

## A CASE STUDY ON THE ABDUCTION OF UKRAINIAN CHILDREN WITHIN THE UKRAINE-RUSSIAN CONFLICT UNDER INTERNATIONAL LAW PERSPECTIVE

Christopher David Nagaria<sup>1\*</sup>, Ariawan Gunadi<sup>2</sup>

Universitas Tarumanegara, Jakarta, Indonesia<sup>1,2</sup>

Email: christopher.205200105@stu.untar.ac.id\*

### Abstract

*The purpose of this research hopes that readers will increase their insight and understanding to international law in the context of child abduction and deportation. The issues the author encounters include what are basis of international law on for child abduction and how the law is implemented against this violation. The research method used is doctrinal legal research to analyze positive law regarding child abduction according to international law. The findings of this research include various regulations and conventions that are preventative and repressive in nature. The Geneva Convention I stipulates that acts of deportation can be recognized as genocide. Geneva Convention IV regulates the rights and obligations of humanitarian organizations in a state of war. UN 1989 regulates children's rights. Meanwhile, the Rome Statute regulates the rights and authority of the International Criminal Court to prosecute and adjudicate on punishments towards perpetrators of such criminal acts. The research results have shown insurmountable violations on child rights through the unlawful act on deporting Ukrainian Children to Russian lands. Children have been subjected to Russian propaganda, bullying and harassment, maltreatment and unlawful adoption by Russians. President Vladimir Putin and Child Commissioner Maria Lvova-Belova should be held responsible under Article 8(2)(b)(viii) of the ICC for authorizing and inciting the forcible transfer of children.*

**Keywords:** Child Abduction; International Law; Conflict; Ukraine; Russia

### Introduction

On February 24, 2022, the President of Russia Vladimir Putin, announced a “special military operation”, which marked the beginning of a full-scale invasion of Donetsk and Luhansk, an eastern region in Ukraine. This announcement was immediately followed by Russian missile strikes on Ukrainian targets, accompanied by the infiltration of Russian troops from all sides of the Russian-Ukrainian border (Fedorenko & Fedorenko, 2022). The resulting armed conflict has resulted in the loss of hundreds of thousands of lives, involving both military personnel and innocent civilians from both sides. In the wake of these events, numerous media outlets have covered in-depth developments in the war, while victims and bystanders from the Ukrainian side have turned to social media to share videos and written reports, detailing the inhumane and unlawful acts committed by Russia against the people of Ukraine.

The Invasion has resulted in a devastating humanitarian crisis, with millions forced to flee their homes for living beside the battlefield, fear from compulsory military service or merely the thought of losing their loved ones (Umland, 2024). One of the many

inhumane and law violating consequences of the war reported was the abduction and deportation of Ukrainian children.

According to the United Nations High Commissioner for Refugees (UNHCR, 2024), more than 2 million children have been forced to flee their homes in Ukraine since the invasion began. Many of these children have been separated from their parents and families, a few of which have reportedly been deported to Russia (Marhold, 2023).

The United Nations (UN) has since condemned Russia's deportation of children, calling it a "war crime" and has urged that the displaced children must be released and returned to their families as soon as possible (Cismas et al., 2023).

The United Nations Convention on the Rights of the Child (CRC) article 2 addresses that "no child shall be subject to arbitrary or unlawful interference with his or her family", and that "State members of the UN shall respect the child's right to maintain his or her identity, including nationality, name and family relationships as recognized by law without unlawful interference".

Russia's deportation of children is a clear violation of international law and could constitute a war crime and crimes against humanity. International organizations such as the Human Rights Watch (HRW), International Red Cross and Red Crescent Movement (ICRC) and UN member states have taken steps to ensure that children who have been deported are released and returned to their families as soon as possible (Tampubolon, 2022).

Journalists have reported first hand interviews from child victims and witnesses to the forced deportation. Ukrainian children have been abducted before and after their separation from their families whilst fleeing from the war zone as they undergo filtration camps as a means of forceful separation (Ioffe, 2023). Others have been abducted from public institutions such as orphanages, schools, care homes, and hospitals

In spite of the active war, Ukrainian parents were pressured by Russian authority to take their children under custody as means to protect them from the war or persuade them by taking the opportunity in providing a cost-free trip, hoping for safer living conditions amidst their war-torn country (Trautman & McFarlin, 2023). Whether forced or "consented", Ukrainian children were then transported to Russian territory and placed in concentration camps or as reported by Russian news as "summer camps" (Alexander, 2023).

However, according to witness testimonies, some children have experienced poor living conditions, verbal abuse, and insufficient care while living under Russia's summer camps while being subjected to the integration and teachings in Russian education. Ukrainian children have been taught to learn the Russian language, Russian culture, and were forced to sing Russia's national anthem. The Ukrainian government has accused the Russian state of brainwashing children in providing Russian propaganda and military education in an effort to replace any childhood attachment from their Ukrainian homeland with Russia.

As easy as it has been for Ukrainian children to enter Russia, repatriation of children to reunite with their parents have been proven difficult amidst the ongoing turmoil of the war. Men and fathers are ineligible to enter Russia and pick up their children due to risk of infiltration and persecution from Russian authority leaving only mothers as the possible solution to retrieve their kids. The Ukrainian government has managed to repatriate 307 children as of February 24, 2023 (Trautman & McFarlin, 2023). However, the duration of detainment for all children abducted in said camps are uncertain or possibly indefinite.

## A Case Study on The Abduction of Ukrainian Children within The Ukraine-Russian Conflict under International Law Perspective

The Russian law prohibits the adoption of foreign children without consent from the child's home country. However, Vladimir Putin signed a decree which grants a Russian citizenship to Ukrainian children to enable their permanent adoption to Russian families in May 2022. The claims of naturalization by the Ukrainian government over the abducted children is supported by the fact that the Russian government has facilitated in promoting the ease to apply and receive financial benefits for Russian families seeking to adopt Ukrainian children (Longobardo, 2022).

Maria Alekseyevna Lvova-Belova, the current Presidential Commissioner for Children's Rights based in Russia, took part in a meeting with President Vladimir Putin in support of the intention to ease the regulations of Russian law to carry out forcible transfers of children and granting citizenship for adoption in 9 March 2022. She has confirmed that Ukrainian children had received Russian citizenship as a result of this legislation including the illegal adoption of a 16-year-old Ukrainian male to which she herself has adopted (Umland, 2024).

As "legal" as it is proclaimed under Russian law, the international law says otherwise towards the actions portrayed by Russia and their orchestrators. The international community recognizes multiple conventions and treaties regarding the rights and protection of children during armed conflict (Cismas et al., 2023). Most notably, the Convention on the Rights of the Child article 2 states that every child has rights without discrimination of any kind, irrespective of the child's or parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth or other status.

Furthermore, article 9 affirms how States Parties shall ensure that a child shall not be separated from his or her parents against their will and any action initiated by a State Party such as deportation, detention, and imprisonment of either parent or child, must provide essential information concerning the whereabouts of the absent member(s) of the family.

Perpetrators that violate such actions are subject to criminal arrest under the International Criminal Court. Article 8(2)(a)(vii) of the Rome Statute addresses unlawful deportation or transfer or unlawful confinement may constitute as a war crime. Additionally, article 8(2)(b)(viii) elaborate of such crimes which include the transfer, directly or indirectly, by the Occupying Power of parts of own civilian population of the occupied territory within or outside this territory. On 17 March 2023, the International Criminal Court has since issued an arrest warrant for Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova for the crimes stated thereof (Ioffe, 2023). The arrest warrant issued by the court marks the first of its kind specifically for the violation of Article 8(2)(a)(vii) regarding the forcible transfer of children. In other instances, the majority of such a case derive from a grander scale which amounted to either war crimes or genocide, such as the Armenian Genocide of World War I or the Holocaust during World War II (Amir, 2019). However, neither the Genocide Convention, the Rome Statute, and the International Criminal Court have been established during each of their respective timeframe, thus cases of past events that occurred before its establishment could not be enforced, or rather known as *nullen crimen sine lege* would be applied (Akhavan, 2022).

Based on the explanation stated above, this research aims to study and analyze the dogmatic view on the rights and protection against unlawful deportation and abduction of children based on the case coinciding with the ongoing Ukraine and Russian invasion. The novelty of this research addresses the applicable legal mechanisms which violate the

international framework regarding the forcible transfer of children, specifically regarding the case between Ukraine and Russia's conflict. Lastly, the researcher hopes this paper can provide readers a better understanding and promote further research development on international law regarding children's rights and their protection.

### **Research Method**

The research method conducted for this paper will apply doctrinal legal research. Also known as normative legal research, is a type of legal research that seeks to identify and analyze the norms that should govern a particular legal issue by examining statutory provisions and court decisions (Ballin, 2020). This type of research derives principles and values by applying doctrinal legal concepts which include primary sources from statutes, rules, provisions and cases, and secondary sources such as legal books, journals, seminars, articles, and websites relevant to the discussion topic in the scope of child abductions under the scope of international law. A few examples include the Genocide Convention, the Fourth Geneva Convention and its protocols, Convention on the Rights of the Children, the Hague Convention on Protection of Children and Co-operation, and the Rome Statute.

The specification for this research will apply descriptive qualitative analysis which explores the characteristics of a phenomenon. It involves the collection and data analysis in the form of words, images, or other non-mathematical forms of information. Descriptive qualitative analysis generates data that describe the problems of the who, what, and where of events and experiences from a subjective perspective (McConville, 2017). In this case what are the rules of international law pertaining in child abduction and deportation in both preventative and repressive in nature?

The research approach conducted in this paper will apply the case study approach. It is explained as an in-depth, explanatory and analyzing investigation using qualitative research methods to a certain sociological event (Orum et al., 1991). Thus, in the context of this research paper discussed would revolve solely on the abductions and deportation of children within the Ukraine and Russian war that started in 2022 and onwards.

### **Results and Discussion**

#### **Sources of International Law on Child Deportation and Abduction**

First enforced in January 1951, the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) is one of the many foundational treaties in international law which set the stones for the protection of the victims and criminalization of the acts on genocide.

Article 2 of the genocide convention addresses genocide as any of five acts committed with the intention to destroy, in whole or in part, a national, ethnic, racial or religious group, which includes:

- 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.

As inherently expressed in point (e), the Russian government has denied accounts of forcibly deporting Ukrainian children. However, the UN and human rights

organizations have documented reports and cases of Ukrainian children being taken from their homes and families whilst transported to Russia. Around 200,000 of Ukraine born children have been separated from their parents and siblings and held in orphanages within Russia (Grossi & Vakulenko, 2022). The forced expulsion of these children constitutes an act of kidnapping according to the Human Rights Watch (HRW) and is a clear attempt to destroy the Ukrainian nation by erasing the identity of Ukrainian children through deportation to Russia which may also constitute as genocide (Ioffe, 2023).

The Fourth Geneva Convention on the Protection of Civilian in Time of War (Geneva Convention IV) of 1949 is a significant part of international humanitarian law and further supplemented by its additional protocols. The conventions' article 4 of protocol II states that "persons who do not or have ceased to take part in combat, including members of the armed forces who have laid down their arms and those who are unable to fight due to illness, injury, detention, or any other reason, must in all circumstances be treated humanely, without adverse discrimination based on race, color, religion or belief, sex birth or nationality, or other similar reasons". Additionally, article 24 states that "parties to the conflict shall take necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition".

This article can be interpreted to mean that children, as civilians, must be protected from danger and must be treated humanely while exercising their right to their own cultural tradition, religion, and national identity. They should not be forcibly deported or separated from their families. Furthermore, articles 49 and 79 of protocol I prohibits the deportation or transfer of persons protected by their country to another country in conflict. Thus, under international humanitarian law, Ukrainian children cannot be forcibly deported to Russia unless the forced expulsion of Ukrainian children can be justified by security reasons and must be carried out in a humane manner.

In the case if children had been transferred, article 50 states that the occupying power shall take all necessary steps to facilitate the identification of children and the registration of their parentage and they must not, in any case, change their personal status, nor enlist them in formations or organizations subordinate to it. The Occupying Power shall make arrangements for the maintenance and education, if possible, by persons of their own nationality, language and religion, of children who are separated from their parents as a result of the war and who cannot be adequately cared for by a near relative or friend. Further elaborated in article 25, all persons in the territory of a party to the conflict, or in a territory occupied by it, shall be enabled to give news of a strictly personal nature to members of their families or through neutral intermediary, to members of their families wherever they may be, and receive news from them speedily and without delay. As the obligation falls to Russia as the Occupying Power, must cooperate with Ukrainian authorities in order to identify and safely reunite the children's parents, family members, or legal guardian as soon as possible.

### **Humanitarian Aid Policies Towards Children During Armed Conflict**

The Fourth Geneva Convention articles 17 and 24 of Protocol 1 provide the International Committee of the Red Cross (ICRC) and humanitarian aid organizations special rights to carry out humanitarian activities in situations of armed conflict. That the ICRC and other humanitarian organizations have the right and obligation to access

Ukrainian children and provide assistance to them in an effort to reunite their families wherever possible. On 16 March 2022, the UN Human Rights Council condemned the actions of the Russian government and demanded the immediate release of all kidnapped Ukrainian children under threat of sanctions against the Russian government and its leaders (Freedman, 2023). The ICRC Central Tracking and Protection Agency has moved to convey family news and assist in the reunification of families with children who have been separated (UK, 2024).

Save Ukraine is a neutral and independent humanitarian organization founded by Presidential Commissioner for Children's Rights Mykola Kuleba since 2014. The sole purpose of Save Ukraine includes the evacuation and repatriation of Ukrainian children whom were displaced or forcibly transported during the Russian attack while providing aid, shelter, and rehabilitation. In terms of statistics, 273 Ukrainian children have safely reunited with their parents while over 19,000 documented children still remain under Russian custody, however the actual number is still uncertain (Grossi & Vakulenko, 2022).

United Nations Children's Fund (UNICEF) has delivered medical supplies, improving access to healthcare, distribution of food and water, and mobilize child protection teams to deliver essential supplies and support in conflict zones across 9 regions in Ukraine. While the British Red Cross has contributed in supporting telecommunications, emergency hotlines, refugee services, and emergency cash-based assistance to over 68,000 people, over 3.9 million USD worth distributed (Unicef, 2022).

With all things considered, Russia has yet to fully cooperate with non-governmental organizations (NGO). During an inaugural meeting of the International Coalition of Countries for the Return of Ukrainian Children, Head of the Office President Andriy Yermak addresses that Russia has been concealing data about children abducted in Ukraine by changing their names, while ignoring requests from the international organizations to provide relevant information on deported Ukrainian children (Freedman, 2023).

### **The Rights and Protection of Children**

Regulations on children's rights and protection are regulated in the 1989 United Nations Convention on the Rights of the Child (UNCRC). Article 1 defines a child as every human being under eighteen years of age, or as determined by the laws of each country. Article 9 states that a child has the right not to be separated from his or her parents unless it is in the child's best interest and is carried out through judicial procedures. In the interests of children, article 7 emphasizes that every child has the right to a name, citizenship, and the right to know and be cared for by his parents.

According to Ukraine's ombudsman for children's rights, Russia is carrying out kidnappings with the aim of increasing its own population, and that Russia is conducting examinations and re-education of Ukrainian children with the aim of integrating them into the Russian state as permanent citizens (Longobardo, 2022). This reference has been substantiated when in May 2022, Vladimir Putin signed a decree facilitating the granting of Russian citizenship to Ukrainian children to allow permanent adoption by Russian families (Гаврилов, 2024)

Article 19 mandates that a state must take legislative, administrative, social and educational steps to protect children from violence which include:

- a. physical or mental;
- b. injury;

- c. abuse;
- d. abandonment;
- e. maltreatment; or
- f. exploitation.

In contrast, articles 27 and 30 stipulate that every child has the right to enjoy a culture and standard of living that enables physical, mental, spiritual, moral and social development.

But according to witness testimony obtained by the United Nations Commission of inquiry to Ukraine, some of the children experience poor living conditions, inadequate care and verbal abuse while living under the supervision from the Russian State. A few Ukrainian repatriates who've returned from Russia testified that they received harsh punishments and poor living conditions while in Russia (Umland, 2024).

The Ukrainian government has claimed that some children have been subjected to sexual and physical exploitation, bullying from peers, and pressure to sing the Russian nationality. Ukrainian children have been abducted by the Russian State after their parents were captured or killed during the Russian invasion, and/or after they were separated from their parents in active warzones (Ioffe, 2023). The Human Rights Watch reported that the kidnapped Ukrainian children were placed in a "summer camp" on Russian territory. The abducted children have undergone a process of "Russification", which is a form of cultural assimilation of non-Russians whom voluntarily or were forced to give up their current culture and language (HRW Press, 2023). Such atrocious acts clearly violate children's rights and can constitute an act of genocide.

The Ukrainian government has verified the identities of more than 19,000 kidnapped children based on the "Children of War" website (Ukraine, 2024). Apart from the ICRC, International organizations such as Save Ukraine are special organizations that work on the facilitation and repatriation to reunify families of kidnapped Ukrainian children.

### **Measures from the International Criminal Court**

Established in 2002, the International Criminal Court (ICC) is the world's first and only permanent tribunal for the purpose to prosecuting individuals for crimes committed on an international scale. The ICC is complemented by the Rome Statute which lays out the legal framework for the courts criminal outlining, structure, jurisdiction, prosecution, trial, and penalties to those found guilty.

Article 8(2)(a)(vii) of the Rome Statute explains that the ICC has jurisdiction to indict matters pertaining war crimes on a global level, in particular when such acts committed as part of a plan or part of the commission of such crimes on a large scale, including unlawful expulsion or transfer, or any unlawful restriction of liberty mentioned above. Article 8(2)(b)(viii) also refers war crimes that include which include the transfer, directly or indirectly, by the Occupying Power of parts of own civilian population of the occupied territory within or outside this territory.

Although Russia has yet ratified the International Criminal Court, Ukraine has accepted and cooperated with the ICC in its investigation of war crimes enacted by Russia. On 17 March 2023, the International Criminal Court issued arrest warrants against Russian President Vladimir Putin and Russian Commissioner for Children's Rights Maria Lvova-Belova, on charges responsibility for war crimes related to the unlawful deportation and transfer of children throughout Russia's invasion of Ukraine (ICC Press, 2023).

In order to enact such warrant, article 86 of the Rome Statute addresses that contracting parties to the Rome Statute must fully cooperate with the Court in its investigations and prosecution of crimes within the jurisdiction of the court. In consideration to the fact of the position as Russia's Head of State and Head Commissioner of the Russian Federation, the ICC can only apprehend those who've surrendered or has entered the territory of a contracting state to the court (Sekulow & Ash, 2019).

### Conclusion

Based on the events occurred during Russia's invasion of Ukraine since 2022, there has been reasonable grounds to surface a disturbing lack in disregard for international law, human rights, children's welfare, forced transfers, systemic assimilation, and mistreatment of Ukrainian children by Russian Forces and its perpetrators. The Russia government is in serious violation of well recognized international conventions and principles to protect innocent civilians in times of conflict. The arrest warrants issued by the International Criminal Court against Vladimir Putin and Maria Lvova-Belova represent a significant step towards accountability and responsibility, it demonstrates a global determination to prosecute and indict those responsible for their criminal actions. Such actions underscore the importance of an international legal framework to effectively address and condemn atrocious acts. Furthermore, this tragic chapter in history serves as a harsh reminder of the importance of safeguarding children's rights, preserving cultural identity, and protecting civilians during times of armed conflict.

### BIBLIOGRAPHY

- Alexander, A. (2023). Crisis and General International Law: Lessons from the Russia-Ukraine Conflict. *Forthcoming in the Indonesian Journal of International Law*, 21(1).
- Ballin, E. H. (2020). *Advanced introduction to legal research methods*. Edward Elgar Publishing.
- Cismas, I., Heffes, E., & Morrison, B. (2023). *Children and Armed Conflict: A Legal Glossary on Abduction and Deportation*.
- Fedorenko, V., & Fedorenko, M. (2022). Russia's Military Invasion of Ukraine in 2022: Aim, Reasons, and Implications. *Krytyka Prawa. Niezależne Studia Nad Prawem*, 14(1), 7–42.
- Freedman, L. (2023). Humanitarian Challenges of Great Power Conflict: Signs from Ukraine. *Dædalus*, 152(2), 40–51.
- Grossi, G., & Vakulenko, V. (2022). New development: Accounting for human-made disasters—comparative analysis of the support to Ukraine in times of war. *Public Money & Management*, 42(6), 467–471.
- HRW Press. (2023). *Submission to the UN Committee on the Rights of the Child 95th Session*.
- Ioffe, Y. (2023). Forcibly Transferring Ukrainian Children to the Russian Federation: A Genocide? *Journal of Genocide Research*, 25(3–4), 315–351.
- Longobardo, M. (2022). Legal Perspectives on the Role of the Notion of 'Denazification' in the Russian Invasion of Ukraine under Jus contra Bellum and Jus in Bello. *Legal Perspectives on the Role of the Notion of 'Denazification' in the Russian Invasion of Ukraine under Jus Contra Bellum and Jus in Bello (September*



A Case Study on The Abduction of Ukrainian Children within The Ukraine-Russian Conflict under International Law Perspective

- 9, 2022). *Revue Belge de Droit International (Forthcoming)*.
- Marhold, A.-A. (2023). Responses of international legal academia to the Russian invasion of Ukraine. *Leiden Journal of International Law*, 36(3), 487–494.
- Orum, A. M., Feagin, J. R., & Sjoberg, G. (1991). *Case for the case study*. University of North Carolina Press.
- Sekulow, J. A., & Ash, R. W. (2019). The Issue of ICC Jurisdiction over Nationals of Non-Consenting, Non-Party States to the Rome Statute: Refuting Professor Dapo Akande's Arguments. *SCJ Int'l L. & Bus.*, 16, 1.
- Tampubolon, M. (2022). Russian Invasion of Ukraine: The Human Rights Violations. *FUNDAMENTUM PETENDI LAW JOURNAL (FPLJ)*, 1(1), 37–46.
- Trautman, L. J., & McFarlin, M. (2023). Putin, Russia and Ukraine: International human rights violations, war crimes, & future implications. *War Crimes, & Future Implications (March 20, 2023)*.
- UK, R. C. (2024). *Continued destruction: unimaginable toll on Ukrainian civilians*.
- Ukraine, S. (2024). *About us*.
- Umland, A. (2024). *Russia's Forcible Transfers of Unaccompanied Ukrainian Children*.
- UNHCR. (2024). *Ukraine Refugees Situation*.
- Unicef. (2022). *More than half of Ukraine's children displaced after on month of war*.
- Гаврилов, В. О. (2024). Putin accused of fast-tracking Russian citizenship for abducted Ukrainian kids. *Atlantic Council*.

---

**Copyright holder:**

Christopher David Nagaria, Ariawan Gunadi (2024)

**First publication right:**

Syntax Literate: Jurnal Ilmiah Indonesia

**This article is licensed under:**

