



UNIVERSIDADE CATÓLICA PORTUGUESA

Ukraine's Stolen Generations
The Forcible Transfer of Ukrainian Children as
Cultural Genocide

Pedro Henrique Lavinias Ortman

Master in Law

Porto Faculty of Law

2025



UNIVERSIDADE CATÓLICA PORTUGUESA

Ukraine's Stolen Generations
The Forcible Transfer of Ukrainian Children as
Cultural Genocide

Pedro Henrique Lavinias Ortman

Supervisor: Prof. Dr. José Alberto Azeredo Lopes

Master in Law

Porto Faculty of Law
2025

To my grandmother Yaracy,
my greatest inspiration and example of humaneness.

ACKNOWLEDGEMENTS

I would like to express my gratitude to a few persons who were fundamental to the realisation of this dissertation.

Firstly, I would like to thank my supervisor, Professor José Alberto Azeredo Lopes, for believing in my proposal from the very beginning and for all his guidance during this process. I would also like to extend my gratitude to Professor Nuno Pinheiro Torres, who has kindly shared with me relevant and useful sources and materials.

I would like to thank Professor Paula Wojcikiewicz Almeida for the opportunity to work with her research projects at FGV Rio Law School and for always having in mind that I was also writing this dissertation during this period.

To Maria Luiza, I would like to thank for standing by my side throughout this process and for supporting me at all times, especially during my daily commute between Coimbra and Porto in my first year of the Masters.

A final word of gratitude is owed to my mother, Andréa, who has always encouraged me to pursue my aspirations and for her unconditional support over the course of this chapter of my life.

ABSTRACT

The present dissertation focuses on the case study of the forcible transfer of Ukrainian children, carried out by the Russian Federation in the context of the Russian invasion of Ukraine. In light of the decision of the International Criminal Court to issue arrest warrants qualifying these acts as war crimes, the aim of this analysis is to shed light on this practice of forcibly transferring children, proposing that such acts constitute another international crime: the crime of genocide, in the form of cultural genocide. To this end, this dissertation examines the relationship between these concepts through the study of the historical origins of the crime of genocide and its evolution to the formulation adopted in the Genocide Convention, as well as by examining the available evidence to establish the requirements for the commission of the crime.

Keywords: Forcible transfer of children, genocide, cultural genocide, Ukraine, Russia, Russian invasion of Ukraine, International Criminal Court, arrest warrant.

RESUMO

A presente dissertação foca-se no estudo de caso da transferência forçada de crianças ucranianas, levada a cabo pela Federação Russa no contexto da invasão russa da Ucrânia. À luz da decisão do Tribunal Penal Internacional de emitir mandados de detenção qualificando estes atos como crimes de guerra, o objetivo desta análise é lançar luz sobre esta prática de transferência forçada de crianças, propondo que tais atos constituem outro crime internacional: o crime de genocídio, sob a forma de genocídio cultural. Para este fim, esta dissertação examina a relação entre estes conceitos através do estudo das origens históricas do crime de genocídio e da sua evolução até à formulação adotada na Convenção sobre o Genocídio, bem como através da análise das evidências existentes para estabelecer os requisitos para a prática do crime.

Palavras-chave: Transferência forçada de crianças, genocídio, genocídio cultural, Ucrânia, Rússia, invasão russa da Ucrânia, Tribunal Penal Internacional, mandado de detenção.

TABLE OF CONTENTS

DISCLAIMER	9
ACRONYMS AND ABBREVIATIONS	10
INTRODUCTION	12
I. THE FACTS	14
A. Examples of FTC in history	14
1. The “Stolen Generations” in Australia and Canada.....	14
2. War and FTC.....	16
B. Forcible transfer of Ukrainian children in the context of the Russian invasion of Ukraine	17
1. Forced transfer of civilians from the outset of the Russian aggression	17
2. Types of FTC implemented by Russia.....	19
a. Transfer of children in institutions and separated from their families during the hostilities.....	19
b. Transfer of children who have lost contact with their family as a result of the “filtration” process.....	21
c. Children who, with or without parental consent, have travelled temporarily to re-education camps in Russia.....	22
3. Enactment of legislation enabling FTC	23
4. Other acts: Attacks on cultural objects and Russia’s rhetoric against Ukrainians.....	24
II. FTC: WAR CRIME OR A CASE OF GENOCIDE?	25
A. FTC as a war crime	25
1. Basic elements	25
2. ICC investigation in Ukraine: The Prosecutor’s decision.....	26
B. FTC, genocide and cultural genocide	28
1. Cultural genocide as conceptualised by Raphael Lemkin	28
2. Historical-legal review of the elaboration of the Genocide Convention	30

III. PROSECUTING FTC AS GENOCIDE.....	37
A. The elements of the crime of forcibly transferring children under Article II e) of the CPPCG.....	37
1.Physical element	37
a. Forcible transfer	38
b. Ukrainian children	39
2.Mental element.....	40
a. Specific intent to forcibly transfer children	40
b. <i>Dolus specialis</i>	41
i. Forcible transfers per se	42
ii. Larger programme to commit genocide	43
B. Prosecution at the ICC.....	44
1.Potential challenges	44
2.Arrest warrant: a non-official sanction?	45
CONCLUSION	47
BIBLIOGRAPHY	49

DISCLAIMER

Throughout this dissertation, a number of terms will be used repeatedly. The terms ‘forcible transfer’, ‘forced transfer’, ‘forcible removal’, ‘enforced relocation’ and ‘deportation’ will be employed as interchangeable concepts.

ACRONYMS AND ABBREVIATIONS

CCR	Commissioner for Children’s Rights
CPPCG	Convention on the Prevention and Punishment of the Crime of Genocide
DPR	Donetsk People’s Republic
ECOSOC	Economic and Social Council
FTC	Forcible transfer of children
HREOC	Human Rights and Equal Opportunity Commission
ICC	International Criminal Court
ILC	International Law Commission
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ICRC	International Committee of the Red Cross
ICCPR	International Covenant on Civil and Political Rights
IICIU	Independent International Commission of Inquiry on Ukraine
ICJ	International Court of Justice
ICL	International Criminal Law
ICTY	International Criminal Tribunal to Former Yugoslavia
IMT	International Military Tribunal
LPR	Lugansk People’s Republic
OTP	Office of the Prosecutor
OHCHR	Office of the UN High Commissioner for Human Rights
TRC	Truth and Reconciliation Commission

TOT Temporarily Occupied Territories
UDHR Universal Declaration of Human Rights
UNGA UN General Assembly

INTRODUCTION

With the outbreak of hostilities following the new wave of aggression by the Russian Federation against Ukraine in 2022, Russian forces have forcibly transferred Ukrainian children from their country to Russia or to territories under their control. Other terms have been used to describe these actions, such as kidnappings, abductions or stealing of children. The facts show that an incalculable number of Ukrainian children have been taken from their group against their will or that of their parents.

Throughout history, deportation or forcible transfer of civilian populations has been a common occurrence in times of armed conflict or occupation.¹ It is firmly established in international law that such practices constitute a violation of IHL, which may fall under the categories of war crimes or crimes against humanity.²

In February 2022, the Prosecutor of the International Criminal Court (ICC) announced his decision to open an investigation into the situation in Ukraine. The Office of the Prosecutor (OTP) decided to request the Court to issue arrest warrants for the perpetrators, qualifying the acts as war crimes. Nevertheless, this decision is highly questionable. When the transferred civilians are children, a distinct legal possibility may arise: the crime of genocide by forcible transfer of children (FTC).

The crime of genocide is defined in Article II of the Convention on the Prevention and Punishment of the Crime of Genocide, or Genocide Convention (CPPCG). Article II, paragraph e) includes within the scope of genocide acts of forcibly transferring children of one group to another. This is a result of the historical origins of the crime of genocide and its evolution to the formulation contained in the convention.

The purpose of this study is to demonstrate that there is evidence to qualify the acts of forcible transfer of Ukrainian children as crime of genocide. In addition, this research aims to prove that these acts constitute a specific form of this crime, the so-called 'cultural genocide'.

In Chapter I, this dissertation will discuss the facts. It begins by addressing previous examples of FTC in history. It will then provide an analysis on the available evidence concerning the transfers of Ukrainian children in the context of the Russian aggression against Ukraine.

¹ Pablo Antonio Fernández Sánchez, 'Forced Transfer of Aliens during Armed Conflicts' in Borhan Uddin Khan and Jahid Bhuiyan (eds), *Revisiting the Geneva Conventions: 1949-2019* (Brill 2019) 1.

² ICRC, 'Rule 129. The Act of Displacement' (*IHL databases*); Rome Statute of the International Criminal Court (Adopted 17 July 1998) UNTS 2187 art 7 1(d).

Chapter II will present a critical analysis of the qualification proposed by the ICC Prosecutor. It then explores the relationship between FTC, the crime of genocide and cultural genocide, through a historical-legal review of the elaboration of the CPPCG.

Finally, Chapter III will examine the specific set of requirements for the crime of genocide under Article II e) of the CPPCG, followed by a discussion on the prosecution of this crime at the ICC stage.

I. THE FACTS

A. Examples of FTC in history

Throughout history, forcible transfer of civilian populations has been a common occurrence in times of occupation or armed conflict, a phenomenon that is especially heinous when it involves children.³ As it will be discussed, FTC is neither a new nor an isolated practice.

1. The “Stolen Generations” in Australia and Canada

From the beginning of the European occupation of Australia, indigenous children have been forcibly removed from their families and communities.⁴ Indigenous Aboriginal children have been subjected to numerous human rights violations during the colonisation period and subsequently under the aegis of the Australian state.⁵

In Australia, it was a programme that initially focused on the so-called ‘half-cast’ children, before being generalised and administered to all Aboriginal children in 1940.⁶ The transfers lasted until the 1960s.⁷ Children were transferred either to boarding schools or to white Australian families in order to be acculturated and assimilated.⁸ Indigenous children were often placed under the ‘guardianship’ of a public ‘protector’.⁹ This ‘protector’ could remove children from their families in case of neglect, and this argument was used recurrently by the authorities.¹⁰

In most cases, these transfers occurred without parental consent.¹¹ In cases where it was required, authorities would pressure and threaten parents if they initially refused.¹² Authorities would sometimes proceed to the separation of children “by taking the child from the mother’s arms”.¹³

³ Fernández Sánchez (n 1) 1.

⁴ Australian Human Rights Commission, ‘Bringing Them Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families’ (1997) 22.

⁵ *ibid.*

⁶ Elisa Novic, *The Concept of Cultural Genocide: An International Law Perspective* (Oxford University Press 2016) 40.

⁷ Australian Human Rights Commission (n 5) 30.

⁸ Novic (n 6) 40.

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ Australian Human Rights Commission (n 5) 5–8.

¹² *ibid.*

¹³ *ibid.* 5.

In the 1990s, the HREOC was requested to undertake an inquiry into the separation of indigenous children from their families”.¹⁴ In 1997, it published a report entitled “Bringing Them Home”.¹⁵ This was the final report of a major inquiry into the separation of indigenous children from their families.¹⁶ Its most relevant conclusion was that the forcible removal of children from indigenous Australians could be qualified as genocide¹⁷. The victims of these practices have been known as the “Stolen Generations”.¹⁸

In Canada, the practice of forcibly removing indigenous children from their families and sending them to residential schools was also extensively carried out from the 1870s until the 1970s.¹⁹ The conditions imposed on the children were similar to those inflicted on Australian indigenous.²⁰

The purpose of these practices was not to educate the children, but primarily to break their connection to their culture and identity.²¹ During the 1980s, survivors of the residential school system began to seek compensation. Later, the TRC was established, empowered to reconstruct the history of the residential school system, raise awareness and make recommendations to the Government of Canada.²² In 2008, the Prime Minister of Canada issued a formal apology to the victims.²³

The TRC published a final report in 2015.²⁴ In a landmark conclusion, the report categorised the residential school system for indigenous children as “cultural genocide”.²⁵

These two cases were prominent for having recognised such practices as FTC and qualified them as genocide. However, this recognition was only achieved at the national level, due to states’ willingness to acknowledge the harm inflicted upon the victims, who belonged to indigenous groups. Controversies have emerged over the question of whether these policies

¹⁴ *ibid* 2.

¹⁵ Australian Human Rights Commission (n 4).

¹⁶ James Woodford, ‘From the Archives, 1997: Bringing Them Home’ (*The Sydney Morning Herald*, 20 May 2022).

¹⁷ Australian Human Rights Commission (n 5) 235–239.

¹⁸ ‘National Sorry Day 2020’ (*Reconciliation Australia*, 25 May 2020) <<https://www.reconciliation.org.au/national-sorry-day-2020/>> accessed 27 January 2025.

¹⁹ Truth and Reconciliation Commission of Canada, ‘Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada’ (Truth and Reconciliation Commission of Canada 2015) 3.

²⁰ Novic (n 6) 41.

²¹ Truth and Reconciliation Commission of Canada (n 19) 2.

²² *ibid* 5–10.

²³ ‘Indian Residential School Apology’ (*National Centre for Truth and Reconciliation*, 21 December 2020) <<https://nctr.ca/exhibits/indian-residential-school-apology/>,<https://nctr.ca/exhibits/indian-residential-school-apology/>> accessed 28 January 2025.

²⁴ Truth and Reconciliation Commission of Canada (n 19).

²⁵ *ibid* 1.

were deliberately designed to result in the destruction of groups, rather than being merely a probable outcome.²⁶ The conclusions of the two commissions remain non-binding and governments and courts have not yet embraced the label of genocide for these practices.²⁷

2. War and FTC

FTC has also been implemented during armed conflicts. During the Second World War, the German Nazi regime orchestrated large-scale operations to forcibly transfer children from occupied territories (mainly children of Polish origin, but also others such as Ukrainian children) to Germany.²⁸ These transfers targeted children who possessed so-called “Aryan” traits.²⁹

The transfers took place as part of the Lebensborn program, a policy designed to increase Germany’s population.³⁰ These measures aimed at the ‘germanisation’ of ‘biologically valuable’ children, who were to be raised within German families, in accordance with the regime’s racial ideology and eugenics theories.³¹

Children have been abducted from foster homes and orphanages, and even directly from their parents.³² They were tested to verify their racial status, and those regarded as insufficiently Aryan were sent to concentration camps, where many were killed.³³ Those who passed the test were sent to Germany and forced to assimilate.³⁴ At least 40,000 children from the ages of 10 to 14 had been stolen from their families³⁵, and other sources estimated that 200,000 Polish children had been abducted.³⁶

After the end of the war, at the IMT, the Prosecutors made multiple references to genocide in the indictment, citing FTC (under the name of ‘kidnapping children’) as a genocidal act.³⁷

²⁶ Douglas Guilfoyle, *International Criminal Law* (Oxford University Press 2016) 279.

²⁷ Novic (n 6) 42.

²⁸ Brent Douglas Dyck, ‘Hitler’s Lebensborn Children: Kidnappings in German-Occupied Poland’ (2013) 12 *WWII History* 20.

²⁹ United States Holocaust Memorial Museum, ‘Lebensborn Program’ (*Holocaust Encyclopedia*, 29 September 2020) <<https://encyclopedia.ushmm.org/content/en/article/lebensborn-program>> accessed 22 March 2025.

³⁰ *ibid.*

³¹ *ibid.*

³² Douglas Dyck (n 28).

³³ *ibid.*

³⁴ *ibid.*

³⁵ United States Government Printing Office, *Nazi Conspiracy and Aggression*, vol III (1946) 71 <<https://archive.org/details/naziconspiracyag03unit/mode/1up?view=theater>> accessed 22 March 2025.

³⁶ Douglas Dyck (n 30).

³⁷ United States Government Printing Office (n 35) 89.

B. Forcible transfer of Ukrainian children in the context of the Russian invasion of Ukraine

1. Forced transfer of civilians from the outset of the Russian aggression

On 24 February 2022, President Putin announced that Russian forces would engage in a “special military operation” in Ukraine.³⁸ On the same day, Russian forces crossed several border points into Ukraine and conducted attacks by land, air and sea.³⁹ This event marked the beginning of a full-scale invasion of Ukraine that completed three years in 2025, despite tensions in the region having been ongoing for almost a decade.⁴⁰ The event is widely regarded as an aggression against Ukraine by the Russian Federation, as evidenced by numerous international legal instruments.⁴¹

In the preceding days, President Putin had recognised the provinces of Donetsk and Luhansk, in eastern Ukraine, as independent republics.⁴² These territories are referred to by Russia as DPR and LPR.⁴³ Under Ukrainian law, these are considered Temporarily Occupied Territories (TOT).⁴⁴

Since 2014, and particularly since 2022, Russia has advanced a policy of large-scale, systematically enforced displacement and deportation of Ukrainian citizens.⁴⁵ Alongside millions of displaced civilians, there have been numerous reports of Ukrainian children being forcibly transferred to the territory of Russia.⁴⁶

³⁸ ‘Address by the President of the Russian Federation’ <<http://en.kremlin.ru/events/president/news/67843>> accessed 12 January 2025.

³⁹ UN OHCHR 18 October 2022 Report of the Independent International Commission of Inquiry on Ukraine to UN General Assembly (2022) A/77/533 6.

⁴⁰ Nigel Walker, ‘Conflict in Ukraine: A Timeline (Current Conflict, 2022-Present)’ (House of Commons Library 2024) Research Briefing CBP-9847 4–5.

⁴¹ At least two UNGA Resolutions (ES-11/1, ES-11/2 and ES-11/5) and six UN reports of the Independent International Commission of Inquiry on Ukraine have designated the event using such nomenclature.

⁴² UN OHCHR 18 October 2022 Report (n 39) 6.

⁴³ *Federation Council of the Federal Assembly of the Russian Federation* <<http://council.gov.ru/en/structure/regions/X2/>> accessed 29 January 2025; *Federation Council of the Federal Assembly of the Russian Federation* <<http://council.gov.ru/en/structure/regions/X1/>> accessed 29 January 2025.

⁴⁴ Ministry for Development of Communities and Territories at Ukraine, ‘List of Temporarily Occupied Territories of Ukraine’ <<http://mtu.gov.ua/en/content/perelik-timchasovo-okupovanih-teritoriy.html>> accessed 26 March 2025.

⁴⁵ Andreas Umland, ‘Russia’s Forcible Transfers of Unaccompanied Ukrainian Children’ 4.

⁴⁶ Yulia Ioffe, ‘Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?’ (2023) 25 *Journal of Genocide Research* 315, 315.

In the context of the conflict, several Russian authorities have explicitly issued threats to transfer Ukrainian children.⁴⁷ Maria Lvova-Belova, Russia’s Commissioner for Children’s Rights (CCR), has confirmed her intention to transfer children on multiple occasions via her official website.⁴⁸ In a meeting with President Putin on 9 March 2022, she reported that a total of 1,090 Ukrainian children, whom she referred to as “orphans”, had arrived in Russia.⁴⁹ She stated that she was working to find temporary accommodation or permanent settlement for them.⁵⁰ During the meeting, President Putin suggested amending the legislation, ultimately facilitating the permanent settlement of Ukrainian children in Russia.⁵¹

There have been reports that the Russian occupation authorities have threatened to take away the children of Ukrainian parents who refuse to enrol their children in schools using the Russian curriculum.⁵² The Independent International Commission of Inquiry in Ukraine (IICIU), established by the UN Human Rights Council in February 2022, has reported that parents in the occupied regions of Ukraine have received threats and intimidating messages, with the aim of forcing them to register their children in schools operating under the system of the Russian Federation.⁵³

A range of coercive measures have been employed by the Russian military and affiliated forces to compel Ukrainian civilians to relocate to either Russia or the TOT.⁵⁴ Russian armed forces have attacked individuals in humanitarian corridors intended for the evacuation of Ukrainians from conflict zones to the rest of Ukraine’s territory.⁵⁵ Amnesty International has reported that a significant proportion of displaced Ukrainians have found themselves in Russia or in the TOT against their will, even in the absence of direct physical force.⁵⁶

⁴⁷ *ibid* 325.

⁴⁸ *ibid*.

⁴⁹ President of Russia, ‘Meeting with Commissioner for Children’s Rights Maria Lvova-Belova’ <<http://en.kremlin.ru/events/president/news/67949>> accessed 12 January 2025.

⁵⁰ *ibid*.

⁵¹ *ibid*.

⁵² Violetta Orlova, ‘В Мелитополе оккупанты угрожают отбирать у родителей детей, которые не будут ходить в российские школы’ (4 July 2022) <<https://www.unian.net/society/v-melitopole-okkupanty-ugrozhayut-otbirat-u-roditeley-detey-kotorye-ne-budut-hodit-v-rossiyskie-shkoly-novosti-ukrainy-11889798.html>> accessed 12 January 2025.

⁵³ UN OHCHR 25 September 2023 of the Independent International Commission of Inquiry on Ukraine to UN General Assembly (2023) A/HRC/52/62 15.

⁵⁴ Human Rights Watch, ‘“We Had No Choice” “Filtration” and the Crime of Transferring Ukrainian Civilians to Russia’ [2022] Human Rights Watch.

⁵⁵ UN OHCHR March 2023 Report of the Independent International Commission of Inquiry on Ukraine to UN General Assembly’ (2023) A/HRC/52/62 para 57.

⁵⁶ Amnesty International, ‘Russia: “Filtration” of Ukrainian Civilians a “Shocking Violation” of People Forced to Flee War’ (*Amnesty International*, 8 September 2022) <<https://www.amnesty.org/en/latest/news/2022/09/russia-filtration-of-ukrainian-civilians-a-shocking-violation-of-people-forced-to-flee-war/>> accessed 16 January 2025.

As to the quantity of children forcibly transferred, the exact number remains unknown.⁵⁷ In October 2022, Ukraine's CCR received official requests from parents and other relatives concerning 8,709 children who had been forcibly transferred to Russia.⁵⁸

The Ukrainian Government has created an official registry of missing children.⁵⁹ This platform serves as a channel for communicating the disappearance of a child or to inform of a child's deportation.⁶⁰ This registry is updated by law enforcement bodies in Ukraine.⁶¹ As of 14 February 2025, the registry indicated that 19,546 children had been forcibly transferred, 2,055 were missing, and only 388 had been returned.⁶² These numbers refer exclusively to children whose families were able to officially register forcible transfers⁶³, what indicates that the actual number of victims is significantly higher.⁶⁴ According to the President of Ukraine, Volodymyr Zelenskyy, in June 2022, approximately 200,000 Ukrainian children were forcibly transferred to Russia.⁶⁵ Other sources have claimed that the number totalled 240,000.⁶⁶

Meanwhile, Russia has alleged that the number of Ukrainian children that have entered the country since February 2022 exceeds 700,000.⁶⁷ CCR Lvova-Belova claimed that the majority of these children came to Russia accompanied by parents and relatives.⁶⁸

2. Types of FTC implemented by Russia

a. Transfer of children in institutions and separated from their families during the hostilities

⁵⁷ Ioffe (n 46) 325.

⁵⁸ Maksym Lipchansky, 'Russia deported 8,700 Ukrainian children - Ombudsman' (20 October 2022) <<https://ua.korrespondent.net/ukraine/4527683-rf-deportuvala-8700-ukrainskykh-ditei-ombudsmen>> accessed 13 January 2025.

⁵⁹ 'About the Platform' (*Children of War*) <<https://childrenofwar.gov.ua/en/about-us/>> accessed 13 January 2025.

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² 'Deported Children' (*Children of War*) <<https://childrenofwar.gov.ua/en/>> accessed 14 February 2025.

⁶³ Ioffe (n 46) 326.

⁶⁴ *ibid.*

⁶⁵ AP, 'Volodymyr Zelenskyy Says 200,000 Children among Ukrainians Forcefully Taken to Russia' (*Firstpost*, 2 June 2022) <<https://www.firstpost.com/world/volodymyr-zelenskyy-says-200000-children-among-ukrainians-forcefully-taken-to-russia-10747981.html>> accessed 14 January 2025.

⁶⁶ Human Rights Watch (n 55).

⁶⁷ Current Time, 'More Than 700,000 Ukrainian Children Taken To Russia Since Full-Scale War Started, Official Says' (*Radio Free Europe Radio Liberty*, 31 July 2023) <<https://www.rferl.org/a/russia-children-taken-ukraine/32527298.html>>.

⁶⁸ *ibid.*

Evidence indicates that Russian authorities have forcibly transferred Ukrainian children residing in institutions from areas under their control in Ukraine to other locations and to the Russian Federation.⁶⁹ The UN has acknowledged that there were credible allegations of forced transfers of unaccompanied children to the TOT or to Russia itself.⁷⁰ In March 2022, CCR Lvova-Belova confirmed that around 1,500 Ukrainian “orphans”, mostly children from boarding schools and orphanages in the Donbass region, had been transferred to Russia.⁷¹ On 15 July, she revealed that she had just returned from a visit to the ‘DPR’, during which she had brought a group of 13 “orphans,” specifically from children’s institutions in the TOT, to be placed with families in Russia. Another event was the transfer of 19 children, this time from the DPR to Rostov-on-Don, Russia.⁷²

As presented above, Lvova-Belova has stated that the Russian authorities were “evacuating only ‘orphans’ and children left without parental care” residing in specialised institutions in the TOT to the Russian territory, and that they were not prevented from being reunited with blood relatives. However, reports indicate that these “orphans” include children who have living parents or family members capable of providing care for them, or children who temporarily lost contact with their family members during the hostilities.⁷³ Ukraine alleges that most children residing in orphanages or similar institutions are not true orphans, but rather have been placed there due to their families’ challenging circumstances.⁷⁴

Ukrainian authorities verified that children forcibly transferred to Russia also included children who were separated from their families during the hostilities.⁷⁵ In certain cases, Russian military personnel had deliberately separated Ukrainian children from their parents, a

⁶⁹ UN OHCHR March 2023 Report (n 55) para 97.

⁷⁰ Al Jazeera, ‘UN Says “Credible” Reports Ukraine Children Transferred to Russia’ (*Al Jazeera*, 8 September 2022) <<https://www.aljazeera.com/news/2022/9/8/un-says-credible-reports-ukraine-children-transferred-to-russia>> accessed 15 January 2025.

⁷¹ Evgenia Priemskaya, “‘Extraordinary Task’: The Russian Federation Is Preparing Amendments for the Adoption of Children from the Donbass” (*Известия*, 5 May 2022) <<https://iz.ru/1330152/evgeniia-priemskaja/zadacha-ekstraordinarnaia-v-rf-gotoviat-popravki-dlia-usynovleniia-detei-iz-donbassa>> accessed 15 January 2025.

⁷² Yana Osadcha, ‘Russian Children’s Rights Commissioner “Adopts” Child Abducted from Mariupol’ (*Ukrainska Pravda*, 27 October 2022) <<https://www.pravda.com.ua/eng/news/2022/10/27/7373740/>> accessed 15 January 2025.

⁷³ UN OHCHR March 2023 Report (n 55).

⁷⁴ Sarah El Deeb, Anastasiia Shvets and Elizaveta Tilna, ‘How Moscow Grabs Ukrainian Kids and Makes Them Russians’ (*AP News*, 17 March 2023) <<https://apnews.com/article/ukrainian-children-russia-7493cb22c9086c6293c1ac7986d85ef6>> accessed 16 January 2025.

⁷⁵ Daniela Dolotova, ‘Stealing Ukraine’s Future: How Many Ukrainian Children Have Been Deported by the Russians and How Will They Be Returned?’ (*Vikna TV*, 22 July 2022) <<https://vikna.tv/video/kradut-majbutnye-ukrayiny-darya-gerasymchuk-pro-nezakonnu-deportacziyu-ukrayinskyh-ditej-rosiyanamy/>> accessed 16 January 2025.

practice that was particularly evident in hospitals in the temporarily occupied territories.⁷⁶ Human Rights Watch has confirmed one case in which 17 Ukrainian children were forcibly transferred by Russian authorities from a healthcare facility in Mariupol in Ukraine and taken to Russia.⁷⁷ The children were in an ambulance that was stopped at a DNR checkpoint and the children were taken away by DNR forces, leaving it unclear as to where the children were taken.⁷⁸

b. Transfer of children who have lost contact with their family as a result of the “filtration” process

Russian authorities have been reported to have separated Ukrainian children from their parents at so-called ‘filtration points’ following the detention of a parent.⁷⁹ This policy of ‘filtering’ the population is considered to be a means of suppressing Ukrainian resistance and enforcing loyalty among the remaining population.⁸⁰

The “filtration” process involved a compulsory screening procedure entailing interrogations concerning their political views and a search of their personal belongings, including telephones, and the collection of biometric data.⁸¹ Many were obliged to remain at the filtration points for long periods of time awaiting processing.⁸² Those who were considered to have “failed” the filtration process in the DNR, apparently due to their suspected connections to the Ukrainian military or alleged nationalist groups, were arrested and detained within the DNR or forcibly disappeared.⁸³

The objective of these camps was twofold.⁸⁴ Firstly, the purpose of the camps was to identify and neutralise individuals considered disloyal to the Putin regime.⁸⁵ Secondly, they were intended to manage the movement of Ukrainians across Russian territory.⁸⁶

⁷⁶ *ibid.*

⁷⁷ Human Rights Watch (n 54) 55.

⁷⁸ *ibid.* 73.

⁷⁹ UN OHCHR March 2023 Report (n 55) para 97.

⁸⁰ United States Department of State, ‘Russia’s Filtration Operations and Forced Relocations’ (6 September 2022) <<https://www.state.gov/russias-filtration-operations-and-forced-relocations/>> accessed 17 January 2025.

⁸¹ Simon Ostrovsky, Ainara Tiefenthaler and Alessandro Pavone, ‘Video: Surviving Russia’s ‘Filtration Camps’ (20 June 2022) <<https://www.nytimes.com/video/world/europe/100000008396333/russia-filtrationcamps.html>>.

⁸² Human Rights Watch (n 54) 73.

⁸³ *ibid.*

⁸⁴ Johanna Urbancik and Maryna Rudenko, ‘Forced from Home: Oleh’s Journey to Escape Russian Occupation’ *euronews* (17 September 2024) <<https://www.euronews.com/2024/09/07/forced-from-home-olehs-journey-to-escape-russian-occupation>> accessed 18 January 2025.

⁸⁵ *ibid.*

⁸⁶ *ibid.*

It has been reported that in cases where parents or other accompanying adults were unable to pass the filtration process, children were forcibly transferred to Russia, while the adults remained behind.⁸⁷

c. Children who, with or without parental consent, have travelled temporarily to re-education camps in Russia

A significant number of children from regions that had come under the control of Russia travelled temporarily, with or without parental consent, to vacation camps in the Russian territory or in Crimea and the city of Sevastopol, in Ukraine.⁸⁸

Russia has operated a large, systematic network of camps and other facilities that held at least 6,000 children from Ukraine in Russian-occupied Crimea and on the Russian mainland in 2022.⁸⁹ There have been at least 43 institutions operating summer camps.⁹⁰ Of these, at least 32 have been identified as being conducting systematic re-education efforts, exposing Ukrainian children to Russia-centred academic, cultural, patriotic and military education.⁹¹ Evidence has been found that multiple camps endorsed by Russia are being promoted as “integration programs”, with the objective of assimilating children from Ukraine into the Russian government’s conception of national culture, history, and society.⁹²

In fact, Ukrainian children have been subjected to indoctrination and, in some cases, military training.⁹³ Evidence reveals that all levels of the Russian government are involved in this practice.⁹⁴ The OHCHR stated in June 2022 that Russia’s removal of children from Ukraine “do not appear to include steps for family reunification or respect the best interests of the child”.⁹⁵

Following the restoration of state control by Ukrainian forces in some regions, Russian authorities required parents or guardians to travel personally to regain custody of their children.⁹⁶ Logistical and security challenges have prevented many parents from travelling,

⁸⁷ UN OHCHR March 2023 Report (n 55) para 97.

⁸⁸ *ibid* 99.

⁸⁹ Yale HRL, ‘Russia’s Systematic Program for the Re-Education and Adoption of Ukraine’s Children’ (2023) 4.

⁹⁰ *ibid* 5.

⁹¹ *ibid*.

⁹² *ibid*.

⁹³ *ibid* 8.

⁹⁴ *ibid* 5.

⁹⁵ United Nations, ‘UN’s Bachelet Concerned over Ukraine Orphans “Deported” to Russia for Adoption’ (*United Nations*, 15 June 2022) <<https://news.un.org/en/story/2022/06/1120412>> accessed 5 February 2025.

⁹⁶ UN OHCHR March 2023 Report (n 55) para 99.

leading to prolonged or indefinite separation.⁹⁷ Some have later been informed that their children would be placed in foster care or adopted.⁹⁸

3. Enactment of legislation enabling FTC

On 30 May 2022, President Putin signed a decree granting Russian citizenship via a simplified procedure to orphaned children and those without parental care, who have Ukrainian citizenship and reside in “DPR, LPR, and Ukraine”.⁹⁹ CCR Lvova-Belova confirmed that in July 2022, almost 200 Ukrainian children had been granted Russian citizenship as a result of this legislation.¹⁰⁰ She declared that “now that the children have become Russian citizens, temporary guardianship can become permanent”¹⁰¹. Also, Lvova-Belova revealed that the transfer of children “was preceded by a large and painstaking work, which was carried out taking into account the legislative features of the interested states, and was connected with the preparation of documents, the choosing of regions capable of creating the necessary conditions (...)”.¹⁰²

In order to encourage the adoption and fostering of children forcibly transferred from Ukraine by Russian citizens, the Russian government implemented supplementary financial benefits for adoptive families.¹⁰³ Russia has committed to providing a “one-time payment of maternity benefits and state aid”.¹⁰⁴ An annual payment was granted for each adopted child, with a higher amount for a child with a disability, a child older than seven years of age, or the adoption of siblings.¹⁰⁵

More recently, on 4 January 2024, President Putin signed a decree determining certain categories of foreign citizens and stateless persons who would be granted the right to apply for

⁹⁷ *ibid.*

⁹⁸ *ibid.* 100.

⁹⁹ Russia’s Official Internet Platform for Legal Information, ‘Decree of the President of the Russian Federation of 30.05.2022 No. 330’ (30 May 2022) <<http://publication.pravo.gov.ru/Document/View/0001202205300008>> accessed 20 January 2025.

¹⁰⁰ Mordovmedia, ‘In Early July, 200 Children from Donbass Will Receive Russian Citizenship’ (*Mordovmedia*, 28 June 2022) <<https://www.mordovmedia.ru/russia/post-111848.html>> accessed 20 January 2025.

¹⁰¹ UN OHCHR March 2023 Report (n 55) para 96.

¹⁰² Commissioner Lvova-Belova, ‘Maria Lvova-Belova Visited the Kaluga Region and Met with Foster Families Who Took Custody of Children from the DPR’ (*Commissioner for Children’s Rights to the President of the Russian Federation*, 22 July 2022) <<http://deti.gov.ru/articles/news/mariya-l-vova-belova-posetilakaluzhskuyu-oblast-i-vstretilas-s-priemnymi-sem-yami-vzyavshimi-pod-opetu-detej-iz-dnr>> accessed 9 February 2025.

¹⁰³ Diana Krechetova, ‘Russia Announces the “Adoption” of Thousands of Children Deported from Mariupol’ (*Ukrainska Pravda*, 23 August 2022) <<https://www.pravda.com.ua/eng/news/2022/08/23/7364446/>> accessed 20 January 2025.

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*

Russian citizenship.¹⁰⁶ The decree introduces a simplified procedure for Russian citizenship acquisition by orphans, children without parental care, legally incapable Ukrainian citizens, and stateless persons who have permanently resided in Ukraine.¹⁰⁷ The Ukrainian government has asserted that this decree constitutes a grave violation of its legislation, as well as of the norms of international law.¹⁰⁸

4. Other acts: Attacks on cultural objects and Russia's rhetoric against Ukrainians

In addition to the reports on FTC, the IICIU has identified destruction of cultural objects and calls for the destruction of Ukrainians as a people. There have been reports of destruction and looting of Ukrainian cultural heritage by Russian forces, such as in Odesa province, where Russian attacks damaged several cultural buildings, according to Ukrainian authorities.¹⁰⁹ Most of the buildings affected were located in the area of the historic centre of the city of Odesa, which is listed as a World Heritage Site. In Mariupol, Russian forces demolished a memorial to the victims of the Holodomor famine.¹¹⁰

Reports indicate a widespread process of 'russification' of Ukrainian children through re-education in Russian language, culture and history.¹¹¹ Children are reported to have been forbidden to speak Ukrainian and exposed to propaganda.¹¹²

Furthermore, the IICIU has indicated that several public statements have been identified as employing dehumanising language, inciting hatred, violence and destruction against Ukraine.¹¹³ For example, the denial of the right of Ukrainians to exist has been widely broadcast

¹⁰⁶ President of Russia, 'Executive Order on Determining Certain Categories of Foreign Citizens and Stateless Persons Having the Right to Apply for Russian Citizenship' (*President of Russia Official Website*, 4 January 2024) <<http://en.special.kremlin.ru/catalog/keywords/28/events/73222>> accessed 20 January 2025.

¹⁰⁷ *ibid.*

¹⁰⁸ Ministry of Foreign Affairs of Ukraine, 'Comment of the Ministry of Foreign Affairs of Ukraine Regarding the Adoption by the Russian Federation of a Legal Act That Violates the Legal Rights of Children - Citizens of Ukraine' (*Ministry of Foreign Affairs of Ukraine*, 6 January 2024) <<https://mfa.gov.ua/en/news/komentar-mzs-ukrayini-shchodo-prijnyattya-rf-normativno-pravovogo-akta-yakij-porushuye-zakonni-prava-ditej-gromadyan-ukrayini>> accessed 20 January 2025.

¹⁰⁹ UN OHCHR 15 March 2024 Report of the Independent International Commission of Inquiry on Ukraine to UN General Assembly' para 29.

¹¹⁰ Iryna Balachuk, 'The Occupiers of Mariupol Dismantled the Monument to the Victims of the Holodomor' (*Pravda*, 19 October 2022) <<https://www.pravda.com.ua/news/2022/10/19/7372573/>> accessed 13 February 2025.

¹¹¹ Council of Europe, 'The Forcible Transfer and "Russification" of Ukrainian Children Shows Evidence of Genocide, Says PACE' (*Portal*, 28 April 2023) <<https://www.coe.int/en/web/portal/-/the-forcible-transfer-and-russification-of-ukrainian-children-shows-evidence-of-genocide-says-pace>> accessed 9 February 2025.

¹¹² *ibid.*

¹¹³ UN OHCHR 15 March 2024 Report (n 109) para 98.

on Russian television,¹¹⁴ with multiple references to them as “subhuman”, “animals” and “Nazis”.¹¹⁵ These statements have been attributed to individuals who have expressed their support for the full-scale invasion of Ukraine by the Russian Federation¹¹⁶, including members of the Russian Government, the Russian Parliament and other prominent figures.

II. FTC: WAR CRIME OR A CASE OF GENOCIDE?

Once the facts have been examined, a question arises: how does international law address FTC? Based on a choice of the ICC Prosecutor, Karim Khan, the ICC issued arrest warrants for the perpetrators, qualifying the acts as war crimes. Nonetheless, a distinct legal possibility should have been sought: the crime of genocide by forcible transfer of children.

A. FTC as a war crime

1. Basic elements

For an act to be categorised as a war crime, specific criteria must be met. Firstly, it is necessary to establish the nexus requirement.¹¹⁷ Secondly, the act must have been committed against a protected person or object.¹¹⁸ Finally, the perpetrator must have acted with the relevant mental state.¹¹⁹

The nexus requirement is defined as the connection to an armed conflict.¹²⁰ The ICC Elements of Crimes stipulate that a war crime must be committed ‘in the context of and associated with’ an armed conflict.¹²¹ With respect to the requirement that the act must be committed against a protected person, children are protected from forcible transfers by virtue of the general protection afforded to members of the civilian population, as well as the specific

¹¹⁴ Julia Davis (19 July 2022) <<https://x.com/JuliaDavisNews/status/1549381189336711169?mx=2>> accessed 14 February 2025.

¹¹⁵ Clara Apt, ‘Russia’s Eliminationist Rhetoric Against Ukraine: A Collection’ *Just Security* (26 August 2024).

¹¹⁶ UN OHCHR 15 March 2024 Report (n 109).

¹¹⁷ Guilfoyle (n 26) 211.

¹¹⁸ *ibid.*

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

¹²¹ ICC Elements of Crimes 15.

protection provided by numerous instruments, such as the Fourth Geneva Convention and Protocol I.¹²² Lastly, the requisite mental state is understood as intent and knowledge.¹²³

In the course of the ICC investigation into the situation in Ukraine, the OTP found that all these requirements had been established.

2. ICC investigation in Ukraine: The Prosecutor's decision

Five days after Russia's full-scale invasion of Ukraine, the ICC Prosecutor affirmed that he was "closely following recent developments in and around Ukraine with increasing concern".¹²⁴ He recalled the declaration lodged on 8 September 2015 by Ukraine accepting the jurisdiction "for the purpose of identifying, prosecuting and judging the perpetrators and accomplices of acts committed in the territory of Ukraine since 20 February 2014".¹²⁵ In light of these findings, he declared that his Office "may exercise its jurisdiction over and investigate any act of genocide, crime against humanity or war crime committed within the territory of Ukraine since 20 February 2014 onwards."¹²⁶

On 28 February 2022, the Prosecutor declared his decision to open an investigation into the situation in Ukraine.¹²⁷ He based his decision on the grounds that alleged war crimes and crimes against humanity had been committed in Ukraine.¹²⁸ The Prosecutor sought authorisation from the Pre-Trial Chamber of the Court to proceed with an investigation,¹²⁹ and after he confirmed that an alternative to expedite the process would be through referrals from an ICC State Party on the situation in Ukraine, the Court received referrals from 41 ICC States Parties.¹³⁰

¹²² Denise Plattner, 'Protection of Children in International Humanitarian Law' (1984) 24 *International Review of the Red Cross* 140, 141–142.

¹²³ Guilfoyle (n 26) 214.

¹²⁴ Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I Have Been Closely Following Recent Developments in and around Ukraine with Increasing Concern." (25 February 2022) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-been-closely-following>> accessed 21 January 2025.

¹²⁵ Letter to the Registrar of the International Criminal Court (ICC), Herman von Hebel from Ministry of Foreign Affairs of Ukraine (8 September 2015) <https://www.icc-cpi.int/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf> accessed 21 January 2025.

¹²⁶ Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine (n 131).

¹²⁷ Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I Have Decided to Proceed with Opening an Investigation." (*ICC*, 28 February 2022) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening>> accessed 21 January 2025.

¹²⁸ *ibid.*

¹²⁹ *ibid.*

¹³⁰ Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia; Contact Portal Launched for Provision of Information (*ICC*, 11 March 2022)

Media reports in March 2023 anticipated that the ICC would imminently issue the first arrest warrants concerning the situation in Ukraine.¹³¹ At the time, there was speculation that the OTP could be pursuing charges of genocide for the perpetrators of the transfers of children.¹³²

On 17 March 2023, Pre-Trial Chamber II of the ICC issued arrest warrants for the Russian President Vladimir Putin and CCR Maria Lvova-Belova.¹³³ The decision of the OTP was to qualify the alleged acts of forcible transfer of children as war crimes.¹³⁴ The Court accepted that there was evidence to support that President Putin and CCR Lvova-Belova had criminal responsibility for the unlawful deportation and transfer of Ukrainian children from occupied areas of Ukraine to Russia, in violation of articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute.¹³⁵

As analysed, the ICC has jurisdiction to investigate any crimes falling within the ICC's jurisdictional scope - including genocide¹³⁶- that have been committed on the territory of Ukraine since 2014. In this light, the decision of the Prosecutor to issue arrest warrants for Putin and Lvova-Belova, only attributing to them the perpetration of war crimes, is questionable in various aspects.

Whilst the *actus reus* of FTC satisfies the requirements for the commission of both war crimes and genocide, the *mens rea* requirement for the perpetration of genocide is well established in this case.¹³⁷ In addition, the ICC's Pre-Trial Chamber specifically mentioned that the forcibly removed persons were children and not the entire civilian population, which strengthens the conclusion that these acts constitute a crime of genocide under Article 6 e) of the ICC Statute.¹³⁸ Another argument is that the Court has legal precedent for issuing arrest warrants in relation to genocide for a sitting head of state, such as President Putin, by virtue of the al-Bashir case.¹³⁹

<<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-additional-referrals-japan-and>> accessed 21 January 2025.

¹³¹ Julian Borger, 'ICC to Issue First Arrest Warrants Linked to Russia's Invasion of Ukraine' *The Guardian* (13 March 2023) <<https://www.theguardian.com/law/2023/mar/13/icc-to-issue-first-arrest-warrants-linked-to-russias-invasion-of-ukraine>> accessed 21 January 2025.

¹³² *ibid.*

¹³³ Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova (*ICC*, 17 March 2023) <<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>> accessed 22 January 2025.

¹³⁴ *ibid.*

¹³⁵ Rome Statute of the International Criminal Court (n 2).

¹³⁶ Similar to the CPPCG, Article 6 e) of the Rome Statute provides for the crime of FTC as genocide.

¹³⁷ Hilly Khen, 'The Forcible Transfer of Children from Ukraine as Genocide: Awakening the Dormant Prohibition of the Genocide Convention' (2024) 32 *The International Journal of Children's Rights* 78, 109.

¹³⁸ *ibid* 110.

¹³⁹ *Al Bashir Case, the Prosecutor v Omar Hassan Ahmad Al Bashir ICC-02/05-01/09*; Khen (n 137) 109.

In this sense, the facts indicate that there is evidence to qualify the acts of forcible transfer not as a war crime, but as a case of genocide.

B. FTC, genocide and cultural genocide

An examination of the origins of the crime of genocide reveals a correlation between FTC, the initial theorisation of the crime of genocide and the so-called “cultural genocide”. The concept of cultural genocide has been a prolonged and extensively debated issue among international scholars and experts.

1. Cultural genocide as conceptualised by Raphael Lemkin

In the context of academic debate, a number of scholars have discussed their own definitions of cultural genocide. Among these scholars, one stands out as a significant contributor to the conceptualisation of cultural genocide: Raphael Lemkin, a Polish lawyer of Jewish origin, who coined the term ‘genocide’ himself.

In his most important publication, *Axis Rule in Occupied Europe*, Lemkin theorised that the term ‘genocide’ was derived from the Greek word ‘*geno*’ (meaning race or tribe) and the Latin word ‘*cide*’ (kill).¹⁴⁰ In the words of Lemkin, genocide is defined as follows:

a co-ordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objective of such a plan would be disintegration of the political and social institutions of culture, language, national feelings, religion, and the economic existence of national groups and the destruction of the personal security, liberty, health, dignity and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.¹⁴¹

In the course of his argument, Lemkin provided the further elaboration:

¹⁴⁰ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Second Edition, first published 1944, The Lawbook Exchange, Ltd 2008) 79.

¹⁴¹ *ibid.*

Genocide has two phases: one, destruction of the national pattern of the oppressed group; the other, the imposition of the national pattern of the oppressor. This imposition, in turn, may be made upon the oppressed population which is allowed to remain or upon the territory alone, after removal of the population and the colonization by the oppressor's own nationals.¹⁴²

In presenting this newly coined term, Lemkin characterised genocide as “a new word for an old practice”.¹⁴³ According to the author, genocide did not necessarily imply the immediate destruction of a national or ethnic group, but rather different actions aimed at the destruction of the essential foundations of the life of the group, resulting in the annihilation of the group as such.¹⁴⁴

Lemkin's description of genocide does not include any mention of a physical requirement for this crime, such as the physical extermination of members of a group.¹⁴⁵ He referred to the idea of “national patterns”, which is directly related to the notion of culture.¹⁴⁶

In his book, written in 1944 and shaped by the unfolding events of the Second World War, the author offers a thorough examination of the manner in which the German Nazis operationalised their genocidal policy. For this, he identifies eight techniques of genocide, as follows: political, social, cultural, economic, biological, physical, religious and moral.¹⁴⁷ William Schabas explains that “(Lemkin) was not referring to political, social, cultural, religious, economic or moral groups, but rather to acts of genocide directed at various aspects of the life of a group.”¹⁴⁸ Accordingly, ‘cultural genocide’ was one of the categories of what Lemkin terms ‘genocide’, situated at the same level as physical and biological genocide.

It is a widely accepted understanding within the academic community that Lemkin's definition of genocide is indissociable from the concept of cultural genocide. For Elisa Novic “(...) (Lemkin) coined the term genocide at the same time as he conceptualized genocide, conceiving the former as a technique of the latter (...)”¹⁴⁹. According to Hanna Schreiber, “the cultural aspect was at the centre of the concept of genocide created by Raphael Lemkin”.¹⁵⁰

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ William Schabas, *Genocide in International Law: The Crime of Crimes* (Second Edition, Cambridge University Press 2009) 27.

¹⁴⁵ Hanna Schreiber, ‘Cultural Genocide - Culturecide: An Unfinished or Rejected Project of International Law’ in Grażyna Michałowska (ed), *Culture(s) in International Relations* (Peter Lang Verlag 2017) 322.

¹⁴⁶ *ibid.*

¹⁴⁷ Lemkin (n 140) 82.

¹⁴⁸ Schabas, *Genocide in International Law* (n 144) 177.

¹⁴⁹ Novic (n 6) 4.

¹⁵⁰ Schreiber (n 145) 322.

As an alternative to genocide, the author considered the ancient Greek term *ethnos*, which conveys essentially the same concept as *genos*.¹⁵¹ This led to the emergence of a closely related concept, ‘ethnocide’. Since Lemkin’s work, this term has been also employed to designate cultural genocide, particularly in the context of indigenous populations.¹⁵²

According to Lemkin, the concept of genocide is originally and inherently linked to culture, as cultural genocide is qualified by this author as a technique of genocide. In essence, Lemkin’s thesis was that a group could be destroyed through attacks on its economy, its cultural and political institutions.¹⁵³ This concept has been understood to extend beyond attacks upon the physical and biological elements of a group, with the aim of eliminating its wider institutions and its cultural identity.¹⁵⁴

In this respect, a core element of Lemkin’s conceptualisation of genocide is the incorporation of FTC as a form of cultural genocide. In his autobiography, written in 1948 but published many decades later, the author characterised this practice as ‘a specific technique of genocide’.¹⁵⁵ Lemkin characterised such actions as “kidnapping”.¹⁵⁶ He further elaborates on the link between FTC and culture as follows:

This type of genocidal practice seemed to be one of the cruelest. It tended to break the cultural continuity of a group. It destroyed the spirit while keeping the body alive.¹⁵⁷

Therefore, Lemkin’s condemnation of FTC was clear and unambiguous. The author considered this practice to be an act of genocide, as it was a method of cultural genocide, a technique of the crime.

2. Historical-legal review of the elaboration of the Genocide Convention

In the aftermath of the Second World War, the international community was confronted with the devastating consequences of the events that had unfolded. The Holocaust was a vivid

¹⁵¹ Schabas, *Genocide in International Law* (n 144) 29.

¹⁵² *ibid* fn 71.

¹⁵³ William A Schabas, ‘Preface’, *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress* (Second Edition, first published 1944, The Lawbook Exchange, Ltd 2008) xiii.

¹⁵⁴ Stefania Negri, ‘Cultural Genocide in International Law: Is the Time Ripe for a Change?’ (2013) 10 T.D.M 1.

¹⁵⁵ Donna-Lee Freeze, *Totally Unofficial: The Autobiography of Raphael Lemkin* (Yale University Press 2013) 168.

¹⁵⁶ Ruth Amir and Yezreel Valley College, ‘Killing Them Softly: Forcible Transfers of Indigenous Children’ (2015) 9 *Genocide Studies and Prevention* 41, 52.

¹⁵⁷ Freeze (n 155) 168.

memory, and there was a widespread consensus that new international legal instruments were required to prevent the repetition of such atrocities.¹⁵⁸

Lemkin was a key figure in the establishment of negotiations for a convention on the crime of genocide, having played a prominent role in the drafting of the CPPCG¹⁵⁹. He was actively involved in lobbying for the negotiations to proceed,¹⁶⁰ although he acted as a “completely unofficial man” in the process.¹⁶¹

The fate of the concept of genocide was uncertain after the Second World War.¹⁶² Despite the use of this term by the prosecution in the indictment¹⁶³, it was not included in the charter of the IMT or in the verdict.¹⁶⁴ Instead the criminal acts were prosecuted under the category of war crimes and crimes against humanity.¹⁶⁵

In the end, it was genocide that became the subject of an international treaty.¹⁶⁶ In the words of Elisa Novic “It is hard to explain this fact by any reason other than Lemkin’s involvement”.¹⁶⁷ The author’s efforts to push for an international instrument on genocide seem to have been decisive.

In 1946, the UN began to be involved in the subject. On 11 December, the UNGA was the first body to address the issue of genocide, unanimously adopting Resolution 96(1).¹⁶⁸ The preamble to the Resolution is drafted as follows:

Genocide is a denial of the right of existence of entire human groups, as homicide is the denial of the right to live of individual human beings; such denial of the right of existence shocks the conscience of mankind, results in great losses to humanity in the form of cultural and other contributions represented by these human groups, and is contrary to moral law and to the spirit and aims of the United Nations.¹⁶⁹

Although not a source of binding law, UNGA Resolution 96(1) was very important in the development of international law on genocide. It provides for a broad conceptualisation of

¹⁵⁸ Novic (n 6) 22.

¹⁵⁹ Convention on the Prevention and Punishment of the Crime of Genocide (Adopted 9 December 1948) UNTS 78 278.

¹⁶⁰ Novic (n 6) 22.

¹⁶¹ Schreiber (n 145) 328.

¹⁶² Novic (n 6) 23.

¹⁶³ See 16.

¹⁶⁴ Charter of the International Military Tribunal (adopted 8 August 1945) 82 UNTS 280 art 6.

¹⁶⁵ *ibid.*

¹⁶⁶ Novic (n 6) 23.

¹⁶⁷ *ibid.*

¹⁶⁸ The Crime of Genocide, 11 December 1948, GA Res 96(I), UN Doc A/PV.55.

¹⁶⁹ *ibid.*

the crime. The resolution stipulates that genocide is a crime under international law and removes any link between genocide and armed conflict.¹⁷⁰ Its significance is enhanced by the fact that it was adopted unanimously and without debate.¹⁷¹ The final and most important conclusion of Resolution 96(1) is the mandate for the drafting of a convention on genocide.¹⁷²

This resolution, however, contained an ambiguity that could have affected the future understanding of genocide.¹⁷³ The comparison with murder may have caused confusion as to whether genocide requires murder, a physical component.¹⁷⁴

Resolution 96(1) mandated the ECOSOC to conduct a study on the issue with the objective of drafting an international convention which in return entrusted the Secretariat General with this task.¹⁷⁵ Three legal experts were appointed by the Secretary-General to assist in the drafting of the Convention. Among them was Lemkin. He directed a significant part of his efforts to trying to convince his colleagues to include a provision criminalising cultural genocide.¹⁷⁶

A draft convention was presented by the UN Secretariat in June 1947. This draft, in line with Lemkin's eight techniques, contained a strict definition of the crime of genocide.¹⁷⁷ These were reduced to three main categories: physical, biological and cultural genocide.¹⁷⁸ In its description of three types of genocide, the draft followed the approach of Lemkin's work.¹⁷⁹

Physical genocide was described as "causing the death of members of the group or injury to their health or physical integrity (...)".¹⁸⁰ Biological genocide was limited to prohibiting the restriction of births.¹⁸¹ Cultural genocide, in comparison, was described as "destroying the specific characteristics of the group".¹⁸² The first paragraph of article I of the draft provides for the "forcible transfer of children to another group" as one of the forms of cultural genocide.¹⁸³

The inclusion of this topic soon came to be contested. The idea of including cultural genocide in the CPPCG was not unanimous among the experts. While Lemkin was of the

¹⁷⁰ Schabas, *Genocide in International Law* (n 144) 57.

¹⁷¹ *ibid* 56.

¹⁷² *ibid* 58.

¹⁷³ Schreiber (n 145) 328.

¹⁷⁴ Novic (n 6) 25.

¹⁷⁵ *ibid*.

¹⁷⁶ *ibid* 24.

¹⁷⁷ Draft Convention on the Crime of Genocide, 26 June 1947 UN Secretary General E/447.

¹⁷⁸ *ibid*.

¹⁷⁹ Schabas, *Genocide in International Law* (n 144) 61.

¹⁸⁰ Draft Convention on the Crime of Genocide (n 177) art I.

¹⁸¹ *ibid*.

¹⁸² *ibid*.

¹⁸³ *ibid*.

opinion that it was important, the other two experts (Henri Donnedieu de Vabres and Vespasian Pella) were against it.¹⁸⁴ Eventually, the only provision that was endorsed by all the experts was the one concerning FTC.¹⁸⁵

Concerns have also been expressed by various delegations during the negotiations. Led by the United States and France, a few delegations argued that only acts of physical violence should be within the scope of the Convention.¹⁸⁶ Furthermore, some states argued that there was a risk of political interference in the internal affairs of states¹⁸⁷, and that cultural genocide should, rather, be addressed as a human rights issue.¹⁸⁸ In contrast, other states advocated for a broad definition of genocide in line with Resolution 96(1).¹⁸⁹

In order to resolve the contentious issues, a restricted ad hoc committee was instituted to formulate a new draft.¹⁹⁰ In the course of the debates, the Polish delegation adopted a more nuanced position, advocating for an alternative proposal that would better address the issue of cultural genocide.¹⁹¹ This alternative proposal involved the establishment of a ‘convention for the protection of minorities’.¹⁹²

As the opposing perspectives became more entrenched, states agreed as a compromise to insert the notion of cultural genocide in a separate article from physical and biological genocide.¹⁹³ According to Elisa Novic, “the underlying goal was to facilitate reservations—and perhaps its later deletion—for those countries that would have otherwise been reluctant to ratify the convention”.¹⁹⁴ This provision became Article III.

In this sense, article II of the new draft took the following phrasing:

In this Convention genocide means any of the following deliberate acts committed with the intent to destroy a national, racial, religious or political group, on grounds of the national or racial origin, religious belief, or political opinion of its members: (1) killing members of the group; (2) impairing the physical integrity of members of the group; (3) inflicting on members of the

¹⁸⁴ Schabas, *Genocide in International Law* (n 144) 61.

¹⁸⁵ Novic (n 6) 25.

¹⁸⁶ Schabas, *Genocide in International Law* (n 144) 63.

¹⁸⁷ *ibid* 208.

¹⁸⁸ Schreiber (n 145) 322.

¹⁸⁹ Novic (n 6) 25.

¹⁹⁰ *ibid*.

¹⁹¹ *ibid* 25–26.

¹⁹² ECOSOC Ad Hoc Committee on Genocide: Summary Record of the Third Meeting 3 <http://digitallibrary.un.org/record/601682/files/E_AC.25_SR.3-EN.pdf> accessed 7 January 2025.

¹⁹³ ECOSOC Ad Hoc Committee on Genocide: Summary Record of the Tenth Meeting 12 <<https://digitallibrary.un.org/record/601776?v=pdf>> accessed 7 January 2024.

¹⁹⁴ Novic (n 7) 26.

group measures or conditions of life aimed at causing their deaths; (4) imposing measures intended to prevent births within the group.¹⁹⁵

Draft Article III was formulated as such:

In this Convention genocide also means any deliberate act committed with the intent to destroy the language, religion, or culture of a national, racial or religious group on grounds of the national or racial origin or the religious belief of its members such as:

1. Prohibiting the use of the language of the group in daily intercourse or in schools, or the printing and circulation of publications in the language of the group;
2. Destroying, or preventing the use of, libraries, museums, schools, historical monuments, places of worship or other cultural institutions and objects of the groups.¹⁹⁶

Therefore, with the new version of the draft convention, the provision on FTC had been temporarily excluded. The new draft was formally submitted to the UNGA and subjected to a final discussion stage, during which Article II of the draft was addressed prior to that of cultural genocide.¹⁹⁷

During the course of the debates, it became evident that there was a strong likelihood of Article III on cultural genocide not being included in the CPPCG.¹⁹⁸ In this context, the Greek delegate proposed the reintroduction of the paragraph on “forced transfer of children” in Article II, as part of the provision on physical and biological genocide.¹⁹⁹

The Greek delegate justified this inclusion by recalling the unanimous acceptance of this paragraph by the three experts who advised the Secretariat and by stating that “(...) the forced transfer of children had not only cultural, but also physical and biological effects since it imposed on young persons conditions of life likely to cause them serious harm or even death”.²⁰⁰

¹⁹⁵ ECOSOC Ad Hoc Committee on Genocide Draft Convention on Prevention and Punishment of the Crime of Genocide <<https://undocs.org/E/AC.25/12>>.

¹⁹⁶ *ibid.*

¹⁹⁷ Novic (n 6) 26–27.

¹⁹⁸ *ibid.* 27.

¹⁹⁹ UNGA Sixth Committee (Third Session) Eighty-Second Meeting UN 186 <http://digitallibrary.un.org/record/604634/files/A_C-6_SR-82-EN.pdf> accessed 8 January 2025.

²⁰⁰ *ibid.*

A surprisingly small number of states voiced opposition to the amendment.²⁰¹ Some delegations feared that by openly accepting the nature of such acts as cultural, it would be difficult to draw a legitimate line between those cultural acts considered heinous enough to be included in the convention (such as FTC) and those that were not.²⁰²

Without substantial debate²⁰³, the proposal was accepted and Article II of the draft Convention was amended to include five subparagraphs, the last of which concerning FTC.

As the draft Article III was subject to review, references to the ongoing negotiations of the forthcoming UDHR became increasingly prevalent.²⁰⁴ A significant number of delegates had argued against the inclusion of cultural genocide in the CPPCG, asserting that it was a human rights question more appropriately addressed under that framework.²⁰⁵ While discussions on the Convention were being conducted in the UNGA Sixth Committee, the Third Committee was engaged in the drafting process of the UDHR.²⁰⁶ This became the most effective argument to remove the cultural genocide provision from the convention.²⁰⁷ Nevertheless, the UDHR never actually addressed this particular subject. The Sixth Committee decided to delete draft Article III, thus excluding cultural genocide from the CPPCG.²⁰⁸

The CPPCG was finally adopted by the UNGA on 9 December 1948 and entered into force in January 1951.²⁰⁹ The first paragraph of the text contains the *mens rea* of the crime, and Article II concerns the *actus reus*.

3. FTC as a reminiscence of cultural genocide

The adopted text of the GPPCG does not have any mention of cultural genocide. The UNGA Sixth Committee voted to limit the punishable acts to physical and biological genocide, excluding cultural genocide.²¹⁰ Nevertheless, the convention does contain a provision on the subject.

According to several scholars, GPPCG Article II e) is the only reference to cultural genocide in the convention. Douglas Guilfoyle asserted that “the forcible transfer of children

²⁰¹ Novic (n 6) 27.

²⁰² *ibid.*

²⁰³ Schabas, *Genocide in International Law* (n 144) 201.

²⁰⁴ Novic (n 6) 27.

²⁰⁵ Schabas, *Genocide in International Law* (n 144) 213.

²⁰⁶ *ibid.*

²⁰⁷ Novic (n 6) 27.

²⁰⁸ Schabas, *Genocide in International Law* (n 144) 213.

²⁰⁹ Convention on the Prevention and Punishment of the Crime of Genocide (n 159).

²¹⁰ Schabas, *Genocide in International Law* (n 144) 82.

to another group is the only acceptable form of ‘cultural genocide’”.²¹¹ Elisa Novic sees Article II e) as “the sole remaining idea of cultural genocide”²¹². Stefania Negri affirmed that the “forcible transfer of children from one group to another (which is a specific form of cultural genocide) was retained as part of the definition of genocide”.²¹³

By contrast, the ILC has taken a divergent stance on the matter of FTC in Article II e). It has concluded that this practice does not constitute an act of cultural genocide but rather an act of biological genocide.²¹⁴ However, this is disputed by many authors. Schabas rationally qualifies Article II e) as “enigmatic” because the drafters of the Convention expressly rejected the concept of cultural genocide.²¹⁵ Nonetheless, the author argues that “the idea for such a provision originated in the Secretariat draft, which quite logically proposed that ‘forcible transfer of children to another human group’ be considered an act of cultural genocide.”²¹⁶ Schabas maintained that the provision on the genocidal FTC introduced the notion of cultural genocide into the CPPCG²¹⁷, arguing that “the drafters of the [Genocide] Convention quite expressly excluded cultural genocide, with one exception, the forced transfer of children from one group to another”.²¹⁸

It should be noted, however, that the rejection of cultural genocide in the CPPCG did not mean its rejection from international law as a whole. The development of a number of international legal instruments on the subject shows that the normative concept of cultural genocide as conceived by Lemkin seems to have been covered by international law through the articulation of its various branches.²¹⁹ In this context, IHRL has been of particular relevance, and has evolved over time to address cultural issues.²²⁰

In relation to the exclusion of cultural genocide from the CPPCG, Schabas affirmed:

This was not really a rejection of [Lemkin’s] thesis by which a group may be destroyed through attacks on its economy, its cultural bodies and its political

²¹¹ Guilfoyle (n 26) 288.

²¹² Novic (n 6) 27–28.

²¹³ Negri (n 154) 4.

²¹⁴ Yearbook of the International Law Commission - Report of the International Law Commission on the Work of Its Forty-Eighth Session 1996 Vol. II (2) Doc A/51/10. 45-46

²¹⁵ Schabas, *Genocide in International Law* (n 144) 201.

²¹⁶ *ibid.*

²¹⁷ Sonja C Grover, *Humanity’s Children: ICC Jurisprudence and the Failure to Address the Genocidal Forcible Transfer of Children* (Springer 2013) 311.

²¹⁸ William Schabas, ‘Problems of International Codification’ (2000) paras 291–292.

²¹⁹ Novic (n 6) 140.

²²⁰ For example, the ICCPR grants cultural rights to groups: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

institutions. Rather, it was simply a case of the world not being ready for such an innovative proposal in a binding treaty.²²¹

In this sense, cultural genocide is an integral and historical part of the concept of genocide. FTC is widely recognised as a form of cultural genocide, and its inclusion in Article II e) of the CPPCG qualifies it as a punishable act under international law.

III. PROSECUTING FTC AS GENOCIDE

In order to proceed with a claim for genocide under Article II e) of the CPPCG, it is necessary that a specified set of requirements be established. The violation of this convention through an act under Article 2 e) entails state responsibility. Concurrently, in the framework of ICL, entailing individual criminal responsibility, the ICC can be regarded as a possible avenue for holding perpetrators of the transfer of Ukrainian children accountable.

A. The elements of the crime of forcibly transferring children under Article II e) of the CPPCG

First, for the crime of genocide to be established, the perpetrator must have committed one of the prohibited acts under the CPPCG. Secondly, these acts must have been committed with the culpable mental element.²²²

1. Physical element

Article II of the CPPCG comprises five paragraphs, forming an exhaustive list of acts constituting the crime of genocide. Among such acts is “forcibly transferring children of the group to another”. In order to establish the physical element or *actus reus* requirement under Article II e), this analysis will discuss the following terms: ‘forcible transfer’ and ‘Ukrainian children’.

²²¹ Schabas, ‘Preface’ (n 154) xiii.

²²² Guilfoyle (n 26) 282.

a. Forcible transfer

FTC refers to the act of separating children from their group and their subsequent placement in another group.²²³ The term “group” means one of the protected groups enumerated by the CPPCG: national, ethnic, racial or religious.²²⁴

Paragraph e) requires the presentation of proof of a result that children from the victim group have been transferred to another group.²²⁵ The jurisprudence of international courts has interpreted threats to transfer children and other forms of coercion as falling within the ambit of this provision.²²⁶ Fear of violence, duress, psychological oppression, and abuse of power are under the scope of the term “forcibly”.²²⁷ Therefore, not only the act of transfer itself, but also threats to transfer children from Ukraine would be covered by paragraph e) of Article II.²²⁸

As demonstrated by the facts, there has been substantial evidence indicating the occurrence of actual transfers of children from Ukraine, which occurred in the context of intimidation, as evidenced by explicit threats issued by Russian authorities. Children have been separated from their families in a range of different ways, including by the so-called ‘filtration’ process, which has been reported to have involved numerous human rights violations.²²⁹

The transfer of children from the TOT in Ukraine has been described as an “evacuation” measure aimed at ensuring their safety by Russian authorities. As mentioned above, the Ukrainian government has denied these allegations, claiming that it did not authorise the transfers or adoptions, and that such actions constitute violations of international law.

In contrast to deportation and forcible transfer, evacuation is a temporary measure conducted in the interests of the protected persons themselves.²³⁰ Under IHL, the general rule is that a party to an armed conflict is strictly prohibited from evacuating children who are not nationals of that state.²³¹ The exceptions are clearly delineated: a temporary evacuation is permitted in cases where the child’s health, medical treatment needs or safety are deemed to

²²³ Khen (n 137) 87.

²²⁴ *ibid.*

²²⁵ Schabas, *Genocide in International Law* (n 144) 202.

²²⁶ *Prosecutor v Akayesu, Case No ICTR-96-4-T, Judgement 2 September 1998* (ICTR) [509].

²²⁷ ICC Elements of Crimes (n 121) 3.

²²⁸ Ioffe (n 46) 324.

²²⁹ UN Security Council, ‘Reports of Russian Federation Forces Putting Ukrainian Civilians in “Filtration” Camps Must Be Investigated’ (7 September 2022) <<https://press.un.org/en/2022/sc15023.doc.htm>> accessed 18 January 2025.

²³⁰ Commentary of 1958 to Article 49 of the Convention (IV) Relative to the Protection of Civilian Persons in Time of War (*IHL databases*).

²³¹ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977 (*International Committee of the Red Cross*) art 78.

be in imminent risk.²³² In all such cases, the written consent of the child’s parents or legal guardians is mandatory.²³³ Another requisite for an evacuation is that the education of the child, including religious and moral instruction, must be maintained in the same conditions as before the evacuation.²³⁴ Additionally, for the purpose of facilitating the eventual repatriation of such children, a detailed identification card is required for each transferred child, which must be sent to the Central Tracing Agency of the ICRC.²³⁵

In this light, none of the actions undertaken by Russian authorities fulfil the requirements to qualify as an evacuation.²³⁶ There is no evidence that the Russian authorities obtained parental consent or made any effort to contact the Ukrainian authorities or the children's relatives. Rather, there is evidence to suggest that CCR Lvova-Belova was aware of requests from the Ukrainian Government to return the children and that she refused.²³⁷ Moreover, Ukrainian children transferred to Russia were not given the opportunity to receive an education based on the Ukrainian curriculum - which includes speaking their own language - but were instead subjected to indoctrination. There is also no evidence to date that Ukrainian children have been provided with identity cards or that the ICRC has been notified as required by Article 78 of Protocol I.

b. Ukrainian children

The CPPCG does not define the term “children”. However, Article II e) has been interpreted in the light of the universally accepted definition contained in the CRC, which defines a child as a person under the age of 18 years.²³⁸ A similar provision establishing the age of 18 is found in the ICC Elements of Crimes.²³⁹

The *actus reus* is established when at least one child has been distanced from the group to which that child belongs.²⁴⁰ This result can be achieved by confining the child to a location

²³² *ibid* 78 (1).

²³³ *ibid*.

²³⁴ *ibid* 78 (2).

²³⁵ *ibid* 78 (3).

²³⁶ UN OHCHR March 2023 Report of the Independent International Commission of Inquiry on Ukraine to UN General Assembly (n 55) para 98.

²³⁷ Maria Lvova-Belova, ‘Telegram: Contact @malvovabelova’ (28 September 2022) <<https://t.me/malvovabelova/605>> accessed 5 February 2025.

²³⁸ UNGA, Convention on the Rights of the Child.

²³⁹ ICC Elements of Crimes (n 121) art 6 (e) 5.

²⁴⁰ Claus Kress, ‘The Crime of Genocide under International Law’ (2006) 6 *International Criminal Law Review* 484.

outside the area from which the group comes.²⁴¹ Schabas opined that the age of eighteen years may be an excessively high threshold, given that the genocidal act of transferring children only makes sense in the case of relatively young children, as they are more susceptible to the loss of their cultural identity.²⁴² In any case, findings indicate that the majority of Ukrainian children subjected to forced transfer were under the age of 15.²⁴³

In addition, the children belong to the Ukrainian national group, a protected group under the CPPCG. There are divergent opinions regarding the categorisation of Ukrainians as an ethnic group rather than a national group.²⁴⁴ Nevertheless, Ukrainians share a common identity and an internationally recognised nationality²⁴⁵, and the Russian Federation itself has consistently acknowledged the Ukrainian national group as distinct in the eyes of the international community.²⁴⁶

2. Mental element

With regard to the mental element, or *mens rea*, the crime of genocide differs from other crimes as it requires a special intent, or *dolus specialis*.²⁴⁷ In the context of FTC, two steps are necessary. First, it is necessary to determine whether the perpetrator committed the act of forcible transfer intentionally.²⁴⁸ Secondly, it is necessary to establish the *dolus specialis* by determining whether the act of FTC was intended to achieve the destruction of a national, ethnic, racial or religious group.²⁴⁹

a. Specific intent to forcibly transfer children

The mental element in relation to Article II e) is established when the perpetrator possesses the specific intent to transfer children from one group to another.²⁵⁰ In order to satisfy

²⁴¹ *ibid.*

²⁴² Schabas, *Genocide in International Law* (n 144) 203.

²⁴³ Ioffe (n 46) 335.

²⁴⁴ William Schabas, 'Genocide and Ukraine: Do Words Mean What We Choose Them to Mean?' (2022) 20 *Journal of International Criminal Justice* 843, 848.

²⁴⁵ Institute New Lines for Strategy and Policy, 'An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent' (May 2022) 11.

²⁴⁶ Bilateral agreement between the Government of the Russian Federation and the Government of Ukraine on Collaboration in the Fields of Culture, Science and Education.

²⁴⁷ *Prosecutor v. Akayesu* (n 227) para 498.

²⁴⁸ *Prosecutor v Bagilishema, Case No ICTR-95-1A-T, Judgment 7 June 2001* (ICTR) [55].

²⁴⁹ *ibid.*

²⁵⁰ Schabas, *Genocide in International Law* (n 144) 294.

this element, the offender must have carried out the act intentionally and had the knowledge of the fact that the children belong to one group and that they are being transferred to another group.²⁵¹

As outlined in the facts, members of the Russian government were aware that the children who were forcibly transferred were Ukrainian, as evidenced by the adoption of legislation establishing a simplified procedure for obtaining Russian citizenship for Ukrainian children.²⁵² These laws were introduced with the explicit intention of forcibly transferring Ukrainian children to Russia and facilitating their placement with Russian foster or adoptive parents.²⁵³

In this sense, there is ample evidence that the actions perpetrated by Russia constitute a deliberate policy. On numerous occasions, CCR Lvova-Belova has unequivocally stated her intention to forcibly transfer children. For example, in July 2022, she herself provided evidence of the Russian government's specific intent when she stated that the transfer of Ukrainian children was a result of an extensive and meticulous process.²⁵⁴

b. *Dolus specialis*

According to the jurisprudence of international courts, the *dolus specialis* requires that the perpetrator acted with the aim, purpose or desire to destroy a national, ethnical, racial or religious group.²⁵⁵ The offender must or should have known that the act committed would destroy a group in whole or in part.²⁵⁶

According to the ICJ, for FTC to constitute genocide, it must be carried out with the intention of physically destroying a protected group, in whole or in part.²⁵⁷ In order to prove the special intent in this case, there are two possibilities.²⁵⁸ Firstly, it may be proven based on forcible transfers per se.²⁵⁹ Alternatively, the intent of physical destruction of Ukrainians may

²⁵¹ *ibid* 294.

²⁵² See 23.

²⁵³ Ioffe (n 46) 336.

²⁵⁴ See 23-24.

²⁵⁵ *Prosecutor v. Akayesu* (n 247) para 520

²⁵⁶ *ibid*.

²⁵⁷ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia)*, *Judgement 15 February 2015* (ICJ) 64–65.

²⁵⁸ Ioffe (n 47) 336.

²⁵⁹ *ibid*.

be inferred not only from Russia's acts of FTC, but as part of a larger programme for genocide of Ukrainians as a national group.²⁶⁰

i. Forcible transfers per se

Case law has interpreted FTC under different perspectives: The ICJ has adopted a narrower approach, under which FTC must be committed with the intent to physically destroy a group, on the basis that the intent to culturally destroy a group is not in the scope of the CPPCG, as it was excluded by its drafters.²⁶¹ On the other hand, the ICTY, in the Krasjinik case, adopted a more expansive approach, reasoning that an intent to culturally destroy the group would be sufficient to establish a special intent in the case of FTC.²⁶²

In either scenario, it is possible to prove the special intent requirement by establishing that the acts of forcible transfer in itself would have serious physical and biological consequences, since the transfers of Ukrainian children to Russia may be understood as an act equivalent to measures designed to prevent the reproduction and biological survival of Ukrainians.²⁶³ According to the prevailing jurisprudence, the term "destroy" in Article II means the physical or biological destruction of the whole or part of the group.²⁶⁴ In this sense, an alternative for litigation under Article II e) would be demonstrating that there is evidence of physical demise of Ukrainians as a distinct national group due to the impact on the group's capacity for renewal and its ability to ensure its long-term survival as a result of FTC.²⁶⁵

There is evidence to indicate that the Russian government is taking deliberate measures to achieve physical and biological consequences through the implementation of a policy aimed to indoctrinate Ukrainian children and accelerate the dissolution of their national identity.²⁶⁶ As evidenced by the facts, Ukrainian children have been subjected to indoctrination by systematic re-education efforts which took place in the context of the re-education and filtration camps.²⁶⁷ In these camps, children from Ukraine were exposed to Russian propaganda, and in

²⁶⁰ *ibid.*

²⁶¹ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) Judgement of 26 February 2007* (ICJ) [187]; *ibid* 344; *Croatia v. Serbia* (n 259) para 390; *ibid* 136.

²⁶² *Prosecutor v Momcilo Krajisnik Trial Chamber Judgement 27 September 2006* (ICTY) [854].

²⁶³ Ioffe (n 47) 336.

²⁶⁴ *Prosecutor v Krstic, Judgement August 2001* ICTY Case No IT-9833-T [580].

²⁶⁵ *Croatia v. Serbia* (n 259) para 136.

²⁶⁶ Ioffe (n 46) 337.

²⁶⁷ See 21-22.

some cases, even military education, as part of a programme of Russian cultural and educational imposition.

Accordingly, it can be inferred that there is evidence of the partial physical decline of Ukrainians as a distinct national group, as demonstrated by the transfer of a minimum of 20,000 children on a large scale.²⁶⁸

ii. Larger programme to commit genocide

The intent to physically destroy Ukrainians as a group can also be identified as part of a larger programme to commit genocide against the group.²⁶⁹ This programme can be seen in the context of a ‘general plan’ to commit genocide.²⁷⁰

A number of scholars have indicated that a ‘general plan’ exists, evidenced by Russia’s official statements, documents and policy to destroy Ukrainians as a national group.²⁷¹ As presented by the facts²⁷², there are numerous statements by President Putin and other Russian officials indicating an organised policy aimed at denying Ukrainians their identity and their right to exist as a group protected under the CPPCG by means of extermination or re-education.²⁷³

Russia’s genocidal ‘general plan’ is characterised by the denial of the existence of Ukrainian identity and of Ukraine itself, followed by dehumanisation of Ukrainians, with a multitude of references to them as “subhuman”, “animals” and “Nazis”.²⁷⁴ One of the most explicit indications of Russia’s genocidal plan is an editorial published by the main state-owned news agency in Russia, titled “What Russia Must Do with Ukraine.”²⁷⁵ This editorial advocates for the destruction of Ukrainian “Nazis”, which are not exclusively high-ranking Ukrainian officials but also “a significant number of common people”.²⁷⁶ Also, CCR Lvova-Belova

²⁶⁸ ‘Ukraine’s Taken Children with Yulia Ioffe and Nathaniel Raymond’ <<https://www.asymmetricalhaircuts.com/episodes/episode-78-ukraines-taken-children-with-yulia-ioffe-and-nathaniel-raymond/>> accessed 14 February 2025.

²⁶⁹ *Krstic Case* (n 264) para 572.

²⁷⁰ Ioffe (n 46) 340.

²⁷¹ Institute New Lines for Strategy and Policy (n 247).

²⁷² See 24-25.

²⁷³ Parliament of Ukraine, ‘Declaration on the Genocide Committed by the Russian Federation in Ukraine’ (14 April 2022) <[https://itd.rada.gov.ua/billinfo/Додато&key;\(eng\).pdf](https://itd.rada.gov.ua/billinfo/Додато&key;(eng).pdf)> accessed 13 February 2025.

²⁷⁴ See 23.

²⁷⁵ Timofey Sergeytsev, ‘What Russia Should Do with Ukraine’ (*Ria Novosti*, 4 April 2022) <<https://ria.ru/20220403/ukraina-1781469605.html>> accessed 14 February 2025.

²⁷⁶ *ibid.*

provided additional evidence of a ‘general plan’ when she affirmed that the transfers had been preceded by an extensive and detailed preparatory work.²⁷⁷

Furthermore, deliberate destruction of the cultural heritage of a protected group can be used as evidence of genocidal intent.²⁷⁸ Although the intent to culturally destroy a group is generally understood to be insufficient to meet the criteria for the application of Article II of the CPPCG, according to the ICTY’s understanding in the Krstić case, evidence of the destruction of Ukrainian cultural heritage by Russian forces may serve as a means of proving the intent to cause the physical destruction of the group.²⁷⁹

Accordingly, all the elements for a claim of genocide under Article II e) of the CPPCG are established. Due to the analogous definition and elements of the crime, all the requirements under Article 6 e) of the Rome Statute are also satisfied, enabling the ICC to prosecute the perpetrators for genocide. This possibility, however, is not free from confrontation with challenges.

B. Prosecution at the ICC

1. Potential challenges

At the ICC stage, there are challenges that a prosecution of FTC as a crime of genocide may face. The main challenge for charging President Putin and CCR Lvova-Belova with genocide seems to be the difficulty of proving the special intent. Although the existence of *dolus specialis* can be demonstrated from the facts, the OTP’s decision may have been influenced by the fact that proving a war crime is easier than proving a crime of genocide, as the former does not require evidence of special intent.²⁸⁰

Additionally, the lack of legal precedent for FTC as a crime of genocide appears to be an influential factor, as previous litigation solely involving FTC has been mostly unsuccessful in courts.²⁸¹ Thus, given that the result of the trial is contingent on the court’s interpretation of the sufficiency of evidence to substantiate the special intent, it is reasonable that the Prosecutor

²⁷⁷ See 23-24.

²⁷⁸ Roger O’Keefe, *International Criminal Law* (Oxford University Press 2015) 148–149.

²⁷⁹ *Krstić Case* (n 264) para 580; see 24-25.

²⁸⁰ *Khen* (n 137) 112.

²⁸¹ *Ioffe* (n 46) 336.

was concerned about the possibility of losing the case at the trial stage.²⁸² Such an outcome could potentially compromise the reputation of the Prosecutor and of the Court itself.²⁸³

Therefore, the challenges to the prosecution of these acts as genocide are not strictly legal in nature, but are primarily pragmatic and political, and do not prevent the ICC from issuing an arrest warrant for genocide.

2. Arrest warrant: a non-official sanction?

Following the collection of evidence and the identification of a suspect, the OTP may request the Court to issue an arrest warrant. The Rome Statute, in Article 58, dictates the issuance of arrest warrants. According to this article, the Prosecutor may request such a measure, and the Pre-Trial Chamber must authorise it, provided that there are reasonable grounds to believe that the suspect has committed the crime.²⁸⁴ However, the ICC lacks enforcement powers, as it depends on cooperation from states to fulfil its objectives, particularly for making arrests.²⁸⁵

ICC state parties are obligated to cooperate fully with the court in its investigation and prosecution of crimes.²⁸⁶ Nevertheless, examples of state parties failing to cooperate with the court are not uncommon. In October 2024, for instance, the ICC found that Mongolia (which is largely economically dependent on Russia) had failed to comply with the Court's request for cooperation by not arresting President Putin when he was on its territory.²⁸⁷

This may give rise to questions about the efficacy of the ICC in ensuring the accountability of perpetrators of crimes, given that many individuals against whom warrants are issued may never be detained. In this perspective, it could be argued that the arrest warrants issued by the ICC may in fact function as a legal sanction. The issuance of these warrants may result in a series of inconveniences, which may be regarded as a form of punishment on its

²⁸² Khen (n 137) 113.

²⁸³ *ibid.*

²⁸⁴ Rome Statute of the International Criminal Court (n 2) art 58.

²⁸⁵ ICC, 'How the Court Works' (*ICC*) <<https://www.icc-cpi.int/about/how-the-court-works>> accessed 21 February 2025.

²⁸⁶ Rome Statute of the International Criminal Court (n 2) art 87.

²⁸⁷ ICC, 'Ukraine Situation: ICC Pre-Trial Chamber II Finds That Mongolia Failed to Cooperate in the Arrest and Surrender of Vladimir Vladimirovich Putin and Refers the Matter to the Assembly of States Parties' (*ICC*) <<https://www.icc-cpi.int/news/ukraine-situation-icc-pre-trial-chamber-ii-finds-mongolia-failed-cooperate-arrest-and>> accessed 21 February 2025; AP, 'Mongolia Ignores an International Warrant for Putin's Arrest, Giving Him a Red-Carpet Welcome' (*AP News*, 3 September 2024) <<https://apnews.com/article/mongolia-russia-putin-international-criminal-court-warrant-4c79850ecf409287924e3d96218abc78>> accessed 21 February 2025.

own. Arrest warrants may, for example, preclude perpetrators from entering states that are committed to enforcing the ICC.

Therefore, by classifying them as ‘fugitives’, arrest warrants have a negative impact on the image of perpetrators and thus serving as an unofficial form of punishment for individuals against whom there are reasonable grounds to believe that they have committed a crime. This means that while perpetrators may not be detained as a result of the issuance of an arrest warrant, the commission of international crimes - such as FTC - will, at a minimum, result in a permanent ‘stain’ on the records of the perpetrators, a mark that may well last for the rest of their lives.

CONCLUSION

The primary objective of this dissertation was to demonstrate that the acts of forcible transfer of Ukrainian children can be qualified as a crime of genocide under Article II e) of the CPPCG. By challenging the decision of the ICC Prosecutor to categorise the acts as war crimes, it has been showed that while the *actus reus* of the FTC satisfies the requirements for the commission of both war crimes and genocide, the *mens rea* requirement for the commission of genocide can be established.

Each of the elements of the crime of genocide under Article II e) is satisfied. Evidence has been presented that actual transfers have taken place, as Russian forces have forcibly transferred children in different forms, even by adopting legislation to facilitate this practice.

As to the mental element of the crime, the Russian authorities were revealed to have acted intentionally and to have demonstrated their specific intent on a number of occasions. The intent to physically destroy Ukrainians as a national group can be inferred from the facts of this case. The most demanding requirement, *dolus specialis*, can be established on the grounds either of forcible transfer per se or of Russia's larger programme for genocide, the genocidal 'general plan'. With respect to forcible transfer per se, it can be proved by establishing that the acts of forcible transfer would have serious physical and biological consequences, since it can be understood as an act equivalent to measures designed to prevent the reproduction and biological survival of Ukrainians. Russia's 'general plan' can be proven by a variety of evidence, including attacks on cultural objects; the 'russification' of Ukrainian children through re-education in Russian language, culture, and history; and Russia's general rhetoric against Ukrainians by numerous documents and official statements calling for the destruction of Ukraine, using dehumanising language and inciting hatred and violence against the protected group.

At the ICC prosecution level, challenges for charging President Putin and CCR Lvova-Belova with genocide have been identified. However, these are not strictly legal, but more pragmatic and political in nature, and do not prevent the court from issuing an arrest warrant for genocide.

It has been demonstrated that these acts constitute a specific form of the crime, the so-called 'cultural genocide'. This is due to the historical origins of the crime of genocide, beginning with its initial conceptualisation by Lemkin, under which FTC constituted a method of cultural genocide, one of the techniques of the crime.

FTC is considered a reminiscence of cultural genocide in the CPPCG. During the process of elaboration of the convention, the drafters decided not to incorporate Lemkin's theorisation of the crime in its entirety; their decision was to limit the punishable acts to physical and biological genocide, thus excluding the concept of cultural genocide. Nonetheless, the paragraph on "forcibly transferring children" was retained as part of the definition of the crime of genocide, making Article II e) the only reference to cultural genocide in the CPPCG.

The rejection of incorporating the full notion of cultural genocide into the convention, however, did not mean its rejection from international law as a whole. The normative concept of cultural genocide as conceived by Lemkin seems to have been covered by international law through the articulation of its various branches.

This study also proposed a perspective under which it could be argued that the ICC arrest warrants may in fact function as a legal sanction, serving as an unofficial form of punishment for individuals against whom there are reasonable grounds to believe that they have committed an international crime.

As discussed in the first chapter of this dissertation, FTC is not a new practice. In fact, the forcible transfer of Ukrainian children exhibits disturbing parallels with historical examples of FTC. The ongoing conflicts in Ukraine and Palestine demonstrate that Lemkin's concept of genocide not only uncovers the issue of FTC, but also describes other practices that remain contemporary.

BIBLIOGRAPHY

Books

Freeze D-L, *Totally Unofficial: The Autobiography of Raphael Lemkin* (Yale University Press 2013)

Grover SC, *Humanity's Children: ICC Jurisprudence and the Failure to Address the Genocidal Forcible Transfer of Children* (Springer 2013)

Guilfoyle D, *International Criminal Law* (Oxford University Press 2016)

Lemkin R, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (Second Edition, first published 1944, The Lawbook Exchange, Ltd 2008)

Novic E, *The Concept of Cultural Genocide: An International Law Perspective* (Oxford University Press 2016)

O'Keefe R, *International Criminal Law* (Oxford University Press 2015)

Schabas W, *Genocide in International Law : The Crime of Crimes* (Second Edition, Cambridge University Press 2009)

United States Government Printing Office, *Nazi Conspiracy and Aggression*, vol III (1946) <<https://archive.org/details/naziconspiracyag03unit/mode/1up?view=theater>> accessed 22 March 2025

Book chapters

Fernández Sánchez PA, 'Forced Transfer of Aliens during Armed Conflicts' in Borhan Uddin Khan and Jahid Bhuiyan (eds), *Revisiting the Geneva Conventions: 1949-2019* (Brill 2019)

Schabas W, 'Preface', *Axis Rule in Occupied Europe: Laws of Occupation - Analysis of Government - Proposals for Redress* (Second Edition, first published 1944, The Lawbook Exchange, Ltd 2008)

Schreiber H, 'Cultural Genocide - Culturecide: An Unfinished or Rejected Project of

International Law' in Grażyna Michałowska (ed), *Culture(s) in International Relations* (Peter Lang Verlag 2017)

ICC

ICC, ICC Elements of Crimes (2011)

Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I Have Decided to Proceed with Opening an Investigation." (*ICC*, 28 February 2022) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening>> accessed 21 January 2025

Letter to the Registrar of the International Criminal Court (ICC), Herman von Hebel (8 September 2015) <https://www.icc-cpi.int/iccdocs/other/Ukraine_Art_12-3_declaration_08092015.pdf> accessed 21 January 2025

Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: "I Have Been Closely Following Recent Developments in and around Ukraine with Increasing Concern." (25 February 2022) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-been-closely-following>> accessed 21 January 2025

Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Additional Referrals from Japan and North Macedonia; Contact Portal Launched for Provision of Information (*ICC*, 11 March 2022) <<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-additional-referrals-japan-and>> accessed 21 January 2025

Situation in Ukraine: ICC Judges Issue Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova (*ICC*, 17 March 2023) <<https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and>> accessed 22 January 2025

How the Court Works (*ICC*) <<https://www.icc-cpi.int/about/how-the-court-works>> accessed 21 February 2025

Ukraine Situation: ICC Pre-Trial Chamber II Finds That Mongolia Failed to Cooperate in the Arrest and Surrender of Vladimir Vladimirovich Putin and Refers the Matter to the Assembly of States Parties (*ICC*) <<https://www.icc-cpi.int/news/ukraine-situation-icc-pre-trial-chamber>>

ii-finds-mongolia-failed-cooperate-arrest-and> accessed 21 February 2025

Journal Articles

Amir R and Yezreel Valley College, 'Killing Them Softly: Forcible Transfers of Indigenous Children' (2015) 9 *Genocide Studies and Prevention* 41

Apt C, 'Russia's Eliminationist Rhetoric Against Ukraine: A Collection' *Just Security* (26 August 2024)

Human Rights Watch, "'We Had No Choice' 'Filtration' and the Crime of Transferring Ukrainian Civilians to Russia' [2022] Human Rights Watch

Ioffe Y, 'Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?' (2023) 25 *Journal of Genocide Research* 315

Khen H, 'The Forcible Transfer of Children from Ukraine as Genocide: Awakening the Dormant Prohibition of the Genocide Convention' (2024) 32 *The International Journal of Children's Rights* 78

Kress C, 'The Crime of Genocide under International Law' (2006) 6 *International Criminal Law Review*

Negri S, 'Cultural Genocide in International Law: Is the Time Ripe for a Change?' (2013) 10 *T.D.M*

Plattner D, 'Protection of Children in International Humanitarian Law' (1984) 24 *International Review of the Red Cross* 140

Schabas W, 'Genocide and Ukraine: Do Words Mean What We Choose Them to Mean?' (2022) 20 *Journal of International Criminal Justice* 843

Jurisprudence

Al Bashir Case, the Prosecutor v Omar Hassan Ahmad Al Bashir ICC-02/05-01/09 (ICC)

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Serbia and Montenegro) Judgement of 26 February 2007 (ICJ)

Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v Serbia), Judgement 15 February 2015 (ICJ)

Prosecutor v Akayesu, Case No ICTR-96-4-T, Judgement 2 September 1998 (ICTR)

Prosecutor v Bagilishema, Case No ICTR-95-1A-T, Judgment 7 June 2001 (ICTR)

Prosecutor v Krstic, Judgement August 2001 ICTY Case No IT-9833-T (ICTY)

Prosecutor v Momcilo Krajisnik Trial Chamber Judgement 27 September 2006 (ICTY)

Legal Documents

Draft Convention on the Crime of Genocide, (1947) UN Secretary General E/447

ECOSOC Ad Hoc Committee on Genocide Draft Convention on Prevention and Punishment of the Crime of Genocide <<https://undocs.org/E/AC.25/12>>

ECOSOC Ad Hoc Committee on Genocide: Summary Record of the Tenth Meeting <<https://digitallibrary.un.org/record/601776?v=pdf>> accessed 7 January 2024

ECOSOC Ad Hoc Committee on Genocide: Summary Record of the Third Meeting <http://digitallibrary.un.org/record/601682/files/E_AC.25_SR.3-EN.pdf> accessed 7 January 2025

ILC, Draft Conclusions on Identification and Legal Consequences of Peremptory Norms of General International Law (Jus Cogens) (2022)

ILC, Yearbook of the International Law Commission - Report of the International Law Commission on the Work of Its Forty-Eighth Session 1996 Vol. II (2) Doc A/51/10

Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, of 8 June 1977 (*International Committee of the Red Cross*)

UN, Bilateral agreement between the Government of the Russian Federation and the Government of Ukraine on Collaboration in the Fields of Culture, Science and Education (Adopted 31 May 1997) UNTS 3007

UN, Charter of the International Military Tribunal (Adopted 8 August 1945) 82 UNTS 280

UN OHCHR 15 March 2024 Report of the Independent International Commission of Inquiry on Ukraine to UN General Assembly

UN OHCHR 18 October 2022 Report of the Independent International Commission of Inquiry on Ukraine to UN General Assembly (2022) A/77/533

UN OHCHR 25 September 2023 Report of the Independent International Commission of Inquiry on Ukraine to UN General Assembly (2023) A/HRC/52/62

UN OHCHR March 2023 Report of the Independent International Commission of Inquiry on Ukraine to UN General Assembly (2023) A/HRC/52/62

UN Security Council, Reports of Russian Federation Forces Putting Ukrainian Civilians in “Filtration” Camps Must Be Investigated (7 September 2022) <<https://press.un.org/en/2022/sc15023.doc.htm>> accessed 18 January 2025

UNGA Sixth Committee (Third Session) Eighty-Second Meeting UN <http://digitallibrary.un.org/record/604634/files/A_C-6_SR-82-EN.pdf> accessed 8 January 2025

UNGA, Convention on the Prevention and Punishment of the Crime of Genocide (Adopted 9 December 1948) UNTS 78 278

UNGA, Convention on the Rights of the Child (Adopted 20 November 1989) UNTS 1577

UNGA, Rome Statute of the International Criminal Court (Adopted 17 July 1998) UNTS 2187

UNGA, The Crime of Genocide (Adopted on 11 December 1948) GA Res 96(I), UN Doc A/PV.55

Newspaper Articles

Al Jazeera, ‘UN Says “Credible” Reports Ukraine Children Transferred to Russia’ (*Al Jazeera*, 8 September 2022) <<https://www.aljazeera.com/news/2022/9/8/un-says-credible-reports-ukraine-children-transferred-to-russia>> accessed 15 January 2025

Associated Press, 'Volodymyr Zelenskyy Says 200,000 Children among Ukrainians Forcefully Taken to Russia' (*Firstpost*, 2 June 2022) <<https://www.firstpost.com/world/volodymyr-zelenskyy-says-200000-children-among-ukrainians-forcefully-taken-to-russia-10747981.html>> accessed 14 January 2025

Associated Press, 'Mongolia Ignores an International Warrant for Putin's Arrest, Giving Him a Red-Carpet Welcome' (*AP News*, 3 September 2024) <<https://apnews.com/article/mongolia-russia-putin-international-criminal-court-warrant-4c79850ecf409287924e3d96218abc78>> accessed 21 February 2025

El Deeb S, Shvets A and Tilna E, 'How Moscow Grabs Ukrainian Kids and Makes Them Russians' (*AP News*, 17 March 2023) <<https://apnews.com/article/ukrainian-children-russia-7493cb22c9086c6293c1ac7986d85ef6>> accessed 16 January 2025

Balachuk I, 'The Occupiers of Mariupol Dismantled the Monument to the Victims of the Holodomor' (*Pravda*, 19 October 2022) <<https://www.pravda.com.ua/news/2022/10/19/7372573/>> accessed 13 February 2025

Borger J, 'ICC to Issue First Arrest Warrants Linked to Russia's Invasion of Ukraine' *The Guardian* (13 March 2023) <<https://www.theguardian.com/law/2023/mar/13/icc-to-issue-first-arrest-warrants-linked-to-russias-invasion-of-ukraine>> accessed 21 January 2025

Commissioner Lvova-Belova, 'Maria Lvova-Belova Visited the Kaluga Region and Met with Foster Families Who Took Custody of Children from the DPR' (*Commissioner for Children's Rights to the President of the Russian Federation*, 22 July 2022) <<http://deti.gov.ru/articles/news/mariya-l-vova-belova-posetilakaluzhskuyu-oblast-ivstretilas-s-priemnymi-sem-yami-vzyavshimi-pod-opeku-detej-iz-dnr>> accessed 9 February 2025

Council of Europe, 'The Forcible Transfer and "Russification" of Ukrainian Children Shows Evidence of Genocide, Says PACE' (*Portal*, 28 April 2023) <<https://www.coe.int/en/web/portal/-/the-forcible-transfer-and-russification-of-ukrainian-children-shows-evidence-of-genocide-says-pace>> accessed 9 February 2025

Current Time, 'More Than 700,000 Ukrainian Children Taken To Russia Since Full-Scale War Started, Official Says' (*Radio Free Europe Radio Liberty*, 31 July 2023)

<<https://www.rferl.org/a/russia-children-taken-ukraine/32527298.html>>

Dolotova D, ‘Stealing Ukraine’s Future: How Many Ukrainian Children Have Been Deported by the Russians and How Will They Be Returned?’ (*Vikna TV*, 22 July 2022)

<<https://vikna.tv/video/kradut-majbutnye-ukrayiny-darya-gerasymchuk-pro-nezakonnu-deportacziyu-ukrayinskyh-ditej-rosiyanamy/>> accessed 16 January 2025

Krechetova D, ‘Russia Announces the “Adoption” of Thousands of Children Deported from Mariupol’ (*Ukrainska Pravda*, 23 August 2022)

<<https://www.pravda.com.ua/eng/news/2022/08/23/7364446/>> accessed 20 January 2025

Lipchansky M, ‘Russia deported 8,700 Ukrainian children - Ombudsman’ (20 October 2022)

<<https://ua.korrespondent.net/ukraine/4527683-rf-deportovala-8700-ukrainskykh-ditei-ombudsmen>> accessed 13 January 2025

Mordovmedia, ‘In Early July, 200 Children from Donbass Will Receive Russian Citizenship’

(*Mordovmedia*, 28 June 2022) <<https://www.mordovmedia.ru/russia/post-111848.html>> accessed 20 January 2025

Orlova V, ‘В Мелитополе оккупанты угрожают отбирать у родителей детей, которые не будут ходить в российские школы’ (4 July 2022) <<https://www.unian.net/society/v-melitopole-okkupanty-ugrozhayut-otbirat-u-roditeley-detey-kotorye-ne-budut-hodit-v-rossiyskie-shkoly-novosti-ukrainy-11889798.html>> accessed 12 January 2025

Osadcha Y, ‘Russian Children’s Rights Commissioner “Adopts” Child Abducted from Mariupol’ (*Ukrainska Pravda*, 27 October 2022)

<<https://www.pravda.com.ua/eng/news/2022/10/27/7373740/>> accessed 15 January 2025

Ostrovsky, S, Tiefenthaler A and Pavone A, ‘Video: Surviving Russia’s ‘Filtration Camps’ (20 June 2022) <<https://www.nytimes.com/video/world/europe/100000008396333/russia-filtrationcamps.html>>

Priemskaya E, ‘“Extraordinary Task”: The Russian Federation Is Preparing Amendments for the Adoption of Children from the Donbass’ (*Известия*, 5 May 2022)

<<https://iz.ru/1330152/evgeniia-priemskaja/zadacha-ekstraordinarnaia-v-rf-gotoviat-popravki-dlia-usynovleniia-detei-iz-donbassa>> accessed 15 January 2025

Sergeytsev T, 'What Russia Should Do with Ukraine' (*Ria Novosti*, 4 April 2022) <<https://ria.ru/20220403/ukraina-1781469605.html>> accessed 14 February 2025

UN, 'UN's Bachelet Concerned over Ukraine Orphans "Deported" to Russia for Adoption' (*United Nations*, 15 June 2022) <<https://news.un.org/en/story/2022/06/1120412>> accessed 5 February 2025

Urbancik J and Rudenko M, 'Forced from Home: Oleh's Journey to Escape Russian Occupation' *euronews* (17 September 2024) <<https://www.euronews.com/2024/09/07/forced-from-home-olehs-journey-to-escape-russian-occupation>> accessed 18 January 2025

Woodford J, 'From the Archives, 1997: Bringing Them Home' (*The Sydney Morning Herald*, 20 May 2022)

Reports

Australian Human Rights Commission, 'Bringing Them Home Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families' (1997)

Institute New Lines for Strategy and Policy, 'An Independent Legal Analysis of the Russian Federation's Breaches of the Genocide Convention in Ukraine and the Duty to Prevent' (May 2022)

Yale HRL, 'Russia's Systematic Program for the Re-Education and Adoption of Ukraine's Children' (2023)

Truth and Reconciliation Commission of Canada, 'Honouring the Truth, Reconciling for the Future Summary of the Final Report of the Truth and Reconciliation Commission of Canada' (Truth and Reconciliation Commission of Canada 2015)

Umland A, 'Russia's Forcible Transfers of Unaccompanied Ukrainian Children'

Walker N, 'Conflict in Ukraine: A Timeline (Current Conflict, 2022-Present)' (House of Commons Library 2024) Research Briefing CBP-9847

Websites

About the Platform (*Children of War*) <<https://childrenofwar.gov.ua/en/about-us/>> accessed 13 January 2025

Address by the President of the Russian Federation <<http://en.kremlin.ru/events/president/news/67843>> accessed 12 January 2025

Amnesty International, 'Russia: "Filtration" of Ukrainian Civilians a "Shocking Violation" of People Forced to Flee War' (*Amnesty International*, 8 September 2022) <<https://www.amnesty.org/en/latest/news/2022/09/russia-filtration-of-ukrainian-civilians-a-shocking-violation-of-people-forced-to-flee-war/>> accessed 16 January 2025

Davis J (19 July 2022) <<https://x.com/JuliaDavisNews/status/1549381189336711169?mx=2>> accessed 14 February 2025

'Deported Children' (*Children of War*) <<https://childrenofwar.gov.ua/en/>> accessed 14 February 2025

Donetsk People's Republic (*Federation Council of the Federal Assembly of the Russian Federation*) <<http://council.gov.ru/en/structure/regions/X2/>> accessed 29 January 2025

Executive Order on Determining Certain Categories of Foreign Citizens and Stateless Persons Having the Right to Apply for Russian Citizenship' (*President of Russia Official Website*, 4 January 2024) <<http://en.special.kremlin.ru/catalog/keywords/28/events/73222>> accessed 20 January 2025

ICRC, 'Commentary of 1958 to Article 49 of the Convention (IV) Relative to the Protection of Civilian Persons in Time of War' (*IHL databases*) <<https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-49/commentary/1958>> accessed 27 March 2025

Indian Residential School Apology' (*National Centre for Truth and Reconciliation*, 21 December 2020) <<https://nctr.ca/exhibits/indian-residential-school-apology/>, <https://nctr.ca/exhibits/indian-residential-school-apology/>> accessed 28 January 2025

Lugansk People's Republic (*Federation Council of the Federal Assembly of the Russian Federation*) <<http://council.gov.ru/en/structure/regions/X1/>> accessed 29 January 2025

Lvova-Belova M, 'Telegram: Contact @malvovabelova' (28 September 2022) <<https://t.me/malvovabelova/605>> accessed 5 February 2025

Ministry for Development of Communities and Territories at Ukraine, 'List of Temporarily Occupied Territories of Ukraine' <<http://mtu.gov.ua/en/content/perelik-timchasovo-okupovanih-teritoriy.html>> accessed 26 March 2025

Ministry of Foreign Affairs of Ukraine, 'Comment of the Ministry of Foreign Affairs of Ukraine Regarding the Adoption by the Russian Federation of a Legal Act That Violates the Legal Rights of Children - Citizens of Ukraine' (*Ministry of Foreign Affairs of Ukraine*, 6 January 2024) <<https://mfa.gov.ua/en/news/komentar-mzs-ukrayini-shchodo-prijnyattya-rf-normativno-pravovogo-akta-yakij-porushuye-zakonni-prava-ditej-gromadyan-ukrayini>> accessed 20 January 2025

National Sorry Day 2020 (*Reconciliation Australia*, 25 May 2020) <<https://www.reconciliation.org.au/national-sorry-day-2020/>> accessed 27 January 2025

Parliament of Ukraine, 'Declaration on the Genocide Committed by the Russian Federation in Ukraine' (14 April 2022) <[https://itd.rada.gov.ua/billinfo/Додаток\(eng\).pdf](https://itd.rada.gov.ua/billinfo/Додаток(eng).pdf)> accessed 13 February 2025

President of Russia, 'Meeting with Commissioner for Children's Rights Maria Lvova-Belova' <<http://en.kremlin.ru/events/president/news/67949>> accessed 12 January 2025

Russia's Official Internet Platform for Legal Information, 'Decree of the President of the Russian Federation of 30.05.2022 No. 330' (30 May 2022) <<http://publication.pravo.gov.ru/Document/View/0001202205300008>> accessed 20 January 2025

United States Department of State, 'Russia's Filtration Operations and Forced Relocations' (6 September 2022) <<https://www.state.gov/russias-filtration-operations-and-forced-relocations/>> accessed 17 January 2025

United States Holocaust Memorial Museum, 'Lebensborn Program' (*Holocaust Encyclopedia*, 29 September 2020) <<https://encyclopedia.ushmm.org/content/en/article/lebensborn-program>> accessed 22 March 2025

Others

Douglas Dyck B, 'Hitler's Lebensborn Children: Kidnappings in German-Occupied Poland' (2013) 12 *WWII History* 20

Schabas W, 'Problems of International Codification' (2000)

Ukraine's Taken Children with Yulia Ioffe and Nathaniel Raymond
<<https://www.asymmetricalhaircuts.com/episodes/episode-78-ukraines-taken-children-with-yulia-ioffe-and-nathaniel-raymond/>> accessed 14 February 2025