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Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide?



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Introduction

Since the onset of the latest wave of aggression instigated by the Russian Federation against Ukraine, numerous credible reports have emerged of Ukrainian children¹ from temporarily occupied territories being forcibly transferred² to the territory of Russia. While the figures provided by different sources are inconsistent, ranging from 19,500 to 570,000,³ it is evident that forcible transferring of Ukrainian children is a systematic and extensive practice.⁴

Forcible transferring of children from Ukraine may potentially violate multiple international law provisions.⁵ In its latest report, the UN Independent International Commission of Inquiry on Ukraine concluded that the transfer and deportation of Ukrainian children to Russia constitute violations of Article 147 of the Geneva Convention IV, Articles 74 and 85(4)(b)-(5) of Additional Protocol I to the Geneva Conventions, and Article 8(1) of the Convention of the Rights of the Child.⁶ On 17 March 2023, the International Criminal

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¹ The article uses the term “child” and “children” in the sense of Article 1 of the Convention on the Rights of the Child: “a child means every human being below the age of eighteen years.” Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 1. The phrase “Ukrainian children” is used to mean Ukrainian children who are members of a national group, and not an ethnic group, as discussed in Part 3.

² The terms “forcible transfer,” “forcible deportation,” and “forcible removal” are used interchangeably.

³ For a more detailed discussion of the numbers of transferred Ukrainian children, see Part 2.

⁴ European Parliament, “Joint Motion for a Resolution on Human Rights Violations in the context of the Forced Deportation of Ukrainian Civilians to and the Forced Adoption of Ukrainian Children in Russia,” RC-B9-0388/2022, 14 September 2022, para (i), https://www.europarl.europa.eu/doceo/document/RC-9-2022-0388_EN.html

⁵ E.g. Articles 49 (1) and 147 of the Fourth Geneva Convention, Article 85(4)(a) of Additional Protocol I to the Geneva Conventions, Articles 3, 7, 8, 9, 16, 21 and 35 of the Convention on the Rights of the Child (CRC), Articles 8 (2)(a)(vii), 8 (2)(b)(viii), or Article 7(1)(d) of the Rome Statute of the International Criminal Court (ICC), and other international law instruments. For the analysis of international humanitarian law and children’s rights law obligations with regard to deportation of children, see Alison Bisset, “Ukraine Symposium – Russia’s Forcible Transfer of Children,” *Lieber Institute West Point*, 5 October 2022, <https://lieber.westpoint.edu/russias-forcible-transfer-children/>; “Ukraine Symposium—Russia’s ‘Re-education’ Camps: Grave Violations against Children in Armed Conflict,” *Lieber Institute West Point*, 20 March 2023, <https://lieber.westpoint.edu/russias-re-education-camps-grave-violations-against-children-armed-conflict/>; Oleksii Kaminetskyi and Inna Zavorotko, “Ukraine Symposium—Russian Crimes against Children,” 14 September 2022, <https://lieber.westpoint.edu/russian-crimes-against-children/>

⁶ UN OHCHR, Report of the Independent International Commission of Inquiry on Ukraine, UN Doc A/HRC/52/62, 15 March 2023, para 102, https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A_HRC_52_62_AUV_EN.pdf

Court (ICC) issued warrants of arrest for two individuals in the situation in Ukraine: President Putin and Commissioner L'vova-Belova for the war crime of unlawful deportation of population (children) and that of unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation (under Articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Rome Statute).⁷

International lawyers⁸ remain divided on extent to which Russia's actions in Ukraine constitute genocide under any of the paragraphs of Article II⁹ of the Genocide Convention.¹⁰ Predictably, the fundamental challenge lies with proving *dolus specialis*, a special intent to physically destroy the group, as required by the genocide definition.¹¹ The UN Independent International Commission of Inquiry on Ukraine has faced the same stumbling block. It acknowledged that, to date, it has not "found that there has been a genocide within Ukraine," but it "noted that there are some aspects which may raise questions with respect to [genocide] ... [f]or instance, certain utterances in Russian media which are targeting groups."¹²

Against this background, this article examines whether the forcible transferring of children from Ukraine commencing on 24 February 2022¹³ satisfies the criteria for genocide under Article II (e) of the Genocide Convention. Based on the available information and evidence, I contend that forcible transferring of Ukrainian children to the Russian Federation satisfies the *prima facie* elements of the crime of genocide under Article II (e) of the Genocide Convention that entails both state responsibility and international criminal responsibility. The material available on the website of the Commissioner for Children's Rights under the President of the Russian Federation, Maria L'vova-Belova,¹⁴ examined

⁷ ICC, Situation in Ukraine: ICC Judges Issued Arrest Warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, 17 March 2023, <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and-maria-alekseyevna-lvova-belova>. See also Mark Kersten, "Why Did the International Criminal Court Focus on the Transfer and Deportation of Children from Ukraine to Russia?" *Justice in Conflict*, 21 March 2023, <https://justiceinconflict.org/2023/03/21/why-did-the-international-criminal-court-focus-on-the-transfer-and-deportation-of-children-from-ukraine-to-russia/>; Miles Jackson, "The ICC Arrest Warrants against Vladimir Putin and Maria Lvova-Belova—An Outline of Issues," *EJIL:Talk!*, 21 March 2023, <https://www.ejiltalk.org/the-icc-arrest-warrants-against-vladimir-putin-and-maria-lvova-belova-an-outline-of-issues/>

⁸ In contrast, social scientists, who focus on patterns of group destruction rather than strict legal criteria in their analysis of genocide, seem to agree that Russia's actions in Ukraine are in fact genocide. Martin Shaw, "Russia's Genocidal War in Ukraine: Radicalization and Social Destruction," *Journal of Genocide Research* (2023) 9; Alex Hinton, "A Year On, We Have Clear Evidence of Genocide in Ukraine," *The Hill*, 19 February 2023, <https://thehill.com/opinion/international/3859439-a-year-on-we-have-clear-evidence-of-genocide-in-ukraine/>

⁹ Article II of the Genocide Convention and Article 6 of the Rome Statute are substantively similar, so further analysis of Article II is relevant for the interpretation of Article 6.

¹⁰ See e.g. the scholars arguing that genocide cannot be proven in this case: William A. Schabas, "Genocide and Ukraine: Do Words Mean What We Choose Them to Mean," *Journal of International Criminal Justice* 20, 4 (2022): 843–57; Noëlle Quéniwet, "The Conflict in Ukraine and Genocide," *Journal of International Peacekeeping* 25, no. 2 (2022): 141–54. Cf. Denis Azarov, Dmytro Koval, Gaiane Nuridzhanian, and Volodymyr Venher, "Genocide Committed by the Russian Federation in Ukraine: Legal Reasoning and Historical Context," *SSRN Electronic Journal* (2022): 28–9, <https://ssrn.com/abstract=4217444>; Iryna Marchuk and Aloka Wanigasuriya, "Beyond the False Claim of Genocide: Preliminary Reflections on Ukraine's Prospects in Its Pursuit of Justice at the ICJ," *Journal of Genocide Research* (2022): 12–20.

¹¹ See Marchuk and Wanigasuriya "Beyond the False Claim of Genocide," 14.

¹² Euronews, "Murder, Torture and Rape but No Genocide—the UN's Latest Report on Ukraine," *Euronews*, 16 March 2023, <https://www.euronews.com/2023/03/16/murder-torture-and-rape-but-no-genocide-the-uns-latest-report-on-ukraine>.

¹³ While it is beyond the scope of this article, there are credible reports that the Russian Federation forcibly transferred children from the temporarily occupied Crimea to the Russian Federation starting in 2014. Regional Center for Human Rights (RCHR) and Lemkin Institute for Genocide Prevention, Submission to the Registry of the International Criminal Court pursuant Article 15 of the Rome Statute on "Responsibility of Russian Federation Officials for Genocide in Ukraine, in particular, for Forcibly Transferring Children of the Group to Another Group," 25 October 2022, https://www.lemkininstitute.com/_files/ugd/9bc553_b7b957498faa441cbe88e21bf717bfe7.pdf

¹⁴ Commissioner L'vova-Belova, <http://deti.gov.ru/> (accessed March 19, 2023).

in this article, is of particular significance for this purpose, as it appears to provide comprehensive documentation of both the forcible transferring of Ukrainian children and the plans and motives behind such actions.

In this article, I trace and analyse available evidence (in the Russian and Ukrainian languages), including the official statements and documents issued by the relevant state authorities and officials of both Russia and Ukraine (including the heads of state, ombudspersons, child commissioners, members of parliament) concerning forcible transfers of Ukrainian children from the areas of Eastern and Southern Ukraine that are temporarily occupied by the Russian Federation. Furthermore, the article analyses the statements of state-owned media in the Russian Federation, such as RT (or Russia Today, a television channel) and RIA Novosti (the primary Russian news agency),¹⁵ in the light of the role of media propaganda can play in incitement to genocide.¹⁶

Additionally, this article reviews the statements of international organisations and NGOs, including by the United Nations (specifically the Independent International Commission of Inquiry on Ukraine), ICC, the Organization for Security and Co-operation (OSCE), Human Rights Watch, Amnesty International, and journalistic investigations available at the time of writing. Ukrainian NGOs at the grass root level, particularly the Center for Civil Liberties,¹⁷ Regional Center for Human Rights,¹⁸ and Kharkiv Human Rights Protection Group,¹⁹ have been instrumental in documenting human rights violations committed by the Russian Federation on the territory of Ukraine. These NGOs have kindly provided the information available to them for the purposes of writing of this article.

In Part 1 of this article, a brief overview of Article II (e) of the Genocide Convention is provided, along with the analysis of the relationship between forcible transfer of children and cultural genocide, and previous attempts to qualify forcible transfers of children as genocide. In Parts 2 and 3, I examine each element of Article II (e) of the Genocide Convention in relation to the factual background and evidence available. Specifically, Part 2 outlines the physical element of genocide in relation to forcible transfers of Ukrainian children to the Russian Federation. Part 3 argues that the Russian authorities and state organs had the requisite mental state to carry out forcible transfers of Ukrainian children, with the intention of partially destroying Ukrainians as a national group. In conclusion, I evaluate the prospects of existing legal actions concerning forcible transfers of Ukrainian children under international law and assess potential opportunities for strategic litigation.

¹⁵ See Anton Shirikov, "Who Trusts State-Run Media? Polarized Perceptions of News Credibility in Non-Democracies," *SSRN Electronic Journal* (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3686299

The President of the Russian Federations has himself acknowledged that Russian state television represents Russian national interests. Timothy Snyder, "Playing the Victim: Testimony to the United Nations Security Council on Russian Hate Speech," Timothy Snyder Substack, 14 March 2023, <https://t.co/ZreJT27Dus>

¹⁶ See *Prosecutor v. Nahimana, Barayagwiza, Ngeze*, Case No. ICTR-99-52-T (3 December 2003), discussed in Richard A Wilson, "Inciting Genocide with Words," *Michigan Journal International Law* 36 (2015): 277. See also Pyotr Sapozhnikov and Emily Laskin, "Charged with Incitement to Genocide: A Rwandan Propagandist Goes on Trial in the Hague—Do His Russian 'Colleagues' Await a Similar Fate?" *Meduza*, 18 November 2022, <https://meduza.io/en/feature/2022/11/19/charged-with-incitement-to-genocide>.

¹⁷ Center for Civil Liberties, <https://ccl.org.ua/en/> (accessed March 22, 2023).

¹⁸ RCHR, <https://rchr.org.ua/> (accessed March 22, 2023).

¹⁹ Kharkiv Human Rights Protection Group, <https://khpg.org/en/> (accessed March 22, 2023); Documenting War Crimes in Ukraine, <https://t4pua.org/en/> (accessed March 22, 2023).

Article II (e) of the Genocide Convention and Cultural Genocide

While Article II of the Genocide Convention lists all five punishable acts without any hierarchy, forcible transferring of children has only recently gained attention in international law scholarship.²⁰ The public²¹ and even some scholars²² have tended to associate genocide only with killing or physical harm, which may explain why Russian politicians and propagandists have been discussing forcible transferring and re-education of Ukrainian children more openly than mass murder, although there have been frequent calls for the extermination of Ukrainians as a nation.²³

Article II (e) of the Genocide Convention prescribes that one of five punishable acts that amounts to genocide is the forcible transfer of children from a protected group to another group, which is conducted “with intent to destroy” the group, “as such,” at least “in part.”²⁴ This provision is based on the premise that children become estranged from the identity of their group of origin, including their language, traditions, and culture.²⁵ In this sense, forcible child transfer depletes the membership of a certain group, as children undergo the loss of family, kinship, and identity.

According to several scholars, the inclusion of forcible child transfer as a punishable act under the Genocide Convention was not a result of a detailed discussion by the drafters, but rather “almost as an afterthought.”²⁶ Paragraph (e) has been described as “enigmatic”²⁷ as the concept of so-called “cultural genocide” was rejected by the drafters.²⁸ Raphael Lemkin, the author of the concept of “genocide,” placed great emphasis on the cultural aspects of genocide.²⁹ Along with the “biological” dimension of

²⁰ See e.g. Dimitrios A Kourtis, “The Greek Civil War and Genocide by Forcible Transfer of Children” *Journal of Genocide Research* (2022); Kurt Mundorff, “Other Peoples’ Children: A Textual and Contextual Interpretation of the Genocide Convention, Article 2(e),” *Harvard International Law Journal* 50, no. 1 (2009): 61; Sonja C. Grover, *Child Soldier Victims of Genocidal Forcible Transfer: Exonerating Child Soldiers Charged With Grave Conflict-related International Crimes* (Berlin: Springer Publishing, 2012).

²¹ Alexandra Smith, “Genocide: To Use or Not To Use,” *Human Rights Pulse*, 26 April 2021, <https://www.humanrightspulse.com/mastercontentblog/genocide-to-use-or-not-to-use>

²² Israel Charny, “Toward a Generic Definition of Genocide,” in *Genocide: Conceptual and Historical Dimensions*, ed. George Andreopoulos (Philadelphia: University of Pennsylvania Press, 1994), 64–94.

²³ Russian Media Monitor, “Russian Leader in Donetsk Says Millions of Ukrainians Will Be Killed Unless They Submit to Russia,” *Russian Media Monitor*, 2 November 2022, <https://www.youtube.com/watch?v=zClrdGzC2yA>

²⁴ “In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group.” Genocide Convention, Article II.

²⁵ Florian Jeßberger, “The Definition and the Elements of the Crime of Genocide,” in *The UN Genocide Convention: A Commentary*, ed. Paola Gaeta (Oxford: Oxford University Press, 2009), 103.

²⁶ William Schabas, *Genocide in International Law: The Crimes of Crimes* (Cambridge: Cambridge University Press, 2009), 201; Ruth Amir, *Twentieth Century Forcible Child Transfers: Probing the Boundaries of the Genocide Convention* (Washington, DC: Lexington Books, 2018), 44.

²⁷ Schabas, *Genocide in International Law*, 201. Cf. Kourtis, Grover, and van Krieken who disagreed that the eventual inclusion of the “forcible transfer” clause was “enigmatic” or an “afterthought.” Kourtis, “The Greek Civil War and Genocide by Forcible Transfer of Children” 14; Sonja V. Grover, *Humanity’s Children ICC Jurisprudence and the Failure to Address the Genocidal Forcible Transfer of Children* (Berlin: Springer Publishing, 2013) 40; Robert van Krieken, “Rethinking Cultural Genocide: Aboriginal Child Removal and Settler-Colonial State Formation,” *Oceania* 75 (2004): 136.

²⁸ International Law Commission, Report of the International Law Commission on the Work of its Forty-eighth Session, 6 May–26 July 1996, vol II, Part Two, 45–46, para 12.

²⁹ Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* (New York: Columbia University Press, 1994), 84–5.

genocide,³⁰ he believed that the destruction of a people was inevitably linked to an assault on culture, language, and religion, without which groups could not preserve their spiritual and moral unity.³¹ As a result, early drafts of the Genocide Convention featured cultural genocide, which included “destroying the specific characteristics of the group” as acts of genocide.³²

Despite cultural genocide being removed from the genocide definition, the drafters seldom contested “forced transfer of children,” as a punishable act,³³ particularly owing to the work of the Greek delegation at the drafting stage of the Convention. The Greek state wanted to include child transfer to criminalize the practice of leftist partisans removing Greek children from conflict zones into Yugoslavia.³⁴ In this Cold War context, a predictable objection to the Greek campaign was voiced by the Soviet delegate, questioning the historical existence of any instances of genocide committed through the transfer of children.³⁵ Coincidentally, at that time, the Soviet Union had already implemented a policy of “Russification,” which involved forcefully separating indigenous Siberian children from their families and placing them in remote Soviet schools.³⁶ Additionally, during the 1940s, the USSR had also carried out *en masse* deportations of women and children from the Baltic states.³⁷ The practice of forcible transferring of children from one group to another is not unique to the USSR but has a long history with multiple examples in various parts of the world, including the removal of indigenous children in North America and Australia, Hitler’s “Germanization” of Polish children,³⁸ removal of Yenish children in Switzerland, and the Inuit in Danish-ruled Greenland.³⁹

According to a widely shared view, “forcible transfer of children” clause remained in the text of the Genocide Convention, because it was reframed as an example of a biological genocide instead of a cultural genocide.⁴⁰ The drafters argued that forcible 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.”⁴¹ The drafters further contended this practice could be “as effective a means of destroying a human group as that of imposing measures intended to prevent births, or inflicting conditions of life likely to cause death.”⁴²

³⁰ A. Dirk Moses, *The Problems of Genocide: Permanent Security and the Language of Transgression* (Cambridge: Cambridge University Press, 2021) 189, 214.

³¹ UN, ECOSOC. “Draft Convention on the Crime of Genocide,” *UN Doc. E/447* (1947): 27.

³² Schabas, *Genocide in International Law*, 207.

³³ *UN Doc. E/447*; *UN Doc. E/C.2/52*; *UN Doc. A/C.6/SR.82* (Vallindas, Greece). See also Jeßberger, “The Definition and the Elements of the Crime of Genocide,” 103.

³⁴ On the Greek amendment to the draft of the Genocide Convention and on the question of the Greek children (and practice of *paidomazoma*) and its ontological connection with Article II (e) of the Genocide Convention see Kourtis, “The Greek Civil War,” 14–18.

³⁵ Schabas, *Genocide in International Law*, 204.

³⁶ Alexia Bloch, *Red Ties and Residential Schools: Indigenous Siberians in a Post-Soviet State* (Philadelphia: University of Pennsylvania Press, 2004), 94–104.

³⁷ Lauri Mälksoo, “Soviet Genocide? Communist Mass Deportations in the Baltic States and International Law,” *Leiden Journal of International Law* 14 (2001): 757.

³⁸ See Isabel Heinemann, “‘Until the Last Drop of Good Blood’: The Kidnapping of ‘Racially Valuable’ Children and Nazi Racial Policy in Occupied Eastern Europe,” in *Genocide and Settler Society*, ed. A. Dirk Moses (New York and Oxford: Berghahn Books, 2012), 244–66.

³⁹ Hedi Viterbo, *Problematizing Law, Rights, and Childhood in Israel/Palestine* (Cambridge: Cambridge University Press, 2021), 161–2.

⁴⁰ Mundorff, “Other Peoples’ Children,” 111–2; van Krieken, “Rethinking Cultural Genocide,” 135.

⁴¹ *UN Doc. A/C.6/SR.82* (Vallindas, Greece) 186; (Rios, Uruguay) 189.

⁴² *Ibid.* (Vallindas, Greece), 186–7.

The differentiation between forcible transfers of children as a form of cultural and biological genocide has received scholarly attention in relation to forcible transfers of indigenous children in Australia,⁴³ discussed below. In particular, scholars seemed to distinguish between the assimilation of children from a certain group, which could result in cultural genocide, and the biological absorption of children, which may lead to the physical destruction of the group.⁴⁴ However, the ordinary meaning of the terms in Article II (e) does not support this distinction. The text of Article II (e) does not provide for the punishable act to be completed only when the transferred children had been completely assimilated in the new group. In fact, the text of Article II (e) is also silent on the necessity of physical and biological effects altogether for forcible transfer of children to be committed.

As with other instances of genocide, the International Court of Justice (ICJ) interpreted Article II (e) of the Genocide Convention restrictively, limiting it to forcible transfers of children that leads to biological destruction of the group, which “can have consequences for the group’s capacity to renew itself, and hence to ensure its long-term survival.”⁴⁵ The primary source of the ICJ’s interpretation is the *travaux préparatoires* of the Genocide Convention, described above.⁴⁶ Three aspects of this interpretation may be questioned. First, this reading is at odds with the express language of Article II (e) of the Genocide Convention, as explained above. Secondly, this approach disregards the relationship between the *travaux préparatoires* (as per Article 32 of the Vienna Convention on the Law of Treaties (VCLT)) and other elements of treaty interpretation (as per Article 31 of the VCLT), according to which the *travaux préparatoires* is subordinate to the general rule,⁴⁷ which requires to focus on the text of the treaty itself.⁴⁸ The use of *travaux préparatoires* for treaty interpretation is meant to be only an exceptional occurrence under Article 32 of the VCLT⁴⁹ and cannot override the meaning of treaty established under the general rule of interpretation.⁵⁰

Thirdly, even if recourse to the *travaux préparatoires* was justified in this case, it may be argued that the preparatory work has been misinterpreted, as the court failed to consider the direct normative antecedent of this provision, specifically the case of Greek children.⁵¹ Although cultural genocide was excluded from the drafting

⁴³ A. Dirk Moses, “Genocide and Settler Society in Australian History,” in Moses, *Genocide and Settler Society*, 18.

⁴⁴ Russell McGregor, “Governance, Not Genocide: Aboriginal Assimilation in the Postwar Era,” in *ibid.*, 294; Robert Manne, “Aboriginal Child Removal and the Question of Genocide, 1900–1940,” in *ibid.*, 218.

⁴⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Judgment, ICJ Reports (2015), para 136.

⁴⁶ The ICJ referred to the Report of the *Ad Hoc* Committee on Genocide, 5 April to 10 May 1948, United Nations, *Proceedings of the Economic and Social Council, Seventh Session, Supplement No. 6, UN Doc. E/794*; and United Nations, *Official Documents of the General Assembly, Part I, Third Session, Sixth Committee, Minutes of the Eighty-Third Meeting, UN Doc. A/C.6/SR.83*, 193–207.

⁴⁷ Oliver Dorr, “Article 32: Supplementary Means of Interpretation,” in *Vienna Convention on the Law of Treaties: A Commentary*, ed. Oliver Dorr and Kirsten Schmalenbach (Berlin: Springer, 2018), 618.

⁴⁸ The ICJ has repeatedly emphasized that “[i]nterpretation must be based above all upon the text of the treaty.” See e.g. *Territorial Dispute (Libyan Arab Jamahiriya v. Chad)*, Judgment, ICJ Reports (1994), para 41.

⁴⁹ There are also commentators who argue that Article 32 of the VCLT has not relegated the *travaux* to an inferior position in the treaty interpretation process. This is, however, a minority view. See e.g. Julian D. Mortenson, “The *Travaux* of *Travaux*: Is the Vienna Convention Hostile to Drafting History?” *American Journal of International Law* 107, (2013): 780.

⁵⁰ Alexander Orakhelashvili, “The Recent Practice on the Principles of Treaty Interpretation,” in *40 Years of the Vienna Convention*, ed. Alexander Orakhelashvili and Sarah Williams (London: British Institute of International and Comparative Law, 2010), 151.

⁵¹ See Kourtis, “The Greek Civil War,” 19.

of the Genocide Convention, the Greek amendment that subsequently informed Article II (e) aimed to safeguard not only the cultural or biological ties between children and their respective group, but also the group's capacity to determine the fate of children and to shape their biological life, political, ideological, and military future.⁵² Therefore, a comprehensive reading of the *travaux préparatoires* suggests that states ought to look beyond a dichotomous categorization of forcible transfers as either biological or cultural genocide.⁵³ Rather, they should take into account a complex set of methods employed to alienate children from their collective identity. This interpretation seems to also be sociologically sound, as social collectivities, such as national groups, are not biologically determined and are more than the sum of their individual members.⁵⁴

As will be demonstrated in Parts 2 and 3 below, the forcible transfers of Ukrainian children are likely to satisfy even the ICJ's narrow interpretation of Article II (e). However, as explained above, the ICJ's previous interpretation is not the sole or inevitably correct one.

Previous Attempts to Qualify Forcible Transfers of Children as Genocide under the Genocide Convention

After the adoption of the Genocide Convention, there have been multiple attempts to bring responsibility for forcible transferring of children to another group in the meaning of Article II (e) of the Genocide Convention.⁵⁵ Notwithstanding, the courts did not find any violations of Article II (e) with respect to all instances referenced below. Arguably, the scarcity of jurisprudence on Article II (e) could potentially provide the courts with greater flexibility in their assessment of the forcible transfers of Ukrainian children.

In the *Bosnian Genocide case*, the ICJ considered whether "procreative rape" of Bosniak women by Serb men fell under Article II (e) of the Genocide Convention.⁵⁶ The ICJ did not find any evidence of the policy of forced pregnancy or the aim to transfer children of the protected group to another group within the meaning of Article II (e) of the Genocide Convention.⁵⁷ The International Criminal Tribunal for Rwanda (ICTR), in the *Akayesu case*, indicated that rape and forced impregnation may constitute a method of forcibly transferring children of a protected group under Article II (e) of the Genocide Convention, but did not expand on the issue.⁵⁸

The forcible removal of indigenous children to residential schools or missions in Australia, Canada, and the US was also evaluated within the framework of genocide. In Canada, the Canadian government had operated 139 residential schools from late

⁵² *Ibid.*, 39.

⁵³ *Ibid.*, 37.

⁵⁴ See Shaw, "Russia's Genocidal War in Ukraine," 7, who argues that the only sociologically coherent view of genocide is that it is a social destruction, carried out in a variety of means (e.g. through the destruction of a group's culture, institutions, social networks, ways of life, and territorial presence) rather than simply a physical destruction.

⁵⁵ The following overview is not comprehensive and is provided as a summary background for the analysis in Parts 2 and 3.

⁵⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, ICJ Reports (2007) (*Bosnian Genocide case*), para 362. See also Anthony Marino, "Bosnia v. Serbia and the Status of Rape as Genocide under International Law," *Boston University International Law Journal* 27 (2009): 222–6.

⁵⁷ *Bosnian Genocide case*, para 367.

⁵⁸ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment (2 September 1998), para 509. See also Charli R. Carpenter, "Surfacing Children: Limitations of Genocidal Rape Discourse," *Human Rights Quarterly* 22 (2000): 428–77.

1800s to the 1990s that forcibly removed approximately 150,000 indigenous children from their families and placed in institutions designed to destroy their identities.⁵⁹ The 2015 Truth and Reconciliation Commission report concluded that residential school system amounted to “cultural genocide.”⁶⁰ A potential reason for the Truth and Reconciliation Commission to refrain from labelling experiences of indigenous people in Canada as “genocide” under the Genocide Convention was a desire to avoid legal debate that could have detracted from the voices of survivors.⁶¹ While many scholars believed that experiences of indigenous people in Canada fell within Article II (e) of the Genocide Convention,⁶² it was difficult to establish *dolus specialis* over the extended history of the residential school system in Canada.⁶³ Although Canadian courts have regularly found the Genocide Convention inapplicable to the forcible removal of indigenous children to residential schools owing to the principle of non-retroactivity and to the “political” nature of genocide allegations, extensive litigation against churches and the federal government was brought in the 1990s, including multiple class action suits by survivors.⁶⁴ A settlement was reached that prescribed various compensatory mechanisms.⁶⁵ In 2012, a class-action lawsuit was initiated by 325 First Nations, seeking compensation for the loss of language and culture inflicted by Canada’s residential school system.⁶⁶ On 21 January 2023, the Canadian government agreed to pay \$2.8 billion to settle the lawsuit.⁶⁷

In Australia, from 1910 to 1970, an estimated of 20,000 to 25,000 indigenous children were forcefully separated from their families.⁶⁸ The 1997 report by the Australian Human Rights Commission “Bringing Them Home” argued that the policy of forcible removal of children from indigenous Australians to other group could be considered a genocide within the meaning of Article II (e) of the Genocide Convention.⁶⁹ Following the report, claims of genocide were made by indigenous people in Australian courts. As in most genocide related caselaw, the special intent has proven to be the stumbling block.⁷⁰ Indigenous plaintiffs brought claims against Australian state for the acts of genocide committed against Aboriginal and Torres Strait Islander peoples, the majority of which were unsuccessful.⁷¹ In the first “stolen generations” case, *Kruger v Commonwealth*, the High Court

⁵⁹ Andrew Woolford and Jeff Benvenuto, “Canada and Colonial Genocide,” *Journal of Genocide Research* 17 (2015): 373.

⁶⁰ Truth and Reconciliation Commission of Canada, *Honouring the Truth, Reconciling for the Future* (Ottawa: Truth and Reconciliation Commission of Canada, 2015), 1, https://ehprnh2mwo3.exactdn.com/wp-content/uploads/2021/01/Executive_Summary_English_Web.pdf

⁶¹ David B. MacDonald, “Canada’s History Wars: Indigenous Genocide and Public Memory in the United States, Australia and Canada,” *Journal of Genocide Research* 17 (2015): 424–5.

⁶² See e.g. Tamara Starblanket, “‘Kill the Indian in the Child’: Genocide in International Law,” in *Indigenous Peoples as Subjects of International Law*, ed. Irene Watson (Routledge 2017).

⁶³ David B. MacDonald and Graham Hudson, “Residential Schools in Canada,” *Canadian Journal of Political Science* 2 (2012): 442.

⁶⁴ James R. Miller, “Reconciliation with Residential School Survivors: A Progress Report,” in *Aboriginal Policy Research*, ed. Jerry White, Julie Peters, and Dan Beavon (Toronto: Thompson Educational, 2010), 138.

⁶⁵ MacDonald, “Canada’s History Wars,” 414.

⁶⁶ Madeline Halpert, “Canada Settles Residential Schools Lawsuit for \$2.8bn,” *BBC*, 21 January 2023, <https://www.bbc.co.uk/news/world-us-canada-64362246>

⁶⁷ Aljazeera, “Canada Settles Residential School Reparations Lawsuit,” *Aljazeera*, 22 January 2023, <https://www.aljazeera.com/news/2023/1/22/canada-to-pay-indigenous-more-than-2bn-over-residential-schools>

⁶⁸ MacDonald, “Canada’s History Wars,” 417.

⁶⁹ 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* (Sydney: Australian Human Rights Commission, 1997), 190, 239, 272–3.

⁷⁰ See Anna Haebich, “‘Clearing the Wheat Belt’: Erasing the Indigenous Presence in the Southwest of Western Australia,” in Moses, *Genocide and Settler Society*, 286.

of Australia argued that allegations of post-1951 violations of Article II (e) of the Genocide Convention were invalid since the powers granted by the 1918 Aboriginals Ordinance, which allowed for forcible children transfers, were supposed to be used in the best interests of Aboriginal children or the Aboriginal community as a whole, and not with a genocidal intent.⁷²

In the US, the government was confirmed to have supported or operated 408 Indian federal boarding schools from 1819 to 1969.⁷³ In 2021, the US Department of Interior created the Federal Indian Boarding School Initiative to investigate the US federal Indian boarding school policies, as a result of which Native American children were forcibly removed from reservations and relocated to federal or religious boarding schools.⁷⁴ The initial report of this initiative has confirmed that the US government engaged in direct targeting of American Indian, Alaska Native, and Native Hawaiian children as part of a policy of cultural assimilation that was executed concurrently with the Indian territorial dispossession.⁷⁵ The report noted emotional, physical and sexual abuse, malnutrition; children were forbidden from speaking their own languages and from engaging in their cultural practices.⁷⁶ The initiative and the report, however, focused only on “cultural assimilation” and not genocide in the sense of Article II (e) of the Genocide Convention. The US Senate previously recognized and apologized for the mistreatment (“many instances of violence, maltreatment, and neglect”) of Native Americans with no express mention of the Indian boarding schools or genocide, where it also excluded the possibility of any claims against the US or settlement of any claim against the US.⁷⁷ Despite their efforts to seek justice through civil litigation in the US courts, survivors have thus far been unsuccessful in their pursuit.⁷⁸

The most recent endeavour to assess the forcible removal of children in the context of genocide was undertaken in relation to maltreatment of the Yazidi community by ISIS. The UN Commission of Inquiry on Syria found reasonable grounds to believe that ISIS had committed genocide against Yazidi, which included the commission of the prohibited act of forcibly transferring Yazidi children,⁷⁹ in addition to other four punishable acts. The UN Commission found that ISIS transferred Yazidi children in two ways: girls were sold as sex slaves to ISIS fighters in Syria and Iraq, while boys were sent to ISIS training bases in Syria and Iraq and indoctrinated into ISIS ideology.⁸⁰ The UN Commission inferred the genocidal intent from the perpetrator’s deliberate and systematic physical

⁷¹ See e.g. *Kruger v. The Commonwealth*, *Australian Law Review* 146 (1997); *Nulyarimma v. Thompson* (1999); *Cubillo v. Commonwealth* (2001). Cf. *Trevorrow v. State of South Australia* (2007), where the first indigenous plaintiff successfully claimed damages arising from his removal from his family as a child, but the case did not invoke genocide.

⁷² *Kruger*, 161 (Dawson, J.). See also Matthew Storey, “*Kruger v. The Commonwealth: Does Genocide Require Malice?*” *University of New South Wales Law Journal* 21, no. 1 (1998): 224–31.

⁷³ Bryan Newland, US Assistant Secretary—Indian Affairs, “Federal Indian Boarding School Initiative Investigative Report” (May 2022), 3, https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf

⁷⁴ US Department of Interior, “Secretary Haaland Announces Federal Indian Boarding School Initiative,” *US Department of the Interior Press Releases*, 22 June 2021, <https://www.doi.gov/pressreleases/secretary-haaland-announces-federal-indian-boarding-school-initiative>.

⁷⁵ Newland, “Federal Indian Boarding School Initiative Investigative Report,” 5, 20.

⁷⁶ *Ibid.*, 56.

⁷⁷ H.R. 3326, 111th Cong. para 8113 (2009).

⁷⁸ See e.g. Brad Brooks, “Native American Survivors of Alleged Boarding School Sex Abuse Want Justice,” *Reuters*, 26 July 2022, <https://www.reuters.com/investigates/special-report/usa-native-americans-schools/>

⁷⁹ Human Rights Council, “They Came to Destroy: ISIS Crimes Against the Yazidis,” 15 June 2016, A/HRC/32/CRP.2, para 149.

⁸⁰ *Ibid.*, paras 147–48.

targeting of the group and their property, the use of derogatory language towards members of the targeted group, the methodical way of planning, the scale of atrocities committed, and their general nature.⁸¹

To date, there have been two convictions of ISIS fighters for the crime of genocide (both cases in Germany),⁸² but neither of these cases concerned forcible transfer of children. Specifically, the Higher Regional Court of Hamburg found a German ISIS member guilty of aiding and abetting genocide for enslavement and abuse of a Yazidi woman.⁸³ Similarly, the German Federal Court of Justice upheld the conviction of ISIS member for genocide for enslavement and abuse of a Yazidi woman and the death of her five-year-old daughter.⁸⁴

The Physical Element (*Actus Reus* of Genocide): Forcibly Transferring Children

Despite the paucity of case law, this article aims to assess available evidence against the *prima facie* elements that must be satisfied to bring a claim of genocidal forcible transfer of Ukrainian children. The crime of genocide consists of two main elements: a physical element and a mental element. The physical element encompasses the five acts enumerated in Article II of the Genocide Convention, including the “forcibly transferring children of the group to another group”. The mental element involves demonstrating the “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such”. Each element of genocidal forcible child transfer is addressed in turn.

(A) “Transferring”

Paragraph (e) stipulates that in order to establish an act of genocide, it is necessary to provide proof of a result that children from the targeted group have been moved to a different group.⁸⁵ The case law has interpreted the transfer of children as encompassing not only instances of actual transfer, but also “acts of threats of or trauma which would lead to the forcible transfer of children from one group to another.”⁸⁶ Hence, not just the act of transfer itself, but also threats to transfer children (in the current context, Ukrainian), would fall under paragraph (e) of Article II of the Genocide Convention, as discussed below.

To analyse this element of the genocide definition in relation to deportations of Ukrainian children to the Russian Federation, I will, first, discuss available information regarding the threats to transfer Ukrainian children to the Russian Federation. Second, specific instances of actual transfers of children will be examined. Third, the recent legislative

⁸¹ *Ibid.*, para 152.

⁸² Aldo Zammit Borda, “A Litmus Test for International Justice: If Not for the Yazidis, Then for Whom?” *EJIL:Talk!*, 17 March 2023, <https://www.ejiltalk.org/a-litmus-test-for-international-justice-if-not-for-the-yazidis-then-for-whom/>.

⁸³ Amal Clooney, “German Court Hands Down Second Genocide Conviction against ISI Member Following Enslavement and Abuse of Yazidi Woman in Syria,” Doughty Street Chamber, 28 July 2022, <https://www.doughtystreet.co.uk/news/german-court-hands-down-second-genocide-conviction-against-isis-member-following-enslavement>

⁸⁴ German Federal Court of Justice, 3 StR 230/22, 30 November 2022, <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=132381&pos=0&anz=1>

⁸⁵ Schabas, *Genocide in International Law*, 202.

⁸⁶ *Prosecutor v. Akayesu*, para 505; *Prosecutor v. Rutaganda*, Case No. ICTR-96-3-T, Judgment (6 December 1999), para 118; *Prosecutor v. Musema*, Case No. ICTR-96-13-A, Judgment (27 January 2000), para 159.

developments within the Russian Federation, which facilitate forcible transfers of Ukrainian children, will be reviewed.

(i) Threats to Transfer Children

Several officials representing the Russian state have made explicit threats pertaining to forcible transfer of Ukrainian children. For example, Andrey Kartapov, a member of Russia's Parliament, proposed removal of Ukrainian children from temporarily occupied territories and relocating them to military boarding schools in the Russian Federation. This was to ensure their "re-education" from what he referred to as "Ukrainian Nazism."⁸⁷

Commissioner L'vova-Belova confirmed the intention to carry out forcible transfers of children on multiple occasions through her website. For example, on 9 March 2022, Commissioner L'vova-Belova met with President Putin and reported that a total of 1,090 Ukrainian "orphans" had entered the Russian Federation, for whom she sought to arrange temporary accommodation or settle them permanently.⁸⁸ During the meeting, President Putin offered to modify the legislation, thereby facilitating a simplified process through which Ukrainian children could be granted Russian citizenship, ultimately enabling their permanent settlement within the Russian Federation.⁸⁹

Additionally, the Mayor of city of Melitopol located in the temporary occupied Zaporizhzhia region of Ukraine reported that Russian occupation authorities threatened to take children away from Ukrainian parents who refuse to send their children to schools using the Russian curriculum.⁹⁰ Similarly, the UN Independent International Commission of Inquiry in Ukraine confirmed that parents in Kherson region were sent threatening and intimidating messages to force them to enrol their children in schools operating under the Russian system in occupied areas.⁹¹

(ii) Instances of Forcibly Transferring Children

There have been credible reports of forcible transferring of Ukrainian children, which can be classified in four categories: (a) the transfers of children from orphanages, boarding schools, other children's institutions, and hospitals, even when the children have parents or families; (b) the forced removal of children to the Russian Federation following the separation of children from their families as part of the so-called "filtration" process; (c) children who travelled temporarily with or without parental consent to re-education camps in the Russian Federation and are unable to return home; and (d) the forcible evacuation of Ukrainian families with children (accompanied children).

While it is clear that there is a large scale of the forcible transfers of Ukrainian children, the exact figures vary depending on the source. As of 20 October 2022, Darya Gerasymchuk, advisor to the President of Ukraine on children's rights and her office received official requests from parents and other relatives regarding 8,709 Ukrainian children

⁸⁷ Julia Davis, comment on Andrey Kartapov's position on Ukrainian children, posted 1 August 2022, <https://twitter.com/JuliaDavisNews/status/1554122972935372804> (accessed March 19, 2023).

⁸⁸ President of Russia, "Meeting with Commissioner for Children's Rights Maria L'vova-Belova," 9 March 2022, <http://en.kremlin.ru/events/president/news/67949>.

⁸⁹ Ibid.

⁹⁰ Violetta Orlova, "V Melitopole okkupanty ugrozhajut otbirat' u roditelej detej, kotorye ne budut hodit' v rossijskie shkoly," *UNIAN: News of Ukraine*, 4 July 2022, <https://www.unian.net/society/v-melitopole-okkupanty-ugrozhajut-otbirat-u-roditeley-detey-kotorye-ne-budut-hodit-v-rossijskie-shkoly-novosti-ukrainy-11889798.html>

⁹¹ UN OHCHR, Report of 15 March 2023, para 93.

who were subjected to forcible transfer to the Russian Federation.⁹² The Ministry of Reintegration of Ukraine and the National Information Bureau on behalf of the Office of the President of Ukraine also established an official registry of missing children, which is regularly updated by Ukraine's law enforcement agencies, including the National Police of Ukraine and the Office of the Prosecutor General.⁹³ As of 8 June 2023, this registry indicated that 19,504 Ukrainian children had been forcibly transferred, and only 372 children have been returned to Ukraine.⁹⁴ These figures, however, pertain solely to the children, whose families were able to follow Ukraine's government procedure and register the forcible transfer of children officially.

It is plausible that the actual number of forcibly transferred children from Ukraine is significantly higher. For example, Ukraine's President Volodymyr Zelenskyy claimed that as of 1 June 2022, around 200,000 of Ukrainian children were forcibly transferred to Russia.⁹⁵ Ukraine's Deputy Prime Minister, Iryna Vereshchuk, reported that as of 20 June 2022, approximately 240,000 children were transferred.⁹⁶ Ukrainian Ombudsperson for Human Rights, indicated that as of 3 September 2022, around 200,000 of the deported Ukrainians to Russian Federation were children.⁹⁷ The methodology used to calculate these numbers (except for the ones provided by the advisor to the President of Ukraine on children's rights and in the official registry of missing children), however, remains unclear and requires further clarification.

On the Russian side, the Ministry of Defence of Russia reported that as of 22 August 2022 a total of 570,601 Ukrainian children had been "evacuated" to Russia since February 2022.⁹⁸ On 24 July 2022, the Russian state-owned news agency TASS reported that according to their source in the Russian law enforcement agencies over 22.8 million people crossed the Russian border from Ukraine, including 448,000 children.⁹⁹ Commissioner L'vova-Belova has frequently shared on her website documented instances of "evacuations" of Ukrainian children to the Russian Federation, specifying the number of children involved in each instance.¹⁰⁰ International bodies confirmed the instances of forcible transfers of Ukrainian children, but they have been vague on numbers as well. The Prosecutor's Office of the ICC

⁹² Maksym Lypchansky, "The Russian Federation Deported 8,700 Ukrainian Children—Ombudsman," 20 October 2022, <https://ua.korrespondent.net/ukraine/4527683-rf-deportuvala-8700-ukrainkykh-ditei-ombudsmen>

⁹³ Children of War, "About the Platform", <https://childrenofwar.gov.ua/en/about-us/> (accessed March 16, 2023).

⁹⁴ Children of War, "Deported Children," <https://childrenofwar.gov.ua/en/> (accessed June 8, 2023) (the content of the website is updated daily and hence the website may contain different figures if checked after the date of publication of this article).

⁹⁵ The 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>

⁹⁶ Human Rights Watch, "'We Had No Choice': 'Filtration' and the Crime of Forcibly Transferring Ukrainian Civilians to Russia," 1 September 2022, https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crime-forcibly-transferring-ukrainian-civilians#_ftn29

⁹⁷ European Parliament, "Joint Motion," para (i).

⁹⁸ Ministry of Defence of the Russian Federation, "Statement of the Interdepartmental Coordination Headquarters of the Russian Federation of Humanitarian Response," 22 August 2022, https://function.mil.ru/news_page/country/more.htm?id=12434945@egNews.

⁹⁹ TASS, "More than 2.8 Million Refugees Arrived in Russia from the Territories of Ukraine and Donbass," *TASS*, 24 July 2022, https://tass.ru/obschestvo/15295715?utm_source=svoboda.org&utm_medium=referral&utm_campaign=svoboda.org&utm_referrer=svoboda.org

¹⁰⁰ See e.g. on 5 August 2022, Maria L'vova-Belova reported that "160 children from the DPR have transferred to the foster care to Russian families, 133 of them have already received Russian citizenship." Commissioner L'vova-Belova, "Davajte dadim im shans – Marija L'vova-Belova o detjah-sirotah v LNR," 5 August 2022, <http://deti.gov.ru/articles/news/davajte-dadim-im-shans-marija-l-vova-belova-o-detyah-sirotah-v-lnr>

identified the forcible transfers of “at least hundreds of children” taken from orphanages and children’s care homes.¹⁰¹ The UN Independent International Commission of Inquiry on Ukraine has confirmed that it has reviewed incidents concerning the transfer of 164 children aged from four to 18 years from the Donetsk, Kharkiv, and Kherson regions.¹⁰²

In cases where children are unaccompanied, they are put up for adoption within the Russian Federation, granted Russian citizenship, and their personal records are erased.¹⁰³ According to Darya Gerasymchuk, the advisor to the President of Ukraine on children’s rights, forcibly transferred Ukrainian children are intentionally dispersed throughout the territory of the Russian Federation, making it more challenging to locate and repatriate them in the future.¹⁰⁴ The correspondence between the officials from the Ministry of Education of Russia with the heads of Russia’s regional guardianship organisations confirms the placement of Ukrainian children in at least 24 institutions located throughout Russia.¹⁰⁵

Such forcible transfers substantially restrict the opportunities for displaced children to maintain contact with their families who remained in Ukraine and arguably undermines the prospects of preserving their Ukrainian identity,¹⁰⁶ the right protected by Article 8 of the CRC. Unaccompanied Ukrainian children are mandated to attend “patriotic education” classes¹⁰⁷ and are sent to re-education camps¹⁰⁸ with the purported objective of instilling pro-Russia political and personal beliefs in Ukrainian children.¹⁰⁹ In Russian boarding schools, Ukrainian children were exposed to the briefings delivered by the representatives of the Russian Ministry of Defence, highlighting the accomplishments of the Russian military in the war in Ukraine; made trench candles intended for use by Russian soldiers on the frontline; and participated in visits to military hospitals to provide emotional support to Russian soldiers wounded in the war in Ukraine.¹¹⁰ On 16 November 2022, the Chechen Republic Ramzan Kadyrov announced about 200 “difficult teenagers from various regions of Russia, including the Luhansk and Donetsk People’s Republics” were staying in the region for “military-patriotic education.”¹¹¹

¹⁰¹ ICC, Statement by Prosecutor Karim A. Khan KC on the Issuance of Arrest Warrants against President Vladimir Putin and Ms Maria Lvova-Belova, 17 March 2023, <https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin>

¹⁰² UN OHCHR, Report of 15 March 2023, para 97.

¹⁰³ European Parliament, “Joint Motion,” para (i). See also Emma Bubola, “Using Adoptions, Russia Turns Ukrainian Children into Spoils of War,” *The New York Times*, 22 October 2022, <https://www.nytimes.com/2022/10/22/world/europe/ukraine-children-russia-adoptions.html>

¹⁰⁴ Maksym Lypchansky, “The Russian Federation Deported 8,700 Ukrainian Children—Ombudsman,” 20 October 2022, <https://ua.korrespondent.net/ukraine/4527683-rf-deportuvala-8700-ukrainskykh-ditei-ombudsmen>

¹⁰⁵ Ibid. See also Nigina Beroyeva and Sonia Groysman, “Kak Rossija ukrala tysjachi detej iz Ukrainy i otdala ih na ‘perevospitanie,’” TV Rain, 26 February 2023, [13:22-14:40], https://tvrain.tv/teleshov/reportazh/kak_rossija_ukrala_tysjachi_detej_iz_ukrainy_i_otdala_ih_na_perevospitanie-550205/

¹⁰⁶ RCHR and Lemkin Institute for Genocide Prevention, “Responsibility of Russian Federation Officials for Genocide in Ukraine,” para 7.

¹⁰⁷ Mickle Nacki, “Kak Putin pohishhaet detej iz Ukrainy i promyvaet im mozgi,” 22 March 2023, [11:45–14:50], <https://www.youtube.com/watch?v=1Fq4NFJlInss>

¹⁰⁸ Yale School of Public Health Humanitarian Research Lab (Yale HRL), “Russia’s Systematic Program for the Re-Education & Adoption of Ukraine’s Children,” 14 February 2023, 5, <https://hub.conflictobservatory.org/portal/sharing/rest/content/items/97f919ccfe524d31a241b53ca44076b8/data>; Tatyana Popova, “Kak vozvrashhajut ukradennyh Rossiej detej?,” *YouTube*, 24 March 2023, <https://www.youtube.com/watch?v=nEnlyZnP0el>

¹⁰⁹ Yale HRL, “Russia’s Systematic Program for the Re-Education,” 5.

¹¹⁰ Beroyeva and Groysman, “Kak Rossija ukrala tysjachi detej iz Ukrainy,” [14:40–16:12].

¹¹¹ Ramzan Kadyrov, Telegram: Contact @RKadyrov, 16 November 2022, https://t.me/RKadyrov_95/3104.

(a) Transfers of children from orphanages, boarding schools, other children's institutions and hospitals even when the children have parents or families. Ilze Brands Kehris, the Assistant Secretary-General for Human Rights at the United Nations, has acknowledged that there have been “credible allegations” of forced transfers of unaccompanied children to Russian occupied territory or Russia itself.¹¹²

The official website of Commissioner L'vova-Belova has also verified a number of instances of forcible transfers. In March 2022, Commissioner L'vova-Belova confirmed that around 1,500 Ukrainian “orphans,” in particular children from boarding schools and orphanages in the Donbas area, have been taken to the Russian Federation.¹¹³ The Commissioner's website regularly reports separate instances of forcible transferring of Ukrainian children. For example, on 15 July 2022, Commissioner L'vova-Belova announced that she had returned from a trip to the self-proclaimed DPR and had brought a group of 13 “orphans,” specifically from children's institutions in Donetsk, Shakhtarsk, and Makiyivka, to be placed with families in the Russian Federation with the help of Russia's Investigative Committee and Ministry of Defence.¹¹⁴ Earlier, another group of 19 children was forcibly transferred from the DPR to Rostov-on-Don, Russia. Commissioner L'vova-Belova herself adopted a forcibly transferred Ukrainian child from Mariupol.¹¹⁵

According to Commissioner L'vova-Belova, due to the ongoing hostilities in the region, the Russian authorities are “evacuating” only “orphans and children left without parental care” who are residing in specialised institutions in the self-proclaimed DPR and LPR to the Russian territory.¹¹⁶ She asserted that such children were not prevented from being reunited with blood relatives. However, credible reports indicate that these “orphans” may 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.¹¹⁷ Ukraine's government claims that children residing in orphanages or similar institutions are mostly not true “orphans” but have been placed there due to their families' challenging circumstances.¹¹⁸ Children who have been separated from their families during the hostilities are also temporarily accommodated in orphanages or similar institutions.

Gerasyimchuk confirmed that the children forcibly transferred to the Russian Federation also included children who were separated from their families during the hostilities.¹¹⁹

¹¹² Aljazeera, “UN Says ‘Credible’ Reports Ukraine Children Transferred to Russia,” 8 September 2022, <https://www.aljazeera.com/news/2022/9/8/un-says-credible-reports-ukraine-children-transferred-to-russia>

¹¹³ Evgenia Priemskaya, “‘Extraordinary Task’: The Russian Federation Is Preparing Amendments for the Adoption of Children from the Donbass,” 5 May 2022, <https://iz.ru/1330152/evgeniia-priemskaja/zadacha-ekstraordinarnaia-v-rf-gotoviat-popravki-dlia-usynovleniia-detei-iz-donbassa>

¹¹⁴ Commissioner L'vova-Belova, “V blizhajshee vremja priemnye sem'i 6 regionov Rossii voz'mut pod opeku 108 detej iz DNR,” 15 July 2022, <http://deti.gov.ru/articles/news/v-blizhajshee-vremya-priemnye-sem-i-6-regionov-rossii-voz-mut-pod-opeku-108-detej-iz-dnr>

¹¹⁵ Yana Osadcha, “Russian Children's Rights Commissioner ‘Adopts’ Child Abducted from Mariupol,” 27 October 2022, <https://www.pravda.com.ua/eng/news/2022/10/27/7373740/>

¹¹⁶ Commissioner L'vova-Belova, “SPCh napravil v mezhdunarodnye organizacii oproverzenie fejkov o prinuditel'nom vyvoze ukrainskih detej,” 19 October 2022, <http://deti.gov.ru/articles/news/spch-napravil-v-mezhdunarodnye-organizacii-oproverzenie-fejkov-o-prinuditel-nom-vyvoze-ukrainskih-detej>

¹¹⁷ UN OHCHR, Report of 15 March 2023, para 97.

¹¹⁸ Sarah El Deeb, Anastasiia Shvets, and Elizaveta Tilna, “How Moscow Grabs Ukrainian Kids and Makes Them Russians,” *AP News*, 13 October 2022, <https://apnews.com/article/ukrainian-children-russia-7493cb22c9086c6293c1ac7986d85ef6>

¹¹⁹ Daniela Dolotova, “Kradut' majbutne Ukraïni: skil'ki Ukraïns'kih ditej deportovali rosijani i jak ih budut' povertati,” *Vikna TV*, 22 July 2022, <https://vikna.tv/video/kradut-majbutnye-ukrayiny-darya-gerasyimchuk-pro-nezakonnu-deportaciyu-ukrayinskyh-ditej-rosijanamy/>

Moreover, she noted that there were instances where Russian soldiers intentionally separated Ukrainian children from their parents, particularly in hospitals in the temporarily occupied territories.¹²⁰ Human Rights Watch has confirmed one case where 17 Ukrainian children were forcibly transferred by the Russian authorities from a healthcare facility in Eastern Ukraine and taken to Russia.¹²¹

According to the advisor to the Mayor of Mariupol, hundreds of children who were separated from their families during the occupation of Mariupol were forcibly taken by the Russian military and transferred to Russia, even when they had living parents or family members.¹²² Amnesty International has also documented cases of unaccompanied, separated, and orphaned Ukrainian children who were in Mariupol-based institutions being forcibly transferred to the DPR and then to the Russian Federation.¹²³ There are credible accounts of Ukrainians hiding orphaned children in the Kherson region from forcible removal by Russian authorities.¹²⁴ Specifically, staff at a children's hospital in the city of Kherson fabricated medical records of 11 orphans, thereby making it impossible for them to travel to Russia.¹²⁵

Additionally, there have been reports of family members of forcibly transferred Ukrainian children recognising the children in the reports of their adoption by the Russian families in the Russian Federation.¹²⁶

(b) Forced removal of children to the Russia Federation following the separation of children from their families as part of the so-called “filtration” process. Russian authorities have engaged in the interment of Ukrainian civilians, including children, who were involuntary relocated from conflict-affected areas.¹²⁷ These civilians were subjected to what is known as “filtration”—a compulsory screening process that entailed interrogations wherein their political views were questioned, and their personal belongings, including phones, were searched, biometric data collected.¹²⁸ The screening process could last from several hours up to a month. Those individuals who were deemed to have failed the “filtration” process were reportedly detained or forcibly disappeared.¹²⁹ Assistant UN

¹²⁰ Ibid., Office of Ukraine's President, “Briefing of Darya Gerasymchuk, Advisor to the President of Ukraine on Children's Rights,” 1 August 2022, https://t.me/OP_UA/7184

¹²¹ Human Rights Watch, “We Had No Choice,” 55.

¹²² Ukrinform, “Iz Mariupolja zahvatychi vyvozzat detej, utrativshih ili poterjavshih roditelej,” 31 May 2022, <https://www.ukrinform.ru/rubric-ato/3496335-iz-mariupola-zahvatyci-vyvozzat-detej-utrativshih-ili-poterjavshih-roditelej.html>.

¹²³ Amnesty International, “Russia: ‘Filtration of Ukrainian Civilians a ‘Shocking Violation’ of People Forced to Flee War,” 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/>

¹²⁴ Sam Mednick, “Ukrainians Hid Orphaned Children from Russian Deportation,” *AP News*, 5 December 2022, <https://apnews.com/article/russia-ukraine-health-europe-orphans-f283aa4d22fdab59a43a16ca0be54ba>

¹²⁵ Ibid.

¹²⁶ Irene Benedicto, “Russia Is Transporting Ukrainian Orphans Over the Border, Violating International Law,” *BuzzFeed News*, 3 August 2022, <https://www.buzzfeednews.com/article/irenebenedicto/ukrainian-children-russia-orphans-mariupol>

¹²⁷ UN OHCHR, Report of 15 March 2023, para 62; US Department of State, “Russia's Filtration Operations and Forced Relocations,” <https://www.state.gov/russias-filtration-operations-and-forced-relocations/>

¹²⁸ Simon Ostrovsky, Ainara Tiefenthaler, and Alessandro Pavone, “Video: Surviving Russia's ‘Filtration Camps,’” *The New York Times*, 20 June 2022, <https://www.nytimes.com/video/world/europe/10000008396333/russia-filtration-camps.html>

¹²⁹ Human Rights Watch, “We Had No Choice”. See also Yale HRL, “System of Filtration: Mapping Russia's Detention Operations in Donetsk Oblast,” 25 August 2022, <https://hub.conflictobservatory.org/portal/apps/sites/#/home/pages/filtration-1>

Secretary-General Kehris reported to the UN Security Council that “filtration” operations conducted by Russian forces involved numerous human rights violations.¹³⁰

There are credible reports indicating that where parents (or accompanying adults) of children were unable to pass the “filtration” process, the children were forcibly transferred to the Russian Federation, while the adults stayed behind.¹³¹ According to Linda Thomas-Greenfield, the US Ambassador, thousands of Ukrainian children have undergone the “filtration” process, with “some separated from their families and taken from orphanages before being put up for adoption in Russia.”¹³² Such occurrences have come to light through the reporting of parents or relatives of children who were separated from them during the “filtration” process and who, ultimately reached safety, have reported the matter to Ukrainian authorities, requesting their assistance in locating their children. One example of such parent is Evgeniy Mezhevoy, who experienced separation from his three children during the “filtration” process, when the family was evacuating from Mariupol.¹³³ Children faced imminent forced adoption in the Russian Federation, when the father was eventually released from detention and subsequently able to retrieve them from Russia.¹³⁴

Since no independent body has been granted access to the “filtration” camps,¹³⁵ the exact number of Ukrainian children who have been separated from their families and forcibly transferred to the Russian Federation remains unknown. It is likely that the actual number exceeds the reported cases where parents or relatives were able to bring the matter to the attention of Ukrainian authorities through official channels.

(c) Children who travelled temporarily with or without parental consent to re-education camps in the Russian Federation or temporarily occupied territories and are unable to return home¹³⁶. Large numbers of children from regions of Kharkiv, Kherson, Zaporizhzhia, and Donetsk temporarily occupied by the Russian Federation, with or without parental consent went to holiday camps in the Russian Federation or temporarily occupied territories.¹³⁷ Thus far, 43 camps have been identified, and of these, a minimum of 32 facilities have undertaken systematic re-education efforts, subjecting Ukrainian children to Russia-centric academic, cultural, patriotic, and/or military education.¹³⁸ Numerous such facilities in Russia are promoted as “integration programmes,” ostensibly designed to integrate Ukrainian children into Russian government’s

¹³⁰ UN Security Council, “Reports of Russian Federation Forces Putting Ukrainian Civilians in ‘Filtration’ Camps Must Be Investigated,” SC/15023, 7 September 2022, <https://press.un.org/en/2022/sc15023.doc.htm>.

¹³¹ European Parliament, “Joint Motion,” para (g); UN OHCHR, Report of 15 March 2023, para 97. See also Franziska Exeler, “Filtration Camps, Past and Present, and Russia’s War Against Ukraine,” *Journal of Genocide Research* (2023): 9–10.

¹³² Aljazeera, “UN Says ‘Credible’ Reports Ukraine Children Transferred to Russia”.

¹³³ Mariana Sych, “‘Papa, nas hotjat usynovit.’ Pohishhennye ukrainskie deti v Rossii,” *Svoboda*, 14 February 2023 <https://www.svoboda.org/a/papa-nas-hotyat-usynoviti-pohishchennye-ukrainskie-deti-v-rossii/32270905.html>. For other examples: Oksana Kovalenko, Mariya Zhartovska, and Tetyana Logvinenko, “Rosijani vivotjat’ ditej z Ukraïni i chinjat’ genocid. Upovnovazhena z prav ditej Dar’ja Gerasimchuk rozkazue, jak ih povertajut’ dodomu, a takozh jak usynoviti chi prihistiti maljuka pid chas vijni,” 5 September 2022, <https://babel.ua/texts/83836-rosiyani-vivozyat-ditej-z-ukrajini-i-chinyat-genocid-upovnovazhena-z-prav-ditej-dar-ya-gerasimchuk-rozkazuye-yak-jih-povertajut-dodomu-a-takozh-yak-vsinoviti-chi-prihistiti-malyuka-pid-chas-vijni>

¹³⁴ Ibid.

¹³⁵ UN Security Council, “Reports of Russian Federation Forces Putting Ukrainian Civilians in ‘Filtration’ Camps,” Statement by Ferit Hoxha (Albania).

¹³⁶ UN OHCHR, Report of 15 March 2023, para 99.

¹³⁷ Ibid., para 99–100; Yale HRL, “Russia’s Systematic Program for the Re-Education,” 13–14. See also Veronika Melkozerova, “Inside the Operation to Rescue Ukraine’s Abducted Children,” *Politico*, 10 June 2023, <https://www.politico.eu/article/save-ukraine-children-abduction-russia-war-rescue-operation/>

¹³⁸ Yale HRL, “Russia’s Systematic Program for the Re-Education,” 5–6, 14.

conception of national culture, history, and society.¹³⁹ The Russian government at multiple levels, including federal (particularly Ministry of Education), regional, and local officials and agencies supported these re-education endeavours, with high-ranking officials acting as liaisons between federal institutions and the camps that are engaged in re-education initiatives.¹⁴⁰

Following the liberation of these territories by Ukraine, children were not returned home, and parents or legal guardians were required by the Russian Federation to physically retrieve their children.¹⁴¹ This situation has led to prolonged and in some cases indefinite separation of families. Testimony of parents and children reveals that while in the Russian Federation or Russian-controlled areas in Ukraine, Russian social services conveyed to the children that they would be placed in foster care or subjected to adoption.¹⁴²

(d) Forcible evacuation of Ukrainian families with children (accompanied children).

Multiple consistent reports indicate that large-scale forced transfers from temporarily occupied territories, including at the time occupied Kherson,¹⁴³ to the Russian Federation have taken place, in some cases as far as to Siberia and Vladivostok.¹⁴⁴ For example, Dmytro Lubinets, the Commissioner for Human Rights of the Parliament of Ukraine, shared an account of a resident of Kherson and her daughter who returned to Ukraine after being forcibly transferred to Russia.¹⁴⁵

According to Ukraine's Ombudsperson, more than 400,000 Ukrainian citizens have been forcibly displaced to Russia or to areas under the effective control of Russia.¹⁴⁶ Nikolai Patrushev, Secretary of Russia's National Security Council, reported on 19 October 2022 that five million Ukrainians from four Ukrainian regions annexed by Russia had been "evacuated" to the Russian Federation.¹⁴⁷ According to Russia's Defence Ministry, 700,000 of the "evacuated" were children.¹⁴⁸

(iii) Legislation Enabling Forcible Transfer of Ukrainian Children

Apart from the verified cases of Ukrainian children being forcibly transferred to Russia, the Russian government has also adopted domestic legislation to enable such transfers. Specifically, on 30 May 2022, President Putin signed a decree that provides for orphaned

¹³⁹ Ibid.

¹⁴⁰ Ibid., 14–15.

¹⁴¹ Beroyeva and Groysman, "Kak Rossija ukrala tysjachi detej iz Ukrainy," [35:00–36:50]; Yale HRL, "Russia's Systematic Program for the Re-Education," 12.

¹⁴² UN OHCHR, Report of 15 March 2023, para 100.

¹⁴³ DW, "Ukraine Updates: Russia Begins 'Evacuation' from Kherson," *Deutsche Welle*, 19 October 2022, <https://www.dw.com/en/russia-ukraine-updates-moscow-begins-evacuation-from-kherson/a-63484112>

¹⁴⁴ OSCE, "Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes against Humanity Committed in Ukraine since 24 February 2022," ODIHR.GAL/26.22.Rev.1, 13 April 2022, 23, <https://www.osce.org/files/f/documents/f/a/515868.pdf>.

¹⁴⁵ Zmina, "Meshkanka Hersona z nepovnitn'uju don'koju povernulisja v Ukraïnu pislja deportacii do Rosii," *Zmina*, 17 January 2023, <https://zmina.info/news/meshkanka-khersona-z-nepovnitn'oyu-don'koyu-povernulysya-v-ukrayinu-pislyya-deportatsiyi-do-rosiyi/>

¹⁴⁶ Shona Murray, "More than 400,000 Ukrainians 'Forcibly Displaced to Russia,' Claims Ukraine's Ombudswoman," *Euro-news*, 20 March 2022, <https://www.euronews.com/my-europe/2022/03/30/more-than-400-000-ukrainians-forcibly-displaced-to-russia-claims-ukraine-s-ombudswoman>

¹⁴⁷ Agence France Presse (AFP), "Five Million Have Left Ukraine for Russia: Russian Agencies," *Barron's*, 19 October 2022, <https://www.barrons.com/news/five-million-have-left-moscow-held-ukraine-for-russia-agencies-01666187706>

¹⁴⁸ Ibid.

children and those without parental care, who hold Ukrainian citizens and reside in “DPR, LPR, and Ukraine” to be granted Russian citizenship via a simplified procedure.¹⁴⁹ Commissioner L’vova-Belova confirmed that in July 2022, 200 Ukrainian children had received Russian citizenship as a result of this legislation.¹⁵⁰ In the same month, she declared that “now that the children have become Russian citizens, temporary guardianship can become permanent.”¹⁵¹

According to Ukraine’s Foreign Ministry, the aforementioned decree represents a tool for legalizing forcible transfers of children from Ukraine’s territory and can furthermore be qualified as forcible transferring of children from one human group to another under international law.¹⁵² Assistant UN Secretary-General Kehris has expressed concern that “the Russian authorities have adopted a simplified procedure to grant Russian citizenship to children without parental care, and that these children would be eligible for adoption by Russian families.”¹⁵³ Filippo Grandi, the UN High Commissioner for Refugees, confirmed that “[g]iving [Ukrainian children Russian] nationality or having them adopted goes against the fundamental principles of child protection in situations of war.”¹⁵⁴

In order to incentivize the adoption and fostering of forcibly transferred children from Ukraine by Russian citizens, the Russian government implemented supplementary financial benefits for adoptive families if they adopt Ukrainian children.¹⁵⁵ Darya Gerasymchuk reported that the Russian Federation is currently in the process of amending its legislation to simplify the adoption of Ukrainian children by the Russian citizens.¹⁵⁶

On 23 August 2022, the Department of Family and Childhood in Krasnodar, Russian Federation, released a statement on their website disclosing that over 1,000 of Ukrainian children from Mariupol have been adopted by Russian families in various regions, including Tyumen, Irkutsk, Kemerovo, and the Altai Territory.¹⁵⁷ This announcement was met with condemnation from Ukraine’s Ministry of Foreign Affairs, which deemed the act as an “abduction” and “illegal adoption” of Ukrainian children.¹⁵⁸ The ministry further

¹⁴⁹ Russia’s Official Internet Platform for Legal Information, “Decree of the President of the Russian Federation No 183 dated 24 April 2019,” para 1(a), <http://publication.pravo.gov.ru/Document/View/0001202205300008>

¹⁵⁰ Mordovmedia, “In Early July, 200 Children from Donbass Will Receive Russian Citizenship,” 28 June 2022, <https://www.mordovmedia.ru/news/russia/item/111848/>

¹⁵¹ Maria L’vova-Belova, Telegram: Contact @malvovabelova, 5 July 2022, <https://t.me/malvovabelova/331>. See also UN OHCHR, Report of 15 March 2023, para 96.

¹⁵² Ukraine’s Ministry of Foreign Affairs, “Zajava MZS Ukraïni shhodo ukazu prezidenta RF pro sproshhenij prijom v rosij’s’ke gromadjanstvo ukraïns’kih ditej-sirit,” 31 May 2022, <https://mfa.gov.ua/news/zajava-mzs-ukrayini-shhodo-ukazu-prezidenta-rf-pro-sproshchenij-prijom-v-rosijske-gromadyanstvo-ukrayinskih-ditej-sirit>

¹⁵³ Aljazeera, “UN Says ‘Credible’ Reports Ukraine Children Transferred to Russia”; UN Security Council, “Reports of Russian Federation Forces Putting Ukrainian Civilians in ‘Filtration’ Camps.”

¹⁵⁴ Kevin Rawlinson, Martin Belam, and Helen Sullivan, “UN Refugee Chief: Russia Violating Principles of Child Protection in Ukraine,” *The Guardian*, 27 January 2023.

¹⁵⁵ Diana Krechetova, “Russia Announces the ‘Adoption’ of Thousands of Children Deported from Mariupol,” *Pravda*, 23 August 2022, <https://www.pravda.com.ua/eng/news/2022/08/23/7364446/>; Micaela Del Monte and Nefeli Barlaoura, “Russia’s War on Ukraine: Forcibly Displaced Ukrainian Children” (European Parliamentary Research Service, April 2023) 4.

¹⁵⁶ Ibid., Daria Getmanova and Svitlana Matviyenko, “Producing the Subject of Deportation: Filtration Processes During the Russia-Ukraine War,” *Sociologica* 16(2) (2022): 240.

¹⁵⁷ Meduza, “Sluzhba opeki Krasnodara soobshhila, chto ‘bolee 1000 malyshej iz Mariupolja nashli novye sem’i v Rossii. MID Ukrainy potreboval vernut’ detej,” *Meduza*, 23 August 2022, <https://t.me/meduzalive/67662>. After the statement of Ukraine’s Ministry of Foreign Affairs, the publication was taken down from the website of the Department of Family and Childhood in Krasnodar. The website now states that the information about children from Mariupol was not posted by the Department of Family and Childhood and that the website was hacked: <https://uvsd.ru/news/important/340-informacija-o-kiberatake.html> (accessed March 19, 2023).

¹⁵⁸ Ukraine’s Ministry of Foreign Affairs, “Zajava MZS Ukraïni shhodo nezakonnogo usinovlennja ukraïns’kih ditej z boku gromadjan Rosij’s’koï Federacii,” 23 August 2022, <https://mfa.gov.ua/news/zajava-mzs-ukrayini-shhodo-nezakonnogo-usinovlennja-ukrayinskih-ditej-z-boku-gromadyan-rosijskoyi-federaciji>

urged for the immediate return of the children to Ukraine. On another occasion, L'vova-Belova confirmed that 350 Ukrainian children had been adopted by Russian families and that more than 1,000 children were awaiting adoption.¹⁵⁹

(B) “Forcibly”

The term “forcibly” in the context of forcibly transferring children has been construed to comprise not only physical force, but also other forms of coercion or threat of force, such as caused by duress, psychological oppression, fear of violence or taking advantage of a coercive environment.¹⁶⁰

The transfer of Ukrainian children from temporarily occupied territories has been ostensibly conducted as an “evacuation” measure to ensure their safety. The Ukrainian government has consistently asserted that the transfer of children constitutes a violation of international law, and that they did not consent to the children’s “evacuation” or adoption.¹⁶¹

International law generally prohibits the evacuation of children by a party to the armed conflict, other than its own nationals, in categorical terms.¹⁶² Any exceptions to this rule are strongly formalised and are exhaustive: a “temporary” evacuation is possible due to compelling reasons relating to children’s health or medical treatment needs or safety.¹⁶³ In all cases, these actions require the written consent of parents or legal guardians or those who are responsible for the care of the children.¹⁶⁴ There is no evidence that Russian authorities satisfied these requirements.¹⁶⁵ It does not appear that the Russian authorities made an effort to establish contact with Ukrainian authorities or with children’s relatives (where children had remaining family). L'vova-Belova acknowledged the request from Iryna Vereshchuk, Ukraine’s Minister for Reintegration of the Temporary Occupied Territories, regarding the return of forcibly transferred children to Ukraine, which L'vova-Belova declined.¹⁶⁶ As of February 2023, the Russian Red Cross confirmed that it has not received any requests from Russian authorities to investigate whether the relatives of Ukrainian children were looking for them.¹⁶⁷ This statement contrasts with claims made by the Russian state media, which suggested that the Russian authorities were checking with the Russian Red Cross whether Ukrainian children had family members before placing them in Russian families.¹⁶⁸ The UN High Commissioner for Human Rights noted on 15 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.”¹⁶⁹

¹⁵⁹ Julian Borgen, “ICC to Issue First Arrest Warrants Linked to Russia’s Invasion of Ukraine,” *The Guardian*, 13 March 2023.

¹⁶⁰ ICC, Elements of Crimes to Article 6(e) of the ICC Statute, 114; *Prosecutor v. Akayesu*, para 509.

¹⁶¹ See e.g. Ukraine’s Ministry of Foreign Affairs statement.

¹⁶² Fourth Geneva Convention, Articles 49 and 147; Additional Protocol I, Articles 78 and 85. See Denise Plattner, “Protection of Children in International Humanitarian Law,” *International Review of the Red Cross* 240 (1984): 1; Vincent Chetail, “Is There Any Blood on My Hands? Deportation as a Crime of International Law,” *Leiden Journal of International Law* 29, no. 3 (2016): 917–43.

¹⁶³ Additional Protocol I, Article 78 (1). See also Sandra Singer, “The Protection of Children During Armed Conflict Situations,” *International Review of the Red Cross* 26, no. 252 (1986): 147–8.

¹⁶⁴ Additional Protocol I, Article 78(1). See also Claude Pilloud, Yves Sandoz, Christophe Swinarski, and Bruno Zimmermann, *Commentary on the Additional Protocol: of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Martinus Nijhoff Publishers, 1987), 913.

¹⁶⁵ UN OHCHR, Report of 15 March 2023, para 98; El Deeb, Shvets, and Tilna, “How Moscow Grabs Ukrainian Kids”.

¹⁶⁶ Maria L'vova-Belova, Telegram: Contact @malvovabelova, 28 September 2022, <https://t.me/malvovabelova/605>

¹⁶⁷ Beroyeva and Groysman, “Kak Rossija ukrala tysjachi detej iz Ukrainy,” [38:36–38:43].

¹⁶⁸ *Ibid.* [38:28–38:37].

¹⁶⁹ 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>

Another requirement in the event of an evacuation, the educational needs of each child, including their religious and moral education, must be sustained in the same conditions they enjoyed up to that time.¹⁷⁰ This requirement is also interpreted to prohibit indoctrination.¹⁷¹ As previously outlined, Ukrainian children transferred to the Russian Federation were not afforded the opportunity to receive an education based on the Ukrainian curriculum or to be instructed in the Ukrainian language. Rather, there are credible reports of indoctrination and, on certain occasions, military training of Ukrainian children in Russia.¹⁷² Furthermore, in order to facilitate the eventual repatriation of such children, a detailed identification card is mandated for each transferred child, which must be sent to the Central Tracing Agency of the International Committee of the Red Cross (ICRC), since the evacuation must only be “temporary.”¹⁷³ To date, there is no indication that Ukrainian children have been issued such identification cards or that the ICRC has been notified. Finally, there is no indication that it was unfeasible to facilitate the transfer of the children to the territory under Ukrainian government control.

The Russian military and other Russian and Russian-affiliated officials exerted different types of pressure¹⁷⁴ to compel Ukrainian civilians in the context of the ongoing hostilities to relocate to either Russia or the self-proclaimed DPR and LPR. Such measures involved a range of tactics, including the use of direct force to forcibly deport Ukrainians and creation of a coercive environment.¹⁷⁵ There have been instances where Russian and Russian-affiliated officials arranged transportation for Ukrainian civilians and communicated to them that they had no alternative but to relocate to Russia.¹⁷⁶ There have been credible reports indicating that the Russian armed forces actively thwarted humanitarian corridors (including by attacking individuals attempting to flee) intended for the evacuation of Ukrainians from conflict zones to the rest of Ukraine’s territory.¹⁷⁷ Amnesty International reported that a significant proportion of displaced Ukrainians end up in Russia or Russia-occupied territories involuntarily, even if the physical force was not used directly.¹⁷⁸

(C) “Children”

Although the Genocide Convention does not provide a definition of the term “children,” it has been interpreted in accordance with universally accepted definition included under the CRC as a person under the age of 18 years.¹⁷⁹ This interpretation is also echoed in

¹⁷⁰ Additional Protocol 1, Article 78(2).

¹⁷¹ Pilloud et al, *Commentary on the Additional Protocol*, 914. The article uses the term “indoctrination” as efforts to exert authority over children’s bodies, decide their fate, and educate them in accordance with the fundamental ideological principles of a certain group or country.

¹⁷² Yale HRL, “Russia’s Systematic Program for the Re-Education,” 8, 14. On so far underreported militarization of patriotic education for Ukrainian children, see Asymmetrical Haircuts, “Ukraine’s Taken Children with Yulia Ioffe and Nathaniel Raymond” (19 May 2023), 30:06–32:48, <https://www.asymmetricalhaircuts.com/episodes/episode-78-ukraines-taken-children-with-yulia-ioffe-and-nathaniel-raymond/>

¹⁷³ Additional Protocol I, Article 78(3).

¹⁷⁴ Human Rights Watch, “We Had No Choice”.

¹⁷⁵ OSCE, Report of 13 April 2022, 24.

¹⁷⁶ Human Rights Watch, “We Had No Choice”.

¹⁷⁷ UN OHCHR, Report of 15 March 2023, paras 57–59; Daniel Boffley and Lorenzo Tondo, “Russia Accused of Shelling Mariupol Humanitarian Corridor,” *The Guardian*, 26 April 2022.

¹⁷⁸ Amnesty International, “Russia: Filtration of Ukrainian Civilians”.

¹⁷⁹ CRC, Article 1. See Claus Kress, “The Crime of Genocide under International Law,” *International Criminal Law Review* 6 (2006): 484.

the ICC Elements of Crime, which in analogues provision within the Rome Statute sets the age of 18.¹⁸⁰

Schabas contended that the age threshold for the application of paragraph (e) should be lower than 18 years old, as the genocidal act of transferring children is particularly effective when directed at relatively young children, who are more susceptible to losing their cultural identity.¹⁸¹ Nonetheless, there exists a general consensus that the definition of a child, as articulated in the CRC, applies to the definition of genocide. In any event, the majority of Ukrainian children who were forcibly transferred seem to be under 15 years old.

The Mental Element (*Mens Rea*) of Genocide

Genocide is a specific intent crime, thereby requiring a two-step inquiry to determine the perpetrator's intent:¹⁸² The first step involves determining whether the perpetrator committed the act of forcible transferring children with the requisite mental state. The second step, referred to special intent or *dolus specialis*, requires determining whether the act of forcibly transferring children was intended to accomplish the destruction of a national, ethnical, racial or religious group.¹⁸³

(A) Specific Intent to Transfer Forcibly Children of the Group to Another Group

Each punishable act in the chapeau of Article II of the Genocide Convention has its own specific element. With regard to Article II (e), the mental element is established when the perpetrator possesses a specific intent to forcibly transfer children of the group to another group.¹⁸⁴ Specifically, the offender must have knowledge of the fact that children belong to one group (that children are Ukrainian in this case) and that they are being transferred to another group (to Russians).

As described above, Commissioner L'vova-Belova and other state officials in Russia possessed knowledge that the children who were forcibly transferred children were Ukrainian. L'vova-Belova herself confirmed that a group of children, who were taken from the basements of Mariupol and forcibly transferred by the Russian officials to the Russian Federation, defiantly sang the Ukrainian national anthem during their removal to the Russian Federation before being transformed to "love" Russia.¹⁸⁵ Similarly, testimonies of Ukrainian children from the Kherson region, who were returned after the forcible transfer to temporarily occupied territories by Russia, indicate that they were subjected to physical violence if they expressed allegiance to Ukraine and were reprimanded for chanting "Glory to Ukraine."¹⁸⁶ They were made to believe that they were destined to be "children of Russia."

¹⁸⁰ ICC, Elements of Crimes to Article 6(e) of the ICC Statute, ICC-ASP/1/3.

¹⁸¹ Schabas, *Genocide in International Law*, 203.

¹⁸² *Prosecutor v. Akayesu*, paras 498, 518; *Prosecutor v. Bagilishema*, Case No. ICTR-95-1A-T, Judgment (7 June 2001), para 55. See also Nina H. B. Jorgensen, "The Definition of Genocide," *International Criminal Law Review* 1 (2001): 285, 308.

¹⁸³ *Bosnian Genocide case*, para 187.

¹⁸⁴ Schabas, *Genocide in International Law*, 294.

¹⁸⁵ Maria L'vova-Belova, Telegram: Contact @malvovabelova, 28 September 2022, <https://t.me/malvovabelova/605>

¹⁸⁶ The Insider, "Bili zheleznoj palkoj, derzhali v podvale.' Ukrainskie deti rasskazali, kak ih uderzhivali v rossijskih lager-jah," *The Insider*, 23 March 2023, <https://theins.ru/news/260402>.

Similarly, a decree on a simplified procedure of obtaining Russian citizenship has been introduced with the knowledge and intention to forcibly transferring Ukrainian children to Russia and placing them in the care of Russian foster or adoptive parents.

There are indications that the actions of L'vova-Belova's can be attributed to a deliberate policy, rather than occurring at random. This is, for example, evidence by her remarks made during a meeting in July 2022 with the governor of the Kaluga region and Russian families who received Ukrainian children.¹⁸⁷ Specifically, she stated that the transfer of Ukrainian children was a result of a comprehensive and meticulous process that took into account the legislative features of the relevant regions. This involved extensive preparation of documentation, identification of suitable regions with adequate resources, and careful selection of families willing to accommodate children with disabilities or large family groups consisting of four to nine children at once.

(B) *Dolus Specialis*

The special intent refers to the requirement that one of five “acts” must be committed with the “intent” as defined in the chapeau of Article II: “to destroy, in whole or in part, a national, ethnical, racial or religious group.” The meaning of a special intent remains a topic of debate.¹⁸⁸ Case law suggests that special (genocidal) intent involves the perpetrator acting with the aim, purpose or desire to destroy a group.¹⁸⁹ Merely having a discriminatory intent is insufficient— “something more is required.”¹⁹⁰

To come within the ambit of Article II of the Genocide Convention, according to the ICJ, forcible transferring of Ukrainian children must be carried out with the intention of physically destroying Ukrainians as a group, in whole or in part,¹⁹¹ as discussed above. There are two possible ways to prove the special intent in this case. One way to prove it is based on forcible transfers *per se* by demonstrating that serious physical and biological consequences of transferring of Ukrainian children to Russia are construed as an act resembling compulsory measure to prevent reproduction and biological survival of Ukrainians. Alternatively, the intent of physical destruction of Ukrainians as a group may be manifested not only through Russia's policy of child removal, but as part of a larger programme for genocide of Ukrainians as a national group, provided the mental element can be proven with regard to one or more other punishable acts under Article II of the Genocide Convention. I argue that special intent can be proven in this case relying on either of these arguments, albeit the presently available information provides greater support for the latter argument. Relatedly, as described above, previous litigation concerning forcible child transfers, categorized as genocide solely under paragraph (e), has been largely unsuccessful, which raises concerns regarding the potential effectiveness of employing the same argument in the context of Ukraine. I will address these two arguments in turn.

¹⁸⁷ Commissioner L'vova-Belova, “Marija L'vova-Belova posetila Kaluzhskuju oblast' i vstretilas' s priemnymi sem'jami, vzjavshimi pod opeku detej iz DNR,” 22 July 2022, <http://deti.gov.ru/articles/news/mariya-l-vo-va-belova-posetila-kaluzhskuyu-oblast-i-vstretilas-s-priemnymi-sem-yami-vzyavshimi-pod-opeku-detej-iz-dnr>

¹⁸⁸ Jeßberger, “The Definition and the Elements of the Crime of Genocide,” 105.

¹⁸⁹ *Prosecutor v. Al Bashir*, Pre-Trial Chamber (4 March 2009) para 124; *Prosecutor v. Krstić*, Case No. IT-98-33-T, Appeals Chamber (19 April 2004) para 134; *Prosecutor v. Akayesu*, para 520.

¹⁹⁰ *Bosnian Genocide case*, para 187.

¹⁹¹ *Ibid.*, 43, paras 344, 423, 438; *Croatia v. Serbia*, paras 137, 390. See also Schabas, “Genocide and Ukraine,” 849.

(i) Special Intent Based on Forcible Transfers Per Se

A comprehensive reading of the *travaux* of Article II (e) of the Genocide Convention seems to indicate that the process of indoctrination is instrumental in establishing special intent for the purposes of this paragraph of Article II.¹⁹² Indoctrination has also been central in the analysis of the UN Commission of Inquiry on Syria on forcible transfers of Yazidi children by ISIS,¹⁹³ as illustrated above.

There are indications that the Russian Federation is taking actions towards achieving such physical and biological consequences¹⁹⁴ through a deliberate policy aimed to indoctrinate Ukrainian children and accelerate the dissolution of their national identity.¹⁹⁵ As demonstrated above, indoctrination includes systematic re-education efforts that expose children from Ukraine to Russia-centric political and personal views through imposing Russian patriotic education, in some cases even military education,¹⁹⁶ sending children to re-education camps, refusing to provide them with education in Ukrainian language or in Ukrainian history and culture or in Ukrainian school curriculum in violation of Article 78(2) of Protocol I to the Geneva Conventions. This policy also includes efforts to hinder communication with children's Ukrainian family members, including by changing names of Ukrainian children and dispersing them across the Russian Federation to prevent family reunification. Finally, this policy includes passing legislation that expedites the adoption of Ukrainian children by the Russian adoptive parents,¹⁹⁷ paying Russian adoptive parents increased government support for adopting Ukrainian children,¹⁹⁸ and providing these parents with ideological education.¹⁹⁹

This argument, however, may be contingent on the scale of child transfers, although the "quantitative criterion" has been criticized in establishing the intent element of genocide in other contexts,²⁰⁰ as discussed below. Similarly, the ICJ interpretation of Article II (e) may be understood as requiring evidence of physical demise of Ukrainians as a national group, in whole or in part, as a result of the reproductive management. While the exact scale of child transfers is difficult to establish during the ongoing armed conflict, it can be argued that evidence of partial physical demise of Ukrainians as a national group has become apparent already with at least 20,000 children having been deported and with deportations continuing on an industrial scale.²⁰¹

¹⁹² See Kourtis, "The Greek Civil War," 19.

¹⁹³ Human Rights Council, "They Came to Destroy," 19.

¹⁹⁴ Cf. Schabas, who insists that Russia's actions constitute cultural genocide and not physical or biological genocide. Schabas, "Genocide and Ukraine," 848.

¹⁹⁵ Deprivation of identity of Ukrainian children might separately constitute a violation of Article 8 of the CRC.

¹⁹⁶ On underreported militarization of patriotic education for Ukrainian children, see Asymmetrical Haircuts, "Ukraine's Taken Children with Yulia Ioffe and Nathaniel Raymond" (19 May 2023), [30:06–32:48], <https://www.asymmetricalhaircuts.com/episodes/episode-78-ukraines-taken-children-with-yulia-ioffe-and-nathaniel-raymond/>

¹⁹⁷ Lauri Blank, for example, argues that "Russian steps to fast-track adoptions for forcibly transferred Ukrainian children will be an important indicator of such specific intent in any future investigations into possible genocide against the Ukrainian people." Lauri Blank, "Forcible Transfer of Children in Ukraine: An Element of Genocide?" *Jurist*, 21 April 2022, <https://www.jurist.org/commentary/2022/04/laurie-blank-russia-invasion-ukraine-genocide/>

¹⁹⁸ See fn 154.

¹⁹⁹ Eastern Human Rights Group and Institute for Strategic Studies and Security, "Forced Deportation of Children in the Russian Federation" (December 2022) 24–5.

²⁰⁰ David Alonzo-Maizlish, "In Whole or in Part: Group Rights, the Intent Element of Genocide, and the 'Quantitative Criterion'" *New York University Law Review* 77 (2002): 1375, 1397–1401; Catherine Renshaw, "The Numbers Game: Substantiality and the Definition of Genocide," *Journal of Genocide Research* 25, no. 2 (2023): 195–215.

²⁰¹ Asymmetrical Haircuts, 45:14–45:35.

Russian state officials argue that Ukrainian children are “evacuated,” which is in their best interests,²⁰² using a similar argument of the leftist partisans in the Greek civil war, and that the re-education efforts are underpinned by purportedly altruistic aims, such as protection, assimilation (and possibly civilization). For instance, President Putin has referred to the war in Ukraine as “extraordinary circumstances,” in which it is imperative “to protect interests of children.”²⁰³ Commissioner L’vova-Belova, in her open letter “We are for the future of children,” supports Putin’s decision to invade Ukraine, claiming that it was done to protect the children of DPR and LPR.²⁰⁴ It is worth noting that perpetrators frequently attempted to justify the genocidal act of forcible transferring children by claiming that their actions were driven by “philanthropic” intentions, such as to “save” or “benefit” the affected children.²⁰⁵ However, it is widely accepted in academic discourse and by courts that the underlying motive for the perpetration of genocide is irrelevant.²⁰⁶

The primary source of this approach is the ordinary meaning of terms in Article II of the Genocide Convention, as the text does not expressly mention the motive.²⁰⁷ A motive requirement was deliberately removed from the final text of the convention.²⁰⁸ An earlier draft stipulated that genocide had to be perpetrated based on a certain motive, but this requirement was ultimately rejected.²⁰⁹ The central rationale behind not allowing a perpetrator’s subjective belief to supersede the illegality of forcible transfer pertained to potentially establishing a dangerous precedent, particularly given the historical context of genocide, where perpetrators have frequently committed atrocities in the name of a purported greater good.²¹⁰ In this specific instance, the motive of Russian state officials should be deemed insufficient to overlook the violation of Article II (e) of the Genocide Convention.

Furthermore, as was discussed in Part 2, the issue of “evacuation” of children during the armed conflict was subsequently clarified by the Fourth Geneva Convention and Additional Protocol I to the Geneva Convention. Evacuation of children by an occupying state is generally proscribed. Evacuation can only be carried out to a foreign (neutral state) under very limited circumstances where precise conditions are met, to ensure that children do not lose their identity or are not raised in a manner foreign to that of their

²⁰² See e.g. Vasily Nebenzya, permanent representative of the Russian Federation to the UN, stated that Ukrainian children were removed to “keep them safe from danger posed by hostilities.” Maria Fedotova, “Postpred Nebenzja nazval bezopasnost’ usloviev dlja vozvrata vyvezennyh s Ukrainy detej,” *Kommersant*, 20 March 2023, <https://www.kommersant.ru/doc/5887517>

²⁰³ President of Russia, “Meeting with Commissioner for Children’s Rights Maria L’vova-Belova”.

²⁰⁴ Commissioner L’vova-Belova, “Uchastniki “Roditel’skoj platformy” i Obshhestvennogo soveta pri Upolnomochennom pri Prezidente RF po pravam rebenka podderzhali otkrytoe pis’mo “My—za budushhee detej!” 27 February 2022, <http://deti.gov.ru/articles/news/uchastniki-roditel-skoj-platformy-i-obshhestvennogo-soveta-pri-upolnomochennom-pri-prezidente-rf-po-pravam-rebenka-podderzhali-otkrytoe-pis-mo-my-za-budushee-detey>

²⁰⁵ Keith David Watenpaugh, “Are There Any Children for Sale?”: Genocide and the Transfer of Armenian Children (1915–1922),” *Journal of Human Rights* 12, no. 3 (2013): 289; Mundorff, “Other Peoples’ Children,” 110.

²⁰⁶ David L Nersessian, “The Contours of Genocidal Intent: Troubling Jurisprudence for the International Criminal Tribunals,” *Texas International Law Journal* 37, no. 2 (2002): 267–8; Payam Akhavan, *Reducing Genocide to Law: Definition, Meaning, and the Ultimate Crime* (Cambridge: Cambridge University Press 2012) 154; Mundorff, “Other Peoples’ Children,” 105–8; *Prosecutor v. Jelisić*, Case No. IT-95-10-A, Appeals Chamber (5 July 2001), para 71; *Prosecutor v. Kayishema*, Case No. ICTR-95-1-A, Judgment (Reasons), para 161. Cf. Schabas, *Genocide in International Law*, 294–5, where he argues in favour of a motive requirement, which he establishes through the reliance on the *travaux préparatoires*.

²⁰⁷ Mundorff, “Other Peoples’ Children,” 107.

²⁰⁸ Nersessian, “The Contours of Genocidal Intent,” 267.

²⁰⁹ *Ibid.*, Storey, “*Kruger v. The Commonwealth*,” 227–8.

²¹⁰ Mundorff, “Other Peoples’ Children,” 110.

family of their country.²¹¹ The motive underlying the deportation or forcible transfers is immaterial.²¹² Even if the Russian Federation was allowed to “evacuate” Ukrainian children, it has not satisfied these mandatory conditions, and the purported “evacuations” have contravened both Article 49 of the Fourth Geneva Convention and Article 78 of Additional Protocol I to the Geneva Conventions.

Furthermore, Russia’s rationale underlying forcible transfers of Ukrainian children bears a striking resemblance to the colonial practices, discussed previously, where indigenous children in Northern America and Australia were forcibly removed from their families to be “protected” and educated “in the way of the white men,” with the English language serving as the medium of education, aimed at facilitating their transition towards “civilization.”²¹³ Similarly, Ukrainian children are being “integrated” into the Russian government’s vision of national culture, history, and society through education in the Russian language and using the Russian curriculum. The Russian Federation’s present-day “de-Ukrainization” policy has deep historical roots, with the Soviet era marked by restrictions and prohibitions on use of Ukrainian language and literature, the denigration of Ukrainian culture as second-rate and mediocre, and the portrayal of Ukrainians as “backward” villagers.²¹⁴

As will be discussed in more detail below, the recent actions taken by Russia in the course of its invasion bear similarities to the patterns of colonial violence and oppression historically inflicted upon Ukrainians by the USSR and the Russian Empire, predecessor states of the Russian Federation.²¹⁵ Consequently, it is my contention that Russia’s actions, commencing in February 2022, cannot be interpreted in isolation from the historical colonial violence and oppression. As such, these actions should be seen as satisfying the special intent element of Article II (e).

(ii) Special Intent Based on a Broader Programme to Commit Genocide

Alternatively, the intent of physical destruction of Ukrainians as a group may be manifested not only through Russia’s policy of child removal, but also as part of a broader programme to commit genocide against Ukrainians. Scholars have argued that other actions of Russian authorities and armed forces, such as killings of Ukrainians and causing serious bodily or mental harm, constitute acts of genocide.²¹⁶ Therefore, in this context, I will draw upon the examination of the mental element in the context of other paragraphs of Article II of the Genocide Convention, specifically paragraphs (a), (b), and (c). I will

²¹¹ Pilloud et al, *Commentary on the Additional Protocol*, 909.

²¹² Fourth Geneva Convention, Article 49 (1).

²¹³ Ruth Amir, “Killing Them Softly: Forcible Transfers of Indigenous Children,” *Genocide Studies and Prevention* 9, no. 2 (2015): 44, 46–8.

²¹⁴ See e.g. Vitaly Chernetsky, “Postcolonialism, Russia and Ukraine,” *Ubandus Review* 7 (2003): 38, 40; James Richter, “Famine, Memory, and Politics in the Post-Soviet Space: Contrasting Echoes of Collectivization in Ukraine and Kazakhstan,” *Nationalities Papers* 48, no. 3 (2020): 487.

²¹⁵ See Werth, “Mass Deportations, Ethnic Cleansing, and Genocidal Politics in the Later Russian Empire and the USSR,” 386–406; Botakoz Kassymbekova and Erica Marat, “Time to Question Russia’s Imperial Innocence,” *PONARS Eurasia Policy Memo*, 27 April 2022, <https://www.ponarseurasia.org/time-to-question-russias-imperial-innocence/>; Moses, *The Problems of Genocide*, 254, 268, 271; A. Dirk Moses, “The Ukraine Genocide Debate Reveals the Limits of International Law,” *Lawfare*, 16 May 2022, <https://www.lawfareblog.com/ukraine-genocide-debate-reveals-limits-international-law>.

²¹⁶ Azarov, Koval, Nuridzhanian, and Venher, “Genocide Committed by the Russian Federation in Ukraine”; Marchuk and Wanigasuriya, “Beyond the False Claim of Genocide”.

also provide specific examples when these punishable acts were conducted in relation to children, which could have implications for the group's capacity to renew itself.

In the context of legal proceedings, it is common practice for courts to look at manifestations of intent, including a "general plan" or a systemic pattern of conduct directed against a specific group from which to infer specific intent.²¹⁷ I argue that it is possible to establish genocidal intent through a "general plan." Alternatively, I contend that specific intent can be inferred from systematic pattern of conduct directed against Ukrainians as a national group.

(a) "General Plan". Within the context of Russia's actions in Ukraine, some scholars agree that a "general plan" can be demonstrated through Russia's official statements, documents, and policy to destroy Ukrainians as a national group.²¹⁸ On the other hand, some suggest that Russia's invasion was aimed to oust Ukrainian President Volodymyr Zelenskyy and install a pro-Russian government rather than to execute a genocidal campaign of partial destruction of Ukrainians as a national group.²¹⁹ According to this perspective, Russian involvement in Ukraine cannot be classified as genocide, as the Russian military's brutality does not differentiate on the basis of ethnic identity, leading to the killing of numerous individuals who identify as Russian-speakers and ethnic Russians.²²⁰ Nevertheless, I argue, along with many scholars,²²¹ that Russia's actions are directed at Ukrainian as a national group in this instance, rather than an ethnic group, as will be discussed below in more detail.

While a court would need to consider factual evidence to establish the requisite genocidal intent on a case-by-case basis, there are numerous public statements made by President Putin in his capacity as head of state and commander-in-chief of the Russian Federation's armed forces, as well as other Russian state official at various levels, that suggest an official policy of the Russian state involving active and systematic efforts to deny Ukrainians their identity and deprive them of their right to exist as a nation through means of extermination or re-education.²²² An analysis of the campaign of incitement to genocide driving the current invasion by Russia's state organs, including state-owned media,²²³ reveals indications of a "general plan." This campaign is characterized by the denial of the existence of a Ukrainian identity and of Ukraine itself, dehumanization of Ukrainians (with multiple reference to them

²¹⁷ *Bosnian Genocide case*, para 373.

²¹⁸ See *Prosecutor v. Gacumbitsi*, Case No. ICTR-2001-64-A, Judgment (7 July 2006), para 43. See also New Lines Institute 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, <https://newlinesinstitute.org/wp-content/uploads/An-Independent-Legal-Analysis-of-the-Russian-Federations-Breaches-of-the-Genocide-Convention-in-Ukraine-and-the-Duty-to-Prevent-1-2.pdf>

²¹⁹ Rich Lowry, "Russia is Not Committing Genocide in Ukraine," *Politico*, 14 April 2022, <https://www.politico.com/news/magazine/2022/04/14/russia-not-committing-genocide-ukraine-biden-harmful-00025329>

²²⁰ Douglas Irvin-Erickson, "Is Russia Committing Genocide in Ukraine?" *Opinio Juris*, 21 April 2022, <https://opiniojuris.org/2022/04/21/is-russia-committing-genocide-in-ukraine/>

²²¹ Azarov, Koval, Nuridzhanian, and Venher, "Genocide Committed by the Russian Federation in Ukraine,"; Marchuk and Wanigasuriya "Beyond the False Claim of Genocide," 14–15.

²²² See 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)

²²³ For a compilation of Russia's genocidal rhetoric, see Clara Apt, "Russia's Eliminationist Rhetoric against Ukraine: A Collection," *Just Security*, 14 February 2023, <https://www.justsecurity.org/81789/russias-eliminationist-rhetoric-against-ukraine-a-collection/>; and the work of expert monitors of Russian media Julia Davis and Francis Scarr: <https://twitter.com/JuliaDavisNews>; https://twitter.com/francis_scarr (accessed March 20, 2023).

being subhuman, animals, epitome of evil, and Nazis),²²⁴ construction of Ukrainians as an existential threat to Russia,²²⁵ and conditioning of Russian society to commit and condone atrocities.²²⁶ Concurring with the UN Independent International Commission of Inquiry²²⁷ and foreign officials,²²⁸ one can find recurring statements made by state-owned media²²⁹ that follow the patterns of group destruction and bear resemblance of the rhetoric of genocide incitement in Rwanda²³⁰ or Nazi discourse about the other.²³¹ These are not isolated indicators emanating from individuals who appear to harbour genocidal intent;²³² genocidal sentiments are expressed systematically by the state media leadership and journalists. It is a well-known fact that state-controlled media refrains from disseminating any information or opinion without the explicit approval of the Office of the President of the Russian Federation.²³³ Some scholars have pointed to eliminationist language and threatening rhetoric as evidence of genocidal intent.²³⁴

Russia's "general plan" may be characterized as "denazification" and has been articulated in Putin's article "On the Historical Unity of Russians and Ukrainians,"²³⁵ as well as in the texts of his public speeches and press conference transcripts starting from 21 February 2022.²³⁶ The objective of "denazification" is to eradicate Ukrainian "Nazis," i.e. Ukrainians who espouse the belief that they constitute a distinct national group

²²⁴ See e.g. Vladimir Solovyov, a presenter on the Russian state TV, compared Ukrainians to "worms" that should be cleansed. Julia Davis, 19 July 2022, <https://twitter.com/JuliaDavisNews/status/1549381189336711169> (accessed April 1, 2023). See generally Ian Garner, "We've Got to Kill Them": Responses to Bucha on Russian Social Media Groups," *Journal of Genocide Research* (2022) 5, 7–8.

²²⁵ See e.g. President Putin, "Greetings to Leaders and Citizens of Foreign States on 77th Anniversary of Victory in Great Patriotic War," 8 May 2022, <http://en.kremlin.ru/events/president/news/68363>.

²²⁶ For example, on 18 April 2022, Putin celebrated soldiers from the 64th Separate Guards Motor Rifle Brigade suspected of mass killing in Bucha: <http://www.kremlin.ru/events/president/letters/68234>. The events in Bucha have been warmly welcomed on some Russian social media. Garner, "We've Got to Kill Them," 6. See also, for example, the interviews with Russian citizens in Russia, who insist on the killing of all Ukrainians, particularly children: 1420 by Daniil Orain, "Should We Invade Poland Next?" [particularly at 0:30–2:42], *YouTube*, 3 March 2023, <https://www.youtube.com/watch?v=-CYHgPcII-g>

²²⁷ Euronews, "Murder, Torture and Rape but No Genocide".

²²⁸ See e.g. Beth Van Schaack, US ambassador-at-large for global criminal justice in the US Senate Committee on Foreign Relations Hearing (12 May 2022): "some of the genocidal rhetoric that we're hearing out of Russia is extremely worrying": <https://www.c-span.org/video/?520168-1/state-department-officials-testify-ukraine-aid> (accessed March 20, 2023).

²²⁹ See Apt.

²³⁰ Radio Television Libre des Mille described Tutsis as "cockroaches" and "snakes," while portraying them as an existential threat. Susan Benesch, "Inciting Genocide, Pleading Free Speech," *World Policy Journal* 21 (2004): 63–4. Similarly, Russian media presents Ukrainians as existential threat and derogatorily labels them as "worms" and "filth," as discussed in fn 224.

²³¹ Garner, "We've Got to Kill Them," 5.

²³² Schabas, "Genocide and Ukraine," 849.

²³³ See Vera Tolz and Yuri Teper, "Broadcasting Agitainment: A New Media Strategy of Putin's Third Presidency," *Post-Soviet Affairs* 34, no. 4 (2018): 213–27; Maya Vinokour, "Russia's Media Is Now Totally in Putin's Hands," *Foreign Policy*, 5 April 2022, <https://foreignpolicy.com/2022/04/05/russia-media-independence-putin/>

²³⁴ Francine Hirsch, "'De-Ukrainization' Is Genocide—Biden was Right to Sound the Alarm," *The Hill*, 14 April 2022, <https://thehill.com/opinion/international/3267060-de-ukrainization-is-genocide-biden-was-right-to-sound-the-alarm/>; Timothy Snyder, "Russia Intends to Commit Genocide in Ukraine, Six Ways to Prove It," *European Pravda*, 23 October 2022, <https://www.eurointegration.com.au/eng/articles/2022/10/23/7149219/index.amp>

²³⁵ President Putin, "On the Historical Unity of Russians and Ukrainians," 12 July 2021, <http://kremlin.ru/events/president/news/66181>. See also Armen Gasparyan, *Denazification of Ukraine. Land of Unlearned Lessons* (Publishing House "Peter," 2018).

²³⁶ President Putin, "Address by the President of the Russian Federation," 24 February 2022, <http://en.kremlin.ru/events/president/news/67843>. See also Alexander Etkind, "Ukraine, Russia, and Genocide of Minor Differences," *Journal of Genocide Research* (2022): 16–19, who discusses four genocidal tropes in Putin's speech.

with a unique identity, language, culture, and history.²³⁷ Margarita Simonyan, the editor-in-chief of RT and head of the media group managing RIA Novosti, a state-owned media outlet in Russia, and a close associate of President Putin, has asserted that a significant proportion of the Ukrainian population are “Nazis,” who possess “bestial nature.”²³⁸ Pyotr Tolstoy, the Deputy Chairman of the State Duma, has supported this claim and specifically referred to Ukrainian children, stating that “the Ukrainian youth were made into Hitler Youth,”²³⁹ and Russia has “lost at least one generation of Ukrainians,” who have been “zombified.”²⁴⁰

The editorial “What Russia Must Do with Ukraine,”²⁴¹ which was published by the RIA Novosti, the main state-owned news agency in Russia, arguably represents the most comprehensive plan for genocide that the Russian Federation has issued to date.²⁴² In response to this editorial, a member of the Bundestag, Thomas Heilmann has asked the Berlin Prosecutor’s Office to initiate investigation against Tymofii Sergeitsev, the editorial’s author and an employee of the RIA News, for inciting to genocide.²⁴³ The editorial explicitly declares that the process of denazification inevitably involves de-Ukrainization, which refers to “the rejection of the large-scale artificial inflation of the ethnic component in the self-identification of the [Ukrainian] population.” According to this plan, Ukrainian “Nazis” must be destroyed, where “Nazis” are not only high-ranking Ukrainian officials, but also “a significant number of common people,” who are “guilty of being passive Nazis and Nazi accomplices.” The plan also advocates for re-education of the Ukrainian population and the imposition of stringent censorship on the political sphere, culture, and education.

The strategy of re-education aimed at suppressing Ukrainians’ sense of history, language, and nationhood appears to be a pivotal element of this plan and has a significant impact on children. In the occupied territories, Russian authorities have exerted pressure (including by detention, ill-treatment, and expulsion) on schoolteachers to adopt the Russian educational programme,²⁴⁴ which involves eliminating Ukrainian language, literature, and history from the school curriculum, as well as replacing Ukrainian textbooks with Russian ones.²⁴⁵ Additionally, the use of Ukrainian language and

²³⁷ Parliament of Ukraine, “Declaration on the Genocide”.

²³⁸ NTV Channel, Comment by Margarita Simonyan on Nazism in Ukraine, 26 March 2022, <https://twitter.com/ntvru/status/1507605586447327234?s=46>

²³⁹ Pyotr Tolstoy, Telegram: Contact @petr_tolstoy, 31 March 2022, https://t.me/petr_tolstoy/1300

²⁴⁰ Ibid., 17 March 2022, https://t.me/petr_tolstoy/1286

²⁴¹ Timofey Sergeytsev, “What Russia Must Do with Ukraine” [English translation], *RIA Novosti*, 4 April 2022, https://medium.com/@kravchenko_mm/what-should-russia-do-with-ukraine-translation-of-a-propaganda-article-by-a-russian-journalist-a3e92e3cb64; Ksenia Svetlova, “Russia’s Chilling Manifesto for Genocide in Ukraine,” *Haaretz*, 7 April 2022, <https://www.haaretz.com/world-news/europe/2022-04-07/ty-article-opinion/russias-chilling-manifesto-for-genocide-in-ukraine/00000180-5b96-d97e-a7fb-7bd7cf700000>

²⁴² See Alexey Kovalev, “Russia’s Ukraine Propaganda Has Turned Fully Genocidal,” *Foreign Policy*, 9 April 2022; Timothy Snyder, “Russia’s Genocide Handbook: The Evidence of Atrocity and of Intent Murders,” 8 April 2022.

²⁴³ Michael Hanfeld, “CDU-Abgeordneter erstattet Anzeige wegen Aufrufs zum Völkermord,” *Faz.net*, 8 April 2022, <https://www.faz.net/aktuell/feuilleton/medien/cdu-abgeordneter-erstattet-anzeige-wegen-aufrufs-zum-voelkermord-17945217.html>

²⁴⁴ UN OHCHR, Report of 15 March 2023, para 94.

²⁴⁵ Maksym Vishchyk, “Occupation of Minds: IHL Response to Russian Education Policies in the Occupied Ukrainian Territories,” *EJIL: Talk!*, 12 October 2022, <https://www.ejiltalk.org/occupation-of-minds-ihl-response-to-russian-education-policies-in-the-occupied-ukrainian-territories/>; Lorenzo Tondo, “Moscow Forcing Teachers in Occupied Ukraine to Follow Russian Curriculum,” *The Guardian*, 1 July 2022.

Ukrainian-language books in education has been prohibited, Russian teachers have been brought in to teach in the occupied territories,²⁴⁶ and Ukrainian children have been compelled to listen to Russia's national anthem in school.²⁴⁷

This process of re-education has been overseen by Sergei Kravtsov, the Russian Education Minister, who as officially acknowledged this on multiple occasions,²⁴⁸ and has been endorsed by the heads of federal subjects of the Russian Federation who have implemented these decisions at the local level.²⁴⁹

(b) Pattern of conduct directed against a specific group. The presence of an overall plan to commit genocide can also be inferred from the pattern of acts directed against a specific group.²⁵⁰ It is important to acknowledge, however, that international courts have established stringent criteria for proving intent in this way.²⁵¹ In the *Bosnian Genocide case*, the ICJ recognized the possibility of inferring genocidal intent from a pattern of conduct but emphasized that such an intent must be the *only* inference that could reasonably be drawn from the acts in question.²⁵² This is an incredibly high bar, since diverse intentions may inform human actions. The ICJ's interpretation of genocidal intent has been subjected to compelling criticisms for excessive restrictiveness verging on absurdity.²⁵³ This is due to the fact that genocide is typically a protracted historical episode, and the notion that a singular intention underpins all actions of a collective actor, such a state or an army, is both ahistorical and implausible.²⁵⁴ As a result of this interpretation, international courts have rarely ruled that a genocide had occurred. Although the ICJ is a well-regarded international court and its decisions are often followed, this court (or any other court) is not obligated to adopt the same approach as the ICJ did in the *Bosnian Genocide case*.²⁵⁵

The intent to commit genocide can be inferred through logical deduction that follows from evidence of the material acts.²⁵⁶ Therefore, genocidal intent may be ascertained from the actions of the perpetrator.²⁵⁷ Courts have affirmed that genocidal intent can

²⁴⁶ Robyn Dixon, "Russia Sending Teachers to Ukraine to Control What Students Learn," *Washington Post*, 18 July 2022, <https://www.washingtonpost.com/world/2022/07/18/russia-teachers-ukraine-rewrite-history/>; Sergii Gorbachov, Education Ombudsman of Ukraine, "Educational Genocide Is a Component of the Russian Genocide of the Ukrainian People," 26 May 2022, <https://eo.gov.ua/osvitniy-henotsyd-skladova-rosiyskoho-henotsydu-ukrainskoho-narodu/2022/05/26/>

²⁴⁷ Media Centre of the Mayor of Melitopol, Comment on Russian curriculum in the Melitopol schools, 9 September 2022, <https://www.facebook.com/UkraineMediaCenter/posts/russian-invaders-prevent-children-from-leaving-schools-in-melitopol-but-children/156853276958026/>

²⁴⁸ See e.g. statements of the Russian Education Minister Sergei Kravtsov in the meeting with President Putin on 8 July 2022: <http://kremlin.ru/events/president/news/68842>.

²⁴⁹ Ukraine Crisis Media Center, "Mariupol: Children Propaganda Day instead of Children Protection Day," 2 June 2022, <https://uacrisis.org/en/den-dytyachoyi-propagandy-v-mizhnarodnyj-zahystu-ditej-v-mariupoli/>; Rory Sullivan, "Mariupol and St Petersburg to Become Sister Cities, Says Russian Governor," 24 May 2022, <https://www.independent.co.uk/news/world/europe/mariupol-st-petersburg-sister-cities-b2086215.html>

²⁵⁰ *Croatia v. Serbia*, para 130; *Prosecutor v. Karadžić*, Case No. IT-95-5/18-T, Judgment (24 March 2016), para 550.

²⁵¹ Philippe Sands, "What the Inventor of the Word 'Genocide' Might Have Said About Putin's War," *New York Times*, 28 April 2022; Schabas, "Genocide and Ukraine," 850.

²⁵² *Bosnian Genocide case*, para 373; *Croatia v. Serbia*, paras 148, 417, 510.

²⁵³ Shaw, "Russia's Genocidal War in Ukraine," 6.

²⁵⁴ *Ibid.*, 8.

²⁵⁵ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 892 UNTS 119, Article 59.

²⁵⁶ Schabas, *Genocide in International Law*, 264.

²⁵⁷ *Prosecutor v. Akayesu*, para 523; *Prosecutor v. Musema*, para 167. See also Devrim Aydin, "The Interpretation of Genocidal Intent under the Genocide Convention and the Jurisprudence of International Courts," *Journal of Criminal Law* 78, no. 5 (2014): 423, 438.

be inferred from “the general context, the scale of atrocities, the systematic targeting of victims on account of their membership in a particular group, the repetition of destructive and discriminatory acts, or the existence of a plan or policy.”²⁵⁸

Since the onset of the full-scale invasion in Ukraine, there are credible evidence of Russian military forces having engaged in a campaign of deliberate and wilful killing of Ukrainians. The UN reports that the Russian army has committed thousands of intentional and arbitrary killings of civilians, including those who attempted to flee and those travelling in civilian cars with signs “children” on the windows.²⁵⁹ There are documented attacks using explosive weapons to target populated areas and cause as much destruction as possible,²⁶⁰ where such killings were not the collateral damage that resulted from bombardment of military objectives.²⁶¹ Children have been subjected to these attacks as well, with instances of deliberate targeting directed towards them. As an illustration, on 9 March 2022, the Russian armed forces bombed a children’s hospital in Mariupol, which President Zelenskyy described as “ultimate evidence of genocide.”²⁶² On 16 March 2022, the Russian military likely deliberately targeted the Mariupol drama theatre, where hundreds of civilians, including families with children, were taking refuge; many were killed.²⁶³ Prior to the attack, locals had painted the word “children” in Cyrillic letters on the forecourts of both sides of the building, which was visible on satellite imagery.²⁶⁴

While the UN authorities have reported 8,231 civilian deaths as of 12 March 2023, they acknowledge that the actual figures are considerably higher,²⁶⁵ including because of the limited access to information from conflict zones and territories occupied by the Russian Federation. The destruction of the city of Mariupol, which was publicly witnessed, and had a pre-war population of 500,000²⁶⁶ might serve as a potential indicator of higher civilian casualties. The precise number of casualties in Mariupol remains unknown, given the city’s ongoing occupation by Russian forces. Nonetheless, based even on conservative approximations the death toll surpasses 20,000.²⁶⁷ Marchuk and Wanigasuriya astutely observed²⁶⁸ that suggesting that the violence and death in Mariupol did not reach the intensity threshold required to qualify as genocide²⁶⁹ would amount to a denial of the

²⁵⁸ *Prosecutor v. Karadžić*, para 550.

²⁵⁹ UN OHCHR, Report of Independent International Commission of Inquiry on Ukraine – Note by the Secretary-General, UN Doc A/77/533, 18 October 2022, <https://www.ohchr.org/en/press-releases/2022/10/un-commission-has-found-array-war-crimes-violations-human-rights-and>; UN OHCHR, Report of 15 March 2023, para 58; Kaminetskyi and Zavorotko, “Ukraine Symposium—Russian Crimes against Children”.

²⁶⁰ *Ibid.*

²⁶¹ See Schabas, “Genocide and Ukraine,” 851; *Croatia v. Serbia*, para 474.

²⁶² Samantha Lock et al, “Strike on Children’s Hospital ‘Ultimate Evidence that Genocide is Happening’ – as It Happened,” *The Guardian*, 10 March 2022.

²⁶³ Amnesty International, “Ukraine: ‘Children’: The Attack on the Donetsk Regional Academic Drama Theatre in Mariupol,” 30 June 2022, <https://www.amnesty.org/en/documents/eur50/5713/2022/en/>

²⁶⁴ Lori Hinnant, Mstyslav Chernov, and Vasilisa Stepanenko, “AP Evidence Points to 600 Dead in Mariupol Theatre Airstrike,” *AP*, 4 May 2022, <https://apnews.com/article/Russia-ukraine-war-mariupol-theater-c321a196fbd568899841b506afcac7a1>

²⁶⁵ UN OHCHR, “Ukraine: Civilian Casualty Update 13 March 2023,” 13 March 2023, <https://www.ohchr.org/en/news/2023/03/ukraine-civilian-casualty-update-13-march-2023>

²⁶⁶ Pjotr Sauer and Andrew Roth, “‘It Was Worse Than Hell’: Life in Mariupol under Russian Occupation,” *The Guardian*, 16 June 2022.

²⁶⁷ Saskya Vandoorne and Melissa Bell, “Mariupol Death Toll at 22,000, Says Mayor’s Adviser,” *CNN News*, 24 May 2022, https://edition.cnn.com/europe/live-news/russia-ukraine-war-news-05-24-22/h_95e94c548d8a5f49e0b97bc3415c9320.

²⁶⁸ Marchuk and Wanigasuriya, “Beyond the False Claim of Genocide,” 16.

²⁶⁹ Schabas, “Genocide and Ukraine,” 851.

lived experiences of Ukrainians residing in the besieged city. Similarly, while the *confirmed* numbers of Ukrainian civilians killed by the Russian Federation is small in relation to the size of Ukraine's total population,²⁷⁰ this fact alone cannot exclude the existence of genocidal intent.²⁷¹ While international courts may look to the quantity of victims when inferring genocidal intent,²⁷² this approach has been criticized for being incompatible with the Genocide Convention, both with its text and object and purpose.²⁷³

Investigations also have revealed a pattern of summary executions in areas temporarily occupied by Russian armed forces, where the victim's bodies were found with hands tied behind their backs and with signs of torture.²⁷⁴ Russian authorities keep threatening to kill more people if they refuse to re-educate and accept that they are not Ukrainians. Most recently, Anton Krasovsky, the head of Russian-language broadcasting for the state-owned RT channel, stated that Ukrainian children who refuse to accept their Russian identity should be drown and burnt alive.²⁷⁵ Multiple torture chambers have been discovered, including a chamber used to torture children,²⁷⁶ where survivors have attested to the use of derogatory language by Russia soldiers when referring to the victims of torture as "fascists" and "livestock."²⁷⁷

Reports from both the UN²⁷⁸ and Ukrainian authorities, including Minister of Foreign Affairs and Ombudsperson,²⁷⁹ have documented instances of systemic sexual violence against children and women perpetrated by Russian military forces.²⁸⁰ These accounts include reports of ritualised rape and rape-murder (for example, where children were forced to watch perpetrators rape their loved ones),²⁸¹ which target both the visible

²⁷⁰ Ibid., referring to *Croatia v. Serbia*, paras 437, 512, where the number of victims alleged by Croatia was 12,500 people.

²⁷¹ See e.g. *Bosnian Genocide case*, para 297, where the ICJ found that the killing of 7,000 Bosnian Muslim men of Srebrenica as genocide under Article II (a) of the Genocide Convention.

²⁷² See *Prosecutor v. Sikić, Judgment*, IT-95-8-T (3 September 2001), paras 66, 76; *Prosecutor v. Jelisić*, Case No. IT-95-10-T Judgment (14 December 1999), paras 78–83; *Prosecutor v. Akayesu*, para 523.

²⁷³ Alonzo-Maizlish, "In Whole or in Part," 1375, 1397–401.

²⁷⁴ UN OHCHR, Report of 18 October 2022, paras 65–74.

²⁷⁵ Andrew Roth, "Russian TV Presenter Accused of Inciting Genocide in Ukraine," *The Guardian*, 24 October 2022. In response to Krasovsky's statement, on 24 October 2022, Margarita Simonyan (RT Editor-in-Chief) announced that RT would suspend cooperation with Krasovsky. Krasovsky apologized for his statement about Ukrainian children. 9 days later, Krasovsky appeared on the air of RT; Margarita Simonyan confirmed his return to RT on 28 February 2023. Ksenia Maksimova, "Anton Krasovskij pojavilsja v jefire RT posle prizyva szhigat' ukraïnskikh detej," *Gazeta.ru*, 2 November 2022, <https://m.gazeta.ru/amp/social/news/2022/11/02/18944143.shtml>; Alexey Solovjev, "Anton Krasovskij nazval Margaritu Simon'jan svoim talismanom posle vozvrashheniya v jefir," *Politexpert*, 1 March 2023, https://politexpert.net/amp/23917723-anton_krasovskii_nazval_margaritu_simon_yan_svoim_talismanom_posle_vozvrashcheniya_v_efir; Anton Krasovsky, Telegram: Contact @krasovkin, 28 February 2023, <https://t.me/krasovkin/10720>

²⁷⁶ Kyiv Post, "Chamber Used by Russians to Torture Children Found in Kherson," *Kyiv Post*, 15 December 2022, <https://www.kyivpost.com/post/5787>

²⁷⁷ Kateryna Tyshchenko, "22 Torture Chambers Found in Liberated Kharkiv Oblast; People Were Brought to Russia for Torture," *Ukrainska Pravda*, 20 October 2022, <https://www.pravda.com.ua/eng/news/2022/10/20/7372813/>; UN OHCHR, Report of 18 October 2022, para 82.

²⁷⁸ UN OHCHR, Independent International Commission of Inquiry on Ukraine to the Human Rights Council: War Crimes Have Been Committed in Ukraine, 23 September 2022, <https://www.ohchr.org/en/press-releases/2022/09/independent-international-commission-inquiry-ukraine-human-rights-council>; UN OHCHR, Report of 15 March 2023, paras 78–85.

²⁷⁹ Lemkin Institute for Genocide Prevention, "Russian Soldiers Raped Me as My Terrified Son Cried," Lemkin Institute, 29 March 2022, <https://www.lemkininstitute.com/single-post/russian-soldiers-raped-me-as-my-terrified-son-cried>; UN OHCHR, "Situation of Human Rights in Ukraine in the Context of the Armed Attack by the Russian Federation, 24 February–15 May 2022," 29 June 2022, paras 96–102, <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-06-29/2022-06-UkraineArmedAttack-EN.pdf>

²⁸⁰ See also Diane Marie Amann, "International Child Law and the Settlement of Ukraine-Russia and Other Conflicts," *International Law Studies* 99 (2022): 563–4.

²⁸¹ UN OHCHR, Report of 15 March 2023, para 80; Orysia Kulick, "Gender and Violence in Ukraine: Changing How We Bear Witness to War," *Canadian Slavonic Papers* 64, nos. 2–3 (2022): 193, 197.

and invisible bonds that make community life in Ukraine possible and that are common atrocities during genocide.²⁸² The actual scale of these atrocities is still unclear, but the reports indicate that sexual violence is being perpetrated on a large scale.²⁸³ Sexual violence in Ukraine should also be interpreted in the light of rape metaphors and violent speech directed at Ukrainian women and Ukraine itself by President Putin, Russian diplomats, statespersons, and soldiers.²⁸⁴

The UN has also documented attacks on essential infrastructure.²⁸⁵ The Russian forces have conducted widespread missile strikes on civilian energy facilities throughout Ukraine, resulting in the destruction of 40 per cent of the country's generation capacity.²⁸⁶ According to State Duma members Andrey Gurulyov and Konstantin Dolgov, the goal of these attacks explained is to freeze and starve the Ukrainian civilian population, rendering it impossible for them to survive in their current location and thereby forcing them into exile.²⁸⁷ Massive destruction of civilian infrastructure across Ukraine has resulted in devastated essential services, including energy, water supply, and heating,²⁸⁸ which likely constitutes deliberately inflicting conditions of life aimed at physical destruction of Ukrainians. In the last quarter of 2022, persistent attacks on energy infrastructure caused an energy crisis, which created a new dimension of the ongoing humanitarian crisis.²⁸⁹ According to the findings of the UN Independent International Commission of Inquiry in Ukraine, as of 15 March 2023, approximately 18 million people in Ukraine were experiencing acute humanitarian needs, particularly during winter months, with children being particularly affected.²⁹⁰

Additionally, Russian forces have engaged in the systematic theft and destruction of grain and other agricultural produce from Ukrainian farmers in temporarily occupied territories,²⁹¹

²⁸² Lemkin Institute for Genocide Prevention, "Updated Statement on Genocide in Ukraine," 9 April 2022, <https://www.lemkininstitute.com/statements-new-page/updated-statement-on-genocide-in-ukraine>. See also Aldo Zammit Borda, "Putting Reproductive Violence on the Agenda: A Case Study of the Yazidis," *Journal of Genocide Research* (2022): 20, who argues that the pattern of rapes against Yazidi women and children (particularly brutal and systematic rapes of children) may be indicative of special intent.

²⁸³ Bethan McKernan, "Rape as a Weapon: Huge Scale of Sexual Violence Inflicted in Ukraine Emerges," *The Guardian*, 4 April 2022; Jelke Boesten, "Sexual Violence as a Weapon of War in Ukraine," *BMJ*, 10 May 2022, <https://www.bmj.com/content/377/bmj.o1172>

²⁸⁴ Kulick, "Gender and Violence in Ukraine," 193, 197; Leon Aron, "What's Behind Putin's Dirty, Violent Speeches," *The Atlantic*, 27 February 2022, <https://www.theatlantic.com/ideas/archive/2022/02/vladimir-putin-dirty-language-cursing/622924/>; The Telegraph, "Audio: Russian Soldier Appears to Discuss Rape of Ukrainian Women with His Wife in Intercepted Call," 13 April 2022, <https://www.youtube.com/watch?v=OusviV2Qd4o>

²⁸⁵ UN OHCHR, Report of 18 October 2022, para 40.

²⁸⁶ Roman Olearchyk, "Russia Ramps up Missile Strikes on Ukraine's Energy Infrastructure," *Financial Times*, 22 October 2022, <https://www.ft.com/content/00433ac0-d6b4-41fe-b36c-f465cf53067c>

²⁸⁷ Julia Davis, comment on attacks on civilian infrastructure, posted 20 October 2022, <https://twitter.com/JuliaDavisNews/status/1582926857749467137> (accessed November 1, 2022). In Ukraine, the term "Kholodomor"/"Холодомор" (kholod (cold) and moryty (to kill by privations, to starve, to exhaust)) has been commonly used to describe the extensive attacks on critical infrastructure, which is analogous to the term given to the man-made famine "Holodomor"/"Голодомор" (holod (hunger) and moryty (to kill by privations, to starve, to exhaust)). Victoria Siumar, "Operacija Kholodomor. Raketyj obstrel Ukrainy — jeto fal'stari, ego planirovali pozzhe," *Focus*, 12 October 2022, <https://focus.ua/opinions/532638-operacija-holodomor-raketyj-obstrel-ukrainy-eto-falstart-ego-planirovali-pozzhe>

²⁸⁸ UN OCHA, Ukraine: Situation Report, 10 February 2023, <https://reliefweb.int/report/ukraine/ukraine-situation-report-10-feb-2023-enruuk>

²⁸⁹ Ibid.

²⁹⁰ UN OHCHR, Report of 15 March 2023, para 20.

²⁹¹ Pavel Polityuk, "Russian Attack Destroys Warehouses of Major Ukrainian Commodity Terminal, Company Says," *Reuters*, 7 June 2022, <https://www.reuters.com/world/europe/russian-attack-destroys-warehouses-major-ukrainian-commodity-terminal-governor-2022-06-07/>; Nick Beake, Maria Korenyuk and Reality Check team, "Tracking Where Russia Is Taking Ukraine's Stolen Grain," *BBC News*, 27 June 2022, <https://www.bbc.co.uk/news/61790625>

which also likely represent efforts to deliberately inflict conditions of life aimed at physical destruction of Ukrainians. Ukrainian officials have likened these actions to Stalin's man-made famine, Holodomor,²⁹² which occurred in Ukraine in 1932–33²⁹³ and is recognized as genocide by seventeen countries.²⁹⁴

The destruction of cultural existence of the protected group can also be an indicator of genocidal intent, when conducted in tandem with "physical" or "biological" attacks.²⁹⁵ The Russian armed forces deliberately targeted various repositories of cultural significant to Ukrainians, such as museums, monuments, libraries, and places of worship.²⁹⁶ Among the recent incidents that exemplify this trend is the demolition of the memorial erected in Mariupol to commemorate the victims of the Holodomor.²⁹⁷

(C) Ukrainians as a Protected National Group

The ultimate aim of the crime of genocide is to destroy, in whole or in part, a national, ethnical, racial or religious group. In present case, there are grounds to believe that the Russian state authorities intend to destroy in part the Ukrainian national group.²⁹⁸ As previously indicated, certain scholars in their analysis concentrate on Ukrainians either as solely an ethnical group or alternatively as a national group, while excluding Russian-speakers or ethnic Russians that identify as Ukrainians.²⁹⁹ This position disregards the fact that vast majority of Ukrainians (irrespective of ethnicity or language)³⁰⁰ self-identify as Ukrainian, including those residing in Eastern and Southern Ukraine and speaking the Russian language.³⁰¹ Ukrainians responded to the Russian invasion and the attack on their

²⁹² Euronews with Reuters, AFP, "Ukraine War: Kyiv Likens Russian 'Genocidal' Tactics to Soviet-Era 'Holodomor' Famine," *Euronews*, 26 November 2022, <https://www.euronews.com/2022/11/26/ukraine-war-kyiv-likens-russian-genocidal-tactics-to-soviet-era-holodomor-famine>; Lyudmyla Pavlyuk, "Russia is Looting Ukraine's Breadbasket ... Again," *Wilson Center*, <https://www.wilsoncenter.org/publication/kennan-cable-no-79-russia-looting-ukraines-breadbasketagain>

²⁹³ See generally Anne Applebaum, *Red Famine: Stalin's War on Ukraine* (New York: Penguin, 2018). See also Nicolas Werth, "Mass Deportations, Ethnic Cleansing, and Genocidal Politics in the Later Russian Empire and the USSR," in *The Oxford Handbook on Genocide Studies*, ed. Donald Bloxham and A. Dirk Moses (Oxford: Oxford University Press), 395–8.

²⁹⁴ Holodomor Museum, "Worldwide Recognition of the Holodomor as Genocide," <https://holodomormuseum.org.ua/en/recognition-of-holodomor-as-genocide-in-the-world/>

²⁹⁵ *Bosnian Genocide case*, para 344; *Croatia v. Serbia*, para 390; *Prosecutor v Krstić*, Case No. IT-98-33-T, Judgment (2 August 2001) paras 574, 580. See also Roger O'Keefe, *International Criminal Law* (Oxford: Oxford University Press, 2015) 148–9.

²⁹⁶ UNESCO, "Damaged Cultural Sites in Ukraine Verified by UNESCO," 31 October 2022, <https://www.unesco.org/en/articles/damaged-cultural-sites-ukraine-verified-unesco>; Ukraine's Ministry of Culture, "Destroyed Cultural Heritage of Ukraine," <https://culturecrimes.mkjp.gov.ua/>. See also Nata Druhak, "Looting, Stealing, Destroying: How Russia Weaponized Art Theft," *European Resilience Initiative Center*, 21 March 2023, <https://european-resilience.org/analytics/looting-stealing-destroying-how-russia-weaponized-art-theft>.

²⁹⁷ Iryna Balachuk, "The Occupiers of Mariupol Dismantled the Monument to the Victims of the Holodomor," *Ukrainian Pravda*, 19 October 2022, <https://www.pravda.com.ua/news/2022/10/19/7372573/>; Pjotr Sauer, Comment on the removal of a Holodomor monument in Mariupol, posted 19 October 2022, <https://twitter.com/PjotrSauer/status/1582678714810511361?s=20&t=0YJhnBMOWMKCpdCPth9c7w> (accessed November 1, 2022).

²⁹⁸ Azarov, Koval, Nuridzhanian, and Venher, "Genocide Committed by the Russian Federation in Ukraine," 7; Marchuk and Wanigasuriya "Beyond the False Claim of Genocide," 14–15; Blank, "Forcible Transfer of Children in Ukraine".

²⁹⁹ Schabas, "Genocide and Ukraine," 848, 856.

³⁰⁰ As Marchuk and Wanigasuriya explain, the Russian ethnic group and the Russian-speaking population in Ukraine should not be conflated, where the former constitutes only 17.3% of Ukrainian population and the later—31.8%. "Beyond the False Claim of Genocide," 15.

³⁰¹ Michal Bilewicz, "What Do Ukraine's Russian Speakers Want?," *Washington Post*, 7 March 2022, <https://www.washingtonpost.com/politics/2022/03/07/ukraine-russian-speakers/>; Oleksiy Yarmolenko, "Rating: The Number of Supporters of Independence in Ukraine Reached Almost 100%," *Babel*, 24 August 2022, <https://babel.ua/en/news/83378-rating-the-number-of-supporters-of-independence-in-ukraine-reached-almost-100>

right to existence in a consolidated way that demonstrates common civic national identity, rather than ethnocultural one.³⁰²

International criminal tribunals clarified that a national group can be defined as “a collection of people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties.”³⁰³ The Ukrainian national group shares common identity and an international recognized nationality;³⁰⁴ Ukrainians identify strongly with their country.³⁰⁵ The Russian Federation itself has consistently acknowledged Ukrainian national group as distinct in the international arena.³⁰⁶ It is therefore the Ukrainian national group that constitutes a protected group for the purposes of genocide.

Conclusion

The systematic, deliberate, and large-scale nature of forcible transferring of Ukrainian children and their indoctrination, along with the broader context of the Russian invasion and the public statements of Russian state officials and state-owned media, strongly suggest that the genocide of the Ukrainian people is unfolding. As other territories under temporary Russian occupation are reclaimed, additional evidence of all five punishable acts is likely to emerge.

Forcible transferring of Ukrainian children, in particular, has grave implications for the future viability of Ukrainians as a national group, as this act has potential to sever the group’s continuity. As President Zelenskyy observed, the purpose of forcibly transferring Ukrainian children “is not just to steal them, but to make those who were deported forget about Ukraine and unable to return.”³⁰⁷

Ukraine is pursuing different avenues to hold the Russian Federation accountable for the violations of international law related to the ongoing armed conflict.³⁰⁸ With respect to forcible transfer of children, it appears that Ukraine has prioritized the litigation before the ICC. During the meeting with the Prosecutor of the ICC, Karim Khan, President Zelenskyy highlighted the significance for Ukrainian society and future generations of the cases of deportation of Ukrainian children from the occupied territories by Russia.³⁰⁹ Ukraine and the ICC also signed a cooperation agreement on the establishment of an ICC country office in Ukraine.³¹⁰ The ICC Prosecutor, however, did not seek genocide

³⁰² Olga Onuch and Henry E Hale, *The Zelensky Effect* (London: Hurst Publishers) 24–6. The authors define civic national identity as people identifying strongly with their country not because it represents any specific ethnic, linguistic, or religious group but because it represents an inclusive vision of the citizenry as a whole.

³⁰³ *Prosecutor v. Akayesu*, para 512. See also *Prosecutor v. Krstić*, para 559; Kress, “The Crime of Genocide under International Law,” 476–7.

³⁰⁴ New Lines Institute for Strategy and Policy, “An Independent Legal Analysis,” 11.

³⁰⁵ Onuch and Hale, *The Zelensky Effect*, 24–6.

³⁰⁶ See e.g. Bilateral agreement between the Government of the Russian Federation and the Government of Ukraine on Collaboration in the Fields of Culture, Science and Education, <https://docs.cntd.ru/document/902056509>

³⁰⁷ The 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>

³⁰⁸ On the efforts to prosecute Russian aggression, see Kevin Jon Heller, “Options for Prosecuting Russian Aggression against Ukraine: A Critical Analysis,” *Journal of Genocide Research* (2022).

³⁰⁹ President of Ukraine, “President of Ukraine met with the Prosecutor of the International Criminal Court,” 28 February 2023, <https://www.president.gov.ua/en/news/prezident-ukrayini-zustrivsvya-z-prokurorom-mizhnarodnogo-kri-81349>

³¹⁰ ICC, “Ukraine and International Criminal Court Sign an Agreement on the Establishment of a Country Office,” 23 March 2023, <https://www.icc-cpi.int/news/ukraine-and-international-criminal-court-sign-agreement-establishment-country-office>

charges against President Putin and Commissioner L'vova-Belova for the forcible transfers of Ukrainian children, a decision that was met with disappointment by Ukrainians. Nonetheless, the possibility of the ICC adding new charges at a later stage cannot be ruled out, particularly since doing so would not be without precedence.³¹¹ Ukrainian authorities maintain that forcible transfer of children to Russia amounts to genocide.³¹²

Furthermore, Ukraine is part of ongoing legal proceedings against Russia before the ICJ on the ground of a false claim of genocide in Donbas, which was used as the pretext for Russia's large-scale invasion of Ukraine.³¹³ Ukraine can expand its argument beyond the false claim of genocide by arguing, in particular, that Russia has violated Article II (e) of the Genocide Convention through engaging in forcible transfer of Ukrainian children. However, such a move may involve certain risks. Although Ukraine is highly likely to prevail with the false claim of genocide,³¹⁴ advancing the claim that Russia perpetrated genocide would require substantial effort to establish the existence of the *dolus specialis* on the part of individual perpetrators, which is necessary to attribute state responsibility for genocide to Russia. As discussed above, the ICJ's previous jurisprudence has provided it with means to avoid genocide determination in this case.³¹⁵ It could be argued that Ukraine requires an unequivocal victory in the ICJ and that adding a claim of genocide perpetrated by Russia could create heightened expectations and raise the likelihood of disappointment for the victims of Russia's crimes.³¹⁶ On the other hand, the victims may benefit from a comprehensive and public disclosure of the truth of the Russian atrocities and an impartial fact-finding carried out by the ICJ, which could contribute to the victims' empowerment and possesses reparative potential. It also appears that Ukraine has an overwhelming body of evidence, particularly concerning the forcible transfer of children. As has been demonstrated in this article, even an examination of publicly available sources yields ample evidence of the probability of genocidal child transfers, predominantly due to Commissioner L'vova-Belova's meticulous documentation of all her actions and intentions on her website and in local media. In view of the fact that the Ukrainian authorities have been collecting evidence with the objective of meeting the high standard of proof for genocide since the outset of the armed conflict, focusing on forcible transfer of children specifically,³¹⁷ this case appears to be particularly strong.

³¹¹ Mark Kersten, "Straight to the Top: The International Criminal Court Issues an Arrest Warrant for Russia's Vladimir Putin," *Justice in Conflict*, 17 March 2023, <https://justiceinconflict.org/2023/03/17/straight-to-the-top-the-international-criminal-court-issues-an-arrest-warrant-for-russias-vladimir-putin/>

³¹² TSN, "'Signs of Genocide, Not Salvation': Podoliak Comments on Russia's Abduction of Ukrainian Children," 21 March 2023, <https://tsn.ua/en/ato/signs-of-genocide-not-salvation-podoliak-comments-on-russia-s-abduction-of-ukrainian-children-2290771.html>; DW, "Ukraine Calls Transfer of Children to Russia 'Genocidal,'" 27 February 2023, <https://www.dw.com/en/ukraine-calls-transfer-of-children-to-russia-genocidal-crime/a-64835163>.

³¹³ *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)*, Application Instituting Proceedings, 26 February 2022, para 2. See also Marchuk and Wanigasuriya, "Beyond the False Claim of Genocide."

³¹⁴ Marchuk and Wanigasuriya, "Beyond the False Claim of Genocide," 20. See also Marko Milanovic, "ICJ Indicates Provisional Measures against Russia, in a Near Total Win for Ukraine; Russia Expelled from the Council of Europe," *EJIL: Talk!*, 16 March 2022, <https://www.ejiltalk.org/icj-indicates-provisional-measures-against-russia-in-a-near-total-win-for-ukraine-russia-expelled-from-the-council-of-europe/>

³¹⁵ See Shaw, "Russia's Genocidal War in Ukraine," 9.

³¹⁶ See Sands, "What the Inventor of the Word 'Genocide' Might Have Said About Putin's War."

³¹⁷ Anthony Deutsch and Stephanie van den Berg, "Ukraine Probes Deportation of Children to Russia as Possible Genocide," 3 June 2022, <https://www.reuters.com/world/europe/exclusive-ukraine-investigates-deportation-children-russia-possible-genocide-2022-06-03/>

Other states may also pursue accountability for the forcible transfer of Ukrainian children at the national level pursuant to the principle of universal jurisdiction, thereby becoming part of the solution to addressing the wide-ranging atrocities committed in Ukraine.³¹⁸ At present, four states, namely Germany, Sweden, Lithuania, and Spain, have commenced universal jurisdiction investigations into war crimes and crimes against humanity perpetrated by Russians in Ukraine.³¹⁹ While such investigations have yet to extend to the crime of genocide,³²⁰ mounting evidence concerning forcible transfer of Ukrainian children and Russia's policies of their indoctrination and adoption may change the situation in the near future.

Ukraine may also seek accountability for forcible transfers of children in domestic courts. Ukraine has been pursuing accountability for international crimes extremely actively. The Office of Prosecutor General previously confirmed that the government was pursuing over 20 cases related to forcible transfers of Ukrainian citizens to Russia.³²¹

Two final remarks are in order. First, in terms of feasibility, while the ICC Prosecutor, Karim Khan KC, appropriately asserted that: “[w]e must ensure that those responsible for alleged crimes are held accountable and that children are returned to their families and communities ... we cannot allow children to be treated as if they are the spoils of war,”³²² international law does not provide for any special mechanisms for the return of Ukrainian children. Furthermore, the reintegration of Ukrainian children, even if they are identified and successfully returned to Ukraine, will be plagued with practical difficulties. At that point, some Ukrainian children may have been residing in Russia with Russian families for an extended period, and repatriation would entail yet another upheaval in children's lives. Additionally, given the widespread destruction and economic devastation that ensued in the aftermath of Russia's invasion of Ukraine, the resources to provide comprehensive support to the repatriated children will be limited. This should not, of course, serve as a deterrent to the process of repatriation of children, but it must be acknowledged that it will pose significant challenge, which has a history after World War II.³²³

Second, in addressing allegations against the Russian Federation, international legal practitioners and scholars should be aware of their wider historical context. Concerns regarding Russian imperialism and colonialism remaining among the many blind spots have been raised in several academic disciplines, including geography,³²⁴ international

³¹⁸ Mark Kersten, “Universal Jurisdiction in Ukraine: States Should Commit to Using Their Own Courts to Address Russian Atrocities,” *Justice in Conflict*, 17 October 2022, <https://justiceinconflict.org/2022/10/17/universal-jurisdiction-in-ukraine-states-should-commit-to-using-their-own-courts-to-address-russian-atrocities/>

³¹⁹ Kevin Jon Heller, “Can International Law Bring a Measure of Justice to Ukraine?” *Russia Matters*, 22 March 2023, <https://www.russiamatters.org/analysis/can-international-law-bring-measure-justice-ukraine>

³²⁰ Tjorben Studt, “The Necessity of a Structural Investigation into the Cultural Genocide in Ukraine,” *Volkerrechtsblog*, 15 February 2023, <https://voelkerrechtsblog.org/the-necessity-of-a-structural-investigation-into-the-cultural-genocide-in-ukraine/>

³²¹ *Ukrainska Pravda*, “20 Criminal Cases Opened in connection with Deportation of Ukrainian Citizens to Russia and Belarus—Prosecutor General,” 4 June 2022, <https://www.pravda.com.ua/eng/news/2022/06/4/7350529/>

³²² ICC, Statement by Prosecutor Karim A.A. Khan KC.

³²³ See e.g. Tara Zahra, *The Lost Children: Reconstructing Europe's Families after World War II* (Cambridge, MA: Harvard University Press, 2015).

³²⁴ Alexander Vorbrugg and Jevgeniy Bluwstein, “Making Sense of (the Russia War in) Ukraine: On the Politics of Knowledge and Expertise,” *Political Geography* 98 (2022): 1–3.

relations, and the broader postcolonial studies.³²⁵ International law also reveals its susceptibility to these blind spots, as international lawyers tend to focus on the abstract universality of international law, disregarding its local interpretations and complex historical contexts.³²⁶ Further research is warranted to examine whether international law scholarship ought to remain aspatial and detached from regional knowledge.

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³²⁵ Maria Mälksoo, "The Postcolonial Moment in Russia's War Against Ukraine," *Journal of Genocide Research* (2022): 4.

³²⁶ See Tamas Hoffmann, "Should the East Have a Voice? International Legal Life on the Semiperiphery," *Opinio Juris*, 16 December 2022, <http://opiniojuris.org/2022/12/16/should-the-east-have-a-voice-international-legal-life-on-the-semiperiphery/>; Patryk I. Labuda, "On Eastern Europe, 'Whataboutism' and 'West(s)plaining': Some Thoughts on International Lawyers' Responses to Ukraine," *EJIL: Talk!*, 12 April 2022, <https://www.ejiltalk.org/on-eastern-europe-whataboutism-and-westsplaining-some-thoughts-on-international-lawyers-responses-to-ukraine/>; Anthea Roberts, *Is International Law International?* (New York: Oxford University Press, 2017).