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The Right to return in International Law: Legal frameworks and prospects for the South Caucasus

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1. Introduction

Since the beginning of the 20th century and specifically after the Second World War, a dramatic increase in the number of internally displaced persons (IDPs) and refugees occurred. If on the one hand this has resulted from massive destructions and conflict, on the other hand the growing presence of refugees can be considered the result of multiple practices that have been specifically intended to promote the creation of ethnically homogeneous States, by driving entire ethnic groups from their homes[1].

The end of the Cold War further spurred the movement of refugees and IDPs on a worldwide scale: in this regard, the displacement of approximately 250,000 Georgians from Abkhazia in the aftermath of the 1992-93 secessionist war and the return of refugees mostly to Afghanistan, Myanmar and Mozambique between 1994 and 1995 represent – among others – a case in point[2]. Accordingly, the United Nations found itself in the situation to address a number of additional conflicts whose outcome was the mass displacement of populations. In the majority of cases, UN organs have supported or demanded the return of all refugees and displaced persons[3]. Security Council resolutions endorsing the return to both Croatia and Bosnia and UN responses to the humanitarian crisis resulting from the Rwandan genocide are an example in this sense[4]. In particular, in the latter case the Security Council underlined the need for the «*orderly and voluntary repatriation and resettlement of refugees and the return of internally displaced persons, which are crucial elements for the stability of the region*»[5]. Additionally, with respect to the collapse of the Soviet Union, numerous resolutions emphasized the importance of the return of masses of individuals in response to the extensive relocations that took place in the former Soviet republics[6].

UN statements and resolutions were indeed followed by the actual return of hundreds of thousands of refugees and displaced persons. However, only in a minority of the abovementioned resolutions – and especially the sole concerning the conflicts in Bosnia and in Croatia – did the United Nations assert the presence of a right to return. Hence, in many cases a simple «encouragement» or «urgence» of the international community and humanitarian organizations to «facilitate» or «assist» the return of refugees and displaced persons was affirmed[7]. Correspondingly, at that time the existence of a legal obligation concerning the right to return could not be detected[8].

Notwithstanding, in recent times the issue of the re-establishment of forcibly displaced persons in their earlier places of residence has attracted the attention of both scholars and the legal doctrine, thus opening to renovated discussions on the legal nature of the right to return and its relationship with the international legal framework.

From a legal standpoint, the right to return is closely connected to the right to leave, since the existence of one right automatically allows the exercise of the other. Likewise, both rights respond to different necessities of the individuals: if on one side peoples leaving their countries may follow a logic of desire to emigrate for economic, social or political reasons or seek refuge, on the other side persons seeking to return to their residences are generally motivated by the aspiration to reconnect to their roots or to the place where they belong[9].

At the same time, the right to return is the corollary of the freedom of movement, which is composed of two main aspects – an internal dimension related to the liberty of mobility within a country, and an external feature connected to the freedom of movement between States, which is based on conventional law. The latter is usually summoned as the right to temporarily or permanently leave a country to return to one's antecedent residence or belonging[10]. Interestingly, unlike other freedoms or human rights, the right to return produces effects in more than one State and generally affects at least two communities – the one of the country of permanence and that of the State to which ingress is sought[11]. Accordingly, questions connected with State sovereignty and responsibility regarding the transboundary movement of persons arise.

Against this background, this study aims at shedding light on the issue of the right to return in international law by focusing on the current situation in South Caucasus. More precisely, the legal nature of the right to return will be initially assessed by verifying its acknowledgement in hard and soft law instruments. Secondly, this paper will tackle the debate

around the customary nature of the right to return. Additionally, a reflection on its possible conception as containing a collective dimension will be included. In conclusion, the last section will be dedicated to the analysis of the main challenges and dilemmas in the practical application of the right to return with reference to South Caucasus, to show both the legal and the political impediments in the effective exercise of the considered right.

2. The right to return: an international legal perspective

2.1 *Hard and soft law instruments protecting the right to return*

By way of context, the topic of the protection of refugees and IDPs has been the object of extensive examination by the legal doctrine and the scholarly community, both in the field of refugee law, international humanitarian law and international human rights law[12].

As concerns IDPs, for example, alongside the extensive body of law protecting internally displaced persons, the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (known as the Kampala Convention) appears to be worthy of mention, as one of the most relevant and appreciated instruments for the protection of IDPs in the African continent[13]. Indeed, with the aim to establish a legal framework to prevent internal displacement and strengthening national and regional measures to promote durable solutions to the condition of IDPs, State Parties to the Kampala Convention commit to ensure the protection of human rights of IDPs, grant responsibility for acts of arbitrary displacement, ensure the accountability of involved non-State actors – including multinational companies and private military and security companies – and eventually to provide prompt and unimpeded assistance to internally displaced persons without prejudice[14].

Against this background, to detect the international legal framework providing for and protecting the right of refugees, IDPs and forcibly displaced persons to return to their previous households, an extensive analysis of the hard and soft law instruments mentioning this right is deemed necessary.

The scholarly doctrine has reflected on the right to return in the aftermath of the Second World War and later of the Cold War, by virtue of an increase in the number of refugees, IDPs, forced displacements and community movements.

Above all, in the case of displaced persons a compensation is foreseen for those individuals who are unable to return home due to property loss or occupation and destruction of the former place of residence. In that respect, the London Conference organized in 1992 with a view to tackle the Bosnian situation offers an interesting example. Hence, by establishing the requirements for refugees and displaced persons to be entitled for the possibility to return home, it was affirmed that compensation should be granted in case of people opting not to return[15]. Nevertheless, compensation should not be considered a substitute of the right to return, which is the expression of one's choice to rejoin the proximities of a former habitation[16].

The solid foundation of the right to return in international law is intrinsically connected to its direct or indirect inclusion in multiple hard and soft law instrument. Article 13(2) of the Universal Declaration of Human Rights (UDHR) adopted on December 10, 1948 affirms that «*everyone has the right to leave any country, including his own, and to return to his country*»[17]. Shortly thereafter, the 1966 International Covenant on Civil and Political Rights (ICCPR) clearly enshrined the right to return under its provisions on the freedom of movement, contained in article 12[18]. Specifically, the right to return is encompassed under the external dimension of the freedom of movement (article 12 (2)), which both implies the right to leave a country and to enter one's country (article 12 (4)). The Human Rights Committee General Comment on article 12 of the ICCPR released in November 1999 provides further clarification for the application of the right to return and guidance for States in fulfilling their reporting requirements[19]. By way of example, the interpretation of article 12(4) was extended also to individuals belonging to extensive dislocated groups, and it constituted the basis for the assurance of the application of the right to return in peace agreements signed in Georgia and Rwanda respectively on April 4 and October 24, 1994[20].

Likewise, the existence of a right to return is further accounted in four human rights treaties with regional scope of application, namely the American Convention on Human Rights (article 22(5)); the African Charter on Human and Peoples'Rights (Banjul Charter, article 12(2)) entered into force in October 1986; Protocol n. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms (article 3) adopted in September 1963; and the Arab Charter on Human Rights (article 22). Interestingly, a different wording is employed by the abovementioned instruments to refer to a person's territory: specifically, the African and the Arab Charter refer to «an individual's country» in con-

nection to the right to return, while the American Convention and the European Protocol make use of the term «the State of which the individual is a national», thereby limiting the scope of application of the examined right and subjecting it to the possession of the country's nationality[21].

As concerns international refugee law, the right to return is affirmed by placing emphasis on voluntary repatriation as the preferred durable solution to refugee situations. The 1951 Convention Relating to the status of Refugee and its 1967 protocol, as well as regional refugee instruments, UN resolutions and the conclusions of the UNHCR's Executive Committee support the abovementioned standpoint.

When it comes to United Nations comments and resolutions, the General Assembly resolution 194(III) of 11 December 1948 represents the cornerstone of the right to return in international law[22]. More precisely, it maintains that refugees wishing to return to their homes and living at peace with their neighbors should be permitted to do so at the earliest predictable date. Similarly, compensation should be paid both for the properties of those individuals choosing not to return and in case of loss or damage of the properties located in the former country of residence by the responsible government or authorities[23]. Even though the abovementioned resolution specifically and merely referred to the right to return of Palestinians, its fundamental importance lays in the fact that it elevated and confirmed the status of the right to return as customary international law.

In addition to the mentioned UNGA resolution, in 1986 the Economic and Social Council – which had first asserted the principle of the right to return in 1946 – approved a set of draft principles on the right of everyone to leave any country and to return to one's country[24]. On that occasion, the Council also decided that the Commission on Human Rights should have continued to retain on its agenda on the topic. Considering this, the presence of the right to return and its status of an acknowledged norm of international law gathered the juridical opinion around the conviction of it being a general principle of law recognized by civilized nations.

Besides, a reference to the right to return is present in article 5 of the 1965 Convention on the Elimination of All forms of Racial Discrimination (CERD) and in the Principles on Housing and Property Restitution for Refugees and Displaced Persons (also known as the Pinheiro Principles) adopted in June 2005. The abovementioned principles were finally endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights, and they provide a primary guidance to governmental and non-governmental authorities for the development

and the implementation of housing and property restitution laws, policies and programs to ensure the protection of the right to housing and property restitution[25].

Additionally, despite being neither an act of hard nor soft law but a mere study commissioned by the International Committee of the Red Cross, an eventual pertinent reference to the right to return is to be detected in rule 132 of the ICRC Rules of Customary International Law, which is dedicated to the return of displaced persons. Markedly, the rule states as follows: «*Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist*»[26]. Accordingly, the right to return applies to those who have been voluntarily or involuntarily displaced in the context and as a consequence of the armed conflict, and not to individuals with foreign nationality who have been lawfully expelled.

Within the context of war, the Geneva Convention (IV) further provides that persons who have been evacuated during military operations must be transferred back to their homes as soon as hostilities in the area at issue have ceased. This therefore means that the displacement must be limited in time, and that individuals must be allowed to return to their homes or places of habitual residence within a determined period of time[27]. On top of that, the Guiding Principles on Internal Displacement provide that displacement shall last no longer than required by the circumstances[28]. Otherwise, the same Guiding Principles further provide for the duty of competent authorities to take measures to facilitate the voluntary and safe return and reintegration of displaced persons, recalling the Convention Governing Refugee Problems in Africa adopted on September 10, 1969. Among the measures to be taken to smooth the voluntary and safe return and reintegration of displaced persons, activities as mine clearance, assistance to cover basic needs as shelter, food, water and medical care, construction tools, rehabilitation of schools, training programs and education are included[29].

2.2 *The right to return as a norm of customary international law?*

The debate around whether the right to return amounts to a principle of customary international law results to be of particular importance. As a matter of fact, even though its precise content appears to be difficult to define, part of the doctrine supports its customary nature due to its express recognition in most international human rights instruments, draft declarations, national constitutions, and in the law and jurisprudence of

multiple States[30]. As portrayed in the above section, a formal recognition is furthermore present in international humanitarian law instruments, as well as a clear reference can be consistently detected in resolutions of UN organs dealing with the rights of displaced individuals and refugees. Similarly, as concerns the objective element of the international custom, State practice seems to suggest that an individual or a State national will not be denied the right of re-entry[31]. A clear example on this matter is the Arab Declaration on the Protection of Refugees and Displaced Persons in the Arab World of 19 November 1992, which provides in article 1 for the «*right of individuals to leave and to return to their own countries*»[32]. Similarly, the International Convention on the Elimination of All Forms of Racial Discriminations (CERD) adopted in 1965 postulates in article 5 that State parties are required to «*prohibit and eliminate racial discrimination […] and guarantee the rights of everyone […] in particular [to] the right to leave any country, including one own's and to return to one's own country*»[33]. In this regard, further documents entailing a reference to the right to return include the *United Nations Draft Principles on Freedom and Non-Discrimination in respect of the right of everyone to Leave any Country, including his own, and to Return to his Country* and the *Strasbourg Declaration on the Right to Leave and Return*, adopted on November 26, 1986.

Nonetheless, to detect the existence of the right to return as a customary norm, its mere inclusion in international treaties, conventions and soft law documents is not sufficient. As a matter of fact, the International Law Commission (ILC)'s Draft conclusions on identification of customary international law of 2018 posit at Conclusion 2 that «*to determine the existence and content of a rule of customary international law, it is necessary to ascertain whether there is a general practice that is accepted as law (opinion juris)*»[34]. It therefore means that considering the practice of international organizations as part of a general practice must entail caution[35] due to their variety of membership and functions. Similarly, the conduct of entities other than States and international organizations is not considered to be an expression of customary international law by the ILC, which explicitly affirms that «*As such, their conduct doers not contribute to the formation, or expression, of rules of customary international law, and may not serve as direct (primary) evidence of the existence and content of such rules […]. However, […] such conduct may have an indirect role in the identification of customary international law, by stimulating or recording the practice and acceptance as law (opinion juris) of States and international organizations*»[36].

For the abovementioned reason, an examination of the *opinio juris* and practice of States with reference to the right to return is deemed necessary to reconstruct its possible customary nature.

At the moment there seems to be a *opinio juris* and State practice regarding the fact that the right to return amounts to a norm of customary international law in its core formulation, namely the right of individuals not being arbitrarily deprived of the ability to come back to their own country. In turn, the presence of numerous international conventions, national legislations and soft law instruments crystallizing the right to return and multiple bodies of law (as refugee law and human rights law) endorsing the principle undoubtedly represents an additional indication confirming its customary nature[37].

More controversial appears, however, the customary nature of the right to return with respect to refugees and displaced persons. As a matter of fact, State practice revealed that the recognition of the customary nature of the right to return is context-specific, recognized on a case-by-case basis and not applied or accepted uniformly.

For example, in the vision of most of the doctrine, the previously recalled General Assembly resolution 194 (III) of 11 December 1948 and the ICRC Rule 132 included in the Rules of Customary International Law leave no doubt on the level of acceptance of the customary nature of the considered right. Nonetheless, in the words of Eric Rosand:

«*In order to show that international practice is starting to support an expansive right to return, which, as demonstrated above, is grounded in the international human rights covenants, mass returns must take place in conjunction with the international community's assertions and the acknowledgment by the parties to the underlying conflict that these people are returning as a matter of right*»[38].

A first relevant example concerns the right to return of Palestinian refugees, which for the first time was made explicit in the already mentioned General Assembly Resolution 194(III) of 1948. Nonetheless, the resolution configures as a non-binding instrument, reflecting political positions more than an established customary norm of international law. Relevant to the discourse on the customary nature of the right to return in this regard is the recent Advisory Opinion of the International Court of Justice (ICJ) *Legal consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem,* delivered on July 19, 2024. Indeed, in line with the previous practice of General Assembly's resolutions on the Palestine issue, the Court made reference to the current practices of Israel in occupied territories and

clearly mentioned the right to return of Palestinianss, by stating in paragraph 270 that «*Restitution [...] also requires [...] allowing all Palestinians displaced during the occupation to return to their original place of residence.*»[39] Following the ICJ's Advisory Opinion, on 19 December 2024 the UNGA adopted a Resolution demanding Israel's compliance with its legal obligations under international law, including as set out by the ICJ[40]. Nonetheless, in spite of the wide support of the international community to the resolution, it has to be acknowledged that at the moment the right to return as applied to the Palestinian people has not been applied and enforced mainly due to political and security reasons, thereby reinforcing the affirmation that the right at issue is generally applied on a case-by-case basis.

Similarly, by taking as example the Bosnian context, the Dayton Agreement signed in 1995 which put an end to the Bosnian War explicitly included provisions for the return of displaced persons. More precisely, the rights of refugees and displaced persons to return to their homes was included as a key goal of the peace agreement in annex 7. This objective was previously endorsed by the Security Council, which in the already mentioned Resolution 787 of 1992 insisted on the voluntary return of all refugees and displaced persons to their pre-war homes as part of a durable solution to the conflict[41]. Nonetheless, in practice the implementation of the right to return did not respect the return of 2.2 million Bosnian refugees as originally foreseen by the Dayton Accords, thereby only realizing what has been described as a «minority return»[42]. Indeed, apparently only 400,000 people have been in the position to exercise the right to return. For this reason, the case of Bosnia can be considered a further example of a non-universal international practice concerning the right to return of refugees, which again appears to be context dependent. As a matter of fact, the possibility to affirm that international practice supports an expansive right to return cannot be exclusively linked to the inclusion of the right in international covenants and soft law instruments, but must be grounded in a consistent practice of States confirming that refugees and IDPs are returning to their original places of residence as a matter of right.

Similar conclusions can be reached with reference to the situation in Cyprus after the occupation of the northern part of the island by Turkish military forces in 1974. Hence, approximately 180,000 Greek-Cypriot nationals have left the island as a consequence of the circumstances, and other 45,000 Turkish-Cypriots already residing in the South decided to move toward the territory controlled by Türkiye. Also in this case, the UN Security Council and the General Assembly endorsed the support for the

return of Greek-Cypriot nationals to their former habitations[43], in spite of Türkiye's refusal to recognize the existence of such a right. Similarly, in 1996 the European Court of Human Rights in the case *Loizidou v. Turkey* reiterated the responsibility of Türkiye to ensure the right to return of a Greek-Cypriot woman who was displaced in 1974. On that occasion, the Court furthermore found the country in violation of article 1 of Protocol 1 of the European Convention on Human Rights, due to the prevention of the plaintiff's right to return to her ancestral land in Northern Cyprus[44].

In spite of this, however, the situation in Cyprus still appears to be a net ethnic division between the North and the South, thereby confirming the reluctance of some States to recognize the existence of a right to return and to effectively implement it.

Nonetheless, the case law of the European Court of Human Rights concerning disputes involving the right to return does not limit to the abovementioned decision regarding the situation in Cyprus. Indeed, in 2012 the Court found inadmissible a dispute involving Chagos Islanders and the United Kingdom, due to the fact that the former effectively renounced to their right to return because of the acceptance of compensation by the UK[45]. Specifically, the case concerned the possibility that the applicants of the Chagos Islands (now known as British Indian Ocean Territory, BIOT) were effectively expelled from or barred from returning their homes between 1967 and 1973 by the United Kingdom to facilitate the construction of a military base on Diego Garcia operated by the USA. In that regard, the Court affirmed that «*where applicants accept a sum of compensation in settlement of civil claims and renounce further use of local remedies, they will generally no longer be able to claim to be a victim in respect of those matters. Having accepted and received compensation in the Ventacassen litigation and thus having effectively renounced bringing any further claims, the applicants could no longer claim to be victims of a violation […]*»[46].

Eventually, a further case decided by the European Court of Human Rights in 2015 concerns the right to return of an Armenian national displaced from the territories formerly pertaining to Soviet Azerbaijan during the Nagorno Karabakh conflict. Indeed, in the case Sargsyan v. Azerbaijan, the Court found Azerbaijan in violation of the European Convention on Human Rights due to the country's unwillingness to allow Sargsyan and its family to return to their property. At the same time, the Court further underlined the importance of the right to return of displaced persons[47].

As for the previously mentioned cases, State practice does not appear uniform with respect to the existence of a customary right to return of refugees and displaced individuals.

Alongside this, further elements that are worthy of consideration concern the content of the right to return, to whom it is addressed and what instruments would guarantee its enforcement. Hence, in spite of the fact that the majority of scholars supports the existence of a norm of customary international law assuring an individual outside his country the right to return to it, the content of this right has nevertheless been subjected to ongoing discussions[48]. In this respect, David Miller explicitly clarifies that in spite of the right to return being widely recognized in international law, its precise content and the basis on which individuals can claim it still remain ambiguous[49]. The reference to the language employed by the already mentioned International Covenant on Civil and Political Rights at article 12(4) and by the International Convention on the Elimination of All Forms of Racial Discrimination at article 5(d)(ii) represent a case in point: hence, both legal instruments employ the term «country», thereby indicating that the right to return is not linked to a person's juridical status nor to its possession of a nationality granted by a State. The absence of narrow formulations and the broad indication to the return to one's country contribute to the ambiguity and the vagueness of the right to return's content, as well as of what it actually implies in practice. According to the author, it is not clear whether the right of return is understood to be exercisable only by single individuals or also by larger groups or communities wishing to come back to their former places of residence[50]. For this reason, Miller advances the proposal of distinguishing between residence-based and citizenship-based conceptions of persons entitled to claim the right to return, with a view to grasp the different sensitiveness in the interpretation of the different extensions and justifications of the right at issue[51]. At the same time, the prevention of statelessness and the human need to belong and to have a homeland to return to are further considered by the author as justification for the exercise of the right to return, which is generally enforceable on an individual basis and – under some circumstances – also collectively by groups of people aspiring at reconstructing their ethnic community in their original place of residence.

Against this background and in spite of the ambiguities that have been underlined in the present section, it can be affirmed that – depending on the specific context – the right to return may be exercised by nationals of a country, as States cannot arbitrarily prevent their nationals from re-entering. As emerged from State practice, the customary nature of the right to return appears to be more contested in presence of displaced populations, including refugees and internally displaced persons (IDPs). Indeed, this

view is extensively context-specific and not universal, depending on the single State's approach.

2.3 *The collective dimension of the right to return*

As partially underlined in the previous paragraph, an additional heated debate concerning the right to return is centered upon its eventual limitation to an individual right or, conversely, its possession of a collective dimension. Hence, since the right to return as a legal principle was first enunciated in the non-binding Universal Declaration of Human Rights in 1948, scholars have generally conceived it as to be applicable only to individuals but not to persons belonging to a group[52]. For this reason, there appears to be an evident need of the international community to adequately and effectively confront the issue by clarifying the scope of application of the right, either to all individuals and/or to members of an entire dislocated population.

Although various scholars have argued that the right to return is applicable even when it is claimed by groups of displaced communities[53], in actual terms the majority of the doctrine shares the vision that international human rights instruments do not recognize such a collective dimension of the right[54]. In support of this standpoint, the dominant view maintains that the issue of return of masses of dislocated people amounts either to a political or to a self-determination problem, rather than an issue to be dealt with by international human rights law[55].

In this regard, a case in point involves a further mention to the 2024 ICJ's Advisory Opinion *Legal consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. Hence, even though the right to self-determination of Palestinians was already affirmed in previous United Nations General Assembly Resolutions[56] and in the previous ICJ Advisory Opinion *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* delivered in 2004[57], the Court tackles the situation of Palestinians as an issue of self-determination. Indeed, in paragraphs 230-243 the Court enquiries the effects of Israel's policies and practices on the exercise of the Palestinian people's right to self-determination, expressing the view that the prolonged character of Israel's unlawful policies and practices exacerbates the violation of Palestinians'right to self-determination[58]. For this reason, the Court found that Israel is under an obligation to cease its unlawful presence in the occupied Palestinian territories in the most rapid way possible[59], and the international community shall not recognize the

current situation arising from Israel's unlawful presence in the occupied territories as legal[60].

In addition to this argument, scholars relied on the fact that both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights ensure to the potential receiving State the right to derogate or limit the exercise of rights and freedoms guaranteed by these conventions, with a view to legitimize the refusal to accept the return of refugees and masses of dislocated peoples. Concretely, this position is generally supported by those States and scholars that endorse Israel's refusal to accept the right to return of Palestinians, and it entails the invocation of a general limitation pursuant to article 29 of the Universal Declaration of Human Rights permitting its non-application in the case in which «*the influx of more than one and half million mostly hostile refugees would without doubt violate the rights and freedoms of others in Israel*» and would probably «*damage public order and the general welfare in a diplomatic society*»[61]. It is unquestionable that this argument is mainly employed as a justification for a clear (unlawful) denial of the return of all the members of the dislocated group. However, the adoption of such an approach reveals to be useful in order to prevent the return of those refugees whose true hostility to the receiving State could not give the expectation of a peaceful life upon return.

Eventually, from an historic perspective the derogation of a State of its obligations deriving from human rights instruments and with respect to the determination whether to deny the right to return to displaced communities is usually linked to a government that in most cases has been the responsible for the exodus of the same community. More precisely, the receiving State would in all likelihood perceive the impending return of the same group as a threat to the national order, security and stability[62].

In any case, in spite of the different approaches that have been presented in this section, it appears possible to share De Zaya's view of the freedom of movement as inevitably acquiring a collective dimension when considered in the context of mass movements of persons. Accordingly, this collective dimension does not imply the modification of the character of the right to leave and to return as individual rights, whose application needs in turn to be determined on an individual basis[63]. As explained by Miller:

«*an individual's claim to return only makes sense in the context of a collective right of return, whereby a sufficiently large number of people go back to recreate the located community that has been destroyed. The exer-*

cise of any individual's right of return will depend on the willingness of the other members of the relevant group to seize the opportunity to repatriate and reconstitute the homeland»[64].

For these reasons, due to its relevance in situations involving refugees, displaced persons and populations affected by conflict or expulsion, it would be reasonable to conclude that the right to return has both individual and collective dimensions, with the latter to be realized and enforced under some circumstances by a community of people desiring to return as a group to a former place of residence, country or homeland. Indeed, no modification of the right holder will occur depending on the individual or collective dimension of the right, as well as the legal basis to claim for its respect by States.

3. The right to return in practice: the Armenia-Azerbaijan case

As concerns the practical application of the right to return, the refugee situation in South Caucasus and in particular the mass dislocation of Azeri from Armenia offers an interesting perspective of the attitude of the international community regarding displaced peoples and refugees in the region. What is more, for the time being studies concerning the application of the right to return in that area are rather scarce, as well as South Caucasian perspectives on the topic result to be sporadic.

Historically speaking, South Caucasus has been the theatre of a thirty-year long conflict between Armenia and Azerbaijan, which virtually broke out in concomitance with the crisis and eventually the collapse of the Soviet Union at the beginning of the 1990s. By 1993, the aggression of Armenia against Azerbaijan resulted in the former's occupation of approximately 20% of the sovereign territory of Azerbaijan and the forcible expulsion of around 1 million Azerbaijanis from their ancestral lands[65]. More recently, in September 2023 Azerbaijan restored its territorial integrity and as a result approximately 100,000 individuals of Armenian ethnicity residing in the region left their habitations, thus producing a further mass exodus of refugees in the region[66].

Beside this, as concerns Azeris expelled from their previous residences in Armenia, it should be recalled that the current predominantly monoethnic composition of modern Armenia is also to be associated with the cumulation of intimidations and enforced ejection of ethnic Azeris that began in the early 20th century and continued into the late Soviet era, until the previously mentioned First Karabakh War in 1991[67]. The scholarly

community has identified at least four waves of expulsion from Armenia: 1905-1906; 1918-1921; 1948-1953 and 1987-1991. Moreover, the situation was further exacerbated in the mid-20th century due to Stalin's soviet policies leading to the transfer of then Azeri-majority regions to Armenia[68].

For the time being, the situation of Azeri refugees has still not been addressed by the international community, which however has solely become acquainted of the negative consequences of the displacements on Azeri citizens'enjoyment of human and cultural rights. Indeed, despite the institutionalization of Azeri communities'calls for international recognition and eventually the application of their right to return in Armenia, the problem remains unsolved, understudied and ultimately unconsidered. Accordingly, among many reasons, political and security challenges undoubtedly play a role[69].

Against this background, several remarks can be retrieved from the general discourse on the right to return made in the previous sections of this paper and from the general refugee situation in South Caucasus. First, it should be noted that the case of Azeri displaced persons appears to be relevant considering previous discussions on the right to return, especially as concerns the hindrances connected to its conception as an individual or as a collective right. As a matter of fact, from a pure legal perspective the right to return is still to be considered on an individual case-by-case basis. At the same time, however, as in the previously mentioned case of Palestinian people, the situation in South Caucasus imposes a set of reflections on the effective convenience of the consideration of the right to return as an individual right, given the fact that in many cases it is invoked by entire groups of people. For this reason, the topic appears to be more current than ever, as well as in need of further investigation to detect any future developments both of international law and of State practice in this sense.

In this regard, it should be noted that since 2021 the International Court of Justice dealt with the situation in South Caucasus in two disputes opposing Armenia and Azerbaijan relating to the application of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) adopted in 1965[70]. In particular, on September 16, 2021 Armenia filed a case against Azerbaijan basing the ICJ's jurisdiction on Article 22 of the CERD. At the same time, on 23 September of the same year Azerbaijan filed a case against Armenia before the ICJ based on the same Article of the CERD[71].

As concerns the lawsuit filed by Armenia, the country complained about the violation of the CERD by Azerbaijan due to alleged systemic

discrimination, mass killings, torture and other abuse, supposedly directed at individuals of Armenian ethnic or national origin. Additionally, the application to the ICJ contained a request for the indication of a set of eight provisional measures to prevent the aggravation or extension of the dispute[72]. On its part, Azerbaijan refused Armenia's allegations and asked the Court to reject the request for the indication of provisional measures and filed a parallel case against Armenia contending the country's engagement in discriminatory acts against Azeris on the basis of their national and ethnic origin[73]. More precisely, Azerbaijan alleged that Armenia's policies of ethnic cleansing, cultural erasure and fomentation of hatred against Azeris amount to a violation of the Convention. In light of this, the application contained a request for the indication of six provisional measures, in order to protect the rights enshrined in the CERD[74]. On 7 December 2021, the ICJ indicated certain measures in order to protect the rights claimed by Azerbaijan. In particular: «*The Court considers that, with regard to the situation described above, Armenia must, pending the final decision in the case and in accordance with its obligations under CERD, take all necessary measures to prevent the incitement and promotion of racial hatred, including by organizations and private persons in its territory, targeted at persons of Azerbaijani national or ethnic origin*»[75]. Additionally, in paragraph 74 the Court recalled the LaGrand (Germany v. United States of America) Judgement of 2001 to affirm that provisional measures have binding effect and thus create international legal obligations for any party to whom they are addressed[76].

Additionally, on 22 February 2023 the Court further indicated provisional measures following Azerbaijan's second request of indication of provisional measures on 4 January 2023, due to the emergence of new evidence showing Armenia's alleged contradiction of representations made to the Court in 2021 and its deliberate dissemination of landmines after 2021 in civilian zones to which displaced Azerbaijanis had to return[77]. For this reason, the Court ordered a set of provisional measures soliciting Armenia to «*immediately take all necessary steps to enable Azerbaijan to undertake the prompt, safe and effective demining of the towns, villages and other areas to which Azerbaijani civilians will return […] in order to enable Azerbaijani internally displaced persons to return to their homes*»[78]. In addition to that, the Court made an additional reference to Azeris returning to their original places of residence by indicating a second provisional measure: «*Armenia shall immediately cease and desist from any further efforts to plant or to sponsor or support the planting of landmines and booby traps in these areas to which Azerbaijani civilians*

will return in Azerbaijan's territory, including, but not limited to, the use of the Lachin Corridor for this purpose»[79].

However, in spite of the order of the International Court of Justice, no concrete action has been undertaken by Armenia neither to comply with the provisional measures, nor to facilitate and realize the right to return of Azeri IDPs to their original residences. On the contrary, a more recent ICJ Order of Provisional Measures dated 17 November 2023 tackled the issue of the exodus of ethnic Armenians from Nagorno-Karabkah following September 2023 Azerbaijan's restoration of sovereignty over the region[80]. In particular, the Court partially accepted Armenia's requests for preliminary measures, but rejected Azerbaijan's requests regarding the issue of the return of people who left Nagorno-Karabakh after Semptember 2023. More precisely, the Court ordered that *«The Republic of Azerbaijan shall, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination, (i) ensure that persons who have left Nagorno-Karabakh after 19 September 2023 and who wish to return to Nagorno-Karabakh are able to do so in a safe, unimpeded and expeditious manner; (ii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 and who wish to depart are able to do so in a safe, unimpeded and expeditious manner; and (iii) ensure that persons who remained in Nagorno-Karabakh after 19 September 2023 or returned to Nagorno-Karabakh and who wish to stay are free from the use of force or intimidation that may cause them to flee»*[81].

Considering ICJ jurisprudence highlighted in the present section, the regional example of (mis)application of the right to return considered in this section opens to additional reflections on the relationship between the legal and the political dimension deriving from the effective exercise of the right. Indeed, in spite of the numerous invoked Conventions and official United Nations documents, the underlying political layer is particularly evident in the South Caucasus example: as repeatedly highlighted over the paper, multiple internal and external factors involving the changed geopolitical situation in the region, the general level of mutual trust between the two countries, the perception of internal security in Armenia and its stances toward the conception of sovereignty are at play[82]. In turn, these aspects raise concerns about the prospect of granting an effective possibility to Azeris displaced persons to exercise their right to return, since their presence is highly interpreted as a destabilizing societal factor in Armenia. Conversely, the same reasons can be invoked with reference to ethnic Armenians desiring to return to the Nagorno-Karabakh region.

Eventually, by adopting a broader regional perspective, the missing repatriation of Azeris to Armenia and vice-versa further undermines the delicate ongoing peace negotiations between the two countries[83].

Conclusion

The constant recalling of the right to return and its inclusion both in hard and soft international law instruments leaves no doubt around the legal relevance of the movement of forcibly displaced peoples and communities and their re-establishment in areas of previous residence.

In spite of the presence of a heated debate around the customary international law nature of the principle – which at present is deemed to be unquestioned – and its uncertain collective dimension, the right to return is considered to be a corollary of the right to freedom of movement and as such it appears to be protected by numerous legal documents. Similarly, the United Nations and its organs continuously recall for a concrete implementation of the right to return by making its realization part of the political agenda of post-war reconstruction efforts. Nonetheless, many examples that go beyond the mere right of Palestinian people to return to their ancestral lands and encompass examples at a worldwide level prove that the international legal framework still appears to be ill-equipped for an effective protection of the right of individuals to re-establish in pre-war or pre-forcibly displacement areas of residence. Eventually, the focus on the practical and political hindrances linked to its actual application in the South Caucasus region, the collective nature of the right to return remains an open question, with a number of States interpreting the re-establishment of refugees and displaced communities in a restrictive way by virtue of fears of domestic destabilization and alterations of the status quo. As a consequence, human rights norms included in international treaties, resolutions and declarations are frequently derogated based on political motives.

Note

[1] A. M. DE ZAYAS, *International Law and Mass Population Transfers,* in «Harvard International Law Journal», vol.16, n.2, 1975, p. 223. By referring to the legacy of the Treaty of Lausanne signed in 1923, the scholar posits that the transplanting of population from their ancestral lands as a means to curb ethnic

violence after the first world war represented a negative precedent, which was later followed during the final months of the second world war. Indeed, population transfers on an unprecedented scale occurred pursuant to the Potsdam Declaration signed on August 2, 1945, which provided for the transfer to Germany of 15 million Germans in Austria, Poland, Hungary and Czechoslovakia. Nonetheless, the Declaration did not deal with the right to return, nor mentioned further issues connected to the mass transfer.

[2] Data can be retrieved from *UNHCR by numbers*, in «United Nations Digital Library», 1997, https://digitallibrary.un.org/record/251091.

[3] E. ROSAND, *The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent*, in «Michigan Journal of International law», vol. 19, n. 4, 1998, pp. 1119-1120.

[4] See S.C. Res. 947, U.N. SCOR, 49th Sess., 3434th mtg., 7; S.C. Res. 859, U.N. SCOR, 48th Sess., 3269th mtg., 6(d).

[5] UNITED NATIONS SECURITY COUNCIL, *Draft Resolution,* S/1996/921, 9 November 1996, https://digitallibrary.un.org/record/223396?ln=en&v=pdf. Adopted as S/RES/1078, 9 November 1996, 10(b): «*To seek the cooperation of the Government of Rwanda in, and to ensure international support for, further measures, including the deployment of additional international monitors, as appropriate, to build confidence and ensure a safe return of refugees*». https://digitallibrary.un.org/record/223424?v=pdf.

[6] See among others S.C. Res. 999, U.N. SCOR, 50th Sess., 3544th mtg, 16 June 1995, https://documents.un.org/doc/undoc/gen/n95/180/23/pdf/n9518023.pdf.

[7] See for instance S.C. Res. 1080, U.N. SCOR, 51st Sess., 3713th mtg., 3, U.N. Doc. S/RES/1080, 1996 with respect to Rwanda and S.C. Res. 1014, U.N. SCOR, 50th Sess., 3577th mtg., 14, U.N. Doc. S/RES/1014, 1995 referring to Liberia.

[8] S. AGTERHUIS, *The right to return and its practical application*, Lambert Academic, London, 2017.

[9] K. LAWAND, *The Right to Return of Palestinians in International Law*, in «International Journal of Refugee Law», vol. 8, n. 4, 1996, pp. 539-540.

[10] International Covenant on Civil and Political Rights, 1966, article 12 (4).

[11] A. CASSESE, *The International Protection of the Right to Leave and to Return*, in «Studi in Onore di Manlio Udina», vol. 1, Giuffre, Milano, 1975, pp. 219-221.

[12] Alongside international conventional instruments regarding the protection of refugees, bibliographic references abound in this regard. Although not exhaustive, see for example F. NEGOZIO, *La protezione temporanea nel diritto internazionale. Profili di ricostruzione teorica, prassi e prospettive evolutive,* Edizioni Scientifiche Italiane, 2023; L. MANCA, *Notes on the UN Special Rapporteur on the human rights of migrants. Practice, challenges and perspectives,* in «Federalismi», 2023; G.S. GOODWIN-GILL, J. MCADAM, *The Refugee in International Law,* Oxford University Press, 2021; C.COSTELLO, M.FOSTER, *The Oxford Handbook of International Refugee Law,* Oxford University Press, 2021; V. CARLINO, *L'accesso alla tutela giurisdizionale nella procedura per il riconoscimento del diritto di asilo,* Wolters Kluver, 2021; M. ODELLO, *Il diritto dei rifugiati,* Franco Angeli, 2021.

[13] AFRICAN UNION, *Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention),* 23 October 2009, entered into force 6 December 2012.

[14] *Ivi,* Article III (1).

[15] UNITED NATIONS DIGITAL LIBRARY, *Letter dated 17 July 1992 from the Permanent Representatives of Belgium, France and the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council*, S/24305, 17 July 1992, https://digitallibrary.un.org/record/146603?v=pdf.

[16] E. KANDEL, *The Right to Return,* in «Journal of Law & Economics», vol. 39, 1996.

[17] Universal Declaration of Human Rights, 10 December 1948, art. 13(2). Nonetheless, scholars have generally interpreted the right to return as formulated by art. 13(2) in a restrictive manner. This should be understood in light of the political and legal context of the 1940s: indeed, human rights law was still in an infancy phase, as it was the prohibition of mass expulsions and transfers of individuals. For this reason, the right to return does not fall within the main focus of the UDHR drafters.

[18] International Covenant on Civil and Political Rights, 1966, art. 12.

[19] CCPR General Comment No. 27, Article 12, https://www.refworld.org/legal/general/hrc/1999/en/46752.

[20] In 1994, a tripartite agreement on the implementation of the voluntary return of Rwandese refugees from Zaire based on Article 13(2) UDHR and article 12 ICCPR was signed between the Governments of Zaire, Rwanda and the UNHCR. The agreement is available at the following link: https://digitallibrary.un.org/record/198058?ln=en&v=pdf. Furthermore, with regard to the situation in the South Caucasian State of Georgia, a quadripartite agreement was signed by the UNHCR with the governments of Russia, Abkhazia and Georgia with the scope of guaranteeing the voluntary return of displaced persons and refugees, which recalled the same abovementioned articles in the UDHR and the ICCPR. The agreement is available at: https://peacemaker.un.org/sites/default/files/document/files/2024/05/ge940404quadripartiteagreementvoluntaryreturnrefugees.pdf.

[21] S. AGTERHUIS, *The right to return*, Cit., p. 13.

[22] UNITED NATIONS GENERAL ASSEMBLY, *Resolution 194 (III). Palestine – Progress Report of the United Nations Mediator,* 11 December 1948, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/IP%20ARES%20194.pdf.

[23] *Ibidem*

[24] UNITED NATIONS COMMISSION ON HUMAN RIGHTS, *The right of everyone to leave any country, including his own, and to return to his country*, 11 March 1986, https://www.refworld.org/legal/resolution/unchr/1986/en/37224.

[25] UNITED NATIONS SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the Pinheiro Principles), June 2005, https://www.unhcr.org/media/principles-housing-and-property-restitution-refugees-and-displaced-persons-pinheiro.

[26] INTERNATIONAL COMMITTEE OF THE RED CROSS, *Rules of Customary International Law*, Rule 132. Return of Displaced persons, https://ihl-databases.icrc.org/en/customary-ihl/v1/rule132.

[27] Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949, art. 134.

[28] OCHA, *Guiding Principles on Internal Displacement*, 2004, https://www.unhcr.org/media/guiding-principles-internal-displacement.

[29] *Ivi,* principles 1-9.

[30] K. LAWAND, *The Right to Return,* Cit., p. 544. See also W.T. MALLISON, S. MALLISON, *The Right to Return*, in «Journal of Palestine Studies» vol. 9, no. 3, 1980, p. 125.

[31] C.L.C. MUBANGA-CHIPOYA, *Analysis of the current trends and developments regarding the right to leave any country including one's own, and to return to one's own country, and some other rights or considerations arising therefrom*, UN doc. E/CN.4/Sub.2/1988/35, 20 June 1988, art. 18, para 87.

[32] Arab Declaration on the Protection of Refugees and Displaced Persons in the Arab World, 19 November 1992, article 1.

[33] Convention on the Elimination of All Forms of Racial Discriminations, 1956, art. 5.

[34] INTERNATIONAL LAW COMMISSION, *Draft conclusions on identification of customary international law, with commentaries,* 2018, commentary 2.

[35] *Ivi,* Conclusion 4, Commentary (7), p. 131.

[36] *Ivi,* (8), p. 132.

[37] D. N. ARCHER, *Reparations and the Right to Return,* in «NYU Review of Law and Social Change», vol. 45, 2021.

[38] E. ROSAND, *The right to return,* Cit., p. 1138.

[39] INTERNATIONAL COURT OF JUSTICE, *Legal Consequences Arising From The Policies And Practices Of Israel In The Occupied Palestinian Territory, Including East Jerusalem,* Advisory Opinion, 19 July 2024.

[40] UNITED NATIONS GENERAL ASSEMBLY, *Request for an advisory opinion of the International Court of Justice on the obligations of Israel in relation to the presence and activities of the United Nations, other international organizations and third States,* A/RES/79/232, 19 December 2024, para 2.

[41] UNITED NATIONS SECURITY COUNCIL, S/RES/787, 1992, para 2.

[42] E. ROSAND, *The right to return,* Cit., p. 1111.

[43] See for instance UNGA, A/RES/37/253, 13 March 1983; UNSC, Resolution 774, 26 August 1992.

[44] EUROPEAN COURT OF HUMAN RIGHTS, *Case of Loizidou v. Turkey,* 18 December 1996. https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58007%22]}.

[45] EUROPEAN COURT OF HUMAN RIGHTS, *Case of Chagos Islanders v. United Kingdom*, 11 December 2012. https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22002-7334%22]}.

[46] *Ivi,* at Law – Article 34 (victim status).

[47] EUROPEAN COURT OF HUMAN RIGHTS, *Case of Sargsyan v. Azerbaijan,* 16 June 2015. https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-155662%22]}.

[48] S. AGTERHUIS, *The right to return,* Cit., pp. 2-4.

[49] D. MILLER, *Justifying the right of return,* in «Theoretical Inquiries in Law», vol. 21, 2020.

[50] *Ivi,* p. 374.

[51] *Ivi,* pp. 375-377.

[52] K. LAWAND, *The right to return,* Cit., pp. 542-543; E. ROSAND, *The right to return*, Cit., p. 1128.

[53] J. QUIGLEY, *Family Reunion and the Right to Return to Occupied Territory,* in «Georgetown Immigration Law Journal», vol. 6, n. 2, 1992, pp. 236-237.

[54] See S. JAGERSKIOLD, *The Freedom of Movement,* Cit., p.180; H. HANNUM, *The Right to Leave and Return in International Law and Practice,* Martinus Nijhoff, Dordrecht, 1987, p. 175.

[55] E. ROSAND, *The right to return,* Cit., p. 1128.

[56] See, among others, UNITED NATIONS GENERAL ASSEBLY, A/RES/3236 (XXIX), *Question of Palestine,* 22 November 1974.

[57] INTERNATIONAL COURT OF JUSTICE, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, 2004.

[58] INTERNATIONAL COURT OF JUSTICE, *Legal Consequences Arising From The Policies And Practices Of Israel In The Occupied Palestinian Territory, Including East Jerusalem,* Cit., paras 230-243.

[59] *Ivi,* para 267: «*With regard to the Court's finding that Israel's continued presence in the Occupied Palestinian Territory is illegal, the Court considers that such presence constitutes a wrongful act entailing its international responsibility. It is a wrongful act of a continuing character which has been brought about by Israel's violations, through its policies and practices, of the prohibition on the acquisition of territory by force and the right to self-determination of the Palestinian people. Consequently, Israel has an obligation to bring an end to its presence in the Occupied Palestinian Territory as rapidly as possible*».

[60] *Ivi,* para 274: «*The Court observes that the obligations violated by Israel include certain obligations erga omnes. […] Among the obligations erga omnes violated by Israel are the obligation to respect the right of the Palestinian people to self-determination*». See also para 278: «*Taking note of the resolutions of the Security Council and General Assembly, the Court is of the view that Member States are under an obligation not to recognize any changes in the physical character or demographic composition, institutional structure or status of the territory occupied by Israel on 5 June 1967, including East Jerusalem, except as agreed by the parties through negotiations and to distinguish in their dealings with Israel between the territory of the State of Israel and the Palestinian territory occupied since 1967*».

[61] T. KRAMER, *The Controversy of a Palestinian Right to return to Israel*, in «Arizona Journal of International and Comparative Law», vol. 18, n. 3, 2001.

[62] K. LAWAND, *The right to return,* Cit.

[63] A. M. DE ZAYAS, *Population, Expulsion and Transfer*, in «Enclopedia of Public Interational Law», Elsevier Science, Amsterdam, vol.8, 1985, at 438-443. The same vision is shared by S. Agterhuis, cit., pp. 9-10.

[64] D. MILLER, *Justifying the right of return,* Cit., p. 393.

[65] B. FRELICK, *Faultlines of Nationality Conflict: Refugee and Displaced Persons from Armenia and Azerbaijan,* in «International Journal of Refugee Law», vol.6, 1994, p. 581.

[66] UNITED NATIONS NEWS, *UN Karabakh mission told 'sudden'exodus means as few as 50 ethnic Armenians may remain*, 2 October 2023, https://news.un.org/en/story/2023/10/1141782.

[67] CENTER OF ANALYSIS OF INTERNATIONAL RELATIONS, *Why there are no Azerbaijanis in the Modern Territories of Armenia*, 2024, p. 4.

[68] B. FRELICK, *Faultlines of Nationality Conflict,* Cit., p. 588.

[69] CENTER OF ANALYSIS OF INTERNATIONAL RELATIONS, *Why there are no Azerbaijanis*, Cit. p. 5.

[70] INTERNATIONAL COURT OF JUSTICE, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan),* 2021; See also INTERNATIONAL COURT OF JUSTICE, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan v. Armenia),* 2021.

[71] R. MAUREL, *Confirming recent developments in the Law of Provisional Measures by and before the International Court of Justice: Remarks on the Provisional Measures Orders of 7 December 2021 in the Cases concerning the application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v Azerbaijan and Azerbaijan v Armenia),* in «Canadian Yearbook of International Law», 2021, pp. 368-369.

[72] INTERNATIONAL COURT OF JUSTICE, *Armenia v. Azerbaijan,* Cit.

[73] INTERNATIONAL COURT OF JUSTICE, *Azerbaijan v. Armenia,,* Cit.

[74] *Ibid.* See also E. SALKIEWICZ-MUNNERLYN, B. ZYLKA, *Interim measures of protection, Order of the ICJ from 7 December 2021 in Case of Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan) and (Azerbaijan v. Armenia),* in «Ukrainian Journal of International Law», vol. 3, 2022, p. 53.

[75] INTERNATIONAL COURT OF JUSTICE, *Application Of The International Convention On The Elimination Of All Forms Of Racial Discrimination*, *Azerbaijan v. Armenia*, Request of indication of Provisional Measures, Order of Provisional Measures, 7 December 2021, para 71. https://www.icj-cij.org/sites/default/files/case-related/181/181-20211207-ORD-01-00-EN.pdf.

[76] *Ivi,* para 74.

[77] INTERNATIONAL COURT OF JUSTICE, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination, Azerbaijan v. Armenia,* Request for the Indication of Provisional Measures, Order of 22 February 2023, para 6. https://www.icj-cij.org/sites/default/files/case-related/181/181-20230222-ord-01-00-en.pdf.

[78] *Ivi,* para 11(a).

[79] *Ivi,* para 11(b).

[80] INTERNATIONAL COURT OF JUSTICE, Application of The International Convention on the Elimination of All Forms Of Racial Discrimination (*Armenia V. Azerbaijan*), Request For The Indication Of Provisional Measures, Order of 17

November 2023. https://www.icj-cij.org/sites/default/files/case-related/180/180-20231117-ord-01-00-en.pdf.

[81] *Ivi*, para 74 (1).

[82] CENTER OF ANALYSIS OF INTERNATIONAL RELATIONS, *Return of Azerbaijani Refugees to Armenia*, 2024, p. 4.

[83] *Ibid.*