

Research Article

THE INTERNATIONAL LEGAL FRAMEWORK FOR THE DIGNIFIED RETURN AND SECURITY OF AZERBAIJANIS DEPORTED FROM THE PRESENT-DAY ARMENIA

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ABSTRACT

Background: *The forced displacement of the Western Azerbaijani population, initially uprooted from territories occupied by Russia in 1920 and subsequently transferred to the jurisdiction of Armenia, constitutes a critical nexus in international law regarding the repatriation, security, and restoration of rights for displaced cohorts. Under the doctrine of jus cogens, the prohibition of deportation is categorised as a peremptory norm of international law, mandating universal adherence and triggering state responsibility for its breach. The legal framework governing such cases is multifaceted, drawing on International Humanitarian Law (IHL) to address populations displaced by military aggression, while also invoking the principles of State responsibility for international wrongful acts. These principles necessitate comprehensive reparations, including restitutio in integrum (restoration of the status quo ante), compensation, rehabilitation, satisfaction, and robust guarantees of non-repetition.*

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From a normative perspective, the Turkic-Muslim population deported from Armenia remains under the protective umbrella of the 1907 Hague Regulations (IV) and the 1949 Geneva Convention (IV). While extant scholarship has extensively documented the historical and normative dimensions of deportation, a significant analytical lacuna persists regarding the specific international legal mechanisms required to operationalise a dignified return and ensure long-term security. This study seeks to address this gap by synthesising international legal norms, individual criminal accountability, and comparative state practices to propose a definitive framework for legal remedies and international protective instruments.

Method: *This study employs a legal-doctrinal and comparative-legal methodology, supplemented by a historical-legal review of archival sources to reconstruct the context and intent of the 1920, 1948–1956, and 1988 deportations. The research systematically interrogates international instruments and scholarly literature to define the parameters of deportation, genocide, and State responsibility under jus cogens norms. By synthesising international jurisprudence, including rulings from the International Court of Justice (ICJ), the International Criminal Tribunal for the former Yugoslavia (ICTY), the European Court of Human Rights (ECtHR), and the Eritrea-Ethiopia Claims Commission (EECC), with comparative reparations practices, the study proposes a remedial framework encompassing model treaties, monitoring systems, and domestic legislative measures.*

Results and Conclusions: *The displaced Western Azerbaijani population maintains an inalienable right to a dignified return and holistic security under international law, predicated upon the jus cogens prohibition of forced displacement. Under the international legal regime of State responsibility, the breach of these peremptory norms requires a multi-layered remedial approach, encompassing restitutio in integrum, financial compensation, rehabilitation, satisfaction, and robust guarantees of non-repetition, as well as the rigorous prosecution of individuals for international crimes. Normatively, the Turkic-Muslim population expelled from Armenia remains under the continuous protection of both historical and contemporary instruments, bridging the gap between IHL and International Human Rights Law (IHRL). Practical enforcement of these rights may be sought through international judicial fora, such as the ICJ and the ECtHR, further bolstered by domestic legislative frameworks that accord formal recognition to their status as victims of genocidal intent. Collectively, these legal architectures provide a definitive and actionable basis for restoring historical rights, ensuring institutional accountability, and facilitating a safe, sustainable, and dignified repatriation to their ancestral homelands.*

1 INTRODUCTION

The aim of this research is to identify the international legal solutions for the dignified and secure return of Azerbaijanis deported from the territory of present-day Armenia. Central to this study is determining the legal status of the deported population and formulating proposals and conclusions based on the legal consequences of that status. Furthermore, the

research aims to establish the substantive legal and institutional mechanisms necessary to ensure a return that adheres to international safety standards.

The primary object of this study is the deportation of the Azerbaijani (Turko-Muslim) population from present-day Armenia, alongside the complex issues regarding their dignified return and security. This article seeks to provide a comprehensive legal qualification of the forced displacements. It critically analyses whether these deportations constitute crimes against humanity, war crimes, or ethnic cleansing driven by racial and religious discrimination. Finally, the research examines these actions within the context of genocide, assessing whether they were executed under a systematic plan and policy aimed at the total or partial physical or biological destruction of the group.

In international legal scholarship, deportation measures, categorised as crimes against humanity, ethnic cleansing, and genocide, have been extensively studied by prominent scholars such as W. Schabas, A. Bossow, V. Chetail, and H. Travis, among others.¹ However, the specific legal status of Azerbaijanis deported from Armenia, as well as the international legal frameworks governing their dignified return and security, have largely remained outside the scope of comprehensive academic inquiry. A notable exception is the analysis provided by Malcolm Shaw and Naomi Hart in their report, *"Report on War Crimes committed during the occupation of the territories of the Republic of Azerbaijan and the responsibility of the Republic of Armenia."*² Yet, even this significant contribution primarily serves as a factual finding (constatation of facts) rather than a dedicated legal exploration of the mechanisms for repatriation and long-term security. Consequently, this study seeks to fill this critical gap by providing a rigorous legal analysis of the status and rights of the displaced Azerbaijani population. Furthermore, these existing works do not address the legal status of Azerbaijanis deported from West Azerbaijan (present-day Armenia). While Azerbaijani historiography features various studies in this field, notably the research conducted by scholars such as A. Gurbanli, A. Pashayev, J. Gasimov, and B. Najafov, based on archival materials from the USSR (Russian Federation), the Republic of Azerbaijan, and the Republic of Turkiye, these remain primarily historical in nature.³ The relevance of the

- 1 William A Schabas, *An Introduction to the International Criminal Court* (6th edn, CUP 2020); William A Schabas, *Genocide in International Law: The Crime of Crimes* (3rd edn, CUP 2025); William A Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (OUP 2010); Anja Bossow, 'Deportation as Torture' (2025) 57 New York University Journal of International Law and Politics 323; Vincent Chetail, 'Is There any Blood on my Hands? Deportation as a Crime of International Law' (2016) 29(3) Leiden Journal of International Law 917, doi:10.1017/S0922156516000376; Hannibal Travis, 'On the Original Understanding of the Crime of Genocide' (2012) 7(1) Genocide Studies and Prevention 30, doi:10.3138/gsp.7.1.30.
- 2 Malcolm Shaw and Naomi Hart, *Report On War Crimes in the Occupied Territories of the Republic of Azerbaijan and the Republic of Armenia's Responsibility* (Red N Line LLC 2020).
- 3 Asad Gurbanli, *From the History of the Deportation of Azerbaijanis from the Armenian SSR (1947–1953)* (Turxan NPB 2018) [in Azerbaijani]; Atakhan Pashayev, *Resettlement* (Azernashr 1995) [in Azerbaijani]; Jalal Gasimov, *From Repression to Deportation* (Mutercim 1998) [in Azerbaijani]; Bakhtiyar Najafov, *Deportation* (Chashioglu 1998) [in Azerbaijani].

proposed topic is directly linked to the geopolitical processes currently unfolding in the Caucasus and the broader region. Regional peace and security remain precarious; without a foundation in the strict rule of law, unfounded mutual claims, disputes, and ethnic conflicts become inevitable. Regrettably, the establishment of such a rigorous legal order often contradicts the interests of certain political "leaders." The contemporary international system faces significant challenges, including the gross violation of universally accepted **jus cogens** norms and international obligations (such as sovereign equality and the prohibition of the use or threat of force). This is often manifested through the prioritisation of domestic law over international obligations, contrary to Article 27 of the 1969 Vienna Convention on the Law of Treaties—as seen in the "Special Military Operation" justification for military intervention or the extraterritorial application of national laws for "national interests."⁴ The deliberate obstruction or failure of international security mechanisms continues to encourage various nihilistic views regarding the efficacy of international law. Undoubtedly, the core of the problem lies in the fact that the victors of World War II established "extraordinary powers" within the UN Charter,⁵ which act in contradiction of and in violation of the principle of sovereign equality of states. It must not be forgotten that the blood of millions of victims from two world wars rests upon the conscience of those who "operate" the international legal institutions. Despite the inherent weaknesses in enforcement mechanisms, international law remains the essential framework through which we define what is moral and humanitarian.

Modern international law is the culmination of lessons learned from the catastrophes of two world wars. Crimes against modern international law trace their roots back to the violations of the 1907 Hague Convention on the Laws and Customs of War on Land, the Treaty of Versailles (which formalised the end of World War I and incorporated the Wilsonian principles), and the Covenant of the League of Nations.

The Azerbaijani people are among those who have endured the consequences of these systemic violations. By violating the international legal norms of the time, many of which remain in force today, Russia occupied the Azerbaijan Democratic Republic, the first democratic republic established in the East, through military aggression and subsequently partitioned its territories. In a blatant breach of international humanitarian law, a systematic alteration of the demographic structure of these territories ("West Azerbaijan") was initiated. The deportation of hundreds of thousands of indigenous Azerbaijanis was compounded by a secondary crime: the illegal settlement of the occupying state's population into their ancestral homelands.

4 Vienna Convention on the Law of Treaties (adopted 23 May 1969) [1987] UNTS 1155/331.

5 United Nations Charter (adopted 26 June 1945) <<https://www.un.org/en/about-us/un-charter>> accessed 15 January 2026.

2 THE PROHIBITION AND NORMATIVE LEGAL CONCEPT OF DEPORTATION AS AN INTERNATIONAL CRIME

Derived from the Latin term *deportation*, meaning "expulsion" or "exile," deportation is generally defined as the forced removal of an individual or a specific group (population) from their state of residence to another territory, typically escorted by military forces.⁶ It constitutes a legal violation or a criminal measure of a collective nature, perpetrated during both peacetime and periods of armed conflict against civilian populations, including individuals, minorities, and indigenous peoples.⁷

The initiatives to regulate deportation as a legal violation initially emerged within the domestic legislative frameworks of sovereign states.⁸ However, as the phenomenon acquired a more pervasive and transboundary character, it necessitated organised international legal cooperation. Through subsequent adoption of international norms and landmark judicial decisions, the legal regulation of deportation has been formalised, and its definitive legal definition has been strictly codified.

The classification of deportation as a prohibited act under international law is fundamentally grounded in four intertwined constituent elements. Primarily, the act must be conducted in a manner that is contrary to international law⁹ and specifically directed against a civilian population.¹⁰ A critical factor in this legal qualification is the forcible nature of the displacement, where individuals are removed from their permanent or ancestral homelands through coercion, force, or the threat thereof.¹¹ Furthermore, for such actions to constitute international crimes, they must be carried out as part of a widespread or systematic policy, indicating a planned and deliberate intent by the perpetrators.¹² When analysing deportations that are contrary to international law, it is observed that such violations typically manifest in three distinct standard scenarios. The first involves the mass or collective deportation of aliens, a practice currently observed in the domestic policies of several states, including the USA, the UK, and the Russian Federation.¹³ This practice stands

6 Rome Statute of the International Criminal Court (adopted 17 July 1998) [2004] UNTS 2187/3, art 7, para 2(d); Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) [1950] UNTS 75/287, art 49. See also, Emily Haslam, 'Population, Expulsion and Transfer' *Max Planck Encyclopedias of International Law* (2011) <<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e861>> accessed 15 January 2026.

7 *Prosecutor v Delalić et al* Case no IT-96-21-T, Celebici (ICTY Chamber II, 16 November 1998) para 583.

8 Bossow (n 1) 329.

9 Schabas, *The International Criminal Court* (n 1) para 139.

10 *Prosecutor v Ruto, Kosgey, and Sang* Case no ICC-01/09-01/11 (ICC Pre-Trial Chamber II, 23 January 2012) para 164.

11 *Prosecutor v Krstić* Case no IT-98-33-T (ICTY, 2 August 2001) para 529.

12 *Prosecutor v Kordić and Čerkez* Case no IT-95-14/2-A (ICTY Appeals Chamber, 17 December 2004) para 94.

13 Lukas Schmid, 'Deportation, Harms and Human Rights' (2021) 14(2) *Ethics & Global Politics* 98, doi:10.1080/16544951.2021.1926083.

in direct violation of major international instruments, such as Article 4 of Protocol No. 4 to the European Convention on Human Rights (ECHR), Article 22(1) of the International Convention on the Protection of the Rights of All Migrant Workers, and Article 13 of the International Covenant on Civil and Political Rights (ICCPR).¹⁴

The second scenario concerns individual deportations carried out against specific persons in total disregard of the procedural guarantees required by international law, particularly those stipulated under the ICCPR.¹⁵ Finally, the most egregious form of this violation is discriminatory deportation, where forced displacement is motivated by ethnic, religious, or racial prejudice. This form of deportation often serves as a primary tool for demographic engineering and systemic persecution. The Universal Declaration of Human Rights (UDHR), as a cornerstone of international human rights law, explicitly states in Article 9 that "no one shall be subjected to arbitrary arrest, detention, or exile."¹⁶ However, Protocol No. 4 of the 1950 European Convention on Human Rights (ECHR) links the prohibition of deportation to the institution of citizenship, specifying in Article 3.1 that "no one shall be expelled, by means either of an individual or a collective measure, from the territory of the State of which he is a national."

In our view, tethering legal protection solely to citizenship status inadvertently limits the safeguards afforded by other instruments, such as the 1951 Convention Relating to the Status of Refugees.¹⁷ Consequently, we contend that Article 9 of the UDHR and Article 12.1 of the International Covenant on Civil and Political Rights (ICCPR), which stipulates that "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", offer a more accurate and comprehensive legal framework. This broader interpretation aligns more effectively with the fundamental concepts of international humanitarian law.

Furthermore, it is legally inconsistent to link the prohibition of deportation to a citizenship status imposed through illegal military occupation. The legal focus must remain on the population's established residency in a specific territory. It is illogical to bind the right not to be deported to a citizenship (such as that of the USSR or Armenia) that was forcibly instituted following military aggression, specifically, the 1920 occupation of the Azerbaijan Democratic Republic and the subsequent transfer of indigenous lands to Armenia.

14 Council of Europe, *European Convention on Human Rights: as amended by Protocols Nos 11, 14 and 15; supplemented by Protocols Nos 1, 4, 6, 7, 12, 13 and 16* (ECtHR 2013); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted 18 December 1990) [2004] UNTS 2220/3; International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966 UNGA Res 2200 (XXI) [1983] UNTS 999/171.

15 Chetail, 'Is There Any Blood on My Hands?' (n 1) 918.

16 Universal Declaration of Human Rights (UDHR) (adopted 10 December 1948 UNGA Res 217 A) <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>> accessed 15 January 2026.

17 Convention Relating to the Status of Refugees (adopted 28 July 1951) <<https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention>> accessed 15 January 2026.

Therefore, the relevant provisions of Protocol No. 4 should have implemented the inclusive wording of Article 9 of the UDHR, ensuring that "no one", regardless of imposed citizenship, can be forcibly expelled from their country.

Massive, systematic, and widespread crimes of deportation as fundamental human rights violations were a defining characteristic of the USSR, an entity established by the Russian Federation. In an attempt to partially mitigate the consequences of these crimes, a framework agreement was signed in 1992 by several post-Soviet states (with the exception of Georgia and the Baltic states), titled the "Agreement on Issues Related to the Restoration of the Rights of Deported Persons, National Minorities, and Peoples". The Azerbaijani people were among the numerous ethnic groups subjected to forced displacement during the Soviet era, a list that includes Ukrainians, Crimean Tatars, Jews, Poles, Lithuanians, Latvians, Estonians, Meskhetian Turks, Talysh, and others. These state-sponsored actions were not merely isolated incidents but were part of a broader, systemic policy of demographic manipulation and political repression. Despite being strictly prohibited under international law, specifically the 1907 Hague Convention (IV) on the Laws and Customs of War on Land and the 1949 Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War¹⁸, the Azerbaijani Turkic-Muslim population, as an indigenous people, has been subjected to repeated waves of mass deportation.

In blatant defiance of these legal frameworks, hundreds of thousands of Azerbaijanis were forcibly expelled from Armenia through systematic military and administrative measures, most notably during the periods of 1948–1956 and 1988. These actions, characterised by their massive scale and coercive nature, constitute a direct violation of the protections afforded to civilian populations under international humanitarian law and represent a profound breach of the established norms governing the treatment of indigenous inhabitants.¹⁹ To ensure the punishment of these crimes and establish comprehensive international legal responsibility, it is first necessary to address the normative definition and the grounds for prosecuting this offence. Given that deportation predominantly occurs during armed conflicts, its normative definition must be sought within the framework of International Humanitarian Law.

International Humanitarian Law distinguishes deportation, which constitutes a criminal offence, from internment and evacuation.²⁰ Regarding internment or evacuation, as stated in Article 49 (paragraph 2) of the Fourth Geneva Convention, "the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or

18 Convention (IV) Respecting the Laws and Customs of War on Land (adopted 18 October 1907) <<https://www.refworld.org/legal/agreements/hague/1907/31788>> accessed 15 January 2026; Geneva Convention (IV) (n 6).

19 State Archive of the Republic of Azerbaijan, f 411, op 38, d 13, l 38.

20 Vincent Chetail, 'The Transfer and Deportation of Civilians' in Andrew Clapham, Paola Gaeta and Marco Sassòli (eds), *The 1949 Geneva Conventions: A Commentary* (OUP 2015) 1213.

imperative military reasons so demand". This provision is intended to ensure the safety of the population. Specifically, internment is carried out if individuals pose a threat to the occupying power, with their return subject to the cessation of hostilities (Articles 41-42 and 132-134 of the Fourth Convention, "right of return").²¹

In contrast to internment, deportation is strictly prohibited under international humanitarian law. Article 49 of the Fourth Convention specifies that "individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive." Furthermore, the legal nature of this act is established within the same instrument; deportation is categorised as a violation of international law that entails individual criminal responsibility (Article 147). In the event of a breach of this established international obligation, what responsibilities arise for states, and how should accountability be ensured?

3 THE INTERNATIONAL LEGAL RESPONSIBILITY OF THE STATE FOR DEPORTATION (REPARATIONS)

International legal responsibility of a State arises from the breach of its accepted international legal obligations. It entails the duty of the state that has committed an internationally wrongful act to eliminate the consequences of the damage caused to another state or to states. In international law, internationally wrongful acts (international delicts) are classified as crimes of an international character and international crimes. Particularly dangerous delicts are crimes that violate the fundamental principles and norms of international law that concern the international community as a whole and, as a result, negatively impact the entire system of international relations. International crimes include acts of aggression, genocide, apartheid, crimes against humanity, war crimes, including deportation, and others. According to a general principle of international law, an internationally wrongful act by a subject gives rise to its international legal responsibility. A number of provisions of the UN Charter, including Articles 39, 41, 42, and 51, determine the procedures for enforcing responsibility for international crimes against international peace and security. The purposes of international legal responsibility include:

- prevention (ensuring the prevention of future violations by holding the delinquent state accountable),
- elimination of the harmful consequences of the wrongful act.

²¹ Geneva Convention (IV) (n 6).

Measures of international legal responsibility include:

- restitution, including legal restitution, in the form of restoring rights by annulment of unlawful acts (for example, provisions in Armenia's Declaration of Independence and Constitution containing territorial claims against neighbouring states, or the well-known 1989 decision of the Supreme Soviet on the incorporation of the territory of the Republic of Azerbaijan into Armenia), as a form of reparation; and
- punitive (repressive) measures against the delinquent state (for example, measures taken against Germany at the end of the Second World War, or against Iraq for its intervention in Kuwait).

A state's international legal responsibility arises for all unlawful criminal acts committed by its own organs and officials, as well as by its nationals.²² State responsibility for criminal acts committed by its organs and officials has been affirmed in judicial decisions in accordance with international legal instruments.²³ In 2007, the International Court of Justice held that Serbia bore responsibility for violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide in relation to acts committed in Bosnia and Herzegovina between 1991 and 1995. However, the Court stated that Serbia itself had not committed genocide; rather, it was responsible for failing to prevent the genocide committed in Srebrenica in 1995 and for failing to punish the perpetrators. Nevertheless, according to international legal doctrine, states also bear criminal responsibility for violations of international law norms, alongside the individuals acting on their behalf.²⁴ This position has been supported, *inter alia*, by Professor P. Ago²⁵ and others.²⁶

In international humanitarian law, the issue of state responsibility for the actions of members of its armed forces was first codified in the 1907 Hague Convention (IV). All acts committed by military personnel, including international crimes, are attributed to the state to which they belong. The same rule is also enshrined in the 1949 Geneva Conventions. The regulation of international legal responsibility for deportation, as well as for other crimes, is also reflected in the 2001 Articles on Responsibility of States for Internationally Wrongful Acts, adopted by a resolution of the UN General Assembly. According to Article 1 of this instrument, any internationally wrongful act of a state (including acts of deportation, author's emphasis) entails the international legal responsibility of that state.

22 State Archive of the Republic of Azerbaijan (n 19) 187; Afsar Isa Sadigov (ed), *International Law: General Part* (Laman Publishing 2018) 317.

23 *Shimoda case (Ryuichi Shimoda et al v The State)* (District Court of Tokyo, 7 December 1963) 636-7.

24 Lassa Oppenheim, *International Law: A Treatise*, vol 1: Peace (Longmans, Green 1948) pt 1.

25 Mohammed Bedjaoui, 'Eighth Report on Succession of States in Respect of Matters Other than Treaties: Draft Articles on Succession to State Property, with Commentaries, Document A/CN.4/292' (1976) 2(1) Yearbook of the International Law Commission 57-63.

26 Igor Lukashuk, *Law of International Responsibility* (Wolters Kluwer 2004) 356.

Internationally wrongful conduct is expressed through specific acts or omissions. According to the Articles, this includes the conduct of state organs; actions carried out by individuals or bodies exercising state authority; conduct that exceeds authority or violates orders; and acts carried out under state control. Rules for assessing an international legal violation establish the conditions under which the conduct is legally attributable to the state.

Under the Articles, the actions of government organs, as well as all persons and entities acting under their direction and control, are attributable to the state. The principle that “the conduct of an organ or an official is attributable to the state” reflects a peremptory customary law norm confirmed by the consistent practice of international tribunals.

A state’s international legal responsibility entails ensuring the fulfilment of breached international obligations through:

1. The prosecution and adjudication of individuals who have committed the crime.
2. *Restitutio in integrum* - the restoration of the material situation (*status quo ante*) that existed prior to the violation.
3. Payment of material and moral damages, including *compensation, rehabilitation, satisfaction, and guarantees of non-repetition*.²⁷
4. State Policy, Intent, and Individual Criminal Responsibility in the Execution of Deportation

4 STATE POLICY, INTENT, AND INDIVIDUAL CRIMINAL RESPONSIBILITY IN THE EXECUTION OF DEPORTATION

Professor E. David, referring to the extensive practice of international criminal tribunals, correctly notes that the deportation of a population from occupied territory constitutes a war crime, and ignorance of the fact that it constitutes a war crime does not exempt one from responsibility.²⁸

The Statutes of the International Criminal Tribunals for Rwanda and the former Yugoslavia established a practical basis for implementing the principle that individuals are responsible for crimes such as genocide and deportation regardless of their official status (official positions do not exempt individuals from responsibility).

The obligation to determine punishment for acts creating individual criminal responsibility, including deportation, is defined under international law. Article 146 of the Fourth Geneva Convention stipulates that State Parties must adopt effective legislative

27 James Crawford, *State Responsibility: First report* (A/CN.4/490 and Add 1–7, 12 August 1998) <https://legal.un.org/ilc/documentation/english/a_cn4_490.pdf> accessed 15 January 2026.

28 Eric David, *Principles of the Law of Armed Conflict* (ICRC 2011) 786.

measures to punish persons responsible for the crimes enumerated in that Article, including those who carried out or ordered deportations, and must ensure that such persons are brought to justice in their courts, irrespective of their nationality.

Deportation as an international crime must form part of a widespread or systematic attack or threat. Deportation is considered an element of crimes against humanity as an intentional act (Statute of the International Criminal Court, Art. 7.1(d). Furthermore, deportations carried out during or following military occupation (for example, after Russia's invasion of the territory of the Azerbaijan Democratic Republic on 28 April 1920 and the subsequent unlawful transfer of territory to Armenia) constitute a violation of international humanitarian law.²⁹

Under the First Protocol of the 1949 Geneva Conventions (Arts. 85(4) (a)-85(5), violations of Article 49 of the Fourth Geneva Convention-such as the occupying power transferring part of its civilian population into the occupied territory or deporting or transferring all or part of the population of the occupied territory, whether within the territory's borders or outside them-constitute war crimes. According to the ICC Statute, deportation is defined as unlawful expulsion or displacement, and the deportation or transfer of the population of occupied territory by an occupying power is explicitly recognised as a war crime (Art. 8.2(a) (vii).

A defining characteristic of war crimes is that they are carried out on a large-scale, either as part of a planned operation or within the framework of a general policy.³⁰ Historical practice from international criminal tribunals, including the Nuremberg Military Tribunal Statute (Art. 6), the Statute of the International Criminal Tribunal for the former Yugoslavia (Art. 5(d), the Statute of the International Criminal Tribunal for Rwanda (Art. 3(d), the Statute of the Special Court for Sierra Leone (Art. 2(d), and the Rome Statute of the ICC (Art. 7(1) (d)-shows that deportation can be carried out both in peacetime and during military aggression or conflict. In such cases, deportation forms part of the general plan or policy of the state (ICC Statute, Art. 8.1) and is executed by the political elite and officials with intent (ICC Statute, Art. 7.1).

The deportation of the population from Western Azerbaijan, present-day Armenia, was conducted as a planned state policy beginning in April 1920. Shortly after the military aggression, on 29 November 1920, by order of the Moscow authorities, the occupying

29 Rahim Kamil Mammadov, *International Criminal Law and International Criminal Legislation of the Republic of Azerbaijan* (NAT Co LLC, 2012) [in Azerbaijani].

30 *Prosecutor v Kordić and Cerkez* (n 12) para 94; *Prosecutor v Kunarac, Kovac and Vukovic* Cases no IT-96-23-T & IT-96-23/1-T (ICTY, 22 February 2001) para 460; *Prosecutor v Kunarac, Kovac and Vukovic* Case no IT-96-23 & IT-96-23/1-A (ICTY Appeals Chamber, 12 June 2002) para 127-8; *Prosecutor v Deronjić* Case no IT-02-61-A (ICTY Appeals Chamber, 20 June 2005) para 109; *Prosecutor v Blagojević and Jokić* Case no IT-02-60-T (ICTY, 17 January 2005) para 596. See also, Thomas De Vaal, *Karabakh: Azerbaijan and Armenia Between Peace and War* (İlay MMC 2008) [in Azerbaijani].

Bolshevik regime in Baku³¹ transferred the known territories of the Azerbaijan Democratic Republic to Armenia. Although the 1907 Fourth Hague Convention (Regulations, Art. 42) effectively ended the period of military occupation, any territorial change was required to be based solely on the will of the people (referendum). The central Soviet authorities were unable to justify this illegality on legal grounds. The formalisation was delayed and only carried out in 1929.

Initially, following the notorious mass repressions and crimes of genocide of the 1930s and shortly after the conclusion of World War II, a process of deportation was initiated between 1948 and 1956. This process was carried out 'as part of a plan or policy' or on a 'widespread scale,' as explicitly defined in Article 8.1 of the Rome Statute of the ICC.³²

The USSR operated a system of camps for the physical and biological elimination of primarily non-Russian populations, deporting various ethnic groups, including Latvians, Poles, Germans, and others. For example, Decree No. 776-120 (1936) of the Council of People's Commissars of the USSR mandated the "resettlement of Polish and German households from the Ukrainian SSR to economic structures in the Karaganda region of the Kazakh MSSR". In relation to all deported peoples within the USSR, the fundamental principles of the Fourth Geneva Convention were severely violated. The dire sanitary conditions, or their total absence, initial lack of housing, food shortages, restrictions on movement, and mandatory military-police registration led to a humanitarian catastrophe.³³

These violations were similarly perpetrated against the Azerbaijani population, instigated by the Armenian Church and the "Dashnaktsutyun" party, and executed through the measures of the Soviet government. However, unlike other groups, the rehabilitation and right of return for the Azerbaijani population were never ensured. The first significant legislative measure toward recognising the violation of the rights of Azerbaijanis deported from Armenia was the 1997 Decree of the President of the Republic of Azerbaijan, titled "On the Mass Deportation of Azerbaijanis from Their Historical and Ethnic Lands in the Territory of the Armenian SSR in 1948–1953."

At that time, challenging the Soviet Union (Russia), a victor of World War II, was perceived as an unattainable task. For the Soviet authorities, the provisions of the 1907 Hague Convention (IV) (Article 42 of the Regulations) and the newly adopted 1949 Fourth Geneva Convention (Article 49), which embodied customary international law, were treated as

31 Bakhtiyar Rafiyev, *The Underwater Part of the Iceberg: The 20s* (Azerneshr 1995) 26 [in Azerbaijani].

32 Afsar Isa Sadigov, 'Crime of Khojaly Genocide: The Intention and International Law Manifested within the Framework of a General Plan and Policy' (2014) 37(1) *International Law and Problems of Integration* 93 [in Azerbaijani]; Jamil Guliyev (ed), *History of Azerbaijan*, vol 6: April 1920–June 1941 (ELM 2000) [in Azerbaijani]; 'Report of the Deputy Investigative Commission on the Khojaly Tragedy' (1995) 5-9 *Muhakime* [in Azerbaijani].

33 Dmitry Pantyo, 'On Foreign Soil... Reasons and Conditions for the Deportation of Poles and Germans to Kazakhstan in 1936: An Analysis of Documents' (2015) 1(8) *Rocznik Instytutu Polsko-Rosyjskiego* 83-4.

mere "scraps of paper." To evade responsibility for the deportations carried out during this period, the lack of ratification of these conventions (first by Russia, and subsequently by the USSR at the time) might be cited as a defence. However, it must not be overlooked that the Nuremberg Tribunal explicitly affirmed that these norms constituted customary international law, rendering them binding regardless of formal ratification.³⁴

The criminal state policy directed against populations protected under international law persisted into subsequent stages. The deportation of hundreds of thousands of people forcibly expelled from Armenia in 1988 leaves no room for any justification or pretext. Under the full weight of international humanitarian law, this creates a clear international legal responsibility for the Russian Federation, as the founding entity and legal successor (by continuity) of the USSR.³⁵

In this context, the obligation to prosecute the perpetrator individually rests primarily with the Russian Federation. Furthermore, the official status of the individuals who committed these crimes does not relieve them of their criminal responsibility, a principle firmly established in international criminal jurisprudence.³⁶

The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY), in the *Krstić* case regarding the total or partial destruction of a group, emphasised the targeting of the Muslim male population in Srebrenica.³⁷ However, in the case of Armenia, it was not merely a portion of the Turkic-Muslim population, but the entire Azerbaijani community that was expelled based on special hatred and racial discrimination due to their ethnic and religious identity.³⁸

The deportation carried out by Armenia contains all the constituent elements of the crime of genocide. According to the International Criminal Court, systematic and planned actions by the authorities of a particular region against a civilian population constitute an indicator of a "policy against a state or group." Even if this policy is not formally formalised, the crime is considered to have been committed in the case of deportation.³⁹ The deportation of the Azerbaijani (Turkic-Muslim) population is a formalised (documented) fact by both the USSR and Armenian authorities, in violation of customary international law (Article 8(2)(e)(viii) of the Rome Statute). This is evidenced by Decree No. 4083 of the Council of Ministers of the USSR, dated December 23, 1947, "On the resettlement of

34 'International Military Tribunal (Nuremberg), Judgment and Sentences' (1947) 41(1) American Journal of International Law 248-9.

35 Saftar Rahimli, 'Analysis of Russia's Military Aggression against the Azerbaijan Democratic Republic from the International Legal Perspective' (2023) 6(2) Access to Justice in Eastern Europe 43, doi:10.33327/AJEE-18-6.2-a000201.

36 De Vaal (n 30).

37 *Prosecutor v Radislav Krstić* Case no IT-98-33-A (ICTY Appeals Chamber, 19 April 2004).

38 Sadigov (n 32).

39 *Prosecutor v Jean-Pierre Bemba Gombo* Case no ICC-01/05-01/08-424 (ICC Pre-Trial Chamber II, 15 June 2009) para 75, decision pursuant to arts 61(7)(a) and (b) of the Rome Statute.

collective farmers and other Azerbaijani populations from the Armenian SSR to the Kura-Araz lowlands of the Azerbaijani SSR," and Decree No. 754, dated March 10, 1948. Furthermore, the well-known anti-Azerbaijani ("Turkic-Muslim") statements by Armenian presidents should be noted as evidence that the deportation in this study constitutes an element of the crime of genocide and a planned state policy.

The speech by the Armenian President L. Ter-Petrosyan, on July 23, 1993, before the "Yerkrapah" military-terrorist group, states: "Armenia and Karabakh have been cleared of other nations; this was a 600-year-old problem, the significance of which the Armenian people will feel for another 600 years. If the 170,000 people of other nationalities who lived here until 1988 were still living here today, we would not have our state. Azerbaijanis constituted the majority in our northern and eastern regions, including Sevan... and Zangezur. These problems did not fall from the sky; we solved them ourselves, we solved them through our movement."⁴⁰

This speech explicitly contains the constituent elements of ethnic cleansing related to "physical and biological destruction" (as defined in the Genocide Convention). The criminal nature of ethnic cleansing regarding "physical and biological destruction" has also been manifested in the actions of other presidents of Armenia. Regarding the crimes committed in Khojaly on February 25-26, 1992, S. Sarkisyan, who directly led the criminal Armenian military units in the deportation of the population and later became the President of Armenia, stated in an interview: "Before Khojaly, the Azerbaijanis (*the targeted group subjected to genocide – author*) thought that they could joke with us. They thought that the Armenians were incapable of raising a hand against the civilian population (*war crime and genocide – author*). We were able to break that stereotype. That is what happened."⁴¹

The second president of Armenia, R. Kocharyan, while speaking in parliament within the context of ethnic and racial discrimination, stated that they "cannot live together because they are genetically different from Azerbaijanis." This statement serves as a clear indicator of genocidal intent under Article II of the Genocide Convention.

Numerous examples of such anti-group positions held by the state or political elite can be cited. Z. Balayan, an Armenian "writer" and former deputy of the Supreme Soviet of the USSR, writes in his work *The Revival of Our Souls*: "...our soldiers had nailed a 13-year-old Turkish child (*referring to an Azerbaijani – author*) to a window. I flayed the skin from his head, chest, and abdomen. I looked at my watch; the Turkish child died of blood loss 7 minutes later... my soul swelled with pride and joy for avenging one per cent of my people. In the evening, we did the same thing to three more Turkish children..."⁴²

40 Levon Ter-Petrosyan, 'The Majority of Azerbaijanis in Three Regions Was a Threat to Armenia' (ICTIMA TV, *You Tube*, 4 January 2025) [in Azerbaijani] <<https://www.youtube.com/watch?v=00FkamBTZqQ>> accessed 15 January 2026.

41 'Report of the Deputy Investigative Commission on the Khojaly Tragedy' (n 32).

42 *Hirsi Jamaa and others v Italy* App no 27765/09 (ECtHR, 23 February 2012).

As a result of the state policy to which the aforementioned officials belonged, the deportation of Azerbaijanis from the territory of present-day Armenia was carried out as an “act of genocide based on specific intent”.⁴³

It is sometimes asserted that genocide is an aggravated form of crimes against humanity. Alternatively, crimes against humanity are occasionally regarded as a more severe form of crime than genocide. Crimes against humanity manifest through widespread or systematic acts of violence. However, genocide involves the specific intent to destroy or eliminate a group protected under international law, an intent that is absent in crimes against humanity. The objective element of genocide, the concept of “destruction,” refers to the deprivation of life through physical or biological impact. A general awareness of the timing of the acts and their possible consequences is not sufficient for them to be characterised as genocide. In this context, it is required to reveal the criminal prejudice or specific intent (*dolus specialis*) regarding the negative consequences of the action.⁴⁴

Officials of Armenian origin within the authorities of the Azerbaijan SSR also continued various forms of repeated persecution against the deported population. For instance, Azerbaijanis who had been exiled to the Shamkhor (now Shamkir) district of the Azerbaijan SSR were subjected to exile once again.⁴⁵ Analysing the Genocide Convention and the practice of the International Criminal Court (Myanmar, Ukraine, Gaza), Professor W. Schabas notes that genocide is the refusal to recognise the right to existence of a distinct, protected human group.⁴⁶ In the interpretation of the crime of genocide by the International Criminal Tribunal for Rwanda, it is stated that an act of genocide is committed against individuals because they are members of a specific group; since the intent is a policy to destroy that specific group, the individuals are the victims, but the group is the target.⁴⁷

The killing of a single person is characterised as a refusal to recognise the right to life of a specific individual. Correspondingly, the *actus reus* (the prohibited act) may be limited to one person, but the *mens rea* (the intent) must be directed against the existence of the group.⁴⁸

43 Western Azerbaijan Community, *Return Concept: A Concept for Ensuring the Safe and Dignified, Peaceful Return of Azerbaijanis Expelled from the Territory of Present-Day Armenia* (Science and Education 2023) [in Azerbaijani]; Rahim Mammadov, ‘Deportation of Azerbaijanis from their Historical Lands is an International Crime’ *Xalq Qazeti* (Baku, 18 March 2023) <<https://xalqqazeti.az/musahibe/123574-azerbaycanlilarin-tarixi-torpaqlarindan-deportasiyasi-beynelxalq-cinayetdir>> accessed 15 January 2026.

44 Fahir Armaoglu, *19 Yüzyil Siyasi Tarihi (1789–1914)* (18th edn, Kronik Kitap 2019); Karma Nabulsi, *Traditions of War: Occupation, Resistance and the Law* (OUP 2005) 209.

45 Archive of the Ministry of Defence of the USSR, f 77, op 410068, d 8, l 2.

46 Schabas, *Genocide in International Law* (n 1) 14-5.

47 *Prosecutor v Akayesu* Case no ICTR-96-4-T (ICTR, 2 September 1998) para 512.

48 Shaw and Hart (n 2) 22.

If deportation is committed on the grounds of ethnic, religious, or racial discrimination (by "...deliberately creating living conditions that will lead to the total or partial physical destruction of a specific group..."), it shall be accepted as a constituent element of the crime of genocide (Article II (c) of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide; Article 6 (c) of the ICC Statute). Naturally, genocidal hatred must be proven in this context. At the same time, the targeting of a civilian group (national, ethnic, religious, or racial) characteristic of international crimes, and the "widespread" and "systematic" (repetitive) nature of the acts against the deported persons, must complement the element of hatred.⁴⁹

The population of Western Azerbaijan had been settled at high altitudes (approximately 900–1,300 metres above sea level) for millennia, with a lifestyle adapted to this specific biogeographical mountainous environment. Despite this, they were deported to the lowlands (Aran) of Azerbaijan, areas located below sea level, where malaria was widespread. However, it would have been entirely possible to deport this population to the mountainous regions of Soviet Azerbaijan that bordered present-day Armenia.⁵⁰ However, this desire was also severely obstructed. The humanitarian crisis reached such a point that some of the deportees attempted to return; however, they were deprived of citizenship, and their identification documents were confiscated. By 1956, one out of every three of the 100,000 people deported from Armenia had perished due to hunger, disease, and the inability to adapt to the new conditions, the hot and arid climate, and the lack of basic household provisions.⁵¹

This is where the genocidal intent, the intent to destroy a distinct ethnic, religious, or racial group (*dolus specialis*), emerges.

According to opponents, the deportation was an economic measure related to the settlement of the Kura-Araz lowlands.⁵² Even if this were the case, international treaty bodies categorise "exploitation," "forced labour," and "degrading treatment" as human rights violations⁵³ and crimes against humanity. However, regarding Azerbaijanis, their deliberate deportation to areas below sea level (an indicator of physical destruction as stipulated in the Genocide Convention), essentially "leaving them to a slow death", has been confirmed by international judicial practice as a standard for genocide.⁵⁴

49 *Prosecutor v Katanga and Chui* Case no ICC-01/04-01/07-717 (ICC Pre-Trial Chamber I, 30 September 2008) 395; *Prosecutor v Gbagbo* Case no ICC-02/11-01/11 (ICC Pre-Trial Chamber I, 12 June 2014) para 222.

50 Nazim Mustafa, *Iravan City* (Red N Line 2020) 3.

51 Jamil Guliyev (ed), *History of Azerbaijan*, vol 7: 1941–2002 (ELM 2003) 151 [in Azerbaijani].

52 Galust A Galoyan and Konstantin S Khudaverdyan (eds), *Nagorny-Karabakh: Historical Reference* (Academy of Sciences of the Armenian SSR 1988) 57-8.

53 CERD, *Concluding Observations on the Thirteenth and Fourteenth Periodic Reports of the Dominican Republic* (CERD/C/DOM/CO/13-14, 19 April 2013) para 19.

54 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (ICJ, 26 February 2007) ICJ Rep 2007/43.

The publication of information regarding the deportation in the press was prohibited. The adoption of the secret Decree No. 605 of the Council of Ministers of the USSR in 1951 concerning the resettlement plan stemmed from the genocidal nature of the deportation.

The inclusion of a normative basis for territorial claims against neighbouring states, including Azerbaijan, Turkey, and Georgia, in the Armenian constitution should be evaluated as a motive for the deportation. The deportation of Azerbaijanis as a distinct ethno-religious group served as a tool for the realisation of the "Great Armenia" idea.⁵⁵ It is evident from the characteristics of this deportation that the primary goal was the dispersal of the population through physical and biological destruction. To destroy a group of people is an act of genocide.⁵⁶ The constitutional ("Great Armenia") idea could only be realised by destroying the group (the Azerbaijani population) that had formed over centuries. This idea in the Armenian constitution, as a project of the "Dashnaktsutyun" party and the Echmiadzin Church⁵⁷, gained the support of the USSR, having been presented as the "Armenian question" at the Tehran Conference (1945).⁵⁸

In some literature, the acts of genocide committed by Armenian military forces in Azerbaijani towns and villages are referred to as "ethnic cleansing".⁵⁹ We consider this assessment to be, at the very least, controversial. The deportation of Azerbaijanis differs from ethnic cleansing. When carried out by the deporting party, ethnic cleansing aims to create a "homogenised ethnic" society. In such cases, there may not be an intent to destroy the deportee based on ethnic hatred. If the opposite occurs, then while ethnic cleansing is being carried out on one hand, genocide is being implemented on the other. In accordance with a planned policy, the deportation of Azerbaijanis began with the Treaty of Turkmenchay (1828, Art. 5), which concluded the Qajar-Russian war, and the Treaty of Adrianople (1829, Art. 16), which concluded the Ottoman-Russian war. Local Turkic-Muslims who did not conform to Russian Tsarism saw their religious centres abolished, were expelled from local self-governing structures, and were often exiled to Siberia. Armenians were settled in the vacated territories. Deportation toward large-scale genocide began after the Soviet-Russian military occupation of the Azerbaijani territories in April 1920 (this will be discussed in the next section).

55 Assad Gurbanli, 'On the Study of the Deportation Policy of the Soviet State and the Problem of the Deportation of Azerbaijanis' (2001) 2 History and its Problems 85-6.

56 *Prosecutor v Al Bashir* Case no ICC-02/05-01/09-3 (ICC Pre-Trial Chamber I, 4 March 2009) para 190.

57 Davut Kilic, 'The Role of the Echmiadzin Church in Russia's Eastern Anatolia Policy (1828–1915)' (2001) 461 Turkish Culture 535 [in Turkish].

58 Aghasi Arshak Yesayan, *The "Armenian Question" and International Diplomacy* (Mitk 1965) [in Armenian].

59 Jessica A Stanton, *Violence and Restraint in Civil War: Civilian Targeting in the Shadow of International Law* (CUP 2016) 35, doi:10.1017/9781107706477.

In the *Krstić* and other cases, the court stated that an assessment of deportation must be made on a case-by-case basis, taking into account the specific circumstances.⁶⁰ Relevant circumstances include the use of force and other associated violence in carrying out the deportation, as well as the age, gender, and health of the victims. Although deportation is not explicitly listed in the non-exhaustive list of serious harms within the elements of the crime, the International Criminal Court (ICC) reached the same conclusion. In the first *Al-Bashir* case⁶¹, the Pre-Trial Chamber of the ICC determined that forcible transfer falls under the material element of the crime of genocide by causing serious bodily or mental harm.

When looking at the nature, degree of public danger, scale, and systematic connection of the crimes committed in the city of Khojaly on the night of February 25–26, 1992, by the 366th regiment—which belonged to Russia but was under the command of officers of Armenian origin—the genocidal intent (*dolus specialis*) becomes evident. Armenian military forces killed 613 people⁶² with particular cruelty against the civilian population (including violence against infants, piercing the abdomens of women, cutting off breasts, scalping men, and mutilating genitals).

Based on reports from international organisations and human rights NGOs,⁶³ the European Court of Human Rights characterised the Khojaly crime as a "war crime or a crime against humanity".⁶⁴ The Organisation of Islamic Cooperation has called for the mass killing of civilians in Khojaly by Armenian military forces to be recognised both internationally and nationally as an "act of genocide" and a "crime against humanity".⁶⁵

Incidentally, the genocidal nature of the crime committed in the city of Khojaly was also confirmed by a court of the Republic of Azerbaijan in 2026. In the Baku Military Court, 15 defendants were convicted of crimes related to the forced displacement of the population, along with planning, preparing, initiating, and conducting an aggressive war, genocide, and

60 *Prosecutor v Krstić* (n 11) para 529; *Prosecutor v Stakić* Case no IT-97-24-A (ICTY Appeals Chamber, 22 March 2006) para 281.

61 *Prosecutor v Al Bashir* Case no ICC-02/05-01/09-94 (ICC Pre-Trial Chamber I, 12 July 2010) para 38.

62 Human Rights Watch, *Bloodshed in the Caucasus: Escalation of the Armed Conflict in Nagorno Karabakh* (Helsinki Watch 1992) 20, 32; 'The Khojaly Tragedy: A Crime against Humanity!' (*UkrInform*, 19 February 2013) <https://www.ukrinform.ua/rubric-other_news/1459146-hodgalinska_tragediya_zlochin_proti_lyudstva_1798541.html> accessed 15 January 2026.

63 Human Rights Watch (n 62) 24; UN Permanent Representative of Azerbaijan, *Report on the international legal responsibilities of Armenia as the belligerent occupier of Azerbaijani territory: Annex to the Letter of 23 January 2009 addressed to the Secretary-General* (UN Doc A/63/692-S/2009/51, 27 January 2009) para 18.

64 *Fatullayev v Azerbaijan* App no 40984/07 (ECtHR, 22 April 2010) para 87; *Chiragov and Others v Armenia* App no (ECtHR, 16 June 2015) para 19.

65 OIC, 'Cairo Final Communiqué' (OIC/SUM-12/F.C./ FINAL, 12th Session of the Islamic Summit Conference "The Muslim World: New Challenges & Expanding Opportunities", Cairo, Arab Republic of Egypt, 6-7 February 2013) para 117; OIC Resolution No 8/43-C on Affiliated Institutions (43rd Ses of the OIC Council of Foreign Ministers (CFM) (Session of Education and Enlightenment: Path to Peace and Creativity), Tashkent, Republic of Uzbekistan, 18-19 October 2016) B) para 8.

other crimes committed on Azerbaijani territory under the direct leadership, participation, and strict control of the Armenian state, its state bodies, and military forces.⁶⁶

Some well-known crimes of genocide (e.g., the Srebrenica genocide) were accompanied by deportation. During the genocide committed in Khojaly, Lachin, Fuzuli, Aghdam, and other territories, similar to the crimes committed in Rwanda, the civilian population was physically destroyed without being deported and without being provided a "humanitarian corridor." Civilians attempting to flee the city besieged by Armenian military forces were lured into ambushes through deliberate misdirection and subsequently destroyed.⁶⁷

Characterising the crimes committed by Armenian military forces and the military units of "Nagorno-Karabakh" under its control⁶⁸ against the civilian population in Azerbaijan, especially against children, women, and the elderly, Professor Malcolm Shaw and Naomi Hart note that "many of these acts can be evaluated as both war crimes and crimes against humanity".⁶⁹ They correctly point out that crimes against humanity are typically committed during peacetime. Therefore, it is impossible to evaluate the crimes committed against the civilian population (children, women, and the elderly) on Azerbaijani territory solely as crimes against humanity. Considering that Azerbaijan has been under occupation since 1920, these listed acts are either war crimes or crimes of genocide. Professor Shaw and Naomi Hart further state: "...certain behaviours constituting the indicated war crimes also targeted ethnic Azerbaijanis because of their nationality and or ethnicity, and the relevant intent was to partially destroy the group. The same behaviour may also constitute the crime of genocide".⁷⁰ In the cases we have expressed, deportation was committed as a crime of genocide.

Neither Article II of the Genocide Convention nor Article 6 of the Rome Statute explicitly defines the concept of "deportation." However, the five forms of conduct set out in those Articles may fall within the scope of three acts of genocide. Specifically (especially considering the systematic killing of children in Azerbaijan – author), it can include the forcible transfer of children of the group to another group. At the same time, transfer can include any forced deportation both within the territory (in the occupied territories of Azerbaijan – author) and outside of it (from the territory of Armenia – author). Excluding these instances from the scope of deportation would render the relevant provision meaningless.⁷¹

66 'Verdict Announced in the Trial of Armenian Citizens' (*Azertag*, 5 February 2026) [in Azerbaijani] <https://azertag.az/xeber/ermenistan_vetendaslarinin_mehkemesinde_hokm_elan_olunub_video-4005923> accessed 15 January 2026.

67 Human Rights Watch (n 62) 20, 32.

68 Shaw and Hart (n 2) 38.

69 *ibid* 123.

70 *ibid* 39.

71 Chetail (n 1); Denys Azarov and others, 'Understanding Russia's Actions in Ukraine as the Crime of Genocide' (2023) 21(2) *Journal of International Criminal Justice* 233, doi:10.1093/jicj/mqad018.

Thus, the deportation of Azerbaijanis was a large-scale and systematic threat or part of a military attack against the civilian population. It is an international crime committed intentionally and knowingly by officials as part of a general state plan and policy, thereby creating corresponding international legal responsibility. In cases where a group protected by international law is targeted for physical and biological destruction, deportation manifests as a constituent element of the crime of genocide.

5 THE INTERNATIONAL LEGAL STATUS OF THE TURKIC-MUSLIM POPULATION (PEOPLE) DEPORTED FROM ARMENIA FROM 1920

Hague Law, beginning with the 1899 and 1907 norms, laid the foundation for modern international humanitarian law. Articles 42 and 43 of the Regulations annexed to the 1907 Hague Convention (IV) established the obligation to "respect public order," while Articles 46 and 50 mandated the "protection of the rights of the civilian population." These universal norms affirmed the illegality of military aggression on one hand and guaranteed the rights of civilians on the other.

According to Article 10 of the Statute of the League of Nations (1920), which dictates that a state's territory cannot be the object of another state's aggressive aims, member states declared they would respect each other's territorial integrity and resist external aggression. Following the 1907 Hague Convention, the League of Nations Statute, and the 1929 Briand-Kellogg Pact, the 1933 London Convention on the Definition of Aggression was adopted with the participation of many states (including the USSR, Turkey, and Iran). Furthermore, Article 11 of the 1933 Montevideo Convention on the Rights and Duties of States clearly sets out an obligation for states not to recognise territorial acquisitions or special advantages obtained by the use of force.

A state's territory is inviolable and cannot be the object of military occupation or other coercive measures by another state, directly or indirectly, regardless of the motive. The illegality of military aggression is rooted in the IV Hague Convention. Specifically, under the principle that "sovereignty does not pass to the occupying power during military occupation" (Hague Regulations, Arts. 27-33, 42, 47), the civilian population's link to their state and their national identity status cannot be forcibly altered.

According to the Martens Clause expressed in the preamble of the IV Hague Convention, "populations and belligerents remain under the protection and empire of the principles of international law, even in cases not covered by the adopted regulations. These derive from the established customs among civilised peoples, from the laws of humanity, and the dictates of the public conscience." The Martens Clause is linked to the principle of *clausula si omnes* and stipulates that sovereignty remains with the people during occupation. In this case, the status of the population is not subject to the will of the military aggressor; rather, that

population acts as a subject of international law. Therefore, Russia's occupation of Baku on April 27, 1920, its military aggression against the Azerbaijan Democratic Republic, and the subsequent measures, including the deportation of the population, are illegal under the international humanitarian law norms of that period.

To ensure the legal force of these norms is not called into question, it is appropriate to refer to the judgement of the Nuremberg International Military Tribunal. The Tribunal stated that by 1939, the rules of the IV Hague Convention had become recognised as international customary law, binding upon all states. This precedent has been significant for other courts, including *Nicaragua v. United States* (1986) and *Congo v. Rwanda* (2006). The 1907 Hague Regulations established the core of modern international humanitarian law regarding the administration of occupied territories and the treatment of civilians and combatants.⁷²

Thus, according to the judgement of the Nuremberg International Military Tribunal, the legal force of the 1907 Hague Convention (IV) was also binding for Soviet Russia in 1920. In other words, since the Regulations concerning the Laws and Customs of War on Land (norms of the IV Convention) as international customary law were in legal force for Soviet Russia, and later the USSR, during the military aggression against Azerbaijan⁷³, it establishes the responsibility of the Russian Federation, as the successor to those states, for all crimes committed against the peaceful population, including the deported population. On the other hand, this keeps the status of the population, who were expelled under military convoy from territories recognised as Azerbaijani lands and illegally transferred to Armenia after the occupation, within the sphere of operation of international humanitarian law norms.

Russia (the USSR) did not only violate its specific international treaty provisions regarding Azerbaijan; it also breached its international obligations under comprehensive norms that, by this period, were already recognised as customary law and *opinio juris*. The 1907 Hague Convention (IV) (the Regulations), specifically Articles 42 and 43 (concerning respect for public order) and Articles 46 and 50 (concerning the protection of the rights of the civilian population), which were later implemented into Article 47 of the 1949 Geneva Convention (IV) (regarding inviolable rights), formulated a specific rule of international law.

According to the 1907 Hague Convention, the occupation of a state's territory by a foreign power does not alter the legal status of that territory. Even a long-term period of occupation imposes strict limitations on the occupier. Under existing rules, the occupier's jurisdiction over the occupied territory is temporary in nature and requires the fulfilment of minimum standards of international human rights law and international humanitarian law. The

72 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (ICJ, 27 June 1986) ICJ Rep 1984/39.

73 Constitution Act of the Republic of Azerbaijan No 222-XII 'On Recovery of the State Independence of the Azerbaijan Republic' (adopted 18 October 1991) <<https://cis-legislation.com/document.fwx?rgn=2889>> accessed 15 January 2026; Statement of the Supreme Council of the Republic of Azerbaijan No 181-XII of 30 August 1991 [1991] Bulletin of the Supreme Council 15-16/264.

temporary jurisdiction of the occupier must ensure the application of the legislative and other jurisdictions of the occupied state, rather than its own. In accordance with the universally recognised principle that "sovereignty does not pass to the occupying power during occupation," the political, social, economic, and legal systems of the state subjected to aggression cannot be altered.⁷⁴

In accordance with the legal framework set forth in Articles 42 through 56 of the Hague Regulations (1907), the occupying power lacks the authority to dismantle the existing state administration or to assume control over its coercive apparatus.⁷⁵

However, Russia's military aggression against Azerbaijan effectively dismantled the pre-existing political order, waged an assault on the social fabric of the nation, and culminated in acts of genocide. Following the illegal transfer of Azerbaijani lands, from which the population had already been deported, to Armenia in 1929, the Bolshevik regime intensified its repressions. During this period, 1,142 members of the Musavat Party and 474 supporters of the Ittihad Party were arrested; while many were subjected to extrajudicial physical elimination, others were forcibly exiled to the Far North.⁷⁶

Under the 1907 Hague Convention (IV) Regulations concerning the Laws and Customs of War on Land, and subsequently the 1949 Geneva Convention (IV), the forced alteration of the demographic composition within occupied territories is codified as a war crime. Although the strategic resettlement of Armenians into Azerbaijani territories originated with the Treaty of Turkmenchay (Art. 16), this process reached systemic proportions under the Soviet-Russian (USSR) administration. This era was characterised by the deliberate settlement of ethnic Armenians in regions from which the indigenous Azerbaijani population had been forcibly removed.

From April 1920 to August 1921 alone, approximately 48,000 Azerbaijanis and Turkic-Muslims fell victim to coordinated Russian-Armenian terror. During the purges of 1936–1937, Armenian-led investigative units within the Azerbaijan SSR fabricated evidence leading to the execution of 29,000 intellectuals as "enemies of the people."⁷⁷ Furthermore, the dual imposition of alphabet changes under the guise of the "Cultural Revolution"⁷⁸ and the forced modification of surnames constituted acts aimed at cultural and biological erosion, aligning with elements of the crime of genocide. Between 1948 and 1953, the systematic deportation of Azerbaijanis from the Armenian SSR was initiated; of the more

74 Afsar Isa Sadigov, "Recognized" Territory Established for Armenia as a Result of Russia's Military Aggression against the Azerbaijan Democratic Republic' (2023) 2 News of Baku University: Socio-Political Sciences Series 138; David (n 28) 564-7.

75 Dietrich Schindler and Jiri Toman, *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and other Documents* (Martinus Nijhoff Publishers 1998) 10.

76 Rafiyev (n 31) 40.

77 Guliyev (n 32) vol 6, 385-6

78 ibid 210, 320.

than 150,000 deportees, one in three perished due to famine and disease, resulting from an inability to adapt to the harsh conditions of their relocation. These acts of genocide, war crimes, and military aggression persisted in subsequent decades. Starting in 1988, with direct support from Moscow, "Armenia's military aggression against Azerbaijan culminated in the occupation of the former Nagorno-Karabakh Autonomous Oblast and other adjacent Azerbaijani territories."⁷⁹

These recent criminal acts can be characterised not only within the historical framework of the 1907 Hague Convention (IV) but also as continuing international crimes under the contemporary international legal order. Since the legal and humanitarian consequences of these acts have not been fully addressed, including the denial of the right to return and the lack of restitution, they persist, thereby invoking the ongoing state responsibility of the successor entities under modern international criminal and human rights law.

The armed struggle against the occupation never ceased; following the April 1920 invasion, there were 54 armed uprisings against the Soviet occupation regime in Azerbaijan through 1924,⁸⁰ and resistance against the Russian-Soviet occupation continued in subsequent years. In November 1920, the Politburo of the CC of the RCP(b) dispatched I. Stalin went to the Caucasus to oversee the suppression of anti-Soviet revolts and lead military operations. During this period, the Russian occupation army in Azerbaijan numbered nearly 80,000.⁸¹ These facts demonstrate the scale of the military aggression and highlight the illegality of the subsequent annexation. Despite attempts to crush the national will through later crimes, Russia's "Sovietisation" of Azerbaijan failed to achieve a legitimate appropriation of the state.

Article 55 of the Regulations annexed to the 1907 Hague Convention (IV) stipulates that an occupying state shall be regarded only as administrator and usufructuary (emphasis added) of public buildings, real estate, forests, and agricultural estates belonging to the hostile State and situated in the occupied country. It must safeguard the capital of these properties (in accordance with the property right concepts of the territory). As Professor Christopher Greenwood notes, under international law, an occupying power's attempts to alter the legal status of an occupied territory or its struggling population lack legal validity.⁸² While we oppose any territorial change via military force, we advocate for the preservation of objective legal assessments. The concept of "Present-day Armenia" used in this subject carries the context of "ex injuria jus non oritur" (law does not arise from injustice).

79 Shaw and Hart (n 2) 123.

80 Mirza Bala Mammadzade, *National Azerbaijan Movement* (Nijat 1992) 154 [in Azerbaijani].

81 Rafiyev (n 31) 19.

82 Christopher Greenwood, 'The Administration of Occupied Territory in International Law' in Emma Play Fair (ed), *International Law and the Administration of Occupied Territories: Two Decades of Israeli Occupation of the West Bank and Gaza Strip* (Oxford Academic 1992) 245, doi:10.1093/oso/9780198252979.003.0008.

In telegrams dated July 2 and 8, 1920, Russian Foreign Minister G. Chicherin instructed G. Ordzhonikidze, Chairman of the Caucasus Bureau of the RCP(b), to ensure that the government of the Azerbaijan SSR accepted the Sharur-Daralayaz district as Armenian territory and recognised Karabakh and Zangezur as disputed territories. Chicherin stated that the international situation required a treaty between Russia and Armenia and that it was "essential" for the Azerbaijani side to "consent" to the transfer of these lands. Consequently, on August 10, 1920, a Russo-Armenian treaty was signed without the participation of Soviet Azerbaijan. This "treaty," which contradicts peremptory norms and thus lacks legal validity (reflecting customary law as later codified in Article 53 of the 1969 Vienna Convention on the Law of Treaties), transferred Sharur-Daralayaz to Dashnak-governed Armenia against the will of the Azerbaijani people. Upon Stalin's "proposal," the transfer of Nakhchivan and Zangezur was made conditional upon the Sovietisation of Armenia.⁸³

On November 29, 1920, in exchange for the establishment of Soviet rule in Armenia, the Bolshevik Baku organisation of the occupying regime (Ordzhonikidze, Ter-Danielyan, Stasova, Kaminski, Narimanov, Serebrovsky, et al.) decided to transfer Zangezur and Nakhchivan to Armenia and granted the "right to self-determination" to the ethnic Armenian minority in the mountainous part of Karabakh.⁸⁴ The decision was announced by N. Narimanov, a representative of the military aggressor regime. Following the withdrawal of the Azerbaijani army (150,000 troops) from Zangezur, Russia divided the Zangezur district into two parts: the western part (Gorus, Gafan, Qarakilsa, and Meghri) was ceded to Armenia, while the eastern part (Lachin, Gubadli, and Zangilan) remained within Azerbaijan. In gross violation of the 1907 Hague Convention (IV), a "geopolitical regime change" was carried out without regard to the will of the local population. The dismantling of local political institutions began, laying the political groundwork for the deportations of 1948–1956.

Prior to the military aggression, the Azerbaijan Democratic Republic (ADR) established its political-territorial sovereignty (borders) and territorial affiliation based on historical, geographical, and ethnographic scientific-practical standards. In relation to the collapsed Tsarist Russia, the territory of the ADR encompassed regions historically and geographically situated within the Azerbaijani space, inhabited by the ethno-religious Turkic-Muslim population (*uti possidetis juris*). That is, the territory of the ADR reflected the interstate borders existing prior to 1828 (the Treaty of Turkmenchay) and subsequently included the compact settlements of the ethnically linked population. In this context, the principle of *uti possidetis juris* serves as an indicator of the objective reality of the Azerbaijan Democratic Republic's territorial authority.⁸⁵

83 Resolution on the Distribution of the Rolling Stock of the Transcaucasian Railways (Treaty of Batumi, 4 June 1918) Archive of Political Documents of the Presidential Administration of Azerbaijan, f 277, op 2, case 9, l 30.

84 Rafiyev (n 31) 26

85 Sadigov (n 74).

Consequently, from the perspective of international legal status, the population of Western Azerbaijan is not merely a population deported from Armenia but rather a population deported from Azerbaijani territory That Russia occupied in 1920. Under these circumstances, the legal regime of international humanitarian law regarding deported populations remains in effect. Regardless of their refugee status, the Turkic-Muslim population deported from Armenia remains under the protection of the IV Hague Convention and the IV Geneva Convention (Art. 4). Furthermore, this rule does not exclude the application of international human rights law to the affected population.

6 THE RIGHT TO REPARATION FOR VICTIMS OF DEPORTATION: JUDICIAL PRACTICE AND LEGAL CONSEQUENCES

Deportation, alongside criminal legal liability, also gives rise to **material legal responsibility**. The right to claim damages resulting from crimes against international law, including deportation, belongs both to the injured state and the victims of the crime.

As a result of prolonged military aggression, the Republic of Azerbaijan was also deprived of its economic development. The Eritrea-Ethiopia Claims Commission rejected Eritrea's claim that it was "deprived of economic development," citing a lack of judicial precedent.⁸⁶ However, Article 36.2(d) of the Statute of the International Court of Justice (concerning the nature and extent of the reparation to be made for the breach of an international obligation) and the Convention on Cluster Munitions (Dublin/Oslo) (which contains a norm encouraging assistance for socio-economic recovery disrupted by the use of cluster munitions) establish an obligation or right to compensation for member states. Because these norms were not brought to the Arbitration Commission's attention, a corresponding negative decision was rendered.

The rights of individuals who are victims of crime are expressed in the UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. This Declaration serves as a systematisation act for customary norms previously shaped by judicial practice. As early as the 1907 Hague Convention (IV), a state is responsible for all acts committed by persons forming part of its armed forces. If the actions of a belligerent party violating the laws and customs of land warfare provide grounds for damage, then that party must pay compensation.

In some instances, Japanese courts have ruled that individuals do not have a direct right to compensation under the Hague Convention IV, holding that the right to receive damages belongs only to the state and that individuals must exhaust domestic remedies.⁸⁷ Conversely,

86 Final Award: Ethiopia's Damages Claims between the Federal Democratic Republic of Ethiopia and the State of Eritrea (Eritrea Ethiopia Claims Commission, 17 August 2009) [2009] Rep IAA 26, para 207.

87 Case no 31 (District Court of Tokyo, Civil Division, 26 November 1996).

the Hellenic Supreme Court of Greece (Cassation, 2000), when investigating crimes committed by German National Socialists in Greece, relied on international practice.⁸⁸ The Greek Court of Cassation stated that Germany possesses no immunity regarding the international crimes committed, bears responsibility for the damage inflicted upon the victims, and that such damages must be paid.⁸⁹ In the event of an international crime, states cannot invoke their own immunity, as the authority itself assumes the status of a presumed criminal.⁹⁰ However, during the proceedings, because both the Greek Ministry of Justice and the Greek courts invoked German immunity, the plaintiff appealed to the European Court of Human Rights (ECHR), citing a violation of the "fair trial" principle. The ECHR ruled against Germany and in favour of the plaintiff.⁹¹ Similar decisions in favour of victims have been adopted by other national courts.⁹²

Contradictory decisions, ultimately favouring the victims, have also been characteristic of the United States. A U.S. District Court rejected Germany's invocation of immunity. Although a U.S. citizen of Jewish descent initially applied to Germany for compensation, the claim was denied. The U.S. District Court upheld the right of a relative of a citizen of Jewish origin who was victimised and killed in Czechoslovakia in 1942 to sue; however, the Court of Appeals (referring to the Foreign Sovereign Immunities Act) accepted Germany's objection. Ultimately, law gave way to politics, and in 1995, a bilateral agreement was signed between the U.S. and Germany regarding compensation for U.S. citizens persecuted on religious or political grounds. Later (2006), contrary to the decisions of lower courts,⁹³ the U.S. Supreme Court directly applied Common Article 3 of the 1949 Geneva Conventions as a precedent for individuals.⁹⁴

Correctly, the International Criminal Tribunal for the former Yugoslavia (ICTY) linked the "requirement for individuals to exhaust domestic remedies for compensation"⁹⁵ to the existence of diplomatic relations during normal times. However, during military conflict, individuals (including those deported) are under the protection of the IV Geneva Convention (Art. 4).⁹⁶ In other words, despite the unsubstantiated decisions of national courts in some cases, the individual right to compensation for deported

88 Dapo Akande and Sangeeta Shah, 'Immunities of State Officials, International Crimes and Foreign Domestic Courts' (2010) 21(4) *European Journal of International Law* 815, doi:10.1093/ejil/chq080; Elena Vounas, 'Prefecture of Voiotia v Federal Republic of Germany: Sovereign Immunity and Jus Cogens Violations' (2002) 21(3) *NYLS Journal of International and Comparative Law* 629.

89 *Voiotia v Federal Republic of Germany* Case no 11/2000 (Greek Court of Cassation, 4 May 2000).

90 *United States v Wilhelm List* (US Military Tribunal Nuremberg, 19 February 1948) 636.

91 *Kalogeropoulos and others v Greece and Germany* App no 59021/00 (ECtHR, 12 December 2002); Judgement no 36 and 37/200 (Court of Cassation Greece, 28 June 2002).

92 *Shimoda case* (n 23) 636-7.

93 *Hamdan v Rumsfeld* (US Supreme Court, 29 June 2006) [2006] US Rep 548/557.

94 *Hamdi v Rumsfeld* (US Court of Appeals 4th Cir, 8 January 2003) F3d 316/450.

95 Case no 31 (District Court of Tokyo, Civil Division, 26 November 1996).

96 *Prosecutor v Tihomir Blaskic* IT 95-14-A (ICTY Appeals Chamber, 29 July 2004) paras 187, 188.

persons is recognised. Specifically, international humanitarian law (1907 Hague Convention IV, Art. 3; Geneva Law, Additional Protocol I, Art. 91) recognises the right of private individuals to compensation.⁹⁷

The International Court of Justice (ICJ), in its 2004 Advisory Opinion, stated that Israel must compensate all natural and legal persons subjected to material damage by the construction of the separation wall in the occupied Palestinian territory.⁹⁸ On July 20, 2004, the UN General Assembly, through Resolution ES-10/15, requested the Secretary-General to establish a Register of Damage for the relevant persons in accordance with paragraphs 152 and 153 of the Advisory Opinion. This practice is also being implemented by national administrative and judicial authorities.

Universal jurisdiction has been established for the crime of deportation as a violation of international humanitarian law. As early as the London Agreement of August 8, 1945, it was stipulated that an International Military Tribunal would be established to try war criminals whose offences had no particular geographical location (emphasis added). While this primarily concerned interstate cooperation in the extradition of criminals, the principle was subsequently integrated into the judicial processes of both the Nuremberg Tribunal and national courts. In a 1948 Allied (Nuremberg) Tribunal judgement, citing Hugo Grotius, it was noted: *"...kings, or those who possess the power of kings, have the right to impose punishment not only for injuries committed against themselves or their subjects, but also for those which do not directly affect them but present a gross violation of the law of nature or of nations in regard to any person."*⁹⁹ This universally recognised (*erga omnes*) right is also characteristic of the legislation of the Republic of Azerbaijan. As provided by law, the courts of the Republic of Azerbaijan possess universal jurisdiction (Criminal Code of AR, Art. 12.3) over the crime of deportation (Criminal Code of AR, Art. 107). Consequently, the victims of this crime (persons deported from Armenia) may realise their right to compensation against Armenia within the courts of the Republic of Azerbaijan.

In the struggle against international crimes, the role of national courts appears increasingly effective. Domestic courts remain the most reliable avenue for the application of international criminal law. Legal proceedings against international crimes, including deportation, can be initiated by domestic courts in any state in accordance with the principle of universal jurisdiction. This rule is also underscored in the Rome Statute (Preamble, para 5), which emphasises the "duty of every State to exercise its criminal jurisdiction over those responsible for international crimes."¹⁰⁰

97 Liesbeth Zegveld, 'Remedies for Victims of Violations of International Humanitarian Law' (2003) 85(851) *International Review of the Red Cross* 512.

98 David (n 28) 1144.

99 *German High Command case* (US Military Tribunal Nuremberg, 28 October 1948) LRTWC 12/61.

100 Rome Statute of the International Criminal Court (n 6) preamble, para 5.

Notably, although the Criminal Code of the Republic of Azerbaijan (Art. 107) categorises deportation as a crime against humanity, it qualifies the broader phrasing found in the Rome Statute (...deportation or forcible transfer of population, Art. 7.1(d)) with the condition of "expulsion to another country (emphasis added) or displacement by other coercive acts." This specific aspect has, in the authors' opinion, been correctly criticised in the legal literature.¹⁰¹ Applying the "expulsion to another country" clause of the AR Criminal Code to the population expelled from Armenia might be problematic if the Azerbaijan SSR is regarded as an integral part of the USSR at that time. We believe that the "expulsion to another country" condition should be removed to ensure alignment with the Rome Statute. Furthermore, the failure to categorise deportation as a war crime within the AR Criminal Code is a legislative flaw. The proposal to classify this crime solely as a "crime against humanity"¹⁰² is unacceptable, as it may inadvertently sideline the crime of military aggression. The status of the population expelled from Armenia cannot be accepted merely as "victims of a crime against humanity"; they are victims of a crime of military aggression that commenced in 1920 and persisted throughout the Soviet era. This distinction preserves the relevant state's international legal responsibility for the crime of aggression.

7 RIGHT TO RESTITUTION AND COMPENSATION FOR DAMAGES: METHODS OF CALCULATION, CONDITIONS FOR PAYMENT, AND NATUR

There are a number of theoretical and practical problems in ensuring the right to restitution for internationally wrongful acts, including deportation, and in determining compensation (compensation, "emenda", the amount to be awarded to the injured party (victim) for wrongful conduct or an international crime). Restitution, compensation, and satisfaction must be provided as forms of reparation for the damage caused.

Article 75 of the Statute of the International Criminal Court states that... the Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation. The Statute of the International Criminal Court provides not only the right to receive reparations but also the establishment of a Trust Fund for Victims (Art. 79). Articles 35-37 of the 2001 Articles on Responsibility of States for Internationally Wrongful Acts regulate all forms of such reparations.

As Professor J. Crawford noted, although restitution is the primary form of reparation, the injured State has the right to elect the form of reparation.¹⁰³ Theoretically, the damage caused

101 Mammadov, *International Criminal Law* (n 29) 129.

102 *ibid* 139.

103 James Crawford, *The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries* (CUP 2002); Daniel Bodansky and John R Crook, 'Symposium: The International Law Commission's State Responsibility Articles' (2002) 96(4) *American Journal of International Law* 773, doi:10.2307/3070677.

must be addressed in the form of restitution (*restitutio in integrum*). This implies that the population deported from Armenia, or their successors, should primarily be returned to the territories where they historically resided. However, changes brought about by time and differing objective realities (e.g., those of 1948–1956) may prevent full restitution. Therefore, alongside the right of return, other forms of reparation must also be ensured. To this end, Article 35 of the 2001 Articles on Responsibility of States for Internationally Wrongful Acts stipulates that a State responsible for an internationally wrongful act is under an obligation to make restitution, provided and to the extent that restitution: a) is not materially impossible; b) does not involve a burden out of all proportion to the benefit derived from restitution instead of compensation.

A specific position on restitution (restoration of the *status quo ante*) has been established through international arbitration and the domestic judicial mechanisms of States. The Eritrea-Ethiopia Claims Commission (2001), established in Algiers under the signed peace agreement, noted that the right of return for 722 individuals expelled by Ethiopia must be ensured.¹⁰⁴ The legal resolution of the Eritrea-Ethiopia conflict, although different in scale and character from Armenia's aggression against Azerbaijan, may also be applicable to the population deported from Armenia or their successors. This implies that, as a matter of restitution, the return of the population must be ensured, and regarding property rights, both restitution and compensation should be provided. In other words, a specific amount must be determined for each case. For instance, in the aforementioned precedent, the Arbitration Commission determined a payment of 45 million USD for the forced displacement of the population and 8.5 million USD for cases of death and injury.¹⁰⁵ The practice of national courts in this field is also substantial. A US court determined 745 million USD in compensation and 4.5 million USD in legal costs against the Bosnian "butcher" Karadzic for the international crimes he committed.¹⁰⁶ If restitution, that is, the full restoration of the *status quo ante*, is practically impossible, then compensation serves as the primary form of reparation. This form of payment is the most common in international practice. Regarding the military conflict in the Congo in 2000, the UN Security Council noted that Rwanda and Uganda must pay compensation for the damage caused to the civilian population in Kisangani.¹⁰⁷ According to Article 36, Paragraph 1 of the 2001 Articles, the damage caused must be compensated. In 2009, the Eritrea-Ethiopia Claims Commission also determined the amount of compensation to be paid. In such cases, when determining the amount of compensation, arbitral tribunals pay close attention to the establishment of future peace and mutual trust.

104 Partial Award: Civilians Claims, Eritrea's Claims 15, 16, and 27-32 between the State of Eritrea and the Federal Democratic Republic of Ethiopia (Eritrea Ethiopia Claims Commission, 17 December 2004) para 16.

105 Final Award: Ethiopia's Damages Claims (n 86) paras 250, 261, 311-2, 328.

106 *Doe v Karadzic* (SDNY, 13 June 2000) FRD 192/133.

107 Resolution UN Security Council 1304 (2000) [Situation in the Democratic Republic of the Congo] (adopted 16 June 2000).

In practice, international treaties have been signed both on a bilateral basis for the voluntary compensation of damages caused to individuals, and norms on compensation have been adopted in the judgements of well-known tribunals. In 1995, a bilateral agreement was signed between the United States and Germany regarding the payment of compensation to US citizens (Germany had previously concluded similar agreements with other states). Furthermore, under a 1956 agreement between the Netherlands and Japan, compensation of 415 guilders was provided for each deported individual.¹⁰⁸

For well-known reasons and due to its disinclination toward a peace treaty, the prospect of Armenia voluntarily providing financial compensation to the Azerbaijanis it deported is very low. Therefore, resolving the issue through judicial means could be significant, at least from a political perspective. Naturally, the primary experience in this field is international. The first international legal precedents in this area are related to the aftermath of World War II. In resolving this problem, there are established decisions of international criminal tribunals.

Certainly, to avoid the emergence of a perception of injustice even toward the aggressor, the compensation of damages, its calculation, and the conditions of payment must be fair and well-founded. In international practice, assessing damages can be complicated. In such cases, the nature of the breached obligations, the parties' conduct, and many other factors are taken into account.

When determining compensation, a "causal link" between the alleged violation and the damage caused must be demonstrated.¹⁰⁹ As a prerequisite for liability to arise, the damage must result from the violation. In its commentary on Article 31 of the Articles on State Responsibility, the International Law Commission refers to "proximate cause" as the justification for the obligation to make reparation. This condition was also reaffirmed in the 2009 decision of the Eritrea-Ethiopia Claims Commission.¹¹⁰ The primary purpose of compensation is to ensure full reparation for all violated rights. In this context, compensation must encompass damages arising from violations of both International Humanitarian Law (IHL) and International Human Rights Law (IHRL). The UN Special Committee, established in 1968 to investigate Israeli practices affecting the human rights of the Arab population of the occupied territories, notes that its activities are based not only on the Hague Conventions of 1899, 1907, and 1954, and the Third and Fourth Geneva Conventions of 1949, but also on the UN Charter and the 1966 International Covenants of the United Nations.¹¹¹

108 RCR Siekmann, 'Netherlands State Practice for the Parliamentary Year 1990-1991' (1992) 23 *Netherlands Yearbook of International Law* 378-9, doi:10.1017/S0167676800002245.

109 UN ILC, *Report of the International Law Commission, 53rd session (23 April-1 June and 2 July - 10 August 2001)* (UN 2001) 245.

110 Final Award: Ethiopia's Damages Claims (n 86) para 39.

111 Special Committee to Investigate Israeli Practices Affecting, *Report Affecting the Human Rights of the Palestinian People and other Arabs of the Occupied Territories* (UN Doc A/47/509, 21 October 1992) 13.

The necessity of the mutual application of norms from both fields is expressed in Article 72 of Protocol I (1977) to the 1949 Geneva Conventions. In this context, elementary norms for the protection of human rights must be applied alongside International Humanitarian Law (IHL) regarding the protection of the rights of refugees and stateless persons (Art. 73), all persons in the power of a party to the conflict (Art. 75), women (Art. 76), children (Art. 77-78), and others.

Judgements of the European Court of Human Rights (ECHR) can serve as examples of this. The ECHR applied the European Convention on Human Rights (specifically Article 2, the right to life) to situations involving Russian military operations in Chechnya—such as the aerial bombardment of civilians not participating in hostilities and extrajudicial killings by Russian servicemen—thereby upholding the plaintiffs' right to compensation.¹¹²

In cases where deportation is not committed with genocidal intent (for instance, when carried out as a war crime), fundamental human rights norms, such as the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, must be applied. In such instances, the damage caused should be determined in accordance with the 1984 UN Convention.

According to Article 36, Paragraph 2 of the 2001 Articles on State Responsibility, compensation shall cover any financially assessable damage, including loss of profits (*lucrum cessans*). Damage calculated in monetary terms includes both the injury to the State itself and to its nationals. Under international law, damage resulting from both lawful and internationally wrongful acts must be compensated. Since damage caused by wrongful conduct involves the breach of *erga omnes* obligations, its reparation regime is subject to international public order (*ordre public*). In decisions adopted regarding the commission of international crimes (in relation to Germany, Iraq, and other states), compensation has been calculated across all liability categories. By its Resolution 692 (1991) concerning Iraq's military aggression against Kuwait, the UN Security Council decided that Iraq is liable under international law for any direct loss or damage resulting from its unlawful invasion of Kuwait.¹¹³

112 Legal Education Society, *European Court of Human Rights: Comments and Normative Acts* (GISO Enterprise KRINB 2006) 862; *Khashiyev and Akayeva v Russia* App nos 57942/00 and 57945/00 (ECtHR, 24 February 2005).

113 Resolution UN Security Council 446 (1979) [On Establishment of a Commission to Examine the Situation Relating to Settlements in the Arab Territories Occupied by Israel] (adopted 22 March 1979); Resolution UN Security Council 452 (1979) [On Israeli Settlement Policies in the Occupied Territories] (adopted 20 July 1979); Resolution UN Security Council 605 (1987) [On Protection of Palestinian Civilians under Israel Occupation] (adopted 22 December 1987); Resolution UN Security Council 626 (1988) [On Establishment of the UN Angola Verification Mission] (adopted 20 December 1988); David (n 28).

As previously stated, the amount of compensation must reflect the actual damage caused. When determining compensation, both material losses and non-material (moral) damages can be established. The assessment should be conducted for each type of damage, including health, material (economic), and cultural-moral dimensions. For instance, in the case of material (economic) assessment, the value of property, loss of profits (*lucrum cessans*), and additional expenses are taken as the basis.

With certain exceptions, the practice of the Eritrea-Ethiopia Claims Commission included compensation for damages resulting from committed crimes, such as injury to health, including rape, killing, and wounding, unlawful deprivation of liberty, deprivation of food and medical assistance, and the creation of unacceptable conditions of detention. It also covered damages for the violation of *jus contra bellum*, the deprivation of the civilian population of education and medical services, and attacks on cultural values. The decision of the Arbitration Commission separately resolved the issue of compensation for unlawful expulsion, unacceptable conditions of transportation and resettlement, and the obstruction of the repatriation of prisoners of war and civilians.

As noted, loss of profits and additional expenses must also be compensated. The Arbitration Commission also ruled on compensation for the lost profits resulting from the loss of employment.¹¹⁴ One form of reparation in the event of an internationally wrongful act is satisfaction, which includes acknowledgement of the breach, an expression of regret, a formal apology, and similar acts. According to Professor I.I. Lukashuk, damage encompasses any harm caused by a State's internationally wrongful act, including both material and moral damage.¹¹⁵ Regarding satisfaction, according to Article 37, Paragraph 1 of the 2001 Articles, a State is liable in the form of satisfaction insofar as the damage caused by an internationally wrongful act cannot be made good by restitution or compensation. Judicial practice is known to apply satisfaction alongside both restitution and compensation. Article 37, Paragraph 2 identifies forms of satisfaction such as an acknowledgement of the breach, an expression of regret, or a formal apology. However, this is not an exhaustive list. Satisfaction may be carried out in other forms, and numerous such cases are known in practice. Generally, in judicial practice, victims are awarded compensation for both material and moral damage.¹¹⁶

The extensive practice of the ECHR can be cited as evidence of this. Article 1 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the United Nations General Assembly on November 29, 1985, states that the term "victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of

114 Final Award: Ethiopia's Damages Claims (n 86) paras 250, 261, 311-2, 328.

115 Lukashuk (n 26) 387.

116 Manfred Nowak, *Introduction to the International Human Rights Regime* (Brill 2023) 158, doi:10.1163/9789004479074.

their fundamental rights, through acts or omissions that are in violation of national criminal laws, including those laws proscribing criminal abuse of power.¹¹⁷

In cases of deportation as an international crime, the method for calculating moral damage must be determined on a case-by-case basis for each deported person.¹¹⁸ Moral damage, being non-pecuniary damage, is a legal violation that does not possess economic content or value. Such damage causes moral distress and suffering to a natural person by violating their inherent or law-based non-material assets (honour, dignity, business reputation, personal and family secrets, freedom of movement, freedom to choose a place of residence, the right to a name, copyright, personal non-property rights, etc.). Moral damage is compensated either alongside the inflicted property damage or in cases where no property damage has been caused. When paying for moral damage, it is necessary to take into account the nature and degree of moral and physical suffering, as well as the fault of the respondent, their financial status, and other important circumstances; the specifics regarding the payment of such damage in each specific case must be determined at the discretion of the court.¹¹⁹ Of course, a complex and long-term process must be carried out in this case. When the reasoned positions of international bodies regarding the assessment of damages are presented as evidence, tribunals can determine compensation.

8 REPARATION IN THE FORM OF IMMOVABLE PROPERTY ARISING FROM THE VIOLATION OF JUS CONTRA BELLUM: THE RIGHT OF THE REPUBLIC OF AZERBAIJAN TO OBTAIN COMPENSATION

As noted, the right to claim damages caused by crimes against international law, including deportation, also belongs to the injured State. If state organs, persons acting under its authority, or individuals and populations associated with that State, along with their interests, have suffered harm, the right to invoke responsibility lies with that State. The Republic of Azerbaijan has the right to receive compensation for the hundreds of thousands of people deported from territories ceded to Armenia following the Russian military aggression against Azerbaijan starting in April 1920 (based on the 1898 and 1907 Hague Regulations, IV Hague Convention (Regulations Art. 42); Article 10 of the Covenant of the League of Nations; bilateral treaties signed by the Azerbaijan Republic with neighbouring states in 1918–1919; the 1991 Declaration of the Supreme Soviet on the Restoration of State Independence; and Articles 1–3 of the 1991 Constitutional Act on State Independence).

117 Resolution of the Constitutional Court of the Republic of Azerbaijan of 31 May 2002 'On the Interpretation of Articles 21 and 23 of the Civil Code of the Republic of Azerbaijan' <<https://constcourt.gov.az/az/decision/600>> accessed 15 January 2026.

118 Final Award: Ethiopia's Damages Claims (n 86) paras 250, 261, 311-2, 328.

119 Resolution of the Constitutional Court of the Republic of Azerbaijan of 31 May 2002 (n 117).

How should the right to claim compensation be realised in this case? In accordance with Article 33 of the UN Charter, and as previously stated, there is an established practice of resolving such issues by concluding international treaties based on claims between states. However, a positive approach from Armenia toward the Republic of Azerbaijan's right to receive compensation does not appear realistic. According to Article 42 of the 2001 Articles on State Responsibility, the Republic of Azerbaijan, as the injured State, has the right to invoke the responsibility of the aggressor, Armenia.

Although Armenia's aggression against the Republic of Azerbaijan was not directly recognised in formal legal terms due to well-known reasons (direct support for Armenia by Russia and France in the UN Security Council), Armenia was indirectly accepted as a party to the conflict in UN Security Council Resolutions 822 (1993), 853 (1993), 874 (1993), and 884 (1993).

The UN General Assembly Resolution A/RES/62/243 of March 14, 2008, titled "The situation in the occupied territories of Azerbaijan," states that the General Assembly... declaring respect for and defence of the sovereignty and territorial integrity of the Republic of Azerbaijan within its recognised international borders; demands the immediate, complete, and unconditional withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan.¹²⁰

Similarly, Resolution 1416 (2005) of the Parliamentary Assembly of the Council of Europe (PACE) states that ...a significant part of Azerbaijan's territory is still occupied by Armenian forces, and the Nagorno-Karabakh region is still under the control of separatist forces. In its resolution, the Parliamentary Assembly further confirms Armenia's status as a party to the conflict: "...the Assembly reaffirms that the secession or independence of a specific region from the territory of any state must only occur through legal, democratic processes and not through military conflict leading to the expulsion of the population based on ethnic affiliation via the de facto annexation of this territory by another state".¹²¹

The primary instrument confirming Armenia's aggression against the Republic of Azerbaijan is the Trilateral Statement of November 9-10, 2020, signed between the Republic of Azerbaijan, Armenia, and the Russian Federation. In numerous Articles of the Statement, Armenia's obligation to cease military aggression against Azerbaijan and to withdraw its forces from the territory of the Republic of Azerbaijan is enshrined. The Republic of Azerbaijan has the authority to take lawful countermeasures (Art. 49) in response to Armenia's reparation obligations arising from military aggression. In accordance with Article 52 of the 2001 Articles on State Responsibility, the lawful countermeasures of the Republic of Azerbaijan can primarily be implemented at a non-

120 PACE Resolution 1416 (2005) 'The Conflict over the Nagorno-Karabakh Region Dealt with by the OSCE Minsk Conference' (25 January 2005); UNGA Resolution 62/243 'The Situation in the Occupied Territories of Azerbaijan' (A/RES/62/243, 14 March 2008).

121 *ibid*

military level (e.g., imposing economic sanctions against the state that committed the violation in other countries or confiscating its assets).

A recent precedent in this field involves the economic sanctions imposed by other states against the Russian Federation in response to its military aggression against Ukraine.¹²² At the recent summit on December 19, 2025, the condition for the repayment of the European Union's 90 billion euro financial support to Ukraine was linked to the reparations that the Russian Federation must pay to Ukraine as a result of its military aggression. It must be noted that the international community has struggled to reach a definitive resolution regarding the transfer of Russian assets to Ukraine as a victim of military aggression. The international legal basis for the seizure of assets of an aggressor state or the confiscation of property belonging to supporters of its policies (2001 Articles; Protocol No. 1, Article 1 of the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms) aims to hold that state accountable. If a sanction is multilateral, national courts can implement such rulings once the sanction regime has been implemented into domestic law.

The UN Security Council,¹²³ the General Assembly, and the International Court of Justice (Statute Art. 36) have the authority to mandate economic sanctions, including the seizure of assets. It is possible for Ukraine to appeal to the UN Security Council to apply established practices¹²⁴ to resolve this issue. According to Article 27, Paragraph 3 of the UN Charter, the participation of, or interference by Russia, as a 'permanent member' that is a party to the dispute, in the voting process shall have no legal weight. In the context of the seizure of an aggressor state's assets, an appeal to international courts can, in itself, facilitate the resolution of the problem on the basis of goodwill.¹²⁵ In accordance with the right of self-defence (UN Charter Art. 51), if a state imposes individual sanctions or countermeasures, a legislative act must be adopted to confiscate property (Protocol No. 1, Art. 1 of the 1950 Convention).

Even if an aggressor state is defeated but not subjugated, it continues to bear responsibility for the military conflict. In such a case, the state that has repelled the aggression may, in accordance with Article 53 of the 2001 Articles (within the context expressed in Part II of

122 Anton Moiseienko, 'Legal: The Freezing of the Russian Central Bank's Assets' (2023) 34(4) European Journal of International Law 1007, doi:10.1093/ejil/chad050; Laurence H Tribe and others, *The Legal, Practical, and Moral Case for Transferring Russian Sovereign Assets to Ukraine* (Renew Democracy Initiative 2023).

123 Resolution UN Security Council 692 (1991) [On Establishment of the UN Compensation Fund and the UN Compensation Commission under Security Council resolution 687 (1991)] (adopted 20 May 1991); Resolution UN Security Council 705 (1991) [On Payment of War Damage Compensation by Iraq] (adopted 15 August 1991); Resolution UN Security Council 706 (1991) [Authorizing States to Permit the Import of Petroleum and Petroleum Products Originating in Iraq Sufficient to Produce a Sum to be Determined by the Council] (adopted 15 August 1991).

124 *ibid*

125 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America)* (ICJ, 27 June 1986).

the Articles), confiscate property owned by that state. This must be done without prejudice to the provision of food and medical supplies for the population of the aggressor state (Articles 23, 55, 59, etc., of the IV Geneva Convention and Articles 69-71 of Additional Protocol I).

The first historical instance of the right to receive reparations in the form of immovable property for violations of *jus contra bellum* dates back to the Treaty of Versailles, adopted at the Paris Peace Conference. Reparation (from Latin *reparatio*, a form of material liability) was imposed on Germany and its allies, who were defeated in World War I.

As compensation under the Treaty of Versailles, Germany lost 13.5% of its territory and 10% of its population.¹²⁶ Along with other indemnities and territories, Poland secured the Danzig (Vistula) Corridor, granting it access to the sea; France obtained the rights to exploit the Saar coal mines; and other states acquired various other rights. Germany was even subjected to indemnities for the maintenance of the "occupation forces." The judgements of the Nuremberg and Tokyo International Tribunals following World War II also imposed reparation obligations on Germany and Japan for aggression, deportation, and other international crimes. The territorial reparation obligations applied to Germany at the Versailles Peace Conference were also adopted at the 1945 Potsdam Conference. The treaties signed upon the repelling of military aggression govern the parties' mutual obligations.

A number of German territories, including Königsberg, were transferred to the USSR; Memelland to Lithuania; and Eupen-Malmedy to Belgium. Saarland remained under French protectorate until the 1957 referendum. In 1949, the Netherlands waived its claim for 25 billion guilders in reparations in exchange for 69 square kilometres of territory. Certain territories (Silesia, Danzig, southern East Prussia, etc.) came under Polish jurisdiction.

In total, Germany's territory was reduced by 25% compared to 1937. Along with territory, various other assets of the aggressor were taken as reparations. In 1947, Yugoslavia received German factory equipment valued at 36 billion US dollars (in 1938 purchasing power) as reparations.¹²⁷ The USSR, meanwhile, seized factories and plants not only within Germany but also in the territories of its other allies. The German naval fleet was divided among Great Britain, the United States, and the USSR.¹²⁸ The reparation regime established against Germany formally continued until the Treaty on the Final Settlement with Respect to Germany (German Reunification) on October 3, 1990. As noted, treaties signed upon the repelling of military aggression regulate the parties' mutual obligations; the regime of such treaties falls under the protection of general international law, ensuring

126 Margaret MacMillan, *Paris 1919: Six Months That Changed the World* (Random House 2001) 584.

127 Special Representative of the Secretary-General in the Republic of the Congo, *Report dated 24 February 1961 to the Secretary-General from his Special Representative in the Congo on the civil war situation in the 3 main sectors of the Congo: addendum dated 1 March 1961* (UN 1961); Alan Kramer, *The West German Economy 1945–1955* (Berg Publishers 1991).

128 Giles MacDonogh, *After the Reich: The Brutal History of the Allied Occupation* (Basic Books 2007).

erga omnes obligations. Even setting aside the conclusion procedure, the regime of obligations expressed for Armenia (for example, under Paragraph 9) in the Trilateral Statement (2020) between the Republic of Azerbaijan, the Republic of Armenia, and the Russian Federation is also under the protection of general international law (UN Charter Art. 51). The guarantors of the relevant obligation (including the Trilateral Statement as a partial act of demilitarisation) are the international community and the Republic of Azerbaijan as the injured State.

9 INTERNATIONAL LEGAL GUARANTEES OF RESTITUTION AND THE VOLUNTARY, SAFE, AND DIGNIFIED RETURN OF THE DEPORTED POPULATION

As noted, restitution should involve restoring the prior situation to ensure a dignified, safe, and honourable way of life. The UN Office of the High Commissioner for Human Rights' document '*Rule-of-Law Tools for Post-Conflict States: Reparations Programmes*' states that restitution for victims includes:

- Restoration of the situation that existed prior to the gross violations of international human rights law or serious violations of international humanitarian law, such as the restoration of human rights and freedoms, and personal, family, and citizenship status documents.
- Return to one's original place of residence.
- Measures for the return of property (restitution of property).¹²⁹

The measures expressed in this document must also be ensured for the Turkic-Muslim population who were mass deported from Armenia. Substantive legal guarantees also require the implementation of a number of procedural measures. A certain practice has already been established in this field. There are well-known resolutions of the UN Security Council¹³⁰ and the General Assembly¹³¹ against the forcible change of demographic structure (population composition), as seen in the case of Iraq's invasion of Kuwait, as well as in the territories occupied by Israel. There is also a quasi-judicial practice regarding the return of deported persons, regardless of the nature and intensity of the military conflict. The Eritrea-Ethiopia Claims Commission (2001) noted that the right to return must be ensured for the 722 individuals expelled by Ethiopia.¹³²

129 Office of the UN High Commissioner for Human Rights, *Rule-of-Law Tools for Post-Conflict States: Reparations Programmes* (HR/PUB/08/1, UN Publication 2008) 7.

130 Resolution UN Security Council 692 (1991); 705 (1991); 706 (1991) (n 123).

131 UN Human Rights Council, *Report of the United Nations Fact Finding Mission on the Gaza Conflict* (A/HRC/12/48, 15 September 2009) 540.

132 Partial Award: Civilians Claims (n 105) para 16.

Furthermore, through a well-known resolution of the UN General Assembly¹³³, the forcible expulsion of the population from their homes in Bosnia and Herzegovina was strictly condemned. The peace agreement signed on June 3, 1993, between NATO, the Russian Federation, and Yugoslavia provided for the voluntary return of displaced populations from the military conflict to their homes under conditions of full security.

International law has established a practice for the unimpeded and voluntary return of persons who have acquired refugee or internally displaced person (IDP) status as a result of military conflict. In such cases, the direct intent to deport by a party to the conflict may not always be evident. According to UN General Assembly Resolution 194 of December 11, 1948, in accordance with the principles of international law, refugees should be permitted to return to their places of residence at the earliest practicable date, with compensation for damages provided by the respective governments. This resolution was subsequently reaffirmed by both the General Assembly (e.g., 2000, 156-2-2) and Security Council resolutions¹³⁴, thereby establishing the "international right to a voluntary, safe, and dignified return."

The 1907 Hague Regulations and Geneva Law (IV Convention: Art. 27 on respect for the rights and freedoms of protected persons; Art. 29 on the responsibility of a party to the conflict regarding the observance of individual rights; Art. 46 on the cancellation of restrictive measures; Art. 49 on the prohibition of deportation and the immediate return of persons to their homes upon the cessation of hostilities; Art. 132 on the temporary nature of evacuation and the absolute nature of release and repatriation; and Art. 133 on the termination of evacuation upon the end of hostilities) collectively encompass the rights and freedoms of deportation victims within the broad framework of the "international right to a voluntary, safe, and dignified return."

Although the population expelled from Armenia has been granted refugee status, they are direct victims of military aggression and deportation; in this sense, their status should be determined under the regime of International Humanitarian Law (IHL). The framework for the domestic legal implementation of international humanitarian law norms is operational under the legislation of the Republic of Azerbaijan (Constitution, Art. 148.II and Art. 10). The domestic protection of the rights of the Turkic-Muslim population subjected to mass deportation from Armenia can be realised by recognising their legal status as a deported population. Such recognition can be effected either through a legislative act of the Republic of Azerbaijan or by a court decision. Alternatively, the protection of their rights can be ensured through a judgement of an international court.

133 UNGA Resolution 51/116 'The Situation of Human Rights in the Republic of Bosnia and Herzegovina, the Republic of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro)' (A/51/PV.82, 12 December 1996).

134 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* Advisory Opinion (ICJ, 9 July 2004) ICJ Rep 2004/152-3; Resolution UN Security Council 259 (1968) [On the Special Representative of the Secretary-General for the Arab Territories under Military Occupation by Israel] (adopted 27 September 1968).

Undoubtedly, a judgement from the UN International Court of Justice (ICJ) could be more ambitious in resolving this issue. In particular, since 2023, the International Court of Justice (ICJ), where mutual jurisdiction is recognised, and reciprocal claims have been filed pursuant to Article 22 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (CERD), may offer greater prospects for resolving this issue. A demand should be made to Armenia through an ICJ judgement to evaluate the racial discrimination aspect and genocidal content of the deportation and to ensure the fulfilment of relevant obligations. In the application to be submitted to the International Court of Justice regarding the deportation of the Turkic-Muslim (civilian) population group, the following should be sought:

1. The evaluation of the acts as:
 - A) Genocide; or
 - B) War crimes; or
 - C) Crimes against humanity.
2. The determination of the State responsibility of Armenia regarding the obligation of reparation.

Another guarantee mechanism, in accordance with Protocol No. 4 to the 1950 European Convention on Human Rights (Art. 3.1: "No one shall be expelled, by means of an individual or collective measure, from the territory of the State of which he is a national"), could involve:

1. A claim for compensation for the victims at the European Court of Human Rights (ECHR).
2. Simultaneously, a series of general measures at the ECHR:

A demand for the annulment of Armenia's acts that are contrary to international law.

Consistent with the ECHR's authority to order administrative or individual measures, a claim can be filed by the Republic of Azerbaijan for the return of our compatriots (the indigenous Turkic-Muslim people) who were subjected to mass deportation. Precedents are known¹³⁵ in accordance with Protocol No. 4 to the 1950 European Convention on Human Rights (Art. 3.1: "No one shall be expelled, by means of an individual or collective measure, from the territory of the State of which he is a national"; and Art. 4 regarding additional procedural guarantees).

The violation of the law in these cases differs from the violation of our compatriots' rights. The individuals in those precedents are subjects of the 'right to asylum' or 'migration law.' In contrast, the members of the 'Western Azerbaijan Community' are indigenous people.

135 *IM v France* App no 9152/09 (ECtHR, 2 February 2012); *Hirsi Jamaa and others v Italy* (n 42).

Therefore, regarding the mass deportation from Armenia, our compatriots may file claims based on the norms concerning violations of Article 2 (right to life), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life, and home) of the 1950 European Convention, and Article 1 of Protocol No. 1 (protection of property).

Physical violence was used against the population deported from Armenia. Within the framework of European human rights, the rights of these persons can also be exercised based on the European Convention on the Compensation of Victims of Violent Crimes (Strasbourg, 1983). The Convention (Art. 2.2) states that compensation shall be paid by the State in whose territory the crime was committed. Naturally, the requirement that a complaint regarding the same subject matter and the same parties must be submitted to only one international judicial mechanism (*lis alibi pendens*) must be observed. The judicial practice explaining the consequences of the principle that no person can be deprived of the right to enter the territory of the State of which he is a national is not very extensive. This right is also a consequence of general international law.¹³⁶

The consequence of general international law is that, under international human rights law, all persons, including indigenous populations, have the right to return to their homeland. Regardless of a peace treaty formalising the end of a war, the internment of evacuated persons must be terminated upon the cessation of active hostilities (IV Convention, Art. 133), and deported or interned persons must be repatriated (IV Convention, Art. 134).

This rule possesses the character of a customary norm of international humanitarian law. Although the repatriation of a deported population may be accompanied by certain military-political, administrative-economic, and other challenges, it is among the principles that must be executed 'unconditionally.' According to Additional Protocol I to the Geneva Conventions (Art. 85.4(b)), the unjustifiable delay in the repatriation of civilian persons, as well as prisoners of war, constitutes a war crime (entails criminal responsibility).

10 INTERNATIONAL LEGAL GUARANTEES OF SECURITY FOLLOWING A DIGNIFIED RETURN (MONITORING SYSTEM)

The voluntary, safe, and dignified return of deported persons, as established by International Humanitarian Law (IV Convention, Arts. 133 and 134), constitutes only the initial stage in resolving the issue. As a continuation of international legal guarantees, the primary challenge is establishing a secure way of life for the population upon their return.

A secure way of life, as an institution of international law, can be realised through the right to self-determination (in both its internal and external aspects). The selection of forms of cultural or ethno-political autonomy will depend on the host country's state

¹³⁶ Legal Education Society (n 112) 670.

form, particularly its administrative-territorial structure. Even in the simplest form, such as cultural autonomy, constitutional guarantees of the host state must be established, and these guarantees must be conditioned by the institution of international guardianship (guarantorship).

As a rule, the institution of international guardianship is implemented through a multilateral international treaty. Without entering into the civil law concept in the narrow sense, it should be noted that the term 'guaranty' (English: guarantee) signifies the securing of ownership of a property, while the term 'guarantor' (French: garant) conveys the meaning of one who protects or guards.¹³⁷ While various definitions are provided for guarantee treaties within international law doctrine, the general substance is that they are 'agreements intended to provide aid and support to one of the contracting parties, should the necessity arise, in order to compel a non-trusted party to fulfil its obligations'.¹³⁸

The aid and support provided through the institution of international guardianship are intended for the purpose of trusteeship, aimed at realising international peace and security, as well as the rights and freedoms of the population in the respective territory. According to international law (UN Charter, Chapter XII), the trusteeship system is generally established to maintain international peace and security in non-self-governing territories. However, the form of trusteeship that constitutes the regulatory object of a guarantee treaty is more specific.

Trusteeship as the object of a guarantee treaty is secured by an obligation undertaken with the possibility of intervention by the other party or parties in the event of a breach of the territorial guarantee obligation; or otherwise, the party is compelled to fulfil it. A guarantee treaty may be cited, for instance, as an agreement signed to strengthen a peace treaty and reinforce the consent of the parties¹³⁹, or as the guarantorship of individual powerful states in the realisation of major economic and commercial projects (for example, the role of the United States in the Ankara Declaration, which supported the construction of the Main Export Pipeline via the Baku-Tbilisi-Ceyhan route among Azerbaijan, Turkey, Georgia, Kazakhstan, Uzbekistan, and the USA). A guarantor state is a state that warrants that the conditions set forth in the treaty will be preserved.

A guarantee treaty establishes international obligations for one party and absolute rights for the other. It serves as a safeguard against bad faith and mistrust. One historical example is the treaty signed by England and the people of La Rochelle against France guaranteeing their right to autonomy.¹⁴⁰ In the Middle Ages, placing small or neutral states under the

137 Emer de Vattel, *The Law of Nations, Or, Principles of the Law of Nature, Applied to the Conduct and Affairs of Nations and Sovereigns, with Three Early Essays on the Origin and Nature of Natural Law and on Luxury* (Liberty Fund 2008) 398.

138 *ibid* 396.

139 Alan Dowty, 'International Guarantees with Special Reference to the Middle East' in David Carlton and Carlo Schaerf (eds), *The Dynamics of the Arms Race* (Wiley & Sons 1975) 215.

140 Armaoglu (n 44) 261.

guardianship of guarantor states was a common practice. Under a guarantee treaty, the guarantor is recognised as having the right to use force against a non-trusted party should that party fail to fulfil its obligations.¹⁴¹

Currently, various alliances and blocs also operate with the characteristics of a guarantee. In the modern era, the UN Charter serves as the ultimate foundation for guarantee treaties. In accordance with the 1969 Vienna Convention on the Law of Treaties (Arts. 2 and 53), these treaties must be based on the use of 'just force', provided that the principles enshrined in the UN Charter (Arts. 2, 51, 103) are observed. This implies that guarantee treaties function as a mechanism to ensure the accountability of aggressor states that violate general international law. According to the UN Charter (Art. 51), a guarantee treaty is significant for the phase following the repatriation of the population and the elimination of the consequences of deportation crimes committed as a result of aggression.

For the Turkic-Muslim population expelled from Armenia, the 20th-century experience, specifically the 1960 Cyprus Treaty of Guarantee or the 1995 Dayton Agreement, can serve as a model. The parties to the 1960 Cyprus Treaty of Guarantee were states with international legal personality (Turkey, the United Kingdom, Cyprus, and Greece). On behalf of the Republic of Cyprus, it was signed by the Greek Cypriot head of state and his Turkish Cypriot deputy.

In the case of the Western Azerbaijan community, if the 1907 Hague Regulations (IV) are taken as a basis, the community could act as a party to the signed guarantee treaty. Alternatively, the Western Azerbaijan Community could constitute the regulatory object of the treaty. The Republic of Azerbaijan and the Western Azerbaijan Community, on the one hand, and Armenia, on the other, could agree to a treaty to ensure the security of Western Azerbaijanis under the guardianship of guarantor states (e.g., the United Kingdom and Turkey). The terms of the treaty could be adapted to the Cyprus model.

The 1960 Cyprus Treaty of Guarantee functioned as a complementary norm to the Cypriot Constitution. It aimed to guarantee the constitutional order governing the state and the rights and freedoms of both communities on the island. Similarly, the Dayton Agreement serves as a guarantee for the constitutional structure of Bosnia and Herzegovina. In the Guarantee Treaty (Art. 1), the right to self-determination of Western Azerbaijanis (including forms of local self-governance) can be enshrined in accordance with Article 2 of the International Covenant on Civil and Political Rights (ICCPR). In the Concept of Return¹⁴², which concerns the ensuring of a safe, dignified, and peaceful return of Azerbaijanis expelled from the territory of present-day Armenia, Armenia is expressed as a socio-political reality (4.4).

141 Dowty (n 139) 216.

142 Western Azerbaijan Community, *Concept for the peaceful, safe and dignified return of Azerbaijanis expelled from the territory of present-day Armenia (Return Concept)* (adopted 26 January 2023).

Article 2 of the Guarantee Treaty may reflect respect for Armenia's politico-legal independence. Article 3 could establish that Western Azerbaijanis shall have unimpeded communication and links with the Republic of Azerbaijan, while Article 4 could state that the autonomy of Western Azerbaijanis shall remain inviolable even if Armenia joins any politico-military blocs. Similar to the Dayton Agreement, security forces of the guarantor states could be deployed in the territories where Western Azerbaijanis are settled. In accordance with the principle of the peaceful settlement of disputes (UN Charter, Art. 33), any disagreements could be designated for adjudication by the UN International Court of Justice (ICJ) as the court of last resort. As the Guarantee Treaty pertains to human rights, it should be of indefinite duration. In the event of a 'fundamental change of circumstances' (*rebus sic stantibus*) as expressed in Article 62 of the 1969 Vienna Convention on the Law of Treaties, Western Azerbaijanis may rely on their right to self-determination as a fundamental basis.

11 CONCLUSION

The right not to be subjected to deportation is based on the *jus cogens* norm, which requires universal observance in international law. The international legal responsibility of a state for deportation involves the fulfilment of the breached international obligation through: *restitutio in integrum*—the restoration of the material situation that existed prior to the violation (*status quo ante*); compensation for material and moral damages, including rehabilitation, satisfaction, and guarantees of non-repetition; and the individual criminal responsibility and prosecution of the perpetrators.

From the perspective of international legal status, the population of Western Azerbaijan is considered a population deported from Azerbaijani territories that Russia occupied in 1920 and subsequently transferred to Armenia. In this case, the regime of International Humanitarian Law (IHL) governing populations deported from territories occupied as a result of military aggression applies. The fact that the Armenian political leadership refers to the ethnic differences of the Turkic-Muslim population deported from Armenia serves as evidence that this deportation was also carried out with genocidal intent.

Criminal cases can be initiated in the Republic of Azerbaijan under universal jurisdiction to establish the individual criminal responsibility of officials who carried out the deportation or obstructed the "right to return."

Regardless of the refugee status recognised under the 1951 Convention, the Turkic-Muslim population deported from Armenia is under the protection of the 1907 Hague Regulations (IV) and the 1949 Geneva Convention (IV, Art. 4). Hague and Geneva law, in turn, do not exclude the application of minimum standards of International Human Rights

Law (IHRL) toward this population. To ensure the right to return, international mechanisms may be utilised. A demand should be made to Armenia through a judgement of the UN International Court of Justice (ICJ) (based on Art. 22 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination) for the evaluation of the racial discrimination and genocidal content of the deportation, and for the fulfilment of relevant obligations, including the "right to return." The 1951 Convention Relating to the Status of Refugees (Art. 38) also allows the ICJ to evaluate deportation, where the hardships of the refugee condition can constitute the subject of the claim.

Victims can file a claim for compensation with the European Court of Human Rights (ECHR). Simultaneously, as general measures, the annulment of Armenia's acts contrary to international law should be demanded, and a claim for the return of the mass deported Turkic-Muslim people can be raised in accordance with the ECHR's authority to order administrative measures.

To implement these demands more effectively, a "Law of the Republic of Azerbaijan on the Dignified Return and Security of Azerbaijanis Deported from the Territory of Present-day Armenia on the Basis of Racial Discrimination and with Genocidal Intent" could be adopted. This law should emphasise that their Azerbaijani citizenship status is of a temporary and transitional nature, recognise them as victims of the crime of genocide and highlight their desire to return to their historical homeland. The granting of citizenship was linked to the desire to eliminate the legal vacuum regarding these persons in accordance with IHRL.

The citizenship granted by the Republic of Azerbaijan was necessitated by Armenia's long-term military aggression, alongside principles governing the institution of citizenship in international human rights, such as the prohibition of arbitrary deprivation of nationality (Universal Declaration of Human Rights, Art. 15), the prevention of statelessness, and the priority of the right to nationality in ensuring human rights. In this sense, the granted Azerbaijani citizenship does not exclude their status as nationals of Armenia. There are no cases of loss of citizenship (expatriation, denaturalisation, denationalisation, etc.) for these persons. The provision of the 1966 International Covenant on Civil and Political Rights (Art. 15.2) that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality" remains an international obligation for Armenia. As long as these persons' specific desire to return persists or no declaration of renunciation of Armenian citizenship is made, the status quo ante formally remains in effect regarding them.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

МІЖНАРОДНО-ПРАВОВІ ЗАСАДИ

ГІДНОГО ПОВЕРНЕННЯ ТА БЕЗПЕКИ АЗЕРБАЙДЖАНЦІВ,
ДЕПОРТОВАНИХ ІЗ СУЧАСНОЇ ТЕРИТОРІЇ СУЧАСНОЇ ВІРМЕНІЇ

Афсар Садізов та Сафтар Рагімлі*

АНОТАЦІЯ

Вступ. Примусове переміщення населення Західного Азербайджану, спочатку вигнаного з територій, окупованих Росією в 1920 році, а згодом переданого під юрисдикцію Вірменії, є важливим предметом міжнародно-правового регулювання у сфері репатріації, безпеки та відновлення прав для переміщених груп населення. Відповідно до доктрини *jus cogens*, заборона депортації класифікується як імперативна норма міжнародного права, яка передбачає загальне дотримання та покладає на державу міжнародно-правову

відповідальність за її порушення. Правова база, яка регулює такі випадки, є багатогранною, спираючись на міжнародне гуманітарне право для вирішення проблем населення, переміщеного внаслідок військової агресії, водночас посилюючись на принципи відповідальності держави за міжнародні протиправні дії. Ці принципи вимагають комплексного відшкодування, зокрема *restitutio in integrum* (відновлення *status quo ante*), компенсації, реабілітації, сатисфакції та надійних гарантій неповторення.

З погляду нормативності, тюрксько-мусульманське населення, депортоване з Вірменії, залишається під захистом Гаазької конвенції (IV) 1907 року та Женевської конвенції (IV) 1949 року. Незважаючи на те, що наявна наука широко задокументувала історичні та нормативні виміри депортації, зберігається значна аналітична прогалина щодо конкретних міжнародно-правових механізмів, необхідних для того, щоб реалізувати право на гідне повернення та гарантувати довгострокову безпеку. Це дослідження має на меті усунути цю прогалину за допомогою синтезу міжнародно-правових норм, індивідуальної кримінальної відповідальності та порівняльної практики держав для розроблення комплексної системи правових засобів захисту та міжнародних механізмів гарантування безпеки.

Методи. У статті було застосовано доктринальний та порівняльно-правовий методи, доповнені історико-правовим аналізом архівних джерел з метою реконструкції історичного контексту та встановлення передумов депортацій 1920, 1948–1956 та 1988 років. Проведено системний аналіз міжнародно-правових актів і наукової літератури для визначення змісту понять депортації, геноциду та міжнародно-правової відповідальності держав за порушення імперативних норм (*jus cogens*). На основі узагальнення міжнародної судової практики, зокрема рішень Міжнародного Суду Організації Об'єднаних Націй, Міжнародного кримінального трибуналу для колишньої Югославії, Європейського суду з прав людини та Комісії з розгляду претензій Еритреї та Ефіопії, а також порівняльного аналізу практики репарацій, дослідження пропонує систему правового захисту, що охоплює типові договори, системи моніторингу та національні законодавчі заходи.

Результати та висновки. Переміщене населення Західного Азербайджану має невід'ємне право на гідне повернення та цілісну безпеку згідно з міжнародним правом, що ґрунтується на забороні примусового переміщення *jus cogens*. Згідно з міжнародно-правовим режимом відповідальності держави, порушення цих імперативних норм вимагає багаторівневого підходу до вирішення проблем, що охоплює *restitutio in integrum*, фінансову компенсацію, реабілітацію, сатисфакцію та надійні гарантії неповторення, а також притягнення винних осіб до відповідальності за міжнародні злочини. Нормативно, тюрксько-мусульманське населення, вигнане з Вірменії, залишається під постійним захистом як історичних, так і сучасних документів, що усуває розрив між міжнародним гуманітарним правом та міжнародним правом прав людини (МППЛ). Практична реалізація цих прав може здійснюватися за допомогою звернення до міжнародних судових інституцій, зокрема Міжнародного Суду ООН та Європейського суду з прав людини, а також через ухвалення національного законодавства, яке офіційно визнає їхній статус як жертв дій, вчинених із геноцидним умислом. Разом зазначені міжнародно-правові механізми формують цілісну й практично застосовну основу для відновлення історичних прав, забезпечення інституційної відповідальності та створення умов для безпечної, сталої та гідної репатріації до місць їхнього походження.

Ключові слова: депортація, міжнародне право, Женевські конвенції 1949 року, міжнародно-правова відповідальність держави, міжнародно-протиправне діяння.