

Russia's war on Ukraine

Forcibly displaced Ukrainian children

SUMMARY

On 17 March 2023, the International Criminal Court (ICC) issued an arrest warrant for Russian President Vladimir Putin and Maria Alekseyevna Lvova-Belova, Russian Presidential Commissioner for Children's Rights. The pair are accused of the 'war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation'. According to the ICC, there are reasonable grounds to believe that President Putin 'committed the acts directly, jointly with others and/or through others,' or that he failed to properly control 'civilian and military subordinates who committed the acts, or allowed for their commission, and who were under his effective authority and control, pursuant to superior responsibility'.

Since the start of Russia's full-scale invasion of Ukraine, evidence has been collected about core international crimes committed against Ukrainian children. Multiple reports consider Russia to be in breach of the obligations set in several international treaties and instruments to which Russia is party, as well as of customary international law. It is well documented that, since the start of the invasion, certain categories of individuals, including women and children, have been disproportionately affected by the conflict. International organisations, institutional actors and civil society organisations have repeatedly warned about the great burden on children, including but not limited to, trafficking, sexual exploitation, abduction and illegal adoption.

Beyond the strictly legal consequences of the arrest warrant, some commentators argue that the arrest warrant against Putin may help to undermine the Russian leader's war efforts, as the international community universally sees the abduction of children as unacceptable. No matter what the geopolitical arguments are, removing children from their families or from care facilities and forcibly transferring them is universally considered a reprehensible act of violence.



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Background

The full-scale Russian invasion of Ukraine started more than one year ago and has disproportionately affected and harmed vulnerable categories of Ukraine's population, including women and children. International and civil society organisations have repeatedly [warned](#) about the great burden on children, including but not limited to, [trafficking](#), sexual exploitation, abduction and illegal adoption. At the time of writing, the United Nation's Refugee Agency (UNCHR) [reports](#) that more than 2.8 million Ukrainian refugees are recorded as present in the Russian Federation and over 22 000 in Belarus. International and Ukrainian actors, as well as several [media](#) outlets, report that the Russian occupation authorities have deported Ukrainian children – sent away for '[ideological screening](#)'. Some [argue](#) that these actions were pre-planned and part of a broader and coordinated Russian effort to annihilate the Ukrainian identity of the young generation. It is very difficult to assess the identity and whereabouts of children who have been illegally transferred to Russia, or the precise conditions under which they are detained in Russia. A limited number of children have returned to Ukraine to rejoin their families however, and in their account of the conditions, have spoken about 're-education' and in some cases also about military training. Despite the difficulties in assessing the magnitude of the problem, there is mounting evidence of 'deportation', 're-education of Ukrainian children' and 'patriotic adoptions' by the Russians.

In May 2022, the Ukrainian Commissioner for Children's Rights [noted](#) that more than 180 000 **children were illegally transferred** to the occupied territories, while the Russians [admitted](#) that since the beginning of the 'special military operation' more than 183 000 children had arrived in Russia. In October 2022, the United States [estimated](#) that around 260 000 Ukrainian children were taken to Russia. Around the same period, it is reported that the Ukrainian human rights [ombudswoman](#), Lyudmyla Denisova, declared that Russia had relocated more than 1.2 million Ukrainians against their will, including more than 210 000 children. The Ukrainian Government [called](#) for the immediate return of children illegally displaced to Russia and confirmed that the Ukrainian authorities will meanwhile continue documenting the crimes committed against children in the Ukrainian territory. In June 2022, Michelle Bachelet, the UN High Commissioner for Human Rights, [expressed](#) concerns to the Human Rights Council about the **disappearance of children in temporarily occupied territories**, particularly children from institutions. Over the summer, the figure of 210 000 jumped to [307 000 children](#), according to Russian media, and to [728 000](#) in January 2023. In August 2022, the [Institute for the Study of War](#) also reported that, according to the Russian government, Ukrainian children were deported to Russia to be adopted by Russian families. In February 2023, a [report](#) by the Yale School of Public Health's Humanitarian Research Lab (HRL) had collected information about at least **6 000 children held at camps and other facilities in Russia**, although it acknowledged that this is a very conservative figure.

It is *de facto* almost impossible for parents to retrieve their children and for the Ukrainian authorities to keep exhaustive records of the identity of the deported children. To retrieve their children, the parents need to know exactly where they are located, they need passports and financial resources. Some camps hosting children are located in Siberia, far from Ukraine, with few or no commercial flights. As of 13 April 2023, [Children of War](#) reports that, according to the National Ukrainian Information Bureau, **19 384 children have been deported** and only **361 returned** to Ukraine, while 468 are known to have died. The scale of efforts to abduct and transfer children from Ukraine to Russia has been qualified as '[staggering](#)'.

In January 2023, [Resolution 2482](#) of the **Parliamentary Assembly of the Council of Europe** (PACE) called for an immediate halt to the forced deportation and transfer of Ukrainian civilians, including children, to Russia and their safe return to Ukraine. The PACE recalled that the forcible transfer of children of one group to another for 'russification purposes through adoption by Russian families and/or transfer to Russian-run orphanages or residential facilities like 'summer camps' could be punishable under Article II of the 1948 [Convention on the Prevention and Punishment of the Crime of Genocide](#), ('the Genocide Convention' hereafter), to which both Ukraine and the Russian Federation are parties. In March 2023, the Council of Europe (CoE) Commissioner for Human Rights, [Dunja Mijatović](#), visited Ukraine to focus on the situation of the [children forcibly transferred](#) to Russia

and to the occupied territories of Ukraine. The illegal deportation included orphans, children in institutional care facilities, unaccompanied children, children separated from their family during the 'filtration process' (see below), and children with family sent to 'recreational camps' and never returned to Ukraine.

'Filtration'* and 're-education' camps

According to [Polish intelligence data](#), by July 2022 'over 1.5 million Ukrainians (including thousands of children) have been sent to prisons and **filtration camps**, most of whom have been forcibly sent to Russia'. In an attempt to break the Ukrainian resistance, it was reported that the Russian forces, amongst others, interrogated Ukrainians, forced them to testify or make statements against Ukraine, and tortured individuals. Some of these acts occurred in buildings previously occupied by the local police or the State Migration Service. Along similar lines, the [US Department of State](#) reported evidence about interrogation, detention and forced deportation of hundreds of thousands of Ukrainian citizens, including unaccompanied children. Moreover the US Mission to the Organisation for Security and Cooperation in Europe (OSCE), [confirmed](#) that 18 filtration camps for Ukrainians were identified. In July 2022 alone, more than 1 800 children were reported to have been deported from Russian-controlled areas in Ukraine to Russia, where they were reportedly subjected to psychological 'rehabilitation'.

In September 2022, [Rosemary DiCarlo](#), UN Under-Secretary-General for Political and Peacebuilding Affairs, [reported](#) persistent allegations of forced displacement and deportation to 'filtration camps' run by Russia to the UN Security Council, and called on the competent authorities to investigate. 'Filtration procedures' may also occur at [checkpoints and routine traffic stops](#) on the street. [Izje Brands Kehris](#), UN Assistant Secretary-General for Human Rights, [described](#) filtration camps as 'a system of security checks and personal data collection'. Individuals subjected to filtration include those leaving areas of ongoing or recent hostilities and those residing in, or moving through, territory controlled by Russian armed forces and affiliated armed groups'. During the '[filtration process](#)', Ukrainian citizens are subjected to security checks, personal data collection, body searches – including forced nudity – as well as interrogation concerning their family ties and their political views.** Men suspected of having any relation with the Ukrainian armed forces were reported to be subject to 'torture, ill-treatment and forced disappearance'. Russia rejected the allegations and argued that this was the standard registration process to which displaced people, arriving at the Russian border, are subject. It was also [reported](#) that, during this 'filtration process', some children were separated from their families in blatant disregard of the Fourth Geneva Convention.

The [Yale report](#) defines re-education in the context of children deported to Russia as involving the 'promotion of cultural, historical, societal, and patriotic messages that serve the political interests of Russia'. The report depicts a system with an unprecedentedly broad geographic scale, indeterminate duration and logistical complexity, which appears to be designed to 'politically integrate' children and to 'enforce a version of Russia's history, culture and society that serves the political interests of Russia's government'. The system includes field trips, lectures from Russian veterans and historians, as well as in some cases military training or '[military-patriotic education](#)'. Another [report](#) claims that the facilities hosting the Ukrainian children in Russia declared they are pursuing educational objectives including 'fostering patriotism' and teaching children to 'identify as citizens of a multinational Russia'. Other [commentators](#) argued that this would result in a policy of 'cultural erasure', which implies the removal of Ukrainian tradition and customs. The whole point of removing these children would be 'to remove any sign of their Ukrainian identity – their linguistic, cultural or national identity'. The children would be indoctrinated into a pro-Russian narrative, as suggested by the words of Maria Llova-Belov, who [told](#) the press that, once moved to Russia, the children drastically changed their anti-Russian ideas as soon as they learned the Russian language and culture. Llova-Belova herself [adopted](#) a child from Mariupol. Though [deportation of civilians](#) is not something new in the history of the former Soviet Union, according to some [commentators](#), the 'Russification' of Ukrainian children was also an opportunity for the government and local administrations to show that the Kremlin cares for vulnerable populations, especially children.

* In 1994, Russia launched a full-scale military invasion of Chechnya. Meanwhile, Russia issued Directive No 247 to establish 'filtration points' for the identification of persons. In 1995, the first camp opened in Grozny. Human Rights Watch [reported](#) that Russian forces beat and tortured the Chechen men held there.

** For a detailed account of the filtration process by Russian forces, see: [System of Filtration: Mapping Russia's Detention Operations in Donetsk](#), Yale School of Public Health, Humanitarian Research Lab, August 2022.

In March 2022, 39 states parties to the ICC's Rome Statute, including all EU Member States, made a referral to the ICC, asking its Prosecutor to investigate the situation in Ukraine. The Prosecutor announced that the opening of an investigation on the basis of this referral. Since then, **ICC Prosecutor Karim A. A. Khan QC** has considered the charges of crimes against and affecting children. He [confirmed](#) that 14 states parties had already contributed or stated their wish to contribute to the dedicated Trust Fund for Advanced Technology and Specialised Capacity and that these first contributions were to be deployed to strengthen the capacity to investigate 'crimes of sexual and gender-based violence and crimes against children'. Although neither Russia nor Ukraine is a state party to the ICC, Ukraine has [accepted](#) the ICC's jurisdiction with respect to alleged crimes committed on its territory since November 2013. Moreover, it is [argued](#) that the forcible transfer of children would be a crime under [customary international law](#), by which all states are bound. [Experts](#) stress that the deportation and assimilation of children were well-planned in advance by the Russian Government and were accompanied by Russian [propaganda](#) on adopting vulnerable Ukrainian children. To sustain this claim, they refer to Putin's signature of [Decree No 330](#) in May 2022, simplifying the procedure for Russian families to adopt orphaned Ukrainian children and children without parental care and to grant them [Russian citizenship](#). The [decree](#) concerns all Ukrainian children, not only those from the occupied territories, and leaves the decision on whether a child is eligible for adoption to the discretion of the Russian authorities. It is also reported that Russian families are eligible for [government support](#) of [RUB20 000](#) (i.e. around €243) for each child adopted.

Early this year, UN High Commissioner for refugees [Filippo Grandi](#) visited Ukraine and stressed that, in a conflict situation, it might be difficult to determine if a child has a family or is under guardianship. Until the legal situation is [clarified](#), 'giving nationality and opening avenues for formal adoption of children violates international norms and practices'. The same principle was [reaffirmed](#) by Dunja Mijatović, who, after her visit to Ukraine, stressed that children separated from their family during a humanitarian emergency could not be presumed orphans and could not be legally adopted. In June 2022, UNICEF Director for Europe and Central Asia [Asfhan Khan](#), told the [press](#) that 'adoption should never occur during or immediately after emergencies'. The US Department of State, [referring](#) to the Yale HRL report mentioned above, stated that unlawful transfer and deportation of children constituted a violation of the [Fourth Geneva Convention on the protection of civilians](#) and was to be considered a war crime. Moreover, the State Department referred to 'mounting evidence' that Russia's actions were meant 'to deny and suppress Ukraine's identity, history, and culture'.

Mounting evidence

Already in May 2022, a team of legal and genocide experts and open-source intelligence investigators [concluded](#) that there were reasonable grounds to believe that Russia bears the responsibility for violating Article II (genocide) and Article III(c) (direct and public incitement to commit genocide) of the [Genocide Convention](#), which triggers the legal duty of all states to prevent genocide (Article I). Among others, the report built upon a number of sources reporting the forcible transfer of children to Russia and/or Russia-controlled territory in violation of Article II(e). In September 2022, a **Human Rights Watch** (HRW) report on the [Crime of Forcibly Transferring Ukrainian Civilians to Russia](#) documented the forcible transfer of Ukrainian civilians from Mariupol and the Kharkiv area to Russia and Russia-occupied areas, and their subjection to a '**filtration**' process. The report includes testimonies from Ukrainian civilians describing the data collection practices, interrogations, confinement and retention of passports, as well as the circumstances and the context of the organised mass transportation. According to the report, Russian Commissioner for Children's Rights Maria Lvova-Belova, was taking action to expand the programme. Moreover, the report mentions that by early June 2022, several orphans were taken to the Moscow region and that 'almost 200 children without parental care from Ukraine's Donbas region were to receive Russian citizenship in July'.

In November 2022, an **Amnesty International** [report](#) documented 'how Russian and Russian-controlled forces gave many civilians no choice but to be transported to Russia or to Russian-occupied areas in Ukraine' and 'how Ukrainian civilians were forced to pass through an **abusive screening process**', known as '**filtration**', while explicitly mentioning the situation of unaccompanied, separated, and orphaned children as being 'particularly concerning'. After Russia's full-scale invasion, children from Russian-occupied areas in Ukraine were initially transferred to the non-government controlled area of Donetsk oblast in Ukraine, where they stayed in hospitals and other facilities, while there is information that older children were 'offered **opportunities to join educational programmes** or to stay in recreational camps or other temporary accommodations in Russia'. The report concludes from the statements and actions of the Russian authorities, the workings of the Russian Commissioner for Children's Rights, and the arrangements made by the Governor of the Moscow Region, that there is a **state policy concerning the deportation of Ukrainian children**, with no formal mechanism for their return or their reunification with their guardians, caregivers or family members.

A [report](#) published by two Ukraine-based organisations, the **Eastern Human Rights Group** and the **Institute for Strategic Studies and Security**, describes the forced transfer of children from occupied regions of Ukraine to Russia that occurred between February 2022 and December 2022, and highlights the **large-scale characteristics** of the processes that involve '**all branches of power in the Russian Federation – legislative, executive, federal authorities and regional**'. The organisations identify **four categories of children subjected to deportation**: orphans already residing in social institutions before the full-scale invasion; children deprived of parental care, reportedly either as a result of alleged violations of children's rights or the forced mobilisation of the male population of the so-called autonomous Ukrainian regions of Luhansk and Donetsk; children without parental care due to the military aggression, the filtration processes and/or detention; and children with parents sent to permanent places of residence in Russia. The total number of deported children remains unclear, since each international organisation or state institution provides different numbers. According to the report, a press conference in Moscow on 18 March 2022 announced that 10 000 children have been 'evacuated', while data from the Russian occupation's 'interdepartmental coordinating headquarters' include approximately 700 000 'evacuated children'.

The same report explains that the transit of Ukrainian citizens to Russia includes four basic steps: evacuation from the main place of residence; transfer to transit accommodation in an occupied territory; followed by transfer to a transit point on Russian Federation territory; and arrival at a permanent location. Following that, children are distributed to '**centres for the promotion of family education**', where a staff member is indicated as their guardian in order to **initiate the procedure for the acquisition of the Russian citizenship and adoption**. The report includes information about '**ideological courses**' addressing candidate families and instances of 'returns' to orphanages in a short period of time following adoptions due to illness.

The above-mentioned Yale HRL [report](#) documented that from February 2022 until January 2023, at least **6 000 children from Ukraine aged from 4 months to 17 years** have been transferred to **43 facilities**, identified in different locations in Russian-occupied territories, but also '**over 500 miles from Ukraine's border with Russia**'. Summer camps aimed at the Ukrainian population on Russian territory have existed since 2014, but current operations demonstrate different characteristics with regard to 'their express purpose, apparent geographic scale, indeterminate duration, logistical complexity, breadth of official involvement, and the number of children involved'. It is stated that re-education as 'an effort to **ostensibly make children more pro-Russian** in their personal and political views', and integration programmes are implemented in 78 % of the camps. The report makes a distinction between children with family and children deemed to be orphans or residing in state institutions or of uncertain custody. In the first case, children in Ukraine are recruited for camps with parental consent for a specific period of time. However, 'consent is collected under duress', and often the terms are breached, as indefinite suspension of returns for 'safety concerns and ongoing hostilities' and limited communication have been reported and

parents have had to physically retrieve their children. In the second case, children are transferred to hospitals or other facilities in Russia-controlled areas, or are held in family centres prior to fostering or adoption. In both cases, **their location and care are unknown**, or they are fostered or adopted in Russia. Although the operation is coordinated at a federal level, **all levels of Russia's government are involved**: 'officials in Russia's Federal Government [create](#) and promote camp and adoption programs; local Russia-aligned officials collaborate and facilitate programs; and Russia's regional officials participate in patronage and coordinate children's camps'.

In **March 2023**, a [report](#) from the Independent International Commission of Inquiry on Ukraine, established by the UN Human Rights Council in February 2022, confirmed that a 'wide range of violations of international human rights law and international humanitarian law' were committed in Ukraine and in Russia. The violations include, among others, attacks on civilians, torture, rape, and **forced transfers and deportations of children**. The report (paragraphs 95 to 102) found that the forced transfer could be categorised under three main situations: 1) transfer of children who had lost parents or temporarily lost contact with them during hostilities; 2) transfer of children separated from their family following detention at 'filtration camps'; 3) transfer of children under institutional care. The report clarifies the conditions set in international humanitarian law under which, exceptionally, the temporary evacuation of children may take place. None of these conditions were met in the case of the transfer of Ukrainian children to Russia or Russian-controlled areas (e.g. no compelling reasons for health or medical treatment, nor safety requirements, absence of the written consent of parents or legal guardians). Moreover, the supposedly temporary transfers were prolonged, and returns took place in limited cases and was unduly delayed. The report stated that the situations of transfer and deportation of children assessed would 'violate international humanitarian law, and amount to a war crime' and, that Russia also violates a number of international humanitarian law obligations (Articles 74, 85(4)(b)-(5) of the [Additional Protocol I to the Geneva Conventions](#) and Article 8(1) of the [Convention on the Rights of the Child](#)).

The ICC issues an arrest warrant for Putin

On 17 March 2023, ICC Pre-Trial Chamber II issued an [arrest warrant](#) (Article 58 of the [Rome Statute](#)) for **Vladimir Putin** (who is also Commander-in-Chief of the Russian Armed Forces – [Article 87\(1\) of the Russian Constitution](#)) and **Maria Lvova-Belova**.¹ The Court had 'reasonable grounds' to believe that both of the accused were responsible for the **war crime** of unlawful deportation and transfer of the population and children in particular, since February 2022, i.e. having committed war crimes as defined in Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute. Concerning President Putin, the ICC refers not only to his individual responsibility but also to the fact that he allegedly failed to 'exercise control properly over civilian and military subordinates who committed the acts, or allowed for their commission, and who were under his effective authority and control, pursuant to superior responsibility (article 28(b) of the Rome Statute)'.

The ICC [explained](#) that the warrants were not kept secret in the interest of justice, although their precise content was not made public. In the Court's opinion, raising public awareness might help to prevent the same crimes being committed again, but the content should remain secret to protect the victims. Some [academics](#) argue that this explanation is not completely convincing, as there are other ways to protect victims and witnesses. It is worth recalling that neither Russia nor Ukraine are state parties to the Rome Statute establishing the ICC. More precisely, Russia initially signed the Rome Statute in 2000, but never ratified it, with Russia therefore never becoming a member subject to ICC jurisdiction. Russia's signature was [withdrawn](#) in 2016, after Russia's illegal annexation of Crimea. Nor has Ukraine ratified the Rome Statute, although it has twice [accepted](#) ICC jurisdiction (for alleged crimes committed from [November 2013 to February 2014](#) and from [February 2014 onwards](#) committed on its territory). The arrest warrant is binding for the current [123 state parties](#) to the Rome Statute and Ukraine. The Russian reaction to the arrest warrant was dismissive, with former Russian President Dmitry Medvedev even [threatening](#) to launch hypersonic missiles at the ICC in The Hague (the Netherlands). The Presidency of the [Assembly of States Parties](#) to the Rome

Statute and the [European Union](#) immediately condemned the threats and reaffirmed their support for the work of the ICC. To confirm its firm commitment to bringing perpetrators of [core international crimes](#) to justice, the ICC signed a cooperation agreement with Ukraine to establish an [ICC country office in Ukraine](#)² a few days later.

The news of the arrest warrant gained immediate attention from the international community. However, ICC indictments are rare; as of March 2023, only 52 people have been formally charged. Commentators [argue](#) that, despite the ICC's poor conviction record, the implications of the arrest warrant are not merely legal, but also political. The arrest warrant further [isolates](#) Russia in the [international arena](#) and undermines Putin's standing within Russia. Others consider it very unlikely that Putin will stand trial at the ICC, though in the past, similar doubts were raised about former Serbian and Liberian Presidents Slobodan Milošević and Charles Taylor, both of whom eventually appeared in the dock. EU High Representative for Foreign Affairs, Josep Borrell, [welcomed](#) the ICC decision and recalled the European Council conclusions of [15 December 2022](#), stressing the need to ensure full accountability for those who are accused of having committed, inter alia, war crimes in connection with Russia's war of aggression against Ukraine. On 20 and 21 March 2023, 40 Ministers of Justice from around the world met in London at a [conference](#) co-hosted by the United Kingdom and Dutch governments to discuss how to further support the work of the ICC after it issued the arrest warrant. It is [reported](#) that the United Kingdom has pledged GBP1 million to the ICC and that other countries were also expected to scale up their financial support to the Court.

International policy and legal frameworks

The sources of international provisions and policy documents on children's rights are scattered throughout several documents; the most relevant being the **1989 United Nations Convention on the Rights of the Child (CRC)**, which both Russia (1990) and Ukraine (1991) have [ratified](#).³ However, the body of law is complex (including regional treaties, such as the 1950 [European Convention on the Protection of Human Rights and Fundamental Freedoms](#)) and touches upon many different aspects.⁴ To that, policy resolutions⁵ of international actors, international case law and the customary international law must be added.

Based on the available information and data, experts [argue](#) that Russia's action in Ukraine regarding children already violates a number of the CRC's provisions (see Annex). According to CRC Article 2, states parties shall protect the rights of children regardless of their 'race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status'. Moreover, they shall ensure respect of the international humanitarian law applicable to children in armed conflicts (Article 38(1) CRC). In addition, the need to protect children and to ensure family reunification, among other things, is recognised in several provisions of the [Fourth Geneva Convention](#) of 1949⁶ on the protection of civilian persons in time of war and, the [Additional Protocol I](#) of 1977 on the protection of victims of international armed conflicts⁷ (see Annex). In particular, Article 49 of the Fourth Geneva Convention states that '**Individual or mass forcible transfers, as well as deportations of protected persons' are prohibited**', regardless of their motive with the only exception being when the temporary evacuation is required for security or imperative military reasons. In this latter case, the return should take place as soon as the specific reasons have ceased. A number of conditions must also be met for the exceptional evacuation to be considered lawful under international humanitarian law (e.g. satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated). The case law has confirmed that deportation is qualified as illegal when the recognised standards of decency and humanity are disregarded.⁸ Article 147 of Additional Protocol I recognises the unlawful deportation or transfer or unlawful confinement of a protected person as a **grave breach** of the Convention.

The forcible transfer of children from one group to another is also prohibited under Article II(e) of the 1948 [Genocide Convention](#), ratified by Russia in [1954](#). While we often associate genocide with the brutal mass killing of a certain group, a range of other group-destroying actions can also constitute genocide, including the forcible transfer of children. Article II provides the legal definition

of genocide as meaning **any** of the following acts committed **with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such**: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; **(e) Forcibly transferring children of the group to another group.**

Similar definitions have been replicated in the Statutes of the [International Criminal Tribunal for the Former Yugoslavia](#) (ICTY – Article 4), the [International Criminal Tribunal for Rwanda](#) (Article 2) and the [ICC](#) (Article 6).⁹ Abduction of children is one of the '[six grave violations](#)' against children during armed conflict, as laid out by the UN Security Council in [Resolution 1261](#) of 1999. The others are: killing and maiming of children; recruitment and use of children by armed forces and armed groups; sexual violence against children; attacks against schools or hospitals; and denial of humanitarian access for children. A UN working paper further explains the legal foundations of the six grave violations. The 2015 [Security Council Resolution 2225](#) added the abduction of children during armed conflict to the list of crimes to be closely monitored.

The UN Guidelines for the [Alternative Care of Children](#) (2009) stressed the desirability of 'maintaining the child as close as possible to his/her habitual place of residence, in order to facilitate contact and potential reintegration with his/her family and to minimize disruption of his/her educational, cultural and social life' (General Principles and Perspectives, B(11)). If they need to be moved outside their country of residence for medical, security reasons, their new location should be as close as possible to their home of origin. Moreover, 'they should be accompanied by a parent or caregiver known to them, and a clear return plan should be established' (160). The [UN Framework of Analysis for Atrocity Crimes](#) considers that the development of policies or measures that 'contemplate the separation or forcible transfer of children belonging to a protected group' is a serious indicator of the intent to destroy, in whole or in part, a protected group (Risk factor 10). UN Security Council [Resolution 2068 \(2012\)](#) stressed the need for perpetrators of crimes against children in armed conflicts to be brought to justice, while [Resolution 1612 \(2005\)](#) recalled states' responsibility to prosecute perpetrators of genocide, crimes against humanity and war crimes against children.

Rome Statute

Several provisions of the [Rome Statute](#) (hereafter 'the Statute') and the [Elements of Crimes](#) address crimes against children or affecting them and stress the importance of investigating and prosecuting, as well as protecting children's rights.¹⁰ The Prosecutor's office policy paper on [Preliminary Examination](#) states that, in light of the purpose of the Statute, there is a 'strong presumption that investigations and prosecutions of crimes against or affecting children are in the interests of justice' (paragraph 71). The [Regulations of the Office of the Prosecutor](#) envisaged the creation of a [Gender and Children Unit](#). Moreover, the Office of the Prosecutor issued a Policy on Children, recognising that the international community considers crimes against or affecting children are considered as particularly grave by, including in light of the fact that children enjoy special recognition and protection under international law.

Article 5 of the Statute states that the ICC has jurisdiction over the most serious crimes of concern to the international community as a whole. This jurisdiction is limited to **genocide, crimes against humanity, war crimes and the crime of aggression**. The [arrest warrant](#) issued on 17 March 2023 by the Pre-Trial Chamber II¹¹ accuses Putin and Lvova-Belova of having committed **war crimes**, as defined in **Articles 8(2)(a)(vii) and 8(2)(b)(viii)** of the Rome Statute. The arrest warrant is thus very specifically defined, as it concerns two elements of war crimes. It does not cover crimes against humanity or genocide. The ICC has jurisdiction over war crimes when committed as part of a plan or policy or as part of a large-scale commission of such crimes. **Article 8(2)(a)(vi)** recognises unlawful deportation, transfer or confinement as a war crime. A transfer is unlawful when in violation of Articles 45 or 49 of the Fourth Geneva Convention. This war crime covers mass deportation and deportation of individual protected persons (First Element of Crimes: The perpetrator **deported or**

transferred one or more persons to another state or to another location). It is worth mentioning that, contrary to crimes against humanity mentioned below (Article 7(1)(d)), the fact that individuals are deported from their 'lawful place of residence' is not an element of this war crime.

Article 8(2)(b)(viii) refers to 'the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory'. According to legal academics, a transfer to occupied territories implies a physical displacement of a certain duration as well as some involvement of the occupying power, either direct or indirect. The involvement may materialise as government resettlement plans or other policies that foster resettlement, or such incentives, subsidies, permits issued on a discriminatory basis.¹² The second part of Article 8(2)(b)(viii) criminalises the same conduct as Article 8(2)(a)(vii), with some differences.¹³ The deportation of the population of an occupied area is used by the occupying power for different reasons, including to alter the demographic composition, weaken the population, and break its culture and link to the territory. To qualify as a crime, the displacement must be physical, forced (i.e. not voluntary) and may happen within or outside the occupied area.

Other articles of the Statute refer to the forcible transfer/deportation of the population. Article 7 clarifies the definition of a **crime against humanity** and the acts that could be considered a crime against humanity under the condition they are committed as part of a 'widespread or systematic attack directed against any civilian population, with knowledge of the attack'. Article 7(1)(d) refers to the '**deportation or forcible transfer of population**', which should be understood as 'forced displacement of the persons concerned by expulsion or other **coercive acts** from the **area in which they are lawfully present, without grounds permitted under international law**' (Article 7(2)(d)). There are indeed limited and compelling grounds (see, for instance, Article 49 of the Fourth Geneva Convention) justifying the removal of individuals, which should happen only as a measure of last resort.¹⁴ The forced removal may concern one or more persons, thus including individual deportation and not mass deportation alone ([Elements of Crimes](#)).

International criminal law distinguishes two types of unlawful expulsion from areas where the population is lawfully present: **deportation** (i.e. the transfer of the population from one country to another),¹⁵ and **forcible transfer** (i.e. compulsory removal from one part to another within the same country).¹⁶ Besides this distinction, the elements of crimes are de facto the same for both deportation and forcible transfer. The reason being that the values protected against these two criminal acts are the same: i.e. the right of any individual to remain in his/her house and community, the right not to be forced to move to another location (*Prosecutor v Milosevic*, Case N IT-02-54-T, ICTY). The Rome Statute does not expressly distinguish the two terms and the [Elements of Crimes](#) uses 'deported or forcibly transferred' as interchangeable terms with 'forcibly displaced' for both Article 7(1)(d) and Article 8(2)(a)(vii). Footnote 12 of the [Elements of Crimes](#) clarifies that the term '**forcibly**' is not limited to 'physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment'. It follows that the transfer is lawful only when it is motivated by the 'individual's genuine wish to leave an area' (*Prosecutor v Simic, Tadic and Zaric*, [Case No IT-95-9-T](#), ICTY). If the person had no real choice because he or she was subject to an abuse of power or persecution, then the removal cannot be considered voluntary. In assessing the voluntary element of the transfer one should look 'beyond formalities to all the circumstances surrounding the person's displacement'. For instance, a lack of genuine choice can be inferred when the commission of criminal acts has the objective 'to terrify the population and make them flee the area with no hope of return' (*Prosecutor v Simic, Tadic and Zaric*, [Case No IT-95-9-T](#), ICTY).

Article 6(e) of the Statute proscribes the **forcible transfer of children from one national, ethnic, racial or religious group to another as genocide**. The transfer may concern one or more persons ([Elements of Crimes](#)) under the age of 18 years. The transfer may be committed not only by physical force, but also through the threat of force or coercion, such as that caused by fear of violence, duress,

detention, psychological oppression or abuse of power, or by taking advantage of a coercive environment (see footnote 5 on the meaning of 'forcibly'). The same conduct, under certain circumstances, could also be classified as crime against humanity or a war crime. Moreover, it is argued that the same conduct involving a separation from other family members could also result in a violation of Article 6(c), i.e. genocide by deliberately inflicting conditions of life calculated to bring about physical destruction.¹⁷ The crime of genocide is commonly understood as encompassing two components: the physical act, or *actus reus*, and the mental state accompanying that act, or *mens rea*.

It is [argued](#) that the mass involvement of local and regional Russian authorities in the abduction, adoption and consequent 're-education' of Ukrainian children will prove the existence of a long process of preparation, with a degree of premeditation and [coordination](#) by the Russian federal government. This latter [suggests](#) that the programme 'might have been devised as a form and a toll of psychological warfare against Ukraine'. With [some](#) even arguing that the system of filtration and re-settlement was part of a larger plan devised [even before](#) the start of the invasion in February 2022. The [Yale report](#) refers to a first group of 500 children moved from the non-government controlled areas of Donetsk oblast in Ukraine to Russia in early February 2022. Along similar lines, other [commentators](#) point to the fact that the transfer is not a chaotic event, but a well-organised process. Children were first moved to filtration camps and then deported to different regions of Russia (which had plans in place to receive the children), and multiple transfers took place across several months with the involvement of the Russian Government at the highest level. The Russian Government [acknowledged](#) that 19 regions were involved in what they presented as humanitarian programmes to welcome vulnerable children from Ukraine. The Ministry of Education stepped in with a Federal Centre for Teenager Socialisation Programmes and opened 65 teenage spaces around Russia. A pilot 'military-patriotic camp' for teenagers who had committed an offence or were registered with the juvenile unit was opened in Chechnya. Lvova-Belova oversaw the process personally.

European Parliament's position

In **April 2022**, Parliament adopted a resolution on the EU's protection of [children and young people](#) fleeing the war against Ukraine, calling for 'the creation of safe passages and humanitarian corridors', and 'the provision of the urgent help needed by children who are internally displaced, stranded in, or unable to leave encircled areas', while explicitly mentioning the need for vigilance for unaccompanied and separated children and children from institutional care settings in Ukraine. In **May 2022**, another [resolution](#) on the impact of the war against Ukraine on women was adopted. Parliament condemned the deportation, transportation and relocation of Ukrainian women and children to Russia. These actions constitute breaches of the Geneva Conventions and Parliament insisted 'that all Ukrainian citizens who were forcibly deported to Russia be immediately returned to Ukraine'. The same month, in another [resolution](#), Parliament reiterated its condemnation of the reported forced deportations from Ukraine to the Russian Federation and called on the EU institutions, the Member States and the international community to assist in the establishment of 'a special international tribunal, which would be mandated to investigate and prosecute the alleged crimes of aggression committed', as well as to support 'the collection and storage of the vast amount of evidence of violations of international humanitarian law, war crimes, and crimes against humanity in Ukraine'.

In **September 2022**, Parliament adopted a [resolution](#) concerning human rights violations in the context of forced deportation and adoption of Ukrainian children, stressing the need for international and European organisations to have access to the 'filtration' camps and other places where Ukrainian citizens are located following their transfer to Russia to monitor and to assist them. It also called for 'the immediate creation of an EU Child Protection Package to protect and assist children fleeing the war in Ukraine' and the introduction of 'mechanisms to document the facts of forced transfer, including in order to determine their whereabouts, to repatriate in particular any

missing children and to assist in family reunification and tracing'. On **16 February 2023**, to mark the one-year anniversary since the Russian invasion of Ukraine, Parliament [recalled](#) that thousands of civilians and hundreds of children have been forcibly displaced. In particular, it stressed that the forcible displacement of children constitutes the crime of genocide, according to Article II of the Genocide Convention. On **9 March 2023**, Catharina Rinzema (Renew, Netherlands), Member of the European Parliament and Vice-Chair of Parliament's Children's Rights Intergroup, sent a [letter \(co-signed\)](#) by Members from the three main political groups) to High Representative of the Union for Foreign Affairs and Security Policy/Vice-President Josep Borrell, calling for immediate action and to 'propose that the Russian officials who are responsible for the forced displacement deportation or forced adoption of Ukrainian children, are to be placed on the EU sanctions list'.

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ENDNOTES

- ¹ [Maria Lvova-Belova](#), who leads and supervises the plans to deport thousands of Ukrainian children to Russia and works directly under Putin, was sanctioned by the [United States](#), [Australia](#), [Canada](#), the [European Union](#), [Switzerland](#), [Japan](#) and the [UK](#).
- ² This will be the 8th ICC country office, the others are located in Kinshasa and Bunia (Democratic Republic of the Congo); Kampala (Uganda); Bangui (Central African Republic); Abidjan (Côte d'Ivoire); Tbilisi (Georgia); and Bamako (Mali). The ICC has also a liaison office to the United Nations in New York.
- ³ Moreover, both States are parties to two Optional Protocols on the [involvement of children in armed conflicts](#) and on the [sale of children, child prostitution, and child pornography](#). Only [Ukraine](#) is a party to the Optional Protocol on a [communications procedure](#).
- ⁴ For a non-exhaustive list of international child law instruments relevant in armed conflict, see Appendix to D. M. Amman, *International Child Law and the Settlement of Ukraine-Russia and Other Conflicts*, *International Law Studies*, Volume 99, 2022.
- ⁵ Suffice to recall [Resolution 1261](#) in which the UN Security Council already in 1999 strongly condemned: 'the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law'.
- ⁶ The Geneva Conventions include four Treaties and three Additional Protocols: the Convention on the amelioration of the [Condition of the Wounded and Sick in Armed Forces in the Field](#) (1949); the Convention for the Amelioration of the [Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea](#) (1949), the Convention on the Treatment of [Prisoners of War](#) (1949) and, the Convention on the Protection of [Civilian Persons in Time of War](#) (1949). The three additional protocols relate to the protection of [Victims of International Armed conflicts](#) (1977), the protection of [Victims of Non-International Armed Conflicts](#) (1977) and, to the Adoption of an [Additional Distinctive Emblem](#) (2005).
- ⁷ A. Bisset, Ukraine Symposium, [Russia's forcible transfer of children](#), October 2022.
- ⁸ O. Triffterer, *Ibid*, p. 317.

- ⁹ The case law of the two special Tribunals has helped to clarify other elements traceable to the genocidal acts, for instance that, in relation to Article II(b), the harm caused can be physical or mental; that it needs to be serious but not necessarily permanent and irremediable; and that it needs to be assessed on a case by case. In relation to Article II(c), for instance, the jurisprudence has clarified that what is relevant is the intention to destroy and the fact that measures are in place to achieve the destruction of a group of people, even though the result is not ultimately achieved. A. Clapham, P. Gaeta, *The Oxford Handbook of International Law in Armed Conflicts*, University Press, 2015, p. 759.
- ¹⁰ For instance: Article 36(8)b of the [Statute](#) requires state parties to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children; Article 42(9) requires the prosecutor to appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children; Article 54(1)(b) requires the prosecutor to take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender [...] take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children.
- ¹¹ On 1 and 2 March 2022, 39 states parties to the ICC's Rome Statute, including all EU Member States, made a referral to the ICC, asking its prosecutor to investigate the situation in Ukraine. The prosecutor announced that he had opened an investigation on the basis of these referrals. He added that the investigations would cover events occurred from 13 November 2013 onward, thus including 'any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine by any person' and that after a preliminary examination, he had a 'reasonable basis to believe crimes within the jurisdiction of the Court had been committed'. See M. Del Monte, K. Luyten, [Seeking justice in Ukraine](#), EPRS, February 2023.
- ¹² O. Triffterer, *Ibid*, p. 369 onward.
- ¹³ For instance, the first element of crime for Article 8(2)(a)(vii)-1 refers to the deportation of 'one or more persons', while the element of crime 1(b) for Article 8(2)(b)(viii) refers to the removal of 'all or parts of the population of the occupied territory within or outside this territory'.
- ¹⁴ O. Triffterer, *Ibid*, p. 247 onward.
- ¹⁵ In [Prosecutor v Jovica Stanišić and Franko Simatović](#) (Case No IT-03-69-T.), the ICTY found that the crime of deportation requires the movement of victims across a state border and that it may take different forms, including forced expulsion. Along similar lines, see paragraph 474 of [Prosecutor v Kmojejac](#), Case No IT-97-25-T.
- ¹⁶ O. Triffterer, *Ibid*, p. 194.
- ¹⁷ O. Triffterer O., *Ibid*, p. 154

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eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

www.europarl.europa.eu/thinktank (internet)

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Annex

Table 1 – Relevant provisions of the Convention on the Rights of the Child

Article	Text
7(1)	the right to know and be cared for by his or her parents
8(1)	respect the right of the child to preserve his or her identity , including nationality, name and family relations
9(1)	child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine
9(3)	child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis
16(1)	No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.
20(3)	When considering solutions for a child deprived of his/her family environment, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.
21(a)	Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians.
21(b)	Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.
35	States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Source: Compiled by the authors on the basis, inter alia, of: A. Bisset, Ukraine Symposium, [Russia's forcible transfer of children](#), October 2022. Emphasis added by the authors.

Table 2 – Relevant provisions of the 1949 Geneva Convention IV and of the Additional Protocol I of 1977 (API)

Article	Text
27	Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs.
17	The Parties to the conflict shall endeavour to conclude local agreements for the removal from besieged or encircled areas , of wounded, sick, infirm, and aged persons, children and maternity cases, and for the passage of ministers of all religions, medical personnel and medical equipment on their way to such areas.
24	The Parties to the conflict shall take the necessary measures to ensure that children under fifteen , who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances . The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power. They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.
25	All persons in the territory of a Party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families , wherever they may be, and to receive news from them.
45	In no circumstances shall a protected person be transferred to a country where he or she may have reason to fear persecution for his or her political opinions or religious beliefs .
49	Individual or mass forcible transfers , as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited , regardless of their motive. The Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand . The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons; that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition; and that members of the same family are not separated .
50	The Occupying Power shall take all necessary steps to facilitate the identification of children and the registration of their parentage . It may not, in any case, change their personal status , nor enlist them in formations or organizations subordinate to it. Should the local institutions be inadequate for the purpose, the Occupying Power shall make arrangements for the maintenance and education , if possible by persons of their own nationality, language and religion , of children who are orphaned or separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend.
82	Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health [...]. Internees may request that their children who

	are left at liberty without parental care shall be interned with them. Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.
147	Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person.
70 (API)	In the distribution of relief consignments, priority shall be given to those persons, such as children , expectant mothers, maternity cases and nursing mothers, who, under the Fourth Convention or under this Protocol, are to be accorded privileged treatment or special protection.
77 (API)	Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require , whether because of their age or for any other reason. [...] children who have not attained the age of fifteen years do not take a direct part in hostilities [...] If arrested, detained or interned for reasons related to the armed conflict, children shall be held in quarters separate from the quarters of adults, except where families are accommodated as family units as provided in Article 75, paragraph 5.
78 (API)	No Party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country except for a temporary evacuation where compelling reasons of the health or medical treatment of the children. [...] each child's education, including his religious and moral education as his parents desire, shall be provided while he is away with the greatest possible continuity. [...] With a view to facilitating the return to their families and country of children evacuated pursuant to this Article, the authorities of the Party arranging for the evacuation and, as appropriate, the authorities of the receiving country shall establish for each child a card with photographs , which they shall send to the Central Tracing Agency of the International Committee of the Red Cross.

Source: Compiled by the authors on the basis of: A. Bisset, Ukraine Symposium, [Russia's forcible transfer of children](#), October 2022. Emphasis added by the authors. The articles are not reported in full.