



UNLAWFUL DEPORTATIONS AND TRANSFERS

An overview of rules of international humanitarian law pertinent to the arrest warrants issued by the International Criminal Court against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova

March 2023

On 17 March 2023, Pre-Trial Chamber II of the International Criminal Court (ICC) issued warrants of arrest against Vladimir Vladimirovich Putin, President of the Russian Federation, and Maria Alekseyevna Lvova-Belova, Commissioner for Children’s Rights in the Office of the President of the Russian Federation, for their alleged responsibility for the unlawful deportation and transfer of children from occupied areas of Ukraine to the Russian Federation.¹

The UN Independent International Commission of Inquiry on Ukraine, in its March 2023 report, affirms that although the official figures as well as the motives differ notably, both Ukrainian and Russian authorities have stated that thousands of children have been transferred from Ukraine to the territory of the Russian Federation since the beginning of the Russian invasion on 24 February 2022.² In particular, the Ukrainian government declared that 16,226 children have been deported to the territory of the Russian Federation as of 22 March 2023.³

Although it was unable to verify these figures, the Commission confirmed that it has examined hundreds of allegations of forcible transfer and deportation of Ukrainian children and noted that this unlawful conduct principally affects children “who lost parents or temporarily lost contact with them during hostilities; who were separated following the detention of a parent at a filtration point; and children in institutions”.⁴ The Commission also added that the government of the Russian Federation has reportedly put in place a comprehensive set of measures to facilitate such transfers, including adoption schemes and a law by decree that simplifies the granting of Russian citizenship to Ukrainian children, expressing its intention of making the transfers permanent.⁵

1. What are the arrest warrants for?

The ICC arrest warrants were issued because of President Putin and Commissioner Lvova-Belova’s alleged responsibility for the unlawful deportation of population (children) and unlawful transfer of population (children) from occupied areas of Ukraine to the Russian Federation, acts which constitute war crimes pursuant to the provisions of Articles 8(2)(a)(vii) and 8(2)(b) (viii) of the [Rome Statute](#). As this legal memo will elaborate below, both of these war crimes emanate from provisions of international humanitarian law (IHL) contained in the [Fourth Geneva Convention](#) (GC IV).⁶

¹ ICC, ‘[Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova](#)’ (17 March 2023).

² Human Rights Council, ‘[Report of the Independent International Commission of Inquiry on Ukraine](#)’, A/HRC/52/62 (15 March 2023) para 95. See also, among others, Amnesty International, ‘[Ukraine: “Like A Prison Convoy”: Russia’s Unlawful Transfer And Abuse of Civilians In Ukraine During “Filtration”](#)’; and Human Rights Watch, ‘[“We Had No Choice: “Filtration” and the Crime of Forcibly Transferring Ukrainian Civilians to Russia](#)’ (1 September 2022).

³ See the database created by the Ukrainian Government, ‘[Children of War](#)’.

⁴ Report of the Commission of Inquiry (March 2023) (note 2) para 97.

⁵ *Ibid.* para 96.

⁶ These are Articles 49(1) and 147. These acts also constitute a grave breach of the First Additional Protocol to the Geneva Conventions (AP I) pursuant to Article 85(4)(a) thereto.

2. Are transfers and deportations of population prohibited under international law?

Article 49(1) of GC IV prohibits individual or mass forcible transfers, as well as deportations of civilians,⁷ from occupied territory to the territory of the occupying power or to that of any other country, occupied or not, regardless of their motive.

Deportations occur when civilians from occupied territories are non-voluntarily displaced across an international border (for example, from occupied territory to the territory of the occupying power or to the territory of a third State). By contrast, forcible transfers may take place within national boundaries, for example when civilians are non-voluntarily transferred from one location to another within an occupied territory.⁸ It is important to note that both conducts are equally prohibited by IHL.

As explicitly stated in Article 49(1) of GC IV, every instance of forcible transfer or deportation of civilians from occupied territory is prohibited, regardless of the individual or collective nature of the act or its alleged motive. Furthermore, unlawful deportation or transfer of civilians constitutes a grave breach of the Convention,⁹ which entails that all States have an obligation to hold the alleged perpetrators of such a grave breach to account with a view to securing effective penal sanctions against them.¹⁰

Unlawful deportations and forcible transfers must be distinguished from cases where civilians willingly depart from an area – that is, when they leave of their own volition. However, it is important to note that deportations and transfers can be “forcible” and thus unlawful even in the absence of physical force, when the “consent” of the persons concerned is obtained under duress or by taking advantage of a coercive environment.¹¹ In the case of children, genuine consent would need to have been obtained from the children’s parents or legal guardians.¹²

⁷ Article 49(1) employs the term “*protected persons*”, which is defined in Article 4(1) of GC IV as persons that “*at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals*”. In the context of the armed conflict in Ukraine, this category includes, among others, all Ukrainian civilians in areas of Ukraine occupied by the Russian Federation.

⁸ See ICTY, *Prosecutor v. Simić et al.*, Judgment of the Trial Chamber, IT-95-9-T (17 October 2003) para 122. See also Article 85(4)(a) of AP I, which enumerates “*transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth [Geneva] Convention*” (emphasis added) as a grave breach of the Protocol.

⁹ Article 147 of GC IV.

¹⁰ Article 146 of GC IV.

¹¹ See, e.g., ICTY, *Prosecutor v. Radislav Krstić*, Judgment of the Trial Chamber, IT-98-33-T (2 August 2001) para 529 and the reference cited therein.

¹² This emanates, by analogy, from the wording of Article 78(1) of AP I concerning the evacuation of children, which is discussed later in this section. Furthermore, Article 18(1) of the Convention on the Rights of the Child provides in general terms: “*Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child*”.

3. What is the difference between forcible transfers/ deportations and evacuations?

Forcible transfers and deportations must be further distinguished from evacuations. This distinction is reflected in Article 49(2) of GC IV, which provides that the prohibition on deportation and forcible transfer notwithstanding, “the Occupying Power may undertake total or partial evacuation of a given area”. Such evacuations are a provisional measure that may be undertaken in one of two cases. First, when (and only for such time as) the presence of the concerned persons is deemed an obstacle to military operations such that their evacuation is required by “imperative military reasons”. Second, when necessary for “the security of the population”, to protect them from an imminent and foreseeable danger.

Evacuations are also subject to a number of conditions¹³ that serve to safeguard the interests of the persons concerned:

- I. They may not involve the displacement of civilians “outside the bounds of the occupied territory” unless “for material reasons” it is impossible to do otherwise.
- II. They must be temporary in the sense that the evacuees must be “transferred back to their homes as soon as hostilities in the area in question have ceased”.
- III. The occupying power undertaking evacuations must ensure, to the greatest practicable extent, that proper accommodation is provided; that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition; and that members of the same family are not separated. This provision corresponds with the occupying power’s general obligation to respect family rights (pursuant to Article 27 of GC IV) and is in line with other provisions of the Convention relating to family unity and unification.

4. Is the “evacuation” of children from occupied territory lawful?

Article 78 of AP I¹⁴ explicitly states that “[n]o party to the conflict shall arrange for the evacuation of children, other than its own nationals, to a foreign country”. The same provision further clarifies that only when “compelling reasons of ... health or medical treatment” so require can children from occupied territory be temporarily evacuated to a foreign country, and thus separated from their families. The article expressly provides that temporary evacuations of children from occupied territory may not be undertaken for reasons of safety. The article further provides that the written consent of the child’s parents or legal guardians is required for such an evacuation or, if these persons cannot be found, that of their caregiver.

¹³ Articles 49(2) and (3) of GC IV.

¹⁴ Article 78 of AP I is concurrently applicable and entails special provisions regarding the evacuation of children.

5. What are the implications of the arrest warrants?

Now that arrest warrants have been issued, whether President Putin and Commissioner Lvova-Belova will be apprehended and stand trial will ultimately depend on changes in the domestic political landscape of the Russian Federation or the cooperation of State parties to the ICC. Indeed, under the Rome Statute all parties have the legal obligation to cooperate fully with the Court, which includes the obligation to arrest and surrender any person subject to an arrest warrant who enters their territory.¹⁵ This may substantially limit the ability of both President Putin and Commissioner Lvova-Belova to travel internationally.

Furthermore, as the ICC Prosecutor's investigation into the Situation in Ukraine continues, the scope of the arrest warrants may be subsequently expanded to include other international crimes.



¹⁵ Articles 86 and 89 of the Rome Statute, among others.

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