years before the collapse of the Soviet Union, a significant number of Meskhetian Turks living in the Fergana region of Uzbekistan were dispersed by the Soviet administration to various parts of the Soviet geography, resulting in a second deportation of Meskhetian Turks. Today, in addition to the former Soviet geography, Meskhetian Turks live in various States, especially in Türkiye and the United States of America.

This article examines the legal avenues that will allow the Meskhetian Turks, who are scattered in various parts of the world, to return to their homeland, the Meskhetian region, which is currently within the borders of the State of Georgia.

The first part of the article is devoted to the history of the Meskhetian Turks, their deportation and their efforts to return. Indeed, it is necessary to understand the events of the past in order to evaluate the legal possibilities and procedures of the present. On the other hand, the documents prepared by the Council of Europe (CoE) and other international organisations following Georgia's admission to the CoE in 1999, which constitute the final stage of the historical process, provide the basis for the legal process for repatriation. The documents of the international organisations, which determine that Georgia has not fulfilled its commitments to carry out the repatriation of Meskhetian Turks and make recommendations for their fulfilment, constitute reliable evidence that Meskhetian Turks have not achieved their right to return. The subject of the legal process to be initiated will be the fulfilment of this right.

In the second part of the article, the definition, scope and nature of the 'right of return' will be examined, and the legal remedies through which Meskhetian Turks can seek to achieve this right will be explored. The Human Rights Committee, the supervisory body of the 1966 United Nations Covenant on Civil and Political Rights, will be proposed as the most effective mechanism to enable Meskhetian Turks to realise their right to return to their homeland.

I. The History of a Double Deportation

Meskhetian Turks are people who have been deported twice[2]. In November 1944, they were forcibly deported by NKVD[3] troops from their homeland in Georgia to

1 For the text of the deportation decision see Kıyas Aslan, *Ahıska Türkleri* (Ahıska Türkleri Kültür ve Dayanışma Derneği 1995) 39-43.

2 Kakoli Ray, 'Repatriation and De-Territorialization: Meskhetian Turks' Conception of Home' (2000) 13(4) Journal of Refugee Studies 391, 391.

3 Narodny Komissariyat Vnutrennih Del, People's-Commissariat of Internal Affairs from 1917-1946, to be renamed MVD (Ministerstvo Vnutrennih Del, Ministry of Internal Affairs) in 1946.

Central Asia. In 1989, they were evacuated to other parts of the Union of Soviet Socialist Republics (USSR) because of ethnic violence in their place of exile in the Fergana Valley in Uzbekistan[4].

Most Meskhetians prefer to be called Ahıska Turks, in reference to the city of Ahıska in this region[5]. After having labelled them as 'Azerbaijanis' in the 1930s[6], the Soviet regime renamed them as Meskhetians during World War II[7] to assert that this community is descended from the Georgian Meskhet tribe[8]. As a matter of course, we have opted in this article to use the term 'Meskhetian', which is commonly and almost exclusively used in international documents, in full respect of the Ahıska Turks' right to self-identification.

According to Georgian historiography, Meskhetian Turks, who are Sunni Muslims and speak Turkish close to the Kars dialect, are actually the descendants of the Meskhs, a Georgian tribe who converted to Islam between the 16th and 19th centuries[9]. Turkish historians, on the other hand, affirm that the Turkish tribes that settled in the region in the 5th century AD eventually united around a single ethnic identity of Meskhetian Turks[10]. The Georgian official discourse insists on referring to the Meskhetians as 'Muslim Georgians'. However, unlike Muslim Georgians, Meskhetians speak Turkish[11].

In Ottoman official records, the region has been referred to as 'Vilâyet-i Ahıska' since the 16th century, when Ottoman rule began[12]. Tsarist Russia annexed the northern part of the Meskhetia region in accordance with Article 4 of the Treaty of Edirne of 1829[13]. Meskhetians took part in the Ottoman side in the Ottoman-Russian War of 1877-1878[14] and, by the end of WW1, declared a semi-autonomous federation to be united with the Ottoman Empire[15]. Participating in the Batumi Conference, (11 May-4

4 "Punished Peoples" of The Soviet Union, The Continuing Legacy of Stalin's Deportations, A Helsinki Watch Report, (1991), 51 < https://www.hrw.org/reports/pdfs/u/ussr/ussr.919/usssr919full.pdf > accessed 6 February, 2024.

5 Malika Mirkhanova, 'People in Exile: The Oral History of Meskhetian Turks (*Akhyskha Turkleri*)' (2006) 26(1) Journal of Muslim Minority Affairs 33, 33-34; "Punished Peoples" of The Soviet Union, The Continuing Legacy of Stalin's Deportations (n 4) 52.

6 Ayşegül Aydıngün, 'Creating, Recreating and Redefining Ethnic Identity: Ahiska / Meskhetian Turks in Soviet and Post-Soviet Contexts' (2002) 21(2) Central Asian Survey 185, 193.

7 Ray (n 2) 392.

8 Göktuğ Kıprızlı, 'Victims of the Soviet Policies: The Case of the Ahiska Turks (1944-1968)' (2019) 56 Avrasya Etüdleri 79, 80.

9 Mirkhanova (n 5) 34.

10 Ayşegül Aydıngün, Çiğdem Balım Harding, Matthew Hoover, Igor Kuznetsov, Steve Swerdlow, *Meskhetian Turks: An Introduction to their History, Culture, and Resettelment Experiences* (Center for Applied Linguistics 2006), 3-4.

11 Elterişhan Elçibey, 'Historical Background of Meskhetian Turks' Deportation and Their Repatriation Process to Georgia' (2023) 7(2) Uluslararası Kriz ve Siyaset Araştırmaları Dergisi 423, 424.

12 Mahmut Niyazi Sezgin and Kâmil Ağacan, *Dünden Bugüne Ahıska Türkleri Sorunu* (Avrasya Stratejik Araştırmalar Merkezi 2003) 9.

13 Muahedat Mecmuası, IV, Ceride-i Askeriye Matbaası, Istanbul, 1298, 72-73; Gabriel Noradounghian (1900) II *Recueil d'actes internationaux de l'Empire Ottoman* (Paris 1900) 167-168.

14 Kıprızlı (n 8) 81.

15 Aydıngün (n 6) 187-188.

June 1918) to discuss the future of the region, Meskhetians declared their will to join Türkiye, in accordance with the principle of self-determination of peoples put forward by President Wilson[16].

In 1921, Soviet forces gained control over Georgia. Under the Treaty of Kars signed on 13 October 1921[17], Türkiye ceded to the Soviets significant parts of the territory lost to the Ottoman Empire, including Ahıska[18]. This was confirmed by the Moscow Treaty of March 16, 1921[19]. The Soviet government treated the Meskhetian Turks as potential enemies and spies, which played a decisive role in the development of a sense of ethnic belonging among Meskhetian Turks. In the late 1920s and 1930s, when Meskhetian Turks were subjected to discriminatory and unequal treatment, identification with Turkishness would gain momentum[20].

Regardless of the debates on their ethnic origins, it is obvious that Meskhetian people have always seen, felt and defined themselves as Turks[21]. The issue of which tribes inhabited the region in ancient times can only be of academic value and does not make any legal sense. In legal terms, it is the most natural right of both individuals and societies to freely adopt and determine the identity they want.

The USSR did not recognise Meskhetians as a 'nationality'[22], subjecting them to various forms of discrimination[23]. In fact, the early Soviet nationality policy recognised the freedom and self-determination of peoples. The Declaration on the Rights of the Peoples of Russia, issued in November 1917, recognised the right of nations to self-determination and autonomy[24]. Meskhetians, who were mentioned as 'Turks' in the 1926 Soviet census, thus had the opportunity to receive education in Turkish until 1935-1936. However, after this date, the language of instruction in schools was changed from Turkish to Azerbaijani, and in the late 1930s, with the Russification policies and the removal of the category of 'Turk' from the list of recognised peoples, Meskhetian Turks were deprived of the advantages of recognised peoples, such as a land, a degree of autonomy, the use of their own language including for purposes of education and publication and a -limited- right to preserve their religion. In the

16 Sezgin and Ağacan (n 12) 13.

17 For the authentic text see <https://www.mfa.gov.tr/data/Kutuphane/Kurucu_Anlasmalar/1921-kars-anlasmasi.pdf> accessed 7 February, 2024.

18 Aydıngün, Harding, Hoover, Kuznetsov, Swerdlow (n 10) 5.

19 For the authentic text see < https://www.mfa.gov.tr/data/Kutuphane/Kurucu_Anlasmalar/1921-moskova-anlasmasi-fransizca.pdf > accessed 8 February 2024.

20 Aydıngün (n 6) 187-188.

21 Sezgin and Ağacan (n 12) 13 ve 35.

22 Aydıngün (n 6) 185.

23 Aydıngün (n 6) 185.

24 N Aslı Şirin Öner, 'Stalin'in Milliyetler Politikasının Bedeli Olarak Ahıska Sürgünü ve Ahıskalılar'ın Sürgündeki Yaşamları' (2019) 56 Avrasya Etüdleri 53, 57.

1936 census, the Meskhetians were recorded not as 'Turks' but as 'Azerbaijanis'[25]. Some Meskhetians were forced to change their surnames into Georgian or to adopt Russianised versions of their names[26]. Meskhetians Turks were excluded from the political elite and from all important decision-making positions and were denied all the rights granted to recognised peoples, such as priority in employment, promotion, admission to universities and funds to promote cultural development[27]. 'It is significant that on the eve of the deportation in 1944, Meskhetians were classified as Turks of Türkiye'[28].

A. The 1944 Exile

The USSR engaged in mass deportations of hypothetical class enemies and committed acts of ethnic cleansing during these deportations[29]. In particular, the Stalin-era Soviet regime is remembered for its extra-legal State actions and mass repression[30].

Between 1937 and 1951, the Stalin regime deported 13 national groups (Koreans, Finns, Germans, Karachays, Kalmyks, Chechens, Ingush, Balkars, Crimean Tatars, Meskhetian Turks, Georgian Kurds, Hemshins and Pontic Greeks) to remote areas of the USSR. The Soviet leadership justified the ethnic cleansic of over two million people on the grounds that the deported nations were traitors and disloyal to the Soviet State[31].

The deportation of Meskhetians was carried out in November 1944 in accordance with the decision 6279 of the State Defence Committee dated July 31, 1944[32]. According to an explanatory letter to Stalin from Lavrenty Beria, the People's Commissar of Internal Affairs of the USSR, labelled 'top secret', '*a significant part of the population in question has for many years been in contact with their relatives on the Turkish side with a tendency to emigrate, smuggling, acting as a source of recruitment of spies for Turkish intelligence agencies and providing manpower for bandit groups*'[33].

The total number of deportees was estimated at 115,500, with an additional 40,000 men still at the front at that time[34], which facilitated the rapid implementation of the

25 Stephen F Jones, 'Meskhetians: Muslim Georgians or Meskhetian Turks?' A Community without a Homeland' (1993) 13(2) Refuge 14.

26 Elçibey (n 11) 424.

27 Aydıngün (n 6) 190.

28 Jones (n 25) 14.

29 Terry Martin, 'The Origins of Soviet Ethnic Cleansing' (1998) 70(4) The Journal of Modern History 813, 815-816.

30 E Kh Panesh and L B Ermolov, 'Meskhetinsky Turks under the Conditions of the Modern Ethnic Processes in the USSR' (1993) 57(219) Belleten 589, 589.

31 J Otto Pohl, 'Stalin's Genocide against the "Repressed Peoples"' (2000) 2(2) Journal of Genocide Research 267, 267.

32 For the text of the decision, see Aslan (n 1) 39-43.

33 Aslan (n 1) 37-38.

34 Panesh and Ermolov (n 30) 589. Western sources estimate the number of people deported at 150,000 to 200,000. See Mirkhanova (n 5) 35.

deportation. A major contradiction in the deportation of the Meskhetians is that unlike other North Caucasian peoples who were deported at the same time, they were never officially accused of collaborating with the Nazis, but were subjected to the same sanctions as the groups accused of this[35]. Their deportation was not related to the current war, but to a possible future war with a probable enemy[36].

Already in the 1930s, Lavrentiy Pavlovich Beria, the Georgian-born head of the NKVD, the 'inspirer' and executor of the deportation of the Meskhets, had conducted a serious Georgianisation campaign against the Ossetians and Abkhazians living in Georgia. The ethnic cleansing of the Meskhetian population followed by the resettlement of ethnic Georgians in the region can be considered as the most violent part of Beria's campaign to 'Georgianise' Georgia. Most of the lands belonging to the exiled North Caucasians were annexed to Soviet Georgia in 1944-1945[37]. In 1945, 30,000 Christian Georgians were forcibly resettled in the villages vacated by the Meskhetian Turks, and the houses belonging to the Turks were demolished, completely changing the demographic structure of the Turkish-Soviet border[38].

Stalin was convinced that the presence of a Turkish minority on the Soviet Union's border with Türkiye could disrupt his future plans to pressure [39]or directly occupy Türkiye[40]. The Meskhetians were reclassified as 'from Türkiye on the day of deportation; which can be seen as a preparation for the future accusation of Meskhetians of collaborating with the enemy[41]. The deportation can also be considered as a tactical move of the USSR's holistic strategy to sever the ethnic ties between Türkiye and the Turkic World. In fact, in 1948, most Turkish elements in Armenia were deported to Azerbaijan. Armenians expelled the Turkish-Karapapak community from the country, expelled the Muslim Hemshinites from Adjaria and gained demographic superiority in the Javakhetia region[42]. On the other hand, the deportation is associated with Armenian territorial demands from Türkiye and with Soviet intentions to annex the region to 'Greater Soviet Armenia'. Indeed, between 1945 and 1953, the Soviet Union claimed the eastern provinces of Türkiye on behalf of both Soviet Armenia and Soviet Georgia[43].

35 Jones (n 25) 14.

36 I Kreindler, 'The Soviet Deported Nationalities: A Summary and an Update' (1986) 38(3) Soviet Studies 387, 391-392.

37 Jones (n 25) 14-15.

38 Öner (n 24) 69.

39 "Punished Peoples" of The Soviet Union, The Continuing Legacy of Stalin's Deportations (n 4) 8.

40 Pohl (n 31) 286-287.

41 S Enders Wimbush and Ronald Wixman, 'The Meskhetian Turks: A New Voice in Soviet Central Asia' (1975) 17(2-3) Canadian Slavonic Papers 320, 324.

42 Sezgin and Ağacan (n 12) 17.

43 Jones (n 25) 14-15.

Soviet Armenia has never given up its claims to the northeastern provinces of Türkiye, which were ceded to Armenia by the 1920 Treaty of Sèvres (Art. 89-91)[44] but returned to Türkiye by the Turkish-Soviet Treaties of 1921. The deportation of the Meskhetians constituted both a concession to the traditional hatred of the Armenians in the region towards the Turks and a prelude for the extension of Soviet influence to the disputed areas[45].

Approximately 15,000 Meskhetian died on the way due to the difficult conditions. The deportees were forced to keep the rotting corpses of their deceased relatives on the train for almost two months until they were given the opportunity to throw them out of the train or bury them. Meskhetians were settled in small groups in Kazakhstan (29,497 people), Kyrgyzstan (9,911 people) and especially Uzbekistan (42,618 people) and assigned exclusively to agricultural work, forced to live in crowded and unhealthy conditions, and many of them died in typhus epidemics. Their conditions slightly improved after Stalin's death in 1953, and they were not allowed to apply to return to their homeland[46]. Meskhetians were isolated from other ethnic groups[47], subjected to discrimination, to violations of their ethnic identity, prevented from publishing and receiving education in their mother tongue[48], and deprived of even the most basic rights of citizenship[49]. They suffered high mortality rates due to malnutrition and heavy workload and were subjected to Russification policies[50].

The only way for the Meskhetians to survive was to resort to ethnic solidarity. They clung more strongly to their ethnic roots, and in their new life, they lived as a closed community and minimised their relations with other ethnic groups. Strong family ties, endogamy and the preservation of their mother tongue became the main means of their ethnic strengthening and cultural survival[51]. They all spoke Turkish, came from a common territory, embraced the religion of Islam, and felt a strong sense of Turkishness. Ironically, these similarities allow the Meskhetian Turks to be characterised as a nation according to Stalin's criteria: '*A nation is a historically evolved, stable community of language, territory, economic life, and psychological make-up manifested in a community of culture*'[52]. The deportation, ordered by Stalin himself, realised overnight what centuries could not do[53].

44 See Sinan Kuneralp, *Recueil des traités, Conventions, Protocoles, Arrangements et Déclarations signés entre l'Empire Ottoman et les Puissances Etrangères, 1903-1922, Vol. II, 1903-1916* (Les Éditions Isis 2000) 526-527.

45 Wimbush and Wixman (n 41) 324-327.

46 Mirkhanova (n 5) 36.

47 Ray (n 2) 393.

48 Pohl (n 31) 267 and 288.

49 Aydıngün (n 6) 188.

50 Elçibey (n 11) 427-428.

51 Aydıngün (n 6) 192.

52 Joseph Stalin, *Marxism and the National Question. Selected Writings and Speeches* (International Publishers 1942) 12. See <https://archive.org/details/in.ernet.dli.2015.166817/page/n7/mode/2up > accessed 14 February 2024.

53 Wimbush and Wixman (n 41) 327.

In his famous secret speech at the 20th Party Congress in 1956, Khrushchev, Stalin's successor, denounced Stalin and his crimes and emphasised the deportation of the Karachai, Balkars, Chechens, Ingush and Kalmyks. Later decrees would also refer to Volga Germans and Crimean Tatars[54]. Why the Meskhetian Turks were exempted, while all deported peoples were returned to their homeland, is a complex issue, related to perceptions of security threats from Türkiye and Georgia's reluctance to take them back[55]. The Soviet Georgian leadership as well as Georgians occupying privileged positions in the Soviet central government opposed the idea of return, which could, they believed, lead to conflicts with Christian Armenians and Georgians[56].

Finally, in 1968, a decree of the Supreme Presidium of the USSR recognised, albeit indirectly, that the Meskhetians, (categorised as Azerbaijanis)[57] had been deported from their homeland[58] but also observed that they had taken root in Central Asia, so there was no need to relocate them[59].

Faced with the fact that the Soviet regime refused to respond to their demands to return to their homeland, Meskhetians turned to action and established in 1964 the Turkish Association for the National Rights of the Turkish People in Exile headed by Enver Odabashev (Khozrevanidze), who remained as the leader of the movement until his arrest in 1971[60].

The Association began to coordinate a more aggressive campaign, including demonstrations, appeals to international organisations and institutions such as the UN and Amnesty International, renunciation of Soviet citizenship and de facto resettlement in Georgia. Soviet authorities responded by arresting Meskhetian leaders and threatened the Meskhetian Turks through Soviet troops. In 1970, the 6th People's Congress proclaimed the right to establish a separate and autonomous national Meskhetian Turkic Republic or Region claimed and the punishment of those responsible for the deportations and the payment of 200,000,000 roubles in compensation for the damages they suffered, including 3% annual interest[61].

After the 1970 Congress, Mesketians leaders applied to the Turkish Embassy to be allowed to emigrate to Türkiye and obtain Turkish citizenship if the Soviet Government persisted in its refusal to resolve the Meskhetian issue[62]. Letters were sent to the

54 ibid 328.

55 Ray (n 2) 392.

56 Aydıngün, Harding, Hoover, Kuznetsov, Swerdlow (n 10) 7.

57 Wimbush and Wixman (n 41) 320.

58 Kreindler (n 36) 397; Wimbush and Wixman (n 41) 321.

59 Jones (n 25) 15.

60 Wimbush and Wixman (n 41) 332.

61 Kreindler (n 36) 399-400.

62 Wimbush and Wixman (n 41) 335.

Soviet Government, the Secretary-General of the UN and the Turkish Grand National Assembly. Odabashev had been arrested and sentenced to two years' imprisonment. The new leader of the movement, Seifatov, appealed to Brezhnev, to the Turkish Prime Minister Ferit Melen and to the UN Secretary-General Kurt Waldheim, requesting that the UN send an investigative mission to the USSR to directly examine the Meskhetian issue[63]. The option of emigrating to Türkiye rather than returning to their homeland gained weight for Meskhetian people[64].

The Meskhetians had 144 meetings with Soviet officials in 45 years[65] and organised ten congresses between 1962 and 1989 to discuss and develop strategies and tactics that would enable them to return to their homeland. The congresses sent 148 delegations to the highest governing bodies of the USSR and 205 delegations to the governing bodies of the Georgian Soviet Socialist Republic. However, none of them could reach a single concrete solution on the issue of repatriation. The Georgian side has unofficially suggested that the Meskhetians should recognise their Georgian roots and adopt Georgian surnames. Given the ethnic self-consciousness of the Meskhetians and their established Islamic traditions, these expectations were not acceptable and realistic[66].

On 14 November 1989, the Supreme Soviet of the Union of Soviet Socialist Republics adopted a Declaration 'On the Elimination of Illegal and Criminal Repressive Acts against Peoples Subjected to Forced Resettlement and the Ensuring the Rights of These Peoples', which recognised 11 of the 13 national groups that Stalin deported in their entirety as 'oppressed peoples'; including Meskhetian Turks[67]. On 26 April 1991, the government publicly acknowledged that the deportations and deportations of the 'oppressed peoples' constituted genocide. The 'Law on the Restitution of the Dignity of the Repressed Peoples', issued by the Parliament under the signature of President Yeltsin, explicitly recognises that the acts of the Stalin regime against these peoples constituted genocide[68].

B. Second Exile: Fergana Events

The 1989-1990 period witnessed numerous and violent ethnic conflicts erupting in various parts of the USSR, which was in the process of dissolution. One of them erupted in May-June 1989 between two ethnic Turkic groups, the Uzbeks and the Meskhetians, living in the Fergana Valley, which is located between Uzbekistan, Kyrgyzstan and Tajikistan and is home to significant natural resources and a dense

63 Wimbush and Wixman (n 41) 336-337.

64 "Punished Peoples" of The Soviet Union, The Continuing Legacy of Stalin's Deportations (n 4) 53-54.

65 Jones (n 25) 15.

66 Panesh and Ermolov (n 30) 592, 594.

67 Pohl (n 31) 267.

68 ibid 268.

population, leading to the deaths of at least a hundred people, the break-up of families and the mass forced resettlement of Meskhetians. The conflicts and forced resettlement destroyed the living arrangements that the Meskhetian Turk diaspora had managed to establish in Uzbekistan[69]. It is believed that the economic and political liberalisation policies of the perestroika period, combined with rising nationalism and poverty, competition over the sharing of natural resources and dense settlement conditions in the Fergana Valley, contributed to inter-ethnic tensions[70]. On the other hand, during this period, Georgia and Uzbekistan showed tendencies to secede from the USSR and the KGB[71], tried to put Gorbachev in a difficult situation and tended to use the issue of Meskhetians as an element of pressure against Georgia[72]. Moscow would allegedly have instigated the Fergana events to divert the attention of Uzbek nationalists away from the Russian population in the country and towards the Meskhetians[73].

In accordance with the decision of the Government of 13 July 1989, the Soviet Army evacuated 17,000 Meskhetians to Russia. Some 70,000 Meskhetians living elsewhere in Uzbekistan migrated to other parts of the USSR on their own initiative[74]. While some Meskhetians settled in Azerbaijan, Ukraine and Kazakhstan, the Government of the then Georgian Soviet Socialist Republic of Georgia rejected the Meskhetians' settlement request[75]. On 27 January 1990, Georgian President Gamsakhurdia affirmed the impossibility of the resettlement of the Meskhetians and strongly condemned the efforts made in this direction behind the backs of the Georgian people. Georgians claimed that there was no place that could be allocated to Meskhetians, who, in turn, pointed out that the 220 villages from which they were deported no longer existed, the number of inhabitants had fallen to 150,000, and 70% of the land was not cultivated. There are warnings that the sudden return of the Meskhetians to their ancestral lands could trigger violence with the Armenian families who now live in the former homes of Meskhetians[76].

Most of the Meskhetians settled in the Krasnodar region in southern Russia, some in Azerbaijan and a few in Türkiye. As a result of the ongoing conflicts and violence in Krasnodar, in 2004, the United States Government established the 'Involuntary Resettlement Immigrant Programme' which allowed Meskhetians to settle in Philadelphia, St. Louis, Missouri Salt Lake City[77]. Following the 1989 exile and the collapse of the USSR, Meskhetian Turks were discriminated against in the places of resettlement and faced citizenship problems and difficulties in accessing social and

69 Mirkhanova (n 5) 37.

70 Aydıngün, Harding, Hoover, Kuznetsov, Swerdlow (n 10) 8.

71 *Komitet gosudarstvennoy bezopasnosti,* (Committee for State Security), the main security agency for the Soviet Union.

72 Sezgin and Ağacan (n 12) 19.

73 Elçibey (n 11) 430.

74 Aydıngün, Harding, Hoover, Kuznetsov, Swerdlow (n 10) 8.

75 Mirkhanova (n 5) 37.

76 "Punished Peoples" of The Soviet Union, The Continuing Legacy of Stalin's Deportations (n 4) 54-55.

77 Mirkhanova (n 5) 33.

public institutions. The violence and exile led the Meskhetian Turks to take a more uncompromising position on the issue of returning to their homeland[78].

C. The Issue of the Return of Meskhetian Turks to their Homeland in the Post-Soviet Period and the International Community

After the collapse of the USSR, the Meskhetian Turks crisis has increasingly attracted the attention of the international community. Many international organisations, including the Council of Europe, (CoE) the Organisation for Security and Cooperation in Europe, (OSCE) the UN High Commissioner for Refugees, the International Organisation for Migration and the Federal Union of European Nationalities, have addressed the issue of Meskhetian Turks[79].

The CoE's pressure on Georgia to resolve the Meskhetian issue in the context of Georgia's integration with Europe and the Baku-Ceyhan pipeline project is closely related to the growing strategic importance of the Caucasus. The issue of transporting Caspian oil has become the subject of political and strategic conflicts among many states, including Türkiye, Russia, Georgia, and Azerbaijan. The stability of the region is a prerequisite for the transport of oil through South Georgia, where some old Meskhetian villages are located. Armenians are still settled in the region. The Georgian Government's sensitivity and resistance to the return of Meskhetian Turks stems from the fact that it sees the issue as a source of conflict in the region and persists in imposing on the Meskhetian to accept the Georgian identity[80].

As soon as the ruling elite of Georgia realised that these exiled people did not have a pro-Georgian orientation, their position on the return of Meskhetians changed. With the coming to power of Georgian President Shevardnadze, who also served as foreign minister just before the break-up of the Soviet Union, the legal status of Meskhetians has gradually improved and constructive steps were taken on the issue of return: a State commission was established to deal with this issue, the Shevardnadze administration attempted to reach an agreement with the Kremlin in 1994, and a bill on the restoration of the rights of the deportees and their descendants was submitted to Moscow[81].

Declaring that the social and economic conditions were not yet adequate for the return of the Meskhetians, Shevardnadze issued a decree in December 1996 which envisaged the gradual resettlement of approximately 5,000 Meskhetians to Georgia by 2000. In the end, the 1996 programme was not implemented[82]. This decree, while granting citizenship and economic privileges to the Meskhetians and encouraging their integration into

78 Panesh and Ermolov (n 30) 604.

79 Aydıngün, Harding, Hoover, Kuznetsov, Swerdlow (n 10) 11.

80 Aydıngün (n 6) 191.

81 Elçibey (n 11) 432-433.

82 Sezgin and Ağacan (n 12) 27-28.

society, demanded that they change their surnames, learn Georgian and not resettle in the places they had left. The last condition was due, among others, to putative conflicts with their Christian Georgian and Armenian neighbours. There was, indeed, a tension between Turkish elements and Armenians in the region beyond the official borders. During the Khojaly massacre perpetrated by Armenian militias against Azerbaijanis on 25-26 February 1992, Meskhetian Turks who had taken refuge in Azerbaijan after their exile from Central Asia were also taken hostage and/or barbarically massacred[83].

The return of Meskhetians is perceived as a threat by Armenians living in the Samtskhe-Javakheti region, a kind of corridor for Armenia to the outside world. Armenians are also concerned that the return of the Meskhetians could lead to a blockade of Armenia 'encircled' by Azerbaijan and Türkiye. Many Armenians, living in the homes of the deported Meskhetians, fear that their land and property may be taken back by them[84].

It is significant that the Georgian Government did not sign the Bishkek Treaty of 9 October 1992, which could indirectly allow Meskhetian Turks to return to their homeland[85]. The Treaty provides for the freedom of visa-free travel only for nationals of members of the Commonwealth of Independent States[86].

Türkiye is unsurprisingly the leading State to show interest in the issue of Meskhetians. The importance of this community, which recognises itself as Turks and expressed its will to affiliate with Türkiye at the Batumi Conference, for Türkiye is obvious. Immediately after the dissolution of the USSR, the Grand National Assembly of Türkiye adopted the 'Law on the Admission and Settlement of Meskhetian Turks in Türkiye[87]. According to the first article of the law

> '*Those who wish to come to Türkiye from among our cognates who live scattered in the republics forming the former Soviet Union and who are called "Meskhetian" Turks may be accepted as free or settled immigrants, starting with those in the most difficult situation, provided that they do not exceed the annual number to be determined by the President of the Republic. Their admission and resettlement shall be carried out in accordance with the provisions of this Law and the Settlement Law No. 2510*'.

According to the Legislative Preamble signed by Prime Minister Süleyman Demirel[88]:

83 See Emre Öktem, Hüseyin Ural Aküzüm and Mehmet Cengiz Uzun, 'Hocalı Soykırımı Hakkında Avrupa İnsan Hakları Mahkemesi'ne Başvuru İmkânı Üzerine' (2020) 15(193-194) Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi 1081, 1082.

84 Elçibey (n 11) 437.

85 Ray (n 2) 398.

86 See the Agreement on Visa-Free Movement of Citizens of the States of the Commonwealth of Independent States on the Territory of its Members, < https://cis-legislation.com/document.fwx?rgn=25681 > accessed 15 February 2024.

87 Ahıska Türklerinin Türkiye'ye Kabulü ve İskânına Dair Kanun, Law No. 3835, adopted on 2 July 1992, Official Gazette: 11 July 1992, No. 21281, Düstur (Collection of Legislation) Tertip 5, Vol. 31.

88 See Deliberations on the Law on the Admission and Settlement of Meskhetian Turks in Turkey, TBMM, (Grand National Assembly of Turkey) Session 19, Legislative Year 1, p. 1.

'*Our cognates, called "Ahıska" Turks, who were living scattered in the republics of the former Soviet Union, were living in Ahıska […] were deported by Stalin to the Republic of Uzbekistan in November 1944, […] In 1956, although the deportation order was lifted, it was not possible for our compatriots to return to their homeland because the areas where they lived in the past were declared as border areas. […] The fact that the dissolution of the USSR and the emergence of the republics as independent States did not bring any improvement to the situation of Meskhetian Turks, our rapidly developing relations with the Central Asian Turkic Republics and humanitarian considerations have led to a positive approach to their migration requests. In order not to create the impression of a mass migration, it is planned to plan the migration within the annual ceiling to be set by the Council of Ministers. […]. In Türkiye, migration is carried out in accordance with the Settlement Law No. 2510. […] [which] is insufficient to ensure the realisation of such a migration, it has [therefore] become necessary to make a separate regulation on the reception and settlement of Meskhetian Turks*'.

The dissenting opinion on the Draft Law on the Admission and Settlement of Meskhetian Turks in Türkiye, which was submitted by Işın Çelebi and Adnan Kahveci and is quoted below, points to the risk that the resettlement of Meskhetian Turks in Türkiye may prevent their return to their homeland[89]:

'*Now that the Soviet Union has disintegrated, taking into consideration Türkiye's good relations with the Republic of Georgia, Meskhetian Turks, who were distributed to 7-8 republics, can be resettled in Georgia. Their territories, which were declared as border regions, can be opened for resettlement. Resettlement of them in Türkiye […] may also lead to the mistreatment of Turks living in other countries. If this draft becomes law, those who oppress the Turks may torture the Turkish and Muslim minority in their countries with the idea that 'Türkiye does not pursue anything anyway […]. The government should intensify its efforts for the return of Meskhet Turks' lands. If necessary, it should provide economic aid to Georgia and enable Meskhet Turks to settle in their former lands […]. These problems can be solved within the framework of good relations with the Commonwealth of Independent States, which replaced the disintegrated totalitarian Soviet Union*'.

In 1996, the Organisation for Security and Cooperation in Europe, the UN High Commissioner for Refugees and the International Organisation for Migration convened a regional migration conference to address the problems of migrants and displaced persons in post-Soviet States, formally recognising the right of Meskhetian Turks to voluntarily return to their homeland in Georgia. The conference raised international awareness of the Meskhetians, although it produced few tangible results. In 1998 and 1999, the OSCE organised meetings in The Hague and Vienna between representatives of post-Soviet governments, international organisations and Meskhetians to seek solutions to the crisis[90].

89 ibid 7.

90 Aydıngün, Harding, Hoover, Kuznetsov, Swerdlow (n 10) 12.

D. The Impact of Georgia's Membership of the Council of Europe on the Repatriation Process of Meskhetian Turks

Georgia's accession to the CoE in 1999 provided a new opportunity to find a permanent solution for the return of Meskhetians to their homeland. Since Georgia's independence in 1991, the Georgian Government has consistently argued that it is not obliged to accept Meskhetian Turks into its territory because Russia, as the continuing State of the USSR, is solely responsible for the crimes committed under Stalin's regime[91]. True, the Russian Federation is the continuing State of the USSR and, in that capacity, is responsible under international law for the wrongful acts committed by the USSR[92]. However, this is a matter of international responsibility law that regulates relations between States. The right of return, which concerns fundamental human rights, particularly the right to property, can be asserted by individuals or groups of individuals against States independently of international responsibility. This issue will be discussed in detail under the title of the right of return in succession cases.

The CoE's request to Georgia to adopt the necessary policies on Meskhetian Turks when admitting Georgia as a member is based on considerations related to the future accession of this State to NATO and possibly to the EU[93]. If the Tbilisi leadership steadfastly pursues its Euro-Atlantic orientation, it will have to take more than symbolic practical initiatives regarding the repatriation of Meskhetian Turks. However, it seems that Georgia is still not capable of dealing with the issue of the return of Meskhetian Turks to their homeland on its own. Therefore, the support of the international community is vital to ensure the safe return of Meskhetian Turks to their homeland and their successful integration. The realisation of repatriation will also contribute significantly to the development of Georgia's Euro-Atlantic orientation[94].

Although Georgia has persistingly denied its legal obligations towards the Meskhetians, upon accession to the CoE, it committed to take explicit and concrete steps for their return to their homeland. The Parliamentary Assembly of the CoE, in its Opinion No. 209 (1999) of 27 January 1999 on Georgia's application for membership of the CoE, expects Georgia '*to adopt, within two years after its accession, a legal framework permitting repatriation and integration, including the right to Georgian nationality, for the Meskhetian population deported by the Soviet regime, to consult the Council of Europe about this legal framework before its adoption, to begin the process of repatriation and integration within three years after its accession and complete the process of repatriation of the Meskhetian population within twelve years after its*

91 ibid

92 For a detailed analysis of the issue of State succession to international responsibility, see Ceren Zeynep Pirim, *Devletlerin Uluslararası Sorumluluğa Halefiyeti* (Turhan 2016) 36.

93 Ray (n 2) 399.

94 Elçibey (n 11) 439.

accession; (Article 10.2. e)'[95]. However, these commitments have not been fulfilled, and the Georgian officials have repeated that the return of Meskhetians could trigger conflicts with their Armenian neighbours[96]. While making ostensible commitments to international organisations, Georgia created public opinion against Meskhetians at the national level, alleging that if Meskhetian Turks returned to Georgia, Türkiye would invade Georgia[97].

Despite all these shortcomings, Georgia's accession to the CoE was beneficial: Georgia had to participate in multilateral negotiations with other CoEmember States on the Meskhetian issue, which remained on the agenda of the CoE. The Parliamentary Assembly's 2001 Report on Honouring of Obligations and Commitments by Georgia (article 8.7)[98] urged Georgia to strengthen its cooperation with the CoE in order 'to accelerate the work undertaken with the Council of Europe and the UN High Commissioner for Refugees (UNHCR) on the question of the repatriation of the deported Meskhetian population, including ongoing legal expertise of the draft law "on repatriation of persons deported from Georgia in the 1940s by the Soviet regime", with a view to granting them the same status of rehabilitation as that already given to deportees of other ethnicities who were repatriated to Georgia under the Soviet regime'.

The 2005 Parliamentary Assembly resolution on the 'Situation of the Deported Meskhetian Population' dealt exclusively with this issue[99]:

" *[…]*

2. Today, Meskhetian Turks live dispersed in several countries: […] However the situation of several thousand Meskhetian Turks living today in the Krasnodar region (Russian Federation) raises major concerns.

3. After the collapse of the Soviet Union, the Meskhetian Turks in the Krasnodar region were not recognised as Russian citizens and remain de facto stateless due to an arbitrary interpretation of the legislation in force at the time and contrary to the 1991 law of the Russian Federation on citizenship. Since the Meskhetian Turks are refused residence registration and are not recognised as citizens of the Russian Federation, they are deprived of basic civic, political, economic and social rights. […] (T)he regional administration applies deliberately discriminatory practices with respect to Meskhetian Turks.

95 Georgia's Application for Membership of the Council of Europe, Opinion 209 (1999), Doc 8275, Report of the Political Affairs Committee (Rapporteur: Mr Davis); Doc 8296, Opinion of the Committee on Legal Affairs and Human Rights (Rapporteur: Mr Kelemen), adopted by the Assembly on 27 January 1999 (4th Sitting).

96 Aydıngün, Harding, Hoover, Kuznetsov, Swerdlow (n 10) 12.

97 Sezgin and Ağacan (n 12) 32-33.

98 Resolution 1257 (2001) Honouring of Obligations and Commitments by Georgia, Assembly debate on 25 September 2001 (26th Sitting) (see Doc 9191, Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Rapporteurs: Mr Diana and Mr Eörsi).

99 Council of Europe, Parliamentary Assembly, Resolution 1428 (2005), The Situation of the Deported Meskhetian Population, Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 March 2005, Doc 10451, Report of the Committee on Migration, Refugees and Population (Rapporteur: Ms. Vermot-Mangold).

4. Moreover, the Assembly recalls that upon Georgia's accession to the Council of Europe in 1999, one of the commitments undertaken by this country included the adoption, within two years, of a legal framework permitting the repatriation and integration of Meshketian Turks, including the right to Georgian nationality, the launch of a repatriation process within three years and its completion within twelve years.

5. The Assembly acknowledges that some measures aimed at facilitating the return of Meskhetian Turks were taken by the Georgian authorities before Georgia joined the CoE. However, the adoption of the main legal instrument, the law on repatriation of persons deported from Georgia in the 1940s by the Soviet regime, prepared with legal assistance by Council of Europe experts, is still outstanding […].

6. […] with regard to any future repatriation of Meskhetian Turks from the Russian Federation to Georgia, the essential principle should be the free choice of those concerned […].

7. […] the Russian authorities should ensure that the question of the Meskhetian Turks' legal status is resolved and […] should stop the regular administrative practices of discrimination against the Meskhetian Turks […].

8. The Assembly notes with satisfaction the commitment of the international community aimed at finding a durable solution. […] it calls on the international community, and in particular on the UNHCR and IOM, to ensure that any repatriation is carried out on a strictly voluntary basis […].

12. Furthermore, the Assembly calls on the Russian authorities:

a. to restore all civic, political, legal, economic and social rights of the Meshketian Turks and to ensure that the process is in accordance with the Constitution of the Russian Federation, Russia's international obligations and federal legislation […];

b. not to discriminate against the Meshketian Turkish population […] and to ensure that all the relevant legislation is applied accordingly and not retroactively;

c. to refrain from any kind of pressure on the Meskhetian Turkish population to leave the Russian Federation when the repatriation process starts and to offer them the possibility to stay as fully fledged citizens of the Russian Federation […].

(The Assembly) calls on the Georgian authorities to

a. honour their commitments undertaken upon accession and to create, without any further delay, the legal, administrative and political conditions necessary for the start of the repatriation process of those Meskhetian Turks who wish to return to their native region, with a view to its completion by 2011;

b. consider the possibility of accession to the Partial Agreement on the Council of Europe Development Bank and to present concrete projects for the financing of the resettlement and integration of the Meskhetian population who wish to return to Georgia […]."

As a result of international pressure on Georgia to comply with the requirements set by the CoE, on 11 July 2007, the Georgian Parliament adopted the Law 'On the

Repatriation of Persons Involuntarily Displaced by the Former USSR from the Soviet Socialist Republic of Georgia) in the 1940s'[100]. The law theoretically addressed the issue of the repatriation of all peoples expelled from Georgia in the 1940s, including Meskhetian Turks. Applications to obtain repatriation status had to be submitted as of January 1, 2010.

The law vaguely defined the persons entitled to repatriation and did not address their rights. In practice, both the procedure and the obstacles in the implementation of the repatriation law have complicated the process. In particular, the costs associated with submitting a repatriation application and the legal obstacles to obtaining 'returnee' status have hampered the efforts of Meskhetian Turks. The Tbilisi administration by enacting an ambiguous law and displaying an indifferent and reluctant attitude towards the resettlement of Meskhetians, was dragging out the repatriation process. In addition, the implementation of the law on repatriation was postponed because of the outbreak of war between Georgia and Russia in August 2008.

In 2011, three years after the war, the Tbilisi government established an inter-institutional government council to prevent possible ethnic conflicts in the areas concerned, and the Public Defender's Office and specially organised activities in the Georgian media have tried to facilitate the formation of a positive opinion in the Georgian society regarding the repatriation of Meskhetians. In the summer of 2011, the Tbilisi administration, once again subjected to European pressure, initiated the official process to grant 'returnee status' to Meskhetians, which was hampered by economic and legal obstacles. It was made difficult for Meskhetians to reside and find employment in Georgia without acquiring Georgian citizenship.

The 2010 Report prepared by the Committee on the Honouring of Obligations and Commitments by Member States of the CoE[101] states that

> '*[…] in 2007, Georgia adopted a Law on the repatriation of persons forcefully expelled from Georgia by the former Soviet Union in the 1940s (which) initiated the process of repatriation by setting out the terms under which Meskhetians could apply for repatriation*'. '*[…] a series of co-ordination working meetings were held with representatives of international organisations concerned with the repatriation process (EU, OSCE, HCNM, UNHCR, IOM, ECMI and the Council of Europe). […] A number of concerns were addressed and commitments made by the Georgian authorities*'. '*Originally, applications for repatriation were to be submitted by 1 January 2009, which gave people very little time to fill in forms and gather documentation, especially as forms were not distributed until quite late in 2008. The deadline was postponed twice until a final deadline for submitting papers was set for 1 January 2010.*' '*According*

100 On the Repatriation of Persons Involuntarily Displaced by the Former USSR from the Georgian SSR (The Soviet Socialist Republic of Georgia) in the 1940s, 11 July 2007, Consolidated versions (8 July 2015-5 July 2018), < https://matsne.gov.ge/en/document/view/22558?publication=6 > accessed 8 February 2024.

101 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia, Information Note by the Co-rapporteurs on their Fact-finding Visit to Tbilisi (22-24 March 2010) (24 June 2010) AS / Mon (2010) 24 rev.; articles 33-40.

to figures provided by the Georgian authorities, the number of applications received by the deadline was 5,806, the majority of which had come from Azerbaijan. The figure is much lower than was anticipated by Meskhetian organisations. No applications have been registered from the Russian Federation. However, Meskhetian organisations claim that approximately 2,000 applications have been sent in Russian. This causes a problem because, according to the law, all applications had to be submitted in Georgian or English'. 'The first decisions on repatriation are expected at the end of 2011. […] The law makes no provision for a strategy of preparation and support for the reintegration process or for any financial commitment by the State. […] 'The Meskhetian Turks were originally expelled from the Samstskhe region, which is a predominantly Armenian area. There is a great deal of hostility towards the idea of repatriation within this community'. 'There were fears that those deciding to return to Georgia could end up being stateless. However, the Georgian government adopted, in March 2010, a Decree on Granting Citizenship of Georgia through Simplified Procedure to Individuals Enjoying Repatriate Status, which excludes the possibility of any individual with repatriate status being left without citizenship.' '[…] (W)e encourage the authorities to demonstrate maximum flexibility with regard to formalities and paperwork to avoid any application being refused on technical grounds only […].

Similar statements are made in the 2011 report of the Monitoring Committee[102] which suggested that the Parliamentary Assembly recommend that Georgia 'develop, without further delay, a comprehensive and efficient mechanism for repatriation and re-integration'[103].

According to the 2012 Report of the Monitoring Committee[104]:

'*The Meskhetian Associations […] have reported that, since the adoption of Resolution 1801 (2011), their relationship with the Georgian authorities has improved markedly […]. The Ministry for Reintegration informed us that a special council has been set up, composed in its majority by Meskhetian representatives, to judge on repatriation requests from persons who can not prove their family's deportation with documentary evidence. […] 75 applications for repatriation were granted. […] (B)y 1 December 2011, this number had increased to 199. No repatriations have yet taken place'. […] There is a great deal of hostility among (the Armenian) community to the idea of repatriation. These concerns need to be addressed especially in view of the tensions that, at times, have surfaced in this region. This underscores the need for the development of a comprehensive repatriation strategy, as recommended by the Assembly. In our talks with the authorities during our visit, we could not discern any such strategy being developed. […].*

The Committee's 2013 report observes that the impact of the change of government in Georgia on the Meskhetian Turks issue is uncertain[105]:

102 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, (Monitoring Committee), Honouring of Obligations and Commitments by Georgia, Provisional Version, Doc 25 March 2011, Art 21 ve 141-149.

103 Art 21.3.

104 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (26 January 2012) AS/Mon (2011)24 rev3.; articles 33-34.

105 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (28 January 2013) AS/Mon (2013)04 rev.; article 43.

According to the 2016 Report of the Monitoring Committee[106]:

'*The authorities informed us that, they have largely honoured their commitment to the Council of Europe with regard to the issue of the Meskhetian repatriation, However, […] we stressed that the honouring of this commitment does not only entail the establishment of a legal framework allowing for repatriation, but also of the successful repatriation of all those Meskhetians who want to repatriate. […] (T)he Interagency Action Plan for the Repatriation and Reintegration of Meskhetians was adopted, but, regrettably, its implementation seems to be proceeding very slowly. We would also like to highlight in this context that the Assembly recommended that the authorities organise a comprehensive evaluation of the repatriation framework and integration strategy, and formulate additional policies if necessary, in order to ensure that all those Meskhetians that were deported and that wish to return to Georgia do indeed have had an objective chance to do so […].*

The 2017 report of the Monitoring Committee recalls the commitments Georgia undertook when joining the CoE and questions to what extent they have been fulfilled[107]:

'*[…] The Georgian authorities indicated that with the putting into place of the legal framework and the repatriation strategy they have fulfilled this accession commitment to the Council of Europe. We do feel that the Georgian authorities have indeed largely honoured their commitment but also note that a number of NGOs and Meskhetian organisations have indicated that a number of practical barriers – some beyond the Georgian authorities' competence, such as problems in rescinding Azeri nationality – continue to exist that prevent de facto repatriation*'. '*According to the data provided to us, the Georgia authorities have received in total 5841 applications for repatriation totalling 8900 persons of which 3059 are adolescents. The largest part of these applications has come from persons with Azerbaijani citizenship (5389). By 10 March 2017, in total 1998 persons had been granted repatriate status, while only 4 persons were rejected. By the same date, 494 persons, all citizens of Azerbaijan, were granted Georgian citizenship by presidential decree; this decree will be enforced for each person as soon as the Georgian authorities have received proof that that person has rescinded his or her original citizenship. According to interlocutors, rescinding Azerbaijani nationality is a complicated procedure, as a result of which only a fraction of the above-mentioned 494 persons obtained their Georgian citizenship. Despite the number of applications granted, actual repatriation is rather low. As of March 2017, only 19 persons from 6 families had returned to Georgia. Of these, 12 have been granted citizenship, while the other 7 still only have repatriate status. […] (I)t is important to ensure that all Meskhetian persons who wish to repatriate to Georgia indeed had a reasonable opportunity to do so […].*

According to the 2018 Report of the Monitoring Committee[108];

106 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (7 June 2016) AS/Mon (2016)15.

107 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (16 June 2017) AS/Mon (2017)16, Art 32-35

108 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (12 December 2018) AS/Mon (2018)23 rev.; articles 41-42.

'*There have been nearly 6000 applications concerning in total nearly 9000 individuals. However, until now only a very small number of Meskhetians have completed their repatriation in practice*'. *[…] 'The Georgian authorities consider that they have by and large fulfilled their accession commitment in this regard. The small number of repatriates, despite the number of applications granted, highlights the fact that actual repatriation is a complicated and time-consuming process […] (I)f we could get explicit confirmation that the Georgian authorities will undertake a comprehensive evaluation of the repatriation framework and strategy, and the result it has achieved, identifying any unforeseen barriers and hurdles for a successful repatriation, we could indeed consider this commitment closed*'.

Article 17 of the 2022 report of the Monitoring Committee contains similar wording[109].

According to the 2006 report of the European Commission against Racism and Intolerance (ECRI) of the CoE[110];

'*In its first report, ECRI recommended that Georgia adopt a legal framework allowing for the repatriation and integration, including the right to Georgian citizenship, of the Meskhetian Turkish population […]. ECRI also asked the Georgian authorities to plan measures to raise awareness of these issues among the local population'. […] 'ECRI notes that there is controversy surrounding the use of the term 'Meskhetian Turks' to describe the population in question here. Numerous other names have been proposed, either by members of this population, by the authorities or by members of Georgian civil society. These include 'Meskhetian Muslims', 'Meskhetian Georgians' and 'Ahiska Turks'. […] Some reject any notion of Turkish identity, particularly among those deported and returned to Georgia. It has been pointed out that the use of the term 'Turkish' could constitute an obstacle to the repatriation and, above all, the integration of deportees in Georgia: this term is said to arouse hostile feelings among certain members of the Georgian population for historical reasons and, in particular, among the Armenian population living in the region from which the deportees came. According to some analyses, these hostile feelings, coupled with the fear of problems that might arise in the event of a claim for the return of property, could be the source of major inter-ethnic conflicts in the future. ECRI considers that, in order to avoid any tension, it is above all necessary to inform and reassure the local population about the return and restitution process'[…] ECRI is pleased to learn that the government has expressed the political will to resolve this issue. However, many commentators consider that the situation is evolving too slowly […].*

ECRI listed its recommendations in the remainder of its 2006 report:

'*The repatriation process must take due account of the opinion of Council of Europe experts, but also by consulting the main parties concerned, i.e. in particular the deportees, […] and the people living in Georgia who are directly affected by the return'. 'ECRI urges the Georgian authorities to combat any racist stereotypes and prejudices concerning Meskhetian Turks. In particular, an information campaign should be organised for the Georgian population in*

109 Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (8 April 2022) Doc 15497.

110 Conseil de l'Europe, Commission européenne contre le racisme et l'intolérance, Second rapport sur la Géorgie (adopté le 30 juin 2006). Articles 72-77.

general and for the Armenian population living in the region from which the Meskhetian Turks originate in particular, to explain […] that it will be organised in such a way as not to present any risk to the rights and security of all the populations concerned'.

ECRI also adopted a report on Georgia in 2010, in which it stated that[111]

'*[…] (T)he use of the term Meskhetian Turks is controversial. Although -according to several experts- the vast majority of the persons concerned identify themselves as Meskhetian Turks, some do not. The authorities have pointed out that national legislation uses the expression 'persons forcibly deported from Georgia by the former USSR during the 1940s of the 20th century' in relation to the entire group. ECRI fully respects the principle of self-identification*' *[…]*.

(T)he implementation of the provisions on the acquisition of Georgian nationality needs to be improved, for example to ensure that no problems of statelessness arise during the change of nationality procedure and to address the concerns expressed about the technical difficulties encountered in applying for Georgian nationality. […] The authorities have also indicated that, […] a government decree on 'the Acquisition of Georgian Citizenship, in a Simplified Procedure, by Persons with Repatriate Status' will be adopted by 1 April 2010; under [which], no person with repatriate status should remain without citizenship'.

'*ECRI wishes to focus in this report on the general state of public opinion concerning Meskhetian Turks and the repatriation process as a whole […]. Meskhetian Turks seemed to suffer from a certain hostility emanating from part of the Georgian population, including members of the Armenian population living in the exiles' region of origin. […] (D)espite efforts to inform the general public about the situation of the Meskhetian Turks, […] this problem is still acute. This hostility seems to be rooted in a lack of information among the general public and the existence of misconceptions about Meskhetian Turks […]*.

'*ECRI notes with interest that some NGOs support the repatriation process […]. ECRI notes that the State has not adopted a specific action plan for the integration of Meskhetian Turks. […] ECRI considers it essential that the authorities, […] do not neglect the crucial aspect of integration [which] is a two-way process: it concerns both the majority population and minorities […]*.

'*ECRI recommends that the Georgian authorities […] ensure that no undue limitations are placed on the acquisition of citizenship by those who have already applied or will apply for it […]*.

'*ECRI recommends that the Georgian authorities launch an awareness-raising campaign among the Georgian population in general, and more particularly among the Armenian population living in the region of origin of the Meskhetian Turks, to explain the historical reasons for the repatriation of these persons and to avoid any form of intolerant reaction against them on the part of members of the majority population and the inhabitants of the areas to which the Meskhetian Turks will return […]*.

111 Commission européenne contre le racism et l'intolérance, Rapport de l'ECRI sur la Géorgie (quatrième cycle de monitoring) (adopté le 28 avril 2010, publié le 15 juin 2010) CRI (2010)17; articles 62-67

The issue of Meskhetian Turks also came before the Advisory Committee on the Framework Convention for the Protection of National Minorities of the CoE. The 2015 opinion of the Advisory Committee provided substantial information about the repatriation process of the Meskhetian Turks and also warned that there had been an increase in manifestations of Islamophobia on State television and in the press against Georgian Muslims labelled as 'Turks' and in ethnically motivated hostility towards some other national minorities including Meskhetians[112]:

In its 2019 opinion, the Advisory Committee called on the authorities to continue their efforts to facilitate the voluntary return of deported Meskhetian refugees to their homeland, noting that '*'the persons concerned continue to have difficulty in having their Azerbaijani citizenship revoked and thus in meeting the criteria of Georgian law, which considerably restricts dual citizenship. As a result, only a small number of Meskhetian citizens have actually returned to Georgia*'[113].

The 2022 report submitted by Georgia to the Advisory Committee contains comprehensive articles on Meskhetian Turks[114]. After having declared that '*Georgia has put a comprehensive legal framework in place and established respective structures to fulfil all the components of Georgia`s accession commitment to the Council of Europe concerning repatriation of Muslim Meskhetians*' and that '*The adoption of the law was followed by an active information campaign in all the countries where the descendants of displaced persons reside, aimed at informing the target group about repatriation opportunities and legal procedures*', the report provides a detailed description of the repatriation mechanism to conclude that

'*Only 494 persons with repatriate status applied for (last in 2016) and all of them were granted conditional citizenship by the State. No person has applied to the State for this purpose since then. Moreover, none of the 494 persons renounced the citizenship of another country (Azerbaijan) for Georgian citizenship to take effect'*.

'*The Government of Georgia, through establishing a legal framework for repatriation, has set up a well- functioning mechanism to facilitate obtaining Georgian citizenship and to make the process merely a technical procedure for a person with repatriate status. Acquisition of Georgian citizenship and renunciation of the citizenship of another country is an individual decision of a person*.

This report, written in erroneous English, contains contradictions within itself. If the mechanism applied to return applications is functioning as well as the report claims, the fact that the number of returnees is so low needs to be explained. The report submitted

112 Conseil de l'Europe, Comité consultatif de la Convention-Cadre pour la protection des minorités nationales, Deuxième avis sur la Géorgie (adopté le 17 juin 2015) ACFC/OP/II(2015)001; articles 29, 48.

113 Conseil de l'Europe, Comité consultatif de la Convention-Cadre pour la protection des minorités nationales, Troisième avis sur la Géorgie (adopté le 7 mars 2019) ACFC/OP/III(2019)002, Art 48, 43.

114 Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Report submitted by Georgia, ACFC/SR/IV(2022)001; articles 227-234.

by Georgia is contented with legal formalism and considers the establishment of legal norms sufficient to solve the problem. However, even if we assume that the norms are well designed, it is obvious that in practice these norms do not fulfil the legitimate expectations of Meskhetian Turks.

The issue of Meskhetian Turks was also on the agenda of the 'Committee on the Elimination of Racial Discrimination', a committee of experts established in accordance with the 'Convention on the Elimination of All Forms of Racial Discrimination' adopted by the United Nations General Assembly Resolution 2106 (XX) of December 21, 1965.

According to the Committee's report on Georgia of 17 August 2011[115], '*Committee Experts raised a number of questions and asked for further information on subjects related to, among others, […] the situation of the Meskhetian Reference is made throughout the discussion to "Meskhetians", "Meskhetian Turks" or "Turkish Meskhetians" by Committee Members. Please note that the Government of Georgia does not use this terminology, but rather designates this minority as Persons Forcefully Deported (FDPs) by the Soviet Regime in the 40s of the XX Century. […] The Committee wanted to know how many Meskhetians were located in Georgia, how many had been repatriated, made citizens and how the Government intended to solve related problems […] [According to Georgian officials] The use of the term of forcibly deported persons by the Soviet Union, instead of the Meskhetians, was due to a policy of self-identification; Georgia did not want to stereotype or apply ethnic or religious labels. Meskhetian was a sub-ethnicity of ethnic Georgians and the use of the term Turks referred to practicing Muslims within the larger ethnic group. However, some members of the group of forcibly deported persons were Christians. Meskhetian was not a language. These people moved to and settled in many different areas, such as Kazakhstan, Turkey, the United States and other States. An information campaign was launched to provide information about repatriation. Georgian citizenship could be acquired if individuals so desired. The deadline was twice extended. Most of the applications were from Azerbaijan*'.

The Committee on the Elimination of Racism adopted a reviewed report in 2016[116] which states that '*with regard to the situation of Meskhetian Turks, a distinct ethnic group with its own culture and language, Experts noted that […] 5,840 had applied for repatriation by the deadline in January 2010. Of those, only 1,300 had been accepted and four had been rejected; this represented a very small proportion of the forcefully deported population, and in addition the rate of processing of received applications*

115 < https://www.ohchr.org/en/press-releases/2011/08/committee-elimination-racial-discrimination-considers-report-georgia > accessed 12 February 2024.

116 < https://www.ohchr.org/en/press-releases/2016/05/committee-elimination-racial-discrimination-considers-report-georgia > accessed 12 February 2024.

was extremely slow. There were reports that Meskhetian Turks, in order to obtain Georgian nationality, were required to renounce their other nationality, which did not seem to be a requirement for other Georgian citizens who could hold double nationality'.

In a document adopted in 2022, the Experts of the Committee on the Elimination of Racial Discrimination advised Georgia on the increase in the prosecution of discrimination offences and raised questions on the right of minorities to education and human rights violations in the occupied territories[117].

II. The Right of Meskhetian Turks to Return to Their Country under Positive International Law

A. Definition of the Right of Return

States are under an obligation to allow all their nationals to enter their country, including those who have never set foot in the territory before[118]. This obligation is regulated by numerous universal and regional instruments on human rights. Several documents and international treaties such as the Universal Declaration on Human Rights[119], the International Covenant on Civil and Political Rights (ICCPR)[120], the American Convention on Human Rights[121], the African Charter on Human and Peoples' Rights[122] and the Fourth Protocol to the European Convention on Human Rights[123] provide that no one shall be deprived of the right to enter the State of which she/he is a national or that everyone has the right to return to his or her country of origin.

The States' obligation to admit the national is a consequence of the proposition that there is no obligation to admit the alien[124]. Indeed, international law has historically explained the basis of the individual's right to be allowed to enter the territory of a

117 Experts of the Committee on the Elimination of Racial Discrimination Commend Georgia on Increased Prosecution of Discrimination Crimes, Ask about Minorities' Access to Education and Human Rights Violations in the Occupied Territories, 24 November 2022, <https://www.ohchr.org/en/news/2022/11/experts-committee-elimination-racial-discrimination-commend-georgia-increased > accessed 12 February 2024.

118 John Quigley, 'Mass Displacement and the Individual Right of Return' (1997) 68(1) *British Yearbook of International Law* 65, 67.

119 Universal Declaration of Human Rights, General Assembly Resolution 217A, UN Doc A/810, p. 71 (1948), Universal Declaration of Human Rights (adopted 10 December 1948) General Assembly Resolution 217A, UN Doc A/810, Art 13(2).

120 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR), Art 12(4).

121 American Convention on Human Rights (signed 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123, Art 22(5).

122 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217, Art 12(2).

123 European Convention for the Protection of Human Rights and Fundamental Freedoms (signed 4 November 1950, entered into force 3 September 1953) 213 UNTS 221. Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and the first Protocol thereto (signed 16 September 1963, entered into force 2 May 1968) 46 European Treaty Series, Art 3(2).

124 Quigley (n 118) 67.

State by the bond of citizenship[125]. However, the 'right of return', which emerged with the development of human rights law, has been interpreted over time as recognising that not only citizens but also individuals who have been displaced for reasons beyond their control have the right to return to their 'country of origin', i.e. their homeland[126].

State practice shows that the right of return covers individuals who are forced to leave their country and move to the territory of another State, as well as internally displaced people who are defined as '*persons or groups of persons who have been forced to flee or leave their homes or places of habitual residence as a result of armed conflicts, internal strife or systematic violations of human rights, and who have not crossed an internationally recognized State border*'[127]. For example, the Dayton Peace Agreement, which aimed to end the conflict in Bosnia and Herzegovina, gives refugees and displaced persons the right to return to their countries of origin and to recover property unlawfully taken from them during the war[128].

B. The Legal Nature of the Right of Return and International Legal Texts Regulating the Right

The right of return, which is mainly regulated by human rights law and enshrined in numerous universal and regional instruments on human rights, is also protected in refugee law, in the decisions of United Nations (UN) bodies—especially in relation to refugees—in international humanitarian law texts and in the national legislation and jurisprudence of many States, and constitutes a part of customary international law, thus binding on all States[129].

Indeed, it is observed that the right of return, which was considered a part of the right to free movement in the 16th and 17th centuries when the first concepts of human

125 Hurst Hannum, *The Right to Leave and Return in International Law and Practice* (Martinus Nijhof 1987) 56-59; Kathleen Lawand, 'The Right to Return of Palestinians in International Law' (1996) 8(4) International Journal of Refugee Law 532, 540.

126 Gail J Boling, *The 1948 Palestinian Refugees and the Individual Right of Return. An International Law Analysis* (BADIL Resource Center for Palestinian Residency and Refugee Rights 2007) 5; Sander Agterhuis, 'The Right to Return and its Practical Application' (2005) McGill University Papers, 1. < https://prrn.mcgill.ca/research/papers/agterhuis.pdf > accessed 18 February 2024.

127 International Law Association, Declaration of International Law Principles on Internally Displaced Persons (29 July 2000), Art 1.

128 According to Article 1 of Annex 7 of the Dayton Agreement on refugees and displaced persons, '*all refugees and displaced persons have the right freely to return to their homes of origin (…)*'. General Framework Agreement for Peace in Bosnia and Herzegovina and Annexes (Dayton-Paris Agreements), Annex 7 (Agreement on Refugees and Displaced Persons) (30 November 1995) UN Doc A/50/790, S/1995/999.

129 See Thomas W Mallison and Sally V Mallison, 'The Right to Return' (1980) 9(3) Journal of Palestine Studies 125, 125; Lawand (n 125) 544, Boling (n 126) 8-9; Agterhuis (n 126) 3; Tjasa Leskovic Vendramin, *The Right to Return of Refugees in International Law. The Case Study of Bosnia and Herzegovina* (Master Thesis, International University Institute for European Studies 2007/2008) 16. Some authors argue that the right of return is a peremptory norm of international law (*jus cogens*). See Quigley (n 118) 122.

rights law emerged[130], has gained an independent character in many texts on human rights adopted after the establishment of the UN[131].

The right of return was first mentioned in the Universal Declaration of Human Rights after the Second World War. According to Article 13(2) '*everyone has the right to leave any country, including his own, and to return to his country*'. It is accepted that the Declaration which is adopted by the UN General Assembly and therefore not binding as a General Assembly Resolution, reflects customary international law. The principles set out in the Universal Declaration of Human Rights, including the right of return, are therefore binding on all States[132].

This was followed by the adoption of the ICCPR, which was concluded in 1966 and currently has 173 parties. According to Article 12 of the Covenant,

> '*1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
>
> *2. Everyone shall be free to leave any country, including his own.*
>
> *3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
>
> *4. No one shall be arbitrarily deprived of the right to enter his own country*'.

The fourth paragraph, which provides that '*no one shall be arbitrarily deprived of the right to enter his own country*', is considered to be the most important provision on the right of return in positive international law[133] and thus will be analysed in detail in the following lines where the content and scope of the right are evaluated. However, it should be mentioned here that the ICCPR is not the only human rights instrument that protects the right of return. Numerous universal legal texts adopted by the UN provide for provisions on this right.

For instance, the International Convention on the Elimination of All Forms of Racial Discrimination guarantees the right of individuals to return to their country of

130 Agterhuis (n 126) 4. The right of return is regulated in much older texts, for example in the Magna Carta Libertatum of 1215. The Magna Carta provides in Article 42 that '*it shall be lawful in the future for anyone (...) to leave our kingdom and to return, safe and secure by land and water (...)*'. See Mallison and Mallison (n 129) 125-126; Mason Wiley, 'Circassian Right of Return: "Putin The Terrible or Putin The Enlightened?"' (2015) 30(1) American University International Law Review 141, 149; Vendramin (n 129) 14.

131 Ruth Lapidoth, 'The Right of Return in International Law, with Special Reference to the Palestinian Refugees' (1986) 16 Israel Yearbook on Human Rights 103, 104.

132 Mitchell Knisbacher, 'Aliyah of Soviet Jews: Protection of the Right of Emigration under International Law' (1973)14 Harvard International Law Journal 89, 99; Justus R Weiner, 'The Palestinian Refugees' "Right to Return" and the Peace Process' (1997) XX(1) Boston College International & Comparative Law Review 1, 38; Agterhuis (n 126) 5; Wiley (n 130) 149.

133 Hannum (n 125) 24.

origin and considers the recognition of this right as part of the obligations of the States Parties to refrain from racial discrimination[134]. In this context, the refusal of entry of nationals by the States Parties on racial or ethnic grounds constitutes a violation of the Convention[135].

The right of return is also protected by the Convention on the Rights of the Child, to which 196 States are parties[136]. According to Article 10(2) of the Convention, '*a child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end (…) States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country (…)*'.

The International Convention on the Suppression and Punishment of the Crime of Apartheid[137] and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families[138] also guarantee the right of return within their scope of application.

The right of return is also envisaged by the 1993 Vienna Declaration and Programme of Action adopted at the UN World Conference on Human Rights in Vienna. Article 23 of the Declaration reaffirms that everyone has the right to return to their country of origin, without discrimination of any kind[139].

The right of return is also recognised in refugee law. This branch of law, which regulates the return of refugees around the 'principle of voluntariness' and the rule of 'non-refoulement', prohibits the expulsion or forced return of a refugee to his/her country against his or her will.

'The principle of non-refoulement', regulated by Article 33 of the 1951 Convention relating to the Status of Refugees and accepted as part of customary law, signifies that '*no*

134 International Convention on the Elimination of All Forms of Racial Discrimination (adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, Art 5(d)(ii).

135 Agterhuis (n 126) 12.

136 Convention on the Rights of the Child (adopted on 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

137 International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted on 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243. According to Article 2(c) of the Convention, the adoption of '*any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognised trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association*' constitutes apartheid.

138 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted on 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3, Art 22.

139 Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion'[140]. However, the aim is not for the refugee to remain a refugee indefinitely, but to reintegrate either in his/her home country or in another country voluntarily[141].

The right of return has also been the subject of numerous UN General Assembly and Security Council resolutions, particularly in relation to refugees[142]. For example, the conflicts in Abkhazia in Georgia following the collapse of the USSR led to a significant population flight. In 1994, an international agreement between Abkhazia and Georgia recognised that the right of everyone to live in their own country and to return to their own country is enshrined in the Universal Declaration of Human Rights and the ICCPR and stipulated that persons displaced during the conflict in Abkhazia have the right to return to their country[143]. The UN Security Council also referred to this agreement and called for the right of all conflict-affected refugees and displaced persons to return to their homes in accordance with international law and in safe conditions[144].

Similarly, the Committee on the Elimination of Racial Discrimination, acting under the International Convention on the Elimination of All Forms of Racial Discrimination has held that the Serbian authorities in Bosnia and Herzegovina who refused the return of displaced Muslims violated the provision of the Convention concerning the right of return. The Committee condemned the massive, gross and systematic violations of human rights, policies of ethnic cleansing and acts of genocide in Bosnia and Herzegovina and stated that these practices constituted grave violations of all the fundamental principles laid down by the International Convention on the Elimination of All Forms of Racial Discrimination[145]. The Committee noted that changing or attempting to change the demographic composition of a territory, by whatever means, against the will of its original inhabitants, is a violation of international law and demanded that persons be given the opportunity to return safely to the places where they lived before the outbreak of hostilities in Bosnia and Herzegovina[146]. In its resolutions on Bosnia and Herzegovina, the Security Council has also called for the peaceful return of all displaced persons to their homes[147].

140 Convention relating to the Status of Refugees 189 UNTS 137.

141 Vendramin (n 129) 26-27.

142 For the right of return under refugee law, see Boling (n 126) 73-82; Vendramin (n 129) 20-23.

143 Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons (Abkhazia, Georgia, Russia and UNHCR) (signed on 4 April 1994), Preamble. See Quigley (n 118) 80.

144 UNSC Res 971 (UN Observer Mission in Georgia) (1995) UN Doc S/RES/971, para 5.

145 Report of the Committee on the Elimination of Racial Discrimination (1995) GAOR 50th Session Supp 18, UN Doc A/50/18, para 219.

146 Report of the Committee on the Elimination of Racial Discrimination (n 215) para 26.

147 UNSC Res 787 (1992) UN Doc S/RES/787, para 2; UNSC Res 1088 (1996) UN Doc S/RES/1088, para 27-30.

Israel's displacement of Palestinian Arabs since its establishment in 1948 has also been the subject of numerous UN General Assembly -and even Security Council resolutions, and the General Assembly and the Security Council have repeatedly called on Israel to fulfil this right, referring to the right of Palestinians to return to their homes and property[148].

The right of return is not only protected by universal human rights instruments and UN resolutions but also by various regional human rights texts. The Fourth Protocol to the European Convention on Human Rights[149], the American Convention on Human Rights[150], the African Charter on Human and Peoples' Rights[151] and the Arab Convention on Human Rights[152], although they do not provide for broad and absolute provisions on the right of return unlike universal texts, protect the right *per se*.

Furthermore, the right of return was discussed at a conference organised by non-governmental organisations in Uppsala, Sweden in 1972 with the participation of a large number of jurists from 25 different states. The Declaration on the Right to Leave and the Right to Return adopted at the conference set out the meaning of the right to leave the territory of a State and the right of return to that territory and provided for substantive and procedural rules governing and limiting the exercise of these rights[153].

Finally, the right of return appears to be protected in the context of humanitarian law—where persons have been displaced in the course of an armed conflict. The 1907 Hague Conventions and the 1949 Geneva Conventions set out norms concerning displaced persons in occupied territories, prohibit the forced displacement of the civilian population and provide for the return of displaced persons, and stipulate that persons under the protection of the Conventions have the right to return to their country

148 Progress Report of the United Nations Mediator (Count Folke Bernadotte) on Palestine Submitted to the Secretary-General for Transmission to the Members of the United Nations (18 September 1948) UN Doc A/648, para 6; UNGA Res 194 (1948) UN Doc A/RES/194, para 11; UNGA Res 2452A (1968) UN Doc A/7218; UNGA Res 3236 (Question of Palestine) (1974) UN Doc A/9631, para 2; UNSC Res 237 (1967) UN Doc S/RES/237, para 1.

149 Article 3(2) of Protocol No. 4 stipulates that no one shall be deprived of the right to enter the State of which he is a national.

150 According to Article 22(5), '*no one can be expelled from the territory of the State of which he is a national or be deprived of the right to enter it*'.

151 Article 12(2) provides that '*every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subjects to restrictions, provided for by law for the protection of national security, law and order, public health and morality*'.

152 Arab Charter on Human Rights (adopted by the League of Arab States on 22 May 2004, entered into force 15 March 2008) (2005)12 International Human Rights Rep 893. According to Article 27, '*1. No one may be arbitrarily or unlawfully prevented from leaving any country, including his own, nor prohibited from residing, or compelled to reside, in any part of that country.*

2. No one may be exiled from his country or prohibited from returning thereto'.

153 'The Right to Leave and the Right to Return: A Declaration adopted by the Uppsala Colloquium' (1973) 7(1) The International Migration Review 62-66.

of origin following the cessation of hostilities[154]. In this framework, there is a general right of return under humanitarian law applicable to all displaced persons, regardless of how they were displaced during the armed conflict. Indeed, the International Committee of the Red Cross, which codifies the customary rules of humanitarian law, confirms that the rule according to which displaced persons have the right to return safely and voluntarily to their homes or places of habitual residence as soon as the causes of their displacement cease to exist is a customary rule[155].

C. Scope of the Right of Return

As stated above, Article 12(4) of the ICCPR, which constitutes one of the most important human rights texts ever adopted, stipulates that '*no one shall be arbitrarily deprived of the right to enter his own country*'. The scope of the right of return is assessed on the basis of the wording of this provision and in the light of its official and unofficial interpretations.

The Human Rights Committee, which is the official interpreting body of the ICCPR[156], and internationalists are of the view that the right of return under Article 12 includes the right to enter and remain in one's own country, to return after having left one's own country, and to come to the country for the first time if he or she was born outside the country[157].

154 The right of return was first stipulated in Article 43 of the 1907 Hague Convention on the Laws and Customs of War on Land. This provision, which has been recognised as a customary norm, stipulates that the occupier must preserve the social and legal *status quo* in the occupied territory, allow the population to continue its existence and public life and make only those interventions that are necessary to maintain the occupation. This includes allowing the local population to remain or return to their places of residence following the cessation of hostilities. Convention IV respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907, Art 43. See Vendramin (n 129) 19.

This principle is also adopted by Articles 4, 6, 40 and 158 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War. These provisions define the persons protected by the Convention and provide for its temporal applicability. The Convention stipulates that the occupier must guarantee the rights of persons protected by the Convention and provides, in its Article 6(4), that the Convention shall continue to apply even after the date of termination of its application for 'protected persons whose release, repatriation or re-establishment may take place after such date'. In this framework, it is stated that persons who should be repatriated are among the 'protected persons' under the Geneva Convention.

Similarly, Article 158 of the Convention provides that either party may denounce the Convention and that *'(…) a denunciation of which notification has been made at a time when the denouncing Power is involved in a conflict shall not take effect until peace has been concluded, and until after operations connected with the release, repatriation and reestablishment of the persons protected by the present Convention have been terminated*'. Convention IV relative to the Protection of Civilian Persons in Time of War, Geneva, August 12, 1949.

For an analysis of the right to return under international humanitarian law, see Boling (n 126) 47-60; Christopher C Joyner, 'The Palestine Problem in International Law and World Order' (Book Review) (1987) 55(3) George Washington Law Review 689, 694; Vendramin (n 129) 19; Quigley (n 118) 70-71; Quincy Wright, 'Legal Aspects of the Middle East Situation' (1968) 33(1) Law and Contemporary Problems 5, 19.

155 Jean-Marie Henckaerts and Louise Doswald-Beck, *Uluslararası İnsancıl Teamül (Örf-Adet) Hukuku*, *Cilt I: Kurallar* (Galatasaray Üniversitesi Hukuk Fakültesi Yayınları 2005), 525, Rule 132.

156 Pursuant to Article 5 of the Optional Protocol to the ICCPR, the Committee is authorised to examine the complaints in the light of all written information made available to it by the individual and by the State Party concerned.

157 See UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, para 19; Paul Taylor, *A Commentary on the International Covenant on Civil and Political Rights. The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge University Press 2020) 345.

As can be seen, the Article protects a very broad right and provides this protection in the case of a person's 'own country'. It is therefore important to clarify the expression of 'his own country' used in Article 12(4) of the ICCPR.

1. Right of Return to His 'Own Country'

As mentioned above, Article 13(2) of the Universal Declaration of Human Rights states that '*everyone has the right to leave any country, including his own, and to return to his country*'. However, Article 12(4) of the ICCPR provides that '*no one shall be arbitrarily deprived of the right to enter his own country*'.

Does the expression 'own country' refer only to the country of the State of which the person is a national, or does it also include the country that the person considers home and to which he or she is bound by history, tradition, race, religion, residence, family or other ties?

The difference between the wording of the 1948 Universal Declaration of Human Rights and the wording of the ICCPR is explained by the fact that the right of return has gradually come to be interpreted as extending to citizens who were born outside the country of return and have never lived in that country[158]. The concept of 'entering a country' is broader than the concept of 'returning' to a country[159]. The fact that Article 12(4) of the ICCPR refers to the right to 'enter a country' rather than the right to 'return' indicates therefore that the right extends to persons born outside the country.

In addition, the fact that the ICCPR, which uses the term of 'State' (or 'territory of the State') in some of its provisions, refers in its Article 12(4) to the right to enter one's 'own territory' seems to be a conscious choice and shows that the right of return is not regulated as a right belonging only to citizens[160]. Although the first draft of the Article referred to the right to enter the 'country of nationality', this expression was later replaced by the expression 'own country'[161]. The final version of the Article does not provide that 'a citizen' shall not be deprived of the right to enter his own country, but that 'no one' shall be deprived of the right to enter his own country.

Indeed, despite the small number of contrary views[162], the right of return is nowadays interpreted by the vast majority of jurists as including persons who were not born in

158 Hannum (n 125) 56; Lawand (n 125) 548-558; Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel 2005) 219; Agterhuis (n 126) 7.

159 Lawand (n 125) 547; Wiley (n 130) 150-151.

160 For a similar view, see Lawand (n 125) 549; Rex Zedalis, 'Right to Return: A Closer Look' (1992) 6 Georgetown Immigration Law Journal 499, 505-506; Wiley (n 130) 152.

161 For the *travaux préparatoires* and the first drafts of the Article, see Lawand (n 125) 549-550; Wiley (n 130) 152.

162 Paul Sieghart, *The International Law of Human Rights* (Clarendon Press 1983) 185 *et seq*; Hannum (n 125) 59-60.

their country of origin, who have never lived in their country of origin, who do not have the nationality of the State of origin and stateless persons[163].

This interpretation seems to be based on the 1955 *Nottebohm* judgement of the International Court of Justice[164]. In accordance with this decision, '*nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State*'[165]. In this framework, the judgement states that the basis of citizenship under international law is the social attachment, the genuine solidarity of being, interests and feelings, together with mutual rights and duties. More importantly, however, the *Nottebohm* judgement states that in case of dual nationality, diplomatic protection may be exercised by the State to which the person is attached by a genuine link and that this is to be determined by taking into account factors such as the language spoken, the length of time spent in the territory of the State and the personal and family ties that the person has. In other words, the *Nottebohm* judgement establishes and characterises the relationship between the individual and the State on the basis of 'substantive' ties.

In the context of their demands for return to Israel, the Jews have put forward the criteria set out in the *Nottebohm* judgement. For example, according to Knisbacher, Jews living in the USSR have the right to return to Israel because the ties expressed in the *Nottebohm* judgement exist between these persons and the territory of Israel; Israel is Jewish people's 'own country' in terms of traditions, interests, activities, family ties and plans for the immediate future[166].

The view that 'his own country' means something different than 'the country of which he is a national' and the right of return extends to persons who were not born or lived in there was also expressed at the Uppsala Conference mentioned above: '*a person's "country" is that to which he is connected by a reasonable combination of such relevant criteria as race, religion, language, ancestry, birth and prolonged domicile. Governments come and go, and their political fluctuations and vagaries should not affect the fundamental right of human beings, such as the right to return to one's own country and to have a homeland*'[167].

163 Taylor (n 157) 345; Nowak (n 158) 219; Agterhuis (n 126) 8; Lawand (n 125) 547-548; Donna E Arzt and Karen Zughaib, 'Return to Negotiated Lands: The Likelihood and Legality of a Population Transfer Between Israel and a Future Palestinian State' (1992) 24(4) New York University Journal of International Law and Politics 1399, 1445; Bill Frelick, 'The Right of Return' (1990) 2 International Journal of Refugee Law 442; Zedalis (n 160) 505-506.

164 See Knisbacher (n 132) 96-97; Lawand (n 125) 553; Wiley (n 130) 152-153.

165 *Nottebohm Case (Liechtenstein v. Guatemala)* (Second Phase) [1955] ICJ Rep 4, 23.

166 Knisbacher (n 132) 97.

167 Muzzawi, 'Comment on the Middle East' in Karel Vasak and Sidney Liskofsky (eds), *The Right to Leave and to Return: Papers and Recommendations of the International Colloquium Held in Uppsala*, Sweden, 19-21 June 1972, New York, American Jewish Committee, 1976, 343; Cited by Hannum (n 125) 58-59.

The Human Rights Committee has also stated that Article 12(4) of the ICCPR does not distinguish between nationals and aliens, and that individuals who are entitled to exercise the right of return can only be identified by interpreting the meaning of the expression 'his own country'[168].

In fact, in its opinions given in the 1990s, the Committee interpreted the expression 'his own country' narrowly. In the 1996 *Stewart* dispute, the Committee noted that the scope of the concept of 'his own country' is broader than that of 'country of nationality' and also includes individuals who have special ties with a country[169]. However, according to the Committee, Article 12(4) does not cover 'aliens'. In other words, a person's right to enter his or her own country is based on his or her special ties with the State of the country: '"*his own country" as a concept applies to individuals who are nationals and to certain categories of individuals who, while not nationals in a formal sense, are also not "aliens" (...)*'[170].

In this context, the Committee has stated that a person is an 'alien' unless he or she is a national of the State or has been deprived of his or her nationality or his or her application for nationality has been rejected, and that he or she cannot claim that the State is his or her own country within the meaning of Article 12(4)[171].

This narrow understanding, which was also adopted by the Human Rights Committee in 1999 in its General Comment No. 27 on Article 12(4) of the ICCPR[172], was challenged by some members of the Committee. Christine Chanet, for example, stated that there was insufficient data on the concept of 'his own country' in the Convention and the *travaux préparatoires* and suggested that the Committee establishes and communicates to States clear criteria explaining the concept[173]. Elizabeth Evatt and Cecilia Medina Quiroga, on the other hand, point out that there is nothing in the Convention indicating that an 'alien' lawfully present within the territory of a State may not claim the protection of Article 12(4), if he or she can establish that it is his/her own country[174]. According to Evatt and Quiroga, for the purposes of the rights set out in Article 12, the existence of a formal link between the individual and the State is irrelevant; the Convention takes into account and protects the strong personal and emotional ties that an individual may have with a particular territory[175].

168 UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement) (n 157) para 20.

169 *Stewart v. Canada* (1996) UN Human Rights Committee, CCPR/C/58/D/538/1993, para 12.3.

170 ibid

171 ibid para 12.4. This interpretation is also adopted in *Canepa* and *Madafferi* disputes. *Giosue Canepa v. Canada* (1997) UN Human Rights Committee, CCPR/C/59/D/558/1993, para 11.3; *Francesco Madafferi v. Australia* (2004) UN Human Rights Committee, CCPR/C/81/D/1011/2001, para 9.6.

172 UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement) (n 157) para 19-20.

173 Individual opinion by Christine Chanet, co-signed by Julio Prado Vallejo (dissenting).

174 Individual opinion by Elizabeth Evatt and Cecilia Medina Quiroga, co-signed by Francisco José Aguilar Urbina (dissenting), para 3.

175 Individual opinion by Elizabeth Evatt and Cecilia Medina Quiroga, co-signed by Francisco José Aguilar Urbina (dissenting), para 5.

In its 2011 opinion on the *Nytrom* dispute, the Committee took these criticisms into account and gave a clearer and more flexible opinion, than it did in the *Stewart* dispute, on the concept of 'his own country'[176]. In its *Nytrom* opinion, the Committee recalled '*its General Comment No. 27 on freedom of movement where it has considered that the scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien*'[177]. Although this view states that the Article covers persons who 'may not be regarded as aliens', the Committee considers that long residence in a country, close personal and family ties, the intention to remain in the country or the absence of such ties in another country are factors that may establish close and lasting ties between the person and the country. In the Committee's view, the links established by these elements may even be stronger than those established by nationality, and may therefore render a country a person's 'own country' within the meaning of Article 12(4)[178].

Based on all these findings, in cases where the person is not a citizen of the concerned State, he/she must demonstrate that this country is 'his/her own country' by proving that he/she has strong ties.

2. The principle that no one shall be 'arbitrarily' deprived of the right to enter his own country

As quoted above, Article 12 of the ICCPR protects not only the right of return but also the right to move freely about the country, to choose one's place of residence and to leave the country. Paragraph 3 of the Article provides that '*the above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant*'. However, these grounds for limitation are not foreseen for the right of return regulated in the last paragraph of the Article[179]. Article 12(4) by stipulating that '*no one shall be arbitrarily deprived of the right to enter his own country*' and that this right can only be restricted 'in a non-arbitrary manner', regulates the right of return as an absolute right[180].

What is to be understood by the expression 'arbitrarily' is not clearly defined in the Convention. However, it is generally admitted that the arbitrary denial of the right

176 Taylor (n 157) 347.

177 *Nystrom v. Australia* (2011) UN Human Rights Committee, CCPR/C/102/D/1557/2007, para 7.4.

178 *Nystrom v. Australia* (n 177) para 7.4.

179 See Lawand (n 125) 547.

180 Wiley (n 130) 154.

of return implies a discriminatory denial of the right in the absence of due process[181]. Besides, where the right is denied on a legal basis, this basis must not be contrary to the right to freedom of movement[182].

Furthermore, the commentators stated that '*the word "arbitrarily" refers to only one specific factual instance, that of the use of exile as a "penal sanction" (i.e., sentencing a person charged with a criminal offense to exile or banishment). Thus, the term 'arbitrarily' only applies to a small group of States for which penal exile is a permissible judicial sanction. Only for those States is it legally permissible in theory to obstruct the exercise of the right to return in the limited factual case where exile had been imposed as a judicial sentence*'[183].

Namely, the expression 'arbitrarily' was added to paragraph 4 of Article 12 as a compromise expression following the rejection of previous drafts of the Article[184]. After it became clear that States that used exile as a penal sanction would not support a formula that would prohibit it, it was agreed that a right of return exempting persons sent into exile under criminal sanction should be envisaged[185].

The phrase 'arbitrarily' was added to Article 12(4) by a separate vote in the General Assembly's Third Committee where there was a common perception that '*only under a criminal sanction could a convicted exile be prevented from returning to his or her country*'[186]. In this framework, exile would not be considered 'arbitrary' when it is carried out in accordance with national legislation where this sanction is provided for as a form of punishment. However, even interventions under national legislation must be reasonable and in accordance with the provisions and objectives of the ICCPR[187].

This interpretation must be read in conjunction with that of the Human Rights Committee, which is authorised to interpret the ICCPR officially. According to the Committee, '*the reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or*

181 Hannum (n 125) 45-46; Lawand (n 125) 547.

182 Lawand (n 125) 547.

183 Nowak (n 158) 219; Agterhuis (n 126) 7.

184 Stig Jagerskiold, 'The Freedom of Movement' in Louis Henkin (eds), *The International Bill of Rights: The Covenant on Civil and Political Rights* (Columbia University Press 1981) 181.

185 Quigley (n 118) 78.

186 UNGA 14th Session, Third Committee, 959th Meeting (17 November 1959) UN Doc A/C.3/SR.959, 250. See Quigley (n 118) 78.

187 Taylor (n 157) 349; Lawand (n 125) 548.

by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country'[188].

Therefore, the right of return provided for in Article 12(4) of the ICCPR may be restricted only on the grounds set out in Article 4(1) of the same Covenant, which regulates that '*in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin*'.

The concept of 'arbitrariness' has also been interpreted in the *Stewart*, *Nystrom* and *Budlakoti* opinions of the Human Rights Committee. Evatt and Quroga, in their dissenting opinion for *Stewart*, argued that 'arbitrary' means '*unreasonable in the particular circumstances or contrary to the aims and objectives of the Covenant on Civil and Political Rights*'[189]. As for the Human Rights Committee, it referred in its *Nystrom* opinion to '*disproportionate and irreparable consequences*' to define 'arbitrary'[190], and stated in its *Budlakoti* opinion that '*unjust, unforeseeable, disproportionate, unreasonable, unnecessary and unlawful*' is 'arbitrary'[191].

D. The Right of Return of Individuals Belonging to Collectively Displaced Groups

It should also be emphasised whether the right of return covers a mass return.

According to one view, international law recognises the right of return only as an individual right and applies to individuals or small groups. The repatriation of displaced populations is therefore a question of politics or self-determination rather than international human rights law[192]. For example, Jagerskiold states that the right of return is an individual right and can only be applied to persons on an individual basis[193]. According to the author, the 1966 Convention is not intended to regulate the claims of masses of people displaced as a result of wars or political choices; these claims require large-scale international political solutions[194].

188 UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement) (n 157) para 21.

189 Individual opinion by Elizabeth Evatt and Cecilia Medina Quiroga, co-signed by Francisco José Aguilar Urbina (dissenting), para 8.

190 *Nystrom v. Australia* (n 177) para 7.11.

191 *Budlakoti v. Canada* (2018) UN Human Rights Committee, CCPR/C/122/D/2264/2013, para 9.4.

192 Agterhuis (n 126) 10; Eyal Benvenisti and Eyal Zamir, 'Private Claims to Property Rights in the Future Israeli-Palestinian Settlement' (1995) 89(2) American Journal of International Law 295, 325; Ruth Lapidoth, 'The Right of Return in International Law, with Special Reference to the Palestinian Refugees' in Yoram Dinstein and Fania Domb F (eds), *The Progression of International Law. Four Decades of the Israel Yearbook on Human Rights. An Anniversary Volume* (Martinus Nijhoff Publishers 2011) 25-44.

193 Jagerskiold (n 184) 180.

194 Jagerskiold (n 184) 180.

In Hannum's view as well, there is no indication that the drafters of Article 12(4) intended to include mass movements of refugees or displaced groups within the scope of the Article; therefore, in these cases, the exercise of the right of return would require the consent and co-operation of the territorial State[195]. Similarly, Arzt argues that the right of return is not structured as a collective or group right but rather an individual right, and therefore members of displaced 'groups' have no right to claim it[196]. Higgins, on the other hand, underlines that the right of return belongs to individuals and not to peoples as a whole, and that in cases where a group of people claims the right of return, this claim should be evaluated separately for each member of the group[197].

Another view, which we find appropriate, argues that the understanding that the right of return does not cover masses and large groups is far from convincing.

First, neither the wording nor the *travaux préparatoires* of the relevant provisions of the Universal Declaration of Human Rights and the ICCPR limit the application of the right of return to persons on an individual basis[198]. On the contrary, these texts, which do not link the right of return to an individual's membership of any group and stipulate that 'no one' may be arbitrarily deprived of the right to enter his or her own country, do not appear to intend to deprive refugees and mass displaced groups of this right. Moreover, all rights enumerated in the 1966 Convention are granted to individuals personally, 'regardless of how many others might be seeking to exercise the same right and at what time'[199].

It should also be emphasised that the right of return, which is an individual right that applies regardless of one's group affiliation, and the right to self-determination, which is interpreted as a collective right, are not mutually exclusive[200].

Furthermore, Article 31 of the 1969 Vienna Convention on the Law of Treaties (VCLT)[201], which is accepted as reflecting a customary norm[202], lays down the basic rules of interpretation of treaties and stipulates that the provisions of international treaties should be interpreted not only in their literal sense but also by a subjective method aimed at revealing the will of the parties. According to Article 31 '*a treaty*

195 Hannum (n 125) 59-60, 66.

196 Donna E Arzt, 'Palestinian Refugees: The Human Dimension of the Middle East Peace Process' (1995) 89 Proceedings of the Annual Meeting (American Society of International Law) 369, 372.

197 See Rosalyn Higgins, 'La liberté de circulation des personnes en droit international' in Maurice Flory and Rosalyn Higgins (eds), *Liberté de circulation des personnes en droit international* (Economica 1988) 18-19.

198 See Nowak (n 158) 220; Eric Rosand, 'The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?' (1998) 19(4) Michigan Journal of International Law 1091, 1129; Quigley (n 118) 77, 81-82; Agterhuis (n 126) 10.

199 Agterhuis (n 126) 11.

200 Eric Rosand, 'The Kosovo Crisis: Implications of the Right to Return' (2000) 18 Berkeley Journal of International Law 229, 237.

201 Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980), 1155 UNTS 331 (VCLT).

202 *Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya v. Chad)* (Judgement) [1994] ICJ Rep 6, para 41.

shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose'. In addition, Article 32 of the VCLT stipulates that '*recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable*'.

In this context, both Articles 31 and 32 allow the right of return to be interpreted as covering masses and large groups. First, it should not be forgotten that the Universal Declaration of Human Rights, which does not contain an explicit statement that the right of return covers masses and large groups, was drafted in the 1940s when human rights law only began to develop and the prohibition of mass forced migration had not yet been established[203]. Second, the right of return must be interpreted in the light of the fact that numerous instruments adopted under contemporary international law[204] prohibit the collective and forced displacement as well as the internal displacement of persons. As stated above, the wording and the *travaux préparatoires* of the Universal Declaration of Human Rights and the ICCPR allow for this interpretation.

Moreover, the right of return, which constitutes one of the fundamental pillars of the freedom of movement, will only make sense if it is interpreted as covering large groups in the 21st century, when forced international migration and mass deportations have reached significant dimensions[205].

Incidentally, the Human Rights Committee underlines that the right of return is of utmost importance for refugees seeking voluntary repatriation, that this right includes the prohibition of forced population transfers and mass expulsions, and confirms that article 12(4) of the ICCPR is applicable to large groups of people[206]. The Committee has stated that Afghan people displaced from their country during the conflict in Afghanistan have the right of return under article 12(4) of the Covenant[207].

Finally, various UN bodies, including the UNHCR, have also explicitly affirmed that the right of return, provided for in Article 13(2) of the Universal Declaration of Human Rights and Article 12(4) of the ICCPR, covers large groups of people.

203 Rosand (n 198) 1130. For a detailed analysis of the prohibition of forced displacement, see Naziye Dirikgil, 'Zorunlu Göç Kavramının Hukuki Kapsamı ve Zorunlu Göç Sonucu Yerinden Edilen Kişilerin Uluslararası Hukukta Korunması' (2022) X(1) Kadir Has Üniversitesi Hukuk Fakültesi Dergisi 67-88.

204 See for example Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Art 3 and Art 4.

205 Arthur C Helton, 'Forced International Migration: A Need for New Approaches by the International Community' (1995) 18 Fordham International law Journal 1623; Rosand (n 200) 238.

206 UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement) (n 157) para 19.

207 Quigley (n 118) 80.

For example, the UNHCR has concluded agreements with States on the exercise by refugees and displaced persons of their right of return as provided for in article 12(4) of the ICCPR[208].

E. Internally Displaced Persons and the Right of Return

Meskhetian Turks were displaced during the USSR period and were deported from Georgia to Uzbekistan, which were both parts of the USSR. Therefore, Meskhetian Turks, at the time of the exile, were 'internally displaced'. Although the USSR collapsed in 1991 and the territory to which Meskhetian Turks want to return remained within the borders of the newly established State of Georgia, and thus, whether Meskhetian Turks have the right of return and the conditions for asserting this right should be analysed under the law of State succession, it should be noted here that internally displaced persons also have the right of return.

The concept of 'internally displaced person', which started to be used under international law during the Second World War, has been the subject of the UN High Commissioner for Refugees' works upon the calls of the UN General Assembly and the Secretary-General since the 1970s. A representative was appointed for internally displaced persons in 1992, and the UN Commission on Human Rights adopted, in 1998, the Guiding Principles on Internal Displacement[209].

According to Article 2 of the Guiding Principles, '*internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border*'.

Article 28 of the Guidelines sets out the right of return of internally displaced persons. The Article provides that:

> '*1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.*

208 See Agterhuis (n 126) 11.

209 UN Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission Resolution 1997/39. Addendum: Guiding Principles on Internal Displacement (11 February 1998) E/CN.4/1998/53/Add.2, Art 2. For a detailed analysis of internal displacement, see Naziye Dirikgil, *Protection of Internally Displaced People from Arbitrary Displacement: The Development of the Right not to be Arbitrarily Displaced* (Thesis submitted for the degree of Doctor of Philosophy, Aberystwyth University 2020); Naziye Dirikgil, 'Addressing the Prevention of Internal Displacement: the Right Not to Be Arbitrarily Displaced' (2023) 24 Journal of International Migration and Integration 113-138.

2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration'.

Besides, according to Article 29(2), '*competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation*'.

Finally, Article 30 imposes an obligation on all authorities concerned to grant and facilitate for international humanitarian organisations and other appropriate actors rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

F. The Right of Return in Cases of State Succession[210]

As stated above, the USSR collapsed in 1991 and the territory to which Meskhetian Turks wanted to return remained within the borders of the newly established State of Georgia. Therefore, whether Meskhetian Turks have the right of return and the conditions for the exercise of the right should also be analysed under the law of State succession.

State succession is defined as 'the replacement of one State by another in the responsibility for the international relations of a territory'[211]. The disintegration of the USSR that started in 1989 with the declaration of independence of the Baltic States and ended in 1991 with the establishment of the Commonwealth of Independent States constitutes one of the most important succession cases of the last century. It is considered to be a case of 'secession' of a large number of former Soviet Republics, including Georgia, from the USSR.

Indeed, the USSR was established on December 30, 1922 by an international treaty concluded by Soviet Russia, Ukraine, Belarus and the South Caucasus Republics (Georgia, Azerbaijan and Armenia) and became a State consisting of fifteen republics over time. Lithuania, Estonia and Latvia, the so-called Baltic States, also came under Soviet rule in 1940 through a secret treaty concluded by the USSR with Hitler's government[212], but since then they have claimed that the said rule and its acts are contrary to international law and therefore invalid. Indeed, the Soviet rule over the Baltic States was not recognised by the majority of the international community

210 This section contains excerpts from Ceren Zeynep Pirim's book on *State Succession to International Responsibility* (n 92).

211 Pirim (n 92) 1.

212 Michael Bothe and Christian Schmidt, 'Sur quelques questions de succession posées par la dissolution de l'URSS et celle de la Yougoslavie' (1992) 96 Revue générale de droit international public 811, 822.

and was regarded as an occupation by many States[213]. Lithuania, Estonia and Latvia declared their independence on March 11, 1990, August 20, 1991 and August 21, 1991, respectively, and these declarations were recognised by Moscow on September 6, 1991, three months before the collapse of the USSR[214]. The Baltic States that became members of the UN on 12 September 1991 were recognised as the continuing States of those that existed before the occupation of the USSR. Therefore, Lithuania, Estonia and Latvia were considered to have never disappeared from history as States[215]. In other words, the independence of the Baltic States was not considered a 'secession' by either the international legal doctrine or the international community. It was accepted that these States re-established their pre-1940 sovereignty. In short, the Baltic States are not considered successor States of the USSR[216].

The same observation is not made for other Soviet Republics.

The declarations of independence of the Baltic States were followed by the declarations of independence of the other republics formerly part of the USSR. In December 1991, Russia, Ukraine, Belarus, Moldova, Azerbaijan, Kyrgyzstan, Uzbekistan, Armenia, Tajikistan, Turkmenistan, Kazakhstan, Turkmenistan and Georgia recognised and declared the end of the USSR and its replacement by the Commonwealth of Independent States[217]. After this date, all Soviet Republics that declared their independence, except Russia, took their place in the international community as successor States of the USSR, while the Russian Federation was recognised as continuing the legal personality of the Soviet Union[218]. The political position of the Republics that established the Commonwealth of Independent States

213 Rein Müllerson, 'Law and Politics in Succession of States: International Law on Succession of States' in Geneviève Burdeau and Brigitte Stern (eds), *Dissolution, continuation et succession en Europe de l'Est* (Cedin-Paris I 1994) 15, 26; Ineta Ziemele, 'State Continuity, Succession and Responsibility: Reparations to the Baltic States and their Peoples' (2003) 3 Baltic Yearbook of International Law 165, 178-179; Lauri Malksoo, 'State Responsibility and the Challange of the Realist Paradigm: the Demand of Baltic Victims of Soviet Mass Repressions for Compensation from Russia' (2003) 3 Baltic Yearbook of International Law 57, 62.

214 See Jan Klabbers, Martti Koskenniemi, Olivier Ribblink, Andreas Zimmermann, (eds), *State Practice Regarding State Succession and Issues of Recognition* (Kluwer Law International 1999) 23-26.

215 Müllerson (n 213) 26; Bothe and Schmidt (n 212) 822; Wladyslaw Czaplinski, 'La continuité, l'identité et la succession d'États-Evaluation de cas récents' (1993) 26(2) Revue belge de droit international 374, 387.

216 See Pirim (n 92) 34-36.

217 Ukraine became independent on 24 August 1991, Belarus on 25 August 1991, Moldova on 27 August 1991, Azerbaijan on 29 August 1991, Kyrgyzstan on 31 August 1991, Uzbekistan on 31 August 1991, Armenia on 21 September 1991, Tajikistan on 9 October 1991, Turkmenistan on 27 October 1991, Kazakhstan on 16 December 1991 and Georgia on 25 December 1991.

The Alma-Ata Declaration, one of the founding texts of the Commonwealth of Independent States, was signed by Russia, Ukraine, Belarus, Kazakhstan, Kyrgyzstan, Turkmenistan, Uzbekistan, Azerbaijan, Tajikistan, Armenia, and Moldova. Turkmenistan, however, withdrew from full membership in 2005. Georgia, which joined the Commonwealth of Independent States in 1993, left the Community in 2009 due to the South Ossetia dispute, and Ukraine left the Community in 2014 following Russia's annexation of Crimea.

See Agreement Establishing the Commonwealth of Independent States (1992) 31 ILM 143-146.

218 See Yehuda Z Blum, 'Russia Takes Over the Soviet Union's Seat at the United Nations' (1992) 3 European Journal of International Law 354, 355-356; Klabbers, Koskenniemi, Ribblink, Zimmermann (n 214) 53-60; Hélène Hamant, *Démembrement de l'URSS et problèmes de succession d'Etats* (Bruylant 2007), 109-128; Emre Öktem, 'Turkey: Successor or Continuing State of the Ottoman Empire?' (2011) 24 Leiden Journal of International Law 561, 569; Pirim (n 92) 36.

was also that Russia should replace the USSR in the UN and other international organisations[219], and this position was accepted by the international community[220]. As the continuing State of the USSR, the Russian Federation took its place among the permanent members of the UN Security Council, States parties to multilateral international treaties concluded with the USSR began to address the Russian Federation, and some States simply changed the name of the USSR to the Russian Federation in the list of parties to the treaties[221].

It follows from this legal framework that all the States that emerged as a result of the disintegration of the USSR, including Georgia, are successor States.

The law of State succession does not explicitly provide for the right of individuals and groups displaced before the moment of succession to return to the territory of the successor State.

In fact, State succession '*corresponds to one of the grey areas of the legal order governing international relations. Namely, the fact that succession cases do not occur frequently and that every case takes shape in the context of different political, ideological and social elements hinders the emergence of uniform rules in this area of international law. In other words, State succession is not governed by customary*

219 In December 1991, the heads of the Commonwealth of Independent States expressed their support for Russia's participation in UN bodies, including the Security Council, in its capacity as the continuing State of the USSR. See Decision by the Council of Heads of State of the Commonwealth of Independent States (1992) 31 ILM 151-154. In a note to the UN Secretary-General on December 24, 1991, the Russian President Boris Yeltsin stated that the membership of the USSR in the UN and its position within the organs of the organisation would be maintained by the Russian Federation, with the support of the member States of the Commonwealth of Independent States. See Agreement Establishing the Commonwealth of Independent States, Background / Content Summary (1992) ILM 31, 138. For a detailed analysis of the process of establishment of the Commonwealth of Independent States, see Sergei A Voitovich, 'The Commonwealth of Independent States: An Emerging Institutional Model' (1993) 4(1) European Journal of International Law 403-429.

220 According to the USA, Russia is the continuing State of the USSR because it is the dominant geographical, demographic and military power of the Union. Accordingly, the USA has taken the position that Russia should be a permanent member of the UN Security Council, while the other republics that broke away from the USSR should apply for membership to the UN as newly established States. See Lucinda Love, 'International Agreement Obligations After the Soviet Union's Break Up: Current United States Practice and Its Consistency with International Law' (1993) 26 Vanderbilt Journal of Transnational Law 373, 404; Edwin D Williamson and John E Osborn, 'A U.S Perspective on Treaty Succession and Related Issues in the Wake of the Breakup of the USSR and Yugoslavia' (1992-1993) 33 Vanderbilt Journal of Transnational Law 264, 268-269.

The European Community has also recognised that the Russian Federation is the continuing State of the USSR and has established its relations with Russia on the basis of this recognition. See the Statement on the Future Status of Russia and Other Former Soviet Republics, EPC Press Release, 133/91 (23 December 1991) Brussels; Konrad G Bühler, 'State Succession, Identity / Continuity and Membership in the United Nations' in Pierre Michel Eisemann and Martti Koskenniemi (eds), *La Succession d'états: la codification à l'épreuve des faits / State Succession: Codification Tested Against the Facts* (Martinus Nijhoff Publishers 2000) 187, 258-263; Hamant (n 218) 110-115 and 120-125.

221 Bothe and Schmidt (n 212) 827. Applying international treaties to which the predecessor State is a party with the successor State, or allowing the successor State to participate in the work of international organisations of which the predecessor State is a member without a new membership procedure, is interpreted as the relevant state being considered the continuing state. Czaplinski (n 215) 379. See Pirim (n 92) 36-38.

international rules.[222] This is a general observation on the law of State succession and applies to many different elements to which States may be successors, such as international treaties, membership of international organisations, property, debts, archives or international responsibility. However, although no universal rules exist, some principles have been developed in some of these areas. For instance, two Conventions have been adopted, respectively, in 1978 and 1983, concerning succession to international treaties[223] and to State property, archives and debts[224].

In our opinion, the rationale behind the principle provided for in Article 12 of the 1978 Convention, which is considered to have become a customary rule, can be applied by analogy to the right of return. This Article stipulates that a succession of States does not as such affect obligations and rights relating to the use of any territory, or to restrictions upon its use, established by a treaty for the benefit of any territory of a foreign State and considered as attaching to the territories in question. Therefore, international treaties relating to a territory may be invoked to the successor State after the moment of succession.

As can be seen, this provision is based on the logic that the successor State, which is a new State under international law, is bound by the rights and obligations attached to the territory succeded. Therefore, in our opinion, Meskhetian Turks who were expelled from the territory that was part of the USSR can invoke their right of return against Georgia, which started to exercise sovereignty over the said territory after the moment of succession.

Moreover, as stated above, since the right of return is an individual right protected in human rights texts, it should be implemented independently of changes in the sovereignty of the relevant State over its territory; these changes should not affect the right of residents to reside in or return to the country[225].

As Daniel Nsereko points out, the territorial sovereignty of the State and the right of individuals to live in their homeland should be considered as two separate concepts with different legal consequences: the former is a right of the State, while the latter

222 Ceren Zeynep Pirim, 'State Succession to International Responsibility: A Critical Analysis of the Modern Succession Theory Based on the General Principles of Law' (2018) 9 Czech Yearbook of International Law 111-129, 112-112. See also Pirim (n 92) 4; Wladyslaw Czaplinski, 'Equity and Equitable Principles in the Law of State Succession' in Mojmir Mrak (eds), *Succession of States* (Martinus Nijhoff Publishers 1999) 61, 61; Georges Abi-Saab, 'Cours général de droit international public' (1987) 207 Recueil des cours de l'Académie de droit international de La Haye 9, 420; Michael John Volkovitsch, 'Righting Wrongs: Toward a New Theory of State Succession to Responsibility for International Delicts' (1992) 92(8) Columbia Law Review 2162; Müllerson (n 213) 17.

223 Vienna Convention on Succession of States in respect of Treaties (concluded at Vienna on 23 August 1978, entered into force on 6 November 1996) 1946 UNTS 3.

224 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (concluded on 8 April 1983, not yet in force), Official Records of the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts, vol. II (United Nations publication, Sales No. E.94.V.6).

225 Daniel Nsereko, 'The Right to Return Home' (1981) 21 Indian Journal of International Law 335, 343.

is a right of individuals and groups of individuals[226]. In other words, the individual's right to return to his or her country is based on his or her attachment to that country, and changes in sovereignty over the country would not affect this attachment[227].

A similar conclusion can be reached from the following statements of Ian Brownlie: '*to regard a population, in the normal case, as related to particular areas of territory, is not to revert to forms of feudalism but to recognize a human and political reality, which underlies modern territorial settlements. (...) Sovereignty denotes responsibility, and a change of sovereignty does not give the new sovereign the right to dispose of the population concerned at the discretion of the government*'[228].

Finally, the law of State succession recognises that when sovereignty over a territory changes, the inhabitants acquire the nationality of the successor State[229]. In our opinion, this rule, which is considered as reflecting the customary law, confirms the proposition that territorial rights may be invoked against the successor State that begins to exercise sovereign powers over the territory.

Conclusion

On the 80th anniversary of their deportation, Meskhetian Turks have still not been able to return to their homeland despite all their efforts. There are many reasons behind this unresolved problem. First, there is no international consensus on the just cause of the Meskhetian Turks[230]. While some States and international organisations, led by Türkiye, support this cause, others remain indifferent, while others view it negatively.

Having made concrete commitments on the return of Meskhetian Turks upon its accession to the CoE in 1999, Georgia has failed to fulfil these commitments. Having taken a few token steps to distract the CoE and the international community in general, Georgia refrains from recognising and implementing the right of Meskhetian Turks to return to their country as a whole. It is a well-known fact that Georgian elements had a strong presence in the Soviet high bureaucracy and especially in the intelligence agencies. Today's Georgian bureaucracy, which has inherited the Soviet traditions, has been following a stalling policy that can be considered 'successful' by itself for years, trying to create the impression that it is doing what is necessary for the repatriation

226 Nsereko (n 225) 343.

227 Quigley (n 118) 97.

228 Ian Brownlie, 'The Relations of Nationality in Public International Law' (1963) 39 British Yearbook of International Law 284, 325.

229 See Boling (n 126) 29-30; Quigley (n 118) 97; Articles on Nationality of Natural Persons in Relation to the Succession of States (adopted by the International Law Commission in 1999) UNGA Res A/RES/55/153 (2001); ILC, 'Report of the International Law Commission on the work of its Forty-Seventh Session' (1995) GAOR 50th Session Supp 10, Annex: Report of the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons, UN Doc A/50/10; Second Report on State Succession and its Impact on the Nationality of Natural and Legal Persons (1996) UN Doc A/CN-4/474.

230 Ray (n 2) 409.

process on the one hand, and on the other hand, it has made it difficult and prevented the repatriation by using elaborate bureaucratic techniques.

It is noteworthy that since the moment they started their political struggle to return to their homeland, Meskhetian Turks have always sought their rights by respecting the law of the State they are in and have never resorted to extra-legal political organisations and acts of violence[231]. This stance and attitude, which they still maintain, constitutes one of the most important advantages in defending their just cause before the international community.

As of today, the reality imposes itself that political initiatives and efforts for the collective return of Meskhetian Turks to their homeland and legal initiatives at the national level cannot yield results. In order to achieve a concrete result in the case of Meskhetian Turks, it has become inevitable to resort to legal mechanisms at the international level.

Positive international law, international jurisprudence and legal scholars recognise that the right of return is a fundamental human right and constitutes a customary norm. Numerous international treaties and UN General Assembly Resolutions adopted after 1944, the year of the mass displacement of Meskhetian Turks, protect the right of return and confirm that it is part of customary international law binding on all States, including Georgia. Georgia, as a party since 1994 to the ICCPR, which enshrines the right to return in its Article 12(4), is under an obligation to respect this right under international treaty law as well.

Article 12(4) of the Covenant stipulates that '*no one shall be arbitrarily deprived of the right to enter his own country*'. A combined reading of the *travaux préparatoires* of this Article, the assessments of the Human Rights Committee officially authorised to interpret the Covenant, the *Nottebohm* judgement of the International Court of Justice and opinions of leading international jurists shows that the right enshrined in Article 12(4) covers not only nationals but also persons who were not born in the country, who have not lived in the country and who are not nationals of the concerned State but who have a genuine connection with the country. In other words, the concept of 'his own country' includes not only nationals or residents of the State but also, as in the case of Meskhetian Turks, persons who consider the country as their own country, who have both historical and ongoing ties with the country, who have family, property and interests in the country, who establish civil organisations to protect their culture, in short, who have a 'genuine connection' with the country. The fact that nearly 80 years have passed since the Meskhetian Turks were forcibly deported from their country to other territories does not affect the existence of this connection. Meskhetian Turks have always maintained their cultural identity linked to their homeland and have repeatedly

231 Sezgin and Ağacan (n 12) 34.

expressed their rights over their country. They have therefore preserved the genuine connection that they have had with the territory of Georgia.

Moreover, in determining whether there is a right to return, the reasons why the right has not been exercised for a significant period of time should be considered[232]. The fact that persons wishing to exercise the right of return have been exiled for a long period of time for reasons beyond their control and will cannot be regarded as a factor that weakens the 'genuine connection' between the country and the persons in question. In other words, 'the State cannot invoke its own unlawful fact to block a claim to return'[233].

Members of the later generations of Meskhetian Turks who were forcibly and collectively removed from their ancestral lands almost eighty years ago also have the right to return to Georgia, provided that they can prove their 'genuine connection' with the territory of Georgia.

In this framework, Meskhetian Turks who wish to return to their country may apply to the Human Rights Committee, the supervisory body of the ICCPR, to which Georgia is a party. The Human Rights Committee, established under article 28 of the Covenant to monitor and supervise the implementation of the provisions of the Covenant by States Parties, is also authorised to consider individual communications under the Optional Protocol to the Covenant[234]. Georgia is a party to the Protocol as of May 3, 1994[235].

According to Article 1 of the Protocol, '*a State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant*'. Therefore, the right of return set out in Article 12(4) of the ICCPR is individually applicable to claimants. In our opinion, and on the grounds explained above in detail, there is no legal obstacle to the collective application of this article to groups of persons. However, considering that there are authors who argue that the right of return belongs to individuals and not to peoples as a whole and that in cases where a group claims the right of return, this claim should be evaluated separately for each individual, we suggest that return claims should be made individually. In accordance with Articles 2 and 5(2)(b) of the Optional Protocol to the ICCPR, Meskhetian Turks who wish to exercise their right of return and who claim that the exercise of that right

232 Lawand (n 125) 566; Wiley (n 130) 153.

233 Lawand (n 125) 566.

234 Optional Protocol to the International Covenant on Civil and Political Rights (adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976 in accordance with Article 9) 999 UNTS 171.

235 See < tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR-OP1 > accessed 24 February 2024.

has been impeded by Georgia must first exhaust Georgian domestic remedies (or demonstrate that the exercise of domestic remedies would take an unreasonably long time) and, failing that, submit a signed complaint to the Human Rights Committee under Article 3.

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Bibliyografya/Bibliography

Books and Articles

Abi-Saab G, 'Cours général de droit international public' (1987) 207 Recueil des cours de l'Académie de droit international de La Haye 9-463.

Agterhuis S, 'The right to Return and its Practical Application' (2005) McGill University Papers < https://prrn.mcgill.ca/research/papers/agterhuis.pdf > accessed 18 February 2024.

Arzt D E, 'Palestinian Refugees: The Human Dimension of the Middle East Peace Process' (1995) 89 Proceedings of the Annual Meeting (American Society of International Law) 369-373.

Arzt D E and Zughaib K, 'Return to Negotiated Lands: The Likelihood and Legality of a Population Transfer Between Israel and a Future Palestinian State' (1992) 24(4) New York University Journal of International Law and Politics 1399-1514.

Aslan K, *Ahıska Türkleri* (Ahıska Türkleri Kültür ve Dayanışma Derneği 1995).

Aydıngün A, 'Creating, Recreating and Redefining Ethnic Identity: Ahiska / Meskhetian Turks in Soviet and Post-Soviet Contexts' (2002) 21(2) Central Asian Survey 185-197.

Aydıngün A, Harding Ç B, Hoover M, Kuznetsov I, Swerdlow S, *Meskhetian Turks: An Introduction to their History, Culture, and Resettelment Experiences* (Center for Applied Linguistics 2006).

Benvenisti E and Zamir E, 'Private Claims to Property Rights in the Future Israeli-Palestinian Settlement' (1995) 89(2) American Journal of International Law 295-340.

Bothe M and Schmidt C, 'Sur quelques questions de succession posées par la dissolution de l'URSS et celle de la Yougoslavie' (1992) 96 Revue générale de droit international public 811-842.

Blum Y Z, 'Russia Takes Over the Soviet Union's Seat at the United Nations' (1992) 3 European Journal of International Law 354-361.

Boling G J, *The 1948 Palestinian Refugees and the Individual Right of Return. An International Law Analysis* (BADIL Resource Center for Palestinian Residency and Refugee Rights 2007).

Brownlie I, 'The Relations of Nationality in Public International Law' (1963) 39 British Yearbook of International Law 284-364.

Bühler K G, 'State Succession, Identity / Continuity and Membership in the United Nations' in Eisemann P M and Koskenniemi M (eds), *La Succession d'états: la codification à l'épreuve des faits / State Succession: Codification Tested Against the Facts* (Martinus Nijhoff Publishers 2000) 187-326.

Czaplinski W, 'Equity and Equitable Principles in the Law of State Succession' in Mrak M (eds), *Succession of States* (Martinus Nijhoff Publishers 1999) 61-73.

Czaplinski W, 'La continuité, l'identité et la succession d'États-Evaluation de cas récents' (1993) 26(2) Revue belge de droit international 374-392.

Dirikgil N, 'Addressing the Prevention of Internal Displacement: The Right Not to Be Arbitrarily Displaced' (2023) 24 Journal of International Migration and Integration 113-138.

Dirikgil N, *Protection of Internally Displaced People from Arbitrary Displacement: The Development of the Right not to be Arbitrarily Displaced* (Thesis submitted for the degree of Doctor of Philosophy, Aberystwyth University 2020).

Dirikgil N, 'Zorunlu Göç Kavramının Hukuki Kapsamı ve Zorunlu Göç Sonucu Yerinden Edilen Kişilerin Uluslararası Hukukta Korunması' (2022) X (1) *Kadir Has Üniversitesi Hukuk Fakültesi Dergisi* 67-88.

Elçibey E, 'Historical Background of Meskhetian Turks' Deportation and Their Repatriation Process to Georgia' (2023) 7(2) Uluslararası Kriz ve Siyaset Araştırmaları Dergisi 423-441.

Frelick B, 'The Right of Return' (1990) 2 International Journal of Refugee Law 442-447.

Hamant H, *Démembrement de l'URSS et problèmes de succession d'Etats* (Bruylant 2007).

Hannum H, *The Right to Leave and Return in International Law and Practice* (Martinus Nijhof 1987).

Helton A C, 'Forced International Migration: A Need for New Approaches by the International Community' (1995) 18 Fordham International Law Journal 1623-1636.

Henckaerts J-M and Doswald-Beck L, *Uluslararası İnsancıl Teamül (Örf-Adet) Hukuku*, *Cilt I: Kurallar* (Galatasaray Üniversitesi Hukuk Fakültesi Yayınları 2005).

Higgins R, 'La liberté de circulation des personnes en droit international' in Flory M and Higgins R (eds), *Liberté de circulation des personnes en droit international* (Economica 1988).

Jagerskiold S (1981) 'The Freedom of Movement' in Henkin L (eds), *The International Bill of Rights: The Covenant on Civil and Political Rights* (Columbia University Press 1981).

Jones, S F, 'Meskhetians: Muslim Georgians or Meskhetian Turks? A Community without a Homeland' (1993) 13(2) Refuge 14-16.

Joyner, C C, 'The Palestine Problem in International Law and World Order' (Book Review), (1987) 55(3) George Washington Law Review 689-714.

Kıprızlı G, 'Victims of the Soviet Policies: the Case of the Ahiska Turks (1944-1968)' (2019) 56 Avrasya Etüdleri 79-98.

Klabbers J, Koskenniemi M, Ribblink O, Zimmermann A (eds), *State Practice Regarding State Succession and Issues of Recognition* (Kluwer Law International 1999).

Knisbacher M, 'Aliyah of Soviet Jews: Protection of the Right of Emigration under International Law' (1973) 14 Harvard International Law Journal 89-110.

Kreindler I, 'The Soviet Deported Nationalities: A Summary and an Update' (1986) 38(3) Soviet Studies 387-405.

Kuneralp S, *Recueil des traités, Conventions, Protocoles, Arrangements et Déclarations signés entre l'Empire Ottoman et les Puissances Etrangères, 1903-1922*, *Vol. II*, *1903-1916* (Les Éditions Isis 2000).

Lapidoth R, 'The Right of Return in International Law, with Special Reference to the Palestinian Refugees' (1986) 16 Israel Yearbook on Human Rights 103-125.

Lapidoth R, 'The Right of Return in International Law, with Special Reference to the Palestinian Refugees' in Dinstein Y and Domb F (eds), *The Progression of International Law. Four Decades*

of the Israel Yearbook on Human Rights. An Anniversary Volume (Martinus Nijhoff Publishers 2011) 25-44.

Lawand K, 'The Right to Return of Palestinians in International Law' (1996) 8(4) International Journal of Refugee Law 532-568.

Love L, 'International Agreement Obligations after the Soviet Union's Break Up: Current United States Practice and its Consistency with International Law' (1993) 26 Vanderbilt Journal of Transnational Law 373-415.

Malksoo L, 'State Responsibility and the Challange of the Realist Paradigm: The Demand of Baltic Victims of Soviet Mass Repressions for Compensation from Russia' (2003) 3 Baltic Yearbook of International Law 57-76.

Mallison T W and Mallison S V, 'The Right to Return' (1980) 9(3) Journal of Palestine Studies 125-136.

Martin T, 'The Origins of Soviet Ethnic Cleansing' 1998 70(4) The Journal of Modern History 813-861.

Mirkhanova M, 'People in Exile: The Oral History of Meskhetian Turks (Akhyskha Turkleri)', (2006) 26(1) Journal of Muslim Minority Affairs 33-44.

Müllerson R, 'Law and Politics in Succession of States: International Law on Succession of States' in Burdeau G and Stern B (eds), *Dissolution, continuation et succession en Europe de l'Est* (Cedin-Paris I 1994) 15-47.

Noradounghian G, *Recueil d'actes internationaux de l'Empire Ottoman II* (Paris 1900).

Nowak M, *UN Covenant on Civil and Political Rights: CCPR Commentary* (NP Engel 2005).

Nsereko, D D N, 'The Right to Return Home' (1981) 21 Indian Journal of International Law 335-351.

Öktem E, Aküzüm H U, Uzun M C, 'Hocalı Soykırımı Hakkında Avrupa İnsan Hakları Mahkemesi'ne Başvuru İmkânı Üzerine' (2020) 15 Bahçeşehir Üniversitesi Hukuk Fakültesi Dergisi 1081-1125.

Öktem E, 'Turkey: Successor or Continuing State of the Ottoman Empire?' (2011) 24 Leiden Journal of International Law 561-583.

Öner N A Ş, 'Stalin'in Milliyetler Politikasının Bedeli Olarak Ahıska Sürgünü ve Ahıskalılar'ın Sürgündeki Yaşamları' (2019) 56 Avrasya Etüdleri 53-77.

Panesh E K and Ermolov L B, 'Meskhetinsky Turks Under the Conditions of the Modern Ethnic Processes in the USSR' (1993) 57 Belleten 589-608.

Pirim C Z, *Devletlerin Uluslararası Sorumluluğa Halefiyeti* (Turhan 2016).

Pohl J O, 'Stalin's Genocide against the "Repressed Peoples"' (2000) 2(2) Journal of Genocide Research 267-293.

Ray K, 'Repatriation and De-Territorialization: Meskhetian Turks' Conception of Home' (2000) 13(4) Journal of Refugee Studies 391-414.

Quigley J, 'Mass Displacement and the Individual Right of Return' (1997) 68(1) British Yearbook of International Law 65-125.

Rosand E, 'The Kosovo Crisis: Implications of the Right to Return' (2000) 18 Berkeley Journal of International Law 229-240.

Rosand E, 'The Right to Return under International Law following Mass Dislocation: The Bosnia Precedent?' (1998) 19(4) Michigan Journal of International Law 1091-1139.

Sezgin M N and Ağacan K, *Dünden Bugüne Ahıska Türkleri Sorunu* (Avrasya Stratejik Araştırmalar Merkezi Ankara Çalışmaları Dizisi No. 14 2003).

Sieghart P, *The International Law of Human Rights* (Clarendon Press 1983).

Stalin J, *Marxism and the National Question. Selected Writings and Speeches* (International Publishers 1942).

Taylor P, *A Commentary on the International Covenant on Civil and Political Rights. The UN Human Rights Committee's Monitoring of ICCPR Rights* (Cambridge University Press 2020).

Vendramin T L, *The Right to Return of Refugees in International Law. The Case Study of Bosnia and Herzegovina* (Master Thesis, International University Institute for European Studies 2007/2008).

Voitovich S A, 'The Commonwealth of Independent States: An Emerging Institutional Model' (1993) 4(1) European Journal of International Law 403-429.

Volkovitsch M J, 'Righting Wrongs: Toward a New Theory of State Succession to Responsibility for International Delicts' (1992) 92(8) Columbia Law Review 2162-2214.

Weiner J R, 'The Palestinian Refugees' "Right to Return" and the Peace Process' (1997) XX(1) Boston College International & Comparative Law Review 1-53.

Wiley M, 'Circassian Right of Return: "Putin The Terrible or Putin The Enlightened?"' (2015) 30(1) American University International Law Review 141-170.

Williamson E D and Osborn J E, 'A U.S Perspective on Treaty Succession and Related Issues in the Wake of the Breakup of the USSR and Yugoslavia' (1992-1993) 33 Vanderbilt Journal of Transnational Law 264-274.

Wimbush S E and Wixman R, 'The Meskhetian Turks: A New Voice in Soviet Central Asia' (1975) 17(2-3) Canadian Slavonic Papers 320-340.

Wright Q, 'Legal Aspects of the Middle East Situation' (1968) 33(1) Law and Contemporary Problems 5-31.

Zedalis R, 'Right to Return: A Closer Look' (1992) 6 Georgetown Immigration Law Journal 499-517.

Ziemele I, 'State Continuity, Succession and Responsibility: Reparations to the Baltic States and their Peoples' (2003) 3 Baltic Yearbook of International Law 165-189.

Documents

CoE Documents

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia, Information Note by the Co-rapporteurs on their Fact-finding Visit to Tbilisi (22-24 March 2010) (24 June 2010) AS / Mon (2010) 24 rev.

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, (Monitoring Committee), Honouring of Obligations and Commitments by Georgia, Provisional version, Doc 25 March 2011.

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (26 January 2012) AS/Mon (2011)24 rev3.

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (28 January 2013) AS/Mon (2013)04 rev.

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (7 June 2016) AS/Mon (2016)15.

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (16 June 2017) AS/Mon (2017)16.

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (12 December 2018) AS/Mon (2018)23 rev.

Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee), Honouring of Obligations and Commitments by Georgia (8 April 2022) Doc 15497.

Conseil de l'Europe, Comité consultatif de la Convention-Cadre pour la protection des minorités nationales, Deuxième avis sur la Géorgie (adopté le 17 juin 2015) ACFC/OP/II(2015)001.

Conseil de l'Europe, Comité consultatif de la Convention-Cadre pour la protection des minorités nationales, Troisième avis sur la Géorgie (adopté le 7 mars 2019) ACFC/OP/III(2019)002.

Conseil de l'Europe, Commission européenne contre le racisme et l'intolérance, Second rapport sur la Géorgie (adopté le 30 juin 2006).

Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Report submitted by Georgia, ACFC/SR/IV(2022)001.

Council of Europe, Parliamentary Assembly, Resolution 1428 (2005), The Situation of the Deported Meskhetian Population, Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 March 2005, Doc 10451, Report of the Committee on Migration, Refugees and Population (Rapporteur: Ms Vermot-Mangold).

Georgia's Application for Membership of the Council of Europe, Opinion 209 (1999), Doc 8275, Report of the Political Affairs Committee (Rapporteur: Mr Davis); Doc 8296, Opinion of the Committee on Legal Affairs and Human Rights (Rapporteur: Mr Kelemen), adopted by the Assembly on 27 January 1999 (4th Sitting).

Resolution 1257 (2001) Honouring of Obligations and Commitments by Georgia, Assembly debate on 25 September 2001 (26th Sitting) (see Doc 9191, Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe, Rapporteurs: Mr Diana and Mr Eörsi).

International Treaties

Agreement Establishing the Commonwealth of Independent States, Background / Content Summary (1992) ILM 31.

Agreement Establishing the Commonwealth of Independent States (1992) 31 ILM 143-146.

African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 1520 UNTS 217.

American Convention on Human Rights (signed 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123.

Agreement on Visa-Free Movement of Citizens of the States of the Commonwealth of Independent States on the Territory of its Members, < https://cis-legislation.com/document.fwx?rgn=25681 > accessed 15 February 2024.

Arab Charter on Human Rights (adopted by the League of Arab States on 22 May 2004, entered into force 15 March 2008) (2005) 12 International Human Rights Rep 893.

Convention on the Rights of the Child (adopted on 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

Convention relating to the Status of Refugees 189 UNTS 137.

Convention IV relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

Convention IV respecting the Laws and Customs of War on Land and its Annex: Regulations concerning the Laws and Customs of War on Land, The Hague, 18 October 1907.

European Convention for the Protection of Human Rights and Fundamental Freedoms (signed 4 November 1950, entered into force 3 September 1953) 213 UNTS 221.

General Framework Agreement for Peace in Bosnia and Herzegovina and Annexes (Dayton-Paris Agreements), Annex 7 (Agreement on Refugees and Displaced Persons) (30 November 1995) UN Doc A/50/790, S/1995/999.

International Convention on the Elimination of All Forms of Racial Discrimination (adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted on 18 December 1990, entered into force 1 July 2003) 2220 UNTS 3.

International Convention on the Suppression and Punishment of the Crime of Apartheid (adopted on 30 November 1973, entered into force 18 July 1976) 1015 UNTS 243.

International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

Optional Protocol to the International Covenant on Civil and Political Rights (adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entered into force 23 March 1976 in accordance with Article 9) 999 UNTS 171.

Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and the first Protocol thereto (signed 16 September 1963, entered into force 2 May 1968) 46 European Treaty Series.

Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons (Abkhazia, Georgia, Russia and UNHCR) (signed on 4 April 1994).

Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980), 1155 UNTS 331 (VCLT).

Vienna Convention on Succession of States in Respect of State Property, Archives and Debts (concluded on 8 April 1983, not yet in force), Official Records of the United Nations Conference on Succession of States in Respect of State Property, Archives and Debts, vol. II (United Nations publication, Sales No. E.94.V.6).

Vienna Convention on Succession of States in respect of Treaties (concluded at Vienna on 23 August 1978, entered into force on 6 November 1996) 1946 UNTS 3.

Jurisprudence

Budlakoti v. Canada (2018) UN Human Rights Committee, CCPR/C/122/D/2264/2013.

Case Concerning the Territorial Dispute (Libyan Arab Jamahiriya v. Chad) (Judgement) [1994] ICJ Rep 6.

Francesco Madafferi v. Australia (2004) UN Human Rights Committee, CCPR/C/81/D/1011/2001.

Giosue Canepa v. Canada (1997) UN Human Rights Committee, CCPR/C/59/D/558/1993.

Nottebohm Case (Liechtenstein v. Guatemala) (Second Phase) [1955] ICJ Rep 4.

Nystrom v. Australia (2011) UN Human Rights Committee, CCPR/C/102/D/1557/2007.

Stewart v. Canada (1996) UN Human Rights Committee, CCPR/C/58/D/538/1993.

UN Documents

Articles on Nationality of Natural Persons in Relation to the Succession of States (adopted by the International Law Commission in 1999) UNGA Res A/RES/55/153 (2001).

Experts of the Committee on the Elimination of Racial Discrimination Commend Georgia on Increased Prosecution of Discrimination Crimes, Ask about Minorities' Access to Education and Human Rights Violations in the Occupied Territories, 24 November 2022, <https://www.ohchr.org/en/news/2022/11/experts-committee-elimination-racial-discrimination-commend-georgia-increased > accessed 12 February 2024.

On the Repatriation of Persons Involuntarily Displaced by the Former USSR from the Georgian SSR (The Soviet Socialist Republic of Georgia) in the 1940's, 11 July 2007, Consolidated versions (8 July 2015-5 July 2018), < https://matsne.gov.ge/en/document/view/22558?publication=6 > accessed 8 February 2024.

Progress Report of the United Nations Mediator (Count Folke Bernadotte) on Palestine Submitted to the Secretary-General for Transmission to the Members of the United Nations (18 September 1948) UN Doc A/648.

Report of the Committee on the Elimination of Racial Discrimination (1995) GAOR 50th Session Supp 18, UN Doc A/50/18.

ILC, 'Report of the International Law Commission on the work of its Forty-Seventh Session' (1995) GAOR 50th Session Supp 10, Annex: Report of the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons, UN Doc A/50/10.

Second Report on State Succession and its Impact on the Nationality of Natural and Legal Persons (1996) UN Doc A/CN-4/474.

UN Commission on Human Rights, Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39. Addendum: Guiding Principles on Internal Displacement (11 February 1998) E/CN.4/1998/53/Add.2.

UNGA 14th Session, Third Committee, 959th Meeting (17 November 1959) UN Doc A/C.3/SR.959.

UNGA Res 194 (1948) UN Doc A/RES/194.

UNGA Res 2452A (1968) UN Doc A/7218.

UNGA Res 3236 (Question of Palestine) (1974) UN Doc A/9631.

UN Human Rights Committee, CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9.

UNSC Res 237 (1967) UN Doc S/RES/237.

UNSC Res 787 (1992) UN Doc S/RES/787.

UNSC Res 971 (UN Observer Mission in Georgia) (1995) UN Doc S/RES/971.

UNSC Res 1088 (1996) UN Doc S/RES/1088.

Universal Declaration of Human Rights (adopted 10 December 1948) General Assembly Resolution 217A, UN Doc A/810.

Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

Other Documents

Ahıska Mesket Türklerinin Türkiye'ye Kabulü ve İskânına Dair Kanun Tasarısı Hakkında Görüşmeler, TBMM, Dönem: 19 Yasama Yılı: 1.

Ahıska Türklerinin Türkiye'ye Kabulü ve İskânına Dair Kanun, Law no. 3835, adopted on 2 July 1992, Official Gazette: 11 July 1992, No 21281, Düstur (Collection of Legislation) Tertip 5, Vol. 31.

Commission européenne contre le racism et l'intolérance, Rapport de l'ECRI sur la Géorgie (quatrième cycle de monitoring) (adopté le 28 avril 2010, publié le 15 juin 2010) CRI (2010)17.

Decision by the Council of Heads of State of the Commonwealth of Independent States (1992) 31 ILM 151-154.

International Law Association, Declaration of International Law Principles on Internally Displaced Persons (29 July 2000).

"Punished Peoples" of The Soviet Union, The Continuing Legacy of Stalin's Deportations, A Helsinki Watch Report, 1991, < https://www.hrw.org/reports/pdfs/u/ussr/ussr.919/usssr919full.pdf > accessed 6 February 2024.

Statement on the Future Status of Russia and Other Former Soviet Republics, EPC Press Release, 133/91 (23 December 1991) Brussels.

'The Right to Leave and the Right to Return: A Declaration adopted by the Uppsala Colloquium' (1973) 7(1) The International Migration Review 62-66.