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THE RIGHT TO RETURN UNDER INTERNATIONAL HUMAN RIGHTS LAW: THE CASE OF ETHNIC AZERBAIJANIS DISPLACED FROM ARMENIA

Master's Thesis

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INTRODUCTION

Forced displacement raises a central question for international human rights law: whether persons compelled to leave their homes retain a legal right to return, and what that right requires of the territorial state when displacement persists for decades without any institutional mechanism for redress. Major human rights instruments recognise the right to return, but its precise scope, enforceability, and remedial implications continue to be elaborated, particularly in protracted situations.[1]

This thesis addresses that question in a specific and under-examined context: the displacement of ethnic Azerbaijani persons from the territory of present-day Armenia in the late 1980s and early 1990s.[2] More than three decades later, no large-scale return has taken place, no systemic property restitution programme has been put in place for this population, and no dedicated institutional mechanism appears to exist through which displaced persons may pursue return-related claims.[3] The legal problem is therefore not only whether international human rights law recognises a right to return in the abstract, but whether, and in what form, such a right continues to generate obligations for the territorial state after prolonged non-return, and what concrete claims it can still support.

The thesis argues, and tests as its central hypothesis, that Article 12(4) ICCPR, read with Articles 2(3) and 17 of the Covenant and as interpreted by the Human Rights Committee in General Comment No 27, imposes on Armenia continuing obligations of an individual character toward the first-generation ethnic Azerbaijanis displaced from its territory in 1988 to 1992, obligations capable of giving rise to communications under the Optional Protocol notwithstanding the passage of more than three decades. Article 12(4) ICCPR is therefore the primary legal vehicle for the claims; European Convention on Human Rights jurisprudence on continuing violations, property, home, and effective remedies plays a supporting and analogical role. The hypothesis is tested through a doctrinal analysis of the universal framework, the European regional

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[1] Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd rev edn, NP Engel 2005) 285–293; see also Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd edn, OUP 2013) 392–417; Stig Jägerskiöld, 'The Freedom of Movement' in Louis Henkin (ed), *The International Bill of Rights: The Covenant on Civil and Political Rights* (Columbia University Press 1981) 166–184.

[2] Human Rights Watch/Helsinki, *Azerbaijan: Seven Years of Conflict in Nagorno-Karabakh* (Human Rights Watch 1994) 1–7; Thomas de Waal, *Black Garden: Armenia and Azerbaijan Through Peace and War* (10th anniversary edn, NYU Press 2013) 19–21, 56–73.

[3] Human Rights Watch/Helsinki (n 2) 1–7; International Crisis Group, *Nagorno-Karabakh: Viewing the Conflict from the Ground* (Europe Report No 166, 14 September 2005) https://www.crisisgroup.org/rpt/europe-central-asia/armenian-azerbaijani-conflict/166-nagorno-karabakh-viewing-conflict-ground accessed 18 April 2026; Thomas de Waal, *The Caucasus: An Introduction* (2nd edn, OUP 2019).

jurisprudence used analogically, and comparative post-conflict practice in Bosnia and Cyprus, with the Conclusion returning to the hypothesis and stating the extent to which the doctrinal material supports it.

The thesis treats the legal problem as one of continuing obligation, exclusion, and denial of both process and effective remedy. Questions of state responsibility for the original events of 1988 to 1992 fall outside the scope of this analysis and are neither pursued nor prejudged.

Two features of the case support this framing. First, Armenia is a party to both the International Covenant on Civil and Political Rights and its (First) Optional Protocol, having acceded to both in the early 1990s.[4] The claims analysed here therefore fall within the personal and substantive scope of an individual complaint regime accepted by the respondent state. Second, Armenia is the territorial state from which the displacement occurred and over whose territory return would have to be effected. This is doctrinally distinct from the extraterritorial-control scenarios addressed in Chiragov and Sargsyan.[5] It reframes the analytical problem as one concerning the continuing obligations of a territorial sovereign under treaty commitments Armenia has expressly accepted, and one that does not depend on resolving disputed questions of effective control or attribution in respect of the original events.

The contribution of the thesis is to apply established doctrinal materials to an under-examined situation. Scholarship on the right to return has concentrated on a small number of emblematic cases, principally the Palestinian and post-Yugoslav contexts. The displacement of ethnic Azerbaijanis from Armenia has received less sustained attention in international human rights law, despite its scale, duration, and the absence of any dedicated remedial mechanism.[6] The thesis shows that the existing framework is capable of generating a coherent legal analysis of this situation, and clarifies how principles developed in Cyprus and in Chiragov and Sargsyan

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[4] International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR'); Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 302 ('Optional Protocol'). Armenia acceded to both instruments on 23 June 1993: United Nations Treaty Collection <https://treaties.un.org> accessed 18 April 2026.

[5] *Chiragov and Others v Armenia* App no 13216/05 (ECtHR [GC], 16 June 2015) ECHR 2015, paras 168–186; *Sargsyan v Azerbaijan* App no 40167/06 (ECtHR [GC], 16 June 2015) ECHR 2015, paras 128–151; Marko Milanović, 'The Nagorno-Karabakh Cases' (*EJIL: Talk!*, 23 June 2015) https://www.ejiltalk.org/the-nagorno-karabakh-cases/ accessed 18 April 2026; Philip Leach, 'Thawing the Frozen Conflict? The European Court's Nagorno-Karabakh Judgments' (*EJIL: Talk!*, 6 July 2015) https://www.ejiltalk.org/thawing-the-frozen-conflict-the-european-courts-nagorno-karabakh-judgments/ accessed 18 April 2026.

[6] For emblematic treatments of the Palestinian context, see eg John Quigley, 'Displaced Palestinians and a Right of Return' (1998) 39 Harvard International Law Journal 171. For the post-Yugoslav context, see eg Eric Rosand, 'The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?' (1998) 19 Michigan Journal of International Law 1091.

operate when applied by analogy[7] to a case in which the respondent state is the territorial sovereign rather than a state exercising extraterritorial control.

The thesis is guided by four research questions, whose answers, taken together, deliver the central argument. First, how is the right to return defined and interpreted under international human rights law at the universal level, and in particular under Article 12(4) ICCPR as elaborated by the Human Rights Committee? Second, what principles has the European Court of Human Rights developed on continuing violations, property, home, and effective remedies in displacement cases, and how far do those principles translate by analogy to the present context? [8] Third, what lessons can be drawn from comparative post-conflict practice, and specifically from Annex 7 of the Dayton Agreement[9] and the jurisprudence culminating in Demopoulos,[10] for the legal treatment of protracted displacement? Fourth, applying that framework, what do Article 12(4) ICCPR and its interpretive practice, read with Article 2(3) of the Covenant, require of Armenia today in respect of the first-generation ethnic Azerbaijanis displaced from its territory, and what remedies do those obligations support?

The thesis employs the doctrinal legal research method. It analyses how international human rights law regulates the right to return and how that framework applies to the situation under examination, through interpretation of primary legal sources, treaties, jurisprudence, and authoritative interpretive materials, supplemented by academic commentary and comparative analysis. It does not undertake independent historical fact-finding, empirical fieldwork, or political evaluation.

The doctrinal method is applied on the following hierarchy of sources. Treaty texts are interpreted in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties[11]. The General Comments and Views of the Human Rights Committee are treated as authoritative interpretive practice under the ICCPR rather than as binding judgments. The jurisprudence of the European Court of Human Rights is used analogically, not as a source of direct obligations binding on Armenia under the ICCPR. Comparative post-conflict practice is used functionally,

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[7] *Cyprus v Turkey* App no 25781/94 (ECtHR [GC], 10 May 2001) ECHR 2001-IV; *Loizidou v Turkey* (Merits) App no 15318/89 (ECtHR [GC], 18 December 1996) ECHR 1996-VI; *Demopoulos and Others v Turkey* (dec) App nos 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04 and 21819/04 (ECtHR [GC], 1 March 2010) ECHR 2010.
[8] *Loizidou* (Merits) (n 7); *Cyprus v Turkey* (n 7); *Chiragov* (n 5); *Sargsyan* (n 5).
[9] General Framework Agreement for Peace in Bosnia and Herzegovina (initialled 21 November 1995, signed 14 December 1995) (1996) 35 ILM 75 ('Dayton Agreement'), Annex 7 ('Agreement on Refugees and Displaced Persons') (1996) 35 ILM 136.
[10] *Demopoulos (n 7).*
[11] Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331 ('VCLT'), arts 31–32.

to test whether the doctrinal framework produces coherent results in structurally similar settings, rather than as precedent. Soft-law instruments, principally the Pinheiro Principles and the Guiding Principles on Internal Displacement, are treated as reinforcing existing obligations rather than as free-standing sources of law.[12]

The source base consists primarily of the binding treaty instruments most directly relevant to the analysis, the International Covenant on Civil and Political Rights and the European Convention on Human Rights, together with the Universal Declaration of Human Rights as a foundational but non-binding normative text[13]; the jurisprudence of the European Court of Human Rights; the General Comments, Views, and Concluding Observations of the Human Rights Committee; relevant General Assembly resolutions; the Pinheiro Principles; and selected academic literature.

The object of the thesis is the continuing legal situation of first-generation ethnic Azerbaijanis displaced from the territory of present-day Armenia in 1988 to 1992, assessed under international human rights law. Four delimitations apply. First, the thesis analyses the claims of ethnic Azerbaijani persons displaced from present-day Armenia and does not attempt to cover every displacement situation linked to the Armenian-Azerbaijani conflict. Second, it does not conduct independent historical fact-finding or seek to resolve competing historical narratives concerning the events of the late 1980s and early 1990s. Third, the analysis is confined to international human rights law; other legal regimes, including international humanitarian law and the law of state responsibility, are engaged only where strictly necessary for context. Fourth, and in keeping with the doctrinal commitments above, the scope is limited to first-generation displaced persons, those personally displaced from Armenia in the late 1980s or early 1990s. Second-generation claims raise distinct and doctrinally harder questions of transmission and continuing connection[14], which are acknowledged but addressed only where strictly necessary to the first-generation analysis.

The thesis is structured in four chapters whose sequence reflects the argument it builds. Chapter 1 establishes the universal doctrinal framework, centred on Article 12(4) ICCPR and the Human

[12] UN Sub-Commission on the Promotion and Protection of Human Rights, 'Final Report of the Special Rapporteur, Paulo Sérgio Pinheiro: Principles on Housing and Property Restitution for Refugees and Displaced Persons' (28 June 2005) UN Doc E/CN.4/Sub.2/2005/17; Commission on Human Rights, 'Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission resolution 1997/39, Addendum: Guiding Principles on Internal Displacement' (11 February 1998) UN Doc E/CN.4/1998/53/Add.2.
[13] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III), art 13(2).
[14] UN Human Rights Committee, 'General Comment No 27: Article 12 (Freedom of Movement)' (2 November 1999) UN Doc CCPR/C/21/Rev.1/Add.9, para 20 (discussing 'long-term residents' and 'special ties'); see also *Stewart v Canada*, HRC Communication No 538/1993, UN Doc CCPR/C/58/D/538/1993 (1 November 1996) paras 12.4–12.5.

Rights Committee's interpretation of 'one's own country', and identifies the normative content, beneficiaries, and limits of the right to return at the universal level. Chapter 2 examines European Convention on Human Rights jurisprudence on displacement, property, home, and effective remedies, treating it as a source of supporting and analogical principles, especially on continuing violations and remedial flexibility, rather than as an independent legal basis for the claims under analysis. Chapter 3 turns to comparative post-conflict practice in Bosnia and Herzegovina and in Cyprus, extracting lessons on the norm-practice gap, remedial pluralism, and the role of institutional mechanisms. Chapter 4 applies the resulting framework to the displacement of first-generation ethnic Azerbaijanis from Armenia, characterising the legal problem as one of continuing obligations of the territorial sovereign, identifying what Article 12(4) ICCPR and its interpretive practice require of Armenia today, and mapping the concrete remedies those obligations support today. A concluding section synthesises the findings and answers the four research questions.

Keywords: right to return, international human rights law, displacement, ethnic Azerbaijanis, Armenia, ICCPR Article 12(4), Human Rights Committee, European Court of Human Rights.

1. The Right to Return in International Human Rights Law

This chapter establishes the doctrinal foundation of the right to return under international human rights law. Section 1.1 sets out the concept and its boundaries, distinguishing the right from related notions such as internal freedom of movement and property restitution. Section 1.2 examines the universal human rights framework, focusing on Article 13(2) of the Universal Declaration of Human Rights and Article 12(4) of the International Covenant on Civil and Political Rights, and drawing on the interpretive practice of the Human Rights Committee. Section 1.3 turns to the broader normative environment, including customary international law, soft-law instruments such as the Pinheiro Principles, and the doctrine of state responsibility for continuing wrongful acts. Section 1.4 analyses the nature and limits of the right and explains why it is best understood as qualified but robust. Together, these sections provide the doctrinal groundwork for the jurisprudential analysis in Chapter 2, the comparative practice examined in Chapter 3, and the application to the protracted displacement of ethnic Azerbaijanis from Armenia in Chapter 4.

1.1. Concept and Scope of the Right to Return

The right to return is a recognised norm of international human rights law. It protects the legal entitlement of a person not to be arbitrarily prevented from re-entering a country to which he or she has a sufficiently close and lasting connection. Although the precise contours of the right have been the subject of ongoing interpretive elaboration, its core has firm treaty foundations, principally in Article 12(4) of the International Covenant on Civil and Political Rights.

Part of the difficulty is that the idea of return arises in different legal contexts and relates to different kinds of claims. In international human rights law, the right to return is grounded mainly on freedom of movement and the prohibition of arbitrary exclusion from one's own country. In refugee law, it is linked to the principle of voluntary repatriation.[15] In post-conflict settings, it is connected to claims for restitution of housing, land, and property. These frameworks are related but not identical. A right to re-enter one's own country is not the same as a right to recover a particular house, and a right to return in principle does not automatically guarantee a specific remedy. This thesis uses a doctrinal method focused on international human rights law; the analysis therefore concentrates on the right to return as it arises under that area of law, while other frameworks are referenced only for contextual purposes.

[15] UNHCR Executive Committee, 'Conclusion on Voluntary Repatriation' No 18 (XXXI) (1980); UNHCR, *Handbook on Voluntary Repatriation: International Protection* (UNHCR 1996) ch 2.

The right to return emerged only gradually. Earlier twentieth-century practice, including the 1923 Greek–Turkish population exchange and the post-war transfers organised under section XIII of the Potsdam Protocol, treated large-scale forced transfer as an instrument of inter-state settlement, although its compatibility with international law became increasingly contested in the second half of the century and is now widely regarded as inconsistent with modern human rights and humanitarian law standards.[16]

Separating the right to return from several related ideas helps clarify the framework. First, the right to return is not the same as general freedom of movement within a state.[17] Freedom of movement, as protected by Article 12(1) of the ICCPR, refers to the liberty to move within a state and to choose one's place of residence there. The right to return concerns a different issue, namely the ability of a person who is outside the country to enter it again. Second, the right to return must be distinguished from a right to property restitution. In displacement situations, these claims are often discussed together, but they are legally distinct. A displaced person may have a valid claim to return without establishing a right to recover every former possession, and a restitution claim may succeed even where the individual does not physically return. Third, compensation is a remedy that may arise instead of, or alongside, return or restitution, but it should not be treated as equivalent to them. Return, restitution, and compensation each carry a distinct legal role and lead to different legal consequences.[18]

A further conceptual question concerns who holds the right. The relevant international instruments do not always describe the right to return specifically in terms of displaced persons. Article 13(2) of the UDHR uses the word "everyone" and Article 12(4) of the ICCPR uses the words "no one." These formulations are broad in structure, but their application in displacement situations raises important interpretive questions. The central question is whether the right belongs only to nationals of the state concerned, or whether it also protects persons whose connection to the country arises from habitual residence, family ties, or another sufficiently lasting bond. The Human Rights Committee has addressed this issue by interpreting the idea of "his own country" broadly enough to include individuals who are not nationals in a formal sense but still have a close and lasting relationship with the state.[19] This broader reading is especially

[16] Convention Concerning the Exchange of Greek and Turkish Populations (signed 30 January 1923) 32 LNTS 75; Protocol of the Proceedings of the Berlin Conference (Potsdam Protocol) (2 August 1945) section XIII; Alfred M de Zayas, 'International Law and Mass Population Transfers' (1975) 16 Harvard International Law Journal 207; Christa Meindersma, 'Population Exchanges: International Law and State Practice (Part 2)' (1997) 9 International Journal of Refugee Law 613.
[17] ICCPR (n 4) arts 12(1) and 12(4); General Comment No 27 (n 14) paras 1–4, 19.
[18] Pinheiro Principles (n 12) principles 2, 21, 22; Quigley (n 6) 174–176.
[19] General Comment No 27 (n 14) para 20.

important in situations of long-term displacement, where a person's formal legal status may have changed through state succession, denationalisation, or long absence. The jurisprudential development of this point is addressed in Section 1.2.

The scope of the right to return therefore extends in several directions. In its narrowest form, it protects the right of a national to re-enter the state of nationality. In a broader sense, it may also cover persons who have a sufficient connection to the country even without formal citizenship. In displacement-related situations, the right may also carry implications for access to places of origin and for legal responses to issues of housing and property. These wider dimensions are less clearly stated in treaty text and require further legal analysis. The sections that follow examine these dimensions in turn, beginning with the main universal instruments.

1.2. Universal Human Rights Framework

The universal basis of the right to return rests principally on two provisions. Article 13(2) of the Universal Declaration of Human Rights affirms the right at the level of universal normative commitment. Article 12(4) of the International Covenant on Civil and Political Rights gives binding treaty expression to the prohibition of arbitrary deprivation of the right to enter one's own country. Together they support the proposition that excluding a person from his or her own country is, in principle, inconsistent with international human rights law, with the binding legal weight of that proposition resting on the ICCPR and the interpretive practice of the Human Rights Committee. This framework is reinforced by Article 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination, a binding treaty obligation prohibiting racial discrimination in the enjoyment of the right to leave any country, including one's own, and to return to it.[20] Understanding the scope of the universal framework requires examining both the text of these provisions and their interpretation in practice.

Article 13(2) of the UDHR states that "[e]veryone has the right to leave any country, including his own, and to return to his country." The Universal Declaration is not a treaty and was not adopted as a legally binding instrument.[21] Its significance lies elsewhere. It was the first universal document to set out a broad catalogue of human rights, and it strongly influenced the subsequent development of treaty law, customary international law, and institutional practice. Some of its provisions are widely regarded as reflecting customary international law,[22] while

[20] International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 ('ICERD') art 5(d)(ii).
[21] Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995–1996) 25 Georgia Journal of International and Comparative Law 287, 289–295.
[22] Hannum (n 21) 317–351.

others have gained legal weight through inclusion in binding instruments and subsequent state practice.

Two features of Article 13(2) are important for the analysis. First, it places departure and return within the same provision, linking the freedom to leave a country with the freedom to come back to it. This structural connection suggests that the two freedoms are legally related: a right to leave would be incomplete if no genuine possibility of returning existed.[23] Second, the provision applies to “everyone,” which gives it a broad personal scope. The breadth of this language indicates that the right is not, on its face, confined to a specific category such as nationals or citizens.

At the same time, Article 13(2) leaves important questions unanswered. The phrase “his country” is not defined. It may refer narrowly to the state of nationality, or it may refer more broadly to a country with which the individual has a strong and lasting connection. The Declaration does not resolve this interpretive question, nor does it address how the right to return relates to specific consequences of displacement such as access to a former home or restitution of property. Article 13(2) establishes a general normative commitment to return but leaves more detailed legal questions to later instruments and interpretive practice.

The binding expression of the right to return is Article 12(4) ICCPR, which states that “[n]o one shall be arbitrarily deprived of the right to enter his own country.” The provision uses the word "enter" rather than "return." That formulation reflects drafting concerns about narrow situations of lawful refusal of entry, such as extradition, rather than an intention to exclude displaced persons seeking to come back to a country in which they had previously lived. The Human Rights Committee has confirmed that "the right to enter one's own country" includes the right to return, and that any other reading would deprive the provision of its protective function in precisely the situations for which it is most needed. [24] This thesis treats the textual choice as one of formulation rather than substance, and uses "return" and "re-entry" interchangeably in respect of the population at issue.

This provision is the central object of any doctrinal analysis of return under international human rights law. Its wording is short, but it carries significant legal weight and has been interpreted in considerable detail. Three features require close examination: the negative formulation of the right, the scope of the phrase “his own country,” and the meaning of “arbitrarily.”

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[23] General Comment No 27 (n 14) para 19.

[24] General Comment No 27 (n 14) para 19; Marc J Bossuyt, *Guide to the 'Travaux Préparatoires' of the International Covenant on Civil and Political Rights* (Martinus Nijhoff 1987) 261–263; Nowak (n 1) 287–289.

The first feature is the provision's negative wording. Rather than declaring a positive right to return in direct terms, Article 12(4) prohibits one specific form of state action, namely arbitrary deprivation of the right to enter one's own country. This places the analytical focus on the conduct of the state. The legal question is not only whether the individual wishes to return, but whether the state has acted through law, policy, or practice in a way that removes that possibility without sufficient justification.[25]

The second and most important interpretive question concerns the phrase "his own country." In General Comment No 27, the Human Rights Committee stated that the scope of this phrase "is broader than the concept of 'country of his nationality.'"[26] The Committee identified several categories of persons falling within this meaning, including nationals who have not lost their nationality, persons whose country of nationality has been incorporated into or transferred to another state entity and whose nationality is being denied them, and persons who have such special ties to or claims in relation to a country that they cannot be treated as mere aliens.[27] The explicit reference to state succession is particularly significant for contexts in which the displaced population lost effective legal connection to a successor state through the dissolution of a predecessor state.

The broad reading was developed further in the Committee's case law. The starting point is Stewart v Canada.[28] There, a divided majority took a narrower reading of "his own country" and rejected the applicant's Article 12(4) claim. The individual opinions of Evatt, Medina Quiroga and Chanet, however, articulated a more substantive test based on length of residence, family ties, degree of integration, and absence of meaningful ties elsewhere.[29] That substantive test is the one that the Committee's later practice has, in substance, adopted. In Nystrom v Australia, the Committee held that a long-term permanent resident who had lived almost his entire life in Australia and had no meaningful ties to his country of formal nationality could invoke Article 12(4) against Australia.[30] Warsame v Canada reached a similar conclusion in respect of a Somali-born applicant who had grown up in Canada[31], and Budlakoti v Canada confirmed that formal nationality is neither a necessary nor a sufficient basis for determining whether a

[25] ICCPR (n 4) art 12(4).
[26] General Comment No 27 (n 14) para 20.
[27] ibid.
[28] *Stewart v Canada*, HRC Communication No 538/1993, UN Doc CCPR/C/58/D/538/1993 (1 November 1996) paras 12.2–12.6.
[29] *Stewart v Canada* (n 29), Individual Opinion of Elizabeth Evatt and Cecilia Medina Quiroga, co-signed by Francisco José Aguilar Urbina (dissenting); Individual Opinion of Christine Chanet (dissenting).
[30] *Nystrom v Australia*, HRC Communication No 1557/2007, UN Doc CCPR/C/102/D/1557/2007 (18 July 2011) paras 7.4–7.6.
[31] *Warsame v Canada*, HRC Communication No 1959/2010, UN Doc CCPR/C/102/D/1959/2010 (21 July 2011) paras 8.4–8.6.

state is the applicant's "own country."[32] Taken together, these decisions show that the test the Committee applies is functional rather than formal: what matters is the substance of the individual's connection to the state, measured through factors such as birth, upbringing, residence, family ties, social integration, and reliance on the state. The Committee's later practice is most readily reconciled with the substantive reading articulated in the Stewart dissents, and the thesis proceeds on that interpretation.

This broad reading is especially important in displacement situations. Where persons have been expelled from, or forced to leave, a country in which they resided for an extended period, built family and community ties, and developed a stable social and economic life, a narrow approach based solely on formal nationality would exclude precisely those individuals who suffered the most serious interference. The choice between a formal and a substantive approach to “his own country” therefore has direct consequences for who receives protection in situations of long-term displacement, including the situation examined in Chapter 4.

Article 12(4) is framed in individual terms, but General Comment No 27 confirms that it remains applicable in cases of "enforced population transfers or mass expulsions"[33]. The individual character of the right does not yield to the collective scale on which it is exercised; the protection available to each rights-holder is not reduced by the fact that many others invoke it simultaneously. This point matters for the present thesis, since the displacement of ethnic Azerbaijanis from Armenia was mass in scale, and the legal analysis proceeds on the basis that the individual right is not extinguished by the collective character of the departure.

The third feature requiring analysis is the meaning of the word “arbitrarily.” The Human Rights Committee has explained that “arbitrarily” in Article 12(4) is not limited to conduct that is unlawful under domestic law; it also covers interference that may be formally authorised but is nonetheless unreasonable, unnecessary, or disproportionate.[34] This approach is consistent with the broader use of “arbitrariness” in the Covenant, which requires a genuine standard of justification rather than mere formal legality. A state cannot therefore rely solely on legislation or administrative convenience to justify exclusion; it must demonstrate that the deprivation is not arbitrary in this broader substantive sense. This is a demanding standard, but it is not an absolute prohibition. Article 12(4) does not state that re-entry may never be denied in any circumstances;

[32] *Budlakoti v Canada*, HRC Communication No 2264/2013, UN Doc CCPR/C/122/D/2264/2013 (6 April 2018) paras 9.2–9.3.
[33] General Comment No 27 (n 14) para 19.
[34] General Comment No 27 (n 14) paras 16, 21.

it states that such denial must not be arbitrary. The implications of this qualification are developed in Section 1.4.

Article 5(d)(ii) of ICERD prohibits racial discrimination in the enjoyment of the right to enter one's own country, and adds an obligation distinct from, and reinforcing of, Article 12(4) ICCPR. The non-arbitrariness standard in Article 12(4) is itself substantive and does not tolerate ethnic exclusion of an identifiable group; Article 5(d)(ii) adds a free-standing prohibition to the same effect, with the result that mass ethnic exclusion is condemned twice over. The point bears directly on the situation examined in Chapter 4.

Taken together, Article 13(2) of the UDHR, Article 12(4) of the ICCPR, and Article 5(d)(ii) of ICERD establish the universal legal framework for the right to return. The UDHR provides the foundational normative commitment; the ICCPR converts that commitment into a binding legal obligation; and ICERD adds a non-discrimination dimension. The interpretive practice of the Human Rights Committee has extended the personal scope of the right beyond formal nationality and has imposed a substantive standard of non-arbitrariness. These developments are significant, but they do not resolve every issue that arises in displacement situations. The treaty framework says relatively little about the precise remedy for violations, about the relationship between return and restitution, or about the effect of prolonged passage of time. These gaps make it necessary to examine whether the right to return also draws support from sources beyond treaty law.

1.3. The Broader Normative Framework

The core human rights instruments discussed above provide the strongest legal basis for the right to return, but the analysis does not end there. In scholarly and institutional discussion, the right to return is frequently linked to claims about customary international law, soft-law instruments, restitution-related principles, and the doctrine of state responsibility for continuing wrongful acts. These additional sources matter because they may extend the normative reach of the right beyond the states parties to a particular treaty, and may offer guidance on the content and remedies of return that treaty texts leave unresolved. At the same time, the strength of these sources varies, and overstating the level of legal certainty beyond treaty law would weaken the analysis.

Whether the right to return has acquired the status of customary international law remains debated. State practice supports, at a minimum, a customary prohibition of arbitrary exclusion from one's own country, grounded in the connection between nationality, human dignity, and non-discrimination and reinforced by treaty law, institutional practice, and General Assembly resolutions.[35] It is harder to establish that custom guarantees, in detailed terms, a full right of physical return to a specific place together with complete restitution regardless of elapsed time: state practice on this broader claim is uneven, ranging from supervised return and restitution programmes to negotiated settlement and compensation. The defensible position is therefore that customary international law supports the core of the right, namely the prohibition of arbitrary exclusion, without establishing a single comprehensive customary rule governing every remedial question.

A further doctrinal source concerns the temporal dimension of unlawful exclusion. Under Article 14(2) of the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts, the breach of an international obligation by an act of a continuing character extends over the entire period during which the act continues and remains not in conformity with that obligation.[36] Where a state maintains a policy or practice that excludes displaced persons from their own country over many years, the wrongful act is not confined to the moment of expulsion: it continues for as long as the exclusion persists. This framing is important because it counters the argument that the mere passage of time transforms an unlawful exclusion into a lawful status quo, and it provides a doctrinal basis for treating displacement situations that have lasted for decades as live violations rather than historical grievances.

Alongside custom and the law of state responsibility, a body of soft-law and restitution-related instruments contributes to the normative framework surrounding return. The most prominent are the Pinheiro Principles, formally titled the Principles on Housing and Property Restitution for Refugees and Displaced Persons, adopted by the UN Sub-Commission on the Promotion and Protection of Human Rights in 2005. These Principles describe housing and property restitution as "the preferred remedy" for displacement and affirm that all refugees and displaced persons have the right to have restored to them any housing, land, or property of which they were arbitrarily deprived.[37] The Guiding Principles on Internal Displacement similarly recognise the right of internally displaced persons to return voluntarily, in safety and dignity, and to have their property restored or to receive compensation.[38]

These instruments are not binding treaties. Their legal significance lies in the fact that they articulate standards that draw on and reinforce existing legal obligations, and in their practical

[35] Hannum (n 21) 351–354; Rosand (n 6) 1091–1096; Quigley (n 6) 174–199.
[36] International Law Commission, 'Articles on Responsibility of States for Internationally Wrongful Acts' in 'Report of the International Law Commission on the Work of its Fifty-Third Session' (23 April–1 June and 2 July–10 August 2001) UN Doc A/56/10, ch IV.E.1 ('ILC Articles'), art 14(2); commentary at Yearbook of the International Law Commission 2001, vol II, Part Two, 59–62.
[37] Pinheiro Principles (n 12) principles 2.1 and 2.2.
[38] Guiding Principles on Internal Displacement (n 12) principles 28–29.

influence on post-conflict policy and institutional design. They confirm two points relevant to this thesis. First, the international normative framework treats return and restitution as preferred remedies, not merely as political aspirations. Second, the same framework acknowledges that the form of remedy must be tailored to the facts of each case; compensation may be appropriate where physical restitution is genuinely impossible, while return and restitution remain the primary remedies and compensation operates as a fallback. This dual recognition preserves the normative priority of return while acknowledging the realities of long-term displacement.

The influence of the Pinheiro Principles has not been confined to normative statements. Their content has been operationalised through institutional mechanisms established in specific post-conflict settings, including the Commission for Real Property Claims and the later Property Law Implementation Plan in Bosnia and Herzegovina, and the Immovable Property Commission in Northern Cyprus.[39] These mechanisms are examined in detail in Chapter 3 as the comparative foundation for the Armenia analysis in Chapter 4.

Scholarly analysis supports the broader normative reach of the right to return. Several commentators have argued that the combined effect of treaty provisions, institutional practice, General Assembly resolutions, and soft-law standards establishes a strong normative expectation that displaced persons should not be permanently prevented from returning to their countries or places of origin.[40] Even commentators who are sceptical of a fully developed customary right of return, such as Lapidoth, acknowledge that the normative weight of these materials is substantial and cannot be dismissed as merely aspirational.[41]

Two conclusions follow from the analysis of sources beyond treaty law. First, the right to return is not an isolated treaty provision but part of a broader normative environment that strengthens its legal significance. Second, the precise boundaries of the right beyond treaty text remain contested, particularly with regard to specific remedies and the treatment of prolonged lapse of time. The treaty-based right is the most legally certain. Support from custom, the law of state responsibility, and soft law is real but uneven. The further the analysis moves toward broad remedial entitlements, the more the legal position depends on interpretation and context rather than on a settled rule.

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[39] Dayton Agreement (n 9), Annex 7; Hans van Houtte, 'Mass Property Claim Resolution in a Post-War Society: The Commission for Real Property Claims in Bosnia and Herzegovina' (1999) 48 ICLQ 625 ('van Houtte') 632; *Demopoulos* (n 7) paras 30–37.
[40] Rosand (n 6) 1091–1093; Quigley (n 6) 171–199.
[41] Ruth Lapidoth, 'The Right of Return in International Law, with Special Reference to the Palestinian Refugees' (1986) 16 Israel Yearbook on Human Rights 103.

1.4. The Nature and Limits of the Right

The preceding sections have established that the right to return rests on a substantial legal basis in both core human rights instruments and broader normative materials. The analysis must now turn to the legal nature of the right: is it absolute, qualified, or something in between? The answer shapes how return claims should be framed and assessed, particularly in situations of protracted displacement.

One strand of the literature treats the right to return as a strong and continuing individual entitlement.[42] On this view, the right reflects the fundamental connection between the individual and the political community to which he or she belongs. Exclusion from that community affects the core of human dignity and legal identity. This reading draws support from the wording of Article 12(4) of the ICCPR, from the broad meaning of "his own country," and from the recognition that displacement frequently produces continuing rather than one-time harm.[43] Where exclusion persists for years or decades, the legal interference is not erased by the passage of time; on the contrary, it may become more serious as the distance between the displaced person and the country grows wider.

At the same time, the strong-right position is not universally accepted. A significant body of scholarship supports a more qualified understanding.[44] This view does not deny the legal importance of the right to return; rather, it holds that the content of the right and its remedial consequences may depend on context, including competing rights, security concerns, post-conflict realities, and the practical feasibility of different forms of redress.

Regional jurisprudence has developed analytical tools that allow context-sensitive but rigorous review of displacement-related claims, including the protection of property, respect for home and private life, the continuing-violation doctrine, and effective control. The foundational decision in this line is Loizidou v Turkey, which established that exclusion of a displaced person from access to property in a territory under the effective control of a state party constitutes a continuing violation of Article 1 of Protocol 1, not a closed historical event.[45] Loizidou and the cases that build on it support rather than undermine the strong-right reading: they show that

[42] Quigley (n 6) 174–176; Gail J Boling, 'The 1948 Palestinian Refugees and the Individual Right of Return' (2001) 8 International Journal on Minority and Group Rights 65, 65–70.
[43] Chiragov (n 5) paras 186–199.
[44] Lapidoth (n 42); Christian Tomuschat, Human Rights: Between Idealism and Realism (3rd edn, OUP 2014) 230–235; Kathleen Lawand, 'The Right to Return of Palestinians in International Law' (1996) 8 International Journal of Refugee Law 532, 543–559.
[45] *Loizidou* (Merits) (n 7) paras 39–47, 56–64.

protracted displacement is treated as a live legal situation, not as a settled historical fact. Chapter 2 examines this jurisprudence in detail.

Several specific limits deserve attention. First, return must be reconciled with the rights and interests of current occupants. In long-term displacement, homes and land may now be occupied by third parties, including persons who acquired them in good faith. Where the original displacement was itself wrongful, however, downstream allocations cannot generate a competing legal title that defeats the right of return as such; they shape the appropriate form of remedy within the hierarchy described in Section 1.3, in which return and restitution remain primary and compensation operates as a fallback only where restoration is genuinely impossible. This does not mean that the displaced person's claim automatically fails, but it introduces remedial complexity that the treaty texts do not directly resolve.

Second, the passage of time affects both the evidentiary situation and the practical conditions for return. After three or more decades, demographic changes, infrastructure developments, and the emergence of new communities may complicate the form that restitution can take in a particular case. These factual changes affect the modalities of remedy, not the legal status of the underlying right. The legal question is then not whether the right exists, but what form of remedy it supports in the circumstances. The right itself is not erased by the conditions that make full physical restitution difficult; it is the menu of available remedies, not the existence of the underlying entitlement, that contracts. As noted in Section 1.3, the Pinheiro Principles expressly treat restitution as the preferred remedy and accept compensation only where restitution is factually impossible; compensation does not stand as a free substitute for restitution at the state's election.[46] Such remedial flexibility does not cancel the right; it adjusts the way the right is expressed in practice.

Third, the general structure of human rights adjudication supports a contextual approach. Many human rights norms, including some framed in strong terms, are applied through standards of proportionality, reasonableness, and necessity. The word 'arbitrarily' in Article 12(4) ICCPR does not convert the right into an open balancing test. The Human Rights Committee has stated that there are 'few, if any, circumstances' in which deprivation of the right to enter one's own country could be reasonable,[47] and the non-arbitrariness requirement accordingly imposes a demanding standard of reasonableness, proportionality, and necessity on the state rather than a presumption in favour of restriction. The qualification is narrow. It does not soften the core

[46] Pinheiro Principles (n 12) principle 21.
[47] General Comment No 27 (n 14) para 21.

entitlement, and it offers no foothold for restrictions of the kind characteristic of mass ethnic exclusion. The right is strong against arbitrary and unjustified exclusion. The possibility of justified restriction concerns the manner in which a state may regulate re-entry in narrow circumstances; it does not provide cover for the wholesale exclusion of an identifiable group.

The right to return is therefore best characterised as qualified but robust. It is robust in rejecting the proposition that the passage of time extinguishes the underlying claim against arbitrary exclusion. It is qualified in the narrow sense that the form of the remedy, whether return, restitution, compensation, or a combination, depends on the facts of the individual case, within a hierarchy in which return and restitution are primary and compensation a fallback. The qualification concerns implementation, not the existence or seriousness of the right.

Four doctrinal questions follow from this characterisation and shape the analysis of the remainder of the thesis. The first concerns state succession: how Article 12(4) applies where the predecessor state has dissolved and the successor state denies that the displaced persons retained a legally protected connection to its territory. The second concerns the discriminatory dimension of exclusion: how the non-discrimination guarantee in Article 5(d)(ii) of ICERD reinforces the core right in contexts where displacement was ethnically motivated. The third concerns the continuing character of the violation: how Article 14(2) of the Articles on State Responsibility supports the treatment of decades-long exclusion as an ongoing breach rather than a closed historical event. The fourth concerns the selection of remedy: how the qualified character of the right permits differentiated outcomes across return, restitution, and compensation without abandoning the underlying norm. These questions are examined through the lens of regional jurisprudence in Chapter 2, comparative practice in Chapter 3, and the Armenia application in Chapter 4.

The next chapter turns to regional human rights jurisprudence and examines how the European Court of Human Rights has addressed displacement-related claims through the legal concepts most closely linked to return.

2. Regional Human Rights Jurisprudence

The universal framework analysed in Chapter 1 places Article 12(4) of the International Covenant on Civil and Political Rights at the centre of any legal argument about the right to return.[48] This chapter turns to the European Convention on Human Rights.[49] Its function is narrow and deliberately bounded. The European Convention does not contain a freestanding right to return in the same terms as Article 12(4) ICCPR, and, as explained below, it is not the primary legal vehicle for the claims examined in this thesis. What the Convention jurisprudence offers is a set of doctrinal principles on continuing violations, a substantive concept of home, continuing interference with property, the requirement of effective remedies, and the flexible treatment of evidence in long-term displacement cases. These principles are valuable not as a source of direct obligations binding on Armenia in the Armenian-Azerbaijani context, but as interpretive tools that inform the reading of Article 12(4) ICCPR and shape the analysis of realistic remedies in Chapter 4.

The chapter proceeds in three parts. Section 2.1 sets out the Convention framework and explains why it cannot be the primary legal vehicle for the claims examined in this thesis. Section 2.2 sets out the substantive principles that emerge from the Convention case law, organised by principle rather than by case cluster, and includes the doctrinal bridge to the Human Rights Committee's parallel treatment of continuing situations. Section 2.3 makes explicit the methodological caveats and the limits of analogy on which the analogical use of Convention material in Chapter 4 depends.

2.1. Convention Framework

Chapter 1 established that Article 12(4) ICCPR recognises a substantive right of return that does not depend on formal nationality and is not extinguished by the passage of time alone. The present chapter does not displace that finding. It supplements it by examining how a parallel regional human rights system has analysed long-term displacement, continuing violations, and remedial structures in factually comparable settings.

Two Convention provisions do most of the work in displacement-related cases: Article 8 and Article 1 of Protocol No 1. The Court has addressed loss of access to homes, interference with

[48] ICCPR (n 4) art 12(4).

[49] Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS 5 ('ECHR'); Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) ETS 9 ('Protocol No 1').

property, and the human consequences of prolonged exclusion primarily through these two provisions, supplemented by the requirement of effective remedies under Article 13.

Article 8 guarantees the right to respect for private and family life, home, and correspondence.[50] Interference may be justified only if it is in accordance with the law, pursues a legitimate aim, and is necessary in a democratic society.[51] The Court has given the concept of "home" a substantive and factual meaning that does not depend exclusively on legal title or current occupation. A home, for Convention purposes, is a place with which an individual has established sufficient and continuing links.[52] This matters in displacement situations because forced departure does not automatically sever the legal connection between displaced persons and the places from which they were excluded. Where an individual had established a home before displacement, the ongoing inability to access or return to that home may engage Article 8.[53] Article 8 also gives rise to positive obligations, so that a state which prevents or fails to facilitate access to homes may bear responsibility not merely for an initial act of displacement but for the continuing consequences of exclusion.[54] Article 8 does not, however, guarantee a right to return in the strict sense. It requires that denial of access be assessed against Convention standards and that affected individuals have access to effective remedies.

Article 1 of Protocol No 1 addresses the proprietary dimension.[55] The Court has interpreted "possessions" broadly to include not only formal ownership but also established economic interests and legitimate expectations of enjoyment.[56] Where the inability to access or use property results from circumstances beyond the owner's control, the Court treats the continuing denial of access as a continuing interference with possessions; that principle, and its evidentiary implications, are examined in section 2.2(iii). Restitution is the default form of redress. Alternative forms such as compensation or exchange are available only where restitution is shown to be unattainable on the facts and the substitute mechanism is itself genuine, accessible, and effective. The conditional structure of that position, and its limits, are developed in section 2.2(iv).

[50] ECHR (n 50) art 8(1).
[51] ECHR (n 50) art 8(2).
[52] *Gillow v United Kingdom* App no 9063/80 (ECtHR, 24 November 1986) para 46; see also David Harris and others, *Harris, O'Boyle, and Warbrick: Law of the European Convention on Human Rights* (4th edn, OUP 2018) 571–573.
[53] Chiragov (n 5) paras 200–207; Sargsyan (n 5) paras 237–242.
[54] *Doğan and Others v Turkey* App no 8803/02 and others (ECtHR, 29 June 2004) para 159.
[55] Protocol No 1 (n 50) art 1.
[56] *Sporrong and Lönnroth v Sweden* App nos 7151/75 and 7152/75 (ECtHR, 23 September 1982) para 61; Tom Allen, *Property and the Human Rights Act 1998* (Hart 2005) 111–115.

Article 8 and Article 1 of Protocol No 1 are complementary rather than overlapping. Article 8 captures the personal and social dimension of displacement, the loss of one's home and the disruption of private and family life. Article 1 of Protocol No 1 captures the economic dimension, the loss of the ability to use, enjoy, or dispose of property. In Cyprus v Turkey, Chiragov, and Sargsyan, the Court found violations of both provisions; in Loizidou (Merits), having found a violation of Article 1 of Protocol No 1, it considered it unnecessary to examine the Article 8 complaint separately.

Jurisdiction under the Convention is primarily territorial, but the Court has accepted that a state may bear Convention responsibility outside its recognised sovereign territory where it exercises effective overall control over the area concerned, as evidenced for example by military presence and substantial political, financial, and other support.[57] [58] In the present case, the territorial dimension of jurisdiction is straightforward: Armenia is the territorial sovereign over the areas from which the displacement occurred, and no extraterritoriality issue arises. A separate point concerns the requirement of effective remedies under Article 13: in each of the leading displacement cases, the Court has found that the absence of any domestic remedy through which the applicants could pursue their claims was itself a separate Convention violation.

It is at this point that the scope of the present chapter must be made explicit. Armenia is party to the Convention and to Protocol No 1, and in principle displacement-related claims against Armenia are capable of falling within the Convention system.[59] The difficulty lies elsewhere. Claims brought today by first-generation ethnic Azerbaijani persons displaced from Armenia proper in 1988 to 1992 would face serious admissibility problems.[60] The events themselves occurred before the Convention became binding on Armenia in 2002, which raises questions of temporal jurisdiction, although the continuing-violation doctrine has provided a route past that limitation in several cases.[61] Within the Convention system, the continuing-violation doctrine in displacement cases has been most fully articulated in cases involving extraterritorial control. Sargsyan v Azerbaijan applied parallel reasoning to a territorial sovereign and confirms that the structure is not confined to extraterritorial settings, but its direct application to exclusion by a

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[57] *Loizidou* (Merits) (n 7) para 52; *Al-Skeini and Others v United Kingdom* App no 55721/07 (ECtHR [GC], 7 July 2011) paras 130–142.

[58] ECHR (n 50) art 1.

[59] Armenia ratified the Convention and Protocol No 1 on 26 April 2002: Council of Europe Treaty Office, Chart of Signatures and Ratifications of Treaty 005 <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=005> accessed 18 April 2026.

[60] de Waal (n 2) chs 1–2; UNHCR, *The State of the World's Refugees 1995: In Search of Solutions* (OUP 1995) ch 2.

[61] *Blečić v Croatia* App no 59532/00 (ECtHR [GC], 8 March 2006) paras 68–88; see also *Šilih v Slovenia* App no 71463/01 (ECtHR [GC], 9 April 2009) paras 140–163.

territorial sovereign would require additional doctrinal work. This is a Convention-specific limitation. As section 2.2(i) shows, the Human Rights Committee's parallel treatment of continuing situations under Article 12(4) ICCPR follows a different path and is not constrained by the same line of authority. Exhaustion of domestic remedies under Article 35(1) presents a further difficulty because no dedicated and effective mechanism appears to exist through which such claims could realistically be pursued.[62] Any argument built around the four-month rule under Protocol No 15 would depend heavily on characterising the situation as a continuing one.[63]

For these reasons, the Convention is not, and in this thesis is not treated as, the primary legal vehicle for the claims of ethnic Azerbaijani persons displaced from Armenia. Article 12(4) ICCPR, supported by the First Optional Protocol to which Armenia is also a party, is the legally appropriate vehicle for the reasons set out in Chapter 1 and developed in Chapter 4. The admissibility difficulties identified above are procedural features of the Convention system; they do not bear on the substantive question whether displaced ethnic Azerbaijanis hold a right of return under Article 12(4) ICCPR, nor on admissibility before the Human Rights Committee under the First Optional Protocol. What the Convention jurisprudence contributes is a body of doctrinal principles, shaped by decades of litigation in comparable factual settings, that informs the interpretation of the ICCPR framework and the design of realistic remedies. The rest of this chapter sets out those principles with that function in view.

2.2. Convention Case Law: Key Principles

The Convention jurisprudence relevant to protracted displacement has been developed primarily through five judgments: Loizidou v Turkey, Cyprus v Turkey, Demopoulos and Others v Turkey, Chiragov and Others v Armenia, and Sargsyan v Azerbaijan.[64] The Cyprus cases concern Greek Cypriot property and home rights in the north of the island after 1974; the Nagorno-Karabakh judgments concern displacement during and after the conflict of the early 1990s. Their factual settings are distinct, but their doctrinal output converges on a small number of principles that, taken together, supply the analogical material on which Chapter 4 draws. This section organises that output by principle rather than by case, so that each principle is stated once and the relevant cases appear under it.

Two threshold points should be noted. First, in Loizidou and Chiragov, Convention responsibility rested on effective overall control over territory outside the respondent state's borders,

[62] ECHR (n 50) art 35(1).
[63] Protocol No 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 24 June 2013, entered into force 1 August 2021) CETS 213, art 4; ECHR (n 50) art 35(1) as amended.
[64] *Loizidou* (Merits) (n 7); *Cyprus v Turkey* (n 7); *Demopoulos* (n 7); *Chiragov* (n 5); *Sargsyan* (n 5).

whereas Sargsyan concerned the territorial state itself[65]; the doctrine of effective control therefore does not bear on the present thesis. Second, the admissibility features specific to the Convention system, addressed in section 2.1, do not affect the substantive principles set out below.

(i) The continuing-violation doctrine

The Convention case law treats prolonged denial of access to homes and property as an ongoing interference rather than a closed historical event. Loizidou established the structural starting point[66]: forced departure does not terminate property rights, and the Convention protects against ongoing exclusion, not only against the initial act that caused it. Cyprus v Turkey extended the same framing to homes and family life under Article 8, alongside the property dimension under Article 1 of Protocol No 1[67]. Chiragov and Sargsyan extended the same analysis to the Nagorno-Karabakh context: prolonged inability to access, use, or enjoy homes and property was characterised as a continuing interference persisting for as long as the applicants remained excluded and uncompensated.[68]

The continuing-violation doctrine matters for the present thesis not as a directly invocable Convention rule but because its analytical structure is paralleled in the Human Rights Committee's own practice. The Committee has treated the continuing effects of an earlier act as giving rise to obligations under the Covenant at the time of consideration, even where the act itself predated the entry into force of the Optional Protocol for the respondent state.[69] General Comment No 31 generalises this approach[70]: where a state's act has continuing effects that themselves constitute violations after the entry into force of the relevant obligations, those effects may be considered on the merits. The continuing-violation principle therefore moves from the Convention to the Covenant by doctrinal parallelism rather than cross-system borrowing. The Convention case law informs the reading of the ICCPR framework without displacing it.

(ii) The substantive concept of home

Article 8 ECHR protects 'home' as a factual and substantive category that does not depend exclusively on legal title or current occupation: a home is a place with which an individual has

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[65] Loizidou (Merits) (n 7) paras 52–57; Chiragov (n 5) paras 168–187; Sargsyan (n 5) paras 129–151.
[66] Loizidou (Merits) (n 7) paras 63–64.
[67] *Cyprus v Turkey* (n 7) paras 172–175, 187–189.
[68] *Chiragov* (n 5) paras 195–207; *Sargsyan* (n 5) paras 220–242.
[69] *Simunek and Others v Czech Republic*, HRC Communication No 516/1992, UN Doc CCPR/C/54/D/516/1992 (19 July 1995) para 4.5; *Lovelace v Canada*, HRC Communication No R.6/24, UN Doc Supp No 40 (A/36/40) (30 July 1981) paras 13–17.
[70] UN Human Rights Committee, 'General Comment No 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant' (26 May 2004) UN Doc CCPR/C/21/Rev.1/Add.13, para 4.

established sufficient and continuing links[71]. Cyprus v Turkey and the later displacement judgments confirm that forced departure does not automatically sever this connection.[72] Where an individual had established a home before displacement, ongoing inability to access or return to it engages Article 8. Sargsyan added a further dimension: the applicant's ties to Gulistan extended beyond the physical structure of his house, and his inability to access the graves of his relatives was recognised as part of the broader interference with private and family life.[73]

This principle transfers to the ICCPR analysis because the corresponding test under Article 12(4), as elaborated in General Comment No 27, is also a substantive one that looks to the density of the connection between a person and a state rather than to formal status. The legal conclusion is straightforward: forced departure does not extinguish the legal connection between a person and the place from which they were displaced. That connection survives, and it grounds the analysis under both Article 12(4) ICCPR (the 'his own country' inquiry) and Article 17 ICCPR (the protection of home and family life), as developed in Chapter 4.

(iii) Continuing interference with property

Property rights do not lapse merely because their holder has been unable to exercise them for a prolonged period. Where the inability to access or use property results from circumstances beyond the owner's control, the continuing denial of access is treated as a continuing interference with possessions. The violation persists as long as the applicant remains excluded without redress.[74]

Two features of the property analysis are particularly important for Chapter 4. First, the Court has accepted property claims under Article 1 of Protocol No 1 in the absence of complete formal title, relying on witness statements, historical records, and the plausibility of the connection to the property.[75] This evidentiary flexibility is doctrinally important: strict documentary requirements would penalise applicants for the very conditions of displacement and would empty the right of practical content. Second, although Article 1 of Protocol No 1 has no direct ICCPR counterpart, the property dimension is addressed at the level of remedies through the Pinheiro Principles[76] and the broader framework set out in Chapter 1; the Convention principle therefore operates analogically rather than as a source of direct obligation. The legal conclusion is that

[71] *Gillow* (n 53) para 46; *Buckley v United Kingdom* App no 20348/92 (ECtHR, 25 September 1996) para 54.
[72] *Cyprus v Turkey* (n 7) paras 172–175; *Chiragov* (n 5) paras 206–207; *Sargsyan* (n 5) paras 256–260.
[73] *Sargsyan* (n 5) paras 254–260.
[74] Loizidou (Merits) (n 7) paras 63–64; Chiragov (n 5) paras 195–201; Sargsyan (n 5) paras 220–229.
[75] *Doğan and Others v Turkey* (n 55) paras 138–139; *Chiragov* (n 5) paras 192–195; *Sargsyan* (n 5) paras 183–185.
[76] Pinheiro Principles (n 12) principles 2 and 21.

continuing denial of access to property is a continuing wrong, not a closed historical event, and that evidentiary flexibility is not a concession but a necessary condition for the right to be effective in displacement situations lasting decades.

(iv) Remedial pluralism within limits

The Convention does not prescribe a single mandatory remedy in every displacement situation. Demopoulos held that the Immovable Property Commission, established in northern Cyprus in response to the pilot judgment in Xenides-Arestis, could in principle constitute an effective domestic remedy that applicants were required to exhaust.[77] The Court's reasoning rested on three factors: the Commission was accessible in practice, it could award meaningful forms of redress, and it offered a range of remedial outcomes including restitution, exchange, and compensation.[78]

The decision is doctrinally important for two reasons. It shows that an effective remedy in long-term displacement cases does not necessarily have to take the form of immediate physical restitution. And it establishes a conditional acceptance of remedial pluralism: the Court does not prescribe a single remedial model, but it will only accept alternative remedies where the mechanism is genuine, accessible, and effective. What the Court has not said is that compensation is equivalent to restitution or that states may freely substitute one for the other. The position is one of remedial pluralism within limits, not of indifference to the form of remedy.

The limits of Demopoulos must be stated plainly. The judgment concerned a mechanism operating in northern Cyprus, where the factual conditions for large-scale physical restitution no longer existed after more than three decades of de facto partition.[79] It does not authorise a sovereign state with full territorial control and no comparable factual impossibility to substitute compensation for return and restitution as a general institutional choice. The remedial-pluralism principle remains a defensible framework for thinking about protracted displacement so long as its conditional structure is observed. This distinction is directly relevant to Chapter 4, where the argument is precisely that the Armenia case calls for a pluralist remedial response that recognises restitution as the preferred outcome but accepts compensation only where restitution is shown to be unachievable on the facts of the individual case.

(v) Effective remedies as an independent violation

[77] *Demopoulos* (n 7) paras 117–129; *Xenides-Arestis v Turkey* App no 46347/99 (ECtHR, 22 December 2005) paras 38–40 and operative para 5.
[78] *Demopoulos* (n 7) paras 84–85, 112–113.
[79] *Demopoulos* (n 7) paras 84–85, 112–113.

In each of the leading displacement cases, the Court has found that the absence of any domestic remedy through which applicants could pursue their claims was itself a separate Convention violation.[80] The total absence of any mechanism for redress was treated as a human rights problem in its own right, on the principle that Convention rights must be practical and effective, not merely theoretical.

This principle transfers cleanly to the ICCPR analysis. Article 13 ECHR is not applicable to the Armenia case, but the same structural point arises under Article 2(3) ICCPR, which guarantees an effective remedy for any person whose rights under the Covenant are violated.[81] The Convention jurisprudence offers a particularly clear articulation of why complete institutional silence in the face of long-term displacement converts a complex implementation problem into an ongoing human rights violation. This is a principle of general international human rights law that the Convention has developed with unusual clarity, and its transfer to the ICCPR analysis does not depend on the specific Convention context.

(vi) Practical and security-related difficulties

Practical and security-related difficulties may affect the form or timing of implementation but do not by themselves extinguish the underlying obligations. Sargsyan and Cyprus v Turkey both confirm this in their respective contexts.[82]

For the Armenia case, this principle transfers without significant qualification. Any serious legal analysis must acknowledge the practical and political difficulties of implementing return-related claims after more than three decades, and must explain why those difficulties do not dissolve the underlying obligations. The Convention jurisprudence supplies that explanation: feasibility shapes implementation but does not extinguish obligation. Where feasibility objections are raised in protracted displacement settings, the Convention principle, applied analogically, helps to show why such objections cannot extinguish the underlying obligation.

2.3. Methodological Caveats and the Limits of Analogy

Two caveats close this chapter. The first is that the transfer of principles described above is analogical, not deductive. The European Court of Human Rights has no jurisdiction over the ICCPR, and the Human Rights Committee is not bound by the Court's jurisprudence. The

[80] Cyprus v Turkey (n 7) paras 192–194; Chiragov (n 5) paras 211–214; Sargsyan (n 5) paras 269–274.
[81] ICCPR (n 4) art 2(3); General Comment No 31 (n 71) paras 15–16.
[82] *Sargsyan* (n 5) paras 226–228, 236; *Cyprus v Turkey* (n 7) paras 96–99.

argument in this thesis is not that the Convention principles bind Armenia as such, but that they inform the interpretation of norms that do.

The second caveat is that the strength of the analogy varies from principle to principle. The continuing-violation doctrine is strongly supported by parallel practice within the Committee's own system, so its transfer is well grounded. The substantive concept of home and the requirement of effective remedies translate readily because functionally analogous tests already exist under Articles 17 and 2(3) ICCPR. The remedial-pluralism principle rests on a more pragmatic basis and operates with the specific limits set out above. The principle on practical and security-related difficulties is general enough to transfer without significant qualification. By contrast, the doctrine of effective control, which carried the jurisdictional weight in Loizidou and Chiragov, has no analogical role here, because the present case concerns the obligations of a territorial sovereign rather than a state exercising extraterritorial control. The territorial-state reasoning in Sargsyan supplies the more direct point of comparison. The doctrine is acknowledged here for completeness but plays no substantive role in Chapter 4.

With those qualifications, the Convention jurisprudence supplies the interpretive material that Chapter 4 will use when reading the ICCPR obligations in the Armenia case. Before that doctrinal application, Chapter 3 moves from jurisprudence to institutional practice. It examines how the principles set out above, in particular the principles of effective remedies and remedial pluralism within limits, have been operationalised in Bosnia and Herzegovina and in Cyprus, and what those experiences indicate about the design of a comparable response in the Armenia case.

3. Comparative Practice

Doctrinal foundations do not by themselves determine how return-related rights function in practice. Legal principles acquire concrete meaning only through the mechanisms that states and international actors create to give them effect. This chapter examines how return-related rights have been implemented, adapted, or left unrealised in two settings that offer the most developed institutional experience with post-conflict displacement: Bosnia and Herzegovina and Cyprus. Both cases are analysed through the same doctrinal lens used in Chapter 1: that the right of return, the right to property restitution, and the right to compensation form a hierarchy of remedies in which compensation supplements rather than supplants the more specific entitlements, and in which a shift down the hierarchy requires justification on the facts.

These cases are selected for specific reasons. Bosnia produced the most comprehensive legal and institutional framework for displacement-related restitution and return. Cyprus produced the most sustained body of international judicial engagement with displacement in the absence of a political settlement. Together they illustrate a range of remedial approaches and recurring patterns in the relationship between norms and outcomes.

Neither case can simply be transplanted to the situation of ethnic Azerbaijani persons displaced from Armenia. Both arose from specific political configurations and forms of international engagement absent in the Armenian-Azerbaijani context. They are therefore treated here as reference points rather than direct precedents.

3.1. Bosnia and Herzegovina

The post-conflict settlement in Bosnia and Herzegovina produced the most legally detailed and institutionally developed framework to date for the implementation of return-related rights. The General Framework Agreement for Peace, initialled at Dayton in November 1995 and signed in Paris in December 1995, contained a dedicated instrument on displacement: Annex 7, the Agreement on Refugees and Displaced Persons.[83] Annex 7 is best understood as combining three analytically distinct but mutually reinforcing components: a normative commitment, an institutional mechanism, and a supervisory architecture.

The normative component of Annex 7 stated in express terms that all refugees and displaced persons had the right freely to return to their homes of origin, and it imposed on the parties an obligation to take all necessary measures to prevent activities that would hinder safe and

[83] Dayton Agreement (n 9), Annex 7.

voluntary return.[84] The agreement further provided that displaced persons were entitled to restitution of property of which they had been deprived during hostilities since 1991, or, where restitution was not possible, to just compensation.[85] By pairing an express right of return with a legally binding restitution obligation, and embedding both in a framework of international guarantees, the Dayton settlement treated displacement as a matter of enforceable legal entitlement rather than humanitarian discretion.[86] The specificity of the normative commitment mattered because it gave the subsequent institutional and supervisory work a clearly defined object.

The institutional component took shape in the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC), created under Annex 7 to receive and adjudicate property claims. Operating as a quasi-judicial body issuing binding decisions on property ownership, the CRPC gave the normative commitments of Annex 7 an operational counterpart independent of local political authorities.[87]

The supervisory component was provided by the Office of the High Representative (OHR), established under Annex 10, which was given progressively broader powers to oversee implementation of the peace settlement.[88] By the late 1990s, and particularly after the Bonn Conclusions of the Peace Implementation Council, the OHR had acquired the authority to remove officials who obstructed the return process and to enact legislation where domestic institutions failed to act.[89] International military forces, initially IFOR and later SFOR, provided the security conditions necessary for return to be physically possible in many areas.[90] This combination of a dedicated claims body, a supervisory authority with enforcement powers, and an international security presence is without close comparator in post-conflict practice.

Despite this elaborate framework, early implementation was difficult. In the years immediately following Dayton, actual return figures were low, particularly for minority returns, that is, returns to areas where the returnee's ethnic group had become a post-war minority.[91] Political

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[84] Dayton Agreement (n 9), Annex 7, art I(1).
[85] Dayton Agreement (n 9), Annex 7, art I(1) (second sentence).
[86] Rhodri C Williams, 'Post-Conflict Property Restitution and Refugee Return in Bosnia and Herzegovina: Implications for International Standard-Setting and Practice' (2005) 37 New York University Journal of International Law and Politics 441 ('Williams (2005)') 451–456.
[87] Dayton Agreement (n 9), Annex 7, arts VII–XIV; van Houtte (n 40) 632–638.
[88] Dayton Agreement (n 9), Annex 10, art I.
[89] Peace Implementation Council, 'PIC Bonn Conclusions: Self-Sustaining Structures' (Bonn, 10 December 1997) section XI(2) (the so-called 'Bonn Powers'). For analysis, see Gerald Knaus and Felix Martin, 'Lessons from Bosnia and Herzegovina: Travails of the European Raj' (2003) 14 Journal of Democracy 60, 63–66.
[90] Dayton Agreement (n 9), Annex 1-A ('Agreement on the Military Aspects of the Peace Settlement'); UN Security Council Resolution 1088 (12 December 1996) UN Doc S/RES/1088.
[91] On early minority-return figures and the obstacles they faced, see Marcus Cox, 'The Right to Return Home: International Intervention and Ethnic Cleansing in Bosnia and Herzegovina' (1998) 47 International and Comparative Law Quarterly 599, 609–619.

obstruction at local level, the secondary occupation of abandoned properties by persons displaced from other areas, and continuing insecurity combined to create substantial practical barriers.[92] The formal legal framework was in place, but the political conditions for its implementation were not.

These early difficulties did not undermine the legal framework itself; they revealed what implementation required. The situation changed from the late 1990s onwards, when a more concerted international enforcement effort produced measurable results. The Property Law Implementation Plan (PLIP), coordinated by the OHR, UNHCR, and the OSCE, systematised the process of property repossession by requiring local housing authorities to process property claims within defined timeframes and imposing consequences for non-compliance.[93] By the mid-2000s, the large majority of registered property claims had been formally resolved.[94]

This gap between recovering a property right and choosing to resume physical residence runs through the comparative analysis of this chapter. It shows that restitution and return, while legally related, are separate in practice. A person may recover a property right without choosing to return, and a restitution mechanism can succeed on its own terms while physical return remains low. Treating sustained physical return as the sole measure of success makes even the most comprehensive framework look like a failure. Recognising property restitution as a meaningful form of redress in its own right allows legal claims to produce tangible outcomes even where full physical return remains elusive. This point connects directly to the separation of return, restitution, and compensation established in section 1.3, and it reappears from a different angle in the Cyprus experience examined below.[95]

The Bosnian experience does not teach that return is achievable wherever a legal framework exists. It teaches three things relevant to the present thesis. The legal recognition of return-related rights is a precondition for any institutional response, but it does not by itself produce return. Where institutional mechanisms, supervisory authority, and external security guarantees coincide, restitution can be delivered at scale even though physical return remains lower. And where any of those conditions weakens, results decline correspondingly. None of this diminishes the underlying right; all of it identifies what is required to give the right operational effect. For displacement situations that lack comparable supporting structures, the conclusion is not

[92] Cox (n 92) 612–619; Williams (2005) (n 87) 457–463.
[93] OHR, UNHCR, OSCE and Council of Europe, 'Property Law Implementation Plan: Inter-Agency Framework Document' (October 2000) ('PLIP'); Charles Philpott, 'From the Right to Return to the Return of Rights: Completing Post-War Property Restitution in Bosnia Herzegovina' (2006) 18 International Journal of Refugee Law 30 ('Philpott') 44–48.
[94] Philpott (n 94) 47–48.
[95] See also section 1.3 above.

that the right is weaker but that the responsibility of the territorial state to construct an adequate domestic mechanism is correspondingly greater.

3.2. Cyprus as a Remedial Model

The situation in Cyprus presents a fundamentally different model for the treatment of displacement-related claims. Following the events of 1974, approximately 200,000 Greek Cypriots were displaced from northern Cyprus, and a smaller but significant number of Turkish Cypriots moved from the south to the north.[96] The island has remained divided since then, with the northern part administered under conditions that lack international recognition, and no comprehensive political solution has been reached despite decades of negotiations under United Nations auspices.[97]

Where Bosnia's return framework was embedded in a comprehensive peace settlement, Cyprus's remedial mechanism emerged without one. Large-scale physical return of displaced Greek Cypriots to their former homes in the north has not occurred. The primary institutional mechanism that has developed is not a product of a peace agreement but a response to sustained judicial pressure from the European Court of Human Rights. Chapter 2 examined the doctrinal significance of the ECtHR's engagement with Cyprus, particularly the concepts of continuing violations and the admissibility of alternative remedies. The present section focuses instead on the remedial mechanism itself: the Immovable Property Commission (IPC), its design, its operation, and what it reveals about the treatment of displacement-related claims in a context of prolonged political deadlock.

The origin of the IPC is analytically important. It was not established at the initiative of the Turkish Cypriot authorities or through political negotiation between the parties, but in response to the pilot judgment in Xenides-Arestis v Turkey, in which the ECtHR held that Turkey was required to introduce a domestic remedy capable of securing redress for Convention violations in respect of property rights in northern Cyprus.[98] The Committee of Ministers supervised execution of that judgment and maintained pressure on Turkey to produce a remedy that would satisfy the Convention standard.[99] The IPC was accordingly established under Law No 67/2005,

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[96] Loizidou v Turkey (Preliminary Objections) App no 15318/89 (ECtHR [GC], 23 March 1995) Series A No 310, paras 11–18; Cyprus v Turkey (n 7) paras 13–16.
[97] UNSC Res 367 (12 March 1975) UN Doc S/RES/367; UN Secretary-General, 'Report of the Secretary-General on his Mission of Good Offices in Cyprus' (1 April 2003) UN Doc S/2003/398.
[98] *Xenides-Arestis v Turkey* App no 46347/99 (ECtHR, 22 December 2005) paras 37–40 and operative para 5 (identifying a systemic problem and directing Turkey, under art 46 ECHR, to introduce a remedy securing genuinely effective redress for the Convention violation found and for all similar applications).
[99] *Xenides-Arestis v Turkey* (just satisfaction) App no 46347/99 (ECtHR, 7 December 2006) paras 37–38 (taking note of the remedy introduced under Law No 67/2005); on the role of the Committee of Ministers in supervising execution, see Philip Leach and others, *Responding to Systemic Human Rights Violations: An Analysis of Pilot*

enacted by the Turkish Cypriot authorities in December 2005, and began to function in the course of 2006.[100] The Commission offers three forms of redress: restitution of the property, exchange for an equivalent property, or financial compensation.[101] This origin matters because it shows that sustained judicial supervision can prompt the creation of a remedial mechanism even where political settlement is absent.

In practice, the IPC has operated overwhelmingly as a compensation mechanism. The Commission has processed a significant number of applications and awarded substantial sums, but in the large majority of resolved cases the outcome has been monetary payment.[102] Restitution has been ordered in a limited number of cases, and exchange has been used rarely.[103] This reflects both practical realities and structural constraints. In the Cypriot setting specifically, the absence of a comprehensive political settlement and five decades of redevelopment and demographic change have made large-scale physical restitution practically difficult to achieve. This is a contingent feature of the Cypriot configuration and does not bear on the legal availability of restitution as a remedy in cases with different factual conditions.[104]

The contrast with Bosnia highlights how different institutional contexts shape remedial outcomes. The CRPC in Bosnia operated within a peace agreement expressly designed to facilitate return and restitution, supported by international enforcement machinery. The IPC operates without a peace agreement, without comparable enforcement capacity, and after more than five decades of separation, during which the physical and demographic landscape has changed substantially. That the IPC has functioned primarily as a compensation body rather than a restitution body is therefore unsurprising. What is significant is that the Commission functions at all, and that the European Court has accepted it as capable of furnishing redress sufficient to satisfy the Convention's exhaustion requirement. That procedural acceptance, however, does not entail a substantive judgment that compensation is equivalent to return or restitution. The Court took care to preserve the underlying property right as continuing, and it located the IPC within the remedial hierarchy rather than above it.[105]

Judgments of the European Court of Human Rights and their Impact at National Level (Intersentia 2010) 109–115.

[100] Law on the Compensation, Exchange and Restitution of Immovable Properties, Law No 67/2005 (Turkish Republic of Northern Cyprus), in force 22 December 2005.

[101] Law No 67/2005 (n 101), arts 7–8.

[102] Ayla Gürel and Kudret Özersay, 'Cyprus and the Politics of Property' (2006) 11(3) Mediterranean Politics 349; Nikos Skoutaris, *The Cyprus Issue: The Four Freedoms in a Member State under Siege* (Hart 2011) ch 5.

[103] Gürel and Özersay (n 103) 361–365.

[104] *Demopoulos* (n 7) paras 84–86, 112–116 (acknowledging that large-scale physical restitution after decades raises particular practical difficulties).

[105] *Demopoulos* (n 7) paras 116, 127–128; *Cyprus v Turkey* (n 7) paras 187–189.

The Grand Chamber in Demopoulos confirmed that the IPC could in principle constitute an effective domestic remedy that applicants were required to exhaust. As discussed in section 2.2(iv), the Court did not equate compensation with restitution, but accepted that in conditions of prolonged political division a mechanism offering meaningful and accessible redress could satisfy the Convention standard.[106]

For the present thesis, this matters because it shows that a gap between the legal recognition of a right to return and its realisation through physical return does not, by itself, deprive the right of legal relevance. The right may take effect through different remedial forms within the hierarchy that the substantive framework prescribes, so that any departure from return or restitution requires justification on the facts.

The limitations of the Cyprus model are significant. The IPC addresses the economic dimension of displacement through financial payment, but it does not restore the personal, communal, or social dimensions of the relationship between displaced persons and their former homes.[107] Individual applicants may receive compensation, but this does not affect the legal or political status of the territory, and it does not settle whether a right of return continues to exist. The ECtHR's own case law supports this reading. The Court has consistently treated the exclusion of displaced Greek Cypriots from their property as a continuing situation rather than a completed historical event, even while accepting that compensation may be an adequate remedy for individual property claims.[108] Compensation, in other words, addresses the property claim without resolving the broader displacement.

The Cypriot experience yields a complementary lesson. Where physical return is foreclosed by prolonged political division, the underlying right does not disappear. It survives in the form of a continuing violation, in the legal recognition that property has not been lawfully extinguished, and in the existence of a remedial mechanism, however limited, that the State responsible cannot escape.[109] The IPC operates predominantly through compensation, and the European Court has accepted that this satisfies the procedural requirements of the Convention. It has not held, and could not coherently hold, that compensation extinguishes the underlying right or settles the question of return. The lesson for protracted displacement is therefore that the passage of

[106] *Demopoulos* (n 7) paras 112–129.
[107] Mehmet Erdem and Steven Greer, 'Human Rights, the Cyprus Problem and the Immovable Property Commission' (2018) 67 ICLQ 721; Anneke Smit, *The Property Rights of Refugees and Internally Displaced Persons: Beyond Restitution* (Routledge 2012) chs 3 and 5; Lorna Fox O'Mahony and James A Sweeney (eds), *The Idea of Home in Law: Displacement and Dispossession* (Ashgate 2011) chs 1 and 9.
[108] *Cyprus v Turkey* (n 7) paras 172–175; *Loizidou* (Merits) (n 7) paras 63–64.
[109] *Xenides-Arestis* (n 99) operative paras 4–5; *Demopoulos* (n 7) paras 127–129.

time and the absence of political settlement reshape the available remedial form without dissolving the legal claim.

3.3. Lessons for Protracted Displacement

The comparative material examined in this chapter yields several lessons that bear directly on the analysis of protracted displacement and prepare the ground for Chapter 4.

The first lesson is the persistent gap between the legal recognition of return-related rights and their practical realisation. In Bosnia, an unusually strong normative framework produced substantial results in property repossession but significantly lower rates of sustained physical return, and even those results depended on exceptional international enforcement capacity.[110] In Cyprus, decades of authoritative jurisprudence have not produced large-scale return, and the available mechanism addresses property claims without resolving the underlying displacement. This does not mean the norms are irrelevant. Without a clear legal basis, no mechanism for restitution or compensation can be designed, and no political negotiation can be structured around enforceable rights rather than discretionary concessions. In Bosnia, it was the legal framework that made institutional enforcement possible. In Cyprus, it was the ECtHR's insistence on continuing property rights that prompted the creation of the IPC. Legal recognition matters, but it does not by itself produce practical results.

The second lesson concerns institutional design. The Bosnian experience shows that implementation in contested post-conflict settings may require a dedicated claims body, international supervisory authority with enforcement powers, and external security presence. The absence of any one of these would likely have produced a weaker outcome.[111] Cyprus offers a more limited illustration: judicial pressure from the ECtHR prompted the creation of a domestic remedy, but the absence of a broader political framework has confined the IPC to addressing individual property claims. The implication is that realising return-related rights in protracted displacement is likely to require institutional architecture and sustained external engagement, though the form such architecture takes will depend on the specific context.

A third lesson concerns the need to keep distinct the concepts of the right to return, the right to property restitution, compensation, and actual physical return. Both cases show that these are functionally separate, and both confirm the doctrinal separation developed in section 1.3. In Bosnia, property restitution was achieved through a claims process, but many recipients did not

[110] See section 3.1 above; Philpott (n 94) 49–54.

[111] Williams (2005) (n 87) 488–493; Gerard Toal and Carl Dahlman, Bosnia Remade: Ethnic Cleansing and Its Reversal (OUP 2011) ('Toal and Dahlman') 291–310.

physically return. The Cyprus model has not delivered physical return, but it has not extinguished the underlying right of return either; it has redirected redress toward the property dimension while the right itself remains legally live. Compensation provides monetary redress for the loss of property or its use, but it neither restores the property nor facilitates physical return. The Pinheiro Principles reflect this hierarchy, establishing a preference for restitution while accepting alternatives where the preferred outcome is not feasible.[112] A realistic approach to protracted displacement must keep these categories separate. Treating sustained physical return as the sole measure of success sets an unrealistically high standard, while recognising that restitution and compensation can serve as partial forms of redress allows legal claims to produce results even where full return remains elusive.

A fourth lesson concerns the effect of time. In Bosnia, the most significant property repossession results were achieved within a relatively short period after the displacement, during the phase of intensive international engagement. As time passed, minority return rates declined and practical complications multiplied. In Cyprus, more than fifty years have passed, and property has been built upon, transferred, and absorbed into new economic and social arrangements.[113] The passage of time does not extinguish the underlying legal right, as both the ECtHR's jurisprudence and the continued operation of the IPC confirm. But it does affect the form of remedy that is realistically available. The longer displacement persists, the more likely it is that physical restitution will prove factually difficult in particular individual cases. The right persists, but the available remedies shift. For the ethnic Azerbaijani displacement, where more than thirty years have passed without a dedicated mechanism, this is directly relevant.

Comparative practice does not prescribe a model for the Armenia situation, but it establishes a minimum: some form of mechanism must exist through which first-generation displaced persons can bring their claims. Bosnia achieved this through a dedicated claims body embedded in a peace settlement; Cyprus achieved this through a domestic mechanism created under judicial pressure. The Armenia case currently offers nothing equivalent, and this absence is itself a matter of legal concern under the effective-remedy obligations discussed in section 2.2(v). The value of the comparative cases, however, lies in identifying that institutional minimum, not in supplying a transposable template. The Annex 7 framework rested on a specific and unusually well-resourced peace settlement, with international military presence and a supervisory authority holding coercive powers; none of those conditions exists in the Armenia situation. The IPC

[112] Pinheiro Principles (n 12) principles 2 and 21; see also section 1.3 above.
[113] On the consolidation of new property and demographic arrangements over extended periods of displacement, see Rhodri C Williams, 'The Contemporary Right to Property Restitution in the Context of Transitional Justice' (International Center for Transitional Justice Occasional Paper, May 2007) 10–17.

arose from a specific configuration of judicial pressure under the Convention system that the Armenia case cannot replicate, for the temporal-jurisdiction reasons addressed in section 2.1. Any eventual mechanism in the Armenia case will therefore need to respond to its specific features: the passage of more than three decades, the absence of any peace settlement, and the territorial sovereignty of Armenia over the areas from which the displacement occurred.

Taken together, Bosnia and Cyprus support a single proposition that the remainder of this thesis takes forward. The legal recognition of return-related rights survives the difficulty of its implementation. Institutional design, international engagement, and the passage of time determine which forms of remedy are practically realisable in a given case, but they do not determine whether the underlying right exists. Where physical return is achievable, the right requires its facilitation. Where return is not immediately achievable, the right requires the construction of a remedial mechanism in which restitution and compensation operate as ordered components of a hierarchy rather than as substitutes for return. The absence of either return or such a mechanism is a legal problem to be solved, not a reason to revise the underlying entitlement.

Chapter 4 applies these comparative findings to the legal position of ethnic Azerbaijani persons displaced from Armenia. The bridge is structural rather than analogical. The comparative material identifies what an adequate response to displacement-related claims requires: a domestic mechanism, sustained engagement, a remedial hierarchy distinguishing return, restitution, and compensation, and a recognition that time alters available remedies without extinguishing the underlying right. The Armenia case currently lacks each element. Chapter 4 argues that this absence does not weaken the legal claim but reallocates responsibility for its fulfilment to the territorial state, whose obligations under the ICCPR and parallel instruments are not contingent on external supervisory architecture.

4. Application to the Displacement of Ethnic Azerbaijanis from Armenia

4.1. Legal Characterisation of the Displacement

Between 1988 and 1992, the ethnic Azerbaijani population of what is now the Republic of Armenia, historically settled there over generations and numbering between approximately 170,000 and 250,000 persons across independent sources, was compelled to leave the country.[114] The displacement occurred in a context of violence, organised pressure and intimidation directed at ethnic Azerbaijani communities, and the breakdown of conditions for safe residence amid the escalating conflict over Nagorno-Karabakh.[115] The displaced population has not returned on any significant scale in the more than three decades since, and no dedicated mechanism has been established at any point through which individual re-entry, property, or family-life claims by displaced persons may be considered on their merits.[116]

The factual premises of the analysis in this chapter are drawn from independent and convergent sources: the contextual findings of the European Court of Human Rights in its Nagorno-Karabakh judgments, which describe the broader displacement context of the late 1980s and early 1990s without addressing the displacement of ethnic Azerbaijanis from Armenia proper as such; the country materials prepared by the United Nations High Commissioner for Refugees and related humanitarian agencies; and the scholarly literature on the conflict, principally the account given by Thomas de Waal.[117] The thesis does not conduct independent historical fact-finding; it proceeds on the most widely supported account of the factual pattern and identifies points of contestation where relevant.

The original events of the late 1980s and early 1990s raise questions of state responsibility that are analytically distinct from the questions this chapter answers and are not pursued here. Subsequent developments, including the 2020 hostilities, the events of September 2023 in Nagorno-Karabakh, and the ongoing Armenia-Azerbaijan normalisation process, fall outside the scope of this analysis. Those developments do not alter the legal position assessed here, because

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[114] de Waal (n 2) chs 1, 4 and 7; Svante E Cornell, *Small Nations and Great Powers: A Study of Ethnopolitical Conflict in the Caucasus* (Curzon Press 2001) ch 3; United Nations High Commissioner for Refugees, *The State of the World's Refugees 2000: Fifty Years of Humanitarian Action* (OUP 2000) ch 9. The figure range reflects the spread between Soviet census-based estimates and later humanitarian estimates and is not itself adjudicated in this thesis.

[115] de Waal (n 2) ch 4; Cornell (n 115) ch 3.

[116] No official position of the Government of Armenia asserting the existence of any such mechanism has been identified on the public record. The absence of a mechanism is treated below as a continuing procedural omission independent of any substantive claim: see section 4.2.

[117] de Waal (n 2) chs 1, 4, 7.

Armenia's continuing obligations as territorial sovereign toward first-generation ethnic Azerbaijanis displaced from its territory are doctrinally separable from the bilateral political process and from displacement situations involving other populations. The chapter's argument is framed in terms of Armenia's continuing obligations as a territorial sovereign and treaty party, because those obligations are engaged directly by the present and ongoing absence of any institutional process through which individual claims may be considered, and are therefore the obligations most immediately cognisable under the interpretive practice of the Human Rights Committee.

A further analytical commitment concerns scope. The analysis in this chapter is concerned with first-generation claimants, that is, persons who themselves resided in the territory of present-day Armenia before the events of 1988 to 1992 and who left in the course of those events. Descendants of the displaced may have distinct claims that raise doctrinally harder questions concerning the transmissibility of a right grounded in personal connection. Those questions are not resolved here. [118] Narrowing the chapter's focus to first-generation claimants sharpens the analysis and allows the core legal argument to be developed on the facts where the doctrinal framework applies with the greatest force.

Within these parameters, the displacement is characterised as involuntary: those who left did so under direct coercion, the threat or reality of violence, or the collapse of the protective conditions on which safe residence depended. This characterisation is a precondition for engaging the legal framework developed in Chapters 1 to 3, since the continuing-violation analysis presupposes that the interference persists against the will of the affected person, and voluntary relocation does not engage the prohibition of arbitrary exclusion under Article 12(4) ICCPR. The analysis that follows therefore proceeds on the characterisation of involuntary displacement, which is sufficient for the doctrinal analysis undertaken and is supported by the factual record.

4.2. Applicability of Return-Related Rights

This section argues that first-generation ethnic Azerbaijanis personally displaced from Armenia hold continuing legal claims under international human rights law. The core of the argument is situated in the International Covenant on Civil and Political Rights. The European Convention on Human Rights plays an analogical and interpretive role, not a co-equal one, for the reasons

[118] The position of second-generation descendants raises doctrinally harder questions concerning the transmissibility of personal connection under Article 12(4) ICCPR. The analysis in this chapter concerns first-generation claimants. Nothing in the arguments developed below determines, in either direction, the position of descendants; the question is left for further research.

set out in Chapter 2.[119] The analysis proceeds in four stages: personal scope under Article 12(4) ICCPR; the non-arbitrariness requirement in its application to present circumstances; the effective-remedy requirement under Article 2(3) ICCPR; and the supporting role of Article 17 ICCPR together with the analogous ECHR material.

Article 12(4) ICCPR provides that no one shall be arbitrarily deprived of the right to enter his own country.[120] The interpretive difficulty in the present case is whether the territory of present-day Armenia constitutes the 'own country' of first-generation ethnic Azerbaijanis who resided there for decades before the events of 1988 to 1992 and who now hold the nationality of the Republic of Azerbaijan.

The Human Rights Committee's interpretation of 'his own country' in General Comment No 27 is broader than the concept of country of nationality and encompasses individuals who, because of their special ties to or claims in relation to a given country, cannot be considered mere aliens.[121] The Committee identified as specifically relevant to that determination long-term residence, close personal and family ties, and the intention to remain, together with the absence of such ties elsewhere, and it expressly contemplated situations of state succession in which individuals had become resident in one country and were unable to acquire the nationality of another.[122] The broader reading was articulated in the dissenting individual opinions in Stewart v Canada and has since been developed by the Committee itself, notably in Nystrom v Australia and Warsame v Canada, and confirmed in Budlakoti v Canada.[123]

The situation of first-generation ethnic Azerbaijanis falls within the personal scope of Article 12(4) on this interpretation. The displaced were not transient visitors. They were long-established residents, in many cases over generations, with homes, property, family, and community ties rooted in the social and economic life of the country. Their departure occurred against the background of state succession: the Soviet Union, of which both they and their country of residence were part, dissolved, and independent Armenia emerged as the successor sovereign precisely during the period in which the displacement took place. The specific combination of Soviet-era citizenship, subsequent Azerbaijani nationality, and long-term connection to Armenia is a configuration the Committee has not yet had the opportunity to address directly, although each of the factors it has identified as relevant under General Comment No 27 is present

[119] See section 2.1 above, explaining why the Convention is not treated as the primary legal vehicle for these claims.
[120] ICCPR (n 4) art 12(4).
[121] General Comment No 27 (n 14) para 20.
[122] General Comment No 27 (n 14) paras 19–21.
[123] *Nystrom* (n 31) paras 7.4–7.6; *Warsame* (n 32) paras 8.4–8.6; *Budlakoti* (n 33) paras 9.2–9.3.

here. The Committee's reading of Article 12(4) is deliberately substantive rather than formal, which is what allows the present configuration to be assessed on its merits. For first-generation ethnic Azerbaijanis personally displaced from Armenia, the territory of present-day Armenia is therefore their 'own country' within the meaning of Article 12(4) ICCPR, on the four factors the Committee has identified as relevant: long-established residence, deep family and community ties, the state-succession context, and the involuntary character of the departure.

The formulation of Article 12(4) as a prohibition on arbitrary deprivation does not weaken the underlying entitlement. The Committee has stated that there are 'few, if any, circumstances' in which deprivation of the right to enter one's own country could be reasonable, [124] and it has clarified that 'arbitrarily' extends beyond conduct that is merely unlawful and captures restrictions which, even if formally lawful, are unreasonable, unnecessary, or disproportionate to any legitimate aim.[125] These two points operate together. The first sets a strong substantive presumption against exclusion; the second specifies that formal legality in domestic law does not satisfy the Covenant standard.

Applied to the present case, the non-arbitrariness requirement is not satisfied. The exclusion of an identifiable ethnic group, long resident in the territory, has persisted for more than three decades. In that time, no institutional process has been established through which individual re-entry claims may be considered, no reasoned, proportionate, non-discriminatory basis for the continued exclusion of particular individuals has been set out, and no mechanism exists through which the excluding state might justify its position in the particularised terms the Covenant requires. The General Comment's framework shifts the argumentative burden onto the excluding state to demonstrate that any continuing restriction is reasonable in the circumstances. No such demonstration is on the record. The prolonged exclusion of this group, without any individualised process through which the reasonableness of exclusion could be tested, cannot be reconciled with the non-arbitrariness standard of Article 12(4); Armenia has not advanced any public position justifying the exclusion in the case-by-case terms the Covenant requires.

Article 2(3) ICCPR requires each state party to ensure that any person whose rights or freedoms under the Covenant are violated has an effective remedy determined by competent authorities, and to develop and enforce the remedies available.[126] The Committee has made clear in General Comment No 31 that the requirement is both substantive and procedural, that the failure to investigate and provide redress for alleged Covenant violations can itself constitute a separate

[124] General Comment No 27 (n 14) para 21.
[125] General Comment No 27 (n 14) para 21; Nowak (n 1) 282–287.
[126] ICCPR (n 4) art 2(3).

breach, and that the obligation to provide an effective remedy exists independently of whether a violation of the underlying right is ultimately established.[127]

The complete absence of any domestic mechanism through which displaced persons could present a claim, raise a question of re-entry or of property and home, obtain a reasoned decision on the merits, or pursue any form of redress, is a continuing violation of Article 2(3) in its own right. It does not depend on the resolution of any individual Article 12(4) claim on the merits, though it presupposes that such claims are at minimum arguable on the interpretation defended in this chapter. The procedural failure is a wrong distinct from any substantive wrong. It has subsisted for more than thirty years. On the Committee's interpretation of Article 2(3), the absence of process is not a neutral background condition but an independent and ongoing breach.

Article 17 ICCPR protects against arbitrary or unlawful interference with home and family life. The first-generation displaced left behind homes and family relations in Armenia, and sustained denial of access, with no process through which the interference can be assessed in their individual case, engages Article 17 directly. Although the Committee's Article 17 jurisprudence is less developed than that under Article 12, it reads non-arbitrariness in congruent terms. Article 17 therefore reinforces rather than displaces the primary framework and applies to the same continuing exclusion.

European Convention jurisprudence provides interpretive support for this reading. On the doctrinal points relevant to this chapter, the Convention is cited here not as a source of direct obligations binding on Armenia in respect of the 1988 to 1992 events, for the temporal-jurisdiction and admissibility reasons set out in Chapter 2,[128] but as a body of reasoning that informs how analogous concepts in the ICCPR framework are best understood in situations of prolonged displacement. Three doctrinal points transfer. First, the continuing-violation principle established in Loizidou v Turkey and applied in Cyprus v Turkey, Chiragov v Armenia, and Sargsyan v Azerbaijan treats prolonged denial of access to homes and property as an ongoing interference that persists for as long as the exclusion persists, rather than as a closed historical event.[129] Second, the Court's substantive and factual understanding of 'home' under Article 8 ECHR, which does not depend exclusively on legal title or current occupation but on sufficient and continuing links, supplies an interpretive analogue for the corresponding concept under Article

[127] General Comment No 31 (n 71) paras 15–18; Nowak (n 1) 64–67.
[128] See section 2.1 above, on ratione temporis and admissibility constraints in the Armenia context.
[129] Loizidou (Merits) (n 7) paras 40–47, 63–64; Cyprus v Turkey (n 7) paras 136–189; Chiragov (n 5) paras 187–201; Sargsyan (n 5) paras 188–242.

17 ICCPR.[130] Third, the Court's treatment of effective remedies under Article 13 ECHR reinforces the Committee's approach to Article 2(3) ICCPR: the absence of any domestic mechanism through which displacement-related claims may be pursued is itself a Convention violation, analytically separable from the underlying substantive claim.[131]

The limits of the analogy must be acknowledged plainly. Chiragov and Sargsyan concerned displaced populations from the Nagorno-Karabakh conflict zone, not persons displaced from the territory of Armenia proper. The applicants, the respondent states, and the jurisdictional bases, in particular the doctrine of effective control that carried the jurisdictional weight in Loizidou and Chiragov, differ from the present case. These judgments do not bind Armenia as direct precedents for the present situation, but the doctrinal standards they articulate were formulated as principles of general application.[132] What they provide is a developed doctrinal framework concerning continuing violations, the substantive interpretation of home, and the requirement of effective remedies, capable of informing by analogy the reading of the ICCPR provisions that do directly apply.

Taken together, the four stages establish the legal proposition on which this chapter rests. First-generation ethnic Azerbaijanis displaced from Armenia fall within the personal scope of Article 12(4) ICCPR; their continued exclusion is inconsistent with non-arbitrariness; the absence of process is itself a continuing violation of Article 2(3); Article 17 supports the analysis; and ECHR jurisprudence provides interpretive support. What remains is to consider the effect of the passage of more than three decades on the remedy.

4.3. Temporal and Remedial Limits

The conclusion that the claims persist does not by itself determine the remedy. More than three decades have passed since the displacement. Properties have been occupied, transferred, or altered, and the demographic and physical conditions in the affected localities have changed. The legal analysis must confront what the passage of time does and does not do to these claims.

The continuing-violation framework developed in Chapter 2 and applied above is the temporal foundation. The decisive question is not when the displacement occurred but whether its consequences remain ongoing.[133] Armenia's exclusion of the displaced and its failure to establish

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[130] On the substantive and factual meaning of 'home' under art 8 ECHR, see Gillow (n 53) para 46; *Prokopovich v Russia* App no 58255/00 (ECtHR, 18 November 2004) para 36; Chiragov (n 5) paras 206–207.
[131] *Cyprus v Turkey* (n 7) para 324; *Kudla v Poland* App no 30210/96 (ECtHR [GC], 26 October 2000) paras 156–157.
[132] See section 2.2 above, analysing the scope and limits of the Chiragov and Sargsyan judgments.
[133] See section 2.2 above; Loizidou (Merits) (n 7) paras 40–47; ILC Articles (n 37) art 14(2).

any mechanism through which re-entry or related claims can be considered have continued without interruption and remain in force at the time of writing. The conditions on which the continuing-violation analysis turns are satisfied on the facts.

The passage of time is not, however, irrelevant. It affects evidence and it affects remedy. On evidence, the documentary record has in many cases been lost, destroyed, or rendered inaccessible; records from the late Soviet period are often incomplete; and the physical condition of properties has changed. The response to these difficulties is a flexible evidentiary standard, not the denial of claims. The European Court's approach in Chiragov and Sargsyan allowed proof by a combination of witness statements, official records, and the overall plausibility of an individual's connection to a particular place in circumstances where strict documentary proof was unattainable. While Chiragov and Sargsyan are not direct precedents, the evidentiary methodology developed there reflects principles of general application and is transferable by analogy.[134] The same approach is appropriate in the present case for the same reason. A regime that required perfect documentary proof of pre-displacement ownership would penalise the very conditions that caused the displacement.

The central effect of time is remedial. The legal claim persists. Its remedial expression takes different forms across individual claims, but within a legal hierarchy that does not itself change. This distinction, developed in the comparative material in Chapter 3 and in the European Court's remedial jurisprudence, is the key to a precise answer in the present case.[135] What persists is the claim: the right against arbitrary exclusion, the entitlement to a substantive and procedural response from the territorial sovereign, the interest in home and family life, and the requirement of an effective remedy. What evolves is the form of enforcement available in particular cases. To the extent that present conditions complicate enforcement, those conditions include changes flowing in significant part from Armenia's own continuing failure to provide a process for return, and a state cannot reduce the remedy it owes by invoking the consequences of its own ongoing breach.

Three remedial categories must be distinguished, as section 1.3 and Chapter 2 developed. Return is protected primarily by Article 12(4) ICCPR. Restitution engages the home protections of Article 17 ICCPR and the analogous home and property protections of Article 8 ECHR and Article 1 of Protocol No 1 ECHR. Compensation is recognised as a legitimate alternative by the European Court in Demopoulos and by the Pinheiro Principles, but only where restitution

[134] Chiragov (n 5) paras 127–131; Sargsyan (n 5) paras 180–187.
[135] See sections 2.2(iv) and 3.3 above.

is factually impossible, not merely difficult or inconvenient.[136] These remedies are distinct but not equal in normative weight: return to one's own country is primary, restitution is the preferred property remedy, compensation is secondary, and the three may be combined in any given case.

The comparative material from Chapter 3 illustrates the operation of this distinction. The Bosnia process under Annex 7 and the later Property Law Implementation Plan achieved substantial restitution, though sustained physical return was lower.[137] The Cyprus Immovable Property Commission has operated predominantly through compensation, and was accepted in Demopoulos as capable in principle of constituting an effective domestic remedy. Neither is a direct template for Armenia. What both confirm is that displacement-related claims can be processed through institutional mechanisms; the legally exceptional position is the maintenance of no mechanism at all.

Applied to the present case, the analysis yields a specific remedial proposition structured around a hierarchy rather than a menu of interchangeable options. The preferred remedies are physical return and restitution of specific property, consistent with the primary position these remedies occupy both under Article 12(4) ICCPR and in the Pinheiro Principles. Compensation is available as a fallback only where restitution is demonstrably impossible on the facts of an individual case, and the burden of establishing impossibility rests on the excluding state rather than on the displaced person. That burden is not discharged by generalised assertions that too much time has passed, by reference to demographic change in the abstract, or by reliance on the state's own continuing failure to facilitate return. To function as a legitimate ground for substituting compensation for return or restitution, infeasibility must be established case-by-case, in reasoned terms, and on evidence capable of withstanding scrutiny through an independent process.

The legal claim of first-generation displaced persons does not dictate a predetermined remedial outcome. But neither is it compatible with the indefinite maintenance of exclusion combined with the total absence of any process through which individual claims can be considered. The minimum content of Armenia's continuing remedial obligation is therefore procedural, and it is identifiable with some precision.

Any mechanism capable of satisfying Armenia's continuing obligations under Article 12(4) read with Articles 2(3) and 17 ICCPR must meet at least the following requirements. It must be accessible, which means that first-generation displaced persons must be able to bring

[136] *Demopoulos* (n 7) paras 112–116; Pinheiro Principles (n 12) principles 2 and 21.
[137] Dayton Agreement (n 9), Annex 7, arts I, VII and XI; Philpott (n 94); PLIP (n 94); Williams (2005) (n 87).

individualised claims without prohibitive procedural, financial, or evidentiary barriers.[138] It must be independent, in the sense that the body taking decisions is institutionally separated from, and not subject to direction by, the political branches whose conduct is impugned.[139] It must produce reasoned decisions that engage the particular facts of each claim and the applicable legal standards, which is what allows the Article 2(3) remedial requirement and the non-arbitrariness requirement of Article 12(4) to function in practice.[140] It must be non-discriminatory, in the sense that ethnic Azerbaijani claimants are not treated less favourably than others whose interests come before the same mechanism.[141] And it must be capable of issuing meaningful outcomes across the full range of remedies the substantive framework requires: return, restitution, and, where the state establishes on the facts of the particular claim that the primary remedies cannot be realised, compensation. A mechanism structurally restricted to compensation does not satisfy this requirement. Its outcomes would be pre-limited in a way that the substantive hierarchy does not permit, and an effective remedy on the Committee's approach cannot be defined by excluding in advance the remedies that international law treats as primary.[142] These requirements identify the procedural floor below which compliance is not possible.

4.4. Proposed Legal Framing of the Claims

The substantive and procedural standards developed above can now be assembled into the legal framing this thesis defends. The framing is committed and addresses the principal objections that may be raised against it.

Armenia, as the territorial sovereign and a party to both the International Covenant on Civil and Political Rights and its First Optional Protocol,[143] owes continuing obligations to these persons under Article 12(4) read with Articles 2(3) and 17 of the Covenant. The continuing character of the obligation is doctrinally secured by Article 14(2) of the ILC Articles on State Responsibility, under which the breach of an international obligation by an act having a continuing character extends over the entire period during which the act continues and remains not in conformity with the obligation.[144] The particular continuing acts in question are twofold: the maintenance of exclusion without individualised justification, and the total absence of any institutional process through which re-entry, property, or family-life claims may be considered on their merits.

[138] Pinheiro Principles (n 12) principle 13; General Comment No 31 (n 71) para 15; Demopoulos (n 7) paras 112–115.
[139] General Comment No 31 (n 71) para 15; *Kudla* (n 132) paras 156–157.
[140] General Comment No 31 (n 71) paras 15–16; Pinheiro Principles (n 12) principle 13.
[141] ICCPR (n 4) arts 2(1) and 26; ICERD (n 20) art 5(d)(ii); see further section 1.4 above.
[142] General Comment No 31 (n 71) para 16; Pinheiro Principles (n 12) principles 2 and 21.
[143] ICCPR and Optional Protocol (n 4); Armenia's instruments of accession deposited 23 June 1993.
[144] ILC Articles (n 37) art 14(2) and commentary, paras 3–5.

Four counter-arguments require brief but direct answers.

The first possible objection is that the claimants now hold Azerbaijani nationality and can therefore look to Azerbaijan, rather than Armenia, for the protection of their return-related interests. That does not displace Armenia's obligations under Article 12(4) ICCPR. Nationality of a third state neither extinguishes a substantive connection to the state from which the displacement occurred nor transfers the Article 12(4) obligation to the state of current nationality. The Human Rights Committee's interpretation of 'his own country' in General Comment No 27 and in cases such as Nystrom, Warsame and Budlakoti treats formal nationality as neither necessary nor sufficient. What matters is the substantive connection to the country concerned. On the argument defended here, that connection is grounded in prior habitual residence, social and family life, and the absence of voluntary departure, and it is not undone by subsequent acquisition or possession of Azerbaijani nationality.

A second possible objection is that Armenia may justify the continued exclusion on national-security grounds. That objection cannot succeed in the form a defence of present conditions would require. Article 12(4) ICCPR permits restrictions only where they are reasonable, necessary, proportionate, and non-discriminatory. Security considerations may justify limitations on individual entry where reasoned individualised assessment supports them. They cannot justify the indefinite blanket exclusion of an identifiable ethnic group, applied without individualised assessment, reasoned decisions, or any institutional process at all. This conclusion is not weakened by the renewed active phase of the underlying conflict, including the 2020 hostilities and subsequent developments. Where concrete security concerns arise in particular cases, those concerns are precisely what an individualised mechanism of the kind described in section 4.3 is designed to consider; their existence reinforces, rather than displaces, the obligation to establish such a mechanism.

A third potential objection is that the parallel displacement of ethnic Armenians from Azerbaijan amounts in substance to an implicit population exchange, such that the present claims are neutralised by reciprocal wrongs on the other side. That objection should be rejected. International human rights law does not recognise reciprocal mass displacement as a basis for extinguishing individual rights under Article 12(4) ICCPR. Parallel violations do not cancel one another out, and the legal position of one displaced population is not dissolved by the existence of another. The question in this thesis is whether Armenia owes continuing obligations to first-generation ethnic Azerbaijanis displaced from its territory. That question must be answered on its own legal terms. Nothing in the Human Rights Committee's practice suggests that mutual or parallel displacement cures the wrongfulness of continued exclusion, and the position of the international community, reflected in successive UN General Assembly resolutions and in the Pinheiro Principles, treats forced population transfer as a wrong that cannot be cured by reciprocity.

A fourth possible objection is that remedial pluralism empties the right of content by allowing compensation to replace return and restitution. That objection also fails. The position defended in this thesis is not that Armenia may freely choose among remedies. Return and restitution remain the primary remedies. Compensation becomes legally available only where the state demonstrates, through an accessible and reasoned individual process, that the primary remedies cannot be realised in the particular case. Plurality therefore operates inside the hierarchy, not in place of it.

The legal argument of this chapter is therefore specific and committed. Armenia owes continuing obligations under Article 12(4) ICCPR, read with Articles 2(3) and 17, to first-generation ethnic Azerbaijanis personally displaced from its territory. Those obligations are not extinguished by the passage of three decades, by subsequent Azerbaijani nationality, or by demographic change. Their minimum content is precise: an accessible, independent, non-discriminatory mechanism issuing reasoned individual decisions across the full remedial range, with return and restitution as primary remedies and compensation available only on case-specific demonstration that the primary remedies cannot be realised. The complete absence of any such mechanism is itself a continuing breach of Article 2(3). On the law as it stands, the right to return is a continuing legal entitlement; the absence of any institutional response does not weaken it but extends the duration of the breach. This is the answer the thesis offers to its fourth research question.

CONCLUSION

This thesis examined whether international human rights law provides a sustainable legal basis for the return-related claims of ethnic Azerbaijani persons displaced from present-day Armenia during the late 1980s and early 1990s. The problem was framed as a specific instance of a broader doctrinal question: how the right to return operates in situations of protracted displacement, where more than three decades have passed without return and without any dedicated mechanism for redress. The analysis moved from the universal normative framework, through regional jurisprudence, to comparative post-conflict practice, and finally to application. This Conclusion answers each of the four research questions in turn, identifies the thesis's contribution and limitations, and indicates directions for further research.

The first research question concerned the definition and interpretation of the right to return under international human rights law. Chapter 1 established that the right rests most firmly on Article 13(2) UDHR and Article 12(4) ICCPR, with the latter providing its binding expression in treaty form. The Human Rights Committee's interpretation in General Comment No 27, particularly of the phrase 'his own country' and of the non-arbitrariness standard, extends the personal scope of the right beyond formal nationality and imposes a substantive standard of justification on states. Beyond treaty law, customary international law supports the core prohibition of arbitrary exclusion, though it does not conclusively establish one comprehensive rule governing every aspect of return, restitution, and compensation. Soft-law instruments, notably the Pinheiro Principles and the Guiding Principles on Internal Displacement, reinforce this framework by articulating restitution as the preferred remedy while recognising compensation as a legitimate alternative where restitution is not feasible. The resulting character of the right is qualified but robust: robust because it preserves the legal significance of belonging and return even after long periods of absence, and qualified because the form of the remedy depends on the factual and legal circumstances of each case.

The second research question concerned the approach of the European Court of Human Rights to displacement-related claims. Chapter 2 showed that although the Convention contains no autonomous right to return, the Court has built a substantial jurisprudence through Article 8, Article 1 of Protocol No 1, and the requirement of effective remedies under Article 13. Six doctrinal principles emerge from that case law and are directly relevant to protracted displacement: the continuing-violation doctrine; the substantive concept of home; the continuing interference with property; the remedial relationship between restitution and compensation under conditions of pluralism-within-limits; the central requirement of effective domestic remedies;

and the proposition that practical and security-related difficulties may affect the form or timing of implementation but do not extinguish the underlying obligations. These principles establish that Convention law treats prolonged exclusion from homes and property as an ongoing legal issue rather than a historical event, while leaving room for context-sensitive implementation.

The third research question concerned the lessons to be drawn from comparative post-conflict practice. Chapter 3 found that the Bosnian and Cypriot experiences reveal a persistent gap between the legal recognition of return-related rights and their practical realisation. In Bosnia, a normative framework of unusual specificity combined with an exceptionally well-resourced institutional architecture produced significant results in property repossession but lower rates of sustained physical return. In Cyprus, decades of authoritative jurisprudence produced a remedial mechanism that operates primarily through financial compensation rather than return or restitution. What both cases demonstrate is that return, restitution, and compensation are functionally separable; that institutional design, international engagement, and political conditions shape what can be achieved; that the passage of time affects the realistic form of the remedy without extinguishing the underlying right; and that the limits of comparative analogy must be respected, since each case arose from a specific configuration of circumstances that cannot be transplanted.

The fourth research question concerned the application of this framework to the claims of ethnic Azerbaijani persons displaced from Armenia. Chapter 4 argued that the claims are legally sustainable as qualified, continuing, return-related human rights claims resting on four convergent elements: the prohibition of arbitrary exclusion under Article 12(4) ICCPR, engaged on the basis of long-established residence, property, and family ties; the regional jurisprudence on continuing violations and the protection of home and property, applied by analogy rather than as direct precedent; the absence of any institutional mechanism through which claims could be pursued, which itself constitutes a continuing breach of Article 2(3) ICCPR; and the supporting normative weight of soft-law instruments and comparative practice. The remedy is not the reconstitution of pre-displacement conditions. It is the set of remedies international law prescribes in this configuration: a continuing right of return and restitution for first-generation claimants, backed by an accessible and independent mechanism through which those remedies can be pursued, with compensation as a fallback only where Armenia establishes on the facts of a particular claim that return or restitution cannot be realised. That hierarchy, and not a free choice among equivalent options, is what the doctrinal analysis of the preceding chapters supports.

On the doctrinal material examined across the four chapters, the hypothesis set out in the Introduction is supported: Article 12(4) ICCPR, read with Articles 2(3) and 17, imposes on Armenia continuing, individually actionable obligations toward the first-generation ethnic Azerbaijanis displaced from its territory, and the passage of three decades has not extinguished those obligations but reshaped their remedial form.

The contribution of this thesis is modest but specific. Scholarship on the right to return has focused heavily on a small number of emblematic situations, particularly the Palestinian and post-Yugoslav cases. The displacement of ethnic Azerbaijani persons from Armenia has received little sustained attention in international human rights law scholarship, despite its scale, duration, and the absence of any dedicated remedial mechanism. By applying established doctrinal materials to this under-examined situation, the thesis shows that the existing framework is capable of generating a coherent legal analysis, and it clarifies how the doctrinal principles developed in Cyprus, and in Chiragov and Sargsyan, operate when applied by analogy to a situation in which the respondent state is the territorial sovereign rather than a state exercising extraterritorial control.

The limitations should be stated candidly. The thesis is doctrinal in method and does not conduct independent historical fact-finding or empirical research. The analysis is confined primarily to international human rights law; other frameworks, including international humanitarian law and the law of state responsibility, are mentioned only where necessary for context. The comparative material from Bosnia and Cyprus is used to illuminate remedial patterns rather than as direct precedent. The central interpretive arguments, particularly the expansive reading of 'his own country' as applied to persons whose formal nationality has shifted through state succession, rest on positions that are widely supported in commentary but have not been tested before an international tribunal in circumstances closely comparable to the present case. The thesis also does not exhaustively distinguish between first-generation claimants, who were directly displaced, and second-generation claimants, whose connection to Armenia is mediated through family and inherited interests; the analysis suggests that the priority of return and restitution may weaken as the chain of personal connection lengthens from first to subsequent generations, but the precise calibration is left for future work.

Several avenues for further research follow. The relationship between the continuing-violation analysis defended here and the broader framework of state responsibility for protracted exclusion would benefit from dedicated treatment. The second-generation claimant question deserves dedicated treatment, particularly in light of the Human Rights Committee's broader interpretive trajectory. The design of a hypothetical remedial mechanism for the Armenian-Azerbaijani context, drawing on the institutional experience of the CRPC and the IPC while adapting to the absence of a peace settlement and an international supervisory framework, would be a natural next step. Ongoing normalisation developments between Armenia and Azerbaijan may produce bilateral arrangements that engage displacement-related claims directly; their legal status and relationship to individual human rights claims would merit examination as those arrangements develop.

The central finding of this thesis is that international human rights law continues to bind Armenia to substantive obligations in respect of the first-generation ethnic Azerbaijanis who have remained excluded from its territory for more than three decades. Armenia remains required under Article 12(4) ICCPR, read with Articles 2(3) and 17, to provide an accessible, independent, reasoned, and non-discriminatory mechanism through which displaced persons can bring individualised claims, and to respond to those claims through remedies structured by the hierarchy international law prescribes: physical return and restitution of property as the preferred outcomes, with compensation available only where Armenia demonstrates on the facts of a particular case that the preferred remedies cannot be realised. The passage of time has not extinguished the underlying right. It has, if anything, aggravated the continuing violation constituted by Armenia's sustained institutional silence: a state that has failed for a generation to establish the minimum institutional conditions for the enforcement of its own accepted treaty commitments cannot invoke the duration of its own inaction as a reason for its continued abstention. The right to return, in the sense defended here, is neither an unconditional guarantee of immediate physical restoration nor an empty procedural shell. It is a robust norm that protects against arbitrary exclusion from one's own country, imposes on the excluding state the continuing burden of justification and process, and gives rise to graduated remedies that the passage of time reshapes but does not dissolve.

ABBREVIATIONS

CRPC	Commission for Real Property Claims of Displaced Persons and Refugees
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ETS	European Treaty Series
HRC	Human Rights Committee (UN treaty body monitoring the ICCPR)
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICLQ	International and Comparative Law Quarterly
IFOR	Implementation Force
IJRL	International Journal of Refugee Law
ILC	International Law Commission
ILM	International Legal Materials
IPC	Immovable Property Commission
LNTS	League of Nations Treaty Series
OHR	Office of the High Representative
OSCE	Organization for Security and Co-operation in Europe
PLIP	Property Law Implementation Plan
SFOR	Stabilisation Force
UDHR	Universal Declaration of Human Rights
UN	United Nations

UNHCR	Office of the United Nations High Commissioner for Refugees
UNTS	United Nations Treaty Series
VCLT	Vienna Convention on the Law of Treaties

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